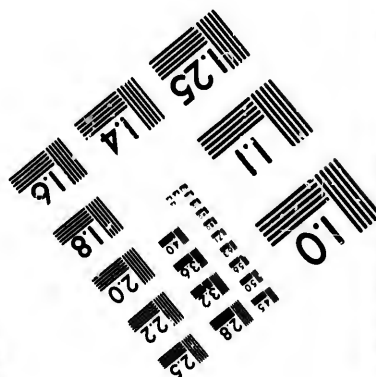
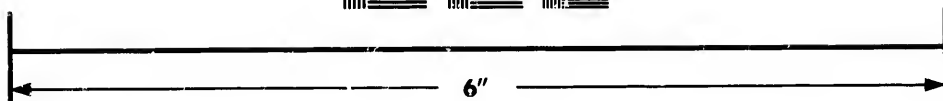
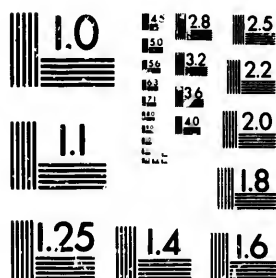


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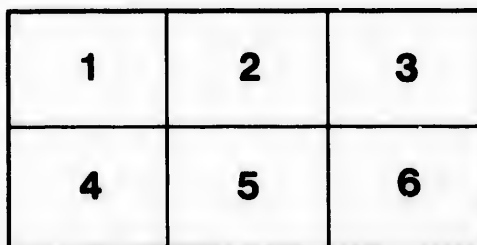
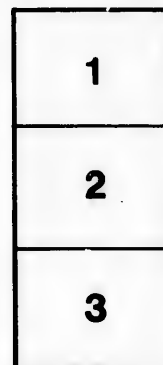
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The Mayor
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Kingston

TITLE
RULES OF THE COURTS
OF
QUEEN'S BENCH AND COMMON PLEAS,
THE
MUNICIPAL COUNCIL RULES,
THE
COUNTY COURTS' EQUITY EXTENSION
AND THE
NEW DIVISION COURT RULES;
TOGETHER, WITH
A COMPLETE COMPILATION
OF THE
CRIMINAL LAW OF THIS PROVINCE.

BY W. G. DRAPER, M. A.,
BARRISTER-AT-LAW.

TORONTO:
MACLEAR & COMPANY.

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TO
THE HONOURABLE
WILLIAM HENRY DRAPER, C. B.,
THIS WORK
IS
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BY THE COMPILER,
W. GEO. DRAPER.

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PREFACE.

Nearly twelve years have now elapsed since the publication, by the Hon. J. Hillyard Cameron, of a Compilation of the Rules of Court with numerous Statutes, a work of unquestioned usefulness and ability. Great alterations have, in the interim, been made by the Legislature in the practice of the law, by adding a Superior Court of co-ordinate jurisdiction with the Court of Queen's Bench; by altering materially the practice in regard to Dower, Ejectment and Replevin; by extending the jurisdiction of the County and Division Courts, by conferring an Equity jurisdiction on the former, and by the Municipal Laws. These alterations have compelled the Courts, in order to meet the requirements of the various enactments, both to abrogate old and to frame new Rules, which are not always of easy access to the profession. A work resembling Mr. Cameron's, and comprising the Rules of both Superior and Inferior Courts, appeared to the Subscriber to be greatly wanted, and, while conscious of his inability to do entire justice to the subject, he ventures to present this volume to the profession, trusting that its usefulness may be found sufficient to excuse its many defects.

The alphabetical arrangement of the whole of the Rules of the Courts of Queen's Bench and Common Pleas, instead of the division adopted by Mr. Cameron, will, he trusts,

admit of a readier and easier reference; and the insertion of the Municipal Rules, the County Courts' Equity Extension Act Rules, and the new Division Court Rules, will, it is hoped, prove acceptable to the profession generally, and more particularly to country practitioners.

The Compiler had originally intended to have inserted many Statutes relating to such subjects as "Evidence," "Sheriff," "Insolvent Debtors," &c., but the space occupied by the "Criminal Law" has rendered that impossible. He trusts, however, that the compilation of the Criminal Law alone will recommend the work to the bar, though he much regrets his inability to make it complete, by the insertion of the new Act introduced this session by Mr. Cameron.

W. GEO. DRAPER.

Kingston, January 1st, 1855.

RULES
OF
COURTS OF QUEEN'S BENCH
AND
COMMON PLEAS
OF
UPPER CANADA.

ACTION.

(a) In every case the suing out of process shall be regarded for all purposes as the commencement of the action.—2 E. T. 5 Vic.

AFFIDAVIT.

1. (b) It is ordered. that the Deputy Clerk of the

(a) It was held formerly that the declaration was the commencement of the action.—Cameron v. Ferguson, H. T. 4 Will. IV. The commencement of an action may be proved by the production of the writ of *ca. re.* The minutes of the Clerk of the Crown or his deputy on the writ, marking the time of issuing, is *prima facie* proof of the fact.—Upper v. McFarland et al., 5 U. C. R. 100.

(b) Where an affidavit of debt was sworn in Ireland, before a commissioner of Common Pleas and Exchequer, *Held*, that the title of the court need not be prefixed to the affidavit when sworn, but that the affidavit might be taken before such commissioner, to be afterwards entitled and used in either Court.—Perse v. Browning, 1 M. & W. 361.

Crown in outer districts do not take any affidavits in any cause after final judgment, except affidavits for *ca. sa's*, nor in any matter in which there is no cause pending.—E. T. 9 Geo. IV.

2. It is ordered, that every affidavit shall contain the christian name or names and surname of the defendant written at length, *with his place of abode and addition*.—T. T. 3 & 4 Will. IV.

3. It is ordered, that the rule of this court of T. T. 3 & 4 Will. IV., which requires that every affidavit shall contain the christian name or names and surname of the defendant written at length, with his place of abode and addition, be rescinded, so far as respects the place of abode and addition of the defendant.—E. T. 4 Will. IV.

4. It is ordered, that in all cases where a defendant appears in person, or the plaintiff enters an appearance for him, and an application is made after appearance to the Judge of the proper County Court for any summons according to the said act (12 Vic. ch. 63) which ought to be served upon the defendant, the affidavit on which the plaintiff grounds his application shall, among other things, state that the defendant resides at some place within the jurisdiction of the said County Court.—17 H. T. 13 Vic.

5. It is ordered, that the affidavit on which a person in execution for debt shall apply to be altogether discharged from custody, shall not be sworn sooner than the day after that on which the notice of application shall expire; and shall in all cases state whether any interrogatories have been served before the expiration of such notice, and if so, whether answers thereto upon oath have been duly made and filed, and notice thereof given.—49 H. T. 13 Vic.

AGENCY.

1. When the attorney in any cause depending on

this court, resides without the district where the action is brought, all notices and demands, and other papers or pleadings to be served on such attorney, shall be deemed regular by being put up in the Crown Office in the district wherein such action is brought, unless such attorney have a known agent in the same district, in which case service on the agent shall be required.—M. T. 4 Geo. IV.

2. Every attorney not resident in the Home District, shall enter in alphabetical order in a book, to be kept for that purpose by the Clerk of the Crown, his name and place of abode, and also, in an opposite column, the name of some practising attorney in the City of Toronto as his agent, who may be served with notices, summonses, and all other papers (not required to be personal); and if any attorney shall neglect so to enter his name, with that of his agent as before mentioned, fixing up the notice, summons, or other paper in the Crown Office shall be deemed good service.—M. T. 4 Geo. IV.

3. It is ordered, that every attorney residing in the Home District, and not having an office in the City of Toronto, or the liberties thereof, shall have a booked agent in said city, conformably to the rule of this court of M. T. 4 Geo. IV., upon whom papers may be served, as is provided in that rule with respect to attorneys not resident in the Home District, and subject to the same consequences, in case of the neglecting to enter the name of himself and his agent in the Crown Office, as directed by the said rule.—H. T. 10 Vic.

4. It is ordered that when the attorney actually suing out any writ, shall sue out the same for any other attorney, the name and place of abode of such other attorney shall also be indorsed upon the said writ.—9 H. T. 13 Vic.

5. It is ordered, that in future no business shall be transacted in the Crown Office, either in procuring

or suing out process, or in entering judgments, or by any proceeding whatever in a cause, unless upon the personal attendance of the party on whose behalf such business is desired to be transacted, or of the counsel or attorney of the party, or the clerk or agent of the attorney, or the clerk of such agent—H. T. 8 Vic.

ALIEN.

As soon as may be after filing any inquisition under the authority of the statute passed in the 54th Geo. III., the Clerk of the Crown shall cause an extract therefrom, containing the name of the person found to be an alien, and describing the land found to be in his possession, or to which he had a title, subject to forfeiture, in order that any person having claim may traverse the said inquisition; and he shall expose such extract in his office from the date thereof to the end of the year from the date of the inquisition.—M. T. 4 Geo. IV.

AMENDMENT.

It is ordered, that when an amendment of the declaration is allowed, no new demand of plea shall be deemed necessary, whether such amendment be made of the same term, or a different term; and the defendant, if he has already pleaded, shall be at liberty, within two days, exclusive of the day on which the amendment shall be actually made, to alter his plea, or plead *de novo*, unless otherwise ordered by the court, or the judge granting leave for the amendment.—21 H. T. 13 Vic.

APPEARANCE.

It is ordered, that the memorandum in writing by or for a defendant, shall be entitled in the proper court, and shall in the County of York be delivered at the office of the Clerk of the Crown and Pleas for the Court of Queen's Bench, or of Common Pleas,

to the clerk having charge of the appearance book, and in other counties to the Deputy Clerk of the Crown at his office; and that such memorandum shall in all cases be delivered at the office from which the original process was issued; and that the said clerks respectively shall enter the same in books to be kept by them for that purpose, and shall mark on every such memorandum the date of its delivery to them, and shall file the same accordingly.—13 H. T. 13 Vic.

ARREST.

(c) Where the defendant is described in the process or affidavit to hold to bail, by initials, or by wrong name, or without a christian name, the defendant shall not be discharged out of custody, or the bailbond delivered up to be cancelled on motion for that purpose, if it shall appear to the court that due diligence have been used to obtain knowledge of the proper name.—T. T. 3 & 4 W. IV.

ASSIZES.

To meet the provisions of the statute passed in the last session of the Parliament of this Province, entitled, "An Act to provide for the payment of petit jurors in Upper Canada,"—14 & 15 Vic. c. 14:

1. It is ordered, that the rules made in Hilary Term, 13 Vic., and severally numbered 33, 34, 35, 36 and 37, be, and the same are hereby rescinded.—1 M. T. 15 Vic.

2. It is ordered, that hereafter no cause shall be tried at the assizes for any county or union of counties, except the County of York, unless the record of nisi prius be delivered to the Deputy Clerk of the

(c) An arrest was set aside, where defendant, whose name was Patrick, was called Peter in the affidavit and writ.—Botsford v. Stewart, E. T. 11 G. IV. All the christian names must be inserted.—Westover v. Burnham, T. T. 3 & 4 Vic.

Crown for such county or union of counties (who shall attend at his office for the purpose of receiving the same) between the hours of nine in the forenoon and twelve o'clock noon, of the day appointed for the opening such assizes.—2 M. T. 15 Vic.

3. It is ordered, that hereafter no cause shall be tried at the assizes for the County of York, unless the record of nisi prius be delivered to the Marshal and Clerk of Assize for the said county, (who shall attend at the Court House in the City of Toronto for the purpose of receiving the same) between the hours of nine in the forenoon and twelve o'clock noon of the day appointed for the opening such assizes.—3 M. T. 15 Vic.

4. It is ordered, that every record of nisi prius shall be entered and numbered by the officer receiving the same, in the order in which he shall receive it; and that he shall not receive or enter any record except within the hours and at the place respectively set forth in the foregoing rules.—4 M. T. 15 Vic.

5. It is ordered, that the foregoing rules shall not preclude the judge, holding any assize, from permitting the record of nisi prius in any suit to be entered after the time limited by the said rules, if, upon facts disclosed by affidavit, or on the consent of both parties he shall consent to do so.—5 M. T. 15 Vic.

ATTORNEY.

1. It is ordered, that every person applying to be admitted an attorney of either of the said courts, shall leave, or cause to be left, with the Clerk of the Crown and Pleas, at least seven days before the day on which he shall apply to such court for admission, his articles of clerkship, and also any assignment that may have been made thereof, together with answers to the several questions hereunto annexed, signed by

the applicant, and also by the attorney or attorneys with whom he shall have served his clerkship.

Questions to be answered by the Clerk.

1. What was your age on the day of the date of your articles?

2. Have you served the whole term of your articles at the office where the attorney or attorneys, to whom you were articulated or assigned, carried on his or their business? If not, state the reason.

3. Have you at any time during the term of your articles been absent, without the permission of the attorney or attorneys to whom you were articulated or assigned? and if so, state the length and occasions of such absence.

4. Have you, during the period of your articles, been engaged or concerned in any profession, business or employment, other than your professional employment as clerk to the attorney or attorneys to whom you were articulated or assigned?

5. Have you, since the expiration of your articles, been engaged or concerned, and for how long time, in any and what profession, trade, business or employment, other than the profession of an attorney or solicitor?

Questions to be answered by the Attorney.

1. Has A. B. served the whole time of his articles at the office where you carry on your business? and if not, state the reason.

2. Has the said A. B., at any time during the term of his articles, been absent without your permission? and if so, state the length and various occasions of such absence.

3. Has the said A. B., during the period of his articles, been engaged or concerned in any profession, business or employment, other than his professional employment as your articulated clerk?

4. Has the said A. B., during the whole time of his clerkship, with the exceptions above mentioned, been faithfully and diligently employed in your professional business of an attorney and solicitor?

5. Has the said A. B., since the expiration of his articles, been engaged or concerned, and for how long time, in any and what profession, business or employment, other than the profession of an attorney or solicitor?

And I do hereby certify, that the said A. B. hath duly and faithfully served under his articles of clerkship (or assignment, as the case may be), bearing date, &c., for the term therein expressed; and that he is a fit and proper person to be admitted an attorney.—Rule 51, H. T. 13 Vic.

2. It is ordered, that whenever hereafter any attorney of this court shall be struck off the roll of attorneys, or be prohibited from practising as an attorney therein, by order of this court, for malpractice or misconduct as an attorney, or other sufficient cause, the clerk of this court shall forthwith certify such dismissal or prohibition, and the grounds thereof expressed in general terms under the seal of this court, and shall transmit such certificate to each of the other superior courts of Upper Canada; and that this court, on receipt of any similar certificate from the Court of Chancery or the Court of Common Pleas, of any attorney or solicitor, of either of the said courts respectively, having been struck off the roll of such court, or prohibited from practising therein, shall thereupon take proceedings for striking such person, being an attorney of this court, from the roll of attorneys, or for prohibiting his practising therein, according to the course and practice (and in like manner, and under like circumstances) observed in similar cases in the superior courts in England.—T. T. 15 Vic. *Mem.*—A similar rule exists in Common Pleas.

AWARD.

1. (d) It is ordered, that in future, where a rule to shew cause is obtained in this court to set aside an award, the several objections thereto, intended to be insisted upon at the time of making such rule absolute, shall be stated in the rule to shew cause.

BAIL,

1. (e) It is ordered in future, that when bail, which has been put in in the country, is to be justified in court, the bailpiece with the affidavit of the due taking thereof, and the affidavit of justification, shall be taken from the Deputy Clerk of the Crown of the district in which they have been filed, and shall be produced in court upon the motion for allowance, and afterwards filed in the office of the Clerk of the Crown and Pleas in Toronto; and that the Deputy Clerk of the Crown shall, on notice given to him for that purpose on behalf of the party moving for allowance, transmit the same to the principal officer, in order that this rule may be complied with.—T. T. 3 & 4 Will. IV.

(d) A rule nisi to set aside an award was discharged with costs, because it was not drawn up on reading the award or copy, nor the submission, nor the rule making the submission a rule of court.—*Jacobs v. Ruttan*, 2 U. C. Chamber Reports, 138. Whenever a certain fact is relied on to set aside an award, that fact must be distinctly sworn to, and if denied the denial is conclusive.—*Slack v. McEathron*, 3 U. C. R. 184. In the rule nisi for setting aside an award, it must be stated that the rule is drawn up "on reading the award or copy of it." The omission of these words is fatal.—*Wilkins v. Peck*, 4 U. C. R. 263. The objection to the rule nisi for setting aside the award, that it is not drawn up "on reading the award" is well answered by shewing, that among "the affidavits and papers filed," on reading which the rule was drawn up, there was a copy of the award verified by affidavit.—*Tracy v. Hodgest*, 7 U. C. R. 5.

(e) The plaintiff declares in debt on a recognizance of bail, and sets out in his declaration that the bail came before a

2. (f) It is ordered, that hereafter no certificate shall be granted by any of the Clerks of the Crown

commissioner of the Newcastle District, duly appointed according to the form of the statute, in such case made and provided (2 Geo. IV. ch. 1, sec. 40), and then, after stating the condition of the recognizance, made this averment, "as by the record of the said recognizance, still remaining in the court, more fully appears." *Held, per Cur.*, (MACAULAY, J.. *dissentiente*) declaration bad on special demurrer, in not averring that the recognizance was filed in the office of the Deputy Clerk of the Crown in the district in which it was taken, as directed by the 40th section of the act (2 Geo. IV., ch. 1).—Gillespie et al. v. Grant, 3 U. C. R., 400.

(f) The affidavit of justification cannot be sworn before the defendant's attorney.—*Koyle v. Wilcox*, 2 O. S. 113. Bail will be allowed to justify by the affidavit made at the time of the acknowledgment, though an exception to them be entered, when nothing is shewn to repel such affidavit.—*Duggan v. Derrick*, H. T. 6 Will. IV. The court will not grant leave to enter an exoneration where bail have surrendered their principal, without a certificate from the sheriff to whom he was rendered.—*Linley v. Cheeseman*, Dra. Rep. 55. *Seemle*, that the plaintiff, though the defendant will not put in bail, may go on with his action against him, and against the sheriff at the same time.—*Reg. v. Sheriff of County of Hastings*, 1 U. C. Cham. Rep. 230. *Seemle*, that bail are not bound by what the attorney for their principal may choose to do, as the attorney for the principal.—*Mitchell v. Noble and Hunter*, 1 U. C. Cham. Rep. 284. On an application to set aside a *ca. sa.* in the original action, or proceedings against bail, the affidavits are rightly entitled in the action against the bail.—*Beattie v. McKay, et al.*, 2 U. C. Cham. Rep. 56. Where an action was brought on a recognizance of bail against one of the bail alone, and it appeared by the declaration that others were jointly bound, it was held that the objection was fatal, and might be taken advantage of without a plea in abatement. The plea in this case was clearly bad.—*Mills v. McBride*, 10 U. C. R. 145. Where a defendant on bail to the limits has broken his recognizance, it is no defence that he was informed and believed that the place he went to was within his limits, unless it can be shewn that such was the general impression, or that the boundary was disputed.—*Hedden v. Gregory et al.* 10 U. C. R. 334.

or their deputies respectively, that a recognizance of bail and affidavit of justification have been filed in his office by any person desirous of obtaining the benefit of the jail limits in pursuance of the provisions of the fifth section of 10 & 11 Vic. ch. 15, until a rule or order for the allowance of such bail shall have been first made, and that such bail-piece shall be in the following form:—

IN THE QUEEN'S BENCH OR COMMON PLEAS.
(County named in writ,) }
TO WIT: } On the — day of
— A.D., 18—.

C. D. having been arrested on a writ of — is delivered to E. F., of — and G. H., of —, at the suit of A. B.

K. H., attorney for the defendant.

Writ endorsed for £ —, and (as the case may be).

Taken and acknowledged at —, in the County of —, this — day of — A.D., 185—, before me.

You (addressing the bail by name) do jointly and severally undertake that C. D. shall remain and abide at the suit of A. B. within the limits of the jail for the County of —, and not depart therefrom, unless released therefrom by due course of law; and that the said C. D. shall and will well and truly obey all notices, orders and rules of court touching or concerning him, the said C. D., remaining or continuing upon the said limits, or being remanded or ordered to close custody therefrom; and, in the event of his failing in any particular, that you will pay such sum of money, sheriff's fees and poundage, as the said C. D. is liable to pay upon or by virtue of the writ on which he has been so arrested.—Rule 50, H. T. 13 Vic.

CLERK OF ASSIZE.

Rule of E. T. 11 Geo. IV. is virtually superseded

by Rule of H. T. 5 Vic., and that again is rescinded by Rule 36 H. T. 13 Vic., which is rescinded by Rule 1 M. T. 15 Vic.—*quod vide supra tit. "Assizes."* See also stat. 14 & 15 Vic. ch. 118.

COGNOVIT.

1. (g) It is ordered, that the 7th Rule of M. T. 4 Geo. IV. be rescinded, and that in future no judgment be entered on any warrant of attorney to confess judgment, or upon any cognovit actionem, that shall not have been obtained through the intervention of some practising attorney of this court, whose name shall be endorsed on the warrant or cognovit; and unless the affidavit of execution shall state the same to have been obtained through the intervention of some practising attorney whose name is thereon indorsed.—E. T. 9 Geo. IV.

2. After the first day of next term judgment shall not be entered up on any cognovit given in a case in which no process shall have been served, without the order of a court or fiat of a judge, in cases where, from lapse of time, an order or fiat would be required, in order to enter up judgment on a warrant of attorney, and the practice as to the obtaining such order or fiat shall be the same as upon warrants of attorney.—H. T. 11 Vic.

(g) The rule requiring the name of the attorney to be indorsed upon the cognovit, does not apply when an attorney is plaintiff.—*McLean v. Cumming, Tay. U. C. R., 240.* Where, after action brought, a confession was prepared by the plaintiff's attorney, and sent to the plaintiff at his request, with a blank for the sum for which the confession was to be given, and the sum was filled in by the plaintiff, and the confession executed by the defendant, without the attorney or any of his clerks being present, the above rule was held to have been sufficiently complied with.—*Thompson v. Zwick, 1 U. C. R. 338.* If a cognovit be prepared by an attorney, and his name be endorsed on it at the time of execution, it is a sufficient compliance with this rule, although the cognovit be afterwards executed in the plain-

COMMISSIONER.

1. No attorney of this court shall take any recognizance of bail as a commissioner, in any case in which he shall be employed as attorney or agent for either party.—T. T. 1 & 2 W. IV.

2. (h) After the first day of Hilary Term next, no attorney of this court shall issue a writ of *capias*, as a commissioner, in any case in which he shall be concerned as attorney for the plaintiff.—M. T. 4 W. IV.

COMPUTATION.

(i) It is ordered, that in future rules nisi for refer-

tiff's counting-house when the attorney is not present.—*Clarkson v. Miller*, 2 U. C. R. 96. In deference to the above cases, Mr. Justice Sullivan came to the same decision in *Paterson v. Squires*, 1 U. C. Cham. Rep. 234. Though the learned judge is reported to have remarked, "that if he had to decide the point in the first instance, he should have hesitated in coming to the same conclusion" as in those cases. In an action of ejectment plaintiffs were nonsuited for not confessing lease, entry and ouster: subsequently to the trial the defendant executed a cognovit; *Held, per Cur.*, on motion for a new trial, that defendant's having confessed judgment was a waiver of any formal exception he might have.—*Doe Kerr v. Shoff*, 9 U. C. R. 180.

(h) The commissioner's authority to issue writs was given by 2 G. IV. c. 1, sec. 9. The only enactment limiting this authority is 4 W. IV. c. 6. sec. 4, until 12 Vic. ch. 63, since the passing of which statute the court have decided that commissioners have no power to issue bailable writs under 2 G. IV. c. 1, sec. 9, which is thereby virtually repealed. *Per Cur. McIntyre v. Hutton*, 8 U. C. R. 560.

(i) By 13 & 14 Vic. c. 52, s. 5, the judges of county courts, in all suits in which the venue is laid in their county, may grant summonses and make orders to compute, in suits depending in superior courts, in the same manner as a judge in chambers may do, whether defendants in such suit reside in their counties or not. The proper method of computing principal and interest is to calculate the interest on the principal sum up to the time

ring to the master to compute principal and interest, and to pay the costs after judgment by default, in actions upon promissory notes, or in other actions in which a reference may be made to the master for the same purposes, may, if the plaintiff shall desire it, be made returnable at the expiration of such number of days after the day of service, as shall be expressed in such rule; and that the practice be the same in this respect upon judges' summonses for the same purpose. And it is further ordered, that upon the rule being made absolute, or upon the granting of a judge's order in any such case, the plaintiff may proceed to tax his costs, and enter up his judgment without service of such rule or order, or of any notice; and that the rule nisi or judge's summons, shall be so drawn as to apprise the defendant that judgment will be entered without further notice, unless cause be shewn to the contrary.—T. T. 5 W. IV.

CORPORATION.

The rule of T. T. 11 Geo. IV. prescribing form of process for summoning corporations is virtually rescinded by 12 Vic. ch. 63, secs. 22 and 28.

of the first payment; then to apply the payment first to the discharge of the interest, and then the balance, if any, may be deducted from the principal, and so on till the debt be discharged.—*McGregor et al. v. Gaulin et al*, 4 U. C. R. 378. Formerly interest was computed only to the commencement of the suit, but is now carried down to final judgment.—*Robinson v. Bland*, 2 Bur. 1077; *Byles on Bills*, 228. The service of a summons to compute, on the agent of the defendant, an attorney, is sufficient.—*Spragge v. McMartin*, T. T. 1 & 2 Vic. A foreign bill may be referred to the master for computation of the principal and interest, and ten per cent. damages under the Provincial statute.—*Com. Bank v. Allen et al.*, T. T. 1 & 2 Vic. The court refused a rule to compute interest on a judgment before the master, where it appeared there might be ground for doubt as to the plaintiff's right to recover such interest, and the defendant resisted the application.—*Eberts v. Traveller*, 9 U. C. R. 355.

COSTS.

1. In future the practice of this court, as well as the quantum of costs to be allowed in all proceedings, is to be governed (when not otherwise provided for) by the established practice of the Court of King's Bench in England.—1 M. T. 4 Geo. IV.

2. (*j*) It is ordered by the court, that in any action of the proper competence of the District Court, in which final judgment shall be obtained without a trial, the master shall tax no more than District Court costs, unless specially authorised by order of the court or of a judge in vacation.—9 E. T. 11 Geo. IV.

3. It is ordered by the court, that fees shall not in any case be taxed to more than two counsel, upon any trial or argument to be had hereafter.—10 E. T. 11 Geo. IV.

4. It is ordered by the court, that no counsel's fee on motion shall be taxed in respect of any rule which may be obtained without filing a motion paper in court or in term time.—11 E. T. 11 Geo. IV.

5. It is ordered by the court, that no fee or other charge shall be charged for any writ to warrant a

(*j*) Such an order must be obtained after an assessment of damages on a judgment by default, where the amount assessed is apparently within the jurisdiction of the County Court.—*Ferrie et al. v. Young*, E. T. 3 Will. IV. Where a verdict is taken subject to a reference to arbitration, and the arbitrators award to the plaintiff an amount apparently within the jurisdiction of the County Court, full costs may be obtained by rule of court, or order of a judge under this rule.—*Elmore v. Colman*, M. T. 6 Will. IV. The plaintiff is not entitled to full costs as a matter of right, where he recovers after judgment by default, an amount apparently within the jurisdiction of a district court, as the 9th rule of E. T. 11 Geo. IV. in such case requires the order of the court or of a judge for such taxation.—*McGill v. Stull*, 3 O. S. 140.

testatum, unless such writ shall be actually sued out by the party.—12 E. T. 11 Geo. IV.

6. It is ordered by the court, that at the foot of every bill to be hereafter taxed, the attorney shall certify under his hand, that every service or disbursement charged has been actually and necessarily made, which certificate shall nevertheless in no case be taken to dispense with the requisite affidavit of disbursements, or to warrant any charge not otherwise taxable.—13 E. T. 11 Geo. IV.

7. It is ordered, that from and after this present term of Easter, the rule of court of E. T. 2 Geo. IV., as revised and altered in T. T. 6 Geo. IV. regulating costs in civil and criminal cases, be rescinded, and that from henceforth the fees hereinafter expressed shall and may be taken, and be allowed to be taken, by any counsel, attorney, clerk of the crown, sheriff, clerk of assize, and marshall, constable, crier and jurors, for the services respectively rendered by them. N.B.—This rule was rescinded, as far as regards fees to be taken by sheriff, by Rule 2 H. T. 10 Vic., *qu. vi. infra*. 16, 11 Geo. IV. E. T.; and as regards clerks of assize by 13 & 14 Vic. ch. 118, and as to jurors by 14 & 15 Vic. ch. 14.

8. It is ordered, that the Rule of E. T. 11 Geo. IV. regulating the amount of costs to be taxed in civil and criminal cases be amended, in that part of it which relates to the counsel's fee with brief at trial or assessment, by adding at the end of that item, the words "or by order of a judge," to such sum as shall appear proper under the circumstances of the case.—2 E. T. 4 Will. IV.

9. It is ordered, that the following fees be allowed to coroners for services hereinafter named:

For summoning jury and making return to clerk of assize, for each juror actually and necessarily summoned, 1s.

In other respects same fees as to sheriffs for similar services.

10. It is ordered, that in future the same fees be allowed to coroners for services rendered by them in the execution and return of process in civil suits, as would be allowed to a sheriff for the same services; and that when, according to the nature of the process and the service rendered thereon, the sheriff, if he had discharged the same duty, would have been allowed poundage, the same poundage shall be allowed to coroners.—H. T. 12 Vic.

11. (*k*) No costs shall be allowed on taxation to a

(*k*) This rule makes the practice towards defendants more just than it was formerly, and it is intended for their benefit in cases where they succeed on any issues raised by their pleadings, or the plaintiff fails on any of his counts; and where the general issue was pleaded to a declaration containing several counts, and the defendant succeeded under it as to some of those counts, he was held entitled to the costs occasioned by them.—*Cox v. Thompson*, 1 Dowl. 526; *Ward v. Pell*, 2 Dowl. 76; *Knight v. Brown*, 9 Bing. 643; *Newton v. Harland*, 5 Dowl. 644. Where in case for a libel, on the general issue, the jury found for the plaintiff, and also found as a fact that a great part of the declaration did not apply specifically to the plaintiff, though there were innuendoes by which it was endeavoured to connect him with the matters complained of; it was held, that the defendant was entitled to the costs of that part.—*Prudhomme v. Fraser*, 2 A. & E. 645. So in ejectment, where there was but one count, and the lessor of the plaintiff recovered judgment for part only of the lands claimed, the court held that the defendant was entitled to have his costs, as to the part found for him, set off against the costs of the lessor of the plaintiff.—*Doe v. Errington*, 4 Dowl. 602. And the same where there were several demises, and the jury found for the plaintiff on some, and for the defendant on others.—*Doe v. Webber*, 4 N. & M. 381. And also in trespass, for entering the plaintiff's house, and taking his goods, where the plaintiff recovered for the entry and part of the goods, and the defendant for the other part.—*Routledge v. Abbott*, 8 A. & E. 592—where see form of postea in such case. So in covenant, with several branches

plaintiff upon any counts or issues upon which he has

assigned, where the defendant succeeds on some of the issues.—*Daubuz v. Rickman*, 4 Dowl. 129. But where in an action for negligently stowing, &c., certain casks, the defendant traversed the breach of contract, and the plaintiff recovered for one cask only, it was held that the issue was not divisible, so as to entitle the defendant to the costs of the portion found for him.—*Anderson v. Chapman*, 3 Jur. 1154. Where in trespass for seizing goods, the defendants pleaded two pleas, one justifying under a distress for rent under a demise at £5 a year, and another for £2 10s., and both issues were found for him, the court held that they were not inconsistent; and the judge having certified at the trial to deprive the plaintiff of costs, the rule for taxing to the defendants the costs of the two issues found for them, was drawn up with this additional clause, “and that the costs when so taxed be paid by the said plaintiff to the said defendants”; but the court held that they had no power to make such an order, and they directed the record to be amended by an entry of a judgment for these costs, upon which the defendants might proceed to obtain them, if they thought proper.—*Twigg v. Potts*, 4 Dowl. 266. On a reference to arbitration before issue joined, the above rule must be observed on the taxation of costs.—*Daubuz v. Rickman*, 4 Dowl. 129. Neither party will be entitled to the costs of issues, from the trial of which the jury have been discharged.—*Valance v. Adams*, 2 Dowl. 118. Nor where judgment is given *non obstante veredicto*, as to the costs of the immaterial issue.—*Goodburn v. Bowman*, 9 Bing. 667. If the defendant seek to deprive the plaintiff of costs, on the ground that his action should have been brought in a Court of Requests, he cannot, at the same time, have the costs of issues, which have been found for him, taxed in a superior court.—*Jenks v. Taylor*, 1 M. & W. 578. Where the plaintiff obtained judgment on demurrer to one plea, and the cause was taken down to trial on another, and a juror was then withdrawn by consent, *Hild*, that the plaintiff could not obtain the costs of the demurrer.—*Burdon v. Flower*, 7 Dowl. 706. This rule does not apply to paupers.—*Gougenheim v. Lane*, 4 Dowl. 482. As to amount and mode of taxation in such cases, if there be two issues, one found for the plaintiff, and one for the defendant, if that found for plaintiff be the substantial issue, he shall have the *postea* and general costs of the cause, with the exception of such parts of the pleadings,

not succeeded; and the costs of all issues found for

briefs, counsel fees, and of such of the witnesses as are applicable only to the issue for defendant, which costs the defendant will be entitled to have deducted from the plaintiff's costs.—*Hart v. Cutbush*, 2 Dowl. 456; *Eades v. Everett*, 3 Dowl. 687; *Knight v. Woorę*, 3 Bing. N. C. 534. But the defendant is not entitled to the expense of witnesses called by him, unless their evidence related exclusively to the issues found for him.—*Crowther v. Ellwell*, 4 M. & W. 71; *semble*, overruling *Eades v. Everett*, 3 Dowl. 687. The defendant is entitled to the costs of all the issues found for him, although they exceed the plaintiff's costs; and in such case he may have judgment and execution for their recovery.—*Milner v. Graham*, 2 Dowl. 422; *Twigg v. Potts*, 2 Dowl. 266. The court will not interfere with the decision of the master as to the issue to which particular costs at the trial are referable.—*Doe Smith v. Webber*, 2 A. & E. 448. The plaintiff sues in trespass in one count, for breaking and entering his house, and taking his goods: the defendant justifies the breaking and entering in one plea, and in another plea he denies the goods to be the plaintiff's; the defendant has a verdict on the first plea, and the plaintiff on the second for 30s.: *Held*, that plaintiff was entitled to judgment in the action, and to the costs of the cause.—*Evans v. Kingsmill, Sheriff*, 4 U. C. R. 132. Defendant demurs to one of the counts in a declaration, and takes issue on the others; the plaintiff goes to trial, and assesses contingent damages on the demurrer for one farthing: the plaintiff succeeds on the demurrer, and the defendant has a verdict upon all the issues: *Held*, that the defendant is entitled to the costs of the issues in fact, and may have judgment and execution for them.—*Taylor v. Carr*, 4 U. C. R. 149. Where, on demurrer and issues in fact, judgment is given in favour of defendant on demurrer, and the issues in fact are found for the plaintiff, the defendant cannot call upon the plaintiff to pay him the costs of the trial of the issues on which he failed, as a condition of his (plaintiff's) being allowed to amend on the demurrer. Where separate actions were brought against maker and endorser of a note, and on demurrer by defendant to plaintiff's replication, judgment was given for defendant, and the plaintiff applied to amend, making but one application in the three cases; *Held*, that defendant was only entitled to the costs as for one case, in attending to oppose the application to amend: *Held also*, that as to the ordinary fee

the defendant shall be deducted from the plaintiff's costs.—26 E. T. 5 Vic.

12. (*l*) Where money is paid into court in several actions which are consolidated, and the plaintiff, without taxing costs, proceeds to trial on one, and fails, he shall be entitled to costs on the other up to the time of paying money into court.—27 E. T. 5 Vic.

13. (*m*) Either party, after plea pleaded, and a reasonable time before trial, may give notice to the

disbursed to counsel, with brief to argue the demurrer in the three cases, and the ordinary taxable costs occasioned to the defendant by the demurrer in each case, that they might be allowed him.—Bank B. N. A. v. Ainsley, 7 U. C. R. 521. Where there are issues in fact and in law, and the issues in fact and one issue in law are in favour of the plaintiff, and an issue in law in bar of the action in favour of the defendant, the plaintiff is entitled to the costs of the trial and of the pleading determined in his favour, and the defendant to the general costs of the cause.—Davis v. Davis, H. T. 7 Will. IV.

(*l*) Where defendant, in an action of assumpsit, paid money into court, and died, and the action abated, and the plaintiff afterwards sued the executors for the same cause of action, and took the money in the former suit out of court, but proved no larger amount, the court held that the plaintiff could not retain the costs of the first action, and recover against the executors for the difference between the sum remaining and that originally paid in.—Carey v. Choate et al. M. T. 6 Vic.

(*m*) This rule virtually supersedes rules 5 and 6 T. T. 3 & 4 Will. IV. It is not compulsory in any case on the party intending to produce documents in evidence, to proceed under this rule; nor is it advisable for him to do so, where the nature of his case requires that he should not give the opposite party information of the nature or contents of his documentary evidence before trial; but in all cases where the steps pointed out by this rule are not taken, the expense of proving documents will not be allowed, though if they have been taken, and the admission of documents is refused, the party refusing (where the judge thinks it reasonable that the admission should be made,)

other, either in town or country, in the form hereto annexed marked A., or to the like effect, of his inten-

can only escape the costs of proving them, by the judge at the trial refusing to certify that they were proved to his satisfaction. It is altogether in the discretion of the judge to say whether the admission required is unreasonable or not, but where *non est factum* is pleaded to a specialty or forgery, of the making or indorsement of a promissory note, &c., or the execution of a private instrument to which the opposite party is not privy, it is presumed that the admission would not be considered reasonable, and the judge cannot, in any case, order the admission of documents against the party's consent.—*Smith v. Bird*, 3 Dowl. 641; *Stacey v. Blake*, 7 C. & P. 404. The court has no jurisdiction to order the admission of documents under this rule; and if a judge at chambers refers the parties to the full court, they will hear the case argued, and intimate their opinion to the judge, but will not pronounce judgment.—*Smith v. Bird*, 3 Dowl. 641. On the plaintiff paying defendant the expenses of examining a judgment and other documents abroad, an order was made by defendant to pay the expense of proving them at the trial (such proof being satisfactory to the judge, and so certified by him), whatever might be the result of the case, if, after such examination, the defendant did not admit them.—*Ib.* If in a notice to admit documents, a document is described as a counterpart, but is in fact a lease, and the opposite party has consented to admit it, he is bound by his admission, and under it the lease may be given in evidence.—*Doe v. Wright v. Smith*, 3 N. & P. 335. Although an order has been made on the plaintiff to admit a copy of a letter from himself to defendant, and the plaintiff has also had notice to produce the original, the copy cannot be read unless evidence is given of the existence of the original.—*Sharpe v. Lamb*, 3 P. & D. 454. Where, by a judge's order, a copy of a letter was ordered to be admitted, it is not enough to put in the notice to admit under the judge's order, and a copy of a letter between the same parties with the same date as the one referred to; but if a witness also prove that he was at chambers when the order was made, and that he produced to the clerk of the opposite attorney the copy of the letter produced to be given in evidence, that is sufficient.—*Clay v. Thackeray*, 9 C. & P. 47. A defendant refused to admit the handwriting of a third person to a document, and the usual order was made for the costs of

tion to adduce in evidence certain written or printed documents; and unless the adverse party shall consent by endorsement on such notice within forty-eight hours to make the admission specified, the party requiring such admission may call on the party required by summons to shew cause before a judge, why he should not consent to such admission, or, in case of refusal, be subject to pay the costs of proof; and unless the party required shall expressly consent to make such admission, the judge shall, if he think the application reasonable, make an order that the costs of proving any document specified in the notice, which shall be proved at the trial to the satisfaction of the judge, and certified by his indorsement thereon, shall be paid by the party so required, whatever may be the result of the cause. Provided that if the judge shall think the application unreasonable, he shall indorse the summons accordingly. Provided, also, that the judge may give such time for enquiry, or examination of the documents intended to be given in evidence, and give such directions for inspection and examination, and impose such terms upon the party requiring the admission, as he shall think fit. If the party required shall consent to the admission, the judge shall order the same to be made. No costs of proving any written or printed document shall be allowed to any party who shall have adduced the same in evidence on any trial, unless he shall have given such notice as aforesaid, and

proving it: at the trial the handwriting was proved, but the document was one which was inadmissible in evidence in the cause, the judge refused to certify for the costs of proving it.—*Phillips v. Harris*, 1 Car. & M. 492. Where a bond is pleaded with a profert, the admission of its execution under a judge's summons for that purpose, does not dispense with the necessity of its production at the trial.—*Lesslie v. Leatry*, H. T. 7 Will. IV. N.B.—The powers given to the judges of the superior courts by this rule are conferred upon the judges of the county courts, to be exercised in suits in superior courts by 16 Vic. ch. 175, sec. 17.

the adverse party shall have refused or neglected to make such admission, or the judge shall have endorsed upon the summons, that he does not think it reasonable to require it. A judge may make such order as he may think fit respecting the costs of the application, and the costs of the production and inspection; and, in the absence of a special order, the same shall be costs in the cause.

FORM OF NOTICE REFERRED TO.

A.

In the Queen's Bench. } A. B.
v.
C. D.

Take notice, that the plaintiff (or defendant) in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the plaintiff (or defendant), his attorney or agent, at —, on —, between the hours of — and —; and that the plaintiff (or defendant) will be required to admit that such of the said documents as are specified to be originals, were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies, are true copies; and that such documents as are stated to have been served, sent or delivered, were so served, sent or delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

G. R.

Attorney for (*plaintiff or defendant*).

To E. F.

Attorney or Agent for (*plaintiff or defendant*).

Then describe the documents; the manner of doing which may be as follows:

ORIGINALS.

<i>Description of the Documents.</i>	<i>Date.</i>
Deed of Covenant between A. B. and C. D. of the first part, and E. F. of the second part	1 January, 1838.
Indenture of Lease from A. B. to C. D.	1 February, 1838.
Indenture of Release between A. B. and C. D. of the first part, &c.	2 February, 1838.
Letter—Defendant to plaintiff	1 March, 1838.
Policy of Insurance on —	3 December, 1839.
Memorandum of Agreement between C. D. and E. F.	9 January, 1838.
Bill of Exchange for £100 at three months, drawn by A. B., on and accepted by C. D., indorsed by E. F. and G. K.	1 May, 1839.

COPIES.

<i>Description of Documents.</i>	<i>Date.</i>	<i>Original or Duplicate served, sent or delivered, when, how, and by whom.</i>
Register of Baptism of A. B. in the parish of —	1 January, 1808.	{ Sent by General Post, 2nd February, 1838. { Served 2nd March, 1838, on defendant's attorney, by E. F. of —.
Letter—Plaintiff to defendant.	1 February, 1838.	
Notice to produce papers	1 March, 1838.	
Record of the Court of King's Bench in an action J. D. v. J. N.	Trinity Term, 10th Geo. IV.	
Letters Patent of King George III.	1 January, 1800.	

—28, E. T. 5 Vic.

14. It is ordered, that so much of the rule of this court of E. T. 11 Geo. IV., regulating costs in civil and criminal cases, as relates to any fee for drawing indictments in criminal cases, and for conducting criminal cases after indictment to judgment, be rescinded; and that the fees so be paid to the Attorney or Solicitor-General, or to any Queen's Counsel for such services, be left as formerly to the direction of the government.—1 E. T. 8 Vic.

15. It is ordered, that in giving judgment in favour of any party demurring specially, or in granting leave to amend any declaration or other pleading specially demurred to, on payment of costs, the costs to be allowed shall be understood to be full costs, unless the court shall, in giving such judgment or leave to amend, assess such costs at any certain sum less than the full costs.—30 H. T. 13 Vic.

16. It is ordered, that in any action or suit to be hereafter brought, which may be of the proper competence of the County Court, and in which, if instituted in the Court of Queen's Bench or Common Pleas, the venue could not, according to the law and practice of the last mentioned courts, be changed upon the usual affidavit only, it shall not be a sufficient ground for certifying, at the trial thereof, that it is a fit cause to have been withdrawn from the County Court and commenced in the Court of Queen's Bench or Common Pleas, or for either of those courts, or for a judge in chambers ordering the allowance of full costs, that the defendant or defendants, or any of them, had removed from the county in which the debt was contracted, or the cause of such action or suit accrued, into any other county, or elsewhere out of such county, or that he or they resided or were served with process in any other place than within such county.—42 H. T. 13 Vic.

17. It is ordered, that no privilege shall hereafter be allowed to any person to exempt him, as plaintiff, from the operation of the statute 8 Vic. ch. 13, sec. 59, and of the rule of the court of King's Bench of E. T. 11 Geo. IV. No 9, restraining costs upon any causes of action of the proper competence of the County Court.—43 H. T. 13 Vic.

18. It is ordered, that when a judge's order is made a rule of court, it shall be a part of the rule of court, that the costs of making the order a rule of court shall be paid by the party against whom the

order is made, provided an affidavit be made and filed, that the order has been served on the party or his attorney, and disobeyed.—46 H. T. 13 Vic.

Costs in summary proceedings to dispossess a tenant wrongfully holding over under 4 Will. IV. ch. 1, s. 53.

ATTORNEY.

	£	s.	d.
Instructions.....	0	5	0
Demand of possession, copy and service.....	0	3	6
Affidavit of service, if necessarily separate from special affidavit of facts, upon which the proceeding is founded, including attendance to swear	0	2	6
Special affidavit to support application for writ, including attendance to swear.....	0	5	0
All copies of papers required to be annexed thereto, per folio of 100 words.....	0	0	6
Attending court or judge for order for writ	0	2	6
Attending for writ	0	1	3
Attending commissioner therewith, and for precept	0	1	3
Attending sheriff with precept	0	1	3
Notice of inquisition to tenant, with copy and service	0	3	6
Copies of papers required to be annexed thereto per folio of 100 words	0	0	6
Fee to counsel attending inquisition	1	5	0
Attending for subpoena, when required	0	1	3
Ticket and service	0	2	0
Drawing affidavit of disbursements, and attending to swear	0	2	6
Attending court or judge with inquisition, &c., for order for writ of possession	0	2	6
Drawing bill of costs, and attending taxation ...	0	2	6
Fee on writ on possession, including attendance	0	5	0
Attending to deliver writ to sheriff.....	0	1	3
Postages, not exceeding	0	5	0
Allowance of costs for proceedings in term the same as in ordinary cases on motions of course			

COSTS OF DEFENCE.

Instructions to defend	0	5	0
Attending for subpoena.....	0	1	3
Ticket and service	0	2	0

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	£	s.	d.
Fee to counsel attending inquest.....	1	5	0
Drawing affidavit of disbursements, and attending to swear	0	2	6
Attending judge or court with inquisition on application for costs	0	2	6
Allowance of costs for proceedings in term, the same as in ordinary cases on motions of course.			

CLERK OF THE CROWN AND PLEAS.

Writ to commissioner, including filing judge's order, with the necessary blanks for the commissioner, &c.....	0	5	0
Taxing costs	0	2	6
Writ of possession	0	5	0
Swearing affidavits, and filing papers, the same as in ordinary cases.			

COMMISSIONER.

Precept	0	3	0
Subpoena for witness (one only to issue on either side)	0	2	6
Taking inquisition, minuting evidence, and returning writ	1	5	0

SHERIFF.

Summoning jury, including mileage and return of precept	1	0	0
Execution of writ of possession, exclusive of mileage	0	10	0
Mileage in services necessarily and actually rendered as to witnesses, and executing writ of possession, &c., the number of miles necessarily and actually travelled in going to perform such service, each	0	0	6

JURY.

For verdict	1	10	0
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WITNESSES.

Same as in Court of King's Bench.

JUDGE'S CLERK.

Same as in ordinary cases.

Signed by the Judges, 14th January, 1839.

Tariff of costs and fees in civil cases.

ATTORNEY AND COUNSEL.

	£	s.	d.
Taking instructions with warrant to prosecute and defend	0	7	6
Letter of notice before suing out process.....	0	2	6
Entering common appearance and attendance ...	0	2	6
See Rule E. T. Drawing bail piece, and attending when bail taken	0	5	0
2 Geo. IV. Drawing declarations, and all other pleadings, per folio of 100 words	0	1	0
Copies thereof, per folio of 100 words	0	0	6
Declaration or other pleading, not exceeding five folios in length	0	5	0
Copy thereof	0	2	6
Fee to counsel to revise declaration or other pleading, if special.....	0	10	0
Affidavits to hold to bail, including copy and attendances.....	0	5	0
Drawing affidavits under three folios of 100 words	0	2	6
Above three folios 1s. per folio, including in all cases attending to swear or to get same sworn.			
Copy of special affidavit, when required to be delivered, per folio of 100 words.....	0	0	6
Paper and depositions books, and other such proceedings, not otherwise charged, per folio of 100 words	0	0	6
Entries on the roll, and engrossing record, per folio of 100 words	0	0	6
Notice of trial and assessment, including copy and service, except mileage.....	0	3	6
Other notices, including copy and service, except mileage	0	2	6
Drawing judge's summons and order thereon, with copy and service, except mileage for each	0	2	6
Attendance at judge's chambers	0	2	6
Attendance at the Crown Office, and other common attendances in the course of a cause	0	1	3
Attending to search for appearance, or other necessary searches.....	0	1	3
Signing interlocutory judgment	0	2	6
Fee on examining and passing records or paper books, including attendance	0	5	0
See Rule T. T. Instructions to or brief for counsel, not being			
7 Wm. IV. attorney in the suit, in ordinary cases	0	5	0

Where not
taxable under
the tariff of
the fees at the
judge's cham-
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s.	d.		£	s.	d.
		When special brief necessary	0	10	0
		Attending Court on the day of trial, or assess- ment, where no fee is charged by the attorney as counsel	0	5	0
7	6	Subpoena ticket and service, exclusive of mile- age	0	2	0
2	6	Taking cognovit and entering judgment thereon, where there has been no previous proceeding, and the true debt does not exceed £50	2	0	0
2	6	For the same services, where the true debt ex- ceeds £50	3	0	0
5	0	Taking cognovit, and attending execution, where there have been previous proceedings	0	5	0
1	0	All other proceedings in such causes, as in other cases	0	7	6
0	6	Bond and warrant of attorney.....	0	5	0
5	0	Fee on all writs, orders, or rules of court to the attorney obtaining the same	0	5	0
2	6	Term fee when proceedings have been had with- in the term	0	5	0
		Receiving instructions for motions of course... Receiving instructions for special motions.....	0	2	6
		Fee on motion of course, or on motion for a rule nisi, or on motion to make rule abso- lute in matters not special	0	10	0
0	6	On special motion for a rule nisi, (only one counsel fee to be taxed)	1	5	0
0	6	For opposing or supporting a rule nisi on argument.....	1	5	0
0	6	On arguing demurrer or other special argu- ment..... (To be increased in the discretion of the master, subject to appeal to the court or a judge.)	2	10	0
2	6	Counsel's Fee with brief at trial or assessment in cases of tort, or in ejectments, or in mat- ters of contract, where the sum to be recov- ered exceeds £100, (to be increased by the master, in his discretion, to a sum not ex- ceeding £5, in actions of a special and im- portant nature) or by order of a judge, to such sum as shall appear proper under the circumstances of the case.	2	10	0
2	6	In other cases.....	1	5	0
5	0	Drawing bill of costs, and attending taxation after verdict or assessment	0	5	0
5	0				

See Rule T. T.
7 Wm. IV.

See Rule E. T.
2 Geo. IV.

See Rule E. T.
4 Wm. IV.

See Rule E. T.
2 Geo. IV.

See Rule T. T.
7 Wm. IV.

The same before verdict or assessment, or upon application in term, or on collateral or interlocutory proceedings, including attendance for allocatur
Mileage out of town, per mile in the service of notices, or other papers served by the attorney

£ s. d.

0 3 0

0 0 6

COSTS IN CHAMBERS.

Counsel.

See Rule T. T.
7 Wm. IV.

Argument by counsel on return of summons (when counsel attend), to be increased in the discretion of the judge.....

0 10 0

Attorney.

Affidavits same as in term.

Attending for summons.....

0 1 3

Copy of summons

0 1 0

Attending to serve.....

0 1 3

Attending for order

0 2 6

Copy of order

0 1 0

Fee on order

0 5 0

FOR THE CLERK OF THE CROWN AND PLEAS.

See Rule M. T.
3 Vic.

Fee on all writs not special, including filing præcipe and memorandum of warrant

0 2 6

Signing, sealing and filing præcipe for special writ, when prepared by the attorney

0 1 3

Special writ when prepared by the master, the same charges as to the attorney.

Drawing and signing all rules

0 1 3

Filing each pleading or paper

0 0 4

Swearing affidavits.....

0 1 0

Every certificate under the seal of the court.....

0 2 6

Passing record

0 5 0

Taxing costs and giving allocatur, except on cognovits or warrants of attorney, where there have been no previous proceedings.....

0 3 4

Ditto on confessions, where no previous proceedings

0 1 0

Entering and docketing judgment

0 2 6

Searching judgment, including examination of roll when required, and other searches

0 1 0

Entering satisfaction on record, and filing satisfaction piece, including any necessary search

0 2 6

All exemplifications of records or extracts therefrom, or copies of papers, per folio of 100 words

0 0 6

£	s.	d.		£	s.	d.
			On the admission of attorneys	0	10	0
			On commissions for the examination of witnesses upon parchment	0	5	0
0	3	0	On commissions for taking bail and affidavits ...	0	2	6
0	0	6	Reference to the master to compute	0	1	0
			Filing and entering motion nisi in ejectment, examining affidavit, entering the same with the description of the premises in ejectment book kept for the purpose, and issuing rule thereon	0	3	0
			Entering exoneretur on bail piece	0	1	3
0	10	0	Making up records of conviction or acquittal per folio	0	0	6
			Entering appearance and pleas in a book kept for the purpose.....	0	0	6
0	1	3	FOR THE CLERK OF ASSIZE AND MARSHALL.			
0	1	0	For each day's attendances at court.....	1	0	0
0	1	3				13 & 14 Vic. ch. 118.
0	2	6	FOR THE CLERK IN CHAMBERS.			
0	1	0	Judge's clerk on summons	0	1	3
0	5	0	On each order of a judge	0	2	6
s.			Filing affidavits, each	0	0	4
0	2	6	For receiving and taking charge of nisi prius records and exhibits, and delivering out the same when required, in each cause	0	2	6
0	1	3				See T. T. 7 Wm. IV. and 37 Rule II. T. 13 Vic.
			FOR THE SHERIFF.			
0	1	3	For every warrant to arrest under any process, or to levy or attach, or to execute any final process, when given to a bailiff, not being deputy sheriff.....	0	2	6
0	0	4	Arrest where amount endorsed shall not exceed £50	0	5	9
0	1	0	Arrest where the amount shall be over £50, and under £100.....	0	10	0
0	2	6	Arrest where the amount shall be £100 and over	1	0	0
0	5	0	Mileage when going to arrest, when arrest made, per mile	0	0	6
0	3	4	Mileage on conveying defendant to gaol from place of arrest, per mile	0	0	6
0	1	0	Bail bond, or bond for the limits.....	0	5	0
0	2	6	Assignment of the same	0	5	0
0	0	6	Service of process not bailable (including affidavit of service) for each defendant	0	5	0

	£	s.	d.
Service of scire facias for each party served.....	0	5	0
For each summoner, to be paid to him by the sheriff	0	2	6
Serving subpoenas, declarations, notices or other papers, besides mileage on each party or witness	0	2	6
Receiving, filing and entering all writs, declarations, rules, notices or other papers to be served, each	0	1	3
Return of all hailable writs, writs of execution or attachments	0	2	6
Every search, not being by a party in the cause, or his attorney	0	1	0
Certificate of result of search, when required for any purpose	0	2	6
Fee on striking special jury.....	1	0	0
Serving each special juror	0	1	3
Summoning special jury, travelling per mile from court house.....	0	0	6
Returning panel of special jurors	0	5	0
Every jury sworn	0	5	0
Attending view per diem	1	0	0
Poundage on executions, and on attachments in the nature of executions, where the sum levied and made shall not exceed £100.....	5 per cent.		
Where it shall exceed £100, and be less than £1000, £5 per cent. for first £100, and 2½ per cent. for residue.			
Over £1000, 1½ per cent. on whatever exceeds £1000, in addition to the poundage hereby allowed up to £1000, in lieu of all fees and charges for services and disbursements, except mileage in going to seize, and disbursements for advertisements, and except disbursements necessarily incurred in the cause, and removal of property in cases not exceeding £100, to be allowed by the master in his discretion.			
For schedule of goods taken in execution, including copy to defendant, if not exceeding five folios of 100 words... ..	0	5	0
For each folio above five folios	0	0	6
Advertisements of lands in the Gazette, the sum actually disbursed.			
Drawing up advertisements, when required by law to be published in a newspaper, and transmitting same, in each suit	0	5	0

£	s.	d.	£	s.	d.
0	5	0	0	2	6
0	2	6	0	1	3
0	2	6	1	0	0
0	1	3	0	5	0
0	2	6	0	0	6
0	1	0	0	0	6
2	6				
0	0				
1	3				
0	0				
5	0				
5	0				
0	0				

Notice of sale of goods in each suit.....
 Notice of postponement of sale, in each suit.....
 Service of writ of possession, or restitution, be-
 sides travel.....
 Bringing up prisoner on attachment or habeas
 corpus, besides travel at 1s. per mile
 For travel from court house to place of service
 of process, and in all cases for actual mileage
 when service is performed
 For ineffectual attempt to make personal service
 when necessary, or arrest, per mile
 (Not having served any other process on the
 same occasion, upon taking the subjoined
 affidavit).
 Seizure of estate and effects on attachment, un-
 der Absconding Debtor's Act
 Taking inventory, same as on executions.
 Removing or retaining property, such disburse-
 ments as shall be ordered by the master, or
 the court, or a judge thereof.

FOR THE CORONER.

For summoning jury, and making return to clerk
 of assize—for each juror actually and neces-
 sarily summoned, 1s.; in other respects, same
 fees as to sheriff for similar services.

It is ordered, that in future the same fees be
 allowed to coroners for services rendered by
 them in the execution and return of process in
 civil suits, as would be allowed to a sheriff for
 the same services; and that when, according
 to the nature of the process, and the service
 rendered thereon, the sheriff, if he had dis-
 charged the same duty, would have been
 allowed poundage, the same poundage shall
 be allowed to the coroner.

See Rule T. T.
 5 Wm. IV.

H. T. 12 Vic.

*Affidavit to be made in order to entitle the officer to
 mileage, upon an ineffectual attempt to serve pro-
 cess or to make arrest.*

IN THE

C. D. v. E. F.

I, A. B., of —, bailiff of the sheriff of —,
 make oath and say, that on the — day of
 —, 18—, I endeavoured to serve the above
 named — with a copy of —, or to arrest

C 2

£ s. d.

the above named — (as the case may be), and that for that purpose, I went to the place of residence of the said —, in the township of — (as the case may be), and made due enquiries concerning him at his residence (or as the case may be), and in the neighbourhood thereof; and that after using due diligence, I could not succeed in making such service (or arrest) in consequence of — (here state the reason); and I further swear, that I necessarily travelled, in attempting to make such service, — miles, exclusive of any mileage travelled upon the same occasion, for which I am entitled to be remunerated in any other case.

CRIER.

Rule F. T. 2	Calling and swearing jury.....	0	2	6
Geo. IV.	Calling plaintiff on nonsuit	0	1	0
	Proclamation and calling parties on recognizance for each person	0	1	0
	Swearing witnesses or constable.....	0	0	6

JURORS IN CIVIL CASES.

14 & 15 Vic.	Common jurors, each day's attendance	0	5	0
h. 14.	Common jurors, for every mile travelled	0	0	6
	Special jurors.....	0	5	0

FEES TO WITNESSES.

See Rule T. T.	To witnesses residing within three miles of the			
5 Wm. IV.	court house, per diem	0	2	6
	To witnesses residing over three miles from court			
	house, per diem	0	5	0
	And for every twenty miles travel	0	5	0

TO PROFESSIONAL MEN.

Attorneys, barristers, physicians and surgeons, 20s. per day, when called upon to give evidence in consequence of any professional service rendered by them, or to give professional opinions.

SURVEYORS.

When called upon to give evidence of any professional service rendered by them, or to give evidence depending upon their skill or judgment, 10s. per diem.

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COSTS ON WRITS OF TRIAL.

The usual costs in like cases to issue joined.

Drawing affidavit of proceedings and paid.....	0	3	6
Attending chambers for summons, 1s. 3d., fee thereon, 1s. 3d.	0	2	6
Paid 1s. 7d. ; attending to serve 1s. 3d. ; affidavit and paid 3s. 6d.	0	6	4
Attending chambers for order 1s. 3d., fee thereon 5s.	0	6	3
Attending to serve 1s. 3d., copy 1s.	0	2	3
Drawing writ same as nisi prius record.			
Attending office to get examined and sealed, do.			
Paid to get examined and sealed, do.			
{ Notice of trial same as in other cases.....	Same as in county court as per schedule 8 Vic. ch. 13. The statute is restrictive.		
{ Attending to enter with county clerk.....			
{ Attending court			
{ Brief and fee			
Attending judge of County Court for return	0	1	3
Attending to file.....	0	1	3

See Rule H.T. 10 Vic.

DISBURSEMENTS.

County judge, 5s. or 10s., as the case may be }	Same as in county court as per schedule, 8 Vic. ch. 13.		
Clerk County Court, 2s. 6d.....			
Sheriff, 4s.			
Jury, 7s. 6d.			
Crier, 6d., 1s. 3d., (as the case may be)			

COSTS ON WRITS OF ENQUIRY.

Drawing writ same as nisi prius record.			
Attending to examine and get sealed, ditto.			
Attending to enter with county clerk, same as in County Court.			
Notice of assessment, same as in other like cases.			
Attending court }	Same as in County Court.		
Brief and fee }			
Attending judge for return	0	1	3
Attending to file.....	0	1	3

DISBURSED.

On same scale as above.

CHAS. C. SMALL,

Clerk Crown and Pleas.

Tariff of Fees.

COURT OF QUEEN'S BENCH, } Michaelmas Term, 9th Vic.,
 OF UPPER CANADA. } *Saturday, Nov. 15, 1845.*

It is ordered, under the authority of the statute passed in the eighth year of her present Majesty's reign, intituled, "An Act to regulate the Fees of certain District Officers, in that part of this Province called Upper Canada," that the fees in the table annexed to this rule shall be taken and received by sheriffs, coroners, clerks of the peace, constables and criers respectively, in the several districts of this Province, for services rendered by them respectively, in the administration of justice, and for other district purposes, where such services were not remunerated by any law in force at the time of passing the said act.

But it is to be understood,—

1st. That besides the fees set down in this table, the several officers will be entitled, as heretofore, to receive fees for other services rendered by them respectively, which are not mentioned in this table, wherever specific fees for such services are fixed by any statute, the judges having no authority, under the act referred to in this rule, to make any regulation in such cases.

2ndly. That if it shall be found that a fee is specifically assigned, under any statute, for a service for which a fee has also been inadvertently fixed in this table, then, in every such case, it will be the fee mentioned in the statute which is to be charged for the service, whether it be greater or less than that set down in the table; and this rule, as to the charge for such service, will have no effect.

3rdly. That the assigning a fee, in this table, for any service rendered, cannot have the effect of entitling the officer to that or any other remuneration for such service, where there is either no necessity

for the service being rendered, or where the right or duty to render it has been legally transferred to some other officer.

4thly. That in regard to public allowances which may have been heretofore paid out of the district funds to any of the officers affected by this table, and which are not in the nature of a fee, such as allowances for office rent, fuel, stationery, &c., it is not to be inferred from their not being provided for in this table, that the claim to any such allowance is denied by the judges. In that respect the several officers will stand on the same footing as before, and the controul of the justices and of the district council, in regard to such allowances, will continue as before: the judges having no authority under the act either to grant, or reject, or to regulate such allowances.

It has been observed by the judges, that in some districts the Clerk of the Peace has been allowed a certain fixed salary in lieu of fees. If such an arrangement could have been legally made before the recent statute, under which this table is framed, it could not now be adopted without some alteration by the legislature of the provisions of the statute. In considering the probable advantages and disadvantages of such a mode of remuneration, it seems to the judges, on the one hand, that it would save the justices and the district council much trouble, as well as the officer himself, and it would relieve the latter from the imputation of multiplying services unnecessarily, in order to accumulate fees; but, on the other hand, it is to be considered, that where the business of a public office consists of a multitude of small duties, some of them very troublesome in their nature, the best security for their being duly performed is to give the inducement of a distinct remuneration for every distinct act of service; and as it seems that, under the present system, some difficulty has arisen

in consequence of the clerks of the peace claiming the right to perform certain services which it is concluded rest now with the clerk of the district council, the judges apprehend that if a fixed salary were to be substituted for all fees, there might then be a struggle in the opposite direction, and there might possibly be found a disposition in some of the clerks of the peace to leave to the clerks of the district councils the performance of some duties which are not clearly within their province.

J. B. ROBINSON, C. J.

J. B. MACAULAY, J.

J. JONES, J.

A. McLEAN, J.

C. A. HAGERMAN, J.

(Certified),

C. C. SMALL,

Clerk of the Crown and Pleas.

SHERIFF.	To be paid out of the dis- trict funds.	To be paid by the party.
Notice of appointment to the associate justices of oyer and terminer, each	0 2 6	0 0 0
Attending the assizes, per diem.....	1 0 0	0 0 0
Attending the quarter sessions, do. ...	0 12 6	0 0 0
Summoning each grand jury for the assizes or quarter sessions	3 0 0	0 0 0
Summoning each petit jury for do. do.	6 0 0	0 0 0
For every prisoner discharged from gaol, having been committed by war- rant for trial at the assizes, or quar- ter sessions or mayor's court	0 5 0	0 0 0
Bringing up each prisoner for arraig- ment, trial and sentence,—in all, for each prisoner, whether convicted or acquitted	0 5 0	0 0 0
Drawing calendar of prisoners for trial at the assizes, including copies	0 10 0	0 0 0
Drawing calendar of prisoners for trial at the quarter sessions, including copies	0 5 0	0 0 0

SHERIFF—continued.	To be paid out of the dis- trict funds.			To be paid by the party.		
	£	s.	d.	£	s.	d.
Advertising the holding the assizes or quarter sessions each court.....	0	10	0	0	0	0
Every annual or general return, re- quired by law or by the government, respecting the gaol or the prisoners therein	1	0	0	0	0	0
Every other return made to the govern- ment or to the sessions, required by statute, or by order of the court ...	0	5	0	0	0	0
Returning precept to the assizes or sessions	0	10	0	0	0	0
Conveying prisoners to the peniten- tiary or to another district (exclusive of disbursements), for each day ne- cessarily employed	1	5	0	0	0	0
Arrest of each individual upon a war- rant. (To be paid out of the district funds, or by the party, as the case may be)	0	5	0	0	5	0
Serving subpoena upon each person. (To be paid out of the district funds or by the party, as the case may be.)	0	1	3	0	1	3
Travelling in going to execute warrant or serve subpoena, 6d. per mile; and the same charge per mile, actually travelled, in returning with a pri- soner. Where the service has not been effected, the justices in sessions to be satisfied that due diligence has been used. (To be paid out of the district funds, or by the party, as the case may be.)						
Conveying prisoners on attachment or habeas corpus to another district, exclusive of disbursements, where no charge allowed by law, for each day necessarily employed. (To be paid out of the district funds, or by the party, as the case may be)	1	5	0	1	5	0
Making return upon attachment or writ of habeas corpus. (To be paid out of the district funds, or by the party, as the case may be)	0	5	0	0	5	0
Levying fines or issues on recogni-						

SHERIFF—continued.	To be paid out of the dis- trict funds.			To be paid by the party.		
	£	s.	d.	£	s.	d.
zances estreated, £5 per £100 on the sum levied, exclusive of mileage at 6d. per mile. (To be levied according to 8 Vic. chap. 38, section 2.)						
Carrying into execution the sentence of the court in capital cases. All such sums as shall be unavoidably disbursed, to be taxed by the court or judge who passed the sentence.						
Attending and superintending the execution in such cases.....	8	0	0	0	0	0
Summoning each constable to attend the assizes or sessions.....	0	2	6	0	0	0
Every notice to a magistrate, under statute 8 Vic. ch. 14, sec. 6, exclusive of mileage at 6d. per mile	0	2	6	0	0	0
Keeping a record of jurors who have served each court.....	0	5	0	0	0	0
All disbursements actually and necessarily made in guarding prisoners, or in their conveyance to the penitentiary, to any other district, or elsewhere, or for other purposes in the discharge of the duties of the office (when not provided for by law, nor hereinbefore specifically), to be rendered in account in detail, with proper vouchers, to the satisfaction of the justices in sessions, and to be by them allowed.						
CORONER.						
Precept to summon jury.....	0	2	6	0	0	0
Impanelling a jury	0	5	0	0	0	0
Summons for witnesses, each.....	0	1	3	0	0	0
Information or examination of each witness	0	1	3	0	0	0
Taking every recognizance.....	0	2	6	0	0	0
Necessary travel to take an inquest, per mile.....	0	1	0	0	0	0
Taking inquisition and making return	1	0	0	0	0	0
Every warrant	0	5	0	0	0	0

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CONSTABLE.	To be paid out of the dis- trict funds.			To be paid by the party.		
	£	s.	d.	£	s.	d.
Arrest of each individual upon a warrant (To be paid out of the district funds, or by the party, as the case may be)	0	5	0	0	5	0
Serving summons or subpoena.....	0	1	3	0	1	3
Mileage, 6d. per mile. (To be paid out of the district funds, or by the party, as the case may be).						
Attending assizes or sessions per day	0	5	0	0	0	0
Attending any justice on trials, under the Summary Punishment Acts, or on the examination of prisoners charged with any crime, for each day necessarily employed	0	5	0	0	0	0
Mileage in going to serve summons or warrant, when the service has not been effected; the justices in ses- sions to be satisfied that due dili- gence has been used. (To be paid out of the district funds, or by the party, as the case may be)	0	0	6	0	0	6
Taking prisoners to gaol, 4d. per mile, exclusive of disbursements necessa- rily expended in their conveyance. (To be paid out of the district funds, or by the party, as the case may be.)						
Summoning jury for inquest.....	0	10	0	0	0	0
Attending inquest, for each day other than the first.....	0	5	0	0	0	0
Serving notice of appointment of con- stables, when personally served ...	0	2	6	0	0	0
Levying upon distress warrant, and returning the same, where charge not provided by law.....	0	5	0	0	0	0
Advertising and selling under distress warrant, where a charge not provid- ed by law	0	5	0	0	0	0
Travelling to make distress, or to search for goods to make distress, where no goods are found, 4d. per mile, when charge not otherwise provided by law.						
Appraisement, whether by one ap- praiser or more, 4d. in the pound on the value of the goods.						

CLERK OF THE PEACE.	To be paid out of the dis- trict funds.			To be paid by the party.		
	£	s.	d.	£	s.	d.
Causing notice to be published of any special or adjourned session, when directed to be done	0	2	6	0	0	0
Sending notice of any such session to the justices individually, where it may be requisite, for each notice ...	0	0	6	0	0	0
Attending each adjourned or special sessions, and making up record thereof	0	7	6	0	0	0
Furnishing annually lists of constables to the sheriff and coroner; for each annual list, to each officer	0	2	6	0	0	0
Making up lists, pursuant to the statute 4 & 5 Vic. ch. 3, sec. 32, of persons qualified by law to serve as jurors, residing within the limits of each Division Court, specifying the place of residence and addition of each person, including the certificate and the transmission of the list to the Clerk of each Division Court; for every 100 names	0	2	6	0	0	0
Making out and delivering to the sheriff, annually, a list of all certificated firemen; for each list of not more than 100 names. (7 Geo. IV, ch. 8, sec. 1).....	0	2	6	0	0	0
For every additional 100, at the rate of 2s. 6d. per 100 names. (4 & 5 Vic. ch. 43)						
Reading any statute in open court, when required to be done by law ...	0	1	0	0	0	0
Copies of depositions or examinations furnished to prisoners or defendants or their counsel, when proper to be furnished, and required by the party or his counsel, for each folio of 100 words. 4 & 5 Vic. ch. 24, s. 12 & s. 23. (To be paid out of the district funds, or by the party applying, according to the nature of the case)	0	0	3	0	0	3
Receiving and filing each presentment of the grand jury.....	0	1	0	0	0	0
Arraigning each prisoner or defendant						

CLERK OF THE PEACE— <i>continued.</i>	To be paid out of the dis- trict funds.			To be paid by the party.		
	£	s.	d.	£	s.	d.
indicted, and recording plea. (To be paid out of the district funds, or by the party indicted, as the case may be).....	0	2	6	0	2	6
Every subpoena ticket, or copy of subpoena, when necessary. (To be paid out of the district funds, or by the party applying, as the case may be)	0	1	0	0	1	0
Empannelling and swearing the jury in every case, whether criminal or otherwise, where by law a trial by jury is to be had at the quarter sessions, and where no fee is fixed by statute. (To be paid either out of the district funds, or by the party, as the case may be).....	0	2	6	0	2	6
Swearing each witness for the prosecution, or for the claimant, appellant, or defendant, upon any trial by a jury, or to go before the grand jury. (To be paid out of the district funds, or by the party, as the case may be.)	0	0	6	0	0	6
Filing each exhibit upon a trial. (To be paid out of the district funds, or by the party, as the case may be)...	0	0	4	0	0	4
Charging the jury, with the prisoner, or defendant, upon each indictment. (To be paid out of the district funds, or by the party, as the case may be)	0	2	6	0	2	6
Receiving and recording each verdict of a jury, in any case of trial by jury. (To be paid out of the district funds, or by the party, as the case may be).....	0	2	6	0	2	6
Recording each judgment or sentence of the court, upon verdict or confession. (To be paid out of the district funds, or by the party, as the case may be).....	0	2	6	0	2	6
Making out and delivering to the sheriff a calendar of the sentences at each court	0	2	6	0	0	0
Certified copy of sentences sent with						

CLERK OF THE PEACE— <i>continued.</i>	To be paid out of the dis- trict funds.			To be paid by the party.		
	£	s.	d.	£	s.	d.
the prisoner to the penitentiary after each session	0	2	6	0	0	0
Making up record of conviction or ac- quittal, in any case where it may be necessary, per folio of 100 words. (To be paid out of the district funds, or by the party, as the case may be)	0	0	6	0	0	6
Discharging any prisoner by procla- mation	0	1	8	0	0	0
Drawing bill of costs to be paid by the party, and filing the same where ne- cessary to be made out and filed; as in cases of assault, nuisances, or the like, and in appeals	0	1	3	0	1	3
Receiving and filing notice of appeal, and the appeal from any judgment or conviction by one or more jus- tices, where an appeal to the quar- ter sessions is given by law. (To be paid out of the district funds, or by the party appealing, as the case may be).....	0	1	3	0	1	3
For all services upon the trial of such appeal case, including the receiving and recording the verdict, the same charges as on ordinary criminal trials. (To be paid out of the dis- trict funds, or by the party, as the case may be.)						
Issuing process to enforce the order of the court in any appeal case. (To be paid out of the district funds, or by the party, as the case may be)...	0	2	6	0	2	6
Making out warrant of distress or commitment, in any case where no fee is specially assigned therefor in any statute, or in this table	0	2	6	0	0	0
Drawing out and taking each recogni- zance to appear, either of prosecutor, defendant or witness	0	2	6	0	0	0
Calling parties on their recognizance, and recording their non-appearance, for each person called.....	0	1	3	0	0	0
Making out lists of forfeited recogni-						

CLERK OF THE PEACE— <i>continued.</i>		To be paid out of the dis- trict funds.			To be paid by the party.		
		£	s.	d.	£	s.	d.
zances and fines to submit to the justices after each quarter sessions, in order to their being estreated ...		0	5	0	0	0	0
Entering any order of sessions to remit an estreat, and recording an entry of the same. (To be paid out of the district funds, or by the party relieved, as the justices may order)...		0	1	0	0	0	0
Drawing order of the justices to estreat and put in process (on the whole list)		0	2	6	0	0	0
Entering and extracting upon a roll, in duplicate, the fines, issues, amerciaments and forfeited recognizances recorded in each session, making out the same, and transmitting it to the sheriff.....		0	5	0	0	0	0
Making out and delivering to the sheriff the writ of fieri facias and capias thereon		0	2	6	0	0	0
Making out and certifying copy of roll and return of the sheriff, and transmitting it to the Receiver-General...		0	5	0	0	0	0
Making up book of orders of sessions, declaring the limits of the Division Courts, and entering the times and places of holding the courts		0	5	0	0	0	0
Making out and transmitting a copy thereof to the government		0	5	0	0	0	0
Making out and transmitting copies (with letter) to the clerk of each Division Court, of the divisions made by the quarter sessions		0	5	0	0	0	0
Drawing orders of sessions for altering the limits of Division Courts		0	2	6	0	0	0
Making out and transmitting copies of such orders to the government		0	2	6	0	0	0
Making out and transmitting copies of such orders to each Division Court affected by the alteration		0	2	6	0	0	0
For each copy of schedule of the Division Courts, with the order of sessions for publication		0	2	6	0	0	0
Swearing each party to an affidavit,							

CLERK OF THE PEACE— <i>continued.</i>	To be paid out of the dis- trict funds.			To be paid by the party.		
	£	s.	d.	£	s.	d.
where no charge is elsewhere pro- vided for it. (To be paid out of the district funds, or by the party for whom the affidavit is sworn, accord- ing to the nature of the case).....	0	1	0	0	0	0
MISCELLANEOUS SERVICES.						
Making out and delivering lists of orders on the treasurer, made at each court of quarter sessions	0	7	6	0	0	0
Copying orders of court, and causing the same to be published, where it is requisite, for each order.....	0	1	8	0	0	0
Drawing every special order of the court of quarter sessions necessary to be communicated to any party, and entering it on record	0	2	6	0	0	0
Making up and transmitting to the Inspector General a return or sche- dule of all convictions which have taken place before any justice or justices, or before the court, each list	0	5	0	0	0	0
Making out an account, to be laid be- fore the grand jury at the quarter sessions of the sum necessary to be provided for the maintenance of in- sane persons, where this service is necessary, and its performance has not been otherwise provided for. (11 Geo. IV. ch. 20)	0	2	0	0	0	0
Making and transmitting a return to the government, of justices and co- roners who have taken the oaths, when required to be done, for each return	0	5	0	0	0	0
For every return or report required by statute, or by the government, for which no remuneration has been provided in this table, or by statute	0	5	0	0	0	0
Entering rules and regulations to be observed by ferrymen, and table of fees, as required by law. (37 Geo. III. ch. 10)	0	5	0	0	0	0

CLERK OF THE PEACE—continued.		To be paid out of the dis- trict funds.			To be paid by the party.		
		£	s.	d.	£	s.	d.
Each copy thereof delivered to a ferry- man. (To be paid for by him).....		0	0	0	0	2	6
For certificate of proof of any deed or instrument, where the witnesses are dead; given under statute 58 Geo. III. ch. 8. (To be paid for by the party obtaining it)		0	0	0	0	2	6
Taking affidavit and granting certifi- cate on each U. E. Loyalist's peti- tion, when required to be done. (To be paid for by the party obtain- ing it)		0	0	0	0	2	6
Receiving and filing each list of mem- bers of fire company		0	1	0	0	0	0
For each certificate given to a member of a fire company. (To be paid for by him)		0	0	0	0	1	3
Drawing certificate of approval by the justices in sessions, of sureties ten- dered by the sheriff. (To be paid by sheriff).....		0	0	0	0	2	6
For every certificate that a township clerk has lodged in the clerk of the peace's office. (The papers required to be furnished by him)		0	0	0	0	1	3
For certificate approving of security to be given by any inspector of fish. (To be paid by the inspector)		0	0	0	0	2	6
Administering oaths to any public officer, when authorised to do so. (To be paid by the officer)		0	0	0	0	1	0
Receiving and filing each oath of qua- lification of a justice of the peace...		0	1	0	0	0	0
Administering oath of allegiance and giving certificate, where a charge is not assigned for the service. (To be paid by the party sworn)		0	0	0	0	1	3
Administering oath to each witness in support of an application for autho- rity to a minister to solemnize mar- riage. (To be paid by the minister applying)		0	0	0	0	1	0
Administering oath of allegiance to each minister. (To be paid by him.)		0	0	0	0	1	0

CLERK OF THE PEACE— <i>continued.</i>	To be paid out of the dis- trict funds.			To be paid by the party.		
	£	s.	d.	£	s.	d.
For recording recognizance entered into by any register of a county. (To be paid by the register)	0	0	0	0	2	6
Receiving and filing affidavit of bastardy, under 7 Wm. IV. ch. 8. (To be paid by the party producing it)	0	0	0	0	1	0
Drawing and recording appointment of inspector of weights and measures.	0	5	0	0	0	0
Drawing, taking, and recording the oath of inspector of weights and measures. (To be paid by the party)	0	0	0	0	2	6
Receiving and filing accounts and demands at the general quarter sessions preferred against the district, in each session, numbering them, and submitting them for audit, and making out the cheques	0	10	0	0	0	0
Every copy of entry of verdict, in a case of altering or laying out a road, and every copy or extract of a record or paper of any kind, required to be made by law, or by order of the justices, where no charge is allowed therefor, including certificate to authenticate the same, where no charge is fixed by law, for every folio of 100 words	0	0	4	0	0	4
The same charge for the same service, when rendered at the request of any individual. (To be paid by him, where no charge is fixed by law) ...	0	0	4	0	0	4
For filing each list, return, or other paper, where no charge is specially provided, except accounts and claims against the district, and papers relating to licenses or inspectors' accounts, and papers connected with matters to be charged against private individuals, and excepting also any papers filed connected with saving banks. (To be paid out of the district funds, or by the party for whom the service is rendered, according to the nature of the case)	0	0	4	0	0	4

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CLERK OF THE PEACE— <i>continued</i> .	To be paid out of the dis- trict funds.			To be paid by the party.		
	£	s.	d.	£	s.	d.
All letters to officers of government or others upon special business connected with the administration of justice, or other district purposes, when written by order of the justices, including a copy for the office	0	1	3	0	0	0
CHIEF.						
Making proclamation for opening or adjourning the court of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery and Quarter Sessions	0	1	0	0	0	0
Making every other proclamation.....	0	1	0	0	0	0
Calling and swearing grand jury	0	2	6	0	0	0
Calling and swearing every petit jury	0	2	6	0	0	0
Calling and swearing every witness or constable	0	0	6	0	0	0
Attending assizes and Quarter Sessions, per diem.....	0	5	0	0	0	0

Tariff of Fees to be taken under 8 Vic. ch. 13.

FEE FUND.

	£	s.	d.
Every writ of ca. re.	0	1	3
Every verdict	0	5	0
Executing each writ of trial or enquiry, and making return thereto	0	5	0
Every report made by the judge of the proceedings on executing a writ of trial or enquiry ...	0	5	0
Every certificate of proceedings made by the judge, to be transmitted to the Court of Queen's Bench	0	2	6
Every rule requiring a motion in open court.....	0	1	3
Every rule or order of reference.....	0	1	3
Every other rule or judge's order	0	1	0
Every recognizance of bail taken by judge.....	0	1	6
Every affidavit administered by judge.....	0	1	0
Every computation of principal and interest on a bill, note, bond, or covenant for payment of money	0	2	6

FEES TO THE SHERIFF.

	£	s.	d.
Every jury sworn	0	4	0
Every process served, including return	0	2	6
Every declaration, rule, or other paper served...	0	1	3
Every execution received	0	1	3
Every return of execution, money made, or party arrested	0	2	6
Every other return of execution	0	1	3
Milence on all writs executed, per mile	0	0	4
Every bail bond taken	0	2	6
Every assignment of bail bond.....	0	1	0
Poundage on all monies actually made under fi. fa., in the pound.....	0	0	6

FEES TO COMMISSIONER.

Taking recognizance of bail	0	1	6
Every affidavit administered.....	0	1	0

FEES TO ATTORNEY.

Instructions to sue or defend	0	5	0
Copy of en. re.	0	1	0
Fee on every writ of capias	0	2	6
Drawing declaration on common counts	0	5	0
Copy of every paper, half the amount allowed for original.			
General issue, appearance, interlocutory judgment, notice of set-off, cognovit, or entering final judgment, each	0	2	6
Special pleadings after declaration, each	0	5	0
Every notice, including copy and service	0	2	6
Drawing bill of costs after verdict	0	2	6
Drawing bill of costs when no verdict	0	1	0
Necessary entries of proceedings on the judgment roll, record for trial, demurrer book, and other necessary entries, per folio of 100 words	0	0	6
For every necessary attendance	0	1	0
Brief and fee on assessment or writ of enquiry...	0	10	0
Brief and fee on a trial	1	10	0
Fee on argument for new trial, or on demurrer...	1	0	0
Every special motion in term time	0	5	0
Every common motion in term, or motion before judge in chambers	0	2	6
Drawing bailpiece	0	4	0
Drawing recognizance of bail	0	2	0
Drawing affidavits, including attendance, each...	0	2	6

	£	s.	d.
Fee on every execution	0	2	6
Special declaration.....	0	10	0
Drawing bond on appeal	0	10	0

FEEs TO THE CRIER.

Swearing the jury	0	1	0
Calling cause	0	0	6
Each witness sworn	0	0	3

FEEs TO THE CLERK.

Every writ of ca. re., and filing præcipe	0	1	3
Filing every separate paper	0	0	4
Taking verdict.....	0	2	6
Taking any affidavit	0	1	0
Taking any recognizance of bail	0	1	6
Every rule drawn up and signed by the clerk ...	0	1	6
Every rule of reference.....	0	2	6
Every subpoena	0	1	3
Every search	0	0	6
Entering every judgment	0	1	6
Every writ of execution, including filing præcipe	0	2	0
For each quarterly account, rendered by him to the treasurer, to be paid by the treasurer out of the fee fund	1	0	0
For every other account of fees received, made and rendered, on a legal requisition, to be also paid out of the fee fund...	0	10	0
Examining and filing record.....	0	2	6

Additional Fees under 9 Vic. ch. 7.

FEE FUND.

Every writ of subpoena	0	0	6
Every judgment entered	0	5	0
Every oath administered in open court	0	1	0

TO THE CLERK.

Every judgment entered	0	2	0
Taxing costs when no judgment entered.....	0	1	6

It is ordered, that from and after the first day of Hilary Term next, bills of costs presented to the Master (and the several Deputy Clerks of the Crown throughout the province) for taxation, must be

written in a plain legible hand, or printed, and not contain more than one item in a line; also designating the term in which the business was done, which may be in the following form:—

Michaelmas Term, 14th Victoria.

TAXED OFF.	COSTS ON AN ASSESSMENT.	ATTORNEY.			DISBURSED.		
		£	s.	d.	£	s.	d.
	Instructions to sue or defend	0	7	6			
	Letter of notice	0	2	6			
	Attending for writ, and paid	0	1	3	0	3	9
	Copy	0	1	0			
	Fee	0	5	0			
	Attending sheriff with and for	0	2	6			
	Paid sheriff service and filing				0	7	3
	Mileage (18 miles)				0	9	0
	Entering common bail or appearance	0	2	6			
	Paid for do. writ and affidavit				0	1	6
<i>Hilary Term.</i>							
	Declaration	0	5	0			
	Copies	0	5	0			
	Demand of plea, copy, &c....	0	2	6			
	Attending sheriff with and for	0	2	6			
	Paid sheriff service and filing				0	3	9
	Mileage (18 miles)				0	9	0
	Attending to file declaration, and paid	0	1	3	0	0	4
	Term fee	0	5	0			
	Attending to search for plea, and paid	0	1	3	0	1	0
	Interlocutory judgment, and attending to sign.....	0	3	9			
	Paid				0	2	10
	Paid filing demand of plea and affidavit of service ...				0	0	8
	Notice of assessment, copy and service	0	3	6			
	Attending sheriff with and for	0	2	6			
	Paid sheriff for service and filing				0	3	9
	Mileage (18 miles)				0	9	0
	Drawing record	0	5	0			

RULES.

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TAXED OFF.	COSTS ON AN ASSESSMENT.	ATTORNEY.	DISBURSED.
		£ s. d.	£ s. d.
	Attending to pass, and fee ...	0 5 0	
	Paid		0 6 3
	Particulars attached (not to exceed three folios	0 1 6	
	Ins. for brief	0 5 0	
	Brief	0 10 0	
	Fee	1 5 0	
2 10 0	Do. to counsel		2 10 0
	Attending for subpœna, and paid	0 1 3	0 2 6
	Six tickets	0 12 0	
	Paid sheriff for service		
	Mileage		
	Attending to enter record ...	0 1 3	
	Paid clerk for fee fund		0 5 0
	Do. for jury		0 15 0
	Paid crier		0 3 0
	Paid sheriff		0 5 0
	<i>Easter Term.</i>		
	Attending for record, and paid	0 1 3	0 2 6
	Drawing postea	0 5 0	
	Drawing roll	0 5 0	
	Entering judgment and attendance	0 3 9	
	Affidavit of disbursements and paid	0 2 6	0 1 0
	Notice of taxation	0 2 6	
	Bill	0 5 0	
	Term fee	0 5 0	
		7 10 6	7 2 1
	Less		2 10 0
	Disbursed		4 12 1
	Postages		
	Fee fund and master		0 10 8
	Paid witnesses as per affidavit		
		7 10 6	5 2 9
	Amount of disbursements	5 2 9	
	Costs taxed at	12 13 3	

TAXED OFF.	ON AN ISSUE.	ATTORNEY.	DISBURSED.
		£ s. d.	£ s. d.
	The same as on assessment, demand of plea and copy inclusive, then proceed.		
	Attending to serve	0 1 3	
	Attending to file and paid ...	0 1 3	0 0 4
	Demand of plea, copy and service	0 2 6	
	Term fee	0 5 0	
	Attending to search for plea and paid	0 1 3	0 1 0
	Replication and copies	0 10 0	
	Attending to file and paid ...	0 1 3	0 0 10
	Attending to serve	0 1 3	
	Drawing record 6d. per folio		
	Attending to pass and fee ...	0 5 0	
	Paid		0 6 3
	(Proceed as before.)		
	Disbursements as the case may be.		
	Fee with brief at trial or assessment, in cases of tort, or in ejectments, or in matters of contract, where the sum to be recovered exceeds £100, (to be increased by the Master in his discretion to a sum not exceeding £5, in actions of a special and important nature)	2 10 0	
	In other cases	1 5 0	

The bills for plaintiff and defendant in ejectment have been omitted, the practice, and consequently the costs, being materially altered by 14 & 15 Vic. ch. 114.

At the foot of or to accompany each bill of costs, when the action is special and disbursements heavy, the following affidavit will be required :—

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I, A. B., the attorney in this cause (clerk or agent having the management or conduct of the cause) do swear that the disbursements charged in the above bill, are, in every respect, correct and true; that the pleadings are special, and Mr. ——— was employed as counsel to revise the same, and that the declaration, replication (or, as the case may be) contain — folios.

A. B.,

Attorney for plaintiff or defendant,

(As the case may be).

Sworn before the taxing officer, }
or commissioner of the court. }

GENERAL DIRECTIONS.

In making affidavits of increase, there are several facts that are required to be clearly, distinctly and positively sworn to, without which the master cannot satisfactorily tax the costs, nor will he allow the charges made. The affidavits must be made by the attorney, or some clerk having the management or conduct of the cause, or by the client, for any payments that may have been made by him to counsel, or to witnesses, or otherwise, during the progress of the action. The place of abode of the witnesses, the places and distances at which they are subpoenaed, and the distances they have to travel for the purpose of attending the trial, must be distinctly stated, and also that they are material and necessary witnesses for the party on the trial of the cause; and it must be stated positively that they did attend at the trial, and also that they attended as witnesses in no other cause (or otherwise, as the case may be). The number of days they are necessarily absent from home on the trial must also be accurately sworn to. If an attorney should attend as a witness, it must be stated whether or not he attended at the place of trial as attorney or witness in any other cause, or whether he

had or had not any other business there. It is also proper to state on what day the cause was tried. A reasonable allowance is made for maps or plans, where the same appear, from the nature or circumstances of the case, to be necessary and proper. The necessity thereof should also appear in the affidavit.

CHARLES C. SMALL,

Clerk of the Crown and Pleas.

CROWN OFFICE.

1. (o) It is ordered, that the offices of the Clerks of the Crown and Pleas be kept open as follows, that is to say,—during term, and one week after every term, from ten o'clock in the morning until three o'clock in the afternoon, and from six o'clock until eight o'clock in the evening; and except between the first day of July and the 21st day of August, at other times from ten o'clock in the morning until four o'clock in the afternoon, Sundays, Christmas Day, Good Friday, Easter Monday, the birth-day of the Sovereign, and any day appointed by general proclamation, for a general fast or thanksgiving, excepted; and that between the first day of July and the twenty-first day of August, the said offices shall be open from eleven o'clock in the forenoon until two o'clock in the afternoon.—18 H. T. 13 Vic.

2. All writs of summons and capias, and all other writs, issued out of the Courts of Queen's Bench and Common Pleas shall be signed and sealed by the Clerks of the Crown and Pleas in the said courts respectively, who shall, from time to time, supply their deputies in each and every county with blank writs, so signed and sealed, to be filled up and issued by such deputies as occasion shall require.—11 H. T. 13 Vic.

(o) The court refused a rule to set aside a fi. fa., because issued by the officer at his own house, before office hours. *Rolker et al. v. Fuller*, 10 U. C. R. 477.

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(p) If or of a d it will be v. Penne B., at Cl the decl "in the consider may hav court, on Newnha & W. 31 ejectmen Ashman 2 A. & I on a jud has been because them.— cannot r sumed t be held served b —Com.

DECLARATION.

(p) It is further ordered, that the twenty-ninth rule of Easter Term, 1842, be rescinded, and that every declaration shall in future be entitled in the proper court, and of the day of the month and year on which it is filed, and shall commence as follows :

DECLARATION AFTER SUMMONS.

(Date.)

(Venue.) A. B., by E. F., his attorney, (or in his own proper person, or by E. F. who is admitted by the court here to prosecute for the said A. B., who is an infant within the age of twenty-one years, as the next friend of the said A. B., as the case may be,) complains of C. D., who has been summoned to answer the said A. B., by virtue of a writ issued on the * ——— day of ——— in the year of our

(p) If the declaration is not entitled of any day or year, or of a day different from that on which it is actually filed, it will be deemed irregular, though not a nullity.—Hodson v. Pennell, 4 M. & W. 373. And in a case before Parke, B., at Chambers, 1st August, 1839, Lewis v. Duthie, where the declaration was entitled the proper day and year, but "*in the year of our Lord*" was omitted, the learned Baron considered it irregular; and in such cases the defendant may have the declaration set aside, on application to the court, or a judge, within the time allowed for pleading.—Newnham v. Hannay, 5 Dowl. 189; Hough v. Bond, 1 M. & W. 314. This rule, it would seem, does not extend to ejectments.—Doe Haines v. Roe, 2 M. & Scott, 609; Doe Ashman v. Roe, 1 Bing. N. C. 253; Doe Evans v. Roe, 2 A. & E., 11: though it does to pleadings on scire facias on a judgment; and although in England the similar rule has been held not to affect real actions or revenue cases, because the courts have not a common jurisdiction over them.—Miller v. Miller, 3 Dow. 408. Yet as this reason cannot apply to the Court of Queen's Bench here, it is presumed that the above rule and rule 30 (tit. pleading) would be held to apply to such cases. The copy of a declaration served being wrongly dated, is an irregularity, not a nullity.—Com. Bank v. Boulton, 1 U. C. Cham. Rep. 15.

* Date of first writ.

Lord 18 , out of her Majesty's Court of Queen's Bench for Upper Canada, at Toronto, (or out of the Court of Common Pleas, at Toronto, as the case may be,) for that, &c.

DECLARATION AFTER ARREST, WHEN THE PARTY IS NOT IN CUSTODY.

(Date.)

(Venue.) A. B. by E. F., his attorney (or in his own proper person, varying the form as above, as the case may be,) complains of C. D., who has been arrested at the suit of the said A. B., by virtue of a writ issued on the * ——— day of ——— in the year of our Lord 18 , out of her Majesty's Court of Queen's Bench for Upper Canada, at Toronto, (or out of the Court of Common Pleas, at Toronto, as the case may be,) for that, &c.

DECLARATION WHEN THE PARTY IS IN CUSTODY.

(Date.)

(Venue.) A. B. by E. F., his attorney, (or varying, as the case may be,) complains of C. D. being detained at the suit of the said A. B. in the custody of the sheriff of ——— by virtue of a writ issued on the * ——— day of ——— in the year of our Lord 18 , out of her Majesty's Court, &c., (as in the preceding form).

DECLARATION AFTER THE ARREST OF ONE OR MORE DEFENDANT OR DEFENDANTS, AND WHERE ONE OR MORE OTHER DEFENDANT OR DEFENDANTS SHALL HAVE BEEN SERVED ONLY, AND NOT ARRESTED.

(Date.)

(Venue.) A. B. by E. F., his attorney, (or varying, as the case may be,) complains of C. D., who has been arrested at the suit of the said A. B., (or being detained at the suit of the said A. B., in the custody

* Date of first writ.

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of the sheriff of ———), and of G. H., who has been served with a *capias* to answer to the said A. B. by virtue of a writ issued on the * ——— day of ——— in the year of our Lord 18 —, out of her Majesty's Court of, &c. (as before).—16, H. T. 13 Vic.

DEMURRER.

1. (q) In the margin of every demurrer, before it is filed, some matter of law intended to be argued shall be stated; and if any demurrer shall be filed or delivered without such statement, or with a frivolous statement, it may be set aside as irregular by the court or a judge, and leave may be given to sign judgment as for want of a plea. Provided that the party demurring may, at the time of the argument, insist upon any further matters of law, of which notice shall have been given to the court in the usual way.—14 E. T. 5 Vic.

2. (r) No motion or rule for a concilium shall be

* Date of first writ.

(q) Under this rule, it will now be necessary, according to the English practice, that each party should state his objections in the margin of his demurrer books, if he intends to object to the other's pleadings, otherwise he cannot enter into them upon argument.—*Clarke v. Davies*, 7 Taunt. 72; *Darling v. Gurney*, 2 Dowl. 101. The Courts of Common Pleas and Exchequer have intimated that they will not hear an argument, on an objection to any of the former pleadings, unless it be stated in the margin of the demurrer book.—*Grottick v. Phillips*, 9 Bing. 723; *Parker v. Riley*, 3 M. & W. 230. It has been held in our own courts, that where exceptions to pleadings are not noticed in the demurrer books, nor any notice of them given into court before argument, they cannot be urged.—*Ferrie et al. v. Lockhart*, 4 U. C. R. 477. And where no notice of an exception to declaration had been given, the court would not entertain such exceptions of their own accord, unless the declaration shewed that on the facts stated the plaintiff really had no ground of action.—*Shouldice v. Fraser*, 7 U. C. R. 60.

(r) In ordinary cases the notice should be given in sufficient time to enable the opposite party to prepare his

required, but demurrers, as well as all special cases and special verdicts, shall be set down for argument at the request of either party, with the officer of the court, and notice thereof shall be given by such party to the opposite party, four days before the day appointed for such argument.—20 E. T. 5 Vic.

3. (s) The form of a demurrer shall be as follows :

“The said defendant, by ——— his attorney, (or in person, &c., or the said plaintiff), says that the declaration (or plea, &c.,) is not sufficient in law,” (shewing the special causes of demurrer, if any).

The form of a joinder in demurrer shall be as follows :

“The said plaintiff (or defendant) says that the declaration (or plea, &c.,) is sufficient in law.—37 E. T. 5 Vic.

4. It is ordered, that the party to whose pleading the opposite party has demurred, shall, with his joinder in demurrer, or at any time within the time allowed for joining in demurrer, or within such further time as a judge on application may allow, deliver to such opposite party a notice in writing of all exceptions intended to be taken on the argument of the demurrer to any preceding pleading of such opposite

demurrer books, otherwise the court may refuse to hear the demurrer, and perhaps allow the objecting party his costs for appearing to make the objection.—Britten v. Britten, 2 Dowl. P. C. 239.

(s) A demurrer commencing “and the defendant says that the said declaration is not sufficient in law,” and then proceeding to assign separate causes of demurrer to each count, is in form a demurrer to the whole declaration; and if any count be good, the plaintiff is entitled to judgment, the demurrer being too large.—Parrett Navig. Co. v. Stower, 6 M. & W. 564. A special demurrer for duplicity must point out expressly, and not by way of description, in what the duplicity consists.—Smith v. Clench, 2 Gale & D. 225. If an objection to a pleading be taken on special demurrer, it must distinctly point out the defect objected to.—Small v. Beasley, 3 U. C. R. 40.

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party, and, in default of such notice, shall be precluded from arguing any such exception; and that all exceptions, of which notice has been so given, shall be entered on the demurrer books, to be delivered to the judges; Provided, that the party demurring may, at the time of the argument, insist upon any further matters of law, which shall have been noted in the margin of the demurrer books at the time of delivering the same, and of which notice shall have been given to the opposite party before the demurrer books are delivered.—27 H. T. 13 Vic.

5. (i) It is ordered, that the rule of E. T. 7 Vic. be rescinded, and that hereafter four days before the day appointed for argument, the party setting down any case for argument shall deliver a copy of the demurrer book, special case or special verdict, to each of the judges, otherwise the case shall not be heard.—28 H. T. 13 Vic.

6. It is ordered, that if the party setting down the case for argument, shall omit to enter on the demurrer book any exception made by the opposite party, of which he has received due notice, the court, in its discretion, may either give judgment in favour of such opposite party, or may strike the case out of the paper, and allow to such opposite party reasonable costs for attending to argue the demurrer.—29 H. T. 13 Vic.

DEPUTY CLERK OF THE CROWN.

It is ordered, that except in cases provided for by

(i) Either party may set down a demurrer for argument, and causes of general demurrer should be delivered to the judges in the form of notes by the opposite party to the one setting down the demurrer for argument.—*Jones v. Dunn*, 1 U. C. C. P. R. 204. Although a plea in abatement need not be demurred to specially, yet all objections intended to be urged must be noted in the demurrer books, according to this rule.—*March v. Burns*, 1 U. C. C. P. R. 344, per Macaulay, C. J.

the statute 14 & 15 Vic. ch. 118, whenever a Deputy Clerk of the Crown is required to transmit any paper or papers filed in any cause, to the principal office in Toronto, it shall be the duty of such deputy clerk to enclose and seal up such paper or papers in an envelope, and to address such envelope to the Clerk of the Crown in the proper principal office, and he may thereupon deliver such sealed envelope, containing the paper or papers, to the attorney who has required the transmission thereof, (in all cases taking a receipt from the attorney,) or may send the same by post. And that in no case shall any original papers be delivered out of the custody of the officer by and with whom the same are filed as aforesaid, except for the purpose of being transmitted to the principal office at Toronto, unless by order of the court, or a judge.—H. T. 15 Vic.

DOWER.

The rule of E. T. 1 Wm. IV. prescribing form of writ in dower, and rule 45 H. T. 13 Vic. as to practice in dower, are virtually superseded by statute 13 & 14 Vic. ch. 58.

EJECTMENT.

The rules of court of E. T. 11 Geo. IV., of H. T. 10 Vic., and rule 45 H. T. 13 Vic. respecting practice in ejectment are virtually rescinded by 14 & 15 Vic. ch. 114.

ENTRIES, ROLLS, RECORDS, &c.

Proposed under
stat. 7
Wm. IV. ch.
3.

1. (u) All judgments, whether interlocutory or

(u) By the common law judgments had relation back to the first day of the term whereof they were entered, unless from the record itself it appeared that they could not have that relation. Before this rule, the court would, in some cases, have allowed judgment to be entered *nunc pro tunc*, when a delay was occasioned by the act of the court, but not where it was occasioned by the act of the party, or by

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final, shall be entered of record of the day of the month and year, whether in term or vacation, when signed, and shall not have relation to any other day; Provided, that it shall be competent for the court or a judge to order a judgment to be entered *nunc pro tunc*.—22 E. T. 5 Vic.

2. (v) No entry of continuances by way of impar-^{Proposed under stat. 7 Wm. IV. ch. 3.} lance, *curia advisare vult*, *vicecomes non misit breve*, or otherwise, shall be made upon any record or roll whatever, or in the pleadings, except the *jurata ponitur in respectu*, which is to be retained; Provided that such regulation shall not alter or affect any existing rules of practice as to the times of proceeding in the cause. Provided also, that in all cases in which a plea *puis darrein* continuance is now by law pleadable in banc or at *nisi prius*, the same defence may be pleaded with an allegation that the matter arose after the last pleading or the issuing of the jury process, as the case may be. Provided also, that no such plea shall be allowed, unless accompanied by an affidavit that the matter thereof arose within eight days next before the pleading of such plea, or unless the court or a judge shall otherwise order.—23 E. T. 5 Vic.

3. After judgment by default, the entry of any subsequent continuances shall not be required.—24 E. T. 5 Vic.

a proceeding in the common course of law; and it would seem that they would be governed by the same principle under this rule.—*Lanman v. Lord Audley*, 2 M. & W. 535. The effect of the rule is that there is no relation back, in appearances, &c., as well as in judgments, although the former are not mentioned.—*Watson. v. Dore*, 2 M. & W. 386; 5 Dowl. 534.

(v) If matters pleadable after the last continuance arise after plea, and before the return of the venire facias, they must be pleaded in banc; if after the return of the venire, they may be pleaded in banc or at *nisi prius*.—*Tidd's Prac.* 9 ed. 847, 848.

4. No entry shall be made on record of any warrants of attorney to sue or defend.—25 E. T. 5 Vic.

5. The entry of proceedings on the record for trial, or on the judgment roll, (according to the nature of the case), shall be taken to be, and shall be in fact, the first entry of the proceedings in the cause, or of any part thereof upon record; and no fees shall be payable in respect of any prior entry made or supposed to be made on any roll or record whatever.—40 E. T. 5 Vic.

EXECUTORS.

1. In all actions by and against executors or administrators, or persons authorised by act of parliament to sue or be sued as nominal parties, the character in which the plaintiff or defendant is stated on record to sue or be sued, shall not, in any case, be considered as in issue, unless specially denied.—39 E. T. 5 Vic.

FI. FA.

1. It is ordered, that the endorsement upon every writ of execution for debt or damages, shall distinguish such debt or damages from the costs taxed, and shall be to the effect, and as nearly as the circumstances allow, in the form following :

“ Levy (or take) the sum of £ ———, being the debt (or damages, as the case may be,) and the sum of £ ———, being the costs taxed in this cause, with interest (according to the circumstances), also the sum of £ ——— for the writ (and former writ, if any, and sheriff's fees thereon,) and your own fees, poundages, and incidental expenses.—41, H. T. 13 Vic.

FILING.

1. It is ordered, that the officer with whom any writ is filed by the sheriff, or other person to whom it is directed, and who has been served with a rule to

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return the same, shall endorse the day and hour when such writ was filed.—48 H. T. 13 Vic.

IRREGULARITY.

1. It is ordered, that if the plaintiff or his attorney shall omit to insert in or endorse on any writ or copy thereof, any of the matters required by the said act (12 Vic. ch. 63), or by any rule of court, to be by him inserted therein, or endorsed thereon, such writ or copy thereof shall not on that account be held void, but the writ, or the service thereof, may be set aside, as irregular, upon application to be made to the court out of which the same shall issue, or to any judge.—10 H. T. 13 Vic.

2. (*w*) It is ordered, that no application to set aside process or proceedings for irregularity shall be allowed, unless made within a reasonable time; nor if the party applying has taken a fresh step after knowledge of the irregularity,—22 H. T. 13 Vic.

ISSUE BOOKS.

It shall not be necessary to furnish issue books or paper books in any case; and in all special pleadings, where the plaintiff takes issue on the defendant's pleading, or traverses the same, or demurs, so that the defendant is not let in to allege any new matter,

(*w*) Where writ and appearance were entitled in the Common Pleas, and the declaration served and filed was entitled in the Queen's Bench—pleas were filed entitled also in the Queen's Bench, but defendant's attorney discovering the mistake made in entitling the declaration served no copies of pleas on plaintiff's attorney, but signed judgment of non pros, for want of a declaration; Held, per Draper, J., that the declaration must be treated as a nullity; but judgment of non pros was set aside on the merits, on payment of costs. Semble, that if the declaration had been filed in the proper office, though entitled wrongly, and the defendant had pleaded filing his plea in the same office, such would be merely an irregularity, and cured by pleading by this rule.—Richardson v. Ranney, 2 U. C. Cham. Rep. 71.

the plaintiff may proceed as if the cause were at issue, and the clerk, in passing the record, shall enter the similiter as of course.—19 E. T. 5 Vic.

ISSUES.

1. Issues, judgments, and other proceedings shall be in the several forms hereunto annexed, or to the like effect, mutatis mutandis; Provided that in cases of non-compliance, the court or a judge may give leave to amend.—45 E. T. 5 Vic.

2. It is ordered, that the following be substituted for the schedule annexed to the 45th rule of E. T. 5 Vic.

No. 1.

FORM OF AN ISSUE IN FACT.

In the Queen's Bench or Common Pleas.

The ——— day of ———, in the year of our Lord (date of the declaration in the cause.)

(*Venue*).—Copy the declaration, and all subsequent pleadings verbatim, to the joinder of issue.

No. 2.

FORM OF NISI PRIUS RECORD.

Copy the issue in fact according to form No. 1, to the end, and then add as follows :

“Therefore for the trial of the said issue (or issues, or for the trial of the said issue or issues and the assessment of the said damages, or for the assessment of the said damages, according to the fact), the sheriff (or coroner, as the case may be) of the county of (the venue) is commanded that he cause to come before her Majesty's justice assigned to take the assizes in and for the said county of ———, on ——— the ——— day of ———, twelve, &c.; by whom, &c.; who neither, &c., to recognise, &c., because as well, &c.”

The postea is to be in the usual form.

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No. 3.

FORM OF JUDGMENT FOR THE PLAINTIFF, ON
VERDICT IN ASSUMPSIT.

(Intended as a general guide for other cases.)

Copy the nisi prius record to the end, and then proceed :

"Afterwards, on the ——— day of ———, (the first day of term next after the trial) come the parties aforesaid, by their attorney aforesaid (as the case may be), and ———, before whom the said issue was tried (or damages assessed, as the case may), hath sent hither his record, had before him in these words —(here insert a copy of the postea.) Therefore it is considered that the said (the plaintiff) do recover against the said (the defendant), his said damages by the jurors aforesaid, in form aforesaid assessed. And also ——— for his costs and charges by the court here adjudged to the said (the plaintiff), with his assent; which said damages, costs and charges, in the whole amount to ———, and the said (the defendant), in mercy," &c.—40 H. T. 13 Vic.

JUDGMENT.

1. It is ordered, that judgment may hereafter be signed after verdict, or assessment of damages, without any rule for judgment, but not before the time when judgment may be signed, according to the present practice of this court.—10 T. T. 3 & 4 Wm. IV.

2. No judgment of non pros. shall be signed for want of a declaration, replication, or other subsequent pleading, until eight days next after a demand thereof shall have been made in writing upon the plaintiff, his attorney or agent, as the case may be.—5 E. T. 5 Vic. Vide rule 20 H. T. 13 Vic.

(x). It is ordered, that in future interlocutory

(x) An incipitur of a declaration is necessary to the

judgment or judgment by default shall be considered well signed, by filing, in the proper office, an incipitur of the judgment roll, containing an incipitur of the declaration, with the words "interlocutory judgment," (or judgment by default) "is hereby signed," written in the margin thereof.—26 H. T. 13 Vic.

4. It is ordered, that no motion in arrest of judgment, or for judgment non obstante veredicto, shall be allowed, unless the same be made within the time allowed for moving a new trial.—38 H. T. 13 Vic.

JURY.

It is ordered, that in counties where provision shall have been made by law for the payment of petit jurors, the marshal and clerk of assize, or deputy clerk of the crown, as the case may be, previous to the entry of each record, (unless the same shall be entitled in the inferior jurisdiction,) shall demand and receive from the party entering the same, the sum of 15s., and in cases of records entitled in the inferior jurisdiction, the sum of 7s. 6d.; and shall in no case be compellable to receive any record without such payment as aforesaid.—6 M. T. 15 Vic.

NEW TRIAL.

It is ordered, that no rule granting a new trial to a party on condition of payment of costs, or other condition, shall be discharged on account of default in performing such condition, by a rule absolute in the first instance; but a rule for such discharge shall issue, which shall make itself absolute, unless cause

regular signing of interlocutory judgment, and such incipitur must be a true copy, so far as it goes; where therefore the venue in the declaration was "District of Victoria," and the venue in the incipitur of the judgment roll was "County of Hastings," the court set the judgment aside as irregular.—*Pace v. Meyers*, 8 U. C. R. 70. A plaintiff is not at liberty to go on and assess his damages, pending a summons to set aside his interlocutory judgment, and after it is returnable.—1b.

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be shewn on or before the day mentioned for that purpose in the rule, and which shall in no case be earlier than the fourth day inclusive after service thereof.—39 H. T. 13 Vic.

NOTICE OF TAXATION.

It is ordered, that from and after the first day of next Easter Term, the rules of this court of H. T. 11 Geo. IV., and numbered 14 and 15, respecting the furnishing to the master copies of bills of costs taxed at more than £20, and the delivery of such copies into court, and respecting orders to revise taxation, be rescinded; and that from thenceforth the practice of this court, in regard to notice to be given by one party to the other, of taxation of costs, and in regard to the obtaining orders for the revising taxation shall be the same as the present practice in the Court of Queen's Bench in England.—H. T. 10 Vic.

NOTICE OF TRIAL.

(y) It is ordered, that the expression "short notice of trial" shall be taken to mean four days' notice.—25 H. T. 13 Vic.

PAPER DAYS.

Ordered, that the first Friday, the second Monday, and the second Wednesday in every term be paper days, for the arguing demurrers, special cases, special verdicts or points reserved; and that on those days the paper list be gone through before any other motion or business is entertained.—H. T. 10 Geo. IV.

(y) Where an attorney had obtained extensions from time to time to plead, agreeing to take short notice of trial, or any notice, or to go down to trial without notice, and short notice of assessment was served; Held, that the court would not set aside the verdict, on the ground that the attorney had agreed to accept short notice of trial, &c., but not notice of assessment.—*Williams v. Lee*; *Williams v. Vansittart*, 2 U. C. C. P. R. 157.

PARTICULARS.

1. (z) A summons for particulars and orders thereupon may be obtained by a defendant before appearance, and may be made, if the judge think fit, without the production of any affidavit.—7 T. T. 3 & 4 Wm. IV.

2. (a) With every declaration delivered containing common counts on indebitatus assumpsit, or in debt,

(z) This rule is not superseded by any of the new rules relating to the delivery of particulars by a plaintiff to a defendant, as they all relate to delivery of particulars *after declaration*; and although their effect is to substitute a demand for particulars by a defendant, for an order for them after declaration, yet the former practice is still continued, according to this rule, if the defendant requires the delivery of particulars before appearance or declaration.

(a) The plaintiff must deliver particulars of his demand only when his declaration contains counts in indebitatus assumpsit, or in debt on simple contract, and even then the only penalty for not delivering them is, that he will not be allowed for them in costs, if afterwards compelled to deliver them by judge's order. In other cases the former practice still continues, and if particulars are required, the defendant must proceed by summons and order in chambers, or by rule in the Practice Court to obtain them; and his application may be made before appearance, and granted without any affidavit, if the judge think fit, by rule T. T. 3 & 4 Wm. IV. If the particulars delivered are not sufficiently explicit, an order may be obtained in the same manner as the first order, for better particulars, and if the plaintiff does not comply with the order for the delivery of particulars at all, Mr. Chitty says in his Arch. Pr. 7th ed. 1033, that the defendant's course is to obtain a further order, compelling the plaintiff to deliver them in a specified time, and expressly reserving to the defendant the liberty of signing judgment of non pros., if not delivered within it.—(See Shaver v. Correy, H. T. 3 Vic.) Such an order has, however, been refused.—Kirby v. Snowden. 4 Dowl. 191. Annexing the particulars to the record dispenses with the necessity of proof of their delivery.—Macarthy v. Smith, 8 Bing. 146. If the plaintiff annex to the record particulars varying from those delivered to the defendant, and the defendant is prepared at the trial to prove delivery of the particulars to

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on simple contract, the plaintiff shall deliver full particulars of his demand under those counts, where such particulars can be comprised within three folios; and where the same cannot be comprised within three folios, he shall deliver such a statement of the nature of his claim, and the amount of the sum or balance which he claims to be due, as may be comprised within that number of folios; and to secure the delivery of particulars in all such cases, it is further ordered, that if any declaration shall be delivered without such particulars, or such statement as aforesaid, and a judge shall afterwards order a delivery of particulars, the plaintiff shall not be allowed any costs in respect of any summons for the purpose of obtaining such order, or of the particulars he may afterwards deliver; and that a copy of the particulars of the demand, and also of the particulars (if any) of the defendant's set off, shall be annexed by the plaintiff's attorney to every record at the time it is entered with the judge's marshal.—7 E. T. 5 Vic.

him, the defendant may nonsuit the plaintiff, if he is unable to give in evidence any cause of action included in the particulars delivered; or if not prepared with proof of the delivery of the particulars, the defendant will be entitled to a new trial, and the plaintiff's attorney might be made to pay the costs of the former trial.—*Morgan v. Harris*, 1 Dowl. 570; 2 C. & J. 461, S. C. In actions of tort, particulars will sometimes be granted, as in action for an escape,—per Abbott, C. J., “the first principle of justice is that defendant should be informed what he is charged with.” —*Webster v. Jones*, 7 D. & Ry. 774. Particulars were ordered in an action on the case for disturbing a ferry, as to the number of passengers, goods, &c., conveyed.—*Ives v. Calvin*, 1 U. C. Cham. Rep. 8; where see the following cases cited by Macaulay, C. J.—*Doe Birch v. Phillips*, 6 T. R. 597, also 7 T. R. 332; *Collett v. Thompson*, 3 B. & P. 246; *Roberts v. Rowlands*, 3 M. & W. 543; *R. v. Flower*, 7 Dowl. P. C. 665; *R. v. Curwood*, 3 A. & E. 815; *Snelting v. Chennell*, 5 Dowl. 80; *Sowter v. Hitchcock*, 5 Dowl. 724; 1 Chitty Rep. 698; *R. v. Hodgson*, 3 C. & P. 422; *Davis v. Chapman*, 6 A. & E. 767; *Hiscock v. Dediard*, 2 Dowl. N. S. 277.

3. (b) In all cases when a declaration shall be delivered not accompanied by particulars of the plaintiff's demand, the defendant may serve the plaintiff, his attorney or agent, as the case may be, with a demand of particulars, and no order of the court or a judge for the delivery of particulars shall in any case be required, and the service of such demand shall operate as a stay of proceedings, until particulars shall be delivered, after the delivery of which the defendant shall have the same time to plead as he had at the time of the demand being served.—9 E. T. 5 Vic.

(b) There seems to be an inconsistency between this rule and No. 7 E. T. 5 Vic. In the latter it is provided, that in actions of *indebitatus assumpsit*, or in debt on simple contract, unless the plaintiff shall deliver particulars with his declaration, that he shall not be allowed any costs on their delivery afterwards, under summons and order of a judge; but this rule makes a demand sufficient wherever the plaintiff does not deliver the particulars of his demand with his declaration, and makes such demand operate as a stay of proceedings from the time of service, and also renders it necessary for the plaintiff to apply to the court or a judge to proceed without furnishing particulars, where they have been demanded, if the action be of such a nature that an order for particulars would not have heretofore been granted. It would seem then, by the operation of this rule, that a summons and order for particulars will not in any case be necessary after service of declaration, and will require only to be taken out in cases where the defendant desires to obtain particulars before declaration. R. 7 T. T. 3 & 4 Wm. IV. having ordered that a summons for particulars, and order thereupon, may be obtained by a defendant before appearance, and may be made, if the judge thinks fit, without the production of any affidavit, and the new rules applying only to a demand of particulars after declaration. After a demand made and sworn to, the court made a rule for particulars of demand to be delivered, and to stay proceedings in the meantime, absolute in the first instance.—*Batler v. Richardson*, 3 O. S. 605. But a judge's order for the delivery of particulars, with a stay of proceedings, after service of non-bailable process, does not prevent plaintiff from arresting the defendant on an alias writ.—*Wilson v. Wilson*, 3 O. S. 297.

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Provided always, that the plaintiff shall in no case be entitled to sign judgment after delivering particulars upon demand, until afternoon of the day following that on which they were delivered.—9 E. T. 5 Vic.

And provided also, that in case the defendant shall demand particulars in any case when, by reason of the nature of the declaration, an order for particulars would not heretofore have been made by a judge, the plaintiff may apply to the court or a judge to be allowed to proceed without furnishing particulars, notwithstanding such demand; and if any order to that effect shall be granted, it shall be at the cost of the defendant, unless the court or judge shall otherwise order.—9 E. T. 5 Vic.

PRACTICE.

1. In future the practice of this court, as well as the quantum of costs to be allowed in all proceedings, is to be governed (when not otherwise provided for) by the established practice of the Court of King's Bench in England.—1 M. T. 4 Geo. IV.

Practice in issuing writs.

2. Every writ of summons, or capias, shall contain the names of all the defendants (if more than one) in the action; and shall not contain the name or names of any defendant or defendants in more actions than one; and shall state in the margin the city, town or place at which the same was issued—as Toronto, Kingston, &c.—1 H. T. 13 Vic.

3. That the rule of T. T. 3 & 4 Wm. IV, No. 3, relative to the indorsing a statement of the amount of debt and costs on any bailable writ, and warrant and process be rescinded.—1 H. T. 13 Vic.

4. That any alias or pluries writ of summons may, if the plaintiff shall think it desirable, be issued into another county; and any alias or pluries writ of capias may be directed to the sheriff of any other county,

the plaintiff in such case, upon the alias or pluries writ of summons, describing the defendant as late of the place of which he was described in the first writ of summons, and upon the alias or pluries writ of capias referring to the preceding writ or writs, as directed to the sheriff to whom they were in fact directed.—5 H. T. 13 Vic.

5. That the alias or pluries writ of summons into another county, shall be in the following form :

Victoria, by the grace of God, &c.

To C. D. of ———, in the county of ———, late of ———, in the county of (original county). We command you as before (or often) we have commanded you, &c. (as in the writ of summons No. 1 in the schedule of the said act.)

And that the alias and pluries writ of capias shall be in the following form :

Victoria, &c.

To the sheriff of

We command you, as heretofore we have commanded the sheriff of ———, that you take C. D. (as in the writ of capias No. 3 in the schedule of the said act.) —6 H. T. 13 Vic.

6. That any deputy clerk of the crown and pleas who shall issue any alias or pluries writ of summons into another county from that into which the original was issued, or any alias or pluries writ of capias directed to the sheriff of any other county than that to the sheriff of which the original was directed, shall mark in the margin of every such alias or pluries writ, a memorandum stating from what office the original writ was issued.

Ex. Gr. Original issued at (Toronto, Hamilton, &c. as the case may be) by (officer's name.)—7 H. T. 13 Vic.

7. No alias or pluries writ of summons or of capias,

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shall be issued from any other office than that from which the original writ of summons or capias was issued.—8 H. T. 13 Vic.

Practice in declaring.

1. In all cases in which a defendant shall have been or shall be detained in prison on any writ of capias, or being arrested thereon shall go to prison for want of bail; and in all cases in which he shall have been or shall be rendered to prison before declaration, on any such process, the plaintiff in such process shall declare against such defendant before the end of the next term after such arrest or detainer, or render and notice thereof; otherwise such defendant shall be entitled to be discharged from such arrest or detainer, upon entering a common appearance, unless further time to declare shall have been given to such plaintiff by rule of court or order of a judge.—3 W. T. 5 Vic.

2. A declaration laying the venue in a different district from that mentioned in the process, shall not be deemed a waiver of the bail.—6 W. T. 5 Vic.

3. When the plaintiff declares against a prisoner, it shall not be necessary to make more than two copies of the declaration, of which one shall be served, and another filed with an affidavit of service, as in non-bailable cases.—8 E. T. 5 Vic.

4. A plaintiff shall be deemed out of court, unless he declare within one year after the process is returnable.—19 H. T. 13 Vic.

5. Upon all writs of capias, when the defendant shall not be in actual custody, the plaintiff, at the expiration of eight days after the execution of the writ, inclusive of the day of such execution, shall be at liberty to declare de bene esse, in case special bail shall not have been perfected; and if there be several defendants, and one or more of them shall have been served only, and not arrested, and the defendant or

defendants so served shall not have entered a common appearance, the plaintiff shall be at liberty to enter a common appearance for him or them, and declare against him or them, in chief, and de bene esse against the defendant or defendants who shall have been arrested, and shall not have perfected special bail.—14 H. T. 13 Vic.

Practice in pleading.

1. (c) The defendant shall not in any case be entitled to an imparlance, nor shall a rule or notice to plead, reply, rejoin, &c. be necessary in any case, whether bailable or non bailable, and whether privileged or otherwise, but a demand shall be sufficient, and the parties respectively shall be bound to plead, reply, rejoin, &c. in eight days after the service of such demand, unless otherwise ordered by the court or judge.—10 H. T. 5 Vic.

2. (d) The defendant shall not be at liberty to waive his plea, without leave of the court or a judge,

(c) Imparlance was before abolished by rule 3 E. T. 11 Geo. IV., and rules to plead, &c. were done away with and a demand substituted under the same rule and R. 4 E. T. 11 Geo. IV., and it was held that plaintiff had eight days to reply after a demand of replication.—*Robinson v. McGrath*, H. T. 2 Vic. The defendant cannot be required to plead in vacation upon a rule to plead given in vacation, in proceedings on an ex officio information, at the suit either of the Queen or the Attorney General, but is entitled to a regular rule to plead and an imparlance, the rules abolishing imparlance not extending to cases of this kind.—*Regina v. Burnham*, T. T. 7 Vic. P. C., Macaulay, J., but see rule 53, H. T. 13 Vic., title “seire facias,” which abolishes imparlance in all suits, actions or proceedings by seire facias, information, or otherwise.

(d) If the defendant waive his plea without leave of the court or a judge, the plaintiff may sign judgment.—*Palmer v. Dixon*, 5 D. & Ry. 623. The court or a judge will generally give leave to do so, on the defendant's agreeing to take short notice of trial.—*Taylor v. Jodrell*, 1 Wils. 254; *Wilkes v. Weed*, 2 Wils. 204. If the defendant be allowed to withdraw his plea, and be ordered to plead forthwith, he

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except by consent of the plaintiff, or for the purpose of confessing the action.—11 E. T. 5 Vic.

3. If a defendant, after craving oyer of a deed, omit to insert it at the head of his plea, the plaintiff, on making up the demurrer book, or in any entry of the proceedings on record, may, if he think fit, insert it for him, but the costs of such insertion shall be in the discretion of the taxing officer.—12 E. T. 5 Vic.

4. (e) It shall not be necessary that any pleading be signed by counsel.—13 E. T. 5 Vic.

5. (f) In any case in which the plaintiff (in order to avoid the expense of a plea of payment) shall have

must plead within twenty-four hours; when ordered to plead instant, he must plead on the same day, or the plaintiff may sign judgment.—(Lit. Arch. Pr. 7 ed. 181. If the defendant do not rejoin, rebut, &c. it is deemed an abandonment of the plea in respect of which he ought to have rejoined, &c., and if there be no other plea to the same part of the cause of action, the plaintiff may strike out the previous pleadings having reference to such cause of action.—*Petrie v. Fitzroy*, 5 T. R. 152. But the plaintiff may sign judgment for want of a rejoinder.—*Ibid*.)

(e) By R. 8 T. T. 3 & 4 Wm. IV. it was ordered, that it should not be necessary that any pleadings which concluded to the country, should be signed by counsel.

(f) In assumpsit for work, &c. the particulars of demand contained items amounting to £116 7s. 0d., and stated that the action was brought to recover £27 13s. 0d. the balance due from defendant to plaintiff on the subjoined account, *after giving credit for all payments on account, and for such sums as the defendant might have to set off*. Pleas—tender of £4, non-assumpsit as to the residue—plaintiff proved £3 10s. 0d. due: Held, that defendant could not, under this rule, avail himself of these particulars as dispensing with a plea of payment, and shewing that £88 14s. 0d. had been paid before action brought, the particular coming within the excepted case in the rule, where the plaintiff “states that he seeks to recover a certain balance, without giving credit for any particular sum,” and it being doubtful whether the credit was given in respect of a payment or set off.—*Morris v. Jones et al.*, 1 Q. B. 397. This rule does

given credit in the particulars of his demand for any sum or sums of money therein admitted to have been

not apply to set off. Plaintiff in assumpsit claimed a balance, which was made out in his particulars of demand, by shewing claims against the defendant; Held, that he was not concluded by the admission of the set off.—*Rowland v. Blaksley et al.* 1 Q. B. 403. Debt for goods sold and delivered: the particulars claimed a balance of £29 for goods sold and delivered, after allowing credit for £929 "paid at various times." At the trial the plaintiff proved a claim for £919, and admitted that part of this was for £84, the price of a tea urn, which the defendant had returned, and plaintiff had taken back; Held, that the plaintiff might shew that the £84 was also a part of the £929 allowed as money paid, and might, therefore, recover the balance between £919 and £929.—*Lamb et al. v. Micklethwaite*, 1 Q. B. 400. Where a plaintiff in his particulars of demand admits a payment generally thus, "Cr. by bills £1500." this is to be taken as a payment admitted to have been made to plaintiff by defendant.—*Smethurst v. Taylor*, 12 M. & W. 345. In an action for use and occupation to recover £12 8s. 10d. balance of an account of £64 0s. 10d. the plaintiff admitted £21 12s. 0d. received in the bill of particulars. It appeared defendant had taken the premises from the husband of plaintiff, and continued in possession sometime after his death; Held, that plaintiff was not concluded from shewing that part of the sum of £21 12s. 0d. was paid to her husband in his lifetime, and another part was paid so recently after his death that it could not possibly have been in respect of a debt due to herself.—*Mercy v. Galot*, 13 Jurist, 412; 3 Exch. 851. Particulars of demand served by the plaintiff on the defendant, containing an admission of payment on account, and shewing a balance in favour of the plaintiff, are put in at the trial by the defendant to prove the payment. The plaintiff then relies on the particulars so put in by the defendant, as a link in the chain of evidence, to shew that he was entitled to a verdict for the balance therein mentioned; Held, that though the particulars rendered by the plaintiff, and made use of by the defendant, were not evidence per se of the balance therein stated, still that the whole of the particulars ought to go to the jury as a fact, in connection with other facts in the case, to assist them in forming their verdict.—*Keesar v. Empey*, 4 U. C. R. 47. Vide also on this point 12 Law Jour. N. S. 32; *Eastwick v. Harman*, 6 M. & W. 13;

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paid to the plaintiff, it shall not be necessary for the defendant to plead the payment of such sum or sums of money; but this rule is not to apply to cases where the plaintiff, after stating the amount of his demand, states that he seeks to recover a certain balance, without giving credit for any particular sum or sums. Payment shall not in any case be allowed to be given in evidence in reduction of damages or debt, but shall be pleaded in bar.—15 E. T. 5 Vic.

6. (g) In every case in which a defendant shall plead the general issue, intending to give the special

Townson v. Jackson, 13 M. & W. 374. A plaintiff is not bound to give defendant a statement of the items of the sums for which he has given the defendant credit in his particulars of demand.—*Myatt v. Green*, 13 M. & W. 377.

(g) The comprehensiveness of the general issue by statute is not affected by the new rules.—*Ross v. Clifton*, 11 A. & E. 631. Where the defendant seeks to give the special matter in evidence, under the general issue, under some statutory provision, it is necessary that he should insert the words "by statute," in the margin of his plea, notwithstanding the provisions of 3 & 4 Wm. IV. ch. 42, sec. 41—(to which our statute 7 Wm. IV. ch. 3, under which the new rules were ordered, is similar,) that no rule or order, made by virtue of its enactments, shall have the effect of depriving any person of the power of pleading the general issue, and giving the special matter in evidence, in any case where he may be entitled to do so under any act of parliament now or hereafter to be in force.—*Bartholomew v. Carter*, 9 Dowl. 896. Where in an action for trespass for hunting over the plaintiff's land, the defendant pleaded not guilty "by statute," the court, on an affidavit of the plaintiff's that he could not discover the statute, under which the defendant meant to justify, made absolute a rule upon the defendant, to point out within three days, the statute under which the plea was pleaded, or else that the words "by statute" should be struck out of the margin.—*Coy v. Forrester*, 8 M. & W. 312. If a defendant does not add the words "by statute" on the margin of his plea of "not guilty," he cannot give special matter in evidence, to bring himself within an act of parliament, which allows a plea of not guilty: but that at the end of the plaintiff's case, it

matter in evidence, by virtue of any statute, he shall insert, in the margin of such plea, the words "by statute," otherwise such plea shall be taken not to have been pleaded by virtue of any statute; and such memorandum shall be inserted in the margin of the nisi prius record.—16 E. T. 5 Vic.

7. (h) When money is paid into court, such payment shall be pleaded in all cases, and as near as may be in the following form, *mutatis mutandis*:

appears that defendant was entitled to notice of action, and to have the venue laid in the proper county, and the plaintiff gave no notice of action, and the venue being in a wrong county, this is not aided by the defendant having omitted to add the words "by statute" on the margin of his plea.—*Bartholomew v. Carter*, 9 Dowl. 896. The general issue "by statute" cannot be pleaded to a count upon an account stated.—*Calvert v. Moggs*, 10 A. & E. 632. Where the defendant pleaded not guilty, intending to justify under a statute, but the nisi prius record had not the words "by statute" in the margin, the judge at nisi prius refused to allow an amendment, by the addition of the words "by statute," as it could not be shewn that those words were on the defendant's plea; but sensible, if that could have been shewn, the amendment would have been allowed.—*Forman v. Davies et al.* 1 C. & Marsh. 127. The insertion of "according to the statute," instead of "by statute," has been held sufficient.—*Robertson v. Cooley*, 7 U. C. R. 305.

(h) A plea of payment of money into court under this rule, cannot be pleaded to the same cause of action to which other pleas are pleaded in denial of the existence of that cause of action, at the time of action brought.—*Thompson v. Jackson*, 8 Dowl. P. C. 591. Where the plaintiff gives credit in his particulars of demand for payments, whether made before or after action brought, and goes only for the balance, a plea of payment is to be taken as pleaded to such balance; and if the defendant proves payment to that amount, independently of the sums credited in the particulars, he is entitled to a verdict.—*Eastwick v. Harman*, 6 M. & W. 13. The court refused to compel a defendant to deliver particulars of a plea of payment.—*Phipps v. Lothian*, 8 Dowl. P. C. 208. The form of plea given above for payment of money into court in actions of debt, seems imper-

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The defendant, by ———, his attorney (or in person) says (or in case it be pleaded as to part only, add, as to £ ———, being part of the sum in the declaration or count mentioned, or as to the residue

fect, as not making any mention of the damages accruing for non-payment of the debt.—*Henry v. Earl*, 8 M. & W. 228. If the defendant omit to plead this plea, he can, it seems, derive no benefit as to costs from the payment into court.—*Adlard v. Booth*, 1 Bing. N. C. 693—and such payment into court must now in all cases be specially pleaded, If the plea begins “as to so much parcel,” &c. and concludes with any prayer of judgment, it is bad on special demurrer; also, if the defendant intends to pay money into court on one part of the action, and to defend the other, the pleas in bar should be pleaded first, and the payment into court be pleaded as to the residue.—*Sharman v. Stevenson*, 3 Dowl. 709; *Porter v. Izat*, 1 Tyr. & G. 639. It is no ground for judgment non obstante veredicto; and semble, not even of demurrer, that the plea alleges the money to have been paid into court by leave of a judge before declaration.—*Edwards v. Price*, 6 Dowl. P. C. 487. According to the practice of this court, it is not necessary, when a defendant pleads payment of money into court, to obtain the master’s receipt for the money in the margin of the plea.—*Miles v. Harwood*, 1 U. C. R. 515. A summons may be taken out to pay money into court before declaration, but it must be afterwards pleaded.—*Molson v. Munro*, 1 U. C. Cham. Rep. 97. To an action of indebitatus assumpsit, defendant pleaded, 1st. As to all but £106 1s. 11d., non-assumpsit; 2nd. As to £28 12s. 6d. parcel, &c. payment; as to £77 9s. 5d. residue, &c. payment into court. Plaintiff took issue on the first plea, traversed the second, and as to the third took out the money paid into court; Held, that it was open to the plaintiff on the general issue to prove a charge not covered by the other pleas; and that the defendant having sworn that he paid in nothing on account of that charge, was precluded from shewing that the other items, which the plaintiff was entitled to, would not cover the money paid into court.—*Taylor v. Flood*, 10 U. C. R. 458.

of the sum of £——), that the plaintiff ought not further to maintain his action, because the defendant now brings into court the sum of £——, ready to be paid to the plaintiff; and the defendant further says, that the plaintiff has not sustained damages (or in actions of debt, that he was never indebted to the plaintiff) to a greater amount than the said sum, &c. in respect of the cause of action in the declaration mentioned (or in the introductory part of this plea mentioned), and this he is ready to verify; whereupon he prays judgment, if the plaintiff ought further to maintain his action thereof.—17 E. T. 5 Vic.

8. (i) The plaintiff, after delivery of a plea of payment of money into court, shall be at liberty to reply to the same by accepting the sum so paid into court, in full satisfaction and discharge of the cause of action, in respect of which it has been paid in; and he shall be at liberty, in that case, to tax his costs of suit, and in case of non-payment thereof within forty-eight hours to sign judgment for his costs of suit so

(i) The plaintiff may at once, without prejudice, take the money out of court. If the plea of payment into court be to the whole declaration, and the plaintiff does not accept it in satisfaction, he should reply according to the rule, and proceed to trial as in ordinary cases. If the plea be only to part, and there be another plea to the rest, and the plaintiff accepts the money paid in, in satisfaction of part, but desires to proceed as to the residue, he shall reply as to the payment that he accepts it, and reply to the other plea, and proceed to trial. If the plea be to the whole, and the money be accepted, he may tax his costs, and if they be not paid in forty-eight hours, may sign final judgment. There is no necessity for the defendant to produce at the trial, the rule for the payment of the money into court. Where to a common count in debt, the defendant pleaded payment into court, and that he never was indebted to a greater amount, and the plaintiff replied that he was indebted to a greater amount, the replication was held bad on demurrer, for not stating that the defendant was and is indebted, according to the form in the rule.—Faithful v. Achly, 9 Dowl. P. C. 555.

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taxed, or the plaintiff may reply "that he sustained damages, or (that the defendant was and is indebted to him, as the case may be,) to a greater amount than the said sum"; and in the event of an issue thereon being found for the defendant, the defendant shall be entitled to judgment and costs of suit.—18 E. T. 5 Vic.

9. (j) Every pleading, as well as the declaration, shall be entitled of the day of the month and year when the same is filed, and shall bear no other time or date; and every declaration and other pleading shall also be entered on the record made up for trial, and on the judgment roll, under date of the day of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the court or a judge.—30 E. T. 5 Vic.

10. (k) The name of a district shall in all cases be stated in the margin of a declaration, and shall be

(j) See note to rule 16 H. T. 13 Vic. title "Declaration."

(k) If, notwithstanding this rule, the venue should be stated, the opposite party can only move to strike it out, and cannot demur.—*Farmer v. Champneys*, 1 C. M. & R. 369; *Fisher v. Snow*, 3 Dowl. 27; *Townsend v. Gurney*, 3 Dowl. 168. But if there be no venue, either in the body of the declaration or the margin, the proper course seems to be to demur.—*Remington v. Taylor*, 1 Lutw. 236. In local actions, laying the venue in the wrong county, is a ground for nonsuit, or if the error appear on the face of the record, of demurrer; but after verdict or judgment by default, the error will be cured by the statute of jeofail.—*Thursby v. Plant*, 1 Saund. 241 n. The locality not appearing on the declaration, in covenant by assignee of lessee against lessor, and no issue being raised on it; Held, that defendant was not entitled to a nonsuit.—*Boyes v. Hewetson*, 2 Bing. N. C. 575. Vide also the bailiffs of *Lichfield v. Slater*, Willes, 431; *Warren v. Webb*, 1 Taunt. 379. The plaintiff commencing a local action in a wrong district, that is, neither in the district in which the cause of action arose, nor in the Home District, cannot afterwards, under 8 Vic. ch. 36, be allowed to amend his declaration by changing the venue to

taken to be the venue intended by the plaintiff; and no venue need be stated in the body of the declaration, or in any subsequent pleading; Provided that in cases where local description is now required, such local description shall be given.—31 E. T. 5 Vic.

11. (7) And whereas, by the mode of pleading hereinafter prescribed, the several disputed facts

the proper district. The irregularity is in the issue of the original process, and incurable.—*Vaughan v. Hubbs et al.*, 1 U. C. Cham. Rep 76.

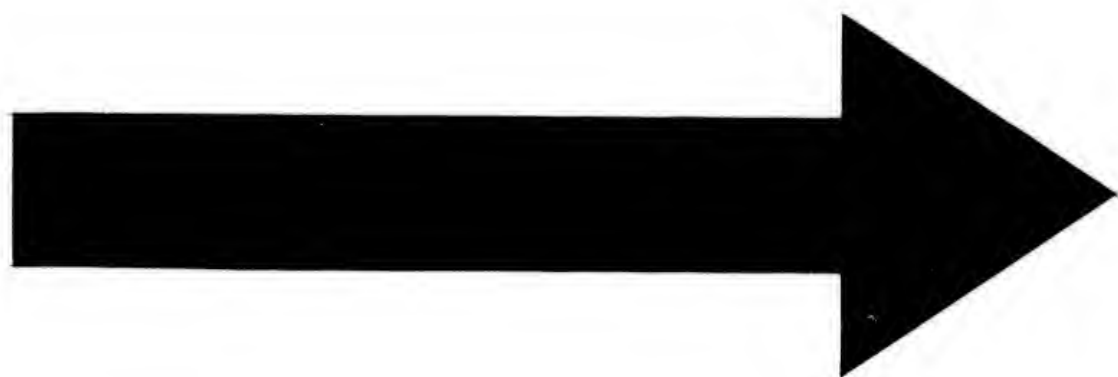
(i) Two counts describing the same contract, cannot be allowed, though the defendant be described in one of them as jointly responsible, in the other as severally so.—*Cholmondeley v. Payne*, 3 Bing. N. C. 708. So where a declaration contained one count, claiming a fee or reward in the name of metage on coals imported into the port of Truro, alleged to be due to the plaintiff, as lessee under the Corporation of Truro, of an ancient office of meter, to which the fee was stated to be incident, and another count claiming the same as a port duty; the court held that these counts were only different statements of the same subject matter of complaint, within the meaning of the above rule, and that one of them must be struck out.—*Jenkins v. Treloar*, 1 M. & W. 16. And where a declaration in ejectment on the demise of the churchwardens and overseers of a parish to recover parish property, contained two sets of counts, one specifying the names of the individuals, and the other not, the court ordered one of them to be struck out.—*Doe Landesley v. Roe*, 4 Dowl. 222. But where the first count was to recover double rent on the statute 11 Geo. II. chap. 19, sec. 18, and the second for use and occupation, both counts were allowed to be retained.—*Thoroton v. Whitehead*, 1 M. & W. 14. And in an action on the case against a sheriff, one count has been allowed for not arresting, and another for an escape.—*Guest v. Everett*, 9 Legal Observer, 75. And also against a carrier, one count for not carrying safely to a port, another for not conveying from the wharf where the goods were landed to the plaintiff's warehouse.—*James v. Bourne*, 6 Dowl. 603. In an action on a policy of insurance, two counts were not allowed, one alleging the loss to have been occasioned by the perils of the seas, and the other by the barratry of the master.—*Blyth v. Sheppard*, 1 Dowl. N. S. 180. Where the defendant took premises under a demise for three years from Christmas, 1839,

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material to the merits of the case, will, before the trial, be brought to the notice of the respective parties more distinctly than heretofore, and by the act 7 Wm. IV. ch. 3, sec. 15, the powers of amendment at the trial in cases of variance, in particulars not material to the merits of the case, are greatly enlarged, several counts shall not be allowed in taxation of costs, unless a distinct subject matter of complaint is intended to be established in respect of each; nor shall several pleas or avowries or cognizances be allowed, unless a distinct ground of answer or defence is intended to be established in respect of each. Therefore counts founded on one and the same principal matter of complaint, but varied in statement,

and continued to occupy them until July, 1841, when he quitted them, having paid rent to the midsummer previous; Held, in an action brought to recover the rent, which subsequently accrued due, that the plaintiff was not entitled to have a count on the demise, and also a count for use and occupation, but that he must make his election.—*Arden v. Pullen*, 9 M. & W. 430. A count in case for employing a vessel let to hire to the defendant in an illegal manner, whereby the vessel was rendered liable to forfeiture, may be joined with a count charging a breach of an express contract in detaining the vessel longer than the stipulated time.—*Blenden v. Rupallo*, 3 Scott N. R. 564. Plaintiff declared in assumpsit, in first count, for breach of warranty of soundness of a certain horse; 2nd count, that in consideration that plaintiff, at request of defendant, would buy a horse, defendant warranted horse sound, that plaintiff did buy the horse, but it was not sound; in 3rd count plaintiff declared that in consideration that he, at defendant's request, would buy a certain other horse, defendant promised that he was sound with certain exceptions. In each of the counts, a breach of the promise in that count was alleged. Non-assumpsit to the whole declaration. Damages were given on the last two counts collectively. Court directed a new trial, upon the ground that plaintiff could not recover upon two counts for the same subject matter of complaint.—*Deere v. Ivey*, 4 Q. B. 379; see also on same points, *Holford v. Dunnett*, 7 M. & W. 348; *Ward v. Bell*, 3 Tyr. & G. 904.



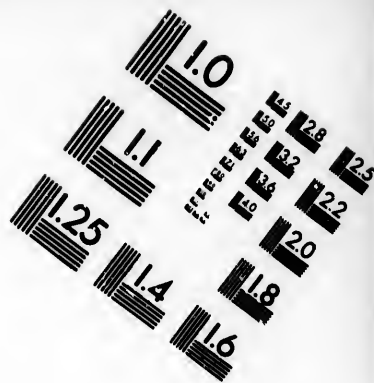
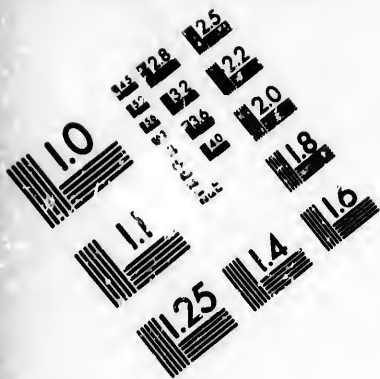
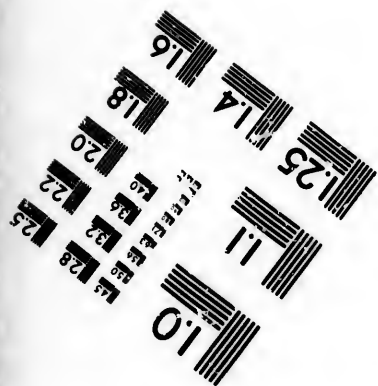
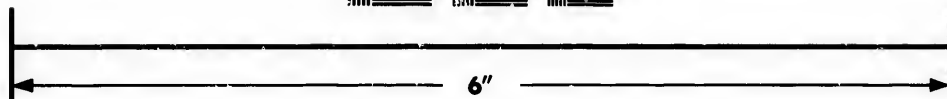
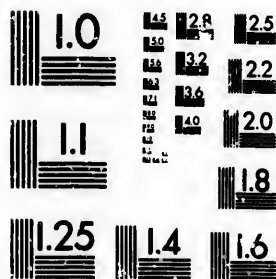


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description or circumstances only, are not to be allowed.

Ex. gr. Counts founded upon the same contract, described in one as a contract without a condition, and in another as a contract with a condition, are not to be allowed, for they are founded in the same subject matter of complaint, and are only variations in the statement of one and the same contract.

So counts for not giving, or delivering, or accepting a bill of exchange, in payment, according to the contract of sale, for goods sold and delivered, and for the price of the same goods, to be paid in money, are not to be allowed.

So counts for not accepting and paying for goods sold, and for the price of the same goods as goods bargained and sold, are not to be allowed.

But counts upon a bill of exchange or promissory note, and for the consideration of the bill or note, in goods, money, or otherwise, are to be considered as founded on distinct subject matters of complaint; for the debt and security are different contracts, and such counts are to be allowed.

Two counts upon the same policy of insurance are not to be allowed. But a count upon a policy of insurance, and a count for money had and received, to recover back the premium upon a contract implied by law, are to be allowed.

Two counts upon the same charter-party are not to be allowed. But a count for freight upon a charter-party, and for freight pro rata itineris upon a contract implied by law, are to be allowed.

Counts upon a demise and for use and occupation of the same land for the same time, are not to be allowed.

In actions of tort for misfeasance, several counts for the same injury, varying the description of it, are not to be allowed.

In the like actions for nonfeasance, several counts founded on various statements of the same duty, are not to be allowed.

RULES.

Several counts in trespass, for acts committed at the same time and place, are not to be allowed.

Where several debts are alleged in indebitatus assumpsit to be due in respect of several matters; ex. gr. for wages, work and labour, as a hired servant, work and labour generally, goods sold and delivered, goods bargained and sold, money lent, money paid, money had and received, and the like, the statement of each debt is to be considered as amounting to a several count, within the meaning of the rule which forbids the use of several counts, though one promise to pay only is alleged in consideration of all the debts.

Provided that a count for money due on an account stated, may be joined with any other count for a money demand, though it may not be intended to establish a distinct subject matter of complaint in respect of each of such counts.

The rule which forbids the use of several counts is not to be considered as precluding the plaintiff from alleging more breaches than one of the same contract in the same count.—32 E. T. 5 Vic.

12. (*m*) Pleas, avowries and cognizances founded on one and the same principal matter, but varied in

(*m*) By Provincial Statute, 2 Geo. IV. ch. 1, s. 7, commonly called the King's Bench Act, "any defendant or defendants in any action or suit in the said court, may plead as many several matters thereto as he shall think necessary, without leave of the said court, where he would be entitled to do so by obtaining such leave, under the same regulations and restrictions as are declared by the British Statute passed in the fourth year of the reign of Queen Anne, chap. 16, sec. 4, anything in the said clause to the contrary notwithstanding;" and by the recited statute of Anne, it was provided, "that the defendant or tenant in any action or suit, or any plaintiff in replevin in any court of record, may, with the leave of the same, plead as many several matters thereto as he shall think necessary for his defence. Provided, nevertheless, that if any such matter shall, upon a demurrer joined, be judged insufficient, costs shall be

statement, description or circumstances only, (and pleas in bar in replevin are within the rule) are not to be allowed.

given at the discretion of the court, or if a verdict shall be found upon any issue in the said cause for the plaintiff or demandant, costs shall be also given in like manner, unless the judge who tried the said issue shall certify that the said defendant or tenant, or plaintiff in replevin, had a probable cause to plead such matter, which, upon the said issue, shall be found against him. Provided also, that nothing in this act shall extend to any writ, declaration, or suit of appeal of felony, &c., or to any writ, bill, action or information upon any penal statute." In addition to this and the preceding rule, there are in England rules six and seven of all the courts of H. T. 4 Wm. IV., by the former of which provision is made for striking out with costs counts or pleas, &c. pleaded in violation of the above rules, and by the latter, the party pleading more than one count or plea, &c., and failing to establish a distinct subject matter of complaint in respect of each count, or distinct ground of defence in respect of each plea, &c., is rendered liable for all the costs occasioned by such count or plea, &c. It is conceived that, although there is no provision in any of the above rules of the Court of Queen's Bench for striking out counts or pleas, &c. similar to the rule adopted in England, yet that the same practice would be observed in the court here, as if such a rule did exist, as all these rules have the force of statutory enactments; and the express directions in rules 32 and 33, that not more than one count or plea, &c. shall be allowed in the cases pointed out, would seem to make the application to the court or a judge at chambers to strike out such additional count or plea, &c., the proper course of procedure, although it may perhaps be deemed that the payment of the costs of the pleadings, &c. by the party failing to substantiate a distinct cause of action or defence on each issue, under rule 37, would be a sufficient disallowance of the additional count or plea. The statute 4 & 5 Anne, and the Queen's Bench Act, do not bind the Queen.—*Attorney-General v. Algood, Parker*, 1-10. Nor do the above rules, and at her suit the defendant cannot plead several pleas without leave of the Attorney-General.—*Reg. v. Bewdley*, 1 P. Wms. 220; *R. v. Archbishop of York, Willes*, 533. The object of these rules seems to be to prevent the same defence being pleaded in different forms, and not to bring into question the inconsistency of

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Pleas of solvit ad diem, and of solvit post diem, are of time only, and are not to be allowed.

the pleas, unless it be grossly manifest; and in *Triebnerr v. Duerr*, 1 Bing. N. C. 266, Tindal, C. J., observed that "the late rules for the regulation of pleading nowhere state that pleas that are inconsistent with each other shall not be allowed; on the contrary, among the examples of pleas that may be pleaded together, we find that pleas of payment, and of accord and satisfaction, or of release, are distinct, and are to be allowed; these and many others that might be referred to, are instances of pleas that cannot all be true, and in that sense are inconsistent. It was not intended that the defendant should be shut out from any bona fide ground of defence, though where pleas that are manifestly inconsistent with each other appear to be vexatiously pleaded, and for the purpose of occasioning inconvenience and expense to the plaintiff, the court will not allow them." Under the statute of Anno, several pleas could not be pleaded without leave of the court, but now in all the courts in England such leave can be obtained by rule drawn up on judge's summons and order, under rule 13 T. T. 1 Wm. IV. In this country the King's Bench Act dispensed with the necessity of obtaining leave of the court to plead several matters. and under these rules several matters may still be pleaded without leave of the court, subject of course to objections as to their allowance, and to the payment of the costs of issues raised on them, if the defences should fail to be proved separately and distinctly. In trespass for false imprisonment on a charge of felony, the court allowed the defendant to withdraw a former plea, and plead several pleas, Tindal, C. J., observing that "where the same facts and circumstances are differently stated in different pleas, the rule applies; but where the same facts lead to different conclusions in law, it is material to the defendant, and of advantage to the plaintiff, that the different views of the facts which are relied on should be put on the record."—7 Dowl. 251. In trover the defendant has been allowed to plead a right of lien by agreement, a right of lien by usage, and the same usage in two other pleas, but with reference to a delivery of goods by two different parties.—*Leuckhart v. Cooper*, 3 Dowl. 415. In replevin, an avowry justifying the taking of cattle damage feasant, in the locus in quo as the soil of A., and the like avowry as the soil of B., have been allowed.—*Evans v. Davies*, 2 N. & P. 464. In case for the obstruction of a right of way, the defendant

But pleas of payment and of accord and satisfaction, or of release, are distinct, and are to be allowed.

was allowed to plead not guilty, leave and license, a denial of the plaintiff's possession of the locus in quo, and a denial of the plaintiff's right of way.—*Forrest v. Hall*, 2 Jurist, 302. In assumpsit against an attorney for negligence in providing insufficient security upon an advance of money, he was allowed to plead non-assumpsit, and several other pleas, that the loss was not the result of the alleged negligence.—*Wright v. Newton*, 3 Scott, 593. Pleas that part of the consideration for which the action was brought was money lent for the purpose of gaming, and that it was money lost at play, are (though founded upon the same transaction) distinct defences, and therefore allowable.—*Temple v. Reily*, 9 Dowl. 62. In an action of trespass for entering and obstructing the navigation of a steam vessel, the court allowed the defendant to plead, first, not guilty; secondly, leave and license; thirdly, that the defendant entered the steam vessel to prevent two persons from fighting; fourthly, that the steam vessel was in danger of being wrecked, to prevent which the defendant went on board to save her; fifthly, that a third party had a lien on the vessel, and that the defendant, as his servant, went on board to take possession of her for him.—*Johnstone v. Knowles*, 1 Dowl. N. S. 30. In trespass quare clausum fregit, the defendants were allowed to plead, first, not guilty; secondly, not possessed; thirdly, a plea stating that one J. was seized in fee of the close, who demised to B., and, after stating various demises, that one F. demised to H., who became bankrupt, and that the defendants entered as his assignees; fourthly, a like plea, stating however that H. mortgaged to one R., and continued in possession as tenant to R., and that the defendants entered as assignees of H., who had become bankrupt; fifthly, a like plea to the fourth, only stating that H. and R., to defraud the creditors of H., demised to the plaintiff.—*Pim v. Grazebrook*, 1 Dowl. N. S. 489. In trespass quare clausum fregit, two pleas justifying the trespass under a custom, with and without a condition, were not allowed. Where a defendant may by statute give the special matter in evidence under the general issue, he will not be permitted to plead the general issue, and also a special plea of justification.—*Ross v. Clifton*, 11 A. & E. 631; *Legge v. Boyd*, 9 Dowl. 39. Pleas varying the allegations of fraud and want of consideration in an action by the indorsee against the maker of

Pleas of an agreement to accept the security of A. B. in discharge of the plaintiff's demand, and of an agreement to accept the security of C. D. for the like purpose, are also distinct, and are to be allowed.

But pleas of an agreement to accept the security of a third person in discharge of the plaintiff's demand, and of the same agreement, describing it to be an agreement to forbear for a time, in consideration of the same security, are not distinct, for they are only variations in the statement of one and the same agreement, whether more or less extensive, in consideration of the same security, and not to be allowed.

In trespass, *quare clausum fregit*, pleas of soil and freehold of the defendant in the locus in quo, and of the defendant's right to an easement there, and pleas of right of way, are distinct, and are to be allowed.

So pleas of a right of way over the locus in quo, varying the termini, or the purposes, are not to be allowed.

Avowries for distress of rent, and for distress for damage feasant, are to be allowed.

But avowries for distress of rent, varying the amount of rent reserved, or the times at which the rent is payable, are not to be allowed.

The examples in this, and other places specified,

the note were not allowed.—*Beavan v. Tanner*, 8 Dowl. 870. In an action on a policy of insurance effected on a ship and cargo, the defendant was not allowed to plead, first, that the policy had been made by fraud; secondly, that the defendant's promise and subscription to the policy had been obtained by fraud; thirdly, that an inconsiderable portion only of the cargo was put on board as a cloak or pretence for effecting a policy, and with intent of defrauding the underwriter, in the event of the loss of the ship; fourthly, that an inconsiderable portion only of the cargo was loaded on board, with intent that it might appear to constitute a valuable cargo, and with the intent that it should be lost by fraud.—*Reid v. Rew*, 6 Jurist, 999.

are given as some instances only of the application of the rules to which they relate; but the principles contained in the rules are not to be considered as restricted by the examples specified.

PLEADINGS.

13. (*n*) Whereas declarations in actions upon bills of exchange, promissory notes, and the counts usually called the common counts, occasion unnecessary expense to parties, by reason of their length, and the same may be drawn in a more concise form; now, for the prevention of such expense, it is ordered, that if any declaration in assumpsit, filed or delivered after these rules shall come into force, (being for any of the demands mentioned in the schedule of forms and directions annexed to this order, or demands of a like nature,) shall exceed in length such of the said forms set forth or directed in the schedule, as may be applicable to the case, or if any declaration in debt to be so filed or delivered for similar causes of action, and for which the action of assumpsit would lie, shall exceed such length, no costs of the excess shall be allowed to the plaintiff, if he succeeds in the cause; and such costs of the excess as have been incurred

(*n*) The words in this rule "or demands of a like nature," and the direction as to drawing foreign bills at the end of these forms, seem to establish that these particular forms are merely given as a few instances; and that in all other cases, at least of common debts, it is intended that the pleadings may and ought to be framed in the like concise manner. The forms of declarations on bills and notes given in the schedule above, are much more concise than those which were adopted by the courts in England, as the unnecessary statements of the delivery of the note or bill to the plaintiff or indorsee, and of notice to the defendants of the indorsements, and the direction of the bill to the drawer, which are to be found in the English forms, are all omitted here; and in the forms of the common counts "price and value," and "then and there" unnecessarily inserted in the English forms, are also omitted.

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by the defendant, shall be taxed and allowed to the defendant, and be deducted from the costs allowed to the plaintiff.

And it is further ordered, that in the taxation of costs as between attorney and client, no costs shall be allowed to the attorney in respect of any such excess of length; and in case any costs shall be payable by the plaintiff to the defendant, on account of such excess, the amount thereof shall be deducted from the attorney's bill.—34 E. T. 5 Vic.

SCHEDULE OF FORMS AND DIRECTIONS.

Count on a Promissory Note against the Maker by Payee or indorsee, as the case may be.

— DISTRICT } For that whereas the defendant on
TO WIT : } the day of in the year
of our Lord , made his promissory note in
writing, and thereby promised to pay to the plaintiff
£ , days (weeks or months) after the
date thereof (or as the fact may be) which period
had elapsed before the commencement of this suit,
[or if the note be payable to A. B.] and thereby pro-
mised to pay to A. B. or order £ , days
[weeks or months] after the date thereof, [or as the
fact may be], which period had elapsed before the
commencement of this suit; [and the said A. B. then
endorsed the same to the plaintiff,] and the said
defendant thereupon became liable to pay the amount
of the said note to the plaintiff, according to the
tenor and effect thereof.

Count on a Promissory Note against Payee by Indorsee.

— DISTRICT } For that whereas one C. D. on the
TO WIT : } day of in the year of
our Lord , made his promissory note in writing,
and thereby promised to pay the defendant or order,
£ , days [weeks or months] after the
date thereof [as the fact may be], which period had

elapsed before the commencement of this suit; and the defendant then endorsed the same to the plaintiff; [or and the defendant then indorsed the same to one X. Y. and the said X. Y. then indorsed the same to the plaintiff,] and the said C. D. did not pay the amount thereof, although the same was duly presented on the day when it became due, of all which the defendant had due notice; whereby the defendant became liable to pay the amount of the said note to the plaintiff, according to the tenor and effect thereof.

Count on a Promissory Note against Indorser by Indorsee.

— DISTRICT } For that whereas one C. D. on the
TO WIT: } day of in the year of
our Lord , made his promissory note in writing,
and thereby promised to pay X. Y. or order £ ,
 days [weeks or months] after date thereof, [or
as the fact may be] which period had elapsed before
the commencement of this suit; and the said X. Y.
then endorsed the same to the defendant, and the
defendant then endorsed the same to the plaintiff, [or
and the defendant then endorsed the same to Q. R.,
and the said Q. R. then endorsed the same to the
plaintiff,] and the said C. D. did not pay the amount
thereof, although the same was duly presented on the
day when it became due, of all which the defendant
had due notice; whereby the defendant became
liable to pay to the plaintiff the amount of the said
note, according to the tenor and effect thereof.

*Count on an Inland Bill of Exchange against the Acceptor
by the Drawer being also the Payee.*

— DISTRICT, } For that whereas the plaintiff on
TO WIT: } the day of in the year
of our Lord , made his bill of exchange in
writing, and thereby required the defendant to pay to
the plaintiff £ , days [weeks or months]
after date [or sight] thereof [as the fact may be]

which period had elapsed before the commencement of this suit, and the defendant then accepted the said bill, and thereby became liable to pay the same to the plaintiff, according to the tenor and effect thereof, [or if the acceptance be special, add, and of his said acceptance thereof.]

Count on an Inland Bill of Exchange against the Acceptor by the Drawer not being the Payee.

— DISTRICT, } For that whereas the plaintiff on
TO WIT: } the day of in the year of
our Lord made his bill of exchange in writing,
and thereby required the defendant to pay O. P. or
order £ days [weeks or months] after
the date [or sight] thereof, which period had elapsed
before the commencement of this suit, and the defend-
ant then accepted the same; yet he did not pay the
amount thereof, although the said bill was duly pre-
sented on the day when it became due, and thereupon
the same was then returned to the plaintiff, whereby
the defendant became liable to pay the said bill to the
plaintiff, according to the tenor and effect thereof.

Count on an Inland Bill of Exchange against the Acceptor by Indorsee.

— DISTRICT, } For that whereas one E. F. on the
TO WIT: } day of in the year of
our Lord made his bill of exchange in writing,
and thereby required the defendant to pay to the said
E. F. [or to G. H.] or order £ days
[weeks or months] after sight [or date] thereof,
which period had elapsed before the commencement
of this suit, and the defendant then accepted the said
bill; and the said E. F. [or the said G. H.] then in-
dorsed the same to the plaintiff; [or, and the said E.
F. or the said G. H. then indorsed the same to J. K.
and the said J. K. then indorsed the same to the
plaintiff] whereby the defendant became liable to pay
to the plaintiff the amount of the said bill, according

to the tenor and effect thereof, [or if the acceptance be special, add, and of his acceptance thereof.]

Count on an Inland Bill of Exchange against the Acceptor by the Payee not being the Drawer.

— DISTRICT, } For that whereas one E. F., on the
TO WIT: { day of in the year of
our Lord made his bill of exchange in writing,
and thereby required the defendant to pay to the
plaintiff £ , days [weeks or months]
after the sight [or date] thereof, which period had
elapsed before the commencement of this suit, and
the defendant then accepted the same, whereby he
became liable to pay to the plaintiff the amount of
the said bill, according to the tenor and effect there-
of, [or, if the acceptance be special, add, and of his
acceptance thereof.]

Count on an Inland Bill of Exchange against the Drawer by Payee on non-acceptance.

— DISTRICT, } For that whereas the defendant,
TO WIT: { on the day of in the
year of our Lord , made his bill of exchange
in writing, and thereby required one J. K. to pay to
the plaintiff £ , days [weeks or months]
after the sight [or date] thereof; and the same was
then presented to the said J. K. for acceptance, and
the said J. K. then refused to accept the same, of all
which the defendant had due notice, whereby he be-
came liable to pay to the plaintiff the amount of the
said bill.

Count on an Inland Bill of Exchange against Drawer by Indorsee, on non-acceptance.

— DISTRICT, } For that whereas the defendant on
TO WIT: { the day of in the year
of our Lord , made his bill of exchange in
writing, and thereby required one J. K. to pay to the
order of the said defendant £ , days

[weeks or months] after sight [or date] thereof, and the said defendant then indorsed the same to the plaintiff [or, and the defendant then indorsed the same to one L. M., and the said L. M. then indorsed the same to the plaintiff], and the same was then presented to the said J. K. for acceptance, and the said J. K. then refused to accept the same, of all which the defendant had due notice, whereby he became liable to pay to the plaintiff the amount of the said bill.

Count on an Inland Bill of Exchange against Indorser by Indorsee on non-acceptance.

— DISTRICT, } For that whereas one N. O. on the
TO WIT: } day of in the year of
our Lord made his bill of exchange in writing, and thereby required one P. Q. to pay to the order of him, the said N. O. [or of one X. Y.] £ , days [weeks or months] after the sight [or date] thereof, and the said N. O. [or the said X. Y.] then indorsed the said bill to the defendant [or to R. S., and the said R. S. then indorsed the same to the defendant], and the said defendant then indorsed the same to the plaintiff, and the same was then presented to the said P. Q. for acceptance, and the said P. Q. then refused to accept the same, of all which the defendant had due notice; whereby he became liable to pay the amount of the said bill to the said plaintiff.

Count on an Inland Bill of Exchange against Payee by Indorsee on non-acceptance.

— DISTRICT, } For that whereas one N. O., on
TO WIT: } the day of in the year
of our Lord , made his bill of exchange in writing, and thereby required one P. Q. to pay the defendant or order, £ , days [weeks or months] after the sight [or date] thereof, and the defendant then indorsed the said bill to the said plaintiff [or to one R. S., and the said R. S. then in-

dorsed the same to the plaintiff,] and the same was then presented to the said P. Q. for acceptance; and the said P. Q. then refused to accept the same; of all which the defendant then had due notice: whereby he became liable to pay to the plaintiff the amount of the said bill.

Count on a Promissory Note according to the form in the stat. of 3 Vic. ch. 8.

— DISTRICT, } For that whereas the said
TO WIT; } [the maker of the note] on the
day of at , made his promissory
note in writing, and thereby promised [setting forth
the note in the usual manner], and the said
[the first, second, or other indorsees] afterwards duly
indorsed the same, and the said [the last in-
dorsee] delivered the said note so indorsed to the
said plaintiff [aver presentment, notice, &c. when by
law necessary in the particular case] by reason where-
of the said [all the defendants] became jointly and
severally liable to pay to the said plaintiff the said
sum of money in the said note specified, and being
so liable, afterwards jointly and severally promised
the said plaintiff to pay him the same. [Add the
usual breach.]

Count on a Bill of Exchange, according to the form in the stat. of 3 Vic. ch. 8.

— DISTRICT, } For that whereas the said
TO WIT: } [the drawer] on the day of
at drew his certain bill of exchange
directed to [setting forth the bill according to
its tenor and effect], and the said [the drawer]
afterwards duly accepted the same; and the said
[the first and other indorsers] afterwards duly
indorsed the said bill of exchange; and the said
[the last indorser] delivered the said bill so indorsed
to the said plaintiff [aver presentment, protest, notice,
&c. where by law necessary in the particular case] by

reason whereof the said [all the defendants] became jointly and severally liable to pay to the said plaintiff the said sum of money in the said bill specified, and being so liable afterwards jointly and severally promised the said plaintiff to pay him the same. [Add the usual breach.]

Directions for Declarations on Bills, when the Action is brought for non-payment.

First.—On Bills payable after date.

If the declaration be against any party to the bill except the drawer or acceptor, and the bill be payable at any time after date, and the action be brought for non-payment, it will be necessary to insert as in declarations on promissory notes, immediately after the words denoting the time appointed for payment, the following words, viz. :—" which period had elapsed before the commencement of this suit ;" and instead of averring that the bill was presented to the drawee for acceptance, and that he refused to accept the same, to allege that the drawee [naming him] " did not pay the said bill, although the same was duly presented on the day when it became due."

Second.—On Bills payable after sight.

And if the declaration be against any party except the drawee or acceptor, and the bill be payable at any time after sight, it will be necessary to insert after the words denoting the time appointed for payment, the following words, to wit :—" and the said drawee [naming him] then saw and accepted the same, and the said period had elapsed before the commencement of this suit ;" and instead of alleging that the bill was presented for acceptance and refused, to allege that the drawee [naming him] did not pay the said bill, although the same was duly presented when it became due.

Directions for Declarations on Bills or Notes payable at sight.

If a note or bill be payable at sight, the form of the declaration must be varied so as to suit the case, which may be easily done.

On Foreign Bills.

Declarations on foreign bills may be drawn according to the principle of these forms, with the necessary variations.

Common Counts.

— DISTRICT, } For that whereas the defendant on
TO WIT : } the day of in the year
of our Lord was indebted to the plaintiff in
Goods. £ for goods bargained and sold [or sold and
delivered] by the plaintiff to the defendant at his
request.

And in £ for work done and materials for
Work. the same provided by the plaintiff for the defendant,
at his request.

And in £ for money lent by the plaintiff to
Money lent. the defendant, at his request.

And in £ for money paid by the plaintiff for
Money paid. the use of the defendant, at his request.

And in £ for money received by the defen-
Money re- dant for the use of the plaintiff.
ceived.

And in £ for money found to be due from
Account the defendant to the plaintiff, on an account stated
stated. between them.

General Conclusion.

And thereupon the defendant, in consideration of the premises respectively, promised to pay the said several sums of money respectively to the plaintiff: yet he hath not paid any of the said monies or any part thereof; to the plaintiff's damage of £ ; and therefore he brings suit, &c.

*Mayors Court
1855*

If the declaration contains only one count on a bill of exchange, promissory note, or for money, the conclusion and breach must be framed to suit the case.

PLEADINGS IN PARTICULAR ACTIONS.

1. ASSUMPSIT.

14. (o) Firstly. In all actions of assumpsit, except on bills of exchange, and promissory notes, the plea

(o) By the terms of the above rule the plea of non-assumpsit is to operate only in denial of the *express* contract or promise alleged, or of the *matters of fact* from which the contract or promise alleged may be implied by law, and as the promise alleged in an indebitatus count is only implied from the plaintiff's proof that the alleged debt had been *contracted*, and was completely *due and actually payable before the action was commenced*, the plea of non-assumpsit to an indebitatus count denies that the alleged debt was *due*, and also denies that the *implied promise* to pay on request had been made; where, therefore, no debt has been completely due, no special plea is necessary, as where the credit for goods sold and delivered has not expired.—*Cousens v. Paddon*, 4 Dowl. 492: *Gregory v. Hartnoll*, lb. 699. And where the requisites of the Statute of Frauds have not been complied with, the general issue is sufficient to let the defendant into this defence.—*Leaf v. Tuton*, 10 M. & W. 393: although it had been previously decided that such defence should be specially pleaded.—*Maggs v. Ames*, 4 Bing. 470. So in assumpsit for use and occupation, a defence that the premises were held under a demise from the plaintiff for rent payable quarterly, and that before the rent became due, the plaintiff evicted the defendant, could be made under the general issue.—*Prentice v. Elliott*, 5 M. & W. 606. So also the partnership of the plaintiff and defendant.—*Payne v. Hales*, 5 M. & W. 598. And in action for wages under this plea, the defendant may shew what the services were worth, and the jury may give damages accordingly.—*Baillie v. Kell*, 4 Bing. N. C. 638. And in assumpsit on a guarantee, under the general issue, the defendant may shew that the consideration alleged in the declaration is not the real consideration to be inferred from the instrument.—*Raikes v. Todd*, 1 P. & D. 138. So that the goods, &c. were not according to contract, and were not accepted, or were returned.—*Flight v. Booth*, 1 Bing. N. C. 370. And that part of contract not performed by plaintiff, and no

of non-assumpsit shall operate only as a denial in fact of the express contract or promise alleged, or of the matters of fact from which the contract or promise alleged may be implied by law.

Ex. gr.—In an action on a warranty the plea will operate as a denial of the fact of the warranty having been given, upon the alleged consideration, but not of the breach; and in an action on a policy of insurance, of the subscription to the alleged policy by the defendant, but not of the interest, of the commencement of the risk, of the loss, or of the alleged compliance with warranties.

In actions against carriers and other bailees, for not delivering or not keeping goods safe, or not returning them on request, and in actions against agents, for not accounting, the plea will operate as a denial of any express contract to the effect alleged in the declaration, and of such bailment or employment as would raise a promise in law to the effect alleged, but not of the breach.

benefit to defendant.—*Oxendale v. Wetherall*, 9 B. & C. 386; *Gardner v. Alexander*, 3 Dowl. 146. But an alteration in the contract after execution must be pleaded specially.—*Hemming v. Trener*, 8 A. & E. 926. And where the plaintiff declared specially, that in consideration that he had sold and delivered twenty tons of best Dutch lead to the defendant, the defendant promised to deliver him prussiate of potash to the same amount, and the plaintiff averred the delivery of the lead, but alleged as a breach that the defendant would not deliver the full quantity of potash: Held, that under non-assumpsit, the defendant could not give in evidence that the lead was of inferior quality, but should have specially pleaded it.—*Pegg v. Stead*, 9 C. & P. 636. So illegality of sale or contract must in all cases be specially pleaded.—*Fenwick v. Laycock*, 1 Q. B. 414; *Clutterbuck v. Coffin*, 1 Dowl. N. S. 479, even though such illegality appears on the plaintiff's pleadings, or by his own evidence.—*Daintree v. Hutchinson*, 10 M. & W. 85. In assumpsit on an attorney's bill, the defendant may prove under the general issue, that the work became ultimately useless, through the plaintiff's negligence.—*Bracey v. Carter*, 12 A. & E. 373.

In an action of indebitatus assumpsit for goods sold and delivered, the plea of non-assumpsit will operate as a denial of the sale and delivery in point of fact; in the like action for money had and received it will operate as a denial both of the receipt of the money and the existence of those facts which make such receipt by the defendant a receipt to the use of the plaintiff.

Secondly. (*p*) In all actions upon bills of exchange and promissory notes, the plea of non-assumpsit shall be inadmissible; in such actions, therefore, a plea in denial must traverse some matter of fact.

Ex. gr.—The drawing, or making, or indorsing, or accepting, or presenting, or notice of dishonour of the bill or note.

Thirdly. In every species of assumpsit, all matters in confession and avoidance, including not only those by way of discharge, but those which show the transactions to be either void or voidable in point of law, on the ground of fraud or otherwise, shall be specially pleaded.

(*p*) If non-assumpsit is pleaded in an action on a bill of exchange or promissory note, the plaintiff may sign judgment.—*Kelly v. Villebois*, 3 Jurist, 1172. Where to an action on a bill of exchange, together with the money counts, the defendant pleads non-assumpsit to the whole declaration, the plaintiff should sign judgment as to the count on the bill, and enter a nolle prosequi as to the other counts.—*Fraser v. Newton*, 3 Dowl. 773. Where the first count of a declaration was on a bill of exchange, and the second on an account stated, and two pleas were pleaded, and there had been judgment on demurrer for the plaintiff on the plea to the count on the bill, and issue joined on the other, which was not a plea of payment; Held, that upon a venire ad triandum et inquirendum, it was not necessary to produce the bill.—*Lane v. Mullins*, 1 Dowl. N. S. 562. A plea denying the indorsement of a bill of exchange puts in issue not only the fact of the signature, but also a delivery with intent to transfer the bill.—*Marston v. Allen*, 1 Dowl. N. S. 442.

Ex. gr.—Infancy, coverture, release, payment, performance, illegality of consideration, (either by statute or common law) drawing, indorsing accepting, &c. bills or notes by way of accommodation, set-off, mutual credit, unseaworthiness, misrepresentation, concealment, deviation, and various other defences, must be pleaded.

Fourthly. In actions on policies of insurance, the interest of the assured may be averred thus; "that A. B. C. and D., or some one of them, were or was interested, &c.," and it may also be averred, that the insurance was made for the use and benefit, and on the account of the person or persons so interested.

II. IN COVENANT AND DEBT.

Firstly. In debt on specialty, or covenant, the plea of non est factum shall operate as a denial of the execution of the deed in point of fact only, and all other defences shall be specially pleaded, including matters which make the deed absolutely void, as well as those which make it voidable.

Secondly. (q) The plea of nil debet shall not be allowed in any action, except in debt on penal statutes.

Thirdly. (r) In actions of debt on simple contract,

(q) The 4th section of the statute 21 Jac. I. ch. 4, allowing the special matter to be given in evidence under the general issue, applies to penal actions given by subsequent statutes, and therefore nil debet is a good plea in an action for the penalty on 11 Geo. II. ch. 19, sec. 4, for fraudulently removing goods from the premises of a tenant.—*Jones v. Williams*, 7 Dowl. 206; *Faulkner v. Chevell*, 10 A. & E. 76. If nil debet be pleaded to a declaration containing a count on an account stated, it is bad for the whole declaration, although to the other counts it is a good plea by statute.—*Calvert v. Moggs*, 10 A. & E. 632.

(r) Under the plea of "never was indebted," evidence of an admission by the plaintiff before action brought, that the balance of accounts was in favour of the defendant, is inadmissible.—*Evans v. Downes*, 2 Jurist, 1066. In debt for goods sold and delivered, and on account stated, it is

other than on bills of exchange and promissory notes, the defendant may plead that "he never was indebted in manner and form as in the declaration alleged," and such plea shall have the same operation as the plea of non-assumpsit in indebitatus assumpsit; and all matters in confession and avoidance shall be pleaded specially, as above directed in actions of assumpsit.

Fourthly. In other actions of debt in which the plea of nil debet has been hitherto allowed, including those on bills of exchange and promissory notes, the defendant shall deny specifically some particular matter of fact alleged in the declaration, or plead specially in confession and avoidance.

not competent for the defendant, under the plea of nunquam indebitatus, to shew that the goods in question originally belonged to a third party, who had assigned his property for the benefit of his creditors, and had since given an authority to the plaintiff to sell the individual goods.—*Poole v. Williams*, 4 Jurist, 748. In debt the defendant may plead to the debt, and not to the damages, or vice versa.—*Henry v. Earl*, 8 M. & W. 228. Under a plea of nunquam indebitatus in debt for goods bargained and sold, it is open to the defendant to object that the contract is void by the 17th section of the Statute of Frauds.—*Fricker v. Thomlinson*, 1 Man. & G. 772. In an action on an attorney's bill, plea nunquam indebitatus, the plaintiff may show that a greater amount is due to him than the master allowed on taxation, pursuant to an order for changing the attorney in the course of the cause, in which the costs were incurred.—*Beck v. Cleaver*, 9 Dowl. 111.—Where goods were sold and paid for immediately, held that this payment could be shewn under nunquam indebitatus.—*Bussey v. Barnett*, 9 M. & W. 312. Debt for use and occupation for half a year, ending in May, 1840, plea, nunquam indebitatus. At the trial it appeared that the defendant was tenant to the plaintiff from year to year; and that in April, 1839, it was agreed that the tenancy should be put an end to at the following Martinmas; and that at that time the defendant accordingly delivered up the keys of the premises, and paid the rent then due; Held, that evidence of this agreement was admissible under the plea.—*Washing-ton v. Harthan*, 6 Jurist, 127.—See *Littlechild v. Banks*, 7 Q. B. 739.

III. DETINUE.

(s) The plea of non detinet shall operate as a denial of the detention of the goods by the defendant, but not of the plaintiff's property therein; and no other defence than such denial shall be admissible under that plea.

IV. IN CASE.

Firstly. (t) In actions on the case, the plea of "not guilty" shall operate as a denial only of the breach

(s) The plea of non detinet merely puts in issue the fact of detention. If the defence be that the plaintiff was not possessed of the goods, or that the defendant was justified in detaining them, it should be specially pleaded.—*Richards v. Frankum*, 6 M. & W. 420. In detinue upon issue joined on a plea denying property in the plaintiff, it is no defence that there are other persons co-tenants with the plaintiff, who are not joined in the action.—*Broadbent v. Ledward*, 11 A. & E. 209. On a plea in detinue that the goods are not the goods of the plaintiff, the defendant may set up a lien.—*Lane v. Tewson*, 12 A. & E. 116 n.

(t) In case for a malicious arrest, the plea of not guilty merely puts in issue the wrongful act, viz., the malicious arrest without probable cause.—*Watkins v. Lee*, 2 M. & W. 570; *Atkinson v. Raleigh*, 6 Jurist, 731. In case against the defendant for negligence for driving his horse and cart against the plaintiff's horse: Held, that under "not guilty," the defendant could not show that he was not the person driving when the injury happened, and that the cart did not belong to him: and after trial the court refused leave to amend by substituting another plea.—*Taverner v. Little*, 5 Bing. N. C. 678. In case for a nuisance for keeping a mixen near the plaintiff's house, whereby the air was corrupted, under "not guilty," the defendant was not allowed to give in evidence an uninterrupted use of it for twenty years.—*Flight v. Thomas*, 10 A. & E. 590. In case for negligent driving, where the plaintiff's possession of the carriage alleged to have been negligently driven, is stated in the declaration by way of inducement, such possession is admitted by the plea of not guilty.—*Emery v. Clark*, 2 M. & Rob. 260. The plea of not guilty in case for erecting a cess pool near a well, and thereby contaminating the water of the well, puts in issue both the fact of the erection

of duty, or wrongful act alleged to have been committed by the defendant, and not of the facts stated in the inducement; and no other defence than such denial shall be admissible under that plea; all other pleas in denial shall take issue on some particular matter of fact alleged in the declaration.

of the cess pool, and that the water was thereby contaminated.—*Norton v. Scholfield*, 9 M. & W. 665. The declaration alleging that the defendant was possessed of a waggon and horses, which were under the care of his servant, and the servant was driving them, and that the defendant, by his said servant, so carelessly drove the same, that the plaintiff's carriage was injured; on a plea of not guilty, the defendant cannot prove that the servant and horses were not his.—*Hart v. Crowley*, 12 A. & E. 378.

Where not guilty is pleaded, if a conversion in fact be proved, the plaintiff is entitled to a verdict, although it appears from the evidence that, at the time of such conversion, the plaintiff had parted with his property in the goods.—*Vernon v. Shipton*, 2 M. & W. 9. In trover it appeared that the plaintiff being the legal owner of the goods in question, they were seized while in the actual possession of a third party, under an execution against such third party and sold to the defendant; Held, that under a plea denying the plaintiff's possession, the defendant might show the plaintiff authorised the sale, and that a jury might infer such authority from the plaintiff consulting with the execution creditor as to the disposal of the property, without mentioning his own claim, after he knew of the seizure and intention to sell.—*Pickard v. Sears*, 6 Ad. & E. 469. Under not guilty, the defendant cannot set up an absolute property in himself by sale from the plaintiff.—*Barton v. Brown*, 5 M. & W. 298. The plea that the plaintiff was not possessed puts in issue the right of the plaintiff to the possession of the goods at the time of the conversion.—*Isaac v. Belcher*, 7 Dowl. 516. Under not guilty the defendant cannot show a right to detain the goods on a delivery of them to him by the plaintiff, as a security for rent.—*White v. Teal*, 4 Jurist, 890; 12 A. & E. 106. A lien may be given in evidence, under the plea "that the plaintiff was not lawfully possessed."—*Brundao v. Barnett*, 1 Man. & G. 908. In trover for goods seized under a claim of toll, alleged to be due for landing them at a particular wharf, the defendant can set up his claim to the toll under the plea of not possessed.—*Webb v. Tripp*, 1 Dowl. N. S. 589.

Ex. gr.—In an action on the case for a nuisance to the occupation of a house, by carrying on an offensive trade, the plea of “not guilty” will operate as a denial only that the defendant carried on the alleged trade in such a way as to be a nuisance to the occupation of the house, and will not operate as a denial of the plaintiff’s occupation of the house. In an action on the case for obstructing a right of way, such plea will operate as a denial of the obstruction only, and not of the plaintiff’s right of way; and in an action for converting the plaintiff’s goods, the conversion only, and not the plaintiff’s title to the goods.

In an action of slander of the plaintiff in his office, profession or trade, the plea of “not guilty” will operate to the same extent precisely as at present, in denial of speaking the words, of speaking them maliciously, and in the sense imputed, and with reference to the plaintiff’s office, profession or trade; but will not operate as a denial of the fact of the plaintiff’s holding the office, or being of the profession or trade alleged.

In actions for an escape it will operate as a denial of the neglect or default of the sheriff or his officers, but not of the debt, judgment, or preliminary proceedings. In this form of action, against a carrier, a plea of “not guilty” will operate as a denial of the loss or damage, but not of the receipt of the goods by the defendant as carrier for hire, or of the purpose for which they were received.

Secondly. All matters in confession and avoidance shall be pleaded specially as in actions of assumpsit.

V. IN TRESPASS.

Firstly. (*u*) In actions of trespass *quare clausum*

(*u*) In trespass *quare clausum fregit*, the declaration described the locus in quo as part of the sea beach, and lying between high water mark and low water mark, and

fregit, the close or place in which, &c. must be designated in the declaration by name or abuttals, or other description, in failure whereof the defendant may demur specially.

Secondly. (v) In actions of trespass quare clausum fregit, the plea of "not guilty" shall operate as a denial that the defendant committed the trespass alleged in the place mentioned, but not as a denial of the plaintiff's possession or right of possession of that place, which, if intended to be denied, must be traversed specially.

Thirdly. In actions of trespass de bonis asportatis, the plea of "not guilty" shall operate as a denial of the defendant having committed the trespass alleged, by taking or damaging the goods mentioned; but not of the plaintiff's property therein.

abutting landwards towards the north on five closes, particularly described. Upon the trial, it appeared that these abuttals were not immediately contiguous to the locus in quo but that there intervened a waste strip of shingle, which was no part of the sea beach; Held, that the abuttals were not proved.—Webbers v. Richards, 1 Q. B. 439. A description of a close by two abuttals only is a sufficient compliance with this rule.—North v. Ingamells, 9 M. & W. 249.

(v) The plea of liberum tenementum admits the plaintiff's possession, and renders it incumbent on the defendant to prove title, either by deed, or by shewing twenty years' actual possession.—Brest v. Lever, 7 M. & W. 593. On a plea of liberum tenementum to a close named in the declaration, the defendant is entitled to a verdict, if he establish a title to that part of the close on which the trespass was committed, and is not bound to prove a title to the whole close.—Smith v. Royston, 8 M. & W. 381.

It was intended by the Court of Queen's Bench that these rules should have been in force after Hil. Term 6 Vic., but the time of their coming into operation was altered by the legislature to the last day of Trin. Term, 6 & 7 Vic., since which day they have been in operation as to all pleas, &c., pleaded after Trin. Term, although pleaded to declarations filed in or before that term.—M. T. 7 Vic. P. C. Jones, J.

Fourthly. Where in an action of trespass *quare clausum fregit*, the defendant pleads a right of way, with carriages and cattle, and on foot, in the same plea, and issue is taken thereon, the plea shall be taken distributively, and if a right of way with cattle or on foot only, shall be found by the jury, a verdict shall pass for the defendant in respect of such of the trespasses proved as shall be justified by the right of way so found, and for the plaintiff in respect of such of the trespasses as shall not be so justified.

Fifthly. And in all actions in which such right of way as aforesaid, or other similar right, is so pleaded that the allegations as to the extent of the right are capable of being construed distributively, they shall be taken distributively.

Provided, nevertheless, that nothing contained in any of the above rules or regulations, relating to pleading in particular actions, shall apply to any case in which the declaration shall bear date before the last day of Hilary Term next.—35 E. T. 5 Vic.

15. All special traverses or traverses with an inducement of affirmative matter, shall conclude to the country: Provided that this regulation shall not preclude the opposite party from pleading over to the inducement when the traverse is immaterial.—36 E. T. 5 Vic.

16. In all cases under the statute 7 Wm. IV. ch. 3, in which after a plea in abatement of the non-joinder of another person, the plaintiff shall, without having proceeded to trial on an issue thereon, commence another action against the defendant or defendants in the action in which such plea in abatement shall have been pleaded, and the person or persons named in such plea in abatement as joint contractors, the commencement of the declaration shall be in the following form:

“ [*Venue.*] A. B. by E. F. his attorney, [or in his own proper person, &c.] complains of C. D. and G. H.,

which said C. D. has heretofore pleaded in abatement the non-joinder of the said G. H., &c."

The same form to be used *mutatis mutandis* in cases of arrest or detainer.—38 E. T. 5 Vic.

17. (*w*) In a plea or subsequent pleading intended to be pleaded in bar of the whole action generally, it shall not be necessary to use any allegation of *actionem non*, or to the like effect or any prayer of judgment, nor shall it be necessary in any replication or subsequent pleading intended to be pleaded in maintenance of the whole action, to use any allegation of *precludi non*, or to the like effect, or any prayer of judgment; and all pleas, replications and subsequent pleadings, pleaded without such formal parts as aforesaid, shall be taken, unless otherwise expressed, as pleaded respectively in bar of the whole action, or in maintenance of the whole action: Provided that nothing herein contained shall extend to cases where an estoppel is pleaded.—41 E. T. 5 Vic.

(*w*) This rule applies to a plea answering the whole of the count to which it is pleaded, though there are other counts which it does not answer.—*Bird v. Higginson*, 6 A. & E. 824. So if a plea be pleaded in total bar of a particular part of a count, it is not requisite in a replication replying specially to it, to commence with the formula of *precludi non*, or conclude with a prayer of judgment.—*Phillips v. Roderick*, 2 Jur. 419. The formal commencement *actionem non* is necessary in a plea to part of the cause of action, whether pleaded in bar or only to the further maintenance of the particular part to which it is pleaded.—*Upward v. Knight*, 5 Bing. N. C. 338. Pleas need not conclude with a verification, unless they contain affirmative matter; therefore a plea of the Statute of Limitations, without a verification is good, on special demurrer.—*Bodenham v. Hill*, 7 M. & W. 274. In debt for £200 for work and labour, money paid, and on an account stated, the defendant pleaded first, never indebted: secondly, as to parcel, &c., a set-off; and, thirdly, as to other parcel, &c., payment: Held, on special demurrer, that the second and third pleas were good, without the allegation of *actionem non*, or prayer of judgment.—*Ratton v. Davis*, 1 Gale & D. 21. 1 Q. B. 496.

18. No formal defence shall be required in a plea, and it shall commence as follows :

“The said defendant by ——— his attorney [or in person, &c.] says that, &c.”—42 E. T. 5 Vic.

19. It shall not be necessary to state in a second or other plea or avowry, that it is pleaded by virtue of the statute, or to that effect.—43 E. T. 5 Vic.

20. It is further ordered, that in case the time for pleading to any declaration, or for answering any pleading, shall not have expired before the first day of July in any year, the party called upon to plead, reply, &c., shall have the same number of days for that purpose after the twenty-first day of August, as if the declaration or preceding pleading had been delivered or filed on the twenty-first day of August; but in such cases no second demand of plea, replication or subsequent pleading shall be necessary.—15 H. T. 13 Vic.

21. It is ordered, that in all cases where the plaintiff in pleading concludes to the country, the plaintiff's attorney may give notice of trial at the time of delivering his pleading so concluding; and in case issue shall be afterwards joined, such notice shall be available; and in all cases where the defendant shall demur to the plaintiff's declaration, replication, or other subsequent pleading, the defendant, if he plead in person, or the defendant's attorney, shall be obliged to accept notice of assessment of damages, or of executing a writ of enquiry on the back of the joinder in demurrer; and in case the defendant pleads a plea in bar, or rejoinder, &c., to which the plaintiff demurs, the defendant, if he plead in person, or the defendant's attorney, shall be obliged to accept notice of executing a writ of enquiry on the back of such demurrer; and in case the defendant, if he plead in person, or the defendant's attorney, shall demur to any pleading of the plaintiff concluding to the country, when there is an issue in fact on the record to be

tried by the country, and the plaintiff, before such demurrer, shall have given notice of trial, if the plaintiff shall immediately on receipt of such demurrer give notice of assessment of damages, such notice shall operate from the time that notice of trial was given as aforesaid.—23 H. T. 13 Vic.

22. It is ordered, that when a defendant shall plead a plea of judgment recovered in another court, he shall, in the margin of such plea, state the date of such judgment; and if such judgment shall be in a court of record, the number of the roll on which such proceedings are entered, if any; and in default of his doing so, the plaintiff shall be at liberty to sign judgment, as for want of a plea: and in case the same be falsely stated by the defendant, the plaintiff, on producing a certificate from the proper officer, or person having the custody of the records or proceedings of the court where such judgment is alleged to have been recovered, that there is no such record or entry of a judgment as therein stated, shall be at liberty to sign judgment as for want of a plea, by leave of the court or a judge.—24 H. T. 13 Vic.

PRISONER.

It is ordered, that the plaintiff shall proceed to trial or final judgment against a prisoner within three terms inclusive after declaration, and shall cause the defendant to be charged in execution within two terms inclusive after such trial or judgment, of which the term in or after which the trial was had shall be reckoned one; and when judgment shall be entered up in vacation, then the plaintiff shall cause the defendant to be charged in execution before the end of the succeeding term.—31 H. T. 13 Vic.

PROCESS

1. No less than eight days, inclusive, shall intervene between the teste and return of all mesne process hereafter to be sued out in any personal action, to be

henceforth instituted in this court.—8 M. T. 4 Geo. IV.

PROTESTATION.

No protestation shall hereafter be made in any pleading; but either party shall be entitled to the same advantage, in that or other actions, as if a protestation had been made.—44 E. T. 5 Vic.

REAL ACTIONS.

It is ordered, that in real actions generally a writ of summons may issue from this court corresponding with the form used in England, and tested in the like manner as writs of capias ad respondendum issued from this court. The time of return to be conformable to the English practice in such cases.—1 H. T. 1 Wm. IV.

RECORDS.

1. It is ordered, for the more convenient and safe keeping of the records of this court, that all rolls and records to be filed with the Clerk of the Crown shall be upon parchment or paper of such width and length as he shall prescribe by a written notice, to be affixed to some conspicuous place in his office, and in the office of each of his deputies; and that the officer shall not be bound to receive any roll or record not made up in conformity to such notice. N.B.—Not to exceed when folded fourteen inches in length, and four in breadth, written upon at least a sheet of paper, and folded accordingly.—H. T. 1 Wm. IV.

2. It is ordered, that it shall not be necessary to repass any nisi prius record, which shall have been once passed, and upon which the fees of passing shall have been paid, where no amendment of any pleading in the suit shall have been made after passing the same; and that whenever it is necessary to amend the clause of nisi prius therein, the same may be done by the order of the judge before whom the cause is entered for trial, or of any other judge of either of the

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said courts presiding in chambers, or on application ex parte.—41 H. T. 13 Vic.

REPLEVIN.

1. It is ordered, that the process and proceedings in actions of ejectment, dower and replevin shall be and continue as heretofore.—45 H. T. 13 Vic. Vide statutes 14 & 15 Vic. ch. 64, as to actions of replevin; 14 & 15 Vic. ch. 114, as to ejectment; and 13 & 14 Vic. ch. 58, as to dower.

RULES.

1. All rules which by the English practice may be had as a matter of course, upon signature of counsel at side bar, or are given by the master, clerk of the papers, or clerk of the rules in England, are to be given by the Clerk of the Crown and Pleas, or his deputies, in this province, in the same manner, and the same may issue either in term or vacation.—6 M. T. 4 Geo. IV.

2. It shall not be necessary to the regular service of a rule that the original should be shown, unless sight thereof be demanded, except in cases of attachment.—9 T. T. 3 & 4 Wm. IV.

3. It is ordered, that a rule to declare peremptorily may be absolute in the first instance: provided always that judgment of non pros may be signed, unless the plaintiff shall declare before the end of the term next after the service of process, a declaration having been previously demanded pursuant to rule 5 E. T. 5 Vic., unless the plaintiff shall have obtained the usual rule for time to declare.—20 H. T. 13 Vic.

4. It is ordered, that to entitle a plaintiff to discontinue after a plea pleaded, it shall not be necessary to obtain the defendant's consent; but the rule to discontinue shall contain an undertaking on the part of the plaintiff to pay the costs, and a consent, that if they are not paid within four days after taxation,

defendant shall be at liberty to sign non pros.—32 H. T. 13 Vic.

SCIRE FACIAS.

1. (*w*) Ordered, that a scire facias to revive a judgment more than ten years old, shall not be allowed, without a motion for that purpose in term, or a judge's order in vacation, nor, if more than fifteen years, without a rule to shew cause.

2. A scire facias upon a recognizance taken before a judge or a commissioner in the county, and recorded at Toronto, shall be brought in the Home District only, and the form of the recognizance shall not express where it was taken.

3. No judgment shall be signed for non-appearance to a scire facias without leave of the court or a judge, unless defendant has been summoned; but such judgment may be signed by leave after eight days from the return of one scire facias.

4. A notice in writing to the plaintiff, his attorney or agent, shall be sufficient appearance by the bail or defendant, on a scire facias.—6 H. T. 10 Vic.

5. It is ordered, that in all suits, actions or proceedings by scire facias, information, or otherwise, by or at the suit of or in the name of the Queen, or of the Attorney or Solicitor-General for the time being, commenced or taken to enforce or protect any of the civil rights of the Crown, or concerning any matter

(*w*) The court refused to set aside upon motion a ca. sa. which had been issued upon a judgment more than a year old, no sci. fa. having issued to revive it, although it was held that the ca. sa. was clearly irregular, yet not void, but voidable, and that the proper remedy would seem to be a writ of error.—McNally v. Stevens, Tay. U. C. R. 355. It is irregular to issue execution on a judgment more than a year old, without a scire facias, even though a writ of fi. fa. has been issued, but not returned, and filed within the year.—Sewell v. Thompson, E. T. 2 Vic., and Wilson v. Jamieson, E. T. 7 Vic.

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or thing affecting such rights, or for any penalties or forfeitures under the Customs Act, or any other act of parliament in force in this province, rules to appear, plead, rejoin, join in demurrer, &c., may, after this present term of Hilary, be had and issued at side bar either in term or vacation; and all such rules, excepting rules to appear, shall be eight day rules; and that no imparlance shall be allowed in any such action or proceeding; and that the party or parties named in any such rule shall be bound to appear, plead, rejoin, join in demurrer, &c., as the case may be, within the time mentioned in such rules respectively, or in default thereof judgment may be entered against such party or parties respectively: Provided, that the court or a judge thereof may grant further time to plead, rejoin, join in demurrer, &c., as the case may be, on sufficient cause therefor being shewn to the satisfaction of such court or judge. And also that nothing herein contained shall in anywise affect or restrict any right, privilege or prerogative now enjoyed or possessed by the Crown.—53 H. T. 13 Vic.

SERVICE.

1. (x) A copy of every declaration and subsequent pleading shall be served on the opposite party, whether the case be bailable or not bailable, and whether the action be against any person having privilege or otherwise; and as well where the plaintiff has appeared for the defendant under the statute, as where the defendant has appeared in person or by attorney.—4 E. T. 5 Vic.

2. That the person serving a writ of summons

(x) It had been previously held that it was not necessary, under the King's Bench Act, to serve any plea.—*McKinnon v. Johnston*, M. T. 4 Wm. IV. If a plea is filed but not served, the plaintiff cannot sign interlocutory judgment as for want of a plea.—*Anon.*, per Draper, J., 21st of March, 1851.

shall, within three days after such service, indorse on such writ the day of the month and of the week of such service; otherwise the plaintiff shall not be at liberty to enter an appearance for the defendant, according to the statute; and every affidavit, upon which such an appearance shall be entered, shall mention the day on which such indorsement was made.—2 H. T. 13 Vic.

3. Service of all rules, orders and notices, if made before nine o'clock at night, shall be deemed good, but not if made after that hour.—47 H. T. 13 Vic.

SHERIFF.

1. The sheriff, to whom any execution or process in the nature of an execution, shall be directed, shall include, in the return of such execution or process, the amount of his fees levied by virtue thereof, and shall specify in the margin the particular items of the same.—9 M. T. 4 Geo. IV. Vide supra, title Fi. Fa.

2. The sheriff or other officer to whom any writ of capias shall be directed, or who shall have the execution and return thereof, shall, within three days after the execution thereof, whether by service or arrest, indorse on such writ the true day of the execution thereof, and in default thereof shall be liable in a summary way to make such compensation for any damage which may result from his neglect, as the court or a judge shall direct.—3 H. T. 13 Vic.

STAY OF PROCEEDINGS.

1. (y) If any attorney shall, as required by the said act (12 Vic., ch. 63, sec. 31,) declare that any writ of summons or writ of capias, upon which his name is indorsed, was not issued by him, or with his

(y) Upon the application of the defendant in the suit, proceedings will be stayed till the plaintiff's attorney files his warrant to prosecute.—*Robe v. Reid*, 1 Cham. Rep. 98.

authority or privity, all proceedings upon the same shall be stayed until further order.—12 H. T. 13 Vic.

SUBPŒNA.

That hereafter any number of names may be included in one writ of subpœna.—8 E. T. 11 Geo. IV.

SUMMONS.

(2) That from and after this term of Easter, on every judge's summons or appointment to be made by the master (having been served on the day previous to that on which the attendance shall be required), the person on whom the same shall be served shall attend such summons or appointment without a second, or in default thereof the judge or master may proceed *ex parte* on the first.—2 E. T. 11 Geo. IV.

WARRANTS.

UPPER CANADA.

1. It is ordered, that the following forms of warrants or writs, framed by the said courts, pursuant to the statute 10 & 11 Vic. ch. 15, sec. 6, be used from and after the last day of this term, with such alterations as the nature of the claim for costs, or on the award or other demand, the description of the court in which the same is depending, the character of the parties, or the circumstances of the case may render necessary; but that any variance not being in matter of substance shall not affect the validity of the warrants or writs sued out:—

(2) A summons is no stay of proceedings (unless so expressed) until returnable.—*Sovreen v. Rapelje*, 1 U. C. Cham. Rep. 11. A summons to set aside the copy of amended pleas and the service thereof held good.—*Edmundson v. Scott*, 1 U. C. Cham. Rep. 88.

UPPER CANADA, } VICTORIA, by the Grace of
 God, of the United Kingdom
 TO WIT: } of Great Britain and Ireland,
 Queen, Defender of the Faith.

To the sheriff of the greeting:

Whereas, lately, in our Court of Queen's Bench [or Common Pleas] for Upper Canada, before us at Toronto, [as the case may be] by a rule of our said court, entitled, &c., [as the case may be] the sum of £ was by our said court ordered to be paid by the said C. D. to A. B. [or whereas lately in our Court of Queen's Bench or Common Pleas, &c.,] by a rule of our said court, a certain submission of C. D. by bond or rule of Nisi Prius whereby all matters in difference, &c., [as the case may be] between the said C. D. and A. B. [as the case may be] so as, &c., [as the case may be] was made a rule of our said court. And whereas, afterwards, that is to say, on the day of the said E. F. and G. H. [or umpire, as the case may be] duly made their award in writing [or his award of umpirage in writing] in the premises, and thereby ordered and directed, &c., that the said C. D. should, on or before, &c., pay to the said A. B. the sum of £ [recite the substance of the award] or whereas, &c., [recite the nature of the debt or demand, as the case may be], and whereas, for non payment of the said costs or the sum [or sums] so awarded to be paid, as aforesaid, [or other demand] though duly demanded, a certain writ of attachment was, on the day of 185 , issued out of our said court against the said C. D., directed to the sheriff of under which attachment the said C. D. was afterwards attached by the said sheriff, and was detained in his custody until afterwards the said C. D., on the day of was, by order of Mr. Justice in chambers, [or by order of the said court, ordered to be discharged from such custody, under such attachment, as being an insolvent debtor in execution for debt, within the true intent

and meaning of the statute passed in the eleventh year of our reign, intituled, "An Act to amend the Law of Imprisonment for Debt in Upper Canada." We, therefore, pursuant to the provisions contained in the 6th section of the said act, command you, that of the goods and chattels [or lands and tenements, as the case may be] of the said C. D. in your county [or united counties], you cause to be made the said sum of £ so by our said court ordered to be paid by him to the said A. B. [or so awarded to be paid by the said C. D. to the said A. B.] as aforesaid, together with costs of said rule or order [or reference] which said costs were, on the day of in the year of our Lord 185 , taxed and allowed by our said court at the sum of £ , and also the costs of the said attachment, and the proceedings thereupon, amounting to £ , and that of the said goods and chattels [or lands and tenements, as the case may be] of the said C. D. in your county [or united counties] you further cause to be made lawful interest upon the said sum of £ from the said day of in the year of our Lord, [the day on which the costs of the rule were taxed, or the sum awarded to be paid, &c.,] on which day the said costs were taxed [or the sum awarded to be paid, &c.,] and have that money, together with such costs and interest as aforesaid, before us at Toronto, on the day of Term to be rendered to the said A. B. for the said sum of money so ordered [or awarded] to be paid by the said C. D. to the said A. B., and for costs and interest as aforesaid; and that you do all such things as by the said statute you are authorised and required to do in this behalf; and in what manner you shall have executed this our writ make appear to us in our said court at Toronto, on the day of Term, aforesaid, and have then there this writ.

Witness the Honourable Chief Justice at
Toronto, the day of in the year of our reign.

2. It is ordered, that the fees to be allowed to the attorney, sheriff, and other officers of the court upon such warrant or writ, and the proceedings thereupon, shall be the same as allowed on other writs of execution against goods or lands respectively.

WRITS OF TRIAL.

(a) It is ordered, that writs of trial and other proceedings under statute 8 Vic. ch. 13, sections 51 and 54, shall be in the several forms in the schedule hereunto annexed, or to the like effect, mutatis mutandis, provided that in cases of non-compliance, the court or a judge may give leave to amend.—H. T. 10 Vic.

Form of Issue when the cause is to be tried by the Judge of the District Court.

[After the joinder of issue proceed as follows:]

And forasmuch as the sum sought to be recovered in this suit, and indorsed on the copy of the original process served in this action, does not exceed £25.

[Or.] And forasmuch as the debt or demand sought to be recovered in this action, is alleged to be ascertained by the signature of the defendant, hereupon on [date of the writ of trial] day of _____ in the year _____ pursuant to the statute in that case made and provided, the judge of the _____ District Court is commanded that he proceed to try the issue [or issues] joined between the parties at the first [or

(a) Under 8 Vic. ch. 13, a writ of enquiry may issue from the Queen's Bench to the District Court, not only to try the issues of the country, but also to assess contingent damages upon demurrer.—*King's College v. Gamble and Boulton*, Executors of D'Arcy Boulton, 1 Cham. Rep. 54.

The summons for the issue of the writ of enquiry need not be entitled "plaintiff" and "defendant."—*Ib.*

The summons must show the venue, also the amount endorsed on the original process, and the nature of the action.—*Ib.*

second] sittings to be next hereafter holden of the said District Court, by a jury returned for the trial of issues joined in the said court. And when the same shall have been tried, that he make known to the court here what shall have been done by virtue of the writ of our lady the Queen, to him in that behalf directed, with the finding of the jury thereon indorsed, within ten days after the execution thereof.—(8 Vic. ch. 13, sec. 54.)

Form of the Writ of Trial.

CANADA, } Victoria, by the Grace of God,
— DISTRICT. } of the United Kingdom of Great
Britain and Ireland, Queen, Defender of the Faith.

To the Judge of the District Court in and for the District.

Whereas A. B., plaintiff in our Court of Queen's Bench in and for the Province of Upper Canada, at Toronto, on the day of [date of the first writ of capias ad respondendum, or process, or of filing the bill, &c.,] impleaded C. D., defendant, in an action on promises [or as the case may be] as follows: [here copy the declaration.] And whereas the said defendant, on the day of last, by his attorney [or in person, as the case may be], came into our said Court of Queen's Bench, and said [here recite the pleas and pleadings to the joinder of issue.] and the plaintiff did the like [or as the case may be]; and whereas the sum sought to be recovered in the said action, and indorsed on the copy of the original process served therein, does not exceed £25.

[Or.] And whereas the debt or demand sought to be recovered in this action, is alleged to be ascertained by the signature of the defendant [or defendants], and it is fitting that the issue [or issues] above joined should be tried by you, the said judge. We, therefore, pursuant to the statute in such case made and provided, command you that you do pro-

ceed to try the said issue [or issues] at the first [or second] sittings of the said District Court, to be holden next after the date of this our writ, by a jury returned for the trial at the said sittings of issues joined in the said District Court. And when the same shall have been tried, in manner aforesaid, we command you that you make known to us, in our said Court of Queen's Bench, at Toronto, what shall have been done by virtue of this writ, with the finding of the jury hereon endorsed, within ten days after the execution hereof.

Witness the Honourable Chief Justice, at
Toronto, the day of in the year
of our reign.

Form of Indorsement thereon of Verdict.

Afterwards, on the [day of trial] day of in
the year before me Esquire, Judge of the
District Court in and for the district within mentioned,
came, as well the within named plaintiff, as the with-
in named defendant, by their respective attorneys
within named [as the case may be], and the jurors of
the jury, whereof mention is within made, being
summoned, also came, and being duly sworn to try
the issue [or issues] within mentioned, on their oath,
said, &c., [according to the finding of the jury
therein.]

Form in case of Nonsuit.

Afterwards, on the [day of trial] day of in
the year before me Esquire, Judge of
the District Court within mentioned, came, as well
the within named plaintiff, as the within named
defendant, by their respective attorneys within named
[or as the case may be], and the jurors of the jury,
whereof mention is within made, being summoned,
also came, and being duly sworn to try the issue [or
issues] within mentioned, were ready to give their
verdict in that behalf, but the said plaintiff being

solemnly called, came not, nor did he prosecute his said suit against the said defendant.

Form of Judgment for Plaintiff after trial.

Afterwards, on the [date of signing judgment] day of in the year came the parties aforesaid, by their respective attorneys aforesaid, [or as the case may be] and the said judge, before whom the said issue [or issues] came on to be tried, hath sent hither the said last mentioned writ, with an indorsement thereon, which said indorsement is in these words, to wit:

[Copy the indorsement.]

Therefore it is considered, &c., [as in other cases.]

Form of Entry after Judgment by Default, or on Demurrer, where damages are to be assessed before a District Judge. (8 Vic. ch. 13, sec. 54.)

[To the entry of interlocutory judgment.] Therefore it is considered the plaintiff ought to recover, [&c., inclusive, then] and because it is unknown to the said court here what damages the said [plaintiff] hath sustained by reason thereof, hereupon, on the [date of the writ of enquiry] day of in the year pursuant to the statute in that case made and provided, the Judge of the District Court is commanded that he proceed diligently to inquire what damages the said plaintiff hath sustained by reason of the premises, at the first [or second] sittings to be next hereafter holden of the said District Court, by a jury returned at such sittings, for the trial of issues joined, and for the assessment of damages upon judgment obtained by default, or upon demurrer, in the said District Court, and when the same shall have been assessed, that he make known to the court here what shall have been done by virtue of the writ of our lady the Queen, to him in that behalf directed, with the finding of the jury thereon indorsed, within ten days after the execution thereof.—(Sec. 40.)

Form of Writ of Inquiry.

CANADA, } Victoria, by the Grace of God,
 — DISTRICT. } of the United Kingdom of Great
 Britain and Ireland, Queen, Defender of the Faith.

To the Judge of the District Court in and for the
 District.

Whereas A. B., plaintiff, in our Court of Queen's
 Bench in and for the Province of Upper Canada, at
 Toronto, on the day of [date of the first writ of
capias ad respondendum or process] impleaded C. D.,
 defendant, in an action on promises [or, as the case
 may be] as follows :

[Copy the declaration.]

And whereas the said defendant, on the day
 of last, came in his own proper person [or as
 the case may be] into our said Court of Queen's
 Bench, and said (*) nothing in bar or preclusion of
 the said action of the said plaintiff, whereby the said
 plaintiff remained undefended against the said defend-
 ant.

[Or, in case of judgment on demurrer, from "and
 said," *supra*, (*) recite the pleas and subsequent
 pleadings to the joinder in demurrer and judgment
 thereon, as in other like cases in this court, then
 proceed as follows :]

Wherefore the said plaintiff ought to recover against
 the said defendant his damages on occasion of the
 premises, but because it is unknown to the said court
 here what damages the said plaintiff hath sustained
 by reason thereof, and it is fitting that the same
 should be inquired of by you, the said judge ; we,
 therefore, pursuant to the statute in such case made
 and provided, command you that you do proceed
 diligently to inquire what damages the said plaintiff
 hath sustained by reason of the premises aforesaid, at
 the first [or second] sittings to be next hereafter
 holden of the said District Court, by a jury returned

at such sittings (sec. 40) for the trial of issues joined, and for the assessment of damages upon judgments obtained by default or upon demurrer, in the said District Court, and when the same shall have been assessed in manner aforesaid, we command you that you make known to our justices of our said Court of Queen's Bench, at Toronto, what shall have been done by virtue of this writ, with the finding of the jury hereon indorsed, within ten days next after the execution thereof.

Witness the Honourable Chief Justice, at
Toronto, the day of in the year
of our reign.

Form of Return to be Indorsed.

Afterwards, on the day of in the year
[day of assessment], before me Esquire, Judge
of the County Court in and for the County of
within mentioned, came the within named plaintiff,
by his attorney within named, and the jurors of the
jury whereof mention is within made, being sum-
moned, also came, and being duly sworn to inquire
of and assess the damages sustained by the said
plaintiff by reason of the premises within mentioned,
on their oath said that the said plaintiff hath sus-
tained damages on occasion thereof, over and above
his costs and charges by him about his suit in that
behalf expended, to £ .

Form of Judgment.

Afterwards, on the day of in the year
came the said plaintiff, by his [or their] attor-
ney aforesaid, and the said judge, before whom the
said damages were inquired of and assessed, hath sent
hither the said last mentioned writ with an indorse-
ment thereon, which said indorsement is in these
words, to wit:

[Copy the indorsement.]

Therefore it is considered, &c.

Form of Issue, &c., where Issues are to be tried and damages assessed before the District Court.

[To the joinder of issue, adding the similiter, and to the joinder in demurrer, or to the joinder of the issue to be tried by the record, or to the interlocutory judgment by default, or to the judgment for the plaintiff on demurrer, or to judgment upon the issue to be tried by the record (as the case may be), and where there is an interlocutory judgment, or a judgment by default, or judgment upon demurrer, or upon issue to be tried by the record, proceed to the entry.] Wherefore the said plaintiff ought to recover against the said defendant, his damages on occasion of the premises, &c.

[If there be interlocutory judgment, or judgment on demurrer, or in the trial by the record:]

And because it is at present unknown to the court here, whether the said defendant will be convicted of the premises upon which the said issue [or issues] is [or are] above joined between the parties or not; and because it is also unknown to the court here what damages the said plaintiff hath sustained on occasion of the premises whereof it is considered that the said plaintiff ought to recover his damages, as aforesaid, and it is convenient and necessary that there be but one taxation of damages in this suit, therefore let the giving of judgment in this behalf against the said defendant be stayed, until the trial of the said issue [or issues] above joined between the said parties to be tried by the country.

[If before judgment on demurrer, or upon the issue to the record.]

[Or.] And because the court here are not yet advised what judgment to give upon the premises, whereof the parties have put themselves upon the judgment of the court.

[Or.] Upon the premises whereon issue is joined

between the said parties, to be tried by the record, [as the case may be]. And because it is convenient and necessary that there be but one taxation of damages in this suit, and forasmuch as the sum sought to be recovered in this suit, and indorsed on the copy of the original process served in this action, does not exceed £25.

[Or.] And forasmuch as the debt or demand sought to be recovered in this action, is alleged to be ascertained by the signature of the defendant hereupon, on the day of in the year [date of the writ of trial, pursuant to the statute in that case made and provided, the judge of the District Court is commanded that he proceed, as well to try the said issue [or issues] joined between the parties to be tried by the country, as also diligently to inquire what damages the said plaintiff hath sustained on occasion of the premises, whereof it is considered that the said plaintiff ought to recover against the said defendant his damages on occasion thereof, as aforesaid.

[Or.] Whereof the parties have put themselves upon the judgment of the court, as aforesaid.

[Or.] Wherein issue is joined between the parties to be tried by the record, as aforesaid, [as the case may be] if judgment shall happen to be thereupon given for the said plaintiff, at the first [or second] sittings to be next hereafter holden of the said District Court, by a jury returned at such sittings for the trial of issues joined, and for the assessment of damages upon judgments obtained by default or upon demurrer in the said District Court, and when the same shall have been tried and assessed, that he make known to the court here, what shall have been done by virtue of the writ of our lady the Queen, to him in that behalf directed, with the finding of the jury thereupon indorsed, within ten days next after execution thereof.

Form of Writ to try issues and to assess damages contingently upon demurrer, or issue, to the record, or where there is interlocutory judgment on demurrer as to part.

CANADA, } Victoria, by the Grace of God,
 — DISTRICT. } of the United Kingdom of Great
 Britain and Ireland, Queen, Defender of the Faith.

To the Judge of the District Court in and
 for the District.

Whereas A. B., plaintiff, in our Court of Queen's Bench in and for the Province of Upper Canada, at Toronto, on the [day of the first writ of *capias ad respondendum* or process], day of in the year impleaded C. D., defendant, in an action on promises [or as the case may be] as follows:

[Copy the declaration.]

And whereas the said defendant, on the day of of , by his attorney [or in person], came into our said Court of Queen's Bench, and said [recite the pleas and pleadings to the joinder of issue, adding the similiter, and to the joinder in demurrer, or to the joinder of the issue to be tried by the record, or to the interlocutory judgment, or judgment by default, or to the judgment for plaintiff on demurrer, or upon the issue to be tried by the record, as the case may be, and where there is interlocutory judgment by default, or judgment upon demurrer, or upon the issue to the record, proceed to the entry.]

Wherefore it was considered that the said plaintiff ought to recover against the said defendant his damages on occasion of the premises. [Then.] And whereas it is at present unknown to the said court here, whether the said defendant will be convicted of the premises upon which the said issue [or issues] is [or are] joined between the parties or not; and whereas it is also unknown to the said court here what damages the said plaintiff hath sustained on occasion of the premises, whereof it is considered

that the said plaintiff ought to recover his damages, as aforesaid, and it is convenient and necessary that there be but one taxation of damages in this suit, the giving of judgment against the said defendant in this behalf is stayed until the trial of the said issue [or issues] so joined between the said parties, to be tried by the country, as aforesaid.

[Or.] And whereas the court here are not yet advised what judgment to give upon the premises, whereof the parties have put themselves upon the judgment of the court.

[Or.] Upon the premises whereon issue is joined between the said parties, to be tried by the record [as the case may be]; and whereas it is convenient and necessary that there be but one taxation of damages in this suit; and whereas the sum sought to be recovered in this suit, and indorsed on the copy of the original process served in this action, does not exceed £25.

[Or.] And forasmuch as the debt or demand sought to be recovered in this action, is alleged to be ascertained by the signature of the defendant; and whereas it is fitting that the said issue [or issues] joined between the parties to be tried by the country, should be tried by you, the said judge, and that the damages of the said plaintiff on occasion of the premises, whereof it is considered that the said plaintiff ought to recover his damages as aforesaid.

[Or.] On occasion of the premises, whereof the parties have put themselves upon the judgment of the court as aforesaid.

[Or.] Wherein issue is joined between the said parties to be tried by the record as aforesaid [as the case may be] should, at the same time be inquired of by you, the said judge: We therefore, pursuant to the statute in such case made and provided, command you that you do proceed to try the said issue [or issues] joined between the parties, to be tried by

the country; and also, at the same time, diligently inquire what damages the said plaintiff hath sustained by occasion of the premises, whereof it is considered that the said plaintiff ought to recover against the said defendant his damages on occasion thereof, as aforesaid.

[Or.] The premises whereof, the parties have put themselves upon the judgment of the court as aforesaid.

[Or.] Whereon issue is joined between the parties, to be tried by the record, as aforesaid [as the case may be], if judgment shall happen to be thereupon given for the said plaintiff at the first [or second] sittings to be next hereafter holden of the said District Court, by a jury returned at such sittings for the trial of issues joined, and for the assessment of damages upon judgments obtained by default or upon demurrer in the said District Court, and where the same shall have been tried and assessed, as aforesaid, that you make known to us, in our said Court of Queen's Bench, at Toronto, what shall have been done by virtue of this writ, with the finding of the jury hereupon indorsed, within ten days after the execution hereof.

Witness the Honourable	Chief Justice, at
Toronto, the day of	in the year
of our reign.	

Form of Indorsement of Verdict thereon.

Afterwards, on the [day of trial and assessment] day of in the year , before me, Esquire, Judge of the District Court in and for the District within mentioned, came as well the within named plaintiff as the within named defendant, by their respective attorneys within named [as the case may be], and the jurors of the jury whereof mention is within made, being summoned, also came, and being duly sworn to try the issue [or issues], and

also to inquire of and assess the damages sustained by the said plaintiff on occasion of the premises within mentioned, on their oath, said, &c., [according to the finding of the jury on the issues, and if for the plaintiff, then] and the jurors aforesaid, upon their oath aforesaid, said that the said plaintiff hath sustained damages on occasion thereof, and on occasion of the premises within mentioned, over and above his costs and charges by him about his suit in that behalf expended, to £ . . .

If Nonsuit.

Afterwards, on the [day of trial and assessment] day of . . . in the year of . . . before me . . . Esquire, Judge of the District Court in and for the District within mentioned, came as well the within named plaintiff as the within named defendant, by their respective attorneys within named [as the case may be], and the jurors of the jury whereof mention is within made, being summoned, also came, and being duly sworn to try the issue [or issues], and also to inquire of and assess the damages sustained by the said plaintiff on occasion of the premises within mentioned, were ready to give their verdict in that behalf, but the said plaintiff, being solemnly called, came not, nor did he further prosecute his said suit against the said defendant.

Form of Entry after the Return of the Writ.

Afterwards, on the . . . day of . . . in the year . . . came the parties aforesaid, by their attorneys aforesaid [or as the case may be], and the said judge, before whom the said issue [or issues] was [or were] tried, and the said damages were inquired of and assessed, hath sent hither the said last mentioned writ, with his indorsement thereon, which said indorsement is in these words, to wit:

[Copy indorsement; and then, if there be already interlocutory judgment, or judgment on the demurrer,

or upon the issue to the record, proceed at once to final judgment.]

Therefore, &c.

[Or, if the issue on demurrer, or to be tried by the record, be still undecided, then proceed in the usual form with the entries to judgment on the demurrer, or upon the issue to the record, and to final judgment.]

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MUNICIPAL RULES.

It is ordered, that the following Rules be substituted for the Rules made in Hilary Term last by the Judges of the said Court of Queen's Bench for the trial of such elections; and that the forms of such writs, and the practice to be observed with respect to the matters aforesaid, shall be as follows, that is to say:—

1. (a) The relator entitled to complain of any election shall in person or by attorney, by written motion, apply to one of the said Courts of Queen's Bench or Common Pleas in term time, or to the Judge presiding in Chambers in vacation, for a writ of summons in the nature of a quo warranto, which motion must, according to the statute, be made within six weeks after the election complained against, or within one month after the person whose election is questioned shall have accepted the office, and not afterwards.

2. (b) Such motion shall be founded—1st. On a

(a) The court will not set aside an election on the relation of a party who concurred in the election, and voted for the person whose election he afterwards attempts to set aside.—Reg. ex. rel. Rosebank v. Parker, 2 U. C. C. P. R. 15.

(b) Where a relator declares that he has an *interest in the election as a voter for said ward*, this, coupled with a previous complaint that defendant was unduly elected alderman, &c., sufficiently identifies him as declaring himself to be a *municipal voter*, though he does not use the precise term *municipal voter*, required by 12 Vic. ch. 81,

written statement, which shall be annexed to the motion-paper, setting forth the interest which the relator has in the election, as candidate or voter, and setting forth also specifically, under distinct heads, separately numbered, (if there be more than one) all such grounds of objection as he intends to urge against the validity of the election complained against and in favour of the validity of the relator or another, or other person or persons, when he shall claim that he or they, or any of them, have been duly elected; and at the foot of such statement there shall be an affidavit made and signed by the relator, that he believes such grounds to be well founded: And, 2ndly. On an affidavit (c) or affidavits of the relator,

sec. 146. An objection, that though the relator's interest is sufficiently alleged, there is no sufficient proof of it to enable the court or judge to order the issue of the writ, cannot be urged on the return of the writ, where such allegation is not denied, and no proof offered to shew that relator had not the interest claimed. The interest of the relator is not established by the ordering of the writ.—Reg. ex. rel. Shaw v. Mackenzie, 2 Cham. Rep. 36. A relator's statement supported by his affidavit, is looked upon as a material traversable allegation in a declaration; and if defendant omit to answer, he must be taken to admit it.—Reg. ex. rel. Hervey v. Scott, 2 Cham. Rep. 88. It is not necessary that the relator's statement should contain all the grounds on which the relator relies to entitle him to the seat, if the election should be set aside.—Reg. ex. rel. Clark v. McMullen, 9 U. C. R. 467. Nor is it necessary to state in the affidavits sustaining the relator's case, that the defendant has either accepted or acted in the office it is alleged he has usurped.—Reg. ex. rel. Helliwell v. Stephenson, 1 Cham. Rep. 270. Nor that a relator, who is a candidate, should shew in his qualification to oust the defendant, that he himself is qualified for the office.—Reg. ex. rel. Mitchell v. Adams, 1 Cham. Rep. 203.

(c) An affidavit in support of an application to quash a by-law was not entitled in any court, nor was there anything to shew that it was sworn before an officer of any court, the commissioner styling himself merely "a commissioner, &c.," Held insufficient.—In re Hiron and al. and the Mun. Council of Amherstburgh, 11 U. C. R. 458.

or other person or persons, setting forth fully and in detail the facts and circumstances which shall support the application.

The statement of the relator may be after the following form *mutatis mutandis* :—

STATEMENT OF THE RELATOR.

In the Queen's Bench (or Common Pleas.)

The statement and relation of _____, of _____, who complaining that _____, of _____, (here inserting the names and additions of all, if more than one person,) hath (or have) not been duly elected, and hath (or have) unjustly usurped, and still doth (or do) usurp the office of _____ in the town of _____ (or township of _____, (as the case may be), in the County (or United Counties) of _____, under pretence of an election held on _____, at _____, in the said County (or United Counties). [And (when it is claimed that the relator, or the relator and another, or others, ought to have been returned), that (here name the party or parties so entitled) was (or were) duly elected thereto, and ought to have been returned at such election], and declaring that he, the said relator, hath an interest in the said election as a _____, states and shews the following causes why the election of the said _____, to the said office should be declared invalid and void. [And (when so claimed) the said _____ (naming the party or parties) be duly elected thereto].

First.—That (for example) the said election was not conducted according to law, in this, that, &c.

Second.—That the said _____ was not duly or legally elected or returned, in this, that, &c.

Third.—That, &c.

Signed by the relator in person, or by C. D., his attorney.

NOTE.—Where the intention of the relator is to

impeach the election as altogether void, in which event, as the office cannot be claimed for any other or others, the portion of the above and succeeding forms relating thereto should be omitted.

3. (d) If the court or judge applied to shall find sufficient ground for issuing a writ of summons in the nature of a quo warranto, then, upon such recognizance being entered into as the act directs, and a proper affidavit of justification made, and the sufficiency of the sureties allowed by such court or judge, a writ shall issue, sealed and tested as other writs of summons in cases between party and party, and attached thereto shall be a copy of the relator's statement of objections and grounds, and of the names and additions of the persons who shall have made the affidavits upon which the writ was moved.

The recognizance and fiat for summons, and the writ of summons in these rules mentioned, may be in the following forms:—

(d) A writ of summons issued against the whole of a corporation must be discharged.—Reg. ex. rel. Lawrence v. Woodruff et al., 1 Cham. Rep. 119. If the writ be not tested on the day it is issued, it is an irregularity; but if an appearance be entered the irregularity is thereby waived.—Reg. ex. rel. Linton v. Jackson, 2 Cham. Rep. 18. A writ ordered by the court in term time need not be sued out in term time; but if the application be made in term, the court shall give the order for the writ, if in vacation, a judge's fiat must be obtained.—Ib. A first writ of summons was abandoned for informality, before cause shewn, merely at the will of the relator, he having served a notice on the defendant that he need not appear to such writ, and the other papers served on him, the same being abandoned. On argument, it was objected that, under those circumstances, it was not competent for the judge to order a second writ to issue: Held, that the judge by whose order the writ issued, standing in the place of the court, it was not competent for the judge in chambers to review the proceedings had before such judge, and that, consequently, he could not entertain the objection.—Reg. ex. rel. Metcalf v. Smart, 2 Cham. Rep. 114.

*in which
any other or
other forms*

FORM OF RECOGNIZANCE.

In the Queen's Bench (or Common Pleas.)

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UPPER CANADA,) Be it remembered, that on
County (or United) the day of , in
Counties) of . } the year of our Lord one thou-
sand eight hundred and , before me, of
; Chief Justice, (or a justice or commissioner
for taking bail) in her Majesty's Court of Queen's
Bench (or Common Pleas) for Upper Canada, cometh
of , of , and of ,
and acknowledge themselves severally and respec-
tively to owe to , of , (here inserting the
name or names of the person whose election is com-
plained against) as follows—that is to say, the said
the sum of fifty pounds, and the said
and , the sum of twenty-five pounds each, upon
condition that if the said do prosecute with
effect the writ of summons in the nature of quo war-
ranto to be issued on an order or fiat to be made at
the instance and upon the relation of the said
against the said , to shew by what authority
he (or they) the said , claims (or claim) to be
(here state the office so claimed) and why he (or
they) the said , should not be removed there-
from, [and (where so claimed by the relator) why he
the said relator (or the party or parties entitled)
should not be declared duly elected, and be admitted
to the said office]; and if the said do pay to
the said all such costs as the said Court of
(or the judge presiding in chambers, at the City of
Toronto, in the County of York,) shall direct in that
behalf, then this recognizance to be void, otherwise
to remain in full force.

Taken and acknowledged the }
day and year first above }
mentioned, }

Before me

FORM OF A JUDGE'S FIAT ORDERING A WRIT TO
ISSUE IN VACATION IN THE QUEEN'S BENCH (OR
COMMON PLEAS.)

Upon reading the statement of _____, of _____, in the County of _____, complaining of the undue election and usurpation of the office of _____, by _____, [and (if so stating) that the said _____ (relator or other person named) was (or were) duly elected, and ought to have been returned to the said office,] and, upon reading the affidavits filed in support of the said statement; and also upon reading the recognizance of the said _____, and sureties therein named, and the same being allowed as sufficient; I do order that a writ of summons do issue, calling upon the said _____, (the party whose election is complained of) to shew by what authority he (or they) the said _____, (the party whose election is complained of) now exercises or enjoys (or exercise and enjoy) the said office, [and why (if so claimed) he (or they) the said _____, should not be removed therefrom, and the said _____, (relator or other person or persons named) should not be declared duly elected, and be admitted thereto].

Dated this _____ day of _____, 18 ____.

NOTE.—If by rule of court, the above form should be modified accordingly.

FORM OF WRIT OF SUMMONS.

UPPER CANADA.

Victoria, by the Grace of God, &c.

To _____, of _____, &c., in the County (or United Counties) of _____.

We command you (and each of you) that you (and each of you) be and appear before the Chief Justice, or other Justice of our Court of Queen's Bench or Common Pleas for Upper Canada, presiding in Cham-

bers, at the Judges' Chambers in our City of Toronto, on the eighth day after the day on which you shall be served with this writ, then and there to answer and shew to such Chief Justice or Justice by what authority you claim to use, exercise or enjoy the office of , which office, upon the relation of having, as he says, an interest in the election to the said office as a , we are informed that you have usurped and do still usurp [and that (if so claimed) the said (relator or party or parties mentioned) was (or were) and should have been declared duly elected and admitted thereto], and further to do and receive all those things which our said Chief Justice or Justice shall thereupon order concerning the premises.

Witness, the Honourable , Chief Justice of our said Court of , (or other Justice in whose name the writ is tested), at Toronto, this day of , 18 , and in the year of our reign.

FORM OF NOTICE TO BE INDORSED ON OR ANNEXED
TO THE WRIT OF SUMMONS.

In the Queen's Bench (or Common Pleas.)

The Queen, upon the relation of ,
against

To , and , named in the within (or annexed) writ of summons.

The within (or annexed) writ of summons has been issued at my instance and relation; and a statement concerning the premises, whereof a copy is hereunto annexed, is filed in the office of the Clerk of the Crown in this court (or with the Clerk in Chambers, at the City of Toronto), together with affidavits supporting the same; and the names and additions of the deponents to the said affidavits are hereunder written. And you are served with the said writ of summons to the intent that you do appear and answer,

as therein commanded, or otherwise judgment will be given against you by your default, and your election to the therein mentioned office will be declared invalid, and you will be removed therefrom [and the said _____, (the relator, or _____, the party or parties, if any, alleged to be entitled (therein named, be declared duly elected, and will be admitted thereto in your place].

A. B. in person,

or by

C. D. his attorney.

The above mentioned deponents are :—

_____, of _____.

_____, of _____.

MINUTE OF THE DAY OF SERVICE TO BE WRITTEN
ON THE SUMMONS.

Served this _____ day of _____ 185 .

4. (e) A copy of such summons, and of the paper attached thereto, with a notice on the back of the copy of summons, according to the foregoing form, may be served by any literate person, who shall, within twenty-four hours after such service, make a minute on the writ of the time of serving the same; and upon the return of the writ, the party or parties summoned may appear either in person or by attorney; and the manner of appearance shall be by indorsing on the back of the relator's statement attached to the motion paper:—"the within named C. D., &c., appears in person (or by attorney, as the case may be) to answer the grounds of objection to his election, which are stated within."

5. If upon the return day of the summons the

(e) Personal service of a writ of summons in the nature of a quo warranto, cannot be dispensed with, except in the case provided for by 12 Vic. ch. 81, sec. 148.—Reg. ex. rel. Arnott v. Marchant et al. 2 Cham. Rep. 167.

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party or parties, having been duly served, shall not appear, then, on proof of such service by affidavit, according to the form subjoined, the Judge sitting in Chambers may, before rising on that day, direct an entry to be made as to such party or parties as make default, on the back of the relator's statement, thus: "The within named C. D. (and E. F.), being duly summoned, hath (or have) not appeared to answer to the matters within objected." Which entry shall be dated on the day of the return, and may be made on any subsequent day, if omitted to be made on that day.

FORM OF AFFIDAVIT OF SERVICE.

When made personally, if service special under the 148th clause of the statute (12 Vic. ch. 81,) the affidavit to be modified accordingly.

In the Queen's Bench (or Common Pleas.)

The Queen, on the relation of _____, of _____, in
 against _____, } the _____, maketh oath
 the _____ day of _____, } and saith, that he did, on
 named defendant (or defendants) with the annexed writ of summons, by delivering to him (or each of them) a true copy thereof, on which said copy was indorsed a written notice, a copy whereof is hereto annexed, and to which said copy (or copies respectively) of the said writ was annexed a written copy of a statement of the above named relator, a copy of which said copy of statement is also hereunto annexed; and the deponent further saith, that the minute (or minutes) of the said service, written on the said writ of summons, was (or were) so written by this deponent within twenty-four hours after such service.

Sworn at _____, in the County of _____, this
 day of _____, 185 _____.

Before me _____.

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6. (f) When it shall appear to the court or judge that the returning officer should be made a party, a writ of summons shall issue to him, in the following form, upon a rule of court to issue for that purpose, or upon the fiat of the judge, which summons shall be served with the like papers annexed, and the service thereof proved in like manner as is provided for other writs of summons, as aforesaid: and the party served shall appear and enter his appearance within the same time after service, and in the same manner; and in default thereof, he shall be liable to have judgment pass against him in his absence, as in the case of any other defendant making a like default, and be dealt with by attachment, execution or otherwise, as the circumstances of the case may require:

FORM OF WRIT OF SUMMONS TO A RETURNING OFFICER.

UPPER CANADA.

Victoria, by the Grace of God, &c.

Whereas, upon the relation of _____, in our Court of (Queen's Bench or Common Pleas), _____, it hath been ordered that a writ of summons should issue to _____ to shew by what authority he (or they) claims or exercises (or claim or exercise) the office of _____. And whereas it appears to our Justices of our Court of (Queen's Bench or Common Pleas), before whom the said writ hath been made returnable, (or as the case may be), that you were the returning officer by whom the said _____ hath (or have) been returned as duly elected to the said office, and that it is proper you should be made a party to the proceeding afore-

(f) The returning officer having become a party by order of a judge, but acquitted and discharged, and relator's statement not being strictly correct; Held, that relator should pay the officer his costs.—Reg. ex. rel. Hawke v. Hall, 2 Cham. Rep. 132.

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said; these are therefore to summon you to be and appear before the Chief Justice or other Justice of our Court of (Queen's Bench or Common Pleas) for Upper Canada, presiding in Chambers, at the Judges' Chambers, in our City of Toronto, on _____, then and there to answer such matters and things as shall then and there be objected against you, and further to do and receive all those things which said Court or said Justice shall thereupon order concerning you in the premises.

Witness, &c.

7. In case of default of appearance by any party summoned as aforesaid, the judge recording the same may, as to such as make default, proceed *ex parte*; and as to such as shall have appeared, as is herein provided, proceed to determine the validity of the election or elections complained of, and also (if so claimed) of the election of the person or persons alleged to have been duly elected, and give judgment thereon, or he may, in his discretion, with or without any application for that purpose, and having regard to the distance of the place where the party was served, or other circumstances, appoint a further day for the appearance of the party or parties summoned, of which an entry shall be made and signed by the judge to the following effect, at the foot of the entry of non-appearance on the back of the relator's statement:—"Whereupon a further day is given to the said _____, (or the said _____ and _____,) to appear on," &c.

On which day, or as soon after as may be convenient, if no further postponement shall be in like manner granted, the case may be heard and disposed of in like manner as if the same had been determined and judgment given thereon, without granting a further day for appearance.

8. At any time before the hearing, any party may

have copies of the affidavits filed, on paying for the same.

9. At the hearing the relator shall not be allowed to object to the election of the party or parties complained against, or to support the election or elections of the person or persons alleged to have been duly elected, on any ground not specified in the statement on which the summons was moved; but it shall, nevertheless, be in the discretion of the judge, if he shall think fit, to entertain upon his own view of the case any substantial ground of objection, to or in support of the validity of the election of either or any of the parties which may appear in the evidence before him.

10. When the party or parties summoned has or have appeared, no more formal answer need be made by him or them to the relator's case, than by affidavits filed in answer; but the judge before whom the case shall be pending may, in his discretion require from either or any party further affidavits, or the production of any such evidence as the law allows.

11. (g) In case of disclaimer under the statute 13 & 14 Vic. ch. 64, schedule A. No. 23, the provisions therein contained, and in sub-proviso No. 6 are to be observed.

12. In case a necessity shall appear for sending an issue to be tried by a jury, the writ for that purpose may be in the following form, and shall issue on the fiat of the judge directing the same, and bear date on the day of its issuing:

(g) Where defendant personally contended the election, but on its being moved against, sent in a disclaimer, praying to be relieved from costs, because, being duly elected, he was obliged to accept the office under a penalty: Held, it was no ground for relief.—Reg. ex. rel. Featherstone v. McMonies, 2 Cham. Rep. 137. Defendant filed a disclaimer a day too late, Held, he must pay costs.—Reg. ex. rel. Hawk v. Hall, 2 Cham. Rep. 182.

WRIT OF TRIAL.

[L. S.] Victoria, by the Grace of God, of the
United Kingdom of Great Britain and
Ireland, Queen, Defender of the Faith.

To the Judge of the County Court of the County of
Greeting :

Whereas, upon the trial of the validity of an election of _____, chosen upon the _____ day of _____, to be _____ for the township of _____, (or as the case may be), in the county of _____, and which election hath been complained of by E. F., as the relator, alleging (as the case may be) that he himself, or that he and C. D., &c., or that C. D., &c., was or were duly elected, and ought to have been returned, it hath become material to ascertain whether (here state concisely the issues to be tried); and whereas it is desired by _____, our Chief Justice (or Justice) of our Court of Queen's Bench (or Common Pleas), before whom the same is pending, that the truth of such matters as aforesaid may be found by a jury: We do therefore, pursuant to the statute in such case made and provided, command you, that by twelve good and lawful men of the county of _____, who are in no wise akin to the said E. F., the relator in the said case, or to the said (the other party or parties, naming him or them), and who shall be sworn truly to try the truth of the said matters, you do proceed to try the same accordingly; and when the jury shall have given their verdict on the matters aforesaid, we command you that you do forthwith make known to our said (Chief Justice (or Justice) what shall have been done by virtue of this writ, with the finding of the jury hereon indorsed.

Witness, the Honourable _____, Chief Justice (or Justice) of our said Court, at Toronto, this _____ day of _____, in the _____ year of our reign.

FORM OF INDORSEMENT OF VERDICT THEREON.

I hereby certify that on the day of , before me, L. M., Judge of the County Court of the County (or United Counties) of came, as well the within named relator, as the within named (the other party or parties), by their attorneys, (or as the case may be), and the jurors of the jury, by me duly summoned as within commanded, also came, and being sworn to try the matters within mentioned on their oath, said that, &c.

13. When the judge before whom any such case shall be pending, shall have determined the same, either ex parte in case of default, or on hearing the parties, or partly ex parte and partly on hearing the parties, he shall make up and annex to the statement of the relator, and to the affidavits and other papers filed in the case, a written judgment, attested by his signature, and dated on the day of the same being signed, in which it shall be sufficient to state concisely the ground and effect of the judgment, which judgment may be at any time amended by the same judge, in regard to any matter of form. And the following may be the form of judgment when in favour of the relator :

IN THE QUEEN'S BENCH (OR COMMON PLEAS.)

The Queen, on the rela- } Be it remembered, that
tion of , } on the day of ,
against . } in the year of our Lord one
thousand eight hundred and , at the Judges'
Chambers in the City of Toronto, before me ,
Chief Justice (or Justice) of her Majesty's Court of
Queen's Bench (or Common Pleas), came, as well
the above named relator, by his attorney, as the
above named , by his (or their) attorney, and
service of the writ of summons herunto annexed
having been duly proved upon affidavit, and upon the
said day and upon other days thereafter, at his cham-

bers aforesaid, having heard and read the statement and proofs of the said relator; touching and concerning the usurpation by him alleged against the said , of the office of , in the said writ of summons mentioned [and (if so) the election of (the party or parties named) thereto], and the answers and proofs of the said , and having heard the said parties by their counsel (or as the case may be), and upon due consideration of all and singular the premises now, that is to say, this day of , in the year aforesaid, I do adjudge and determine:

First.—That the said relator had, at the time of his making his aforesaid complaint, an interest in the election to the said office of as a .

Second.—That, &c.

Third.—That, &c.

Fourth.—That the said hath (or have) usurped, and doth (or do) still usurp the said office, and that he (or they) be removed therefrom [or that the election of to the said office was void, and that he (or they) be removed therefrom (as the judgment may be)]. And that the said relator (or the said [naming the party or parties whose election is affirmed, when he or they are adjudged to be entitled to the said office]) was (or were) duly elected thereto, and ought to have been returned, and is (or are) entitled in law to be received into, and to use, exercise and enjoy the said office. And I do adjudge and determine that the said do not in any manner concern himself (or themselves) in or about the said office, but that he (or they) be absolutely forejudged and excluded from further using or exercising the same, under pretence of the said election [and further that the said (naming the relator or parties whose election is affirmed) be (or be respectively) admitted to the said office in his (or their) place or places]; And I do further order, adjudge and determine, that the said relator do recover against the said , his costs and charges by him in and about the

said relation and the prosecution thereof expended, to be taxed in the said court.

All which the said writ of summons, and the said judgment, and the statements, answers and proofs of the said relator, and of the said , and all other things had before me, touching the same, I do hereby certify and deliver into the said court, according to the form of the statute in such case made and provided.

E. F., J.

And the following may be the conclusion of a judgment for the defendant, to follow the word *affidavit*, in the foregoing form :

Thereupon now at this day, that is to say, on the day of aforesaid, at the Judges' Chambers, at Toronto aforesaid, all and singular the relation and proofs of the said relator, and the answers and proofs of the said being seen and fully understood, I do consider and adjudge that the said office of so claimed by him (or them) the said , be allowed and adjudged to him (or them), that the said be dismissed and discharged of and from the premises above charged upon him (or them) and also that he (or they) the said do recover against the said relator his (or their) costs by him (or them respectively) laid out and expended in defending himself (or themselves) in this behalf. All which, &c. (as in the judgment for the relator).

When the returning officer is made a party, the judgment to be modified accordingly.

14. (h) When the judgment of the Judge in Cham-

(h) No new evidence will be received by the court on the examination of the decision of a judge in Chambers as to a contested election: Semble, that whether the court or a judge, before whom a relator brings his case, will go further than declare the election of the defendant void, or will proceed as well to seat the relator, is a matter of discretion

bers shall have been returned into court, according to the statutes, and after the end of four days after such return, and if no rule shall have been granted to set aside or amend the judgment, the relator or person (or persons) in whose favour the judgment shall have been given, shall be at liberty to tax his or their costs, and the following entry shall be made under or upon the record of the judgment, after which execution may issue:—

“Afterwards, that is to say, on the day of , in the year of the reign of our lady the Queen, cometh the said , and prayeth that his (or their) said costs, £ as aforesaid adjudged to him (or them) be taxed and assessed according to the form of the statute in such case made and provided, and the said costs of the said , in and about his (or their) prosecution (or defence) aforesaid [and (when the returning officer is a party) of the said in and about his defence aforesaid], so as aforesaid adjudged to him (or them), are now here accordingly taxed and assessed as follows, that is to say, the costs of the said at the sum of [and the costs of the said (when returning officer entitled thereto), at the sum of], and the said , in mercy, &c.”

15. (i) The writs of certiorari and mandamus which it may become necessary to issue in any such case, will be in the common form of such writs, the command therein contained being suited to the circumstances of each case, and, when applicable, the following form may be used:

that cannot be interfered with on appeal,—Reg. ex. rel. Clark v. McMullan, 9 U. C. R. 467.

(i) Semble, that as soon as judgment ousting defendant has become final, the relator's course will be to apply to the Municipal Corporation to admit him, and, if they refuse, then to apply to the court.—Reg. ex. rel. Gibbons v. McLellan, 1 Cham. Rep. 125.

FORM OF A WRIT OF MANDAMUS,

To remove the person (or persons, being less than the whole number of members of any Municipal Corporation) whose election is adjudged invalid, and to admit the person or persons lawfully elected.

Victoria, &c.

To the Municipal Corporation of (the town, township or city of.)

Whereas, on the day of , in the year of our Lord one thousand eight hundred and , at the Judges' Chambers, in the City of Toronto, before Chief Justice (or one of the Justices) of our Court of Queen's Bench (or Common Pleas) for Upper Canada, it was by the said Chief Justice (or Justice) adjudged and determined that , of , had usurped, and did then usurp, the office of [and that was (or were) duly elected thereto, and ought to have been returned, and was (or were) entitled in law to be received into, and to use, exercise and enjoy the said office], all which has. by the said Chief Justice (or Justice), been duly certified into our Court of Queen's Bench (or Common Pleas), pursuant to the statute in that behalf. Now, we being willing that speedy justice be done in this behalf, as it is reasonable, command that the said (the person or persons naming him or them, whose election has been declared invalid) do not in any manner concern himself (or themselves) in or about the said office, but that he (or they) be absolutely forejudged, removed and excluded from further using or exercising the same, under pretence of his (or their) election thereto.* [And we do further command that the said (the person or persons, naming him or them, who has or have been adjudged lawfully elected) be forthwith admitted, received and sworn into the said office, to use, exercise and enjoy the same.] And we do hereby command you and every of you to

obey, observe, and do all and every act, matter and thing that may be necessary, on the part of you or any of you in the premises, according to the purport, true intent and meaning of these presents, and of the statutes in that behalf, and that you make known to our Court of Queen's Bench (or Common Pleas) at Toronto, on the day of , how this writ shall have been executed.

Witness, &c.

FORM OF A WRIT OF MANDAMUS.

When neither the election of the person or persons (less than the whole number of members of the Municipal Corporation) who has (or have) been returned, nor the person or persons claiming to be returned is (or are) held valid, and for a new election.

Victoria, &c.

To the Municipal Corporation of , and to any returning officer or other person or persons to whom it shall of right belong to do any act necessary to be done, touching the election hereinafter commanded to be held :

Whereas (as in the last precedent to the asterisk, omitting the part between brackets, and then proceed as follows :) and we do further command that you, the said Municipal Corporation, and any returning officer or other person or persons, or such of you to whom the same shall of right belong, that you do, pursuant to and according to the statute in that behalf, cause an election to be as speedily held as shall be lawful, for the election of a person (or persons) in the place or stead of the said , who has (or have) been removed as aforesaid; and that you, or such of you to whom the same doth of right belong, do administer to the person (or persons) who shall be so elected, the oath (or oaths) if any, in that behalf by law directed; and that you admit, or cause to be

admitted, such person (or persons) so elected into the said office, and that you, the said Municipal Corporation, do shew how this writ shall have been executed to our Court of Queen's Bench (or Common Pleas), at Toronto, on the day of

Witness, &c.

FORM OF A WRIT OF MANDAMUS,

Directed to the Sheriff, where the elections of all the members of any Municipal Corporation have been adjudged invalid, and for the admission of those adjudged to have been legally elected.

Victoria, &c.

To the Sheriff of the County (or United Counties)
of , Greeting:

Whereas (the same as in the first precedent of a mandamus, to the end of the words "adjudged and determined," then say) that the election (or elections) of all the members of the Municipal Corporation of , returned as elected at the election (or elections) of members of the said corporation held (describing the time or times and place or places of such election [or elections]) was (or were) invalid or void in law, and that (naming them all) had usurped (proceeding as in the first precedent, adopting the plural form, to the asterisk, and then as follows): and we do hereby further command you, the said sheriff, that you do, pursuant to the statute in that behalf, admit or return and swear into, or cause the said (naming the persons adjudged to have been duly elected) to be forthwith admitted or returned, and sworn into the said office, to use, exercise and enjoy the same, and that you do and perform, or cause to be done and performed, all and every act or acts, thing or things necessary to be done and performed in the premises; and we hereby command and strictly enjoin all and every person or persons to whom the

same shall lawfully belong, to be aiding and assisting you, and to do all and every lawful and necessary act to be done by him or them in the premises, according to the purport, true intent and meaning of these presents, and of the statutes in that behalf; and how you shall have executed this writ make known to our Court of Queen's Bench (or Common Pleas), at Toronto, on the day of next, and have then there this writ.

Witness, &c.

FORM OF A MANDAMUS,

To the Sheriff, when the elections of all the members of any Municipal Corporation have been adjudged invalid, and requiring others to be elected.

Victoria, &c.

To the sheriff, &c. (as in the last precedent to the asterisk, omitting the part between the brackets, and adopting the plural form, then concluding as follows): and that you do every act necessary to be done by you in order to the due election and admission of members of the said corporation, in the place and stead of the persons whose elections have been so declared invalid; and we hereby command, and strictly enjoin all and every person and persons, (continuing as in the last precedent to the end),

Witness, &c.

The form of writs of execution for costs in any such case may be as follows:—

FI. FA. AGAINST THE DEFENDANT FOR RELATOR'S COSTS.

UPPER CANADA.

Victoria, &c.

To the Sheriff of the County of , Greeting:

We command you, that you levy, or cause to be levied, of the goods and chattels of C. D., late of ,

[add the description of the returning officer, where the execution is against him], the sum of _____, which hath been lately adjudged to A. B. of _____, in our Court of Queen's Bench (or Common Pleas), at Toronto, according to the form of the statute in such case made and provided, for his costs by him laid out and expended in the prosecuting of a certain writ of summons in the nature of a quo warranto, issued out of our said court against _____, at the relation of the said A. B., for usurping the office of _____, in our _____, of _____, in your county, [add, when the returning officer is a party, "to which proceeding the said _____ was made a party,"] and whereof the said C. D (&c.) is (or are) convicted, as in our said court appears of record, and that you have that money before our Court of Queen's Bench (or Common Pleas), at Toronto, on the _____ day of _____ Term, to satisfy the said A. B. for his costs aforesaid, and have you then there this writ.

Witness, &c.

FI. FA. AGAINST THE RELATOR FOR THE DEFENDANT'S COSTS.

UPPER CANADA.

Victoria, &c.

To the Sheriff of the County (or United Counties) of _____, Greeting:

We command you, that you levy, or cause to be levied, of the goods and chattels of A. B., late of _____, the sum of _____, which hath lately been adjudged to C. D. of _____ in our Court of Queen's Bench (or Common Pleas) at Toronto, according to the form of the statute in such case made and provided, for his costs by him laid out and expended in his defence upon a certain writ of summons in the nature of a quo warranto, issued out of our said court against the said C. D., upon the relation of the said A. B., for usurping the office of _____, in our

of in your County (or Counties). [If the returning officer has been made a party, add here, "to which proceeding E. F., the returning officer, at the election of the said C. D. to the said office, was made a party,"] whereof the said A. B. is convicted as in our said court appears of record; and that you have that money before our said court, at Toronto, on the day of Term, to satisfy the said C. D. for his costs aforesaid, and have you then there this writ.

Witness, &c.

N.B.—When the returning officer has been made a party, and is entitled to costs, the fieri facias must be framed accordingly.

16. Contempts in disobeying writs of summons, certiorari, mandamus, or other process, rule or order of either court, or of any judge thereof acting in the execution of the powers conferred by the statutes 12 Vic. ch. 81, and 13 & 14 Vic. ch. 64, are to be certified into the court from which the writ of summons issued, to be dealt with like other contempts of such court in other cases.

17. If any of the forms given in the foregoing rules shall not be found adapted to a case which may arise in reference to proceedings connected with or resulting from the trial of the validity of municipal elections, changes are to be made therein when necessary, at the discretion of the judge who shall try or determine the case, to adapt the same to such particular case.

18. None of the proceedings which shall be had in any case for trying the validity of any election, or which shall follow the determination thereof, shall be set aside or held void on account of any irregularity or defect, which shall not, in the opinion of the court or judge before whom the objection is made, be deemed such as to interfere with the just trial and adjudication of the case upon the merits.

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19. *Costs.*—The same table as authorised by the fifteenth rule of Hilary Term last, and any disbursements necessarily made, and not allowed for in the said table, may be taxed according to the table of fees generally established in the court in which the proceedings shall be conducted.

The costs taxable under the foregoing orders may be stated as follows:—

ATTORNEY.

	£	s.	d.
<i>Instructions</i> —To apply for a writ of summons or defend against.....	0	5	0
<i>Statement</i> —Of the grounds of complaint, including fair copy	0	5	0
<i>Affidavits</i> —Whether special or common, per folio of 100 words, and copies thereof when necessary.....	0	0	6
<i>Recognizance</i> —Drawing.....	0	2	6
<i>Attendances, Special</i> —at Chambers, for writ of summons, to serve writ, upon the argument, or to hear judgment	0	2	6
<i>Attendances, Common</i> —all other attendances not mentioned as special, each	0	1	3
<i>Writs</i> —Preparing writ of summons, writ of certiorari, mandamus, trial or writ of execution each	0	2	6
Fee on each writ.....	0	5	0
<i>Notices</i> —Indorsement on writ of summons, every other indorsement upon writ, when required to be made, and all common notices, each....	0	1	3
<i>Copies</i> —Of statement or other papers and documents, when required to be made or served, half the amount allowed for the original, and when no specific sum is allowed, then copies of papers required, or which may be directed to be made, furnished or served, to be allowed per folio of 100 words.....	0	0	6
<i>Issues</i> —When directed to be tried, preparing same	0	5	0
<i>Disbursements</i> —Postages actually paid, mileage where it is necessary to employ parties to serve writs, papers, &c., the actual number of miles travelled to perform the service, per mile	0	0	6

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The affidavit must state the number of miles actually travelled, and also that the charge has been paid.

£ s. d.

N.B.—No instructions to be allowed nor attendances to swear affidavits. No instructions to be allowed for briefs or charge for briefs.

COUNSEL.

<i>Fee</i> —For argument upon the return of the writ of summons, if argued by counsel	1	5	0
To be increased at the discretion of the judge, according to the importance of the case.			
<i>Fee</i> —Upon the trial of issues upon writ of trial at the County Court	1	10	0

CLERKS OF THE CROWN AND PLEAS AND THEIR DEPUTIES.

For taking recognizance	0	2	6
For signing and sealing each writ	0	1	3
For each order or rule of court	0	2	6
For filing each paper.....	0	0	4
Copies of papers, per folio of 100 words	0	0	6

COMMISSIONER.

For taking recognizance	0	2	6
Swearing each affidavit.....	0	1	0

CLERK IN CHAMBERS.

For each fiat granted by a judge for a writ.....	0	1	3
For filing each paper.....	0	0	4
For making up each final judgment of the judge and returning the same into court	0	5	0
Copies of papers, per folio of 100 words	0	0	6
Witnesses, jurors, sheriff and other officers, the same fees and allowances as for similar services at Nisi Prius, and in the Courts of Queen's Bench and Common Pleas.			

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ORDERS OF THE COURT OF CHANCERY

FOR DEFINING AND REGULATING THE PRACTICE AND PROCEEDINGS OF THE COUNTY COURTS OF UPPER CANADA, UNDER "THE COUNTY COURTS EQUITY EXTENSION ACT."

The Judges of the Court of Chancery do hereby, in pursuance of the authority and power conferred by an Act of the Legislature of this Province, passed in the sixteenth year of the reign of her present Majesty, intituled "An Act to confer Equity Jurisdiction upon the several County Courts in Upper Canada, and for other purposes therein mentioned," order and direct, that all and every the rules, orders and directions hereinafter set forth, shall henceforth be, and for all purposes be deemed and taken to be, general orders and rules for defining and regulating the practice and proceedings of the several County Courts in Upper Canada, under the jurisdiction conferred upon them by the said act:—

Intituling
proceedings.

1. All pleadings and affidavits filed in the County Courts under the provisions of the said act, are to be intituled as follows:—

"In the County Court of the County of _____,
Equity Side."

Counsel need
not sign
pleadings.

See. 2.—No pleadings shall require the signature of counsel.

Claim—Con-
tents of.

Sec. 3.—The claim is to contain:

- (1.) The name and description of each party plaintiff.
- (2.) The name of each party defendant.
- (3.) A statement of the plaintiff's case in clear and concise language.
- (4.) A prayer for the specific relief to which the plaintiff supposes himself entitled; but the prayer for general relief may be added.

Sec. 4.—In the several cases enumerated in schedule A, the claim may be in the form, or to the effect ^{Form of} set forth in that schedule, as applicable to the particular case; and in cases not enumerated in that schedule, forms similar in principle may be adopted, wherever a more detailed statement is not necessary for the clear and intelligible statement of the case.

Sec. 5.—It must appear upon the face of the claim that the subject matter thereof is within the jurisdiction of the County Court.

Sec. 6.—Upon the claim being brought to the clerk's office to be filed, it shall be his duty to file ^{To be filed and entered by clerk.} the same of the day on which it may be so brought in, and to enter the same in a book to be by him kept for that purpose; such entry to contain the names of parties plaintiffs and defendants, and the date of the filing of such claim.

Sec. 7.—It shall not be necessary to serve the defendant with a summons or other process to notify him to answer the claim; but, in lieu thereof, a copy of the claim is to be personally served upon him, ^{Mode of service of.} with an indorsement thereon in the form, or to the effect set forth in schedule B. In making such service it shall not be necessary to produce the original claim.

PARTIES TO SUITS.

1. It shall not be competent to any defendant in any suit to take any objection for want of parties ^{Parties—no objection for want of in certain cases.} to

any suit in the County Court, in any case in which such objection could not be taken in the Court of Chancery, in case such suit had been instituted therein.

But the judge may require other persons to be added as. The judge, if he shall see fit, may require any other person to be made a party to the suit; and may, if he shall see fit, give the conduct of the suit to such person as he may deem proper; and may make such order in any particular case as he may deem just for placing the defendant on record on the same footing, in regard to costs, as other parties having a common interest with him in the matter in question.

How added, and effect of. In such cases, the persons who, according to the practice of the Court of Chancery previous to the third day of June, 1853, would be necessary parties to the suit, are to be served with a copy of the decree; and after such service, they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit; and upon service of notice upon the plaintiff, they may attend the proceedings under the decree. Any party so served may apply to the judge to vary or add to the decree, within fourteen days from the date of such service.

Trustees of real or personal estate shall represent those beneficially interested, who need not be parties. In all suits concerning real or personal estate which is vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust in the same manner, and to the same extent, as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such case it shall not be necessary to make the persons beneficially interested under the trusts parties to the suit; but, on the hearing, the judge, if he shall think fit, may order such person or persons, or any of them, to be made parties.

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In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court, as parties to a suit concerning such demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

Where demand is joint and several; who need be made defendants.

AMENDMENT.

1. Orders of course to amend a claim may be obtained at any time before answer, upon proceipe.

Amendment ordered on proceipe before answer.

Sec. 2.—Service upon any defendant of an order of course to amend before answer may be dispensed with, upon an application ex parte, where the judge is satisfied that such an order may be made without prejudice to the defendant's rights; and where service upon any defendant of an order to amend has been dispensed with, the course as to such defendant is to proceed as if the claim had been originally filed in the amended form.

Service of order may be dispensed with in certain cases.

Sec. 3.—An order to amend the claim only for the purpose of rectifying a clerical error in names, dates or sums, may be obtained at any time upon proceipe.

To correct error in name, &c., at any time.

Sec. 4.—The judge may, at any time, in furtherance of justice, and on such terms as he may think proper, permit an amendment of the claim and of every proceeding relating thereto, by adding or striking out the name of any party, by correcting errors, by inserting allegations material to the case, or by conforming such claim or proceeding to the facts proved, when the amendments shall not substantially change the nature or form of the suit; and such amendments may be in respect of any matter arising or occurring after, as well as before, the institution of the suit, and before final decree, and as well whereby the occurring of such matter the suit abates or becomes defective as otherwise.

Order may be made by judge at any time in furtherance of justice.

How obtained.

Such order is to be applied for by motion to the judge; and notice thereof, stating the proposed amendment, is to be served upon the defendant, or his attorney, unless dispensed with by the judge.

Upon the motion the judge must be satisfied, by affidavit or otherwise, of the truth of the proposed amendment, and of the propriety of permitting it to be made at the particular stage of the cause under all the circumstances.

Directions to be given by judge in such cases.

Upon pronouncing such order for amendment, the judge is to give such direction, as to the future conduct of the suit, in relation to service upon new parties defendants, in relation to answering such amendments, as also in regard to the evidence taken or to be taken, and in all other respects, as the circumstances of the case may require.

Amendment must be made within two days.

Sec. 5.—A plaintiff having obtained an order to amend his claim, is to amend the same within two days from the date of such order, otherwise the order to amend becomes void, and the case, as to dismissal, stands in the same situation as if such order had not been made.

Abatement—in case of; how suit revived.

Sec. 6.—When a suit becomes defective or abates, by any event occurring after final decree or order, any party entitled to revive the same, may do so by a petition in the cause, which is to state the petitioner's title to the relief sought. The petition must be verified by affidavit; it is to be served upon the attorneys for all parties, or in case any party has no attorney, then upon such party.

GUARDIAN AD LITEM.

Guardian ad litem.

1. In case it shall appear to the judge that any defendant upon whom a copy of a claim has been duly served is an infant, or a person of weak or unsound mind, not so found by inquisition, unable of himself to defend the suit, the judge, upon the application of the plaintiff, at any time after claim filed, may order

motion to the
the proposed
defendant, or
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that one of the attorneys of the court be assigned
guardian of such defendant, by whom he may answer
the bill and defend the suit.

Notice of the application must be served upon, or
left at the dwelling house of, the person with whom
or under whose care such defendant may be residing
at the time of the motion, at least five days before
the hearing of the application; and where such de-
fendant is an infant, not residing with or under the
care of his father or guardian, in that case notice of
the application must also be served upon or left at
the dwelling house of the father or guardian, unless
the judge, at the time of hearing such application,
think fit to dispense with such service.

How appoint-
ted:

at instance
of plaintiff.

Sec. 2.—A party desirous of appointing a guardian
for himself to defend a suit, may go before the judge
with the proposed guardian, and the judge may appoint
such guardian, if he shall think fit so to do. But he
must be satisfied by affidavit that such proposed guar-
dian is a fit person, and has no interest adverse to
that of the person of whom he is to be the guardian
in the matter in question; and if the affidavit is not
sufficient for this purpose, he may examine the pro-
posed guardian, or the person making the affidavit,
viva voce, or require further evidence to be adduced
until he is satisfied of the propriety of the appoint-
ment.

At the in-
stance of in-
fant, &c.

APPEARANCE.

No appearance, is to be entered in any suit,
either by the defendant, or by the plaintiff on his
behalf.

No appear-
ance to be
entered.

ANSWER AND DEMURRER.

All defences to the plaintiff's claim are to be
made by answer or demurrer, or by both, according
to circumstances.

Defences—
how made.

DEMURRER.

A defendant may demur to a claim at any time

Defendant
must demur

within ten days after service of claim.

When demurrer to be argued.

within ten days after service upon him of a copy thereof. Upon the filing of a demurrer by a defendant, either party is at liberty to set down the same for argument immediately, to be heard in the following term, or at such other time as the judge shall appoint.

ANSWER.

Answers—
form of.

1. Answers may be in a form similar to the form set out in schedule C. The answer is to be in the first person, and is to consist of a clear and concise statement of such defence or defences as the defendant may desire to make. The silence of the answer as to any statement contained in the claim is not to be construed into an implied admission of its truth; and any allegation introduced into an answer for the purpose of preventing such implied admission is to be considered impertinent.

Must be made within ten days.

Sec. 2.—A defendant served with a copy of a claim is to answer or demur to any original claim, or claim amended before answer, within ten days after service of such claim, or of notice of the amendment thereof, as the case may be.

Must be signed and sworn.

Sec. 3.—The answer is to be signed by the defendant, and is to be verified by his oath; and the jurat is to be in the form set forth in schedule C.

Unless upon written consent.

Sec. 4.—An answer may be filed without oath or signature, by written consent without order.

JUDGE MAY GIVE RELIEF TO DEFENDANT UPON ANSWER PROPERLY FRAMED.

Relief may be given to defendant on case made by answer.

1. When, in order to do complete justice, relief ought to be given to the defendant as well as to the plaintiff, or to the defendant alone, or to one of several defendants, the judge, if he see fit, may frame his decree so as to attain that object, when the right of the defendant to relief grows out of the same transactions which form the subject matter of the claim. The facts necessary to make out the defendant's

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DEFENDANT
RAMED.

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right to relief are to be stated in the answer as part of the defendant's case; and he is to pray such relief as he may think himself entitled to. This order is not to be considered as authorising a defendant to state in his answer any distinct or independent matters, not connected with, and growing out of the case made by the claim, as the foundation for relief; and the judge, in all such cases, may either grant such relief upon the answer, or he may direct or permit a separate suit to be instituted.

SUPPLEMENTAL ANSWER.

The judge may permit a supplemental answer to be filed at any period of the suit, for the purpose of putting new matter in issue, in furtherance of justice, and upon such terms as may seem proper.

Supplemental answer may be permitted by Judge.

No answer, supplemental answer, or demurrer, is to be deemed as filed, for the purpose of the computation of time, until a copy thereof has been served.

When to be deemed filed.

CLAIM BEING TAKEN AS CONFESSED BY DEFAULT OF DEFENDANT.

1. When any defendant, not appearing to be an infant, or a person of weak or unsound mind, unable of himself to defend the suit, has been personally served with a copy of such claim, and has neglected to answer or demur thereto within ten days from the time of such service, the clerk is, upon the precept of the plaintiff, to make an entry in his said book in the following form, or to the following effect:—"The plaintiff's claim is taken as confessed, for default of the defendant in not answering thereto," upon being satisfied by affidavit that a copy of such claim has been personally served, and upon finding that no answer or demurrer has yet been filed. Such entry not to be made by the clerk without the order of the judge, except when application is made to him within one month from the time of such service; and after the expiration of such month, the judge may order

Pro confesso proceedings to take claim

such entry to be made, if he think fit, upon being satisfied by affidavit of such due service aforesaid, and that a demurrer or answer has not been filed by such defendant. Such entry shall have the same effect as an order to take a bill pro confesso in the Court of Chancery.

Decree may be moved for in ten days thereafter.

It shall be competent to the plaintiff to move for a decree after the expiration of ten days from the date of such entry, such motion to be ex parte, and to be made in the following term, or at such other time as the judge may appoint.

Such entry to be invalid in case defendant is an infant, &c.

Sec. 2.—An entry of a claim being taken as confessed by a defendant who, at the time of such service or of such entry, is an infant or a person of weak or unsound mind, unable of himself to defend the suit, is irregular and of no validity.

Subsequent proceedings to be ex parte.

After such entry, all further proceedings in the cause may be ex parte as to the defendant in respect of whom such entry is made, unless the judge order otherwise.

Amendment may be made without prejudice to such entry.

Sec. 3.—A plaintiff may move ex parte for leave to amend his claim, without prejudice to the entry of the same being taken as confessed; and when the judge is satisfied that the rights of the defendant will not be prejudiced by granting such motion, he may direct the same accordingly.

After entry defendant may be permitted to answer.

After such entry, and before the motion for decree, the judge is to be at liberty to permit the defendant to answer, upon such terms, as to evidence and otherwise, as he may think just, upon being satisfied, by affidavit, that granting such permission will be in furtherance of justice.

Defendant may appear at hearing.

A defendant against whom such entry has been made, is to be at liberty to appear at the hearing of the motion for decree; and if he waive all objection to such entry, but not otherwise, he may be heard to argue the case upon the merits, as stated in the claim.

Sec. 4.—A defendant shall be entitled to be served with notice of such motion, notwithstanding such entry, upon serving the plaintiff or his attorney with notice of his desire to be so served, within five days after such entry; and notice of motion must be served four days before the day for hearing the same.

And may require notice of proceedings.

Upon the hearing of a cause in which a claim has been taken as confessed, in manner aforesaid, such a decree is to be made as the judge may think just.

What decree thereon.

Sec. 5.—In pronouncing the decree, the judge, either upon the case stated in the claim, or upon that case, and a petition presented by the plaintiff for the purpose, as the case may require, may order a receiver of the real and personal estate of the defendant against whom the claim has been taken as confessed to be appointed with the usual directions; or direct a sequestration of such real and personal estate to be issued; and may, if it appear to be just, direct payment to be made out of such real and personal estate of such sum or sums of money, as at the hearing or any subsequent step in the cause the plaintiff may seem to be entitled to.

Judge may order receiver or sequestration.

Sec. 6.—The rights and liabilities of any plaintiff or defendant under a decree made upon a claim taken as confessed, extend to the representatives of any deceased plaintiff or defendant, at the time when the decree was pronounced; and with reference to the altered state of parties, and any new interests acquired, the judge may, upon motion, supported by such evidence, as under the circumstances of the case the judge deems sufficient, permit any party, or the representative of any party, to adopt such proceedings as the nature and circumstances of the case may require, for the purpose of having the decree duly executed, or for the purpose of having the matter of the decree and the rights of the parties duly ascertained and determined; notice of such motion to be served in such manner as the judge may direct.

Rights of parties extend to representatives.

12. PRODUCTION OF BOOKS AND PAPERS.

Production
of papers—order
for, obtained on
preceipe.

1. Either plaintiff or defendant may, at any time, after answer, or when the application is on behalf of the plaintiff, after the time for answering has expired, obtain an order of course upon preceipe, requiring the adverse party to produce, within a time to be limited by the order, all deeds, papers, writings and documents in his custody or power relating to the matters in question in the cause under oath, and to deposit the same with the clerk for the usual purposes. But neither plaintiff nor defendant is to be held bound to produce, in pursuance of such order, any deeds, papers writings or documents, which a defendant, admitting the same by his answer to be in his custody or power, would not be bound to produce according to the practice of the Court of Chancery

Affidavit of
party served.

Sec. 2.—The affidavit to be made by a party who has been served with an order for the production of documents under the preceding section, may be in the form or to the effect set forth in schedule D.

Order for production need
not be personally served.

Sec. 3.—Such order shall not require personal service. If the party required to obey the same shall have an attorney, it shall be sufficient to serve the same upon such attorney; but any writ or writs of attachment to be issued for disobedience to such order, must be obtained by orders nisi and absolute, and the order nisi must be personally served.

Judge may
order production at
trial.

Sec. 4.—Upon any trial before a jury, the judge shall have the like powers, in respect of the production of deeds, papers, writings or documents, as is possessed by judges of county courts in Upper Canada upon the trial of issues in causes on the common law side of such courts.

13. MOTION FOR DECREE OR DECRETAL ORDER AFTER TIME FOR ANSWERING HAS EXPIRED.

1. The plaintiff in any suit, at any time after the

period allowed to the defendant for answering has expired, may move the court for such decree or decretal order as he may think himself entitled to; and the plaintiff and defendant respectively may file affidavits in support of, and in opposition to such motion, and may use the same at the hearing thereof; and when such motion is made after an answer filed in the cause, the answer, for the purposes of the motion, is to be treated as an affidavit.

Motion for decree, when and how to be made, and how to be opposed.

Sec. 2.—Notice of the motion is to be served upon the defendant or defendants at least ten days before the day to be named in such notice for the making of the application.

Sec. 3.—Within five days from the service of the notice, the defendant must file his affidavits in answer.

Sec. 4.—Within three days after the expiration of such five days, the plaintiff is to file his affidavits in reply; and, except so far as such last mentioned affidavits are in reply, they are not to be regarded by the judge, unless upon the hearing of the motion the judge shall give the defendant leave to answer them; and in that case, the costs of such affidavits, and of the further affidavits consequent upon them, are to be paid by the plaintiff, unless the judge order otherwise.

No further evidence, on either side, is to be used upon the hearing of such motion, without the leave of the judge.

Sec. 5.—Upon hearing the application, the judge in his discretion may either grant or refuse the motion, or may give such directions for the examination of either parties or witnesses, or for the making of further enquiries, as the circumstances of the case may require, and upon such terms, as to costs and otherwise, as he may think right.

Such motion is to be heard in the following term, or at such other time as the judge may appoint.

14. MOTION FOR DECREE OR DECRETAL ORDER BEFORE TIME FOR ANSWERING HAS EXPIRED.

Judge may permit notice of motion for decree to be given before time for answering has expired.

1. When it can be made to appear to the judge that it will be conducive to the ends of justice to permit such notice of motion to be served before the time for answering the claim has expired, the plaintiff may apply to the judge ex parte for that purpose, at any time after the claim has been filed, and the judge, if he thinks fit, may order the same accordingly; and when such permission is granted, the judge is to give such directions, as to the service of the notice of motion, and the filing of the affidavits, as he may deem expedient.

Upon hearing the motion, judge may give certain directions.

Sec. 2.—Upon the hearing of the motion for a decree or decretal order, the judge, in his discretion, may either grant or refuse the application, or may give such directions for the examination of either parties or witnesses, or for the making of further enquiries, or for a jury trial, or with respect to the further prosecution of the suit, as the circumstances of the case may require, and upon such terms, as to costs and otherwise, as he may think right.

15. ISSUE AND PROCEEDINGS THEREUPON, AND DISMISSAL FOR WANT OF PROSECUTION.

When cause is at issue.

1. Upon the filing of an answer, or the last of several answers, or of answer by one or more defendants, and of entry for taking claim as confessed as to others, or after the time allowed for answering an amended claim has expired, the cause is to be deemed at issue.

Under what circumstances defendant may move to dismiss.

Sec. 2.—When the plaintiff has not obtained an order to amend, he is either to apply to the judge for a trial by a jury, as provided for by order 22; or in the event of the defendant not having made the like application, he is to give notice of motion for decree within ten days after the cause is at issue, otherwise

any defendant may move to dismiss the plaintiff's claim for want of prosecution, unless the judge shall in the meantime have given to the plaintiff further time to take such proceedings.

Sec. 3.—When the plaintiff has obtained an order to amend his claim after answer, he is to amend the same within two days after such order being granted, and thereupon he is either to apply for a trial by jury, or in the event of not receiving notice of the like application on the part of the defendant, he is to give notice of motion for decree or decretal order, within the times following; and in default thereof any defendant may move to dismiss the claim for want of prosecution :—

- (1.) When the plaintiff amends his claim, and no answer is put in thereto, and no notice of application for further time to answer is served within seven days after the service of the notice of amendment, then, after such seven days, but within ten days from the time of the service of such notice.
- (2.) Where the plaintiff amends his claim after answer, and a defendant, within seven days after service of notice of the amendment, serves notice of an application for further time to answer the amendments, but such application is refused, then within seven days after such refusal.
- (3.) When a defendant puts in an answer to amendments, then within seven days after the filing of such answer, unless the plaintiff obtain in the meantime an order for leave to re-amend his claim.

Sec. 4.—In every case where the plaintiff is delaying the suit unreasonably, any defendant may apply to the judge upon notice, that the claim may be dismissed with costs for want of prosecution after the expiration of ten days from the time of filing his answer, in case the plaintiff not having obtained an

order to enlarge the time does not give notice of proceeding in manner aforesaid, within the time above limited in respect thereof, or in case the plaintiff should make unreasonable delay in the further prosecution of his suit to a decree; and upon the hearing of such motion the judge is to make such order for the dismissal of the claim, or for the expediting of the suit, or as to the costs, as under the circumstances of the case may seem just.

16. PROOF OF EXHIBITS BY AFFIDAVIT.

Exhibits
may be proved
by affidavit.

Any exhibit which, according to the practice of the Court of Chancery, may be proved by the affidavit of a witness, may be in like manner proved by affidavit; an order having been taken out for that purpose.

17. AFFIDAVITS BY PARTICULAR WITNESSES, OR AS TO PARTICULAR FACTS.

Facts in issue
may be proved
by affidavit,
by consent or
leave of judge,

When the facts in issue are, at the instance of either party, to be tried by a jury, in such case affidavits of particular witnesses, or affidavits as to particular facts or circumstances, may be taken by consent, or by leave of the judge; and such consent may be given on behalf of married women or infants, or other persons under disability, with the approbation of the judge.

18. WITNESSES MAKING AFFIDAVIT SUBJECT TO CROSS-EXAMINATION.

Witnesses
making affidavits
may be cross-examined.

1. Any witness who has made an affidavit to be used upon any application other than an affidavit of service, is to be subject to oral cross-examination before the judge, in the same manner as if the evidence given by him in his affidavit had been given by him orally; and such witness is to attend before the judge upon being served with a writ of *subpoena ad testificandum* or *subpoena ad testificandum et duces tecum*; and the expenses attending such cross-examination,

and re-examination are to be paid by the parties respectively, in like manner as if the witness to be cross examined were the witness of the party cross-examining, and are to be deemed costs in the cause of such parties respectively, unless the judge think fit to direct otherwise.

Sec. 2.—Any party desiring to cross-examine a witness who has made an affidavit in any cause is to give forty-eight hours notice to the party on whose behalf such affidavit has been filed, or to the party intending to use the same, of the time and place of such intended cross-examination, in order that such party may, if he think fit, be present thereat.

Forty-eight hours' notice of such cross examination to be given.

The re-examination of any such witness is to follow immediately upon the cross-examination, and is not to be delayed to any future time.

Sec. 3.—In case any witness making such affidavit, and for whose cross-examination notice shall have been served, shall reside without the county, it shall be competent to the judge, at the instance of either party, if he think fit, to certify, that in his judgment it is reasonable that such witness should be cross-examined in the county where he resides; and upon production of such certificate to the registrar of the Court of Chancery, he is to issue a writ of *subpœna ad testificandum* or *subpœna ad testificandum et duces tecum*, requiring such witness to attend before the master, or a deputy-master, or examiner of the Court of Chancery, for the purpose of such cross-examination; and such witness is to attend accordingly; and the party obtaining such certificate shall give notice thereof to the opposite party, and, if he be the cross-examining party, notice also of the time and place of such intended cross-examination.

Mode of proceeding where witnesses reside without the county.

Notwithstanding the granting of such certificate, witnesses residing without the county may be cross-examined before the judge at the instance of any party willing to pay the extra expense, if any, there-

by incurred, and such party shall be entitled to such subpoenas aforesaid from the registrar of the Court of Chancery, and the witness shall be bound to attend before the judge in obedience thereto.

Sec. 4.—Any party requiring the attendance of witnesses or other parties, for the purpose of examination, who may reside without the county, for the purpose of evidence at a jury trial, shall be entitled to such subpoenas aforesaid for that purpose; and such witnesses and parties shall be bound to attend accordingly.

19. FORM OF AFFIDAVITS, &c.

Affidavits to be in the first person.

All affidavits are to be taken and expressed in the first person of the deponent, and his name at the commencement of the affidavit is to be written in full, and not designated by any initial letter merely.

Otherwise no costs to be allowed.

No costs are to be allowed in respect of any affidavit not drawn in conformity with this order.

Officer to read over affidavit.

Every affidavit in support of, or in opposition to any application other than an affidavit of service, is to be read over to the deponent by the officer who is required to administer the oath; and the officer is to inform such witness that he is liable to be cross-examined touching the matter of such affidavit; and when the witness desires to qualify or add to his deposition, the officer is to vary the same accordingly, and the jurat is to be in the form or to the effect set forth in schedule E.

20. COMPELLING ATTENDANCE OF WITNESSES FOR PURPOSES OF MOTIONS, &c.

Witnesses may be compelled to attend before judge, &c. for purposes of a motion, &c.

1. Any party in any cause depending, may, by a writ of *subpoena ad testificandum* or *subpoena ad testificandum et duces tecum*, require the attendance of any witness before the judge, or before a deputy master, or before an examiner, and examine such witness orally, for the purpose of using his evidence upon any motion, petition, or other proceeding before

the court; and such witness shall be bound to attend for the purpose of being cross-examined on being served with such writ; but the judge, nevertheless, in his discretion, may act upon the evidence before the court at the time, and may make such *interim* order, or otherwise, as may appear necessary to meet the justice of the case.

Sec. 2.—Any party in any cause or matter who requires the attendance of any witness, whether a party to the cause or not, for the purpose of his being examined with a view to his evidence upon any motion, petition, or other proceeding before the court, is to give to the opposite party or parties ^{Forty-eight hours' notice thereof to be served on opposite party.} forty-eight hours' notice at least, of his intention to examine such witness, and of the time and place of such examination, unless the court think fit in any case to dispense with such notice.

Sec. 3.—The cross-examination in such case is to follow immediately upon the examination, and is not to be deferred to any future time.

21. EXAMINATION OF PARTIES.

1. Any party to a suit may be examined as a witness by the party adverse in point of interest, without any special order for that purpose; and may be compelled to attend and testify in the same manner, upon the same terms, and subject to the same rules of examination, as any other witness, except as hereinafter mentioned: and any person for whose immediate benefit a suit is prosecuted, or defended, is to be regarded as a party for the purpose of this order. Provided always, that when it appears that any party examined under this order is united in interest with the examining party, the evidence so used is not to be used on behalf of either the examining party or examinant, but may be struck out at the hearing of the motion at the instance of any party affected thereby.

Parties to the cause may be examined as witnesses by party adverse in point of interest.

Or upon any points in which party examined is not interested.

Sec. 2.—Any party defendant may be examined as a witness on behalf either of the plaintiff or of a co-defendant upon any points as to which the party to be examined is not interested; and any party plaintiff may be examined under similar circumstances by a co-plaintiff or by a defendant. Provided that where any party having an interest has been examined under this order, such evidence is not to be used on behalf either of the examining party or of the examinant, but may be struck out at the hearing of the motion at the instance of any party affected thereby; but such examination is not to preclude the judge from making a decree either for or against the party examined.

Where party interested is examined, may be further examined on their own behalf.

Sec. 3.—Evidence taken under the first section of this order may be rebutted by adverse testimony; and any party examined as therein provided may be further examined on his own behalf in relation to any matter respecting which he has been examined in chief. And where one of several plaintiffs or defendants, who are joint contractors, or are united in interest, have been so examined, any other plaintiff or defendant so united in interest may also be examined on his own behalf, or on behalf of those united with him in interest, to the same extent as the party actually examined. Provided, nevertheless, that such explanatory examination must be proceeded with immediately after the examination in chief, and not at any future period, except by leave of the judge.

And parties jointly interested may be examined on their own behalf.

Sec. 4.—Any party to the record who admits upon his examination that he has in his custody or power any deeds, papers, writings or documents relating to the matters in question in the cause, is to produce the same for the inspection of the party examining him upon the order of the judge, and for that purpose a reasonable time is to be allowed. But no party shall be obliged to produce any deed, paper, writing or document which would be protected under the practice of the Court of Chancery.

Party admitting deeds, &c., to be in his possession may be ordered to produce them.

Sec. 5.—Any person refusing or neglecting to attend at the time and place appointed for his examination, under the first section of this order, may be punished as for a contempt; and the party who desires the examination, in addition to any other remedy to which he may be entitled, may apply to the judge upon motion either to have the claim taken as confessed, or to have it dismissed, according to circumstances; and the judge may, upon such application, if he think fit, order, either that the claim be taken as confessed, or that it be dismissed, as the case may be; and where, from the circumstances of the case, such order cannot be made consistently with the rights of other parties to the suit, then the judge may make such order as to the taking of evidence, or otherwise, as may seem just.

Party refusing to attend may be punished as for contempt, or claim may be taken as confessed.

Sec. 6.—When the examining party uses any portion of the evidence taken under the first section of this order, (but not otherwise) then it shall be competent for those against whom it is used to put in the entire evidence so taken, as well that given in chief, as that in explanation.

When part of examination is used entire evidence may be put in by other side.

Sec. 7.—Any party plaintiff examined under the first section of this order may be so examined at any time after answer, and any party defendant may be examined at any time after answer, or after the time for answering has expired, as the case may be.

When party may be examined.

22. JURY TRIAL.

It shall be competent to the plaintiff, instead of giving notice of motion for a decree in manner hereinbefore provided, to apply to the judge upon notice, for an order that the facts in issue in the cause, or that certain of such facts, be tried by a jury, and it shall in like manner be competent to the defendant, at any time within five days after filing his answer, to make the like application; and upon the hearing of such application, the judge, if he thinks fit to grant the same, is to settle, as nearly as con-

Parties may apply for facts in issue to be tried by a jury.



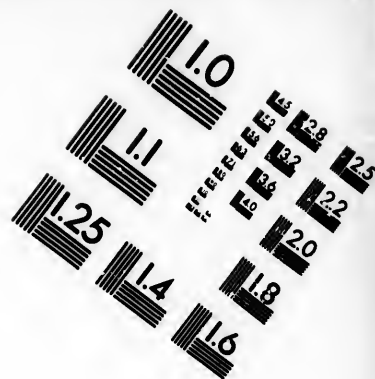
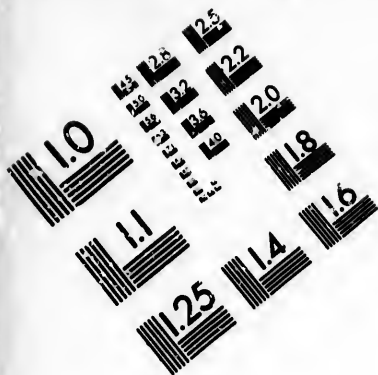
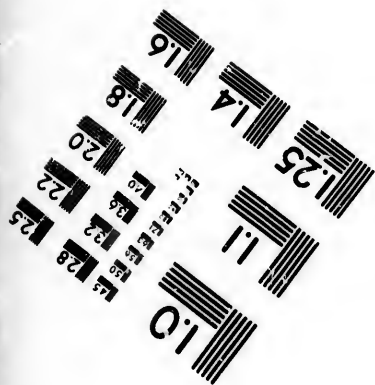
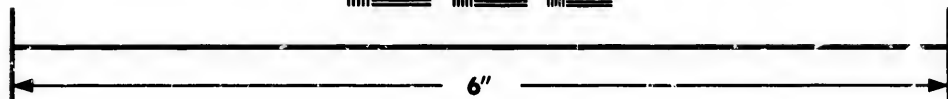
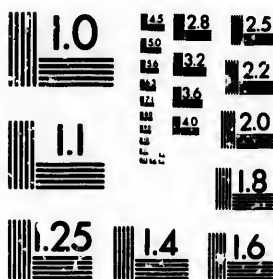


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veniently may be, what facts are to be tried by a jury, and whether any, and if any, what affidavit evidence may be used upon such trial; and in the event of such application being granted, such jury trial is to be had, and a decree may thereupon be made in manner directed by the said act; and such application may be granted upon such terms as the judge may deem just, and he is to be at liberty to make such interlocutory order, upon such application or otherwise, as he may think fit, upon affidavits or other evidence.

23. FOREIGN COMMISSIONS.

Foreign commissions may be issued. A commission may be obtained for the examination of witnesses not residing within Upper Canada, upon affidavit by the party applying that certain witnesses (naming them) reside at or about a place to be specified in such affidavit, and that the evidence of such witnesses is, as he believes, material and necessary to his case.

24. MISJOINDER OF PLAINTIFFS.

Suits not to be dismissed for misjoinder of plaintiffs; but judge may order necessary amendment at hearing. No suit is to be dismissed by reason only of the misjoinder of persons as plaintiffs therein, but whenever it appears to the judge that notwithstanding the conflict of interest in the co-plaintiffs, or the want of interest in some of the plaintiffs, or the existence of some ground of defence affecting some or one of the plaintiffs, the plaintiffs, or some or one of them, are or is entitled to relief, the judge may grant such relief, and may modify his decree according to the special circumstances of the case: and for that purpose he is to direct such amendments, if any, as may be necessary; and at the hearing, before such amendments are made, may treat any one or more of the plaintiffs as if he or they were defendant or defendants in the suit, and the remaining or other plaintiffs was or were the only plaintiff or plaintiffs on the record; and where there is a misjoinder of plaintiffs,

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and the plaintiff who has an interest has died, leaving a plaintiff on the record without any interest, the judge may, at the hearing of the cause, order such an amendment of the record as may appear just, and proceed to a decision of the cause, if he shall see fit, and give such directions, as to costs or otherwise, as may appear just and expedient.

25. CONDITIONAL ORDER.

In all cases where a person or party obtains an order from the judge upon condition, and fails to perform or comply with such condition, he is to be considered to have waived or abandoned such order, as far as the same is beneficial to himself, and any other party or person interested in the matter, on the breach or non-performance of the condition, may either take such proceedings as the order in such case may warrant, or such proceedings as might have been taken if no such order had been made.

Party failing to perform condition on which he obtains order may be treated as having waived it.

26. PAYMENT OF MONEY INTO COURT.

Money ordered to be paid into court is to be paid with the privy of the clerk into such bank or bank agency in the county town as the judge may appoint, and if there be no bank or bank agency therein, then into such bank or bank agency in Toronto as the judge may appoint; the attorney or party paying in the same is to furnish the bank with a correct copy of so much of the order directing such payment as relates thereto, with the names of the parties to the suit and the date of the order.

Payment of money in

Sec. 2.—All sums of money to be paid out of court are to be so paid upon the cheque of the clerk, countersigned by the judge, and not otherwise.

And out of court.

27. SUITS FOR FORECLOSURE AND REDEMPTION.

1. In any suit for the foreclosure of the equity of redemption in any mortgaged property, or for redemption, the mortgagor may be ordered to deliver

On final order in foreclosure or redemption suits, posses-

slon may be ordered to be delivered. up possession of the mortgaged premises upon the final order for foreclosure or for dismissal of the claim as the case may be.

Sale instead of foreclosure may be directed. Sec. 2.—In any suit for the foreclosure of the equity of redemption in any mortgaged property, the judge, upon the request of the mortgagee, or of any subsequent incumbrancer, or of the mortgagor, or any person claiming under them respectively, may direct a sale of such property, instead of a foreclosure of such equity of redemption, on such terms as the judge may think fit to direct, and, if the judge think fit, without previously determining the priority of incumbrancers, or giving the usual or any time to redeem; but if such request be made by any such subsequent incumbrancer, or by the mortgagor, or by any person claiming under them respectively, the judge is not to direct any such sale without the consent of the mortgagee or the person claiming under him, unless the party making such request deposit in court a reasonable sum of money, to be fixed by the judge, for the purpose of securing the performance of such terms as the judge may think fit to impose.

And any balance ordered to be paid. Sec. 3.—Instead of foreclosure, the claim in any such suit may pray a sale of the mortgaged premises, and that any balance of the mortgage debt which may remain due after such sale may be paid by the mortgagor, and the same may be decreed accordingly.

Surety for mortgage debt may be made party and ordered to pay. Sec. 4.—When any person is surety for the payment of any mortgage debt, such person may be made a party to any suit for the foreclosure of the equity of redemption of the mortgaged property, and the relief specified in the last section may be prayed against both the mortgagor and his surety, and the same may be decreed accordingly.

Sec. 5.—When a suit has been instituted for the foreclosure of the equity of redemption in any mortgaged property for default in the payment of interest, or of an instalment of the principal, any defendant

may move to dismiss such claim upon paying into court the amount then due for principal and interest, with costs.

Sec. 6.—When a suit has been instituted for the purpose and under the circumstances specified in the last section, any defendant may move to stay the proceedings in the suit, *after decree*, but before sale or final foreclosure, upon paying into court the amount then due for principal and interest with costs.

In foreclosure suits on default of payment of instalment or interest, defendant may move to stay proceedings on payment into court of sum due and costs

When an application is made to stay the proceedings under this section, the decree may afterwards be enforced, by order of the judge, upon any subsequent default in the payment of any further instalment of the principal or of interest.

Decree may be enforced on subsequent default.

Sec. 7.—When a motion is made for a decree after entry made to take the claim as confessed, in a suit for the foreclosure of the equity of redemption in any mortgage property, the plaintiff is to produce at the hearing:

Proceedings on motion for decree after entry pro confesso.

- (1.) The mortgage deeds and the assignments thereof, if any.
- (2.) An affidavit, which is to state the amount advanced upon the security; the amount paid—whether by receipt of rents or otherwise; and the amount remaining due for principal and interest, distinguishing how much for principal and how much for interest: the affidavit is to state whether the mortgaged premises or any part of them have been in the occupation of the mortgagee, or of any one under whom he claims; and when there has been any such occupation, the affidavit is to state its nature, the time it continued, and the fair rentable value of the property.

Upon production of such proofs and documents, the judge may at once determine the amount due,

and when a foreclosure is ordered, the time and place for the payment of the mortgage money may be fixed by the decree, without a reference or any further enquiry.

28. INDORSEMENT OF NAMES OF ATTORNEYS OR PARTIES.

Name of attorney or party to be endorsed on pleadings &c.

1. Upon every writ sued out, and upon every claim, demurrer, and answer, or other proceeding, there shall be endorsed the name, or firm and place of business of the attorney or attorneys by whom such writ has been sued out, or such pleading or other proceeding has been filed; and when such attorneys are agents only, then there shall be further endorsed thereon the name, or firm and place of business of the principal attorney or attorneys.

When party sets in person, and resides more than three miles distant, address for service to be given.

Sec. 2.—Every party suing or defending in person is to cause to be endorsed or written upon every writ which he sues out, and every claim, demurrer, answer, or other proceeding, his name and place of residence, and also. (when his place of residence is more than three miles from the office where such pleading or other proceeding is filed) another proper place, to be called his address for service, not more than three miles from the said office, where writs, notices, orders, appointments and other documents, proceedings and communications may be left for him.

29. COPIES OF PLEADINGS, &c.

Copies of pleadings &c. to be demanded in writing.

1. Any party requiring a copy of any pleading or affidavit is to make a written application for the same to the attorney of the party by whom it has been filed, or on whose behalf it is to be used; and when such party has no attorney, then to the party himself.

And to be delivered within 48 hours.

Sec. 2.—When an application is made for a copy of any pleading or affidavit, it is to be delivered within forty-eight hours from the time of such demand; and any further time which may elapse before the

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delivery thereof is not to be computed against the party demanding the same.

Sec. 3.—Copies of pleadings and affidavits are to be written on paper of convenient size, in a legible manner, and unless so written, the attorneys furnish- ing them are not to be paid for the same.

No costs al-
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30. TRANSMISSION OF PAPERS BY MAIL.

All documents, of whatever nature, required to be transmitted to the clerk of the court, or the deputy master may be so transmitted through the post office, under cover, addressed to the clerk, or deputy master, as the case may be, sealed with the seal of the party required to transmit the same; or they may be forwarded by a special messenger: in that event the messenger is to make oath, before the clerk or deputy master, that he received the document from the hands of the party required to transmit the same, that it has not been out of his possession since he so received it, and that it is in the same state and condition as when it was placed in his hands for transmission: and the name, style and place of residence of such messenger, are forthwith to be endorsed upon the document so transmitted, by the clerk or deputy master, as the case may be.

Mode of
transmitting
papers to
clerk, &c.

31. ORDERS OF COURSE.

All orders of course are to be drawn up by the clerk upon præcipe.

Orders of
course ob-
tained on
præcipe.

32. APPOINTMENT OF RECEIVERS.

Receivers are to be appointed in the following manner:—The party prosecuting the order for a receiver is to obtain an appointment from the judge, and to serve the same on all necessary parties, naming, in the copy thereof served, the proposed receiver and his sureties. At the time appointed, the party prosecuting the order is to bring into the judge's chambers the recognizance or bond proposed as security.

Mode of ap-
pointing re-
ceivers.

The bond or recognizance is to be to the judge. Any other party desirous of proposing another person as receiver, is to serve notice of his intention so to do upon the other parties, naming in such notice the person proposed by him as receiver, and his sureties: and is then in like manner to bring into the judge's chambers the recognizance or bond proposed by him as security. At the time named in the appointment, the judge is, in the presence of the parties, or of those who attend, to consider of the appointment of the receiver, and to determine respecting the same, and to settle and approve the proposed security; and the judge is to appoint such receiver by signing a written appointment to the following effect:—"In the County Court of the County of _____, Equity Side. (Style of cause.) I hereby appoint (receiver's name), receiver in this cause." (Signature of judge). Which appointment is to be signed without any appointment or attendance for that purpose; when signed it is to be filed by the party who has procured the person named by him as receiver to be appointed, but the same is not to be filed until after the execution and filing of the securities settled and approved by the judge.

33. NOTICES OF MOTION.

Service of notice of motion after claim filed.

1. A notice of motion, by any party to the suit, may be served at any time after claim filed, without the leave of the judge.

Sec. 2.—There must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion, unless the judge give special leave to the contrary; and in the computation of such two clear days, Sundays, or days on which the offices are closed, are not to be reckoned.

Interlocutory proceedings, affidavits and mode of proceeding.

34. EVIDENCE UPON MOTIONS AND INTERLOCUTORY PROCEEDINGS.

1. Admissions of the service of a notice of motion

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or other paper, upon the opposite attorney, need not be verited by affidavit.

Sec. 2.—All the affidavits upon which any notice of motion is founded must be filed at the time of the service of such notice of motion; and the affidavits, either in support of, or in opposition to, any special motion, are to be filed with the clerk.

Sec. 3.—Any party who requires a copy of an affidavit to be used upon any application is to demand the same from the attorney of the party by whom such affidavit has been filed, or on whose behalf it is to be used, and such copy is to be ready for delivery within forty-eight hours from the time of such demand, or within such other time as the judge may in any case direct.

35. TAKING ACCOUNTS AND MAKING INQUIRIES.

1. When it shall, in the opinion of the judge, be necessary or proper that accounts be taken, or inquiries made, and when the judge shall not think fit that the same be taken before himself, they may be referred to the master or to a deputy master of the Court of Chancery, or to the clerk of the county court, in the discretion of the judge; and in case of such reference being ordered, the decree or order referring the same shall be carried into the office of the master, deputy master or clerk, as the case may be, within ten days after the decree or order shall have been pronounced, by the party having the carriage of the same; otherwise any other party to the cause, or any party having an interest in the reference, may apply to the judge as he shall be advised, that the prosecution of such decree or order may be committed to him, or otherwise, for the purpose of expediting the prosecution thereof.

Judge may order reference to master or clerk of County Court.

Sec. 2.—Upon the bringing in of every decree or order, the attorney bringing in the same is to take out an appointment (unless the officer to whom the

Mode of proceeding thereon.

reference is made shall dispense therewith) appointing a time, which is to be settled by him, for the purpose of taking into consideration the matters referred by such decree or order, and is to serve the same upon the parties or their attorneys, unless such officer shall dispense therewith; and upon the return of such appointment, or upon the bringing in of the reference when no such appointment shall have been issued, the officer is to proceed to regulate in all respects the manner of proceeding with such reference, and the manner in which each of the accounts and inquiries is to be prosecuted.

As to the evidence to be adduced in support thereof, and therein to give such special directions (if any) as he may think fit with respect to the mode in which any accounts referred to him are to be taken or vouched; and, if he think fit so to do, to direct that in taking such accounts the books of account, in which the accounts required to be taken have been kept, or any of them, be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objection thereto as they may be advised.

As to the parties who are to attend on the several accounts and inquiries;

As to the time at which, or within which, each proceeding is to be taken.

And he is to fix a time at which to proceed to the hearing and determining of such reference, appointing a day in the meantime, if he shall think fit, for the purpose of entering into the accounts and inquiries, with a view to ascertain what is admitted and what is contested between the parties, and such directions may be afterwards varied or added to, as may be found necessary; and in giving such directions, and in regulating the manner of proceeding before him, the officer is to devise and adopt the simplest, most speedy, and least expensive method of

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prosecuting the reference, and every part thereof. And any party directed by him to bring in any account, or do any other act, is to be held bound to do the same in pursuance of the direction in that behalf, without any written direction being served upon him for that purpose.

Sec. 3.—When the officer shall appoint a day, as provided for in section 2 of this order, for the purpose of entering into the accounts or inquiries referred to him, with a view to ascertain what is admitted and what is contested between the parties; and when it becomes necessary to adduce evidence, or to incur expenses otherwise, in establishing or proving items of account or other matters which, in the judgment of the officer ought, under all the circumstances, to have been admitted by the party sought to be charged therewith, and which such party shall refuse to admit, the officer, before making his report, is to proceed to tax such costs, occasioned by such refusal, as shall appear to him reasonable and just, and shall state the amount of such costs, and how the same were occasioned; and the party to whom such costs are to be paid is to be entitled, upon the officer's report becoming absolute, to such process of the court, to compel payment thereof, as in other cases: provided always, that when the party entitled to receive the general costs of the cause is the party ordered to pay such costs, he is to be at liberty to deduct such costs from such general costs, provided such general costs and such interlocutory costs are between the same parties. When the officer shall omit to appoint a day for the purposes aforesaid, it shall be competent to him to grant to any party bringing in accounts an appointment to proceed on the same for the purposes aforesaid; such appointment to be underwritten as follows:—"On leaving the accounts of, &c.; and take notice that you are required to admit the same, or such parts thereof as you can properly admit." And when the

Party improperly refusing to admit items of account, to be charged with costs of proving.

party so notified shall refuse to admit the same, the like consequences shall follow, under the like circumstances, as are hereinbefore provided for.

Officers to keep Reference Book in office.

Sec. 4.—The officers are each to keep in his office a book, to be called the "Reference Book," in which, upon the bringing in of any decree or order of reference, is to be entered, the style of the cause, the name of the attorney prosecuting the reference, the date of the decree or order being brought in, and an entry of the proceedings then taken, and the officer shall enter therein from time to time the proceedings taken before him, and the directions which he may give in relation to the prosecution of the reference, or otherwise.

No state of facts, &c., to be brought in

Sec. 5.—No state of facts, charges or discharges are to be brought into the officer's office. But, when directed, copies, abstracts of or extracts from accounts, deeds or other documents, and concise statements, are to be supplied; and, where so directed, copies are to be delivered, as the officer shall direct. No copies of deeds or documents are to be made, where the originals can be brought in, without special direction.

Accounting party to bring in account in form of Dr. and Cr.

Sec. 6.—Where any account is to be taken, the accounting party is, unless the officer shall otherwise direct, to bring in the same in the form of debtor and creditor, verified by affidavit. The items on each side of the account are to be numbered consecutively, and the account is to be referred to by the affidavit as an exhibit, and not to be annexed thereto.

When accounting party is sought to be further charged, notice to be given.

Sec. 7.—Any party seeking to charge any accounting party beyond what he has in his account admitted to have received, is to give notice thereof to the accounting party, stating, so far as he is able, the amount so sought to be charged, and the particulars thereof, in a short and succinct manner.

Sec. 8.—Every reference appointed to be heard, as by section 2 of this order provided, is to be called

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on and proceeded with at the day and time so fixed, unless the officer shall in his discretion think fit to postpone the same; and in granting any application to postpone the hearing of such reference, he may make such order as to the costs consequent upon such postponement, as he may think just. And so soon as he shall have entered upon the hearing of such reference, he is to proceed therewith to the conclusion without interruption, where that is practicable; and when any reference cannot be finished in a single day, he is to proceed de die in diem without any fresh appointment, unless he shall be of opinion that an adjournment other than de die in diem would be proper, and conducive to the ends of justice: and when any such adjournment shall be ordered, he is to note in his book the time and reason thereof; and in no case is any matter to be discontinued or adjourned for the mere purpose of proceeding with any other matter, unless such course shall have become necessary.

Sec. 9.—Upon any application made by any person to the judge, the officer is, at the instance of the person making the application, to certify to the judge, as shortly as he conveniently can, the several proceedings had in his office in the same cause or matter, and the dates thereof.

Sec. 10.—Where a party actually prosecuting a decree or order, does not proceed before the officer with due diligence, the officer is at liberty, upon the application of any other party interested, either as a party to the suit, or as one who has come in and established his claim before him under the decree or order, to commit to him the prosecution of such decree or order, and from thenceforth neither the party making default, nor his attorney, is to be at liberty to attend him as the prosecutor of such decree or order.

References to
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Officer to cer-
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Sec. 11.—Advertisements for creditors are to ap-

Advertisements for creditors, whose claims to be proved by affidavit

Proceedings thereon.

Cost of, may or may not be allowed to creditors.

point a day and hour at which creditors are to come in and present and prove their claims; for this purpose no state of facts shall be necessary, but the claims are to be duly verified by affidavit. At the time and place named in such advertisement, the officer is to proceed on the claims brought in before him without further notice, and may examine any parties as witnesses in relation thereto at such time or thereafter, as he may see fit; and he is to allow or disallow or adjourn the same, as to him may seem just. The costs of proving such claims are, in the discretion of the officer, to be allowed to the creditors proving the same, and added to their debts respectively, or to be disallowed. And in case of their being allowed, they may be allowed in gross, in place of taxed costs.

Officers' reports, how to be made.

Sec. 12.—In reports, no part of any account, charge, affidavit, deposition, examination or answer, brought in or used in the officer's office, is to be stated or recited; but instead thereof the same may be referred to by date or otherwise, so as to inform the judge as to the paper or document so brought in or used.

In taking accounts in officer's office, what course he may pursue.

Sec. 13.—In taking of accounts in the officer's office, it shall be within his cognizance to take the same with rests or otherwise; to take accounts of rents and profits received, or which, but for wilful neglect or default might have been received; to set occupation rent; to take into account necessary repairs and lasting improvements, and costs and other expenses properly incurred otherwise, or claimed so to be; and generally, in the taking of accounts, to inquire and adjudge as to all matters relating thereto, as fully as if the same had been specifically referred; subject, nevertheless, to the revision of the judge upon appeal from the report. And it shall not be necessary to the taking of such accounts, that any of the matters aforesaid should have been stated in the pleadings, or that evidence thereof should have been

Where not stated in the pleadings.

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Sec. 14.—Under any order of reference witnesses may be examined before any examiner of the Court of Chancery; and upon the certificate of the officer to whom the reference is made foreign commissions may issue for the examination of witnesses without the jurisdiction of the court, the officer is to be at liberty to cause parties to be examined, and to produce books, papers and writings as he shall think fit, and to determine what books, papers and writings are to be produced, and when and how long they are to be left in his office; or, in case he shall not deem it necessary that such books, papers or writings should be left or deposited in his office, then he may give directions for the inspection thereof by the parties requiring the same, at such time and in such manner as he shall deem expedient. He is also to be at liberty to cause advertisements for creditors, and, if he shall think it necessary, but not otherwise, for heirs or next of kin, or other unascertained persons, and the representatives of such as may be dead, to be published, as the circumstances of the case may require; and in such advertisements to appoint a time within which such persons are to come in and prove their claims, and within which time, unless they so come in, they are to be excluded from the benefit of the decree. And in taking any account of a deceased's personal estate, under any order of reference, he is to enquire and state to the judge, what, if any, of the deceased's personal estate is outstanding or undisposed of; and is also to compute interest on the deceased's debts from the date of the decree, and on legacies from the end of one year after the deceased's death, unless any other time of payment is directed by the will; and under any order whereby any property is ordered to be sold, the same is to be sold to the best purchaser that can be got for the

Under order
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mission may
issue.

Creditors ad-
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In taking ac-
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Without special directions.

same, and either in one lot or in parcels, as the officer shall direct; and all proper parties are to join therein as the officer shall direct. And under every order whereby the delivery of deeds is ordered, or the execution of conveyances is directed, the officer is to give directions as to the delivery of such deeds, and to settle conveyances where the parties differ, and to give directions as to the parties thereto, and the execution thereof; and for the special purposes herein enumerated no special order shall be necessary.

May direct copy of decree to be served on persons interested, not parties—effect of

Sec. 15.—Where in proceedings before the officer to whom any reference is made, it appears to him that some persons not already parties ought to be made parties, and ought to attend or be enabled to attend the proceedings before him, he may direct a copy of the decree to be served upon such parties; and upon due service thereof, such parties are to be treated and named as parties to the suit, and to be bound by the decree, in the same manner as if they had been originally made parties to the suit.

Every copy of a decree directed to be served under this section is to be endorsed with a notice to the effect set forth in schedule F. to these orders, with such variations as circumstances may require.

When hearing before officer completed, how he is to proceed.

Sec. 16.—So soon as the hearing of any matter pending before the officer shall have been completed, he shall so inform the parties to the reference then in attendance, and shall make a note to that effect in his book, and after such entry no further evidence shall be received or proceedings had, without his special permission; but he shall proceed to prepare his report or certificate without further appointment, unless he shall see fit to make an appointment to settle the same, which shall in such case be served on the parties as he shall direct. So soon as the report or certificate shall have been prepared, it shall be delivered out to the party prosecuting the reference, or in case he shall decline to take the same, then, in

as, as the officer to join therein under every order ordered, or the officer is to such deeds, and as differ, and to thereto, and the purposes here- be necessary.

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the discretion of the officer, to any other party applying therefor, and a common attendance shall be allowed to the party taking the same.

Sec. 17.—Reports become absolute, without order confirming the same, in ten days after the signing thereof, unless previously appealed from. An appeal shall lie to the judge upon motion within ten days from the signing of the report, in respect of the finding of the officer upon any matter presented in his office for his decision, without objections or exceptions being previously taken. The appeal motion may be made by any party affected by the report; and upon notice thereof being served, all the proceedings before the officer, and all papers and evidence relating thereto, are, at the instance of any party interested therein, to be transmitted, in order to the same being produced in court, upon the hearing of such motion.

Reports become absolute in ten days, without order.

Appeal may be made within ten days.

Sec. 18.—Where accounts are directed to be taken, or inquiries to be made, by any decree or order, each direction is to be numbered, so that, as far as may be, each distinct account and inquiry may be designated by a number; and such order may be in the form set forth in schedule G., with such variation as the circumstances of the case may require.

Directions in decree to be numbered.

Sec. 19.—When the judge shall in his discretion think fit that such inquiries be made or accounts taken before himself, he may give such special directions, if any, as he may think fit, as to the mode in which the account is to be taken or vouched; and in cases where he shall think fit so to do, he may direct that in taking the accounts, the books of account, in which the accounts required to be taken have been kept or any of them, shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

Inquiries made, or accounts taken, before judge.

Sec. 20.—An accounting party is to bring in his

Accounts to
be brought
in form of
Dr. and Cr.

account in the form of debtor and creditor, and verify the same by affidavit, unless the judge shall otherwise direct. The items on each side of the account are to be numbered consecutively, and the account is to be referred to by the affidavit as an exhibit, and not to be annexed thereto, and is to be left at the judge's chambers.

And mode of
proceeding
thereon.

Sec. 21.—Any party seeking to charge any accounting party beyond what he has by his account admitted to have received is to give notice thereof to the accounting party, stating, as far as he is able, the amount sought to be charged, and the particulars thereof, in a short and succinct manner.

Sec. 22.—In the taking of accounts before the judge, he is to be at liberty to give such direction, as to the mode of proceeding, as to parties, as to costs and otherwise, as he may see fit, and as to him may appear to be just; and in points as to which he may give no direction, the mode of proceeding is to be the same, *mutatis mutandis*, as upon a reference.

36. SALES OF PROPERTY UNDER THE DIRECTION OF THE JUDGE.

Sales under
decree or or-
der.

Sales under any decree or order are to be conducted in the following manner:—

- (1.) No copy of the decree or order, or any part thereof, is to be brought before the judge, or into the master's, deputy-master's, or clerk's office, but the original decree or order is to be used, unless the judge or officer require such copy.
- (2.) An appointment is to be obtained from the judge or officer, and served upon all necessary parties.
- (3.) At the time appointed thereby, the party having the conduct of the sale is to bring before the judge or officer a draft advertisement, but

no particulars or conditions of sale, or any draft or copy thereof.

- (4.) Such draft advertisement is to contain the following particulars, viz.:—1st. The style of the cause: 2nd. That the sale is in pursuance of the order or decree of the judge: 3rd. The time and place of sale: 4th. A short and true description of the property to be sold: 5th. The manner in which the property is to be sold, whether in one lot or several, and, if in several, in how many, and what lots: 6th. What proportion of the purchase money is to be paid down by way of deposit, and at what time or times, and whether with or without interest, the residue of such purchase money is to be paid: 7th. Any particular or particulars in which the proposed conditions of sale differ from the standing conditions.
- (5.) At the time named in such appointment, the judge or officer is, in the presence of all parties served, or of such of them as attend to settle such advertisement, to fix the time and place of sale, to name an auctioneer, where one is to be employed, and to make every other necessary arrangement preparatory to the sale, so that nothing may remain to be done but to insert the advertisement; and all the before-mentioned matters must be done at one meeting—namely, upon the return of the appointment, where it is practicable; and no adjournment of such meeting is to take place, and no new meeting is to be appointed for the aforesaid purposes, unless it is unavoidable.
- (6.) The advertisement is to be inserted by the party conducting the sale, at such times, and in such manner, as the judge or officer shall have appointed at the meeting before mentioned.
- (7.) The judge or officer may fix an upset price or

Advertisements of sale.

Upset price
may be fixed.

reserved bidding, where it is thought expedient, without further order; but this must be done at the meeting before mentioned, and it must be notified in the conditions of sale; the officer is to conduct the sale, where no auctioneer is employed; the deposit is to be paid to the vendor, if present, or if not, to his solicitor, at the time of sale, and is to be forthwith paid by him into court; biddings need not be in writing, and all parties, except the one having the conduct of the sale, may bid thereat, provided it be notified in the conditions of sale; a written agreement is to be signed by the purchaser at the time of sale; after the sale is concluded, the auctioneer, where one is employed, is to make the usual affidavit according to the practice of the Court of Chancery; and where no auctioneer is employed, the officer is to certify to the judge to the same effect, but is to make no report allowing the purchaser in any case.

Contract to
be signed by
purchaser.

- (8.) Under the printed conditions of sale is to be printed a blank form of contract in these words, or to this effect: "I agree to purchase the property (or lot No.) mentioned in the annexed particulars, for the sum of £ , and upon the terms mentioned in the above conditions of sale.

(Purchaser's Signature.)

"Witness."

the purchaser is to sign one of these contracts; and the affidavit of the auctioneer, or the certificate of the deputy-master or clerk, and a printed copy of the particulars of sale, are to be annexed to the contract so signed.

After 10 days,
sale confirmed.

- (9.) The signed contract, with the printed copy of particulars, and affidavit or certificate annexed as aforesaid, is to be filed by the vendor's attor-

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ney; and if such sale is not objected to within ten days from the time of such filing, it is thenceforth to stand absolutely confirmed.

(10.) Such sale must be objected to by motion to the judge to set aside the same; and notice of such motion must be served upon the purchaser and the other parties to the cause.

(11.) At any time after the confirmation of the sale, the purchaser may pay his purchase money and interest, or the balance thereof into court, without further order, but with the privity of the clerk, and upon notice to the party having the conduct of the sale; and shall thereupon be entitled to be let into possession of the estate, and may then proceed, in the usual way, to obtain possession thereof; or, if such possession be wrongfully withheld from him, may, at his own expense, obtain an order against the party in possession for the delivery thereof to him.

Purchaser
may then
pay money
into court.

(12.) When an inquiry into title has been directed by the judge, the vendor is to deliver an abstract of the title to the purchaser; and if the purchaser does not object to the title, and obtain and serve an appointment to consider the same, within ten days after the delivery of such abstract he is to be deemed to have accepted such title. At the time of serving the appointment, the purchaser must deliver to the vendor a written notice of the objections to the title; at the time appointed a duplicate of such notice is to be brought into the judge's chambers by the objecting party, and such objections are to be argued before the judge, who is to allow or disallow such objections.

Mode of pro-
ceeding when
inquiry into
title directed.

(13.) The standing conditions of sale are to be those set forth in schedule H. attached to these orders.

37. The judge, in any stage of the cause, and the

Judge, master, or clerk, may obtain assistance of accountants, &c.

master, deputy-master or clerk, upon any inquiry or taking of account before him, may obtain the assistance of accountants, merchants, engineers, actuaries, or other scientific persons, in such way as he may think fit, the better to enable him to determine any matter in issue in any cause or proceeding, and may act on the certificate of such persons:

38. EVIDENCE ON CLAIM PRO INTERESSE SUO.

Pro interesse suo.

Any person who, according to the practice of the Court of Chancery previous to the 6th day of June, 1853, might have moved to be examined pro interesse suo, may apply to the judge, upon motion, for such relief as he may think himself entitled to.

Sec. 2.—Motions under this order are to be governed by the practice prescribed by the 13th order, in relation to motions for a decree.

How proceeded with.

Sec. 3.—On hearing the motion, the judge, in his discretion, may either grant or refuse the motion, or may give such directions for the examination of parties or witnesses, or for the making further inquiries, or for the institution of any suit or action, as the circumstances of the case may require.

Sec. 4.—When it can be made to appear to the judge that it would be conducive to the ends of justice to permit a notice for such purpose to be served for some day earlier than that prescribed by the 13th order, leave may be obtained for that purpose, upon an ex parte application to the judge in the manner prescribed by the 14th order.

39. MOTION FOR A DÉCREE TO ADMINISTER THE ESTATE OF A DECEASED PERSON, WITHOUT CLAIM FILED.

Decree to administer estate may be made without claim filed.

Any person claiming to be a creditor, or a specific, pecuniary, or residuary legatee, or the next of kin, or the heir, or a devisee, interested under the will of any

deceased person, may apply to the judge upon motion, without claim filed, or any other preliminary proceeding, for an order for the administration of the estate, real and personal, of such deceased person.

The notice of motion in such case is to be in the form or to the effect set forth in schedule I., and must be served upon the executor or administrator, as the case may be, at least ten days before the day fixed for hearing the application.

Upon proof by affidavit of the due service of such notice of motion, or on the appearance in person, or by his attorney or counsel, of such executor or administrator, and upon proof by affidavit of such other matter, if any, as the judge may require, the judge, if he think fit so to do, may make the usual order for the administration of the estate of the deceased, with such variations, if any, as the circumstances of the case may require, and the order so made shall have the force and effect of a decree to the like effect made in a cause between the same parties.

How obtained and proceedings thereon.

The judge is to give any special directions touching the carriage or execution of any such order as, in his discretion, he may deem expedient; and in case of applications for any such order by two or more persons, the judge may grant the same to such one or more of the claimants as he may think fit; and the carriage of the order may be subsequently given to such party interested, and upon such terms as the judge may direct.

Sec. 2.—An order for the administration of the estate of a deceased person may be obtained by his executor or administrator, as the case may be, and all the provisions of the first section of this order are to extend to applications by an executor or administrator under the present section.

Sec. 3.—The costs attending the administration of the estate of a deceased person under the preceding

sections of this order, are to be borne by such estate, unless the judge shall direct otherwise.

40. INJUNCTIONS TO STAY WASTE, &c.

Injunctions
may be
granted.

The judge may, in his discretion, grant such injunction ex parte, or upon notice, and may, in a proper case, direct notice to be served for such day as he may think proper, and order in the meantime an interim injunction.

Sec. 2.—The injunction may be in the form set forth in schedule K., and there is to be a notice or memorandum in the margin thereof to the effect set forth in the same schedule.

41. PROCESS FOR ENFORCING DECREE OR ORDER.

How order or
decree to be
enforced.

If any party, who is by any order or decree ordered to do any act, other than the payment of money, in a limited time, shall, after due service of such order or decree, refuse or neglect to obey the same according to the exigency thereof, the party prosecuting such order or decree shall, at the expiration of the time limited for the performance thereof, upon filing with the clerk an affidavit of the service of such order and of the non-performance thereof, be entitled, without further order, to a writ or writs of attachment against the disobedient party; and in case such party shall be taken or detained in custody, under any such writ of attachment, without obeying the same order or decree, then, upon the sheriff's return that the party has been so taken or detained, the party prosecuting such order or decree shall be entitled, without further order, to a commission of sequestration against the estate and effects of the disobedient party.

Sec. 2.—Commissions of sequestration are to be directed to the sheriff, unless some good reason exists to the contrary.

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Sec. 3.—Every order or decree, requiring any party to do any act thereby ordered, shall state the time after service of the decree or order within which the act is to be done, and upon the copy of the order or decree which shall be served upon the party required to obey the same there shall be endorsed a memorandum, in the words, or to the effect following—namely, “If you, the within named (here insert the name of the party) neglect to obey this order or decree by the time therein limited, you will be liable to be arrested by the sheriff, and you will also be liable to have your estate sequestered, for the purpose of compelling you to obey the same order or decree, without further notice.”

Sec. 4.—The party prosecuting any decree or order for the delivery of possession, upon filing with the clerk an affidavit of the service of the same, and of non-compliance therewith, shall be entitled, without further order, to a writ of assistance.

Sec. 5.—Every person not being a party in any cause, who has obtained any order, or in whose favor an order has been made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the cause; and every person not being a party in any cause, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such order as if he were a party to the cause.

Sec. 6.—Orders and decrees for the payment of money may be enforced in the same manner as any judgment of a County Court, on the common law side of such court.

42. COMPUTATION OF TIME.

When any time limited from or after any date or event is appointed or allowed for doing any act or taking any proceeding, the computation of such limited time is not to include the day of such date, ^{Computation of time.}

or of the happening of such event, but is to commence at the beginning of the next following day, and the act or proceeding is to be done or taken at the latest on the last day of such limited time, according to such computation.

Months; lunar months.

Sec. 2.—When the time of doing any act or taking any proceeding is limited by months, not expressed by calendar months, such time is to be computed by lunar months of twenty-eight days each.

Sec. 3.—When the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day; such act or proceeding is, so far as regards the time of doing or taking the same, to be held to be duly done or taken, if done or taken on the day on which the offices shall next open.

Sec. 4.—Where, by these orders, a time is limited for making an application to the judge, any time during which a party is prevented by the absence, on circuit, of the judge, from making such application, is not to be reckoned against him in computing such time.

43. REMOVAL OF SUIT INTO COURT OF CHANCERY.

How suits removed from County Court into Court of Chancery.

The application for the removal of a cause into the Court of Chancery is to be made by motion in chambers to one of the judges of the said court; and in case such judge shall be of opinion that any pleadings, documents, or evidence should be transmitted from the County Court to the Court of Chancery for the purpose of hearing and determining such application, he is to direct the same; and such pleadings, documents or evidence are to be transmitted accordingly.

Sec. 2.—Upon making such application, the party making the same shall file in the Court of Chancery

an affidavit in the form or to the effect set forth in schedule L.

Sec. 3.—The affidavits and other papers in relation to such application shall be intituled as follows: "In Chancery, in the matter of the suit of A.B. against C. D., in the County Court of the county of ."

Sec. 4.—It shall not be competent for any plaintiff by whom such suit has been instituted to apply for the removal of the same into the Court of Chancery. Plaintiff cannot remove.

44. APPEAL.

Any party desiring to appeal from any decree or order shall, within four weeks from the day on which such decree or order shall be pronounced, file in the clerk's office a bond, with an affidavit of the due execution thereof, together with an affidavit of justification by the sureties in such bond, and shall serve upon the opposite party, his attorney or agent, a notice to the following effect: "The plaintiff (or defendant, as the case may be) intends to appeal from the decree (or order) pronounced in this cause on or about the day of last, and has filed with the clerk of the County Court a bond for the due prosecution of such appeal, with an affidavit of justification by the sureties thereto." Appeals—how made.

Sec. 2.—The security to be given on appeals shall, unless otherwise specially ordered by the judge of the County Court, be by bond to the respondent in the sum of £20, which bond shall be executed by the appellant or appellants, or one of them, and by two sufficient sureties (or if the appellants or appellant be absent from Upper Canada, then by three sufficient sureties), and the condition thereof shall be to the effect that the appellant shall and will effectually prosecute his appeal, and pay such costs and damages as shall be awarded in case the decree or order appealed from shall be affirmed or in part affirmed. Security to be given.

The bond may be in the form set forth in schedule M.

Sureties to
justify.

Sec. 3.—The parties to such bond as sureties shall by affidavit each make oath that he is a resident householder or freeholder in Upper Canada, and worth the sum mentioned in such bond over and above what will pay and satisfy all his debts.

Ten days
allowed for
objection to
bond.

Sec. 4.—Such bond shall stand allowed, unless the respondent shall, within ten days after service of the notice required by the first section of this order, move the judge to disallow the same.

When appeal
to be argued.

Sec. 5.—The petition of appeal shall be filed in the office of the registrar of the Court of Chancery within five weeks from the day on which the decree or order appealed from shall have been pronounced, and a copy thereof, together with an appointment for the hearing of the appeal, to be obtained from the Court of Chancery or a judge thereof, is to be served upon the respondent, his attorney or agent, at least three weeks before the time appointed for the hearing of the appeal; the time to be appointed for the hearing of the appeal is to be not more than five weeks from the day of filing the petition of appeal, unless the court or judge making such appointment shall think proper to appoint a more distant time, under the circumstances. The petition of appeal shall be in the form or to the effect set forth in schedule N.

In what cases
appeal and
perfecting
the security
will stay pro-
ceedings in
court below.

Sec. 6.—The appeal and the perfecting the security thereupon shall stay proceedings in the court appealed from in the following cases, upon the terms provided in respect thereof, that is to say :

- (1.) When the appeal is from an order or decree directing the payment of money, unless the party appellant shall have further given security to the satisfaction of the judge, that, if the decree or order or any part thereof be affirmed, the

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appellant will pay the amount directed to be paid by the decree or order, or the part of such amount as to which the same shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against the appellant on the appeal.

- (2.) Where the decree or order appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment or decree shall not be stayed by the perfecting of the security hereinbefore firstly required, unless the things directed to be assigned or delivered be brought before the judge or placed in the custody of such officer or receiver as the judge shall appoint; or, unless security be given to the satisfaction of the judge, and in such sum as the judge shall direct, that the appellant will obey the order of the Court of Chancery on the appeal.
- (3.) Where the decree or order appealed from directs the execution of a conveyance or other instrument, the execution of the order or decree shall not be stayed by the appeal until the instrument shall be executed and deposited with the proper officer of the County Court, to abide the judgment of the Court of Chancery.
- (4.) Where the decree or order appealed from directs the sale or delivery of possession of real property or chattels real, the execution of the same shall not be stayed, unless proper security be entered into to the satisfaction of the judge, that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon; and that, if the decree or order be affirmed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery

of possession thereof, the amount of which said security shall be fixed by the said judge.

- (5.) When the decree or order is for the sale of property, and the payment of any deficiency arising upon the sale, the security shall also provide for the payment of such deficiency.

In the cases above provided for, proceedings in the County Court shall not be stayed except upon the order of the judge, which he may grant *ex parte* or upon notice, as he may see fit.

In other cases proceedings are not to be stayed except by order of the Court of Chancery or a judge thereof, to be applied for by motion, and to be granted by such court or judge *ex parte* or upon notice, and upon such terms as such court or judge may think proper.

Sec. 6.—Upon the perfecting of the security for the appeal, it shall be the duty of the County Court judge, at the instance and at the expense of the appellant, to cause the pleadings, evidence and documents filed or deposited in his court, to be transmitted to the registrar of the Court of Chancery by mail or otherwise, as he may think expedient, provided that if the parties consent that any documents be not sent to the Court of Chancery as being not material to the matter appealed, it shall not be his duty to transmit the same; and in case he shall be clearly of opinion that certain documents are not material to the matter appealed, and that for any reason it is inexpedient to transmit the same, he may, instead thereof, certify his reasons for not transmitting the same: unless documents are retained for either of the reasons above set forth, the judge is to certify to his sending all the pleadings, papers, evidence and documents filed and deposited in his court.

45. The foregoing orders are not to affect the course of proceeding pointed out in the County

Court Equity Extension Act for the conduct of suits in County Courts, or in relation to the removal of causes therefrom to the Court of Chancery, or in relation to the appeals from such County Courts or otherwise, except in so far as the provisions of the said act may be inconsistent with the said orders.

These orders not to affect the course of proceeding as pointed out by statute, unless inconsistent.

Sec. 2.—In any matters not provided for by the said act or the foregoing orders the course of proceeding shall be the same as in the Court of Chancery for Upper Canada.

References to practice of Court of Chancery, when not provided for.

46.—It shall be competent to the judge in any case in which he shall deem it right so to do, to extend the time by these orders limited for the doing of any act or taking any proceeding in any suit in the said court, and also, upon a proper case made, to allow any act to be done or any proceeding to be taken, notwithstanding the lapse of the time by these orders limited in respect thereof, upon such terms as he may deem just.

Judge may extend time limited by orders for doing any act.

47. The clerk shall keep, in his office, a book to be called, "The Order Book,"—in which shall be entered at length all orders, decrees, or decretal orders, made in the progress of any cause or matter pending in such court, on the equity side thereof.

Order book to be kept by clerk.

48. INTERPRETATION.

In the foregoing orders the following words have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there is something in the subject or context repugnant to such construction, viz:

Interpretation.

- (1.) Words importing the singular number include the plural number, and words importing the plural number include the singular.
- (2.) Words importing the masculine gender include females.

- (3.) The words "person" or "party" include a body politic or corporate.
- (4.) The word "affidavit" includes affirmation.
- (5.) The word "legacy" includes an annuity, and a specific as well as a pecuniary legacy.
- (6.) The word "legatee" includes a person interested in a legacy.
- (7.) The expression "residuary legatee" includes a person interested in the residue.
- (8.) The word "order" includes decree and decretal order.
- (9.) The word "county" imports the county or united counties in the County Court of which the cause may be pending.
- (10.) The words "County Court" import the County Court of the county or united counties in which the cause may be pending.
- (11.) The word "judge" imports the judge of such County Court.
- (12.) The word "clerk" imports the clerk of such County Court.
- (13.) The word "schedule," with a letter following such word, refers to the schedule designated by such letter following these orders.

49. WHEN THESE ORDERS TO COME INTO OPERATION.

When these orders come into operation.

These orders are to come into operation and take effect on the first day of February 1854.

SCHEDULE A.

FORM OF CLAIMS.

1. By a legal or equitable mortgagee, or person entitled to a lien as a security for a debt, seeking foreclosure or sale, or otherwise to enforce his security.

In the County Court of the County of——
——Equity side.

A. B. } (*enumerate all the parties*
and } *plaintiffs*).....Plaintiffs.
C. D. }

C. D. }
and
E. F. } (*all parties defendants*)
and } Defendants.
G. H. }

A. B., of the township of _____ in the said county, states that under and by virtue of an indenture (or other document) dated, &c., and made, &c., (and a transfer thereof, made by indenture, dated, &c., and made, &c.) the said A. B. is a mortgagee (or an equitable mortgagee) of (or is entitled to a lien upon) certain freehold property (or leasehold or other property) therein comprised, being (insert a general description of the property), for securing the sum of £ _____ and interest; that the time for payment thereof has elapsed; that £ _____ has been paid on account of principal, and £ _____ on account of interest (or that no sum has been paid on account of either principal or interest, or otherwise, as the case may be); that the said A. B. has not been in the occupation of the premises, or any part thereof, (or that the said A. B. has been in the occupation of the premises, or some part thereof, from the _____ day of _____, in the year _____, to the _____ day of _____ in the year _____); that there is now justly

due upon the said security for principal £ and
 for interest £ . That E. F. and G. H., the
 defendants hereto, are entitled to the equity of re-
 demption of the said mortgaged premises (or the
 premises subject to such lien). The said A. B.
 therefore claims to be paid the said sum of £
 and interest, and the costs of this suit; and in default
 thereof that the equity of redemption of the said
 mortgaged premises may be foreclosed, (or that the
 said mortgaged premises may be sold, or that the
 premises subject to such lien may be sold, as the case
 may be, and the produce thereof applied in or to-
 wards the payment of the said debt and costs; and
 that the said E. F. and G. H. may be ordered to pay
 the balance of the said mortgaged debt and costs,
 after deducting the amount realized by such sale),
 and for that purpose that all proper directions may
 be given and accounts taken, (and for further relief,) and the said A. B. avers that the said defendants
 reside in the said county of .

2. By a judgment creditor, who has registered his
 judgment, seeking a sale or otherwise to enforce
 his charge or lien.

In the County Court of the County of——

——Equity side.

A. B.Plaintiff.

and

C. D.Defendant.

A. B., of the township of in the said county,
 states that in term, in the year , the
 said A. B. (or G. H., late of deceased, of whom
 the said A. B. is the executor, or administrator or
 assignee, under an assignment, dated, &c., and made,
 &c., or of whose executor or administrator, or admin-
 istrator de bonis non, the said A. B. is the assignee

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said A. B.
of £
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id defendants

under, &c.,*) recovered a judgment in the court of
against C. D., the defendant herein named,
for the sum of in an action heretofore brought
against the said C. D., which judgment was duly
registered in the registry office of the county of
on the day of , at which time the said
C. D. had divers lands, tenements and hereditaments
in the said county; and that the said C. D. is now
the owner of the same lands, tenements and heredita-
ments, subject to the said judgment. The said A.
B., therefore, claims to be paid the amount of the
said judgment, together with interest thereon, and
his costs of this suit; or in default thereof, that
the said lands, tenements and hereditaments, or a
competent part thereof, may be sold for the satisfac-
tion thereof, and the proceeds of such sale applied
accordingly; and for that purpose that all proper
directions be given, and accounts taken. And the
said A. B. avers that the said defendant resides in
the county of .

registered his
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3. By a person entitled to redeem any property sub-
ject to any legal or equitable mortgage, or any
lien, seeking to redeem the same.

y of—
quity side.

In the County Court of the County of ———

...Plaintiff.

———— Equity side.

Defendant.

Between A. B. Plaintiff.

and

C. D. Defendant.

said county,
, the
sed, of whom
inistrator or
, and made,
or, or admin-
the assignee

A. B., of the township of in the said county,
states that under and by virtue of an indenture (or

* The character of the plaintiff must be described, with-
out detailing the transactions whereby he acquired such
character.

other document), dated the day of , and made between (parties), (and the assurance herein-after mentioned, that is to say, an indenture dated the day of , the will of dated the day of ,) the said A. B. is entitled to the equity of redemption of certain property therein comprised, being (here describe the property shortly) which was originally mortgaged (or pledged) for securing the sum of £ and interest, and that C. D., the defendant hereto, is now, by virtue of the said indenture, dated the day of (and of subsequent assurances), the mortgagee of the said property (or holder of the said lien), and entitled to the principal money and interest remaining due upon the mortgage (or lien); and the said A. B. believes that the amount of the principal money and interest now due upon the said mortgage (or lien) is the sum of £ or thereabouts; and he has made an application to the said C. D. to receive the said sum of £ and any costs justly payable to him, and to reconvey to the said A. B. the mortgaged property (or property subject to the said lien) upon payment thereof, and of any costs due to him in respect of this security; but that the said C. D. has not so done. The said A. B. therefore prays that he may be let in to redeem the said mortgaged property (or property subject to the said lien), and that the same may be reconveyed (or delivered up) to him upon payment of the principal money and interest, and costs due and owing upon the said mortgage (or lien), and for that purpose that all proper directions may be given and accounts taken; and the said A. B. avers that the said defendant resides in the county of A.

4. By a person entitled to an account of the dealings and transactions of a partnership dissolved or expired, seeking such account.

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said A. B.
the county

In the County Court of the County of ———

——— Equity side.

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

A. B., of the township of in the said county, states that from the day of down to the day of he and C. D., the defendant hereinafter named, carried on the business of in co-partnership, under certain articles of co-partnership, dated the day of , and made between (parties), or under a verbal agreement, made between the said A. B. and the said C. D., or through their respective agents (E. F. and G. H.) on the day of , and he says that the said co-partnership was dissolved (or expired, as the case may be,) on the day of . The said A. B. therefore prays that an account of the partnership dealings and transactions between the said A. B. and the said C. D. may be taken, and the affairs and business of the said partnership wound up and settled under the direction of this court, and for that purpose that all proper directions may be given and accounts taken. And the said A. B. avers that the joint stock or capital of the said co-partnership hath not at any time exceeded the sum of £200. And the said A. B. avers that the said defendant resides in the said county of A.

5. By a person entitled to the specific performance of an agreement, for the sale or purchase of any property, seeking such specific performance.

In the County Court of the County of ———

——— Equity side.

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

the dealings
dissolved or

A. B., of the township of _____ in the said county, states that by agreement dated the _____ day of _____, and signed by C. D., the defendant hereinafter named, the said C. D. contracted to buy of the said A. B. (or to sell to him) certain freehold property (or leasehold or other property, as the case may be,) therein described or referred to, for the sum of £ _____; and that he has made or caused to be made to the said C. D. an application specifically to perform the said agreement on his part, but that he has not done so; the said A. B. therefore prays that the said agreement may be specifically performed, and for that purpose that all proper directions may be given; he, the said A. B., hereby offering to perform the said agreement specifically on his part. And the said A. B. avers that the present value of the said property does not, in his judgment and belief, exceed the sum of £50; and further, that the said defendant resides in the said county of A.

6. Claim for the specific performance of a parol agreement partly performed.

In the County Court of the County of _____
_____Equity side.

A. B.....Plaintiff.
 and
 C. D.....Defendant.

A. B., of the township of _____ in the said county of _____ states that, on the _____ day of _____, he, the said A. B. being seised in fee simple in possession (or otherwise, as the case may be; or C. D., the defendant hereinafter mentioned, being or pretending to be seised in fee simple in possession, &c., as the case may be,) * of lot number _____ the said

* If either party fills a representative character, say that the said _____ died on the _____ day of _____, and the said _____ is his executor, or administrator or heir-at-law.

said county,
day of _____,
hereinafter
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y of _____
Equity side.

...Plaintiff.

Defendant.

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of _____, he,
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e; or C. D.,
being or pre-
possession, &c.,
the said

character, say
, and the
or heir-at-law.

A. B. and C. D. entered into a verbal agreement for the sale and purchase of the said premises, at or for the price or sum of £ _____ payable by equal annual instalments, with interest, upon the payment whereof a proper conveyance was to be executed of the said premises, free from incumbrances (here state acts of part performance, as) that the said A. B. or the said C. D. was accordingly admitted, and entered into possession of the said lot, and has continued in possession thereof ever since, and is still in possession thereof, and has made divers and considerable improvements thereon, and has paid the sum of £ _____ part of the said purchase money: and the said A. B. submits that, under the circumstances aforesaid, the said agreement has been partly performed, so as to entitle him to a specific execution thereof, for which purpose he has made frequent applications to the said C. D., but without effect. The said A. B. therefore claims that the said contract may be specifically performed by the said C. D., the said A. B. being willing and hereby offering to perform the same in all respects on his part, and that he may have such further and other relief, &c. And the said A. B. avers that the present value of the said property does not, in his judgment and belief, exceed the sum of £50; and further, that the said defendant resides in the said county of A.

7. Claim by a person entitled to an equitable estate or interest, and claiming to use the name of his trustee in prosecuting an action for his sole benefit.

In the County Court of the County of _____

_____Equity side.

A. B., of the township of _____ in the said county states that under an indenture dated the

day of _____, and made between (parties), he is entitled to an equitable estate or interest in certain property therein described or referred to; and that C. D., the defendant hereinafter named, is a trustee for him of such property; and that being desirous to prosecute an action at law against _____ in respect of such property, he has made or caused to be made an application to the said defendant to allow him to bring such action in his name, and has offered to indemnify him against the costs of such action, but that the said defendant has refused or neglected to allow his name to be used for that purpose. The said A. B. therefore claims that he may be allowed to prosecute the said action in the name of the said defendant, he hereby offering to indemnify him against the costs of such action. And the said A. B. avers that the subject matter of the said action does not exceed in value the sum of £50; and further, that the said defendant resides in the said county of _____.

SCHEDULE B.

FORM OF ENDORSEMENT ON CLAIM.

Your answer is to be filed at the office of the clerk of the County Court of the county of _____, at the city (or town) of _____, in the said county _____. You are to answer within ten days from the service hereof.

If you fail to answer within the time above limited, you are subject to have such decree or order made against you as the court may think just, upon the plaintiff's own shewing, and you will not be entitled to any further notice of the future proceedings in the cause.

NOTE.—This claim is filed by Messrs. A. B. and C. D. of the city (or town) of _____, (and where the party who filed the claim is agent, add, agents of Messrs. E. F. and G. H., of _____.)

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Where the plaintiff sues in person, his place of residence is to be stated; and where that is more than three miles from the office where the claim is filed, an address for service must be designated in accordance with the provisions of section 2, order 28.

SCHEDULE C.

FORM OF ANSWER.

In the County Court of the County of——
——Equity side.

A. B.Plaintiff.
and
C. D. and E. F. Defendants.

The answer of C. D., one of the above named defendants, to the claim of A. B., the above named plaintiff.

In answer to the said claim, I, C. D., say as follows :—

I believe that the defendant E. F. does claim to have a charge upon the farm and premises comprised in the indenture of mortgage of the day of , in the plaintiff's claim mentioned.

Such charge was created by an indenture, dated, &c., made between myself of the one part, &c.

To the best of my knowledge, remembrance and belief, there is not any other mortgage, charge or incumbrance affecting the aforesaid premises.

Such statements as are considered necessary or material, are to be introduced with as much brevity as may consist with clearness; and where a defendant seeks relief under order 9, the answer is to ask the special relief to which he thinks himself entitled.

ENDORSEMENT.

This answer is filed by Messrs. A. B. and C. D., of the city (or town) of , (and where the party

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Where the party defends in person, the answer must be endorsed in conformity with section 2, order 28.

FORM OF JURAT TO ANSWER.

The defendant, C. D., on the day of , appeared before me, at my chambers in , and signed the foregoing answer in my presence, and thereupon was sworn before me that he had read the said answer and knew the contents thereof, and that the same was true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believed it to be true.

IN THE CASE OF ILLITERATE PERSONS.

The defendant C. D., not being able to read or write, E. F., attorney (or clerk to the attorney) was sworn before me at my chambers in , on the day of , that he had truly and faithfully read the contents of this answer to the said C. D., and that he appeared perfectly to understand the same; and the said C. D. was thereupon sworn that he had heard the said answer subscribed by him with his mark read over to him by the said E. F., and that he knew the contents thereof, and that the same was true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters that he believed it to be true.

SCHEDULE D.

FORM OF AFFIDAVIT AS TO PRODUCTION OF DOCUMENTS UNDER ORDER 12.

In the County Court of the County of——

——Equity side.

A. B.Plaintiff.

and

C. D.Defendant.

I, , of , make oath and say as follows:—

- (1.) I say I have in my possession or power the documents relating to the matters in question in this suit, set forth in the first and second parts of the first schedule hereto annexed.
- (2.) I object to produce the documents set forth in the second part of the said first schedule hereto.
- (3.) State upon what ground the objection is made, and verify the facts as far as may be.
- (4.) I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit, set forth in the second schedule hereto annexed.
- (5.) The last mentioned documents were last in my possession or power, (state when).
- (6.) (*State what has become of the last mentioned documents, and in whose possession they now are*).
- (7.) According to the best of my knowledge, remembrance, information and belief, I have not now, and never have had in my own possession, custody or power, or in the possession, custody or power of my attorneys or agents, or in the possession, custody or power of any other person

on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the first and second schedules hereto.

NOTE 1. (If the party denies having any, he is to make an affidavit in form of the seventh paragraph, omitting the exception).

NOTE 2. (This form of affidavit, though not obligatory, will be satisfactory).

SCHEDULE E.

JURAT OF AFFIDAVIT.

Sworn before me at _____, on the _____ having been first read over to the deponent C. D., whom I informed that he was liable to cross-examination as to its contents, and that he was at liberty to add to or vary the same.

SCHEDULE F.

**NOTICE TO BE ENDORSED ON AN OFFICE COPY OF
A DECREE UNDER SEC. 15, ORDER 35.**

To Mr. _____, (the person upon whom service has been directed).

(Set out the order.)

If you wish to apply to discharge the foregoing order, or to add to or vary the decree, you must do so within fourteen days from the service hereof. (When the order fixes a time for the further proceedings, add) and if you fail to attend at the time and place appointed, either in person or by your solicitor, such order will be made and proceedings taken in your absence as the judge may think just

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and expedient; and you will be bound by the same, and the further proceedings in the cause in the same manner, as if you had been originally made a party to the suit, without any further order.

SCHEDULE G.

The court doth order that the following accounts and enquiries be taken and made, that is to say :

1st. An account of the personal estate not specifically bequeathed of A. B., deceased, the testator in the pleadings mentioned, come to the hands of, &c.

2nd. An account of the said testator's debts.

3rd. An account of the said testator's funeral expenses.

4th. An account of the said testator's legacies.

5th. An enquiry, what parts, if any, of the said testator's personal estate are outstanding or undisposed of.

And it is ordered, that the said testator's personal estate, not specifically bequeathed, be applied in payment of his debts and funeral expenses, in a due course of administration, and then in payment of his legacies.

And it is ordered, that the following further accounts and enquiries be taken and made, that is to say :—

6th. An enquiry what real estate the said testator was seised of or entitled to at the time of his death.

7th. An enquiry what incumbrances affect the said testator's real estate.

8th. An account of the rents and profits of the said testator's real estate received by, &c.

And it is ordered, that the said testator's real estate be sold. And it is ordered, that the further consideration of this case be adjourned, and any of the parties are to be at liberty to apply.

SCHEDULE H.**CONDITIONS OF SALE.**

1st. No person shall advance less than £2 at any bidding under £100, nor less than £5 at any bidding over £100; and no person shall retract his bidding.

2nd. The highest bidder shall be the purchaser; and if any dispute arise as to the last or highest bidder, the property shall be put up at a former bidding.

3rd. The parties to the suit, with the exception of the vendor, are to be at liberty to bid.

4th. The purchaser shall, at the time of sale, pay down a deposit in the proportion of £10 for every £100 of his purchase money to the vendor or his attorneys, and shall pay the remainder of his purchase money on the day of next; and upon such payment, the purchaser shall be entitled to the conveyance, and to be let into possession : the purchaser, at the time of such sale, to sign an agreement for the completion of the purchase.

5th. The purchaser shall have the said conveyance prepared at his own expense, and tender the same for execution.

6th. If the purchaser shall fail to comply with the conditions aforesaid, or any of them, the deposit, and all other payments made thereon, shall be forfeited, and the premises may be resold, and the deficiency, if any, by such resale, together with all charges attending the same, or occasioned by the defaulter, shall be made good by the defaulter.

SCHEDULE I.**NOTICE OF MOTION FOR THE ADMINISTRATION OF THE ESTATE OF A DECEASED PERSON.**

In the County Court of the County of ———

——— Equity side.

In the matter of John Thomas, late of the township of , in the said county, deceased.

Joseph Wilson
against
Thomas Cochrane.

To Thomas Cochrane, executor of John Thomas,
deceased.

Take notice, that Joseph Wilson, of the township of _____, in the said county, merchant (or other proper description of the party), who claims to be a creditor upon the estate of the above named John Thomas will apply to the judge of the County Court of the County of _____ in the city (or town) of _____, on the _____ day of _____, at the hour of _____, for an order for the administration of the estate, real and personal, of the said John Thomas by the said court.

NOTE.—If you, the above named Thomas Cochrane, do not attend, either in person or by your attorney, at the time and place above mentioned, such order will be made in your absence as the judge may think just and expedient.

SCHEDULE K.

UPPER CANADA.

In the County Court of the County of _____

— Equity side.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To C. D., of the township of _____, his servants, workmen and agents, greeting:

Whereas it has been represented to our judge of our County Court of the County of _____, on the part of A. B., of the township of _____, in the said county, that you are committing waste (or trespass, as the case may be,) in and upon certain property wherein the said A. B. is interested, as set forth in

his certain claim and affidavit filed in our said County Court on behalf of the said A. B. We, therefore, in consideration thereof, do strictly command you, the said C. D., and the persons before mentioned, and each and every of you, under the penalty of five thousand pounds, to be levied upon your lands, goods and chattels, to our use, that you do absolutely desist and refrain from cutting down, removing or destroying any timber or other trees, growing or being upon lot No. , in the concession of the township of , in the said county .

Witness, E. F., Esquire, judge of our said County Court, this day of 185 , and in the year of our reign.

Plaintiff's attorney.

This injunction will remain in force for one month from the date hereof, unless sooner dissolved on an application to the Court of Chancery at Toronto, but the injunction may be extended, and the suit further prosecuted to judgment or otherwise in the said Court of Chancery.

SCHEDULE L.

In Chancery.

In the matter of the suit of

A. B.

v.

C. D.

in the County Court of the County of A.

I., A. B., of , the above named defendant, (or attorney or agent of the above named defendant) make oath and say, that (state shortly the grounds upon which the removal of the cause is sought), and further, that the removal of the said cause is not sought for the purpose of delay, or of increasing the expense of prosecuting the said suit, or for any vexatious or improper purpose whatever; but because in

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my judgment and belief, such removal would be con-
ducive to the ends of justice.

Sworn, &c.

SCHEDULE M.

BOND TO BE GIVEN BY APPELLANT.

Know all men by these presents, that we, A. B.,
of &c., C. D., of &c., and E. F., of &c., are jointly
and severally held and firmly bound unto G. H., of
&c., in the penal sum of £ of lawful money of
Canada, for which payment to be well and truly
made, we bind ourselves, and each of us by himself,
our and each of our heirs, executors and administra-
tors firmly, by these presents, sealed with our seals,
this day of .

Whereas (the appellant) alleges and complains that
he is aggrieved by a certain decree (or order) pro-
nounced by the judge of the County Court of the
County of , made on or about the day
of last; wherefore he desires to appeal there-
from to the Court of Chancery.

Now the condition of this obligation is such, that
if the said (the appellant) shall effectually prosecute
his appeal, and pay such costs and damages as shall
be awarded, in case the said decree (or order) shall be
affirmed, then this obligation to be void, otherwise to
remain in full force.

SCHEDULE N.

FORM OF PETITION OF APPEAL.

In Chancery.

In the matter of the suit of

A. B.

v.

C. D.

in the County Court of the County of .

TO THE HONOURABLE THE JUDGES OF THE
COURT OF CHANCERY.

The humble petition of the above named (appellant), sheweth:

That a decree (or order) was lately, and on o. about the day of last, pronounced by the judge of the County Court aforesaid in the above named cause, whereby he feels aggrieved; and he hereby appeals therefrom, and humbly prays that the same may be reversed or varied, or that such other order or decree may be made in the premises as may be just.

And your petitioner will ever pray, &c.

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16 VICTORIA, CHAP. CXIX,

THE COUNTY COURTS EQUITY EXTENSION ACT.

[Assented to 23rd May, 1853.]

WHEREAS it is expedient to extend the jurisdiction of the several County Courts in Upper Canada to certain matters cognizable in the Court of Chancery of Upper Canada: Be it therefore enacted, That the jurisdiction of the said County Courts respectively shall extend to the several matters hereinafter enumerated, and that the said County Courts respectively shall possess the like power and authority in respect of the matters hereinafter enumerated as by law is now possessed by the Court of Chancery of Upper Canada.

Preamble.

County Courts to have Equity Jurisdiction in certain matters.

II. It shall be lawful to and for any person seeking equitable relief, to enter (personally or by attorney) a claim against any person from whom such relief is sought, with the clerk of the County Court of the county within which such last mentioned person resides, in any of the following cases, that is to say:—

To what cases the Equity Jurisdiction of County Courts shall extend.

1. A person entitled to an account of the dealings and transactions of a partnership (the joint stock or capital not having been over two hundred pounds,) dissolved or expired, seeking such account.

Partnership accounts.

2. A creditor upon the estate of any deceased person, such creditor seeking payment of his debt (not exceeding fifty pounds) out of the deceased's assets, (not exceeding two hundred pounds.)

Debts of deceased persons.

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

Legatees.

4. A residuary legatee, or one of the residuary

Residuary
legatees.

legatees of any such deceased person seeking an account of the residue and payment or appropriation of his share therein (the estate not exceeding two hundred pounds.)

Administra-
tion of per-
sonals.

5. An executor or administrator of any such deceased person seeking to have the personal estate (not exceeding two hundred pounds) of such deceased person, administered under the direction of the judge of the County Court for the county within which such executor or administrator resides.

Foreclosure
of mortgages.

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

Redemption
of mortgages.

7. A person entitled to redeem any legal or equitable mortgage or any charge or lien, seeking to redeem the same, where the sum actually remaining due does not exceed fifty pounds.

Equitable re-
lief generally

8. Any person seeking equitable relief for, upon or by reason of any act, matter or thing whatsoever, where the subject matter involved does not exceed the sum of fifty pounds.

Injunctions
to restrain
commission
of waste.

9. Injunctions to restrain the committing of waste or trespass to property by unlawfully cutting, destroying or removing trees or timber, may be granted by the judge of any County Court, which injunction shall only remain in force for a period of one month, unless sooner dissolved on an application to the Court of Chancery; Provided always, that the power to grant such injunction shall not authorize the prosecuting of the suit in the County Court, but the injunction may be extended, and the suit further prosecuted to judgment or otherwise in the superior court, in the like manner as if the same had originated in that court.

Proviso.

III. Such claim in the several cases enumerated above, may be similar in principle to the form set forth in Schedule A* to this act. Form of claim.

IV. Upon entering such claim with the clerk of a County Court, the same shall be numbered and filed by such clerk according to the order in which it shall be entered, and thereupon a summons, briefly stating the nature of the claim, and bearing the number of the claim on the margin thereof, shall be issued under the seal of the court, requiring the person against whom such claim is made, on some day in the next ensuing term of such County Court, or (upon special order of the judge of the County Court) on a day to be therein named, to appear before the judge of the said court, to shew cause, if he can, why such relief as is claimed by the plaintiff should not be had, or why such order as shall be just with reference to the claim shall not be made. Proceedings on the filing of claim.

V. Such writ of summons may be in the form or to the effect in that behalf set forth in Schedule B* to this act, with such variations as circumstances may require, and shall be sealed with the seal of the court from which it issues, and that, when necessary, alias and pluries writs may be issued. Form of writ of summons.

VI. A copy of the said writ of summons, to which shall be attached a certified copy of the plaintiff's claim so entered as aforesaid, shall be served on the defendant ten days at least before the day appointed in the said writ of summons for shewing cause. Copy of writ and claim to be served.

VII. At the time appointed for showing cause as aforesaid, the defendant shall appear personally or by attorney, and show cause, if he can, (and if necessary by affidavit) why such relief as is claimed by the plaintiff should not be had against him; and each party may, on giving five clear days' notice in writing Hearing on claim; evidence, examination of parties, &c.

* Schedules A. & B. are omitted, in consequence of the provisions of the orders rendering them inapplicable.

Order to be made.

Oral evidence to be on oath.

Defaults.

County judge to be the sole judge.

prior to any hearing of his intention so to do, examine the other party upon the matters relating to such claim; and the judge, on hearing the claim, and what the plaintiff alleges in support thereof, and such other evidence, whether oral, or written, or by affidavit, as he may produce in that behalf, and what may be alleged on the part of the defendant, and such evidence, whether oral, or written, or by affidavit, as he may produce in that behalf, or on production of an affidavit that the writ of summons and copy of claim aforesaid have been duly and personally served on such defendant, may, if he shall think fit, make an order granting or refusing the relief claimed, or directing any accounts or enquiries to be taken or made, (such accounts or enquiries to be taken or made before the judge, if he shall deem such course proper or expedient, or before the clerk of such court, at days or times to be appointed by the judge for that purpose,) or may direct such other proceedings to be had for the purpose of ascertaining the plaintiff's title to the relief claimed, or make such other order as, according to the nature and circumstances of the case, shall seem to be just and proper; and further, the judge may direct such persons or classes of persons, as he may think necessary or fit, to be summoned or ordered to appear as parties to such claim, or on any proceedings with reference to any account or enquiries directed to be taken or made, or otherwise; and all oral evidence given by any person before such judge relating to such claim, shall be upon the oath of the person giving the same, to be administered by or before said judge; and further, in default of the appearance of either of the parties, the said judge may make such order as to the payment of costs by the party in default, as to him may seem meet.

VIII. The said judge of the County Court shall be the sole judge in all actions brought in the said County Courts respectively under the jurisdiction

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given by this act, and shall determine in a summary manner all questions of law or equity, as well as of fact, arising therein, unless the said judge shall think it proper to have any fact or facts controverted in the action tried by a jury, or either party shall apply to have such facts tried by a jury; and upon order made, allowing a trial by jury, such trial shall take place at the then next ensuing sittings of such County Court, and be conducted in the same manner as other trials by jury in the said court are conducted; and the judge may, unless a new trial be moved for within ten days after verdict rendered, proceed to make such order and decree on the verdict of such jury as, according to the nature and circumstances of the case, shall seem just and proper.

Unless a jury be applied for to try the facts: as it may be.

New trial.

IX. The rules of decision in the said County Courts respectively, in respect to the matters aforesaid, shall be the same as govern the said Court of Chancery, (when not otherwise provided for by or under the authority of this act) so far as the same may be held to be applicable to a court of summary jurisdiction. And the said County Courts respectively shall possess full power and authority to enforce and compel obedience to their orders, judgments and decrees, in respect to all and singular the matters hereinbefore and hereinafter set forth and contained; and all sheriffs, gaolers, coroners, constables and other peace officers, shall be aiding, assisting and obeying the said County Courts respectively, in the exercise of their jurisdiction, when required by the County Court so to do.

Rules of decision to be as in Chancery.

Certain powers vested in the Court.

X. The judge of the said County Court may at any time, in furtherance of justice, and on such terms as he may think proper, amend such claim so filed as aforesaid, and any and every proceeding relating thereto, by adding or striking out the name of any party, or a mistake in any other respect, or by inserting other allegations material to the case, or by

Judge may amend the claim in furtherance of justice.

conforming such claim or proceeding to the facts proved, where the amendments shall not change substantially the form of action; and may also, in any stage of the proceedings, disregard any error or defect which shall not affect the substantial rights of the adverse party, and may make any order for granting time to the plaintiff or defendant to proceed in the prosecution or defence of his suit that to such judge may seem necessary for the ends of justice.

How orders
may be en-
forced.

XI. Every order by the judge of the County Court, made upon the hearing of any such claim as aforesaid, or in respect to such claim and suit, or in respect to the matters hereinbefore or hereinafter mentioned, may be enforced in the same manner as any judgment or any order of a County Court is or may be enforced in the said County Court, under the existing provisions of law in relation to the said courts, so far as such provisions are applicable, or in such other manner as may be prescribed by rules to be made in the manner hereinafter mentioned.

Judge to
have the
same power
as Court of
Chancery to
order pro-
duction of
books, adver-
tisements,
&c.

XII. The judge, before or upon any hearing or trial, or upon taking any accounts or making any enquiries, shall have the same powers and authority to order the parties to produce books, papers and writings, as is possessed by the Court of Chancery, and may cause advertisements for creditors and next of kin, or other unascertained persons, and the representatives of such as may be dead, to be published in the usual forms or otherwise, as the circumstances may require; and in such advertisements, appoint a time within which such persons are to come in and prove their claims, and within which time, unless they so come in, they are to be excluded from the benefit of the order.

No order, &c
to be quash-
ed for want
of form.

XIII. No order, direction, verdict, decree or judgment, or other proceeding made concerning any of the matters aforesaid, shall be reversed, quashed or vacated for want of form.

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XIV. Every summons, (except the summons at ^{Summons, when to be served.} the commencement of the action), order, notice, or other proceedings, shall be served ten days at least before the day on which the same is returnable, or the action thereunder intended, except where otherwise directed by the said judge.

XV. The costs in every action or proceeding ^{Costs.} brought or had under the authority of this act in the said County Courts respectively, shall be paid by or apportioned between the parties in such manner as the judge shall think fit, and in default of any special directions, the costs shall abide the event of the action or proceeding.

XVI. All affidavits to be used in the said County ^{Affidavits.} Courts respectively, may be sworn before any judge or clerk of the said courts, or before any commissioner for taking affidavits in the superior courts at Toronto.

XVII. Any claim as aforesaid entered in a County Court, under the provisions of this act, shall be re- ^{Claims may in certain cases be removed into Chancery.} movable by either party into the Court of Chancery, by order of the said court, to be obtained on a summary application by motion or petition supported by affidavit, of which reasonable notice shall be given to the opposite party, and the said order shall be made on such terms as to payment of costs, giving security in respect to the relief claimed and costs, or upon such other terms as to the said Court of Chancery shall seem reasonable, just and proper; but no claim shall be so removed as aforesaid, unless the said Court of Chancery shall be of opinion that the same is of such a nature as to render it proper that the same should be withdrawn from the jurisdiction of the said County Court, and disposed of in the said Court of Chancery.

XVIII. Either party may appeal to the said Court ^{Appeal given to Chancery.} of Chancery against any order or decree made by the judge in any County Court, under the provisions of

Proviso.

Chancery
may make
regulations.

Chancery to
frame gen-
eral rules
and orders
for carrying
this act into
effect.

And may
amend the
same.

this act; and the said Court of Chancery shall make such order thereupon in respect to costs or otherwise, or for referring back the same matter to the judge before whom the same has been first heard, as shall be just and proper: Provided always, That before the County Court judge shall be called on to certify the said order or other matter appealed against to the said Court of Chancery, the party appealing shall enter into a recognizance, with sufficient bail to the satisfaction of the said judge, to pay the sum decreed, in case no relief shall be had on such appeal, or to obey the said order (or as the case may be); and when the party appealing appears by attorney, an affidavit shall be made by such attorney that the appeal is not intended for delay, as he believes, and that there is in his opinion probable cause for reversing the order or decree against which the appeal is made; and the said Court of Chancery shall specially make the necessary regulations for the practice to be observed in proceedings under this and the next preceding section.

XIX. And in order that procedure under this act may be fully traced out, and from time to time be improved, and rendered as simple, speedy and cheap as may be—Be it enacted, That it shall be the duty of the judges of the said Court of Chancery, and they are hereby authorized and empowered to frame such general rules and orders, and all such forms, as to them shall seem expedient, for and concerning the practice and proceedings in the said County Courts in relation to the powers conferred on such courts by this act, and for the execution of the orders and process under this act, and in relation to any of the provisions thereof as to which there may arise doubts; and from time to time to alter and amend such rules, orders and forms, and also the forms and mode of procedure prescribed by this act; and such rules and orders and forms as shall be made and framed by the

ancery shall make costs or otherwise, matter to the judge first heard, as shall says, That before called on to certify led against the the appealing shall cient bail to the the sum decreed, uch appeal, or to se may be); and by attorney, an attorney that the he believes, and e cause for revers- ch the appeal is ery shall specially the practice to be and the next pre-

re under this act time to time be speedy and cheap shall be the duty ancery, and they ed to frame such uch forms, as concerning the County Courts n such courts by e orders and pro o any of the pro y arise doubts; nend such rules, as and mode of d such rules and d framed by the

said judges, or any two of them, (of whom the Chancellor of Upper Canada shall be one), shall, from and after a day to be named therein, be in force in every County Court in Upper Canada, and shall be of the same force and effect as if the same had been embodied in this or some other act of parliament.

Their effect.

XX. There shall be payable on every proceeding for equitable relief, or other proceeding under this act in the said County Courts respectively, the fees which are set down for such proceeding respectively in the schedule to this act marked C, and the clerks of the said County Courts respectively shall keep a separate account of such fees, and shall render an account to the Receiver General of fees in his county, and shall pay over the amount of such fees to such Receiver General, under the same liabilities, securities and conditions, and to be accounted for in like manner as the present general fee fund of the county, and that the several provisions of the act passed in the eighth year of her Majesty's reign, and intituled, *An Act to amend, consolidate and reduce*

Fees payable to fee fund.

How to be accounted for, &c.

s v. c. 13.

into one Act the several laws now in force, establishing or regulating the practice of District Courts in the several Districts of that part of this Province formerly Upper Canada, in relation to the receiving, accounting for and paying over fees, and in relation to the responsibilities and duties of county treasurer and clerks, shall apply to the fees under this act as fully as if the said provisions were herein contained and re-enacted.

XXI. There shall be payable to the clerk of every County Court, and to the sheriff of every county respectively, the fees which are set down for such proceedings respectively in the schedule to this act annexed marked D, and the scale of costs to be paid to attorneys and counsel in the said County Courts, as between party and party, for proceedings under this act, shall be according to schedule E to this act annexed.

Other fees.

No costs to plaintiff proceeding in Chancery instead of under this act.

XXII. If any action or proceeding be commenced in the said Court of Chancery, after this act shall come into force, for any cause or claim which might have been entered in a County Court under this act, no costs shall be taxed against the defendant in such action or proceeding, and the defendant, if he shall succeed in his action, shall be entitled of right to a decree against the plaintiff for his costs, as between attorney and client, unless the said Court of Chancery shall be of opinion that it was a fit cause or claim to be withdrawn from a County Court and entered in the said Court of Chancery.

Exception.

This act incorporated with other County Court acts.

XXIII. This act, and the several acts of Parliament now in force relating to County Courts, or affecting in any way their powers or practice, shall be read and construed as one act, as if the several provisions therein contained, not inconsistent with the provisions of this act, or inapplicable to an equitable jurisdiction, were repeated and re-enacted in this act.

Interpretation clause.

XXIV. In construing this act and the schedules thereto, the following words shall have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction, viz. :—The words "person" or "party" shall be understood to mean a body politic or corporate as well as an individual; and every word importing the singular number shall, when necessary to give full effect to the enactments herein contained, be understood to mean several persons or things, as well as one person or thing; and every word importing the masculine gender shall, when necessary, be understood to mean a female as well as a male; and the word "affidavit" shall include affirmation, and the word "legacy" shall include an annuity and a specific as well as a pecuniary legacy; the word "legatee" shall include a person interested in a

Person.

Singular number.

Gender.

Affidavit.

Legacy.

Legatee, &c.

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and entered in

legacy; and the words "residuary legatee" shall in-
clude a person interested in the residue; and the
word "County" shall include any two or more Coun- County.
ties united for judicial purposes.

XXV. In citing this act in other acts of Parlia- Short title of
ment, and in legal instruments, and other proceed- this act.
ings, it shall be sufficient to use the expression,
"The County Courts Equity Extension Act."

XXVI. This act shall commence and take effect Commence-
on the Thirty-first day of December next after the ment of act.
passing hereof.

l acts of Parlia-
ounty Courts, or
or practice, shall
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SCHEDULE C.

FEEES TO BE RECEIVED BY THE CLERK, AND TO
BELONG TO AND TO BE PAID OVER TO THE
FEE FUND.

	£	s.	d.
Every claim filed.....	0	1	3
Every writ of summons, or other writ under the seal of the court	0	1	3
Every order or application for order	0	1	3
Every hearing.....	0	5	0
To be increased in the discretion of the judge to a sum not exceeding.....	0	10	0
Every oath administered in court	0	1	0
Every certificate under seal of court	0	1	3
Every sitting in taking an account, or other sit- tings.....	0	5	0

SCHEDULE D.

FEEES TO THE CLERK.

Receiving and filing claim	0	0	4
Every writ of summons, or other writ	0	1	0
Filing every separate paper	0	0	3
Preparing order	0	1	0
And for every folio over three.....	0	0	4
Taking any affidavit other than oath in open court	0	1	0
Every search	0	0	6

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EQUITY EXTENSION ACT.

	£	s.	d.
Recording every final order or decree	0	1	0
Other orders	0	0	6
Every certificate, not exceeding three folios	0	1	0
Every special writ, writ of execution, or other special document (per folio).....	0	0	8
Taxing costs	0	1	0
Every attendance on reference.....	0	5	0
Every verdict taken	0	2	6

FEES TO THE SHERIFF.

Every summons or order served, including return	0	2	6
Every jury sworn	0	2	6
Every execution or judgment order received.....	0	1	3
Return thereof, money made, or party arrested	0	1	3
Necessary mileage, actually travelled, per mile	0	0	4
And for other services, a sum to be fixed by order of the judge, not exceeding the present allow- ance by statute for similar services.			

SCHEDULE E.

ATTORNEY AND SOLICITOR.

Instructions to sue or defend	0	2	6
Drawing claim.....	0	2	6
Fee on every writ or order	0	1	3
Common affidavits.....	0	1	0
Common notice or appointment	0	1	0
Every necessary attendance.....	0	0	6
Special affidavits, and other special documents, per folio	0	0	8
Fee on common motions	0	1	3
Copy of every paper, when necessary, half the amount allowed for the original.			
Bill of costs	0	1	0
Postages actually paid.			

COUNSEL.

Fee on special applications, arguments, hearings, &c.	0	10	0
To be increased at the discretion of the judge to	1	5	0

ACT.

	£	s.	d.
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olios	0	1	0
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.....	0	1	0
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.....	0	2	6

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DIVISION COURT RULES.

WHEREAS by "The Upper Canada Division Courts Extension Act of 1853," it was enacted, That it should be lawful for the Governor-General of this Province to appoint and authorize five of the judges of the County Courts, in Upper Canada, to frame such general rules, as to them should seem expedient, for and concerning the practice and proceedings of the courts holden under the authority of "The Upper Canada Division Courts Act of 1850," and for the execution of the process of such courts, and in relation to any of the provisions of the said last mentioned act, or of "The Upper Canada Division Courts Extension Act of 1853," or of any act to be thereafter passed, as to which there might have arisen doubts, or might have been conflicting decisions in the said Division Courts, or as to which there might thereafter arise doubts; and also to frame forms for every proceeding, for which they should think it necessary that a form should be provided: and that all such rules, orders and forms as aforesaid should be certified to the Chief Justice of Upper Canada, under the hands of the County Judges so appointed and authorised, or of any three of them; and should be, by the said Chief Justice, submitted to the judges of the Superior Courts of Common Law at Toronto, or any four of them; and that such Judges of the Superior Courts (of whom the said Chief Justice, or the Chief Justice of the Court of Common Pleas at Toronto should be one) might approve or disallow, or alter or amend such rules or orders; and such of the rules as should be so approved by such judges of the Superior Courts, should have the same force and effect, as if the same had been

made and included in "The Upper Canada Division Courts Extension Act of 1853."

And whereas by virtue and in exercise of the power for that purpose given to the Governor of this Province by the said recited act, "The Upper Canada Division Courts Extension Act of 1853," the Honourable Samuel Bealey Harrison, Miles O'Reilly, Edward Clarke Campbell, George Malloch and James Robert Gowan (five of the judges of the County Courts in Upper Canada), were, on the twenty-fifth day of November, in the year of our Lord one thousand eight hundred and fifty-three, appointed by his Excellency the Administrator of the Government of this Province, to frame such general rules and orders as to them should seem expedient, for and concerning the practice and proceedings of the courts holden under the authority of the said Upper Canada Division Courts Act of 1850, and for the execution of the process of such courts, and in relation to any of the provisions of the said Act of 1850, or of the above in part recited act, as to which there might have arisen doubts, or might have been conflicting decisions in the said Division Courts, or as to which there might thereafter arise doubts, and also to frame forms for every proceeding, for which they should think it necessary that a form should be provided.

In pursuance of the powers thereby vested in us, we, the said Samuel Bealey Harrison, Miles O'Reilly, Edward Clarke Campbell, George Malloch and James Robert Gowan, have framed the following rules, orders and forms, and we do hereby certify the same to the Chief Justice of Upper Canada accordingly.

(Signed)

S. B. HARRISON,
M. O'REILLY,
E. C. CAMPBELL,
GEO. MALLOCH,
JAS. ROBT. GOWAN.

Toronto, 28th June, 1854.

RULES.

TIME OF OPERATION.

1. All rules of practice and forms, now in force in the several counties respectively in Upper Canada, shall, from and after the rules and forms hereinafter set forth come into operation, cease to be used in the several Division Courts of Upper Canada; and, in lieu thereof, the following shall be the rules of practice and forms adopted and used in the said courts: and with reference to forms not contained in the schedule to these rules appended, where practicable, the forms prescribed in the said schedule shall be used as guides in framing the same, until forms shall be provided by the commission under the authority aforesaid.

2. It is ordered, that the following rules and forms shall come into operation, and be in force, upon, from and after the first day of October, 1854.

CLERK'S DUTIES.

3. The clerk of every Division Court shall have an office at such place, within the division for which he is clerk, as the judge shall direct.

4. Two books (besides the account kept for the fee fund) shall be kept by each clerk, and the necessary entries be fairly made therein, namely, a book to be called "the procedure book," in which shall be entered a note of all summonses issued, and of all orders, judgments, decrees, warrants, executions and returns thereto, and of all other proceedings in every cause, and at every court; and a book to be called the "cash book," in which shall be entered an account of all suitors' moneys paid into and out of court; which books shall be according to the forms given in the schedule to these rules appended, and kept, as nearly as may be, in the manner shown in the forms.

See No. 64 of
schedule.

See No. 65 of
schedule.

5. The returns required to be made by clerks under the 110th section of the "Upper Canada Division Courts Act of 1850," shall be according to the form given in the schedule, and shall be made immediately after the 30th day of June, and 31st day of December, in each year, without any special order from the judge.

6. The list of unclaimed moneys required by the 13th section of the "Upper Canada Division Courts Extension Act of 1853," shall be according to the form given in the schedule; and a copy thereof shall, in the month of January in each year, be transmitted by the Clerk, together with the moneys therein mentioned, to the treasurer of the county.

7. The returns mentioned in the twelfth rule, shall be filed by the clerk in his office, and shall be open, without fee, to the inspection of any person interested, desirous of searching the same; and it shall be the duty of the clerk to examine such returns, and if found correct and complete, within ten days after the receipt thereof, to endorse thereon a memorandum in the following words:—"I have carefully examined the within return, and find the same to be full, true, and correct in every particular, to the best of my knowledge and belief. Dated the day of 18 , A. B., clerk." And if such returns be found by the clerk to be incorrect or incomplete, he shall forthwith notify the judge of the same, and of the particulars thereof.

8. The Clerk shall number every demand, claim, or account, in the order in which it is received by him: the numbering to show the standing of the suit, in respect to the whole number of suits entered in the court for the then current year.

9. The clerk shall annex to every summons (whether original, alias or pluries) the copy of account, demand or claim, entered with him according to the fourteenth rule; and to each copy of summons

to be served, shall be likewise annexed a copy of such account, demand or claim; and the clerk shall, without delay, issue the same for service.

10. Upon all warrants of commitment, the Clerk of the court issuing the same shall indorse, and show the amount of debt and costs, in gross, on each proceeding, or of fines and costs, up to the time of delivery to the bailiff for execution. See Nos. 56, 57 and 62 of schedule.

BAILIFF'S DUTIES.

11. Four days before the holding any court, the bailiff of that court shall deliver to the clerk a return of each summons issued or delivered to him, returnable at such court, and such return shall state the mode of service; and if a summons has not been served, the reason of such non-service shall be stated in writing on the back thereof.

12. Every bailiff, levying and receiving any money by virtue of any process, shall, within three days after the receipt thereof, pay over or transmit the same to the proper officer; and at every court, and at such other times as the judge shall require, the bailiff shall deliver to the clerk of the court a statement or return on oath, pursuant to the form in the schedule, of what shall have been done since his last return, of what shall have been done since his last return, under every warrant, precept and writ of execution, which he shall have been required to execute. See No. 68 of schedule.

13. The bailiff, or other officer, executing any warrant of commitment, shall, at the time of delivering the party arrested with the warrant to the jailer, indorse the number of miles, showing the amount of mileage, and also state, in writing, the actual day of the arrest.

DESCRIPTION OF PARTIES.

14. Every account, demand or claim, should show the names in full, and the present or last known places of abode of the parties, and must be written in a legible

See No. 6 of
schedule.

See amend-
ments, com-
mencing
with rule No.
33.

manner, and delivered to the clerk, at his office; provided that if the plaintiff is unacquainted with the defendant's christian name, the defendant may be described by his surname, or by his surname and the initial of his christian name, or by such name as he is generally known by: and the defendant may be so described in the summons, and the same may be taken to be as valid, as if the true christian name and surname had been stated in the summons; and all subsequent proceedings thereon may be taken in conformity with such description; or, when the defendant's true name is discovered, the proceedings may be amended accordingly, on such terms as the judge may think fit and direct.

PARTICULARS OF CLAIM.

See Nos. 3 &
4 of schedule.

15. The account, demand or claim shall, in every case admitting thereof, show the particulars in detail; and, in other cases, shall contain a statement of the particulars of the demand or claim, or the facts constituting the cause of action, in ordinary and concise language, and the sum or sums of money claimed in respect thereto: (*the forms in the schedule are given by way of illustration,*) Provided always, that, in all cases, the judge, in his discretion, and on such terms as he may think fit, may adjourn the hearing of the cause, for a statement of particulars, or further particulars.

See No. 5 of
schedule.

16. In all actions in Division Courts against officers and their sureties (under the 22nd section of the "Upper Canada Division Courts Act of 1850,") on the officer's *security covenant*, the particulars of the demand or claim shall be according to the form in the schedule. The summons and subsequent proceedings to be the same as in ordinary cases.

PARTICULARS OF JUDGMENT SUMMONS.

17. Where a party, having an unsatisfied judg-

ment, desires to proceed under the 91st section of the "Upper Canada Division Courts Act of 1850," he shall enter with the clerk a minute in writing according to the form in the schedule, or to the like effect, which shall be numbered in the order in which it shall be received; and, if he proceeds in a Division Court, other than the one in which the judgment was entered, he shall, with the minute, deliver to the clerk a certified copy of the judgment; and thereupon a summons, bearing the number of the minute, shall issue, which summons shall be according to the form in the schedule, or to the like effect.

See No. 54 of
schedule.

See No. 55 of
schedule.

SUMMONS.

18. The ordinary summons on demand, account or claim, shall be issued according to the form to these rules appended, in lieu of the form given in the schedule to the "Upper Canada Division Courts Act of 1850;" and the issuing thereof shall be the commencement of the suit: and every summons shall be numbered to correspond with the demand or claim, on which it issues, and dated as of the day on which the same was entered for suit, except in the case of *alias* or *pluries* summons, which shall be dated on the day on which it actually issues.

See No. 6 of
schedule.

19. Where the plaintiff sues under the 90th section of the "Upper Canada Division Courts Act of 1850," the proceeding shall be the same as in ordinary cases; but, in addition to the usual notice on the original summons to appear, there shall be added the following:—"The defendant is informed and cautioned, that A. B. (the beneficial plaintiff) only has power to discharge this suit, the subject matter of this suit having been seized under execution."

20. Leave to issue a summons under the 9th section of the "Upper Canada Division Courts Extension Act of 1853" may be granted at any time by the judge, on production of an affidavit in the form or to

See No. 1 & 2
of schedule.

the effect of the forms given in the schedule, or upon oath to the same effect, at any sittings of the court in which the action is to be brought; and where a summons issues by leave of the judge, no written order for such leave shall be necessary, but it shall be sufficient to insert in the summons "issued by leave of the judge."

SERVICE OF SUMMONS.

21. Where summons, or other process, is required to be served out of the division of the court from which the same issues, the papers may be transmitted by mail by the clerk issuing the same, (on receiving the necessary postage and fees) to the clerk of the division where the same is required to be served; and such last mentioned clerk shall forthwith deliver such summons, or other process, to the bailiff of his division to be executed; and such bailiff shall serve the same, and forthwith make return thereof to the clerk of his court, in the manner required by the eleventh rule, and such last mentioned clerk, on return made, shall forthwith transmit the papers, by mail, with the necessary affidavits of service, if effected, to the first mentioned clerk.

22. Every summons on account, demand or claim, must be served ten days before the holding of the court, at which it is returnable, (neither the day of service, nor the day of holding the court, to be counted,) except when otherwise directed by the Upper Canada Division Courts Acts; and where any summons has not been served, another summons, or successive summonses may be issued.

See Nos. 51 &
55 of schedule.

23. The summons under the 91st section of the "Upper Canada Division Courts Act of 1850" may be served by delivering to the defendant a copy thereof, and showing the original, if required; and shall be served ten days at least before the day on which the party is required to appear: provided

schedule, or upon
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always, that the service of such summons, at any time before the day appointed for the appearance of such party, may be deemed by the judge to be a good service, if it shall be proved to his satisfaction, that such party was about to remove out of the jurisdiction of the court.

ATTACHMENT.

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24. The form of affidavit for an attachment shall See No. 22 of schedule. be according to the form in the schedule, in lieu of the form given in the "Upper Canada Division Courts Act of 1850," schedule D.

25. In all cases where an attachment shall issue, For form of attachment, see 13 and 14 Vic. ch. 53, schedule E. (whether the suit be commenced by attachment in the first instance or not,) and the summons against the defendant shall not be personally served, the hearing or trial shall not take place until a month after the seizure under the attachment.

INSPECTION OF DOCUMENTS.

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26. When in any action, the defendant is desirous of inspecting any deed, bond or other instrument under seal, or any written contract, or other instrument in which he has an interest, and which shall be in the possession, power or control of the plaintiff, he may, within four days from the day of the service of the summons, give notice, by pre-paid post letter, or otherwise, that he desires to inspect such instrument, at any place to be appointed by the plaintiff, within the division in which the suit is brought; and the plaintiff shall appoint a place accordingly; and if the plaintiff shall neglect or refuse to appoint such place, or to allow the defendant or his agent to inspect it within three days from the day of receiving such notice, the judge may, in his discretion, on the day of hearing, adjourn the cause, for the purpose of such inspection, and make such order as to costs, as he shall think fit.

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WITHDRAWAL BY PLAINTIFF.

See 13 & 14
Vic. ch. 53,
sec. 48.

27. If the plaintiff be desirous of not proceeding in the cause, he shall serve a notice thereof on the defendant, in the manner directed in the "Upper Canada Division Courts Act of 1850," for the service of a notice of set-off; and after receipt of such notice, the defendant shall not be entitled to any further costs than those incurred up to the receipt of such notice, unless the judge shall otherwise order: and where a cause is not withdrawn until after the opening of the court, the hearing fee shall be charged, unless otherwise ordered.

ADJOURNMENT OF SUIT.

28. Where a cause is adjourned, no order of adjournment shall be served on either party, except by direction of the judge; and where the adjournment is opposed by either party, a hearing fee, as for a defended cause, shall be charged, and the usual costs of the day, in the discretion of the judge.

NOTICE OF DEFENCE.

See Nos. 8 &
of schedule.

29. Where the defendant is desirous to avail himself of the law of set-off, the statute of limitations, or any other defence requiring notice to the plaintiff, under the 43rd section of the "Upper Canada Division Courts Act of 1850," the forms of notice in the schedule may be used, to be served in the manner directed by the act.

30. With a view to save unnecessary expense in proof, the defendant (or plaintiff) shall be at liberty to give the opposite party a notice in writing, that he will admit, on the trial of the cause, any part of the claim or set-off, or any facts which would otherwise require proof; and after such notice given, the plaintiff or defendant shall not be allowed any expense incurred for the purpose of such proof: the notice to

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be according to the form in the schedule, or to the like effect, and served on the plaintiff or defendant, or left at his usual place of abode, at least six days before the trial or hearing.

See No. 19 of
schedule.

CONFESSION.

31. Every confession or acknowledgment of debt, taken before suit commenced, must show therein, or by statement thereto attached at the time of the taking thereof, the particulars of the claim or demand for which it is given, with the same fulness and certainty as would be required, if such claim or demand were sued on in the ordinary manner; and unless application for judgment on such confession or acknowledgment shall be made to the judge, within three calendar months next after the same is taken, or at the sittings of the court next after the expiration of such period, no execution shall be issued on the judgment rendered, without an affidavit by the plaintiff or his agent, that the sum confessed, or some and what part thereof remains justly due; and applications for judgment shall be made at a court holden for the division, wherein the confession or acknowledgment was taken.

PAYMENT INTO COURT.

32. When the plaintiff shall, in accordance with the 46th section of the "Upper Canada Division Courts Act of 1850," signify to the clerk his intention to proceed for the remainder of his demand, and such signification shall be given within three days after he received notice of the payment into court, but after the rising of the court at which the summons was returnable, the case shall be tried at the then next sittings of the court, and be put upon the list for that court in the regular order.

AMENDMENT.

33. Where a person, other than the defendant,

appears at the hearing, and admits that he is the person whom the plaintiff intended to charge, his name may be substituted for that of the defendant, if the plaintiff consents, and thereupon the cause shall proceed, as if such person had been originally named on the summons; and, if necessary, the hearing may be adjourned on such terms as the judge shall think fit; and the costs of the person originally named as defendant, shall be in the discretion of the judge.

34. Where a party sues, or is sued, in a representative character, but at the hearing, it appears, that he ought to have sued or been sued in his own right, the judge may, at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly; and the case shall then proceed in all respects, as to set-off and other matters, as if the proper description of the party had been given in the summons.

35. Where a party sues, or is sued in his own right, and it appears at the hearing, that he should have sued, in a representative character, the judge may, at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly; and the case shall then proceed in all respects, as to set-off and other matters, as if the proper description of the party had been given in the summons.

36. Where the name, or description of a *plaintiff* in the summons, is insufficient or incorrect, it may at the hearing be amended, at the instance of either party, by order of the judge, on such terms as he shall think fit: and the cause may then proceed, as to set-off and other matters, as if the name and description had been originally such as it appears, after the amendment has been made.

37. Where the name, or description of a *defendant* in the summons, is insufficient or incorrect, and the defendant appears and objects to the description, it

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may be amended at the instance of either party, by order of the judge, on such terms as he shall think fit; and the cause may proceed as to set-off and other matters, as if the name or description had been originally such as it appears, after the amendment has been made: but if no such objection is taken, the cause may proceed, and in the judgement and all subsequent proceedings founded thereon, the defendant shall be described in the same manner.

38. In actions by or against a husband, if the wife is improperly joined or omitted as a party, the summons, may, at the hearing, be amended at the instance of either party, by order of the judge, on such terms as he shall think fit; and the cause may proceed as to set-off and other matters, as if the proper person had been made party to the suit.

39. Where it appears at the hearing, that a *greater number* of persons have been made plaintiffs, than by law required, the name of the person improperly joined may, at the instance of either party, be struck out by order of the judge, on such terms as he shall think fit; and the cause may proceed as to set-off, and other matters, as if the proper party or parties only had been made plaintiffs.

40. Where it appears at the hearing, that a *less number* of persons have been made plaintiffs than by law required, the name of the omitted person may, at the instance of either party, be added by order of the judge, on such terms as he shall think fit; and the cause shall proceed as to set-off and other matters, and judgement shall be pronounced, as if the proper persons had been originally made parties; and unless the person, whose name is so added, shall assent thereto, either at the hearing or some adjournment thereof, personally, or by writing signed by him or his agent, proceedings on the judgment shall be stayed, until the court next after five clear days from the day of hearing; and if the person whose name is

added, shall at the hearing or an adjournment thereof, consent to become a plaintiff, (such consent being in writing signed by him or his agent) execution shall issue as the judge shall think fit; but if such party shall not consent to become a plaintiff in manner aforesaid, either at the hearing or at an adjournment thereof, judgment of nonsuit may be entered.

41. When it appears at the hearing, that more persons have been made defendants, than by law required, the name of the party improperly joined may, at the instance of either party, be struck out by order of the judge, on such terms as he shall think fit; and the cause shall proceed as to set-off and other matters, as if the party or parties liable had been sued, and judgment shall be given for the party improperly joined.

42. Where several persons are made defendants, and all of them have not been served, the name or names of the defendant or defendants, who have not been served, may at the instance of either party, be struck out by order of the judge, on such terms as he shall think fit; and the cause shall then proceed, in all respects, as to set-off and other matters, as if all the defendants had been served.

43. Where, at the hearing, a variance appears between the evidence and the matters stated in any of the proceedings in the Division Court, such proceedings may, at the discretion of the judge, and on such terms as he shall think fit, be amended.

44. In cases of amendment, a corresponding amendment shall be made, in the presence of the judge, in the proceedings of the court, antecedent to such amendment; and the subsequent proceedings shall be in conformity therewith: and all amendments shall be made in open court, and during the sitting of the court.

45. The judge may, in any case, refuse to set aside, or to hold void, any of the proceedings, on

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AFFIDAVITS.

46. Every affidavit, in any proceeding in the court, must be entitled in the cause, (if a cause has been commenced) stating the christian and surname of the parties as in the summons, and also that of the deponent, and his place of abode and addition; and if an affidavit be sworn by an illiterate person, the jurat must contain a certificate of the clerk or commissioner administering the oath, that the affidavit was read in his presence to the party making the same, and that such party seemed perfectly to understand it; and there shall be no erasure nor interlineation in any jurat: but the judge shall not be bound to reject, as insufficient, any affidavit not complying with the above requisites, or any of them, but may, in his discretion, receive the same.

POSTAGE.

47. Postage necessary for the transmission of any process, order, notice, or other matter, by the clerk or judge, shall be paid in the first instance, by the party on whose behalf the proceeding is required, and shall be costs in the cause.

WITNESS FEES.

48. On application made to him in that behalf, the judge shall determine, what number of witnesses ^{See No. 14 of schedule.} shall be allowed on taxation of costs; the allowance for whose attendance shall be according to the scale in the schedule, unless otherwise ordered; but in no case to exceed such scale, except the witness attends under *subpoena* from the superior courts; and, before allowing disbursements to witnesses, the clerk shall

be satisfied that the witnesses attended, and that the claim for fees is just.

ABATEMENT.

49. Where one or more of several plaintiffs or defendants shall die before judgment, the suit shall not abate, if the cause of action survive to, or against such parties.

50. Where one or more of several plaintiffs or defendants shall die after judgment, proceedings thereon may be taken by the survivors or survivor, without leave of court.

JUDGMENT.

See Nos. 16, 17, 18, 27, 31, 33, 34, 35, 36, 37, 38, 39, 40, 44, 47, 48, 50, 60, 61 and 64 of schedule.

51. Every judgment, order, and decree of the court, shall be entered by the clerk in the procedure book, according to the forms given in the schedule, or to the like effect; and when any order is made for the payment of any debt, damages, costs, or other sum of money, the same shall be payable at the office of the clerk of the court forthwith, or at such periods as the court shall order.

NEW TRIAL.

See No. 19 of schedule.

52. Application for new trial may be made *viva voce*, and determined on the day of hearing, if both parties be present; but if made when both parties are not present, it shall be in writing, and show briefly the grounds on which it is made, (which grounds, if matters of fact requiring proof, shall be supported by affidavit,) and a copy thereof, and of every such affidavit, shall be served by the party making the application, on the opposite party or his agent, or left at his usual place of abode or business, if within the division,—or if without the division, then with the clerk, who shall transmit the same forthwith to the opposite party; and the application and affidavits (if any) together with an affidavit of

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the service thereof, shall be delivered to the clerk, within fourteen days after the day of trial, to be by him, on receiving the fees and necessary postage, transmitted to the judge, with a copy of the original claim, and other papers necessary to the proper understanding of the case, which delivery to the clerk shall operate as a stay of proceedings, until the judge's final decision on the application is communicated to the clerk; and the judge after receiving such papers shall delay for six days deciding upon the application, to enable the opposite party to answer the same in writing or by affidavit, if facts stated by the applicant in his affidavit are disputed; and the decision or judgment of the judge shall be transmitted to the clerk by mail, who shall, if a new trial be ordered, notify the parties thereof by mail or otherwise, and the suit shall be tried at the next sittings of the court, unless the judge shall otherwise order; and if the application be refused, or if the party applying shall fail to comply with the terms imposed by the judge, the proceedings in the suit shall be continued as if no such application had been made; provided always, that the judge, instead of deciding upon the application after the end of the six days aforesaid, may, in his discretion, decide to hear the parties on the matter of such application, at the next sittings of the court, or at such other time and place as he may appoint, which decision shall be sent to the clerk, and be by him communicated to the parties in like manner as aforesaid.

INTERPLEADER.

53. When any claim shall be made to, or in respect to, any goods or chattels, property, or security, taken in execution, or attached under the process of any Division Courts or the proceeds or value thereof, by any landlord for rent, or by any person, not being the party against whom such process has issued and

summonses have been issued on the application of the officer, charged with the execution of such process, such summonses shall be served in such time and manner, as by the "Upper Canada Division Courts Act of 1850" is directed for service of an original summons to appear; and the claimant shall be deemed the plaintiff, and the execution creditor the defendant: and the claimant shall, five clear days before the day on which the summonses are returnable, leave at the office of the clerk of the court, a particular of any goods or chattels, property or security, alleged to be the property of the claimant, and the grounds of his claim, set forth in ordinary and concise language; or, in case of a claim for rent, the amount thereof, for what period, in respect to what premises the same is claimed to be due, and the terms of holding. And any money paid into court shall be retained by the clerk, until the claim shall be adjudicated upon; provided that, by consent, an interpleader claim may be tried; although the above rule may not have been complied with: and the summonses, the particulars, and the order thereon shall be according to the forms in the schedule, or to the like effect.

See Nos. 28,
29, 30, 31 & 32
of schedule.

54. Where the claim to any goods or chattels, property or security taken in execution or attached, or the proceeds or value thereof shall be dismissed, the costs of the bailiff shall be retained by him out of the amount levied, unless the judge shall otherwise order.

WARRANT OF COMMITMENT.

55. Warrants for commitment, whenever issued, shall bear date on the day on which the order for commitment was entered in the procedure book, and shall continue in force for three calendar months from such date, and no longer; but no order for commitment shall be drawn up or served.

See Nos. 53,
57 and 62 of
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PROCEEDINGS AGAINST EXECUTORS AND ADMINISTRATORS.

56. A party suing an executor or administrator, See Nos. 42 and 43 of schedule. may charge in the summons, in the form in the schedule, that the defendant has assets, and has wasted them.

57. In all cases, if the court shall be of opinion that the defendant has wasted the assets, the judgment shall be, that the debt or damages and costs shall be levied *de bonis testatoris si d'c., et, si non, de bonis propriis*; and the non-payment of the amount of the demand immediately, on the court finding such demand to be correct, and that the defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount with which he is so chargeable. See No. 34 of schedule.

58. Where an executor or administrator denies his representative character, or alleges a release to himself of the demand, whether he insists on any other ground of defence or not, and the judgment of the court is in favour of the plaintiff, it shall be, that the amount found to be due, and costs, shall be levied *de bonis testatoris si d'c. et, si non, de bonis propriis*. See No. 35 of schedule.

59. Where an executor or administrator admits his representative character, and only denies the demand, if the plaintiff prove it, the judgment shall be, that the demand and costs shall be levied *de bonis testatoris si d'c., et, si non, as to costs, de bonis propriis*. See No. 36 of schedule.

60. Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment shall be, to levy the costs of proving the demand *de bonis testatoris si d'c. et, si non, de bonis propriis*; and as to the whole or residue of the demand, judgment of assets *quan-* See No. 37 of schedule.

do acciderint; and the plaintiff shall pay the defendant's costs of proving the administration of assets.

See No. 38 of
schedule.

61. Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the defendant does *not* prove the administration alleged, the judgment shall be, to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris si &c., et, si non* as to the costs, *de bonis propriis*; and as to the residue of the demand, if any, judgment of assets, *quando acciderint*.

See No. 39 of
schedule.

62. Where the defendant admits his representative character, and the plaintiff's demand, but alleges a total or partial administration of the assets, and proves the administration alleged, the judgment shall be for assets *quando acciderint*, and the plaintiff shall pay the defendant's costs of proving the administration of assets.

See No. 40 of
schedule.

63. Where a defendant admits his representative character, and the plaintiff's demand, but alleges a total or partial administration of the assets, but does not prove the administration alleged, the judgment shall be, to levy the amount of the demand, if so much assets is shown to have come to the defendant's hands, or so much as is shown to have come to them, and costs, *de bonis testatoris si &c., et, si non*, as to the costs, *de bonis propriis*; and as to the residue of the demand, if any, judgment of assets, *quando acciderint*.

See No. 41 of
schedule.

64. Where judgment has been given against an executor or administrator, that the amount be levied upon assets of the deceased, *quando acciderint*, the plaintiff, or his personal representative, may issue a summons in the form in the schedule; and if it shall appear, that assets have come to the hands of the

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levied *de bonis testatoris si d'c., et, si non*, as to the
costs, *de bonis propriis*; provided, that it shall be See No. 44 of
schedule.
competent for the party applying to charge in the
summons that the executor or administrator has
wasted the assets of the testator or intestate, in the
same manner as in rule 56; and the provisions of
rule 57 shall apply to such enquiry: and the court
may, if it appears that the party charged has wasted
the assets, direct a levy to be made, as to the debt
and costs, *de bonis testatoris si d'c., et, si non*, *de
bonis propriis*.

65. Where a defendant admits his representative
character, and the plaintiff's demand, and that he is
chargeable with any sum in respect of assets, he shall
pay such sum into court, subject to the rules relating
to payment into court in other cases.

66. In actions against executors and administra-
tors, for which provision is not heretofore specially
made, if the defendant fails as to any of his defences,
the judgment shall be for the plaintiff, as to his costs
of disproving such defence, and such costs shall be
levied *de bonis testatoris si d'c., et, si non*, *de bonis
propriis*.

REVIVING JUDGMENTS.

67. No warrant of execution, nor summons for
commitment shall, without leave of the judge, issue
on a judgment more than a year old, unless an instal-
ment has been paid on such judgment, or a warrant
of execution against the goods, or a warrant of com-
mitment has been issued within a year from the time
of obtaining such judgment; but no notice to the
defendant, previous to applying for such leave, shall
be necessary.

68. The mode of reviving a judgment, under the
73rd section of the "Upper Canada Division Courts
See Nos. 45,
46, 47, 48, 50
and 51 of
schedule.

Act of 1850," shall be by summons on the judgment, in the nature of a *sci. fa.*, the proceedings on which shall be the same as in ordinary cases.

GENERAL RULE.

69. Where the excess is abandoned, it must be done, in the first instance, on the claim or set-off.

Claims by husbands in their own right may be joined with claims, in respect to which the wife must be joined as a party.

Where the court gives leave to take any proceeding, such leave shall be minuted in the procedure book, but it shall not be necessary to draw up any order.

In cases where the hearing is by jury, the judge has the same power to non-suit, as in ordinary cases.

Under the 9th section of the "Upper Canada Division Courts Extension Act of 1853," the leave to be granted for issuing a summons shall be by the judge, before whom the action is to be tried under the order; but no leave shall be given to bring a suit in a division, other than one adjacent to the division in which the party to be sued resides; but the division may be in the same, or an adjoining county.

After an award is made and filed, (with an affidavit of the due execution thereof) under the 4th section of the "Upper Canada Division Courts Extension Act of 1853," the duty of the clerk is, forthwith to enter the judgment on such award, and issue execution thereon, at the request of the party entitled to such execution, without any order from the judge.

The court has no jurisdiction to try an action upon a note of hand, whether brought by the payee, or any other person, the consideration, or any part of the consideration of which, was any gambling debt, or for spirituous or malt liquors, or other like liquors, drunk in a tavern or ale-house.

See Nos. 25
and 26 of
schedule.

INTERPRETATION.

70. In construing these rules and forms, the word "person" or "party" shall be understood to mean a body politic or corporate, as well as an individual; and the word "executor" or "executrix" or both (when used) shall be held to embrace and mean "of the last will and testament," and extend to parties acting as such of their own wrong; and the word "administrator" or "administratrix," or both (when used) shall be held to embrace and express "of the goods and chattels, rights and credits, which were, &c.;" and every word importing the singular number shall, where necessary to give full effect to the rules and forms herein, be understood to mean several persons or things, as well as one person or thing; and every word importing the masculine gender shall, where necessary, be understood to mean a female, as well as a male; and the words "on oath" shall be understood to mean *vivâ voce*, or by affidavit, or affirmation; and the words "judge" and "clerk," respectively (when used) shall be taken to extend and be applied to the deputy judge or deputy clerk (as the case may be or require); and the words "plaintiff" and "defendant," respectively, shall be mutually transposed, where necessary, for the proper application and construction of any of these rules or the forms herewith, or for giving effect thereto; and the word "county" shall include any two or more counties united for judicial purposes; and in any form or proceeding, the words "united counties," shall and may be introduced according to law, and circumstances rendering the same necessary.

SCHEDULE OF FORMS.

See rule No. 20.

1. *Affidavit for leave to sue a party residing in an adjoining division.*

In the Division Court for the County of .

A. B., of , yeoman, maketh oath and saith, that he (or H. F., of , yeoman, agent for A. B., of, &c., maketh oath and saith, that the said A. B.) hath a cause of action against C. D. of , yeoman, who resides in the Division of the County of , that this deponent (or the said A. B.) resides in the Division of the County of ; that the distance from this deponent's residence (or from the said A. B.'s residence) to the place where this Court is held is about miles, and to the place where the Court is held in the Division of the County of is about miles; that the distance from the said C. D.'s residence to the place where the court is held in the Division where he resides is about miles, and to the place where this court is held about miles; that the said Division and this Division adjoin each other, and that it will be more easy and inexpensive for the parties to have this cause tried in this Division, than elsewhere.

Sworn, &c.

A. B. (or H. F.)

See rule No. 22. *Affidavit for leave to sue in a division adjoining one in which debtors reside, where there are several.*

In the Division Court of the County of .

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that he (or E. F. of , agent for A. B. of, &c.,
maketh oath and saith, that the said A. B.) hath a
cause of action respectively against each of the debtors
named in the first column of the schedule on this
affidavit endorsed; that the columns in the said
schedule numbered respectively 1st, 2nd, 3rd, 4th,
5th, 6th, and 7th, are truly and correctly filled up,
according to the best of this deponent's knowledge
and belief; that the Divisions named in the second
and third columns of the said schedule, opposite each
debtor's name, respectively, adjoin each other; and
that it will be more easy and inexpensive for the
parties to have the said causes respectively tried in
this Division than elsewhere.

Sworn, &c.

A. B. (or E. F.)

Schedule referred to in the within affidavit.

COLUMNS.

1st.	2nd.	3rds	4th.	5th.	6th.	7th.
Debtor's name, place of residence, and addition.	Division in which suit is to be commenced.	Division in which debtor resides.	Number of miles from creditor's residence to where Court held in division in which debtor resides.	Number of miles from creditor's residence to where Court held in division in which suit to be commenced.	Number of miles from debtor's residence to where Court held in division where suit to be commenced.	Number of miles from debtor's residence to where Court held in division where debtor resides.
John Doe, of Sheffield, of the United Counties of Westworth and Halton, yeoman.	Division No. 3 in the United Counties of Lincoln and Welland.	Division No. 1 in the United Counties of Westworth and Halton.	22	1	5	17
Richard Roe, of the County of Shire, Esquire.	Division No. 3 of the County of Shire.	Division No. 8.	28	11	18	4

A. B. (or E. F.)

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3. *Particulars in cases of contract.*

A. B. of _____ claims of C. D. of _____ the sum ^{See Rule No. 15.} _____ of _____ [the amount of the following account or the amount of the note (a copy of which is underwritten) together with interest thereon:] or for that the said C. D. promised (here state shortly the promise) which undertaking the said C. D. hath not performed:—or, for that the said C. D. by deed under his seal, dated, _____, covenanted to, &c., and that the said C. D. hath broken said covenant, whereby the said A. B. hath sustained damages to the amount aforesaid.]

A. B.

4. *Particulars in cases of tort.*

A. B. of _____ states that C. D. of _____ did, on ^{See Rule No. 15.} _____ or about the _____ day of _____, A. D. 18____, at the township of _____, unlawfully [take and convert one cow and one calf, the property of the said A. B.: or break and injure a waggon of the said A. B.: or keep a dog, which the said C. D. knew was accustomed to bite mankind or sheep, and that the said dog did, on the day and at the place aforesaid, bite and lacerate the arm of the said A. B., or kill, or injure two sheep, the property of the said A. B.: or assault and beat the said A. B., (or, as the case may be, stating the tort sued for in concise language);] The said A. B. hath sustained thereby damages to the amount of _____, and claims the same of the said C. D.

A. B.

5. *Particulars in actions against a clerk or bailiff, and his sureties.*

A. B. of _____ claims of C. D., clerk (or bailiff,) ^{See Rule No. 16.} _____ of the _____ Division Court for the County of _____,

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

A. B.

6. *Summons to appear.*

In the Division Court for the County of
No. , A. D., 18 .

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

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

See Rule Nos
9, 14, 18, 21,
and 22.

You are hereby [as before (*or*, as often before) you were] summoned to be and appear, at the sittings of this court to be holden at , in the township of , in the said county of , on the day of , A. D. 18 , at the hour of in the forenoon, to answer the above-named plaintiff in an action on contract, (*or*, in an action for tort) for the causes set forth in the plaintiff's statement of claim hereunto annexed; and, in the

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event of your not so appearing, the plaintiff may proceed to obtain judgment against you by default.

Dated the day of , A. D. 18 .

By the court.

_____, Clerk.

Claim _____

Costs, exclusive of mileage, _____.

NOTICE.

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

7. Affidavit of service of summons.

In the Division Court for the County of .

Between A. B., plaintiff;

and

C. D., defendant.

E. F., bailiff of the Division Court of the said County of (*or of the said court*) maketh oath and saith, that he did, on the day of , 18 , duly serve the said C. D. with a true copy of the annexed summons and statement of claim, by delivering the same personally to the said C. D., (or if the service was not personal, state how and on

whom served) and that he necessarily travelled —
miles to make such service.

E. F.

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

Or,

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

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

E. F., bailiff.

Sworn, &c.

8. Notice of set-off.

See Rule No.
29.

In the Division Court for the County of
Between A. B., plaintiff;
and
C. D., defendant.

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

Dated this day of , 18 .

C. D.

To A. B., the plaintiff.

9. *Notice of defence under statute.*See Rule No.
29.

In the Division Court for the County of .
Between A. B., plaintiff;
and
C. D., defendant.

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

Dated this day of C. D.

To A. B., the plaintiff.

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

10. *Notice of admission to save unnecessary expense in proof.* See Rule No.
30.

In the Division Court for the County of .
Between A. B., plaintiff;
and
C. D., defendant.

The plaintiff is required to take notice, that the defendant will admit, on the trial of this cause, the first, second and third items of the plaintiff's particulars to be correct [or, the signing and endorsement of the promissory note sued upon (or, as the case may be.)]

Dated the day of , A. D. 18 .
C. D.

N. B.—This notice may be embodied with notice of set-off, or of other defence.

11. *Confession of debt after suit commenced.*

In the Division Court for the County of
 Between A. B., plaintiff;
 and
 C. D., defendant.

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

C. D.

Dated the day of , 18 .
 Witness , clerk (or bailiff.)

12. *Affidavit of execution of confession.*

In the Division Court for the County of
 Between A. B., plaintiff;
 and
 C. D., defendant.

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

E. F.

Sworn before me, at , on
 the day of 18

Clerk, &c., or a Commissioner
 in B. R. in and for the said
 _____.

13. *Summons to witness.*

In the Division Court for the County of .
Between A. B., plaintiff;
and
C. D., defendant.

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

Given under the seal of the court, this day of 18 .

_____,
Clerk.

To_____.

14. *Allowance to witnesses.*

Attendance per day in court.....	2s. 6d.	See Rule No. 48.
Travelling expenses, per mile, one way ...	0s. 6d.	

15. *Summons to jurors.*

In the Division Court for the County of .

You are hereby summoned to appear and serve as a juror in this court, to be holden at on , at the hour of . Herein fail not at your peril.

Given under the seal of the court, this day of , 18

_____,
Clerk.

To_____.



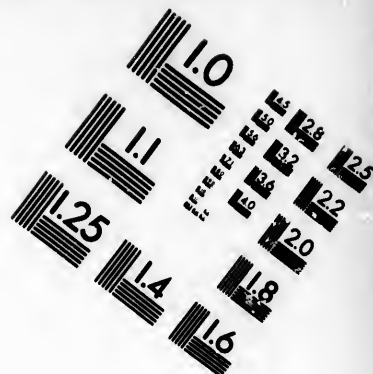
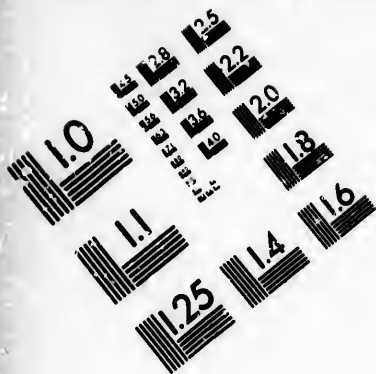
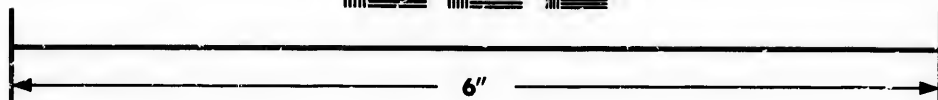
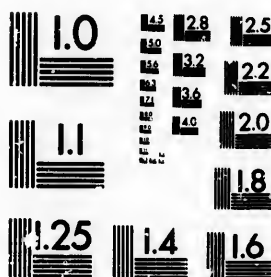


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(716) 872-4503



See Rule No. 16. *Minute in Procedure Book of judgment of nonsuit, or dismissal for want of prosecution.*
51.

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

See Rule No. 17. *Minute in Procedure Book of judgment against defendant for debt or damages.*
51.

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

See Rule No. 18. *Minute in Procedure Book of judgment for defendant.*
51.

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

19. *Order for new trial.*

See Rule No. In the Division Court for the County of .
52. Between A. B., plaintiff;
and
C. D., defendant.

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

—————, Judge.
Dated , 18 .

20. *Execution against the goods of defendant.*

In the Division Court for the County of .

No. , A. D., 18 .

Between A. B., plaintiff ;

and

C. D., defendant.

Whereas, at the sittings of the said court, holden on , at , by the judgment of the said court, the said plaintiff recovered against the said defendant the sum of for a certain debt (*or* for certain damages) with for costs, which said debt (*or* damages) and costs were ordered to be paid by the said defendant, at a day now past; and whereas the defendant has not made such payment; these are therefore [as before, (*or* as often before)] to command you forthwith to make and levy by distress and sale of the goods and chattels of the said defendant, wheresoever the same may be found (except the wearing apparel and bedding of the said defendant, or his family, and the tools or implements of his trade, if any, to the value of £5) the said debt (*or* damages) and costs, amounting together to the sum of and your lawful fees on the execution of this precept, and also, and if necessary for that purpose, to seize and take any money, or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said defendant, which may be there found, or such part thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same, so that you may have the said sum of , within thirty days after the date hereof, and pay the same over to the clerk of the court for the said plaintiff.

Given under the seal of the court, this day
of 18 .

To _____,

_____, Clerk.

Bailiff of the said court.

Judgment .

Execution _____.

Paid _____.

Levy .

21. *Execution against goods of plaintiff.*

In the Division Court for the County of .
No. , A. D. 18 .

Between A. B., plaintiff;

and

C. D., defendant.

Whereas at the sittings of this court, holden on
 , at , judgment was given for the defend-
dant, and for the sum of costs (*or*, for the sum
of on set-off, and for costs; *or*, judgment
of dismissal was given, and for the sum of for
defendant's trouble, and for costs) to be paid
at a day now past; and whereas the plaintiff has not
paid the same, these are therefore to command you
forthwith to make and levy, by distress and sale of
the goods and chattels of the plaintiff, wheresoever
the same may be found (except the wearing apparel
and bedding of the said plaintiff or his family, and
the tools and implements of his trade, if any, to the
value of £5) the said sum of , or the said
sum of and , amounting together to the
sum of , and your lawful fees on the execution
of this precept, and also, and if necessary for that
purpose, to seize and take any money, or bank notes,

day
Clerk.

and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money of the said plaintiff, which may be found, or such part thereof as may be sufficient for the satisfying of this execution, and the costs of executing the same, so that you may have the said sum of _____ within thirty days after the date hereof, and pay the same over to the clerk of the court for the said defendant.

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

Clerk.

ntiff.
nty of

To _____,
Bailiff of the said court.

Judgment _____.
Execution _____.
Paid _____.
Levy _____.

22. Affidavit for attachment.

If made after suit commenced, insert style of court and cause.

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A. B. of _____, in the County of _____, (or E. F. of, &c., agent for A. B. of, &c.,) maketh^{See Rule No. 24.} saith (or, being one of the people called Quakers, &c. affirmeth,) and saith, that C. D. of (or late of) _____, in the county of _____, is justly and truly indebted to this deponent (or to the said A. B.) in the sum of _____ [for goods sold and delivered by this deponent (or by the said A. B.) to the said C. D., at his request, (or other cause of action, stating the same in ordinary and concise language)], and this deponent further saith, that he hath good reason to believe, and doth verily believe, that the said C. D. hath absconded from this Province, leaving personal property liable to seizure under execution for debt in the county (or united counties) of _____ [or, hath

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of Upper Canada
ties of to
or, from Upper to
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f his said debt [or
united counties of
or as the case may
and this deponent
ot; and this depo-
it is not made, nor
from any vexatious

A. B. (or E. F.)

pecial character, as
stated in the affida-
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ishable property.

he County of

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xc., and G. G. of
and severally held
, the above-named
of lawful money of
endant, his certain
s and assigns, for
be made, we bind
nd administrators,

and each and every of us binds himself, his heirs,
executors and administrators, firmly by these presents.

Sealed with our respective seals.

Dated this day of A. D. 18 .

Whereas the above named plaintiff hath sued out
of the above named court (or from a justice of the
peace) a warrant of attachment against the goods and
chattels of the above named defendant, and hath re-
quested that certain perishable property, to wit (spe-
cify property) belonging to the above-named defen-
dant, may be seized, and forthwith exposed and sold,
under and by virtue of the said warrant of attachment
[or whereas certain perishable property, to wit, ,
belonging to the above-named defendant, hath been
seized under and by virtue of a warrant of attachment,
issued out of the above-named court (or by a justice
of the peace) in the above-named cause, and hath
been duly appraised and valued at the sum of ,
and is now in the hands of the clerk of the said court;
and whereas the said above-named plaintiff hath re-
quested the said clerk to expose and sell the said
goods and chattels as perishable property] according
to the form of the statute in that behalf.

Now the condition of this obligation is such, that
if the said above-named plaintiff, his heirs, executors or
administrators, do repay to the said above-named
defendant, his executors or administrators, the value
of the said goods and chattels, together with all costs
and damages that may be incurred in consequence
of the seizure and sale thereof, in case judgment be not
obtained by the plaintiff, according to the true intent
of the 70th section of the "Upper Canada Division
Courts Act of 1850," then this obligation to be void,
else to remain in full force and virtue.

Sealed and delivered in
presence of

}

A. B. [L.S.]
E. F. [L.S.]
G. G. [L.S.]

24. *Bond on supersedeas to warrant of attachment.*

In the Division Court for the County of
Between A. B., plaintiff;
 and
 C. D., defendant.

Know all men by these presents, that we, C. D., of (insert place of residence and addition) the above-named defendant, E. F. of, &c., and G. G. of, &c., are, and each of us is, jointly and severally held and firmly bound to A. B. of, &c., the above-named plaintiff, in the sum of of lawful money of Canada, to be paid to the said plaintiff, his certain attorney, executors, administrators and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each and every of us binds himself, his heirs, executors and administrators firmly by these presents.

Sealed with our respective seals.

Dated the day of , 18 .

Whereas the above-named plaintiff hath sued out of the above-named court (or from a justice of the peace) a warrant of attachment against the goods and chattels of the above-named defendant, for the sum of , and under and by virtue of the said warrant of attachment, certain goods and chattels of the said defendant, to wit: (specify property seized) have been seized and attached; and the said defendant desires that the said warrant be superseded, and the said property, so attached, restored to him, under the provisions of the 67th clause of the "Upper Canada Division Courts Act of 1850."

Now the condition of this obligation is such, that if the said defendant, his heirs, executors or administrators, do and shall, in the event of the claim in the said cause being proved, and judgment being recovered thereon, as in other cases, where proceed-

ings have been commenced against the person, pay the same, or pay the value of the said property, so taken and seized as aforesaid, to the said plaintiff, his executors or administrators, or shall produce such property, whenever thereto required, to satisfy such judgment; then this obligation to be void, else to remain in full force and virtue.

Scaled and delivered in
presence of

}

C. D. [L.S.]
E. F. [L.S.]
G. G. [L.S.]

25. Order of reference.

In the

Division Court for the County of

Between A. B., plaintiff;

and

C. D., defendant.

See Rule No.
69.

By consent of the above-named plaintiff and defendant (or, agents, if so,) given in open court (or, produced in writing to the court), it is ordered, that all matters in difference in this cause (and if consented to, add "and all other matters within the jurisdiction of this court in difference between the said parties") be referred to the award of _____, so as said award be made in writing, ready to be delivered to the parties entitled to the same, on or before the day of _____; and that the said award may be entered as the judgment in this cause (add any special terms as) "the costs of reference to be in the discretion of the arbitrator," (or) "the costs of the action to abide the event of the suit."

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

Clerk.

See Rule No.
60.

26. *Award.*

The award should be endorsed on the order in the following form.

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

_____,
Arbitrator.

Dated this _____ day of _____, 18 _____.

See Rule No.
51.

27. *Minute in Procedure Book of judgment on award.*

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

See Rule No.
53.

28. *Summons to plaintiff on interpleader.*

In the _____ Division Court for the County of _____
Between A. B., plaintiff;
and
C. D., defendant.

Whereas _____ of _____ hath made a claim to certain goods, [*or to certain securities or money (as the case may be,)] viz. : (here specify) which have been seized and taken in execution (or attached) under and by virtue of process, issuing out of this court, in this action (or, by a justice of the peace); you are therefore hereby summoned to be and appear before the judge of the said court, at _____ on _____,*

at the hour of _____, when the said claim will be adjudicated upon, and such order made thereupon as to the court shall seem fit.

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

_____, Clerk.

To _____,

The above-named plaintiff.

N. B.—The claimant is called upon to give particulars of his claim, which you may inspect on application at the office of the clerk of the court five days before the day of hearing.

_____, Arbitrator.

29. *Interpleader summons to claimant.*

In the _____ Division Court for the County of _____
Between A. B., plaintiff;
and _____
C. D., defendant.

See Rule No. 53.

You are hereby summoned and required to appear at a court, to be holden on _____ at the hour of _____, at _____, touching a claim made by you to certain goods and chattels [or moneys, &c., or securities (as the case may be), viz: (here specify) seized and taken in execution (or attached) under process issued out of this court in this action, (or by a justice of the peace,) and in default of your then establishing such claim, the said goods and chattels will be sold, (or, the said moneys, &c., paid and delivered over) according to the exigency of the said process: and take notice, that you are required, five days before the said day of _____, to leave at the clerk's office a particular of the goods and chattels (or as the case may be) so claimed by you, and the grounds of your claim.

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

_____,
Clerk.

To _____,
Of _____, (the claimant.)

30. *Particulars of claim on interpleader.*

See Rule No.
53.

In the _____ Division Court for the County of _____
Between A. B., plaintiff;
and
C. D., defendant.

To whom it may concern.

E. F. of _____ claims as his property the following goods and chattels (or moneys, &c.) seized and taken in execution, (or attached) as it is alleged, namely, (specify the goods and chattels, or chattels or moneys, &c. claimed) and the grounds of claim are (set forth in ordinary language the particulars on which the claim is grounded); and this the said E. F. will maintain and prove.

E. F.

Dated this _____ day of _____, 18 .

N. B.—If any action for the seizure has been commenced, state in what court, and how the action stands.

31. *Minute in Procedure Book of adjudication on interpleader.*

See Rules
Nos. 51 & 53.

Adjudged, that the goods [or the goods, chattels and moneys, or proceeds of the goods, &c. (as the case may be)] mentioned in the interpleader summons [if only for a part of the goods, &c., add the words "hereafter mentioned, that is to say (here enumerate them)"] are (or are not) the property of E. F. (the claimant), or that rent to the amount of _____ is due

to E. F. (the claimant); ordered that _____, the costs of this proceeding be paid by (here insert such order as to the costs or the subject in dispute, if any, as the judge shall have made) in _____ days.

32. *Execution against the goods of claimant on interpleader.*

See Rule No. 53.

In the _____ Division Court for the county of _____
Between A. B., plaintiff;
and
C. D., defendant,
E. F., claimant.

Whereas at the sittings of the said Court, holden on _____ at _____ by the judgment of the said court, the said plaintiff recovered against the said defendant the sum of _____ for a certain debt, before that time due and owing to the said plaintiff (or for certain damages sustained by the said plaintiff) and costs of suit, which said debt (or damages) and costs were ordered to be paid by the said defendant at a day now past; and whereas the said sum and costs not being paid, an execution issued against the goods of the said defendant, under which certain goods and chattels were seized [if the interpleader was in respect to goods attached, omit all the preceding after the word "claimant" and say in lieu thereof as follows—"whereas a writ of attachment was sued out of this court (or issued by a justice of the peace) under which certain goods and chattels, &c. were seized and attached"] to which the above-named claimant made claim, and which claim came on to be heard and decided, upon interpleader summons, at a sitting of this court held on _____ at _____, and at such last mentioned court it was adjudged, touching the said claim, that the goods [(or the goods, chattels and moneys, or proceeds of the goods, &c. (as the case may be))] mentioned in the interpleader summons

[if only for a part of the goods, &c., add the words—
 “hereinafter mentioned, that is to say (here enumerate them)] were not the property of E. F. (the claimant); and it was ordered that the sum of _____ the costs of that proceeding should be paid by the said claimant to the clerk in _____ days, for the use of the said plaintiff; and whereas the said sum of _____ has not been paid, pursuant to the said order: these are therefore to require you to make and levy by distress and sale of the goods and chattels of the said claimant, wheresoever the same may be found (except the wearing apparel and bedding of the said claimant or his family, and the tools or implements of his trade, if any, to the value of £5) the said sum of _____, and your lawful fees on the execution of this precept; and also, if necessary for that purpose, to seize and take any money, or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money of the said claimant, which may be found, or such part thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same, so that you may have the said sum of _____ within thirty days after the date hereof, and pay the same over to the clerk of the court for the said plaintiff.

Given under the seal of the said court this
 day of _____, 18 ____.

_____, Clerk.

To _____,

Bailiff of the said court.

Costs,

Execution, _____

Paid, _____

Levy _____.

See Rule No.
 51.

33. *Minute in Procedure Book of ordinary judgment
 against executor or administrator.*

Judgment for the plaintiff for _____ and _____

, add the words—
say (here enumerate
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said order: these
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uting the same, so
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he said plaintiff.

court this

_____, Clerk.

ordinary judgment
istrator.

and

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

34. *Minute in Procedure Book of judgment against an
executor or administrator, who has wasted assets.*

See Rules
Nos. 51 & 57.

Judgment for the plaintiff for _____ and
costs, to be paid in _____ days, to be levied of the
goods and chattels of the deceased; failing such
goods, then the whole (or the sum of _____ and the
said costs) to be levied of the defendant's proper
goods and chattels; the defendant having wasted the
goods of the deceased to that amount.

35. *Minute in Procedure Book of judgment against an
executor or administrator, who has denied his represent-
ative character, or pleaded a release to himself.*

See Rules
Nos. 51 & 58.

Judgment for the plaintiff or _____, and
costs, to be paid in _____ days, to be levied of the
goods and chattels of the deceased; failing such
goods, then to be levied of the defendant's proper
goods, the defendant having pleaded a release to
himself, (or "the defendant having denied his repre-
sentative character") and this plea being found
against him.

36. *Minute in Procedure Book of judgment against an
executor or administrator, who admits his representative
character, and denies the demand.*

See Rules
Nos. 51 & 59.

The same as in ordinary judgment against executor
or administrator.

See Form No.
23.

See Rules
Nos. 51 & 60.

37. *Minute in Procedure Book of judgment against executor or administrator, where he admits his representative character, but denies the demand, and alleges total or partial administration of assets: and the plaintiff proves his demand, and the defendant proves administration.*

Judgment for the plaintiff for debt, and also
 costs, to be paid in days; the plaintiffs
demand having been proved, which was denied, and
full (or partial) administration also having been
proved, which was denied, the said costs to be levied
of the goods and chattels of the deceased; failing
such goods, then of the defendant's proper goods;
the said debt to be levied of the goods and chattels
of the deceased, hereafter to come to the defendant's
hands to be administered; and ordered that
the costs of proving such administration, be paid by
the plaintiff in days.

N. B.—If the defendant is shown to have some
assets, the judgment must be for the amount "*de
bonis testatoris*," and for the residue, "*quando
acciderint*."

See Rules
Nos. 51 & 61.

38. *Minute in Procedure Book of judgment against executor or administrator, where the defendant admits his representative character, but denies the demand, and alleges total or partial administration of assets, and the plaintiff proves his demand, and the defendant does not prove administration.*

Judgment for the plaintiff for , debt, and
also , costs to be paid in days, to be
levied of the goods and chattels of the deceased;
failing such goods, then the said costs to be levied of
the defendant's proper goods, and the debt to be
levied of the goods and chattels of the deceased,
hereafter to come to the defendant's hands to be
administered, the plaintiff's demand having been

proved, which was denied, and administration, which was alleged, not having been proved.

30. *Minute in Procedure Book of judgment against executor or administrator, who admits his representative character, and the plaintiff's demand, but alleges a total or partial administration of assets, and proves the administration.* See Rules Nos. 51 & 52.

Judgment for the plaintiff for _____, to be paid in _____ days; to be levied of the goods and chattels of the deceased, hereafter to come to the defendant's hands to be administered:--the debt not being denied, and full (or partial) administration, which was denied, having been proved, ordered, that the plaintiff pay _____, for the defendant's costs in _____ days.

40. *Minute in Procedure Book of judgment against executor or administrator, who admits his representative character, and the plaintiff's demand, but alleges a total or partial administration of assets, and does not prove the administration.* See Rules Nos. 51 & 53.

Judgment for the plaintiff for _____, debt and _____, costs, to be paid in _____ days; full (or partial) administration, which was alleged, and disputed, not having been proved, ordered, that the said sums be levied of the goods and chattels of the deceased; failing such goods, then the debt of the goods and chattels, hereafter to come to the defendant's hands to be administered; and the said costs to be levied of the defendants proper goods.

41. *Summons to executor or administrator, where plaintiff intends to apply to the court, alleging that assets have come to the defendant's hands since judgment.* See Rule N 64.

In the _____ Division Court for the County of _____.

Between A. B., plaintiff;
and
C. D., executor, (or administrator,)
Of E. F., deceased, defendant.

The plaintiff having learned, that property of the said deceased has come to your hands as executor (or administrator) since the judgment herein, to be administered (and that you have withheld and wasted the same) intends to apply at the next sitting of this court, to be holden at _____ in _____ on the _____ day of _____, at the hour of _____, for an order, that the debt, (or damages) and costs be levied of the goods and chattels of the said deceased, if you have so much thereof to be administered, (and that if you have not, then that it shall be levied of your own proper goods and chattels) and that the costs be levied of your proper goods and chattels.

You are, thereupon, hereby summoned to be and appear at the said court, at the time and place aforesaid, to answer touching the matter aforesaid.

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

To _____, Clerk.
The above named defendant.

See Rule No.
50.

42. *Suggestion of devastavit on original summons.*

See Form No.
6.

(Commence with forms of summons, same as in ordinary cases, but naming defendant as executor or administrator, and adding after the word "default") and the plaintiff alleges, that you the defendant have money, goods, and chattels, which were the property of _____ deceased, at the time of his death, and which came to your hands as such executor (or administrator) to be administered; and if not, that you have withheld or wasted the same.

43. *Summons on a devastavit.*See Rule No.
50.

In the Division Court for the County of
Between A. B., plaintiff;
and
C. D., executor (or administrator) of
E. F., deceased, defendant.

To C. D. the above named defendant.

You are hereby [as before (or as often before) you were] summoned to be and appear at the sittings of this court, to be holden at _____ in the town of _____ on the _____ day of _____, A. D., 18____, at the hour of _____ in the forenoon, to answer the above-named plaintiff in an action, for that you, the defendant, have withheld and wasted divers goods and chattels, which were the property of E. F. deceased, at the time of his death, and which came to the hands of you the defendant, as executor (or administrator) of the said E. F. to be administered, whereby a certain judgment recovered against you by the plaintiff at the sittings of this court on _____ at _____ for the sum of _____ remains unsatisfied; and in the event of your not appearing, the plaintiff may proceed to obtain judgment against you by default.

Dated the _____ day of _____, 18____.

_____, Clerk.

Add notice as in Form 6.

44. *Minute in Procedure Book of judgment against executor or administrator on devastavit after judgment.*See Rules
Nos. 51 & 64.

Judgment that the defendant has wasted goods and chattels of _____ deceased to the sum of _____, whereby a judgment, recovered against him by the plaintiff in the _____ Division Court for the county of _____ on the _____ day of _____, remains unsatisfied.

tified; and that the plaintiff now recover against the defendant the first named sum, and also costs; to be paid in days.

Dated this day of _____, Judge.
 _____, 18 .

See Rule No. 45. *Summons on behalf of executor or administrator to*
 68. *revive a judgment.*

In the Division Court for the County of :
 No. , A. D. 18 .

Between A. B., executor of C. D., deceased, plaintiff;
 and
 E. F., defendant.

To E. F. the above named defendant.

Whereas at the sittings of this court (or the Division Court, &c.,) held at on , the above-named C. D, in his life-time, obtained a judgment against you for the sum of , and costs, which judgment, a transcript of which is hereto annexed, still remains unsatisfied, and the said plaintiff, as executor as aforesaid, claims to have execution thereof; you are hereby summoned to appear at the sittings of this court to be holden at on at in the forenoon, to show cause, if any you have, why the said plaintiff, executor as aforesaid, should not have execution against you of the said judgment, according to the force and effect of the said recovery: and, in the event of your not appearing, judgment will be entered against you by default.

See Form 52.

By the court,

_____,
 Clerk.

Dated this day of , 18 .
 Claim
 Costs exclusive of mileage .

46. *Summons to revive judgment against an executor.*See Rule No.
68.

In the Division Court for the county of
No. A. D., 18 .

Between A. B., plaintiff;
and

C. E.; executor of E. F., deceased, defendant.

Whereas at the sittings of this court (or the Division Court for &c.) held at on , &c., the said plaintiff recovered against the said E. F., in his life-time, the sum of , which judgment, a transcript whereof is hereto annexed, still remains unsatisfied; and the said plaintiff claims to have execution thereof against you, as executor of the said E. F.: you are hereby summoned to appear at the sittings of this court, to be holden at , on , at the hour of , to show cause, if any you have, why the said plaintiff should not have execution of the said judgment against you, as executor as aforesaid, to be levied of the goods and chattels of the said E. F. deceased, in your hands to be administered: and in the event of your not appearing, judgment herein will be entered against you by default. See Form No. 52.

Dated this day of , 18 .

By the court,

_____,
Clerk.

Amount claimed ,
Costs exclusive of mileage .

_____,
Clerk.

47. *Minute in Procedure Book of judgment for executor to revive a judgment.* See Rules
Nos. 51 & 68.

Judgment for plaintiff, that he have execution against the defendant of a judgment of this court (or

of the Division Court, &c.) whereby the said
C. D. in his life time, on , recovered against
the said defendant the sum of .

See Rules
Nos. 51 & 68.

48. *Minute in Procedure Book of judgment to revive a
judgment against an executor.*

Judgment for the plaintiff, that he have execution
against the defendant, as executor of E. F. deceased,
of a judgment of this court (or of the Division
Court, &c.) whereby the plaintiff, on , recovered
against the said E. F. in his life-time the sum of
 , to be levied of the goods and chattels of the
said deceased, in the hands of the said defendant to
be administered.

49. *Execution against goods of testator.*

In the Division Court for the county of
Between A. B., plaintiff;
and
C. D., executor (or administrator
of E. F., deceased, defendant.

Whereas at a sitting of the said court, holden on
at by the judgment of the said court, the said
plaintiff recovered against the said defendant as exe-
cutor (or administrator) of E. F. deceased, the sum
of , for a certain debt, with , for costs,
to be levied of the goods and chattels of the deceased;
failing such goods, the costs to be levied of the
defendants proper goods and chattels, which said
debt and costs were ordered to be paid at a day now
past, and the defendant has not paid the same: these
are therefore to command you, forthwith to make
and levy, by distress and sale of the goods and chat-
tels, which were the property of the said E. F. in his
life-time, in the hands of the defendant to be admin-

istered, wheresoever the same may be found, the said debt and costs, amounting together to the sum of _____, together with the costs of this execution; and also, and if necessary for that purpose, to seize and take any money, or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money, which were the property of the said E. F. in his life-time, in the hands of the said defendant to be administered, which may be found, or such part thereof, as may be sufficient for the satisfying of this execution, and the costs of making and executing the same, if the defendant have so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered then that you make and levy of the proper goods, notes and chattels, money, &c. [repeat] of the defendant the sum of _____ for the costs aforesaid, and the costs of this execution and levying the same, so that you may have the said moneys within thirty days after the date hereof, and pay the same over to the clerk of the court, for the said plaintiff.

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

_____,
Clerk.

To _____

Bailiff of the said court.

Debt _____.

Costs _____.

Execution ____.

Paid _____.

Levy _____.

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

See Rule No. 50. *Execution for an executor on judgment revived in his favor.*
68.

In the Division Court for the County of
Between A. B., executor of C. D. deceased, plaintiff
and
E. F., defendant.

You are hereby commanded [or as before or as often before] to make and levy by distress and sale of the goods and chattels of the said defendant, [except the wearing apparel and bedding of the said defendant and his family, and the tools and implements of his trade, if any, to the value of £5] the sum of _____, which C.D. in his life-time in this court [or the Division Court &c.] on recovered against the said defendant for his debt [or damages] and costs, and whereof it was on &c., in this court [or the Division Court, &c.] adjudged that the said plaintiff, as executor of the said C. D., should have execution, together with the costs of execution herein, and bailiff's fees; and also, and if necessary for that purpose, you are to seize and take any money, or bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said defendant, or such part thereof as may be sufficient for the satisfying of this execution; so that you may have the said moneys within thirty days, and pay the same over to the clerk of the court, for the use of the said plaintiff, as executor as aforesaid.

Given under the seal of the court, this day
of 18 .

_____, Clerk.

To _____,

Bailiff.

Due on judgment _____.

Execution _____.

Bailiff's fees _____.

See Rule No.
68.51. *Execution on judgment revived against executor or administrator.*

In the Division Court for the County of

Between A. B., plaintiff;

and

C. D., executor of E. F., de-
ceased, defendant.

You are hereby commanded (or as before, or as often before) to make and levy by distress and sale of the goods and chattels of E. F., deceased, in the hands of the said defendant, as his executor (or administrator) to be administered, the sum of , which the said plaintiff in this court, (or in the Division Court, &c.) on recovered against the said deceased in his lifetime for the said plaintiff's debt [or damages] and costs, and whereof it was on adjudged in this court [or in the Division Court, &c.,] that the said plaintiff should have execution against the said defendant as executor [or administrator] of the said deceased, to be levied of the goods and chattels of the said deceased, in the said defendant's hands to be administered, together with the costs of execution herein, and bailiff's fees; and also, and if necessary for that purpose, you are to seize and take any money or bank notes, cheques, bills of exchange, promissory notes, bonds, specialties or securities for money, which were the property of the said deceased, or such part thereof as may be sufficient for the satisfying of this execution; so that you may have the said moneys within thirty days, and pay the same over to the clerk of the court, for the use of the said plaintiff, as executor [or administrator] as aforesaid.

Given under the seal of the court, this day
of , 18 .

_____,
Clerk.

To _____,

Bailiff.

Due on judgment _____.

Interest _____.

Execution costs _____.

Bailiff's fees _____.

52. *Transcript of judgment.*

In the Division Court for the County of .
Between A. B., plaintiff;
and
C. D., defendant.

The following proceedings were had :

On the day of , a summons, requiring the defendant to answer the plaintiff's claim, for a debt (or for damages) amounting to , was issued out of this court in this cause, according to the statute in that behalf: on the day of the said defendant was duly served with a copy of the said summons, and of the particulars of the plaintiff's claim: at the sittings of the said court holden on the day of , at , the said cause came on to be tried, and the following judgment was then and there rendered by the court (here copy the minute of judgment from the procedure book): on the day of , a writ of execution upon the said judgment was duly issued out of the said court by the clerk thereof, which said writ of execution was directed to , a bailiff of the said court, and commanded him to levy the sum of of the goods and chattels of the said defendant: on the day of , the said bailiff returned the said writ of execution, with a return thereto, in the

day
Clerk.

following words: (copy bailiff's return). Pursuant to the 57th section of the "Upper Canada Division Courts Act of 1850," I _____, clerk of the said Division Court for the _____, do hereby certify and declare, that the foregoing is a faithful transcript of the judgment and proceedings in the above cause, as shown, and as appears, by the original entries and records of the court.

Given under the seal of the said court, this _____ day of _____, 18 ____.

Clerk.

N. B.—The above form may be adopted, when the judge certifies a judgment into another county.

53. *Certificate of judgment for registration.*

In the _____ Division Court for the County of _____.

I, R. B., clerk of the said court, do hereby certify that judgment was rendered in the said Division Court, in favour of _____, plaintiff, against C. D. of _____, defendant, on the _____ day of _____, in the year of our Lord, &c., in an action on contract (or for tort) for the sum of _____, debt (or damages) and _____ costs of suit, in all _____, which defendant was ordered by the said court to pay in days (or as the judgment may be.)

No. _____, A. D., 18 ____.

Given under my hand, and the seal of the said court, this _____ day of _____, 18 ____.

R. B., clerk.

54. *Application for judgment summons.*

To R. B., clerk of the _____ Division Court for the County of _____.

Be pleased to summon _____, of, &c., to answer

See Rule No.
17 and Form
No. 55.

according to the statute in that behalf, touching the debt due me by the judgment of the Division Court on my behalf, a minute whereof is hereunto annexed.

A. B., plaintiff.

55. *Summons to defendant after judgment.*

In the Division Court for the County of
 See Rule No. 17: No. , A. D., 18 .

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

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

Whereas, at the sittings of this court (or the Division Court for, &c.,) held at , on, &c., the above named plaintiff obtained a judgment against you for the payment of the sum of , which said judgment still remains unsatisfied; you are therefore hereby summoned to appear at the next sittings of this court, to be holden at , on the day of , at the hour of , to be then and there examined by the judge of the said court, touching your estate and effects, and the manner and circumstances under which you contracted the said debt, (or incurred the damages or liability) which was the subject of the action, in which the said judgment was obtained against you, and as to the means and expectations you then had, and as to the property and means you still have of discharging the said debt [or damages or liability], and as to the disposal you may have made of any of your property: And take notice, that if you do not appear, in obedience to this summons, you may, by order of this court, be committed to the common jail of the county.

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

By the court. _____, Clerk.

Amount of judgment_____.

Costs of this summons_____.

56. *Warrant of commitment in default of appearance.*

In the _____ Division Court for the county of _____
No. _____, A. D., 18 ____.

• See Rule Nos.
10, 13 and 55.

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

To _____, bailiff of the said court, and to all con-
stables and peace officers of the county of _____,
and to the jailer of the common jail of the said
county of _____.

Whereas the sittings of this court, [or of the
Division Court for, &c.] holden at _____, on the
_____ day of _____, the above named plaintiff, by
the judgment of the said court, in a certain suit
wherein the court had jurisdiction, recovered against
the above named defendant, the sum of _____, for
his debt [or damages] and costs of suit, which were
ordered to be paid at a day now past: and whereas
the defendant, not having made such payment upon
application of the plaintiff, a summons was duly issued
from and out of this court, against the said defendant,
by which said summons the defendant was required
to appear at the sittings of this court, holden at _____,
on, &c., to answer such questions as might be put to
him, touching [set out as in the summons]: and
whereas it was duly proved, on oath, at the said last mentioned sittings of this court, that the said defen-
dant was personally served with the said summons:

See Form No.
55.

and whereas the said defendant did not attend, as required by such summons, nor allege any sufficient cause for not so attending; and thereupon it was ordered, by the judge of this court, that the said defendant should be committed, for the term of _____ days, to the common jail of the said county, according to the form of the statute in that behalf, or until he should be discharged by due course of law: these are therefore to require you, the said bailiff and others, to take the said defendant, and to deliver him to the jailer of the common jail of the said county: and you, the said jailer, are hereby required to receive the said defendant, and him safely to keep in the said common jail for the term of _____ days from the arrest under this warrant, or until he shall be sooner discharged by due course of law, according to the provisions of the Act of Parliament in that behalf: for which this shall be your sufficient warrant.

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

_____, Clerk.

57. *Warrant of commitment after examination.*

In the _____ Division Court for the County of _____.

No _____, A. D. 18 ____.

Between A. B., plaintiff;

and

C. D., defendant.

To _____, bailiff of the said court, and to all constables and peace officers of the county of _____, and to the jailer of the common jail for the said county.

Whereas, at the sittings of this court [or the Division Court for, &c.,] holden at _____, on the _____ day of, &c., the above named plaintiff, by the judgment of the said court, in a certain suit wherein

See Rules
Nos. 15, 18
and 55.]

the court had jurisdiction, recovered against the above named defendant the sum of _____, for his debt [or damages] and costs, which were ordered to be paid at a day now past; and whereas the defendant not having made such payment, upon application of the plaintiff, a summons was duly issued from and out of this court against the said defendant, by which said summons the defendant was required to appear at the sittings of this court, holden at _____, on, &c., to answer such questions as might be put to him, touching [set out as in the summons]: and whereas the defendant having duly appeared at the said court, pursuant to the said summons, was examined touching the said matters: and whereas it appeared, on such examination, to the satisfaction of the judge of the said court, that [here insert the particular ground of commitment in the language used in the statute, e. g., "C. D., the said defendant, incurred the debt [or liability], the subject of this action, under false pretences," (or by means of fraud or breach of trust")]: and thereupon it was ordered by the said judge, that the said defendant should be committed for the term of _____ days to the common jail of the said county, according to the form of the statute in that behalf, or until he should be discharged by due course of law: these are therefore to require you, the said bailiff and others, to take the said defendant, and to deliver him to the jailer of the common jail of the said county; and you, the said jailer, are hereby required to receive the said defendant, and him safely keep, in the said common jail, for the term of _____ days from the arrest under this warrant, or until he shall be sooner discharged by due course of law, according to the provisions of the Act of Parliament in that behalf; for which this shall be your sufficient warrant.

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

_____, Clerk.

See Form No. 56.

58. *Certificate for discharge of a party from custody.*

In the Division Court for the County of
No , A. D. 18 .

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

I do hereby certify, that the defendant, now in your custody under warrant of commitment in this cause, has, since the issuing of the said warrant, to wit, on the day of , paid and satisfied the judgment, for the non-payment whereof he was so committed, together with all costs and charges due and payable by him in respect thereof; and the said defendant may, in respect of such warrant, be forthwith discharged from and out of your custody.

Given under the seal of the court, this day
of 18 .

_____,
Clerk.

To the jailer of the common jail }
of the county of }

See Rule No.
61.

59. *Minute in Procedure Book of imposition of fine on Witness.*

Adjudged, that H. H. was duly summoned to appear as a witness in this action, at the sittings of this court here this day [and also to produce (as the case may be)] that payment [or a tender of payment] of his reasonable expenses was made to him, and that he did not appear [or having appeared, did wilfully refuse to be sworn, and give evidence in this action (or to produce such, &c.)] Or adjudged, that H. H. being before this court, now holden, and called upon to give evidence in this cause, did wilfully refuse to be sworn and give evidence.] And further adjudged,

that the said H. H. pay a fine of _____ for such neglect [or refusal] in _____ days [or forthwith]; and that the sum of _____, part of the said fine, be paid by the clerk to the plaintiff [or defendant] being the party injured by such neglect or refusal.

60. *Minute in Procedure Book of order for imposition of fine for contempt.* See Rule No. 51.

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

61. *Minute in Procedure Book of imposition of fine on a juror, for non-attendance.* See Rule No. 51.

Adjudged, that G. H. was duly summoned to attend this court now holden, as a juror; that he hath made default therein; that he pay a fine of _____, for such default, in _____ days [or forthwith].

62. *Warrant of commitment for contempt.*

In the _____ Division Court for the County of _____
To _____, bailiff of the said court, and to all constables and peace officers of the county of _____, and to the jailer of the common jail of the said county of _____

See Rules
Nos. 10, 13
and 55.

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

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

_____, Judge [L. s.]

Scaled with the seal of
 the court, [L. s.] }

_____,
 Clerk, }

63. *Warrant to levy fine upon witness.*

In the Division Court for the County of

Between A. B., plaintiff;

and

C. D., defendant.

Whereas at the sittings of this court, holden on , at , it was adjudged, that H. H. was duly summoned to appear as a witness in this action, at a sittings of this court [and also to produce (as the case may be)]; that payment (or a tender of payment) of his reasonable expenses was made to him, and that he did not appear [or having appeared did wilfully refuse to be sworn and give evidence in this action (or to produce such, &c.)]: [where a witness in court refuses to give evidence, instead of the foregoing, commence, "Whereas , being before the court at a sittings thereof, and called upon to give evidence in the above cause, did wilfully refuse to be sworn and give evidence"]; and thereupon it was adjudged, that the said should pay a fine of for such neglect [or refusal] in days [or forthwith]: and whereas the said hath not made such payment: these are therefore [as before or as often before] to command you forthwith to make and levy by distress and sale of the goods and chattels of the said , wheresoever the same may be found, [except the wearing apparel and bedding of the said , or his family, and the tools and implements of his trade, if any, to the value of £5] the said fine and costs amounting together to the sum of , and your lawful fees on the execution of this precept; and also to seize and take any money, or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said , which may be then found, or such part thereof, as may be sufficient for the satisfying of this execution, and the costs on the same; so that you may have the

rt, holden on
 at E. F., did
 ly insult me,
 the said court,
 nsult
 ing his atten-
 y interrupt the
 it was ordered,
 a pay a fine of
 lt of payment,
 the county of
 said E. F. did
 he said order;
 he said Bailiff
 if he shall be
 him to the said
 nty of ;
 ired to receive
 a the common
 days from the
 said fine and
 , and also the
 nt, amounting
 her paid.

s day of
 Judge [L. s.]

said sum of _____ within thirty days after the date hereof, and pay the same over to the clerk of the court.

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

By order of the judge, _____, Clerk.

To _____,
Bailiff of the said court.

Fine, _____

Costs, _____

Execution, _____

64. *Procedure Book.*

See Rule No.
4.

_____ Division Court for the _____
Ensuing sittings, 26th February, 1851.

No. 1. A. D. 18—.

JOHN DOE vs. THOMAS ROE
Town of _____, Township of _____.

1851.

1st Jan.	Received particulars of plaintiff's demand (on contract) for £2, and plaintiff paid 1s. 8d. towards costs.
11th "	Issued summons to Bailiff, costs 1s. 8d. and mileage.
24th "	Summons returned served the _____ day of _____.
28th "	Defendant paid £2 1s. 8d., demand and costs.
10th Feb.	Paid plaintiff £2 1s. 8d., demand and costs, deposited.

DIVISION COURT FORMS.

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No. 2. A. D. 18—.

JOHN DEN vs. THOMAS FEN,
Township of — Town of —.

10th Jan.	Received particulars of plaintiff's demand (for tort) for £5; plaintiff paid on account of costs 15s., and directed two subpoenas, and gave notice to try by jury.
12th "	Issued summons to bailiff, costs 5s. 9d., and mileage.
20th "	Summons returned served the — day of —.
8th Feb.	Issued jury summons and subpoenas to bailiff.
13th "	Jury summonses returned served, 10 miles travel, subpoenas served also.
20th "	Both parties appeared, cause tried, judgment for plaintiff on verdict for ten pounds, ten shillings and ten pence damages, and — pounds — shillings and — pence costs, to be paid in — days.
20th March	Defendant paid — pounds —, —, in full of judgment and costs.

No. 3. A. D. 18—.

JAMES JONES vs. THOMAS THOMPSON,
Township of — Town of —.

11th Jan.	Received particulars of plaintiff's demand (on contract) for £25, and 6s. 6d. on account of costs from James Patton, plaintiff's attorney.
12th "	Issued summons to G. G., bailiff; costs 6s. 6d. and mileage.
1st Feb.	Summons returned, served the — day of —, 9 miles travel.
3rd "	Defendant executed cognovit for £25.
20th "	Judgment for plaintiff—twenty-five pounds debt, and — pounds —, — costs, to be paid in — days.
10th March	Defendant paid £ — debt and costs.

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

65. Cash Book.

CASH BOOK—RECEIPTS.

Account of suitors' money paid into the ——— Division Court for the
 ——— commencing the 1st of January, 1851.

No.	Style of Cause.	When Received.	From whom Received.	Amount £ s. d.
36	Doe vs. Roe	24th Jan. 1851	Defendant	10 0 0
100	Doe vs. Fen et al.	27th " "	Balliff	5 10 0
250	James ats. Jones	28th Feb. " "	Plaintiff	6 18 4
153	Thomas v. Roe et al.	10th April " "	Wm. Roe	26 11 8
Receipts up to 30th April.....£				37 0 0
Paid to suitors as per payment account.....				27 0 0
Balance in court 30th April, carried to next Quarter...				10
To Cash Balance remaining in Court 30th April£				10 0 0
357	Johnston ats. Wm. 3rd Sept., 1851, son, &c.	From plaintiff, &c.		2 7 6

CASH BOOK—PAYMENTS.

Account of suitors' money paid out of the ——— Division Court for the
 ——— commencing the 1st of January, 1851.

No.	Style of Cause.	When Paid.	To whom paid.	Amount. £ s. d.
100	Doe vs. Fen et al.	1st Feb., 1851.	Plaintiff	5 10 0
153	Thomas v. Roe et al.	29th April “	Plaintiff's att'ny.	2 11 8
250	James ats. Jones ...	29th “	Defendant	6 18 4
Payment up to 30th of April.....£				27 0 0
357	Johnston ats. Wm. son, &c.	20th Sept. 1851 &c.	Defendant, &c.	2 7 6

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

See Rule No. 4.

66. Clerk's return of emoluments.

See Rule No. 5.

Return of _____, clerk of the _____ Division Court
for the _____ of all fees and emoluments from the
day of _____, to the _____ day of _____, both days
inclusive, made in pursuance of the "Upper Canada
Division Courts Act of 1850," section 110.

On What.	No.	Rate.	Amount Currency.
		At . d.	
Entering every account and } Not Exceeding £2		0 6	
issuing summons. } Exceeding £2		0 9	
		Exceeding £5	1 0
		Exceeding £10	1 3
		Exceeding £15	1 6
Copy of summons, and par- } Not Exceeding £2		0 6	
ticulars of demand or set- } Exceeding £2		1 0	
off, when not furnished by } Exceeding £5		1 0	
plaintiff or defendant. } Exceeding £10		1 0	
		Exceeding £15	1 0
Summons to witness.....		0 3	
Adjournment of any cause.....		0 3	
		Not Exceeding £2	0 6
		Exceeding £2	0 9
		Exceeding £5	0 9
		Exceeding £10	0 9
		Exceeding £15	0 9
Entering set-off, or other de- } Not Exceeding £2		0 6	
fence, requiring notice to } Exceeding £2		0 9	
the plaintiff. } Exceeding £5		1 0	
		Exceeding £10	1 0
		Exceeding £15	1 0
Entering every judgment		Not Exceeding £2	0 6
		Exceeding £2	0 9
		Exceeding £5	1 0
		Exceeding £10	1 0
		Exceeding £15	1 0
Every search into a proceeding over a year old.....		0 6	
Taking confession of judgment-Not Exceeding £2		0 6	
		Exceeding £2	0 6
		Exceeding £5	0 6
		Exceeding £10	0 9
		Exceeding £15	1 0
Every warrant of attachment } Not Exceeding £2		0 6	
or execution. } Exceeding £2		1 0	
		Exceeding £5	1 6
		Exceeding £10	1 6
		Exceeding £15	1 6
Every copy or certificate of judgment to another county		1 3	
Drawing affidavits, and administering oaths to jurors		0 9	

I, _____, above named, make oath and say, that

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

See Rule No. 4.

the foregoing return contains a full and correct statement in every particular, to the best of my knowledge and belief, of the fees and emoluments of my office, received or receivable on business done during the period above mentioned.

_____, Clerk.
Sworn before me, at _____, &c.

N. B.—The sums of money may be in decimal currency, pursuant to the 16th Vic., ch. 158, if so ordered.

67. *List of unclaimed moneys.*

See rule No. 8.

List of all sums of money belonging to suitors in the _____ Division Court for the _____, which remain unclaimed for six years before the last day of December last past, applicable as part of the General Fee Fund of the Division Courts.

Published in pursuance of the 13th section of the "Upper Canada Division Courts Extension Act of 1853."

For whom or on whose account money paid into court,	When Paid.	Style and No. of Suit.	Amount.		
			* £	s.	d.

Dated _____

Clerk's Office,

January, 18 ____.

_____, Clerk.

* Or the amount may be in decimal currency, pursuant to 16th Vic., ch. 158, if so ordered.

correct state-
y knowledge
of my office,
e during the
—, Clerk.

e in decimal
h. 158, if so

to suitors in
which remain
ay of Decem-
General Fee

ection of the
nsion Act of

68. *Bailiff's return.*

See Rules
Nos. 7 & 12.

Return of A. B., bailiff of the Division Court for the
, made in pursuance of the rules of practice, touching
all warrants, precepts and writs of execution, acted on or
in hand, between the day of , and the day of .

Number.	Style of cause.	Nature of process.	When received.	Amount to be made.	Amount levied.	When levied.	Amount of bailiff's charges.	Amount paid to clerk.	When paid.	REMARKS.

Amount.

* £ s. d.

A. B. above named maketh oath and saith, that the fore-
going return is full, true and correct, in every particular.

Sworn before me at , in the }
, this day of , 18 . }
E. F., Clerk. }

Toronto, 23th Juno, 1854.

(Signed) S. B. HARRISON,
" M. O'REILLY,
" E. C. CAMPBELL,
" GEO. MALLOCH,
" JAS. ROBT. GOWAN,

Approved as amended 8th July. 1854.

(Signed) JNO. B. ROBINSON, C. J.
" J. B. MACAULAY, C. J. C. P.
" W. H. DRAPER, J.
" ROBERT E. BURNS, J.
" WM. B. RICHARDS, J.

P

ncy, pursuant

CRIMINAL LAW.

ACCESSORIES.

Accessory before the fact may be tried as such or as a substantive felon, by any court which has jurisdiction to try the principal felon, although the offence be committed on the seas or abroad.

4 & 5 VIC. CHAP. 24.—37. For the more effectual prosecution of accessories before the fact to felony, Be it enacted, that if any person shall counsel, procure or command any other person to commit any felony, whether the same be a felony at common law, or by virtue of any statute or statutes, made or to be made, the person so counselling, procuring or commanding, shall be deemed guilty of felony, and may be indicted and convicted as an accessory before the fact to the principal felony, either together with the principal felon, or after the conviction of the principal felon; or may be indicted for and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or not be amenable to justice, and may be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished; and the offence of the person so counselling, procuring or commanding, howsoever indicted, may be inquired of, tried, determined and punished by any court which shall have jurisdiction to try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony, although such offence may have been committed either on the high seas or at any place on land, whether within her Majesty's dominions or without; and in case the principal felony shall have been committed within the body of any district or county, and the offence of counselling,

procuring or commanding shall have been committed within the body of any other district or county, the last mentioned offence may be enquired of, tried, determined and punished in either of such districts or counties: Provided always, that no person who shall be once duly tried for any such offence, whether as an accessory before the fact, or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

If the offence be committed in different districts and counties, accessory may be tried in either.

38. For the more effectual prosecution of accessories after the fact of felony, Be it enacted, that if any person shall become an accessory after the fact to any felony, whether the same be a felony at common law, or by virtue of any statute or statutes made or to be made, the offence of such person may be inquired of, tried, determined and punished by any court which shall have jurisdiction to try the principal felon, in the same manner as if the act by reason whereof such person shall have become an accessory, had been committed at the same place as the principal felony, although such act may have been committed either on the high seas, or at any place on land, whether within her Majesty's dominions or without; and in case the principal felony shall have been committed within the body of any district or county, and the act by reason whereof any person shall have become accessory, shall have been committed within the body of any other district or county, the offence of such accessory may be enquired of, tried, determined and punished in either of such districts or counties: Provided always, that no person who shall be once duly tried for any offence of being an accessory shall be liable to be again indicted or tried for the same offence.

Accessory after the fact may be tried by any court which has jurisdiction to try the principal felon.

If the offence be committed in different districts and counties, accessory may be tried in either.

39. In order that all accessories may be convicted and punished in cases where the principal felon is not attainted, Be it enacted, that if any principal offender shall be in anywise convicted of any felony, it shall be lawful to proceed against any access-

Accessory may be prosecuted after conviction of the principal though the principal be not attainted.

sory either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding such principal felon shall die, or be pardoned, or otherwise delivered before attainder; and every such accessory shall suffer the same punishment, if such accessory be in anywise convicted, as such accessory should have suffered if the principal had been attainted

Principals in
the second
degree and
accessories.

4 & 5 VIC. CHAP. 25.—53. In the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act (except only a receiver of stolen property,) shall, on conviction, be liable to be imprisoned for any term not exceeding two years; and every person who shall aid, abet, counsel or procure the commission of any misdemeanor punishable under this act, shall be liable to be indicted and punished as a principal offender.

Abettors in
misdemean-
ors.

Abettors in
offences pun-
ishable on
summary
conviction.

54. If any person shall aid, abet, counsel or procure the commission of any offence, which is by this act punishable on summary conviction, either for every time of its commission, or for the first and second time only, or for the first time only, every such person shall, on conviction before a justice or justices of the peace, be liable for every first, second or subsequent offence of aiding, abetting, counselling or procuring, to the same forfeiture and punishment to which a person guilty of a first, second or subsequent offence as a principal offender is by this act made liable.

Principals in
the second
degree and
accessories.

4 & 5 VIC. CHAP. 26.—26. In the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact shall be punishable with death or otherwise, in the same manner as the principal in the first degree

is by this act punishable; and every accessory after the fact to any felony punishable under this act, shall, on conviction, be liable to be imprisoned, for any term not exceeding two years; and every person who shall aid, abet, counsel or procure the commission of any misdemeanor, punishable under this act, shall be liable to be indicted and punished as a principal offender.

Abettors in
misdemean-
ors.

4 & 5 VIC. CHAP. 27.—35. In the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act, shall, on conviction, be liable to be imprisoned for any term not exceeding two years. (a)

10 & 11 VIC. CHAP. 4.—*An Act for preventing malicious injuries to persons and property by fire, or by explosive or destructive substances.*

Punishment
of principals
in the second
degree, and
accessories.

10. In the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act, shall, on conviction, be liable to be imprisoned in any common gaol for any time not exceeding two years.

10 & 11 VIC. CHAP. 9, relating to the crime of forgery, section 18, is verbatim the same as the one immediately preceding. (b)

(a) Vide post, title "Post-office," 13 & 14 Vic. ch. 17, s. 16.

(b) Vide post, 16 Vic. ch. 19, s. 11, title "Forgery."

ADMINISTRATION (GENERAL LAW.)

40 GEO. III. CHAP. 1.—*An Act for the further introduction of the Criminal Law of England in this Province, and for the more effectual punishment of certain offenders.*

Recital.

Criminal law of England introduced as it stood on 17th Sept. 1792.

Saving of ordinances made since 14. Geo. III.

WHEREAS the criminal law of England was, by an act of the Parliament of Great Britain, passed in the fourteenth year of his Majesty's reign, intituled "An Act for making more effectual provision for the government of the Province of Quebec in North America," introduced and established as the criminal law of this Province: And whereas divers amendments and improvements have since been made in the same by the mother country, which it is expedient to introduce and adopt in this Province, *Be it, &c.*, that the criminal law of England, as it stood on the seventeenth day of September, in the year of our Lord one thousand seven hundred and ninety-two, shall be, and the same is hereby declared to be the criminal law of this Province.

2. *Provided, nevertheless*, that nothing herein contained shall be taken or construed to vary, repeal, or in any manner affect any ordinance of the late Province of Quebec, which may have been made since the said fourteenth year of his Majesty's reign.

7. *Provided, nevertheless*, that nothing herein contained shall be construed in any manner to restrain or prevent his Majesty, his heirs or successors, to grant an absolute and unconditional pardon to such offender, and to allow of his or her return to this Province.

3 WILL. IV. CHAP. 4.—15. (a) That so much of

(a) 36 Geo. III. ch. 1 is repealed by 4 & 5 Vic. ch. 93, s. 1, and 38 Geo. III. ch. 1 by 13 & 14 Vic. ch. 35, s. 1. By reference to 40 Geo. III. ch. 1 it will be seen that little of that statute remains in force, and so much of the present Act as relates to forgery, and offences of that character, is repealed by 10 & 11 Vic. ch. 9, s. 22.

an Act passed in the Parliament of this Province, in the fortieth year of King George the Third, entitled, "*An Act for the further introduction of the Criminal Law of England in this Province, and for the more effectual punishment of certain offenders*," and of the several Acts of the Parliament of this Province, passed for authorising the issuing of government debentures, as provides that any offence in any of those statutes respectively mentioned, shall be punishable with death, shall be, and the same is hereby repealed; and that such offences shall continue to be of the degree of felony, and the persons convicted thereof shall be liable to the punishments, or any of them, which are by this Act provided in respect to felonies generally, which are not punishable with death.

40. Geo. III.
chap. I.
repealed and
also so much
of any sta-
tute as
makes it cap-
ital to forge
government
debentures
&c.

16.—That if any person shall be indicted for any offence made capital by this or any other offence made capital by this or any other statute, made or to be made, such person shall be liable to the same punishments, whether he or she shall be convicted by verdict or confession, or shall be outlawed upon indictment; and this as well in the case of accessories as of principals.

Persons con-
fessing or
outlawed, to
be punished
in the same
manner as if
convicted by
verdict.

3 WILL. IV. CHAP. 5.—*An Act to take away corruption of blood, save in certain cases.*

(13th Feb., 1833.)

WHEREAS it is expedient to mitigate the rigor of the law in respect to corruption of blood in attainder for felony, *Be it, &c.*, that no attainder for felony which shall take place from and after the passing of this Act, save and except in the cases of the crime of high treason, or of abetting, procuring or counselling the same, shall extend to the disinheriting of any heir; nor to the prejudice of the right or title of any person or persons, other than the right or title of the offender or offenders during his, her, or their natural lives only; and that it shall be lawful for every person or persons to whom the right or interest to or in any

Preamble.

No attainder
except for
high treason
shall extend
to the disin-
heriting of
any heir.

lands, tenements or hereditaments, after the death of any such offender or offenders, should or might have appertained, if no such attainder had been, to enter into the same.

Copy of indictment to be delivered to prisoners on payment of certain charges.

6 WILL. IV. CHAP. 48.—*An Act to allow persons indicted for felony a full defence by Counsel, and for other purposes herein mentioned.*

1. Superseded by 4 & 5 Vic. chap. 24, s. 9.

2. That whenever any person shall be indicted in any of his Majesty's courts of this Province, for any felony or misdemeanor, and shall apply to such court for a copy of the said indictment, the same shall, with all convenient expedition, be made out and delivered to the person so applying: Provided, nevertheless, that the clerk or officer shall be entitled to demand and receive for the same of such person the following and no other fee, that is to say: at the rate of ninepence for every hundred words contained in such indictment: Provided always, that such copy shall not be received in evidence upon any trial for a malicious prosecution.

7 WILL. IV. CHAP. 4.—It is apprehended that no part of this Act remains in force. The 70th section of 4 & 5 Vic. ch. 25 repeals all Acts or parts of Acts or provisions of law in force in this Province, or any part thereof, immediately before the time when this Act shall come in force, which shall be contradictory to or inconsistent with this Act, "*or which make any provision in any matter provided for by this Act other than such as is hereby made in such matter.*" Sec. 2 of the same Act abolishes the distinction between grand and petit larceny, and generally gives power to the courts having jurisdiction in cases of petit larceny to try every case of larceny, the punishment of which cannot exceed the punishment thereinafter provided for simple larceny.

7 WILL. IV. CHAP. 6.—*An Act to provide more effectually for the punishment of certain offences, and*

to enable the Governor, Lieutenant-Governor, or Person administering the government of this Province to commute the sentence of death, in certain cases, for other punishment in this Act mentioned.

WHEREAS it is expedient to make further provision Preamble.

for the effectual punishment of certain offences hereinafter mentioned, *Be it enacted, &c.*, that in case of the conviction of any person after the passing of this Act, of any larceny, or of manslaughter, or of any assault with intent to commit any felony, or of felonious rescue, or of assaulting with any weapon a sheriff, or other peace officer, in the execution of his duty, or of any forgery which before the passing of this Act was not punishable with death, with or without benefit of clergy, or of perjury, or of fraud, or cheating, or conspiracy, or of being accessory, before or after the fact, to larceny, or any other felony; or of receiving stolen goods; or of embezzlement; or of uttering or tendering in payment false or counterfeit money resembling any of the gold or silver coins current in this Province, knowing the same to be false or counterfeit; or of any offence against a certain statute of this Province passed in the fiftieth year of his late Majesty George the Third, entitled, "*An Act for preventing the forging and counterfeiting of foreign Bills of Exchange, and of foreign notes and orders for the payment of money*"; or of assisting in or attempting to effect the escape of a prisoner confined for a felony or other crime; before or after conviction—the person convicted of such offence may be sentenced to such punishment as is now provided by law for any such offence; or if the court which is to pass sentence on such convict shall think fit, may be sentenced to be imprisoned only, or imprisoned and kept to hard labour, or in solitary confinement in the common gaol, or in any penitentiary or house of correction, that hath been or may be provided in this Province for such purpose, for any term not exceeding seven years: *Provided always*, that where, for

Larceny and other offences to be punished as heretofore.

or by imprisonment only; with or without hard labour; In the common gaol or penitentiary

Term not to exceed seven years.

Convictions
for offences
(except man-
slaughter)
punishable
under 3 Will.
IV. C. 4, not
to be affected
by this Act.

any of the offences above mentioned, a specified term of imprisonment is now assigned by law, no person shall be sentenced, for such offence, to be imprisoned in a penitentiary, or other place of confinement for a longer period than such specified term: *And provided also*, that in case a conviction shall take place of any of the offences hereinbefore enumerated, except the offence of manslaughter, which before the passing of this Act would have subjected the offender to any punishment provided by the Act of Parliament of this Province, passed in the third year of his present Majesty's reign, entitled, "*An Act to reduce the number of cases in which capital punishment may be inflicted; to provide other punishment for offences which shall no longer be capital after the passing of this Act; to abolish the privilege called benefit of clergy; and to make other alterations in certain criminal proceedings before and after conviction,*" such punishment shall in no case be altered or affected by this Act.

Sentences of
death may be
commuted
by governor
&c., except
for murder
and high
treason.

3. That it shall and may be lawful for the Governor, Lieutenant-Governor, or Person administering Government of this Province, to commute the sentence of death, which may be passed upon any person convicted of a capital crime, other than high treason or murder, and with authority from his Majesty, upon any person convicted of high treason or murder for transportation for life, or term of years, to such place in his Majesty's dominions as may be assigned for the reception of convicts; or for banishment from this Province for life, or any term of years; or for solitary confinement; or confinement with or without hard labour in any penitentiary or house of correction that may be appointed for such purpose, either during life, or for any term of years; and that an instrument under the hand and seal of the Governor, Lieutenant-Governor or Person administering the Government of this Province, declaring such commutation of sentence, shall be sufficient

specified term
law, no person
be imprisoned
confinement for a
in: *And pro-*
shall take place
enumerated, ex-
ch before the
cted the offen-
e Act of Par-
third year of
"An Act to
pital punish-
r punishment
ital after the
ivilege called
alterations in
nd after con-
ase be altered

for the Gov-
administering
ute the sen-
pon any per-
than high
from his Ma-
gh treason or
rm of years,
s as may be
r for banish-
any term of
confinement
nitentiary or
ed for such
m of years;
l and seal of
erson admin-
e, declaring
e sufficient

authority to any of his Majesty's judges or justices in this Province, having jurisdiction in such cases, to make such orders, and give such directions, under his hand and seal, as may be requisite for the change of custody of such convict, and for his conduct to and delivery at any penitentiary or house of correction in this Province, and his detention therein, according to the terms on which his sentence may have been commuted.

4. That the time during which any offender shall have continued in any common gaol, under sentence of transportation, or under sentence of confinement in the penitentiary, shall be reckoned in discharge, or part discharge, of the term which shall be appointed by such sentence. (a)

Imprison-
ment after
sentence to
be reckoned
in the term
of transpor-
tion.

4 & 5 Vic. CHAP. 24.—*An Act for improving the administration of criminal justice in this Province.*

1. (b) Where any person shall be taken on a charge of felony, or suspicion of felony, before one or more justice or justices of the peace, and the charge shall be supported by positive and credible evidence of the fact, or by such evidence as if not explained or contradicted, shall, in the opinion of the justice or justices raise a strong presumption of the guilt of the person charged, such person shall be committed to prison by such justice or justices in the manner hereinafter mentioned; but if there shall be only one justice present, and the whole evidence given before him shall be such as neither to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, such justice shall order the person charged to be detained in custody, and such person shall be taken before two justices at the least; and where any person so taken, or any person in the first instance taken

Who may be
admitted to
bail on a
charge of fe-
lony, and
who may
not.

(a) Vide 4 & 5 Vic. ch. 24, s. 52, (infra).

(b) Vide 16 Vic. ch. 179 which repeals many provisions relative to the duties of justices of the peace set forth in the first thirteen sections.

before two justices of the peace, shall be charged with felony, or on suspicion of felony, and the evidence given in support of the charge, shall, in the opinion of such justices, not to be such as to raise a strong presumption of the guilt of the person charged, and to require the committal of such person, or such evidence shall be adduced on behalf of the person charged as shall in the opinion of such justices, weaken the presumption of guilt, but there shall, notwithstanding, appear to such justices, in either of such cases, to be sufficient ground for judicial inquiry into the guilt of the person charged, such person shall be admitted to bail by such two justices in the manner hereinafter mentioned: Provided always, that nothing herein contained shall be construed to require any such justice or justices to hear evidence on behalf of any person so charged as aforesaid, unless it shall appear to such justice or justices to be meet and conducive to the ends of justice to hear the same.

2. (a) Two justices of the peace, before they shall admit to bail, and one or more justice or justices, before he or they shall commit to prison, any person arrested for felony, or on suspicion of felony, shall take the examination of such person, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, in the presence of the party accused, if he be in custody, who shall have full opportunity afforded him of cross-examining such witnesses, if he shall think proper so to do, and the two justices admitting to bail shall certify the bailment in writing; and every such justice shall have authority to summon any person within his jurisdiction, whom he shall have reason to consider capable of giving material evidence concerning any such felony or suspicion of felony, and to examine such person on oath, touching the

Before any person charged with felony, &c., shall be bailed or committed, the justice shall take down in writing the examination, &c., and bind witnesses to appear at trial.

(a) See 16 Vic. ch. 179, sec. 15, *infra*.

same, and to bind by recognizance all such persons as know or declare anything material touching any such felony, or suspicion of felony, to appear at the next Court of Oyer and Terminer, or Gaol Delivery, or other court at which the trial of such offence is intended to be had, then and there to prosecute and give evidence against the party accused; and such justices and justice, respectively, shall subscribe all such examinations, informations, bailments and recognizances, and deliver, or cause to be delivered, the same to the proper officer of the court in which the trial is to be, before, or at the opening of the court; and in case any person so summoned shall refuse to submit to such examination, or to enter into such recognizance, it shall be lawful for the justice or justices to commit such person to the common gaol of the district, county, city or town, until such person shall submit to such examination, or shall enter into such recognizance, or be discharged by due course of law: (a) Provided that no such examination shall subject the party examined to any prosecution or penalty, or be given in evidence against such party, save on any indictment for having committed wilful and corrupt perjury in such examination.

Examinations, &c., to be delivered to the court.

3. Every justice of the peace, before whom any person shall be taken on a charge of misdemeanor, or suspicion thereof, shall take the examination of the person charged, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, before he shall commit to prison or require bail from the person so charged; and in every case of bailment, shall certify the bailment in writing, and shall have authority to bind all persons by recognizance to appear to prosecute or

Duty of justices on charges of misdemeanor.

(a) See *Evans v. Rees*, 12 A. & E. 55, as to power of a justice to commit a witness for not appearing to enter into a recognizance to give testimony.

No traverse
allowed.

give evidence against the party accused in like manner as in cases of felony; and shall subscribe all examinations, informations, bailablements and recognizances, and deliver or cause to be delivered the same to the proper officer of the court in which the trial is to be, before, or at the opening of the court, in like manner as in cases of felony, and that no traverse or other postponement of any trial thereupon had, shall be allowed except upon special cause shown to the satisfaction of the said court, or by consent of the prosecutor.

Duty of coron-
er.

4. Every coroner, upon any inquisition taken before him, whereby any person shall be indicted for manslaughter or murder, or as an accessary to murder before the fact, shall, in presence of the party accused, if he can be apprehended, put in writing the evidence given to the jury before him, or as much thereof as shall be material, giving the party accused full opportunity of cross-examination; and shall have authority to bind by recognizance all such persons as know or declare anything material touching the said manslaughter or murder, or the said offence of being accessary to murder, to appear at the next Court of Oyer and Terminer or Gaol Delivery, or other court, at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such coroner shall certify and subscribe the same evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper officer of the court in which the trial is to be, before, or at the opening of the court.

When party
committed
wishes to be
bailed, the
justices on
notice there-
of to forward
all informa-
tions to clerk
of the crown.

5. When and so often as any person shall be committed for trial by any justice or justices, or coroner, as aforesaid, it shall and may be lawful for such prisoner, his counsel attorney or agent, to notify the said committing justice or justices, or coroner, that he will, so soon as counsel can be heard, move her Majesty's Court of Superior Jurisdiction, for that part of the Province in which such person stands commit-

ted, or one of the judges thereof, for an order to the justices of the peace, or coroner for the district where such prisoner shall be confined, to admit such prisoner to bail, whereupon it shall be the duty of such committing justice or justices, or coroner, with all convenient expedition, to transmit to the office of the Clerk of the Crown, close under the hand and seal of one of them, a certified copy of all informations, examinations and other evidences, touching the offence where-with such prisoner shall be charged, together with a copy of the warrant of commitment and inquest, if any such there be, and that the packet containing the same shall be handed to the person applying therefor in order to such transmission, and it shall be certified on the outside thereof to contain the information touching the case in question.

6. Upon any application to her Majesty's Court of Superior Criminal jurisdiction, for that part of the Province within which such person stands committed, or to any judge thereof, the same order, touching the prisoner being bailed or continued in custody, shall be made, as if the party were brought up upon a habeas corpus. (a)

Same orders
to be made
as in Habeas
Corpus.

7. If any justice or coroner shall neglect or offend in anything contrary to the true intent and meaning of any of the provisions of this Act, it shall be lawful for the court to whose officer any such examination, information, evidence, bailment, recognizance or inquisition ought to have been delivered, and such court is hereby authorised and required, upon examination and proof of the offence, in a summary manner to set such fine upon every justice or coroner as the court shall think meet.

Penalty on
justices and
coroners.

8. The provisions of this Act relating to justices

(a) A judge will not admit a prisoner to bail after the grand jury have returned a true Bill against him for murder.—*R. v. Chapman*, 8 C. & P. 556; *R. v. Anderson*, 2 D. & L. 10.

Provisions to apply to all justices and coroners.

and coroners, shall apply to the justices and coroners, not only of districts and counties at large, but also of all other jurisdictions.

Persons tried for felony to have benefit of counsel.

9. All persons tried for felonies shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto by counsel, learned in the law, or by attorney, where attorneys practice as counsel. (a)

Same in cases of summary conviction.

10. That in all cases of summary conviction, persons accused shall be admitted to make their full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney. (b)

Order for delivery of prisoners to be tried at assizes,

11. When and so often as the attendance of any person confined in any gaol or prison of this Province, or upon the limits thereof, shall be required in any Court of Assize and Nisi Prius or Oyer and Terminer or General Gaol Delivery, or other court, it shall and may be lawful for the court before whom such prisoners shall be required to attend, in its discretion, to make order upon the sheriff, gaoler or other person having the custody of such prisoner, to deliver such prisoner to the person named in such order to receive him, which person shall thereupon instantly convey such prisoner to the place where the court

(a) If in a case of felony the prisoner's counsel has addressed the jury, the prisoner himself will not be allowed to address them also.—*R. v. Boucher*, 8 C. & P. 141; *R. v. Rider*, 8 C. & P. 531. Where the counsel for several prisoners cannot agree as to the order in which they are to address the jury, the court will call on them, not by seniority, but in the order in which the names of the prisoners stand in the indictment. But where the counsel for one prisoner has witnesses to examine, the counsel for another prisoner cannot be allowed to postpone his address to the jury until after those witnesses have been examined.—*R. v. Barber*, 1 Car. & K. 434.

(b) As to the right of an attorney to be present on behalf of a prisoner on a preliminary examination on a charge of felony before justices, see *R. v. Borron*, 3 B. & A. 432; *Cox v. Coleridge*, 1 B. & C. 37.

issuing such order shall be sitting, there to receive and obey such further order as to the said court shall seem meet: Provided always, that no prisoner confined for any debt or damages in any civil suit shall be thereby removed out of the district where he shall be confined. Proviso.

12. All persons who, after the passing of this Act, shall be held to bail or committed to prison for any offence against the law, shall be entitled to require and have on demand (from the person who shall have the lawful custody thereof, and who is hereby required to deliver the same) copies of the examinations of the witnesses respectively, upon whose depositions they have been so held to bail, or committed to prison, on payment of a reasonable sum for the same, not exceeding three pence for each folio of one hundred words: Provided always, that if such demand shall not be made before the day appointed for the commencement of the assize or sessions at which the trial of the person on whose behalf such demand shall be made, is to take place, such person shall not be entitled to have any copy of such examination of witnesses, unless the judge or other person to preside at such trial, shall be of opinion that such copy may be made and delivered without delay or inconvenience to such trial, but it shall, nevertheless, be competent for such judge or other person so to preside at such trial, if he shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged. (a)

Prisoners entitled to copies of depositions against them.

(a) A magistrate is not bound by law to return all that is stated by the witnesses on a charge of felony, but only all that is material to the case, and though they ought to contain what was stated, that the prisoner may know what he has to answer, there is a difference between a witness at the trial adding to his deposition and contradicting it, and it seems the chief object in granting the prisoner the depositions was to guard against an attempt at such contradic-

Persons under trial may inspect all depositions.

13. All persons under trial shall be entitled, at the time of their trial, to inspect, without fee or reward, all depositions (or copies thereof) which have been taken against them, and returned into the court before which such trial shall be had.

A plea of not guilty, without more, shall put the prisoner on his trial by jury.

14. If any person whatever, being arraigned upon any indictment for treason, felony or piracy, shall plead thereto a plea of "not guilty," such person shall, by such plea, without any further form, be deemed to have put himself or herself upon the country for trial, and the court shall, in the usual manner, order a jury for the trial of such person accordingly. (a)

If he refuse to plead, the court may order a plea of "not guilty" to be entered.

15. If any person, being arraigned upon or charged with any indictment or information for treason, felony, piracy or misdemeanor, shall stand mute of malice, or will not answer directly to the indictment or information, in every such case, it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of "not guilty" on behalf of

tion.—7 C. & P. 667-817. Where depositions are taken and returned by a coroner, the prisoner may obtain a copy of them.—R. v. Greenacre, 8 C. & P. 82. A prisoner is not entitled to a copy of his own statement returned by the magistrate as made before him, but only to a copy of the depositions.—R. v. Aylett, 8 C. & P. 669. Depositions taken before a magistrate cannot be read against a prisoner, where the witness has died since the examination, unless the depositions on cross-examination have been correctly taken and returned. Depositions in cross-examination taken at a subsequent time to those in chief, and not signed by the committing magistrates, are so irregular as to prevent the whole depositions being read against the prisoner, although both are proved by one of the committing magistrates to have been correctly taken.—R. v. France, 2 M. & Rob. 207. The right to copies does not attach until the prisoner is held to bail or committed for trial.—Ex parte Fletcher, 8 Jur. 269: 5 Q. B. 555.

(a) A prisoner who has pleaded guilty to a charge of larceny, cannot, after sentence, be allowed to withdraw his plea, and plead not guilty.—R. v. Selbe, 9 C. & P. 346.

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such person; and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

16. If any person indicted for any treason, felony, or piracy, shall challenge peremptorily a greater number of the men returned to be of the jury, than such person is entitled by law so to challenge, in any of the said cases, every peremptory challenge beyond the number allowed by law in any of the said cases, shall be entirely void, and the trial of such shall proceed as if no such challenge had been made.

Every challenge beyond the legal number shall be void.

17. No plea setting forth any attainder shall be pleaded in bar of any indictment, unless the attainder be for the same offence as that charged in the indictment.

Attainder of another crime not pleadable.

18. Where any person shall be indicted for treason or felony, the jury impanelled to try such person shall not be charged to inquire concerning his lands, tenements or goods, nor whether he fled for such treason or felony.

Jury shall not enquire of prisoner's lands, &c., nor whether he fled.

19. Benefit of clergy with respect to persons convicted of felony shall be abolished; but that nothing herein contained shall prevent the joinder in any indictment of any counts which might have been joined before the passing of this Act. (a)

Benefit of clergy abolished.

20. No person convicted of felony shall suffer death, unless it be for some felony which was excluded from the benefit of clergy by the law in force in that part of this Province in which the trial shall be before the commencement of this Act, or which

What felonies only shall be capital.

(a) A general judgment for the crown on an indictment containing several counts, one of which is bad, and where the punishment is not fixed by law, cannot be supported.—*O'Connell v. Reg.* in error, 11 Cl. & F. 155. An indictment contained four counts for extortion, and three for uttering forged licenses; the jury returned a verdict of guilty on all the counts; the court passed sentence of the same identical term of imprisonment on each count separately.—*R. v. Carter*, 9 Jur. 178.

shall be made punishable with death by some Act passed after that day.

Every punishment for felony after it has been endured shall have the effect of a pardon under the great seal.

21. To prevent all doubts respecting the civil rights of persons convicted of felonies not capital, who have undergone the punishment to which they were adjudged; Be it enacted, that where any offender had been or shall be convicted of any felony not punishable with death, and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, the punishment so endured hath and shall have the like effects and consequences as a pardon under the great seal as to the felony whereof the offender was so convicted: Provided always, that nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any other felony.

No misdemeanor (except perjury) shall render a party an incompetent witness after he has undergone the punishment.

22. And whereas there are certain misdemeanors which render the parties convicted thereof incompetent witnesses, and it is expedient to restore the competency of such parties after they have undergone their punishment; Be it therefore enacted, that where any offender hath been or shall be convicted of any such misdemeanor (except perjury or subornation of perjury), and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, such offender shall not, after the punishment so endured, be deemed to be, by reason of such misdemeanor, an incompetent witness in any court or proceeding civil or criminal.

Felonies not capital, punishable under the Act relating thereto, otherwise under this Act.

24. Every person convicted of any felony not punishable with death, shall be punished in the manner prescribed by the statute or statutes specially relating to such felony; and that every person convicted of any felony for which no punishment hath been or hereafter may be specially provided, shall be deemed to be punishable under this Act, and shall be liable, at the discretion of the court, to be imprisoned at hard

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labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. (a)

28. Where any person shall be convicted of any offence punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour in the common gaol, or house of correction, and also to direct that the offender shall be kept in solitary confinement, for any portion or portions of the term of such imprisonment or of such imprisonment with hard labor not exceeding one month at any one time, and not exceeding three months in any one year, as to the court, in its discretion, shall seem meet.

The court may order hard labour or solitary confinement as part of the sentence of imprisonment.

29. Whenever sentence shall be passed for felony on a person already imprisoned under sentence for another crime, it shall be lawful for the court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced; and where such person shall be already under sentence of imprisonment, the court may award such sentence for the subsequent offence, to commence at the expiration of the imprisonment to which such persons shall have been previously sentenced, although the aggregate term of imprisonment may exceed the term for which such punishment could be otherwise awarded.

If a person under sentence for another crime is convicted of felony the court may pass a second sentence, to commence after the expiration of the first.

31. And whereas it is expedient to abolish the punishment of the pillory; Be it therefore enacted, that from and after the commencement of this Act, judgment shall not be given and awarded against any person or persons convicted of any offence, that such person or persons do stand in or upon the pillory, by any law, statute or usage to the contrary notwithstanding.

Punishment of the pillory abolished.

(a) See post, title "punishment."

standing : Provided that nothing herein contained shall extend or be construed to extend in any manner to change, alter or affect any punishment whatever which may now be by law inflicted in respect of any offence, excepting only the punishment of the pillory.

No report to be made to the Governor of the case of any capital convict.

32. From and after the commencement of this Act, it shall not be necessary that any report should be made to the Governor, Lieutenant Governor or Person administering the Government, in the case of any prisoner convicted before any court and now under sentence of death, or who may be hereafter convicted before any court and sentenced to the like punishment, previously to such sentence being carried into execution ; any law, usage, or custom to the contrary notwithstanding.

The court may abstain from pronouncing judgment on persons convicted of crimes liable to the punishment of death ; and order the same to be entered of record.

33. Whenever any offender shall hereafter be convicted before any court of criminal judicature, of any crime for which such offender shall be liable to the punishment of death, and the court shall be of opinion that, under the particular circumstances of the case such offender is a fit and proper subject to be recommended for the royal mercy, it shall and may be lawful for such court, if it shall think fit so to do, to direct the proper officer, then being present in the court, to require and ask, (whereupon such officer shall require and ask) whether such offender hath or knoweth anything to say why judgment of death should not be recorded against such offender, and in case such offender shall not allege any matter or thing sufficient in law to arrest or bar such judgment, the court shall and may, and is hereby authorized to abstain from pronouncing judgment of death upon such offender, and instead of pronouncing such judgment to order the same to be entered of record, and thereupon such proper officer as aforesaid shall and may and is hereby authorized to enter judgment of death on record against such offender in the usual and accustomed form, and in such and the same manner as now used, and as if judgment of

death had actually been pronounced in open court against such offender by the court.

34. A record of every such judgment so entered, as aforesaid, shall have the like effect to all intents, and be followed by all the same consequences as if such judgment had actually been pronounced in open court. Such record to have the same effect as if pronounced.

25. Whenever any offender shall hereafter be convicted before any court of criminal judicature, of any offence for which such offender shall be liable to and shall receive sentence of death, and the court shall be of opinion that, under the circumstances of the case, the judgment of the law ought to be carried into effect, it shall be lawful for the said court, and such court is hereby required, to order and direct execution to be done on such offender in the same manner as any court is empowered to order and direct execution by the law as it stood before the passing of this Act. Court to direct execution in certain cases.

36. Nothing in this Act contained shall effect Her Majesty's royal prerogative of mercy. Not to affect the Royal Prerogative.

42. In any indictment of information for any felony or misdemeanor, wherein it shall be requisite to state the ownership of any property whatsoever, whether real or personal, which shall belong to or be in the possession of more than one person, whether such persons be partners in trade, joint tenants, parceners or tenants in common, it shall be sufficient to name one of such persons, and to state such property to belong to the person so named and another or others, as the case may be; and whenever in any indictment or information for any felony or misdemeanor, it shall be necessary to mention for any purpose whatsoever, any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and this provision shall be construed to extend to all joint-stock companies and trustees. (a) In indictments for offences committed on the property of partners, it may be laid in any one partner by name, and others.

(a) If the property be laid in "A. B. and others," and

In indictments for felonies, &c., relating to churches, bridges, or public buildings, property need not be stated as being in any person.

43. In any indictment or information for any felony or misdemeanor committed in, upon, or with respect to any church, chapel or place of religious worship, or to any bridge, court, court-house, gaol, house of correction, penitentiary, infirmary, asylum, or other public building, or any canal, lock, drain or sewer erected or maintained in whole or in part at the expense of the Province, or of any division or subdivision thereof, or on or with respect to any materials, goods, or chattels, whatsoever, provided for or at the expense of the Province, or of any division or subdivision thereof, to be used for making, altering or repairing any bridge or highway, or any court or other such building, canal, lock, drain, or sewer as aforesaid, or to be used in or with any such court or other building, canal, lock, drain, or sewer, it shall not be necessary to state such church, chapel, or place of religious worship, or such bridge, court, court-house, gaol, house of correction, Penitentiary, infirmary, asylum, or other building, or such canal, lock, drain, or sewer, or any such materials, goods, or chattels to be the property of any person.

Property of turnpike trustees may be laid in trustees, &c.

44. In any indictment or information for any felony or misdemeanor, committed on or with respect to any house, building, gate, machine, lamp, board, stone, post, fence or other thing erected or provided, in pursuance of any Act in force in this Province, for making any turnpike road, or of any conveniences or appurtenances thereunto respectively belonging, or any materials, tools or implements provided for making, altering, or repairing any such road, it shall be sufficient to state any such property to belong to the trustees or commissioners of such road, and it shall not be necessary to specify the names of any such trustees or commissioners.

45. No indictment or information shall be abated

A.B. be proved to be in partnership with one other only, defendant must be acquitted. Archb. Crim. Law, 30.

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a. Law, 30.

by reason of any dilatory plea of misnomer, or of want of addition, or of wrong addition of any party offering such plea, if the court shall be satisfied, by affidavit or otherwise, of the truth of such plea; but in such case the court shall forthwith cause the indictment or information to be amended according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no such dilatory plea had been pleaded.

46. No judgment upon any indictment or information for any felony or misdemeanor, whether after verdict or outlawry, or by confession, default or otherwise, shall be stayed or reversed for want of the averment of any matter unnecessary to be proved, nor for the omission of the words, "as appears by the record," or of the words, "with force and arms," or of the words, "against the peace," nor for the insertion of the words "against the form of the Statute," instead of the words, "against the form of the Statutes" or *vice versa*, nor for that any person or persons mentioned in the indictment or information is or are designated by a name of office or other descriptive appellation, instead of his, her or their proper name or names, nor for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or exhibiting the information, or on an impossible day, or on a day that never happened, nor for a want of a proper or perfect venue, where the court shall appear by the indictment or information to have had jurisdiction over the offence.

47. No judgment after verdict upon any indictment or information for any felony or misdemeanor, shall be stayed or reversed for want of a *similiter*, nor by reason that the jury process has been awarded to a wrong officer upon an insufficient suggestion,

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nor for any misnomer or misdescription of the officer returning such process, or of any of the jurors nor because any person has served upon the jury who has not been returned as a juror by the sheriff or other officer; and that where the offence charged shall be an offence theretofore created by any statute, or subjected to a greater degree of punishment, or excluded from the benefit of clergy, by any statute, the indictment or information shall after verdict be held sufficient if it describe the offence in the words of the statute creating the offence, or prescribing the punishment, or excluding the offender from the benefit of clergy.

Effect of a
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48. Where the Queen's Majesty, or the Governor, Lieutenant Governor, or Person administering the Government of this Province for the time being, shall be pleased to extend the royal mercy to any offender convicted of any felony, punishable with death or otherwise, and by warrant under the royal sign manual, countersigned by one of the principal Secretaries of State, or by warrant under the hand and seal at arms of such Governor, Lieutenant Governor, or Person administering the Government as aforesaid, shall grant to such offender either a free or a conditional pardon, the discharge of such offender out of custody, in case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the great seal for such offender, as to the felony for which such pardon shall have been granted: Provided always, that no free pardon, or any such discharge in consequence thereof, or any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any felony committed after the granting of any such pardon.

49. Whereas the practice of indiscriminately

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estreating recognizances for the appearance of per-
sons to prosecute or give evidence, or to answer for
a common assault, or in the other cases hereinafter
specified, has been found in many instances pro-
ductive of hardship to persons who have entered
into such recognizances: Be it enacted, that in every
case where any person bound by recognizance for his
or her appearance, (or for whose appearance any
other person shall be so bound) to prosecute or give
evidence in any case of felony or misdemeanor, or
to answer for any common assault, or to articles of
the peace, shall therein make default, the officer of
the court by whom the estreats are made out, shall,
and such officer is hereby required to prepare a list
in writing, specifying the name of every person so
making default, and the nature of the offence in re-
spect of which every such person, or his or her surety
was so bound, together with the residence, trade,
profession or calling of every such person and surety,
and shall in such list distinguish the principals from
the sureties, and shall state the cause, if known,
why each such person has not appeared, and whether
by reason of the non-appearance of such person, the
ends of justice have been defeated or delayed; and
every such officer shall, and such officer is hereby
required, before any such recognizance shall be
estreated, to lay such list, if at a court of Oyer and
Terminer or Gaol Delivery in any district or county,
or at any of her Majesty's Superior Courts of Record
in this Province, before one of the justices of those
courts, respectively, or if at a session of the peace,
before two of the justices of the peace, who shall
have attended such courts, who are respectively
authorised and required to examine such list, and to
make such order touching the estreating or putting
in process any such recognizance as shall appear to
them, respectively, to be just; and it shall not be
lawful for the officer of any court to estreat or put in
process any such recognizance without the written

Recognizances in certain cases not to be estreated without a Judge's order.

order of the justice, or justices of the peace before whom respectively such list shall have been laid.

Rule for the interpretation of this and all criminal Acts.

50. Wherever in this Act or in any other Act relating to any offence, whether punishable upon indictment or summary conviction, in describing or referring to the offence or the subject matter on or with respect to which it shall be committed, or the offender or the party affected or intended to be affected by the offence, any word or words have been or shall be used or employed importing the singular number or the masculine gender only, every such act 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 females as well as males, 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; and wherever any forfeiture or penalty is or shall be made payable to a party aggrieved, it shall be payable to a body corporate in every case where such a body shall be the party aggrieved.

All Acts repugnant to this Act repealed.

51. All Acts or parts of Acts or provisions of law in force in this Province, or any part thereof, immediately before the time when this Act shall come into force, which shall be inconsistent with or contradictory to this Act, or which make any provision in any matter provided for by this Act, other than such as is hereby made in such matter, shall from and after the time when this Act shall come into force, be and they are hereby repealed, except in so far as may relate to any offence committed before the commencement of this Act, which shall be dealt with and punished as if this Act had not been passed.

From what period the imprisonment is to be reckoned.

52. The period of imprisonment in the Provincial Penitentiary, in pursuance of any sentence passed under this Act or under any other Act relating to the punishment of offences by confinement and imprisonment in the Provincial Penitentiary, shall

be held to commence from the period of passing such sentence, whether the convict upon whom such sentence shall be passed shall be removed to the said Provincial Penitentiary forthwith, or be detained in custody in any other prison or place of confinement, previously to such removal.

12 VIC. CHAP. 21, SEC. 2.—And whereas a failure of justice frequently takes place in criminal trials, by reason of variances between writings produced in evidence, and the recital or setting forth thereof in the indictment or information, and the same cannot now be amended at the trial except in cases of misdemeanor; for remedy thereof, Be it enacted, that it shall and may be lawful, for any Court of Queen's Bench, or other superior court of criminal jurisdiction in Lower Canada, or of Oyer and Terminer and General Gaol Delivery in any part of this Province, if such court shall see fit so to do, to cause the indictment or information for any offence whatever, when any variance or variances shall appear between any matter, in writing or in print, produced in evidence, and the recital or setting forth thereof in the indictment or information whereon the trial is pending to be forthwith amended in such particular or particulars, by some officer of the court, and after such amendment, the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury, and otherwise, as if no such variance or variances had appeared. (a)

Recital.

Indictment,
&c., may be
amended by
order of the
court in case
of variance
between a
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Effect of such
amendment.

(a) A count for receiving stolen goods alleged that the prisoner received the goods of A. B., "he, the said A. B., then knowing them to have been stolen." After a verdict of guilty, the counsel moved in arrest of judgment, on the ground that the seienter was omitted, but the Court of Quarter Sessions amended the count, by striking out A. B., and inserting the name of the prisoner; Held, by the Court of Criminal Appeal, that the count was bad as originally framed, that the objection was taken at the proper time, and that the indictment was not amendable after verdict; and they ordered the record to be restored to its original shape.—R. v. Larkin, 18 Jur. 530.

Any question of law may be reserved by certain courts for the opinion of one of the Superior Courts.

14 & 15 VIC. CHAP. 13, SEC. 1.—When any person shall have been convicted of any treason, felony, or misdemeanor before any Court of Oyer and Terminer or Gaol Delivery, or Quarter Sessions, the judge, recorder or justices of the peace, before whom the case shall have been tried, may, in his or their discretion, reserve any question of law which shall have arisen on the trial, for the consideration of the justices of either of her Majesty's Superior Courts of Common Law, and thereupon shall have authority to respite execution of the judgment on such conviction, or postpone the judgment until such question shall have been considered and decided, as he or they may think fit, and in either case the court in its discretion shall commit the person convicted to prison, or shall take a recognizance of bail with one or two sufficient sureties, and in such sum as the court shall think fit, conditioned to appear at such time or times as the court shall direct and receive judgment, or to render himself in execution, as the case may be.

Case to be stated and certified to such Superior Court.

Powers of the judges of such Superior Court.

2. The judge, recorder, or Court of Quarter Sessions, shall thereupon state, in a case to be signed by such judge, recorder or the chairman of such court, the question or questions of law which shall have been so reserved, with the special circumstances upon which the same shall have arisen; and such case shall be transmitted, by such judge, recorder, or Court of Quarter Sessions to one or other of the said Superior Courts on or before the last day of the first week of the term of such Superior Court next after the time when such trial shall have been had, and the justices of either of the said Superior Courts shall thereupon have full power and authority to hear and finally determine the said questions, and thereupon to reverse, affirm or amend any judgment which shall have been given on the indictment or inquisition on the trial whereof such question or questions have arisen, or to avoid such judgment, and to order an entry to be made on the record, that in the judgment

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of the said justices the party convicted ought not to have been convicted, or to arrest the judgment, or order judgment to be given thereon at some other session of Oyer and Terminer or Gaol Delivery, or other sessions of the peace, if no judgment shall have been before that time given, as they shall be advised, or to make such other order as justice may require; and such judgment and order, if any, of the said justices, shall be certified under the hand of the Chief Justice or senior judge of such court, to the clerk of assize, or to the clerk of the peace, or recorder's clerk, as the case may be, who shall enter the same on the original record in proper form, and a certificate of such entry, under the hand of the clerk of assize, or of the clerk of the peace, or the recorder's clerk, as the case may be, in the form, as near as may be, or to the effect mentioned in the schedule to this Act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the sheriff or gaoler in whose custody the person convicted shall be, and the said certificate shall be sufficient warrant to such sheriff or gaoler, and all other persons, for the execution of the judgment, as the same shall have been so certified to have been affirmed or amended, and execution shall thereupon be executed on such judgment, or for the discharge of the person convicted from further imprisonment, if the judgment shall be reversed, avoided or arrested, and in that case such sheriff or gaoler shall forthwith discharge him, and also the next Court of Oyer and Terminer or Gaol Delivery or session of the peace, shall vacate the recognizance of bail, if any, and if the Court of Oyer and Terminer or Gaol Delivery or sessions of the peace shall be directed to give judgment, the said court shall proceed to give judgment at the next session.

Judgment to
be certified
to the court
below:—its
consequence.

3. The judgment or judgments of the said justices of the said Superior Courts shall be delivered in open court. How the judgment of the Superior

Court shall
be delivered.

court, after hearing counsel or the parties, in case the prosecutor or person convicted shall think it fit that the case shall be argued in like manner as the judgments of the said Superior Courts are now delivered.

Case may be
sent back for
amendment.

4. The said justices of the said Superior Courts, when a case has been reserved for their opinion, shall have power, if they think fit, to cause the case or certificate to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

What judg-
ment may
be pro-
nounced by
a Court of
Error.

5. Whenever any writ of error shall be brought upon any judgment, on any indictment, information, presentment or inquisition, in any criminal case, and the Court of Error shall reverse the judgment, it shall be competent for such Court of Error either to pronounce the proper judgment, or to remit the record to the court below, in order that such court may pronounce the proper judgment upon such indictment, information, presentment or inquisition.

Extent of
Act. §

7. This Act shall be in force only in Upper Canada.

SCHEDULE.

Whereas at the session of the peace for the county (*or* united counties *or* city) of _____, held on _____, before _____ and others, their fellows, [*or* at the session of Oyer and Terminer and Gaol Delivery, held for the county (*or* united counties) of _____ on _____ before the Honourable _____, one of the justices of the Court of _____, and others, his fellows, justices of Oyer and Terminer and Gaol Delivery] A. B., late of _____, having been found guilty of felony and judgment thereon given; that (*state the substance*) the court before whom he was tried reserved a certain question of law for the consideration of the justices of one of the Superior Courts of Common Law, and execution was thereupon respited in the mean-

time: this is to certify that the justices of the Court of Queen's Bench (*or* Common Pleas) having met at Toronto, in Term (*or* the sittings after term) it was considered, by the said justices there, that the judgment aforesaid should be annulled, and an entry made on the record that the said A. B. ought not, in the judgment of the said justices, to have been convicted of the felony aforesaid, and you are therefore hereby required forthwith to discharge the said A. B. from your custody.

Signed E. F., Clerk of the Peace for the, &c. *or*

" Recorder's Clerk of the city of &c. *or*

" Clerk of Assize of &c. (*as the case may be.*)

To the sheriff of and the }
gaoler of and all others }
whom it may concern.

16 VIC. CHAP. 179. (a)—9. In all cases where any person shall appear or be brought before any justice or justices of the peace charged with any indictable offence, whether committed in this Province, or upon the high seas, or on land beyond the sea, or whether such person appear voluntarily, upon summons, or have been apprehended with or without warrant, or be in custody for the same or any other offence, such justice or justices, before he or they shall commit such accused person to prison for trial, or before he or they shall admit him to bail, shall, in the presence of such accused person, who shall be at liberty to put questions to any witness produced against him,

Examination and deposition of witnesses in the presence of the accused.

(a) This Act relates to the duties of justices of the peace out of sessions as to persons accused of indictable offences, and annexed to it is a schedule of forms to be used. It belongs, however, more to a work compiled for the use of magistrates than to one of this description, and the compiler has, therefore, only extracted those portions which are more immediately connected with the administration of justice in courts of criminal jurisdiction. By the last section, this Act came into force from and after the 1st July, 1853.

Justice to administer the usual oath or affirmation.

Deposition of persons who may have died, or who shall be unable to attend, may, in certain cases be read at the trial.

When examination is completed, depositions must be read to the party accused, and any statements he may then wish to make to be taken down, he being first cautioned, &c.

take the statement on oath or affirmation of those who shall know the facts and circumstances of the case, and shall put the same in writing; and such depositions shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same, and the justice or justices before whom any such witness shall appear to be examined as aforesaid, shall, before such witness is examined, administer to such witness the usual oath or affirmation which such justice or justices shall have full power and authority to do; and if upon the trial of the person so accused, as first aforesaid, it shall be proved, upon the oath or affirmation of any credible witness, that any person, whose deposition shall have been taken as aforesaid, is dead, or is so ill as not to be able to travel, and if also it be proved that such deposition was taken in the presence of the person so accused, and that he, or his counsel or attorney, had a full opportunity of cross-examining the witness, then, if such deposition purports to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same.

10. After the examination of all the witnesses on the part of the prosecution, as aforesaid, shall have been completed, the justice of the peace, or one of the justices, by or before whom such examination shall have been so completed as aforesaid, shall, without requiring the attendance of the witnesses, read, or cause to be read, to the accused, the depositions taken against him, and shall say to him these words, or words to the like effect:—"Having heard the evidence, do you wish to say anything in answer to the charge; you are not obliged to say anything unless you desire to do so, but whatever you say will

be taken down in writing, and may be given in evidence against you on your trial." And whatever the prisoner shall then say in answer thereto shall be taken down in writing, and read over to him, and shall be signed by the said justice or justices and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned, and afterwards, upon the trial of the said accused person, the same may, if necessary, be given in evidence against him, without further proof thereof, unless it shall be proved that the justice or justices purporting to sign the same did not in fact sign the same: Legal effect of his answers. Provided always, that the said justice or justices, before whom such accused person shall make any statement, shall state to him, and give him clearly to understand, that he has nothing to hope from any promise of favor, and nothing to fear from any threat which may have been holden out to him to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evidence against him on his trial, notwithstanding such promise or threat: Proviso: he is to be cautioned on certain points. Provided nevertheless that nothing herein contained or enacted shall prevent the prosecutor in any case from giving in evidence any admission or confession or other statement of the person accused or charged made at any time which by law would be admissible as evidence against such person. Proviso: Certain statements made by the accused may be used against him.

12. It shall be lawful for any such justice or justices, before whom any such witness shall be examined, as aforesaid, to bind by recognizance the prosecutor, and every such witness, to appear at the next court of competent criminal jurisdiction at which the accused is to be tried, then and there to prosecute, or to prosecute and give evidence, or to give evidence, as the case may be, against the party accused, which said recognizance shall particularly specify the profession, art, mystery or trade of every such person entering into or acknowledging the same, together

Justices may bind over the prosecutor and witnesses to prosecute and give evidence.

Recognizance, depositions, &c., to be transmitted to the proper officer of the court in which the trial is to be had.

Witnesses refusing to enter recognizances may be committed.

Witnesses committed may be discharged, if prisoner be not committed or held to bail.

with his christian and surname, and the township or place of his residence, or if his residence be in a city, town or borough, the recognizance shall also particularly specify the name of the said city, town or borough, and, when convenient so to do, of the street and the number, if any, of the house in which he resides, and whether he is owner or tenant thereof, or lodger therein; and the said recognizance being duly acknowledged by the person so entering into the same, shall be subscribed by the justice or justices before whom the same shall be acknowledged, and a notice thereof signed by the said justice or justices shall at the same time be given to the person bound thereby, and the several recognizances so taken together, with the written information, if any, the depositions, the statement of the accused, and the recognizance of bail, if any, in every such case, shall be delivered by the said justice or justices, or he or they shall cause the same to be delivered to the proper officer of the court in which the trial is to be had, before or at the opening of the said court, on the first day of the sitting thereof, or at such other time as the judge, justice or other person who is to preside at such court at the said trial shall order and appoint: Provided always, that if any such witness shall refuse to enter into or acknowledge such recognizance, as aforesaid, it shall be lawful for the justice or justices of the peace, by his or their warrant, to commit him to the common gaol of the county in which the accused party is to be tried, there to be imprisoned and safely kept until after the trial of such accused party, unless in the meantime such witness shall duly enter into such recognizance, as aforesaid, before some one justice of the peace for the territorial division in which such gaol shall be situate: Provided, nevertheless, that if afterwards, for want of sufficient evidence in that behalf, or other cause, the justice or justices before whom such accused party shall have been brought, shall not commit him or hold him to bail

for the offence with which he is charged, it shall be lawful for such justice or justices, or for any other justice or justices for the same territorial division, by his or their order, in that behalf, to order and direct the keeper of such common gaol where such witness shall be so in custody to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly.

15. When any person shall appear before any justice of the peace, charged with a felony or suspicion of felony, and the evidence adduced, shall in the opinion of such justice be sufficient to put such accused party on his trial, as hereinafter mentioned, but shall not furnish such a strong presumption of guilt as to warrant his committal for trial, it shall and may be lawful for such justice, jointly with some other justice of the peace, to admit such person to bail, upon his procuring and producing such surety or sureties, as in the opinion of such two justices, will be sufficient to ensure the appearance of such person so charged, at the time and place when and where he is to be tried for such offence; and, therefore, such two justices shall take the recognizance of the said accused person and his surety or sureties, conditioned for the appearance of such accused person at the time and place of trial, and that he will then surrender and take his trial, and not depart the court without leave: Proceedings where a party shall be charged with felony, or suspicion of felony, and the evidence appears sufficient to put him on his trial, but not to warrant his committal for trial. Provided firstly, that when the offence committed, or suspected to have been committed, is a misdemeanor, any one justice may admit to bail in manner aforesaid; and such justice or justices may at their discretion require that such bail should justify upon oath as to their sufficiency, which oath the said justice or justices is and are hereby authorized to administer, and in default of such person procuring sufficient bail, then such justice or justices, may commit him to prison, there to be kept until delivered according to law; Provide: one justice may bail if the offence be misdemeanor or only. Provided secondly, that in all cases of felony where the party

Proviso: County Judge in his discretion, may order a party committed for trial to be admitted to bail.

Proviso: for certain offences bail shall not be taken, except by order of one of the Judges of Q. B. or C. P.

Defendant is entitled to a copy of depositions after examination is completed.

accused shall be finally committed as hereinafter provided, it shall be lawful for any county judge who may be also a justice of the peace for the county within the limits of which such accused party is confined, in his discretion on application made to him, for that purpose, to order such accused party or person to be admitted to bail on entering into recognizance with sufficient sureties for such an amount, before two justices of the peace as the said judge shall direct, and thereupon such justices shall issue a warrant of deliverance as hereinafter provided, and shall attach thereto the order of the judge, directing the admitting of such party to bail; Provided lastly, that no justice or justices of the peace, or county judge shall admit any person to bail accused of treason or murder, nor shall any such person be admitted to bail, except by order of her Majesty's Court of Queen's Bench or Common Pleas, or one of the judges thereof in vacation, and nothing herein contained shall prevent such last mentioned judges admitting any person accused of misdemeanor or felony to bail when they may think it right so to do.

19. At any time after all the examinations aforesaid shall have been completed and before the first day of the session or other first sitting of the court, at which any person so committed to prison or admitted to bail as aforesaid, is to be tried, such person may require and shall be entitled to have from the officer or person having the custody of the same copies of the depositions on which he shall have been committed or bailed, on payment of a reasonable sum for the same, not exceeding the rate of three pence for each folio of one hundred words.

AGRICULTURAL SOCIETIES.

16 VIC. CHAP. 11, SEC. 41.—Any treasurer or other officer of any county, township or branch

society, who shall make affidavit that any subscription, or any sum of money, has been paid to him for the society, when it has not been so paid, or who shall return any such subscription, shall forfeit and pay to her Majesty the sum of ten pounds for every such offence, and shall be guilty of perjury, and be held liable to all the penalties with which the law may visit that crime

Penalty on
Treasurers
in certain
cases.

ASSESSMENT.

10 VIC. CHAP. 182, SEC. 78.—If any clerk, assessor or collector, acting under this act shall make any unjust or fraudulent assessment or collection, or copy of any assessors or collectors roll, or shall wilfully and fraudulently insert the name of any person who should not have been entered in such roll, or omit the name of any person who should have been entered in such roll according to the true intent and meaning of this Act, or shall wilfully omit any duty required of him by this Act, he shall be guilty of a misdemeanor; and upon conviction thereof before any court of competent jurisdiction, he shall be liable to a fine not exceeding fifty pounds, (and to imprisonment until the fine shall be paid) or to imprisonment in the common gaol of the county or city for a period not exceeding six calendar months, or to both, in the discretion of the court, whose duty it shall be to pass the sentence of the law on such offender, and proof to the satisfaction of the jury, that any real property was assessed by such assessor at an actual or yearly value, greater or less than its actual or yearly value, by thirty per centum thereof, shall be *prima facie* evidence that such assessment was fraudulent and unjust, and the assessor convicted of having made any fraudulent and unjust assessment, shall be sentenced to the greatest punishment, both of fine and imprisonment, allowed by this Act.

Punishment
of clerks, as-
sessor or
collectors
making any
fraudulent
assessment,
&c.

Evidence of
such fraud.

BANKS.

Undertakings in the nature of bank bill or note, and intended to pass as money, issued by persons either associated with-out Legislative authority, or incorporated for any other purpose than banking, declared illegal.

7 WILL. IV. CHAP. 13, SEC. 1.—After the passing of this Act, (except in the cases hereinafter mentioned,) it shall not be lawful for any person in this Province, or for any number of persons, either associated without legislative authority or incorporated for any other purpose than banking, to make or issue any bill, note, or undertaking of any description, or in any form, in the nature of a bank bill or note, and intended to pass as money; and that if any bill, note or undertaking, shall be issued or put in circulation contrary to this Act, such bill, note or undertaking, shall be void; and any mortgage, or other deed, bond, note, bill or other security, which may be taken for securing any loan or advance made in such bills, notes or undertakings, shall be absolutely null and void.

Person acting as president, director, cashier, or other officer of any association acting in violation of this Act, to be deemed guilty of misdemeanor.

2. If any person, after the passing of this Act, shall act as president, director, cashier, or other officer of any Associations of persons, acting in violation of this Act, such person shall, on conviction thereof before any court of Oyer and Terminer, or General Gaol Delivery, be deemed guilty of a misdemeanor.

3. If any person, after the first day of July next after the passing of this Act, shall knowingly utter, or tender in payment or in exchange, any bill or note in the nature of a bank note, which shall not have been issued by some person or association of persons, or body corporate, legally authorized to issue such bill or note within this Province, or within the county in which such note or bill shall have first issued, such person shall be deemed guilty of misdemeanor, and liable to be punished as before provided for other persons offending against the provisions of this Act.

4. This Act not to extend to the Bank of British North America, the Farmers Joint Stock Banking

Company, the Agricultural Bank, the Bank of the People, or the Niagara Suspension Bridge Bank.

6 VIC. CHAP. 26.—*An Act to extend the Charter of the Commercial Bank of the Midland District, and to increase its capital stock, (a)*

32. If any cashier, manager, clerk, or servant of the said corporation shall secrete, embezzle or abscond with, any bond, obligation, bill obligatory, or of credit, or other bill, or note, or with any security for money or moneys, or effects entrusted to him as such cashier, manager, clerk or servant, whether the same belong to the said corporation, or belonging to any other person or persons, body or bodies, politic or corporate, or institution or institutions, be lodged and deposited with the said corporation, the cashier, manager, clerk or servant so offending, and being thereof convicted, in due form of law, shall be deemed guilty of felony.

Officers of the bank embezzling bills &c.

6 VIC. CHAP. 27.—*An Act to extend the Charter of the Bank of Upper Canada, and to increase the capital stock thereof.*

31 Differs only from 32 of 6 Vic. Chap. 26, in having the word "officer" precede the word "cashier" whenever the latter occurs.

CEMETERIES.

13 & 14 VIC. CHAP. 76.—*An Act to authorise the formation of Companies for the establishment and management of Cemeteries in Upper Canada.*

9. Any person who shall wilfully destroy, mutilate, deface, injure or remove any tomb, monument, grave stone, or other structure placed in any cemetery, or any fence, railing or other work for the protection or ornament of any cemetery, or of any tomb, monument, grave stone, or other structure aforesaid, or of

Penalty on persons defacing tombstones, &c.

(a) This is in force until 1st June, 1862.

any cemetery lot within any cemetery, or shall wilfully destroy, cut, break or injure any tree, shrub or plant within the limits of any cemetery, or play at any game or sport, or discharge firearms (save at a military funeral) in any such cemetery, or who shall wilfully and unlawfully disturb any persons assembled for the purpose of burying any body therein, or who shall commit any nuisance in any such cemetery, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, before any justice of the peace, or other court of competent jurisdiction, be punished by a fine of not less than one pound, nor more than ten pounds, according to the nature of the offence, and such offender shall also be liable to an action of trespass to be brought against him in any court of competent jurisdiction, in the name of any such corporation aforesaid, to pay all damages which shall have been occasioned by his unlawful act or acts, which money, when recovered, shall be applied, under the direction of the directors, for the reparation and reconstruction of the property destroyed; and members of any such company may be competent witnesses in such suits. (a)

CENSUS.

Offences
against this
Act not otherwise
provided for,
how punished.

10 & 11 VIC. CHAP. 14.—*An Act for taking the Census of this Province, and obtaining statistical information therein.*

21. Any person neglecting or refusing to comply with the requirements of this Act, in any matter for which no punishment is herein specially provided, shall be guilty of a misdemeanor, and shall be liable to punishment accordingly; and all penalties incurred under this section shall be distributed and applied in

(a) See also similar provisions in 13 & 14 Vic. ch. 140, sec. 11, as to the Cataragui Cemetery, and in 13 & 14 Vic. ch. 141, sec. 6, as to the Toronto Necropolis, in both of which acts a justice of the peace or other competent authority is authorised to convict.

etery, or shall wil-
any tree, shrub or
metery, or play at
firearms (save at a
etery, or who shall
any persons assem-
any body therein, or
any such cemetery,
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Act for taking the
taining statistical

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and in 13 & 14 Vic.
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the manner hereinbefore provided with regard to
other penalties

14 & 15 VIC. CHAP. 49.—*An Act to provide more
effectually for taking the periodical census of this
Province.*

15. If any census commissioner or enumerator
shall wilfully disobey or contravene any of the provi-
sions of this Act, or wilfully make any false declara-
tion or return under the same, he shall be guilty of a
misdemeanor, and shall, on conviction thereof, be
liable to a penalty not exceeding twenty-five pounds,
nor less than five pounds, in the discretion of the
court before whom the conviction shall be had, and
to imprisonment until such penalty be paid, and such
penalty shall belong to the crown for the public uses
of the Province.

Penalty on
census offi-
cers or enu-
merators
contraven-
ing this act.

CHARITABLE ASSOCIATIONS.

13 & 14 VIC. CHAP. 32.—*An Act for incorpo-
rating certain Charitable, Philanthropic and Pro-
cident Associations, and for the effectual protection
from fraud and misappropriation of the funds of
the same.*

5. If any officer, secretary, treasurer, trustee or
member of any society constituted in accordance
with this Act, shall obtain undue possession of, mis-
appropriate, embezzle or withhold from the other
members, officers or other persons entitled to demand
and receive the same, the whole or any portion of
the funds, monies or other property of such society,
and shall continue to withhold such property after due
demand shall have been made for the restoration and
payment of the same by some one or more of the
members or officers duly appointed by and on behalf
of the said body or society, every such offender shall
be guilty of a misdemeanor, and being convicted
thereof, shall be liable, at the discretion of the court,

Punishment
of officers and
members
embezzling
funds, &c.

to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding three years, or imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment or by both, as the court shall award

What shall be evidence in proceedings against officers or members of the association.

6. In any proceedings to be hereafter commenced or taken under the provisions of this Act, in and before any court of civil or criminal jurisdiction, against any treasurer, trustee, secretary, officer or other member of such herein recited charitable and benevolent society, or provident association, for obtaining undue possession of, or withholding, embezzling or misappropriating the whole or any portion of the funds, monies or other property of such charitable and benevolent society, or provident association, it shall and may be lawful to receive in evidence the printed or written rules of such society, body or association, for the time being in force, and the appointment of any officer, secretary, treasurer, trustee or enrolment of any member, certified under the hand of the presiding officer for the time being, and the seal of the said society, and the books, minutes and other documents of such association, relative to the matter then in question.

COINS AND CURRENCY.

Punishment of persons counterfeiting current coin.

First offence.

12 VIC. CHAP. 20, SEC. 1.—If any person shall falsely make or counterfeit, or cause to be made or counterfeited, any coin resembling or apparently intended to resemble, or pass for any of the Queen's current gold or silver coin, made or declared to be lawfully current in this Province, such person shall be guilty of a misdemeanor, and, on being duly convicted thereof, shall be liable to be imprisoned and kept at hard labour in the Provincial Penitentiary for not more than four years, and if such person shall afterwards offend in like manner, he or she shall, for

the Provincial
ing three years,
place of cen-
two years, or to
e or imprison-
yard

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s' Act, in and
al jurisdiction,
tary, officer or
charitable and
association, for
withholding,
whole or any
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being duly con-
nprisoned and
enitentiary for
a person shall
she shall, for

such second, or for any subsequent offence, be deemed guilty of felony, and on being thereof duly convicted, shall be liable to punishment as in cases of felony

Second or
subsequent
offence.

2. On the trial of any person accused of any offence alleged to have been committed against the form of the Act (4 & 5 Vic. ch. 93) (a) or against the provisions of this Act, no difference in the date or year marked upon the lawfully current coin described in the indictment, and the date or year marked upon the false coin counterfeited to resemble or pass for such lawfully current coin, or upon any die, plate, press, tool or instrument used, constructed, devised, adapted or designed for the purpose of counterfeiting or imitating any such lawfully current coin, shall be considered a just or lawful cause or reason for acquitting any such person of such offence or accusation.

Difference of
date between
the forged
coin, die, &c.
and true
coin not to
be a ground
of acquittal.

16 VIC. CHAP. 158, SEC. 1, repeals 4 & 5 Vic. ch. 93; 13 & 14 Vic. ch. 9; 14 & 15 Vic., chapters 47 and 48, from the time this Act comes into force:

Certain Acts
repealed.

Provided, that all Acts, or parts of Acts, and provisions of law repealed by any of the said Acts, shall remain repealed; and that all offences against any or all of the said Acts, committed before this Act shall come into force, may be tried, punished and otherwise dealt with, as if this Act had not been passed.

Proviso.

2. The denominations of money in the currency of this Province shall be pounds, dollars, shillings, pence, cents and mills, the pound, shilling and penny shall have respectively the same proportionate values as they now have; the dollar shall be one-fourth of a pound, the cent shall be one-hundredth part of a dollar, and the mill one-tenth of a cent; and in any statement as to money or money value in any agreement, indictment or legal proceeding, the same may be mentioned and described in pounds, shillings and pence, or in dollars, cents and mills, or in any or either of such denominations as may be considered expedient.

Legal denomi-
inations of
current
money,

(a) Repealed by 16 Vic. ch. 158.

Pound sterling.

British gold coins.

Proviso: as to meaning of word "sterling" in contracts &c. made before this act shall come in force.

Public accounts to be kept in such denominations as her Majesty shall direct.

Copper coins of United Kingdom.

4. The pound sterling shall be held to be equal one pound four shillings and four-pence, or four dollars eighty-six cents and two-thirds of a cent current and any British sovereign of lawful weight shall pass current and be a legal tender for that sum, and all other gold coins of the United Kingdom shall, when of lawful weight, pass current and be a legal tender for sums in currency equal, according to the proportion aforesaid, to their sterling value.

5. Nothing in this Act shall affect the meaning to be affixed to the words "sterling," "sterling money of Great Britain," or other words of like import, by any law in force in this Province, or in any part thereof, at the time when the Act (4 & 5 Vic. chap. 53) came into force, or in any contract or agreement then made therein, but any such law, contract or agreement shall be construed according to the intention of the Legislature, or of the parties who made the same, but in any law, contract or agreement made in this Province after the said Act came in force, or to be made after this Act shall come in force, the pound sterling shall be understood to have the value in currency hereby assigned to the British sovereign.

6. The public accounts of this Province shall be kept in such of the denominations of current money of the Province hereinbefore mentioned as her Majesty shall from time to time direct, but all sums of money and accounts may be legally mentioned, described and stated in any of the said denominations.

10. The copper coins of the United Kingdom shall while lawfully current therein, pass current and be legal tender in this Province to the amount of one shilling currency, and no more, in any one payment at the following rates, that is to say: the copper penny for two cents, and the copper halfpenny for one cent, and any other subdivisions of the said copper penny for proportionate sums: Provided always that any copper coins of like weights with the

shall be held to be equal to four-pence, or four dol- thirds of a cent currency, lawful-weight shall pass for that sum, and the United Kingdom shall, while it and be a legal tender according to the propor- value.

shall affect the meaning to sterling," "sterling money words of like import, in Province, or in any part the Act (4 & 5 Vic. chap. y contract or agreement y such law, contract or according to the inten- of the parties who made contract or agreement the said Act came into this Act shall come into shall be understood to have assigned to the British

of this Province shall be ations of current money mentioned as her Majesty t, but all sums of money y mentioned, described denominations.

the United Kingdom shall, an, pass current and be a e to the amount of one re, in any one payment,

is to say: the copper e copper halfpenny for ivisions of the said cop- sums: Provided always, like weights with those

aforesaid respectively which her Majesty may direct to be struck for the purpose, shall pass current and be a legal tender in this Province at the like rates and to the like amount in any one payment, and that if such copper coins be struck, her Majesty may, if she see fit, declare by proclamation that the copper coins of the United Kingdom shall not be lawful money of this Province after a day to be appointed by such proclamation.

11. The gold eagle of the United States of Ame-rica coined before the 1st July, 1834, and weighing seven pennyweights six grains Troy weight, shall pass current and be a legal tender in this Province for ten dollars and sixty six cents and two thirds of a cent, or two pounds thirteen shillings and four-pence currency; and the half eagle of like date and proportionate weight for one half the said sum; and the gold eagle of the said United States, coined after the day last mentioned, and before the 1st January, 1852, or after the said day, but while the standard of fineness then fixed by the law of the said United States shall remain unchanged and weighing ten penny weights eighteen grains Troy weight, shall pass current and be a legal tender in this Province for ten dollars or two pounds, ten shillings currency; and the gold coins of the said United States, being multiples or halves of the said eagle and of like date and proportionate weight shall pass current and be a legal tender in this Province for proportionate sums.

12. Her Majesty may at any time declare by proclamation, that any or all of any other gold coins of the said United States, or of any other foreign nation or state, shall pass current and be a legal tender in this Province at rates in currency to be assigned to them respectively in such proclamation, when of the weights to be also assigned therein, such rates being proportionate to the quantity of pure gold in such coins, reckoning ninety two grains and eight hundred and seventy-seven thousandths of a grain of pure gold as equivalent to one pound currency.

Proviso: her Majesty may order other copper coins to be struck-

Rates at which American gold coins shall pass.

Other foreign gold coin may be made current by proclamation.

Punishment
of persons
counter-
feiting coin,
or uttering
counterfeit
coin.

13. If any person shall colour or gild, or case over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin of coarse gold or of coarse silver or of base metal resembling any coin made or declared to be current by this Act, or shall make or cause to be made, or shall buy, sell or procure, for himself or for another, or shall knowingly bring or import, or cause to be brought or imported into this Province, any forged, false or counterfeit gold, silver or copper coin, like to any of the gold, silver or copper coin, made or declared by this Act to be lawfully current, or any coin of coarse gold, or of coarse silver, or of base metal coloured, gilded or cased over with gold or silver, or with any wash or materials producing the colour of gold or silver and resembling any such coin, or any piece of gilded silver resembling any such coin, or shall utter or attempt to utter or tender in payment to any person or persons (as being any of the gold, silver or copper coins hereby made or declared to be current money) any false or counterfeit piece counterfeited to any of the gold, silver or copper coins, made or declared to be current by this Act, or to any of the higher or lower denominations thereof, knowing the same to be false or counterfeit, such person shall be guilty of a misdemeanor, and on being duly convicted, shall be liable to be imprisoned and kept at hard labour in the Provincial Penitentiary for not less than three nor more than fourteen years, in the discretion of the court before which the conviction shall be had, and if such person shall afterwards offend in like manner, he or she shall, for such second or for any subsequent offence, be deemed guilty of felony, and, on being thereof duly convicted, shall be liable to be imprisoned in the said Penitentiary for life, or for any term not less than fourteen years, in the discretion of the court before which the conviction shall be had.

14. If any person shall form, make, cut, sink,

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stamp, engrave, repair or mend, or shall assist in forming, making, cutting, sinking, stamping, engraving, repairing or mending, or shall have in his or her possession, except for some known and lawful purpose, any false or counterfeit coin counterfeit to any coin lawfully current under the authority of this Act, or any die, press, tool or instrument, or metal or material of any kind used, constructed, devised, adapted, or designed for the purpose of counterfeiting or imitating any coin which shall be lawfully current under the authority of this Act, such person shall be guilty of a misdemeanor, and shall be liable to punishment accordingly, and the proof that such false or counterfeit coin, or such die, press, tool or instrument, metal or material was formed, made, cut, sunk, stamped, engraved, repaired or mended by, or was in the possession of such person for some lawful purpose, shall lie upon him or her.

Punishment of persons making dies, stamps, &c., for counterfeiting, or having them in his possession.

15. It shall be lawful for any one justice of the peace, on complaint made before him upon the oath of one credible person, that there is just cause to suspect that any person or persons is or are or hath or have been concerned in making, counterfeiting or imitating any such coin, as aforesaid, by warrant, under the hand of such justice of the peace, to cause the dwelling-house, room, workshop, out-house, or other building, yard, garden, ground, or other place belonging to such suspected person or persons, or where such suspected person or persons shall be suspected to carry on any such making, counterfeiting or imitating, to be searched for any such counterfeit coin, and if any such coin, or any such die, press, tool or instrument, metal or material, as aforesaid, shall be found in the possession or custody of any person or persons whomsoever, not having the same for some lawful purpose, it shall and may be lawful to and for any person or persons discovering the same, to seize and he or they are hereby authorized and required to seize and carry the same forthwith

Power to issue warrants to search for counterfeit coin, coining tools, &c.

before a justice of the peace, having jurisdiction within the locality in which the same shall be seized, who shall cause the same to be secured and produced in evidence against any person or persons who shall or may be prosecuted for any such offence, as aforesaid, in any court of competent jurisdiction, and the same, after being so produced in evidence, shall, by order of the court, be defaced or destroyed, or otherwise disposed of, as the court shall direct.

Counterfeit
coin tender-
ed may be
broken, &c.

16. Any person, to whom any pretended gold, silver or copper coin, shall be tendered in payment, which shall, by the stamp, impression, colour or weight thereof, afford reason to suspect that the same is false or counterfeit, may cut or break such coin, and if the same shall be counterfeit, the person who tendered it shall bear the loss, otherwise the person who shall have cut or broken it shall receive it for a sum proportionate to its weight; and if any question shall arise whether such coin be counterfeit, it shall be determined by any justice of the peace, who, if he entertain any doubt in that behalf, may summon three skilful persons, the decision of a majority of whom shall be final.

Counterfeit
coin produc-
ed in court
to be broken,
&c.

17. If any false or counterfeit coin shall be produced in any court of law, the court shall order the same to be cut in pieces in open court, or in the presence of a justice of the peace, and then delivered to or for the lawful owner thereof, if any such lawful owner there be claiming the same.

Willfully ten-
dering light
coin to be a
misdemean-
or.

18. Any person who shall knowingly utter, attempt to utter, or offer in payment as being lawfully current, any gold coin of less than its lawful weight, or shall diminish the weight of any such coin, with intent to utter or offer it in payment as lawfully current, shall be guilty of a misdemeanor, and, on being duly convicted, shall be liable to be punished accordingly.

Evidence in
cases of of-
fences
against this
Act.

19. On any trial for any offence under this Act, it shall not be necessary to call any officer of the mint, or other person employed in producing the lawful

coin, in order to prove any counterfeit to be such, but the fact may be proved by any evidence which shall be satisfactory to the jury trying the case.

Commence-
ment of Act.

20. This Act to take effect upon, from and after the day to be appointed by her Majesty by proclamation. (a)

COMMON SCHOOLS.

13 & 14 VIC. CHAP. 48.—13. Every trustee of a common school who shall knowingly sign a false report, and every teacher of a common school who shall keep a false school register, or make a false return, with the view of obtaining a larger sum than the just proportion of school monies coming to such common school, shall, for each offence, forfeit to the common school fund of the township the sum of five pounds, and may be prosecuted before any such justice of the peace, by any person whatever, and convicted on the oath of any one credible witness other than the prosecutor, and if convicted, the said penalty shall, if not forthwith paid, be levied with costs by distress and sale of the goods and chattels of the offender, under warrant of such justice, and paid over by him to the said common school fund, or the said offender shall be liable to be tried and punished for the misdemeanor.

Penalty for a
false report
by a trustee,
or false regis-
ter or return.

46. Any person who shall wilfully disturb, interrupt or disquiet the proceedings of any school meeting authorized to be held by this Act, or any school established and conducted under its authority, shall for each offence forfeit for common school purposes, to the school section, city, town or village, within the limits of which such offence shall have been committed, a sum not exceeding five pounds, and may be prosecuted before any justice of the peace by any person whatever, and convicted on the oath of one

Punishment
of persons
disturbing
meetings, &c.

(a) A proclamation bringing this Act into force on the 1st of August, 1854, issued on the 4th of July, 1854.

credible witness other than the prosecutor, and, if convicted, the said penalty shall, if not forthwith paid, be levied with costs by distress and sale of the goods and chattels of the offender, under a warrant of such justice, and paid over by him to the school treasurer of such section, city, town or village, or the said offender shall be liable to be indicted and punished for the same as a misdemeanor.

CROWN TIMBER.

Timber
alleged to be
unlawfully
cut may be
seized on a
sufficient
affidavit, &c.

12 VIC. CHAP. 30.—8. Whenever satisfactory information, supported by the affidavit of one or more persons made before a justice of the peace, or before any other competent party, shall be received by the Commissioner of Crown Lands, or any other officer or agent of the Crown Lands' Department, that any timber or quantity of timber has been cut without authority, on crown, clergy, school or other public lands, and describing where the said timber may be found, it shall and may be lawful for the said Commissioner, officer or agent, or any one of them, to seize or cause to be seized, in her Majesty's name, the timber so reported to be cut without authority, wherever it may be found within the limits of this Province, and to secure and place the same under proper custody, until such time as a decision can be had in the matter from competent authority: Provided always, that where the timber, so reported to have been cut without authority on the public lands aforesaid, without license, has been made up with other timber into a crib, dram or raft, or in any other manner has been so mixed up at the mills or elsewhere as to render it impossible or very difficult to distinguish the timber so cut on the lands aforesaid, without license, from other timber with which it may be mixed up, the whole of the said timber shall be held as having been cut without authority on public lands, and be liable to seizure and forfeiture accordingly until satisfactorily separated by the holder.

Proviso: as
to timber so
cut and mix-
ed up with
other timber.

9. It shall and may be lawful for any such officer ^{Seizing officer may command assistance.} in the discharge of his duty, to call in such lawful aid and assistance in the name of the Queen as may be necessary for securing and protecting the timber so seized, and if any person or persons whatever shall, under any pretence, either by actual assault, ^{Violent resistance to be felony.} force or violence, or by threat of such assault, force or violence, in any way resist, oppose, molest or obstruct any officer or person acting in his aid or assistance in the discharge of his or their duty, under the authority of this Act, such person or persons, being convicted thereof, shall be adjudged guilty of felony, and shall be punishable accordingly.

10. If any person or persons whatsoever, whether ^{Carrying away timber under seizure to be deemed stealing.} pretending to be the owner or not, shall, either secretly or openly, and whether with or without force or violence, take or carry away, or cause to be taken or carried away, any timber which shall have been seized and detained as subject to forfeiture under this Act before the same shall have been declared by competent authority to have been seized without due cause, or without permission of the officer or person having seized the same, or of some competent authority, such person or persons shall be deemed to have stolen such timber being the property of her Majesty, and to be guilty of felony, and liable to punishment accordingly; and that whenever any timber shall be seized for non-payment of duties, or ^{Burden of proof that dues have been paid, on whom to lie.} for any other cause of forfeiture, or any prosecution shall be brought for any penalty or forfeiture under this Act, and any question shall arise whether the dues have been paid on such timber, or whether the said timber has been cut on other than any of the public lands aforesaid, the burden of proving payment, or on what land the said timber has been cut, shall lie on the owner or claimant of such timber, and not on the officer who shall seize and stop the same, or the party bringing such prosecution.

12. If any wilful false oath be made in any case,

Wilfully
false oath to
be perjury.

where by this Act an oath is required or authorised, the party wilfully making the same shall be guilty of wilful and corrupt perjury, and be liable to the punishment provided for that offence; and any persons availing themselves of any false statement or oath to evade the payment of duties, shall forfeit the timber on which duty is attempted to be evaded.

Forfeiture of
timber in
any case of
fraud.

Maliciously
cutting
booms, &c.,
to be a mis-
demeanor.

13. Parties maliciously cutting or loosening booms, or breaking up or cutting loose rafts or cribs, shall be guilty of a misdemeanor, punishable with fine and imprisonment of not less than six months.

CUSTOMS.

Penalty for
counterfeit-
ing or using
counterfeit-
ed papers,
&c.

10 & 11 VIC. CHAP. 31.—36. If any person shall counterfeit or falsify, or use when so counterfeited or falsified, any paper or document required under this Act, or for any purpose therein mentioned, whether written, printed or otherwise, or shall by any false statement procure such document, or shall forge or counterfeit any certificate relating to any oath, affirmation or declaration, hereby required or authorised, knowing the same to be so forged or counterfeited, such person shall be guilty of a misdemeanor, and being thereof convicted, shall be liable to be punished accordingly.

Or forging
certificates,
&c.

Punishment
of persons
obstructing
officer.

39. If any person or persons whatsoever shall, under any pretence, either by actual assault, force or violence, or by threats of such assault, force or violence, in any way resist, oppose, molest or obstruct any officer of customs, or any person acting in his aid or assistance, in the discharge of his or their duty under the authority of this Act, or any other Act of this Province relating to customs, trade or navigation; or shall wilfully or maliciously shoot at or attempt to destroy or damage any vessel or boat belonging to her Majesty, or in the service of the Province, or maim or wound any officer of the army, navy, marine or customs, or any person acting in his aid or assist-

Firing at H.
M.'s vessels.

Wounding
persons in
H. M.'s ser-
vice.

CRIMINAL LAW.

ance, while duly employed for the prevention of smuggling, and in execution of his or their duty ; or if any person or persons shall be found with any goods liable to seizure or forfeiture, under this or any other Act relating to customs, trade or navigation, and carrying offensive arms or weapons, or in any way disguised ; or shall stave, break, or in any way destroy any such goods, before or after the actual seizure thereof ; or shall scuttle, sink or cut adrift any vessel, or destroy or injure any vehicle, before or after such seizure ; or shall wilfully and maliciously destroy or injure, by fire or otherwise, any custom-house, or any building whatsoever in which seized or forfeited goods are deposited or kept, such person or persons, being convicted thereof, shall be adjudged guilty of felony, and shall be punishable accordingly.

Or having goods liable to seizure and being armed or disguised.

Or destroying vessels or goods.

Or any custom-house, &c.

Such offences to be felony.

40. If any five or more persons in company be found together, and they or any of them shall have any goods liable to forfeiture under this Act, every such person shall be guilty of misdemeanor, and punishable accordingly.

Company of persons found with smuggled goods. Misdemeanor.

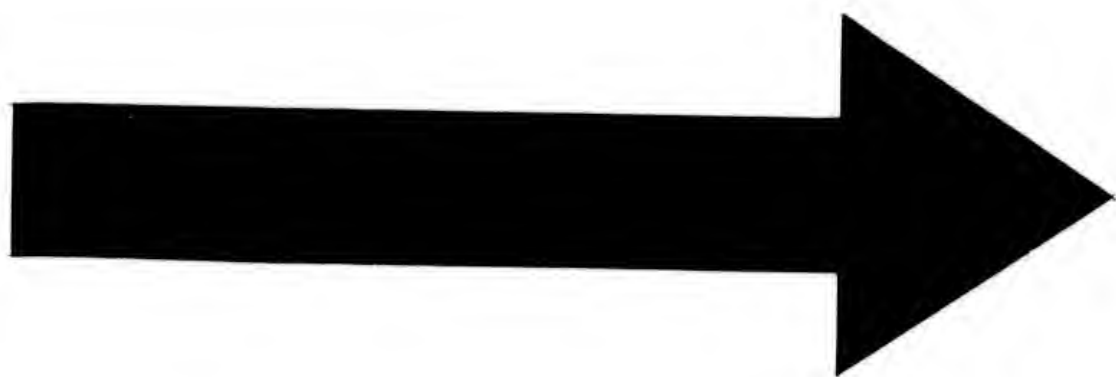
45. If any person whatever, whether pretending to be the owner or not, shall either secretly or openly, and whether with or without force or violence, take or carry away any goods, vessel, carriage or other thing which shall have been seized or detained on suspicion as forfeited under this Act, before the same shall have been declared by competent authority to have been seized without due cause, and without the permission of the officer or person having seized the same, or of some competent authority, such person shall be deemed to have stolen such goods being the property of her Majesty, and to be guilty of felony, and liable to punishment accordingly.

Punishment of persons taking away goods, &c., seized.

Such offence a felony.

73. All general regulations to be made by the Governor in Council under this Act, shall have force and effect from and after the day on which the same shall be published in the Official Gazette, or from and after such later day as shall be appointed for the

Mode of publication of regulations.



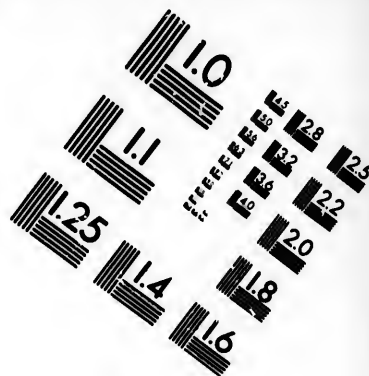
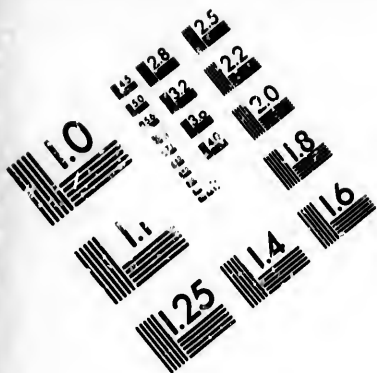
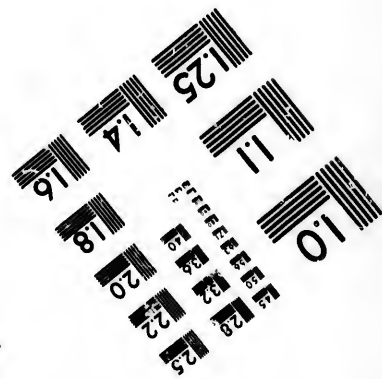
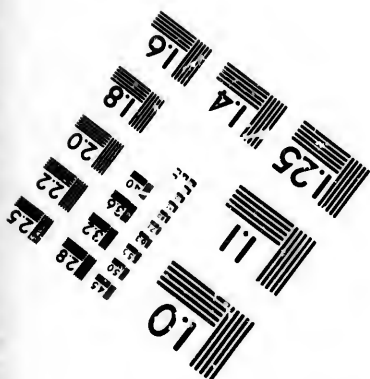
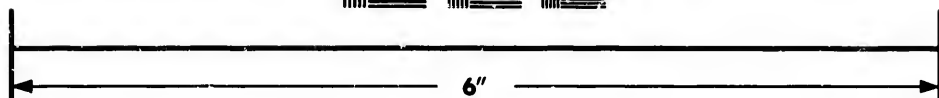
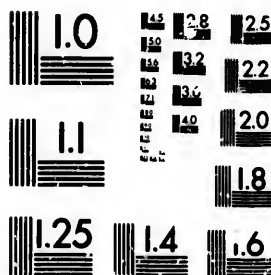


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Corporation

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WEBSTER, N.Y. 14580
(716) 872-4503



Revocation.

How regulations may be proved.

purpose in such regulations, and during such time as shall be therein expressed, or if no time be expressed for that purpose, then until the same shall be revoked or altered; and all such regulations may be revoked, varied or altered by any subsequent regulation; and a copy of the Official Gazette, containing any such regulation, shall be evidence of such regulation to all intents and purposes whatsoever.

Certain copies of orders in council to be evidence.

74. Any copy of an order of the Governor in Council made in any special matter, and not being a general regulation, certified as a true copy of such order by the Clerk of the Executive Council or his deputy, shall be evidence of such order to all intents and purposes whatsoever.

Penalty on persons smuggling goods using false invoices &c.

12 VIC. CHAP. 1.—19. If any person shall knowingly and wilfully, with intent to defraud the revenue of this Province, smuggle or clandestinely introduce into this Province, any goods subject to duty, without paying or accounting for the duty thereon; or shall make out or pass or attempt to pass through the custom-house any false, forged or fraudulent invoice; or shall in any way attempt to defraud the revenue, by evading the payment of the duty, or of any part of the duty on any goods, every such person, his, her or their aiders or abettors, shall, in addition to any other penalty or forfeiture to which they may be subject for such offence, be deemed guilty of a misdemeanor, and, on conviction, shall be liable to a penalty not exceeding fifty pounds, or to imprisonment for a term not exceeding one year, or both, in the discretion of the court before whom the conviction shall be had.

DESERTION.—(ENCOURAGING.)

3 VIC. CHAP. 3, SEC. 1, repeals Act of 44 Geo. III. chap. 2.

Any person procuring soldiers or sailors to de-

2. From and after the passing of this Act, if any person other than enlisted soldiers in her Majesty's

during such time as
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 ne shall be revoked
 s may be revoked,
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 ntaining any such
 ch regulation to all

the Governor in
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 true copy of such
 ive Council or his
 order to all intents

person shall know-
 defraud the revenue
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 such person, his,
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 which they may be
 l guilty of a mis-
 all be liable to a
 , or to imprison-
 year, or both, in
 whom the convic-

GING.)

Act of 44 Geo.

this Act, if any
 in her Majesty's

service, or sailors engaged in the naval service of her Majesty, shall, by words or with money, or by any ways, methods or means whatsoever, directly or indirectly, prevail upon, procure, persuade or encourage any such soldier or sailor to desert or leave her Majesty's naval or military service as aforesaid, and shall be thereof lawfully convicted before any Court of Oyer and Terminer and General Gaol Delivery in this Province, such person so offending shall be deemed guilty of a misdemeanor, and upon conviction shall be liable to be punished by imprisonment in the common gaol of the District in which such conviction shall happen, or by imprisonment in the Provincial Penitentiary in this Province, for such period as the court before which such trial shall take place, shall in their discretion adjudge, and shall be further liable to the payment of such fine as the said court shall impose upon and require to be paid by such offender.

3. If any person other than an enlisted soldier, or sailor engaged in the naval service of her said Majesty, shall, after the passing of this Act, harbor, conceal, receive or assist any deserter from her Majesty's naval or military service, knowing him to be a deserter, such person so offending shall be deemed guilty of a misdemeanor, and upon conviction shall be liable to the same penalties and punishments as are mentioned and set forth in the preceding clause of this Act.

sert, to be
 liable to im-
 prisonment
 in the com-
 mon gaol or
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 and to a fine,
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Any person
 harbouring a
 deserter, lia-
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 same penal-
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DOCKYARDS.

3 WILL. IV. CHAP. 4.—14. And whereas by a certain Act of the Parliament of Great Britain, passed in the twelfth year of the reign of King George the Third, intituled, "An Act for the better securing and preserving his Majesty's dock-yards, magazines, ships, ammunition and stores," it is enacted, that "if any person or persons shall within the realm,

British sta-
 tute 12 Geo.
 III. ch. 24,
 respecting
 the burning
 his Majesty's
 ships, naval
 arsenals, &c.,
 recited.

or in any of the islands, countries, forts or places thereunto belonging, wilfully and maliciously set on fire or burn, or otherwise destroy or cause to be set on fire or burnt, or otherwise destroyed, or aid, procure, abet or assist in the setting on fire or burning, or otherwise destroying of any of his Majesty's ships or vessels of war, whether the said ships or vessels of war be on float or building, or begun to be built, in any of his Majesty's dock-yards, or building or repairing by contract in any private yard, for the use of his Majesty, or any of his Majesty's arsenals, magazines, dock-yards, rope-yards, victualling offices, or any of the buildings erected therein or belonging thereto, or any timber or materials there placed, for building, repairing or fitting out of ships or vessels, or any of his Majesty's military, naval or victualling stores, or other ammunition of war, or any place or places where any such military, naval or victualling stores, or other ammunition of war, is, are, or shall be kept, placed or deposited, that then the person or persons guilty of any such offence, being thereof convicted in due form of law, shall be adjudged guilty of felony, and shall suffer death, as in cases of felony, without benefit of clergy: " Be it therefore enacted, that nothing in this Act contained shall be construed or taken to affect in any manner the provisions of the above in part recited Act.

ELECTIONS.

Returning officer or his deputies may demand the surrender of all arms.

12 VIC. CHAP. 27.—52. It shall and may be lawful for any returning officer or deputy returning officer, during any part of the days whereon any such election shall be to be begun, holden or proceeded with, or on which any poll for such election shall be to be begun, holden or proceeded with, to demand and receive from any person whomsoever, any offensive weapon, such as firearms, swords, staves, bludgeons, or the like, with which any such person shall

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be armed, or which any such person shall have in his hands or personal possession, and every such person, who, upon such demand, shall decline or refuse to deliver up to such returning officer or deputy returning officer any such offensive weapon as aforesaid, shall be deemed guilty of a misdemeanor punishable by fine not exceeding five pounds currency, or imprisonment not exceeding three calendar months, or by both, in the discretion of the court whose duty it shall be to pass the sentence of the law upon such person upon his conviction.

Penalty for
refusing to
surrender
the same.

53. Every person who shall be convicted of a battery committed during any part of the days whereon any such election shall be to be begun, holden or proceeded with, or on which any poll for such election shall be to be begun, holden or proceeded with, within the distance of two miles of the place where such election or such poll shall be to be begun, holden or proceeded with, shall be deemed guilty of an aggravated assault, and shall be punished accordingly.

Certain bat-
teries during
election time
to be deemed
aggravated
assaults.

57. It shall not be lawful for any candidate for the representation of any county, riding, city or town in this Province, with intent to promote his election, or for any other person with intent to promote the election of any such candidate, either to provide or furnish entertainment at his expense to any meeting of electors assembled for the purpose of promoting such election previous to or during the election at which he shall be a candidate, or to pay for, procure or engage to pay for any such entertainment: Provided always, that nothing herein contained shall be construed to extend to any entertainment furnished to any such meeting of electors by or at the expense of any person or persons at his, her or their usual place of residence.

Entertain-
ment not to
be furnished
to electors.

58. Except for the returning officer for such election or his deputy, for such parish, township or union of townships or ward, or the poll clerk for such parish,

Except at the
residence of
party fur-
nishing it.

With certain
exceptions
no stranger
shall come

armed into
any parish,
&c., while
the poll shall
be open
therein.

Nor shall
any armed
person ap-
proach with-
in two miles
of the poll.

Party en-
signs, flags,
&c., not to be
carried dur-
ing any elec-
tion, or with-
in eight days
before it.

township or union of townships or ward, or one of the constables or special constables appointed by such returning officer or his deputy, for the orderly conduct of such election or poll, and the preservation of the public peace thereat, it shall not be lawful for any person who hath not had a stated residence in such parish, township, union of townships or ward, for at least six calendar months next before the day of such election, to come during any part of the days upon which such poll shall be to remain open, into such parish, township or union of townships or ward, armed with offensive weapons of any kind, as fire-arms, swords, staves, bludgeons, or the like, or for any person whomsoever being in such parish, township, union of townships or ward to arm himself during any part of either of such days with any such offensive weapons, and thus armed to approach within the distance of two miles of the place where the poll for such parish, township, union of townships or ward shall be held, unless called upon to do so by lawful authority.

59. It shall not be lawful for any candidate for the representation of any county, riding, city or town in this Province, or for any other person, to furnish or supply any ensign, standard or set of colours, or any other flag, to or for any person or persons whomsoever, with intent that the same should be carried or used in such county, riding, city or town on the day of election, or within eight days before such day, or during the continuance of such election, by such person or any other, as a party flag, to distinguish the bearer thereof, and those who might follow the same, as the supporters of such candidate, or of the political or other opinions entertained or supposed to be entertained by such candidate, or for any person to carry or use any such ensign, standard, set of colours or other flag as a party flag within such county, riding, city or town, on the day of any such election, or within eight days before such day, or during the continuance of such election.

ward, or one of
 appointed by such
 the orderly con-
 ne preservation of
 not be lawful for
 the orderly con-
 ne preservation of
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 wnships or ward,
 xt before the day
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 remain open, into
 ownships or ward,
 any kind, as fire-
 r the like, or for
 uch parish, town-
 rm himself during
 any such offensive
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 e the poll for such
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 y lawful authority.
 any candidate for
 ding, city or town
 person, to furnish
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 or persons whom-
 should be carried
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 re such day, or
 tion.

60. It shall not be lawful for any candidate for the representation of any county, riding, city or town in this Province, or for any other person, to furnish or supply any ribbon, label, or the like favor, to or for any person whomsoever, with intent that the same should be worn or used within such county, riding, city or town on the day of election, or within eight days before such day, or during the continuance of such election, by such person or any other as a party badge, to distinguish the wearer as the supporter of such candidate, or of the political or other opinions entertained or supposed to be entertained by such candidate, or for any person to use or wear any ribbon, label or other favor, as such badge, within such county, riding, city or town, on the day of any such election, or within eight days before such day, or during the continuance of such election.

Party badges
 &c. not to be
 used during
 a like time.

61. Every person offending against any of the provisions of the next four preceding sections of this Act, shall be deemed guilty of a misdemeanor, punishable by fine not exceeding twenty-five pounds, or imprisonment not exceeding six calendar months, or by both, in the discretion of the court whose duty it shall be to pass sentence of the law upon such person upon his conviction.

Punishment
 for contra-
 vening the
 four preced-
 ing sections.

62. If any person shall steal, or unlawfully or maliciously, either by violence or stealth, take from any deputy returning officer or poll clerk, or from any other person having the lawful custody thereof, or from its lawful place of deposit for the time being, or shall unlawfully or maliciously destroy, injure or obliterate, or shall aid, counsel or assist in so stealing, taking, destroying, injuring or obliterating any writ of election, or any return to a writ of election, or any indenture, poll book, certificate or affidavit, or any other document or paper made, prepared or drawn out according to or for the purpose of meeting the requirements of this Act, or any of them, every such offender shall be guilty of felony, and being convicted

Persons
 stealing or
 destroying,
 &c., the writ
 return, in-
 denture, &c.,
 relating to
 any election
 to be guilty
 of felony.

Punishment
of such per-
sons.

What need
not be stated
in the indict-
ment.

What suffi-
cient to be
stated in any
indictment
under this
Act.

Proviso:
limitation of
suits.

thereof shall be liable, at the discretion of the court whose duty it shall be to pass the sentence of the law upon such offender, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding seven years nor less than three years, or to be imprisoned in any other place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award, and it shall not in any indictment for any such offence, be necessary to allege that the article, in respect of which the offence is committed, is the property of any person, or that the same is of any value.

64. It shall be sufficient in any indictment or information for any offence committed contrary to this Act, to allege the particular offence charged upon the defendant, and that the defendant is guilty thereof, without mentioning the writ of election, or the return thereof, or the authority of the returning officer founded upon any such writ of election, nor shall it be necessary, on the trial of any suit or prosecution under this Act, to produce the writ of election, or the return thereof, or the authority of the returning officer founded upon any such writ of election, but general evidence of such facts shall be sufficient evidence: Provided always, that every action, suit or information given by this Act, shall be commenced within the space of nine calendar months next after the fact committed, and not afterwards.

Registration of votes.

Punishment
of officers
dealing frau-
dulently in
respect of
such lists.

16 VIC. CHAP. 153.—9. If the clerk or secretary-treasurer of any Municipality shall, in making out any certified list of persons entitled to vote at an election of a member to serve in the Provincial Parliament, wilfully insert or omit any name which ought not to have been inserted or omitted, or otherwise alter or falsify the same, so that it shall not be a correct list of all persons entitled to vote according

tion of the court
sentence of the law
ed at hard labour
any term not ex-
three years, or to
f confinement for
or to suffer such
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indictment or in-
d contrary to this
e charged upon the
is guilty thereof,
tion, or the return
returning officer
ction, nor shall it
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y of the returning
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shall be sufficient
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months next after
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clerk or secretary-
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e Provincial Par-
any name which
omitted, or other-
at it shall not be
to vote according

to the assessment rolls, or to the proper list of voters (as the case may be) as finally revised and corrected, and if any clerk, secretary, treasurer, returning officer, deputy returning officer, registrar, or any other person, whose duty it is to deliver copies, or have the custody of any certified list of voters as aforesaid, shall wilfully make any alteration, omission or insertion, or in any way falsify any such certified list or copy, every such person shall be guilty of a misdemeanor, and shall, on conviction thereof, be liable to a fine not exceeding fifty pounds, or to be imprisoned for a period not exceeding six months, or both, at the discretion of the court before which he shall be convicted.

FALSE CERTIFICATE.

16 VIC. CHAP. 19.—*Law of evidence.*—10. If any officer authorised or required by this Act, or by any law or usage now in force in Upper Canada, to furnish any certified copies or extracts, shall wilfully certify any document as being a true copy or extract, knowing that the same is not a true copy or extract, as the case may be, he shall be guilty of a misdemeanor, and be liable, upon conviction, to imprisonment for any term not exceeding eighteen months. (a)

Punishment
of officers
giving false
certificate.

FORGERY.

33 GEO. III. CH. 5.—4. If any person shall, after the passing of this Act, make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged or counterfeited, or act or assist in falsely making, altering, forging or counterfeiting any such certificate of marriage as hereinbefore is required to be given, or shall knowingly and wilfully insert or cause to be inserted in such register book, to be kept in each district, any false entry of any matter or thing relating to any marriage, or act or assist in falsely making, altering or forging any such entry in such register,

Persons
counterfeit-
ing or pro-
curing to be
counterfeit-
ed the evi-
dence of any
marriage, to
suffer on con-
viction fine
and impris-
onment.

(a) Vide 10 & 11 Vic. ch. 9, sec. 2.

or utter, or publish as true any such falsely forged, altered or counterfeited certificate or register as aforesaid, or a copy thereof, knowing such certificate or register of marriage respectively to be false, altered, forged or counterfeited, or shall wilfully destroy, or cause or procure to be destroyed, any register book of marriages, or any part of such register book, with an intent to avoid any marriage, every person so offending, and being thereof lawfully convicted, shall for such offence suffer such fine and imprisonment, as to the court shall seem meet, provided such imprisonment be in the common gaol of the district for a term not less than twelve calendar months.

Punishment
for forging
certificates.

9 VIC. CHAP. 34.—*Registry Act.*—17. If any person or persons shall at any time forge or counterfeit any certificate by this Act authorised or directed, or any affidavit of the execution of any memorial, or any such memorial, and be thereof lawfully convicted, such person or persons shall incur and be liable to the same pains and penalties as in and by an Act of the Parliament of Great Britain, made in the fifth year of the reign of Queen Elizabeth, intituled, *An Act against the forgers of false deeds and writings*, are imposed upon persons forging or publishing deeds, charters or writings, sealed court rolls or wills, whereby the freehold inheritance of any person or persons, in or to any lands, tenements or hereditaments, shall or may be molested, troubled or charged. (a)

10 & 11 VIC. CHAP. 9, *An Act to consolidate and amend the laws, and to repeal certain Acts relating to the crime of forgery.*

Preamble.

WHEREAS it is desirable that the laws concerning offences relating to forged writings, and to other forged and counterfeit matters, and to divers false personations, false oaths, false entries, and other false matter, should be amended and consolidated into this

(a) Vide 10 & 11 Vic. ch. 9; sec. 14, *infra*.

Act, and that none of those offences shall be here-
 after punishable with death: Be it therefore enacted, ^{Forging the great seal of Canada, or of Upper or Lower Canada, to be felony, and how punishable.}
 if any person shall forge or counterfeit, or shall utter, knowing the same to be forged or counterfeited, the Great Seal of this Province, or of the late Province of Upper Canada, or of the late Province of Lower Canada, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be kept confined at hard labour in the public Penitentiary of this Province, for any time not less than seven years.

2. If any person shall forge or counterfeit, or shall utter, knowing the same to be forged or counterfeited, ^{Forging seal at arms of the Governor public register, &c.}
 the seal at arms of any governor, lieutenant-governor or person administering the government of this Province, to any commission, grant, appointment, license, warrant, order or other instrument of a public nature appertaining or relating to the affairs of this Province, or to any instrument purporting to be a commission, grant, appointment, license, warrant, order or other instrument of a public nature appertaining or relating to the affairs of this Province, or shall forge any public register book, appointed by law to be made or kept, or shall wilfully certify or utter any writing as and for a true copy of such public register or book, or of any entry therein, knowing such writing to be counterfeit or false, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than five nor more than fourteen years. (a) ^{Punishment}

3. If any person shall forge or alter, or shall offer, dispose of or put off, knowing the same to be forged ^{Forging debentures, assignments of debentures, scrip, &c.}
 or altered, any debenture issued under the authority of any Act of the Legislatures of the late Provinces of Upper Canada or of Lower Canada, or of any Act passed or to be passed hereafter by the Legislature of

(a) Vide 16 Vic. ch. 19, sec. 10.

Bank notes,
writs, licenses
of marriage, &c.

Bills or notes
or indorse-
ments there-
on.

Punishment

this Province, or any stamp or endorsement on or assignment of any such debenture, or any scrip issued by the Commissioner of Crown Lands for the time being, in lieu of or in satisfaction of any right or claim to a grant of land from the Crown in this Province, or any part thereof, or any bank note, or any will, testament, codicil, or testamentary writing, or any license of marriage, or any bill of exchange, or any promissory note for the payment of money, or any indorsement on or any assignment of any bill of exchange or promissory note for the payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant or order for the payment of money, with intent, in any of the cases aforesaid, to defraud any person whatsoever, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept confined at hard labour in the public Peni-

(a) A forged acceptance to an instrument in the form of a bill, but having no drawer's name is not within the statute.—*R. v. Butterwick*, 2 M. & Rob. 196. Knowingly uttering a bill of exchange, all the names on which are fictitious, is within the Act, though the utterer meant to provide for payment of the bill, the party taking the bill not knowing the parties named were not real.—*R. v. Hill*, 2 M. C. C. R. 30. An indictment for uttering a forged bill of exchange is supported by proof of uttering an instrument in form of a bill with a forged acceptance on it, though no person be named in the bill as drawee.—*R. v. Hawkes*, 2 M. C. C. R. 60. (See *vide Peto v. Reynolds*, 18 Jur. 472, where this case is doubted.) A forged foreign letter requesting a correspondent of the supposed writer in England to advance money is an "order," within the Act, it being proved that such letters are in the course of business treated as orders.—*R. v. Raake*, 2 M. C. C. R. 66. A forged request to pay a third person money on account of the supposed writer, will not sustain an indictment which charges the forgery to be of an undertaking, warrant or order for the payment of money, it should be charged as a request, under sec. 9.—*R. v. Thorne*, 2 M. C. C. R. 210; *R. v. Roberts*, ib. 258. A forged bill of exchange given by the prisoner to one of two known partners, may be laid to be

indorsement on or
any scrip issued
ands for the time
of any right or
own in this Pro-
bank note, or any
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of exchange, or
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cases aforesaid,
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196. Knowingly
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erer meant to pro-
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—R. v. Hill, 2 M.
g a forged bill of
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e on it, though no
—R. v. Hawkes, 2
olds, 18 Jur. 472.
sign letter request-
ter in England to
the Act, it being
of business treat-
R. 66. A forged
ccount of the sup-
pment which charges
fraud or order for
ged as a request,
C. R. 210: R. v.
uge given by the
ay be laid to be

entiary of this Province, for any term not less than
four years, nor more than ten years. (a)

4. Where by any law now in force in any part of
this Province, any person is made liable to the pun-
ishment of death for forging or altering, or for offer-
ing, uttering, disposing of, or putting off, knowing
the same to be forged or altered, any instrument or
writing, designated in such law by any special name

Where by
any other
law the for-
ger of any
instrument
or writing is
made pun-
ishable with
death, and
the same is

forged, &c., with intent to defraud that one, the partner-
ship dealing having been conducted by him only.—R. v.
Hanson, 2 M. C. C. R. 245. An instrument payable to the
order of A., and directed "at Messrs. P. & Co., bankers,"
may be described in the indictment as a bill of exchange.—
R. v. Smith, 2 M. C. C. R. 295. Any instrument for pay-
ment, under which, if genuine, the payer may recover the
amount against the party signing it, may be properly con-
sidered a warrant for the payment of money, and it is
equally this whatever be the state of the account between
the parties.—R. v. Vivian, 1 C. & K. 719; 1 Den. C. C. R.
35, s. c. A bill of exchange made payable to A. B., C. D.
or order executrixes: indictment that prisoner forged on the
back of the bill a certain forged indorsement, which indorse-
ment was as follows: (naming one executrix); Held, a
forged indorsement.—R. v. Winterbottom, 1 Den. C. C. R.
41. A forged instrument, by which the supposed maker,
in consideration of goods to be sold to P., but so that the
supposed maker should not be liable beyond £10, is a forged
undertaking for the payment of money.—R. v. Stowe, 2 C.
& K. 364; 1 Den. C. C. R. 181. A. gave to B., his clerk, a
blank check, and directed him to fill it up with the amount
of a bill and expenses (for which A. had to provide, and
which amount B. was to ascertain,) and get the money on
the check, and pay and take up the bill, which was for
£156 9s. 9d., expenses 10s.; B. filled up the check for
£250, got the money and kept it, alleging it was due to him
for salary; Held to be forgery, even if the £250 were really
due from A. to B.—R. v. Wilson, 1 Den. C. C. R. 284.
Putting an address to the name of the drawer of a bill of
exchange, while the bill is in the course of completion, with
intent to make the acceptance appear to be that of a differ-
ent existing person, is forgery.—R. v. Blenkinsop, 1 Den.
C. C. R. 276. A forged order for the payment of money
need not disclose on the face of it the name of the party re-
quired to pay, this may be shewn by extrinsic evidence.—
R. v. Snelling, 1 Den. C. C. R. 219; 17 Jur. 1012.

in law a will,
note, bill,
&c., within
the meaning
of this Act,
the offender
may be pun-
ished under
this Act.

or description, and such instrument or writing, how-
ever designated, is in law a will, testament, codicil,
or testamentary writing, or a bill of exchange, or a
promissory note for the payment of money, or an en-
dorsement on or assignment of a bill of exchange, or
promissory note for the payment of money, within
the true intent and meaning of this Act, in every
such case the person forging or altering such instru-
ment or writing, or offering, uttering, disposing of or
putting off such instrument or writing, knowing the
same to be forged or altered, may be indicted as an
offender under this Act, and punished in the manner
provided in the next foregoing section thereof.

Forging let-
ters patent,
or enrolment
or registra-
tion thereof,
&c.

5. If any person shall forge, or alter, or shall in
any way publish, put off or utter as true, knowing
the same to be forged or altered, any copy of letters
patent or of the enrolment or enregistration of letters
patent, or of any certificate thereof now or hereafter
to be made or given, or purporting to be or to have
been made or given, by virtue of any statute of Upper
Canada or of Lower Canada, or of this Province,
every such offender shall be guilty of felony, and
being convicted thereof, shall be liable, at the discre-
tion of the court, to be kept confined at hard labour
in the public Penitentiary of this Province, for any
term not less than three years, nor more than seven
years, or to be imprisoned in any common gaol for
any term not more than two years.

Punishment

Forging
transfers of
stock, or
power of
attorney to
transfer, &c.,
or personat-
ing the own-
er thereof, in
order to
transfer the
same, &c.

6. If any person shall forge or alter, or shall utter,
knowing the same to be forged or altered, any trans-
fer of any share or interest of or in the capital stock
of any body corporate, company or society, which
now is or hereafter may be established by charter or
Act of Parliament in any part of this Province, or
shall forge or alter, or shall utter knowing the same
to be forged or altered, any power of attorney or other
authority to transfer any share or interest of or in
any such capital stock, or to receive any dividend or
profit payable in respect of any such share or interest,

or writing, how-
estament, codicil,
f exchange, or a
money, or an en-
l of exchange, or
f money, within
is Act, in every
er such instru-
g, disposing of or
ing, knowing the
ee indicted as an
ed in the manner
on thereof.

alter, or shall in
as true, knowing
y copy of letters
stration of letters
now or hereafter
g to be or to have
y statute of Upper
f this Province,
y of felony, and
ble, at the discre-
ed at hard labour
Province, for any
more than seven
ommon gaol for

er, or shall utter,
tered, any trans-
the capital stock
e society, which
ed by charter or
his Province, or
owing the same
ttorney or other
nterest of or in
any dividend or
share or interest,

or shall demand or endeavour to have any such share or interest transferred, or to receive any dividend or profit payable in respect thereof, by virtue of any such forged or altered power of attorney or other authority, knowing the same to be forged or altered, with intent in any of the several cases aforesaid, to defraud any person whatsoever; or if any person shall falsely and deceitfully personate any owner of any such share, interest, dividend or profit as aforesaid, and thereby transfer any share or interest belonging to such owner, or thereby receive any money due to such owner, as if such person were the true and lawful owner, every such offender shall be guilty of felony, and being convicted thereof, shall be liable at the discretion of the court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than four years nor more than ten years.

Punishment

7. If any person shall falsely and deceitfully personate any owner of any share or interest of or in the capital stock of any body corporate, company or society, which now is or hereafter may be established by charter or Act of Parliament in any part of this Province, or any owner of any dividend or profit payable in respect of any such share or interest as aforesaid, or any person having a claim for a grant of land from the crown in this Province, or for any scrip or other payment or allowance in lieu of such grant of land, and shall thereby endeavour to transfer any share or interest belonging to any such owner, or thereby endeavour to receive any money due to any such owner as if such offender were the true and lawful owner, or to obtain any such grant of land, or any scrip or other payment or allowance in lieu thereof, as if such offender were entitled thereto, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than

Personating
owners of
stock and
scrip, &c.

Punishment

prisoned in any common gaol for any term not exceeding two years.

Forging signature of witnesses to power of attorney, or other authority to transfer stock, &c.

Punishment

8. If any person shall forge the name or handwriting of any person as or purporting to be a witness attesting the execution of any power of attorney or other authority to transfer any share or interest of or in any capital stock as is in this Act before mentioned, or to receive any dividend or profit payable in respect of any such share or interest, or to assign or transfer any right to obtain a grant from the crown of lands in this Province, or to obtain any scrip or other payment or allowance in lieu of such grant of land, or shall utter any such power of attorney or other authority with the name or handwriting of any person forged thereon as an attesting witness, knowing the same to be forged, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than three years nor more than seven years, or to be confined in any common gaol for any term not exceeding two years. authorised to take any recognizance or bail, acknow-

(a) Indictment for uttering a forged receipt. Prisoner being asked to pay a debt, said he had paid it, and had a receipt signed by T. Afterwards he shewed the receipt to one F., but would not let it out of his hand. F. and T. afterwards asked prisoner to produce the receipt, and he did, holding it up for them to look at, but refused to let it out of his hand; F. however got it from him; Held an uttering.—R. v. Radford, 1 Den. C. C. R. 59. A scrip certificate in a railway company is not an "accountable receipt" nor an "acquittance or receipt," therefore forging such a certificate is not a felony.—Clark v. Newsam, 1 Exch. R. 131. An unsigned forged paper "Received from Mr. D. due to Mr. W. 17s., settled," is a forged receipt.—R. v. Juda, 2 C. & K. 635. Where a document is set out *in hoc verba*, the description of it in an indictment as a "warrant order and request" is immaterial.—R. Williams, 1 Temp. & M. 382. A bill of parcels underwritten "I hope you will excuse me for sending for such a trifle," &c., and purport-

9. (a) If any person shall forge or alter, or shall ^{Forging} offer, utter, dispose of or put off, knowing the same ^{deeds, bonds, memorials, receipts, notarial instruments, proces verbaux, or any judicial proceeding, or exemplification &c.} to be forged or altered, any notarial act or instrument or copy purporting to be an authenticated copy thereof, of, *proces verbal* of any surveyor, or like copy thereof, of any judicial record, writ, order, return, exhibit, report, certificate or other document or entry made or filed in any suit or proceeding civil or criminal, in any court of justice, or with any officer of such court, or any copy or paper purporting to be an exemplification or authenticated or certified copy of any such judicial record, writ, order, return exhibit, report, certificate or other such document or entry as aforesaid, deed, bond, writing obligatory or any assignment of a right to land, certificate of registration or affidavit of execution, or any memorial of any deed, will or other instrument, that may now or hereafter be registered by virtue of any statute in force in this Province, or any part thereof, or any acquittance or receipt either for money or for goods, or any accountable receipt either for money or goods, as for any note, bill or other security for payment of money, or any warrant, order or request for the delivery or transfer of goods, or for the delivery of any note, bill or other security for the payment of money, or any contract, promise or agreement with intent to defraud any person whatsoever, every such offender shall be guilty of felony, and being convicted thereof, shall ^{Punishment} be liable, at the discretion of the court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than four years, nor more than ten years.

10. If any person shall knowingly and wilfully, ^{Personating parties giving recognizances, cognovit, &c.} before any court, judge or other person lawfully three years nor more than seven years, or to be im-

ing to be signed by the party to whom the money was due, and presented to the debtor, is a "warrant," and *semble* also an "order."—Reg. v. Dawson, 1 Temp. & M. 428.

Punishment

ledge any recognizance or bail in the name of any other person not privy or consenting to the same, whether such recognizance or bail in either case be or be not filed, or if any person shall in the name of any other person not privy or consenting to the same, acknowledge any *cognovit actionem* or judgment, or any deed to be registered or enrolled, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than four years nor more than ten years.

Having forged Bank notes in possession, &c.

Punishment

11. If any person shall, without lawful excuse, the proof whereof shall lie upon the party accused, purchase or receive from any other person, or have in his custody or possession, any forged bank-note or blank bank-note, knowing the same respectively to be forged, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than three years, nor more than seven years, or to be imprisoned in any common gaol for any term not exceeding two years.

Engraving Bank-notes, &c. without permission;

12. If any person shall engrave or in any wise make upon any plate whatever, or upon any wood, stone or other material, any bank-note, bill of exchange or promissory note for the payment of money, purporting to be the bank-note, bill or promissory note, or part of the bank-note, bill or promissory note of any person or persons, body corporate, or company carrying on the business of bankers in this Province, without the authority of such person or persons, body corporate or company, the proof of which shall lie on the party accused; or if any person shall engrave or make upon any plate whatever, or upon any wood, stone or other material, any word or words resembling or apparently intended to resemble any subscription subjoined to any bank-note, bill of

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exchange or promissory note for the payment of money, issued by any such person or persons, body corporate or company carrying on the business of bankers, without such authority, to be proved as aforesaid; or if any person shall, without such authority, to be proved as aforesaid, use, or shall, without lawful excuse, to be proved by the party accused, knowingly have in his custody or possession, any plate, wood, stone or other material upon which any such bank-note, bill of exchange or promissory note, or part thereof, or any word or words resembling or apparently intended to resemble such subscription, shall be engraved or made; or if any person shall, without such authority, to be proved as aforesaid, knowingly offer, utter, dispose of or put off, or shall, without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession, any paper upon which any part of such bank-note, bill of exchange or promissory note, or any word or words resembling or apparently intended to resemble any such description, shall be made or printed, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than three years nor more than seven years, or to be imprisoned in any common gaol for any term not exceeding two years.

13. If any person shall forge or alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or altered, any bill of exchange, promissory note, undertaking or order for payment of money, in whatever language or languages the same may be expressed, and whether the same shall or shall not be under seal, purporting to be the bill, note, undertaking or order of any foreign prince or state, or of any minister or officer in the service of any foreign prince or state, or of any body corporate or body of the like nature constituted or recognized by any

Or having
plates of such
bank-notes,
&c., so en-
graved in
possession.

Offering or
uttering the
same.

Punishment

Forging or
uttering
foreign bills,
notes, under-
takings, &c.

Engraving
such notes,
&c.

Having
plates, &c. of
such foreign
bills, notes,
&c. in pos-
session.

Punishment

foreign Prince or state, or of any person or company of persons resident in any country not under the dominion of her Majesty; or if any person shall engrave or in any wise make upon any plate whatever, or upon any wood, stone or other material, any bill of exchange, promissory note, undertaking or order for payment of money in whatever language or languages the same may be expressed, and whether the same shall or shall not be intended to be under seal, purporting to be the bill, note, undertaking or order of any foreign prince or state, or of any minister or officer in the service of any foreign prince or state, or of any body corporate, or body of the like nature, constituted or recognized by any foreign prince or state, or of any person or company of persons resident in any country not under the dominion of her Majesty, without the authority of such foreign prince or state, minister or officer, body corporate, or body of the like nature, person or company of persons, the proof of which authority shall lie on the person accused; or if any person shall, without such authority, to be proved as aforesaid, use, or shall without lawful excuse, to be proved by the party accused, knowingly have in his custody or possession any plate, stone, wood or other material upon which any such foreign bill, note, undertaking or order, or any part thereof, shall be engraved or made; or if any person shall, without such authority, to be proved as aforesaid, knowingly utter, dispose of, or put off, or shall, without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession any paper upon which any part of any such foreign bill, note, undertaking or order shall be made or printed, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than three years, nor more than seven years, or to be imprisoned in any common gaol for any term not exceeding two years.

14. And whereas by an Act passed in the fifth year of the reign of Queen Elizabeth, intituled, *An English stat. 5 Elizabeth, c. 14 recited.*
Act against forgers of false deeds and writings, it is amongst other things provided, that every person convicted of any of the offences first enumerated in that Act shall pay to the party grieved his double costs and damages, and shall forfeit to the crown the whole issues of his lands and tenements during his life, and shall also suffer imprisonment during his life; And whereas there are certain Acts in force in this Province, or in some parts thereof, by which persons convicted of certain offences mentioned in those Acts are subjected to the same pains and penalties as are imposed by the said Act of Queen Elizabeth for the offences first enumerated in that Act; *Other punishments substituted for those in the said Act.*
 And whereas it is expedient to substitute other punishments in lieu of the punishments of that Act so far as the same have been adopted by any other Act; Be it enacted, That every person who shall after the commencement of this Act be convicted of any offence which is now subjected by any Act or Acts to the same pains or penalties as are imposed by the said Act of Queen Elizabeth for any of the offences first enumerated in that Act, shall be guilty of felony, and shall, in lieu of such pains and penalties, be liable, at the discretion of the court, to be kept confined at hard labour in the public Penitentiary of this Province for any term not less than three years, *Punishment* nor more than seven years, or to be imprisoned in any common gaol for any term not exceeding two years.

15. Where the forging or altering any matter *Forging, uttering, &c. to be an offence within this Act, where-
 sever the thing forged may purport to be made expressed.*
 whatsoever, or the offering, uttering, disposing of, or putting off any writing or matter whatsoever, knowing the same to be forged or altered, is in this Act expressed to be an offence, if any person shall in this Province forge, or alter or offer, utter, dispose of, (*a*)

(a) Vide supra, title "customs."

Or in what
language so-
ever.

Abettors.

Writings for
payment of
money, and
for some
other pur-
pose;

And where-
soever the
money be
made paya-
ble, or in
what lan-
guage soever
couched.

Punishment

or put off, knowing the same to be forged or altered, any such writing or matter, in whatsoever place or country out of this Province, whether under the dominion of her Majesty or not; such writing or matters may purport to be made or may have been made, and in whatever language or languages the same or any part thereof may be expressed, every such person, and every person aiding, abetting, or counselling such person shall be deemed to be an offender within the meaning of this Act, and shall be punishable thereby in the same manner as if the writing or matter had purported to be made or had been made in this Province; and if any person shall in this Province forge or alter, or offer, utter, dispose of or put off, knowing the same to be forged or altered, any bill of exchange, or any promissory note for the payment of money, or any endorsement on or assignment of any bill of exchange or promissory note for the payment of money, or any deed, bond, writing obligatory for the payment of money (whether such deed, bond or writing obligatory shall be made only for the payment of money, or for the payment of money together with some other purpose) in whatsoever place or country out of this Province, whether under the dominion of her Majesty or not, the money payable or secured by such bill, note, undertaking, warrant, order, deed, bond or writing obligatory may be or may purport to be payable, and in whatever language or languages the same respectively, or any part thereof, may be expressed, and whether such bill, note, undertaking, warrant or order be or be not under seal, every such person, and every person aiding, abetting or counselling such person shall be deemed to be an offender within the meaning of this Act, and shall be punishable thereby in the same manner as if the money had been payable or had purported to be payable in this Province.

16. When by any law now in force in any part of this Province, any person falsely making, forging,

forged or altered, in any place or under the seal of any such writing or in any language the words expressed, every person abetting, or who seemed to be an Act, and shall be in the same manner as if the same had been made or had been by any person shall utter, dispose of, or alter, forged or altered, any such note for the use of or on or assignment of any note for the use of, bond, writing or receipt (whether such shall be made only for the payment of the same or for any other purpose) in what province, whether by or not, the money or value, undertaking, or obligation may be made and in whatever manner, or any other whether such order be or be not by any person aid- person shall be in the meaning of this Act, by in the same manner as if the same had been made or altered in any part of the Province, making, forging,

counterfeiting, erasing or altering any matter whatsoever, or uttering, publishing, offering, disposing of, putting away or making use of any matter whatsoever, knowing the same to be falsely made, forged, counterfeited, erased or altered, or any person demanding or endeavouring to receive or have anything, or to do or cause to be done any act upon or by virtue of any matter whatsoever, knowing such matter to be falsely made, forged counterfeited, erased or altered, or where by any law now in force as aforesaid, any person falsely personating another, or falsely acknowledging anything in the name of another, or falsely representing any other person than the real party to be such party, or demanding or receiving any money or other thing by virtue of any probate or letters of administration, knowing the will on which such probate shall have been obtained to have been false or forged, or knowing such probate or letters of administration to have been obtained by means of any false oath or false affirmation, would be guilty of felony, and be liable to any other punishment than is provided by this Act; then and in each of the several cases aforesaid, if any person shall after the commencement of this Act be convicted of any such felony as hereinbefore mentioned, or of aiding, abetting, counselling or procuring the commission thereof, and no other provision is made for the punishment of any such offender under any other clause of this Act, such offender shall be liable, at the discretion of the court, to be kept confined at hard labour in the public Penitentiary of this Province for any term not less than three nor more than ten years, or to be imprisoned in any common gaol for any term not exceeding two years: Provided always, that nothing herein contained shall affect or alter any law relating to any coin lawfully current in this Province

17. If any person shall commit any offence against this Act, or shall commit any offence of forging or altering any matter whatsoever, or of offering, utter-

Persons convicted of forging, uttering fraudulently, personating another, &c., after this Act shall be in force, under some other Act, and no other punishment being assigned by this Act, how to be punished.

Punishment

Proviso: this Act not to affect any law relating to current coin.

Offenders may be tried in the District in

which they
shall be ap-
prehended or
in custody.

ing, disposing of or putting off any matter whatsoever, knowing the same to be forged or altered, whether the offence in any such case shall be indictable at common law or by virtue of any statute or statutes made or to be made, the offence of every such offender may be dealt with, indicted, tried and punished and laid and charged to have been committed in any district or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that district or place; and every accessory before or after such offence, if the same be a felony, and every person aiding, abetting or counselling the commission of any such offence if the same be a misdemeanor, may be dealt with, indicted, tried and punished, and his offence laid and charged to have been committed in any district or place in which the principal offender may be tried.

And access-
ories in the
same place.

Accessories
and prin-
cipals in the
second de-
gree, how
punished.

Accessories
after the fact.

Fac simile
not required
in indict-
ments.

What de-
scription shall
be sufficient.

18. In the case of every felony punishable under this Act, every principal in the second degree and every accessory before the fact shall be punishable in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act shall on conviction be liable to imprisonment in any common goal for any term not exceeding two years.

19. And in order to prevent justice being defeated by clerical or verbal inaccuracies, be it enacted, That in all informations or indictments for forging, altering or in any manner uttering any instrument or writing, it shall not be necessary to set forth any copy or *fac simile* thereof, but it shall be sufficient to describe the same in such manner as would sustain an indictment for stealing the same. (a)

(a) A count for forging or uttering a deed purporting to be a lease of certain "premises" described shortly, is good without setting it out verbatim.—R. v. Davies, 2 M. C. C. R. 177. A request for the delivery of goods may be so described in an indictment for forgery without setting it out

ter whatsoever, tered, whether e indictable at ute or statutes of every such tried and pun- een committed shall be appre- ence had been or place; and offence, if the iding, abetting such offence if be dealt with, offence laid and any district or may be tried.

nishable under nd degree and be punishable al in the first ed every acces- nishable under o imprisonment exceeding two

being defeated t enacted, That orging, altering nent or writing, ny copy or *fac* ent to describe stain an indict-

ed purporting to shortly, is good vices, 2 M. C. C. oods may be so out setting it out

20. When the having any matter in the custody or possession of any person is in this Act expressed to be an offence, if any person shall have any such matter in his personal custody or possession, or shall knowingly or wilfully have any such matter in any dwelling-house or other building, lodging, apartment, field or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or for the use or benefit of another, every such person shall be deemed and taken to have such matter in his custody or possession within the meaning of this Act; and where the committing of any offence with intent to defraud any person whatsoever is made punishable by this Act, in every such case the word "person" shall throughout this Act be deemed to include Her Majesty or any foreign Prince or State, or any body corporate or any company or society of persons not incorporated, or any person or number of persons whatsoever who may be intended to be defrauded by such offence, whether such body corporate, society, person or number of persons shall reside or carry on business in this Province or elsewhere in any place or country, whether under the dominion of Her Majesty or not; and it shall be sufficient in any indictment to name one person only of such company, society or number of persons and to allege the offence to have been committed with intent to defraud the person so named and another or others, as the case may be.

21. In all prosecutions by indictment or information against any person or persons for any offence punishable under this Act, no person or persons shall be deemed to be an incompetent witness or incompetent witnesses, in support of any such prosecution by reason of any interest which such person or persons may have or be supposed to have in respect of

verbatim.—R. v. Robson, 2 M. C. C. R. 182, vide ante title "Administration".—12. Vic. Chap. 21, Sec. 2.

What shall be a having anything in possession under this Act.

Word "person" how interpreted under this Act.

What allegation as to party intended to be defrauded shall be sufficient in an indictment.

Persons interested in the forged document not incompetent as witnesses.

Proviso :
their evi-
dence must
be supported
by other
proof.

any deed, writing, instrument or other matter given in evidence on the trial of any such indictment or information : Provided always, that the evidence of any person or persons so interested or supposed to be interested shall in no case be deemed sufficient to sustain a conviction for any of the said offences unless the same be corroborated by other legal evidence in support of such prosecution.

Certain Acts
repealed.

22 Repeals 4 & 5 Vic. Chap. 28, Sec. 7 ; 4 & 5 Vic. Chap. 33, Sec. 3 ; the 13 section of 4 & 5 Vic. Chap. 93, except so much as applies to any offence relative to coin ; 4 & 5 Vic. Chap. 94, Sec. 21, 22, 23 ; 4 & 5 Vic. Chap. 96, Sec. 43, 44, 45 ; 4 & 5 Vic. Chap. 97, Sec. 32, 33, 34 ; 4 & 5 Vic. Chap. 98, Sec. 35, 36, 37 ; 6 Vic. Chap. 8, Sec. 4 ; 6 Vic. Chap. 26, Sec. 33, 34, 35 ; 6 Vic. Chap. 27, Sec. 32, 33, 34 ; 7 Vic. Chap. 66, Sec. 33, 34, 35 ; 9 Vic. Chap. 34, so much of section 17 as relates to the forging or counterfeiting any certificate, affidavit or memorial ; 9 Vic. Chap. 3 ; 9 Vic. Chap. 61, Sec. 3 ; 9 Vic. Chap. 62, Sec. 28 ; 9 Vic. Chap. 63, Sec. 4 ; 9 Vic. Chap. 66, Sec. 3 ; 9 Vic. Chap. 74, Sec. 10 ; and the following Act of Upper Canada, 50 Geo. III. Chap. 4 ; 3 Will. IV. Chap. 3, so much of section 25 and 26 as relates to forgery or any other offence concerning which provision is made by this Act ; 7 Will. IV. Chap. 14, Sec. 8 ; and the following Acts of Lower Canada, 35 Geo. III. Chap. 8, Sec. 10 ; 36 Geo. III. Chap. 3, Sec. 6 ; 51 Geo. III. Chap. 10 ; 3 & 4 Vic. Chap. 31, Sec. 19 ; 4 Vic. Chap. 16, Sec. 34 ; 4 Vic. Chap. 17, Sec. 30 ; 4 Vic. Chap. 30 ; so much of section 51 as relates to the forging or counterfeiting of any memorial certificate or endorsement therein mentioned, and all other Acts or parts of Acts or laws now in force, at

To continue
in force until
31st Decem-
ber 1847, and
thereafter to
be repeal d.

variance with the provisions of this Act, or respecting matters for which this Act provides, shall continue in force until and throughout the thirty-first day of December in the present year, one thousand

eight hundred and forty-seven, and shall from and after that day be repealed, except so far as any of the said Acts may repeal the whole or any part of any other Acts, and except as to offences committed before or upon the said thirty-first day of December, which shall be dealt with and punished as if this Act had not been passed : Provided always, that if any person who shall before or upon the said thirty-first day of December, have committed any offence against any of the several Acts hereby declared to be no longer in force or repealed as aforesaid, shall after the commencement of this Act be convicted of the same, and such offence shall have been made heretofore punishable with death, in every such case the person convicted of such offence shall not suffer the punishment of death, but shall in lieu thereof be liable at the discretion of the court, to be kept confined at hard labour in the public penitentiary of this Province, for any term not less than three nor more than ten years, or to be imprisoned in any common gaol for any term not exceeding two years.

23. This Act shall commence and take effect on the first day of January one thousand eight hundred and forty-eight.

12 VIC. CHAP. 85.—6. If any person or persons shall make, forge or counterfeit, or cause or procure to be made, forged or counterfeited, or knowingly act or assist in the making, forging or counterfeiting any stamp or mark now used, or which may hereafter be legally used for the stamping or making of any weights or measures in any district or place in Upper Canada, each such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable at the discretion of the court to be fined and imprisoned in the common goal of the district where the conviction shall take place; provided such fine shall not exceed twenty pounds, and that such imprisonment shall not exceed three calendar months; and if any person shall knowingly sell,

alter, dispose of or expose to sale any weight or measure with such forged or counterfeit stamp or mark thereon, every person so offending shall, for every such offence, forfeit on conviction a sum not exceeding ten pounds or less than forty shillings, to be recovered under the provisions of the fifth section of this Act, (i. e. before any justice) and all weights and measures with such forged or counterfeited stamps or marks shall be forfeited, and the same be broken up by the inspector.

13 & 14 VIC. CHAP. 19.—*An Act to facilitate the admission of evidence of foreign judgments and certain official or other documents.*

Punishment
of persons
forging any
such seal,
signature &c.

6. If any person shall forge the seal or signature to any such certified copy (of any official or public document in this Province, or of any document, by-law, rule, regulation, or proceeding, or of any entry in any register, or other book of any corporation in this Province, purporting to be certified under the hand of the officer or person having custody of such official or public document, or to be certified under the seal of such corporation and the hand of the presiding officer or secretary thereof—sec. 4.) as is hereinbefore mentioned, or shall tender in evidence any such certified copy with false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, whether the seal or signature be that relating to any corporation or office already created or established, or to be hereafter created or established; or if any person shall forge the signature of any such judge as aforesaid (judges of the superior, circuit or county courts of law or equity in Upper or Lower Canada,) to any decree, order, certificate, affidavit, or other judicial or official document, or shall tender in evidence any order, decree, certificate, affidavit, or other judicial or official document, with a false or counterfeit signature of any such judge as aforesaid thereto, knowing the same to be false or counterfeit, every such person shall be guilty of

felony, and shall upon conviction be liable to imprisonment in the Provincial Penitentiary for any term not less than two nor more than five years.

13 & 14 VIC. CHAP. 53.—86. For every court ^{Each court to have a seal.} holden under the authority of this Act (Division Courts) there shall be made a seal of the court to be paid for out of the fee fund, and all summonses and other process issuing out of the said court shall be sealed or stamped with the seal of the court, and every person who shall forge the seal or any process of the court, or who shall serve or enforce any such forged process, knowing the same to be forged, or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said court, knowing the same to be false, or who shall act or profess to act under any false colour or pretence of the process of the said court shall be guilty of felony. ^{Punishment for forging it.}

13 & 14 VIC. CHAP. 17, part of Sec. 16, relating to forging post-office stamps, see *post*, title "post-office."

14 & 15 VIC. CHAP. 13.—6. Every person who ^{Punishment of persons forging certificates &c.} shall forge or alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or altered, any certificate of or copy certified by a Chief Justice or senior judge, or by a clerk of assize, clerk of the peace or recorder's clerk, as the case may be, with intent to cause any person to be discharged from custody or otherwise prevent the course of justice, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned in the Provincial Penitentiary for any period not more than seven nor less than three years.

14 & 15 VIC. CHAP. 51.—22. *Ninthly.* The ^{Forging railway debentures, &c., to be felony.} offence of forging any debentures or a *coupon* of any debenture issued under the authority of this Act, or of the Special Act, or of uttering any such debenture or *coupon*, knowing the same to be forged, or of

being accessory before or after the fact to any such offence, shall be deemed felony, and be punished accordingly.

16 VIC. CHAP. 19.—*An Act to improve the Law of Evidence in Upper Canada.*

Punishment of persons forging documents, &c., or using them knowing them to be forged.

Document may be impounded.

11. If any person shall forge any seal, stamp or signature of any document in this Act mentioned or referred to (probate of will of person dying in her Majesty's possessions out of Upper Canada, or certificate of the judge, registrar or clerk of the court granting such probate, or probate of will, or letters of administration with the will annexed, or any copy or extract from a book or document of such a public nature as to be evidence on its mere production,) or shall tender in evidence any such document with a false or counterfeit seal, stamp or signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall, upon conviction, be liable to be imprisoned in the Provincial Penitentiary for any term not exceeding ten years, or to imprisonment in any gaol or house of correction with hard labour for any term not exceeding one year or less than two months. And whenever any such document shall have been admitted in evidence by virtue of this Act the court or the person who shall have admitted the same, may, at the request of any party against whom the same is admitted in evidence, direct that the same shall be impounded and kept in the custody of some officer of the court, or other proper person for such period and subject to such conditions as to the said court or person shall seem meet; and every person who shall be charged with committing any felony under this Act, may be dealt with, indicted and tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed in the county or place in which he shall be apprehended or be in custody; and every accessory before or after the fact to any such offence may be dealt with,

indicted and tried, and, if convicted, sentenced, and his offence laid to have been committed in any county or place in which the principal offender may be tried. Where offenders may be tried.

FUGITIVE OFFENDERS.

37 GEO. III. CHAP. 15.—1. From and after the passing of this Act, if any person or persons, against whom a warrant shall be issued by the Chief Justice of the King's Bench, or any other magistrate having competent authority in any of his Majesty's provinces or governments in North America, respectively, for any felony or other crime of a high nature, shall escape, come into, reside or be in any part of this Province, it shall and may be lawful for any justice of the peace of the district, county, city or place, where such person or persons shall escape, come into, reside or be, to endorse his name on the said warrant (due proof being first made of the hand-writing of the magistrate issuing the same,) which warrant, so endorsed, shall be a sufficient authority to all persons to whom such warrant was originally directed, and also to all constables of the district, county, city or place where such warrant shall be so endorsed, to execute the same, by apprehending the person or persons against whom such warrant is granted, and to convey him, her, or them into the Province from which such warrant originally was issued, to be dealt with according to law. Warrants issuing within his Majesty's other governments in North America against felons escaping therefrom, may be executed within this Province, being duly endorsed.

2. Provided, That before any such warrant shall be so endorsed as aforesaid, the person applying for such endorsement shall enter into a recognizance, with sufficient sureties, for a sum not less than fifty pounds, lawful money of this Province, to indemnify this Province, and every part thereof, against any expense that may arise or accrue from the apprehension of such offender, and also to bring or cause the said offender to be brought to trial; and the magistrate to whom such application shall be made, is hereby authorised to take such recognizance. Security being previously given to indemnify the Province against any expense, and to bring the offender so apprehended to trial.

Government
authorized
to deliver up
to justice
persons who
may have
fled from
other coun-
tries into
this Pro-
vince
charged
with heinous
offences.

3 WILL. IV. CHAP. 6.—1. The Governor, Lieutenant-Governor or Person administering the government of this Province, shall have power, and he is hereby authorised at his discretion, and by and with the advice of the Executive Council, on requisition being made by the government of any country, or its ministers or officers authorized to make the same, within the jurisdiction of which country the crimes hereinafter mentioned shall be charged to have been committed, to deliver up to justice any person who may have fled to this Province, or who shall seek refuge therein, being charged with murder, forgery, larceny or other crime committed without the jurisdiction of this Province, which crimes, if committed within this Province, would by the laws thereof be punishable by death, corporal punishment, by pillory or whipping, or by confinement at hard labour, to the end that such persons may be transported out of this Province to the place where such crime shall have been charged to have been committed: Provided always, that this shall only be done upon such evidence of criminality as, according to the laws of this Province, would, in the opinion of the Governor, Lieutenant-Governor or Person administering the government, and of the Executive Council, warrant the apprehension and commitment for trial of such fugitive from justice, or person so charged, if the offence had been committed within this Province.

Proviso.

Persons
charged with
offences com-
mitted in
foreign coun-
tries may be
committed
until an
application
can be made
to the Gov-
ernment for
delivering
up such
offender.

2. For preventing the escape of any person so charged, before any order for his apprehension can be obtained from the Governor, &c., it shall be lawful for any judge, or for any justice of the peace in this Province acting within his jurisdiction to issue his warrant for the apprehension and for the commitment of any such person charged as aforesaid, in order that he may be detained in secure custody until application can be made to the Governor, &c., under the provisions of this Act, and until an order can be made thereon, which warrant shall neverthe-

Governor, Lieutenant the govern-
 ment, and he is
 and by and with
 on requisition
 country, or its
 make the same,
 country the crimes
 and to have been
 any person who
 who shall seek
 murder, forgery,
 without the juris-
 s, if committed
 thereof be pun-
 t, by pillory or
 labour, to the end
 out of this Pro-
 shall have been
 provided always,
 such evidence of
 of this Province,
 or, Lieutenant-
 the government,
 want the appre-
 of such fugitive
 the offence had

any person so
 apprehension can
 it shall be law-
 of the peace in
 dictation to issue
 for the commit-
 as aforesaid, in
 secure custody
 Governor, &c.,
 until an order
 shall neverthe-

less only be granted upon such evidence on oath as shall satisfy such judge or justice that the person accused stands charged with some crime of the description hereinbefore specified, or that there is good ground to suspect him to have been guilty thereof.

3. Nothing in this Act contained shall be construed to affect the provisions of (37 Geo. III. chap. 15), or to make it incumbent upon the Governor and Council of this Province to deliver up any person charged, if for any reason they shall deem it inexpedient so to do, or to prevent the discharge of any person upon habeas corpus who, having been committed under this Act, shall be detained in custody beyond the time that may be reasonably required under the circumstances of the case for carrying the provisions of this Act into effect.

This Act not to affect provisions of 37 Geo. III. Chap. 15, or to make it incumbent on government to deliver up persons charged as aforesaid.

6 & 7 VIC. CHAP. 76.—(Imperial statute.) *An Act for giving effect to a treaty between her Majesty and the United States of America for the apprehension of certain offenders. (a)*

5. If by any law or ordinance to be hereafter made by the local legislature of any British colony or possession abroad, provision shall be made for carrying into complete effect within such colony or possession the objects of this present Act, by the substitution of some other enactment in lieu thereof, then it shall be competent to her Majesty, with the advice of her Privy Council, (if to her Majesty in Council it shall seem meet, but not otherwise), to suspend the operation, within any such colony or possession, of this present Act so long as such substituted enactment shall continue in force there, and no longer.

If local legislature substitute any other Act, Her Majesty may suspend the operation of this one.

6. This Act shall continue in force during the continuance of the tenth article of the said treaty.

12 VIC. CH. 19.—1. Whereas by the tenth article

Recital.

(a) So long as the Provincial Statute 12 Vic. ch. 19 is in force, this Act is not, and it is therefore omitted.

of a treaty between her Majesty and the United States of America, signed at Washington on the 9th day of August in the year one thousand eight hundred and forty-two, the ratifications whereof were exchanged at London on the thirteenth day of October in the same year, it was agreed that her Majesty and the said United States should, upon mutual requisitions by them or their ministers, officers or authorities respectively made, deliver up to justice all persons who being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either of the high contracting parties, should seek an asylum, or should be found within the territories of the other; provided that this should only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged should be found, would justify his apprehension and commitment for trial, if the crime or offence had been there committed, and that the respective judges and other magistrates of the two governments should have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, so that he might be brought before such judges or other magistrates respectively, to the end that the evidence of criminality might be heard and considered; and if, on such hearing, the evidence should be deemed sufficient to sustain the charge, it should be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant might issue for the surrender of such fugitive, and that the expense of such apprehension and delivery should be borne and defrayed, by the party making the requisition and receiving the fugitive; and it is by the eleventh article of the said treaty further agreed, that the tenth article, hereinbefore recited, should continue in force until one or other of the

high contracting parties should signify its wish to terminate it, and no longer: And whereas certain provisions of the Act (*Imp. Stat. 6 & 7 Vic. chap. 76*) have been found inconvenient to practice in this Province, and more especially that provision which requires, that before any such offender as aforesaid should be arrested, a warrant shall come under the hand and seal of the person administering the government to signify that such requisition as aforesaid hath been made by the authority of the United States for the delivery of such offender as aforesaid, and to require all justices of the peace and other magistrates and officers of justice within their several jurisdictions, to govern themselves accordingly, and to aid in apprehending the person so accused, and committing such person to gaol, for the purpose of being delivered up to justice, according to the provisions of the said treaty, inasmuch as by the delay occasioned by compliance with the said provision, an offender may have time afforded him for eluding pursuit: And whereas (*reciting sec. 5 of the Imp. Stat. qu. vide sup.*) And whereas it is expedient to make provision for carrying the objects of the said Act and treaty into complete effect within this Province by the substitution of other enactments in lieu of the said Imperial Act; Be it, &c., that it shall be lawful for any of the judges of her Majesty's Superior Courts in this Province, or for any of her Majesty's justices of the peace in the same, and they are hereby severally vested with power, jurisdiction and authority, upon complaint made under oath or affirmation, charging any person found within the limits of this Province with having committed within the jurisdiction of the United States of America, or of any of such States, any of the crimes enumerated or provided for by the said treaty, to issue his warrant for the apprehension of the party so charged, that he may be brought before such judge or such justice of the peace, to the end that the evidence of criminality

By whose order and on what evidence persons charged with crimes committed in the U. S. may be arrested and detained.

Proceedings
to be certified
to the Gov-
ernor.

And the
offender to
be commit-
ted until
duly dis-
charged.

Properly
attested
copies of
depositions
taken in U.
S. to be
received as
evidence of
criminality.

Governor
may order
the delivery
of the offend-
er to the
U. S., or to
any one of
the States.

may be heard and considered, and if, on such hearing, the evidence be deemed sufficient by him to sustain the charge according to the laws of this Province, if the offence alleged had been committed therein, it shall be his duty to certify the same, together with a copy of all the testimony taken before him, to the Governor, &c., that a warrant may issue upon the requisition of the proper authorities of the said United States, or of any of such States, for the surrender of such person, according to the stipulations of the said treaty, and it shall be the duty of the said judge or of the said justice of the peace to issue his warrant for the commitment of the person so charged to the proper gaol, there to remain until such surrender shall be made, or until such person shall be discharged according to law.

2. Provided that in every case of complaint as aforesaid, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any of the said United States may have been granted, certified under the hand of the person or persons issuing his warrant, or under the hand of the officer or person having the legal custody thereof, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended.

3. It shall be lawful for the Governor, &c., upon a requisition made as aforesaid by the authority of the said United States or of any of such States, by warrant under his hand and seal to order the person so committed to be delivered to such person or persons as shall be authorized in the name and on the behalf of the said United States, or of any of such States to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly, and it shall be lawful for the person or persons authorized as aforesaid to hold such person in custody and to take him or her to the territo-

ries of the said United States pursuant to the said treaty, and if the person so accused shall escape out of any custody to which he or she shall be committed, or to which he or she shall be delivered as aforesaid, it shall be lawful to retake such person in the same manner as any person accused of any crime against the laws of this Province may be retaken upon an escape. Offenders escaping may be retaken.

4. When any person, who shall have been committed under this act and the treaty aforesaid, to remain until delivered up in pursuance of a requisition as aforesaid, shall not be delivered up pursuant thereto and conveyed out of this Province within two calendar months after such commitment over and above the time actually required to convey the prisoner from the gaol to which he or she may have been committed by the readiest way out of this Province, it shall in every such case be lawful for any of the judges of Her Majesty's Superior Courts in this province having a power to grant a writ of habeas corpus upon application made to him or them by or on behalf of the person so committed, and upon proof made to him or them, that reasonable notice of the intention to make such application has been given to the Provincial Secretary, to order the person so committed to be discharged out of custody unless sufficient cause shall be shewn to such judge or judges why such discharge shall not be ordered. Any person so arrested and not delivered up within two months, may obtain his discharge, unless good cause for his further detention be shewn.

5. (This Act is to come into force on a day to be announced by proclamation promulgating any order of Her Majesty in council suspending the operation of the imperial Act in this Province and shall continue in force during the continuance of the tenth article of the treaty. (a) Commencement and duration of this Act.

(a) A proclamation, dated 28 March, 1850, brought this into force on 10th April, 1850. By order of Her Majesty in council dated 8th January, 1850, the operation of the Imperial Act in this Province was suspended during the continuance of this Act.

GAS AND WATER WORKS.

11 VIC. CHAP. 13.—(*The City of Kingston Gas Light Company*).—26. If any person or persons shall wilfully or maliciously break up, pull down, or damage, injure, put out of order or destroy any main pipe, pipe, or other works or apparatus, appurtenances or dependencies thereof, or any matter or thing already made and provided, or which shall be made and provided, for the purposes aforesaid, or any of the materials used and provided for the same, or ordered to be erected, laid down or belonging to the said company, or shall in any wise wilfully do any other injury or damage for the purpose of obstructing, hindering, or embarrassing the construction, completion, maintaining or repairing of the said works, or shall cause or procure the same to be done, or shall increase the supply of gas agreed for with the said company by increasing the number or size of the holes in the gas burners, or otherwise wrongfully, negligently or wastefully burning the same, or by wrongfully or improperly wasting the gas, every such person or persons shall be guilty of a misdemeanor; and on conviction thereof, the court, before whom such person shall be tried and convicted, shall have the power and authority to condemn such person to pay, a penalty not exceeding ten pounds, currency, or be confined in the common gaol of the district for a space of time not exceeding three months, as to such court shall seem meet.

Penalty for wilfully injuring or destroying the works, &c.

Or increasing the supply of Gas.

11 VIC. CHAP. 14.—(*The Consumers Gas Company of Toronto*).—19. If any person or persons shall wilfully or maliciously break up, pull down, or damage, injure, put out of order, or destroy any meter, main-pipe, pipe, or other works or apparatus, appurtenances or dependencies thereof, or any matter or thing already made or provided, or which shall be made or provided for the purposes aforesaid, or any of the materials used and provided for the same or

Penalty for wilfully injuring or impeding the use of the works of the company.

WORKS.

City of Kingston Gas
 person or persons
 up, pull down, or
 or destroy any main
 apparatus, appurten-
 any matter or thing
 which shall be made
 aforesaid, or any of
 for the same, or
 or belonging to
 any wise wilfully do
 or the purpose of
 embarrassing the con-
 struction or repairing of
 procure the same to
 supply of gas agreed
 increasing the number
 burners, or otherwise
 wastefully burning the
 improperly wasting the
 shall be guilty of
 thereof, the court,
 tried and convicted,
 to condemn such
 exceeding ten pounds,
 common gaol of the
 exceeding three
 months.

Summers Gas Com-
 person or persons
 up, pull down, or
 , or destroy any
 works or apparatus,
 eof, or any matter
 or which shall be
 aforesaid, or any
 for the same or

ordered to be erected, laid down or belonging to the said company, or shall in any wise wilfully do any other injury or damage for the purpose of obstructing, hindering or embarrassing the construction, completion, maintaining or repairing of the said works, or shall wilfully alter or impair any meter so that the same shall indicate less gas than actually passes through the same, or shall cause or procure the same to be done, or shall increase the supply of gas agreed for with the said company by increasing the number or size of the holes in the gas-burners, or otherwise wrongfully, negligently or wastefully burning the same, or by wrongfully or improperly wasting the gas, every such person or persons shall be guilty of a misdemeanor, and on conviction thereof the court before whom such person shall be tried and convicted, shall have power and authority to condemn such person to pay a penalty not exceeding ten pounds, currency, or be confined in the common gaol of the district for a space of time not exceeding three months, as to such court may seem meet, and such person shall defray the expenses attending the repair or replacing of such meter.

Fraudulent-
 ly increasing
 the size of
 burners.

12 VIC. CHAP. 158.—(*City of Kingston Water-works Company*).—12. If any person or persons shall wilfully or maliciously break up, pull down, or damage, injure, put out of order, or destroy any main pipes, engine, water-house, pipe, plug or other work or apparatus, appurtenances or dependencies thereof, or any matter or thing already made and provided, or which shall be made and provided for the purposes aforesaid, or any of the materials used and provided for the same, or ordered to be erected, laid down or belonging to the said company, or shall in anywise wilfully do any other injury or damage, for the purpose of obstructing, hindering or embarrassing the construction, completion, maintaining or repairing of the said works, or shall cause or procure

Penalty on
 persons dam-
 aging pipes
 or other
 works, &c.

the same to be done, or shall bathe or wash or cleanse any cloth, wool, leather, skins, animals, or any noisome or offensive thing, or cause, permit or suffer the water of any sink, sewer or drain to run or be conveyed into, or cause any other annoyance to be done to the water within any reservoirs, cisterns, ponds, courses or fountains from which the water to supply the said city is to be conveyed, or by wrongfully or improperly wasting the water, every such person or persons shall be guilty of a misdemeanor, and, on conviction thereof, the court, before whom such persons shall be tried and convicted, shall have power and authority to condemn such person to pay a penalty not exceeding five pounds currency, or to be confined in the common gaol of the district for a space of time not exceeding three months as to such court may seem meet.

13 & 14 VIC. CHAP. 136.—(*The Hamilton Gas Light Company.*)—20. (This section is a mere transcript of section 26 of 11 Vic. ch. 13—*qu. vide supra.*)

16 VIC. CHAP. 66.—(*The Hamilton Water-works Company.*)—5. If any person shall wilfully or maliciously hinder or interrupt, or cause or procure to be hindered or interrupted, the said company, or their managers, servants, agents or workmen, or any of them, in the exercise of any of the powers and authorities in this Act authorised and contained, or if any person shall wilfully or maliciously let off or discharge any water, so that the same shall run waste or useless, out of the works of the said company; or if any person shall throw or deposit any thing, or noisome or offensive matter into the water of the said company, or in any way foul the same, or commit any wilful damage or injury to the works or water of the company, or encourage the same to be done, every person offending in any of the cases aforesaid, shall, being subject to an action at law for the damages

Parties wilfully hindering company in the exercise of their power, subject to penalties.

11 wilfully or malice or procure to be
 12 company, or their
 13 workmen, or any of
 14 powers and author-
 15 contained, or if any
 16 let off or discharge
 17 run waste or use
 18 company; or if any
 19 thing, or noisome
 20 of the said com-
 21 e, or commit any
 22 ss or water of the
 23 to be done, every
 24 as aforesaid, shall,
 25 for the damages

16 VIC. CHAP. 250.—(*The Metropolitan Gas and Water Company at Toronto.*)"—23. If any person or persons shall wilfully or maliciously hinder, interrupt or cause or induce or procure to be induced or interrupted the said company or their managers, servants, agents or workmen or any of them in the exercise of any of the powers and authorities in this Act authorised and contained, or if any person or persons shall wilfully or maliciously break up, pull down, damage, injure, put out of order or destroy any main pipe or other works or apparatus, appurtenances or dependencies thereof, or any matter or thing already made and provided or which shall be made and provided for the purposes aforesaid or any of the materials used and provided for the same, or ordered to be erected laid down or belonging to the said company, or if any person or persons shall throw or deposit any thing or nuisance or offensive matter into the water of said company or in any way foul the same, or shall in any wise wilfully do any injury or damage for the purpose of obstructing, hindering or embarrassing the construction, completion, maintaining or repairing of the said works, or shall cause or procure the same to be done, or shall increase the supply of gas or water agreed for with the said company by increasing the number or size of the holes in the gas-

Persons hindering company or damaging their property how punished.

Persons blinding company or damaging their property how punished.

burners, or by substituting a pipe or pipes of larger bore for the conveyance of water, or otherwise wrongfully, negligently or wastefully throwing away or wasting the said gas and water or either of them respectively, every such person or persons shall be held guilty of a misdemeanor, and on conviction thereof, the court before whom such person shall be tried and convicted shall have power and authority to condemn such person to pay a penalty not exceeding ten pounds currency, or to be confined in the common gaol of the city for a space of time not exceeding three months as to such court may seem meet.

INDIANS AND INDIAN LANDS.

Purchases of land from Indians not valid without the consent of the crown.

13 & 14 VIC. CHAP. 74.—1. No purchase or contract for the sale of land in Upper Canada which may be made of or with the Indians or any of them shall be valid unless made under the authority and with the consent of Her Majesty, her heirs or successors, attested by an instrument under the great seal of the Province, or under the privy seal of the governor thereof for the time being.

Such purchase without consent to be a misdemeanor.

2. If any person without such authority and consent shall in any manner or form, or upon any terms whatsoever purchase or lease any lands within Upper Canada of or from the said Indians or any of them, or make any contract with such Indians or any of them for or concerning the sale of any lands therein, or shall in any manner give, sell, demise, convey or otherwise dispose of any such lands or any interest therein, or offer so to do, or shall enter on or take possession of, or settle any such lands by pretext or colour of any right or interest in the same in consequence of any such purchase or contract made or to be made with such Indians or any of them unless with such authority and consent as aforesaid, every such person shall in every such case be deemed guilty of a misdemeanor, and shall, on conviction thereof before any court of competent

pipes of larger bore
otherwise wrongfully,
away or wasting
them respectively,
be held guilty of
thereof, the court
tried and convicted
condemn such per-
son to ten pounds' im-
prisonment in the
common gaol of the
county for three months

LANDS.

No purchase or
conveyance of any
land in Upper Canada
which is or any of them
the authority and
consent of her heirs or suc-
cessors under the great
seal of the province
or upon any terms
lands within Upper
Canada or any of them,
with Indians or any
other persons, the sale
of any lands, give,
sell, demise, or any
other interest in or
shall enter on any
such lands by or
interest in the
such purchase or
with such Indians or
other persons and
consent of all in every
such conveyance,
and shall, the court
of competent

jurisdiction, forfeit and pay to Her Majesty, her
heirs or successors, the sum of two hundred pounds,
and be further punished by fine and imprisonment
at the discretion of the court.

16 VIC. CHAP. 176.—9. Any person inciting Persons in-
citing In-
dians to the
commission
of certain
offences, how
punishable. Indians or half-breeds frequenting or residing in such
tracts of country as aforesaid (unorganized tracts of
country in this Province bordering upon and adjacent
to lakes Superior and Huron including the islands on
those lakes which belong to this Province, and all
other parts of Upper Canada which are not now
included within the limits of any county or township)
to the disturbance of the public peace, or to the
commission of any other indictable offence shall be
guilty of a felony, and upon conviction thereof, shall
be sentenced to imprisonment for not more than five
years nor less than two years in the Provincial Peni-
tentiary; and for and notwithstanding anything to
the contrary contained in an Act, (9 Vic. Chap. 41,) or
in any other Act or law in force in Upper Canada,
persons accused of inciting Indians or half-breeds as
aforesaid, or accused or convicted of any other crime
or offence in any such provisional district as aforesaid
(*governor may by proclamation declare any part or
the whole of the unorganized territory to be a provi-
sional judicial district*) may be committed to any
common gaol in Upper Canada.

INNKEEPERS.

13 & 14 VIC. CHAP. 27.—6. Whenever per- Tavern-keep-
ers subjected
to imprison-
ment and
fine for acci-
dents to in-
toxicated
persons. son shall have drunk spirituous liquors in any inn or
tavern with the permission or sufferance of the keeper
thereof, and shall, while in a state of intoxication or
drunkenness, arising out of the use of such spirituous
liquors, come to his death by committing suicide or
by drowning or perishing from cold, or any other acci-
dent, such keeper of any such inn or tavern shall be
guilty of a misdemeanor, and, being convicted there-

Fine to be
paid to heirs.

of, after having been indicted and tried for such offence in due course of law, shall be liable to be imprisoned in the common gaol of the district in Lower Canada, or county in Upper Canada, in which such offence shall have been committed, for a period of time not less than two nor more than six months, and to pay a penalty of not less than twenty-five pounds, nor more than one hundred pounds, the amount of which penalty shall, by the court before which such conviction shall take place, be ordered to be paid to such one or more of the heirs, legal representatives, or surviving relatives of the deceased, as the said court may consider to be most in need or deserving of the same.

INSURANCE COMPANIES.

Penalty on
officers guilty
of fraud.

14 & 15 VIC. CHAP. 162.—(*The Western Assurance Company*).—22. Any person who as secretary, clerk or other officer of the company, shall be guilty of any designed falsehood, or fraud in any matter or thing pertaining to his office, or duty, shall be guilty of a misdemeanor, and any person offering to vote in person, at any election of directors in the said company, who shall falsely personate another, or who shall falsely sign or affix the name of any other person, a member of this company, to any appointment of a proxy, shall be guilty of a misdemeanor.

24. Officers or stockholders may be witnesses.

Penalty on
officers guilty
of falsehood in mat-
ters pertaining
to their
office.

14 & 15 VIC. CHAP. 163.—(*The Canada West Farmers Mutual and Stock Insurance Company*).—14. Any person who as secretary, deputy secretary, treasurer, clerk or other officer of the company, shall be guilty of any wilful fraud, in any matter or thing pertaining to his office, or the duties thereof, shall be guilty of a misdemeanor, and any person offering to vote in person, at any election of directors, in the said company, who shall falsely personate another, or who shall falsely sign or affix the name of any other

person, or member of this company to any appointment of a proxy shall be guilty of a misdemeanor.

16 VIC. CHAP. 144.—(*The Erie and Ontario Insurance Company*).—14. Verbatim as section 14 of 14 & 15 Vic. Chap. 163.

JURISDICTION, VENUE, &c.

59 GEO. III. CHAP. 10.—1. All crimes and offences committed in any of the said tracts of country, or parts of this Province, not being within the limits of any described county or township, may be inquired of and tried within any district of this Province, and may and shall be laid and charged to have been committed within the jurisdiction of the court which shall try the same, and such court may and shall proceed thereon to trial, judgment and execution, or other punishment, for such crime or offence, in the same manner as if such crime or offence had been really committed within the district where such trial may be had, any law, usage or custom, to the contrary notwithstanding.

2. When and so soon as any new county or counties, township or townships, shall be laid out, described and established, in any of the tracts of country aforesaid, and shall be so declared by law or by proclamation, under the hand and seal of the Governor, Lieutenant-governor, or Person administering the government of this Province for the time being, by and with the advice and consent of his Majesty's Executive Council, all crimes and offences committed within the limits of any such new county or counties, township or townships, shall be enquired of and tried in the district or districts, wherein such new county or counties, township or townships, shall be respectively comprehended, in like manner as such crimes or offences would have been inquired of and tried if this present Act had not been made or passed.

2 WILL. IV. CHAP. 2.—1. The lakes, rivers, and

Hereafter of
offences com-
mitted in un-
organized
parts of this
Province
may be tried
in any dis-
trict thereof.

When such
unorganized
parts of the
Province
shall be
formed into
townships,
the provi-
sions of this
act shall not
apply to
them.

Navigable waters to be taken to be parcel of the several districts to which they are opposite.

other waters of this Province, which are not comprehended within the defined limits of any town, township or county, shall and may be taken to be, and are hereby declared to be parts of that district respectively within the exterior side lines of which any such lake, river, or other water would lie and be if such exterior side lines were produced in that direction, to the utmost limits of this Province.

Crimes committed upon navigable waters may be tried in any district adjacent thereto.

2. All crimes and offences committed in or upon any of the said waters, may be enquired of and tried within any district lying adjacent to such waters, and shall and may be laid and charged to have been committed within the jurisdiction of the court which shall try the same; and such court shall and may proceed thereon to trial, judgment and execution, or other punishment, for such crime or offence, in the same manner as if such crime or offence had been really committed within the district where such trial may be had, any law, usage or custom to the contrary notwithstanding.

Offences committed on the boundaries of districts and counties may be tried in either.

4 & 5 VIC. CHAP. 24.—40. And for the more effectual prosecution of offences committed near the boundaries of districts or of counties, or partly in one district or county and partly in another, Be it enacted, that where any felony or misdemeanor shall be committed on the boundary or boundaries of two or more districts or counties, or within the distance of five hundred yards of any such boundary or boundaries, or shall be begun in one district or county and completed in another, every such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished in any of the said districts or counties, in the same manner as if it had been actually and wholly committed therein.

Offences committed during a journey or voyage, may be tried in any county or district

41. And for the more effectual prosecution of offences committed during journeys from place to place, Be it enacted, that where any felony or misdemeanor shall be committed on any person, or on or in respect of any property, in or upon any coach,

h are not com-
s of any town,
be taken to be,
of that district
nes of which any
ld lie and be if
ed in that direc-
vince.

itted in or upon
ired of and tried
such waters, and
o have been com-
the court which
t shall and may
nd execution, or
r offence, in the
ffence had been
where such trial
tom to the con-

nd for the more
mitted near the
, or partly in one
er, Be it enacted,
or shall be com-
es of two or more
distance of five
r boundaries,
county and com-
or misdemeanor
determined and
or counties, in
ually and wholly

prosecution of
from place to
felony or mis-
person, or on
pon any coach,

waggon, cart, or other carriage, whatever, employed through which the coach, &c, passed.
in any journey, or shall be committed on any person,
or on or in respect of any property, on board any
vessel whatever, employed in any voyage or journey
upon any navigable river, canal, or inland navigation,
such felony or misdemeanor may be dealt with,
inquired of, tried, determined, and punished in any
District or county through any part whereof such
coach, waggon, cart, carriage, or vessel shall have
passed in the course of the journey or voyage, during
which such felony or misdemeanor shall have been
committed, in the same manner as if it had been
actually committed in such district or county; and in
all cases where the side, centre or other part of any
highway, or the side, bank, centre or other part of any
such river, canal, or navigation, shall constitute the
boundary of any two districts or counties, such felony
or misdemeanor may be dealt with, inquired of, tried,
determined, and punished in either of such districts
or counties, through or adjoining to or by the bound-
ary of any part whereof such coach, waggon, cart,
carriage, or vessel, shall have passed in the course of
the journey or voyage, during which such felony or
misdemeanor shall have been committed, in the same
manner as if it had been actually committed in such
district or county.

12 VIC. CHAP. 78.—21. All actions, informations Provisions as to actions, &c. pending at the dissolution of any union.
and indictments, pending at the time so appointed by
proclamation for the disuniting such junior county
from such union, shall be tried in the senior county
unless, by order of the court in which the same shall
be pending in term time or of some judge thereof in
vacation, the venue therein shall be changed to the
junior county which change every such court or judge
is hereby authorized to grant and direct either on
the consent of parties or in their or his discretion on
hearing such parties to the point by affidavit or
otherwise.

32. All actions, informations, indictments, inqui- Provisions as to pending

actions and other proceedings in the present districts.

sitions and other proceedings of what nature or kind soever whether of a judicial or any other character now pending in the several districts in Upper Canada shall from henceforth be deemed and taken to all intents and purposes whatsoever to be pending in the counties or unions of counties to which they are respectively transferred as respectively set forth in the schedule to this Act annexed marked B, as if the same had been originally instituted and proceeded within such counties or unions of counties respectively, and the different courts, officers and other authorities in which or before whom the same shall be respectively pending, shall take such order respecting the same as may be necessary or expedient for the proper disposition of the same according to law without prejudice to the parties interested or affected or any of them from the abolition of such division into districts, and the establishment of a division into counties in lieu thereof as herein provided.

As to suits pending when this Act commences.

14 & 15 VIC. CHAP. 5.—12. Notwithstanding any change made by this Act in the limits of any county or union of counties or township, all indictments, suits, actions and proceedings pending in any court at the time this Act shall come into effect (1st January 1852) may nevertheless be continued to trial and judgment, and such judgment may be executed as if this Act had not been passed although the local jurisdiction of such court may be changed as to other matters.

Parties in prison or under bail at the time of the dissolution of any unions may be tried, &c. in either county.

16 VIC. CHAP. 181.—12. Any person charged with any indictable offence who, at the time of the disuniting of any junior county from any senior county under the provisions of the Act, (12 Vic. Chap. 78) or of any other Act of the parliament of this province, shall be imprisoned on such charge in the gaol in such senior county, or be under bail or recognizance to appear for trial at any court in such senior county, may be indicted, tried, sentenced and punished either in such senior county, or such junior

county as to the court before whom such person shall be tried shall seem meet.

JURORS, CHALLENGE, &c.

13 & 14 VIC. CHAP. 55.—53. Nothing herein contained shall extend, or be construed to extend, to any jury of matrons, or any writ *de ventre inspiciendo*, or to deprive any alien not naturalized, indicted or impeached of any felony or misdemeanor, of the right of being tried by a jury *de medietate linguae*, but that on the prayer of every such alien, so indicted or impeached, the sheriff shall by command of the court return for one half of the jury a competent number of aliens, if so many there be in the town or place where the trial is had, and, if not, then so many aliens as shall be found in the same town or place, if any; and that no such alien juror shall be liable to be challenged for want of any qualification required by this Act, but every such alien may be challenged for any other cause, in like manner as if he were qualified by this Act.

Right of
alien to be
tried by jury
*de medietate
linguae* saved.

55. If any man shall be returned as a juror for the trial of any issue in any cause civil or criminal, or on any penal statute in any of the courts hereinbefore mentioned, (her Majesty's superior courts of common law at Toronto, having general criminal or civil jurisdiction throughout Upper Canada, and all courts of criminal or civil jurisdiction within any county, union of counties, city or other local judicial division of a county—sec. 1; and the sittings or sessions of assize, *nisi prius*, oyer and terminer, gaol delivery, sessions of the peace or county courts—sec. 29,) who shall not be qualified according to this Act, the want of such qualification shall be a good cause of challenge, and he shall be discharged upon such challenge, if the court shall be satisfied of the fact: Provided always, that nothing herein contained shall extend in anywise to any special juror.

Want of
qualification
to be a cause
of challenge.

Providso as to
special juror.

56. If any man returned as a juror for the trial of

Want of freehold nor a cause of challenge.

any such issue shall be qualified in other respects according to this Act, the want of freehold shall not, on such trial, in any case civil or criminal, or on any penal statute, be accepted as a good cause of challenge, either by the crown, or by the party, nor as cause for discharging the man so returned upon his own application; any law, custom or usage to the contrary notwithstanding.

Peremptory challenges limited.

58. No person arraigned for murder or felony (a) shall be admitted to any peremptory challenge above the number of twenty, and the defendants arraigned for any misdemeanor, if they, or such of them as may be tried together, shall unite in such challenge, may challenge peremptorily, without assigning any cause for the same, any two of the jurors who may be called upon to serve on such trial. (b)

Crown to challenge for cause only.

59. In cases in which the Queen shall be a party, those who sue for the Queen shall not be allowed a challenge to any juror who may be called to serve upon the jury in any such case, except for cause to be assigned, tried and disposed of according to the custom of the court. (c)

16 VIC. CHAP. 120.—7. The following clause

(a) The right of challenge extends to all cases of felony, whether capital or not.—Gray v. Reg. 11 Cl. & F. 427.

(b) If on a trial for felony the prisoner peremptorily challenge some jurors, and the counsel for the prosecution also challenge so many that a full jury cannot be had, the proper course is to call over the whole panel in the same order as before, omitting those whom the prisoner has peremptorily challenged, and, as each juror then appears, the counsel for the prosecution must state their cause of challenge, and, if not sufficient, and the prisoner does not challenge, for the juror to be sworn. After a prisoner has challenged twenty peremptorily, he may examine others who are called as to their qualification.—R. v. Geach, 9 C. & P. 499.

(c) The provisions of sec. 7, 16 Vic. ch. 120 appear intended to supersede this section, but the 69th sec. is nevertheless therein mentioned, and also in the first section as repealed.

in other respects
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criminal, or on any
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-R. v. Geach, 9 C.

h. 120 appear in-
69th sec. is never-
the first section as

shall be substituted for the repealed sixty-ninth section of the Act first above cited, and shall be read as a part of the said Act; That in all inquests to be taken before any of the courts of Upper Canada wherein the Queen is a party howsoever it be, notwithstanding it be alleged by them that sue for the Queen, that the jurors of those inquests, or some of them, be not indifferent for the Queen, yet such inquests shall not remain untaken for that cause, but if they that sue for the Queen will challenge any of those jurors, they shall assign of their challenge a cause certain, and the truth of the same challenge shall be enquired of according to the custom of the court, and it shall be proceeded to the taking of the same inquisitions, as it shall be found if the challenges be true or not, after the discretion of the court: Provided always, that nothing herein contained shall affect or be construed to affect the power of any court in Upper Canada to order any juror to stand by until the panel shall be gone through, at the prayer of them that prosecute for the Queen, as has been heretofore accustomed.

Clause substituted for repealed section 69 of 13 & 14 Vic. Chap. 55.

Cause to be assigned for challenges on the part of the crown.

8. After the passing of this Act, it shall not be a good ground of challenge against any person who may be called upon to serve as a juror, that he belongs to any religious persuasion or denomination allowed by law to affirm in civil cases instead of taking an oath, but every such person shall be as eligible and liable to serve on all juries and inquests on his being affirmed, as if he had been sworn in the usual way. (a)

Certain matters not to be a cause of challenge.

LARCENY AND OFFENCES CONNECTED THEREWITH.

4 & 5 VIC. CHAP. 25.—2. The distinction between

Distinction between

(a) If one of the grand jurors be a Quaker, the indictment should commence "The jurors for our lady the Queen upon their oath and affirmation, present."—9 C. & P. 78.

grand and petty larceny abolished; all larceny shall be considered as grand larceny.

Punishments for simple larceny, or felony punishable as such.

grand larceny and petty larceny shall be abolished; and every larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects, as grand larceny was before the commencement of this Act; and every court whose power as to the trial of larceny was, before the commencement of this Act, limited to petty larceny, shall have power to try every case of larceny, the punishment of which cannot exceed the punishment hereinafter mentioned for simple larceny, and also to try all accessories to such larceny. (a)

3. Every person convicted of simple larceny, (b) or of any felony hereby made punishable like simple larceny, shall (except in the cases hereinafter otherwise provided for) be liable, at the discretion of the court, to be imprisoned at hard labour in the Provin-

(a) Ordinarily a wife cannot steal the goods of her husband, nor can an *indifferent* person steal the goods of the husband by the delivery of the wife, but an adulterer, to whom the husband's goods are delivered by the wife, may be convicted of larceny, even though the things be the clothes of the wife taken away when she elopes with the adulterer, for they are the husband's property. R. v. Tollet, 1 Car. & M. 112; R. v. Rosenberg, 1 Car. & K. 233; R. v. Thompson, 1 Temp. & M. 294; R. v. Featherstone, 18 Jur. 538.

(b) The correct definition of larceny is the "wrongful or fraudulent taking and carrying away by any person—of the mere personal goods of another—with a felonious intent to convert them to his (the takers) own use and make them his own property. The "*fraudulent*" taking being explained to be a taking without any colour of right, and the "*felonious*" intent an intent to deprive the owner permanently of his property.—R. v. Holloway, 1 Temp. & M. 40. Without feloniously obtaining possession there cannot be larceny.—R. v. Thistle, 1 Temp. & M. 204. If a man finds goods which he reasonably supposed to be lost and appropriates them *animo furandi*, believing when he takes them that the owner cannot be found, it is not larceny, if he believes the owner can be found it is larceny.—R. v. Thurborn, 1 Temp. & M. 67.

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cial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

4. Where any person shall be convicted of any felony or misdemeanor punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol, or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet.

For all offen-
 ces under this
 Act, hard la-
 bour or soli-
 tary confine-
 ment may be
 added to im-
 prison-
 ment.

5. If any person shall steal any tally, order, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of this Province or of the United Kingdom of Great Britain and Ireland, or of any British Colony, or of any Foreign State or Colony, or in any fund of any body corporate, company or society, or to any deposit in any Savings Bank, or shall steal any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever, for money or for payment of monies, whether of this Province or of Great Britain, or of any British Colony, or of any Foreign State or Colony, or shall steal any warrant or order for the delivery or transfer of any goods or valuable thing, every such offender shall be deemed guilty of felony, of the same nature and in the same degree, and punishable in the same manner, as if he had stolen any chattel of like value with the share, interest, or deposit to which the security so stolen may relate, or with the money due on the security so stolen or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing mentioned in the warrant or order; and each of the several documents hereinbe-

Stealing pub-
 lic or private
 securities for
 money, or
 warrants for
 goods, &c.
 shall be fe-
 lony punish-
 able accord-
 ing to the
 circumstan-
 ces, as steal-
 ing goods.

Rule of interpretation.

fore enumerated, shall throughout this Act, be deemed for every purpose to be included under, and denoted by, the words "valuable security."

Punishment of robbery attended with cutting, &c.

6. Whosoever shall rob any person, and at the time of or immediately before or immediately after such robbery, shall stab, cut, or wound any person, shall be guilty of felony, and being convicted thereof shall suffer death.

Of robbery attended with violence

7. Whosoever shall, being armed with any offensive weapon or instrument, rob, or assault with intent to rob any person, or shall, together with one or more person or persons, rob, or assault with intent to rob any person, or shall rob any person, and at the time of or immediately before or immediately after such robbery, shall beat, strike, or use any personal violence to any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Punishment for obtaining property by threat of accusing of unnatural crimes.

8. Whosoever shall accuse or threaten to accuse, any person of the abominable crime of buggery, committed either with mankind or with beast, or of any assault with intent to commit the said abominable crime, or of any attempt or endeavour to commit the said abominable crime, or of making or offering any solicitation, persuasion, promise or threat to any person whereby to move or induce such person to commit or permit the said abominable crime, with a view or intent in any of the cases aforesaid, to extort or gain from such person, and shall by intimidating such person, by such accusation or threat, extort or gain from such person any property, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven

years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

9. Whosoever shall rob any person, or shall steal any chattel, money, or valuable security from the person of another, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Punishment
of stealing
from the
person.

10. Whosoever shall assault any person, with intent to rob, shall be guilty of felony, and being convicted thereof shall (save and except in cases where a greater punishment is provided by this Act,) be liable to be imprisoned for any term not exceeding three years.

Punishment
for assault
with intent
to rob.

11. Whosoever shall, with menaces or by force, demand any chattel, money, or valuable security, of any person with intent to steal the same, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding three years.

Attempting
to obtain
property by
menaces.

12. If any person shall knowingly send or deliver any letter or writing, demanding of any person with menaces, and without any reasonable or probable cause, any chattel, money, or valuable security; or if any person shall accuse or threaten to accuse, or shall knowingly send or deliver any letter or writing, accusing or threatening to accuse any person of any crime punishable by law with death, or transportation, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit rape with a view or intent to extort or gain from such person any chattel, money or valuable security, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour at the Provincial Penitentiary for any term not less than seven years,

Sending let-
ter contain-
ing menacing
demands, to
extort
money, &c.

or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Sacrilege
when capital.

13. If any person shall break and enter any church or chapel, and steal therein any chattel, or having stolen any chattel, money, or valuable security in any church or chapel shall break out of the same, every such offender being convicted thereof, shall be liable to be imprisoned at hard labour at the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. (a)

Burglars
using violence to
suffer death.

14. Whosoever shall burglariously break and enter into any dwelling house, and shall assault with intent to murder any person being therein, or shall stab, cut, wound, beat, or strike any such person, shall be guilty of felony, and being convicted thereof shall suffer death.

Punishment
of Burglars.

15. Whosoever shall be convicted of the crime of burglary shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

When break-
into a house
considered
burglary.

16 So far as the same is essential to the offence of burglary, the night shall be considered and is hereby declared to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day: And it is hereby declared that if any person shall enter the dwelling house of another with intent to commit felony, or being in such dwelling house, shall

Burglary.

(a) The vestry of a parish church was broken open and robbed; it was formed out of what before had been the church porch but had a door opening into the church-yard which could only be unlocked from the inside: *held* this vestry was part of the fabric of the church and within the meaning of an indictment for sacrilegiously breaking and entering the church.—R. v. Evans, 1 Cor. & M. 928.

prison or place of
imprisoning two years.

enter any church
or chapel, or having
any valuable security in any
of the same, every
of, shall be liable
at the Provincial
Penitentiary for more than seven years,
prison or place of
imprisoning two years. (a)
break and enter
any dwelling house with intent
to commit felony, or shall stab,
or wound any person, shall be
guilty thereof shall

of the crime of
robbery, or of the court,
in the Provincial
Penitentiary for natural life, or for
any term not exceeding fourteen years,
or to be imprisoned
for any term of confinement for

al to the offence
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any person shall
with intent to
break and enter any dwelling house; shall

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of the church-yard
inside: held this
and within the
of the dwelling house
& M. 928.

commit any felony, and shall in either case break
out of the said dwelling house in the night time, such
person shall be deemed guilty of burglary.

17. Whosoever shall steal any chattel, money or valuable security in any dwelling house, and shall by any menace or threat put any one, being therein, in bodily fear, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Stealing in
a dwelling
house with
menaces.

18. No building, although within the same curtilage with the dwelling house, and occupied therewith, shall be deemed to be part of such dwelling house for the purpose of burglary, or for any of the purposes aforesaid, unless there shall be a communication between such building and dwelling house, either immediate, or by means of a covered and inclosed passage leading from the one to the other.

What build-
ings only are
part of a
house for
capital pur-
poses.

19. If any person shall break and enter any building, and steal therein any chattel, money or valuable security, such building being within the curtilage of a dwelling house, and occupied therewith, but not being part thereof, according to the provision hereinbefore mentioned, every such offender, being convicted thereof, (either upon an indictment for the same offence, or upon an indictment for burglary, house breaking, or stealing to the value of five pounds sterling, in a dwelling house, containing a separate count for such offence,) shall be liable to be imprisoned at hard labour in the Provincial Penitentiary, for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Robbery in
any building
within the
same curtil-
age as the
house, but
not privileg-
ed as part of
the house.

20. If any person shall break and enter any shop, warehouse, or counting house, and steal therein any

Robbery in a
shop, ware-
house, &c.

chattel, money or valuable security, every such offender, being convicted thereof, shall be liable to any of the punishments which the court may award as hereinbefore last mentioned. (a)

Stealing
goods from
a vessel in a
port, river,
or canal, &c.

21. If any person shall steal any goods or merchandize in any vessel, barge or boat of any description whatsoever, in any port of entry or discharge, or upon any navigable river or canal, or in any creek belonging to or communicating with any such port, river or canal, or shall steal any goods or merchandize from any dock, wharf or quay, adjacent to any such port, river, canal or creek, every such offender, being convicted thereof, shall be liable to any of the punishments which the court may award as hereinbefore last mentioned.

Punishment
for wrecking.

22. Whosoever shall plunder or steal any part or any ship or vessel which shall be in distress, or wrecked, stranded or cast on shore, or any goods merchandize or articles of any kind belonging to such ship or vessel, and be convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Persons in
possession of
shipwrecked
goods, not
giving a satis-
factory
account, shall
pay a penalty

23. If any goods, merchandize, or articles of any kind, belonging to any ship or vessel in distress, or wrecked, stranded or cast on shore as aforesaid, shall, by virtue of a search warrant, to be granted as hereinafter mentioned, be found in the possession of any person, or on the premises of any person with his knowledge, and such person, being carried before a justice of the peace, shall not satisfy the justice that he came lawfully by the same, then the same shall,

(a) Breaking into a blacksmith's shop, and taking goods, is within this section.—*R. v. Carter*, 1 C. & K. 173. A cellar used merely for the deposit of goods is a warehouse within this section.—*R. v. Hill*, 2 M. & Rob. 453.

op, and taking goods,
1 C. & K. 173. A
goods is a warehouse
& Rob. 453.

25. If any person shall steal, or shall, for any fraudulent purpose, take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure or destroy any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or any original document whatsoever, of or belonging to any court of justice, or relating to any matter, civil or criminal, begun, depending or terminated in any such court, or any bill, answer, interrogatory, deposition, affidavit, order

The stealing &c., of records and other proceedings of courts of justice, &c.

or decree, or any original document whatsoever, of or belonging to any court, or relating to any cause or matter begun, depending or terminated in any such court, or any notarial minute, or the original of any other authentic act, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary, for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award: and it shall not, in any indictment for such offence, be necessary to allege that the article, in respect of which the offence is committed, is the property of any person, or that the same is of any value.

The stealing
&c. of wills.

26. If any person shall, either during the life of the testator or testatrix, or after his or her death, steal, or for any fraudulent purpose destroy or conceal, any will, codicil, or other testamentary instrument, whether the same shall relate to real or personal estate, or to both, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable to any of the punishments which the court may award, as hereinbefore last mentioned; and it shall not in any indictment for such offence, be necessary to allege that such will, codicil, or other instrument, is the property of any person, or that the same is of any value.

The stealing
of writings
relative to
real estates.

27. If any person shall steal any original paper or parchment, written or printed, or partly written and partly printed, being evidence of the title, or of any part of the title to any real estate, every such offender shall be deemed guilty of a misdemeanor, and, being convicted thereof, shall be liable to any of the punishments which the court may award, as hereinbefore last mentioned; and in any indictment for such offence, it shall be sufficient to allege the thing stolen

at whatsoever, of or
to any cause or mat-
in any such court,
ginal of any other
shall be guilty of a
d thereof, shall be
t, to be imprisoned
penitentiary, for any
nor less than seven
ther prison or place
ceeding two years,
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t shall award: and
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cle, in respect of
is the property of
any value.

during the life of
his or her death,
se destroy or const-
amentary instru-
to real or personal
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cted thereof, shall
ts which the court
mentioned; and it
n offence, be neces-
il, or other instru-
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y original paper or
partly written and
the title, or of any
very such offender
error, and, being
any of the punish-
, as hereinbefore
etment for such
e the thing stolen

to be evidence of the title, or of part of the title, of
the person, or of some one of the persons having a
present interest, whether legal or equitable, in the
real estate to which the same relates, and to mention
such real estate or some part thereof; and it shall
not be necessary to allege the thing stolen to be of
any value.

28. Nothing in this Act contained relating to
either of the misdemeanors aforesaid, nor any pro-
ceeding, conviction or judgment to be had or taken
thereupon, shall prevent, lessen or impeach any
remedy at law or equity, which any party aggrieved
by any such offence, might or would have had if this
Act had not been passed; but nevertheless the con-
viction of any such offender shall not be received in
evidence in any action at law or suit in equity against
him; and no person shall be liable to be convicted
of either of the misdemeanors aforesaid, by any evi-
dence whatever in respect of any act done by him, if
he shall at any time previously to his being indicted
for such offence, have disclosed such act on oath, in
consequence of any compulsory process of any court
of law or equity in any action, suit or proceeding
which shall have been bonâ fide instituted by any
party aggrieved, or if he shall have disclosed the
same in any examination or deposition before any
commissioners of bankrupt.

These provi-
sions as
to wills and
writings
shall not
lessen any
other remedy

Conviction
shall not be
evidence in
actions
against
offender.

Offender
shall not be
convicted by
evidence dis-
closed by
himself.

29. If any person shall steal any horse, mare, geld-
ing, colt or filly, or any bull, cow, ox, heifer or calf,
or any ram, ewe, sheep or lamb, or shall wilfully kill
any of such cattle with intent to steal the carcase or
skin, or any part of the cattle so killed, every such
offender shall be guilty of felony, and, being convicted
thereof, shall be liable, at the discretion of the court,
to be imprisoned at hard labour in the Provincial
Penitentiary for any term not exceeding fourteen
years, nor less than seven years, or to be imprisoned
in any other prison or place of confinement for any
term not exceeding two years.

Stealing
horses, cows,
sheep, &c.

Stealing dogs
or stealing
beasts, or
birds ordi-
narily kept
in confine-
ment, and
not the sub-
jects of lar-
ceny.

30. If any person shall steal any dog, or shall steal any beast or bird ordinarily kept in a state of confinement, not being the subject of larceny at common law, every such offender, being convicted thereof before a justice of the peace, shall for every such offence forfeit and pay, over and above the value of the dog, beast or bird, such sum of money not exceeding five pounds, as to the justice shall seem meet.

Stealing
trees, shrubs,
&c. where-
soever grow-
&c.

31. If any person shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be respectively growing, the stealing of such article or articles, or the injury done, being to the amount of a shilling at the least, every such offender, being convicted before a justice of the peace, shall, for every such offence, forfeit and pay, over and above the value of the article or articles stolen, or the amount of the injury done, such a sum of money, not exceeding five pounds, as to the justice shall seem meet.

Stealing &c.
any live, or
dead fence,
wooden fence
stile or gate.

32. If any person shall steal, or shall cut, break, or throw down with intent to steal, any part of any live or dead fence, or any wooden post, pale or rail, set up or used as a fence, or any stile or gate, or any part thereof respectively, every such offender, being convicted before a justice of the peace, shall for every such offence, forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding five pounds, as to the justice shall seem meet.

Suspected
persons in
possession of
wood, &c. not
satisfactorily
accounting
for it.

33. If the whole or any part of any tree, sapling, or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, rail, stile or gate, or any part thereof, being of the value of two shillings, at the least, shall, by virtue of a search warrant, to be granted as hereinafter mentioned, be found in the possession of any person, or on the premises of any

any dog, or shall steal
 in a state of confine-
 of larceny at common
 convicted thereof,
 shall for every such
 and above the value of
 sum of money not ex-
 the justice shall seem

al, or shall cut, break,
 or damage with intent
 of any tree, sapling or
 resoever the same may
 stealing of such article
 e, being to the amount
 y such offender, being
 the peace, shall, for
 pay, over and above
 articles stolen, or the
 uch a sum of money,
 s to the justice shall

al, or shall cut, break,
 steal, any part of any
 len post, pale or rail,
 y stile or gate, or any
 such offender, being
 the peace, shall for every
 er and above the value
 en, or the amount of
 money not exceeding
 all seem meet.

of any tree, sapling,
 any part of any live
 rail, stile or gate, or
 alue of two shillings,
 a search warrant, to
 oned, be found in the
 the premises of any

person with his knowledge, and such person, being
 carried before a justice of the peace, shall not satisfy
 the justice that he came lawfully by the same, he
 shall, on conviction by the justice, forfeit and pay,
 over and above the value of the article or articles so
 found, any sum not exceeding two pounds.

34. If any person shall steal, or shall destroy or
 damage with intent to steal, any tree, sapling, shrub,
 bush, plant, root, fruit or vegetable production grow-
 ing in any garden, orchard, nursery-ground, hot-
 house, green-house or conservatory, every such offen-
 der, being convicted thereof before a justice of the
 peace, shall forfeit and pay, over and above the value
 of the article or articles so stolen, or the amount of
 the injury done, such sum of money, not exceeding
 five pounds, as to the justice shall seem meet; and
 if any person so convicted shall afterwards commit
 any of the said offences, such offender shall be deem-
 ed guilty of felony, and, being convicted thereof,
 shall be liable to be punished in the same manner as
 in the case of simple larceny.

Stealing, &c.
 of any vege-
 table produc-
 tion in a gar-
 den &c. pun-
 ishable on
 summary
 conviction.

35. If any person shall steal, or shall destroy or
 damage, with intent to steal, any cultivated root or
 plant used for the food of man or beast, or for medi-
 cine, or for distilling, or for dyeing, or for or in the
 course of any manufacture, and growing in any land
 open or enclosed, not being a garden, orchard or
 nursery-ground, every such offender being convicted
 thereof before a justice of the peace, shall forfeit and
 pay, over and above the value of the article or articles
 so stolen, or the amount of the injury done, such
 sum of money, not exceeding twenty shillings, as to
 the justice shall seem meet, and in default of payment
 thereof, together with the costs, if ordered, shall be
 committed to the house of correction for any term
 not exceeding one calender month, unless payment
 be sooner made.

Stealing &c.
 vegetable
 productions
 not growing
 in gardens,
 &c.

36. If any person shall steal or rip, cut or break
 with intent to steal, any glass or wood-work belong-

Stealing
 glass, wood-
 work or fix-

tures of any kind from buildings, and metal fixtures from grounds.

ing to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material, respectively, fixed in or to any building whatsoever, or any thing made of metal fixed in any land, being private property, or for a fence to any dwelling house, garden or area, or in any square, street or other place, dedicated to public use or ornament, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and in case of any such thing fixed in any square, street, or other like place it shall not be necessary to allege the same to be the property of any person.

Tenants and lodgers stealing any property from houses or apartments let to them.

37. If any person shall steal any chattel or fixture let to be used by him or her, in or with any house or with any house or lodging, whether the contract shall have been entered into by him or her, or by her husband, or by any person on behalf of him or her, or her husband, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and in every such case of stealing any chattel, it shall be lawful to prefer an indictment in the common form as for larceny, and in every such case of stealing any fixture, to prefer an indictment in the same form as if the offender were not a tenant or lodger, and in either case to lay the property in the owner or person letting to hire.

Clerks and servants stealing property of their masters.

38. If any clerk or servant shall steal any chattel, money, or valuable security belonging to or in the possession or power of his master, every such offender, being convicted thereof, shall be liable at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

39. If any clerk or servant, or any person employed

, or any lead, iron, any utensil or fixture, or other material, residing whatsoever, or in any land, being any dwelling house, street or other place, garment, every such and being convicted punished in the same larceny; and in case square, street, or other try to allege the same

any chattel or fixture or with any house or other the contract shall or her, or by her behalf of him or her, der shall be guilty of eof, shall be liable to r as in the case of ch case of stealing prefer an indictment ay, and in every such refer an indictment fender were not a case to lay the pro- ng to hire.

ll steal any chattel, nging to or in the every such offender, liable at the discre- d at hard labour in y term not exceed- year: or to be im- ace of confinement ars.

y person employed

for the purpose or in the capacity of a clerk or servant, shall by virtue of such employment receive or take into his possession any chattel, money or valuable security for, or in the name or on the account of his master, and shall fraudulently embezzle the same or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money, or security was not received into the possession of such master otherwise, than by the actual possession of his clerk, servant or other person so employed; and every such offender being convicted thereof, shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned.

Clerks or servants receiving any money, &c. on their master's account and embezzling it, shall be deemed to have feloniously stolen it.

40. It shall be lawful to charge in the indictment, and proceed against the offender for any number of distinct acts of embezzlement, not exceeding three, which may have been committed by him against the same master within the space of six calendar months from the first to the last of such acts; and in every such indictment, except where the offence shall relate to any chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained, if the offender shall be proved to have embezzled any amount although the particular species of coin or valuable security of which such amount was composed shall not be proved; or, if he shall be proved to have embezzled any piece of coin or valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly.

Distinct acts of embezzlement may be charged in same indictment.

As to allegation and proof of property embezzled.

41. If any money or security for the payment of money shall be intrusted to any banker, merchant,

Agents embezzling money in

trusted to them to be employed to any special purposes;

Or embezzling any goods or valuable security entrusted to them for safe custody, or for any special purpose, guilty of a misdemeanor.

broker, attorney or other agent, with any direction in writing to apply such money or any part thereof, or the proceeds, or any part of the proceeds of such security, for any purpose specified in such direction, and he shall, in violation of good faith, and contrary to the purpose so specified, in any wise convert to his own use or benefit such money, security or proceeds, or any part thereof respectively, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary, for any term not less than seven years, or imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award; and if any chattel or valuable security, or any power of attorney, for the sale or transfer of any share or interest in any public stock or fund, whether of this Province or of the United Kingdom of *Great Britain* and *Ireland*, or of *Great Britain* or of *Ireland*, or of any British Colony or Foreign State or Colony, or in any fund of any body corporate, company or society, shall be intrusted to any banker, merchant, broker, attorney, or other agent for safe custody, or for any special purpose without any authority to sell, negotiate, transfer or pledge, and he shall in violation of good faith, and contrary to the object or purpose for which such chattel, security or power of attorney shall have been entrusted to him, sell, negotiate, transfer, pledge or in any manner convert to his own use or benefit such chattel or security, or the proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate, or any part thereof, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned.

th any direction in
ny part thereof, or
proceeds of such
in such direction,
faith, and contrary
wise convert to his
ecurity or proceeds,
every such offender
and being convicted
retention of the court,
r in the Provincial
s than seven years,
or place of confine-
g two years, or to
e or imprisonment,
d; and if any chat-
twer of attorney, for
or interest in any
this Province or of
critian and Ireland,
l, or of any British
y, or in any fund
r society, shall be
t, broker, attorney,
or for any special
ell, negotiate, trans-
ation of good faith,
ose for which such
ney shall have been
transfer, pledge or
use or benefit such
ds of the same, or
nterest in the stock
orney shall relate,
nder shall be guilty
icted thereof, shall
ourt, to any of the
award as herein-

42. Nothing hereinbefore contained relating to agents, shall affect any trustee in or under any instrument whatever, or any mortgagee of any property, real or personal, in respect of any act done by such trustee or mortgagee in relation to the property com-
 prised in or affected by any such trust or mortgage; nor shall restrain any banker, merchant, broker, attorney or other agent from receiving any money which shall be or become actually due and payable upon or by virtue of any valuable security, according to the tenor and effect thereof, in such manner as he might have done if this Act had not been passed; nor from selling, transferring, or otherwise disposing of any securities or effects in his possession, upon which he shall have any lien, claim or demand, entitling him by law so to do; unless such sale, transfer, or other disposal shall extend to a greater number or part of such securities or effects than shall be requisite for satisfying such lien, claim or demand.

Not to affect trustees or mortgagees.

Nor bankers, &c. receiving money due on securities.

Or disposing of securities on which they have a lien.

44. Nothing in this Act contained, nor any proceeding conviction or judgment to be had or taken thereupon against any banker, merchant, broker, factor, attorney, or other agent, as aforesaid, shall prevent, lessen or impeach any remedy at law or in equity, which any party aggrieved by such offence might or would have had if this Act had not been passed; but, nevertheless, the conviction of any such offender shall not be received in evidence in any action at law or suit in equity against him; and no banker, merchant, broker, factor, attorney, or other agent as aforesaid, shall be liable to be convicted by any evidence whatever as an offender against this Act, in respect of any act done by him, if he shall at any time previously to his being indicted for such offence have disclosed such act on oath, in consequence of any compulsory process of any court of law or equity in any action, suit or proceeding which shall have been bona fide instituted by any party aggrieved, or

These provisions, as to agents, shall not lessen any remedy which the party aggrieved now has.

if he shall have disclosed the same in any examination or deposition before any commissioners of bankrupt.

Obtaining money under false pretences, a misdemeanor.

45. And whereas a failure of justice frequently arises from the subtle distinction between larceny and fraud: for remedy thereof, be it enacted, that if any person shall, by any false pretence, obtain from any other person, any chattel, money, or valuable security, with intent to cheat or defraud any person the same, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary, for any term not exceeding fourteen years, nor less than seven years, or imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment, by fine or imprisonment, or by both, as the court shall award.

No acquittal on the ground that the case proved amounts to larceny.

Provided always, that if upon the trial of any person indicted for such misdemeanor, it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not, by reason thereof, be entitled to be acquitted of such misdemeanor; and no such indictment shall be removeable by *certiorari*; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts. (a)

Where the original offence is felony, the receiver of stolen property may be tried either as an accessory after the fact, or for a substantive felony.

46. If any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing or taking whereof shall amount to a felony, either at common law or by virtue of this Act, such person, knowing the same to have been feloniously stolen or taken, every such receiver shall be guilty of a felony, and may be indicted and convicted either as an accessory after the fact, or for a substantive felony,

(a) An indictment for obtaining goods by false pretences is bad on error, if it does not state to whom the goods belonged.—*Sill v. Queen*, (Error) 1 Ellis & Blackburne, 552.

same in any examination of commissioners of bank-

of justice frequently on between larceny and it enacted, that if any enee, obtain from any ney, or valuable security, defraud any person of er shall be guilty of a icted thereof, shall be court, to be imprisoned al Penitentiary, for any years, nor less than n any other prison or term not exceeding two punishment, by fine or the court shall award: the trial of any person nor, it shall be proved ty in question in any law to larceny, he shall itled to be acquitted of uch indictment shall be and no person tried for liable to be afterwards he same facts. (a)

ive any chattel, money, property whatsoever, the all amount to a felony, irtue of this Act, such have been feloniously eiver shall be guilty of and convicted either as or a substantive felony,

goods by false pretences to whom the goods be Ellis & Blackburne, 552.

and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and every such receiver howsoever convicted, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary, for any term not exceeding fourteen years, nor less than seven years, or imprisoned in any other prison or place of confinement for any term not exceeding two years: Provided always, that no person howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence.

47. If any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining or converting whereof is made an indictable misdemeanor by this Act, such person, knowing the same to have been unlawfully stolen, taken, obtained or converted, every such receiver shall be guilty of a misdemeanor, or may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice; and every such receiver shall, on conviction, be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any other term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

48. If any person shall receive any chattel, money, valuable security, or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained, or converted, every such person, whether charged as an accessory after the fact to the felony, or with a substantive felony, or with a misdemeanor only, may be dealt with, tried and punished in any district, county or place in which he shall have or shall have had any such property in his possession, or in any district, county or place in

Where the original offence is a misdemeanor, or, receivers may be prosecuted for a misdemeanor.

All receivers may be tried where the property is found in their possession, as well as where the receiving takes place.

which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the district, county or place where he actually received such property. (a)

49. If any person guilty of any such felony or misdemeanor as aforesaid, in stealing, taking, obtaining or converting, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever shall be indicted for any offence by or on the behalf of the owner of the property, or his heir, curator, executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and the court, before whom any such person shall be so convicted, shall have power to award from time to time writs of restitution for the same property, or to order the restitution thereof in a summary manner: Provided always, that if it shall appear, before any award or order made, that any valuable security shall have been bonâ fide paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument, shall have been bonâ fide taken or received by transfer or delivery by some person or body corporate, for a just and valuable consideration without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained or converted as aforesaid, in such case the court shall not award or order the restitution of such security. (b)

Exception.

50. Every person who shall corruptly take any money or reward, directly or indirectly, under pretence or on account of helping any person to any chattel, money, valuable security, or other property

(a) Vide 12 Vic. ch. 21, infra.

(b) The property in a stolen chattel reverts in the owner on conviction of the thief, and such owner may maintain trover for it, though there has been no order for restitution. —Scattergood v. Sylvester, 15 Q. B. 506.

principal felony or misdemeanor in the same manner as a person indicted, tried and convicted, or place where he

(a)

any such felony or misdemeanor, taking, obtaining, or receiving any property, or other property, or any offence by or on property, or his heir, executor, and convicted, the property shall be restored to him; and the court shall be so convicted, and time to time writs of habeas corpus, or to order the return of the property in the same manner: Provided that before any award or security shall have been made by some person or agent thereof, or being made, have been bonâ fide delivery by some person, and valuable consideration without any reason, or had by any felony, or obtained or converted, the court shall not award such security. (b) No person shall corruptly take any property directly, under pretence, or any person to any person, or other property

reverts in the owner, or owner may maintain an order for restitution. 506.

whatsoever, which shall by any felony or misdemeanor have been stolen, taken, obtained or converted, as aforesaid, shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. (a)

Taking a reward for helping to the recovery of stolen property without bringing the offender to trial.

51. If any person shall publicly advertise a reward for the return of any property whatsoever, which shall have been stolen or lost, and shall in such advertisement use any words purporting that no question will be asked, or shall make use of any words in any public advertisement, purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property, or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of a loan upon any property stolen or lost, the money so paid or advanced, or any other sum of money or reward for the return of such property, or

Advertising a reward for the return of stolen property without inquiry.

(a) On an indictment against A., framed on a similar enactment, for feloniously receiving from B., under pretence of helping B. to recover goods stolen from him, and with not causing the thieves to be apprehended, three questions were left to the jury:—1st. Did A. mean to screen the guilty parties, or to share the money with them? 2d. Did A. know the thieves, and intend to assist them in getting rid of the property, by promising B. to buy it? 3rd. Did A. know the thieves, and assist B. as her agent, and at her request, in endeavouring to purchase the stolen property from them, not meaning to bring the thieves to justice? The jury answered the first question in the negative, and the third in the affirmative: Held, that the receipt of the money under such circumstances was a corrupt receiving by A.—*R. v. Pascoe*, 1 Temp. & M. 141.

if any person shall print or publish any such advertisement in any of the above cases, every such person shall forfeit the sum of twenty pounds for every such offence, to any person who will sue for the same, by action of debt to be recovered with full costs of suit. (a)

A person in the act of committing any offence may be apprehended without a warrant.

A justice, upon good ground of suspicion, proved on oath, may grant a search warrant.

Any person to whom stolen property is offered, may seize the party offending.

55. Any person found committing any offence punishable either upon indictment, or upon summary conviction, by virtue of this Act, may be immediately apprehended without a warrant, by any peace officer, or by the owner of the property on or with respect to which the offence shall be committed, or by the servant of any person authorized by such owner, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law; and if any credible witness shall prove upon oath, before a justice of the peace, that there is reasonable cause to suspect that any property whatsoever, on or with respect to which any such offence shall have been committed, is in any dwelling-house, out-house, garden, yard,croft, or other place or places, the justice may grant a warrant to search such dwelling-house, out-house, garden, yard,croft or other place or places, for such property, as in the case of stolen goods; and any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed, on or with respect to such property, is hereby authorized, and if in his power is required to apprehend and forthwith to carry before a justice of the peace, the party offering the same, together with such property to be dealt with according to law.

61. It shall be lawful for the Queen's Majesty and

(a) The law does not authorize a private person to forego a prosecution upon any terms, and if a promise be given and broken in such a manner as a jury would consider scandalous, yet in point of law that makes no difference.—*R. v. Daly*, 9 C. & P. 342.

ish any such adverse, every such party pounds for every will sue for the same, and with full costs of

mitting any offence, or upon summary, may be immediately, by any peace property or: or with all be committed, or authorized by such are some neighbour: dealt with according: shall prove upon: e, that there is real property whatsoever any such offence any dwelling-house, or other place or warrant to search garden, yard,croft property, as in the person to whom any sold, pawned, or ble cause to suspect committed, on or hereby authorized, to apprehend and of the peace, the with such property

Queen's Majesty and

private person to forego a promise be given jury would consider takes no difference.—

for the Governor, Lieutenant Governor or person administering the government of this Province, to extend the royal mercy to any person imprisoned by virtue of this Act, although he shall be imprisoned for non-payment of money to some person other than the crown.

Pardon for nonpayment of money.

68. If any person having stolen or otherwise unlawfully taken any chattel, money, valuable security, or other property whatsoever, the stealing or unlawfully taking whereof is made punishable by indictment by any of the provisions of this Act, in any part of her Majesty's dominions, shall afterwards have the same property in his possession in any part of this Province, he may be dealt with, indicted, tried and punished for such offence under this Act, in that part of this Province where he shall so have such property, in the same manner as if he had actually stolen or unlawfully taken it in that part; and if any person in any part of this Province shall receive or have any chattel, money, valuable security, or other property whatsoever, which shall have been stolen or otherwise unlawfully taken in any other part of her Majesty's dominions, such person knowing the said property to have been stolen or otherwise unlawfully taken, he may be dealt with, indicted, tried, and punished for such offence in that part of this Province where he shall so receive or have the stolen property, in the same manner as if it had been originally stolen or unlawfully taken in that part of this Province as aforesaid.

This Act to extend to offences committed out of this Province in certain cases.

69. All sums of money mentioned in the Act to be deemed currency.

All sums to be currency,

70. All Acts and parts of Acts repugnant to this Act repealed.

8 VIC. CHAP. 4.—16. All books, papers, accounts and documents of what kind soever and by whom and at whose cost soever the paper and materials thereof may have been procured or furnished, which shall have been kept by or used or shall have been

Punishment of officers or persons employed in collecting the revenue and einbez-

zling the
same or any
books &c.
thereunto
relating.

received or taken into the possession of any officer or person employed or having been employed in the collection or management of the revenue, or in accounting for the same by virtue of his employment as such, shall be deemed to be chattels belonging to her Majesty, and all monies or valuable securities which shall have been received or taken into his possession by virtue of his employment shall be deemed to be monies and valuable securities belonging to her Majesty, and if any such officer or person shall at any time fraudulently embezzle any such chattel, money or valuable security, (and any refusal or failure to pay over or deliver up any such chattel, money or valuable security to any officer or person who being duly authorized by the governor in council shall demand the same after the passing of this Act, shall be a fraudulent embezzlement thereof) he shall be deemed to have feloniously stolen the same, and may be indicted and proceeded against, and being convicted thereof, shall be liable to be punished in the same manner as any servant, who, having fraudulently embezzled any chattel, money or valuable security received or taken into his possession by virtue of his employment for or on the account of his master, and being in law deemed to have feloniously stolen the same, may be indicted, proceeded against, and punished. Provided always, that nothing herein contained shall prevent, lessen or impeach any remedy which her Majesty or any other party may have against such offender or his sureties or against any other party whomsoever, but nevertheless the conviction of any such offender shall not be received in evidence in any suit or action at law or in equity against him.

Proviso:
other remedies
not to
be impaired.

In an indictment
for stealing, a
count may
be inserted
for receiving
and vice
versa.

12 VIC. CHAP. 21.—1. From and after the passing of this Act in any indictment for feloniously stealing property, it shall be lawful to add a count for feloniously receiving the same property knowing it to have been stolen, and in any indictment for felo-

nously receiving property, knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing the same property. And where any such indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election but it shall be lawful for the jury who shall try the same to find a verdict of guilty either of stealing the property or of receiving it knowing it to have been stolen, and if such indictment shall have been preferred and found against two or more persons, it shall be lawful for the jury who shall try the same to find all or any of the said persons, guilty either of stealing the property, or of receiving it knowing it to have been stolen, or to find one or more persons guilty of stealing the property, and the other or others of them guilty of receiving it knowing it to have been stolen. (a)

LAWLESS AGGRESSIONS.

3 VIC. CHAP. 12.—1. Repeals 1 Vic. Chap 3.

2. If any person, being a citizen or subject of any Foreign State or Country, at peace with the ^{Citizens or subjects of a foreign power taken}

(a) Where the stealing is in county Y, and the receiving in county L, both are triable in Y and the indictment may allege both in Y.—*R. v. Henley*, 2 M. & Rob. 524. In indictments under this Act there may be as many counts for felonious receiving as for larceny, and the prosecutor cannot be put to his election on what count or counts he will proceed.—*R. v. Beston*, 1 Temp. & M. 87. Where a prisoner was indicted for stealing certain goods, and in another count for receiving said goods, “*so as aforesaid feloniously stolen*,” and the jury acquitted of the stealing and convicted of the receiving, the conviction was affirmed upon a case reserved on a motion *in arrest of judgment*. But in such a case the judges should direct the jury to acquit of receiving, if they do not find prisoner guilty of stealing.—*R. v. Craddock*, 1 Temp. & M. 361. Neither upon an indictment for stealing nor receiving, can evidence be admitted that the prisoner had at the time or previously other stolen goods in his possession.—*R. v. Oddy*, 1 Temp. & M. 593.

See also *post* title POST OFFICE, 13 & 14 Vic. Chap. 17.

In arms in
this Pro-
vince;

Or coming
therein with
intent to
levy war; or
To commit
certain felo-
nies;

May be tried
by a Militia
General
Court Mar-
tial;

And, if con-
victed, to be
sentenced to
death.

Any subject
levying war
in this Pro-
vince with
foreigners;

Or entering
the Province
with foreign-
ers with in-
tent to levy
war.

Or to commit
such felony;

With intent
to aid such
persons;

May be tried
and punish-
ed in like
manner.

United Kingdom of Great Britain and Ireland, shall, after the passing of this Act, be or continue in arms against her Majesty, her heirs or successors, within this Province, or shall commit any act of hostility therein, or shall enter this Province with design or intent to levy war against her said Majesty, her heirs or successors, or to commit any felony within the same, for which any person convicted of such felony would by the laws of this Province be liable to suffer death, then it shall and may be lawful for the Governor of this Province to order the assembling of a Militia General Court Martial for the trial of such person, agreeably to the Militia Laws of this Province; and upon being found guilty by such Court Martial of offending against this Act, such person shall be sentenced by such Court Martial to suffer death, or such other punishment as shall be awarded by the court.

3. If any subject of her Majesty, her heirs or successors, shall within this Province levy war against her Majesty, her heirs or successors, in company with any of the subjects or citizens of any Foreign State or Country then at peace with the United Kingdom of Great Britain and Ireland, or shall enter this Province in company with any such subjects or citizens of a Foreign State or Country at peace with the said United Kingdom, with intent to levy war on her Majesty, or to commit any such act of felony as aforesaid within this Province, or shall join himself to any person or persons whatsoever, whether subjects or aliens, who may have entered this Province with design or intent to levy war on her Majesty, her heirs or successors, or to commit any such felony as aforesaid within the same, with the design or intent to aid and assist such last-mentioned person or persons to levy war, or to commit any such Act of felony as aforesaid, then such subject of her Majesty, her heirs or successors, shall be liable to be tried and punished by a Militia Court

Martial, in like manner as any citizen or subject of a Foreign State or country at peace with her Majesty, her heirs or successors, is liable under this Act to be tried and punished.

4. The citizen or subject of any Foreign State or Country offending against the provisions of this Act, ^{Any such foreigners may be tried before a court of Oyer and Terminer.} shall be deemed guilty of felony, and may, notwithstanding the provisions hereinbefore contained, be prosecuted and tried before any Court of Oyer and Terminer and General Gaol Delivery in and for any district of this Province, in the same manner as if the offence had been committed in such district, and upon conviction shall suffer death as in cases of felony.

LIBEL.

13 & 14 VIC. CHAP. 60.—1. From and after the ^{Jury not to be directed to return a verdict of guilty on the mere proof of the publication, and of the sense ascribed.} passing of this Act, it shall and may be lawful on the trial of any action, indictment, or information for the making or publishing any libel, on the plea of not guilty pleaded, that the jury sworn to try that issue may give a general verdict of guilty or not guilty upon the whole matter put in issue in such action, or upon such indictment or information and shall not be required or directed by the court or judge before whom such action, indictment or information shall be tried, to find the defendant guilty, merely on the proof of publication by such defendant of the paper charged to be a libel and of the sense ascribed to the same in such action, indictment or information, Provided always, that the court or judge, before whom such trial shall be had, shall according to their or his discretion give their or his opinion and direction to the jury on the matter in issue as in other cases; And provided also, that the jury may on such issue find a special verdict, if they shall think fit so to do, and that the defendant if found guilty may move in arrest of judgment on

such ground and in such manner as he might have done before the passing of this Act.

Punishment
for extorting
money by
threatening
to publish or
promising to
prevent the
publication
of a libel.

4. If any person shall publish or threaten to publish any libel upon any other person, or shall directly or indirectly threaten to print or publish, or shall directly or indirectly propose to abstain from printing or publishing, or shall directly or indirectly offer to prevent the printing or publishing, of any matter or thing touching or concerning any other person with intent to extort any money, or security for money, or any valuable thing from such or any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust, every such offender, &c. being convicted thereof, shall be liable to be fined any sum not exceeding one hundred pounds and imprisoned in the common goal for a period not exceeding two years.

Punishment
for publish-
ing a libel
knowing it
to be false.

5. If any person shall maliciously publish any defamatory libel, knowing the same to be false, every such person, being convicted thereof, shall be liable to a fine of not more than fifty pounds and to be imprisoned in the common goal for a period not exceeding one year.

Punishment
for publish-
ing any libel.

6. If any person shall maliciously publish any defamatory libel, every such person, being convicted thereof, shall be liable to fine and imprisonment, or both, as the court may award, so as such fine do not exceed the sum of twenty-five pounds nor such imprisonment the period of six calendar months.

Truth being
pleaded, may
be inquired
into but
shall not be
a defence
except in
certain cases.

7. On the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as hereinafter mentioned, the truth of the matters charged may be inquired into but shall not amount to a defence unless it was for the public benefit that such matters charged should be published, and that to entitle the defendant to give evidence of the truth of such matters charged, as a defence to such indictment or information, it shall be necessary

as he might have
t.
r threaten to pub-
on, or shall directly
publish, or shall
obtain from print-
or indirectly offer
ng, of any matter
any other person
y, or security for
such or any other
y person to con-
y appointment or
offender, can being
be fined any sum
s and imprisoned
ot exceeding two

usly publish any
e to be false, every
of, shall be liable
nds and to be im-
period not exceed-

usly publish any
being convicted
imprisonment, or
such fine do not
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months.

t or information
having pleaded
the truth of the
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ive evidence of
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all be necessary

for the defendant in pleading to the said indictment or information to allege the truth of the said matters charged in the manner now required in pleading a justification to an action for defamation, and further to allege that it was for the public benefit that the said matters charged should be published, to which plea the prosecutor shall be at liberty to reply generally denying the whole thereof. And if after such plea the defendant shall be convicted on such indictment or information, it shall be competent to the court in pronouncing sentence to consider whether the guilt of the defendant is aggravated or mitigated by the said plea and by the evidence given to prove or disprove the same; (a) Provided always, that the truth of the matters charged in the alleged libel, complained of by such indictment or information, shall in no case be inquired into without such plea of justification: Provided also, that in addition to such plea it shall be competent for the defendant to plead not guilty, and that no defence shall be taken away or prejudiced under the plea of not guilty, which the defendant can now make under such plea to any indictment or information for a defamatory libel.

Reply may
be general.

As to aggra-
vation or
mitigation of
such offence.

8. Whenever, upon the trial of any indictment or information for the publication of a libel under the plea of not guilty, evidence shall have been given

In certain
cases defend-
ant may
prove publi-

(a) Where a defendant in a criminal information for libel has pleaded the truth of the charges, evidence is not admissible in support of the plea, that the same charges had been previously published within the knowledge of the prosecutor and that he had not taken legal proceedings against the publisher. Where a plea in justification contains several charges and the prosecutor replies generally denying the whole, the defendant must prove all the material allegations, or the prosecutor is entitled to a verdict, and if defendant fails to prove the truth of all the matters charged, it is no ground for a new trial, that as to some on which the jury found against defendant, their finding was against the weight of evidence.—R. v. Newman, 3 Car. v. K. 292, 17 Jur. 617, S. C.

cation without his authority.

which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent or knowledge, and that the said publication did not arise from want of due care or caution on his part.

Private prosecutor, if successful, entitled to costs, and so defendant.

9. In the case of any indictment or information by a private prosecutor for the publication of any defamatory libel, if judgment be given against the defendant, he shall be liable for the costs sustained by the prosecutor by reason of such indictment or information, and if judgment be given for the defendant, he shall be entitled to recover from such prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be recovered by the prosecutor or defendant respectively, to be taxed by the clerks of the Courts of Queen's Bench or Common Pleas in Toronto, or their respective deputies, in the counties where such trial shall be had, at the option of the party in whose favour such costs are to be taxed; such costs to be recoverable by writ of attachment, on the order of any judge of the superior courts of common law, or of any judge of the county court in the county in which such indictment or information shall have been tried; and all proceedings for the recovery of such costs shall be entitled in the Court of Oyer and Terminer for the county in which such trial has been had; and such writ of attachment shall be returnable in either of the superior courts of common law, as in other cases of attachment, and on its return such proceedings shall be had thereon as may now be had in any case of attachment for non-payment of costs, pursuant to any order or rule of either of the said superior courts.

How to be recoverable.

Proceedings for recovery how entitled.

LUNATICS. (a)

14 & 15 VIC. CHAP. 83.—1. In all cases where it

(a) When a lunatic is tendered as a witness, it is for the

ve case of publica-
e act of any other
e competent to such
lication was made
or knowledge, and
rise from want of

t or information by
lication of any de-
given against the
the costs sustained
such indictment or
iven for the defen-
ver from such pro-
defendant by reason
n, such costs to be
ndant respectively,
Courts of Queen's
to, or their respec-
ere such trial shall
ty in whose favour
osts to be recover-
order of any judge
w, or of any judge
in which such in-
e been tried; and
such costs shall be
Terminer for the
n had; and such
le in either of the
in other cases of
proceedings shall
ad in any case of
, pursuant to any
perior courts.

all cases where it
itness, it is for the

shall be given in evidence upon the trial of any per-
son charged with any offence, whether the same be
treason, felony or misdemeanor, that such person was
insane at the time of the commission of such offence,
and such person shall be acquitted, the jury shall be
required to find specially whether such person was
insane at the time of the commission of such offence,
and to declare whether such person was acquitted by
them on account of such insanity, and if they shall
find that such person was insane at the time of com-
mitting such offence, the court, before whom such
trial shall be had, shall order such person to be kept
in strict custody, in such places and in such manner
as to the court shall seem fit, until her Majesty's
pleasure shall be known; and it shall thereupon be
lawful for the Governor of this Province to give such
order for his* safe custody of such person during her
Majesty's pleasure, in such place and in such manner
as to such Governor shall seem fit; and in all cases
where any person before the passing of this Act has
been acquitted of any such offence, on the ground of
insanity, at the time of the commission thereof, and
has been detained in custody as a dangerous person,
by order of the court before whom such person has
been tried, and still remains in custody, it shall be
lawful for the Governor of this Province to give the
like order for the safe custody of such person during
the pleasure of her Majesty, as such Governor is
hereby enabled to give in the cases of persons who
shall hereafter be acquitted on the ground of insanity.

2. If any person indicted for any offence shall be
insane, and shall upon arraignment be found so to be
by a jury lawfully empannelled for that purpose, so
that such person cannot be tried upon such indict-
ment, or if upon the trial of any person so indicted

Jury acquit-
ting prisoner
on ground of
insanity to
state so in
their verdict.

Duty of the
court in such
case.

* Sic.

Similar pro-
visions with
respect to
persons in-
dicted for
any offence
and found to

judge to determine whether he shall be admitted. If, on
his examination upon the *voir dire*, he exhibits a knowledge
of the religious nature of an oath, it is a ground for his
admission.—R. v. Hill, 1 Temp. & M. 582.

be insane by a jury, to be impanelled for the purpose of their arraignment(s).

such person shall appear to the jury charged with such indictment to be insane, it shall be lawful for the court, before whom any such person shall be brought to be arraigned or tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody until her Majesty's pleasure shall be known; and if any person charged with any offence shall be brought before any court to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such court to order a jury to be empanelled to try the sanity of such person, and if the jury so empanelled shall find such person to be insane, it shall be lawful for such court to order such person to be kept in strict custody, in such place and in such manner as to such court shall seem fit, until her Majesty's pleasure shall be known, and in all cases of insanity so found, it shall be lawful for the Governor of this Province to give such order for the safe custody of such person so found to be insane, during her Majesty's pleasure, in such place and in such manner as to him shall seem fit.

MALICIOUS INJURIES TO PROPERTY.

Setting fire to a dwelling house &c.

4 & 5 VIC. CHAP. 26.—2. Whosoever shall unlawfully and maliciously set fire to any dwelling house, any person being therein, shall be guilty of felony, and being convicted thereof shall suffer death. (a)

Setting fire to a church or chapel house, warehouse, &c.

3. Whosoever shall unlawfully and maliciously set fire to any church, chapel or meeting house for the exercise of any mode or form of religious worship whatever, or shall unlawfully and maliciously set fire to any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn,

(a) Where the floor of the house set fire to, had been at a red heat at the time not in a blaze, *held*, this was a sufficient burning to sustain the indictment.—R. v. Parker, 9 C. & P. 45.

jury charged with shall be lawful for any person shall be aforesaid, to direct thereupon to order custody until her; and if any person be brought before the court of prosecution, and if the jury find the person to be insane, the court may order such person to be confined in any place and in such manner as the court may deem fit, until her recovery, and in all cases of insanity for the Governor may order for the safe custody of the person, during her confinement, and in such manner

PROPERTY.

Whoever shall unlawfully enter into any dwelling house, or shall be guilty of any offence whereby such dwelling shall suffer

and maliciously set fire to any dwelling house for the purpose of religious worship, or maliciously set fire to any out-house, warehouse, hop-oast, barn,

fire to, had been at the time as a sufficient burn-marker, 9 C. & P. 45.

or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them, respectively, shall then be in the possession of the offender, or in the possession of any other person, shall be guilty of felony, and being convicted thereof, shall be liable at the discretion of the court to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. (a)

4. If any person shall unlawfully and maliciously cut, break or destroy, or damage with intent to destroy, or to render useless, any goods or article of silk, woollen, linen or cotton, or of any one or more of those materials, mixed with each other or mixed with any other material, or any frame-work-knitted piece, stocking, hose or lace, respectively, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture; or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any warp or shute of silk, woollen, linen, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any loom, frame, machine, engine, rack, tackle, or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles: or shall by force enter into any house, shop, building, or place with intent to commit any of the offences aforesaid, every such offender shall be guilty of felony, and

Destroying silk, woollen, linen, or cotton goods in the loom &c., or any machinery belonging to those manufactures, &c.

(a) In the imperial statute; 1 Vic. Chap. 89, Sec. 3, after the words "in the possession of any other person" these words follow "with intent thereby to injure or defraud any person."

being convicted thereof, shall be liable, at the discretion of the court to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Destroying
threshing or
other ma-
chines in
any other
manufacture
than the
foregoing.

5. If any person shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any threshing machine, or any machine or engine, whether fixed or moveable, prepared for or employed in any manufacture whatsoever, (except the manufacture of silk, woollen, linen, or cotton goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any frame-work-knitted piece, stocking, hose or lace,) every such offender shall be guilty of felony, and being convicted thereof, shall be liable at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or in any other prison or place of confinement for any term not exceeding two years.

Setting fire
to ships or
vessels with
intent to
commit mur-
der.

7. Whosoever shall unlawfully and maliciously set fire to, cast away, or in any wise destroy any ship or vessel, either with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of felony, and being convicted thereof shall suffer death.

Hanging out
false lights to
cause ship-
wreck.

8. Whosoever shall unlawfully exhibit any false light or signal, with intent to bring any ship or vessel into danger, or shall unlawfully and maliciously do any thing to the immediate loss or destruction of any ship or vessel in distress, shall be guilty of felony, and being convicted thereof shall suffer death.

Setting fire
to ships or
vessels with
intent to
destroy the
same.

9. Whosoever shall unlawfully and maliciously set fire to, or in any wise destroy any ship or vessel, whether the same be completed or in an unfinished state, or shall unlawfully and maliciously set fire to, cast away, or in any wise destroy any ship or vessel,

with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any other term not less than seven years, or to be imprisoned in any other prison or place of confinement for any time not exceeding two years.

10. Whosoever shall by force prevent or impede any person endeavouring to save his life from any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, (whether he shall be on board or shall have quitted the same) shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

11. Whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandize, or article of any kind belonging to such ship or vessel, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

12. If any person shall unlawfully and maliciously break down or cut down any sea bank or sea wall, or the bank or wall of any river, canal or marsh, where-

Impeding
any person
endeavour-
ing to save
life from any
ship wrecked
&c.

Destroying
wrecks or
any articles
belonging
thereto.

Destroying
any sea bank
&c. or works
on any river

or canal,
felony.

by any land shall be overflowed or damaged, or shall be in danger of being so, or shall unlawfully and maliciously throw down, level, or otherwise destroy any lock, sluice, flood-gate, or other work on any navigable river or canal, every such offender shall be guilty of felony, and being convicted thereof, shall be imprisoned for any term not exceeding four years; and if any person shall unlawfully and maliciously cut off, draw up or remove any piles, chalk or other materials fixed in the ground and used for securing any sea bank or sea wall, or the bank or wall of any river, canal or marsh, or shall unlawfully and maliciously open or draw up any flood-gate, or do any other injury or mischief to any navigable river or canal with intent, and so as thereby to obstruct or prevent the carrying on, completing or maintaining the navigation thereof, every such offender shall be guilty of felony, and being convicted thereof shall be imprisoned for any term not exceeding two years.

Removing
the piles of
any sea bank
&c. or doing
any damage
to obstruct
the naviga-
tion of a
river or canal

Breaking
down the
dam of a
fishery, &c.
or mill dam.

15. If any person shall unlawfully and maliciously break down or otherwise destroy the dam of any fish pond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish therein, or shall unlawfully and maliciously break down or otherwise destroy the dam of any mill pond, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be punished accordingly.

Killing or
maiming cat-
tle.

16. If any person shall unlawfully and maliciously kill, maim or wound any cattle, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to

damaged, or shall unlawfully and maliciously destroy any work on any navigable river, shall be imprisoned for four years; and if maliciously cut off, or other materials securing any sea wall of any river, and maliciously any other injury to any canal with intent, prevent the carrying on of navigation thereof, shall be guilty of felony, and be imprisoned for any

year, and maliciously destroy the dam of any fishery, or private property, or the right of fishery, or any of the fish in any pond, to cause the loss of any of the fish, shall unlawfully or maliciously use any noxious material with intent thereby to destroy the fish, shall unlawfully or maliciously destroy the dam of any fishery, or private property, or the right of fishery, or any of the fish in any pond, to cause the loss of any of the fish, shall be guilty of felony, and be imprisoned for any

year, and maliciously destroy the dam of any fishery, or private property, or the right of fishery, or any of the fish in any pond, to cause the loss of any of the fish, shall be guilty of felony, and be imprisoned for any

be imprisoned in any other prison or place of confinement for any term not exceeding two years.

17. Whosoever shall unlawfully or maliciously set fire to any stack of corn, grain, pulse, peat, coals, charcoal or wood, or any steer of wood, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. (a)

18. If any person shall unlawfully and maliciously cut or otherwise destroy any hop-binds, growing on poles in any plantation of hops, every such offender shall be guilty of felony, and being convicted thereof, shall be imprisoned for any term not exceeding four years.

19. If any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling or shrub, or any underwood, respectively, growing in any park, pleasure-ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling house, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be punished accordingly; and if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling or shrub, or any underwood respectively, growing elsewhere than in any of the situations hereinbefore mentioned, every such offender (in case the amount of the injury done shall exceed the sum of one pound) shall be guilty of a misdemeanor, and being convicted thereof, shall be punished accordingly.

(a) In the English statute 7 & 8 Geo. IV. ch. 30, sec. 17, "straw and hay" follow "pulse." The burning of stacks of straw or hay is a capital felony by 9 Geo. I. ch. 22 s. 1.

Destroying
or damaging
trees, shrubs
or under-
wood, &c.
wheresoever
growing to
the amount
of damage
punishable
on summary
conviction.

20. If any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be respectively growing, the injury done being to the amount of one shilling at the least, every such offender, being convicted thereof, before a justice of the peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding one pound, as to the justice shall seem meet.

Destroying
any fruit or
vegetable
production
in a garden
&c.

21. If any person shall unlawfully and maliciously destroy or damage, with intent to destroy, any plant, root, fruit or vegetable production, growing in any garden, orchard, nursery ground, hot-house, greenhouse or conservatory, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding two pounds, as to the justice shall seem meet.

Destroying
&c. vegetable
production
not growing
in gardens.

22. If any person shall unlawfully and maliciously destroy or damage, with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or enclosed, not being a garden, orchard or nursery ground, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding twenty shillings, as to the justice shall seem meet.

Destroying
&c. any fence
wall, stile or
gate.

23. If any person shall unlawfully and maliciously cut, break, throw down, or in anywise destroy any fence of any description whatsoever, or any wall, stile or gate, or any part thereof respectively, every such offender, being convicted before a justice of the peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding one pound, as to the justice shall seem meet.

24. If any person shall wilfully or maliciously commit any damage or injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no remedy or punishment is hereinbefore provided, every such person, being convicted thereof before a justice of the peace, shall forfeit and pay such sum of money as shall appear to the justice to be a reasonable compensation for the damage, injury or spoil so committed, not exceeding the sum of five pounds, which sum of money shall, in case of private property, be paid to the party aggrieved, except where such party shall have been examined in proof of the offence; and in such case, or in the case of property of a public nature, or wherein any public right is concerned, the money shall be applied in such manner as every penalty imposed by a justice of the peace under this Act is hereinafter directed to be applied; Provided always, that nothing herein contained shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of.

Persons committing damage to property in any case not previously provided for, may be compelled by a justice to pay compensation not exceeding £5.

Proviso.

25. Every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment, or upon summary conviction, shall equally apply and be enforced, whether the offence be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise.

Malice at the owner not essential to any offence under this Act.

27. Where any person shall be convicted of any indictable offence punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour in the common gaol or house of correction; and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour

The court may, for all offences within this Act, order hard labour or solitary confinement.

not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet.

Persons' in the act of committing any offence may be apprehended without a warrant.

28. Any person found committing any offence against this Act, whether the same be punishable upon indictment or upon summary conviction, may be immediately apprehended, without a warrant, by any peace officer, or the owner of the property injured, or his servant, or any person authorized by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law. (a)

Prerogative of mercy reserved to Crown.

35. It shall be lawful for the Queen's Majesty, or for the Governor, &c., to extend the royal mercy to any person imprisoned by virtue of this Act, although he shall be imprisoned for non-payment of money to some party other than the crown.

42. All Acts and parts of Acts repugnant to this Act repealed.

Destroying any dwelling house by explosive substance, any person being therein, to be guilty of felony.

10 & 11 VIC. CHAP. 4.—1. Whoever shall unlawfully and maliciously by the explosion of gunpowder or other explosive substance, destroy, throw down or damage the whole or any part of any dwelling house, any person being therein, shall be guilty of felony.

And so if with intent to destroy life.

2. Whoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroy or damage any building with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of felony.

Doing bodily harm to any person.

3. Whoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burn, maim or disfigure, disable or do any grievous bodily harm to any person, shall be guilty of felony.

(a) If a party has arrested another as being found committing an offence against this Act, under circumstances which afford reason for thinking that he was at the time committing such offence, though in reality he was not, and an action is brought for the arrest, the defendant is entitled to notice of action.—*Cam. v. Clipperton*, 10 A. & E. 582.—See also 7 C. & P. 821; 9 B. & C. 806; 9 C. & P. 651.

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defendant is entitled
n, 10 A. & E. 582.—
; 9 C. & P. 651.

4. Whoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send or deliver to or cause to be taken or received by any person any explosive substance, or any other dangerous or noxious thing, or cast or throw at or upon, or otherwise apply to any person any corrosive fluid, or other destructive or explosive substance, with intent in any of the cases aforesaid to burn, maim, disfigure or disable any person, or to do some grievous bodily harm to any person, shall, although no bodily injury be effected, be guilty of felony. (a)

Causing ex-
plosion,
throwing
corrosive
fluids, &c.,
with like in-
tent.

5. Whoever shall be convicted of any felony hereinbefore mentioned, shall be liable, at the discretion of the court, to be imprisoned in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any common goal for any term not exceeding three years.

Punishment
of persons
convicted of
such offences

6. Whoever shall unlawfully and maliciously place or throw in, into, upon, against or near any building or vessel, any gunpowder or other explosive substance, with intent to do any bodily damage to any person, or to destroy or damage any building or vessel, or any machinery, working tools, fixtures, goods or chattels, shall, whether or not any explosion takes place, and whether or not any injury is effected to any person, or any damage to any building, vessel, machinery, working tools, fixtures, goods or chattels, be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned in the Provincial Penitentiary for any time not exceeding seven years, nor less than three years, or to be imprisoned in any common goal for any period not exceeding two years.

Throwing ex-
plosive sub-
stances into
or near to
any build-
ings, &c.

Punishment
for such of-
fence.

7. Whoever shall unlawfully and maliciously, by any overt act, attempt to set fire to any building, ves-

Attempting
to set fire to
any building

(a) Boiling water is a destructive matter within the meaning of this section.—R. v. Crawford, 2 C. & K. 120.

vessel, &c.,
the offence
not being
complete.

Punishment
for such
offence.

Having ex-
plosive sub-
stances with
intent to
commit an
offence
against this
Act, &c.

Punishment

Male offen-
ders under
18 years may
be whipped.

Court may
order hard
labour and
solitary
punishment.

sel, or to any stack, or to any vegetable produce of such kind, and with such intent, that if the offence were complete the offender would be guilty of felony, and liable to be imprisoned in the Provincial Penitentiary for any term not less than seven years, shall, although such building, vessel, stack or vegetable produce be not actually set on fire, be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned in the Provincial Penitentiary for any time not exceeding seven years, nor less than three years, or to be imprisoned in any common gaol for any term not exceeding two years.

8. Whoever shall knowingly have in his possession, or make or manufacture any gunpowder, explosive substance or any dangerous or noxious thing, or any machine, engine, instrument or thing with intent by means thereof to commit, or for the purpose of enabling any other person to commit any offence against this Act, shall be guilty of a misdemeanor, and on conviction thereof shall be liable to be imprisoned in any common goal for a period not exceeding two years.

9. Every male person under the age of eighteen years who shall be convicted of any offence under this Act, or who shall be convicted of feloniously setting fire to any building, vessel or to any stack, shall be liable, at the discretion of the court before which he shall be convicted, in addition to any other sentence which may be passed upon him, to be publicly or privately whipped in such manner and as often, not exceeding thrice, as the court shall direct.

11. When any person shall be convicted of any offence punishable under this Act for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such im-
prisonment.

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Provincial Peni-
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sonment, or of such imprisonment with hard labour,
not exceeding one calendar month at any one time, Limitation.
and not exceeding three calendar months in any one
year, as to the court in its discretion shall seem meet.

12. Any justice of the peace of any district, city, town or place in which any gunpowder or other explosive, dangerous or noxious substance is suspected to be made or kept for the purpose of being used in committing an offence under this Act, upon reasonable cause assigned upon oath by any person or persons, may issue a warrant or warrants under his hand and seal for searching in the day time any house, shop, cellar, yard or other building, or any vessel in which such gunpowder or other explosive, dangerous or noxious substance is suspected to be made or kept for such purpose as aforesaid, and that every person acting in the execution of any such warrant shall have power to seize any gunpowder, explosive substance, or any dangerous or noxious thing, or any machine, engine or instrument or thing which he shall have good cause to suspect to be intended to be used in committing or enabling any other person to commit any offence against this Act, and with all convenient speed after the seizure to remove the same to such proper places as they shall think fit, and may detain the same until ordered to restore it to the person or persons who shall claim the same by any judge of any of her Majesty's Courts of Queen's Bench; and such searcher or searchers, seizer or seizers shall not be liable to any suit for such detainer, or for any loss of or damages which may happen to the same, other than by the wilful acts or neglects of them or the persons with whom they shall intrust the keeping thereof.

Search warrants may be issued to search for gunpowder or explosive substance suspected to be kept for illegal purposes.

The same if formed may be seized; how to be dealt with.

Protection to persons searching.

13. Any gunpowder, explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument or thing which shall be intended to be used in committing or in enabling any other person to commit any offence against this Act, and which Forfeiture of gunpowder, &c. found with persons convicted under this Act.

Sale of such
gunpowder.

shall be seized and taken possession of under the provisions thereof, shall, in the event of the person or persons in whose possession the same shall be found, or the owner or owners thereof being convicted for any offence under this Act, be forfeited; and the same shall be sold under the direction of the court before which any such person shall be convicted, and the proceeds thereof shall be paid into the hands of the Receiver General to and for the use of the Province.

Persons loitering, &c. and suspected of intention to commit offences against this Act, may be detained.

14. It shall be lawful for any constable or peace officer to take into custody, without a warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony under this Act, and to detain such person until he can be brought before a justice of the peace to be dealt with according to law.

Must be brought before a justice within a certain time.

15. No such person, having been so apprehended, shall be detained after noon of the following day without being brought before a justice of the peace.

Offender not to be tried by justices of the peace or recorders.

16. Neither the justices of the peace acting in and for any district, division or city, nor the recorder of any city, shall, at any session of the peace, or at any adjournment thereof, try any person or persons for any offence under this Act.

Offences within the jurisdiction of Vice Admiralty, how dealt with.

17. Where any felony punishable under this Act shall be committed within the jurisdiction of any Court of Admiralty in this Province, the same shall be dealt with, inquired of, and tried and determined in the same manner as any other felony committed within that jurisdiction.

Setting fire to any schoolhouse, seminary &c., to be a felony.

12 VIC. CHAP. 20.—3. Whosoever shall unlawfully and maliciously set fire to any school-house, lecture-room, seminary of learning, college or building used for the purpose of education, or to any village, town or city hall, or to any railroad station house, steam or fire engine house, or toll booth, or to

session of under the name of the person or name shall be found, being convicted for forfeited; and the decision of the court shall be convicted, and committed into the hands of the use of the Pro-

constable or peace without a warrant, any person loitering in any place during the night, and upon suspicion of having committed any felony with any person until he is brought before the justice of the peace to be

when so apprehended, on the following day before the justice of the peace. The justice of the peace acting in and out of the recorder of the peace, or at any time or persons for

able under this Act the jurisdiction of any court, the same shall be determined and determined the felony committed

ever shall unlawfully use any school-house, college or building, or to any railway station or toll booth, or to

any building used or employed as a mechanics' institute, or as a public library, or to any hall or building used by any body or society of persons by whatever name or designation they may be known, and whether they be associated together for educational, philanthropic or benevolent purposes, or for any other lawful purpose, or to any museum or repository of curiosities, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than three years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years; and further, that it shall not be necessary to allege or set out in the indictment the name of the owner of any such building.

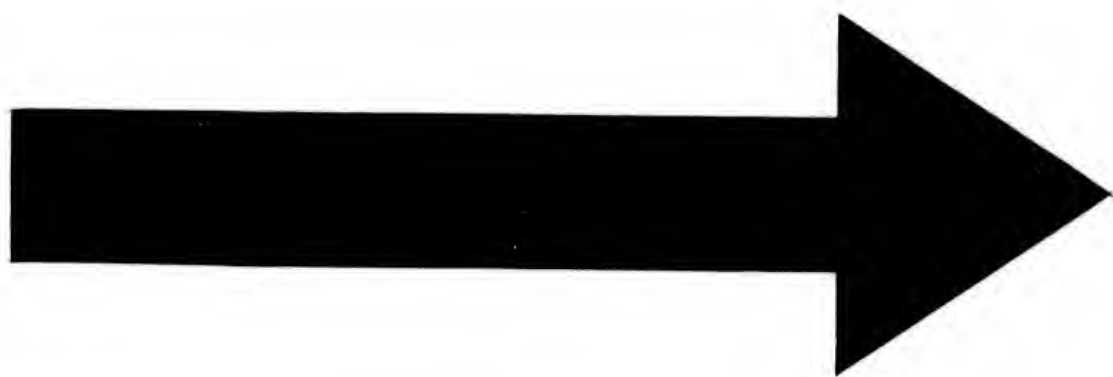
How punishable.

Owners need not be named in the indictment.

16 VIC. CHAP. 113.—(*The Brock Monument*).—

2. Whosoever shall wilfully set fire to any gunpowder, or other explosive or combustible substance or material in or in contact with, or in close proximity to the said monument, or any fence or work therewith connected, with intent to destroy or injure the said monument, fence or work, shall be guilty of felony, and being convicted thereof, shall be liable, in the discretion of the court, before which the conviction shall take place, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years; and if any other person be in the said monument at the time of the commission of such felony, or so near thereto that his life is endangered by such felony, or he be killed or maimed by reason thereof, then the offender, being convicted, shall suffer death, and any attempt to commit such felony, by placing in or in contact with or in close proximity to the said monument, fence or work any gunpowder, or other explosive or combustible

Punishment of persons injuring or attempting to injure the said monument.



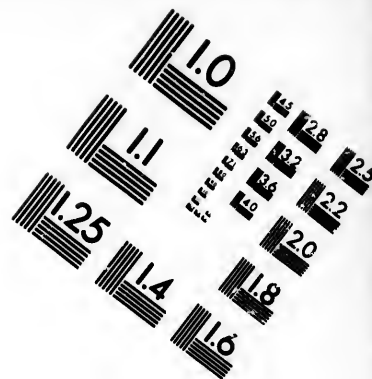
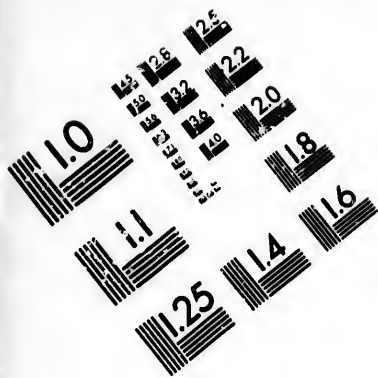
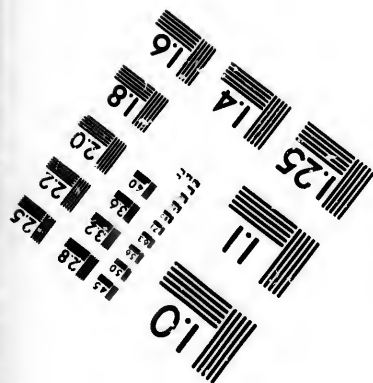
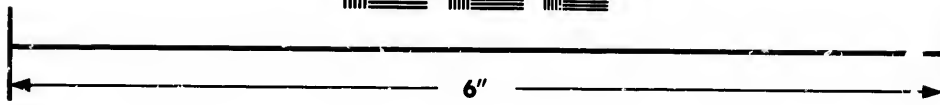
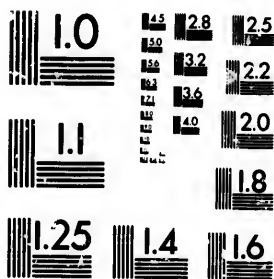


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(716) 872-4503**



As to allegations of property in indictment for any such offence.

material, or the doing of any wilful injury to the same in any way, shall be a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court before which the offender shall be convicted; and in any indictment or prosecution or trial for any offence against this Act, it shall not be necessary to allege or to prove that the said monument, fence or other work were the property of any person, or to describe the same otherwise than they are described in this Act. (a)

MILITIA.

Penalty on persons unlawfully disposing of or obtaining arms or equipments of the militia or stores or ammunition.

9 VIC. CHAP. 28.—42. Every person whether he be or be not in the militia, and although he be also liable to be tried for the offence by court martial who at any time whatever shall sell, barter or pledge or tender in sale, barter or pledge, or unlawfully make away with any part of the arms or equipments of the said militia force, or any ammunition or stores, and every person who shall buy, or by barter or pledge obtain, or who shall otherwise unlawfully receive, take or detain any portion of the said arms or equipments or ammunition, or stores, shall be deemed guilty of a misdemeanor, upon conviction for such offence before any court of competent jurisdiction, and be liable to be punished accordingly.

MUNICIPAL OFFICERS.

Books &c. of the present district treasurer to be deemed chatels belonging to the different

12 VIC. CHAP. 81.—174. All the books of the present district Treasurers and all books, papers, accounts or documents of what kind soever which shall have been kept by or shall have come into the possession of any person or officer to be appointed or employed by any municipal corporation by virtue of

(a) In the preamble the monument is called "the monument to the late General Sir Isaac Brock on Queenston Heights;" in all other parts of the statute it is spoken of as "the said monument."

any wilful injury to the
 misdemeanor, punishable
 both, in the discretion of
 the offender shall be convicted
 of prosecution or trial for
 it shall not be necessary
 to the said monument, fence
 or property of any person, or to
 than they are described

A.

every person whether he
 and although he be also
 sentence by court martial,
 all sell, barter or pledge,
 pledge, or unlawfully
 the arms or equipments
 any ammunition or stores,
 buy, or by barter or
 otherwise unlawfully
 portion of the said arms,
 on, or stores, shall be
 of, upon conviction for
 of competent jurisdiction
 punished accordingly.

OFFICERS.

All the books of the
 and all books, papers,
 of that kind soever which
 shall have come into the
 officer to be appointed or
 corporation by virtue of

agent is called "the monu-
 ment Brock on Queenston
 the statute it is spoken of

his office or employment, shall be deemed to be chat-
 tels belonging to such municipal corporation, and all
 moneys or valuable securities which shall have been
 lawfully received or taken into his possession by vir-
 tue of his office or employment, shall be deemed to
 be moneys or valuable securities belonging to such
 municipal corporation; and if any such officer or
 person shall at any time fraudulently embezzle any
 such chattel, money or valuable security, (and any
 refusal or failure to pay over or deliver up any such
 chattel, money, or valuable security to such municipi-
 pal corporation, or to any officer or person by them
 authorized to demand the same, shall be held to be a
 fraudulent embezzlement thereof) he may be indicted
 and proceeded against, and being convicted thereof,
 shall be liable to be punished in the same manner as
 any servant, who, having fraudulently embezzled any
 chattel, money or valuable security received or taken
 into his possession by virtue of his employment for
 and in the name and on the account of his master,
 may be indicted proceeded against and punished.
 Provided always, that nothing herein contained shall
 prevent, lessen or impeach any remedy which such
 municipal corporation, or any other party may have
 against such offender, or his sureties, or against any
 other party whomsoever, but nevertheless the con-
 viction of any such offender shall not be received in
 evidence in any suit or action at law or in equity
 against him.

municipal
 corporations.

Punishment
 of officers
 embezzling
 or refusing
 to deliver
 the same to
 the proper
 parties.

Proviso:
 other reme-
 dies not to
 be lessened.

183. It shall not be lawful for any of the municipi-
 pal corporations to continue or be incorporated under
 the authority of this Act to act as bankers or to
 issue any bond, bill, note, debenture or other under-
 taking of what nature or kind soever, or in what
 form soever in the nature of a bank bill or note, or
 for the payment of any money intended to form a cir-
 culating medium to supply the place of specie or
 otherwise pass as money; nor shall it be lawful
 for any of such municipal corporations to make or

Municipal
 corporations
 not to act as
 bankers or to
 issue bonds,
 to pass as
 money.

Penalty for
contraven-
ing this sec-
tion.

give any bond, bill, debenture or other undertaking for the payment of any loan contracted by such corporation, or of any debt due by such corporation, or of any part of such loan or debt of a less amount than twenty five pounds of lawful money of Canada, and if any such first mentioned bond, bill, note or debenture or other undertaking shall be issued or put in circulation by any such municipal corporation or under its direction or authority, or under the direction or authority of any of its officers or servants, or of any other person or persons whomsoever, or if any such last mentioned bond, bill debenture or other undertaking shall be made or given by any such municipal corporation for the payment of a less amount of money than twenty-five pounds as aforesaid, every such bill, bond, note, debenture, or undertaking shall be absolutely null and void to all intents and purposes whatsoever; Provided always, that nothing in the section contained shall extend or be construed to extend to any bond, bill, note, debenture or other undertaking to be issued under the authority of any such by-law as shall or may be passed with the consent of the Governor of this Province in council for providing for the payment and satisfaction of certain debts mentioned in the last preceding section of this Act.

Any person
issuing,
making or
uttering
bonds con-
trary to this
Act, to be
guilty of
misdemean-
or.

184. Every person who shall issue or make, or assist in the issuing or making of any such bonds, bills, notes, debentures or undertakings for the payment of money contrary to the provisions of the next preceding section of this act, and every person who shall knowingly utter or tender in payment or in exchange any of such bonds, bills, notes, debentures or undertakings for the payment of money, shall be guilty of a misdemeanor, as provided in and by the third section of the Act (of Upper Canada, 7 Will. IV. CHAP. 13.)

or other undertaking
 tracted by such corpo-
 such corporation, or of
 f a less amount than
 oney of Canada, and
 d, bill, note or debenture,
 be issued or put in
 cipal corporation or
 , or under the direc-
 officers or servants, or
 whomsoever, or if any
 debenture or other un-
 by any such municipi-
 of a less amount of
 s as aforesaid, every
 ure, or undertaking
 d to all intents and
 always, that nothing
 tend or be construed
 e, debenture or other
 the authority of any
 passed with the con-
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 atisfaction of certain
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l issue or make, or
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 akings for the pay-
 provisions of the next
 l every person who
 e in payment or in
 s, notes, debentures
 of money, shall be
 dded in and by the
 Canada, 7 Will. IV.

OFFENCES AGAINST THE PERSON.

2 WILL. IV. CHAP. 1.—1. From and after the passing of this Act, no clause, matter or thing in the Act passed in the twenty-first year of the reign of King James the First, (entitled “An Act to prevent the destroying and murdering of bastard children,”) shall extend to and be in force in this Province.

^{21 James I.}
 not to be in
 force in this
 Province.

2. From and after the passing of this Act, the trial of any woman charged with murder of any issue of her body, male or female, which, being born alive, would by law be bastard, shall proceed and be governed by such and the like rules of evidence and presumption as are by law used and allowed to take place in respect to other trials for murder, and as if the said Act passed in the reign of King James the First had never been made.

^{Trials for the}
 murder of
 bastard chil-
 dren to pro-
 ceed like
 other trials
 for murder.

3 WILL. IV. CHAP. 4.—4. If any person or persons whatsoever shall by force set at liberty or rescue, or attempt to rescue or set at liberty, any person cut of prison, who shall be committed for or found guilty of murder, or rescue or attempt to rescue any person convicted of murder going to execution, or during execution, every person so offending shall be deemed, taken and adjudged to be guilty of felony, and shall suffer death.

^{Rescuing}
 persons con-
 victed of or
 committed
 for murder.

20. Whenever any person shall be convicted of murder, and executed therefor, the body of such murderer shall be delivered, by the sheriff or his deputy and his officers, to a surgeon, for the purpose of being dissected and anatomized.

^{Murderers}
 to be dissect-
 ed. Vide 4 & 5
 Vic. Chap.
 27, Sec. 4 & 5.

21. Sentence shall be pronounced in open court immediately after the conviction of such murderer, and before the court shall proceed to any other business, unless the court shall see reasonable cause for postponing the same, in which sentence shall be expressed, not only the usual judgment of death, but also the time appointed for the execution thereof, and the mark of infamy hereby directed for such offen-

<sup>When sen-
 tence to be
 passed.</sup>

ders, in order to impress a just horror in the mind of the offender, and on the minds of such as shall be present, of the heinous crime of murder.

Respite.

22. After such sentence pronounced as aforesaid, in case there shall appear reasonable cause, it shall and may be lawful to and for such judge or justice, before whom such criminal shall have been so tried, to stay the execution of the sentence, at the discretion of such judge or justice, regard being always had to the true intent and purpose of this Act: Provided also, that it shall be in the power of any such judge or justice to appoint the body of any such criminal to be dissected and anatomized.

Petit treason to be treated in all respects as murder.

4 & 5 VIC. CHAP. 27.—2. Every offence, which before the commencement of this Act, would have amounted to petit treason, shall be deemed to be murder only, and no greater offence; and all persons guilty in respect thereof, whether as principals or as accessories, shall be dealt with, indicted, tried and punished as principals and accessories in murder.

Punishment of principals and accessories in murder.

3. Every person convicted of murder, or of being an accessory before the fact to murder, shall suffer death as a felon; and every accessory after the fact to murder, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Sentence of death to be pronounced.

4. From and after the passing of this Act, sentence of death may be pronounced after convictions for murder, in the same manner, and the court before which the conviction may be had shall have the same power in all respects as after convictions for other capital offences.

Prison regulations as to murderers under sentence.

5. Every person convicted of murder, shall, after judgment, be confined in some safe place within the prison, apart from all other prisoners, and shall be fed with bread and water only, and with no other

or in the mind of
such as shall be
murder.

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s, and shall be
with no other

food or liquor, except in case of receiving the sacra-
ment, or in case of any sickness or wound, in which
case the surgeon of the prison may order other neces-
saries to be administered; and no person but
the gaoler and his servants, and the chaplain and
surgeon of the prison, shall have access to any such
convict without the permission in writing of the court
or judge before whom such convict shall have been
tried, or of the sheriff or his deputy.

6. Where any person, being feloniously stricken, Provision for
poisoned, or otherwise hurt upon the sea, or at any the trial of
place out of this Province, shall die of such stroke, murder and
poisoning or hurt, in this Province, or being feloniously manslaughter
stricken, poisoned or otherwise hurt, at any or where the
place in this Province, shall die of such stroke, death, or the
poisoning or hurt, upon the sea, or at any place out cause of
of this Province, every offence committed in respect death only,
of any such case whether the same shall amount happens in
to the offence of murder or of manslaughter, or of being this Pro-
accessory before the fact to murder, or after the fact vince.
to murder or manslaughter, may be dealt with, en-
quired of, tried, determined and punished in the
district, county or place in this Province, in which
such death, stroke, poisoning or hurt shall happen,
in the same manner, in all respects, as if such offence
had been wholly committed in such district, county,
or place.

7. Every person convicted of manslaughter, shall Punishment
be liable, at the discretion of the court, to be impri- of man-
soned at hard labour in the Provincial Penitentiary slaughter.
for the term of his natural life, or for any term not
less than seven years, or to be imprisoned in any
other prison or place of confinement for any term not
exceeding two years, or to pay such fine as the court
shall award.

8. No punishment or forfeiture shall be incurred As to homi-
by any person who shall kill another by misfortune cide not felo-
or in his own defence, or in any other manner with- nious.
out felony.

Punishment
or adminis-
tering poison
&c.

9. (a) Whosoever shall administer or cause to be taken by any person, any poison or other destructive thing, or shall stab, cut or wound any person, or shall by any means whatsoever cause to any person any bodily injury, dangerous to life, with intent, in any of the cases aforesaid, to commit murder, shall be guilty of felony, and, being convicted thereof, shall suffer death.

Punishment
for offences
with intent
to commit
murder,
though no
injury effect-
ed.

10. Whosoever shall attempt to administer to any person any poison or other destructive thing, or shall shoot at any person, or shall by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent in any of the cases aforesaid to commit the crime of murder, shall although no bodily injury shall be affected, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. (b)

11. Whosoever unlawfully and maliciously shall

(a) Under this section the jury should be satisfied the prisoner had in his mind a positive intention to murder, not merely that it would have been a case of murder had death ensued.—*R. v. Crease*, 8 C. & P. 541. Though if it would have been a case of murder had death ensued, that furnishes evidence of the prisoners intent.—*R. v. Jones*, 9 C. & P. 258.

(b) Indictment that prisoner "feloniously assaulted J. H., and by feloniously drawing the trigger of a certain pistol loaded with gunpowder and a leaden bullet, then and there feloniously did attempt to discharge the said pistol at the said J. H. with intent to murder him", is good without stating "that the said pistol" was "so loaded as aforesaid." But if the jury think the pistol was not so primed and loaded that it could go off, they should acquit the prisoner, and not find him guilty of assault *under section 37*.—*R. v. Baker*, 1 C. & K. 254.

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R. v. Jones, 9 C.

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shoot at any person, or shall by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall stab, cut or wound any person, with intent in any of the cases aforesaid to maim, disfigure or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. (a)

Punishment
for cutting
and maiming
with intent
to disfigure.

(a) To stab imports a wound made with a pointed instrument; to cut, a wound with an instrument having an edge; to wound, includes incised wounds, punctured wounds, lacerated wounds, contused wounds, and gunshot wounds, but in all these cases the continuity of the skin must be broken.—R. v. Wood, 1 M. C. C. R. 278.—But if the skin be broken, the nature of the instrument used is immaterial. R. v. Briggs, 1 M. C. C. R. 318; R. v. Withers, 1 M. C. C. R. 294. In a case of wounding with intent to do some grievous bodily harm, it is not essential that, if death had ensued, the crime would have been murder.—R. v. Griffiths, 8 C. & P. 248; R. v. Nicholls, 9 C. & P. 267. On an indictment for wounding with intent to do grievous bodily harm, some of the prisoners may be convicted of the felony, and others of an assault (under sec. 37, post). Where a person having a deadly weapon lawfully in his possession, without previously retreating as far as possible, in his own defence cuts a person who is assaulting him, he is guilty under this section, if he intended grievous bodily harm.—R. v. Odgers, 2 M. & Rob. 479. A rifle, which is loaded, but not primed, and therefore will not go off, is not a loaded arm within the statute; and therefore pointing a rifle, so circumstanced at a person, and pulling the trigger of it, will not warrant a conviction either for felony or assault.—R. v. James, 1 C. & K. 530. Applying a lighted match to a loaded matchlock, or striking the percussion cap of a percussion gun is a sufficient attempt within these enact-

Punishment
for sending
explosive
substances
or throwing
destructive
matter with
intent to do
bodily harm.

12. Whosoever shall unlawfully and maliciously send or deliver to or cause to be taken, or received by any person, any explosive substance, or any other dangerous or noxious thing, or shall cast or throw upon or otherwise apply to any person, any corrosive fluid, or other destructive matter, with intent in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, and whereby in any of the cases aforesaid any person shall be burnt, maimed, disfigured, or disabled, or receive some other grievous bodily harm, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement, for any term not exceeding two years. (a)

Punishment
for trying to
procure
abortion.

13. Whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be im-
prisoned in any other prison or place of confinement, for any term not exceeding two years. (a)

ments.—R. v. St. George, 9 C. & P. 483. On an indictment for cutting and wounding, prisoner will not be permitted to plead guilty of a common assault merely; he must plead to the felony; and if no evidence of the felony be offered, he may be acquitted of the felony, and found guilty of the assault upon his own confession.—R. v. Calverte, 3 C. & K. 201.

(a) Vide 10 & 11 Vic. ch. 4, which apparently provides for every case falling within this section. (Ante, "Malicious injuries to property," page 456.

y and maliciously taken, or received tance, or any other shall cast or throw rson, any corrosive with intent in any naim, disfigure, or me other grievous hereby in any of the be burnt, maimed, some other grievous ony, and being con- he discretion of the labour in the Provin- his natural life, or years, or to be im- place of confinement, years. (a)

to procure the mis- lawfully administer y her, any poison or lawfully use any in- soever with the like and being convicted cretion of the court, ur in the Provincial s natural life, or for ears, or to be impi-

P. 483. On an indict- soner will not be per- on assault merely; he evidence of the felony of the felony, and found confession.—R. v. Cal-

ch apparently provides section. (Ante, "Mali- 56.

soned in any other prison or place of confinement for any term not exceeding two years. (a)

14. If any woman shall be delivered of a child, and shall, by secret burying or otherwise disposing of the dead body of the said child, endeavour to conceal the birth thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding two years; and it shall not be necessary to prove whether the child died before, at, or after its birth: Provided always, that if any woman, tried for the murder of her child shall be acquitted thereof, it shall be lawful for the jury, by whose verdict she shall be acquitted, to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth. (b)

Proviso.

15. Every person convicted of the abominable Sodomy.

(a) It is immaterial on the trial of an indictment under this section, whether the woman was pregnant or not.—R. v. Goodchild, 2 C. & K. 294.

(b) Some act of disposal of the body, after the child is dead, must be shown.—R. v. Hunter 8 C. & P. 755. The indictment must set forth the mode in which the body was disposed of.—R. v. Hounsell, 2 M. & Rob. 292. Placing the dead body of the child between a bed and a mattress is a sufficient disposing of the body to warrant a conviction, for it is not essential that the body should be put in a place intended for its final deposit, or be buried or destroyed.—R. v. Goldthrop, 2 M. C. C. R. 244. A woman was delivered of a child, which died: shortly after its birth the mother concurred with her paramour to endeavour to conceal the birth, and he, by her persuasion, and while she remained in bed, took the body and buried it in a field in order to effect the concealment: *Held*, that she might be convicted of endeavouring to conceal, and he of counselling, aiding and abetting her (vide sec. 38).—R. v. Bird, 2 C. & K. 817; R. v. Skelton, 3 C. & K. 117. This section is verbatim the same as sec. 3 of 2 Will. IV. ch. 1.

crime of buggery, committed either with mankind or with any animal, shall suffer death as a felon. (a)

Rape.

16. Every person convicted of the crime of rape, shall suffer death as a felon. (b)

Carnal knowledge of a girl under 10. The like of a girl above 10 and under 12.

17. If any person shall unlawfully and carnally know and abuse any girl under the age of ten years, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon; and if any person shall unlawfully and carnally know and abuse any girl, being above the age of ten years, and under the age of twelve years, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be imprisoned for such term as the court shall award. (c)

What shall be sufficient proof of carnal knowledge in such cases.

18. Whereas upon trials for the crime of buggery, and of rape, and of carnally abusing girls of the respective ages hereinbefore mentioned, offenders frequently escape by reason of the difficulty of the proof which has been required of the completion of those several crimes; for remedy thereof be it enacted, that it shall not be necessary in any of those cases, to prove the actual emission of seed in order to constitute a carnal knowledge, but that the carnal know-

(a) A married woman who consents to her husband committing an unnatural offence with her, is an accomplice in the felony, and as such her evidence requires confirmation, although consent or nonconsent is quite immaterial to the offence.—*R. v. Jellyman*, 8 C. & P. 604.

(b) An indictment is good which charges that A. committed a rape, and that B. was present aiding, abetting and assisting him in his commission of the felony; for the party aiding may be charged either, as he is in law, a principal in the first degree, or, as he is in fact, a principal in the second degree.—*R. v. Cresham*, 1 Car. & M. 187.

(c) A prisoner cannot be convicted of an assault with intent carnally to know, &c., a girl above ten and under twelve years of age, nor of a common assault, if she be consenting. The proper charge is of misdemeanor in attempting to commit a statutable offence.—*R. v. Martin*, 2 M. C. C. R. 123.

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tration only.

19. Where any woman shall have any interest, whether legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or shall be an heiress presumptive or next of kin to any one having such interest, if any person shall, from motives of lucre, take away or detain such woman against her will, with intent to marry or defile her, or to cause her to be married or defiled by any other person, every such offender, and every person counselling, aiding or abetting such offender, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned at hard labour in the Provincial Penitentiary, for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. (a)

Forcible ab-
duction of a
woman on
account of
her fortune
with intent
to marry
her, &c.

20. If any person shall unlawfully take, or cause to be taken, any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to suffer such punishment by fine or imprisonment, or by both, as the court shall award.

Unlawful ab-
duction of a
girl from her
parents or
guardians.

21. If any person shall maliciously, either by force or fraud, lead or take away, or decoy, or entice away or detain, any child under the age of ten years, with

Child steal-
ing.

(a) On an indictment for abduction under this section, the jury ought not to convict the person unless satisfied that he committed the offence from motives of lucre, but expressions used by him respecting the lady's property—such as that he had seen the will of one of her relations (naming him), and that she would have £220 a year—are evidence for the consideration of the jury in coming to a conclusion whether the prisoner was actuated by motives of lucre or not.—R. v. Barrett, 7 C. & P. 387.

intent to deprive the parent or parents, or any other person having the lawful care or charge of such child of the possession of such child, or with intent to steal any article upon or about the person of such child to whomsoever such article may belong; or if any person shall, with any such intent as aforesaid, receive or harbour any such child, knowing the same to have been, by force or fraud, led, taken, decoyed, enticed away or detained as hereinbefore mentioned every such offender, and every person counselling, aiding or abetting such offender, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years or to be imprisoned in any other prison or place of confinement, for any term not exceeding two years. Provided always, that no person who shall have claimed to be the father of an illegitimate child, or to have any right to the possession of such child, shall be liable to be prosecuted by virtue hereof, on account of his getting possession of such child, or taking such child out of the possession of the mother, or any other person having the lawful charge thereof.

Not to extend to fathers taking their illegitimate children.

Bigamy.

22. If any person, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in this Province or elsewhere, every such offender, and every person counselling, aiding or abetting such offender, shall be guilty of felony; and being convicted thereof, shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years; and any such offence may be dealt with, enquired of, tried, determined and punished in the district or county where the offender shall be apprehended or be in custody, as if the offence had been actually committed in that district or county: Provided always, that nothing herein contained shall

Place of trial.

Exceptions.

parents, or any other
 or charge of such child,
 , or with intent to steal
 person of such child,
 may belong; or if any
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 child, knowing the same
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 of felony; and being
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 of confinement for any
 and any such offence
 tried, determined and
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 stody, as if the offence
 hat district or county:
 herein contained shall

extend to any second marriage contracted out of this Province by any other than a subject of her Majesty, resident in this Province, and leaving the same with intent to commit the offence, or to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time; or shall extend to any person, who, at the time of such second marriage, shall have been divorced from the bond of the first marriage; or to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction. (a)

23. If any person shall arrest any clergyman or minister of the gospel, upon any civil process, while he shall be performing divine service, or shall, with the knowledge of such person, be going to perform the same, or returning from the performance thereof, every such offender shall be guilty of a misdemeanor; and being convicted thereof, shall suffer such punishment, by fine or imprisonment, or by both, as the court shall award.

Arresting a
 clergyman
 during di-
 vine service.

24. If any person shall assault and strike or wound any magistrate, officer or other person whatsoever, lawfully authorized, on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods or effects wrecked, stranded or cast on shore, or lying under water, every such offender, being convicted thereof, shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,

Punishment
 for assaults
 on officers,
 &c., for their
 endeavours
 to save ship-
 wrecked prop-
 erty.

(a) The prior marriage in a foreign country may be proved by prisoner's deliberate declarations or admissions.—R. v. Newton, 2 M. & Rob. 503; R. v. Simmonsto, 1 C. & K. 161; but not by prisoner's mere statements while in custody without some additional proof.—R. v. Fisherly, 2 C. & K. 782.

Assaults
with intent
to commit
felony ;
assaults on
peace officers,
or to prevent
the arrest of
offenders ; or
in pursuance
of a conspi-
racy to raise
wages ; pun-
ishable with
hard labour.

Offences pun-
ishable by
imprison-
ment.

Jury may
acquit of
felony and
convict of
assault.

or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

25. Where any person shall be charged with and convicted of any of the following offences as misdemeanors, that is to say, of any assault with intent to commit felony ; of any assault upon any peace officer or revenue officer in the due execution of his duty or upon any person acting in aid of such officer ; or any assault upon any person with intent to resist or prevent the lawful apprehension or detainer of the party so assaulting, or of any other person, for any offence for which he or they may be liable by law to be apprehended or detained ; or of any assault committed in pursuance of any conspiracy to raise the rate of wages : in any such case, the court may sentence the offender to be imprisoned for any term not exceeding two years, and may also (if it shall so think fit) fine the offender, and require him to find sureties to keep the peace.

36. When any person shall be convicted of any offence punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet.

37. On the trial of any person for any of the offences hereinbefore mentioned, or for any felony whatever, where the crime charged shall include an assault against the person, it shall be lawful for the jury to acquit of the felony, and to find a verdict of guilty of assault, against the person indicted, if the evidence shall warrant such finding ; and when such verdict shall be found, the court shall have power to

er prison or place of exceeding two years.

l be charged with and ing offences as misde- assault with intent to upon any peace officer execution of his duty; id of such officer; of with intent to resist or on or detainer of the other person, for any ay be liable by law to r of any assault com- piracy to raise the rate e court may sentence for any term not ex- o (if it shall so think e him to find sureties

be convicted of any ct, for which impi- ll be lawful for the o be imprisoned, or hard labour, in the rection, and also to kept in solitary con- ions of such impi- nt with hard labour, one time, and not one year, as to the meet.

son for any of the or for any felony ed shall include an l be lawful for the to find a verdict of on indicted, if the ag; and when such shall have power to

imprison the person so found guilty of an assault, for any term not exceeding three years. (a)

38. Nothing herein contained shall alter or affect any of the laws relating to the government of her Majesty's land or naval forces. Not to affect the laws relating to the forces.

39. It shall be lawful for the Queen's Majesty, and for the Governor, Lieutenant Governor or person administering the government of this Province, to extend the royal mercy to any person imprisoned by Persons imprisoned may be pardoned.

(a) Burglariously breaking and entering a dwelling house with intent to commit a rape is not a crime which includes an assault, so that a prisoner can be convicted under this section.—R. v. Watkins, 2 M. C. C. R. 217. On a charge of manslaughter the jury ought not to convict a prisoner of an assault unless that assault conducted to the death of deceased, though the death was not by manslaughter.—R. v. Crumpton, 1 Car. & M. 597. On an indictment for carnally knowing and abusing a girl under ten years of age, prisoner may be acquitted of the felony and convicted of an assault.—R. v. Folker, 2 M. & Rob. 460. cont. R. v. Holcroft, 2 C. & K., 341. If on the trial of an indictment for robbery with violence, the robbery be not proved, prisoner cannot be found guilty of assault only, unless it was committed in the progress of something which when completed would be, and was done with intent to commit a felony.—R. v. Greenwood, 2 C. & K. 339. This section applies wherever the indictment charges an assault and the jury, negating the felony, find guilty of the assault, provided the finding be in respect of that very same Act which is charged as felonious; identity being the question and not the intent of the prisoner to commit a felony.—R. v. Birch, 1 Den. C. C. 185. A prisoner, indicted for manslaughter, was proved to have assaulted deceased some time before his death, but a surgeon proved the death to have arisen from natural causes. *Held*, he could not be convicted of the assault.—R. v. Connor, 2 C. & K. 518. Two prisoners were indicted for murder; the jury negated that the assaults or any one or more of them laid and proved against the prisoner or either of them conducted to the death. *Held*, that the prisoners could not upon that indictment be convicted of an assault, and that therefore upon a subsequent indictment for the same assaults (as assaults) the prisoners could not plead *autrefois acquit*. Eight judges to six.—R. v. Bird, 1 Temp. & M. 437.

virtue of this Act, although he shall be imprisoned for non-payment of money to some party, other than the crown.

Acts relating to high treason or revenue not to be affected.

43. Nothing in this Act contained, shall affect or alter any Act, so far as it relates to the crime of high treason, or to any branch of the public revenue.

Assaults with intent to commit rape or sodomy how punished.

6 VIC. CHAP. 5.—5. Whereas it is necessary to determine the punishment to be inflicted upon certain offenders, not provided for by the said before recited Act, (4 & 5 Vic. Chap. 27.) intituled "*An Act for consolidating and amending the statutes in this Province relating to offences against the person.*" Be it enacted, that where any person shall be charged with and convicted of any assault with intent to commit rape, or of any assault to commit the abominable crime of buggery, either with mankind or with any animal, the court in any such case may sentence the offender to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding three years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

PATENTS FOR INVENTIONS.

Penalty on persons counterfeiting name of patentee, &c.

12 VIC. CHAP. 24.—15. If any person or persons shall write, paint, print, mould, cast, carve, engrave, or stamp upon any thing made, used or sold by him for the sole making or selling of which he hath not or shall not have obtained letters patent, the name or any imitation of the name of any patentee for the sole making or vending of such thing without the consent in writing of such patentee or of his assigns or legal representatives, or if any person upon any such thing not purchased from the patentee or from his assigns or representatives, or from a vendee, or not having his license or consent in writing, shall write, paint, print, mould, cast, carve, engrave, stamp, or otherwise make or affix the word or words

shall be imprisoned
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term not exceeding

ENTIONS.

any person or persons
cast, carve, engrave,
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f which he hath not
ers patent, the name
any patentee for the
h thing without the
ntee or of his assigns
ny person upon any
the patentee or from
r from a vendee, or
ent in writing, shall
ast, carve, engrave,
ix the word or words

"patent," "letters patent," by the "Queen's patent,"
"patentee," or any word or words of like kind, mean-
ing or import with the view or intent of imitating or
counterfeiting the stamp, mark or other device of the
patentee, or shall affix the same or any word, stamp
or device of like import on any unpatented article
for the purpose of deceiving the public, he shall be
deemed to have committed a misdemeanor, and shall
be punished by fine or by imprisonment in the com-
mon gaol of the district or county in which the
offender is brought to trial, or by both fine and im-
prisonment at the discretion of the court trying the
same: Provided the fine do not exceed fifty pounds
currency in amount, and the imprisonment do not
exceed three months in duration.

16. From the passing of this Act all patentees
and assignees of patents hereafter to be granted shall
stamp, engrave or cause to be stamped or engraved
on each article vended, or offered for sale, the date of
the patent thereof, and any persons patented or
assigned neglecting so to do shall be deemed to have
committed a misdemeanor, and shall be liable there-
for to the same penalties as are provided in the next
preceding section.

Patentees to
stamp &c.
date of pa-
tent on the
articles.

Penalty for
contraven-
tion.

PENITENTIARY.

14 & 15 VIC. CHAP. 2.—37. No person shall,
without consent of the warden, bring into or convey
out of the Penitentiary any letter, writing or other
article to or from a convict, nor shall any officer or
any other person employed therein write any letter
on behalf of a convict; and whoever shall violate
either of the provisions of this clause shall be deemed
guilty of a misdemeanor, and he shall be liable to be
fined or imprisoned, or both, at the discretion of the
court before which he or she may be convicted for
the same.

Any person
conveying
letter into or
out of peni-
tentiary
guilty of a
misdemean-
or.

POST-OFFICE.

Certain offences to be felonies, stealing letters &c.

To steal any chattel from a post letter.

To stop a mail with intent to rob.

To receive a letter bag or chattel, knowing the same to have been stolen.

Forging stamps &c.

13 & 14 VIC. CHAP. 17.—16. To steal, embezzle, secrete or destroy any post letter, shall be felony punishable in the discretion of the court by imprisonment in the Provincial Penitentiary for not less than three nor more than fourteen years, unless such post letter shall contain any chattel, money or valuable security, in which case the offence shall be punishable by imprisonment in the said Penitentiary for life :—To steal from or out of a post letter any chattel, money or valuable security shall be felony, punishable by imprisonment in the said Penitentiary for life :—To steal a post letter bag, or a post letter from a post letter bag, or a post letter from any post-office, or from any office of the Provincial Post-office, or from a mail, or to stop a mail with intent to rob or search the same, shall be felony, punishable by imprisonment in the said Penitentiary for life :—To open unlawfully any post letter bag, or unlawfully to take any letter out of such bag, shall be felony, punishable by imprisonment in the said Penitentiary for fourteen years :—To receive any post letter, or post letter bag, or any chattel, money or valuable security, the stealing, taking, secreting or embezzling whereof is hereby made felony, knowing the same to have been feloniously stolen, taken, secreted or embezzled, shall be felony, punishable by imprisonment in the said Penitentiary for fourteen years, and the offender may be indicted and convicted either as an accessory after the fact, or for a substantive felony, and in the latter case, whether the principal felon hath or hath not been previously convicted, or shall not be amenable to justice, and however such receiver shall be convicted, the offence shall be punishable as aforesaid :—To forge, counterfeit or imitate any postage stamp issued or used under the authority of this Act, or by or under the authority of the government, or proper authority of the United Kingdom, or of any British

North American Province, or of any foreign country, or knowingly to use any such forged, counterfeited or imitated stamp, or to engrave, cut, sink or make any plate, die or other thing whereby to forge, counterfeit or imitate such stamp, or any part or portion thereof, except by the permission in writing of the Provincial Post-master General, or of some officer or person, who, under the regulations to be made in that behalf, may lawfully grant such permission, or to have possession of any such plate, die or other thing as aforesaid without such permission, or to forge, counterfeit or unlawfully imitate, use or affix to or upon any letter or packet, any stamp, signature, initials or other mark or sign purporting that such letter or packet ought to pass free of postage, or at a lower rate of postage, or that the postage thereon, or any part thereof, hath been prepaid, or ought to be paid by or charged to any person, department or party whomsoever, shall be felony, punishable by imprisonment in the Provincial Penitentiary for life, and to such felony all the provisions of the Act (10 & 11 Victoria, chapter 10 & 11 Vic. Chap. 9.) shall apply as if such offence were made felony under that Act in so far as the provisions thereof may not be inconsistent with this Act, and the accessories to any such offence shall be punishable accordingly :—To open unlawfully or wilfully to keep, secrete, delay, or detain or procure or suffer to be unlawfully opened, kept, secreted, or detained any post letter bag, or any post letter, whether the same came into the possession of the offender by finding or otherwise howsoever, or after payment or tender of the postage thereon, (if payable to the party having possession of the same) to neglect or refuse to deliver up any post letter to the person to whom it shall be addressed, or who shall be legally entitled to receive the same, shall be a misdemeanor :—To steal or for any purpose to embezzle, secrete, destroy, wilfully detain or delay any printed vote or proceeding, newspaper, printed paper, or book sent by post, shall

Wilfully
opening or
secreting let-
ters or bags.

Drunkenness
or neglect of
carrier.

Tollgate
keeper refus-
ing to allow
mail to pass.

Endeavour-
ing to cause
felony to be
committed.

be a misdemeanor:—To obstruct or wilfully delay the passing or progress of any mail, or of any carriage or vessel, horse, animal or carriage employed in conveying any mail on any public highway, river, canal or water communication in this Province shall be a misdemeanor:—To cut, tear, rip, or wilfully to damage or destroy any post letter bag, shall be a misdemeanor:—It shall be a misdemeanor for any mail carrier or any person employed to convey any mail, post letter bag or post letters to be guilty of any act of drunkenness, negligence or misconduct whereby the safety or punctual delivery of such mail, post letter bag or post letters shall be endangered, or contrary to this Act or any regulation made under it, to collect, receive or deliver any letter or packet, or to neglect to use due care and diligence to convey any mail, post letter bag or post letter at the rate of speed appointed therefor by the regulations then in force, or the contract under which he acts:—It shall be a misdemeanor for any toll-gate keeper to refuse or neglect forthwith upon demand to allow any mail or any carriage, horse or animal employed in conveying the same, to pass through such toll-gate whether on pretence of the nonpayment of any toll, or any other, provided, that nothing herein shall affect the right of any officer or person travelling with any mail to pass toll free through any toll gate, but in any case where such officer or person would now pass toll free an officer or person in travelling with a mail after the passing of this Act shall in like manner pass toll free, but not otherwise or elsewhere unless it be otherwise provided by competent authority, but in any case he shall not be detained on pretence of demanding such toll but the same if due and not paid shall be recoverable in the usual course of law from the party liable:—Any wilful contravention of any regulation lawfully made under this Act shall be a misdemeanor, if declared to be so by such regulation:—To solicit or endeavour to procure any person to commit any act

or wilfully delay or of any carriage employed in con-
 highway, river, canal
 Province shall be a
 ip, or wilfully to
 bag, shall be a mis-
 deonor for any mail
 convey any mail,
 be guilty of any act
 misconduct whereby
 of such mail, post
 endangered, or con-
 on made under it,
 letter or packet, or
 gence to convey any
 at the rate of speed
 ons then in force, or
 acts :—It shall be a
 keeper to refuse or
 o allow any mail or
 employed in conveying
 toll-gate whether on
 y toll, or any other,
 ll affect the right of
 ith any mail to pass
 t in any case where
 y pass toll free an
 h a mail after the
 manner pass toll free,
 less it be otherwise
 but in any case he
 of demanding such
 paid shall be recover-
 om the party liable:
 y regulation lawfully
 a misdemeanor, if
 ion :—To solicit or
 to commit any act

hereby made or declared a felony or misdemeanor shall be a misdemeanor :—And every such misde-
 meanor as aforesaid shall be punishable by fine or
 imprisonment, or both, in the discretion of the court
 before whom the offender shall be convicted :—And
 every principal in the second degree, and every
 accessory before or after the fact to any such felony
 as aforesaid shall be guilty of felony, and punishable
 as the principal in the first degree, and every per-
 son who shall aid, abet, counsel or procure the com-
 mission of any such misdemeanor as aforesaid, shall
 be guilty of a misdemeanor and punishable as a prin-
 cipal offender :—And any imprisonment awarded
 under this Act shall be in the Provincial Penitentiary
 if for a term of or exceeding two years, and if the
 imprisonment awarded be for a less term, it may be
 with or without hard labour in the discretion of the
 court awarding it.

Principals in
 the 2nd de-
 gree and
 accessories.

17. Any indictable offence against this Act may
 be dealt with, indicted, and tried, and punished, and
 laid and charged to have been committed either in
 the district or county or place where the offence shall
 be committed, or in that in which the offender shall
 be apprehended, or be in custody, as if actually com-
 mitted therein, and where the offence shall be com-
 mitted in or upon or in respect of a mail, or upon a
 person engaged in the conveyance or delivery of a
 post letter bag, or post letter, or chattel, or money,
 or valuable security sent by post, such offence may be
 dealt and inquired of, tried and punished and
 charged to have been committed, as well within the
 district, county or place in which the offender shall
 be apprehended or be in custody, as in any district,
 county or place through any part whereof such mail,
 person, post letter bag, post letter, chattel, money or
 valuable security shall have passed in the course of
 conveyance and delivery by the post, in the same man-
 ner as if it had been actually committed in such district,
 county or place and in all cases where the side or

As to the
 locality of
 any offence.

centre or other part of a highway or the sidebank, centre or other part of a river or canal, or navigable water shall constitute the boundary between two districts, counties or places then to pass along the same shall be held to be passing through both, and every accessory before or after the fact, if the offence be felony, and every person aiding or abetting or counselling or procuring the commission of any offence, if the same be a misdemeanor, may be dealt with, indicted, tried, and punished as if he were a principal, and his offence may be laid and charged to have been committed in any district, county or place where the principal offence may be tried.

Property of
post letters,
&c., stolen,
to be laid in
P. M. G.

18. In every case where an offence shall be committed in respect of a post letter bag or a post letter, packet, chattel, money or a valuable security sent by post, it shall be lawful to lay in the indictment to be preferred against the offender the property of such post letter bag, post letter, packet, chattel, money or valuable security sent by post in the Provincial Postmaster General, and it shall not be necessary to allege in the indictment or to prove upon the trial or otherwise that the post letter bag, post letter, packet, chattel or valuable security was of any value, but except in the cases aforesaid the property of any chattel or thing used or employed in the service of the provincial post-office, or of moneys arising from duties of postage shall be laid in her Majesty, if the same be the property of her Majesty, or if the loss thereof would be borne by the Province and not by any party in his private capacity, and in any indictment against any person employed in the provincial post-office for any offence against this Act, or in any indictment against any person for an offence committed in respect of some person so employed, it shall be sufficient to allege that such offender, or such other person as aforesaid, was employed in the provincial post-office at the time of the commission of such offence, without stating further the nature or particulars of his employment.

19. The provisions of the Act (10 & 11 Victoria, ^{Certain provisions of 10 & 11 Vic.} ch. 31, *vide supra*, title "Customs,") relative to the publication and proof of regulations or orders made under it, and to the time of their coming into force, shall apply to the publication and proof of regulations and orders made under this Act, and to the time of their coming into force, and any bond or security required or authorized by any such regulations, or by any order of the Governor in Council, in any matter relative to the provincial post-office, or to the observance of any provision of this Act, or of any regulation or order made under it, shall be valid in law, and may be enforced according to its tenor on breach of the condition thereof.

24. The Interpretation Act shall apply to this Act, which shall be cited and known as *The Post-Office Act*, and the following terms and expressions therein shall have the meanings hereinafter assigned to them, unless such meaning be repugnant to the subject, or inconsistent with the context:—The term "letter" shall include packets of letters; the term "postage" shall mean the duty or sum chargeable for the conveyance of post letters, packets and other things by post; the term "foreign country" shall mean any country not included in the dominions of her Majesty; the term "foreign postage" shall mean the postage on the conveyance of letters, packets or other things within any foreign country; the term "colonial postage" shall mean the postage on the conveyance of letters, packets or other things within any of the British colonies in North America, which colonies when referred to in this Act shall be understood to be those only which being parties to the agreement aforesaid shall have acquired the right of establishing and regulating inland posts under the Act of the British parliament, (12 & 13 Vic. Chap. 66,) the term "provincial postage" shall mean the postage on the conveyance of letters, packets and other things by post within this Province; the term "mail" shall

<sup>Interpreta-
tion clauses.</sup>

include every conveyance by which post letters are carried whether it be by land or by water; the term "British packet postage" shall mean the postage due on the conveyance of letters by British packet boats between the United Kingdom and any British North American Colony; and the term "British postage" shall include all postage not being foreign, colonial or provincial; the expression, "employed in the provincial post-office," shall apply to any person employed in any business of the provincial post office; the term "post letter" shall mean any letter transmitted or deposited in any post office to be transmitted by the post, and a letter shall be deemed a post letter from the time of its being so deposited or delivered at a post-office to the time of its being delivered to the party to whom it is addressed, and a delivery to any letter carrier, or other person authorized to receive letters for the post, shall be deemed a delivery at the post-office and a delivery at the house or office of the person to whom the letter is addressed, or to him or to his servant or agent or other person considered to be authorized to receive the letter, according to the usual manner of delivering that person's letters, shall be a delivery to the person addressed; the term "post letter bag" shall include a mail bag or box or packet or parcel or other envelope or covering in which post letters are conveyed whether it does or does not actually contain post letters; the term "any post office" shall mean any building, room or place where post letters are received, or delivered, sorted, made up, or despatched; the term "valuable security" shall include the whole or any part of any tally, order or other security, or document whatsoever, entitling or evidencing the title of any party to any share or interest in any public stock or fund whether of this Province or the United Kingdom, or any British colony or possession, or of any foreign country, or in any fund or stock of any body corporate, company or society in this Province or elsewhere,

which post letters are
by water; the term
mean the postage due
British packet boats
any British North
"British postage"
foreign, colonial or
employed in the provin-
y person employed
post office; the term
letter transmitted or
transmitted by the
a post letter from
d or delivered at a
g delivered to the
d a delivery to any
thorized to receive
ed a delivery at the
ouse or office of the
ressed, or to him or
person considered
letter, according to
that person's letters,
ddressed; the term
mail bag or box or
ope or covering in
whether it does or
ers; the term "any
ng, room or place
r delivered, sorted,
n "valuable secu-
ny part of any tally,
ument whatsoever,
e of any party to
blic stock or fund
nited Kingdom, or
or of any foreign
f any body corpo-
vince or elsewhere,

or to any deposit in any savings bank, or the whole
or any part of any debenture, deed, bond, bill, note,
cheque, warrant, or order, or other security for the
payment of money, or for the delivery or transfer of
any goods, chattels or valuable thing, whether in this
Province or elsewhere; and the term, "between,"
when used with reference to the transmission of
letters or other things, shall apply equally to such
transmission from either place to the other.

14 & 15 VIC. CHAP. 71.—23. If any officer or
connected with the post-office department shall con-
vert to his own use in any way whatever, or shall
use by way of investment in any kind of property or
merchandize, or shall loan with or without interest
any portion of the public moneys entrusted to him for
safe keeping, transfer, disbursement, or for any other
purpose, every such act shall be deemed and adjudged
to be an embezzlement of so much of the said moneys
as shall be thus taken, converted, invested, used or
loaned, which is hereby declared to be a felony; and
the neglect or refusal to pay over any public moneys
in his hands, or to transfer or disburse any such
moneys promptly on the requirement of the Post-
master General shall be *prima facie* evidence of such
conversion to his own use of so much of the public
moneys as may be in his hands; and all persons
advising, or knowingly and willingly participating in
such embezzlement, upon being convicted thereof,
before any court of competent jurisdiction, shall, for
every such offence, forfeit and pay to her Majesty,
her heirs or successors, a fine equal to the amount of
the money embezzled, and shall suffer imprisonment
for a term not less than three months and not more
than seven years.

16 VIC. CHAP. 8.—5. Every United States' mail
so carried or transported as aforesaid (over any part
or portion of this Province, by arrangement with
the Postmaster General made with the approval of
the Governor in Council, sec. 4,) shall, while within

Embezzle-
ment, what,
and a felony:

U. S. mail to
be deemed
H. M. mails
as regards
the punish-
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offences com-
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respect
thereof.

this Province, be deemed and taken to be a mail of her Majesty, so far as to make any violation thereof any depredation thereon, or any act or offence in respect thereto, or to any part thereof, which would be punishable under the existing laws of this Province, in case the same had been a mail or part of a mail of this Province, an offence of the same degree and magnitude, and punishable in the same manner and to the same extent, as though the same were a mail or part of a mail of this Province; and in any indictment for such act or offence, such mail or part of a mail may be alleged to be, and on the trial of such indictment, shall be deemed and held to be a mail or part of a mail of this Province; and in any indictment for stealing, embezzling, secreting or destroying any post letter, post letter bag, packet, chattel, money or valuable security sent by post through and by all and every of the said United States' mail or mails as aforesaid, it shall be lawful to lay in the indictment to be preferred against the offender, the property of such post letter, post letter bag, packet, chattel, money or valuable security sent by post, as herein mentioned, in the Provincial Postmaster General; and it shall not be necessary to allege in the indictment, or to prove upon the trial or otherwise, that the post letter, post letter bag, packet, chattel, or valuable security was of value.

Property of
letters &c.,
may be laid
in P. M. G.

Punishment
of persons
stealing
counterfeit-
ing &c. keys
or locks used
for mails.

6. If any person shall steal, purloin, embezzle or obtain by any false pretence, or shall aid or assist in stealing, purloining, embezzling, or obtaining by any false pretence, or shall knowingly or unlawfully make, forge or counterfeit, or cause to be unlawfully made, forged or counterfeited, or knowingly aid or assist in falsely and unlawfully making, forging or counterfeiting any key suited to any lock which has been or shall be adopted for use by the post-office department of Canada, and which shall be in use on any of the mails or mail bags of the said post-office department, or shall have in his possession any such mail key or

W.
 taken to be a mail of
 any violation thereof;
 any act or offence in
 thereof, which would
 ing laws of this Pro-
 a mail or part of a
 ce of the same degree
 in the same manner
 ough the same were a
 Province; and in any
 ce, such mail or part
 , and on the trial of
 med and held to be a
 Province; and in any
 ling, secreting or des-
 er bag, packet, chattel,
 t by post through and
 United States' mail or
 lawful to lay in the
 ainst the offender, the
 ost letter bag, packet,
 urity sent by post, as
 ncial Postmaster Gen-
 ssary to allege in the
 the trial or otherwise,
 bag, packet, chattel,
 e.
 purloin, embezzle or
 shall aid or assist in
 or obtaining by any
 y or unlawfully make,
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 ingly aid or assist in
 forging or counter-
 k which has been or
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 n use on any of the
 st-office department,
 y such mail key or

any such mail lock with the intent unlawfully or improperly to use, sell or otherwise dispose of the same, or to cause the same to be unlawfully or improperly used, sold or otherwise disposed of, such person shall, on conviction, be deemed guilty of felony, and shall be punished by imprisonment in the Provincial Penitentiary for a period not exceeding seven years.

PUNISHMENTS.

See the various offences under their respective titles.

6 VIC. CHAP. 5.—1. So much of a certain Act passed in the session held in the fourth and fifth years of her Majesty's reign, and entitled, "An Act for improving the administration of criminal justice in this Province," or of a certain other Act passed in the same session, and entitled, "An Act for consolidating and amending the laws in this Province, relative to larceny and other offences connected therewith," or of a certain other Act passed in the same session, and entitled, "An Act for consolidating and amending the laws in this Province, relative to malicious injuries to property;" or of a certain other Act passed in the same session, and entitled, "An Act for consolidating and amending the statutes in this Province, relative to offences against the person;" or of any other act or law as shall be repugnant to or inconsistent with the enactments of this Act, shall be and is hereby repealed. ^{4 & 5 Vic. Chap. 24.} ^{4 & 5 Vic. Chap. 25.} ^{4 & 5 Vic. Chap. 26.} ^{4 & 5 Vic. Chap. 27.} ^{Inconsistent provisions repealed.}

2. For each and every offence for which by any of the Acts hereinabove cited, the offender is liable on conviction to be punished by imprisonment in the Provincial Penitentiary, but may, instead thereof and in the discretion of the court, be punished by imprisonment in any other prison or place of confinement for any term not exceeding two years, the offender may, if convicted after the passing of this Act, be punished in the discretion of the court by imprison- ^{Cases in which offenders may be committed to the provincial penitentiary for any term not less than three years.}

ment in the Provincial Penitentiary for any term not less than three years, and not exceeding the longer term for which such offender might have been so imprisoned if this Act had not been passed, or by imprisonment in any other prison or place of confinement for any term not exceeding two years, in the manner prescribed by such Act: Provided always, that nothing in this Act shall prevent such offender from being punished by imprisonment in the Provincial Penitentiary for life, if he might have been so punished if this Act had not been passed.

Other cases
in which
offenders
may be so
committed.

3. For each and every offence, for which by any of the said Acts, the offender may on conviction be punished by imprisonment for such term as the court shall award, or for any term exceeding two years such imprisonment, if awarded for a longer term than two years, shall be in the Provincial Penitentiary.

Purposes of
the peniten-
tiary.

14 & 15 VIC. CHAP. 2.—2. The said Provincial Penitentiary shall be maintained as a prison for the confinement and reformation of persons male and female lawfully convicted of crime before the duly authorised legal tribunals of this Province, and sentenced to confinement therein for a term not less than

Who shall be
sent there,

two years, and whenever any offender, convicted after this Act shall come into effect, shall be punishable by imprisonment, such imprisonment shall, if it be for two years or any longer term, be in the Provincial Penitentiary, anything in the Act (6 Vic. ch 5) or in any other Act or law to the contrary notwithstanding: Provided always, that nothing herein contained shall prevent the reception and imprisonment in the said penitentiary of any prisoner or prisoners sentenced for any period of time by any military or militia court martial, or military authority under any Mutiny Act.

6 Vic. Chap.
5.

RAILWAY OFFENCES.

10 & 11 VIC. CHAP. 118.—(*Bytown and Britannia Railway*).—24. If any person or persons shall

tiary for any term not exceeding the longest might have been so imposed, or by imprisonment in place of confinement for years, in the manner provided always, that no such offender from being in the Provincial Penitentiary shall have been so punished.

ence, for which by any law on conviction be such term as the court may exceed two years, for a longer term than the Provincial Penitentiary.

. The said Provincial Penitentiary shall be used as a prison for the reception of persons male and female committed to the gaol before the duty of the Provincial Penitentiary, and sentenced for a term not less than six months, and offenders, convicted after the expiration of their term, shall be punishable by imprisonment, if it be for a term, be in the Provincial Penitentiary. The Act (6 Vic. ch 5) shall be the contrary notwithstanding nothing herein contained shall prevent the imprisonment of any prisoner or prisoners by any military or naval authority under any

ENCES.

—(*Bytown and British Columbia*)—14. If any person or persons shall

wilfully and maliciously, and to the prejudice of the said railway authorized to be made by this Act, break, throw down, damage or destroy the same, or any part thereof, or any of the houses, warehouses, toll-houses, watch-houses, weigh-beams, cranes, carriages, vessels, engines, inclined planes, machines or other works or devices, incidental and relative thereto or connected therewith, or do any other wilful hurt or mischief thereto, or wilfully or maliciously obstruct or interrupt the free use of the said railway, vessels or works, or shall obstruct, hinder or prevent the carrying on, completing, supporting and maintaining the said intended railway, vessels or works, such person or persons shall be adjudged guilty of felony, and the court by and before whom such person or persons shall be tried and convicted shall have power and authority to cause such person or persons to be punished in like manner as felons are directed to be punished by the laws in force in this Province, or in mitigation thereof to award such sentence as the law directs in cases of simple larceny, as to such court shall seem fitting.

Punishment of persons breaking down or obstructing any railway or any works of the company.

57. Any contravention of this Act by the said company or by any other party, for which no punishment or penalty is herein provided, shall be a misdemeanor, and shall be punishable accordingly; but such punishment shall not exempt the said company (if they be the offending party) from the forfeiture of this Act and the privileges hereby conferred on them, if by the provisions thereof or by law the same be forfeited by such contravention.

61. Nothing herein contained shall be construed to except the railway by this Act authorized to be made, from the provisions of any general Act relating to railways which may be passed during the present or any future session of parliament.

10 & 11 Vic. Chap. 123.—(*Toronto and Goderich Railway*).—14. If any person or persons shall wilfully and maliciously, and to the prejudice of the

Punishment of persons breaking down or ob-

structing or
damaging
the railway
&c.

said railway authorized to be made by this Act, break throw down, damage or destroy the same, or any part thereof, or any of the houses, warehouses, toll houses, watch-houses, weigh-beams, cranes, carriages, vessels, engines, inclined planes, machines, or other works or devices, incidental and relative thereto or connected therewith, or do any other wilful hurt or mischief, or wilfully or maliciously obstruct or interrupt the free use of the said railroad, vessels, or works, or shall obstruct, hinder or prevent the carrying on, completing, supporting and maintaining the said intended railway, vessels or works, such person or persons shall be adjudged guilty of a misdemeanor, and the court by and before whom such person or persons shall be tried and convicted shall have power and authority to cause such person or persons to be punished in like manner as persons convicted of a misdemeanor are directed to be punished by the laws in force in this Province, or in mitigation thereof to award such sentence as the law directs in cases of simple larceny, as to such court shall seem fitting.

46. Any contravention of this Act by the said company, or by any other party, for which no punishment or penalty is herein provided, shall be a misdemeanor, and shall be punished accordingly; but such punishment shall not exempt the said company (if they be the offending party) from the forfeiture of this Act and the privileges hereby conferred on them, if by the provisions thereof or by law the same be forfeited by such contravention.

49. Nothing herein contained shall be construed to except the railway by this Act authorized to be made, from the provisions of any general Act relating to railways which may be passed during the present or any future session of parliament.

Penalty for
obstructing
said railway.

13 & 14 VIC. CHAP. 132.—(*Bytown and Prescott Railway*.) 21. If any person shall by any means or in any manner or way whatsoever obstruct or interrupt the free use of the said railway, or the carriages,

by this Act, break, or by the same, or any means, warehouses, toll-houses, cranes, carriages, machines, or other works, or relative thereto or other wilful hurt or obliquely obstruct or interrupt the railroad, vessels, or other works, or prevent the carrying on and maintaining the same, such person or persons shall be guilty of a misdemeanor, and from such person or persons shall have power to be punished by the laws in mitigation thereof to be directed in cases of shall seem fitting.

by this Act by the said person or persons for which no punishment is provided, shall be a misdemeanor accordingly; but not the said company from the forfeiture hereby conferred on it, or by law the same shall be construed

shall be construed as authorized to be a general Act relating to the carrying on during the present Act.

Bytown and Prescott shall by any means or obliquely obstruct or interrupt the same, or the carriages,

vessels, engines, or other works incidental or relative thereto, or connected therewith, such person shall, for every such offence, be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by imprisonment in the Provincial Penitentiary for a term not to exceed five years.

22. If any person or persons shall wilfully and maliciously, and to the prejudice of the said railway, authorized to be made by this Act, break, throw down, damage or destroy the same, or any part thereof, or any of the houses, warehouses, toll-houses, watch-houses, weighbeams, cranes, carriages, vessels, engines, inclined planes, machines or other works or devices incidental and relative thereto, or connected therewith, or do any other wilful hurt or mischief, or wilfully or maliciously obstruct or interrupt the free use of the said railway vessels or works, or shall obstruct, hinder or prevent the carrying on, completing, supporting and maintaining the said intended railway vessels or works, such person or persons shall be adjudged guilty of a misdemeanor, unless the offence committed shall, under some other Act or law, amount to a felony, in which case such person shall be adjudged guilty of a felony, and the court by and before whom such person or persons shall be tried and convicted, shall have power and authority to cause such person or persons to be punished in like manner as persons guilty of misdemeanors, or felons (as the case may be) are directed to be punished by the laws in force in this Province.

Penalty for
destroying
works &c.

51. Any contravention of this Act by the said company, or by any other party, for which no punishment or penalty is herein provided, shall be a misdemeanor, and shall be punishable accordingly, but such punishment shall not exempt the said company (if they be the offending party) from the forfeiture of this Act, and the privileges hereby conferred on them, if, by the provisions thereof, or by law, the same be forfeited by such contravention.

Penalty on
company for
contraven-
tion of this
Act.

No exception
on behalf of
this com-
pany.

Penalty for
obstructing
company.

Penalty for
destroying
works, &c.

54. Nothing herein contained shall be construed to except the railway, by this Act authorised to be made, from the provisions of any general Act relating to railways which may be passed during the present or any future session of parliament.

14 & 15 VIC. CHAP. 51.—(*The Railway Clauses Consolidation Act.*—20. 2ndly. All persons by any means, or in any manner or way whatever, obstructing or interrupting the free use of the railway, or the carriages, vessels, engines or other works incidental or relative thereto, or connected therewith, shall, for every such offence, be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in the common gaol of the district or county where the conviction shall take place, or in the Provincial Penitentiary for a term not to exceed five years.

3rdly. All persons wilfully and maliciously, and to the prejudice of the railway, breaking, throwing down, damaging or destroying the same, or any part thereof, or any of the buildings, stations, depots, wharves, vessels, fixtures, machinery or other works or devices incidental and relative thereto, or connected therewith, or doing any other wilful hurt or mischief, or wilfully or maliciously obstructing or interrupting the free use of the railway, vessels or works, or obstructing, hindering or preventing the carrying on, completing, supporting and maintaining the railway, vessels or works, shall be adjudged guilty of a misdemeanor, unless the offence committed shall, under some other Act or law, amount to a felony, in which case such person shall be adjudged guilty of a felony, and the court, by and before whom the person shall be tried and convicted, shall have power and authority to cause such person to be punished in like manner as persons guilty of misdemeanor or felony, (as the case may be) are directed to be punished by the laws in force in this Province.

5thly. All contraventions of this Act, or of the

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railway, or the car-
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special Act, by the company or by any other party Penalty on company for contravening this Act.
for which no punishment or penalty is herein pro-
vided, shall be a misdemeanor and shall be punisha-
ble accordingly, but such punishment shall not
exempt the company if they be the offending party
from the forfeiture by this Act and the special Act,
of the privileges conferred on them by the said Acts
if by the provisions thereof or by law the same be
forfeited by such contravention.

6thly. Enacts that copies of by-laws, rules and Copies of by-laws to be evidence.
orders regularly made, being "certified as correct by
the president or secretary, shall be deemed authentic,
and shall be received as evidence thereof in any
court without further proof."

21. 4thly. The baggage, freight, merchandize or Where bag-
gage cars to be placed.
lumber cars shall not be placed in rear of the passen-
ger cars, and if any such be so placed the officer or
agent directing or knowingly suffering such arrange-
ment and the conductor of the train shall severally be
deemed guilty of a misdemeanor and be punished
accordingly.

7thly. All persons in charge of a locomotive Penalty on engineers for intoxication.
engine, or acting as the conductor of a car or train
of cars, who shall be intoxicated on the railway shall
be deemed guilty of a misdemeanor.

22. 9thly. The offence of forging any debentures Penalty for forging debentures.
or a coupon of any debenture issued under the
authority of this Act, or of the special Act, or of
uttering any such debenture or coupon knowing the
same to be forged, or of being accessory before or
after the fact to any such offence, shall be deemed
felony, and be punished accordingly. (a)

16 Vic. CHAP. 99.—*The Great Western Railway Company.*—11. * * * All contraventions of this Penalty for contravention of this Act.
Act or of the Act incorporating the said Great

(a) NOTE.—The Railway Clause Consolidation Act, by
section 1 applies "to every railway which shall by any Act
which shall hereafter be passed, be authorized to be con-
structed, and this Act shall be incorporated with such Act."

Western Railroad Company, or any Act amending the same, by any party for which no punishment or penalty is herein provided, shall be a misdemeanor, and shall be punishable accordingly, but such punishment shall not exempt the company, if they be the offending party, from the forfeiture by this Act or other Acts applicable to them of the privileges conferred on them by the said Acts, if by the provisions thereof or by law the same be forfeited by such contravention.

Company to have power to expel passengers refusing to pay fare.

12. The said company shall have power and are hereby authorized to remove and put out of the cars by the conductor of the train and also the servants of the company, using no unnecessary force, at any usual stopping place or near any dwelling house as the conductor shall elect for stopping the train, all or any passenger or passengers refusing to pay his or their fare, and any person in charge of a locomotive engine or acting as the conductor of a car or train of cars who shall be intoxicated on the railway shall be deemed guilty of a misdemeanor.

16 VIC. CHAP. 169.—*An Act in addition to the General Railway Clauses Consolidation Act.*

Penalty for displacing rails, &c., whereby any person is injured.

1. If any person shall wilfully and maliciously displace or remove any railway switch or rail of any railroad, or shall break down, rip up, injure or destroy any railroad track or railroad bridge or fence of any railroad, or any portion thereof, or place any obstruction whatsoever on any such rail or railroad track or bridge with intent thereby to injure any person or property passing over or along such railroad, or to endanger human life, every such person so offending shall be guilty of misdemeanor, and shall be punished by imprisonment with hard labour in the common gaol of the territorial division in which such offence shall be committed or tried for any period not exceeding one year from conviction thereof, and if, in consequence of such act done with the intent aforesaid, any person so passing over and along such railroad

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shall actually suffer any bodily harm, or any property passing over and along such railroad shall be injured, such suffering or injury shall be an aggravation of the offence, and shall render such offence a felony, and shall subject the said offender to such punishment by imprisonment in the Provincial Penitentiary for not less than one year, nor more than two years as the circumstances of the case may in the opinion of the court, before which he shall be convicted, appear to be proportionate to the offence and the mischief occasioned by it.

2. If any person shall wilfully and maliciously displace or remove any railway switch or rail, of any railroad, or shall break down, rip up, injure or destroy any railroad track, or railroad bridge or fence of any railroad, or any portion thereof, or place any obstruction whatever on any such rail or railroad track or bridge, or shall do or cause to be done any act whatever whereby any engine, machine or structure, or any matter or thing appertaining thereto, shall be stopped obstructed, impaired, weakened, injured or destroyed, with intent thereby to injure any person or property passing over or along such railroad, and if, in consequence thereof, any person be killed, or his life be lost, such person so offending shall be deemed guilty of manslaughter, and, being found guilty, shall be punished by imprisonment in the Provincial Penitentiary for any period not more than ten nor less than four years.

Penalty for removing switches, rails with intent to injure any person or whereby any one is killed.

3. If any person shall wilfully and maliciously do or cause to be done any act whatever, whereby any building, fence, construction or work of any such railroad, or any engine, machine or structure of any such railroad, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, such person, so offending, shall be guilty of a misdemeanor, and punished by imprisonment with hard labour, not exceeding one year, in the common gaol of the terri-

Penalty for doing any act whereby any engine &c. is injured.

torial division in which such offence shall have been committed or tried.

10. The provisions of this Act shall, from the passing thereof, apply to every railway made or to be made in this Province.

REGISTRAR.

9 VIC. CHAP. 34.—21. If any register or his deputy shall neglect to perform his duty as required by this Act, or commit or suffer to be committed any undue or fraudulent practice in the execution thereof, and be thereof legally convicted, then such register shall forfeit his said office, and shall be liable to pay treble damages, with full costs of suit, to any person or persons that shall be injured thereby, to be recovered by action of debt, bill, plaint or information, in any of her Majesty's courts of record; and any deputy who shall remain in office during any vacancy occasioned by the death, resignation or forfeiture of the register, shall be for the same cause and in like manner liable.

Deputies.

RIOTS AND TUMULTS.

3 WILL. IV. CHAP. 3.—13. And whereas for the preventing and suppressing of riots and tumults, and for the more speedy and effectual punishing the offenders therein, an Act was passed in the parliament of Great Britain, in the first year of the reign of King George the First, intituled "An Act for preventing tumults and riotous assemblies, and for the more speedy and effectual punishing the rioters," whereby it is among other things enacted, "that if any persons to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, at any time after the last day of July, in the year of our Lord one thousand seven hundred and fifteen, and being required or commanded by any one or more justice

British statute Geo. 1. Chap. 5, commonly called "the Riot Act," recited.

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or justices of the peace, or by the sheriff of the coun-
ty, or his under-sheriff, or by the mayor, bailiff, or
bailiffs, or other head officer, or justice of the peace
of any city or town corporate, where such assembly
shall be, by proclamation, to be made in the King's
name, in the form in the said Act directed, to dis-
perse themselves, and peaceably to depart to their
habitations, or to their lawful business, shall, to the
number of twelve or more (notwithstanding such
proclamation made) unlawfully, riotously, and tu-
multuously, remain or continue together by the space
of one hour after such command or request made by
proclamation, that then such continuing together to
the number of twelve or more, after such command
or request made by proclamation, shall be adjudged
felony without benefit of clergy, and the offenders
therein shall be adjudged felons, and shall suffer
death as in case of felony, without benefit of clergy."

And it is in the said Act further enacted, that "the
order and form of the proclamation which shall be
made by the authority of the said Act shall be as
hereafter followeth, (that is to say;) that the justice
of the peace, or other person authorized by the said
Act to make the said proclamation, shall, among the
said rioters, or as near to them as he can safely come,
with a loud voice command, or cause to be com-
manded, silence to be, while proclamation is making;
and after that, shall openly and with a loud voice
make, or cause to be made, proclamation in these
words, or like in effect:—

"Our sovereign lord the King chargeth and com-
mandeth all persons being assembled immediately to
disperse themselves, and peaceably to depart to their
habitations or to their lawful business, upon the pains
contained in the Act made in the first year of King
George, for preventing tumults and riotous assem-
bly.—God save the King."

Proclamation
for rioters to
disperse.

"And every such justice and justices of the peace,
sheriff, under-sheriff, mayor, bailiff, and other head

officer, aforesaid, within the limits of their respective jurisdictions are by the said Act authorized, en-
erred, and required, on notice or knowledge of
such unlawful, riotous, and tumultuous assembly
resort to the place where such unlawful, riotous,
tumultuous assemblies shall be, of persons to
number of twelve or more, and there to make
cause to be made, proclamation in manner aforesaid.
And it is in the said Act further enacted, that
such persons so unlawfully, riotously, and tumultu-
ously assembled, or twelve or more of them, a
proclamation made in manner aforesaid, shall conti-
together and not disperse themselves within one h
that then it shall and may be lawful to and for ev
justice of the peace, sheriff, or under-sheriff of
county where such assemblies shall be, and also to
for every high and petty constable and other pe
officer within such county, and also to and for ev
mayor, justice of the peace, sheriff, bailiff, a
other head officer, high or petty constable, and o
peace officer, of any city or town corporate wh
such assembly shall be, and to and for such ot
person and persons as shall be commanded
be assisting unto any such justice of the pea
sheriff or under-sheriff, mayor, bailiff, or other h
officer aforesaid, (who are thereby authorized a
empowered to command all his Majesty's subjects
age and ability to be assisting to them therein)
seize and apprehend, and they are thereby requi
to seize and apprehend such persons so unlawfu
riotously, and tumultuously continuing togeth
after proclamation made, as aforesaid, and forthw
to carry the persons so apprehended before one
more of his Majesty's justices of the peace of
county or place where such persons shall be so app
hended, in order to their being proceeded against
such their offences according to law; and that if
persons so unlawfully, riotously, and tumultuou
assembled, or any of them, shall happen to be kill

the limits of their respective
 Act authorized, empow-
 ering any justice or knowledge of any
 tumultuous assembly, to
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 further enacted, that "if
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 and also to and for every
 ace, sheriff, bailiff, and
 petty constable, and other
 or town corporate where
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 or, bailiff, or other head
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 persons shall be so appre-
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 usly, and tumultuously
 shall happen to be killed,

maimed, or hurt, in the dispersing, seizing, or
 apprehending, or endeavouring to disperse, seize, or
 apprehend them, by reason of their resisting the per-
 sons so dispersing, seizing, or apprehending, or endea-
 vouring to disperse, seize, or apprehend them, that
 then every such justice of the peace, sheriff, under-
 sheriff, mayor, bailiff, head officer, high or petty constable
 or other peace officer, and all and singular persons
 being aiding and assisting to them, or any of them,
 shall be free, discharged and indemnified, as well
 against the King's Majesty, his heirs and successors,
 as against all and every other person and persons, of,
 for or concerning the killing, maiming or hurting of
 any such person or persons so unlawfully, riotously
 and tumultuously assembled, that shall happen to be
 so killed, maimed or hurt as aforesaid." And it is
 in the said Act further enacted, that "if any persons
 unlawfully, riotously and tumultuously assembled
 together, to the disturbance of the public peace, shall
 unlawfully, and with force, demolish or pull down,
 or begin to demolish or pull down, any church, cha-
 pel, or any building for religious worship, certified
 and registered according to the statute made in the
 first year of the reign of the late King William and
 Queen Mary, intituled 'An Act for exempting their
 Majesties' Protestant subjects dissenting from the
 Church of England from the penalties of certain
 laws;' or any dwelling house, barn, stable, or other
 out-house, that then every such demolishing or pul-
 ling down, or beginning to demolish or pull down,
 shall be adjudged felony, without benefit of clergy,
 and the offenders therein shall be adjudged felons,
 and shall suffer death as in case of felony without
 benefit of clergy." And it is in the said Act further
 enacted, that "if any person or persons do, or shall
 with force and arms, wilfully and knowingly op-
 pose, obstruct, or in any manner wilfully or know-
 ingly let, hinder or hurt any person or persons that
 shall begin to proclaim, or go to proclaim, according

to the proclamation thereby directed to be made, whereby such proclamation shall not be made, then every such opposing, obstructing, letting, hindering or hurting, such person or persons so beginning or going to make such proclamation as aforesaid shall be adjudged felony, without benefit of clergy, and the offenders therein shall be adjudged felons and shall suffer death as in case of felony, without benefit of clergy; and that also every such person or persons so being unlawfully, riotously and tumultuously assembled to the number of twelve as aforesaid or more, to whom proclamation should or ought to have been made, if the same had not been hindered as aforesaid, shall likewise, in case they, or any of them, to the number of twelve or more, shall continue together, and not disperse themselves within one hour after such let or hindrance so made, having knowledge of such let or hindrance so made, shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy." And it is in the said Act further enacted, that "no person or persons shall be prosecuted by virtue of the said Act, for any offence or offences committed contrary to the same, unless such prosecution be commenced within twelve months after the offence committed:" Be it enacted by and with the authority aforesaid, That nothing in this Act contained shall affect, or be construed to affect, or in any manner to repeal or vary any of the provisions in the said Act contained, but the same shall continue and remain as if this Act had not been passed: Provided nevertheless, and it is hereby enacted by the authority aforesaid, That the provisions in the fourth clause of the same Act shall apply and extend to all churches or chapels, or places for religious worship in this Province, notwithstanding the same, or any of them, shall not be certified or registered as provided in the said Act.

The provisions of
1 Geo. I.
Chap. 5
(Riot Act)
not to be repealed or
affected by
this Act.

Churches
and places
of worship
to be within
Riot Act,
though not
registered.

4 & 5 VIC. CHAP. 26.—6. If any persons riotously and tumultuously assembled together to the distur-

directed to be made, shall not be made, that obstructing, letting, hindering or persons so beginning a proclamation as aforesaid, without benefit of clergy, shall be adjudged felons, in case of felony, without benefit of clergy, and every such person or persons riotously and tumultuously beginning or committing the same shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. (a)

bance of the public peace, shall unlawfully, and with force, demolish, pull down or destroy, or begin to demolish, pull down or destroy any church, chapel or meeting house, for the exercise of any mode or form of religious worship, or any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn or granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. (a)

(a) "rioters have begun to demolish a house, but leave off of their own accord, and before the act of demolition is completed, this is evidence from which a jury might infer that they did not intend to demolish it; but if they were prevented from going on by the interference of the police, or any other force, that would afford evidence that they were compelled to desist from that which they had designed, and the jury might infer that they had begun to demolish within the statute.—*R. v. Howell*, 9 C. & P. 437. Destroying moveable shutters is not a beginning to demolish, as they are not part of the freehold.—*Ib.* The jury ought not to convict unless they believe the prisoner's intention was so to destroy the house as in fact to leave it no house at all; no injury, however extensive, short of the actual demolition of the very walls of the building, is within this section.—*R. v. Adams*, 1 C. & M. 299. If the house be so far destroyed as to be no longer a house, the fact that a chimney is left standing makes no difference. But if the rioters really believe that the house is the property of one of them, and act *bonâ fide* in the assertion of a supposed right, this is no felonious demolition.—*R. v. Langford*, 1 C. & M. 602; *R. v. Phillips*, 2 M. C. C. R. 252. If rioters destroy a house by fire, this is a felonious demolition, and they may be convicted under this section, and need not be indicted

Punishment
of rioters
destroying
churches &c.

ROADS, BRIDGES, TOLL-GATES, &c.

Injury to a
public
bridge.

4 & 5 VIC. CHAP. 26.—13. If any person shall unlawfully and maliciously pull down, or in any wise destroy any public bridge, or do any injury with intent and so as thereby to render such bridge or any part thereof dangerous or impassable, every such offender shall be guilty of felony, and, being convicted thereof, shall be imprisoned for any term not exceeding four years.

Destroying a
turnpike
gate, toll-
house, &c.

14. If any person shall unlawfully and maliciously throw down, level or otherwise destroy in whole or in part, any turnpike gate, or any wall, chain, rail, post, bar or other fence belonging to any turnpike gate, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any Act or Acts, ordinance or ordinances relating thereto, in force in this Province, or any house, building, or weighing engine erected for the better collection, ascertainment or security of any such toll, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be punished accordingly.

Penalty for
wilfully,
injuring
bridge, &c.

10 VIC. CHAP. 112.—(*The Niagara Falls Suspension Bridge Company.*)—8. If any person shall willingly do or cause to be done any act or acts whatever, whereby the said bridge, or anything appertaining thereto, shall be impaired or injured, the person or persons so offending shall forfeit and pay to the said corporation treble the damages sustained by means of such offence or injury, to be recovered in the name of the corporation, with costs of suit, by action, and shall be, moreover, guilty of a misdemeanor, and be punishable by fine or imprisonment, or both, by any court having cognizance of such offence: Provided, that nothing in this Act contained shall be construed to extend to take away the juris-

Proviso.

under sec. 2 or 3 of 4 & 5 Vic. ch. 26, qu. vide sup., title "Malicious injuries to property."

GATES, &c.

If any person shall
own, or in any wise
any injury with in-
such bridge or any
assable, every such
nd, being convicted
ny term not exceed-

ilfully and maliciously
destroy in whole or
ny wall, chain, rail,
ng to any turnpike
ent passengers pas-
directed to be paid
ordinances relating
or any house, build-
or the better collec-
any such toll, every
misdemeanor, and,
e punished accord-

Niagara Falls Sus-

If any person shall
ny act or acts what-
or anything apper-
or injured, the per-
forfeit and pay to
images sustained by
to be recovered in
h costs of suit, by
guilty of a misde-
ne or imprisonment,
cognizance of such
at this Act contained
ake away the juris-

s, qu. vide sup., title

diction given to justices of the peace, by an Act passed in the fourth and fifth years of her present Majesty, intituled, "*An Act for consolidating and amending the laws in this Province relative to Malicious Injuries to Property.*"

12 VIC. CHAP. 84.—(a) *An Act to authorize the formation of Joint Stock Companies for the construction of roads and other works in Upper Canada.*

22. If any person or persons shall in any way injure, cut, break down or destroy any part of any such road, bridge or other such work as aforesaid, or any toll gate or toll house, building or other erection in upon or near any such road or work, and belonging to or used for the convenience of any such company under the provisions of this Act, every such person so offending, and being lawfully convicted thereof, shall be deemed guilty of a misdemeanor, and shall be punished by fine and imprisonment.

Penalty on persons in-
juring roads
or other
works of any
company.

12 VIC. CHAP. 157.—(*The Markham and Elgin Mills Plank Road Company.*)—22. If any person

or persons shall cut, break down or destroy in any way any of the gates or toll houses to be erected by virtue of this Act, every such person so offending and, being lawfully convicted, shall be deemed guilty of a misdemeanor, and be punished by fine and imprisonment.

Penalty for
injuring
roads.

13 & 14 VIC. CHAP. 134.—(*The Vaughan Road Company.*)—15. If any person or persons shall cut, break down, or destroy in any way, &c.; (*verbatim*, as the section immediately preceding.)

14 & 15 VIC. CHAP. 172.—(*The Fort Erie and Buffalo Suspension Bridge and Tunnel Company.*)

—16. If any person shall wilfully do or cause to be done any act or acts whatsoever, whereby the said bridge or tunnel or anything appertaining thereto shall be impaired or injured, the said person or per-

Penalty for
injuring Fort
Erie and
Buffalo Sus-
pension
Bridge.

(a) NOTE.—This Act is repealed by 16 Vic. Chap. 190 except as to companies incorporated under it.

sons so offending shall forfeit and pay to the said corporation treble the damages sustained by means of such offence or injury to be recovered in the name of the corporation with costs of suit by action, and shall be moreover guilty of a misdemeanor, and be punishable by fine or imprisonment, or both, by any court having cognizance of such offence; Provided that nothing in this Act contained shall be construed to extend to take away the jurisdiction given to justices of the peace by an Act (4 & 5 Vic. Chap. 26.)

Proviso.

Penalty for
injuring
wharves, &c.

16 VIC. CHAP. 141.—(*The Pickering Harbour and Road Joint Stock Company*).—16. If any person or persons shall in any way injure, cut, break down or destroy any part of the said road, piers, wharves, storehouses or other buildings, erections or improvements made or to be made by the said company in upon or near the said road or harbour, and belonging to or used for the convenience of the said company under the provisions of this Act, every such person so offending, and, being lawfully convicted thereof, shall be deemed guilty of a misdemeanor, and shall be punished by fine and imprisonment.

Penalty for
injuring toll-
gates, &c.

16 VIC. CHAP. 190.—(*Consolidation of Acts for the formation of Joint Stock Companies for the construction of roads and other works in Upper Canada*).—47. If any person shall wilfully and maliciously burn, break down, injure, cut, remove, or destroy in whole or in part any toll house, turnpike gate, wall, lock, chain or other fastening, rail, post, bar or other fence belonging to any toll gate or toll house set up, erected or used for the purpose of preventing the passing by such gate of persons, carriages, or other property liable to the payment of toll at such gate, or any house, building, engine or weighing machine erected or used for the better ascertainment or security of any such toll, every such offender shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished either by imprisonment in the Provincial Penitentiary for a term not exceeding

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ent, or both, by any
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diction given to jus-
& 5 Vic. Chap. 26.)

Pickering Harbour
(.)—16. If any per-
injure, cut, break
the said road, piers,
buildings, erections or
de by the said com-
ad or harbour, and
venience of the said
this Act, every such
lawfully convicted
of a misdemeanor,
and imprisonment.

Validation of Acts for
Companies for the
er works in Upper
shall wilfully and
injure, cut, remove,
ny toll house, turn-
ther fastening, rail,
g to any toll gate or
d for the purpose of
gate of persons, car-
o the payment of toll
ing, engine or weigh-
the better ascertain-
l, every such offender
r, and, on conviction
r by imprisonment in
a term not exceeding

three years, or by fine and imprisonment in the com-
mon gaol for any term not exceeding two years, at
the discretion of the court before whom the offender
shall be convicted.

Mem.—By section 59, of this Act, this 47th sec-
tion (among others) shall extend to and regulate all
turnpike road companies in Upper Canada, whether
under 12 Vic. Chap. 84; 14 & 15 Vic. Chap. 122;
14 & 15 Vic. Chap. 57; 13 & 14 Vic. Chap. 72, or
12 Vic. Chap. 5; and also to road companies having
private Acts of incorporation.

16 VIC. CHAP. 191.—(*River Navigation Im-
provement Act.*)—28. If any person shall wilfully
and maliciously burn, break down, injure, cut,
remove or destroy in whole or in part any dam, pier,
slide, boom or other work of any such company, or
any chain or other fastening attached thereto, or
wilfully and maliciously impede or block up any
channel or passage intended for the transmission of
timber, every such offender shall be guilty of a mis-
demeanor and on conviction thereof shall be punished
by fine and imprisonment in the common gaol for
any term not exceeding one year, at the discretion of
the court before whom the offender shall be convicted.

Penalty for
injuring
piers, slides,
booms, &c.

SPECIAL CONSTABLES.

10 & 11 VIC. CHAP. 12.—9. If any person shall
assault or resist any constable appointed by virtue of
this Act while in the execution of his office, or shall
promote or encourage any other person so to do,
every such person shall, on conviction thereof be-
fore two justices of the peace, forfeit and pay for
such offence any sum not exceeding ten pounds, or
shall be liable to such other punishment upon con-
viction on any indictment or information for such
offence, as any persons are by law liable to for
assaulting any constable in the execution of the du-
ties of his office.

Punishment
of persons
assaulting
special con-
stables or
encouraging
others to do
so.

SUBSEQUENT FELONY.

Punishment
for a subse-
quent of-
fence.

4 & 5 VIC. CHAP. 24.—30. And whereas it is expedient to provide for the more exemplary punishment of offenders who commit felony after a previous conviction for felony, whether such conviction shall have taken place before or after the commencement of this Act; Be it therefore enacted, that if any person shall be convicted of any felony not punishable with death, committed after a previous conviction for felony, such person shall on such subsequent conviction be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years; and in any indictment for any such felony committed after a previous conviction for felony, it shall be sufficient to state that the offender was at a certain time and place convicted of felony, without otherwise describing the previous felony; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk or officer (for which certificate a fee of five shillings and no more shall be demanded or taken,) shall upon proof of the identity of the person of the offender be sufficient evidence of the first conviction, (a) without proof of the signature or official character of the person appearing to have signed the same; and if any such clerk, officer, or deputy shall utter any false certificate of any indictment and conviction for a

(a) A certificate of a previous conviction must state that judgment was given, though it is sufficient to allege in the indictment that the prisoner was convicted of felony, without stating the judgment.—R. v. Ackroyd, 1 C. & K. 168.

Y.
 and whereas it is
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 after a previous
 conviction shall
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 conviction for a

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 d of felony, with-
 t, 1 C. & K. 158.

previous felony, or of any sentence or order of transportation or banishment, or if any person, other than such clerk, officer, or deputy, shall sign any such certificate as such clerk, officer or deputy,(a) or shall utter any such certificate with a false or counterfeit signature thereto, every such offender shall be guilty of felony, and being lawfully convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. (b)

SUMMARY PROCEEDINGS.

This title belongs more peculiarly to a work designed for the exclusive use and guidance of justices of the peace; and besides that, it is beyond the design of the present compilation, its great bulk would create an almost insurmountable objection. Besides the clauses contained in the Acts of 4 & 5 Vic. chapters 25, 26 and 27, there is the long statute of 16 Vic. chap. 178, with the still longer schedule of forms

(a) Vide 10 & 11 Vic. c. 9, s. 9, title "Forgery," page 376.

(b) The proper course under this section is, when a prisoner is charged with felony on an indictment containing also count charging a previous conviction, to arraign him on the whole charge. After the jury are called, and before they are sworn, is the only time when the prisoner has the right of challenge. The count stating the previous conviction is not to be stated to the jury when the prisoner is given in charge to them, but is to be reserved till they have found the prisoner guilty on the principal charge. Then they are to inquire whether he has been previously convicted of felony or not, but they are not to be re-sworn, and there can be no challenge then.—R. v. Key, 15 Jur. 1065; R. v. Shuttleworth, 15 Jur. 1066; 1 Temp. & M. 623, 626, S. C. Any number of previous convictions may be alleged in the indictment, and if necessary proved.—R. v. Clark, 17 Jur. 582.

attached thereto, and, in addition to these, there are few of the Acts which give jurisdiction to courts over criminal matters, which do not also authorise summary proceedings by justices of the peace, while there are also very many Acts giving this latter authority, which do not extend at all to courts of criminal jurisdiction. For these reasons, the Acts which would range under this title have been omitted.

SURVEYS AND SURVEYORS.

12 VIC. CHAP. 35.—(*An Act to repeal certain Acts therein mentioned, and to make better provision respecting the admission of Land Surveyors, and the Survey of Lands in this Province.*)—14. From and

Punishment
of persons
molesting
surveyors on
duty.

after the passing of this Act, if any person or persons shall in any part of this Province, interrupt, molest, or hinder any land surveyor, while in the discharge of his duty as a surveyor, such person or persons shall be deemed to have been guilty of a misdemeanor, and, being thereof lawfully convicted in any court of competent jurisdiction, may be punished either by fine or imprisonment, or both, in the discretion of such court, such imprisonment being for a period not exceeding two months, and such fine not exceeding five pounds, without any prejudice to any civil remedy which such surveyor or any other party may have against such offender or offenders in damages by reason of such offence; and any land surveyor, when engaged in the performance of the duties of his profession, shall be and he is hereby authorised and empowered to pass over, measure along and ascertain the bearings of any township line, concession or range line, or other governing line or side line, and for such purposes to pass over the lands of any person whomsoever, doing no actual damage to the property of such person, any law to the contrary notwithstanding.

Punishment
of persons
removing or

29. If any person or persons shall knowingly and wilfully pull down, deface, alter or remove any such

to these, there are
 action to courts over
 also authorise sum-
 e peace, while there
 his latter authority,
 ts of criminal juris-
 Acts which would
 mitted.

DESTRUCTIVE.

*to repeal certain
 like better provision
 Surveyors, and the
 e.)—14. From and
 y person or persons
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 misdemeanor, and,
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 etion of such court,
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 eeding five pounds,
 remedy which such
 have against such
 by reason of such
 when engaged in
 his profession, shall
 and empowered to
 ertain the bearings
 range line, or other
 r such purposes to
 whomsoever, doing
 f such person, any
 g.
 all knowingly and
 r remove any such*

monument so erected as aforesaid, in Upper Canada, ^{defacing land} such person or persons shall be adjudged guilty of ^{marks in} felony, and if any person or persons shall knowingly ^{U. G. or in} and wilfully deface, alter or remove any other land- ^{L. C.} mark, post or monument placed by any land surveyor to mark any limit, boundary or angle of any town- ship, concession, range, lot or parcel of land in Upper or in Lower Canada, such person or persons shall be deemed guilty of a misdemeanor, and, being convicted thereof before any competent court, shall be liable to be punished by fine or imprisonment, or both, at the discretion of such court, such fine not to exceed twenty-five pounds, and such imprisonment not to be for a longer period than three months, without any prejudice to any civil remedy which any party may have against such offender or offenders in damages by reason of such offence: Provided, that nothing herein contained shall extend to prevent land survey- ors in their operations from taking up posts or other boundary marks when necessary, after which they shall carefully replace them as they were before.

TELEGRAPHS.

10 & 11 VIC. CHAP. 82.—(*The British North American Telegraph Association.*)—14. If any per- ^{Penalty on} son or persons shall wilfully and maliciously, and to ^{persons} the prejudice of the said telegraph authorised to be ^{breaking} made by this Act, break, throw down, damage or ^{down or} destroy the same, or any part thereof, or any of the ^{damaging} station houses, watch-houses, observatories, posts, ^{the telegraph} poles, wires, or other apparatus, works or devices ^{or any works} incidental and relative thereto, or connected there- ^{of the com-} with, or do any other wilful hurt or mischief, or shall ^{pany.]} wilfully and maliciously obstruct or interrupt the free use of the said telegraph, or any of the appurtenances thereof, or obstruct, hinder, or prevent the carrying on, completing, supporting and maintaining, using or working of the said intended telegraph, such person

or persons shall be adjudged guilty of felony, and the court by and before whom such person or persons shall be tried and convicted shall have power and authority to cause such person or persons to be punished in like manner as felons are directed to be punished by the laws in force in this Province, or in mitigation thereof to award such sentence as the law directs in cases of simple larceny as to such court shall seem fitting.

Penalty for
injuring
telegraph or
works.

16 VIC. CHAP. 10.—(*Incorporation of Electric Telegraph Companies.*)—6. Any person who shall wilfully and maliciously injure, molest, or destroy any of the said lines, posts, piers, or abutments, or the material or property belonging thereto, or in any way disturb the working of the said lines of telegraph, shall on conviction thereof be deemed guilty of misdemeanour, and be punished by a fine not exceeding ten pounds, or imprisonment not exceeding one month, or both, at the discretion of the court before whom the conviction shall be had.

Penalty on
operators
divulging
secrets.

11. Any operator of any telegraph line, or person employed by any telegraph company, divulging the contents of a private despatch, shall be deemed guilty of a misdemeanour, and on conviction shall be liable to a fine not exceeding twenty-five pounds, or to imprisonment for a period not exceeding three months, or both, in the discretion of the court before which the conviction shall be had.

TRANSPORTATION OF CONVICTS.

Transporta-
tion substi-
tuted for
banishment.

7 WILL. IV. CHAP. 7.—1. Notwithstanding anything contained in a certain Act of the parliament of this Province, passed in the 40th year of the reign of his late Majesty King George the Third, entitled "*An Act for the further introduction of the criminal law of England in this Province, and for the more effectual punishment of certain offenders,*" it shall be lawful after the passing of this Act, to sentence

guilty of felony, and
 any person or persons
 shall have power and
 authority to punish
 persons to be pun-
 ished directed to be
 in this Province, or in
 sentence as the law
 as to such court

of *Electric*
 person who shall
 molest, or destroy
 or abutments, or
 thereto, or in any
 said lines of tele-
 graph deemed guilty of
 a fine not exceed-
 ing not exceeding one
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ph line, or person
 any, divulging the
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 pounds, or to im-
 ing three months,
 court before which

CONVICTS.

withstanding any
 the parliament of
 year of the reign
 e Third, entitled
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 and for the more
 ders," it shall be
 act, to sentence

offenders to transportation, not only in such cases
 where by any law now in force, or hereafter to be
 passed, it is expressly provided that such offenders
 may be transported, but also in every case in which
 by the provisions of the said Act passed in the 40th
 year of the reign of his late Majesty King George
 the Third, the person convicted would be liable to
 be banished from this Province: *Provided always,* ^{Proviso.}
nevertheless, that no offender shall, under the author-
 ity of this Act, be sentenced to be transported,
 except by such court, and in such cases, and for
 such term of time, as the same offender might,
 according to the said Act, be banished from this
 Province; and that nothing in this Act contained
 shall extend, or be construed to take away or affect
 the power of sentencing offenders to be banished
 according to the Act hereinbefore recited, when it
 shall appear proper to pass such sentence.

2. All and singular the provisions now in force
 which are contained in the said Act of the Parlia-
 ment of this Province, passed in the 40th year of
 the reign of his late Majesty King George the Third,
 respecting persons returning to this Province before
 the expiration of the period for which they have
 been banished by sentence of a court, or have con-
 sented to be banished according to the terms of any
 conditional pardon granted to a convict sentenced to
 suffer death, shall equally extend to and be in force
 with respect to any person returning from trans-
 portation after this Act, whether such person shall
 have been sentenced to be transported, or having
 been capitally convicted, shall have been pardoned
 on condition of being transported. <sup>Punishment
for return-
ing from
transporta-
tion.</sup>

3. The sentence in case of transportation shall be,
 that the offender shall be transported for a time to
 be mentioned in such sentence, or for life, where
 that may be lawful, and shall in the opinion of the
 court passing such sentence appear proper, to such
 place as the Governor, Lieutenant Governor, or per-
 son. <sup>Form of sen-
tence of
transporta-
tion.</sup>

son administering the government of this Province, by and with the advice of the Executive Council thereof shall, appoint.

Place of transportation to be determined by Governor &c. in council.

4. It shall and may be lawful for the Governor, Lieutenant Governor, or person administering the government of this Province, by and with the advice of the Executive Council thereof, to determine, upon reference to his Majesty's Government in England, to what foreign possession of his Majesty, convicts shall be transported from this Province, under the provisions of this Act.

Judge's warrant.

5. An instrument under the sign manual of the Governor, Lieutenant Governor, or person administering the government of this Province, and directed to the judges of the Court of King's Bench, declaring to what colony or place it has been determined to transport any convict, shall be sufficient authority for the judge who passed sentence on such convict or in his absence, for any other judge of the said court, to make his warrant, authorizing any person or persons to carry and secure such convict in and through this Province, towards the seaport or place from whence he or she is to be transported; and if any person or persons shall rescue such convicts, or any of them, or assist them, or any of them in making their escape from such person or persons as shall have them in their custody, as aforesaid, such offence shall be punishable in the same manner as if such convict had, at the time it was committed, been confined in a gaol or prison, in the custody of the sheriff or gaoler, after sentence for the crime of which he shall have been convicted.

Rescue.

Imprisonment to be reckoned as part of the term of transportation.

6. The time during which any offender shall have continued in gaol under sentence of transportation, shall be taken and reckoned in part discharge or satisfaction of the term of his transportation.

Provision in case sentence of transpor-

8. If by reason of any difficulty occurring which may prevent the transportation or reception of any convict in any colony or possession of his Majesty,

of this Province,
Executive Council

for the Governor,
administering the
and with the advice
of, to determine,
Government in Eng-
his Majesty, con-
Province, under

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offender shall have
of transportation,
discharge or sat-
tation.

occurring which
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the sentence which shall have been passed on any such convict cannot be carried into effect, such convict may be detained in prison, for a period not longer than that for which he shall have been sentenced to be transported, unless it shall appear expedient to pardon such convict, in which case it may be made a condition of such pardon, that the convict shall banish himself from this Province, for a period not exceeding the residue of the time for which he was to have been transported.

tation can-
not be
carried into
effect.

4 & 5 VIC. CHAP. 24.—25. If any person sentenced or ordered, or hereafter to be sentenced or ordered to be transported, or who shall have agreed or shall agree to transport or banish himself or herself, on certain conditions, either for life or for any number of years, shall be afterwards at large within any part of this Province, contrary to such sentence, order or agreement, without some lawful cause, before the expiration of his or her term of transportation or banishment, every such offender shall be guilty of felony, and shall be liable to be transported beyond the seas for his or her natural life, and previously to transportation shall be imprisoned for any term not exceeding four years; and every such offender may be tried either in the district, county or place where such offender shall be found at large, or in the district, county or place in or at which such sentence, or order of transportation, or banishment was passed or made.

Persons
returning
from trans-
portation
may be tried
where found
&c.

26. In any indictment or information against any offender for being at large in this Province contrary to the provisions of this Act, or of any other Act hereafter to be in force in this Province, it shall be sufficient to allege the sentence or order of transportation or banishment of such offender, without alleging any indictment, information, trial, conviction, judgment or other proceeding, or any pardon or intention of mercy, or signification thereof, of or against or in any manner relating to such offender.

Allegation of
sentence &c.
of transpor-
tation suffi-
cient with-
out reference
to indict-
ment.

27. The clerk of the court or other officer having

Certificate of
the sentence
by the clerk
of the court
sufficient
evidence, &c.

the custody of the records of the court where any such sentence or order of transportation or banishment shall have been passed or made, or his deputy, shall, at the request of any person on behalf of her Majesty, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of any indictment, information and conviction of such offender, and of the sentence or order for his or her transportation or banishment, (not taking for the same more than the sum of five shillings) which certificate shall be sufficient evidence of the conviction and sentence or order for the transportation or banishment of such offender; and every such certificate shall be received in evidence upon proof of the signature of the person signing the same.

Imprison-
ment in the
penitentiary
substituted
for transpor-
tation.

6 VIC. CHAP. 5.—4. For each and every offence for which by any of the said Acts, or by any other Act or law, the offender might, if this Act had not been passed, have been punished by transportation beyond seas, such offender may, if convicted after the passing of this Act, be punished by imprisonment in the Provincial Penitentiary for any term for which he might have been transported beyond seas if this Act had not been passed, or by imprisonment for life, if without this Act he might have been punished by transportation for life.

TREASON.

What
offences shall
be capital.

High trea-
son.

3. WILL. IV. CHAP. 4.—1. If a person do compass or imagine the death of our lord the King, or if a person do levy war against our lord the King, in this Province, or be adherent to the King's enemies in this Province, giving to them aid and comfort, in this Province or elsewhere, and thereof be provably attainted of open deed by people of his condition, such person so attainted shall be deemed guilty of treason, and shall suffer death.

19. Whereas in certain cases of high treason, as

court where any
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le, or his deputy,
on behalf of her
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any indictment,
offender, and of
transportation or
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sentence or order
of such offender;
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his Act had not
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person do com-
the King, or if
l the King, in
King's enemies
and comfort, in
of be provably
his condition,
emed guilty of
high treason, as

the law now stands, the sentence or judgment re-
quired by law to be pronounced or awarded against
any persons convicted or adjudged guilty of the said
crime in such cases is, that they should be drawn
on a hurdle to the place of execution, and there be
hanged by the neck, but not until they are dead, but
that they should be taken down again, and that when
they are yet alive their bowels should be taken out,
and burnt before their faces; and that afterwards
their heads should be severed from their bodies, and
their bodies divided into four quarters, and their
heads and quarters to be at the King's disposal: And
whereas it is expedient in the said cases of high
treason to alter the sentence or judgment now
required by law: Be it therefore enacted, That in all
cases of high treason in which, as the law now stands,
the sentence or judgment ordained by law is as afore-
said, the sentence or judgment to be pronounced or
awarded from and after the passing of this Act against
any person convicted or adjudged guilty shall be,
that such person shall be drawn on a hurdle to the
place of execution and be there hanged by the neck
until such person be dead; and that afterwards the
body of such person shall be dissected and anatomi-
zied.

Sentence in
certain cases
of high trea-
son miti-
gated.

UNLAWFUL TRAINING TO ARMS.

1 VIC. CHAP. 11.—1. All meetings and assemblies
of persons for the purpose of training or drilling
themselves, or of being trained and drilled to the
use of arms, or for the purpose of practising military
exercises, movements or evolutions, without any
lawful authority for so doing, shall be and the same
are hereby prohibited, as dangerous to the peace and
security of her Majesty's liege subjects, and of this
Province; and every person who shall be present or
attend any such meeting or assembling, for the pur-
pose of training and drilling any other person or

persons to the use of arms, or to the practice of military exercise, movement or evolution, or who shall train or drill any other person or persons to the use of arms, or to the practice of military exercise, movement or evolution, or who shall aid or assist therein, being legally convicted thereof, shall be liable to be confined in the public Penitentiary of this Province, for any term not exceeding two years, or to be punished by fine and imprisonment in any of the common gaols in this Province, for a period not exceeding two years, at the discretion of the court in which such conviction shall be had; and every person who shall attend or be present at any such meeting or assembly, for the purpose of being, or who shall at any such meeting or assembly be trained or drilled to the use of arms, or the practice of military exercise, movements, or evolutions, being legally convicted thereof, shall be liable to be punished by fine and imprisonment not exceeding two years, at the discretion of the court in which such conviction shall be had.

2. It shall be lawful for any justice of the peace, or for any constable or peace officer, or for any person acting in their aid or assistance, to disperse any such unlawful meeting or assembly as aforesaid, and to arrest and detain any person present at, or aiding, assisting or abetting, any such assembly or meeting as aforesaid, and it shall be lawful for the justice of the peace who shall arrest any such person, or before whom any person so arrested shall be brought, to commit such person to trial for such offence under the provisions of this Act, unless such person can and shall give bail for his appearance at the next assizes, to answer to any indictment which may be preferred against him, for any such offence against this Act.

3. Nothing in this Act contained shall extend to prevent any prosecution by indictment or otherwise, for any thing that shall be an offence within the intent and meaning of this Act, and which might have been

to the practice of
 revolution, or who
 son or persons to
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 convicted there-
 ed in the public
 or any term not
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 non gaols in this
 ing two years, at
 such conviction
 shall attend or
 assembly, for the
 any such meeting
 to the use of arms,
 e, movements, or
 thereof, shall be
 imprisonment not
 on of the court in

so prosecuted if this Act had not been made, unless the offender shall have been prosecuted for such offence under this Act, and convicted or acquitted of such offence.

7. All justices of the peace in and for any district in this Province, shall have concurrent jurisdiction, as justices of the peace, with the justices of any other district, in all cases, as to the carrying into execution the provisions of this Act, and as to all matters and things relating to the preservation of the public peace, as fully and effectually as if each of such justices was in the commission of the peace for each of such districts.

10. No person shall be prosecuted for any offence done or committed contrary to the provisions of this act, unless such prosecution be commenced within six calendar months after the offence committed.

Limitation of
 prosecution
 under this
 Act.

WAREHOUSEMEN, FACTORS, AGENTS, &c.

ice of the peace,
 or for any person
 disperse any such
 aforesaid, and to
 ent at, or aiding,
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 for the justice of
 person, or before
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 shall extend to pre-
 or otherwise, for
 within the intent
 might have been

4 & 5 VIC. CHAP. 25.—43. If any factor or agent entrusted for the purpose of sale with any goods or merchandise, or entrusted with any bill of lading, warehouse keeper's or wharfinger's certificate or warrant or order for delivery of goods or merchandise, shall for his own benefit and in violation of good faith, deposit or pledge any such goods or merchandise, or any of the said documents as a security for any money, or negotiable instrument borrowed or received by such factor or agent, at or before the time of making such deposit or pledge, or intended to be thereafter borrowed or received, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or imprisoned in any other prison or place of confinement, for any term not exceeding two years, or to suffer such other punishment by fine

Factors
 pledging for
 their own
 use any
 goods, or
 documents
 relating to
 goods, en-
 trusted to
 them for the
 purpose of
 sale, guilty
 of a misde-
 meanor.

Provided.

or imprisonment, or by both, as the court shall award, but no such factor or agent shall be liable to any prosecution for depositing or pledging any such goods or merchandise, or any of the said documents, in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such deposit or pledge was justly due and owing to such factor or agent from his principal, together with the amount of any bill or bills of exchange drawn by or on account of such principal, and accepted by such factor or agent.

Contracts for the sale of goods made with agents entrusted with the possession thereof to be valid, although the purchaser may know the seller to be only an agent.

10 & 11 VIC. CHAP. 10.—(*An Act for the better protection of Merchants and others who may hereafter receive Assignments and enter into Contracts and Agreements in relation to Goods and Merchandise entrusted to Agents.*)—1. It shall and may be lawful for any person to contract with any agent who shall thereafter be entrusted with the possession of any goods or merchandise or to whom the same may be consigned, for the purchase of any such goods or merchandise, and to receive the same of and pay for the same to such agent, and such contract and payment shall be binding upon and good against the owner of such goods and merchandise, notwithstanding such person shall have notice that the person making and entering into such contract or on whose behalf such contract is made or entered into is only an agent.

Agents to be deemed the owners of goods entrusted to them, for the purpose mentioned in section one, so as to entitle a consignee thereof to a lien for moneys,

2. Any such agent who shall be entrusted with the possession of goods and merchandise, or of the documents of title to goods and merchandise shall be deemed and taken to be owner of such goods and merchandise, and documents for the purposes of such sale or contract of sale as in the first clause mentioned; and also so as to entitle the consignee of such goods and merchandise to a lien thereon in respect of any money or negotiable security advanced or given by such consignee to and for the use of such agent;

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ble to any prose-
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of money than
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or in respect of any money or negotiable security received by him to the use of such consignee in the like manner to all intents and purposes, as if such person was the true owner of such goods and merchandise, and so far as to give validity to any contract or agreement by way of pledge (*gage*), lien or security *bonâ fide* made by any person with such agent so entrusted as aforesaid, as well for any original loan, advance or payment made upon the security of such goods and merchandise or documents, as also for any further or continuing advance in respect thereof, and such contract or agreement shall be binding upon and good against the owner of such goods and merchandise, and all other persons interested therein, notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made is only an agent.

7. If any agent entrusted as aforesaid shall, contrary to, or without the authority of his principal in that behalf, for his own benefit, and in violation of good faith, make any consignment, deposit, transfer or delivery of any goods and merchandise or documents of title, so entrusted to him as aforesaid, as and by way of a pledge (*gage*), lien and security, or shall, contrary to or without such authority, for his own benefit, and in violation of good faith, accept any advance on the faith of any contract or agreement to consign, deposit, transfer or deliver such goods and merchandise, or documents of title as aforesaid, every such agent shall be deemed guilty of a misdemeanor, and, being convicted thereof, shall be sentenced to suffer such punishment by fine or imprisonment in the common gaol for any term not exceeding two years, or by both, as the court having jurisdiction in such cases shall award; and every clerk or other person who shall knowingly and wilfully act and assist in making any such consignment, deposit, transfer or delivery, or in accepting or procuring such advance as aforesaid, shall be deemed guilty of a mis-

do. advanced to the agent: and also so as to make valid contracts of pledge.

Contracts of pledge. Notice of ownership not to affect such contracts.

Agent pledging goods, &c., for his own benefit in bad faith and contrary to instructions, to be guilty of a misdemeanor.

Punishment for such offence.

The like of any clerk aiding or abetting in such offence.

Proviso:
Agent not
liable to pro-
secution for
pledging
goods to an
amount not
exceeding
that due
him.

Proviso.

Persons giv-
ing false re-
ceipts for
goods, or
making use
of such false
receipts, to
be guilty of
a misde-
meanor.

demeanor, and, being convicted thereof, shall be liable, at the discretion of such court, to any of the punishments which such court shall award as hereinbefore last mentioned: Provided, nevertheless, that no such agent shall be liable to any prosecution for consigning, depositing, transferring or delivering any such goods and merchandise, or documents of title, in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such consignment, deposit, transfer or delivery was justly due and owing to such agent from his principal, together with the amount of any bills of exchange drawn by or on account of such principal, and accepted by such agent: Provided also, that the conviction of any such agent so convicted as aforesaid, shall not be received in evidence in any action at law or suit in equity against him; and no agent entrusted as aforesaid shall be liable to be convicted by any evidence whatsoever in respect of any act done by him, if he shall at any time previously to his being indicted for such offence have disclosed such act on oath, in consequence of any compulsory process of any court of law, equity or admiralty in any action, suit or proceeding which shall have been bonâ fide instituted by any party aggrieved, or if he shall have disclosed the same in any examination or deposition before any commissioner of bankrupts.

12 VIC. CHAP. 12.—1. If the keeper of any warehouse, or any forwarder, common carrier, agent, clerk or other person employed in or about any warehouse, or if any other factor or agent or any clerk or other person employed in or about the business of such factor or agent, shall knowingly and wilfully give to any person a writing purporting to be a receipt for or an acknowledgment of any goods or other property having been received in his warehouse, or in the warehouse in or about which he shall be employed, or in any other manner received by him,

proof, shall be liable, any of the punishment as hereinbefore provided, unless, that no such action for consigning, or any such goods of title, in case the person is for or subject to any such money than the value of such consignment, and is justly due and owing together with the interest thereon drawn by or on behalf of the agent accepted by such agent: and if of any such agent the money is not received in full, or is not received in equity against the person aforesaid shall be liable to the extent of the balance whatsoever in his hands if he shall at any time be convicted for such offence, in consequence of which a judgment of law, equity or proceeding which is made by any party, shall be set aside, and the same in full be paid before any commis-

the keeper of any common carrier, employed in or about the business of the carrier or agent or any person or about the business shall knowingly and wilfully acting purporting to be the owner or agent of any goods received in his warehouse or about which he shall be received by him,

or by the person in or about whose business he shall be employed before the goods, or other property named in such receipt, or acknowledgment shall have been actually delivered to him as aforesaid, with intent to mislead, deceive, injure or defraud any person or persons whomsoever, although such person or persons may be then unknown, or if any person shall knowingly and wilfully accept or transmit or use any such false receipt or acknowledgment the person giving and the person accepting such receipt or acknowledgment shall severally be deemed guilty of a misdemeanor, and upon conviction thereof, shall be liable in the discretion of the court to be imprisoned in the Provincial Penitentiary and kept at hard labour for any period of time not exceeding three years, nor less than one year.

Punishment.

2. If any owner of merchandise or other person in whose name merchandise shall be shipped, or delivered to the keeper of any warehouse, or other factor or agent, or carrier, to be shipped or carried shall after the advancement to him of any money, or the giving to him of any negotiable security by the consignee of such merchandise for his own benefit and in violation of good faith, and without the consent of such consignee being therefor first had and obtained, make any disposition of such merchandise different from and inconsistent with the agreement in that behalf between such owner, or other person aforesaid, and such consignee at the time of or before such money being so advanced or such negotiable security being so given with the intent to deceive, defraud or injure such consignee, such owner or other person aforesaid and each and every other person knowing and wilfully acting and assisting in making such disposition for the purpose of deceiving, defrauding or injuring such consignee, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be liable to be, in the discretion of the court before whom the conviction shall take place, im-

Persons fraudulently disposing of goods after having received advances upon them, to be guilty of a misdemeanor.

Punishment. soned in the Provincial Penitentiary and kept at hard labour for any period of time not more than three years, nor less than one year: Provided however, that no person shall be subject to prosecution under this section who shall before making such disposition as aforesaid of such merchandise pay or tender to the consignee the full amount of any advance made thereon.

Proviso as to partners not conniving.

Interpretation clause.

3. All words in this Act importing the singular number only shall be construed as including the plural number also, unless there be something in the context inconsistent with such construction, and if any offence against this Act be committed by the doing of any thing in the name of any firm, company or copartnership of persons, the person by whom such thing shall be actually done, or who shall have connived at the doing thereof shall be deemed guilty of such offence, and not any other person.

WITNESSES.

9 VIC. CHAP. 35.—If any witness or witnesses in any criminal case cognizable in the courts of Queen's Bench, or before any justices of assize, or commissioners of Oyer and Terminer or Gaol Delivery in any part of this Province, shall reside in any part of this Province without the jurisdiction of that court of Queen's Bench, or of the justices of assize, or commissioners of Oyer and Terminer or Gaol Delivery, before which or whom such criminal case is or shall be cognizable, it shall be lawful for the court of Queen's Bench, or justices of assize, or commissioners of Oyer and Terminer or Gaol Delivery, before which or whom such criminal case shall be cognizable, to issue a writ or writs of subpœna, directed to such witness or witnesses in like manner as if such witness or witnesses were resident within the jurisdiction of such court of Queen's Bench, justices of assize, or commissioners of Oyer and Terminer or Gaol Delivery, and in case such witness or witnesses

Witness may be summoned from any part of the Province to attend certain criminal courts who may enforce their attendance.

centiary and kept at time not more than year: Provided how- subject to prosecution fore making such dis- merchandise pay or full amount of any

nporting the singular ed as including the e be something in the construction, and if e committed by the of any firm, company he person by whom e, or who shall have shall be deemed guilty er person.

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witness or witnesses in the courts of Queen's of assize, or commis- Gaol Delivery in any de in any part of this ion of that court of es of assize, or com- er or Gaol Delivery, ninal case is or shall ful for the court of ize, or commissioners Delivery, before which shall be cognizable, to a, directed to such nner as if such wit- within the jurisdic- Bench, justices of er and Terminer or witness or witnesses

shall not obey such writ or writs of subpoena, it shall be lawful for such court of Queen's Bench, justices of assize, or commissioners of Oyer and Terminer or Gaol Delivery, issuing such writ or writs of subpoena, to proceed thereupon against such witness or witnesses for contempt or otherwise, or to bind over such witness or witnesses to appear at such days and times as may be necessary, and upon default being made in such appearance, to cause the recognizances of such witness or witnesses to be estreated, and the amount thereof to be sued for and recovered by process of law, in like manner as if such witness or witnesses were resident within the jurisdiction of such court of Queen's Bench, justices of assize, or commissioners of Oyer and Terminer or Gaol Delivery; any law, usage or custom to the contrary thereof in anywise notwithstanding.

And may be punished for disobedience.

13 & 14 VIC. CHAP. 56.—6. Whenever it shall appear to the majority of the jurymen sitting at any coroner's inquest, that the cause of death has not been satisfactorily explained by the evidence of the medical practitioner, or other witness or witnesses, who may be examined in the first instance, such majority of the jurymen are hereby authorized and empowered to name to the coroner in writing any other legally qualified medical practitioner or practitioners, and to require the coroner to issue his order in the form hereinbefore mentioned for the attendance of such last mentioned medical practitioner or practitioners as a witness or witnesses, and for the performance of such post-mortem examination, as in the fifth section of this Act mentioned, whether such examination has been before performed or not: And if the coroner, having been so required, shall refuse to issue such order, he shall be deemed guilty of a misdemeanor, and shall be punishable by a fine not exceeding ten pounds, or by imprisonment not exceeding one month, in the discretion of the court trying such offence, or by both, as to the said court shall seem fit.

A majority of the jurymen may require the coroner to summon another medical practitioner.

Penalty on coroner for refusing,

ADDENDUM.

MICHAELMAS TERM 18th VICTORIA,
2nd December, 1854.

It is ordered, that the 18th Rule of Court of Hilary Term 13th Victoria, be rescinded so far as regards the opening of the offices of the Clerks of the Crown and Pleas, and that from and after the end of this present Term the offices of the Clerks of the Crown and Pleas be kept open as follows, that is to say ; during Term from 10 o'clock in the morning until 4 o'clock in the afternoon, and except between the first day of July and the 21st day of August, at other times from 10 o'clock in the morning until 3 o'clock in the afternoon, Sundays, Christmas Day, Good Friday, Easter Monday, New Years Day, and the birthday of the Sovereign, and any day appointed by general proclamation for a general fast or thanksgiving excepted, and that between the first day of July and the twenty-first day of August the said offices shall be open from 11 o'clock in the forenoon until 2 o'clock in the afternoon. (a)

(a) See Rule 1, page 56, tit. "Crown Office."

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18th VICTORIA,
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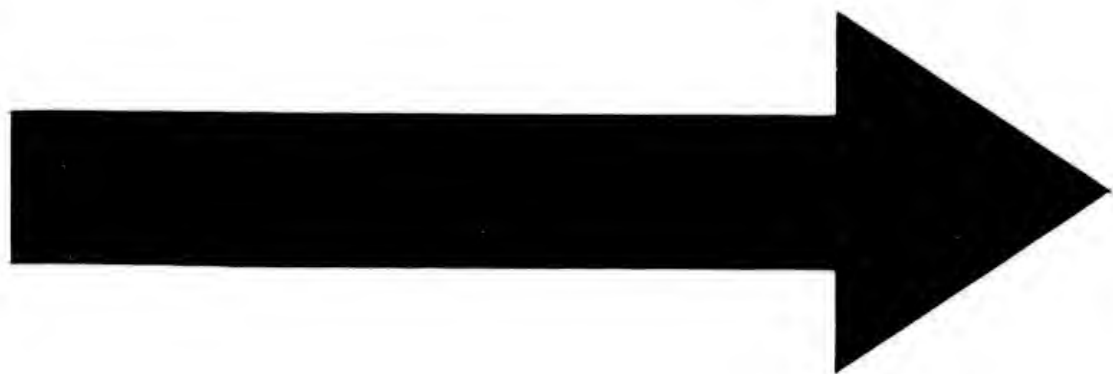
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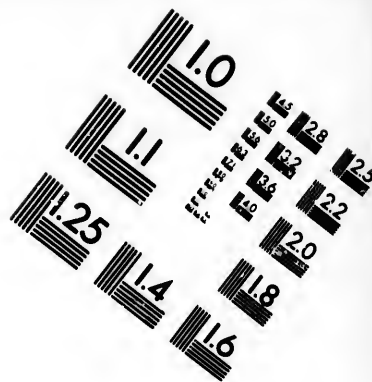
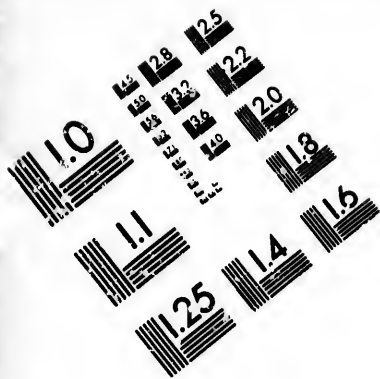
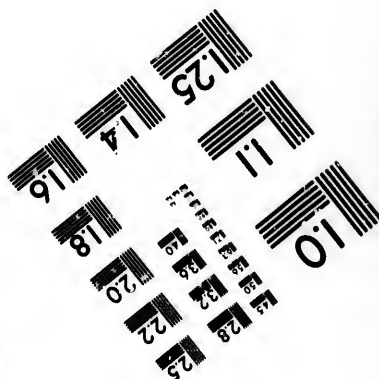
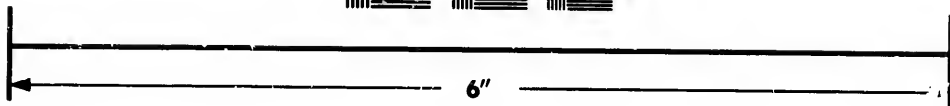
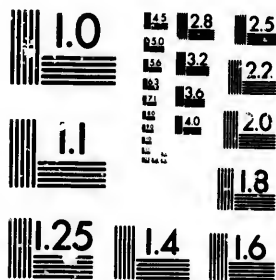


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