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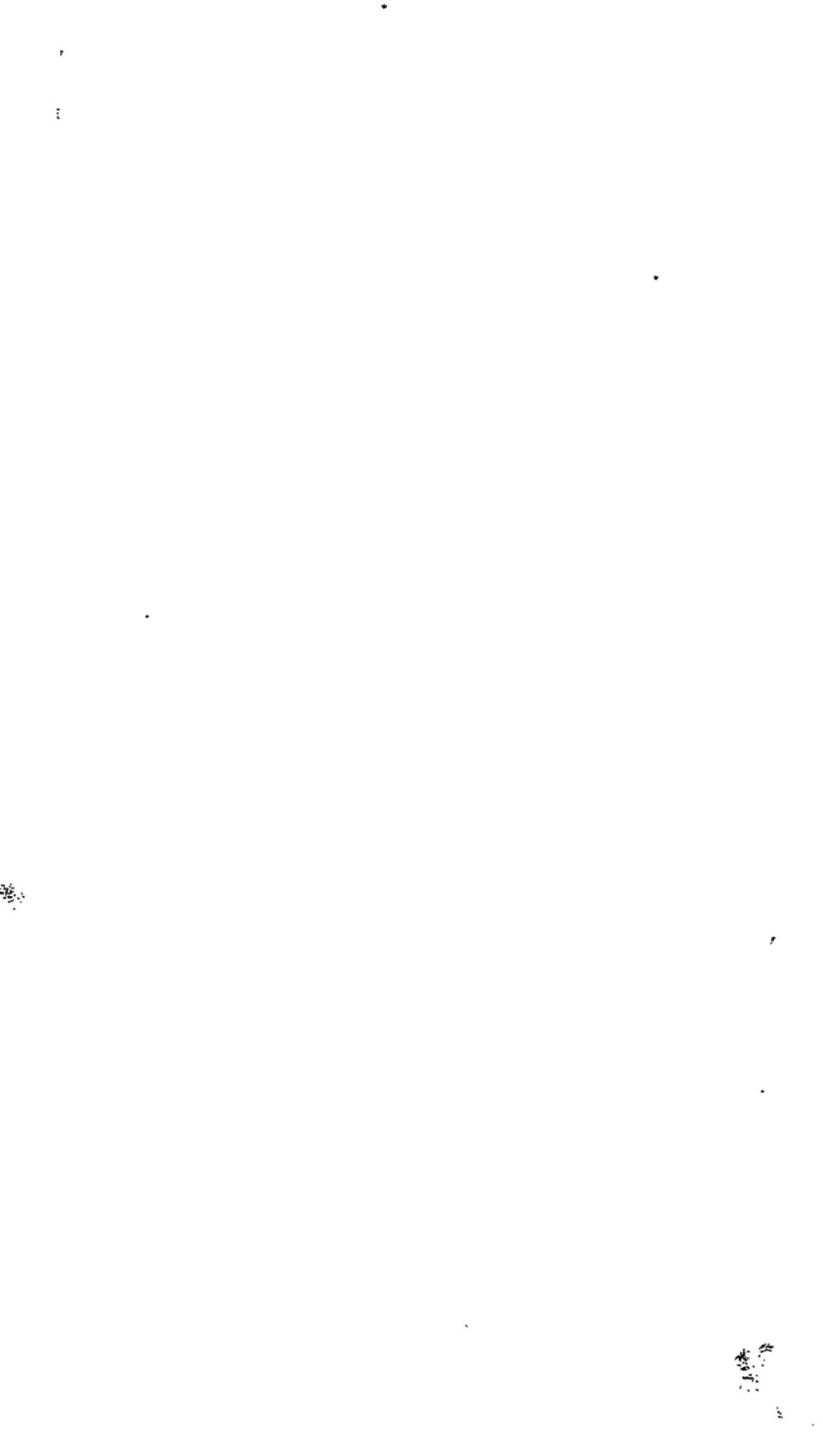
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Walter Jacobs

THE
PROVINCIAL JUSTICE,
OR
MAGISTRATE'S MANUAL,
BEING A COMPLETE DIGEST
OF THE
CRIMINAL LAW OF CANADA,
AND
A COMPENDIOUS AND GENERAL VIEW
OF THE
PROVINCIAL LAW OF UPPER CANADA:
WITH PRACTICAL FORMS,
FOR THE USE OF THE MAGISTRACY.

BY W. C. KEELE, Esq.

ATTORNEY-AT-LAW.

FIFTH EDITION.

TORONTO:
HENRY ROWSELL, KING STREET.

1864.

LP

K220 .K26 1864

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DEDICATED,

WITH SINCERE RESPECT,

TO

THE EARLY PATRONS OF THIS WORK,

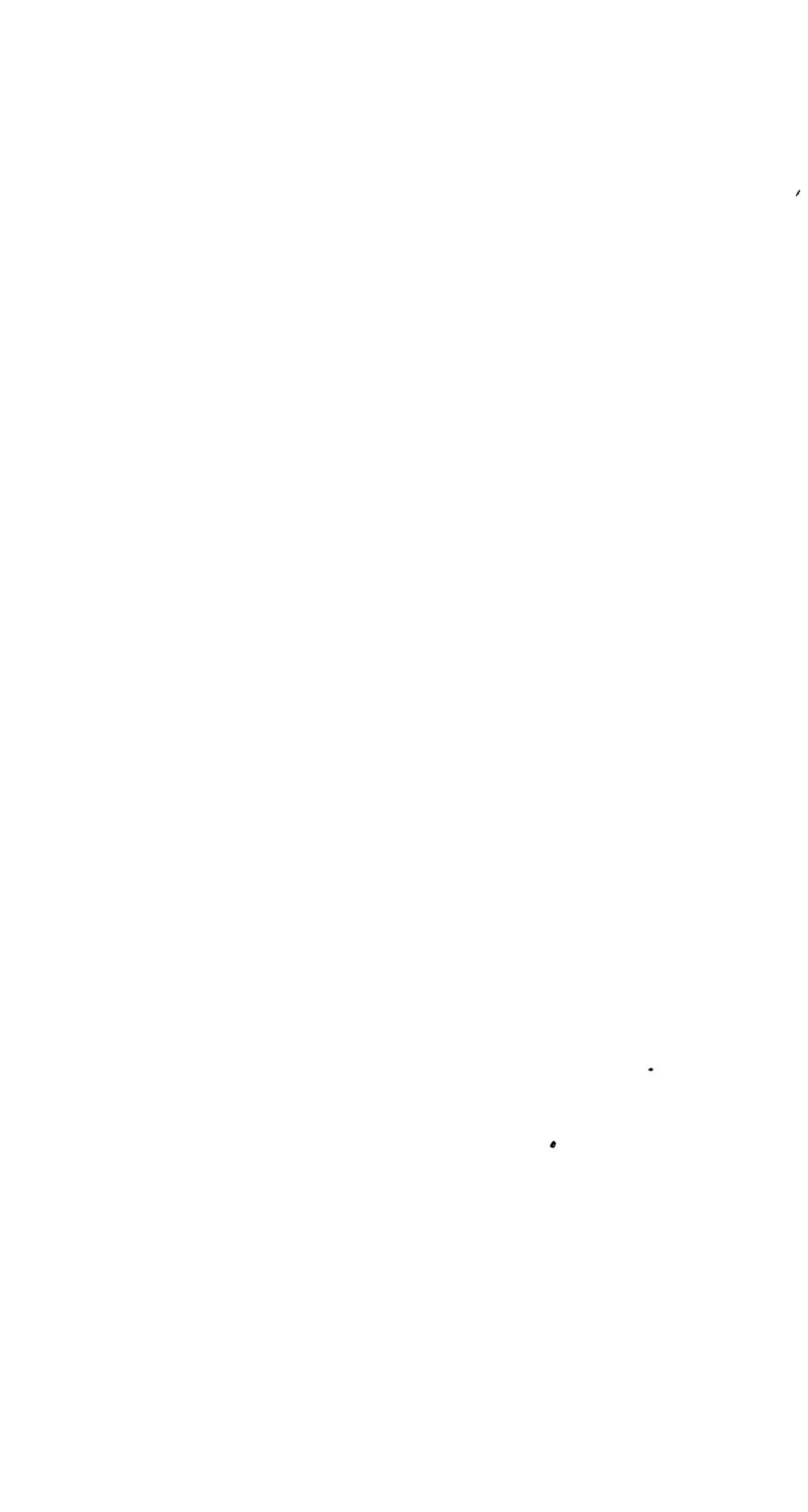
The Magistracy

OF

UPPER CANADA,

BY

THE AUTHOR.



INTRODUCTION.

Since the publication of the last edition of this work the statute law has been consolidated, and is now comprised in two volumes ; one contains the law common to both sections of the province, and is entitled, "An Act respecting the Consolidated Statutes of Canada," the other contains the law relating exclusively to Upper Canada, and is entitled, "The Consolidated Statutes for Upper Canada." Both these statutes were passed in the twenty-second year of Her Majesty's reign, (1859,) and are an invaluable acquisition to the province. They have reduced into form and order, and set in their right place, the disjointed fragments of former statutes, which, from repeated alteration, amendment or repeal, had become complicated and embarrassing; and as the Consolidated Statutes contain all that remains of the old laws, (and for which they are now substituted,) the author has made them the groundwork of this new edition of the **PROVINCIAL JUSTICE**. He has added all the statutes relating to the criminal law down to and inclusive of the acts of the last session of parliament, (27, 28 V., 1864,) carefully noting every material alteration or amendment, the whole presenting a full and accurate digest of the law as it now stands in relation to the office and duties of Justices of the Peace, with every requisite form for their use and guidance.

The acts relating to Brewers and Distillers, referred to under those titles, (C. Stat. 22 V. c. 19, and 25 V. c. 57, pages 111, 263,) were repealed by the new excise act of last session, 27, 28 V. c. 3, which will be found in the Addenda, under the head of Excise. As the work had gone to press before the new

act was passed, the repeal has been unavoidably left for the *Addenda*, pages 839, 840.

The *PROVINCIAL JUSTICE* has now been before the public upwards of a quarter of a century, and may therefore fairly lay claim to being an old established work. The reputation it has acquired, the author is deeply anxious it should continue to deserve and sustain. To accomplish this object he has spared no pains to make this new edition as perfect as possible. The preparation of it has cost him much labour, as the work will shew, covering as it does upwards of 840 pages of letter-press. It also contains, besides the criminal law, a variety of other matters of general interest, such as the law of elections, our municipal and school law, the laws relating to railways and navigation, the new excise and stamp acts of the last session, and other important measures.

The author has also included, as in former editions, the *LAW AND OFFICE OF CORONER*, with suitable forms.

A copious index will be found at the end of the volume.

With grateful remembrance of the generous support given to former editions, the author trusts that this new one will be found worthy of the same liberal patronage, and that it will prove equally efficient and valuable to the magistracy as a guide to them in the performance of their duties as conservators of the peace.

TORONTO, October, 1864.



THE
MAGISTRATE'S MANUAL.

NOTE.—C. Stat., means the Consolidated Statutes of Canada.
U. C. Stat., means the Consolidated Statutes for Upper Canada only.

ABDUCTION.

Is the unlawful taking, enticing or decoying away of females or children from the custody of their natural or lawful guardians, and for unlawful purposes, against which the law makes the following provisions by C. Stat., 22 V. c. 91.

Abduction of an Heiress.

§ 25. In case any woman has any interest, whether legal or equitable, present or future, absolute, conditional, or contingent in any real or personal estate, or be an heiress presumptive, or next of kin to any one having such interest. Any person who from motives of lucre takes away or detains 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, and every person counselling, aiding or abetting such offender, shall be guilty of felony, and shall respectively be imprisoned in the penitentiary for any term not less than two years, or in any other prison or place of confinement for any term less than two years.

Abduction of Females under sixteen years of age.

§ 26. Any person who unlawfully takes or causes to be taken any unmarried girl 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, shall be guilty of a misdemeanor, and shall be punished by fine or imprisonment, or by both, as the court shall award.

Decoying children under ten years of age.

§ 27. Any person who maliciously, either by force or fraud, leads or takes away, or decoys or entices away or

Absconding Debtors.

detains any child under the age of ten years, with 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; and any person who with any such intent receives or harbours any such child, knowing the same to have been by force or fraud led, taken, decoyed, enticed away, or detained as hereinbefore mentioned, and any person who counsels, aids or abets any such offender shall respectively be guilty of felony, and shall be imprisoned at hard labour in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

Illegitimate children.

§ 23. No person who claims 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 of the last section 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.

ABORTION.

C. Stat. 22 V., c. 91.

§ 24. Any person who, with intent to procure the miscarriage of any woman, unlawfully administers to her, or causes to be taken by her any poison or other noxious thing; or unlawfully uses any instrument, or other means whatsoever with the like intent, shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term not less than two years.

ABSCONDING DEBTORS.

Division Court Process.

By U. C. Stat. 22 V., c. 19, § 199, in case any person being indebted in a sum not exceeding *one hundred dollars*, nor less than *four dollars*, for any debt or damages arising upon any contract expressed or implied, or upon any judgment, absconds (1) from this province, leaving personal pro-

perty liable to seizure under execution for debt in any county in Upper Canada, (2) attempts to remove such personal property either out of Upper Canada or from one county to another therein, or (3) keeps concealed in any county of Upper Canada to avoid service of process, and in case any creditor of such person, his servant or agent, makes and produces an affidavit or affirmation to the purport of the form prescribed by any rule respecting the practice and proceedings of the division courts, (and the clerks of any division court of the county wherein the debtor was last domiciled, or where the debt was contracted, may administer such affidavit,) and in case the said affidavit or affirmation be filed with such clerk, then such clerk, upon the application of such creditor, his servant or agent, shall issue a warrant under the hand and seal of such clerk in the form C. directed to the bailiff of the division court within whose division the same is issued, or to any constable of the county, commanding such bailiff or constable to attach seize, take and safely keep all the personal estate and effects of the absconding, removing, or concealed person, within such county, liable to seizure under execution for debt, within such county, or a sufficient portion thereof to secure the sum mentioned in the warrant, with the costs of the action, and to return the warrant forthwith to the court out of which the same issued.

§ 200. The judge or a justice of the peace for the county may take the affidavit in the last preceding section mentioned, and upon the same being filed with such judge or justice, the judge or justice may issue a warrant under his hand and seal in the form C., and such judge shall forthwith transmit the affidavit to the clerk of the division court within whose division the same was made or taken, to be by him filed or kept among the papers in the cause.

§ 201. Upon the receipt of such warrant by the bailiff or constable, and upon his being paid his lawful fees, including the fees of appraisement, such bailiff or constable shall forthwith execute the same, and make a true inventory of all the estate and effects which he seizes and takes by virtue thereof, and shall within twenty-four hours after seizure call to his aid two freeholders, who being first sworn by him to appraise the personal estate and effects so seized, shall then appraise the same and forthwith return the inventory attached to such appraisement to the clerk of the court of the division in which the warrant is returnable.

§ 202. In any case commenced by attachment in a division

court, the proceedings may be conducted to judgment and execution in the division court of the division within which the warrant of attachment issued.

§ 203. When proceedings have been commenced in any case before the issuing of an attachment, such proceedings may be continued to judgment and execution in the division court within which such proceedings were commenced.

§ 204. The property seized upon any warrant or attachment shall be liable to seizure and sale under the execution to be issued upon the judgment, or in case such property was perishable and has been sold, the proceeds thereof shall be applied in satisfaction of the judgment.

§ 205. No plaintiff shall divide any cause of action into two or more suits for the purpose of bringing the same within the provisions of the preceding sections, but any plaintiff having a cause of action above the value of *one hundred dollars*, and not exceeding *two hundred dollars*, for which an attachment might be issued if the same were not above the value of *one hundred dollars*, may abandon the excess, and upon proving his case may recover to an amount not exceeding *one hundred dollars*, and the judgment of the court in such case shall be in full discharge of all demands in respect of such cause of action. and the entry of judgment therein shall be made accordingly.

Form of the affidavit.

County of

}

A. B. of in the county of (*here state the county*) the plaintiff (*or agent, as the case may be*) maketh oath and saith, that C. D., (*the debtor's name*) is (*or are*) justly and truly indebted to (*the creditor's name*) in the sum of of lawful money of Canada, for (*here state the cause of action briefly* :) and this deponent further saith, that he hath good reason to believe, and verily doth believe, that the said C. D. hath absconded from this province, and hath left personal property liable to seizure under execution for debt within the county of ; (*or*) that the said C. D., is (*or are*) about to abscond from this province, (*or*) to leave the county of and to take or remove away therefrom to another county certain personal estate of him the said C. D., liable to seizure under execution for debt ; with intent and design to defraud the said (*the creditor*) of his said debt, (*or*) that the said C. D. is concealed within the county of to avoid being served with process, with intent and design to defraud the said (*the creditor*) of his said debt ; and this deponent further saith, that this affidavit (*or affirmation as the case may be*) is not made, nor the

process thereon to be issued out, from any vexatious or malicious motive whatever.

A. B.

Signature of deponent.

Sworn (or affirmed as the case may be) before me, the day
of one thousand eight hundred and

SCHEDULE C.

County of } To A. B., bailiff of the division
(here insert the county.) } court of the said county of (or to A.
B., a constable of the county of) (as
the case may be)

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

Witness my hand and seal, the day of 18
E. F. (L.S.)

Judge, clerk or justice of the peace, (*as the case may be.*)

See further title "*Division Courts.*"

ACCESSORY.

An accessory is one guilty of felony, not as a principal, but by participation, command, advice, or concealment. In high treason there can be no accessories, as all concerned are considered principals. The mere concealment of a felony *intended* to be committed does not render the concealer an accessory. It is only misprision of felony.—2 *Haw. c. 29, § 23.*

There are accessories *before* and *after* the fact.

An *accessory before the fact* is, as Hale defines it, one who being absent at the time the crime is committed doth procure, counsel or advise the commission of it; and his absence is necessary to constitute him an accessory.

Accessories after the fact, are those who, knowing the felony to have been committed by another, receive, relieve, comfort or assist the felon.—1 *Hale, 618.*

But if others accompany the principal to commit a felony,

and keep within hearing, or upon watch, all are in such case deemed principals.—2 *Haw.* c. 29, § 7, 8.

A wife cannot be accessory to her husband, either before or after the fact, unless she be any way guilty of procuring him to commit the felony.—2 *Haw.* § 20.

¹ By Stat. 27, 28 V., c. 19, the C. Stat. 22 V., c. 97, and the § 43 of the C. Stat. 22 V., c. 99, both relating to accessories are repealed, and the following provisions substituted:—

As to Accessories to Felony before the fact.

2. Whosoever shall become an accessory before the fact to any felony, whether the same be a felony at common law, or by virtue of any act passed, or to be passed, may be indicted, tried, convicted, and punished in all respects as if he were a principal felon.

3. Whosoever 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 act passed or to be passed, shall be guilty of felony, and may be indicted and convicted, either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not be amenable to justice, and may, thereupon, be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished.

As to Accessories to Felony after the fact.

4. Whosoever shall become an accessory after the fact to any felony, whether the same be a felony at common law, or by virtue of any act passed or to be passed, may be indicted and convicted, either as an accessory after the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted or shall not be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished.

5. Every accessory after the fact to any felony (except where it is otherwise specially enacted) whether the same be a felony at common law, or by virtue of any Act passed or to be passed, shall be liable, at the discretion of the court, to

be imprisoned in the common gaol, or house of correction for any term not exceeding two years, with or without hard labour; and it shall be lawful for the court, if it shall think fit, to require the offender to enter into his own recognizance and to find sureties, both or either, for keeping the peace, in addition to such punishment; provided that no person shall be imprisoned under this clause, for not finding sureties, for any period exceeding one year.

As to Accessories generally.

6. If any principal offender shall be in any wise convicted of any felony, it shall be lawful to proceed against any accessory, 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, upon conviction, suffer the same punishment as he would have suffered if the principal had been attainted.

7. Any number of accessories, at different times, to any felony, and any number of receivers, at different times, of property stolen at one time, may be charged with substantive felonies in the same indictment, and may be tried together, notwithstanding the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice.

8. Where any felony shall have been wholly committed within this province, the offence of any person, who shall be an accessory, either before or after the fact, to any such felony, may be dealt with, inquired of, tried, determined and punished by any court which shall have jurisdiction to try the principal felony, or any felonies, committed in any county or place in which the act, by reason whereof such person shall become such accessory, shall have been committed; and in every other case, the offence of any person, who shall be an accessory, either before or after the fact, to any felony, may be dealt with, inquired of, tried, determined, and punished by any court which shall have jurisdiction to try the principal felony, or any felonies committed in any county or place, in which such person shall be apprehended or be in custody, whether the principal felony shall have been committed on the sea or on the land, or begun on the sea and completed on the land, or begun on the land and completed on the sea, and whether within her Majesty's dominions or without, or partly within her Majesty's dominions and partly without; provided that no person who shall have been once

duly tried, either as an accessory, before or after the fact, or for a substantive felony, under the provisions hereinbefore contained, shall be liable to be afterwards prosecuted for the same offence.

Form of Information and Complaint against an Accessory before the fact.

PROVINCE OF CANADA :

County of } The information and complaint of A. B. of
to wit. } the township of yeoman, taken this
day of in the year of our Lord , before the under-
signed, (*one*) of her Majesty's justices of the peace, in and for the
said county of , who saith that on the day of
last, his dwelling house, situate at was about the hour of
ten o'clock, in the night of the same day, feloniously and bur-
glariously broken and entered, and that (*describe the property*
stolen) his property were then and there feloniously stolen, taken,
and carried away, and that he hath just cause to suspect, and doth
verily suspect and believe that C. D., of aforesaid, labourer,
did commit the said felony and burglary, and that E. F., of
aforesaid, labourer, did advise, aid, and abet, the said C. D., in
the said felony.

Sworn before (*me*) the day and } C. D.
year first mentioned. } J. P.

Warrant thereon.

PROVINCE OF CANADA :

County of } To all or any of the constables or other
to wit. } peace officers in the county of

Whereas C. D., of and E. F., of have this day been
severally charged upon oath before the undersigned (*one*) of her
Majesty's justices of the peace, in and for the said county of

For that he, the said C. D., did on the day of
last, about the hour of ten o'clock in the night of the same
day, feloniously and burglariously break and enter the dwelling-
house of A. B., situate at , and feloniously steal, take,
and carry away (*describe the articles*) the property of the said A.
B., and that the said E. F. did advise, aid and abet the said C.
D. in the said felony. These are therefore to command you, in
her Majesty's name, forthwith to apprehend the said C. D. and
E. F., and to bring them before (*me*) or some other of her Ma-
jesty's justices of the peace, in and for the said county of
to answer unto the said charge so preferred against them respec-
tively, and to be further dealt with according to law.

Given under (*my*) hand and seal, this day of in the year
of our Lord 18 , at in the county of
aforesaid. J. S. (L. S.)

Warrant to apprehend an Accessory after the fact, for harbouring the principal.

PROVINCE OF CANADA :

County of } To all or any of the constables or other
to wit. } peace officers in the county of

Whereas C. D., of stands charged this day upon oath before the undersigned, (*one*) of her Majesty's justices of the peace in and for the said county of . For that he the said C. D. (*stating the offence as above*) and whereas G. H. hath also this day been charged upon oath before me, the said justice, for that he the said G. H., since the said felony and burglary was committed, hath received, harboured and maintained him the said C. D. in the dwelling-house of him the said G. H., at aforesaid: he the said G. H. well knowing the said C. D. to have committed the said felony and burglary. These are therefore to command you in her Majesty's name forthwith to apprehend the said G. H., and to bring him before (*me*) or some other of her Majesty's justices of the peace, in and for the said county of to answer unto the said charge, and to be further dealt with according to law. Given under (*my*) hand and seal, this day of in the year of our Lord 18 , at in the county of aforesaid. J. P. (L. S.)

ACCIDENT.

By C. Stat. 22. V. c. 78, § 2, in case of death by the wrongful act, neglect, or default of any party, such party may be sued for damages by the executor or administrator of the deceased party, and the amount divided among the deceased's wife and family, as the jury by their verdict shall find and direct. See *post* title "*Duel.*"

ACCIDENTS ON RAILWAYS.

See "*Railways.*"

ACQUITTAL.

And see—"Autrefois Acquit."

An acquittal is the deliverance and setting free of the accused from the imputation of guilt; as when a prisoner is found by a jury not guilty of the offence with which he stood charged before them upon his trial.—*Deacon's C. Law*, 18.

Where there is no evidence whatever to affect a party who is unjustly made a defendant with others in a prosecution, the judge may, in his discretion, direct the jury to acquit him in the first instance, and such an acquittal will enable him to give evidence in behalf of the other defendants.—1 *Holt*. 275; *Gil. Ev.* 117; *Bull N. P.* 285.

Every prisoner upon his acquittal, it has been said, has an undoubted right to a copy of the record of such acquittal; and after a demand of it has been made of the proper officer, the latter may be punished for refusing to make it out.—*R. v. Brangan*, 1 *Leach*, 27.

But if there was probable cause for the indictment, or where the acquittal arises from the incompetency of a witness, the court will not then permit the prisoner to have a copy of the indictment.—*R. v. Quick*, 1 *Leach*, 28, Note (a); *R. v. Bevan*, *Ibid* 1; *Ld. Ray.*, 253.

By C. Stat. 22. V. c. 99, s. 130, no person shall be prosecuted for any attempt to commit any felony or misdemeanor who has been previously tried for committing the same offence.

ACTION.

By Imperial Statute 24 G. II., c. 44. No action shall be brought against any constable, or any officer acting by his order, for any thing done in obedience to any warrant of a justice, until demand made, or left at his usual place of abode, by the party intending to bring such action, or by his attorney or agent, in writing, signed by the party demanding the same, of a perusal or a copy of the warrant, and that the same hath been refused or neglected for six days after such demand: and if after any demand and compliance, any action shall be brought, without making the justice who signed the warrant defendant, on producing and proving such warrant on the trial the jury shall give a verdict for the defendant, notwithstanding any defect of jurisdiction of the justice; and if such action be brought jointly against the justice and constable, &c., on proof of such warrant the jury shall find for the constable; and if the verdict shall be against the justice, the plaintiff shall recover costs against him, including such costs as the plaintiff is liable to pay to the defendant, for whom the verdict shall be found. And where the plaintiff in such action against a justice shall obtain a verdict, and the judge shall certify on the record that the injury was wilful and malicious, the plaintiff shall have double costs. It is not necessary in the notice that the attorney's christian name should be written in full, but his residence must be specifically stated.—7 *Taunt*, 53; 2 *Marsh*, 367; 3 *Bos. and Pull*.

By U. C. Stat. 22 V. c. 126, s. 9, no action shall be brought against any justice of the peace for any thing done by him in the execution of his office, unless the same be

commenced within six months next after the act complained of was committed.

§ 10. No such action shall be commenced against any justice of the peace, until one month at least after notice in writing of the intended action has been delivered to him, or left for him at his usual place of abode, by the party intending to commence the action, or by his attorney or agent, in which notice the cause of action, and the court in which the same is intended to be brought, shall be clearly and explicitly stated; and upon the back thereof shall be endorsed the name and place of abode of the party so intending to sue; and also the name and place of abode, or of business, of his attorney or agent, if such notice be served by such attorney or agent. (a)—See further on this subject under the title of "*Justices of the Peace.*"

Notice of Action from the Attorney of the Party to a Justice of the Peace for false Imprisonment.

To A. B., one of Her Majesty's Justices of the Peace, acting in
and for the county of

SIR,

I do hereby, as the attorney of C. D., of _____, gent., give you notice, according to the form of the statute in that case made and provided, that I shall, at or soon after the end of one month from the time of the service of this notice upon you cause a writ of summons to be sued out of Her Majesty's Court of Queen's Bench at Toronto against you, at the suit of the said C. D., for false imprisonment; for that you, on or about the _____ day of _____ last, by warrant under your hand and seal, dated the _____ day of _____, did cause the said C. D. to be apprehended and conveyed to the common gaol of _____ (as the case may be) and to be there imprisoned, and kept and detained there without any reasonable or probable cause for a long time, to wit, for the space of _____ then next following. Dated this _____ day of _____, 18 _____.

Yours, &c.,

E. F., residing at *City of Toronto*,
Attorney for the said C. D.

Demand on a Constable of perusal and copy of his warrant.

To MR. C. D.

I do hereby, as attorney of and for A. B., of _____, &c., according to the form of the statute in such case made and provided, demand of you the perusal and copy of the warrant, by virtue or under colour whereof you did, or on or about the _____ day of _____ last, appre-

(a) See similar provision in C. Stat. 22 V. c. 90, s. 125.

hend the said A. B., and carry and convey him in custody to and before S. P., Esq., one of Her Majesty's Justices of the Peace in and for the county of Dated, &c.

Yours, &c.,

W. T., Attorney for the said A. B.,
City of Hamilton.

The like on a Gaoler.

TO MR. A. B.

I do hereby, as the attorney for E. F., of , &c., according to the form of the statute. &c., (*as before*) demand of you the perusal and copy of the warrant of commitment and detainer under which you received into your custody the said E. F. on or about the day of instant. Dated, &c.

Yours, &c.,

W. T., Attorney for the said E. F.
City of Hamilton.

It seems proper that constables should retain their warrants, and not return them to the magistrate, otherwise they cannot comply with the directions of the act.—(*Toone.*)

ACTS OF PARLIAMENT.

C. Stat. 22 V. c. 5.

§ 4. The clerk of the Legislative Council shall endorse on every act of the parliament of this Province, immediately after the title of such act, the day, month and year when the same was by the Governor assented to in Her Majesty's name, or reserved for the signification of Her Majesty's pleasure thereon; and in the latter case he shall then endorse thereon the day, month and year when the Governor has signified either by speech or message to the Legislative Council and Assembly, or by proclamation, that the same was laid before Her Majesty in council, and that Her Majesty was pleased to assent to the same: and such endorsement shall be taken to be a part of such act; and the date of such assent or signification, as the case may be, shall be the date of the commencement of the act, if no later commencement be therein provided.

§ 5. Any act of the parliament of this province may be amended, altered or repealed by any act to be passed in the same session thereof.

§ 6.—*Sub-§ 15.* Any wilful contravention of any such act as aforesaid, which is not made any offence of some other kind, shall be a misdemeanor, and punishable accordingly.

16. Whenever any wilful contravention of any

such act is made an offence of any particular kind or name the person guilty of such contravention shall, on conviction thereof, be punishable in the manner in which such offence is by law punishable.

27. If any such act as aforesaid be declared to be a public act, such declaration shall be construed as an enactment that such act shall be judicially noticed by all judges, justices of the peace, and others, without being specially pleaded; and every such act which shall not either by its nature or by express provision be a public act shall be deemed a private act, and shall be judicially noticed only when specially pleaded; and all copies of any such acts, public or private, printed by the Queen's printer, shall be evidence of such acts and of their contents, and every copy purporting to be printed by the Queen's printer shall be deemed to be so printed, unless the contrary be shewn.

28. The preamble shall be deemed a part of the act, and every act deemed remedial, and receive such liberal construction as will best ensure the object of the act.

29. But not to exclude any rule of construction applicable thereto, and not inconsistent; or exclude the application of any rule of construction to any act passed in any session before the 12 V., if without this section such rule would have been applicable.

A penal statute is to be construed according to its spirit and the rules of natural justice, not according to its very letter.—*Rex. v. McIntosh*, Easter, 7 W. IV., *Cameron's Digest*, p. 55. See also "*Interpretation Act.*"

ADJOURNMENT.

When a court of sessions of *oyer and terminer* and gaol delivery breaks up without any *adjournment*, or upon a void one, as being made without the consent of the majority of the commissioners, the commission is determined, if no time be limited for its continuance, as where it is appointed *pro hac vice* only; but if it be granted for a certain time, or, *quamdiu nobis placuerit*, it does not necessarily require any adjournment, and may be holden again on new summons.—2 *Haw. c. 5*, § 7.

AFFIDAVIT.

An affidavit is an oath of some fact, testified in writing and sworn before some person who hath authority to ad-

minister such oath. The true place of habitation and true addition of the deponent must be inserted in the affidavit.—1 *Lill. Ab.* 44, 46.

An affidavit ought to set forth the matter of the *fact* only which the party intends to prove by his affidavit, and not to declare the merits of the case, of which the court alone is to judge.—21 *C. 1 B. R.*

And the matter sworn to must be *positively* set forth, with all material circumstances attending it, that the court may judge whether the deponent's conclusion be just or not.—1 *New. Abr.* 63.

Therefore, on a motion to put off a trial for want of a material witness, it must appear in the affidavit that sufficient endeavours have been made to have him at the time appointed, and that he cannot possibly be present, though he may be, on further time given.—7 *Mod.* 121; *Comb.* 421, 422.

When an affidavit is read in court, it ought to be filed with the proper officer, that the adverse party may see it and take a copy.—*Pasch.* 1655.

The affidavit must be made before the judge or commissioner of the court where the cause or matter was pending.—*Sty.* 455.

An affidavit improperly entitled cannot be read, as no indictment thereon will lie for perjury.—*Salk.* 461.

Affidavits in aggravation of punishment are not receivable in cases of felony.—*R. v. Ellis, B. & C.* 148.

Any person making or knowingly using a false affidavit, purporting to be taken abroad before a *foreign magistrate*, for the purpose of misleading our own courts, is guilty of a *misdemeanor*, in attempting to pervert public justice, and is punishable by indictment.—*Omealy v. Newall*, 8 *East*, 364.

Affidavit of being prevented by illness from attending the Sessions, [to be made by a medical man, if convenient,] in order to move to continue a party upon his recognizance.

County of . } A. B., of , in the said county, surgeon,
to wit. } maketh oath and saith, that C. D., of ,
yeoman, is confined to his house by severe illness, and that this deponent saw the said C. D. this day, and verily believes he is incapable of travelling without manifest danger of his life.
Sworn, &c. A. B.

AFFIRMATION.

See "*Oath.*"

AFFRAY.

An affray signifies the fighting of two or more persons in some public place, to the *terror of her Majesty's subjects*.—3 *Inst.* 158; 3 *Bl. Com.* 144; 1 *Burn. Just. Affray*, 1.

An affray differs from a riot in this, that *two* persons only may be guilty of it; whereas *three* persons, at least, are necessary to constitute a riot.—*Haw.* c. 65, § 1.

Persons going armed with such dangerous and unusual weapons as will naturally cause terror to the people are guilty of an affray: which is said to have been always an offence at common law, and is strictly prohibited by several statutes.—1 *Haw.* c. 63, § 2, 4.

A constable is not only empowered, but bound to suppress an affray which *happens in his presence*; and he may demand the assistance of others to enable him to do so, which if they refuse they are punishable by fine and imprisonment.—*Ibid.* 3, 13.

A justice of the peace may *on view*, and without warrant, authorise the arrest of any person for an affray, and may compel the offender to find sureties of the peace. But he cannot do this without a warrant, when the affray is out of his view.—1 *Haw.* c. 63, § 18.

This offence is in general punishable by *fine and imprisonment*, the measure of which is to be regulated by the discretion of the judges, according to the circumstances of the case.—1 *Haw.* c. 63, § 30.

Indictment for an affray. (Archbold.)

County of) The jurors for our Lady the Queen upon their
to wit.) oath present, that J. S., late of the township
of) , labourer, and J. W., of the same,
) , in the county of , in the year of the reign of our
Sovereign Lady Victoria, with force and arms, in the township
aforesaid, in the county aforesaid, and being unlawfully assembled together and arrayed in a warlike manner, then and there in a certain public street and highway there situate, unlawfully and to the great terror and disturbance of divers liege subjects of our said Lady the Queen, then and there being, did make an affray, in contempt of our said Lady the Queen and her laws, to the evil example of all others in the like case offending, and against the peace of our said Lady the Queen, her crown and dignity.

AGENT.

C. Stat. 22. V. c. 59.

§ 15. In case any agent entrusted as in the act mentioned*

* For which see the act.

contrary to or without the authority of his principal, for his own benefit, and in violation of good faith, makes by way of pledge, (*gage*,) lien and security any consignment, deposit, transfer or delivery of any goods or documents of title so entrusted to him, or contrary to or without such authority for his own benefit, and in violation of good faith accepts any advance on the faith of any contract to consign, deposit, transfer or deliver such goods or documents of title, 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 awards.

§ 16. Every clerk or other person who knowingly and wilfully acts and assists in making any such consignment, deposit, transfer or delivery, or in accepting or procuring such advance as aforesaid, shall be guilty of a misdemeanor, and shall be liable at the discretion of the court to any of the punishments which the court may award as herein last mentioned.

§ 17. No such agent shall be liable to any prosecution for consigning, depositing, transferring or delivering any such goods or documents of title, in case the same are not made a security for or subject to the payment of any greater sum of money than at the time was justly due and owing to the agent from his principal, together with the amount of any bills of exchange drawn by or on account of his principal and accepted by such agent.

AGRICULTURAL AND MECHANICAL SCIENCE.

C. Stat. 22. V. c. 32.

§ 1. The Bureau of Agriculture, and all Agricultural Societies, Associations and Boards of Agriculture, incorporated, organised or established under the repealed act, 16 V. c. 11, shall continue, except as altered or affected by this act.

BUREAU OF AGRICULTURE.

§ 2. Shall continue attached to one of the public departments, and the head of such department shall be charged with the direction of the said Bureau, and be known as the "Minister of Agriculture." § 3. Said minister shall be *ex officio* member of all boards of agriculture. § 4. Receive all applications, descriptions, specifications and models for patents for inventions. § 5. And be a member of

the board of registration and statistics, and chairman thereof, and have charge of the census and statistical returns. § 6. It shall be the duty of said minister to institute enquiries and collect statistics relating to the agricultural, mechanical and manufacturing interests of the province, and to adopt measures for disseminating the same: and submit a report of his proceedings to parliament within ten days after the opening of each session. § 7. All Boards of Agriculture and other institutions are required to answer promptly official communications from the Board of Agriculture; and any officer wilfully neglecting to answer shall incur the penalty of *forty dollars*. § 8. The said minister authorised to appoint persons to inspect the books and accounts of any society receiving government aid in connexion with said Bureau of Agriculture. § 9. Provision for agricultural instruction.

BOARDS OF AGRICULTURE.

§ 10. Presidents for the time being of the agricultural associations hereinafter mentioned, and all professors of agriculture in chartered colleges, universities, and other public educational institutions, and the chief superintendents of education in Upper and Lower Canada, shall respectively be members *ex officio* of the Board of Agriculture of their locality. § 11. Four members of the said board shall retire annually, each seat being vacated every alternate year. The names of such retiring members to be published in the local agricultural journals. § 12. The county agricultural societies shall, at their annual meetings in January, nominate four proper persons to be members of the said boards, and transmit their names to the bureau, and the four persons so nominated by the greatest number of societies shall be members in the place of those vacating their seats. In case of an equality of votes, the Minister of Agriculture shall decide, and notify the result to the board: casual vacancies to be filled up by the Governor. § 13. Members of the board to be allowed their actual expenses only in attending regular meetings. Each board may appoint a secretary at a reasonable salary. § 14. The regular meetings of the boards shall be held pursuant to adjournment, or be called by the secretary at the instance of the president or vice-president, or upon the written request of any three members, and five days' notice given; a president and vice-president to be annually elected. In the absence of the president and vice-president, a chairman to be ap-

pointed *pro tem*. Five members to be a *quorum*. § 15. It shall be the duty of the board to receive the reports of agricultural societies, and before granting the certificates hereinafter mentioned to see that they have complied with the law; to take measures, with the approbation of the minister, to procure and set in operation a model, illustrative, or experimental farm or farms in their respective localities, and in connexion with any public school, college, or university, or otherwise, and to manage and conduct the same; to collect and establish at Toronto and Montreal an agricultural museum, and an agricultural and horticultural library; to take measures to obtain from other countries animals of new or improved breeds, new varieties of grain, seeds, vegetables or other agricultural productions; new or improved implements of husbandry, or new machines which may appear adapted to facilitate agricultural operations, and to test the quality, value, and usefulness of such animals, grains, seeds, vegetables or other productions, implements, or machines, and generally to adopt every means in their power to promote improvements in the agriculture of this province. § 16. Said boards shall keep a record of their transactions, and from time to time publish in such manner and form, so as to secure the widest circulation among the agricultural societies, and farmers generally, all such reports, essays, lectures and other useful information as the said boards may procure and adjudge suitable for publication. And if the board shall publish a monthly journal, or adopt the agricultural journals now published, agricultural societies receiving any share of the government grant shall give at least one month's notice of the time and place of holding their exhibitions in such journals. § 17. Said boards shall transmit to the bureau a copy of of their resolutions and by-laws, or other formal proceedings, immediately after the adoption thereof; and no resolution, by-law, or other proceeding, involving an expenditure exceeding £10, shall be passed except with the assent of a majority of the members. § 18. Boards incorporated with power to hold land, &c.

BOARD OF ARTS AND MANUFACTURES.

§ 19. Incorporation of "the Board of Arts and Manufactures for Upper Canada." § 20. Incorporation of a similar board for Lower Canada. § 21. Empowered to hold land, &c. § 22. Said corporations to consist of the Minister of Agriculture for the time being, who shall be (*ex officio*) a member of each; the professors of and lecturers on the va-

rious branches of physical science in all the chartered universities and colleges in Upper and Lower Canada; the chief superintendents in both sections for the time being, (*ex officio*); the presidents for the time being, and one delegate from each of the Boards of Trade; the presidents of and delegates from each of the incorporated Mechanics' Institutes, or of any incorporated Arts Associations qualified as hereinafter mentioned, in Upper and Lower Canada, to be chosen annually as hereinafter provided. § 23. The Board of Trade in each city and town in Upper Canada, authorised at its first meeting in January, annually to elect and accredit one of its members to the Board of Arts, &c., for Upper Canada. § 24. Contains a similar provision with respect to the Boards of Trade in Lower Canada, § 25. Each incorporated Mechanics' Institute in both sections, authorised at its first meeting in January, annually, to elect and accredit to said Board of Arts, &c., one delegate for every twenty members on its roll being actual working mechanics or manufacturers, and having paid annual subscriptions of at least \$1; provided that such Mechanics' Institute shall have contributed to the funds of such board at least one tenth of the government aid to such institute for the year previous. § 26. The auditor shall transmit to the Board of Arts, &c., in March annually, statements of the number of members on the books, and the revenue of each institute, exclusive of provincial aid. § 27. The names of the delegates to be transmitted by the secretary of the institute to the secretary of the proper board, with affidavit by the secretary of such institute, sworn before a justice, of the names of all the members on the roll of such institute, being actual working mechanics or manufacturers, and having paid subscriptions of at least 5s. each to its fund for the last year.

Meetings and functions of the Boards.

§ 28. Said Board of Arts, &c., to meet at Toronto and Montreal four times a year, viz., on the first Tuesday in January, April, July and October, provided the same be not a holiday, in such case the next day thereafter. Special meetings may be called by the president, or in his absence the vice-president, whenever he may deem it necessary, or upon the requisition of any ten members, in the interval between any two quarterly meetings, upon seven clear days' notice to be given by the secretary of the board. § 29. Each board at its quarterly

meeting in January each year to elect a president, vice-president, and a secretary and treasurer for the ensuing year, appoint a sub-committee of not less than five, nor more than nine, of their number for the management of affairs. The president and vice-president to be *ex officio* members of such sub-committee, and a majority to be a *quorum*. Vacancies to be filled up at quarterly or special meetings. § 30. It shall be the duty of the Board of Arts, &c., to take measures with the approbation of the Minister of Agriculture to collect and establish at Toronto and Montreal, for the instruction of practical mechanics and artizans, museums of minerals and other material substances and chemical compositions susceptible of being used in mechanical arts and manufactures, with models of works of art, and of implements and machines other than implements of husbandry, and free libraries of reference, containing books, plans and drawings, selected with a view of imparting useful information in connexion with mechanical arts and manufactures; to take measures to obtain from other countries new or improved implements and machines (not agricultural) to test the quality, value and usefulness of the same, and generally to adopt every means in their power to promote improvement in mechanical arts and manufactures. § 31. Said boards authorised with the consent of the Minister of Agriculture to establish in connexion with their museums model rooms or libraries, schools of design for women, on the most approved plan, and furnished and supplied in the most complete and appropriate manner that the funds at their disposal may admit of; and the Minister of Agriculture may cause duplicates or copies of patented inventions to be placed in the model room, museums or libraries of said Board of Arts, &c., also to found schools or colleges for mechanics, and to employ competent persons to lecture. § 32. Said boards shall keep records of their transactions and publish the same. § 33. Said Board of Arts, &c., authorised to make by-laws, copies of the same to be transmitted to the Bureau of Agriculture, meetings, and functions of the board.

AGRICULTURAL ASSOCIATIONS.

§ 34. The members of the Boards of Agriculture and of the Boards of Arts and Manufactures, the presidents and vice-presidents of all lawfully organised county Agricultural Societies, and of all Horticultural Societies, and all subscribers of one dollar annually, shall constitute an Agricultural

Association for that section. § 35. Members of the Board of Agriculture, and of the Board of Arts and Manufactures, and the president and vice-presidents of county societies and Horticultural Societies (or any two members appointed directors instead of its president and vice-president) shall be the directors of such agricultural associations and may elect a treasurer. § 36. Associations in Upper Canada to hold an annual fair or exhibition to be open to all competitors from any part of the province. The directors to hold an annual meeting during the week of the exhibition, and at such meeting shall elect a president and vice-presidents, and appoint the place for holding the next meeting and exhibition, and may make rules and regulations for the management thereof, appoint a local committee at the place of such exhibition, and prescribe their powers and duties. § 37. The Board of Agriculture in conjunction with the president and vice-presidents of the Board of Arts and Manufactures, or any two persons named by the board in their place shall be the council of the association, with full powers; and all the grants of money, subscriptions, or other funds appropriated for the use of the association (except money collected by or granted to any local committee for the local expenses of the exhibition) shall be received by and expended under the direction of the said board as such council—and the secretaries of the said board and of the Board of Arts and Manufactures shall be *ex officio* joint secretaries of the association. § 38. All contracts and legal proceedings of the association shall be had with the Board of Agriculture, so constituted as such council in its corporate capacity.

HORTICULTURAL SOCIETIES.

§ 39. Any number of persons, not less than *twenty-five*, may form themselves into a Horticultural Society for any city, town, village, township or parish, or union of two or more thereof, in Upper or Lower Canada, by signing a declaration in the form of schedule A, (with necessary alterations as to name of the Society,) and subscribing not less than forty dollars annually to the funds thereof. § 40. Declaration to be in duplicate, one part to be written and signed on the first page or pages of a book to be kept by the society for recording its proceedings during the first year; and the other part written and signed on paper or parchment to be sent by post to the Minister of Agriculture, who shall cause a notice thereof to be inserted in the Canada Gazette. § 41. After insertion in the Gazette, such society

shall be a body corporate and politic, with power to hold and alienate property. § 42. And power to make by-laws for prescribing the mode of admission of new members and election of officers and regulation of affairs. § 43. To hold annual meeting in the first week in February besides meetings at such other times as may be provided for by its by-laws; and at such annual meeting to elect a president, vice-president, a secretary and treasurer, and not less than three, nor more than nine directors. § 44. Said officers and directors to prepare and present to the annual meeting a report of their proceedings during the year as directed for county Agricultural Societies, but with reference to horticulture only.

AGRICULTURAL SOCIETIES IN UPPER CANADA.

County or Electoral Division Societies.

§ 45. An Agricultural Society may be organised in each electoral division whenever fifty persons shall become members thereof by signing a declaration in the form A annexed to the act, and each paying, not less than five shillings annually to the funds of the society, a true copy of such declaration (within one month after the money has been so paid) to be transmitted to the Board of Agriculture. § 46. The object of such societies, and of the township or branch societies in connexion therewith, shall be to encourage improvement in agriculture or horticulture. 1. By holding meetings for discussing and for hearing lectures on husbandry. 2. By promoting the circulation of agricultural periodicals. 3. Importing seeds, plants and animals of new and valuable kinds. 4. By offering prizes for essays on questions of scientific enquiry relating to agriculture or horticulture, manufactures, and works of art. 5. And by awarding premiums for excellence in raising or introducing stock, the invention or improvement of agricultural implements and machines, the production of grain, vegetables, plants, flowers, fruits, &c. 6. The fund not to be expended otherwise. 7. And the directors empowered to make by-laws. § 47. First meeting for the formation of a county Agricultural Society to be called by the warden in the third week in January. § 48. Annual meetings to be held on the third week in January for the election of a president and vice-president, a secretary and treasurer, and not more than seven directors. § 49. Presidents of township Agricultural Societies, and of Mechanics' Institutes receiving government aid, and of Boards of Trade (or any other person appointed by such society, institute or board, in the place of such

president) within the county, to be in addition to those before named *ex officio* directors of the county society. Provided that such township society and Mechanics' Institute shall have contributed ten dollars annually to the funds of the county society. § 50. Meetings of the officers and directors to be held pursuant to adjournment, or called by written notice to, and by authority of, the president, or senior vice-president in his absence, at least one week before the day appointed. Five to be a quorum. § 51. Said officers and directors to prepare and present at the annual meeting a report of their proceedings during the year, and to contain certain statements, also a detailed statement of receipts and disbursements; a true copy of such report, if approved, certified by the president or secretary, to be sent to the Board of Agriculture on or before the first day of April following. § 52. County societies to receive reports of township or branch societies and transmit them to the Board of Agriculture with appropriate remarks. § 53. Officers and directors to answer queries and give such information from time to time to the Board of Agriculture, or minister, as may be required, touching the interests or condition of agriculture in such county, and generally to act as far as practicable upon the recommendations of said board.

TOWNSHIP SOCIETIES.

§ 54. A township or branch Agricultural Society may be organised in each township in Upper Canada, if one not already organised, on tenth of June, 1857, or in any two or more townships together whenever a sufficient number of persons, not less than *twenty-five*, shall become members by signing a declaration in the form of schedule A, and subscribing not less than \$40 annually to the funds thereof. A true copy of such declaration, certified by the president or vice-president of such society, to be forthwith transmitted to the county society. § 55. Such societies to hold their annual meetings in the second week in January, and elect a president, vice-president, secretary and treasurer, and not less than three nor more than nine directors. § 56. Said officers and directors to prepare and present to their annual meeting a report of their proceedings during the year, in the same manner as county societies, and transmit a certified copy to the secretary of the county society in time for their annual meeting in January.

GENERAL PROVISIONS.

§ 57. The exhibition of the county society shall be held

whenever the majority of the directors, or of a quorum, shall think fit, giving public notice thereof. 1. It shall be lawful for two or more county and township societies, by agreement between the directors, or a majority in each society, to unite their funds for the erection of suitable buildings, for exhibiting articles of produce, manufactures or works of art, or for animal or extra shows, ploughing matches, or for any other purpose likely to promote agriculture, horticulture, arts or manufactures, with power to hold or alienate land, &c. § 58. Whenever the president and secretary of the Board of Agriculture shall certify to the Minister of Agriculture that any county society has sent to the board reports and statements as required by the act for the year then last previous, and that the treasurer or other officer of such society has transmitted to said board an affidavit in the form of schedule B, sworn before a justice, stating the amount subscribed for that year and paid to the treasurer of the county society by the members thereof, and by the township societies, it shall be lawful for the Governor to issue his warrant in favour of such county society for a sum, out of any unappropriated moneys in the hands of the Receiver General, equal to three times the amount appearing by such affidavit to be in the hands of the treasurer. 2. But no grant shall be made unless \$100 be first subscribed and paid to the treasurer; 3, and the whole amount granted to any such Electoral Division Society shall not exceed \$800 per annum, 4, except that each of the counties of Lennox and Addington, Huron and Bruce, separately shall be entitled to receive a sum not exceeding \$800, on the conditions specified in this act; and that the counties of Prince Edward, Welland, Haldimand, Grey, Halton, Kent, Carleton, Essex, Lambton, Lincoln, Norfolk, Peel and Perth shall be entitled as heretofore to a sum not exceeding \$1000 per annum, and on the conditions aforesaid. § 59. The electoral divisions following, viz., City of Toronto, City of Kingston, City of Hamilton, Town of Brockville, Town of Niagara, Town of Cornwall, City of London, and City of Ottawa, shall each be entitled to receive a sum not exceeding \$400 for the encouragement of horticulture, agriculture, manufactures and works of art within their respective limits; 2, provided that a full equivalent for the sum to be so paid by the government be subscribed and paid to the treasurer of a society to be formed within such electoral division in the same manner as county agricultural societies under § 45 of this act, to be called "the Society for the Upper Canada Electoral Division" (or as the case

may be). § 60. Township or branch societies duly organised, and sending a report of its proceedings to the county society, entitled to a share of the grant to the county in proportion to the amount subscribed by members and deposited with the treasurer of the county society on or before the 1st May in each year, as compared with the amounts deposited by other township or branch societies. And the sum so deposited shall be re-paid along with its share of the public grant when received by the county society. 2. Provided that *three fifths* and no more of the public grant shall be subject to division among township or branch societies; and that the declaration mentioned in § 54 shall be deemed a sufficient report for the first year in which any township or branch society may have been organised, and that no such township or branch societies shall thus receive more than three times the amount so deposited; 3, and provided that no member of a township society shall by virtue of his subscription thereto be admitted as a member of the county society.

§ 61. The Board of Agriculture to receive and pay over to the county societies the public grants. The said board retaining for the use of the Agricultural Association *one tenth* part of all such grants. § 62. Any treasurer or officer making any false affidavit or return shall forfeit \$40 for every offence, and be liable to prosecution for perjury.

§ 63. County societies duly organised to be bodies corporate, with power to hold land as a site for fairs and exhibitions, or for a school farm, and to sell, lease, or dispose of the same; and any township or branch society duly organised may at any regular meeting adopt a resolution for incorporation, and upon filing the same with the Secretary of the Board of Agriculture, be thenceforth a body corporate with the like powers as county societies. § 64. Provision, authorising county or township societies or municipalities to purchase land for a school farm for the instruction of pupils in the science and practice of agriculture, not exceeding 100 acres.

§ 65. Provides for the apportionment of property between Electoral Divisions which originally belonged to the county society of which any such Electoral Division formed a part. Interpretation clause, the word "county" to mean Electoral Division, except where inconsistent; and the words "Electoral Division" shall mean a division for the purposes of representation. § 66.—2. The provisions of this act to extend to any new counties or new Electoral Divisions hereafter to be formed in Upper Canada, but no such new Electoral Division shall be entitled to more than \$800.

Agricultural Societies.

SCHEDULE A.

We whose names are subscribed hereto, agree to form ourselves into a society under the provisions of the act *respecting the Bureau of Agriculture and Agricultural Societies* to be called the (county electoral division, township or branch, *(as the case may be)* Agricultural Society of the county of _____, (or electoral division of _____ or township of _____); and we hereby severally agree to pay to the treasurer yearly, while we continue members of the society (any member being at liberty to retire therefrom upon giving notice in writing to the secretary, at any time before the annual meeting, of his wish so to do) the sums opposite our respective names, and we further agree to conform to the rules and by-laws of the said society.

NAMES.	\$.	cts.

SCHEDULE B.

County of _____ } I, A. B., of the township of _____ treasurer
to wit. } of the county Agricultural Society of
make oath and say, that the sum of _____ has been paid into my hands, since the first day of February last, by the township Agricultural Societies of the said county, as and for the members' subscription for this year, and that the sum of _____ has been paid into my hands, as subscriptions for this year, by members of the said county society; and that the said sums, making in the whole the sum of _____, now remain in my hands ready to be disposed of according to law.

Sworn to before me, this }
day of _____ A.D. 18 ____ }
C. D.,

A. B.

Justice of the Peace for the County of _____

SCHEDULE C.

We whose names are subscribed hereto, agree to form ourselves into a society under the provisions of the "*act respecting the Bureau of Agriculture and Agricultural Societies,*" to be called the county of (*name of county*) Agricultural Society (*or if there be a Society already organised under this act in the said county, add the words*) "number two, three or four," (*as the case may be, and state the part or section of the county to which its operations are intended to be confined,*) and we hereby severally agree to pay to the treasurer yearly while we continue members of the society the sum set opposite our respective names; and we agree to give written

notice to the secretary whenever we wish to withdraw from the society ; and we further agree to conform to the rules and by-laws of the said society.

NAMES.	\$	cts.

SCHEDULE D.

County of

I, A. B., of the county of Treasurer (*or other officer*) of the county of agricultural society (number two, three, or four *as the case may be*) make oath and say that there are forty (*as the case may be*) members belonging to the said society who have paid their subscriptions for the present year, and that there is now in my hands the sum of \$ being the produce of such subscriptions ready to be disposed of according to law.

Sworn to before me }
 this day of }
 A. D. 18 }

A. B.

C. D.,

Justice of the peace.

ALE-HOUSES.

The power of licensing houses of this description was formerly vested in justices of the peace, but is now under the U. C. Municipal Act, 22 V. c. 54, s. 240, vested in the municipal authorities, who are by law authorised to make by-laws regulating the same, and imposing duties, &c.

ALIENS.

An alien is one, generally speaking, who is born in a foreign country out of the allegiance of the king.—4 *Bl. Com.* 342.

But by 7 Ann, c. 5; 5 G. II. c. 21: and 13 G. III. c. 21, all children born out of the king's legiance whose *fathers* or *grandfathers* by the father's side were natural born subjects are deemed to be natural born subjects themselves, to all intents and purposes; unless their said ancestors were attainted or banished beyond the sea for high treason; or were, at the birth of such children, in the service of a prince at enmity with *Great Britain*.

The children of aliens born in the king's dominions are natural-born subjects, unless the alien parents are acting in the realm as enemies; for it is not *cælum nec solum* which gives them the rights of *Englishmen*, but their being born

within the allegiance and under the protection of the king.—7 *Co.* 18 *A.*; 1 *Bl. Com.* 374.

When an alien is indicted for any crime, the jury should be one half foreigners, if so many are found in the place; but this privilege does not hold in treason, since aliens are holden to be not the proper judges of what is the breach of the allegiance due to a *British* Sovereign.—4 *Bl. Com.* 352.

An alien residing in this country may be indicted for high treason, if he aid even his own countrymen in acts of hostility to this kingdom.—1 *Haw. c.* 17, § 5; *Fost.* 185; *Salk.* 46; 2 *Ld. Ray.* 282; *East, P. C.* 53.

A conveyance in fee to an alien is not void, but he holds for the benefit of the Crown, and is entitled, as against all others, until the land is seized into the hands of the Queen on office found; and if a subject be a trustee for an alien, he has the legal estate and the Queen is entitled to the profits; and a person claiming through an alien may have the benefit of the Crown; and *semble*, a person claiming lands under a sheriff's deed sold at the suit of an alien is entitled to recover in ejectment, notwithstanding stat. 5 *G. II.*, it being necessary to take the objection of alienage, if available at all, before execution.—*Cameron's Digest*, p. 5.

A person who was born in the United States before the revolution, and has continued to reside there since, is an alien, and cannot maintain an ejectment in this country.—*Ib.*

Naturalization of, under C. Stat. 22 V. c. 8.

§ 1. Every alien residing in any part of this province immediately before the 18th day of January, 1849, or who at any time thereafter came or comes to reside in any part of this province with intent to settle therein, and who, after a continued residence therein for a period of three years or upwards, has taken the oaths or affirmations of residence and allegiance (or the oath or affirmation of residence only if a female) and procured the same to be filed of record as hereinafter prescribed, so as to entitle him or her to a certificate of naturalization as hereinafter provided, shall thenceforth enjoy and may transmit all the rights and capacities which a natural-born subject of Her Majesty can enjoy or transmit.

§ 2. Every such alien in order to become entitled to the benefit of this act, shall take and subscribe the following oath of residence, or being one of those persons who are allowed by the laws of this province to affirm in judicial cases, shall make affirmation to the same effect, that is to say:

Oath of Residence.

I, A. B., do swear (or, being one of the persons allowed by law to affirm in judicial cases, do affirm) that I have resided three years in this province, with intent to settle therein, without having been during that time a stated resident in any foreign country. So help me God.

And every such alien, being a male, shall also take and subscribe the following oath of allegiance, (or being one of those persons who are allowed by the laws of this province to affirm in judicial cases,) shall make affirmation to the same effect, that is to say :

Oath of Allegiance.

I, A. B., do sincerely promise and swear (or being one of the persons allowed by law to affirm in judicial cases, do affirm) that I will be faithful and bear true allegiance to her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of the Province of Canada, dependent on, and belonging to the said United Kingdom, and that I will defend her to the utmost of my power against all traitorous conspiracies and attempts whatever which shall be made against her person, crown and dignity ; and that I will do my utmost endeavour to disclose and make known to her Majesty, her heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against her or any of them ; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or persons whatever to the contrary. So help me God.

And every such oath or affirmation shall be taken and subscribed by the said alien, and shall be duly administered to him or her by any justice of the peace or person having *ex officio* the power and authority of a justice of the peace within the city, town, parish, village or township in which the said alien resides, which said justice of the peace or person shall thereupon grant unto the said alien a certificate of residence, setting forth that such alien has taken and subscribed the said oath or affirmation, and (if the fact is so) that such justice or person has every reason to believe that such alien had been so resident within the province for a period of three years or upwards ; that he or she is a person of good character, and that there exists to the knowledge of such justice or person no reason why the said alien should not be granted all the rights and capacities of a natural-born British subject.

§ 3. The said alien may present the certificate of residence from the said justice of the peace, or other person as afore-

§ 5. A copy of the said certificate of naturalization may, at the option of the party, be entered and registered in the registry office of any county or registration division within this province, and a certified copy of such registry shall be sufficient evidence of such naturalization in all courts and places whatsoever.

§ 6. Any alien entitled to be naturalized under the provisions of the twelfth section of this act, may take the oaths or affirmations of residence and of allegiance, and obtain certificates as aforesaid in the same manner as aliens entitled to be naturalized under the provisions of the first section of this act only, and with the same effect to all intents and purposes.

§ 7. Any woman married to a natural born British subject, or person naturalized under the authority of this, or any other, or former law either of this province or either of the late provinces of Lower or Upper Canada, shall be deemed to be herself naturalized, and have all the rights and privileges of a natural born British subject.

§ 8. The justice of the peace, or other person as aforesaid, for administering the oath or oaths, or affirmation or affirmations above mentioned, shall be entitled to receive from the person to whom he administers the same twenty-five cents, and no more; and the clerk of the peace or clerk of the recorder's court, or clerk of the circuit court shall, for reading and filing the certificate of residence, and preparing and issuing the certificate of naturalization under seal of the court, be entitled to receive from such person the sum of twenty-five cents, and no more; and the registrar shall, for recording the said last mentioned certificate, be entitled to receive from such person the sum of twenty five cents, and a further sum of twenty-five cents for every search and certified copy of the same, and no more.

§ 9. Every alien shall have the same capacity to take, hold, possess, enjoy, claim, recover, convey, devise, impart, and transmit real estate in all parts of this province, as natural born subjects of her Majesty, in the same parts thereof respectively; 2, provided always, that nothing herein contained shall alter, impair or affect, or be construed to alter, impair, or affect in any manner or way whatsoever any right or title legally vested in or acquired by any person or persons whomsoever before the 23rd day of November, 1849.

§ 10. The privileges of naturalization imparted by this act to the several classes of persons herein mentioned, are

imparted to such persons respectively on the terms and conditions herein set forth, and to be by such persons exercised and enjoyed within the limits of this province, according to the true intent and meaning of an act passed in the parliament of the United Kingdom of Great Britain and Ireland, in the tenth and eleventh years of Her Majesty's reign, and intituled, *An Act for Naturalization of Aliens.*

§ 11. That nothing herein contained shall repeal or in any manner affect or interfere with a certain act of the legislature of Upper Canada, passed in the fifty-fourth year of the reign of his late Majesty King George the Third, intituled *An Act to declare certain persons therein described Aliens, and to vest their estates in his Majesty*, or any proceedings had under the said act.

§ 12. Nor shall any thing herein contained repeal or in any manner affect the act passed in the fourth and fifth years of her Majesty's reign, intituled *An Act to secure to and confer upon certain inhabitants of this province the civil and political rights of natural born British subjects*, or the first, second and third sections of the act passed in the twelfth year of her Majesty's reign, intituled *An Act to repeal a certain act therein mentioned, and to make better provision for the naturalization of aliens*, or impair or affect the naturalization of any person naturalized under the said acts or either of them, or any rights acquired by such person, or by any other party by virtue of such naturalization, all which shall remain valid and be possessed and enjoyed by such person or party respectively.

Penalty for False Swearing.

§ 13. Any person wilfully swearing or making any false affirmation under this act, shall be deemed guilty of wilful and corrupt perjury, and shall, on conviction, in addition to any other punishment authorised by law, forfeit all the privileges or advantages which he or she would otherwise by making such oath or affirmation have been entitled to under this act, but the rights of others in respect to estates derived from, or held under him or her, shall not thereby be prejudiced, excepting always such others as shall have been cognizant of the perjury at the time the title by which they claim to hold under him or her was created.

ALLEGIANCE.

Allegiance is the *tie* which binds the subject to the king, in return for the protection which the king affords the sub-

ject. — 1 *Bl. Com.* 396. And there is an implied original, and virtual allegiance owing from every subject to his sovereign, although the subject never swore any oath or allegiance in due form—2 *Inst.* 121; 1 *Bl. Com.* 368—which upon the death of the king in actual possession of the crown, is due to his heir and successor before his coronation—3 *Inst.* 7; 1 *Hale*, 61, 102; 1 *Haw.*, c. 17, § 19.

Allegiance is of two sorts, the one *natural*, and the other *local*; the former being perpetual, the latter only temporary.

Natural allegiance is such as is due from all men born within the king's dominions immediately upon their birth; and this cannot be forfeited, cancelled or altered by any change of time, place or circumstance, nor by any thing but the united concurrence of the legislature.—1 *Bl. Com.* 359; 2 *P. Wm.* 124; 1 *Hale*, 68, 96; *Fost.* 7.

Local allegiance is such as is due from an alien or stranger born for so long a time as he continues within the king's dominions and protection; and this ceases the instant such stranger transfers himself from this kingdom to another.—1 *Bl. Com.* 370.

Oath of Allegiance by Public Officers, &c.

Under C. Stat. 22 V. c. 12, § 3.

I, A.B., do sincerely promise and swear, that I will be faithful and bear true allegiance to her Majesty Queen Victoria, (*or the reigning sovereign for the time being,*) as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this province dependent on and belonging to the said kingdom, and that I will defend her to the utmost of my power against all traitorous conspiracies or attempts whatever which shall be made against her person, crown and dignity; and that I will do my utmost endeavour to disclose and make known to her Majesty, her heirs or successors, all treasons or traitorous conspiracies and attempts which I shall know to be against her, or any of them; and all this I do swear, without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or power whatever to the contrary.—So help me God.

§ 4. The form hereinbefore set forth, and no other, shall be that of the oath of allegiance to be administered to and taken by every person in this province who, either of his own accord or in compliance with any lawful requirement made on or in obedience to the directions of any statute, either of the Imperial or Provincial Parliament, desires to take an oath of allegiance; and all magistrates and other officers lawfully authorised, either by virtue of their office, or by special commission

from the Crown for that purpose, may administer the oath of allegiance in any part of this province.

§ 6. All persons allowed by law to affirm instead of swearing in civil cases in any part of this province, shall be received to take an affirmation of allegiance in the like terms, *mutatis, mutandis*, as the said oath of allegiance, and such affirmation of allegiance taken before the proper officer, shall in all cases be accepted for such persons in lieu of such oath; and shall as to such affirmants have the like effect as the said oath of allegiance, and all magistrates and other officers lawfully authorised, either by virtue of their office, or by special commission from the Crown for that purpose, may administer the affirmation of allegiance in any part of this province.

AMENDMENT.

See title "*Indictment.*"

AMNESTY.

By * 12 V. c. 13, a free pardon was granted to all persons in regard to the rebellion in 1837 and 1838; and by § 2, all lands and tenements, goods and chattels, forfeited to the Crown, are restored to the offender, excepting those actually seized and sold under lawful authority, in consequence of any such forfeiture or attainder, by any public officer or minister of justice; and by the same clause, *corruption* of blood, and forfeiture wrought by such attainder, are taken away.

ANATOMY.

The C. Stat. 22 V. c. 76, s. 2, directs that the bodies of persons found dead publicly exposed, or who immediately before their death had been supported in and by any public institution receiving aid from the provincial government, shall be delivered to persons qualified as hereinafter mentioned, unless the person so dying shall otherwise direct: or unless such bodies be claimed by *bonâ fide* friends or relations for interment. § 3. Persons qualified to receive such unclaimed bodies shall be public teachers of anatomy or surgery, or private medical practitioners having three or more pupils. But any public medical school in the locality shall have a preferable claim. § 4. The Governor authorised to appoint inspectors of anatomy in certain places. § 5. Their duties. § 6. The coroner presiding at the inquest on any body found

* This statute is indexed in the C. Statutes as *effete*, but retained here to show its effect upon titles.

publicly exposed, and unclaimed, shall notify the local inspector of anatomy, if there be one, otherwise cause the body to be interred as heretofore. § 7. Superintendents of public institutions shall notify in like manner such inspector of anatomy. § 8. A register to be kept by such superintendents of the bodies so delivered up. § 9. Emoluments of the inspectors fixed. § 10. Medical practitioners availing themselves of this act to give security for the decent interment of the remains.

By C. Stat. 22 V. c. 111, s. 63, bodies of deceased convicts in the penitentiary and unclaimed may be delivered up to the inspector of anatomy.

APPEAL.

Formerly an appeal, against the conviction of justices of the peace, lay only in cases where it was expressly given by statute; but now appeal lies in all cases, unless the particular statute relating to the offence disallows appeal; the general mode and manner of appeal is regulated by two statutes, viz.: 1.—C. Stat. 22 V. c. 99, which relates to appeals in *criminal* cases only; 2.—U. C. Stat. 22 V. c. 114, which relates to cases *not criminal*; among the latter may be classed petty trespasses, infractions of municipal law, and the like; under the head of criminal cases are included common assaults, breaches of the peace, and any criminal offence which may be disposed of by summary conviction before justices of the peace. The statute, however, under which the offence arises, may contain special provision in regard to appeal, regulating the time and rules to be observed, as for instance, in the case of "profanation of the Lord's day," the statute there (U. C. Stat. c. 104, s. 14) allows appeal to be made within *six* days after conviction; in other cases the time may be less or more; reference to the statute therefore, under which the conviction takes place, should be always had in cases of appeal in order to determine the time. But where the statute makes no special provision, then the case will come under one of the following statutes.

Appeal in Criminal Cases.

Under C. Stat. 22 V. c. 99.

§ 117. In case any person thinks himself aggrieved by any summary conviction or decision under any of the foregoing criminal acts, (a) then, in case such person within

(a) C. Stat. 22 V. c. 90 to 98, but in c. 96, (relating to *cruelty to animals*, it will be observed that by § 22, *fourteen* days' notice of appeal are requisite.

three days after such conviction, and *seven* days at least before the first court of General Quarter Sessions of the peace for the district, inferior district, county or place, to be held not sooner than *twelve* days next after the day of such conviction, or decision, gives to either party a notice in writing of his intention to appeal, and of the cause and matter thereof, and in case such person either remains in custody until such sessions, or enters into a recognizance with two sufficient sureties of the peace, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded, such person may appeal to such Court of Quarter Sessions, and the court shall, at such sessions, hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court seems meet, and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

§ 118. In case a party in custody has given notice of appeal, and entered into a recognizance according to the provisions of the foregoing section, then the justices before whom such recognizance was entered into shall liberate the party.

§ 119. Whenever an appeal is made from the decision of any justice under any of the said acts, the Court of Quarter Sessions shall have power to empanel a jury to try the matter on which the decision has been made, and the court on the finding of the jury, under oath, shall thereupon give such judgment as the circumstances of the case may require; but the court shall not in any case adjudge the payment of a fine exceeding the sum specified in the conviction in addition to the costs, or order the imprisonment of the person so convicted for any period exceeding the time specified in the conviction; and all fines imposed and recovered by the judgment of such court, shall, if not otherwise specially provided, be applied and disposed of in the same manner as other fines imposed by justices of the peace are directed to be applied.

Appeal in Cases not Criminal.

Under U. C. Stat. 22 V. c. 114.

§ 1. In case a person, complainant or respondent, thinks himself

aggrieved by an order, conviction, or decision before any justices of the peace, mayor or police magistrate, not being a crime, then in case within *four* days after the conviction, order or decision, and *eight* days before the first Quarter Session of the Peace to be held not sooner than twelve days next after such order, decision, or conviction, the party aggrieved gives to the other party, or leaves with the convicting justice for him, a notice in writing of his intention to appeal, and of the cause and matter thereof, and in case of an appellant in custody, if he either remains in custody until such sessions, or enters into a recognizance with two sufficient sureties before a justice of the peace, conditioned to appear at the said quarter sessions and try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded, or, in case the appellant be on bail, if he enters into such recognisance as aforesaid, such appellant may appeal to such court of quarter sessions, and such court shall, at such sessions, hear and determine the matter of such appeal, and make such order therein, with or without costs to either party, as to the court seems meet ; and in case of the dismissal of the appeal, or of the affirmance of the order, decision, or conviction, the court shall order and adjudge the order, decision, or conviction to be enforced, and the appellant to pay such costs as may be awarded, and shall, if necessary, issue process for enforcing the judgment of the court.

§ 2. In case a party in custody has given notice of appeal and entered into recognizance according to the provisions of the foregoing section, then the justice before whom such recognizance was entered into shall liberate such party.

§ 3. Whenever an appeal is made from the decision, order, or conviction of any justice, mayor, or police magistrate the court of quarter sessions appealed to, shall, at the request of either appellant or respondent, empanel a jury to try the matter on which such decision has been made, and administer to such jury the following oath :

“ You do solemnly swear that you will well and truly try the matter of the complaint of C. D. against E. F., and a true verdict give according to the evidence—So help you God.”

And the court, on the finding of such jury, shall thereupon give such judgment as the circumstances of the case may require ; not, however, exceeding the amount of penalty or period of imprisonment that might have been imposed or awarded under any law giving cognizance to the justice, mayor or police magistrate. § 4. Any appellant may abandon his appeal, by giving the opposite party notice of such intention in writing *six* days before the sessions appealed to, and thereupon the convicting justice, mayor or police magistrate may tax the respondent's additional costs, (if any,) and add the same to the original costs, and proceed on the original order, decision, or conviction, in the same manner as if there had been no appeal thereon.

§ 5. An appeal shall lie, in like manner, from all decisions, orders and convictions made by any justice of the peace, or by any person authorised to act in that capacity, upon complaints against any by-law of any municipal council.

§ 6. In this act the words "Quarter Sessions" includes Recorder's Courts.

On an appeal to the quarter sessions, evidence may be received which was not offered to the convicting justices.—*Cameron's D.* p. 71.

See title "*Summary Conviction*" for the forms of notices. And see also title *New Trial*.

APPRENTICES.

An apprentice is one under age, who is bound by indenture to serve his master or mistress for a term of years during his minority.

It has been held not an indictable offence to entice away an apprentice from his master, on the ground that it is not an act of a public nature, but a mere private injury, and therefore the proper subject of an action.—*Rex v. Daniel*, 6 *Mod.* 182; *Rex v. Collingwood*, 1 *Salk.* 380.

At common law, an apprentice stealing his master's goods is guilty of felony, if they were simply under his *charge*: but not so, if entrusted to him to *keep* for his master, this being a breach of trust only.—1 *H. P. C.* 505. This however was made felony by stat. 21 H. VIII. c. 7, in apprentices [not under eighteen years of age] embezzling to the value of forty shillings. (a) It is a misdemeanor to solicit him to steal his master's goods, though no act be done by him as to the stealing.—*Rex. v. Higgins*, 2 *East* 5; *Rex v. Collingwood*, *contra*.

It is an indictable offence to refuse or neglect to supply necessaries to a child, a servant or apprentice, whom a person is bound by duty or contract to provide for.—*R. v. Friend*, *Russ. & Ry.* 20.

The apprenticeship may be determined by the death of the master, or the apprentice coming of age.—*Ex parte Davies*, 5 *Term Rep.* 715; *Chitty App. L.* 79.

Differences between the Master and Apprentice.

A master is allowed by law, with moderation, to chastise his apprentice.—*Dalt.* c. 68.

(a) See also *post* title "Embezzlement."

But if the master and his apprentice cannot agree, either party may proceed under the statute 22 V. c. 76.

An order of discharge may be made upon the application of either party; for an apprentice may be discharged from a bad master, and a bad apprentice from his master.—1 *Saund.* 315, 16, 313, *n.* 2.

But the sessions cannot discharge without setting forth some cause in their order.—1 *Bott.* 577; 2 *Str.* 1013; *Ib.* 704; *Bott.* 576.

The usual causes for which an apprentice may complain against his master are cruelty, and misusing his contract, either by neglecting to instruct him, or the like.

And when the master applies to get rid of his apprentice, it is generally upon the ground of incorrigible behaviour.

There is no power to discharge for sickness, as, “where the apprentice was lame, and in the surgeon’s opinion incurably afflicted,” for the master takes him for better or worse, and is to provide for him in sickness and in health.—1 *Skin.* 89; 1 *Bott.* 572.

It has been decided and settled, that the justices have power to order restitution of the premium received with the apprentice, or such part of it as they may think fit, as an incident to their authority to discharge.—1 *Saund.* 313, *n.* 3, *cites* 1 *Salk.* 67, 68; 2 *Salk.* 481, *S. C.*; *Skin.* 108; 1 *Bott.* 571, 576, *acc.*; 1 *Str.* 79, *contra*, and see the proceedings in 2 *Bernard K. B.*, 244, 296, and *Chitty* on *App. Laws*, 107.

Proceedings under U. C. Stat. 22 V. c. 76,

Entitled *An Act respecting Apprentices and Minors.*

§ 1. Where a minor over the age of sixteen years who has no parent or legal guardian, or who does not reside with his parent or guardian, enters into an engagement, written or verbal, to perform any service or work, he shall be liable upon the same, and shall have the benefits thereof, as if he had been of legal age.

§ 2. A parent, guardian, or other person having the care or charge of a minor, not under the age of fourteen years, may, with the consent of the minor, put and bind him as an apprentice by indenture, to any master mechanic, farmer, or other person carrying on a trade or calling, for a term not to extend beyond the minority of the apprentice.

§ 3. When the father of an infant child abandons and leaves the child with the mother, the mother, with the

approbation of two justices of the peace, may bind the child as an apprentice to any person mentioned in the last section until the child attains the age of twenty-one years in the case of a male, and eighteen in the case of a female; and an indenture to that effect under the hand and seal of the mother, and countersigned by such justices, shall be valid; but no child, having attained the age of fourteen years, shall be so apprenticed unless he or she concurs.

§ 4. In a city or town, the mayor, recorder, or police magistrate, and in a county, the chairman of, and at the court of general quarter sessions of the peace, may put and bind for the like period, to any person mentioned in the several sections of this act, with the consent of such person, and of the minor, any minor who is an orphan, or has been deserted by his or her parents or guardian, or whose parents or guardian have been for the time committed to a common gaol or house of correction, or any minor who is dependent upon public charity for support; and such apprentice, and the master of such apprentice, shall be held in the same manner, as if the apprentice had been bound by his or her parent.

§ 5. If the master of the apprentice dies, the apprentice shall, by act of law, be transferred to the person, (if any such,) who continues the establishment of the deceased, and such party shall hold such apprentice upon the same terms as the deceased, if alive, would have done.

§ 6. A master may transfer his apprentice to any person who is competent to receive or take an apprentice, and who carries on the same kind of business.

§ 7. Every master shall provide to his apprentice during the time of his apprenticeship suitable board, lodging and clothing, or such equivalent therefor as is mentioned in the indenture, and shall also properly teach and instruct him, or cause him to be taught and instructed in his trade or calling.

§ 8. Every apprentice shall, during the term of his apprenticeship, faithfully serve his master, shall obey all lawful and reasonable commands, and shall not absent himself from his service day or night, without his consent.

§ 9. Any justice of the peace, mayor, or police magistrate, on complaint made before him on oath, by an apprentice against his master for refusing him necessary provisions, or for misuse, cruelty or ill-treatment, shall summon the master to appear before him to answer the complaint, and on conviction shall levy on the offender a fine

not exceeding twenty dollars, and issue a warrant of distress to collect the same and the costs, and in default of satisfaction of the distress shall imprison the offender in any common gaol for a term not exceeding one month, unless the fine and costs be sooner paid. § 10. Any justice, mayor, or police magistrate shall also, on complaint of a master against his apprentice for refusing to obey his commands, or for waste or damage to property, or for any other improper conduct, cause the apprentice to come before him, and shall hear and determine the complaint, and, on conviction, order such apprentice to be imprisoned in a common gaol or house of correction for a term not exceeding one month.

§ 11. If any apprentice absents himself from his master's service or employment before the time of his apprenticeship expires, he may, at any time thereafter, if found in Upper Canada, be compelled to serve his master for so long a time as he so absented himself, unless he makes satisfaction to his master for the loss sustained by such absence. § 12. In case an apprentice refuses to serve as above required, or to make such satisfaction to his master, or to obey the lawful commands of his master, or in any other way refuses to perform his duty to his master, and if the master, or his overseer or agent, complains on oath to a justice of the peace, mayor, or police magistrate, or in any county, city or town where the absconding apprentice is found, such justice, mayor, or police magistrate shall, by warrant under his hand and seal, cause the apprentice to be apprehended and brought before him, or before some other justice of the peace, and such justice upon hearing the complaint shall determine what satisfaction shall be made by the apprentice to his master; and in case the apprentice does not give or make such satisfaction immediately, or in case the satisfaction be of such a nature as not to admit of immediate performance, if he does not give sufficient security to make such satisfaction, then the justice, mayor, or police magistrate shall commit the apprentice to the common gaol, or house of correction of the county, city or town, for any time not exceeding three months. But such imprisonment shall not release the apprentice from his obligation to make up the lost time to his master. § 13. Where the apprentice has not left Upper Canada, or having left it has returned thereto, the master shall not proceed against him under this act, except within *three* years next after the expiration of the term for which the apprentice contracted to serve, or next after his return, as the case may be.

§ 14. Any person who knowingly harbours or employs an absconding apprentice, shall pay to the master of the apprentice the full value of the apprentice's labour, and such value shall be what the master would have received from the labour and service of the apprentice if he had continued faithfully in his master's service, and the master may recover in any court having jurisdiction where the apprentice has been employed, or where the master resides.

§ 15. If an apprentice becomes insane, or be convicted of felony, or be sentenced to the provincial penitentiary, or absconds, his master may within one month then next ensuing, but not afterwards, avoid the indenture of apprenticeship, from the time he gives notice in writing of his intention to do so to the other parties to the indenture, either by serving them with such notice or a copy thereof, or by inserting the same in the *Canada Gazette*, or in a newspaper of the county or city where the master's establishment is situated.

§ 16. Either party may appeal from the decision of a justice, mayor, or police magistrate under this act in manner provided for by the act respecting appeal in cases of summary conviction.

§ 17. The Court of Quarter Sessions shall have a concurrent primary jurisdiction over offences committed against this act.

§ 18. When that court is called upon to adjudicate in any matter arising under this act, it shall, in addition to the other powers of the court, have power in any case where it appears necessary for the full administration of justice, to annul the apprenticeship, and to compel the parties to the indenture of apprenticeship to deliver the same up to be cancelled; and the court may make such further order as the circumstances require.

§ 19. All fines imposed and collected under this act shall be paid to the chamberlain of the city, or to the treasurer of the county or town respectively where the offence was committed.

Interpretation.

§ 20. The word "master" when it occurs in this act shall include any person, or number of persons, male or female, carrying on business singly, or in co-partnership, and every body corporate.

The forms found under the title "*Summary Conviction*" may be used in proceedings under this act.

Common form of Indenture of Apprenticeship.

This Indenture witnesseth, that A. B., of the age of _____ years, the son of B. C., of the township of _____ in the county of _____, yeoman, by and with the consent of his said father, doth put himself apprentice to C. D., of the city of Toronto, shoemaker, to learn his art, and with him, after the manner of an apprentice, to serve, from the day of the date of these presents, unto the full end and term of _____ years from thence next following, to be fully complete and ended; during which term the apprentice his master faithfully shall serve, his secrets keep, his lawful commands every where gladly do: he shall do no damage to his said master, nor see it to be done of others, but to his power shall let or forthwith give warning to his said master of the same: he shall not waste the goods of his said master, nor lend them unlawfully to any: he shall not commit fornication nor contract matrimony within the said term: he shall not play at cards, dice tables, or any other unlawful games, whereby his said master may have any loss with his own goods or others, during the said term, without license of his master: he shall neither buy nor sell: he shall not haunt taverns or play-houses, nor absent himself from his said master's service day or night, unlawfully, but in all things as a faithful apprentice he shall behave himself towards his said master and all his during the said term. And the said C. D. in consideration of the faithful services of the said apprentice, and of the sum of £ _____ of lawful and current money of the province of Canada, to him in hand paid by the said B. C. at or immediately before the execution hereof, the receipt whereof is hereby acknowledged, his said apprentice in the art of a shoemaker which he useth, by the best means that he can, shall teach and instruct, or cause to be taught and instructed, finding and providing unto the said apprentice sufficient meat, drink, lodging and all other necessaries during the said term, and moreover, (*here add any special contract for wages, in case any are to be paid to the apprentice*), and for the true performance of all and every the said covenants and agreements, each of the said parties bindeth himself unto the other, and others of them firmly by these presents. In witness whereof, the parties above named to this indenture interchangeably have put their hand and seals, at the city of Toronto aforesaid, the _____ day of _____ in the year of our Lord 18 _____

Signed, sealed, and delivered	A. B.	[L. S.]
in the presence of	B. C.	[L. S.]
E. K. Schoolmaster.	C. D.	[L. S.]

Assignment of an Apprentice.

To all to whom these presents shall come, I, A. M., of _____ send greeting:

Whereas my apprentice A. P., hath divers years yet to come,

and expired of his apprenticeship, to wit : whole years from the day of now last past, as by his indenture of apprenticeship to me sealed, and hereunto annexed, doth appear. Now know ye that I, the said A. M., for divers good causes and considerations, me hereunto moving, have given, granted, assigned and set over, and by these presents do fully and absolutely give, grant, assign and set over, unto A. S. of , all such right, title, duty, term of years to come, service and demand whatsoever, which I, the said A. M., have in, or to the said A. P., or which I may or ought to have in him by force and virtue of the said indenture of apprenticeship ; and moreover I, the said A. M., do by these presents covenant, promise and agree, with and to the said A. S., his executors and administrators, that notwithstanding any thing by me, the said A. M., to be done to the contrary, the said A. P. shall, during the remainder of the said term of years, well and truly serve the said A. S., as his master, and his commandments lawful and honest shall do, and from his service shall not absent himself during the said term ; provided, that the said A. S. shall well entreat and use him the said A. P., and him the said A. P., in the craft, mystery and occupation of a , which he the said A. S. now useth, after the best manner that he can or may, shall teach, instruct and inform, or cause to be taught, instructed and informed, as much as thereunto belongeth, or in anywise appertaineth, and shall also, during the said term, find and allow unto the said A. P. sufficient meat, drink, apparel, washing, lodging, and all other things needful or meet for an apprentice.

In witness, &c.

APPROVERS.

An approver is a person who (when indicted of treason or felony and arraigned for the same) confesses the fact before plea pleaded, and approves or accuses others, his accomplices, of the same crime, in order to obtain his pardon ; in this case he is called an approver. Such approvement can only be in capital offences, and is, as it were, equivalent to an indictment ; for the appellee is equally called upon to answer it ; and if he hath no reasonable or legal exceptions to make to the approver, (which were formerly very numerous,) he must put himself upon his trial, and if found guilty must suffer judgment, and the approver shall have his pardon *ex debito justitiæ*.

On the other hand, if the appellee be acquitted, the approver shall receive judgment to be hanged, upon his own confession of the indictment ; for the condition of his pardon has failed, viz., the convicting of some other person, and therefore his conviction remains absolute.—3 *Inst.* 159 ; 4 *Bl. Com.* 230 ; 2 *Hale, c.* 4, 29 ; 2 *Haw. c.* 24.

But this course of admitting approvements has long been disused, and the law upon the subject is now become merely matter of curiosity. But what has most contributed to render the system of approvement obsolete, is the practice which has now prevailed for many years of the committing magistrate admitting an accomplice to become a witness (or as it is generally termed *king's evidence*) against his fellows, upon an implied confidence, which the judges of gaol delivery have usually countenanced and adopted, that if such accomplice makes a full and complete discovery of that and all other felonies, to which he is examined by the magistrate, and afterwards gives his evidence without prevarication or fraud, he shall not himself be prosecuted.—4 *Bl. Com.* 331-

And see *post* title "*King's Evidence.*"

ARBITRATION.

By 9 & 10 W. c. 15, § 1, all merchants and others, desiring to end any controversy (for which there is no remedy but by personal action or suit in equity) by arbitration, may agree that their submission of the suit to the award of any persons shall be made a rule of her Majesty's courts of record, and may insert such their agreement in their submission, or the condition of the bond or promise; and upon reading and filing such affidavit in court, the same may be entered of record, and a rule shall be thereupon made, that the parties shall submit to, and finally be concluded by such arbitration; and in case of disobedience thereto, the party shall be subject to all the penalties of contemning a rule of court, and process accordingly; which shall not be stopped by any order, &c., of any other court, either of law or equity, unless it appear on oath, that the arbitrators, or umpire, misbehaved themselves, and that such award was corruptly procured.

Any arbitration, or umpirage, procured by corruption or undue means shall be void and set aside by any court of law or equity, so that such corruption or undue practice be complained of in the court, where the rule is made for such arbitration, before the last day of the next term after such arbitration made and published to the parties.—§ 2.

The form of an Agreement.

Articles of agreement entered upon this day of 18 ,
between A. B., of , of the one part, and C. D. of , of the
other part. Whereas (*here state the subject in dispute, and that
an action is now pending in the Court of Q. B.*) And whereas
the said A. B. and C. D., for the purpose of putting an end to all

controversy touching the matters in question, have respectively agreed to refer all questions, differences and disputes whatsoever, now pending in the said matters, (*and if an action is pending, "also by whom, and in what manner, the costs of all the parties in such cause or suit shall be paid,"*) to the consideration, judgment and arbitrament, and final award of _____, being a person indifferently named and chosen by the parties hereto, as an arbitrator in the premises; and further, that the said reference and submission shall and may, in pursuance of the statute in that behalf made and provided, be made an order of her Majesty's said court of Queen's Bench, if the said court shall think fit to order the same. Now these presents witness, that for the consideration and purposes aforesaid, it is hereby declared and agreed upon, by and between the said parties to these presents, that they the said parties hereto, and each of them, their and each of their heirs, executors and administrators, on his and their respective parts, shall and will well and truly stand to, abide by, perform, fulfil and keep, the order, arbitrament, final determination, and award of the said _____ the arbitrator so as aforesaid indifferently named and chosen by them the said parties hereto, to adjudge, arbitrate, determine, order and award between them, of and concerning all questions, titles, controversies, differences and disputes, now pending or subsisting between them in the premises, and also by whom and in what manner, and to whom the costs in the said suit are or ought to be paid, so as the said arbitrator shall make such his order, arbitrament, final determination and award in writing, under his hand and seal, ready to be delivered to the said parties, or such of them as shall require the same, on or before the _____ day of _____ next ensuing the date of these presents. And it is hereby agreed by and between the said parties hereto, that no action at law or suit in equity shall be commenced or prosecuted by any or either of them against the said _____, for or on account of his award, to be made pursuant to this agreement.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered, }	A. B.	[L. S.]
in the presence of E. F. }	C. D.	[L. S.]

The Award.

To all to whom these presents shall come, I, _____ of _____, yeoman,
send greeting :

Whereas (*here recite the subject matter in dispute, and the agreement to refer the same to arbitration, as in the above form.*) Now know ye, and these presents witness, that I, the said _____, having taken upon myself the said reference, and having heard the statement of the parties and their witnesses, and having examined the

matters and proofs produced on both sides, and having investigated the transactions and accounts by and between the said parties, and maturely considered the same, do make my award in manner following, that is to say :—I do hereby award and determine that there is now justly due and owing to the said A. B. from the said C. D. the sum of £ upon a balance of account ; and I do award, order and direct that the said C. D. shall pay the said sum of £ to the said A. B. or his order, within after the publication of this my award, and notice thereof in writing given to the said C. D. : and I do further order and direct that each of the said parties shall pay his own costs, charges and expenses of and concerning the said suit, and of all matters whatsoever attending the said reference : (a) and I do further order and direct that the costs and charges of and attending this my award shall be paid equally between the said parties.

In witness whereof, I have hereunto set my hand and seal, the day of , 18 .

Signed, sealed, and delivered, }
 in the presence of }

ARRAIGNMENT.

The arraignment of a prisoner consists in calling him to the bar by his name, and commanding him to hold up his hand, in order to identify his person, reading over distinctly the indictment to him, that he may understand the charge, and demanding of him whether he is “guilty” or “not guilty.” The practice formerly was to ask him, in addition, how he would be tried—to which the answer was—“by God and my country.” But now by C. Stat. 22 V. c. 99, s. 49, if any person whatever, being arraigned upon an indictment for treason, felony or piracy, pleads thereto a plea of “not guilty,” such person shall by such plea, without any further form, be deemed to have put himself upon the country for trial, and the court shall, in the usual manner, order a jury for the trial of such person accordingly.

§ 47. 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, the court may order the proper officer to enter a plea of “not guilty” on behalf of such person ; and the plea so entered shall have same force and effect as if such person had actually pleaded the same.

The prisoner should stand at the bar till he receives judgment, without irons, shackles or bonds.—2 *Hale*, 219.

(a) The arbitrator may award otherwise, as he may think proper, and award either party to pay the whole.

ARREST.—CRIMINAL.

An arrest is, in the criminal law, an apprehending or restraining of the person of any individual, in order to be forthcoming to answer an alleged or suspected offence or crime; and to such an arrest all persons whatsoever, without distinction, are equally liable; but no man can, in general, be arrested unless charged with such a crime as will at least justify holding him to bail when taken.—4 *Bl. Com.* 289.

Arrest by Warrant.

A warrant may be granted, in extraordinary cases, by the privy council, or any of the secretaries of state, but ordinarily by justices of the peace.—1 *Ld. Raym.* 65.

A justice may grant a warrant in all cases where he has a jurisdiction over the offence, in order to compel the person accused to appear before him.—12 *Co.* 130; 2 *Haw.* 34; *Bone v. Methuen*, 2 *Bing.* 63.

Thus, a warrant may be granted in all treasons, felonies and breaches of the peace, and also for all such offences as a justice has power to punish by statute.—*Ibid.* So a justice may grant a warrant against an offender charged on oath with having published a *libel*, and compel him to find sureties.—*Butt v. Conant*, 1 *Brak. & B.* 548.

It may be issued also to apprehend a person accused of felony, though not indicted, or to apprehend a person suspected of felony, though the original suspicion be not in the justice issuing the warrant, but in the party that prays it, for the justice is the competent judge of the probability offered to him of such suspicion.—2 *Hale, P. C.* 108, and see 34 *Edw.* III. c. 1.

But no warrant should, in any case, be granted without an examination upon oath of the party requiring it, as well to ascertain that there is a felony, or other crime actually committed, as also to prove the cause and probability of suspecting the party against whom the warrant is prayed.—2 *Hale*, 100.

The reasonable grounds of suspicion are—common fame; being found in such circumstances as induce a strong presumption of guilt; the flight or escape of the person suspected; being found in evil company; or living an idle, vagrant and disorderly life.—2 *Haw.* 76.

The warrant should be under the hand and seal of the justice; should set forth the time and place of making, and the cause for which it is made; and should be directed to

the constable or other peace officer, (or it may be to any private person, by name—*Salk*. 176,) requiring him to bring the party, either generally before any justice for the county, (or district,) or only before the justice who granted it: the warrant in the latter case being called a special warrant.—2 *Haw.* 85; 4 *Bl.* 290.

A general warrant to apprehend all persons suspected without naming or describing any person in particular, is illegal and void, for it is uncertain.—1 *Hale*, 580; 2 *Haw.* 82.

In like manner, a *blank warrant* filled up by a *third person*, with the name of an officer after the warrant is signed and sealed by the magistrate, is illegal.—*Stockley's case*, 1 *East*, P. C. 310; *Houson v. Barrow*, 6 *T. R.* 122; *Stevenson's case*, 10 *St. Tr.* 462.

The cause of the arrest should be stated with sufficient certainty on the face of the warrant, in order to shew the jurisdiction of the court or magistrate granting it.

When a warrant, properly penned, is received by the officer, he is bound to execute it within the district for which the jurisdiction extends; and the officer will (by 24 *G. II.*, c. 44) be in that case indemnified, even though the magistrate should not have strict authority to grant it.—*Bl.* 291.

The warrant of a justice of the peace in one county must be backed, that is, its execution authorised by a justice of the peace in another county, before it can be executed in the latter.

When a constable, after he has arrested the party under a warrant, suffers him to go at large, upon his promise to come again and find securities, he cannot afterwards arrest him by force of the same warrant; but if the party return and put himself again under the custody of the constable, it seems that the constable may then lawfully detain him and carry him before the justice.—2 *Haw.* 81.

And if the party escape, the officer may take him again, although he goes out of view, or flies into another town or county.—*Dalt.* c. 169.

Arrest without Warrant.

A justice of the peace may apprehend, or cause to be apprehended, by word only, any person committing a felony or breach of the peace in his presence.—1 *Hale*, 86; and see 34 *Edw. III.*, c. 1.

So the *sheriff* and the *coroner* may apprehend any felon within the county without warrant.—2 *Hale*, 87, 88; 4 *Bl. Com.* 292.

So also a *constable* may arrest any one for a felony or breach of the peace committed in his view, and carry him before a justice of the peace. And in case of a felony actually committed, or a dangerous wounding whereby felony is likely to ensue, he may also, upon a probable suspicion, arrest the party, notwithstanding the suspicion arise not in his own mind, but in that of some other person, who communicates it to the constable. But in this last case he ought to enquire, scrupulously, into the causes of the suspicion; for though he cannot do this upon oath, it may reasonably carry over the suspicion to his own mind.—*Hale*, 91.

And although it should afterwards appear that no felony has been committed, yet he may justify an arrest without a warrant on a charge of felony made by another person, on reasonable cause of suspicion.—*Samuel v. Payne*, 359. Or even if, without any charge, the constable himself has reasonable cause of suspicion.—*Beckwith v. Shilby*, B. & C. 635.

And if one menace another to kill him, and complaint be made to the constable forthwith, the constable may (in order to avoid the present danger) arrest the party, and detain him till he can conveniently bring him to a justice of the peace; and this on the ground that it is the duty of the officer to prevent a probable felony, (2 *Hale*, 88;) or, according to *Dalton*, c. 116, § 3, even a probable battery or assault.

Watchmen, who are appointed by the statute of *Winchester* (13 *Edw.* I.) to keep watch and ward in all towns, from sun-setting to sun-rising, or such as are mere assistants to the constable, may arrest all offenders, and particularly *night-walkers* and *disorderly persons*, and commit them to custody till the morning.—2 *Hale*, 98.

By C. Stat. 22 V. c. 99, s. 1, any person found committing any offence punishable upon indictment, or upon summary conviction, may be immediately apprehended by any peace officer without a warrant, or by the owner of the property with respect to which the offence is, committed, or by his servant, or any other person authorised by such owner, and shall be forthwith taken before some neighbouring justice of the peace to be dealt with according to law.

Any *private person*, who is present when any felony is committed, is bound by the law to arrest the felon, on pain of fine and imprisonment if he escape through his negligence.—2 *Haw.* 74.

So where an indictment is found against a party, a private person may arrest the offender.—*Dalt.* c. 170, § 5; 1 *Haw.* c. 28, § 12; 1 *East*, P. C. 301.

Any person may apprehend any other person found committing any indictable offence in the night, and convey or deliver him to some constable or other person, in order to his being taken, as soon as conveniently may be, before a justice of the peace, to be dealt with according to law. C. Stat. 12 V. c. 99, s. 4.

The manner of making an Arrest.

The party arrested should have due notice of the officer's authority.—1 *Hale*, 458, 470; 1 *Haw. c.* 31, § 49, 50; *Fost.* 310; *Kel.* 136.

But otherwise, if the officer and his business be known.—*Mackally's case*, 9 *Co.* 59; *Pew's case*, *Cro. Car.* 183. And this will apply as well to a special bailiff, as to a known officer.—2 *Russ.* 787.

After a due notification to the party, a bailiff *juratus et cognitus* (sworn and known) acting in his own district, need not shew the warrant by which he is constituted bailiff—1 *Hale*, 458, 461, 583; 9 *Co.* 69; *Gordon's case*, 1 *East, P. C.* 315: or, as it seems, the particular warrant directed to him to execute.—1 *East, P. C.* 315.

But if he acts out of his precinct, and is not sworn, or commonly known, he must then shew his warrant, if demanded.—*Hale*, 459; *Fost.* 320.

If a constable has no authority, a notification of his authority becomes more essential. In this case, it seems that the production of his *staff* of office, or any other known ensign of authority, will be sufficient.—1 *Hale*, 406; *et seq.*; *Fost.* 310; *Kel.* 66, 115; 1 *Russ.* 738.

An arrest in the night is good, both at the suit of the king and of the subject, in order to prevent the escape of the party.—9 *Co.* 66.

Bare words will not make an arrest, without laying hold on the person, or otherwise confining him. But if an officer comes into a room, and tells the party he arrests him, and locks the door, this is an arrest.—1 *Sa.* 79; 2 *Haw.* 129; *Cas. temp. Hard.* 301.

Doors and windows may be broken open, if necessary, in order to make an arrest under a magistrate's warrant, or any other criminal process: but in this case, the officer must first signify to those in the house the cause of his coming, and request admittance.—2 *Haw.* 86; 1 *Hale*, 459; 2 *Hale*, 117; *Dalt, c.* 169; *Fost.* 320; 1 *East, P. C.*, 315.

And, as an officer may break open a man's house, so may he break open the house of a stranger, in order to take

him; but the party must be there—if not, the officer will be a trespasser—2 *Hale*, 117—unless acting under a magistrate's warrant.

Where one is *known* to have committed a treason or felony, or to have given another a dangerous wound—then, if pursued by an officer, or even a *private person*, with or without warrant, doors may be broken to apprehend him.—1 *Hale*, 459; 2 *Haw. c.* 13, § 7; *Fost.* 320.

Upon any *process of contempt* from courts of justice, the officer charged with the execution of such process may break open doors, if necessary, to execute it.—1 *Burdett v. Abbot*, 14 *East*, 157.

So, the like may be done upon a *capias ut lagatum*, a *capias pro fine*, or upon an *habere facias possessionem*; or where a *forcible entry* or *detainer* is found by inquisition, before justices of the peace, or appears upon their view.—2 *Haw. c.* 14, § 6; 4 *Com. Dig.*, title *Forcible Entry* (D. 6.)

Or, on the warrant of a justice for *levying a penalty* on a conviction grounded on any statute, which gives the whole or any part of such penalty to the king.—2 *Haw. c.* 14, § 5. But in this case the officer, if required, must shew the warrant, and suffer a copy to be taken.—27 *G. II.*, c. 20.

So, when there is an *affray* in a house, in the view or hearing of the constable, and manslaughter, or bloodshed is likely to ensue, he may break open doors to keep the peace.—2 *Hale*, 95; 1 *Haw.* 137; 2 *Haw.* 87.

So, if there be a *disorderly* drinking or noise in a house, at an unreasonable time of night, especially in inns, taverns or ale-houses, the constable, or his watch (demanding entrance and being refused) may break open the doors, to see and suppress the disorder.—*Hale*, 95.

So wherever a person *escapes* from a lawful arrest, and shelters himself in a house, the officer may break open doors to retake him, whatever the cause of the arrest may have been.—2 *Haw.* 78. But if it be upon a fresh pursuit, the officer (it seems) should have a warrant.—1 *East*, P. C. 324.

And in any of the above cases, where the officer enters a house, and the doors are locked upon him to prevent his egress, he may break them open to regain his liberty.—*Ibid.*

What is to be done after making an Arrest.

When the arrest is by warrant, the officer who has made it should forthwith take the party before a magistrate, according to the direction of the warrant. If the warrant be

to bring the defendant before *any* justice of the county, then the officer may bring him before what justice he thinks fit; for the defendant himself has no election in the matter.—1 *Hale*, 582; *Ib.* 112.

If the time be unseasonable, as in or near the night, whereby he cannot attend the justice; or, if there be danger of a present rescue; or, if the party be sick—then, the constable may keep the party in a house, or any place of security, till the next day, or such time as it may be reasonable to bring him.—2 *Hale*, 120.

And after the officer has brought him to a justice, yet he is still in custody till the justice discharge, or bail, or commit him.—*Ibid.*

But the constable need not return the warrant itself, but may keep it for his own justification, in case he should be questioned for what he has done upon it.—*Ld. Raymond*, 1196.

For forms of warrants see “*Justices of the Peace.*”

ARSENALS.

See “*King's Stores.*”

ARMS.—AMMUNITION, &c.

By Stat. 27, V. c. 4, the Governor in Council may by proclamation prohibit the exportation of arms, ammunition, gunpowder, military and naval stores, under the penalty of forfeiture of the same.

ARREST FOR DEBT.

By U. C. Stat. 22 V. c. 24, s. 1, none allowed for a less amount than \$100. § 5. And then only upon plaintiff, by affidavit, shewing such facts and circumstances as will satisfy the judge, there is good cause for believing that the defendant, unless forthwith apprehended, is about to quit Canada with intent to defraud his creditors generally, or the plaintiff in particular.

ARSON.

Arson, at common law, means the malicious and wilful burning of a house, or out-house, of another man; and being an offence of very great malignity was always considered of the degree of felony.—1 *Haw.* 105.

By Statute.

The statutes relating to this offence are the 23 H. VIII.,

c. 1; 26 H. VIII., c. 3; 4 & 5 Ph. M., c. 4; 22 & 23 C. II., c. 7; all of which are now obsolete.

By Stat. 6 Anne, c. 31, if any servant, through negligence or carelessness, shall set fire to any dwelling house, he shall forfeit £100, and in default of payment be committed to hard labour for eighteen months.

Under C. Stat. 22 V. c. 93.

Inhabited dwelling house.

§ 1. If any person unlawfully and maliciously sets fire to any dwelling house, any person being resident therein, such offender shall be guilty of felony, and shall suffer death.

Church, Chapel, Warehouse, &c.

§ 4. If any person unlawfully and maliciously sets fire to any church, chapel, or meeting house for the exercise of any mode or form of religious worship whatever, or unlawfully and maliciously sets fire to any house, stable, coach-house, out-house, ware-house, office, shop, mill, malt-house, hop-oast, barn or granary, or to any building or erection used in carrying on trade or manufacture or any branch thereof, whether the same, or any of them respectively, be then in the possession of the offender, or in the possession of any other person, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

School-house, Public Buildings.

§ 6. If any person unlawfully and maliciously sets fire to any school-house, lecture-room, seminary of learning, college or building used for the purpose of education, or any village, town or city hall, or to any steam or fire-engine house, or toll-booth, or 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 are associated together for educational, philanthropic or benevolent purposes, or for any other lawful purpose, or to any museum or repository of curiosities, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

Corn, Charcoal, Wood, &c.

§ 12. If any person unlawfully and maliciously sets fire to any stack of corn, grain, pulse, straw, hay, peat, coal, charcoal or wood, or any steer of wood, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not more than five years nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

Building, Vessel, Stack.

§ 13. If any person unlawfully and maliciously by any overt act *attempts* to set fire to any building or vessel, 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 penitentiary for any term not less than two years, he shall, although such building, vessel, stack or vegetable produce be not actually set on fire, be guilty of felony, and shall be imprisoned in the penitentiary for any time not exceeding seven years nor less than two years, or be imprisoned in any common gaol for any term less than two years.

See also titles "*Explosive Substance*," "*Ships*."

Station-house, Goods and Chattels.

§ 32. If any person wilfully and maliciously sets fire to any station-house, engine-house, ware-house, or other building belonging or appertaining to any railway, lock, canal, or to any goods or chattels being in any building, the setting fire to which is made felony by this or any other act of parliament, such offender shall be guilty of felony, and shall be punished as in the last preceding section of the act is mentioned.

ARTICLES OF THE PEACE.

Whenever a person has just cause to fear that another will burn his house, or do him or his wife or children a corporal hurt, or unlawfully imprison any of them, or that he will procure others to do so, he may exhibit *articles of the peace* against the person from whom he apprehends such mischief, either in the Court of Chancery, or Queen's Bench, or before a justice of the peace; and such court or justice is bound to require the party to find securities to keep the peace towards the exhibitant, upon the latter making oath that he is actually under such fear from the other person, and that he has

just cause to be so, and that he does not require such surety out of malice or vexation.—1 *Haw.*, c. 60, § 6, 7.

And all persons whatsoever, under the Queen's protection, subjects or aliens, have a right to demand surety of the peace.

A wife may demand it against her husband, and a husband against his wife.—*Ib.* § 2, 4.

Sureties of the peace may be required from any person whatsoever under the degree of nobility; but *infants* and *married women* ought to find security by their friends, and not to be bound themselves—*Ib.* § 5.

When the articles are exhibited before a *justice of the peace*, the party, if present, may be immediately committed, unless he offer sureties; but if he be absent, the justice cannot commit him for not finding security, until he has been required, and has refused to do so; and the warrant in that case must shew the cause for which it is granted, and at whose suit.—1 *Haw.*, c. 60, § 9; *Rex v. Wilks*, *Ib.* 5.

The proper course in such a case would be for the justice to take the information on oath, of the party complaining, with a statement of the particular facts or menaces that induce the complainant to fear some injury to himself or property; upon which the justice may issue his warrant for bringing the party before him; upon his being brought before him, he may then either bind him over with sufficient sureties to keep the peace, or to appear at the sessions. If bound over to appear at the sessions, he should also be bound to keep the peace in the meantime towards the party complaining, and this is the common form of the precedent.—1 *Haw.*, c. 60, § 16. It is better, however, for justices to bind over the parties to keep the peace a reasonable time, to be stipulated in the recognizance, rather than to appear at the sessions, where the offender would be obliged to find fresh security, without any new offence being alleged; and for non-appearance his recognizance would be forfeited, except reasonable cause shewn, by sickness or otherwise; and this opinion is corroborated by a recent decision in the Court of Queen's Bench, which determines that a justice of the peace is authorised to take surety for the peace for a limited time, (*e.g.*, two years,) according to his discretion, and that he need not bind the party over to the next sessions. 2. *B. & A.* 278.

A warrant for the peace must be executed by the person only to whom it is directed; who is authorised to break open any door on being refused admittance and stating the cause of his coming.—2 *Haw.*, c. 14, § 2.

If the warrant is special, the party must be carried before the justice granting it, and no other; but if general, the offender may be taken before any justice, and the officer may take him to prison on refusing to give sureties before such justice.—1 *Haw.*, c. 60, § 13. If the accused, on being apprehended, refuse to obey the warrant, or to find sureties, the officer may, without further warrant, convey him to gaol; but the warrant should so direct; otherwise it is prudent to bring him before the justice, by whom, on refusal to find sureties, he may be committed without further warrant.—2 *H. H.* 112; *Dalt.* c. 118.

An officer not doing his duty may be indicted and fined at the sessions.—*Dalt.* c. 118. If the sureties are insufficient, the justice may compel the party to find better.—c. 116, 119. But if the sureties should die, the principal is not compellable to find other, their executors or administrators being liable.

The recognizance may be forfeited by doing any actual violence to the person of another, or causing it to be done by his instigation.—*Dalt.* c. 121. A justifiable assault is no forfeiture.—1 *Haw.* c. 60, § 23, 24.

If the recognizance is made to keep the peace *generally*, it shall be deemed to be during the party's life; and as such recognizance cannot be discharged, it should not be so granted on slight grounds.—*Dalt.* c. 119, 120. But it is discharged upon the death of the Queen, or of the principal.—1 *Haw.* c. 60, § 17. And it has been held that a recognizance may be discharged on the release of the complaining party.—*Id.*

If the recognizance is to keep the peace towards the Queen and all her subjects, the sessions may discharge it, unless on proclamation some person appears to demand sureties upon warrantable cause; but if it is made to keep the peace with a particular person, the sessions will not discharge it, though the person requiring it do not appear; and the court may bind over the party to the next sessions.—*Dalt.* c. 120.

If the party accused be in prison for want of sureties, on the death of the party demanding the peace, he shall be released, or if he offers sufficient surety while in prison.—*Dalt.* c. 118.—See also title "*Bail*," "*Surety for good Behaviour*."

Information to require Surety of the Peace and good behaviour.

PROVINCE OF CANADA :

County of , } The information and complaint of A. B., of
to wit. } , taken on oath before me, the under-
signed, one of her Majesty's justices of the peace in and for the

said county of at in the said county this day of ,
 18 , who saith that C. D., of , yeoman, did, on the day of ,
 , threaten the said A. B., in the words, or to the effect following,
 ing, that is to say, (*Set them out with the circumstances under
 which they were used*) and that from the above and other threats
 used by the said C. D. towards the said A. B., he, the said A. B.,
 is afraid that the said C. D. will do him some bodily harm, and
 and therefore prays that the said C. D. may be required to find
 sufficient sureties to keep the peace and be of good behaviour to-
 wards him, the said A. B. And the said A. B. also saith, that
 he doth not make this complaint against, nor require such sureties
 from the said C. D., from any malice or ill will, but merely for
 the preservation of his person from injury.

Sworn before &c.

A. B.

Warrant thereon.

PROVINCE OF CANADA :

County of , } To the constable of , in the county of
 to wit. }

Whereas A. B., of , yeoman, hath on this day of
 personally come before me, J. C., Esq., one of her Majesty's
 justices of the peace in and for the said county, and hath this day
 made information and complaint upon oath that C. D., of ,
 yeoman, did on the day of , at , threaten to beat, &c.,
 (*here follow the information*) and that from the above and other
 threats used by the said C. D., towards the said A. B., he the said
 A. B. is afraid that the said C. D. will do him some bodily harm, and
 hath therefore prayed of me the said justice, that the said C. D.
 may be required to find sufficient sureties to keep the peace and
 be of good behaviour towards him the said A. B. These are there-
 fore to require you immediately upon sight hereof to apprehend
 and bring the said C. D. before me, to find sufficient sureties as
 well for his appearance at the next general quarter sessions of the
 peace to be holden in and for the said county, then and there to
 answer to the premises, and to do and receive what shall be then
 and there enjoined him by the court, as also in the meantime to
 keep the peace and be of good behaviour towards her Majesty
 and all her liege people, and especially towards the said A. B.
 Given under my hand and seal, at , in the said county,
 the day of .

Condition of Recognizance to appear at the Sessions.

The condition of the within written recognizance is such, that
 if the within bounden C. D., of &c., shall appear at the next
 court of general or quarter sessions of the peace to be holden in
 and for the said county of , to do and receive what shall be
 then and there enjoined him by the court; and in the mean time
 shall keep the peace, and be of good behaviour towards her Ma-

jesty and all her liege people, and especially towards A. B. (of , &c.) for the term of, now next ensuing, then the said recognizance to be void, or otherwise to stand in full force and virtue.

Condition of Recognizance to keep the Peace, &c., without appearance at the Sessions.

The condition of the above recognizance is such, that if the above bounden C. D. shall keep the peace, and be of good behaviour towards her Majesty and all her liege people, and especially towards A. B. of , for the space of one year, (*or longer if need be,*) then this recognizance to be void, or else to remain in full force and virtue.

Commitment for want of Sureties.

PROVINCE OF CANADA :

County of , } To the constable of , and to the keeper of
to wit. } the common gaol of the said county at ,
in the said county.

Whereas, on the day of instant, complaint on oath was made before the undersigned, one of her Majesty's justices of the peace in and for the said county of , by A. B., of , that C. D. of , on the day of , at the township of aforesaid, did &c., (*follow to end of complaint as in form above*), and whereas the said C. D. was this day brought and appeared before me the said justice, to answer unto the said complaint, and having been required by me to enter into his own recognizance in the sum of £ , with two sufficient sureties in the sum of £ , each, as well for his appearance at the next general quarter sessions of the peace to be held in and for the said county of ; to do what shall be then and there enjoined him by the court, as also in the meantime to keep the peace and be of good behaviour towards her Majesty and all her liege people, and especially towards the said A. B., and the said C. D. hath refused and neglected, (a) and refuses and neglects to find such sureties. These are therefore to command you the said constable of the township of , to take the said C. D. and him safely to convey to the common gaol at aforesaid, and there to deliver him to the keeper thereof, together with this precept ; and I do hereby command you the said keeper of the said common gaol to receive the said C. D. into your custody in the said gaol, there to imprison him until the said general quarter sessions of the peace, unless he in the meantime find sufficient sureties as well for his appearance at the said sessions as in the meantime to keep the peace as aforesaid. Given under my hand and seal this day of , in the year of our Lord, 18 , at in the county aforesaid.

J. P. (L.S.)

(a) A neglect or inability to find sureties is the same as a refusal at law.

The form of a Supersedeas to be used where the defendant finds surety before the warrant is executed upon him.

PROVINCE OF CANADA :

County of _____, } J. C. Esq., one of the justices of our lady
to wit : } the Queen, assigned to keep the peace within
the said county, to the sheriff of the said county, and to the constables and others, the faithful ministers and subjects of our said lady the Queen within the said county, and to every of them, greeting. Forasmuch as C. D., of _____, in the said county, yeoman, hath personally come before me at _____, in the said county, and hath found sufficient surety, that is to say, E. F., of _____ yeoman, and E. H., of _____, yeoman, either of whom hath undertaken for the said C. D., under the pain of £20 each, and he, the said C. D. hath undertaken for himself, under the pain of £40, that he, the said C. D., shall personally appear at the next general quarter sessions of the peace to be holden in and for the said county, then and there to do and receive what shall be then and there enjoined him by the court, and in the meantime to keep the peace and be of good behaviour towards her Majesty and all her liege people, and especially towards A. B., of _____, therefore, I do command you and every of you, that you utterly forbear and do cease to arrest, take, imprison, or otherwise by any means, for the said cause, to molest the said C. D., and if you have for the said occasion and for none other taken and imprisoned him the said C. D., that then him you deliver or cause to be delivered and set at liberty without further delay. Given under my hand and seal, this _____ day of _____, &c.

Release of the Surety for the Peace, &c.

PROVINCE OF CANADA :

County of _____, } Be it remembered, that A. B., of _____, in said
to wit. } county, yeoman, on the _____ day of _____, in the
_____ year of the reign of our sovereign lady Victoria, came before me, J. C., Esq., one of the justices of our said lady the Queen, assigned to keep the peace within the said county, and there remised and freely released to C. D., of _____, in the said county, yeoman, the surety of the peace and good behaviour by him the said A. B., before me prayed against the said C. D. Given under my hand and seal, the _____ day of _____, in the year of our Lord, 18 _____.

Or, if it is before another Justice, then say—

The surety of the peace and good behaviour which he has against C. D. of _____, in the said county, yeoman. Given, &c.

Discharge of one Committed for want of Sureties.

PROVINCE OF CANADA :

County of _____, } J. C., Esq., one of the justices of our lady
to wit. } the Queen assigned to keep the peace in the
county of _____, to the keeper of her Majesty's common gaol at
in the said county, greeting.

Forasmuch as C. D., in the prison of our said lady the Queen, in your custody now being, at the suit of A. B., of _____, in the said county, yeoman, for the want of his finding sufficient sureties, &c. (*as in the former precedent of a supersedeas.*) Therefore I do command you that if the said C. D. do remain in the said gaol for the said cause, and none other, then you forbear to grieve or detain him any longer, but that you deliver him thence and suffer him to go at large, and that upon the pain which will fall thereon.

Given under my hand and seal, this _____ day of _____, 18____.
J. C.

Form of Articles of the Peace.

PROVINCE OF CANADA :

County of _____, } C. D., wife of E. D., of _____ in the said county,
to wit. } labourer, prays surety of the peace against the
said E. D., her said husband, for fear of death or bodily injury.

First—This informant, on her oath, saith, that she intermarried with her said husband about _____ years ago, since which time he hath often in a cruel, barbarous, and inhuman manner beat, abused, and ill-treated this informant, and frequently threatened to take away her life.

Secondly—This informant saith, that on the _____ day of _____ last past, her said husband in a violent passion, (*state the particular acts of cruelty.*)

Lastly—This informant saith, that she is actually afraid her said husband will do her some bodily injury, if not murder her, should she return home again to him ; and saith that she doth not make this complaint against her said husband out of any hatred, malice, or ill-will which she hath or beareth towards him, but purely for the preservation of her life and person from further danger.

Articles of the peace should have the signature of counsel.

ASSAULT AND BATTERY.

An assault is a forcible attempt to do corporal injury to another ; a blow, however trifling, is a battery ; every assault, however, is not a battery ; but every battery necessarily includes an assault.—1 *Haw. P. C.* 263. So, striking at another, or even holding up a fist in a menacing manner, will amount to an assault.—1 *Haw. c.* 62.

An unlawful imprisonment is also an assault in law.—1 *Haw. c.* 60.

An assault in some instances may be justified ; thus, a party may justify an assault, *molliter manus imposuit* in defence of his goods, his wife, father, mother or child, and a wife in defence of her husband.—1 *Ld. Ray.* 62.

A servant may also justify an assault in defence of his master, but doubtful whether a master may do so in defence of his servant.—1 *Salk.* 407.

So also may a master reasonably correct his apprentice or servant; and a master his scholar; but immoderate correction, or with an unlawful instrument, will constitute an assault.—3. *Salk.* 47.

A common assault is punishable as a misdemeanor; and the punishment usually inflicted is, fine, imprisonment, and the finding of sureties.—4 *Bl. Com.* 417. And is now punishable on summary conviction before a justice of the peace under C. Stat. 22 V. c. 91 § 37, hereinafter referred to, unless it be of such a nature as to require that the party should be prosecuted by indictment, in which case the offender should be bound over to appear at the sessions, or committed for want of bail.

Aggravated Assaults.

Are such as are committed by persons with intent to commit felony, or some illegal act; assaulting a magistrate or constable in the execution of his duty; or a servant his master; and the like.

And any servant assaulting his master, or mistress, may, upon conviction before *two* justices, and upon the oath of two witnesses, be imprisoned for a year, or less.—5 *Eliz.* c. 4, § 21.

Also, any person assaulting or challenging another for money won by gaming, shall forfeit to the King all his goods, and be imprisoned for two years.—9. *Ann.* c. 14, § 8.

AGGRAVATED ASSAULTS.

C. Stat. 22. V. c. 91.

§ 32. Any person who assaults and strikes or wounds any magistrate, officer or other person, lawfully authorised, 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, shall be guilty of felony, and imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

Assaulting parties exercising their lawful calling.

§ 33. Any person who unlawfully and with force,—

1. Hinders any seaman from working at or exercising his lawful trade, business or occupation, or beats, wounds or or uses any other violence to him, with intent to deter or hinder him from working at or exercising the same.

2. Beats, wounds, or uses any other violence to any person with intent to deter or hinder him from selling or buying

any wheat or other grain, flour, meal or malt, in any market or other place.

3. Beats, wounds or uses violence to any person having the care or charge of any wheat or other grain, flour, meal or malt, whilst on its way to or from any city, market, town or other place, with intent to stop the conveyance of the same, may be convicted thereof before two justices of the peace, and imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding three months.

§ 34. No person having been punished for any such offence by virtue of the foregoing provision, shall be punished for the same offence by virtue of any other law whatsoever.

Assaulting persons apprehending offenders in the night.

§ 36. If any person found committing an indictable offence in the night and apprehended thereon, assaults or offers any violence to any person by law authorised to apprehend or detain him, or to any person acting in the aid or assistance of the person so authorised, such offender shall be guilty of a misdemeanor, and shall be imprisoned with or without hard labour for any term not exceeding two years.

Common Assault.—Summary Proceedings.

§ 37. If any person unlawfully assaults or beats any other person, any justice of the peace, upon complaint of the party aggrieved praying him to proceed summarily under this act, may hear and determine such offence. § 38. The offender, upon conviction before such justice, shall forfeit and pay such fine as may to him appear meet, not exceeding, together with the costs, (if ordered,) the sum of \$20. § 39. Such fine shall be paid to the treasurer of the municipality in which the offence was committed, and shall make part of the funds thereof; or if the conviction be had in a place not within any municipality the fine shall be paid over to such officer, and be applicable to such purposes, as other fines and penalties not specially appropriated. (a) § 40. The evidence of any inhabitant of the municipality, or place interested as aforesaid, shall be admitted in proof of the offence. § 41. If the fine awarded by the said justice together with the costs (if ordered) be not paid immediately after the conviction, or within such period as the said justice at the time of conviction appoints, he may commit the offender to the common gaol or house of correction, there to be imprisoned

(a) See title "*Fines and Forfeitures.*"

for any term not exceeding two months, unless such fine and costs be sooner paid. § 42. If the justice upon the hearing of any such case, deems the offence not proved, or finds the assault or battery justified, or so trifling as not to merit any punishment, he shall dismiss the complaint with or without costs in his discretion, and shall forthwith make out a certificate under his hand, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint has been preferred. § 43. If costs be ordered upon such dismissal, and such costs be not paid immediately, or within such period as such justice at the time of such dismissal appoints, he shall issue his warrant to levy the amount thereof within a certain time to be in the said warrant expressed; and in case no distress sufficient to satisfy the amount of such warrant can be found, he shall commit the party ordered to pay the costs to the common gaol of the district, county, or division where the offence was alleged to have been committed, there to be imprisoned for any term not exceeding ten days, unless such costs be sooner paid. § 44. If the person against whom such a complaint has been preferred for a common assault or battery, obtains such certificate as aforesaid, or, having been convicted, pays the whole amount adjudged to be paid under such conviction, or suffers the imprisonment awarded for nonpayment thereof, he shall be released from all further or other proceedings, civil or criminal, for the same cause. § 45. In case the justice finds the assault or battery complained of to have been accompanied by *any attempt to commit felony*, or is of opinion that the same is, from *any other circumstance*, a fit subject for a *prosecution by indictment*, he shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as he would have done had no such summary jurisdiction been conferred upon him. § 46. Nothing in the last section shall authorise any justice of the peace to hear and determine any case of assault or battery in which any question shall arise as to the *title to lands*, tenements or hereditaments, or any interest therein, or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice. § 47. Neither of the justices of the peace acting in and for any district, county, division or city, nor the recorder of any city shall, at any session of the peace, or at any adjournment thereof, try any person for any offence under the 15th, 16th, and 18th sections of this act.

These sections relate to bodily injury effected or attempted by gunpowder, or other explosive substance, or the manufacture of such for unlawful purposes.

Prosecutions for offences punishable on summary conviction must be commenced within three months.—*C. Stat. 22 V. c. 99, § 124.*

For forms, see "*Summary Conviction.*"

Indictment at Quarter Sessions.

By U. C. Stat. 22 V. c. 119, s. 4. In case any person be convicted before any court of quarter sessions of any assault and battery or other misdemeanor, such person shall pay such costs as may be allowed and taxed by the court; but in case any defendant or defendants be acquitted, the costs of the prosecution when not otherwise provided for shall be paid out of the county funds.

Indictment for a Common Assault.

County of , } The jurors for our lady the Queen, upon
to wit : } their oath, present, that A. O., late of the
township of , in the county of , butcher, on the day of
 , in the year of the reign of our Sovereign lady the Queen,
with force and arms, at the township aforesaid, in the county afore-
said, in and upon one A. L., in the peace of God and our said lady
the Queen then and there being, did make an assault, and him the
said A. I. then and there did beat, wound and ill-treat, and other
wrongs to the said A. I. then and there did, to the great damage
of the said A. I., and against the peace of our said lady the Queen,
her crown and dignity.

Indictment for an Aggravated Assault.—(Archbold.)

(Commencement as before) in and upon one I. N., in the peace of God and our said lady the Queen then and there being, did make an assault, and him the said A. N. then and there did beat, wound and ill-treat, and that the said J. S., with both his hands, then and there violently cast, flung and threw the said I. N. to, upon and against a certain brick floor there, and him the said I. N., in and upon his head, neck, breast, back, sides and other parts of his body, with both the feet of him, the said J. S., then and there violently and grievously did kick, strike and beat, giving to the said I. N. then and there, as well by such flinging, casting and throwing of him the said I. N., as also by such kicking, striking and beating of the said I. N. as aforesaid, in and upon the head, neck, breast, sides, back and other parts of the body of him the said I. N., divers bruises, hurts and wounds, so that his life was greatly despaired of, and other wrongs, &c. (as before).

For Assaulting a Constable in the Execution of his Office.

(Commencement as before) in and upon I. N. (then being one of the constables of the said township of _____, in the county aforesaid, and in the due execution of his said office, then and there being) did make an assault, and him the said I. N., so being in the due execution of his said office as aforesaid, then and there did beat, wound and ill-treat, and other wrongs, &c., (as before.) *Add a count for a common assault. From this precedent an indictment may readily be framed for an assault upon any other public officer in the execution of his office.—Arch.*

ASSESSMENT.

U. C. Stat. 22. V. c. 55.

Property liable to taxation.

§ 9. All land and personal property in Upper Canada shall be liable to taxation, subject to the following exemptions:—

Exemptions.

Sub-§ 1. All property belonging to Her Majesty, including Indian Lands. 2. Occupants in possession to be liable, but not the property. 3. Every place of worship, church-yard or burying-ground. 4. College or School-lands while occupied by such institutions. 5. Every public School House, Town or City Hall, Court House, Gaol, House of Correction, Lock-up House, and public Hospital with land attached, and personal property belonging to each. 6. Every public road and way or public square. 7. The property belonging to any County, City, Town, Township or Village, whether occupied, or unoccupied. 8. The Provincial Penitentiary, and land attached. 9. Every Industrial Farm, Poor House, House of Industry and Lunatic Asylum, every house belonging to a company for the reformation of offenders, and all property belonging thereto. 10. The property of every Public Library, Mechanics Institute and other public literary or scientific institution, and every Agricultural [or Horticultural*] Society. 11. The personal property and official income of the Governor of this Province. 12. The full or half pay of officers in H. M. Naval or Military Service, or any pension, salary or other gratuity or stipend from the Imperial Treasury, and the personal property of naval or military officers. 13. All pensions under

* Amended by 23 V. c. 51.

\$200 a year, payable out of provincial funds. 14. The income of a farmer, from his farm, and the crops the produce of the current year. 15. Mortgages on real estate. 16. Bank stock, so long as the tax continues upon bank issues. 17. Railroad stock. 18. Foreign securities. 19. Personal property incumbered with debt to equal amount. 20. Personal property under \$100 value. 21. Stipend or salary of any minister of religion, under \$1200 per annum. 22. Household effects, books and wearing apparel.

§ 10. In counties and townships the rates to be calculated at so much in the dollar upon the actual value of real and personal property, and in cities, towns and villages upon the yearly value. § 11. Yearly estimates to be made by the municipal councils of amount required for the year. § 12. Amount to be raised by by-law. Deficiency to be made up from unappropriated funds. § 14. Or reduced proportionately if no such funds. § 15. If the amount collected exceed the estimates, the balance to form part of the general funds of the municipality. § 16. Yearly taxes to be computed from the first of January.

Assessors and Collectors.

§ 17. Such number to be appointed as the municipal council deems necessary. § 18. Assessment districts may be appointed.

How assessments to be proceeded with.

§ 19. Assessors to prepare assessment rolls. § 20. Land to be assessed in the local municipality or ward. § 21. Land occupied by the owner to be assessed in his name. § 22. Non-resident owners may be assessed at their request if land unoccupied, otherwise, in the name of the owner and occupant. § 23. If owner unknown, then in the name of the occupant. § 24. Assessment against the owner and occupant recoverable against future owners and occupiers. § 25. In case of joint occupation assessment to be against all. § 26. Occupants may deduct the taxes from the rent, unless special agreement to the contrary. § 27. The "word non-resident," if required to be entered on the roll. § 28. Real estate to be estimated at its full value, as it would be appraised in payment of a just debt, and the yearly value in cities, towns and villages, calculated at six per cent. upon the real value, (except vacant ground, or ground used as a farm, garden or nursery, and not in immediate demand for building purposes, in

cities, towns, or villages, the value of which shall be that at which sales of it can be freely made, and where no sale can be reasonably expected during the current year, then as land held for farming or gardening purposes.*) § 29 If more than a quarter of an acre attached to any house or building, the overplus to be assessed as vacant ground at six per cent. on its yearly value, (but if held as a paddock, park, lawn garden or pleasure ground, then to be assessed at a fair annual rental.†) § 30. Railway companies to transmit annual statements describing value of their real property to the clerk of the municipality, amount of assessment to be notified by the assessor personally or by post. § 31. Relates to lands of non-residents and duties of assessors therein.

Manner of assessing personal property.

§ 32. The yearly value to be six per cent. on its actual value. § 33. Scale of assessment to be as follows, viz. :

\$100 or more, but under		\$200
\$200	do. do.	\$400
\$400	do. do.	\$1,000
\$1,000	do. do.	\$2,000
\$2,000	do. do.	\$4,000
\$4,000	do. do.	\$10,000
\$10,000	do. do.	\$20,000
\$20,000	do. do.	\$40,000
\$40,000	do. do.	\$60,000
\$60,000	do. do.	\$80,000

and so forward, the sums increasing by \$20,000. § 34. Persons deriving income exceeding \$200, not to be assessed for a less sum as the amount of their net personal property. § 35. Shareholders in companies to be assessed for their stock, unless exempted by this act. § 36. Partnership property to be assessed at the usual place of business. § 37. If the business carried on in several localities, the firm may elect at which place assessment may be made. § 38. Trades and professions to be assessed where the office or place of business is. § 39. If two or more places of business, then at each, or at one place at the discretion of the party. § 40. If no place of business, then at his residence. § 41. Property held in trust, to be assessed in the name of the trustee, guardian or executor. § 42. Joint owners may be sepa-

* † Amended by 24 V. c. 38.

rately assessed. § 43. If trustee assessed to be so named, and distinction made from his own personal assessment. § 44. Parties liable to assessment to furnish statement to assessor. § 45. Assessor not bound thereby, but may assess for such amount as he believes just and correct. § 46. Penalty \$20 for omitting to furnish statement when required. § 47. Penalty \$20 for making false statement. § 48. Assessors to give parties notice of their assessment, and by post to non-residents. § 49. Assessment rolls to be completed between the first day of February and not later than the first day of May. § 50. Assessors to deliver assessment roll to the clerk of the municipality with certificates and affidavits attached.

Court of Revision.

§ 51. If the council of the municipality consist of not more than five members, such members to be the court of revision. § 52. If more, the council to appoint five of its members. § 53. Three members to be a quorum. § 54. Clerk of the municipality to be clerk of the court. § 55. Court may meet and adjourn at pleasure. § 56. May administer oaths and summon witnesses. § 57. Witnesses failing to attend after tender of expenses, fifty cents a day, to incur a penalty not exceeding \$20. § 58. All complaints of parties to be tried by the court. § 59. Business of the court and rolls to be finally completed before the first day of June. § 60. Regulates the proceedings for the trial of complaints, viz. :

Sub-§ 1. Parties complaining to give notice of appeal to the clerk within fourteen days after the return of the roll, stating the grounds. 2. Assessments being too low or too high, or omissions on the roll, may be complained against by any municipal elector. 3. A list of appeals to be posted up by the clerk. 4. The form of the list. 5. Sitting of the court of revision to be publicly advertised in newspaper. 6. List to be left by the clerk with each assessor. 7. Form of notice by the clerk to appellants. 8. To be left at party's residence or house of business. 9. If non-resident or unknown, then on the premises or through the post. 10. Notice to be given at least six days before the court. 11. Appellant may appear before the court and make a declaration in writing in the form prescribed, and shall be assessed accordingly. 12. In other cases the court may hear parties upon oath, and decide accordingly. 13. Either party failing to appear the court may proceed *ex parte*.

§ 61. The roll as finally passed by the court of revision to be binding on all parties (except amended on appeal by the county court judge.) § 62. The court may also before or after the first of June receive and decide upon petition respecting tenements vacant more than three months in the year, or parties claiming exemption from poverty or sickness, or gross overcharge, and may, subject to any existing by-law, remit or reduce the taxes.

Appeal from the Court of Revision.

§ 63. May be made, in case the appellant shall,
 1. Within three days after decision serve a written notice on the clerk of his intention to appeal to the judge of the county court. 2. The clerk thereupon shall give notice to all parties. 3. The parties appealing at the same time and in like manner to give a written notice of appeal to the clerk of the division court, and deposit \$2 for each party appealed against as security for costs. 4. The judge to appoint a day for hearing the appeal. 5. Clerk of the division court to post up notice where division court held, containing appellants' names, &c., together with the date of holding the court. 6. The judge to hear the appeals and may adjourn the hearing and defer judgment, so that a return be made to the clerk of the municipality before the 15th of July.

§ 64. Clerk of the municipality or person having charge of the roll to appear at the court, produce the roll and papers connected with the appeal, and the roll to be altered and amended according to the decision of the judge. § 65. The judge to have power to compel the attendance of witnesses, &c. § 66. Costs to be paid or apportioned as the judge shall think fit, and enforced by execution from the division court. § 67. To be taxed as in ordinary division court suits for sums exceeding forty and not exceeding sixty dollars. § 68. Decision of the judge to be final. § 69. After final revision and correction, clerk of the municipality to transmit without delay a certified copy of the roll to the county clerk.

County Council.

§ 70. Assessment roll to be examined annually by the council, not later than the first of July, for the purpose of equalising the valuation in the different municipalities. § 71. If the clerk of any municipality omit to send certified copies of the roll the council to proceed on the best information obtainable. § 72. The apportionment to be based

upon the assessment rolls of preceding years. § 73. Apportionment between townships, &c., to be calculated at ten per cent. upon the capital. § 73. Provision made in case of new municipalities without assessment rolls. § 75. Apportionment to be made by by-law. § 76. The county clerk before the first of August to certify to the township clerk the total amount to be levied, who shall calculate and insert the same in the assessors' roll. § 77. This act not to affect provisions for rates for interest on county debentures.

Statute Labour.

§ 78. Persons in her Majesty's naval or military service on full pay or on actual service are exempt. § 79. Every other male inhabitant of a city, town or village, of the age of twenty-one years and upwards, and under sixty years of age (and not otherwise exempted) not assessed, or whose taxes do not amount to two dollars, taxable, instead of labour, at two dollars yearly. § 80. Not to claim exemption for statute labour elsewhere, unless actually domiciled out of the limits. § 81. Every male inhabitant of a township between the ages aforesaid, not otherwise assessed, or not exempt under the 78th section, shall be liable to two days' statute labour. § 82. Every person assessed upon the assessment roll of a township to be liable as follows :

At not more than \$200, to be liable to two days' labour.			
At more than \$200, but not more than \$400, to 3 days' labour.			
“ \$400,	“ \$600,	4	“
“ \$600,	“ \$800,	5	“
“ \$800,	“ \$1,200,	6	“
“ \$1,200,	“ \$1,600,	7	“
“ \$1,600,	“ \$2,000,	8	“
“ \$2,000,	“ \$2,400,	9	“
“ \$2,400,	“ \$3,200,	10	“
“ \$3,200,	“ \$4,000,	12	“
And for every \$800	above \$4,000,	1	“

But the council of any township may, by by-law, reduce or increase the number of days equally in proportion to the assessment. § 83. May, by by-law, commute for statute labour, not exceeding one dollar a day. § 84. Any local municipal council may also, by by-law, commute in like manner. § 85. Where no such by-law made, tax on non-resident lands commuted at fifty cents for each day. § 86. If the tax not collected, and no sufficient distress be found, the head of the municipality, or a justice of the peace having jurisdiction in

the locality, upon complaint shewing that the person appears upon the collector's roll to be rated for such sum; that the same has been duly demanded, and that the party has neglected to pay the same, and that no sufficient distress can be found, may issue a warrant under his hand and seal, and commit the party to the common gaol of the county for any time not exceeding six days, unless such sum and the costs of the warrant and of the execution thereof be sooner paid. § 87. Non-residents, not entered on the roll, to be charged with the commutation tax. § 88. Non-residents, admitted to perform statute labour as residents, neglecting to perform, or pay the overseer of highways of the division, is to return him as a defaulter to the clerk of the municipality before the first day of September, and if not paid to the treasurer before the first of May following, the amount to be then charged against the lot.

Collection of Rates.

§ 89. The clerk of the municipality is to make out the collection roll. § 90. How rates are to be headed. § 91. Moneys assessed for provincial purposes may be levied as local rates. The roll to be delivered by the clerk to the collector on or before the first day of October, or such other day as may be fixed by by-law. § 92. Clerk to make out also a non-resident roll, and transmit the same to the treasurer of the county or city chamberlain, as case may be.

Collectors and their Duties.

§ 93. To collect the taxes. § 94. To call at least once upon the person taxed and demand payment. § 95. If a non-resident, to transmit statement and demand by post. § 96. In default of payment fourteen days after demand the collector may levy the amount with costs by distress and sale. § 97. In case of non-residents, the collector may within one month from the delivery of the roll, and after fourteen days from the time of such demand, distrain any goods he may find upon the land. § 98. Six days' notice of sale to be given where distress made. § 99. Surplus of sale to be returned to the party. § 100. Or to the rightful claimant. § 101. If claim contested, then to be paid to the treasurer or chamberlain, until parties' rights settled. § 102. Taxes also recoverable as a debt due to the local municipality. § 104. On or before the fourteenth of December, or subsequent day as the council may appoint, not later than the first of March in the next year, the collector to return his

roll and pay over the amount to the treasurer or chamberlain. § 104. In case taxes not collected by the fourteenth day of December, the council may authorise the collector or other person to continue the collections. § 105. Account of taxes remaining unpaid to be delivered to the treasurer of the township, &c. § 106. Collector to be credited on making oath he has been unable to collect. § 107. Taxes to be a charge upon the land. § 108. Lists of Crown lands granted or leased to be annually transmitted by the Commissioner of Crown Lands to the treasurer of the county. § 109. County treasurer to furnish the clerk of the municipality with a copy.

Treasurer's Duties.—Sheriff's Sale, &c.

§ 110. Treasurer of the locality to furnish treasurer of the county within fourteen days after the time appointed for return of collector's roll a correct copy with an account of arrears. § 111. No arrears to be afterwards received by the officer of the municipality. § 112. Arrears to be paid to county treasurer. § 113. No partial payment to be received. § 114. Treasurer, on demand, to give the owner a written statement of arrears. § 115. To keep proper books for each locality. § 116. Lands not assessed to be entered on the collector's roll the following year. § 117. The treasurer to insert in his books any lands on which the tax has not been paid, and the just tax thereon. § 118. Lands not liable to assessment to be erased from the books. § 119. Errors to be corrected. § 120. Collectors' receipts for taxes not to be accepted until verified by clerk of the municipality. § 121. Ten per cent. to be added yearly to arrears. § 122. Treasurer may distrain on non-resident lands for taxes. § 123. No land to be sold for taxes unless due five years.* § 124. Taxes in arrear five years may be levied by warrant to the sheriff. § 125. Distinction to be made between freehold and leased lands. § 126. After warrant issued no payment to be received by treasurer. § 127. County council may extend the time for payment. § 128. Proceedings to be taken by the sheriff on receipt of the warrant. Lands to be advertised. § 129. With notice of sale. § 130. Not less than three months after first publication. § 131. Notice to be posted at the court house three weeks before the sale. § 132. Costs to be added to the arrears. § 133. Taxes over-due under any former act may be collected under this

* See Amendment, 27 V. c. 19.

act. § 134. After receipt of the warrant sheriff required to sell goods coming to his knowledge. § 135. Provision as to sale and costs of levy. § 136. If no bidders at land sale sheriff may adjourn. § 137. Sale to be of such part as the sheriff may consider most advantageous to the owner to sell first. § 138. The interest only of the party in Crown lands to be sold. § 139. Land to be re-sold in default of payment by purchaser. § 140. Sheriff on sale to give purchaser a certificate. § 141. The purchaser to be deemed the owner for certain purposes. § 142. Purchaser's right to cease after tender of redemption money to the treasurer. § 143. Sheriff to make return within one month of sale, and pay over the money. § 144. To receive five per cent. on collection. § 145. Besides certain fees. § 146. And cost of search in registry office for description. § 147. But no other fees.

Redemption, &c.

§ 148. Owner may redeem within one year from day of sale, exclusive of that day, on tendering to the county treasurer the purchase money with ten per cent. thereon, who shall give certificate of redemption, which shall be evidence. § 149. If land not redeemed within the period allowed, the purchaser on demand entitled to a deed on payment to sheriff of one dollar. § 150. Deed to state certain particulars. § 151. Provides for registration of land sales before 1854. § 152. And since 1st January, 1851. § 153. Sheriff to enter land sales in a book. § 154. Non-resident land fund how constituted. § 155. Treasurer to open accounts. § 156. Provision as to limited counties on dissolution. § 157. Treasurer not to keep separate rate accounts, but all arrears to form one charge on the land. § 158. Local municipalities to make up deficiency in school rate, &c., from the general funds, non-resident land fund, &c. § 159. Moneys paid out of non-resident land fund to form part of the general fund of municipality. § 160. Issue of debentures on credit of non-resident fund. § 161. How negotiated. § 162. Payment of interest. § 163. Surplus to be divided among the municipalities. § 164. Treasurer's per centage or salary how paid. § 165. Annual statement of non-resident land fund to be submitted to county council. § 166. Contents of report. § 167. Copy to be sent to provincial secretary by the council.

Non-resident lands in cities.

§. 168. Same course to be pursued for collection and sale as in other municipalities.

Responsibilities of officers.

§ 169. Treasurer, chamberlain and collector to give security. § 170. By bond with two sureties, to the satisfaction of the council. § 171. If an assessor or clerk refuses or neglects to perform his duty, he shall for every offence, upon conviction before the recorder of a city, or the Court of Quarter Sessions, forfeit \$100 to the Crown. § 172. Other assessors may be appointed in default of duties performed. § 173. Any clerk, assessor or collector making any unjust or fraudulent assessment, or collection, or copy of roll, or wilfully and fraudulently inserting therein the name of any person who should not be entered, or omitting any who should be, or wilfully omitting any duty, shall be guilty of misdemeanor, and upon conviction before a court of competent jurisdiction, be liable to a fine not exceeding \$200 and imprisonment until the fine is paid, for a period not exceeding six months, or to both fine and imprisonment. § 174. Assessment 30 per cent. under or over actual value to be *prima facie* evidence of fraud. § 175. Punishment of assessor for fraudulent assessment. § 176. Assessors not returning roll in proper time under jurors' act shall forfeit for every offence \$200, one moiety to the Crown, the other to the prosecutor.

Proceedings against collectors, &c.

§ 177. In default of collector paying or accounting to the treasurer, he shall, within twenty days after time for payment elapsed, issue his warrant to the sheriff to levy on collector and his sureties amount unpaid and unaccounted for. § 178. Warrant to be immediately delivered to the sheriff. § 179. Who shall within forty days enforce the same, and make returns. § 180. In case of neglect by sheriff, application to be made to the superior courts. § 181. Rule how returnable. § 182. Proceedings thereon. § 183. Issue of *fieri facias* to the coroner. § 184. Directions to be contained in it. § 185. Any sheriff or high bailiff wilfully omitting duty liable to a penalty of \$200. § 186. Assessments for provincial purposes how to be collected. § 187. Moneys collected for county purposes to be paid to township treasurer and by him to county treasurer. § 188. Collector's or treasurer's bonds to be security for payment to county treasurer. § 189. Township treasurers to pay to county treasurer moneys collected for county purposes. § 190. Mode of enforcing payment in case of default. § 191. Amount to be levied by the sheriff. § 192. Treasurers of counties and

cities to account for Crown moneys. § 193. Counties and cities responsible to the Crown for public money. § 194. Treasurer and their sureties to be held responsible to the county or city. § 195. Default in school moneys or other public moneys how enforced. § 196. Private remedy for default of treasurer or chamberlain.

Miscellaneous.

§ 197. If any person wilfully tears down, injures or defaces any assessment roll, advertisement, notice, or other document which is required by this act to be posted up at a public place for the information of persons interested, he shall, on conviction thereof in a summary way before any justice of the peace having jurisdiction in the locality, be liable to a fine of \$20. § 198. Fines and forfeitures under this act, when not otherwise provided, to be levied and collected by distress and sale of the offender's goods under warrant of distress issued by the justice before whom the offender was convicted, and, in default of distress, offender to be committed to the common gaol of the county for a period not exceeding one month. § 199. Penalties (where not otherwise provided) to be paid to the treasurer or chamberlain. § 200. The provisions of this act to apply to the sections of the act respecting municipal institutions Nos. 350 to 356, so far as applicable and not inconsistent.

ASSESSORS.

See "*Assessment.*"

ASSIZES.

U. C. Stat. 22 V. c. 11.

Except in that county, or union of counties within which the city of Toronto is situate, Courts of Assize and Nisi Prius, and of Oyer and Terminer and General Gaol Delivery, shall be held in every county or union of counties in Upper Canada, in each year, in the vacations between Hilary and Easter Terms, and between Trinity and Michaelmas Terms; (a) and in the county or union of counties within which the city of Toronto is situate, three times in each year, commencing on the Thursday next after holding the municipal elections

(a) *Hilary Term* begins on the first Monday in February. *Easter Term* on the third Monday in May. *Trinity Term* on the Monday next after the twenty-first day of August. *Michaelmas Term* on the third Monday in November, each ending on the Saturday of the following week.—*U. C. Stat. 22 V. c. 10, § 18.*

in January, on the second Monday in April, and on the second Monday in October; and all such courts shall be held with or without commission as to the Governor may seem best, and (except as to the county in which the city of Toronto is situated) on such days as the chief justices and judges of the superior courts of common law shall respectively name.—§ 1.

Special commissions of Oyer and Terminer and General Gaol Delivery for the trial of offenders may be issued by the Governor.—§ 6.

By U. C. Stat. 24 V. c. 53, entitled "An Act to provide for the separation of the City of Toronto from the united counties of York and Peel." § 1. There shall be separate sittings for the said municipal counties, and the City of Toronto, of the courts of assize, &c. § 7. To be held at the same time, or at different times, as the superior courts shall order. § 8. The city of Toronto shall be deemed a *county* for all purposes in this act mentioned connected with the administration of justice.

ATTAINDER.

An *attainder* is the *stain* or *corruption of the blood* of a criminal capitally condemned, and is the immediate and inseparable consequence, by the common law, of pronouncing sentence of death against him, he being then called *attaint*, *attinctus*—that is, stained or blackened.—4 *Bl. Com.*

A person *attainted* is no longer of any credit or reputation; he cannot be a witness in any court, neither is he capable of performing the functions of another man; for, by a sort of anticipation of his punishment, he is already dead in law.—3 *Inst.* 213; 4 *Bl. Com.* 380. Indeed, it was formerly holden, that any one might as lawfully kill a person attainted of treason or felony, as a wolf or other wild beast; though now, a malicious killing of any such person, there is no doubt, would be murder.—1 *Haw. c.* 28, § 8; *Ibid. c.* 31, § 15.

The attainder commences upon the judgment of death, or judgment of outlawry on a capital crime.—4 *Bl. Com.* 380.

But attainder does not follow until *after* judgment.—*Ibid.*

The immediate consequences of attainder were (1) the forfeiture of all the real and personal estates of the party attainted, and (2) the corruption of his blood both upwards and downwards; so that an attainted person could neither inherit lands from his ancestors, nor retain those he was already in possession of, nor transmit them by descent to any heir.

By an attainder for *high treason* a man forfeits to the

Crown all his lands, &c.—26 *H. VIII.*, c. 13; *H. VIII.*, c. 20; and see 4 *Bl. Com.*

This forfeiture relates back to the time of the treason committed, so as to avoid all intermediate acts. A wife's dower is expressly forfeited by 5 & 6 *Edw. VI.*

By 7 *Ann.*, c. 21, it was enacted, that after the death of the then Pretender, no attainder for *high treason* should extend to the disinheriting of any heir, nor to the prejudice of any person other than the traitor himself; by which, says *Blackstone*, the law of *forfeitures* for high treason would by this time have been at an end, had not a subsequent statute (17 *Geo. II.*, c. 39), intervened to give them a longer duration. By this statute, the operation of the statute of *Ann* was still further suspended, till the death of the sons of the Pretender.—4 *Bl. Com.* 384.

In a certain kind of treason, however, namely, that relating to the coin, it is provided by the 5 *Eliz.* c. 11, and 18 *Eliz.* c. 1, that it shall work no forfeiture of lands, save only for the life of the offender, and that it should not deprive the wife of her dower.—See 8 & 9 *W. III.* c. 26, and 15 & 16 *Geo. II.*, c. 28.

In *petit treason and felony* the offender forfeits to the Crown all his chattel interests absolutely, and the profits of all estates of freehold during life; and after his death, all his lands and tenements in fee simple (but not those in tail) for the space of a year and a day.—2 *Inst.* 37; 4 *Bl.* 385.

The forfeiture relates back to the time of the offence committed, so as to avoid all intermediate acts.—4 *Bl. Com.* 385; *Haw.*, c. 49, § 17.

Lands are only forfeited upon *attainder*, but goods and chattels upon *conviction*. The forfeiture of goods has no relation backwards; those only which a man has at the time of his conviction are actually forfeited. Therefore a traitor or felon may, *bona fide*, sell any of his chattels, real or personal, for the sustenance of himself and family, previous to *conviction*; but not if they be collusively, and not *bona fide*, parted with, and the object of the transfer be merely to defraud the Crown.—13 *Eliz.*, c. 5; 3 *Inst.* 232; 2 *Haw.*, c. 49, § 34; 4 *Bl. Com.* 388.

By C. Stat. 22 *V.* c. 116, entitled “*An Act respecting Corruption of Blood*,” it is enacted, that except in case of high treason, and of abetting, procuring or counselling the same, an attainder for felony shall not extend to the disinheriting of any heir, nor to the prejudice of the right or title of any person other than the right or title of the offender,

during his natural life only.—§ 1. Every person to whom after the death of any such offender the right or interest to or in any lands, tenements or hereditaments should or would have appertained if no such attainder had taken place, may enter into the same.—2.

By C. Stat. 22 V. c. 99, 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.—§ 50.

AUCTIONEER.

By U. C. Stat. 22 V. c. 54. The municipal council of every county and town separated for municipal purposes may pass by-laws (*inter alia*) for licensing, regulating and governing auctioneers and other persons selling or putting up for sale goods, wares, merchandise or effects by public auction, and for fixing the sum to be paid for every such license, and the time it shall be in force.—§ 284.

AUTREFOIS ACQUIT.

The plea of *autrefois acquit* is a plea by a criminal that he was heretofore quitted of the same treason or felony; and is grounded upon an universal maxim of the common law of England, that no man shall be brought into jeopardy of his life twice for the same offence.—2 *Inst.* 213; 4 *Co.* 40; 2 *Haw.*, c. 35, § 1.

The whole of the record of acquittal must be set forth in the plea, in order that the court may see whether the prisoner was *legitimo modo acquietatus*.—*R. v. Wildey*, 1 *M. & S.* 183.

The plea must plainly show that the party was lawfully acquitted by *verdict*; for, if no bill was preferred against the prisoner, or even no true bill found by the grand jury, so that at the end of the sessions he is quit by proclamation and discharged, he may still be afterwards indicted; for this amounts to no acquittal.—2 *Hale*, 246.

But if an erroneous judgment be reversed by writ of error, the party may, in that case, be indicted *de novo*.—2 *Hale*, 247.

And if the party be acquitted from any insufficiency in the indictment, such an acquittal is in general not pleadable upon a second indictment, because the prisoner's life, in this instance, was never placed in jeopardy, and therefore the reason for the plea entirely fails.—2 *Hale*, 248; 4 *Co.* 44, 45; 1 *Star.* 302; *Rex. v. Reading*, 2 *Leach*, 593, *per Buller, J.*

But then the insufficiency of the indictment should appear in the record of the judgment of acquittal.—2 *Hale*, 385.

When the defendant has been tried by a *foreign tribunal*, of competent jurisdiction, it seems clear that an acquittal before such tribunal will equally enure to his defence in this country; but in this case he should produce an exemplification of the record of his acquittal, under the public seal of the state or kingdom where he has been tried and acquitted.—*Hutchinson's case*, 3 *Kes.* 785; *Beak v. Thyrrwhit*, 3 *Mod.* 194; 1 *Shore*, 6; *Bull N. P.* 245.

The identity of the party must be shewn, by averment in the plea, that he was the same person charged in the former indictment. And though he be described differently in the two indictments—as, if in the first place he be styled *yeoman*, and in the second *gentleman*, yet he may aver that he only was the person meant under each addition.—2 *Haw.* c. 35, § 3.

The *identity of the offence* must appear as well *in law* as *in fact*.—1 *Str.* 304.

Thus, an acquittal on an indictment for *felony* is no bar to an indictment for a misdemeanor.—2 *Haw.* c. 35, § 5.

And an acquittal as *accessory after the fact*, cannot be pleaded to a subsequent indictment as *principal*; and the same *é converso*.—2 *Hale*, 244; *Fost.* 361; *Staundf.* 105.

If a man be acquitted generally upon an indictment for *murder*, *autrefois acquit* is a good plea to an indictment for *manslaughter* of the same person; and *é converso*, if he be indicted of *manslaughter* and acquitted, he shall not be afterwards indicted for the same death as *murder*.—4 *Co. Rep.* 46, 6; *Holcroft's case*, 2 *Hale*, 246; *Fost.* 329; 1 *Star.* 305.

But if A. commit a *burglary*, and at the same time steal *goods* out of the house, and he be indicted for the *larceny only* and acquitted, he may still be indicted for the *burglary*.—*Hale*, 245.

And so *é converso* (Lord Hale says) if he be indicted for the *burglary* and acquitted, he may still be afterwards indicted for *larceny*.—*Ib.* 246.

But the converse of this proposition must be received with this limitation, viz., that the indictment for the burglary lay the offence only with an *intent to steal*, and not with an *actual larceny*; for, if laid with an actual larceny, a general acquittal would of course include an acquittal of the larceny itself.—1 *Star.* 309.

If A. commit a *robbery* in the county of B., and carry the goods into the county of C., and be there indicted for *larceny*

only, an acquittal upon such an indictment is no bar to an indictment for the *robbery* in the county of B.—2 *Hale*, 245, 246.

For the same reason, if an indictment for *murder* is brought in an *improper county*, an acquittal upon such indictment cannot be pleaded to a subsequent indictment in the proper county.—2 *Haw. c. 35*, § 3; *Contra Staundf.* 105.

But if a man steal goods in one county, and carry them into another, as he may be indicted for the larceny in either county, it seems that an acquittal in one county would be a bar to subsequent prosecution for the same stealing in the other county.—1 *Haw. c. 35*, § 4.

Yet it hath happened, says Lord *Hale*, that a man acquitted for stealing a *horse*, hath afterwards been convicted for stealing the *saddle*, though both were taken at the same time.—2 *Hale*, 246.

Where there is a variance between the record of the former acquittal and the indictment to which it is pleaded, yet, if the nature of the crime be in substance the same, the variance may generally be helped by proper averments in the plea.—2 *Haw. c. 36*, § 3.

As, if a man be acquitted upon an indictment for murder, charged to be committed on one day, and be afterwards indicted for murder alleged to have been committed on another day, he may plead *autrefois acquit*, alleging the supposed offence to be the same; for the *day* is not material, and the death is of a person certain, who can be but once killed.—2 *Hale*, 244.

So if a man be acquitted of an indictment for murder or robbery of J. S., and he be afterwards indicted for the murder or robbery of J. N., he may plead *autrefois acquit*, and aver the person to be the same, notwithstanding the variance in the surname; for a man, it is said, may have many surnames.—*Ib.*; 2 *Haw. c. 35*, § 3.

But where a prisoner was acquitted on an indictment for forgery, on a variance between the instrument produced and that recited in the indictment, it was held that he could not plead *autrefois acquit* to another indictment for the same offence, which set forth the instrument correctly.—*R. v. Coogan*, 1 *Leach*, 448; *R. v. Reading*, 2 *Leach*, 593; per *Buller, J.*

The plea of *autrefois acquit*, in *R. v. Coogan*, was taken *ore tenus*, and the court rejected the record of the acquittal as insufficient proof of the plea. But if the plea had been in writing, and there had been an averment that the instrument

set out in the first indictment, and that set out in the second, were in fact the same, it seems to be reconcilable with what is said in 2 *Haw. c.* 35, § 3, 4, that such a plea would have been available.—*Deacon's C. L.* 96.

An *accessory* may plead the acquittal of his *principal*, for if there be no principal, there can be no *accessory*.—2 *Hale*, 524; 3 *Inst.* 139.

So if A., charged with a felony, breaks prison, and be acquitted of the principal felony, he may plead that acquittal to any indictment for felony in the *breach of prison*.—*Sawford's case*; 1 *Hale*, 611, 612; 2 *Hale*, 254.

Practice.

The prisoner is not entitled to a copy of the indictment to enable him to plead *autrefois acquit*; but he has a right to have the indictment read very slowly and distinctly over to him.—*R. v. Vandercomb*, 2 *Leach*, 711.

The plea, as well as the replication, may in general be pleaded *ore tenus*.—*R. v. Coogan*, 1 *Leach*, 448. But the replication of *nul tiel record* cannot be pleaded *ore tenus*, except by the Attorney-General, but must be written on parchment, and handed in to the court.—2 *Leach*, 715, note (a).

If the indictment be for *felony* or *treason*, the defendant, besides the plea of *autrefois acquit*, should also plead over to the felony or treason.—*Hale, Sum.* 246; *R. v. Vandercomb*, 2 *Leach*, 708.

The court, upon issue joined as to the identity of the person or the offence, awards a *venire* returnable *instanter*; and upon the sheriff making his return, the jury are immediately sworn to try the issue of *autrefois acquit*, the counsel for the prisoner having leave to address the jury in support of the affirmative of the issue.—*R. v. Sheen*, 1 *Carr. & P.* 638; 1 *Leach*, 416.

By C. Stat. 22 V. c. 99.—In any plea of *autrefois convict* or of *autrefois acquit*, it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted, as the case may be, of the offence charged in the indictment.—§ 48.

Record of Acquittal.—(Cr. Cir. Com.)

County of , } Be it remembered, that at the general quarter
to wit: } sessions of the peace of our Sovereign Lady the
Queen, holden at , in and for the said county of ,
on the day of , in the year, &c., before W. M.

K. R., R. R., and Z. Z., Esquires, justices of our said lady the Queen assigned to keep the peace of our said lady the Queen in and for the said county of _____, and also to hear and determine divers felonies, trespasses and other misdeeds, committed in the said county, by the oath, &c., (*the grand jury stating all their names*) good and lawful men of the county aforesaid, then and there sworn and charged to enquire for our said lady the Queen, for the body of the said county, it is presented in manner and form as followeth, that is to say,—county of _____, to wit. The jurors, &c. (*recite the whole indictment*), Whereupon the sheriff of the said county of _____ is commanded that he cause the said A. B. to come to answer, &c., and afterwards, to wit, at the same sessions of the peace, holden at the _____ aforesaid in and for the said county of _____, by adjournment on (*Wednesday*) the _____ day of the same month of _____, in the year aforesaid, before the justices of our said lady the Queen above named, and others their fellows aforesaid, cometh the said A. B. in his own proper person, and having heard the said indictment read, the said A. B. saith that he is not guilty thereof, and concerning thereof he putteth himself upon the country; and _____ Esquire, clerk of the peace for the said county of _____, who prosecutes for our said lady the Queen, in this behalf doth the like; therefore let a jury thereupon come before the justices of our said lady the Queen, at the next general quarter sessions of the peace of our said lady the Queen, to be holden at the _____, aforesaid, in and for the county of _____, by whom the truth of the matter may be better known, and who have no affinity to the said A. B., to recognize upon their oath if the said A. B. be guilty of the premises aforesaid or not; because as well the said _____, who prosecutes for our said lady the Queen in this behalf, as the said A. B. have put themselves on that jury, the same day is given as well to the said _____ who prosecutes for our said lady the Queen, in this behalf, as to the said A. B., at which said next general quarter sessions of the peace of our said lady the Queen, holden at the said _____, in and for the county of _____ aforesaid, on (*Monday*) the _____ day of _____, in the said _____ year of the reign of our said lady the Queen, before W. M., G. H., F. P., and S. T., Esquires, and others their fellows, justices of our said lady the Queen assigned to keep the peace of our said lady the Queen, in and for the county aforesaid, and also to hear and determine divers felonies, trespasses and other misdeeds, committed in the same county, cometh as well the said _____, who prosecutes for our said lady the Queen in this behalf, as the said A. B. in his own proper person; and the jurors of that jury, by _____ Esquire, sheriff of the said county, to this matter empannelled and returned—to wit, (*the names of the petit jury,*) being called, come, who being chosen, tried and sworn to speak the truth of and upon the premises in the indictment aforesaid, above specified, do say, upon their oath, that the said A. B. is not guilty of the (*felony*) or trespass and offence aforesaid, in the indictment afore-

said, above specified, in manner and form as the said A. B., for himself above by his plea hath alleged; whereupon it is considered by the court here, that the said A. B. of the trespass (*or felony*) and offence aforesaid, in the indictment aforesaid, above specified, be discharged and go thereof without day.

AUTREFOIS ATTAINT.

Formerly, a person once *attainted* of felony, being *civilliter mortuus*, and his property forfeited to the king, could not in general be indicted again for another felony—whether committed before or after his *attainder*—on the ground that, as he had forfeited all that he could forfeit, a prosecution for any other offence would be useless. A plea of *autrefois attaint*, therefore, was a good bar to an indictment for the same or any other felony of the like description.—2 *Haw. c. 36*; 4 *Bl. Com.* 336.

But as this rule was one rather of expediency than otherwise, it did not follow that after an *attainder* the party attainted might commit other felonies of a higher description, such as murder, rape, and the like with impunity. A plea of *autrefois attaint* will therefore, in such cases, or for other capital offences, be of no avail; and the party may be indicted and convicted, in order that he may undergo the higher degree of punishment—*forfeiture of goods* being only of secondary consideration in such cases; and now by *C. Stat. 22 V. c. 99, § 50*, no plea setting forth any *attainder* shall be pleaded in bar of an indictment unless the *attainder* be for the *same* offence as that charged in the indictment.

AUTREFOIS CONVICT.

This plea (like that of *autrefois acquit*) can in general only be pleaded for the same identical felony; it is (like that also) founded on the principle, that a man is not again to be placed in jeopardy for the same offence; and still less so if he has already (as in this case) suffered the penalty due for it.—*Haw. c. 36, § 10*; 4 *Bl. Com.* 336.

And though no judgment may have been given upon the former conviction, still the plea of *autrefois convict* is a good bar to a second indictment for the same offence.—2 *Haw. c. 36, § 14*.

Record of Conviction—See “*Autrefois Acquit*.”

do say upon their oath, that the said A. B. is guilty of the trespass and offence aforesaid in the indictment aforesaid, above specified, in manner and form as by the said indictment against

him is alleged ; whereupon it is considered by the court here, that the said A. B., for the trespass and offence aforesaid, in the indictment aforesaid, above specified, be taken, &c., which said A. B. being present here, is fined for the said trespass and offence three shillings and fourpence, which he paid to the sheriff of the said county, in court, to the use of our said lady the Queen; and the said A. B. is committed to the common gaol, at the aforesaid, in the said county, there to remain and be kept to hard labour for the space of six calendar months.

BACKING WARRANT.

A justice of the peace has no authority beyond his territorial jurisdiction. He may, however, issue a warrant for the apprehension of a party who has *escaped* or is residing out of his jurisdiction, but such warrant cannot be legally executed unless such execution of it be sanctioned by some justice of the peace residing in the locality where the accused party is residing. This is usually done by the constable having charge of the warrant calling upon such justice for leave to execute the same within his jurisdiction, who, on proof upon oath of the signature to the original warrant, is authorised by law to endorse permission or leave to execute such warrant within his jurisdiction. This is called "backing the warrant;" with respect to which the act respecting the duties of justices of the peace, C. Stat. 22 V. c. 102, § 24, provides as follows :

If the person against whom any such warrant has been issued be not found within the jurisdiction of the justice or justices by whom the same was issued, or, if he escapes, goes into, resides or be, or is supposed or suspected to be in any place within this province, whether in Upper or *Lower Canada*, out of the jurisdiction of the justice or justices issuing such warrant, any justice of the peace within the jurisdiction of whom such person so escapes or goes, or in which he resides or is supposed or suspected to be, upon proof made on oath (a) of the handwriting of the justice who issued the same, and without any security being given, shall make an endorsement (K) on such warrant signed with his name, authorising the execution of such warrant within the jurisdiction of the justice making such endorsement, and which endorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the

(a) The constable having charge of the warrant should either see it signed, or be well acquainted with the handwriting of the justice to enable him to make the requisite oath.

same was originally directed, and also to all constables and other peace officers of the territorial division, where such warrant has been so endorsed, to execute the same in such other territorial division, and to carry the person against whom such warrant is issued, when apprehended, before the justice or justices who first issued the said warrant, or before some other justice or justices of the territorial division where the offence mentioned in the said warrant appears to have been committed.

Form of endorsement (K) in backing a warrant.

PROVINCE OF CANADA:

District (or county or *united counties*,
or as the case may be,) of _____ }

Whereas proof upon oath hath this day been made before me, one of her Majesty's justices of the peace in and for the said district (or county or *united counties*, or as the case may be) of _____ that the name of J. S. to the within warrant subscribed is of the handwriting of the justice of the peace within-mentioned.

I do, therefore, hereby authorise W. T., who bringeth to me this warrant, and all other persons to whom this warrant was originally directed, or by whom it may be lawfully executed, and also all constables and other peace officers of the said district (or county or *united counties*, or as the case may be) of _____, to execute the same within the said last mentioned district (or county or *united counties*, or as the case may be).

Given under my hand, this _____ day of _____ in the year of our Lord _____, at _____, in the district (*county, &c.*) aforesaid.

J. L.

See also *post* titles "*Indictable Offences*," "*Summary Conviction*."

BAIL.

Bail (from the French word *bailler*, "to deliver") signifies the delivery of a man out of custody, upon the undertaking of one or more persons for him that he shall appear at a day limited to answer and be justified by the law.—*Hales*, *P. C.* 96.

By the declaration of rights, 1 W. session 2, c. 2, excessive bail ought not to be required. To refuse bail where the party ought to be bailed, (the party offering the same,) is a misdemeanor, punishable not only by the suit of the party, but also by indictment.—2 *Haw.* 90 *H. P.* 97. And to admit bail where it ought not to be admitted, is punishable by the judges of assize by fine, or punishable as a negligent escape at common law—*H. P.* 97; and so if a justice take

insufficient bail.—*Ib.* A justice of the peace cannot take bail for treason or murder except by order of a judge of the Court of Queen's Bench or Common Pleas.—*C. Stat. 22 V. c. 102, § 55.* And if a person be dangerously wounded, the justice ought to be very cautious how he takes bail, till the year and day be passed, for if the party die, and the offender appear not, the justice is in danger of being severely fined.—*1 Haw. 138.* If the bail taken be insufficient, the justice may require better sureties, and commit the party on refusal.—*2 Haw. 89.*

Bail may be taken in all cases of *misdemeanor*, and by one justice.—*C. Stat. 22 V. c. 102, § 53.* It may also be taken in cases of felony, where the evidence adduced shall, in the opinion of the justice before whom the accused party is brought, be sufficient to put him on trial, but shall not furnish such a strong presumption of guilt as to warrant his *committal* for trial. "In such case such justice, *jointly* with some other justice of the peace, may 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 the person so charged at the time and place when and where he is to be tried for the offence."—*C. Stat. 22 V. c. 102, § 52.*

It will be observed that *one* justice alone cannot take bail for felony. The statute requires that *two* justices shall be present on such occasion.

The party bailed is considered, in law, as in custody of his sureties, who are considered as his keepers, and they may therefore re-seize him if they fear his escape, and take him before the justice or court, by whom he may be committed, and thus the bail may be discharged from their recognizance; but he is at liberty to find new sureties.—*2 Hale, 124-7; 2 Hawk, c. 15, § 3; Com. Dig., Bail, Q. 2.* The bail may thus seize the person of the principal at any time (even on a Sunday) or at any place; and in surrendering the principal they may command the co-operation of the sheriff, and of any of his officers.—*Anon. 6 Mod. 231; Rol. Rep. 99; and see Ex parte Lym, 3 Stark. 132; Horn v. Swinborn, 1 Dowl. N. P. c. 20.*

If the principal do not appear, and the recognizance be forfeited and the penalty paid by the bail, yet the principal continues amenable to the law, whenever he can be taken.

It should seem that, if the bail have been compelled to pay the penalty in consequence of the recognizance being forfeited, they may sustain an action against the principal for money paid.—*Fisher v. Fallows, 5 Esp. 171.*

The *persons* of the bail are not liable under the recognizance.—*R. v. Dalton*, 2 *Stra.* 911; 2 *Hale*, 125.

See further on the subject under the titles "*Indictable Offences*," "*Coroner*," "*Justices of the Peace*."

Acknowledging Bail in another man's name.

Acknowledging bail in the name of any other person not privy or consenting to the same, or any *cognovit*, or deed to be registered, is made *felony* by C. Stat. 22 V. c. 94, § 10

See also *post* titles "*Forgery*," "*Habeas Corpus*."

BANISHMENT.

See title "*Transportation*."

BANKS—BANKING.

By C. Stat. 22 V. c. 55.—§ 1. The business of banking shall comprise the making and issuing of bank notes, the dealing in gold and silver bullion and exchange, discounting of promissory notes, bills, and negotiable securities, and such other trade as belongs legitimately to the business of banking.

§ 4. No person or association of persons, body corporate or politic, except banks, incorporated at the time this act takes effect, by royal charter or by act of the legislature, and thereunto expressly authorised, or such as are authorised under this act shall make, issue, sign, &c., any note, *bon*, check, or promise in writing, or undertaking for the payment of money, or security for money or other evidence of debt of any description or form in the nature of a bank note, or bank bill, or intended to pass as money. § 11. Bank notes not to be issued for less than one dollar, or made payable otherwise than on demand, in current coin of this province, and at some certain place within this province. § 12. Under the penalty of \$400 incurred by any party issuing, circulating, or passing, or attempting to circulate or pass, any unlawful bank note in contravention of this act. § 13. Foreign banks prohibited from opening or keeping any office or place of discount or deposit, or for the issue, circulation, or redemption of its bank notes within this province, under the penalty of \$400 for each day. § 14. Every unlawful bank note shall be void: as well as securities given for securing any loan or advance made in such unlawful notes, as also any receipt or discharge for money paid in such notes. § 15. Any company or party lawfully exercising the business of banking under this act

may take and hold property *bonâ fide* mortgaged or pledged as security for debts previously contracted, or sold under any process at law or in equity, and bought at such sale by such company or party, with power to re-sell. § 16. May also hold real estate for business purposes. § 17. Any individual or co-partnership may at some one city, town or village carry on the business of banking in this province, upon complying with the requirements of this act, but not otherwise. § 19. Joint stock banks may be composed of not less than five persons, the whole capital being not less than \$100,000; shares not less than \$40 each. § 20. Articles of co-partnership to be filed in the office of the clerk of the county court in U. C. § 24. Shareholders to be liable for *twice* the amount of their shares, and no more. § 27. Banks not to commence business until they have deposited with the Receiver-General provincial debentures or securities to the amount of \$100,000. § 28. To be held in pledge for redemption of bank notes of the bank. § 29. Upon such deposit being made, the minister of finance is authorised to deliver to the bank, bank notes for not less than one dollar each, not exceeding the amount deposited. § 31. To be numbered, registered and countersigned. § 34. And so long as the bank shall pay such notes in specie, on demand, they shall be receivable in payment of duties. § 44. Banks may make further deposits not less than \$20,000 at one time. § 42. If any such bank note shall not be paid in specie on demand at the bank, the same may be protested and a copy forwarded to the minister of finance. § 33. Who shall then by letter require the bank to pay the same, with costs of protest and postage and interest, within ten days, or the bank shall be closed (unless there be a legal defence.) § 46. Notice thereof to be given in the *Gazette* by the minister of finance, § 47, stating that he will redeem the notes of the bank to the extent of the funds deposited; and that a receiver has been appointed for settling the affairs of the bank, § 48, who is authorised to take possession of the bank property, books and papers. § 49. Any banker, partner, associate, or shareholder, or any director, manager or servant of such banker or bank, or other person who has been entrusted with any money, property, securities, books, accounts, papers or documents of the bank in his possession or under his control, and has no legal title or lien on the same, and does not forthwith deliver them to the receiver on demand, shall be held to have *fraudulently embezzled* them. § 50. The receiver shall settle the affairs of the bank, and report thereon to the

minister of finance, who shall sell the deposits, § 53, and apply the proceeds, *first* in redemption of the bank notes, and *then* in payment of other liabilities. The act then provides for the way in which the business and affairs of the bank are to be wound up: a schedule of bank liabilities and assets is to be filed in the county court, and a day appointed by the judge for settling disputed claims, with power of appeal to the Court of Queen's Bench against his decision. § 76. The bank may also be closed if it permit any judgment against it to remain *three months* unsatisfied, and no appeal pending. § 79. Every bank shall keep in the office a list of all partners, associates, and shareholders open to the public, and a copy of the bank articles. § 80. And furnish copies to applicants on demand, on payment of twelve and a half cents. § 81. Under a penalty of \$400. § 85. The total liabilities of the bank never to exceed *three* times the amount of its capital, under a penalty of \$400 per diem for the excess. § 87. No dividend to be made out of bank capital. § 89. Monthly accounts to be rendered by the bank to the minister of finance of bank assets and liabilities. § 92. Under a penalty of \$400 per diem for neglect. § 93. And if not transmitted within a month, the bank may be closed. § 108. A general statement of all the banks under this act to be laid before the legislature within thirty days after the opening of each session. § 109. Banks not to take more than seven per cent. interest. § 110. But may take certain other rates on discounting notes payable elsewhere, viz., on notes under thirty days $\frac{1}{2}$ of one per cent., under sixty days $\frac{1}{4}$, under ninety days $\frac{3}{8}$, over ninety days $\frac{1}{2}$.

Frauds by Bankers.

If any person being a banker, merchant, broker, attorney or agent, and being entrusted for safe custody with the property of any other person does, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate to or for his own use such property, or any part thereof, he shall be guilty of a misdemeanor.—*C. Stat. 22 V. c. 92, § 53.*

BANK NOTES.

By *C. Stat. 22 V. c. 21, § 1*, banking companies are required to deliver a statement in writing on the 15th May and the 15th November, annually, to the Receiver-General, of the amount of notes or bills issued and in circulation at the end of each calendar month, certified by the cashier and

president; and the person or persons so certifying shall make and sign a declaration in writing before a justice of the peace, that he or they had the means of knowing that such statement was correct, and that it is so, to best of his or their knowledge and belief. § 2. Any wilful false allegation in any such statement shall be a misdemeanor, punishable as for perjury. § 3. A duty of one per cent. per annum imposed on the average amount of notes and bills in circulation *pro tem*. § 4. The bank or party neglecting or refusing to deliver such statement shall forfeit to her Majesty \$400 for the use of the province, to be recovered with costs, as any other debt of the Crown.

By C. Stat. 22 V. c. 94, § 3, forging or knowingly uttering forged bank notes is made felony. See further on this subject, *post* title "*Forgery*."

BANKS OF RIVERS.

By C. Stat. 22 V. c. 93, § 19, it is enacted, that if any person unlawfully and maliciously breaks down, or cuts down any sea-bank or sea-wall, or the bank or wall of any river, canal, or marsh, whereby any land is, or is in danger of being overflowed or damaged, or unlawfully and maliciously throws down, levels or otherwise destroys any lock, sluice, flood-gate or other work on any navigable river or canal, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not exceeding four years, or in any other prison or place of confinement for any term less than two years. § 20. If any person unlawfully and maliciously cuts off, draws up, or removes 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 unlawfully and maliciously opens or draws up any flood-gate, or does 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, such offender shall be guilty of felony, and shall be imprisoned for any term not exceeding two years.

BARRATRY.

A barrator, in legal acceptance, signifies a common mover, exciter, or maintainer of suits or quarrels, either in courts or in the country.—1 *Inst.* 368; 1 *Haw.* 243. *In courts*, means either courts of record or not of record. *In the country*, in three manners: 1. In disturbance of the peace. 2. In taking

or keeping possession of lands in controversy. 3. By false inventions and sowing of calumnious rumours and reports, whereby discord and disquiet may arise between neighbours.—1 *Inst.* 368. No one can be a barrator in respect to one act only.—1 *Haw.* 243. Neither is an attorney guilty of an act of barratry in respect of his maintaining another in a groundless action, to the commencing whereof he was in no way privy.—1 *Haw.* 243. Nor shall a man be adjudged a barrator in respect of any number of false actions brought by him in his own right; for in such case he is liable to double costs.—1 *Haw.* 243.

By statute 34 E. III., c. 1, justices of the peace shall have power to restrain all barrators, and to pursue, arrest, take and chastise them, according to their trespass or offence.

As to the kind and manner of punishment it is said, that if the offender be a common person he shall be fined and imprisoned and bound to his good behaviour; and if he be of any profession relating to the law, he ought also to be further punished by being disabled to practise for the future.—1 *Haw.* 244.

BASTARD.

By C. Stat. 22 V. c. 99, § 69, it is enacted, that no part of the act of 21 James I., entitled "An Act to prevent the destroying and murdering of Bastard Children," shall extend to or be in force in this province, and the trial of any woman charged with the 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 in other trials for murder.

See *post* title, "*Concealing Birth.*"

BAWDY-HOUSE.

Keeping a bawdy-house is a common nuisance, and it not only endangers the public peace, by drawing together dissolute and debauched persons, but also tends to corrupt the morals of both sexes, by such an open profession of lewdness.—3 *Inst.* 204; 1 *Haw.* c. 74, 75, § 6. This offence is punishable by fine and imprisonment—1 *Haw.* c. 74, and is in law a misdemeanor.

A married woman may be indicted for this offence, the same as if she was a *femme sole*; and also be convicted of it together with her husband.—*Rex v. Williams*, 1 *Salk*, 383. A man may be bound to his good behaviour for

haunting bawdy-houses with women of bad fame, or for keeping bad women in his own house.—1 *Haw. c.* 74. And a constable is authorised by the common law to arrest persons that resort to bawdy-houses.—1 *Haw. c.* 10, § 34.

A summary course of proceedings is now provided by law for conviction of offenders of this description before the recorder of any city before whom any such may be brought, and who may elect to be tried before him instead of before a jury.—*C. Stat.* 22 *V. c.* 105, § 1.

For forms of complaint, summons, &c., see *post* title "*Indictable Offence.*"

Indictment for keeping a bawdy house. (Archbold.)

County of } The jurors, &c. That I. S., late of, &c.,
to wit: } labourer, and A. his wife, on the day
of , in the year of the reign of our sovereign lady
Victoria, and on divers other days and times, between that day
and the day of the taking of this inquisition, with force and arms,
at the township aforesaid, in the county aforesaid, unlawfully did
keep and maintain a certain common ill-governed and disorderly
house, and in the said house, for the lucre and gain of him the
said I. S., certain persons, as well men as women of evil name and
fame, and of dishonest conversation, then and on the said other
days and times, there unlawfully and wilfully did cause and pro-
cure to frequent and come together, and the said men and women,
in the said house of him the said I. S., at unlawful times, as well
in the night as in the day, then and on the said other days and
times, there to be and remain drinking, tippling, whoring, and
misbehaving themselves, unlawfully and wilfully did permit, and
yet do permit, to the great damage and common nuisance of all
the liege subjects of our said lady the Queen there inhabiting,
being, residing and passing, to the evil example of all others in the
like case offending, and against the peace of our said lady the
Queen, her crown and dignity.

BEEF AND PORK.

Act respecting the inspection of.

C. Stat. 22 *V. c.* 48, § 1.—The board of trade in Quebec, Montreal, Toronto and Kingston, and municipal authorities in other places where inspectors are required, may appoint a board of examiners, to consist in Quebec and Montreal of *five*, and in other places of *three* fit and proper persons, residents, who, before acting, shall take and subscribe the following oath before any justice of the district:

"I, A. B., do swear that I will not, directly or indirectly, personally, or by means of any person or persons in my behalf,

receive any fee, reward, or gratuity whatever, by reason of any function in my office of examiner of applicants for the office of inspector of beef and pork, and that I will therein well and truly in all things act without partiality, favour or affection, and to the best of my knowledge and understanding. So help me God."

§ 2. Board of examiners to be assisted at the examination of applicants by competent persons. § 3. The mayor of Quebec, Montreal, Toronto, and Kingston, and the mayor or chief municipal officer of other places, shall appoint by an instrument under his hand and the seal of the corporation an inspector of beef and pork for such places, such inspector to be previously examined by the board of examiners and recommended by the majority. § 4. Inspectors before acting shall furnish two good and sufficient sureties in \$2000, if appointed for Quebec or Montreal, and \$1000 for other places, to be approved by the mayor, or chief municipal authority, by bond to her Majesty. § 5. Bond to be kept at the office of the clerk of the corporation. § 6. Inspector to take the following oath before the mayor or chief municipal officer of the place :

"I, A. B., do solemnly swear, that I will faithfully, truly and impartially, to the best of my judgment, skill and understanding, execute and perform the office of an inspector of beef and pork, and that I will not, directly or indirectly, by myself or by any other person or persons whomsoever trade or deal in beef or pork of any description otherwise than for the use and consumption of my own family, during the time I shall continue such inspector ; and that I will not, directly or indirectly, brand or suffer to be branded any cask or half cask of beef or pork, but such as shall be sound and good and of the quality designated by such brand, and with regard to which all the other requirements of the law have been complied with, to the best of my knowledge. So help me God."

§ 7. The inspectors for Quebec and Montreal to appoint one or more assistants when required by the board of trade, subject to the approval of the board of examiners, for whose acts the inspector shall be responsible; each assistant to furnish two sureties in \$1000, and take and subscribe the following oath :

"I, A. B., do swear that I will diligently, faithfully and impartially execute the office of assistant to the inspector of beef and pork , and that I will not directly or indirectly, personally or by means of any person or persons in my behalf, receive any fee, reward or gratuity whatever, by reason of my office of assistant to the said inspector, (except my salary from the said inspector,) and

that I will not, directly or indirectly, trade in the articles of beef or pork, or be in any manner concerned in the purchase or sale of beef and pork, except so far as may be necessary for myself and family. So help me God."

§ 8. To be paid and hold office at the pleasure of the inspector. § 9. Inspectors and assistants are required to cut up, salt, pack, cure, or if already packed, to unpack and examine throughout, adding salt if necessary, and coopering up the same according to this act, every barrel or half barrel, tierce or half tierce, of beef and pork, submitted to their inspection, such inspection to be made at the store, shop, or warehouse of such inspector, or at some store within the limits of the city, &c., for which he may be appointed, at the option of the proprietor. § 10. Inspectors and assistants to have iron or metal brands, and immediately after inspection (1) to brand on each barrel, tierce or half tierce the words "Quebec," "Montreal," "Toronto," or "Kingston," or the name of the place, (as the case may be,) and the initial of the christian name and the surname at full length of the inspector, with the quality thereof; (2) if found to be soft or still fed to be branded with the word "soft," (3) and if unsound or unmerchantable the word "rejected;" (4) erroneous marks to be erased and corrected. (5) Inspector to brand the month and year in which it was inspected, with the net weight and quality, (6) and to receive for such inspection twenty cents for each barrel, twelve and a half cents for a half barrel, thirty cents for each tierce, and eleven pence or eighteen and one-third cents for a half tierce, exclusive of cooperage and repairs not exceeding ten cents per barrel or half barrel, tierce or half tierce, delivered in good shipping order: (7) such fee or allowance to be paid by the owner before removal: (8) after inspection a certificate or bill of inspection to be furnished by the inspector or assistant, without charge, specifying the quantity and the owner's marks, and the quantities and qualities ascertained by inspection, and the charges thereof, (9) any inspector or assistant giving an untrue certificate, or without a personal examination, shall incur a penalty of \$80 currency, and be dismissed from office: (10) beef or pork re-inspected to bear the brand of the year and month originally affixed: (11) such brand-marks to be branded on one head of the barrel or tierce, &c. (12) Where beef or pork shall be sold subject to inspection, the cost shall fall on the vendor (if not the applicant) unless agreement to the contrary at the time of sale. And any such agreement shall imply a warranty

that this act has been complied with, as well with regard to the provisions, as to the vessels containing the same, and the marks thereon. § 11. All beef which an inspector shall find on examination to have been killed at a proper age, and to be fat and merchantable, shall be cut into pieces as nearly square as may be, not more than eight nor less than four pounds weight; and shall be sorted and divided for packing and re-packing in barrels and half barrels, tierces and half tierces, into four different sorts, to be denominated respectively mess—prime mess—prime—and cargo beef. § 12. All brands to be large and legible within a space not exceeding *fourteen inches* long by *eight inches* broad, under a penalty of \$80 currency for each barrel, &c. § 13. On the head of any barrel, &c., containing any thin, rusty, measley, tainted, sour, or unmerchantable pork, or unmerchantable or spoiled beef, branded “rejected,” the true character both as to quality and condition of such pork or beef shall be marked with black paint, and the inspector shall certify, when required, the quality, state and condition thereof, and the package containing the same, specifying the extent of damage and apparent cause thereof, with the brands or other marks upon the casks or packages, and the name of the owner. § 14. The salt to be used shall be clean *St. Ubes, Isle of May, Turk’s Island*, or other coarse ground salt of equal quality; and every barrel of fresh beef or pork shall be well salted with 75 pounds, and every tierce with 112 pounds of good salt as aforesaid, exclusive of a sufficient quantity of pickle as strong as salt will make it, and to each barrel of beef and pork shall be added four ounces, and to each tierce six ounces of saltpetre; and each half barrel of fresh beef and pork shall be salted with half the quantity of salt and saltpetre above mentioned, with a sufficiency of pickle, and in all cases of packing and re-packing beef and pork to be inspected and branded under the authority of this act, the inspector is hereby authorised to use salt, saltpetre, and pickle, in his discretion. § 15. Barrels, &c., to be made of good seasoned white oak staves; and heads not less than $\frac{3}{4}$ inch thick; each stave on the edge at the bilge not less than $\frac{1}{2}$ an inch thick for barrels, not less than $\frac{3}{4}$ for tierces, and half barrels or tierces in the same proportion to their size, and in both cases free from defect; (2) each barrel &c., to be hooped and covered $\frac{2}{3}$ of the length with good oak, ash, or hickory hoops, leaving $\frac{1}{3}$ in the centre uncovered; and each barrel, &c., shall be bored in the centre of the bilge with a bit of not less in diameter than *one inch*,

for the reception of pickle, (3) each barrel to be not less than 27 inches nor more than $28\frac{1}{2}$ inches long; and the contents of each beef barrel shall not be less than 28 gallons nor more than 29 gallons wine measure, and of each pork barrel not less than 30 gallons nor exceeding 31 gallons wine measure, (4) each tierce not less than 30 inches nor more than 31 inches long: contents for beef, not less than 44 gallons nor more than 45 gallons wine measure: for pork, not less than 45 gallons nor more than 46 gallons wine measure; (5) half barrels or tierces to contain half the quantity, and no more.

Inspectors to ascertain the sufficiency of each barrel, &c., before branding, and to brand none without. § 16. Barrels and salt, &c., to be furnished by the inspector, or owner, at the option of such owner or consignee. § 17. In case of dispute between the inspector and owner, with regard to the quality and condition, either party may apply to a justice, who shall summon *three* persons of skill and integrity, one to be named by the inspector and one by the proprietor, and and the third by the justice, who shall examine and report their opinion under oath, (to be administered by such justice,) and the decision of the majority shall be final, and the inspector brand accordingly, and if the opinion of the inspector be confirmed, the costs shall be paid by the proprietor, *otherwise* by the inspector.

Offences, Penalties, and Miscellaneous Provisions.

§ 18. Any inspector or assistant neglecting or refusing, when called upon by any proprietor between *sunrise* and *sunset* (not being previously engaged) within *two hours* to proceed to such inspection, shall forfeit to the person applying, on conviction before any justice, the sum of \$20 over and above all other damages. § 19. Any inspector suffering beef or pork left in his charge to be exposed, after inspection, to the heat of the sun, or inclemency of the weather, longer than *six* days, shall be liable to the penalty of \$40 currency for every offence; and for not providing a suitable store in a convenient situation, \$4 a day. § 20. Inspector not to charge storage unless left in store more than ten days after notice of inspection.

(2) *Mess beef* shall consist of the choicest pieces only, that is to say, briskets, the thick of the flank, ribs, rumps, and sirloins of oxen, cows or steers, well fattened; and each barrel or half barrel, tierce or half tierce, containing beef of this description, shall be branded on one of the heads with the words *Mess beef*.

(3) *Prime mess beef* shall consist of pieces of meat of the second class, from good fat cattle, without shanks or necks ; and barrels and half barrels, tierces and half tierces, containing beef of this description, shall be branded on one of the heads thereof with the words *Prime mess beef*.

(4) *Prime beef* shall consist of choice pieces of fat cattle, amongst which there shall not be more than the coarse pieces of one side of a carcass, the houghs and neck being cut off above the first joint ; and barrels and half barrels, tierces and half tierces, containing beef of this description, shall be branded on one of the heads with the words *Prime beef*.

(5) *Cargo beef* shall consist of the meat of fat cattle, of all descriptions, of three years old and upwards, with not more than half a neck and three shanks, (with the hough cut off above the first joint), and the meat otherwise merchantable ; and barrels and half barrels, and tierces and half tierces, containing such beef, shall be branded on one of the heads *Cargo beef*.

(6) And each barrel, in which beef of either of the foregoing descriptions shall be packed or re-packed, shall contain two hundred pounds of beef, and each half barrel, one hundred pounds ; each tierce, three hundred pounds ; and each half tierce, one hundred and fifty pounds.

§ 12. All pork which an inspector shall find to be fat and merchantable, shall be cut in pieces as nearly square as may be, and not exceeding six, nor less than four pounds weight, and shall be sorted and divided into four sorts, to be denominated respectively mess—prime mess—prime—and cargo pork.

(2) *Mess pork* shall consist of the rib pieces only, of good hogs, not weighing less than two hundred pounds each ; and barrels and half barrels, tierces and half tierces, containing such pork shall be branded on one of the heads *Mess pork*.

(3) *Prime mess pork* shall consist of the pieces of good fat hogs, not weighing less than one hundred and ninety pounds each, the barrel to contain the coarse pieces of one hog only—that is to say, two half heads (not exceeding together sixteen pounds in weight) with two shoulders and two hams, and the remaining pieces of a hog ; the tierce to contain the relative proportion of heads, shoulders and hams, and the remaining pieces of one hog and a half hog ; and barrels and half barrels, tierces and half tierces, containing pork of this description, shall be branded on one of the heads *Prime mess pork*.

(4) *Prime pork* shall consist of the pieces of good fat hogs,

not weighing less than one hundred and fifty pounds each, the barrel to contain the coarse pieces of one hog and a half only, that is to say, three half heads, (not exceeding together twenty-four pounds in weight,) three hams and three shoulders, and the remaining pieces of a hog and a half hog; the tierce to contain the relative proportions of heads, shoulders and hams, and the remaining pieces of two hogs and a quarter of a hog; and each barrel or half barrel, tierce or half tierce, containing pork of this description, shall be branded on one of the heads *Prime pork*.

(5) *Cargo pork* shall consist of the pieces of fat hogs, weighing not less than one hundred pounds each, the barrel to contain the coarse pieces of not more than two hogs, that is to say, four half heads, (not exceeding together in weight thirty pounds,) four shoulders and four hams, and the remaining pieces of two hogs, and shall be otherwise merchantable pork; the tierce to contain the relative proportion of heads, shoulders and hams, and the remaining pieces of three hogs; and the barrels and half barrels, tierces and half tierces, containing pork of this description, shall be branded on one of the heads *Cargo pork*; (6) but in all cases the following parts shall be cut off and not packed, viz., the ears close to the head, the snout above the tusks, the legs above the knee joint, the tail shall be cut off, and the brains, tongue and bloody grizzle taken out; (7) each barrel, in which pork of any of the foregoing descriptions may be packed or re-packed, shall contain two hundred pounds; and each tierce three hundred pounds; and each half barrel, or half tierce, one-half those quantities respectively, of the several qualities of pork as aforesaid, and shall be branded accordingly.

§ 21. No inspector or assistant inspector of beef and pork shall directly or indirectly trade or deal in beef or pork, or be concerned in such trade, whether by buying, bartering, or exchanging any live or dead cattle or hogs, with a view to pack the same or get them packed, or by buying, bartering or exchanging beef or pork when packed; nor shall he purchase beef or pork of any description, otherwise than for the use and consumption of his family, under a penalty of \$200 currency for each offence, and on pain of being removed from office. § 22. None but inspectors or their assistants duly appointed, or actual owners, shall inspect any beef or pork, or brand or mark any barrel or half barrel, tierce or half tierce, or cask, or vessel of any kind containing the same, under a penalty of \$40, (2) and if any owner shall brand any such vessel without affixing to it his surname and the initial of

his christian name, the date when branded, and the word "owner" or "owners," he shall incur the penalty aforesaid.

§ 23. If any packer or any other person with a fraudulent intent, effaces or obliterates any of the inspector's brand marks, or counterfeits any such marks, or brands the same on any barrel or half barrel, tierce or half tierce, or empties or partially empties any barrel or half barrel, tierce or half tierce, branded after inspection, in order to put into the same other beef or pork, or uses for the purpose of packing any beef or pork, old barrels or half barrels, tierces or half tierces, without destroying the old brand marks, before offering the same for sale or exportation, or not being an inspector or assistant inspector, brands any pork or beef with the inspector's brand-marks, such person so offending shall, for every such offence, incur a penalty of \$200, and every inspector or assistant inspector who inspects or brands any beef or pork out of the limits for which he shall be appointed, or hires out his brands to any person whomsoever, or connives at or is privy to any fraudulent evasion of inspection of beef and pork by others, shall, for every such offence, incur a penalty of \$200. § 24. Nothing herein contained shall be construed to prevent any person from packing for exportation, or from exporting any beef or pork, without inspection, provided such beef or pork be packed in tierces and half tierces, barrels or half barrels, of the dimensions hereinbefore prescribed for such vessels respectively, and be marked with black paint, or branded on one end thereof, with the name and address of the packer, the date and place of packing, the weight, and the quality of the provisions contained in each package; (2) nor shall any thing herein contained prevent any person from packing for exportation, or from exporting without inspection, any rounds of beef, rounds and briskets of beef, the meat of young pigs, called pig pork, the tongues of neat cattle, the tongues of pigs, hams of pigs, or pigs cheeks, or any smoked or dried meat of any description, contained in tubs, casks or barrels, or other packages of any kind, provided each package be marked in the manner above mentioned; but every person who shall export any meat of the kind last mentioned, not so marked as aforesaid, or beef or pork of any other kind, not so marked, and not packed in barrels or half barrels, tierces or half tierces, of the dimensions hereinbefore prescribed, shall thereby incur a penalty of \$4 for every barrel or half barrel, tierce or half tierce, tub, cask or other package, with regard to which the provisions of this section shall be contravened.

Penalties, how recoverable.

§ 25. All fines, penalties and forfeitures imposed by this act, not exceeding \$48 68 $\frac{2}{3}$ cts, (a) shall be recoverable with costs in a summary way, before any two justices of the peace, and may, in default of payment, be levied by warrant of distress, to be issued by such justices, against the goods and chattels of the offender; and when the same shall exceed the said sum they may be sued for and recovered by civil action, before any court of competent jurisdiction, and levied by execution, as in the case of debt, and one moiety of such fines and forfeitures (except such as are hereinbefore directed to be otherwise applied) shall belong to the corporation of the city, or place where the suit or prosecution is brought, and shall be forthwith paid to the treasurer of such city or place, and the other moiety shall belong to the prosecutor, unless the action be brought by any officer of such corporation, in which case the whole shall belong to the corporation. § 26. Actions to be commenced within six months.

BENCH WARRANT.

The old practice with respect to the issue of the bench warrant against a party indicted and not before the court has been in a measure superseded by the C. Stat. 22 V. c. 102, s. 3, which provides that after indictment found the clerk of assize, or clerk of the peace (as the case may be) shall, after the end of the sessions, upon the application of the prosecutor, and on payment of a fee of twenty-five cents, grant a certificate of such indictment having been found, and upon the production of such certificate any justice of the peace where the offence was committed may issue his warrant for the apprehension of the offender, to be dealt with according to law. § 6. But nothing in the preceding section is to prevent the issuing or execution of bench warrants whenever the court thinks proper to order the same.

See also "Justices of the Peace."

Form of a Bench Warrant.

County of York, }
to wit. } To the Sheriff of the County of York, Greeting :

These are to will and require, and in her Majesty's name to command you, upon sight hereof, to bring before us J. C. and S. P., Esquires, two of her Majesty's justices of the peace for the county of York, at the general quarter sessions of the peace now

(a) £10 sterling.

being holden at the city of Toronto, in and for the said county of York, or such other two or more of her Majesty's justices of the peace for the said county as shall be then and there sitting, the body of A. B., who stands indicted before us at this same sessions for an assault, (*or for larceny,*) if the court shall be then and there sitting; and if he cannot be taken during the present sessions, that then so soon after as he shall be taken you bring or cause him to be brought before some justice of the peace of the said county, to be dealt with according to law; and what you shall have done herein make appear to her Majesty's justices of the Court of Queen's Bench at Toronto, on the first day of _____ term now next ensuing, and have you there this warrant. Dated in open sessions, at the city of Toronto, this _____ day of _____, in the year of our Lord 18 .

J. C.

S. P.

BENEFIT OF CLERGY.

Benefit of clergy was a privilege allowed by the law to clerks in orders, and afterwards to those among the laity who could read, by virtue of which a criminal, though duly convicted, was discharged from the sentence of the law in the king's courts and delivered over to the ordinary, to be dealt with according to the ecclesiastical canons.—4 *Bl. Com.* 368. Owing to the ancient severity of the British law, which subjected all persons convicted of felony, of any description, to the penalty of death, the benefit of clergy appears to have been a remedy invented by the church in her day of power to rescue offenders convicted of felony from the punishment consequent thereon; subsequently the legislature, to distinguish such crimes as were by statute to be punished with death, usually enacted that the offender, upon conviction, should be deemed guilty of felony without benefit of clergy, thus leaving the criminal to rely only upon the royal prerogative for a mitigation of his punishment. The real distinction therefore, in cases of felony, appears to have been this: felonies at the common law or by statute, within the benefit of clergy, were no longer deemed capital; but such as were not within this privilege partook of all the ancient rigour of the law, and were deemed capital or punishable with death. Benefit of clergy is now very properly abolished and a milder criminal code substituted: this important change was effected in England by 7 & 8 G. IV., c. 27, and in Upper Canada, by statute 3 W. IV., c. 3, s. 25.

Felonies.

By C. Stat. 22 V. C. 99, s. 97.—Benefit of clergy with

respect to persons convicted of felony, having been abolished in U. C. on the 13th February, 1833, and in L. C. from and after the 1st of January, 1842, 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 the province in which the trial is had, when the benefit of clergy was abolished therein, or which has been made punishable with death by some act passed since that time.

BENEFIT SOCIETIES.

See "*Provident Societies.*"

BIGAMY.

Bigamy signifies, in criminal law, the offence of having two wives or two husbands, at the same time.—4 *Bl. Com.* 168.

By C. Stat. 22 V., c. 91, s. 29, any person who, being married, marries any other person during the life of the former husband or wife, whether the second marriage takes place in this province or elsewhere, and every person who counsels, aids or abets such offender, shall be respectively guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

§ 30. Nothing herein contained shall extend (1) 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 (2) to any person marrying a second time, whose husband or wife had been continually absent from such person for the space of seven years then last past, and was not known by such person to be living within that time; (3) or to any person who, at the time of such second marriage, had been divorced from the bond of the first marriage, or (4) to any person whose former marriage had been declared void by the sentence of any court of competent jurisdiction.

By C. Stat. 22 V. c. 99, s. 9, the offence of bigamy may be dealt with and tried in the county where the offender is apprehended.

For forms see "*Indictable Offences.*"

BILLIARD TABLES.

By the U. C. Stat. 22 V., c. 54, s. 261, (1) municipalities are authorised to make by-laws for licensing, regulating and governing all persons who for hire or gain, directly or in-

directly, keep or have in their possession, or on their premises any billiard table, or who keep or have a billiard table in a house or place of public entertainment, or resort, whether such billiard table be used or not, and for fixing the sum to be paid for a license, and the time it shall be in force.

BIRDS.

Destruction of may be prohibited by municipal by-law.—*U. C. Stat. 22 V. c. 54, s. 266.*

See also title "*Cruelty to Animals.*"

BLASPHEMY AND PROFANENESS.

All blasphemies against God, as denying his being or providence, and all contumelious reproaches of Jesus Christ; all profane scoffing at the holy scriptures, or exposing any part of them to contempt or ridicule; imposters in religion, as falsely pretending to extraordinary commissions from God, and terrifying or abusing the people with false denunciations of judgment, and all open lewdness grossly scandalous are punishable by fine and imprisonment, and also such corporal punishment as to the court shall seem meet, according to the heinousness of the crime.—1 *Haw. 6, 7.*

And if any person shall, in any stage-play, interlude, show, May-game or pageant, jestingly or profanely speak or use the holy name of God, or of Christ Jesus, or of the Holy Ghost, or of the Trinity, he shall forfeit £10—half to the king and half to him that shall sue.—3 *J. C. 21.*

BOARD OF HEALTH.

See "*Public Health.*"

BOARD OF POLICE.

By the Municipal Act, (U. C. Stat. 22 V. c. 54,) § 396. In every city there is hereby constituted a board of commissioners of police, and such board shall consist of the mayor, recorder, and police magistrate, and if there is no recorder or police magistrate, or if those offices are filled by the same person, the council of the city shall appoint a person resident therein to be a member of the board, or two persons so resident to be members thereof, as the case may require.

§ 398. The police force shall consist of a chief constable and as many constables and other officers and assistants as the council from time to time deems necessary, but not less in number than the board reports to be absolutely required.

§ 399. The members of the police force shall be appointed by and hold their offices at the pleasure of the board, § 402, and be paid by the council.

§ 400. The board shall from time to time make such regulations as they may deem expedient for the government of the force and for preventing neglect or abuse, and for rendering the force efficient in the discharge of all its duties.

§ 401. The constable shall obey all the lawful directions, and be subject to the government of the board, and shall be charged with the special duties of preserving the peace, preventing robberies, and other felonies and misdemeanors, and apprehending offenders, and shall have generally all the powers and privileges, and be liable to all the duties and responsibilities which belong by law to constables duly appointed.

By statute 25 V. c. 23.—The power for granting certificates for tavern licenses in cities is now vested in the board of commissioners of police.

See also "*Police Office.*"

BOARD OF WORKS.

"See post title "*Public Works.*"

BOUNDARY LINES.

Under U. C. Stat. 22 V. c. 93.

§ 1. Stone monuments, or monuments of durable materials, shall be placed at the several corners, governing points or off-sets of every township surveyed or hereafter to be surveyed; and also at each end of the several concession lines of such townships; and lines drawn as hereinafter prescribed therefrom shall be the permanent boundary lines of such townships and concessions. § 2. Such monuments to be placed under the direction and order of the Commissioner of Crown Lands. § 3. The courses and length of said boundary lines so ascertained and established, shall be the true courses and lengths of the boundary lines of said townships and concessions, whether the same do or not, on actual survey, coincide with the courses and lengths in any letters patent or other instrument. § 4. If any person knowingly and wilfully pulls down, defaces, alters or removes any such monument so erected as aforesaid, such person shall be guilty of felony; and if any person knowingly and wilfully defaces, alters or removes any other land-mark, post or monument, placed by any land surveyor to mark any limit, boundary or angle of any township, concession, range, lot or parcel of

land in U. C., such person shall be guilty of a misdemeanor, and being convicted before any competent court, shall be liable to be punished by fine or imprisonment, or both; fine not to exceed \$100, nor imprisonment three months: but this clause not to prevent land surveyors, in their operations, from taking up posts or other boundary marks when necessary; after which they shall carefully re-place them as they were before. § 5. Monuments need not be placed under § 1, 2, 3, 4, except on application of the municipal council of the locality. § 6. It shall be lawful for the county council, on application of one-half of the resident landowners in any concession, (or without such application if the council shall deem necessary,) to make application to the Governor to cause any such line to be surveyed and marked by permanent stone boundaries under the direction and order of the Commissioner of Crown Lands, in the manner prescribed in this act, at the cost of the proprietors of the lands in such concession or part of a concession interested. § 7. The lines shall be drawn so as to leave each of the adjacent concessions of a depth proportionate to that intended in the original survey. § 8. And the lines or parts of lines so surveyed and marked as aforesaid, shall thereafter be the permanent boundary lines of such concessions or parts of concessions to all intents and purposes. § 9. The council shall cause an estimate of the sum requisite to defray the expenses to be incurred to be laid before them, in order that the same may be levied on the said proprietors in proportion to the quantity of land held by them respectively in such concession or part of a concession, in the same manner as any sum required for any other purpose authorised by law may be levied. § 10. And all expenses incurred in performing any survey or placing any monument or boundary under this section, shall be paid by the county treasurer to the person employed, on certificate of the Commissioner of Crown Lands. § 11. Whenever the municipal corporation of any township, city, town, or incorporated village shall adopt a resolution on application of one-half the resident land-holders to be affected thereby, that it is desirable to place stone or other durable monuments at the front or at the rear, or at the front and rear angles of the lots in any concession or range, or part of a concession or range in their township, city, town, or incorporated village, it shall be lawful for such municipal corporation to make application to the Governor in the same manner provided in the 6th and four following sections of this act, praying him to cause a

survey of such concession or range, &c., to be made, and such boundaries to be planted under the authority of the Commissioner of Crown Lands. § 12. The person or persons making such survey shall, accordingly, plant stone or other durable monuments at the front or at the rear, or at the front and rear angles of each and every lot in the said concession or range, or part of the same, and the limits of each lot so ascertained shall be taken to be, and are hereby declared to be, the true limits thereof. § 13. The costs of the said survey shall be defrayed in the manner prescribed by the 9 and 10 sections of this act.

§ 14. All boundary lines of townships, cities, towns, villages, concession lines, governing points, and all boundary lines, of concessions, sections, blocks, gores, commons, and all side lines and limits of lots surveyed; and all posts or monuments which have been placed or planted at the front angles of any lots or parcels, (under the authority of the executive government of this province,) shall be, and the same are hereby declared to be, the true and unalterable boundaries of the same, whether the same shall upon admeasurement be found to contain the exact width, or more or less than that expressed in any letters patent, grant or other instrument in respect thereof. § 15. Every township, city, town, &c., shall embrace the whole width contained between the front posts, monuments or boundaries, planted or placed at the front angles respectively, so marked, placed or planted as aforesaid, and no more nor less. § 16. Aliquot parts of any township, &c., to contain the quantity expressed in the patent. § 17. All allowances for roads or streets in any city, town or village, as laid out in the original survey, to be public highways. § 18. As to lands granted in blocks and subsequently surveyed by the grantees—such surveys to be deemed original surveys. § 19. The course of the boundary line of each and every concession, on that side from which the lots are numbered, shall be the course of the division or side lines throughout the several townships; *provided* that such division or side lines were intended in the original survey to run parallel to the said boundary. § 20. And all surveyors shall run division or side lines, which they may be called upon to survey, so as to correspond with and be parallel to that boundary line of the concession in which such lands are situate, from whence the lots are numbered as aforesaid: *provided* such division or side lines were intended in the original survey to run parallel to the said boundary. § 21. When the end of a concession from

which the lots are numbered is bounded by a lake or river, or other natural boundary, or when it has not been run in the original survey, performed under such competent authority as aforesaid, or when the course of the division or side lines of the lots therein was not intended in the original survey to run parallel to such boundary, the said division or side line shall run parallel to the boundary line at the other extremity of such concession, provided their course was intended in the original survey to be parallel thereto, and that such boundary line was run in the original survey. § 22. When in the original survey the course of the division or side lines in any concession was not intended to be parallel to the boundary line at either end of such concession, they shall be run at such angle with the course of the boundary line at that end of the concession from which the lots are numbered, as is stated in the plan and field notes of the original survey; *provided* such line was run in the original survey as aforesaid, or with the course of the boundary line at the other extremity of the said concession, if the boundary at that end of the concession from which the lots are numbered was not run in the original survey, or if neither of the aforesaid boundaries of the concession were run in the original survey, or if the concession be bounded at each end by a lake or river or other natural boundary, then at such angle, with the course of the line in front of the said concession, as is stated in the plan and field notes aforesaid. § 23. If any division or side line between lots, or proof line intended to be parallel to the division or side lines between lots was drawn in any such concession in the original survey thereof, the division or side lines between the lots therein shall be drawn parallel to such division or side line, or proof line. § 24. When two or more such division or side lines, or proof lines, were drawn in the original survey, that division or side line, or proof line nearest to the boundary of the concession from which the lots are numbered, shall govern the course of the division or side lines of all the lots in such concession, between the boundary of the concession from which the lots are numbered and the next division or side line, or proof line drawn in the original survey, which shall govern the course of the division or side lines of all the lots up to the next division or side line, or proof line, drawn in the original survey, or to the boundary of the concession towards which the lots are numbered (as the case may be). § 25. In all those townships in Upper Canada which in the original survey

have been divided into sections, pursuant to an order in council, dated 27th March, 1829, the division or side lines in all concessions, in any section, shall be governed by the boundary line of such section, in like manner as the division or side lines in townships originally surveyed before that day are governed by the boundary lines of the concession in which such lots are situate. § 26. The front of each concession where only a single row of posts has been planted, on the concession lines, and the lands have been described in whole lots, shall be that end or boundary of the concession which is nearest to the boundary of the township from which the concessions are numbered. § 27. In those townships bounded in front by a river or lake, where no posts were planted in the original survey on the bank of such river or lake to regulate the width in front of the lots in the broken front, the division or side lines of such lots shall be drawn from the posts or boundaries on the concession line in the rear, parallel to the governing line determined as aforesaid, to the river or lake in front; and when the line in front of any such concession was not run in the original survey, the division or side lines of the lots in such concession shall be run from the original posts or monuments planted on the front line of the concession in the rear thereof, parallel to the governing line determined as aforesaid, to the depth of the concession, viz., to the centre of the space contained between the lines in front of the adjacent concessions, if the concessions were intended in the original survey to be of an equal depth; or if they were not so intended, then to the proportionate depth intended in the original survey, as shewn on the plan and field notes thereof, having due respect to any allowance for roads made in the original survey; and a straight line joining the extremities of the division or side lines of any lot in such concession, drawn as aforesaid, shall be the true boundary line of that end of the lot which was not run in the original survey. § 28. In those townships in which the concessions have been surveyed with double fronts, that is with posts or monuments planted on both sides of the allowance for road between the concessions, and the lands have been described in half lots, the division or side lines shall be drawn from the posts at both ends to the centre of the concession, and each end of such concession shall be the front of its respective half of such concession, and a straight line joining the extremities of the division or side lines of any half lot, in such concession drawn as aforesaid, shall be the true boundary of that end of the

half lot, which has not been bounded in the original survey. § 29. In those townships with double fronts, the division or side lines shall be drawn from the posts at both ends thereof, to the centre of the concession as provided in the last preceding section of this act, without reference to the manner in which the lots or parts of lots have been described in the patent. § 30. In townships where alternate concession lines only have been run in the original survey, but with double fronts, the division or side lines shall be drawn from the posts or monuments on each side of such alternate concession lines to the depth of a concession, viz., to the centre of the space contained between such alternate concession lines, if the concessions were intended in the original survey to be of an equal depth, otherwise to the proportionate depth intended in the original survey and patent, and each alternate concession line as aforesaid shall be the front of each of the two concessions abutting thereon. § 31. In cases where letters patent have issued for several lots, in concessions adjoining each other the side lines shall commence at the front angles of such lots, and shall be run as hereinbefore provided, and shall not continue on in a straight line through several concessions, unless the side lines, when run as aforesaid, shall intersect the corresponding post or monument in the front of the concession next in rear, viz., each lot shall be surveyed and bounded according to the provisions of this act, independently of all other lots mentioned in the grant. § 32. Every land surveyor running any side line between lots shall, if not done before, or if done, and the course cannot be ascertained, determine by astronomical observation the true course of a straight line between the front and rear ends of the governing boundary line of the concession or section, and shall run such side line parallel thereto, if so intended in the original survey, or at such angle therewith as stated in the plan and field notes. § 33. In case the original post or monument from which any side line or limit between lots should commence, cannot be found, the surveyor shall obtain the best evidence the case will admit of respecting the same; but if the same cannot be satisfactorily ascertained, he shall measure the true distance between the nearest undisputed posts, limits or monuments, and divide such distance into such number of lots as the same contained in the original survey, assigning to each a breadth proportionate to that intended in such original survey, as shewn on the plan and field notes thereof; and if any portion of the line in front of the concession in which

such lots are situate, or boundary of the township has been obliterated or lost, then he shall run a line between the two nearest points or places where such line can be clearly and satisfactorily ascertained, and shall plant all such intermediate posts or monuments as he may be required to plant, having due respect to any allowance for roads, or commons set out in such original survey, and the limits so found shall be the true limits thereof.

§ 34. Surveyors when called on to determine disputed boundaries in any of such townships, shall ascertain and establish the division or side lines of the lots by running such side lines as they were run in the original survey, whether the same were run from the front of the concession to the rear, or the rear to the front, and shall adhere to all posts, limits or monuments planted on the division or side lines in the original survey, as being or designating corners of lots under such original survey.

See also title "*Land Surveyors.*"

BREAD.

By the general municipal act U. C. Stat. 22, c. 54, s. 294, the municipal authorities in cities, towns and incorporated villages, are authorised to make by-laws for regulating the assize of bread.

BREWERS.

None but licensed persons shall act as brewers under a penalty of \$40 for each day, and on pain of forfeiting utensils.—*C. Stat. 22 V. c. 19, s. 3.*

Brewer's License ten dollars.—§ 3. Increased to *sixty dollars* by a subsequent statute, 25 V. c. 5, s. 3, besides an additional duty of three cents per gallon of beer.

See further on this subject title "*Distillers—Brewers.*"

BRIBERY.

Bribery is the receiving of any undue reward by any person whatsoever, whose ordinary profession or business relates to the administration of public justice, or who is in any official situation, in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity, and the person who *gives* the bribe is as much guilty of the offence as he who takes it.—3 *Inst.* 149; 1 *Haw. c.* 67, § 2; 4 *Bl. Com.* 139.

The offence of bribery is punishable with *fine and imprisonment.*—1 *Haw. c.* 67, § 3.

In judges, especially the superior ones, says *Blackstone*, bribery hath always been looked upon as so heinous an offence, that the Chief Justice *Thorp* was hanged for it in the reign of Edward III.—4 *Bl. Com.* 140.

By a statute of 2 Hen. IV. all judges, officers and ministers of the king, convicted of bribery, shall forfeit treble the bribe, be punished at the king's will, and be discharged from the king's service for ever.—3 *Inst.* 146.

So a mere attempt to bribe a judge or a juryman is punishable by law in the party that offers it.—3 *Inst.* 147; *R. v. Young, cit.* 2 *East, Rep.* 14, 16.

Bribery at elections for members of parliament was always an offence at common law, and punishable by indictment or information.—*R. v. Pitt, 3 Burr*, 1335.

See title "*Elections.*"

BRIDGES.

By C. Stat. 22 V. c. 93, s. 21, if any person unlawfully and maliciously pulls down or in anywise destroys any public bridge, or does any injury with intent to and so as thereby to render such bridge or any part thereof dangerous or impassable, every such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not exceeding four years, or in any other prison or place of confinement for any term less than two years.

By U. C. Stat. 22 V. c. 56, s. 8, every person who has the superintendence and management of any bridge exceeding thirty feet in length, shall cause to be put up at each end thereof, conspicuously placed, a notice legibly printed in the following form, "any person or persons riding or driving on or over this bridge at a faster rate than a walk, will on conviction thereof be subject to a fine, as provided by law."

§ 9. In case any person injures, or in any way interferes with such notice, he shall incur a fine of not less than one or more than eight dollars, to be recovered as other penalties imposed by this act. § 10. If while such notice continues up any person rides or drives a horse or other beast of burden over such bridge at a pace faster than a walk, he shall incur the penalties imposed by this act.

Penalties.

§ 11. In cases not otherwise provided for, if any person contravenes this act, and such contravention be proved by the oath of one credible witness before any justice of the peace having jurisdiction where the offence has been com-

mitted, he shall incur a penalty of not less than one dollar nor more than twenty dollars, in the discretion of such justice, with costs. § 12. If not paid forthwith, to be levied by distress and sale of the offender's goods and chattles under a warrant signed and sealed by such convicting justice. § 13. In default of payment or distress, the offender shall be imprisoned in the common gaol for not less than one day nor more than twenty days, at the discretion of such justice, unless fine and costs sooner paid. § 15. Penalties to go to the municipality. § 16. Appeal as in cases of summary conviction.

Control and Management of.

Any public road or bridge, made, built or repaired at the expense of the province, and which was on the tenth day of August, 1850, under the management and control of the commissioners of public works, may by proclamation of the Governor be declared to be no longer under such management.—*C. Stat. 22 V. c. 85, § 4.* From and after a day to be named in such proclamation, such road or bridge shall cease to be under such management, and no tolls levied thereon, but the same shall be under the control of the municipal authorities of the locality, as other public roads and bridges therein, and maintained and kept in repair under the same provisions of law.—*Ibid. § 5.*

By *C. Stat. 22 V. c. 28, § 10.* The public works and buildings mentioned in schedule A shall be vested in Her Majesty, § 14, and the management of all bridges on which provincial funds have been expended is transferred to the commissioner of public works.

Bridges in Upper Canada mentioned in Schedule A.

The Union Suspension, and other bridges over the Ottawa river between the city of Ottawa and Hull.

The Trent bridge at the mouth of the Trent.

The bridge at the narrows of Lake Simcoe.

The Dunnville bridge.

The Caledonia bridge.

The Brantford bridge.

The Paris bridge.

The Delaware bridge.

The Chatham bridge.

By *U. C. Stat. 22 V. ch. 54, § 331,* municipalities are authorised to make by-laws for regulating the driving and riding on public bridges.

See also "*Highways,*" "*Travellers.*"

BUGGERY.

Buggery is a detestable and abominable sin, not to be named, committed by carnal knowledge against the ordinance of the Creator and order of nature by mankind, or with brute beast, or by womankind with brute beast.—3 *Inst.* 58. And by stat. 25 H. VIII. c. 6, buggery committed with mankind or beast is made felony; which said statute making it felony generally, there may be accessories before and after, but those that are present, aiding and abetting, are all principals; and although none of the principals are admitted to their clergy, yet accessories before and after are not excluded from clergy.—1 *H. H.* 670.

If the party buggered be within the age of discretion, (fourteen years) it is no felony in him, but in the agent only; but if buggery be committed on a man of the age of discretion, it is felony in both of them.—3 *Inst.* 59; 1 *H. H.* 67.

By C. Stat. 22 V. c. 91, § 22, every person guilty of the abominable crime of buggery, either with mankind or with any animal, shall suffer death as a felon. Any person who commits an assault with intent to commit the above offence, shall be imprisoned in the penitentiary for any term not exceeding three nor less than two years, or to be imprisoned in any other prison or place of confinement less than two years. .

BUILDINGS.

By C. Stat. 22 V. c. 92, § 34, if any person steals or rips, cuts or breaks with intent to steal, any glass or woodwork belonging 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 in a fence to any dwelling-house, garden or area, or in any square, street or other place dedicated to public use or ornament, such offender shall be guilty of felony, and shall be punished in the same manner as in the case of simple larceny; and if 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.

See also titles "*Arson*," "*Burglary*."

BUREAU OF AGRICULTURE.

See "*Agricultural Societies*."

BURGLARY.

Burglary is a felony at common law, in breaking and entering the mansion-house of another in the *night*, with intent to commit some felony within the same, whether the felonious attempt be executed or not.—*Hale's Pl.* 79.

Every entrance is not a breaking—as, if the door stand open, and the thief enter, this is no breaking; so, if the window be open, and the thief draw out some of the goods, this is not burglary, because there is no actual breaking; but if the thief break the glass of the window, and draw out the goods, this is burglary.—3 *Inst.* 64. And Lord *Hale* says these acts amount to an actual breaking—opening the casement, or breaking the glass window; picking open the lock of the door, or putting back the lock, or the leaf of a window, or unlatching the door that is only latched—1 *H. H.* 552; and so does the pushing open of folded doors—*Rex v. Brown*, 2 *East P. C.* 487; 2 *Russ.* 902; pulling down the upper sash of a window—*Rex v. Haines*, *Russ. & Ry.* 451; *S. C. nom.*, *Rex v. Harrison*, 1 *Chetw. Brom.* 497; creeping down a chimney.—*Crompt.* 32; *Dalt.* 253; 1 *Haw. c.* 38, § 6.

The breaking is not confined to the outer door or external parts of a house, for if A. enters the house of B., the outward door being open, or by an open window, and when within the house turn the key of a chamber door, or unlatch it with intent to steal, this will be burglary—*Johnson's case*, 2 *East P. C.* 488; and the like if any lodger in a house, or guest in a public inn open and enter another person's chamber door with intent to commit a felony—1 *Hale*, 553, 554; 4 *Bl. Com.* 227; *Rex v. Bington*, 2 *East P. C.* 448; but if an inn-keeper break the chamber of his lodger or guest at night to rob, this would not be burglary, for a man cannot commit a burglary by breaking his own house.—2 *East P. C.* 502; *Kel.* 84.

Constructive breaking is where, in consequence of *violence* commenced or threatened, the owner of the house (through fear or in order to repel the violence) opens the doors, and the thief then enters, this amounts to burglary, for the opening of the door in this case is as much imputable to the thief as if it had been done by his own hands.—*Crompt.* 32, (a); 1 *Hale*, 553; 2 *East P. C.* 486. And so, if in consequence of any *fraud* or *deceit* the owner is induced to open his door to thieves, this will amount to breaking; as, where thieves came with a pretended hue and cry, and required a consta-

ble to go with them to apprehend the owner and search his house, and the owner, at the command of the constable, opens the door, when the thieves bound the constable and robbed the house, this was held to be burglary.—1 *Hale*, 553; 3 *Inst.* 64; *Cromp.* 32, (b); 3 *Bl. Com.* 226. And the like if a man go to a house under the pretence of being authorised to make a distress, and by this means obtain admittance.—*Gascoigne's case*, 1 *Leach*, 284. For in all these cases the law will not endure to have its justice defrauded by such evasions.—1 *Haw. c.* 38, § 5; 4 *Bl. Com.* 227.

What is an Entering.

It is deemed an entry when the thief breaketh the house and his body or any part thereof—as his foot or arm—is within any part of the house, or when he putteth a gun into a window which he hath broken, or into a hole of the house which he hath made, with intent to kill or murder—3 *Inst.* 64; or when the thief merely puts his fingers within the window—*Rex v. Davis, Russ. & Ry.* 499; but if he shoots *without* the window, and the bullet only comes in, the point is doubtful—1 *Hale* 555; yet *Hawkins* says this is a sufficient entry—1 *Haw. c.* 38, § 11. Where a glass window, which had shutters inside, was broken, and the window was opened with the hand, but the shutters were not broken or opened, this was ruled to be burglary—*Rex v. Roberts alias Chambers*, 1 *East P. C.* 487; but, as in this case, *Holt, C. J.*, and *Powell, J.*, doubted, and inclined to another opinion, no judgment was given; but in a recent case the same point was before the judges, who were of opinion (three being absent) that the entry was sufficient.—*Rex v. Baily, Russ. & Ry.* 341.

If divers come in the night to do a burglary, and one of them break and enter, the rest of them standing to watch at a distance, this is burglary in all.—3 *Inst.* 64.

What is a Mansion or Dwelling-house.

Where the whole of the house is let out into lodgings, and the owner does not inhabit any part of it, though there is only one outer door common to all its inmates, yet every separate apartment is the distinct mansion house of its possessor.—*Rex v. Trapshaw* 1 *Leach*, 427. So where a loft over a coach-house and stables was converted into lodging-rooms.—*R. v. Turner*, 1 *Leach*, 305.

But where the owner of a dwelling-house lets off the shop to a tenant, who occupies it by means of a *different entrance*

from that belonging to the dwelling-house, and carries on his business in it, but never sleeps there, it then becomes so severed from the rest of the house, as no longer to be a place where burglary can be committed; for it ceases to form parcel of the dwelling-house of the owner, being thus severed by lease as well as by the distinct mode of ingress and egress to it; and it does not become the dwelling-house of the tenant, when neither he nor any of his family sleep there.—1 *Hale*, 557; *Kel.* 83; 4 *Bl. Com.* 225; 2 *East P. C.* 507.

But if the tenant, or his servant, should usually, or often, sleep in the shop at night, it would then become the dwelling-house of the tenant.—1 *Hale*, 558.

There is no severance, however, where there is *any internal communication*, though there may be a separate entrance from without to the part let off; as where the communication was formed by means of a trap-door and a ladder, which were seldom used, but the trap-door was never fastened. Lord Ellenborough said it could make no difference whether the communication was through a trap door, or by a common stair-case. *Rock v. Stockton*, 2 *Taunton*, 339; 2 *Leach*, 1015.

And when the owner of the house continues to sleep in it, no part of it then can be so severed by being let off to a tenant or a lodger, as to become a separate mansion house. *Rex v. Rogers*, 1 *Leach*, 89; 2 *East P. C.* 507. Unless, indeed, that which was one house originally comes to be divided completely into two separate tenements, and there is a distinct outer door to each, without any internal communication; in which case they will then become separate houses.—*Per Ld. M. Cowp.* 8. But if the owner of a house neither *inhabits* it himself nor any of his family, it will not then become *his* dwelling-house, as applicable to the offence of burglary. Therefore when a man purchases or rents a house with intention to reside in it, and moves some of his furniture into it, but neither he or any of his family ever sleep there, and it is broken open in the night, the judges have determined that a breaking into a house of this description does not amount to burglary.—*R. v. Lyons*, 1 *Leach*, 185; 2 *East P. C.* 496; *R. v. Hallard*, 2 *East* 498; 2 *Leach*, 701 (*note a*); *R. v. Thompson*, 2 *Leach*, 771; 2 *East* 498; *Contra*, 1 *Haw. c.* 38, § 18; 1 *Kel.* 46. And this, even though the owner of the house has used it for his meals and for all the purposes of his business.—*Rex v. Martin*, *Russ & Ry.* 108.

Or, though a person actually sleep in the house for the purpose of protecting it, if such person forms no part of the domestic family of the owner—as where the owner puts in a

workman or other person, who is in no situation of servitude to him, for the purpose of taking care of his goods.—*Rex v. Fuller*, 2 *East P. C.* 498; 1 *Leach*, 186 (*note b.*); *Rex v. Harris*, *Leach*, 701; 2 *East P. C.* 498. So, if a servant is put into a warehouse to watch goods, this does not make it a dwelling-house.—*Rex v. Smith*, 2 *East P. C.* 497.

But where the owner of the house has once inhabited it, it will not cease to be his dwelling-house on account of any occasional or temporary absence, provided he has the *animus revertendi*—the intention of returning to it; in such cases the premises may be the subject of burglary.—*Rex v. Murray & Harris*, 2 *East P. C.* 496, *cit. Fost.* 77. But where a person had a counting-house, at which he lived only a part of the year, and then quitted, with a considerable part of his furniture, with no intention of immediately returning, and during his absence the house was broken open and rifled—this was held not to be burglary.—*Fost.* 76, 77.

By C. Stat. 22 V. c. 92, § 12, no building, although within the same curtilage with the dwelling-house and occupied therewith, shall be deemed a part of such dwelling-house, for the purpose of burglary, or for any of the purposes in said act, unless there 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. § 13. If any person breaks and enters any building and steals 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 provisions herein before mentioned and be convicted thereof, (either upon an indictment for the same offence, or upon an indictment for burglary, house breaking, or stealing to the value of £5 sterling, or \$24 33½ cents, in a dwelling-house containing a separate count for each such offence,) he shall be imprisoned in the penitentiary for any term not exceeding fourteen years, nor less than ten years, or be imprisoned in any other prison or place of confinement for any term less than two years. § 14. Any person who breaks and enters any shop, warehouse or counting-house, and steals therein any chattel, money, or valuable security, shall be liable to any of the punishments which the court may award as hereinbefore last mentioned.

Of the time of Committing the Offence.

It must be *in the night*; and, by C. Stat. 22 V. c. 92, § 10, in cases of burglary, the night shall be considered to

commence at *nine* in the evening and to conclude at *six* the next morning.

It being moonlight will make no difference, for then many midnight burglaries would go unpunished; and the malignity of the offence, as Blackstone observes, does not indeed so properly arise from its being done in the dark, as at the dead of the night, when all the creation, except beasts of prey, are at rest; when sleep has disarmed the owner, and rendered his castle defenceless.—4 *Bl. Com.* 224.

The breaking and entering need not be the *same night*; for if thieves break a hole in the house one night, with the intent to enter another night and commit felony, and they accordingly do so, through the hole they made the night before, this seems to be burglary.—1 *Hale*, 554; 4 *Bl. Com.* 226.

Of the Intent.

The intent of the breaking and entering must be to commit a *felony*. Therefore, if the intention was only to commit a *trespass*, the offence will not be a burglary. Thus, an intention to *beat* a man in the house will not be sufficient; for though killing or murder may be the consequence of beating, yet if the primary intention were not to kill, a breaking and entering for the purpose of beating will not amount to burglary.—1 *Hale*, 561; *East P. C.* 509. But where a man broke into a house with intent to commit a rape, this was held to be burglary.—*Rex v. Gray*, 1 *Str.* 481.

By C. Stat. 22 V. c. 92, § 15, any person who is found by night armed with any dangerous or offensive weapon or instrument, with intent to break or enter into any dwelling-house or other building, and to commit any felony therein; (2) and any person who is found by night having in his possession, without lawful excuse, any picklock, key, crow, jack, bit, or other implement of housebreaking, or any match or other combustible or explosive substance, (3) and any person who is found by night having his face blackened, or otherwise disguised, with intent to commit felony, (4) and any person who is found by night in any dwelling-house, or other building whatsoever, with intent to commit any felony therein, shall be guilty of a misdemeanor, and be imprisoned in the penitentiary for two years, or in any other prison or place of confinement with or without hard labour for any term less than two years. § 16. The time at which the night commences and concludes to be the same as in cases of burglary.

Punishment, when Capital.

By C. Stat. 22 V. c. 92, § 8, any person who burglariously enters any dwelling-house, and assaults with intent to murder any person being therein, or stabs, cuts, wounds, beats or strikes any such person, shall be guilty of felony and shall suffer *death*.

When not Capital.

§ 9. Any person who commits the crime of burglary, shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

Burglary therefore, when accompanied by personal violence, committed on any person in the dwelling-house, becomes a capital offence, and is punishable with *death*. But when it is unattended by personal violence the offence then is simple burglary, punishable under the second section of the above statute.

For forms see "*Indictable Offences.*"

BY-LAWS.

27 V. c. 18.

§ 1. It shall not be necessary in any conviction made under any by-law of any municipal corporation in Upper Canada to set out the information, appearance or non-appearance of the defendant, or the evidence or by-law under which the conviction is made, but all such convictions may be in the form given in the schedule of this act.

§ 2. In prosecuting under any by-law, or for the breach of any by-law, witnesses may be compelled to attend and give evidence, in the same manner and by the same process as witnesses are compelled to attend and give evidence on summary proceedings before justices of the peace in cases tried summarily under the statute now in force in Upper Canada.

§ 3. Every justice of the peace for a county shall have jurisdiction in all cases arising under any by-law of any municipality in such county.

§ 4. The word "County" in this act and in the schedule thereof shall include United Counties.

§ 5. This act shall only apply to Upper Canada.

Schedule.

PROVINCE OF CANADA,

County of _____, } Be it remembered, that on the _____ day
 to-wit. } of _____, A.D. at _____, in the county of _____,
 A.B. is convicted before the undersigned, one of her Majesty's
 justices of the peace in and for the said county, for that the said
 A.B. (stating the offence, and time and place, and when and
 where committed), contrary to a certain by-law of the municipi-
 pality of the _____ of _____, in the said county of _____; passed on
 the _____ day of _____ A.D., and intituled, (reciting the title of
 the by-law,) and I adjudge the said A.B., for his said offence, to
 forfeit and pay the sum of _____, to be paid and applied according
 to law, and also to pay to C. D., the complainant, the sum
 of _____, for his costs in this behalf. And if the said several
 sums be not paid forthwith, (or, on or before the _____ day of
 A.D., as the case may be,) I order that the same be levied by
 distress and sale of the goods and chattels of the said A.B.; and
 in default of sufficient distress, I adjudge the said A. B. to be
 imprisoned in the common gaol in the said county of _____ (or, in
 the public lock-up at _____) for the space of _____ days, unless
 the said several sums; and all costs and charges of conveying the
 said A. B. to such jail (or lock-up) shall be sooner paid.

Given under my hand and seal, the day and year first above
 written, at _____, in the said county.

J. M., J.P.

See also "*Municipal Institutions.*"

CALENDAR OF PRISONERS.

By 3 Hen. VII., c. 3, the sheriff shall certify a list of the
 prisoners in his custody to the justices of gaol delivery, for
 the purpose of being calendared.

CANALS.

See "*Banks of Rivers.*"

CAPITAL OFFENCES.

By C. Stat. 22 V. c. 99, § 97. Benefit of clergy with
 respect to persons convicted of felony having been abolished
 in Upper Canada on the 13th day of February, 1833, and
 in Lower Canada from and after the 1st day of January,
 1842, 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 is had when the benefit of clergy
 was abolished therein, or which has been made punishable
 with death by some act passed since that time.

The following offences are punishable with death :

1. High Treason.—U. C. Stat. 22 V. c. 97, § 1.
2. Petit Treason.—C. Stat. 22 V. c. 91, § 1.
3. Murder.—C. Stat. 22 V. c. 91, § 2.
4. Arson of an inhabited house.—C. Stat. 22 V. c. 93, § 1.
5. Burglary and assault with intent to murder.—C. Stat. 22 V. c. 92, § 8.
6. Robbery, with stabbing, cutting or wounding.—C. Stat. 22 V. c. 92, § 1.
7. Poisoning, stabbing, cutting or wounding, with intent to murder.—C. Stat. 22 V. c. 91, § 5.
8. Rape.—C. Stat. 22 V. c. 91, § 19.
9. Carnal knowledge of a girl under ten years of age.—C. Stat. 22 V. c. 91, § 20.
10. Bestiality.—C. Stat. 22 V. c. 91, § 22.
11. Setting fire to, casting away or destroying any ship or vessel, with intent to murder, or whereby life is endangered.—C. Stat. 22 V. c. 93, § 7.
12. Exhibiting false lights or signals with intent to bring any ship or vessel into danger, or otherwise causing the loss or destruction of the same.—*Ibid*, § 8.
13. Rioters to the number of twelve or more remaining together *one hour* after proclamation to disperse.—U. C. Stat. 22 V. c. 97, § 6.
14. Rioters opposing or assaulting peace officers, reading proclamation to disperse.—*Ibid*, § 11.
15. Setting fire to or otherwise destroying ships, naval stores, or buildings in any of H. M. dockyards.—*Ibid*, § 13.
16. Rescuing or attempting to rescue any person committed for or found guilty of murder.—U. C. Stat. 22 V. c. 97, § 4.
17. Principals in the second degree, and accessories before the fact to any capital offence.—C. Stat. 22 V. c. 97, § 1.

CARRIERS.

It was formerly held that a carrier embezzling goods which he had received to carry to a certain place, was not guilty of felony, because there was not a felonious taking, but was liable only to a civil action.—*Haw.* 89, 90. But if a carrier opened a pack and took out part of the goods, with intent to steal, it would be felony.—1 *Haw.* 90. But now by C. Stat. 22 V. c. 92, § 55. If any person being a *baillie* of any property fraudulently takes or converts the same to his own use, or the use of any person other than the owner thereof, although he shall not break bulk, or otherwise de-

termine the bailment, he shall be guilty of larceny.

Where goods are delivered to a carrier, and he is robbed of them, he shall be charged and answer for them, by reason of the hire; and generally, if a man delivers goods to a common carrier to carry to a certain place, if he loses or damages them, an action *upon the case* lies against him; for by the custom of the realm he ought to carry them safely.—1 *Bac. Ab.* 343. Where goods are stolen from a carrier, he may prefer an indictment against the felon, as for his own goods.—*Kelynge*, 39.

See also title "*False Receipts.*"

CATTLE.

By C. Stat. 22 V. c. 92, § 21, any person who steals any horse, mare, gelding, colt or filly, or any bull, cow, ox, heifer or calf, or any ram, ewe, sheep or lamb, or wilfully kills 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 shall be imprisoned in the penitentiary for any term not exceeding fourteen years, nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

By C. Stat. 22 V. c. 93, § 16, if any person unlawfully and maliciously kills, maims, or wounds any cattle, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two years, or be-imprisoned in any other prison or place of confinement for any term less than two years.

CATTLE RUNNING AT LARGE.

By the General Municipal Act, U. C. Stat. 22 V. c. 54, § 359, the municipalities of townships, cities, towns, and incorporated villages are empowered to make by-laws "for restraining or regulating the running at large of any animals, and for impounding them; and for causing them to be sold in case they are not claimed within a reasonable time, or in case the damages, fines and expenses are not paid according to law.

By C. Stat. 22 V. c. 66, (Railway Act,) § 147. No horses, sheep, swine, or other cattle shall be permitted to be at large upon any highway within a half mile of the intersection of such highway with any railway or grade unless such cattle are in charge of some person or persons to prevent their loitering or stopping on such highway at such intersection.

§ 148. All cattle found at large in contravention of the last preceding section may by any person finding the same at large be impounded in the nearest pound to the place where the same are so found, and the poundkeeper shall detain the same in the like manner, and subject to the like regulations as to the care and disposal thereof as in the case of cattle impounded for trespass on private property.

See also "*Pounds, Poundkeepers.*"

CEMETERIES.

By the General Municipal Act, U. C. Stat. 22 V. c. 54, § 266, the municipalities are authorised to make by-laws for accepting or purchasing land for public cemeteries, as well within as without the municipality, and for "laying out, improving and managing the same." § 4. For selling or leasing portions of such land for the purpose of interment in family vaults or otherwise, and for declaring in the conveyance the terms on which such portions shall be held. § 13. And for preventing the violation of cemeteries, graves, tombs, tombstones or vaults, where the dead are interred.

By U. C. Stat. 22 V. c. 67, entitled "an Act respecting companies for the establishment of Cemeteries in Upper Canada." § 1. Any number of persons not less than *twenty*, may form a company under the provisions of this act. § 2. And when they shall have subscribed a sufficient quantity of stock adequate to the purchase of the ground required for a cemetery, and executed an instrument according to the form prescribed, and paid to their treasurer *twenty-five* per cent. of the capital stock intended to be raised, and registered such deed at full length, together with the treasurer's receipt for such first instalment of twenty-five per cent., with the registrar of the county, such company shall thenceforth become a body corporate by the name designated in such deed, and may take, hold, and convey the land to be used exclusively as a cemetery or a place for the burial of the dead.

§ 4. The cemetery to be enclosed by walls or fences eight feet in height. § 5. Cemetery and buildings to be kept in good repair. § 6. All proper and necessary sewers and drains to be made. § 7. If the company at any time causes, or suffers to be brought to, or flow into any river, spring, well, stream, canal, reservoir, aqueduct, pond, or watering place, any offensive matter from the cemetery whereby the water is fouled, the company shall forfeit for every such offence \$50. § 8. Recoverable with full costs of suit by

action in any court of competent jurisdiction. § 9. In addition thereto, any person having a right to use the water may sue for special damage, or for \$10 a day while such offensive matter is flowing after twenty-four hours' notice to the company. § 10. Bodies not to be buried under any chapel or building, nor within fifteen feet of the outer wall. § 11. Burials to be conducted in a decent and solemn manner. § 12. Graves to be furnished gratis for strangers and poor of all denominations. § 13. Real estate of the company to be exempt from taxation. § 14. Burial sites sold and conveyed need not be registered. § 15. Form of deed. (See the act.) § 16. Lots when sold as burial sites to be indivisible. § 17. Proceeds of sales to be applied to the payment of original purchase, the residue in improving and embellishing the land as a cemetery, and other incidental expenses; no dividend or profit to be paid to the company. § 18. Proprietors of lots not less than 100 feet, and twenty-five per cent. paid thereon, to be shareholders. § 19. Shareholders having paid not less than \$8 on share or shares are eligible as directors. 20. No proprietor of a smaller lot to be a member, or have any vote. § 21. Affairs of the company to be managed by nine directors. § 22. Annual election to be on the third Monday in January. § 23. Shareholders to have one vote for every share up to ten, and one vote for every five shares above. But not to vote until \$2 paid upon each share. § 24. Proceedings to be registered in a book open for public inspection. 27. Directors may call for instalments, and in default of payment shares to be forfeited. § 28. Directors to be personally liable for judgments against the company. § 29. Any person who (1) wilfully destroys, mutilates, defaces, injures or removes any tomb, monument, gravestone, or other structure placed in a cemetery, or any fence, railway or other wall for the protection or ornament of a cemetery, or any tomb, monument, gravestone, or other structure aforesaid, or of any cemetery lot within a cemetery, or (2) wilfully destroys, cuts, breaks, or injures any tree, shrub, or plant in a cemetery, or (3) plays at any game or sport in a cemetery, or (4) discharges fire-arms (save at a military funeral) in a cemetery, or (5) who wilfully and unlawfully disturbs persons assembled for the purpose of burying a body therein, or (6) who commits a nuisance in a cemetery, shall be guilty of a misdemeanor, and shall upon conviction thereof before a justice of the peace, or other court of competent jurisdiction, be punished by a fine not less than \$4, nor more than \$40, according to

the nature of the offence. § 30. Offenders also liable to be sued for damages.

CENSUS.

By C. Stat. 22 V. c. 33, a census of the whole province is to be taken every *tenth* year in January. The next census will be in January, 1871. The act provides for the appointment of a census commissioner for every county, city, and incorporated town, whose duty is to appoint enumerators for every district in the municipality. The duty of the enumerators is to visit every house in his enumeration district on the second Monday in January, in the census year, and take an account in writing of the name, sex, age, and occupation of every living person in the house on the Sunday previous. Occupiers of houses are required to fill up the printed schedule left for the purpose by the enumerator under the penalty of not less than \$8, nor more than \$20, for neglect or making a false return. Enumerators are also authorised to question such occupiers; whose wilful neglect, or false statement will subject them to a penalty of from \$4 to \$20, in the discretion of the justice. § 19 Penalties recoverable before any one justice on the oath of the enumerator, or any other credible witness, with costs, (not to exceed \$2,) and if not paid, may in the discretion of the justice be levied by distress and sale, or the offender may be committed for one month unless penalty and costs sooner paid.

CERTIORARI.

A certiorari is an original writ issuing out of the Court of Chancery or the King's Bench, directed in the king's name to the judges or officers of inferior courts, commanding them to certify or to return the records of a cause depending before them, to the end the party may have the more sure and speedy justice before the king or such justices as he shall assign to determine the cause—1 *Bac. Abr.* 559—and no proceedings of any court of criminal jurisdiction can be removed into a superior court, but by a writ of error or *certiorari*.—2 *Haw. c.* 1, § 14.

A certiorari lies in all judicial proceedings in which a writ of error does not lie, and it is a consequence of all inferior jurisdictions erected by act of parliament, to have their proceedings returnable in the King's Bench.—*L. Raym.* 469, 580. And therefore a certiorari lies to justices of the peace even in such cases which they are empowered by statute finally to hear and determine; and the superin-

tendency of the Court of King's Bench is not taken away without express words.—2 *Haw.* 286. But it seems agreed that a *certiorari* should never be granted to remove an indictment after a conviction, unless for some special cause; as when the judge below is doubtful what judgment to give. 2 *Haw.* 288. Also, it seems a good objection against granting a *certiorari*, that issue is joined in the court below and a *venire* awarded for the trial of it.—2 *Haw.* 288.

It hath been adjudged that wherever a *certiorari* is by law grantable for an indictment, the court is bound of right to award it, at the instance of the king, and he has a prerogative of suing in what court he pleases. But it seems to be agreed, that it is left to the discretion of the court to grant or deny it at the prayer of the defendant.—2 *Haw.* 287. And the court will not ordinarily at the prayer of the defendant grant a *certiorari* for the removal of an indictment for perjury, or forgery, or other heinous misdemeanor, for such crimes deserve all possible discountenance, and the *certiorari* might delay, if not wholly discourage, the prosecution.—2 *Haw.* 287.

How to be granted and allowed.

1. On indictment or presentment, by statute, 5 W. c. 11, and 8 & 9 W. c. 33, it is enacted "that in term time no writ of *certiorari* at the prosecution of any party indicted shall be granted out of the King's Bench, to remove any indictment or presentment of trespass or misdemeanor before trial had from before the justices in sessions, unless such *certiorari* shall be awarded upon motion of counsel, and by rule of court made for the granting thereof. But in the vacation writs of *certiorari* may be granted by any justice of the King's Bench whose name shall be endorsed on the writ, and also the name of the person at whose instance it is granted, and all parties prosecuting such *certiorari* shall, before the allowance thereof, find two sufficient manucaptors who shall enter into a recognizance before a justice of the King's Bench, (who shall endorse the same on the writ,) or before a justice of the peace of the county or place, in the sum of £20, with condition at the return of the writ to appear and plead to the said indictment or presentment in the said Court of King's Bench, and at their own cost and charges to cause and procure the issue that shall be filed thereon, or any plea thereon, or any plea relating thereto, to be tried at the next assizes for the county wherein the indictment or presentment was found, after such *certiorari*

shall be returned, or the next term, if in London, Westminster or Middlesex, unless the court shall appoint another time, and if so, then at such other time; and to give due notice of such trial to the prosecutor or his clerk in the court, and also that the party prosecuting such writ of certiorari shall appear from day to day in the said Court of King's Bench, and not depart until he shall be discharged by the court.

And the said recognizance shall be certified into the King's Bench with the certiorari and indictment to be there filed, and the name of the prosecutor (if he shall be the party grieved) or some public officer shall be endorsed on the said indictment. And if the defendant prosecuting the writ of certiorari be convicted of the offence for which he was indicted, then the Court of King's Bench shall give reasonable costs to the prosecutor, to be taxed according to the course of the said court, who shall for the recovery thereof within ten days after demand and refusal of payment, on oath, have an attachment awarded, and the recognizance shall not be discharged until the costs are paid. But if the person procuring the certiorari, being the defendant, shall not before allowance thereof procure such manucaptors to be as aforesaid, the justices may proceed to the trial of the indictment in sessions, notwithstanding the writ of certiorari delivered.

On a Conviction or Order.

By 13 G. II., c. 18, no certiorari shall be granted to remove any conviction, judgment, order or other proceeding, before any justice of the peace, or quarter sessions, unless it be applied for *six calendar months* after such proceedings had or made, and unless it be duly proved upon oath that the party suing for the same hath given six days' notice thereof in writing to the justice or justices, or two of them, (if so many there be,) before such proceedings have been, to the end that such justices may shew cause, if they so think fit, against the issuing of the certiorari; and by 6 G. II., c. 19, no such certiorari shall be allowed to remove any such judgment, unless the party prosecuting the certiorari, before the allowance thereof, enter into a recognizance with sufficient sureties before a justice of the county or place, or before the justices at sessions where such judgment or order shall have been given or made, or before a justice of the King's Bench, in £50, with condition to prosecute the same at his own costs and charges with effect, without wilful delay,

and to pay the party in whose favour the judgment or order was made within a month after the same shall be confirmed his full costs, to be taxed according to the course of the court where such confirmation shall be; and if he shall not enter into such recognizance, or shall not perform the conditions, the justices may proceed and make such further order for the benefit of the party for whom the judgment shall be given, in such manner as if no certiorari had been granted; the said recognizance to be certified into the King's Bench, and then filed, with the certiorari and order or judgment removed thereby; and if the order or judgment shall be confirmed by the court, the person entitled to the costs, for the recovery thereof, within ten days after demand made, upon oath of such demand and refusal of payment, shall have an attachment granted for the contempt, and the recognizance shall not be discharged till the costs are paid and the order complied with.

E. 1 An. A rule was made in the Court of King's Bench, that no certiorari should be granted to remove orders of justices, from which the law has given an appeal, to the sessions, before the matter be determined on the appeal, because it hinders the privilege of appealing; and that if any order be removed before appeal, it should be sent down again. But if the time of appeal be expired, that case is not within the rule. By *Holt*, Chief Justice.—but afterwards *M. 4 An.* in the case of *Skellington*—it was held, that advantage must be taken of this rule, upon the motion to file the order, for that after it is filed it is too late.—1 *Salk.* 147.

The effect of it.

After a certiorari is allowed by the inferior court, it makes all the subsequent proceedings on the record, that are removed by it, erroneous.—2 *Haw.* 293. But if a certiorari for the removal of an indictment before justices of the peace be not delivered before the jury be sworn for the trial of it, the justices may proceed.—2 *Haw.* 294. And the justices may set a fine, to complete their judgment, after a certiorari delivered.—*L. Ray.* 1516. A certiorari removes all things done between the *teste* and *return*.—*L. Ray.* 835, 1305.

The return of it.

Every return of a certiorari ought to be under seal.—2 *Haw.* 294. And although the *custos rotularum* keeps the records, yet must the justices to whom it is directed return the certiorari; and therefore, if it is directed to the justices

of the peace, and the clerk of the peace only return it, nothing is thereby removed—2 *Haw.* 294. The certiorari may be sometimes to remove and send up the record itself, and sometimes but only the tenor of the record, (as the words therein be,) and it must be obeyed accordingly.—*Dalt. c.* 195; 2 *Haw.* 295.

If the person to whom a certiorari is directed, do make a false return, yet the court will not stay filing it on affidavit of its being false, except in public cases, as in commissioners of sewers, or for not repairing highways, or for some such special causes, because the remedy for a false return is either an action on the case at the suit of the party grieved, or an information at the suit of the king.—*Dalt. c.* 195. If the person to whom the certiorari is directed do not make a return, then an *alias*, that is, a second writ; then a *pluries*, that is, a third writ, or *causam nobis significes* shall be awarded; and then an attachment.—*Crom.* 116.

The return of a certiorari may be thus:—

On the back of the writ endorse these words, or the like—

“*The execution of this writ appears in a schedule to the same writ annexed.*”

And that schedule may be thus, on a piece of parchment, by itself, and fixed to the writ:

County of , } I, , Esquire, one of the keepers of the
to wit. } peace and justices of our lady the Queen
assigned to keep the peace within the said county, and also to
hear and determine divers felonies, trespasses, and other mis-
demeanors, in the same county committed, by virtue of this
writ to me delivered, do, under my seal, certify unto her
Majesty, in her Court of Queen’s Bench, the indictment or con-
viction of which mention is made in the same writ, together with
all matters touching the same. In witness whereof, I, the said
 have to these presents set my seal. Given at , in
the year of the reign of her Majesty Queen .

Then take the record of the said indictment, and close it within the schedule, and seal and send them up both together with the certiorari.

Recognizance on Certiorari.

County of , } Be it remembered, that on the day of
to wit. } in the year of the reign, &c., A.B. of ,
C. D. of , and E. F. of , came before me, J. C., Esquire,
one of the keepers of the peace and justices of our lady the
Queen in and for the county of , and acknowledged to owe
to our sovereign lady the Queen the sum of £50, of lawful

money of Canada, to be levied upon their goods and chattels, lands, and tenements, to her Majesty's use, upon condition that if shall prosecute with effect, without any wilful or affected delay, at his own proper costs and charges, a writ of certiorari, issued out of the court of our said lady the Queen before the Queen herself, at Toronto, to remove into the said court all and singular the records of conviction, of whatever trespasses and contempts, against the form of the statute made and passed in the year of her Majesty's reign, entitled, "An Act," &c., whereof the said is convicted before me, J. C., Esquire, one of the keepers of the peace and justices of our said lady the Queen in and for the said county of , and shall pay to the prosecutor, within one month next after the said record of conviction shall be confirmed in the said court, all his full costs and charges, to be taxed according to the course of the said court, then this recognizance to be void, or else to remain in full force. Taken and acknowledged, the day and year first above said.

J. C.

CHALLENGE TO FIGHT.

A challenge to fight a duel is a high offence at law; or even an endeavour to provoke another to send a challenge; and the messenger or bearer of a challenge is equally culpable with him who sends it.—1 *Haw. c.* 63, § 3; 3 *Inst.* 158; 4 *Bl. Com.* 150. It is no excuse that the challenge is given under provocation, for if one person were to kill another in a deliberate duel, though under provocation, it would be *murder* in him and his second.—*R. v. Rice*, 3 *East* 581. Where the provocation consisted in sending an abusive letter, it was held an *indictable offence*, and the act of *sending* such a letter was held to be an *act done* towards procuring the commission of the misdemeanor meant to be accomplished.—*Rex v. Phillips*, 6 *East* 464; so, words spoken which tend to a breach of the peace, are equally indictable, such as words conveying an express challenge, or a threat to beat another.—*R. v. Langley*, 6 *Mod.* 125; 2 *Ld. R.* 1031; and so, any words which are evidently intended to provoke a party to *give* a challenge; it has been considered, however, that such words as *liar* and *knave* do not tend immediately to a breach of the peace, though they are motives and *mediate* provocation for a breach of it.—*King's case*, 4 *Inst.* 181.

The punishment for this offence is discretionary, by *fine* and *imprisonment*, and is guided by such circumstances of aggravation as appear in each particular case.—1 *Haw. c.* 63, § 21; *Rex v. Rice*, 3 *East* 384.

Indictment for sending a Challenge. (Archbold.)

County of , } The jurors for our lady the Queen, upon their
 to wit. } oath present, that J. S., late of the township
 of , in the county of , gentleman, being a person of a
 turbulent and quarrelsome temper and disposition, and contriving
 and intending not only to vex, injure and disquiet one J. N.,
 and to do the said J. N. some grievous bodily harm, but also to
 provoke, instigate and excite the said J. N. to break the peace,
 and to fight a duel with and against him the said J. S., on
 the day of , in the year of the reign of our Sovereign
 lady Victoria, at the township aforesaid, in the county aforesaid;
 wickedly, wilfully and maliciously did write, send and deliver,
 and cause and procure to be written, sent and delivered unto
 him the said J. N. a certain letter, and paper writing, containing
 a challenge to fight a duel with and against him the said J. S.,
 and which said letter and paper writing is as follows: (*here set
 out the letter, with such innuendoes as may be necessary*) to the
 great damage, scandal and disgrace of the said J. N., in contempt
 of our lady the Queen and her laws, and against the peace of our
 lady the Queen, her crown and dignity.

2nd count.—And the jurors aforesaid upon their oath aforesaid, do further present, that the said J. S. contriving and intending as aforesaid, afterwards, to wit, on the day and year aforesaid, with force and arms, at the township aforesaid, in the county aforesaid, wickedly, wilfully and maliciously did provoke, instigate, excite and challenge the said J. N. to fight a duel with and against him the said J. S., to the great damage, scandal and disgrace of the said J. N., in contempt of our lady the Queen and her laws, and against the peace of our lady the Queen, her crown and dignity.

CHALLENGE OF JURORS.

See "*Jury.*"

CHAMPERTY.

Champerty is a bargain made with a plaintiff or defendant in any suit, to have part of the land, or debt, or other thing sued for, if the party litigant prevails in the action or suit, the *champertor* agreeing to carry on the suit at his own expense; it amounts, in fact, to a purchase of the suit; a practice which *Blackstone* says, is so much abhorred by our law, that it is one main reason why a *chose in action* is not assignable at common law, because no man should purchase any pretence to sue in another's right.—*4 Bl. Com.* 135. This offence is a species of maintenance, and punishable by fine and imprisonment.—*Ibid.*

CHANCE MEDLEY.

Chance medley is where homicide is committed by a man upon a sudden affray, in his own defence.—4 *Bl. Com.* 184. The true criterion between *chance medley* and *manslaughter*, seems to be this,—where both parties are actually combatting at the same time when the mortal stroke is given, the slayer is then guilty of manslaughter; but if the slayer hath not begun to fight (or having begun) endeavours to decline any further struggle, and afterwards being closely pressed by his adversary, kills him to avoid his own destruction, this is *chance medley*, or homicide excusable by *self-defence*.—*Ibid.* The party assaulted, therefore, in order to excuse himself in killing his assailant, must flee from him as far as he conveniently can, either by reason of some wall or ditch, or other impediment, or as far as the *fierceness* of the assault will permit him; for it may be so fierce as not to allow him to yield a step without manifest danger of his life, or enormous bodily harm, in which last predicament he may, in his own defence, kill his assailant instantly.—1 *Hale. P. C.* 483.

The penalty anciently inflicted on any one who had committed *chance medley*, seems to have been a forfeiture of a portion of the goods and chattels of the party, by way of fine—*Fost.* 287; which, however, was remitted to him, as a matter of course, on his suing out, and paying for a writ of restitution—2 *Haw.* 381; but to prevent this expense, in cases where the death has happened notoriously by misadventure or in self-defence, the judges now always direct a general verdict of acquittal.—*Fost.* 288; 4 *Bl. Com.* 188, note (1.)

And now, by C. Stat. 22 V. c. 99, § 96, no punishment or forfeiture shall be incurred by any person who kills another by misfortune, or in his own defence, or in any other manner without felony.

CHATTEL MORTGAGE.

By U. C. Stat. 22 V. c. 45, § 1.—Every *mortgage* or conveyance intended to operate as a mortgage of goods and chattels, in Upper Canada, not accompanied by an *immediate delivery* and an actual and continued change of possession of the things mortgaged, or a true copy thereof shall within five days from the execution thereof be registered, as hereinafter provided, together with the affidavit of a witness thereto, of the due execution of such mortgage or conveyance, or of the due execution of the mortgage or con-

Chattel Mortgage.

veyance of which the copy filed purports to be a copy, and also with the affidavit of the mortgagee or his agent, if such agent be aware of all the circumstances connected therewith and properly authorised in writing to take such mortgage (in which case a copy of such authority shall be registered therewith.)

§ 2. Such last mentioned affidavit, whether of the mortgagee or his agent, shall state that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage; that it was executed in good faith and for the express purpose of securing the payment of money justly due, or accruing due, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of such mortgagor from obtaining payment of any claim against him.

§ 3. In case such mortgage or conveyance and affidavit be not registered as hereinbefore provided, the mortgage or conveyance shall be absolutely null and void as against creditors of the mortgagor and against subsequent purchasers or mortgagees in good faith for valuable consideration.

§ 4. Every sale of goods and chattels not accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods and chattels sold, shall be in writing, and such writing shall be a conveyance under the provisions of this act, and shall be accompanied by an affidavit of a witness thereto of the due execution thereof, and an affidavit of the bargainee or his agent duly authorised in writing to take such conveyance (a copy of which authority shall be attached to such conveyance) that the sale is *bona fide*, and for good consideration, as set forth in the said conveyance, and not for the purpose of holding, or enabling the bargainee to hold the goods mentioned therein against the creditors of the bargainor, and such conveyance and affidavits shall be registered as hereinafter provided within *five* days from the execution thereof, otherwise the sale shall be absolutely void as against the creditors of the bargainor, and as against subsequent purchasers or mortgagees in good faith.

§ 5 contains a provision for making valid mortgages of personals for securing future advances to be made. § 6.— That all instruments mentioned in this act shall contain a full description of the goods &c. § 7. That the instruments mentioned shall be registered in the office of the clerk of the county court, where the mortgagor or bargainor, if a resident in Upper Canada, resides, and if a non-resident

where his property is at the time of the execution of such instrument, and such clerk shall endorse thereon the time of receiving the same. § 8. Names of parties, &c., to be entered in a book and numbered. § 9. If goods afterwards removed into another county, a certified copy of the mortgage, &c., to be filed there within two months, otherwise the mortgage to be void as against creditors, &c., § 9, sub-sec. 10. Every mortgage or copy thereof filed in pursuance of this act shall cease to be valid as against creditors of the persons making the same, and against subsequent purchasers or mortgagees in good faith for valuable consideration, after the expiration of *one year* from the filing thereof, unless within *thirty* days next preceding the expiration of the said term of one year, a true copy of such mortgage with a statement exhibiting the mortgagee's interest in the property claimed by virtue thereof, and a full statement of the amount still due for principal and interest thereon, and of all payments made on account thereof, shall be again filed in the office of the clerk of the county court, where such goods are then situate, with an affidavit of the mortgagee or his agent, duly authorised, verifying such statements, &c. § 11. Clerk's certificate to be evidence of registration. § 12. Affidavits may be sworn before a commissioner. § 13. The interest or equity of redemption in any such goods and chattels may be seized and sold by the sheriff under any writ of execution against the goods and chattels of the party. § 14. Fees as follows:—For filing and registering each instrument twenty-five cents. For searching for each paper ten cents. For copies and certificate ten cents for every hundred words.

CHEATS.

By the Common Law.

Cheats, which are punishable by the common law, may in general be described to be deceitful practices, in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty; as by playing with false dice; or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written; or by persuading a woman to execute writings to another, as her trustee, upon an intended marriage, which, in truth contained no such thing, but only a warrant of attorney to confess a judgment; or by suppressing a will, and such like.—1 *Haw.* 188.

On an indictment against the defendant, a miller, for changing corn delivered to him to be ground, and giving bad corn instead of it, it was moved to quash the same, because it was only a private cheat, and not of a public nature; it was answered, that being a cheat in the way of trade, it concerned the public, and therefore was indictable, and the court unanimously agreed not to quash it.—*T. 16, G. 2, K. and Wood, 1 Sess. C. 217.*

The selling of unwholesome provisions is a fraud indictable at common law.—*4 Bl. Com. 162; 2 East P. C. 822; R. v. Johnston, 6 East 133.*

Where a person who was committed to gaol under an attachment for a contempt in a civil action, counterfeited a pretended discharge (as from his creditor) to the sheriff and gaoler, under which he obtained his release from gaol, it was held that this was a cheat and misdemeanor at common law, in thus effecting an interruption to public justice.—*R. v. Fawcett, 2 East P. C. 862, 952.* Public officers are also indictable for frauds committed in their public capacities; thus, where two persons enabled others to pass their accounts with the pay office in such a way as to defraud the government, they were held to be indictable for the fraud.—*R. v. Bambridge, cit. 5 East 136.* A surveyor of the highways may be indicted for converting to his own use gravel which had been dug at the expense of the inhabitants of the parish, and for employing, for his own private gain and emolument, the labourers and teams of the parishioners, which he ought to have employed in repairing the highways.—*3 Chit. C. L. 666.* So also, any fraud which is practised on the public by means of *false weights or measures*, or any *false token*, having the semblance of public authority, and purposely calculated for deceit, and by which the public may be imposed upon, without any imputation of folly or negligence, is indictable at common law.—*2 East P. C. 820.* As where a person sells corn in a bushel, short of the statute measure, or puts something into the bushel to help to fill it up.—*R. v. Pinckney, 2 East P. C. 820.* There appears, however, to be this distinction—where a man sells by *false weights or measures*, it is an indictable offence, but if *without false weights or measures*, he sells merely a less quantity than he pretends to sell, he is not then indictable, but liable only in an action for the deceit.—*R. v. Young, 3 T. R. 104, per Buller, J.; R. v. Nicholson, cit. 2 Burr. 1130; R. v. Driffield, say. 146.*

By Statute.

By Con. Stat. 22 V. c. 92, s. 71, if any person by any false pretence obtains from any other person any chattel, money or valuable security, with intent to cheat or defraud any person of the same, such offender shall be guilty of a misdemeanor, and shall be imprisoned in the penitentiary for any term not exceeding fourteen years, nor less than two years, or imprisoned in any other prison or place of confinement for any term less than two years, or shall suffer such other punishment by fine or imprisonment, or by both, as the court may award.

§ 72. If any person by any false pretence obtains the signature of any other person to any bill of exchange, promissory note, or any valuable security with intent to cheat or defraud, every such offender shall be guilty of a misdemeanor, and shall be liable to fine or imprisonment or both at the discretion of the court: such imprisonment to be for a period less than two years.

§ 73. If any person shall obtain any property whatever with intent to defraud, such offender shall be guilty of a misdemeanor, and shall be imprisoned for any period not exceeding two years, with or without hard labour.

§ 74. If any person by means of any false ticket or order or of any other ticket or order fraudulently and wilfully obtains or attempts to obtain any passage on any railway or train, or in any steam or other vessel, such offender shall be guilty of a misdemeanor, and shall be liable to imprisonment in any common gaol or prison, with or without hard labour, for any period not exceeding six months.

CHILDREN.

A child under ten years of age cannot be punished for any capital offence, whatever circumstances of a mischievous nature may appear.—*Moir, c. 4, § 6; Plowd. 19; 1 Hale, 20; Fost. 349; 4 Bl. Com. 23; Cowp. 222, 3.*

From a supposed imbecility of mind, the protective humanity of the law will not, without anxious circumspection, permit an infant under 14 to be convicted on his own confession.—*Cro. Jac, 446; 1 Hale, 24; Fost. 70.* Yet, if it appear, by strong and pregnant evidence and circumstances, that he was perfectly conscious of the nature and malignity of the crime, a jury may then find him guilty, and judgment of death may be given against him.—*1 Hale, 20, 25, 434; Fost. 71; 4 Bl. Com. 23, O. B. 1784, p. 971.* On the

attainment of 14 years of age the criminal actions of infants are subject to the same mode of construction as those of the rest of society; for the law presumes that the human mind has acquired at this period a complete sense of right and wrong.—*Doct. & St. c.* 26; *Co. Lit.* 79, 181, 247; *Dalt.* 476, 505; 1 *Haw. c.* 1, (note) 1.

See post title "*Orphan Children.*"

CHILD STEALING.

By C. Stat. 22 V. c. 91, § 27, any person who maliciously, either by force or fraud, leads or takes away, or decoys or entices away, or detains any child under the age of ten years, with 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; and any person who, with any such intent receives or harbours any such child, knowing the same to have been by force or fraud, led, taken, decoyed, enticed away, or detained, as hereinbefore mentioned, and every person who counsels, aids or abets any such offender, shall respectively be guilty of felony, and shall be imprisoned at hard labour in the penitentiary, for any term not less than two years, or be imprisoned in any other prison or place of confinement less than two years. § 28. No person claiming 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 of the last section 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.

CHLOROFORM.

By C. Stat. 22 V. c. 91, § 13, any person who unlawfully applies or administers or attempts to apply or administer to any other person any chloroform, laudanum, or other stupifying or overpowering drug, matter or thing, with intent to enable such offender, or any other person to commit any felony, shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two nor more than five years.

CITIES—INCORPORATION OF.

The General Municipal Act, (U. C. Stat. 22 V. c. 54,)

§ 15, provides for the erection of an incorporated village into a city, when it appears by the *census* return that it contains over 15,000 inhabitants. The provision is as follows:—The council of the town shall for three months after the census return, insert a notice in some newspaper published therein, setting forth the intention of the council to apply for the erection of the town into a city, and stating the limits to be included therein. The town shall, moreover, pay to the county of which it forms part, such portion (if any) of the debts of the county as may be just; or agree with the council of the county as to the amount to be paid, and the period of payments, with interest from the time of the erection of the new city, or in case of disagreement the same shall be determined by arbitration under this act; and the council shall prove to the Governor in council the payment, agreement or arbitration. Then the Governor may by proclamation erect the town into a city by a name to be given thereto by the proclamation.

§ 66. The council of every city shall consist of the mayor, who shall be the head thereof, and of two aldermen and two councilmen for every ward.

Recorder's Court.—§ 370, provides there shall be in every city a court of record, to be called the Recorder's Court of the city; and therein the recorder alone, assisted by one or more of the aldermen, shall preside; or in the absence of the recorder, or when there is no recorder, the mayor, (and in his absence, one of the aldermen elected by themselves,) assisted by one or more of the aldermen, shall preside; and the court shall, as to crimes and misdemeanors committed in the city, and as to matters of civil concern therein, have the same jurisdiction and powers, and use the like process and proceedings as Courts of Quarter Sessions of the peace in counties.

For further provisions respecting "*Cities*," see the General Municipal Act.

CLERGY.

By C. Stat. 22 V. c. 91, § 35, any person who upon any civil process arrests any clergyman or minister of the gospel, while he is performing divine service, or so arrests him while he is going to perform the same, or while he is returning from the performance thereof, knowing that he is so going or returning, shall be guilty of a misdemeanor, and shall suffer such punishment by fine or imprisonment, or by both, as the court shall award.

CLERGY RESERVES.

The C. Stat. 22 V. c. 25, § 1, provides that the moneys arising from the sale of clergy reserves in Upper Canada shall form a separate fund, called "The Upper Canada Municipalities Fund." § 2. Moneys to be paid into the hands of the Receiver-General. § 3. Certain annual stipends or allowances charged on the reserves before the passing of the imperial act 16 V. c. 21 to continue to be a first charge thereon, and payable during the lives of the present incumbents. § 4. The Governor in council authorised, with consent of parties, to commute with them for the value thereof, and such value to be paid to them out of such municipalities fund. (2) In case of commutation, the amount not to be invested in real estate under the penalty of forfeiture. § 5. Sufficient funds to be retained to pay such stipends while chargeable on the fund. § 7. The balance of such fund, remaining unexpended and appropriated on the 31st of December in each year, shall by the Receiver-General be apportioned equally among the several city, town, incorporated village, and township municipalities in Upper Canada in proportion to the number of ratepayers that shall appear on the assessment rolls of such municipalities, for the year next before the time of such apportionment. § 8. The clerks of such municipalities on or before the 31st day of December in each year, shall transmit to the Receiver-General true returns of the number of such ratepayers appearing on the said assessment rolls for the year such return shall be made, and make an affidavit of the correctness of the returns, in the form of the schedule annexed, and sworn before a justice of the peace. § 9. If any money be due from the municipal city to the Receiver-General, he may retain so much of the amount, in discharge thereof, as may be requisite. § 10. Any clerk failing to make such return by the time limited, shall be liable to a penalty of \$100.

§ 11. Municipalities may by by-laws set apart for any special purpose, to be mentioned in such by-law, the whole or any part of the moneys derived from "The Upper Canada Municipalities Fund," and invest the same in the purchase of provincial consolidated loan fund or municipal debentures for the purposes mentioned in such by-law, and from time to time sell and dispose of such securities and re-invest the proceeds in other like securities, or otherwise appropriate the same in the manner mentioned in and directed by the said by-law, or other by-laws passed for that purpose. § 12. By-laws already passed authorising the investment of such moneys as last aforesaid shall be held good and valid. § 13.

If in consequence of erroneous returns too much money has been paid to any municipality the excess shall be a debt to the Crown.

Schedule.

A. B., clerk of the municipality of (city, town, township or village as the case may be,) maketh oath and saith, that the (above within written or annexed return, as the case may be.) contains a true statement of the number of resident ratepayers appearing on the assessment roll of the said city, &c., as the case may be, for the year one thousand eight hundred and sixty

Sworn before me, &c.

CLERK OF THE PEACE.

The clerk of the peace is an officer belonging to the sessions of the peace; and his duty is to read indictments, enrol the proceedings, draw the process, and record other matters which appertain to the jurisdiction of the quarter sessions; he also certifies into the Court of Queen's Bench transcripts of indictments, outlawries, attainders; and convictions had before the justices of the peace within the time limited by any writ of *certiorari* directed to the justices to return such proceedings; and he ought to be an able and sufficient person residing in the county or division for for which he is appointed.—*Deacon's C. L.* 246.

The clerk of the peace is appointed by the Governor, by commission under the great seal of the province, and holds his office at pleasure. And by the late act U. C. Stat. 22 Vic. c. 17, § 9, no person shall be appointed a clerk of the peace for any county who is not a barrister at law of not less than three years standing at the Upper Canada bar, and every clerk of the peace shall be *ex officio* county attorney for the county of which he is clerk of the peace.* He may also execute his office by deputy. 37 H. VIII., c. 1.

By stat. 1 W. & M. c. 21, § 6, if he shall misdemean himself in office; and a complaint in writing be exhibited against him to the justices in sessions, the justices may on examination and due proof thereof suspend him from his office; and before entering upon the execution of his office, he must take the following oath, besides the oaths of allegiance, supremacy and abjuration. †

I, A. B., do swear that I have not, nor will pay any sum or sums of money, or other reward whatsoever, nor give any bond or other assurance to pay any money, fee or profit, directly or

* See also U. C. Stat. 22 V. c. 106, s. 7.

† But see C. Stat. 22 Vic. c. 12, which regulates the form of oath to be taken by public officers.

indirectly, to any person whomsoever, for such nomination and appointment. So help me God.

Duties of his office. (Dickenson.)

The clerk of the peace, by himself, or his sufficient deputy, must be in constant attendance on the court of quarter sessions. He gives notice of its being holden or adjourned; issues its processes; records its proceedings, and does all the ministerial acts necessary to give effect to its decisions. It is his duty when prosecutors do not choose to seek professional assistance to draw bills of indictment. In the actual course of the sessions it is his duty to read the acts directed to be read in sessions; to call the jurors and make known their defaults and excuses to the court; to call the parties under recognizance whether to prosecute, plead or give evidence; to present the bills to, and receive them from, the grand jury; to arraign prisoners; to receive and record verdicts; to administer all oaths, and make true entries of all proceedings. By an ancient statute he is bound to certify to the Court of King's Bench the names of such as shall be outlawed, attainted, or convicted of felony; and if he shall discharge or conceal any fine or forfeiture, unless by rule of court, he is liable to forfeit treble value, half to the king and half to him that shall sue, to lose his office, and be incapacitated ever to hold any office connected with the revenue.—22, 23 Car. II., c. 22, § 9. Neither he nor his deputy may act as solicitor, attorney or agent, or sue out any process at any general quarter sessions, where he shall execute the office of clerk of the peace, or deputy, on pain of £50.—2 G. II. c. 46, § 4.

His duties by Provincial Statute.

Convictions.—By U. C. Stat. 22 V. c. 124, § 1. To file returns made by justices. § 4. To publish the same in a public newspaper within seven days after the adjournment of the next ensuing general quarter sessions, and fix the same up in the court house and office of the Clerk of the Peace. Fee \$4, besides expense of publication. § 5, within twenty days after the end of each quarter session to transmit a copy of such return to the minister of finance.

Records in Criminal cases, how to be drawn up.—See C. Stat. 22 Vic. c. 99, § 52.

Heir and Devisee Act, U. C. Stat. 22 V. c. 80, § 15, to make list of claims once in every three months, and affix the same in some conspicuous part of the court-house, and cause the same to be publicly read and proclaimed in open court

at the general quarter sessions, immediately after the charge to the grand jury, and give certificates thereof.

Census Act, C. Stat. 22 Vic. c. 33, § 34. To forward returns of "births, deaths, and marriages," as filed in his office under the statute, to the Board of Registration and Statistics on or before the 1st January, yearly. § 36. To furnish triplicate lists of convictions at sessions, or before justices, at such periods as the board shall appoint. § 37. Neglect to be a misdemeanor.

Under the Juror's Act. U. C. Stat. 22 Vic. c. 31.

§ 25. To prepare "The Jurors' Book," according to form B. in the act, — § 29, deposit a certified copy on or before the thirty-first day of December, in the office of the Clerk or Deputy Clerk of the Crown and Pleas of H. M. Court of Queen's Bench. § 30 In case of destruction of the original to procure and deposit in his office a duplicate original. § 31. In such case to notify the sheriff of such destruction, and deposit of duplicate. § 32. On dissolution of union of counties to procure for the year next ensuing two jurors' books, one for the senior county the other for the junior county. § 33. Books, how to be arranged. § 34. In such case the preparing of the books, selecting jury lists, and other things required for such junior county to be done by the clerk of the peace for the union. § 35. To deliver on demand jurors' books to clerk of the peace of junior county.

Jury lists.—§ 39, to deliver jurors' books to the chairman of the Quarter Sessions on the first day of the court next after the 10th of November in each year, together with such preceding ones as may be requisite, and verify the same by oath.

Selecting of Jurors.—§ 51, clerk of the peace to be *ex officio* one of the selectors. § 53. His duties on selection, (1) to call over the names on the jurors' roll, (3) to note exemptions, (6) and grounds of exemptions, (7) if no objection made or established then to insert the names in the minute book, (9) to be afterwards inserted alphabetically into the jurors' books, with the title of the grand jury list for the superior courts, (10) and transferred to such jury list. § 54. After such grand jury list has been completed, the selector then to proceed with the grand jury list for inferior courts. § 55. And then lists of petit jurors for superior and inferior courts. § 56. Such jury lists to be certified by the clerk of the peace, and with the jurors' book deposited in his office.

Drafting Jury Panels from Jury List.—§ 75. To be done by the sheriff. § 78. At the office of the clerk of the peace and in his presence, and the presence of two justices. § 83. How the panel of jurors to be drafted. The names drafted to be alphabetically arranged and numbered, entered in the jurors' books, and attested by the sheriff, clerk of the peace and justices, or at least two of them.

Special Juries.—§ 113. To be balloted by the sheriff at the office of the clerk of the peace.

Towns becoming Cities.—§ 134. The clerk of the peace to perform *pro tem.* the duties of the clerk of Recorder's Courts. § 135. And hand over jurors' book to clerk of Recorder's Court.

Fees to Clerk of the Peace and of Recorder's Courts.

1. For receiving and examining reports of selectors for each city, town, village, and township, causing any deficiency which may be found therein to be supplied, and filing the same.....	\$0 50
2. For giving certificates to selectors of juries of duties having been performed.....	0 50
3. For preparing in proper form each jurors' book and superintending the making up of the same (besides actual disbursements for stationary charges).....	3 00
4. For arranging alphabetically and in order the names contained in selector's report per 100 names.....	2 00
5. For making up jurors' books, entering all the names and numbers, and all other matters required to be entered therein, per 100 names....	2 00
6. For each copy of the jurors' book required by this act per 100 names.....	2 00
7. For each certificate required to be entered in the jurors' book to verify same.....	1 00
8. For copy of jury list required to be entered, per 100 names.....	2 00
9. For each panel of jurors drafted from the jury list, per 100 names on such jury list.....	2 00
10. For entering such panel in the jurors' book with the numbers corresponding to the jury list.....	2 00
11. For making up aggregate return in detail of jurors.....	5 00
12. For copy thereof, and transmitting same to Provincial Secretary when required, and for an office copy of the same, each.....	2 00

§ 174. Any clerk of the peace, or clerk of any recorder's court of any city, or his deputy, neglecting or omitting to perform any duty required of him by this act, or wilfully doing any thing inconsistent therewith, shall forfeit the sum of \$200, recoverable in any court of competent jurisdiction by action of debt or information.

Marriages.—Clerks of the peace are required to furnish, at the expense of the county, all clergymen or ministers and others required to make returns with the books to be kept, and with printed blank forms for the lists to be returned.—*U. C. Stat. 22 V. c. 72, § 13.*

Insane destitute.—Account of moneys necessary for the support of, in each county, to be laid before the grand jury once a year by the clerk of the peace.—*U. C. Stat. 22 V. c. 122, § 1.*

Illegitimate children.—Affidavit by the mother to be filed in the office of the clerk of the peace.—*U. C. Stat. 22 V. c. 87, § 6.*

Fines and Forfeited Recognizances.

U. C. Stat. 22 V. c. 117.

§ 3. To be entered on a roll within 21 days after adjournment of the quarter sessions. Such roll to be made in duplicate, and signed by the clerk of the peace. § 4. One to be deposited in the office of the clerk of the peace, and the other sent to the sheriff, with writs of *feri facias* and *capias* as per form annexed to the act.

§ 9. Affidavit to be made by the clerk of the peace at the foot of each roll.

§ 12. Writs to be returned by the sheriff and filed by the clerk of the peace. § 13. And a certified copy sent to the Receiver-General.

County accounts.—*U. C. Stat. 22 V. c. 121.*

§ 1. Accounts to be delivered to the clerk of the peace before the first day of the general quarter sessions.

§ 2. No accounts to be audited unless *seven* justices present.

§ 3. Accounts to be taken into consideration on the *second* day of the sessions.

§ 4. Clerks of the peace to furnish the county treasurer with lists of orders for payment according to their priority; but certain expenses for the custody and maintenance of prisoners to be first paid.

§ 5. No order to be made unless there be funds to meet the same, except where debts actually due.

Lunatic Asylum, (private).—Certain duties to be performed under this act by clerks of the peace, for which see the act.—*C. Stat.* 22 *V. c.* 73.

New Tariff of Fees for Clerks of the Peace.

TRINITY TERM, 26TH VICTORIA,
5th September, 1862.

Whereas, the table of fees confirmed by the judges of the Court of Queen's Bench, on the 15th of November, 1845, applicable to Sheriffs, Clerks of the Peace, Constables and Criers, for services rendered in the administration of justice, and for other county purposes, has become inapplicable in many respects to the duties as now performed by the respective clerks of the peace for the several counties of this Province, and new duties have been assigned to the clerks of the peace since the making of the said table :

And whereas, by the Consolidated Acts of Upper Canada, 22 *V. c.* 119, § 2, the said table of fees was to continue until otherwise appointed; and power was thereby given to the chief justices and other judges of the superior courts of common law, at Toronto, from time to time, as occasion requires, by rule or rules by them to be made in term-time, to appoint the fees to be taken and received by such Sheriffs, Coroners, Clerks of the Peace, Constables and Criers, for such services as aforesaid :

First.—It is ordered, under and by virtue of such authority, that with respect to the duties performed by the several clerks of the peace, in the several counties of this province, the table of fees in the schedule hereto annexed shall be substituted for and taken in lieu of such table of fees.

Second.—That the table of fees in the schedule hereto annexed shall not be construed as interfering with the Orders made by the judges of the Court of Queen's Bench, on the 15th November, 1845, further than as an alteration of the fees to be taken by the clerks of the peace for the several services stated in the schedule hereto annexed.

(Signed,) . ARCH'D MCLEAN, C. J.
WM. H. DRAPER, C. J., C. P.
ROBERT E. BURNS, J.
WM. B. RICHARDS, J.
JOHN H. HAGARTY, J.
JOS. C. MORRISON, J.

Schedule of Fees to be taken and received by the Clerks of the Peace in this Province, in lieu of the Table established on 15th November, 1845.

	To be paid out of the Co. Fund. \$ cts.	To be paid by party applying. \$ cts.
1. For drawing Precept to Summon the Grand and Petit Jury, attending Justices to sign same, and transmitting to the Sheriff.....	4 00	
2. Attending each general Quarter Sessions.....	6 00	
3. Making up Record of each general Quarter Sessions.....	10 00	
4. Notice of every appointment of a constable, under 23 Vic., ch. 8, or other officer appointed by the Justices in Sessions, and notice of any order made by the Quarter Sessions, when required to be notified to any person or party...	0 20	
5. Subpœna.....	0 50	0 50
6. Bench Warrant.....	1 00	
7. Every Recognizance of the Peace for good behaviour.....	1 00	
8. For discharging the same.....	0 50	
9. Making up Estreats of each Session.....	1 00	
10. Every allowance of Certiorari (to be paid by the party applying).....		1 00
11. Furnishing to Sheriff and Coroners revised lists of Constables, whenever ordered to be done by the Justices in general Quarter Sessions.....	1 00	
12. Reading any Statute or public Proclamation, when required to be done by law.....	0 25	
13. Copies of Depositions or Examinations furnished to Prisoners, Defendants, or their Counsel, when required, each folio of 100 words (to be paid out of the County funds, or by the party applying, as the case may be)	0 05	0 05
14. Receiving, filing, and reading each Presentment of the Grand Jury.....	0 50	
15. For copy thereof forwarded to the Government, or to the County Council, when directed by the Quarter Sessions.....	0 50	
16. Arraigning each Prisoner or Defendant indicted, (to be paid out of the County funds, or by the party applying, as the case may be).....	0 50	0 50
17. Empanneling 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 when no fee is fixed by		

statute : (to be paid out of the County funds, or by the party, as the case may be).....	0 50	0 50
18. Swearing each Witness upon any trial by a Jury, or to go before the Grand Jury : (to be paid out of the County funds, or by the party, as the case may be).....	0 20	0 20
19. Filing each Exhibit on a trial : (to be paid out of the County funds, or by the party, as the case may be).....	0 08	0 20
20. Every Subpœna Ticket, or copy of Subpœna, when necessary : (to be paid out of the County funds, or by the party applying, as the case may be).....	0 20	
21. Charging the Jury with the Prisoner or Defendant, upon each indictment : (to be paid out of the County funds, or by the party, as the case may be).....	1 00	1 00
22. Receiving and recording each Verdict of a Petit Jury, in any case of trial by Jury, (to be paid out of the County funds, or by the party, as the case may be).....	0 50	0 50
23. Recording each Judgment or Sentence of the Court upon a Verdict or Confession, to be paid out of the County funds, or by the party, as the case may be).....	0 50	0 50
24. Making out and delivering to the Sheriff a Calendar of the Sentences at each Court.....	1 00	
25. Certified copy of Sentences sent with the Prisoners to the Penitentiary, after each Session...	0 50	
26. Making up Record of Conviction or Acquittal, in any case where it may be necessary : (to be paid out of the County funds, or by the party applying, as the case may be,) per folio of 100 words	0 10	0 10
27. Every Copy or Extract of a Record or Paper of any kind, required to be made by law, or by Order of the Justices in Sessions, or for the Information and use of the Government, when required, and where no charge is fixed by law—if the same shall be less than 10 folios of 100 words each.....	1 00	1 00
28. If above ten folios, then for each folio.....	0 10	0 10
29. Discharging any Prisoner by Proclamation....	0 50	
30. Drawing bill of Costs, including taxation, (to be paid by the party,) and filing the same where necessary to be made and filed, as in cases of Assault, Nuisances or the like, and in Appeals.....		0 50
31. Drawing out and taking each Recognizance to		

appear, either of Prosecutor, Defendant, or Witness	0 50	0 50
32. Calling parties on their Recognizance, and recording their non-appearance, for each person called : (only to be charged where the parties do not answer).....	0 25	0 25
33. Drawing order of the Justices to Estreat and put in Process : (on the whole list)	0 50	
34. Entering any Order of Sessions, or of the chairman with two Justices, to remit any Estreat, and recording an Entry of the same : (to be paid out of the County funds, or by the party relieved, as may be ordered).....	0 25	0 25
35. Entering and Extracting upon a Roll in duplicate, the fines, issues, amerciaments, and forfeited Recognizances, recorded in each session, making Oath to the same, and transmitting to the Sheriff	2 00	
36. Making out and delivering to the Sheriff the writ of <i>feri facias</i> and <i>capias</i> thereon	0 50	
37. Making out and certifying copy of Roll and return of the Sheriff, and transmitting it to the Receiver General.....	1 00	
38. Making up Book of Orders of Sessions, declaring the limits of the Division Courts, and entering the times and places of holding the Courts.....	1 00	
39. Making out and transmitting a copy thereof to the Government.....	1 00	
40. Making out and transmitting copies (with letter to the Clerks of each Division Court,) of the divisions made by the Quarter Sessions	1 00	
41. Drawing Orders of Sessions for altering the limits of Division Courts	1 00	
42. Making out and transmitting copies of such Orders to the Government.....	0 50	
43. Making out and transmitting copies of such Orders to each Division Court affected by the alteration	0 50	
44. For each copy of Schedule of the Division Courts, with the order of Sessions, for publication	0 50	
45. For every Search under three years : (to be paid by the party making the search)	0 20	
46. For the same extending over three years.....	0 50	
47. For every Certificate required of proof of a Deed, to be paid by the party applying for the same.....		1 00

48. For every other Certificate required by law or order of the Sessions to be given, where the same is under five folios : (to be paid out of the County funds, or by the party applying for the same, according to the nature of the case)	0 50	0 50
49. For the same, if more than five folios, per folio.	0 10	0 10
50. Copying orders of Court, and causing same to be published, where it is requisite, for each order, exclusive of the expense of publication.	0 50	
51. Receiving and filing affidavit of Bastardy, to be paid by the party producing it.....		0 25
52. Receiving and filing each Tender for any public work, or supply, or printing, or other service.	0 25	
53. Making out a list of the several tenders on each occasion, as they are opened, specifying the names, prices, and other particulars, and filing the same, when required to be done by the Justices	0 50	
54. Drawing Bonds or Agreements for the delivery of articles, or for doing the work for the Gaol or other County purposes, and attending execution, when required by the Justices	1 00	
55. Receiving and filing accounts and demands at the General Quarter Sessions, preferred against the County, in each Session, numbering them, and submitting them for audit, and making out the cheques	4 00	
56. Making out and delivering lists of orders on the Treasurer, made at each Court of Quarter Sessions	2 00	
57. Making out and transmitting to the Inspector General a return or Schedule of all Convictions which have taken place before any Justice or Justices, or before the court, each list.	1 00	
58. Making out the annual account to be laid before the Grand Jury at the Quarter Sessions (<i>vide Consol. Stat. U. C., ch. 122.</i>) of the sum necessary to be provided for the maintenance of insane persons	1 00	
59. For every report or return required by Statute, or by the Government, where no remuneration has been provided by this Table, or Statute	1 00	
60. Making and transmitting a return to the Government of Justices and Coroners who have taken the Oaths, when required to be done, for each return.....	1 00	

61. Drawing every special Order of the Court of Quarter Sessions, necessary to be communicated to any party, and entering it on Record.	0 50	
62. Letter, and transmitting or delivery to the party interested or affected thereby.....	0 25	
63. Swearing each party to an Affidavit, where no charge is elsewhere provided for it: (to be paid out of the County funds, or by the party for whom the Affidavit is sworn, according to nature of case).....	0 20	
64. Causing notice to be published of any special or adjourned Sessions, when directed by the Chairman of the Quarter Sessions, or other two Justices, so to do: (exclusive of the amount paid the printer for publication)....	1 00	
65. Sending notice of any such Session to the Justices individually, when it may be directed by the Chairman, or other two Justices, for each notice.....	0 10	
66. Attending each adjourned or Special Sessions, and making up Record thereof.....	2 50	
67. Receiving and filing Notices of Appeal, and the Appeal from any Judgment or Conviction by one or more Justices, where an Appeal to the Quarter Sessions is given by law: (to be paid out of the County funds, or by the party appealing, as the case may be).....	0 25	0 25
68. When the Appeal called on, reading the Conviction, Notice of Appeal, and Recognizance: (to be paid out of the County funds, or by the party appealing, as the case may be).....	0 50	0 50
69. For all other Services upon the trial of such Appeal case, when tried by a Jury, including the receiving and recording the Verdict, the same charges as in ordinary Criminal Trials: (to be paid out of the County funds, or by the party, as the case may be).....		
70. Issuing Process to enforce the Order of the Court in any Appeal case: (to be paid out of the County funds, or by the party, as the case may be).....	1 00	1 00
71. Making out Warrant of Distress or Commitment, in any case where no fee is specially assigned therefor in any Statute, or in this Table.....	1 00	
72. Drawing certificate of approval by the Justices in Sessions, of sureties tendered by the Sheriff: (to be paid by the Sheriff).....		0 50
73. Administering Oaths to any Public Officer,		

when authorised so to do : (to be paid by the Officer)		0	25
74. Receiving and filing each Oath of Qualification of a Justice of the Peace.....	0	25	
75. All Letters written to the Government, all Letters written by direction of the Chairman, or of the Justices in Sessions, to Justices, Coroners, or Constables, or others, upon special business connected with the administration of Justice, or County purposes.....	0	25	
76. For distributing the Statutes to the Justices and County officers, or others, when directed by the Statute or the Government so to do, and taking receipts therefor from each Justice or officer.....	0	10	
77. For accounting to the County Member for the copies of Statutes not called for by the Justices and County Officers, and delivering the same to him, whenever such duty shall be required by Statute, or by the Government—and no other fee allowed.....	1	00	
78. For procuring and supplying to Clergymen and Ministers all Books and Forms required under the Con. Acts U. C. ch. 72, for each Book with the necessary set of Forms.....	0	25	
79. For forwarding the Returns directed by the Census Act, Consol. Stat. Can., ch. 23, annually	0	50	
80. For receiving and Filing Voters' Lists under the Election Law, Con. Acts Can., ch. 6, sec. 6, sub-sec. 2, each list.....	0	25	
81. For attending and producing before County Judge the Duplicate List, when required by the Judge to do so, under sub-sec. 8 of the same	0	50	
82. For filing each List, Return, or other Paper, where no charge is specially provided for, except Accounts and Claims against the County, and papers connected with matters to be charged against private individuals : (to be paid out of the County funds, or by the party for whom the service is rendered, according to the nature of the case).....	0	08	0 08

(Signed,)

A. McLEAN, C. J.
 WM. H. DRAPER, C. J. C. P.
 ROBERT E. BURNS, J.
 WM. B. RICHARDS, J.
 JOHN H. HAGARTY, J.
 JOS. C. MORRISON, J.

Form of the appointment of a Deputy.

I, G. G., clerk of the peace in and for the county of York, do hereby make, substitute and appoint J. H. S. D., of the City of Toronto, in the said county, gentlemen, my true and lawful deputy, in the office of clerk of the peace for the said county, so long as I shall hold the same. and during the continuance of my will and pleasure. Witness my hand and seal, this day
of 18 .

CLERKS AND SERVANTS.

Stealing by, see "*Embezzlement.*"

COALS.—CHARCOAL.—WOOD.

Maliciously setting fire to any, declared felony by C. Stat. 22 V. c. 93, § 12.—See also "*Arson.*"

COIN.

By C. Stat. 22 V. c. 90, § 3, if any person falsely makes or counterfeits, or causes 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, or any of the gold or silver coin made or declared to be lawfully current in this province, such person shall be guilty of a misdemeanor, and shall be imprisoned in the Provincial Penitentiary for not more than four years, nor less than two years, or be imprisoned in any other prison or place of confinement for any term not less than two years.

§ 4. If such person afterwards offends in like manner he shall for such second or for any subsequent offence be deemed guilty of felony, and shall be liable to the punishment by law provided for felony.

§ 5. Upon the trial of any person accused of any offence alleged to have been committed against the form of the Consolidated Statute of Canada, respecting the currency 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.

§ 6. If any person colours or gilds, or cases 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 in this province; or makes or causes to be made, or buys, sells, or procures for himself or for another, or knowingly brings and imports, or causes to be brought and imported into this province any forged false or counterfeit gold, silver, or copper coin, made or declared lawfully current in Canada, 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 utters, or attempts to utter or tender in payment to any person or persons as being any of the gold, silver, or copper coin made or declared to be current money as aforesaid, any false or counterfeit piece counterfeited to any of the gold, silver, or copper coins so made or declared to be current, 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 shall be imprisoned in the penitentiary for not less than three, nor more than fourteen years.

§ 7. If such person afterwards offends in like manner, he shall for such second and for any subsequent offence be deemed guilty of felony, and shall be imprisoned in the penitentiary for life, or any term not less than fourteen years.

§ 8. If any person forms, makes, cuts, sinks, stamps, engraves, repairs, mends, or assists in forming, making, cutting, sinking, stamping, engraving, repairing, or mending, or has in his possession, except for some known and lawful purpose, any false or counterfeit coin, counterfeit to any coin lawfully current as aforesaid, 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 lawfully current as aforesaid, such person shall be guilty of a misdemeanor, and shall be punished accordingly.

§ 9. 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.

§ 10. Any 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 is or has been concerned in making, counterfeiting, or imitating any such coin as aforesaid,

shall, by warrant under the hand and seal of such justice, cause the dwelling-house, room, workshop, out-house, or other building, yard, garden ground, or other place belonging to such suspected person, or where such suspected person is suspected to carry on any such making, counterfeiting, or imitating, to be searched for such counterfeit coin.

§ 11. If any such coin or any such die, press, tool, or instrument, metal, or material as aforesaid be found in the possession or custody of any person not having the same for some lawful purpose, any other person discovering the same may seize, and he is hereby required to seize and carry the same forthwith before a justice of the peace, having jurisdiction within the locality in which the same has been seized, and such justice shall cause the same to be secured and produced in evidence against the person prosecuted for any such offence in any court of competent jurisdiction, and the same after so being produced in evidence, shall by order of the court be defaced or destroyed, or otherwise disposed of as the court directs.

§ 12. Any person to whom there is tendered in payment any pretended gold, silver, or copper coin, which by the stamp impression, colour or weight thereof affords reason to suspect that the same is false or counterfeit, may cut or break such coin, and if the same be counterfeit, the person who tendered it shall bear the loss, otherwise the person who cut or broke it shall receive it for a sum proportionate to its weight; and if a question arises whether such coin be counterfeit, a justice of the peace shall determine the same, and if he entertains any doubt in that behalf, he may summon three skilful persons, the decision of a majority of whom shall be final.

§ 13. If any false or counterfeit coin 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 such owner claims the same.

§ 14. Any person who knowingly utters, or attempts to utter or offers in payment, as being lawfully current, any gold coin of less value than its lawful weight, or who diminishes the weight of any such coin with intent to offer it in payment as lawfully current, shall be guilty of a misdemeanor and be punished accordingly.

§ 15. On the trial of any person for an offence under this act, it shall not be necessary to call an officer of the mint or other person employed in producing the lawful coin to prove

any counterfeit to be such, but the fact may be proved by any evidence which is satisfactory to the jury trying the case.

Spurious Foreign Coin.

§ 16. In case any person colours, gilds or cases over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin of coarse gold or silver, or of base metal resembling any coin made, coined or struck by or under the authority of any foreign prince or state, and then actually current in the dominions or country of such prince or state, although not current by law in this province, or in case any person makes or causes to be made, or buys, sells, or procures, or knowingly brings or imports into this province any forged, false or counterfeit coin resembling any such foreign gold or silver coin as aforesaid, or any coin of coarse gold or silver or base metal coloured or cased over with gold or silver, or with any wash or materials producing the colour of gold or silver, and resembling any such foreign gold or silver coin as aforesaid, or offers or utters, tenders or puts off as being any such foreign gold or silver coin, any forged, false or counterfeit piece or coin counterfeited to, and resembling any such foreign gold or silver coin, knowing the the same to be forged, false or counterfeit, such offender shall for the first offence be guilty of a misdemeanor, and for the second and every subsequent offence shall be guilty of felony.

§ 17. If any person forms, casts, makes, cuts, sinks, stamps, or engraves, repairs or mends any die, press, mould, matrix, tool, instrument or machine, metal or material of any kind, used, constructed, devised, adapted or designed for the purpose of counterfeiting or imitating any foreign gold or silver coin described in the last preceding section of this act, such offender shall, for the first offence be guilty of a misdemeanor, and for any subsequent offence shall be guilty of felony.

§ 18. If any person knowingly, and except for some known and lawful purpose, has in his possession or custody any forged, false or counterfeit piece or coin counterfeited to resemble any foreign gold or silver coin described in the sixteenth section of this act, or any die, press, mould, matrix, tool or instrument or machine, metal or material of any kind used, constructed, devised, adapted or designed for the purpose of imitating any foreign gold or silver coin described in the said section, such offender shall for the first offence be guilty of a misdemeanor, and for the second or any subsequent offence shall be guilty of felony.

§ 19. Any person convicted of having committed any misdemeanor under the three last sections of this act shall be imprisoned in any common gaol, with or without hard labour, for any term under two years, or shall be imprisoned in the penitentiary for any term not less than two nor more than seven years; and upon conviction for a second or any subsequent offence as aforesaid, such person shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two nor more than fourteen years, in the discretion of the court before which the conviction may be had.

Spurious Copper and Brass Coin.

§ 20. Except the lawful copper coin of the United Kingdom of Great Britain and Ireland, no person, body politic or corporate shall, without authority under the hand of the Governor, import into this province, or manufacture herein, any copper or brass coin or tokens of any description.

§ 21. The Governor may grant such permission by and with the advice and consent of the executive council, and such permission shall contain the name of some certain person, body politic or corporate authorised to import or manufacture any such coin or tokens, a description of the coin or tokens to which it extends, the quantity thereof to be imported or manufactured, and the time during which such permission shall be in force.

§ 22. Such permission shall be announced in the official Gazette.

§ 23. All coins imported or manufactured as aforesaid, shall in purity, weight and quality be equal to five-sixths at the least of the lawfully current British penny or half penny.

§ 24. No such permission shall be granted by the Governor for the importation or manufacture of any copper or brass coin or tokens under the provisions of this act by any person, body politic or corporate, unless such coin or tokens be stamped with the nominal value thereof, and with the name of such person or persons, body politic or corporate.

§ 25. Such person, body corporate or politic shall, on demand, pay or redeem such coins and tokens at the nominal value thereof, as in payment of a debt equal to such nominal value, and shall so pay or redeem the same in lawful current coin being a legal tender in this province.

§ 26. All such coin or tokens as aforesaid imported or manufactured in contravention of the twentieth and five next following sections of this act shall be forfeited to her majesty

for the public uses of this province, and the person who manufactures or imports the same, shall thereby incur a penalty not exceeding twenty dollars, for every pound troy of the weight thereof,

§ 27. Any two or more justices of the peace, on the oath of a credible person, that any such coin or tokens have been unlawfully manufactured or imported as aforesaid, shall cause the same to be seized and detained, and shall summon the person in whose possession the same has been found, to appear before them, and if it appears to their satisfaction, on the oath of a credible witness other than the informer, that such coin or tokens have been manufactured or imported in contravention of this act, such justices shall declare the same forfeited, and shall place them in safe keeping to await the disposal of the Governor, for the public uses of this province.

§ 28. If in like manner it appears to the satisfaction of such justices that the person in whose possession such coin or tokens were found, knew the same to have been so illegally manufactured or imported, they may condemn the offender to pay the penalty aforesaid with costs, and may commit him to the common gaol of the district, county, or place for a period not exceeding two months, if such penalty and costs are not forthwith paid, or until the same be paid.

§ 29. If it appears to the satisfaction of such justices of the peace, that the person in whose possession such coins or tokens were found, was not aware of their having been so illegally manufactured or imported, the penalty may, on the oath of any one credible witness other than the plaintiff, be recovered from the owner thereof, by any person who sues for the same in any court of competent jurisdiction.

§ 30. Any officer of her Majesty's customs may seize any coin or tokens, imported or attempted to be imported into this province in contravention of this act, and may detain the same as forfeited, to await the disposal of the Governor for the public uses of this province.

§ 31. No person shall utter, tender, or offer in payment any copper or brass coin, other than the lawful coin of the United Kingdom, or the tokens of some other one of the chartered banks of the province, or of the *Banque du Peuple* at the city of Montreal, imported or manufactured before the twenty-first day of November, one thousand eight hundred and forty-one, under the sanction and authority of the executive, or under and by virtue of the ordinances of the late province of Lower Canada heretofore repealed, or American cents, or such coins or tokens as have been law-

fully imported into, or manufactured in this province according to the provisions of the act 4 & 5 V. c. 17, or of the act respecting the currency, or of this act, under a penalty of the forfeiture of double the nominal value thereof.

§ 32. Such penalty may be recovered with costs, in a summary manner, on the oath of one credible witness other than the informer, before any justice of the peace, who, if such penalty and costs be not forthwith paid, may commit the offender to the common gaol of the district, county or place for a time not exceeding eight days, or until the same be paid, if sooner paid

§ 33. One moiety of all the penalties imposed by the 26th to the 32nd sections of this act (but not the coins or tokens forfeited under the provisions thereof) shall go to the informer or person suing for the same, and the other moiety shall belong to her Majesty, for the public uses of the province.

COMMITMENT.

There is no doubt but that persons apprehended for offences which are notailable, and also all persons who neglect to offer bail for offences which areailable, must be committed—2 *Haw.* 116; and wheresoever a justice empowered by any statute to bind a person over, or to cause him to do a certain thing, and such person being in his presence shall refuse to be bound, or to do such thing, the justice may commit him to the gaol, there to remain till he shall comply.—2 *Haw.* 116. If a person be brought before a justice, expressly charged with felony upon oath, the justice cannot discharge him, but must bail or commit him—2 *H. H.* 121; *C. Stat.* 22 V. c. 102, § 52; but if he be charged with suspicion of felony only, yet if there be no felony at all proved to be committed, or if the fact charged as felony be in truth no felony in point of law, the justice may discharge him; but if a man be killed by another, though it may be misadventure, or self defence, (which is not properly felony,) or in making an assault upon a minister of justice in execution of his office,* (which is not at all felony,) yet the justice ought not to discharge him, for he must be committed.—2 *H. H.* 221.

A justice of the peace in any territorial division may, upon a charge or complaint made upon oath before him of an indictable offence committed without his jurisdiction, by a party

* But see Biot Act, U. C. Stat. c. 97, § 11, and C. Stat. 22 V. c. 91, § 32.

residing or being within his jurisdiction, grant his warrant or summons for the appearance of such party before him or any other justice—*C. Stat. 22 V. c. 102*, § 1. And upon the party accused being brought before such justice, he shall examine the witness, and if in his opinion there be sufficient proof of the charge, he shall commit him to the common gaol or house of correction for the territorial division where the offence is alleged to have been committed, or admit him to bail, (as the case may be,) and bind over the prosecutor and the witnesses by recognizance.—*Ibid.* § 47. But if the evidence be not in the opinion of such justice sufficient to put the accused party upon his trial, then such justice shall bind over the witnesses by recognizance, and by warrant under his hand and seal order the accused party to be taken before some justice or justices for the territorial division where the offence is alleged to have been committed, and deliver up the depositions and recognizances so taken by him to the constable, to be by him delivered to the justice or justices before whom he takes the accused in obedience to such warrant, and the same shall be deemed as if taken before such justice or justices, and shall, together with such depositions and recognizances as such last mentioned justice or justices take in the matter, be transmitted to the clerk of the court, or other proper officer where the accused party is to be tried, if committed for trial, or admitted to bail.—*Ibid.*, § 48.

And where any party is directed to be imprisoned or committed for any act cognizable before any justice or justices, such imprisonment or committal shall, if no other place be mentioned or provided by law, be in or to the common gaol of the locality, or if no common gaol there, then to the nearest common gaol.—*C. Stat. 22 V. c. 5*, § 6, subsec. 21. See also title "*Justices of the Peace.*"

A married woman may be committed, who is a material witness upon any charge of felony, if she refuses to find sureties for her appearance at the sessions.—*Bennett v. Watson*, 3 *M. & S.* 1. And so with regard to witnesses generally—if they refuse to be bound over to appear on the prosecution, they may be committed; and minors or infants under twenty-one years of age, as well as married women, are liable to find sureties. A justice of the peace in England may commit a person to prison in England, for an offence committed in Ireland, in order that the offender may be sent over and tried there.—*R. v. Kimberley*, *Str.* 848. And so upon the same principal a justice of the peace in

Canada may commit to gaol in this province any person charged with felony committed in England, Scotland, or Ireland.

Where contemptuous and libellous words are spoken of a justice of the peace in the execution of his office, *and in his presence*, it seems that he may commit the party for a contempt.—*R. v. Ravel*, 2 *Salk.* 240; *Mayhey v. Locke*, 7 *Taunton*, 63.

Form of the Commitment.

It must be in writing, either in the name of the king, and only tested by the person who makes it, or it may be by such person in his own name, expressing his office or authority, and must be directed to the gaoler or keeper of the prison.—2 *Haw.* 19. It should contain the name and surname of the party committed, if known—if not known, then it may be sufficient to describe the person by his age, stature, complexion, colour of his hair, and the like—and to add that he refuseth to tell his name.—*H. H.* 577. It should set forth that the party is charged upon oath.—2 *Haw.* 120. It ought to contain the cause—as, for treason, or felony, or suspicion thereof—otherwise the prisoner would not only be entitled to his discharge, under the *habeas corpus* act, but if no cause be expressed, and the prisoner escape, neither himself nor the gaoler would be punishable for the escape; whereas if the commitment contained the cause of imprisonment, the escape itself will then be an offence of the same degree as that for which the party was committed.—2 *Inst.* 52, 591. The cause also should be stated with *sufficient certainty*, in order that the party may know for what he is committed, and that it may appear to the court or judge, upon a *habeas corpus*, whether the cause assigned for the commitment was a legal one or not; therefore, if the commitment be for felony, the warrant ought not to state generally *for felony*, but it should state the special nature of the felony—as *felony for the death of J. S.*, or *burglary in breaking the house of J. S.*, otherwise the court could not determine whether the offence amounted to felony or not.—2 *Hale*, 122; 2 *Inst.* 592; 1 *Ld. Ray.* 213.

Where the statute provides a particular form of commitment it should be strictly followed.

Although the form of a commitment for trial may be defective, yet the committing magistrate may issue a warrant of *detainer*, remedying the defect, and this, even after the issuing of a *habeas corpus*.—*R. v. Gordon*, 1 *B. & A.* 572.

But where the commitment is final and by way of *punishment*, it is essentially necessary that the offence (for which the commitment is made) be described with certainty. A commitment therefore of a person, as an apprentice or servant, for disobeying his indentures or articles, but without stating particulars, was held bad for uncertainty.—*R. v. Everett, Cald.* 26. And if a man be committed for non-payment of two sums, one of which is not due, the warrant of commitment is bad for the whole—*Exp. Addis*, 1 *B. & C.* 90.

A commitment in *execution* must allege the party to have been convicted of the offence, and it is bad if it merely state that he was charged with it.—*R. v. Rhode*, 4 *T. R.* 220; *R. v. Cooper*, 6 *T. R.* 509; 12 *East* 78, note (a). It must be distinctly expressed in the warrant whether the commitment be for a time *certain*, or only till the payment of a fine, for the defendant ought to know for what he is in custody, and how he may regain his liberty; therefore, if he be committed for a fine, it ought to be till he pay the fine; if the intent be to punish him by fine and imprisonment, it ought to order imprisonment for such a time, and from thence till he pay his fine.

Charges of the Commitment.

As to the immediate charges of the commitment, and the conveyance of the offender to the gaol, it is provided by C. Stat. 22 V. c. 102, § 49, that the constable shall be entitled to his expenses for conveying an accused party from one jurisdiction to another. § 50. Upon the constable delivering to the justice or justices the warrant and depositions, &c., and proving by oath the hand-writing of the justice or justices thereto, such justice or justices shall thereupon furnish the constable with a receipt or certificate (according to the prescribed form in the act) of their having received the body of the accused, &c. § 51. And the constable on producing such receipt or certificate to the sheriff or high bailiff, if employed by either of them, otherwise to the treasurer of the municipality or division in which the party was apprehended, shall be entitled to be paid all his reasonable charges, costs, and expenses of conveying such accused party into such other jurisdiction and of returning therefrom.

Gaoler shall receive the Prisoner.

If the gaoler shall refuse to receive a felon, or if he take any thing for receiving him, he shall be punished for the same,

by the justices of gaol delivery.—4 Ed. III. c. 10; *Dalt. c. 170*. But if a man be committed for felony, and the gaoler will not receive him, the constable must bring him back to the town where he was taken, and that town shall be charged with the keeping of him, until the next gaol delivery; or the person that arrested him may, in such case, keep the prisoner in his own house.—*Dalt. c. 170*. But in other cases, it seems that no one can justify the detention of a prisoner in custody out of the common gaol, unless there be some particular reason for so doing; as, if the party be so dangerously sick that it would apparently hazard his life to send him to the gaol, or there be evident danger of a *rescue*, or the like.—2 *Haw. 118*.

By statute 3 Hen. VI., c. 3, the sheriff or gaoler shall certify the commitments to the next gaol delivery.

Commitment—how it may be Discharged.

It seems that a person legally committed for a crime certain cannot (unless under the Habeas Corpus Act) be lawfully discharged by any one but the king, till he be acquitted on his trial, or have an *ignoramus* found by the grand jury, or none to prosecute him on a proclamation for that purpose by the justices of gaol delivery: but if a person be committed on a bare suspicion, without an indictment, for a supposed crime, when afterwards it appears that there was none; as, for the murder of a person thought to be dead, who afterwards is found to be alive; it hath been holden that he may be safely dismissed without any further proceedings.—2 *Haw. 121*. This position, however, will not always hold good; for though a person supposed to be murdered may have recovered from the injuries he received, yet the offender may still be indicted for an *attempt to murder*, or do the party some bodily harm, in which cases it would be highly improper that any gaoler should take upon himself to discharge the prisoner without an order from a magistrate.

A commitment after a conviction, for a time certain, is a commitment in execution, and does not admit of bail.—*Anon. 11; Mod. 45*. But, on a commitment to the sessions, under the Vagrant Act, 17 Geo. II., c. 5, § 32, two magistrates (of whom the committing magistrate was one) might discharge the prisoner before the sessions—*R. v. Rhodes, 4 T. R. 220*. When the commitment is till payment of a fine certain, it follows of course that the party is entitled to be set at liberty on payment of it.—*Dalt. c. 170, § 12*.

For the several forms of "*Commitment*," See "*Indictable Offences—Summary Conviction*."

COMMON SCHOOLS.

Legislative Grant for.

By C. Stat. 22 V. c. 26, § 1, one million of acres of Crown lands are set apart for common school purposes, the money arising from the sale or disposal of the same to be invested and applied towards creating a capital sum, sufficient, at the rate of six per cent. per annum interest, to produce a clear sum of \$400,000 per annum, and such capital and the income thereof shall form the common school fund. § 2. All moneys arising after the 27th day of May, 1850, from the sale of any public lands of the province, shall remain or be set apart as part of the capital of the said common school fund, until the same is sufficient, at the rate aforesaid, to produce said sum of \$400,000 per annum. § 3. The capital to remain invested in public debentures of the province, or in the debentures of any public company or companies, incorporated by act of the legislature, for the construction of a public nature. (2) Said fund and income not to be alienated for any other purpose, but to remain a perpetual fund for the support of common schools, and the establishment of township and parish libraries. § 4. For the support thereof until the said common school fund produces a net yearly income of \$200,000 and upwards, the sum of \$200,000 is granted to Her Majesty out of the annual income and revenue derived from such permanent fund, and of such further sum as may be requisite to complete the same, out of any unappropriated moneys levied by the authority of the legislature for the public uses of the province. § 5. Said sum of \$200,000 annually to be apportioned by order of the Governor in Council, between Upper and Lower Canada, in proportion to the relative numbers of the population, as the same shall from time to time be ascertained by the census next before taken in each of the said divisions respectively. § 6. So soon as the net annual income of \$200,000 shall be realised from the permanent fund, the grant out of the public revenue is to cease. § 7. The Governor in Council is authorised to reserve out of the proceeds of school lands in any county a sum not exceeding one-fourth, and out of the proceeds of unappropriated Crown lands in any county a sum not exceeding one-fourth, for public improvements in such county. (2) Accounts to be laid before parliament each session.

Common School Act.

U. C. Stat. 22 V. c. 64, § 1. Existing organization and school arrangements to continue when this act comes into force.

§ 2, 3. *Annual elections* for school trustees to be held on the second Wednesday in January, commencing at ten of the clock in the forenoon.

Township School Sections and Trustees.

§ 4. For each section there shall be three trustees, each holding office for three years, and until his successor is elected. § 5. Any trustee elected to fill a vacancy to hold office for the unexpired term. § 6. No trustee to hold the office of local superintendent or teacher within his section. § 7. When a school section is formed under the 39th section of this act, notice to be given by the township clerk to the person appointed to call the first school meeting for the election of trustees, of the description and number of such school section. § 8. The person so appointed shall, within twenty days, give notice in writing of the time and place of such meeting, copies of such notice to be posted in at least three public places in the section six days before the meeting. § 9. A president and secretary at such meeting to be appointed by the freeholders and householders of the section present. § 10. The chairman to have a casting vote. § 11. Votes to be taken in the manner decided by the majority present; a poll to be granted at the request of any two electors. § 12. Three trustees to be elected. § 13. To continue in office as follows, (1) the first person elected, for two years from the annual school meeting next after his election, (2) the second, for one year, (3) the third, until the next annual school meeting. § 14. A copy of the proceedings to be transmitted by the secretary to the local superintendent. § 15. One trustee to be elected annually in the place of one whose term of office is about to expire. The same person, if willing, may be re-elected, but not without his consent, for the next four years. § 16. At the annual school section meeting the freeholders and householders present, or the majority shall (1) elect a chairman and secretary, (2) receive and decide upon the report of the trustees, (3) elect a trustee or trustees to fill up vacancies, (4) provide for the salaries of the teachers, and all other expenses.

§ 17. A declaration of qualification to be made by any elector whose qualification may be challenged. § 18. Any false declaration to be a *misdemeanor*, punishable by fine

or imprisonment at the quarter sessions, or by a penalty of not less than five dollars, nor more than ten dollars, recoverable with costs, before a justice of the peace, by the trustees for the use of the section. § 19. Subscribers to separate schools not to vote at election of trustees for common schools. § 20. Place of annual school meetings to be appointed by the trustees. § 21. In case of neglect to call meetings, trustees to forfeit five dollars, recoverable before a justice of the peace, for the use of the section. § 22. In case of such default, any two freeholders or householders may, within twenty days after the time the meeting should have been held, call a meeting, by giving six days' notice in three public places in such section. § 23. Any person chosen as trustee, and refusing to serve, forfeits five dollars, or refusing or neglecting duties the sum of twenty dollars, recoverable before a justice of the peace.

§ 24. Any trustee may resign with the consent of his colleagues and of the local superintendent. § 25. In case of contested election, the local superintendent within twenty days to receive and investigate complaint and decide thereon, and appoint time and place for a new election; (2) also the time and place for any special school section meeting. § 26. The trustees to be a body corporate.

Duties of the Trustees.

§ 27.—1. To appoint a secretary treasurer, who shall give security (a) for the correctness of papers and moneys. (b) Recording proceedings. (c) Accounting for school moneys. (d) Disbursements. 2. To appoint a collector. 3. To take possession of school property; acquire and hold land for common school purposes. 4. Provide for building, repairing, renting, warming, furnishing and keeping schoolhouse in order, and for procuring apparatus and text books for their school. 5. Renting a schoolhouse when necessary. 6. To establish, with the consent of the local superintendent, both a female and male school. 7. To unite (if expedient) with any public grammar school. 8. Employ teachers, determine salaries. 9. To give orders upon the local superintendent of the school fund. 10. To provide for teachers' salaries and other expenses as may be desired by a majority of the freeholders and householders at the annual school meeting, or special meeting called for the purpose, and if funds insufficient, to assess and collect an additional rate. 11. To make out a rate bill and warrant to the collector. 12. To apply to the township council, or of their own

authority levy and collect by rate all sums for the support of their school, purchase of school sites and erection of schoolhouses, and for other school purposes. 13. To exempt, in their discretion, indigent persons from payment of school rates. 14. To sue for school rates from non-residents. 15. To make return to the clerk of the municipality of school rates and uncollected arrears from non-residents. 16. To permit all residents in the several sections, between the ages of five and twenty-one years to attend school, excepting persons in whose behalf a separate school has been established. 17. To visit and see that the school is properly conducted. 18. That no unauthorised books are used in the school, and proper books supplied, and procure periodicals devoted to education. 19. To appoint a librarian, and establish a library. 20. To exercise all corporate powers vested in them by the act. 21. To prepare annual report to be read at the annual section meeting, including a detailed account of moneys received and expended. 22. To make half yearly returns to local superintendent of the average attendance of pupils. 23. To ascertain the number of children between the ages of five and sixteen residing in the section on the 31st of December in each year, and make annual report to the local superintendent on or before the 15th of January, specifying therein 1. The time the school has been kept open. 2. Moneys received and paid. 3. The average attendance at school, winter and summer. 4. Branches of education taught, text books, number of school examinations, lectures, &c.,

§ 28. Trustees neglecting to make such report by 31st January to forfeit weekly, each of them, five dollars, to be sued for by the local superintendent. § 29. Unsatisfactory accounts to be referred to arbitration. § 30. New school sites to be authorised by a special meeting of the freeholders and householders. § 31. Trustees responsible for moneys lost from neglect of duty. § 32. Union of school sections provided for.

Duties of Township Councils.

§ 33. Assessors to value lands in each section. § 34. May assess for purchase of a school site, erection, repair, rent and furniture, &c., of a school-house. § 35. May authorise trustees to borrow money for school purposes. § 36. One rate only to be levied annually, except for school site or school-house. § 37. May levy sums for establishing libraries and a model school. § 38. Common schools may be merged

into such model school. § 39. New school sections may be formed. § 40. Existing sections altered. § 41. Public meeting to be called for union of sections. § 42. First election in united sections to be held as provided for in the seventh to the twelfth sections. § 43. Share of school funds to be apportioned. § 44. School sites when no longer required may be disposed of. § 45. Union of sections of two or more townships may be formed. § 46. Such union section to be considered as belonging to the township where schoolhouse situate. § 47. Section unions may be dissolved by either township council. § 48. Township clerk to furnish local superintendent with a copy of proceedings. § 49. And prepare a map of the township shewing the school sections.

Duties of County Municipal Council.

§ 50. To raise yearly an amount equal to that apportioned by the chief superintendent. § 51. To be collected and paid to county treasurer by the 14th December. § 52. May raise money for a county common school library. § 53. Appoint the local superintendent and provide for his salary. § 54. No local superintendent to have the oversight of more than one hundred schools. § 55. His appointment to be notified to chief superintendent. § 56. Security to be furnished by officers for school moneys. § 57. May appoint sub-treasurers. § 58. County account to be audited annually. § 59. Auditor's report to be sent to chief superintendent on or before the first day of March.

Councils and Trustees in Cities, Towns, and Incorporated Villages and their duties.

§ 60. Invested with the same powers, and subject to the same obligations, as in sections 34, 35, and 50, 51, 55, 56, 58, and 59. § 61. Board of trustees to appoint the local superintendent.

Cities and Towns divided into wards.

§ 62. Two trustees to be elected for each ward, to continue in office *two* years, one to retire on the second Wednesday in January, yearly in rotation. § 63. Provision for first election on the incorporation of any city or town. § 64. Annual elections of trustees to be held in each ward at the time prescribed by s. 3.

Towns not divided into wards and villages.

§ 65. Six school trustees to be appointed, *two* of them after the first election to retire annually on the second Wednesday in January.

First Election.

§ 66. Upon the incorporation of any town or village the returning officer is to call the meeting, and in case of his neglect *one month* any two freeholders may do so, giving six days' notice, and at such meeting six trustees to be elected. § 67. To be divided into three classes, of two individuals each, and numbered 1, 2, 3. § 68. One class to retire yearly in rotation.

Subsequent Elections.

§ 69. School meeting to be held annually on the second Wednesday in January, for the election of two trustees, who shall continue in office three years.

Provisions of general Application.

§ 70. Any voter objected to may be required to make the declaration as prescribed (*for which see the act*). § 71. False declaration to be a misdemeanor, punishable by fine and imprisonment, as in the 18 section. § 72. Contested elections to be decided by the judge of the county court. § 73. Any returning officer convicted before such judge of dereliction of duty or partiality shall be subject to a fine of not less than \$20, nor more than \$100, at the discretion of the judge. § 74. Costs of contested elections to be paid as the judge may decide. § 75. Trustees elected to fill vacancies to hold office for the unexpired term only. § 76. Retiring trustees may be re-elected—with their consent—otherwise exempt for four years. § 77. Trustees to be a corporate body. § 78. The first meeting of the board may be called by any trustee.

Duties of the Board of Trustees.

§ 79. 1. To elect a chairman. 2. Appoint a secretary, local superintendent, one or more collectors, who may also be secretary treasurer. 3. To appoint the times and places of meetings. 4. To take possession of school property. 5. Manage or dispose of the same, and school moneys. 6. To apply the same for the objects intended. 7. Provide school premises, apparatus, text books, and libraries. 8. To determine (a) the number, sites, and description of school: also the teachers to be employed: their remuneration and duties; also (c) the salary of the local superintendent, and his duties. 9. To provide at their discretion for union with county grammar school. 10. To appoint (if expedient)

a committee of not more than *three* persons for the special charge of each school. 11. To prepare and lay estimates before the municipal council of the sums they think requisite, (a) for paying salaries of teachers, (b) for purchasing or renting school premises, (c) for building, renting, repairing, &c., school-houses and grounds, (d) for procuring suitable apparatus and text books, (e) school libraries, (f) for all other necessary expenses. 12. To levy rates upon parents or guardians of children attending school. 13. To give orders to teachers, or the chamberlain, or treasurer for the sums due to them. 14. To call annual and special school meetings, as prescribed in the 20 §. 15. To see that pupils are duly supplied with text books, &c. 16. That the schools under their charge are properly conducted; and publish annual reports in newspaper. 17. To prepare and transmit annual reports before the 15 January to the chief superintendent. 18. To exercise the powers vested in them, so far as they judge expedient.

Common School Teachers and their Duties.

§ 80. Must hold a certificate of qualification. § 81. No teacher to hold office of school trustee or local superintendent. § 82. Their duties: 1. To teach diligently and faithfully. 2. To keep the daily, weekly, and monthly or quarterly register. 3. To maintain order and discipline in his school. 4. To keep a visitors' book. 5. To give the trustees at all times access thereto. 6. To have a public examination of his school at the end of each quarter. 7. To give local superintendent, when desired, information respecting the school.

§ 83. Teachers entitled to full payment, until whole salary paid up. § 84. Difference between school trustees and teachers to be settled by arbitration. § 85. Arbitrators may require the attendance of witnesses, with books and papers. § 86. Arbitrators may enforce their award by warrant. § 87. Actions at law not to be resorted to.

Duties of Local Superintendents of Schools.

§ 88. To continue in office until the first of April next after his appointment, and entitled annually to not less than \$4 per school under his charge. § 86. In case of resignation the warden of the county may appoint his successor. § 90. No local superintendent to be a teacher or trustee.

His Duties.

§ 91—1. To apportion school moneys. 2. To give to

teachers, on the order of the trustees, a check upon the county treasurer or sub-treasurer for money due. 3. To visit each common school in his section twice in the year, or oftener if required by the council or board appointing him. 4. To examine at each half-yearly visit the state and condition of the school progress, order and discipline observed, system of instruction pursued, &c. 5. To deliver in each section a public lecture once a year. 6. To see that the schools are managed and conducted according to law. 7. To attend the meetings of the board of public instruction, and confer with the chief superintendent. 8. To attend arbitrations and meetings of township reeves, provided for in secs. 27, 29, 45; to decide upon or refer questions submitted to him to the chief superintendent, with right of appeal to any aggrieved party to the chief superintendent. 9. To suspend certificates of qualification, until meeting of the county board. 10. To give certificates of qualification on due examination. 11. To observe regulations and instructions provided for his guidance, and give (when desired) information to the chief superintendent, furnish county auditors, when required, with the trustees' orders as the authority for his money checks, and on retiring from office to deliver copies of his official correspondence and school papers in his custody to the order of the county council. 12. To prepare and transmit to the chief superintendent an annual report on or before the first day of March, which shall state (a) the number of schools and school-sections within his jurisdiction, (b) the number of pupils taught, and ages. (c) The time each school has been open; number and average attendance of pupils in each half year. (d) The amount of moneys collected in each section, and expenditure of the same. (e) The number of school visits made by himself and others during the year; the number of lectures delivered; number of school children, &c. (f) Number of qualified teachers, standing, sex, and religious persuasion; number of private schools and other particulars.

§ 92. Local superintendents of adjoining townships to determine the sums to be paid in support of union sections.

§ 93. In case of disagreement the warden of the county to decide.

Constitution and duties of the County Board of Public Instruction.

§ 94. When only one county grammar school, the board of trustees for such school and local superintendents to

constitute the board of public instruction for such county. § 95. If more than one grammar school, the county council to divide the county into circuits; and for each circuit the trustees of each county grammar school and local superintendents to be a board of public instruction. § 96. Three members (including a local superintendent) to be a *quorum*. § 97. The county council to provide for incidental expenses.

Duties of County and Circuit Boards of Public Instruction.

§ 98.—1. To meet not less than four times a year. 2. To adopt measures to promote the establishment of school libraries, &c. 3. To select school books. 4. Examine and give certificates of qualification to teachers. 5. Annul certificates when judged expedient.

§ 99. Certificates to have the signature of at least one local superintendent: none to be given without satisfactory proof of good moral character, or the party being a natural born or naturalized British subject, and having taken the oath of allegiance before a justice of the peace of the locality.

School Visitors and their duties.

§ 100.—All clergymen recognised by law, all judges, members of the legislature, magistrates, members of county councils, and aldermen to be school visitors within their localities. § 101. Authorised to visit schools and attend quarterly examinations and give advice to teachers. § 102. A general meeting of visitors may be convened by any two.

Chief Superintendent of Education. His duties, &c.

§ 103.—To be appointed by the Governor. § 104. Responsible to and subject to his direction. § 105. Allowed two clerks. § 106. His duties: 1. To apportion on or before the 1st day of May all legislative grants for school purposes. 2. To certify such apportionment to the minister of finance. 3. To direct the distribution of the common school fund. 4. Apportion the legislative grant for school libraries. 5. To prepare suitable forms and instructions for reports and proceedings under this act. 6. To print and circulate copies of this act to officers of common schools. 7. To see to the due appropriation of school-moneys apportioned, and decide upon complaints. 8. To direct the application of balances. 9. To appoint one of his clerks as his deputy in his absence: to appoint inspectors. 10. To take the superintendence of the normal school, and recommend text books for the schools generally.

11. To promote the establishment of school libraries. 12. To provide and recommend plans of school-houses, &c. 13. To submit to the council of public instruction text books or library books for their sanction. 14. To appoint persons to conduct county teachers' institutes. 15. To be responsible for all moneys paid through him in behalf of normal and model schools and give security therefor. 16. To prepare and transmit all correspondence directed by the council of public instruction. 17. To make an annual report to the Governor on or before the 1st day of July, of the state of the normal, model, and common schools throughout Upper Canada, and expenditure. 18. To lay before the legislature at each sitting thereof an account of the disposition and expenditure of moneys which have come to his hands: and annually on or before the 30th day of January to make the reports required by "the act for the more efficient auditing of public accounts."

§ 107.—The chief superintendent, on the recommendation of the teachers in the normal school, may give teachers of common schools certificates of qualification which shall be valid in any part part of Upper Canada. § 108. Judges of division courts authorised to delay judgment in any case, in order to allow of appeal to the chief superintendent. § 109. The chief superintendent authorised to appeal from the decision of division court judge to that of the superior courts. § 110. Such judge to certify proceedings accordingly. § 111. The matters to be disposed of by such superior court. § 112. And the judge of the division court to proceed accordingly. § 113. Costs of appeal to be paid by chief superintendent, and charged as contingent expenses.

Constitution and Duties of the Council of Public Instruction.

§ 114.—To consist of not more than nine persons, chief superintendent being one, appointed by the Governor, holding office during pleasure. § 115. Chief superintendent to provide place and call meetings. § 116. Expenses to be accounted for. § 117. Senior clerk in education office to be recording clerk to the council. § 118. Three members to form a quorum. Chairman to have a casting vote.

Duties of such Council.

§ 119.—1. To appoint a chairman. 2. To adopt measures for establishment of normal and model schools. 3. To make rules and regulations for government of the same. 4. To make regulations for common school teachers, and school

libraries. 5. To recommend or disapprove of text books. 6. To prescribe regulations for pensions to superannuated teachers. 7. To make annual reports to the Governor of normal school expenditure.

§ 120.—Appropriation of legislative school grants, viz. :

1. *Under the direction of the Council of Public Instruction.*

A. For salaries of officers and contingent expenses of Normal school, a sum not exceeding.....	\$6,000
B. For attendance of teachers in training at Normal school, a sum not exceeding.....	4,000
C. For support of the Normal and Model schools, a sum not exceeding.....	2,200
D. For Model Grammar school, in connection with Normal and Model schools, a sum not exceeding.....	4,000
E. For inspectors of grammar schools, a sum not exceeding.....	1,000
F. For superannuated common school teachers, a sum not exceeding.....	4,000

2. *Through the Chief Superintendent of Education.*

A. For purchase of books, &c., for library and museum, a sum not exceeding.....	2,000
B. For copies of <i>Journal of Education</i> to school corporations, &c., a sum not exceeding.....	1,800
C. For school libraries, a sum not exceeding.....	26,000
D. For maps and apparatus, “ “	10,000
F. For a Teacher's Institute, in any county or riding, a sum not exceeding	100
G. For improvement of school architecture, a sum not exceeding.....	800
H. In aid of common schools, in new and poor townships, a sum not exceeding.	2,000

§ 121. The whole of the remainder to be expended in aid of common schools. § 122. Grants made before the 24th of July, 1856, not to be lessened. § 123. Apportionment to be payable annually, on or before the 1st of July. § 124. Municipalities to raise by assessment a sum equal to apportionment, or deduction to be made therefrom. § 125. School expenses of each section to be provided for (1) by voluntary subscription. 2. Rate bill for each pupil. 3. Rate upon property. No rate bill to exceed twenty-five cents per month for each pupil.

Special Provisions.

§ 126. Persons sending children to neighbouring school section, to be liable for rates assessed in section where they reside. § 127. Collectors to make returns to clerk of the municipality of uncollected rates, who shall return same to county treasurer for collection, as other arrears of taxes. § 128. Foreign books in the English branches not to be used without permission of the Council of Public Instruction. § 129. Pupils not to be required to read or study religious books objected to by their parents.

Penal Clauses.

§ 130. Any secretary or treasurer wrongfully withholding, or not accounting for books, papers or moneys, to be guilty of *misdeemeanor*. § 131. May be compelled to appear before the county judge. § 132. Order, how to be served. § 133. The judge may order a certain day for such delivery and account. § 134. In default of compliance, the party to be forthwith arrested by the sheriff, and committed to the common gaol, to remain (without bail) until delivery and account made. § 135. To be then discharged by judge's order. § 136. Other remedies not to be affected or impaired. § 137. Any loss to common school fund arising from insufficient security, to be borne by the party originally responsible. § 138. Any trustee signing a false report, or any common school trustee making a false return, or making a false return with a view of obtaining an undue proportion of school moneys, to forfeit for each offence \$20, recoverable before any justice of the peace, upon the oath of one credible witness, other than the prosecutor, to be levied (if not forthwith paid) by distress and sale, or the offender may be prosecuted and punished for *misdeemeanor*. § 139. Any person wilfully disturbing any school meeting, or any grammar, common or other public school, shall incur for each offence, on conviction before a justice of the peace, on the oath of one credible witness, a sum not exceeding \$20 with costs; or the offender may be indicted and punished for *misdeemeanor*. § 140. All penalties under this act (unless otherwise provided) recoverable before any justice of the peace within the jurisdiction, and if not paid, may be levied by distress and sale with costs, and in default thereof, the offender imprisoned for any time not exceeding thirty days, unless fine and costs sooner paid.

SEPARATE SCHOOLS.

U. C. Stat. 22 V. c. 65.

1.—*Protestant and Coloured People.*

§ 1. Application for, to be in writing of twelve or more heads of families, being protestants, and made to the municipal council; and a similar provision made in favour of coloured people. § 2. Three trustees to be appointed for each such school. § 3. Commencement as in case of altered school section. § 4. Coloured people only to vote at the election of trustees for separate schools for them. § 5. May be established in wards of any city or town. § 6. No protestant separate school to be allowed, unless the teacher of the common school is a Roman Catholic. § 7. Parties sending children to separate schools to be exempt from other school rates. § 8. But exemption limited to the time of attendance. § 9. Separate schools not to share in any school assessment. § 10. But may share in legislative grant according to the yearly average of pupils. § 11. Teacher's certificate of qualification to be signed by a majority of the trustees. § 12. Trustees of such schools to make half-yearly returns to the local superintendent of the number of pupils. § 13. Local superintendent to report to clerk of the municipality and trustees of the common school section. § 14. Parties' names appearing on such return to be exempt from general school rate. § 15. Trustees of separate schools to have copy of the assessment roll. § 16. Provisions of the 138th section of the "Common School Act" to apply to separate schools. § 17. Trustees of separate school to be a corporate body.

2. *Roman Catholic Separate Schools.*

§ 18. Any five persons, heads of families, may convene a public meeting for the election of trustees. § 19. The majority present (not less than *ten* in number) being freeholders or householders, and Roman Catholics, may at such meeting elect three trustees. § 20. Notice in writing to be given to the reeve or chairman of the board of common school trustees. § 21. Officer receiving such notice to endorse the date. § 22. Trustees therein named to be thenceforth a body corporate. § 23. Provision for union of such separate schools in wards of cities or towns. § 24. Trustees of separate schools under this act to have the same powers for levying and collecting school rates upon persons sending

children to such school as the trustees of common schools have. § 25. And be subject, as well as teachers, to same duties and penalties. § 26. Annual election of such trustees. § 27. Other children may be permitted to attend such schools. § 28. Certificate of teachers' qualification to be signed by a majority of the trustees. § 29. A supporter of such school giving notice to the clerk of the municipality of his being a Roman Catholic, and a supporter of such separate school, shall be exempt from common school rates. § 30. Clerk of the municipality to give certificates accordingly. § 31. Any person fraudulently giving such notice is liable to a penalty of \$20, recoverable with costs before any justice of the peace at the suit of the municipality. § 32. Exemption from school rates limited to subsequent rates. § 33. Such separate schools entitled to share the legislative grant, viz.:—1. Provided the average number of pupils be fifteen or more. 2. But not to share in any municipal assessment. § 34. Trustees to make half yearly returns to the chief superintendent. § 35. Election of trustees to be void unless the school is established within *two* months. § 36. Supporters of separate schools not entitled to vote at elections of trustees for common schools.

By the U. C. Municipal Act 22 Vic. ch. 54, § 266, the municipalities are also authorised to make by-laws for acquiring property for the erection of common school-houses therein, and for providing for the support of common schools according to law.

COMMON SCOLD.

A common scold, *communis rixatrix*, (for our law-Latin, says *Blackstone*, confines it to the feminine gender,) is a troublesome, angry woman, who by her brawling and wrangling amongst her neighbours breaks the public peace; increases discord and becomes a public nuisance to the neighbourhood: she is, therefore, liable to be indicted as a public nuisance, and on conviction to undergo the punishment of the tre-bucket, or ducking-stool.—4 *Bl. Com.* 168.

COMMUTATION.

By U. C. Stat. 22 V. c. 115, § 2, the Governor may commute the sentence of death upon any person convicted of a capital crime (other than high treason or murder, except with authority from her Majesty) to solitary confinement, or to confinement with or without hard labour, in the common gaol or house of correction, for any period less than two

years, or in the penitentiary either during life, or for any term of years not less than two years.

COMPOUNDING FELONY.

Is a misdemeanor at common law called *Theftbote*—which is, where the party robbed not only knows the felon, but also takes his goods again, or other amends, upon agreement not to prosecute. This is frequently called *compounding of felony*, and formerly was held to make a man an accessory, but is now punished only with fine and imprisonment.—*1 Bl. Com. p. 138, 16 Ed.; 1 Hacc. c. 59, § 5.*

By C. Stat. 22 V. c. 92, § 79.—If any person corruptly takes any money or reward, directly or indirectly, under pretence or on account of helping a person to any chattel, money, valuable security or other property whatsoever, which by any felony or misdemeanor has been stolen, obtained or converted as aforesaid, such offender shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of felony, and, shall be imprisoned in the penitentiary for any term not less than two years, or to be imprisoned in any other place of confinement for any term less than two years. § 80. If any person publicly advertises a reward for the return of any property which has been stolen or lost, and in such advertisement uses any words, purporting that no question will be asked; or makes use of any words, in any public advertisement, purporting that a reward will be given or paid for any property which has been stolen or lost, without seizing or making any enquiry after the person producing such property; or promises or offers 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 the property; or if any person prints or publishes any such advertisement, in any of the above cases, the offender shall forfeit the sum of \$80 for the offence, to any person who will sue for the same by action of debt, to be recovered with full costs of suit.

Indictment for Compounding a Felony.—(Archbold.)

County of , } The jurors for our lady the Queen, upon
to wit. } their oath present, that heretofore, to wit, on
the day of in the year of the reign of our sovereign
lady Victoria, at the township of in the county of .
one A. wife of J. N. feloniously stole, took, and carried away,

one silver spoon of the value of twenty shillings, of the goods and chattels of one J. S., against the peace of our lady the Queen, her crown and dignity. And that the said J. S. late of the township aforesaid, in the county aforesaid, labourer, well knowing the said felony to have been by the said A. so as aforesaid done and committed; but contriving and intending unlawfully and unjustly to prevent the due course of law and justice in that behalf, and to cause and procure the said A. for the felony aforesaid to escape with impunity; afterwards, to wit, on the day and year aforesaid, unlawfully, and for wicked gain's sake, did compound the said felony with the said J. N. the husband of the said A., and then and there did exact, take, receive and have of the said J. N. the sum of twenty-six shillings, for and as a reward for compounding the said felony, and desisting from all further prosecution against the said A. for the felony aforesaid; and that the said J. S., on the day and year aforesaid, at the township aforesaid, in the county aforesaid, did therefore desist, and from that time hath desisted from all further prosecution of the said A. for the felony aforesaid to the great hindrance of justice, in contempt of our lady the Queen, her crown and dignity.

COMPOUNDING OTHER OFFENCES.

The compounding of *informations on penal statutes* is a misdemeanor against public justice, by contributing to make the laws odious to the people.—4 *Bl. Com.* 136. Therefore, in order to discourage malicious informers, and to provide that offences, when once discovered, shall be duly prosecuted, it is enacted by the statute 18 Eliz., c. 5, § 4, that if any informer, by colour or pretence of process, or without process, upon colour or pretence of any manner of offence against any penal law, make any composition, to take any money or promise from the defendant without leave of the court, he shall stand two hours in the pillory; be for ever disabled to sue on any popular or penal statute, and shall forfeit £10. This severe statute extends even to penal actions, where the whole penalty is given to the prosecutor. *Bl. Com.* 136, note (a). But it does not apply to penalties which are only recoverable by information before justices; and an indictment for making a composition in such a case was holden bad in arrest of judgment.—*Rex v. Crisp and others*, 1 *B. & A.* 282.

It has been decided that a party is liable to the punishment prescribed by the 18 Eliz., c. 5, for taking the penalty imposed by a penal statute, though there was no action or proceeding for the penalty.—*Rex v. Gotley*, *East T.* 1805, *Russ. & Ry.* 84.

CONCEALING BIRTH.

By C. Stat. 22 V. c. 91, § 4, any woman delivered of a child, who by secret burying or otherwise disposing of the dead body of the said child, endeavours to conceal the birth thereof, shall be guilty of a *misdemeanor*, and shall be imprisoned for any term less than two years; and it shall not be necessary to prove whether the child died before, at, or after its birth.

CONFESSION.

If a party, on examination before a justice, confess a crime, it may be given in evidence against him, but not against others—2 *Haw. c. 46*, § 3; and it is sufficient, though there is no other proof of his having committed the offence, or of the offence having been committed, if such confession was in consequence of a charge against him—*Rex v. Eldridge, Russ. and Ry. c. c. R. 440*; but it must be voluntary, and not have been obtained by any promise, favour, menace or terror; and by C. Stat. 22 V. c. 102, § 32, it is enacted that after the examination of witnesses for the prosecution, the justice of the peace shall read to the accused the depositions against him, and say to him these words, or words to the like effect: "Having heard the evidence, do you wish to say any thing in answer to the charge? You are not obliged to say any thing unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial;" and whatever the prisoner then says 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 be transmitted with them as hereinafter mentioned.

The admissibility of a confession must depend upon circumstances—*Phil. Ev. 104*; and the identity of the examination must be proved before it can be read in evidence—*Sum. 263*; it must be in writing, and not oral, and must be taken altogether and not by parcels.—2 *Haw. c. 46*, § 5; *Leach, 286*; and such examinations should not be on oath.—*Bull, N. P. 242*. Persons confessing themselves, and on that confession adjudged guilty of felony, cannot be admitted to bail—as the only reason for admitting to bail in felony, is where the crime is doubtful.—2 *Haw. c. 15*, § 40. The confession must be in the very words used by the party, and not in the language of another, from recollection.—*Rex v. Sexton, 1 Burn, 692*. A prisoner

may be convicted on the uncorroborated evidence of his own confession.—*Leach*, 287.

CONFINEMENT.—SOLITARY.

By C. Stat. 22 V. c. 99, § 110, may be ordered by the court, in addition to other punishment in certain cases, not exceeding one month at any one time, nor exceeding three months in any one year.

CONSPIRACY.

Is a combination of *two* or more persons to injure a third person—1 *Haw. c.* 72, § 2; or to injure or prejudice the community—8 *Mod.* 11, 320; 3 *M. & S.* 67; thus, where the defendants were charged with conspiracy in causing a man to be convicted and executed for robbery, which they knew he was innocent of, with intent to obtain the reward then given by act of parliament—*R. v. Macdaniel*, 1 *Leach*, 45; *Fost.* 130: so, where the defendants were indicted for conspiring to accuse another of taking hair out of a bag, without alleging that it was done feloniously, *Lord Mansfield* held, that the gist of the offence was the unlawfully conspiring to do an injury to another by a false charge; and that whether the conspiracy be to charge a man with criminal acts, or such only as affect his reputation, it is sufficient—*R. v. Rispal*, 1 *Bl. Rep.* 368; 3 *Burr*, 1320: so, where the prosecution is for the sole purpose of extorting money—*R. v. Hollingbury*, 4 *B. & C.* 329: so also, a conspiracy to prevent the prosecution for a felony is as much an offence as a conspiracy to institute a false prosecution—14 *Ves.* 65; and a conspiracy of two magistrates to prevent the course of justice, on an indictment for not repairing a highway, by signing a false certificate of the highway being in repair, in order to prevent the court from imposing a fine on the defendants, has been also held to be an indictable offence.—*R. v. Mawley*, 6 *T. R.* 619. Among various other subjects of conspiracy may be mentioned a conspiracy to obtain, by procuring in return, the appointment to a public office—*R. v. Pollman*, 2 *Camp.* 229; of several defendants to injure a man in his trade—*R. v. Eccles*, 1 *Leach*, 274; to sell unwholesome wine or provisions—*R. v. Macarty*, and *Fordenburgh*, 2 *Ld. R.* 1179; journeymen combining not to work unless for certain wages—*R. v. Journeymen Tailors of Cambridge*, 8 *Mod.* 10; to suppress a will—*Breerton's case*, *Noy*, 103; or to cause an illiterate person to execute a deed to his prejudice, by reading it over falsely to him.—*R. v. Skirret*, 1 *Sid.* 312, 431.

If all the defendants who are indicted for a conspiracy be acquitted but one, the acquittal of the rest is the acquittal of that one also, as there must *two* concerned in the conspiracy—*Cro. Cir. Com.* 159; 2 *Ld. Ray.* 1167; 2 *Burr.* 993.

By C. Stat. 22 V. c. 99, § 108, in case of any assault committed in pursuance of any conspiracy to raise the rate of wages, the court may sentence the offender to be imprisoned for any term less than two years, and may also fine the offender and require him to find sureties for keeping the peace.

The offence of conspiracy may be tried by justices of the peace in their quarter sessions—*R. v. Rispal*, 3 *Burr.* 1320; and the act of one party, in pursuance of the common object, is evidence in law against all the parties.—*Ph. on Ev.* 76. If one only of two persons indicted appear, he may be tried in the absence of the other defendant.—*R. v. Kinnerley*, 1 *Str.* 193. The punishment for a conspiracy is by pillory, (a) fine and imprisonment, and sureties for the good behaviour.—2 *Bur.* 1027.

See also *post* title “*Workmen.*”

Indictment for Conspiracy. (Chitty.)

County of _____, { The jurors for our lady the Queen, upon
to wit, { their oath present, that A. B., late of _____,
in the county of _____, yeoman, C. D., late of _____, in the said
county, yeoman, and E. F., late of _____ in the same county,
labourer, being persons of evil minds and dispositions, on the
day of _____ in the _____ year of the reign of our sove-
reign lady Victoria, with force and arms, at the township
aforesaid, in the county aforesaid, unlawfully and wickedly
(*or, if the conspiracy be malicious, say “falsely and maliciously”*)
did conspire, combine, confederate and agree together, to (*here
state the object of the conspiracy*) and the jurors aforesaid, upon
their oath aforesaid, do further present, that the said A. B.,
&c., in pursuance of, and according to the said conspiracy,
combination, confederacy and agreement, between them, the
said A. B., &c., as aforesaid had, did, on, &c., at, &c. (*the place
where the overt act took place*) (*here set out the overt acts of conspi-
racy*) to the great damage of, &c. (*the party immediately injured*)
to the evil example of all others, and against the peace of our
said lady the Queen, her crown and dignity (*add a second
count, stopping at the statement of the conspiracy, omitting the
overt acts, and concluding as above.*)

(a) Abolished by C. Stat. 22 Vic. c. 99, § 98.

CONSTABLE.

Who are liable to Serve the Office.

No person can be appointed a constable who is not an *inhabitant* of the place where he is to serve—1 *Burn*, 703; *R. v. Adbard*, 4 *B. & C.* 772: and if a very poor and ignorant person be chosen, he may by law be discharged, and an abler person appointed in his room.—*Ibid.*; *Dalt.* c. 28.

Barristers-at-law, attorneys, and other officers of the Court of King's Bench are exempt from serving the office—2 *Keb.* 508; *Cro. Cri.* 389; 2 *Haw. c.* 10, § 30; and by the ancient custom of the realm, surgeons have been allowed the like privilege.

An *officer in the King's service*, or a *gentleman of quality*, may perhaps be relieved from serving such office, upon application to the Court of King's Bench, provided there are other persons sufficient to execute the office.—2 *Haw. c.* 10, § 41.

It hath been holden that the King may exempt any person, if the exemption be not extended so far as to prevent the *existence* of the office in any place.—*Rex v. Clark*, 1 *T. R.* 682. By 10 & 11 *W. III.*, c. 23, § 2, 3, the prosecutor of a felon to conviction is discharged from liability to serve as a constable. A *foreigner*, though naturalised, is not liable to serve.—*Rex v. De. Mierre, Burr*, 278. No man that *keeps a public-house* ought to be made a constable, if there are other persons in the parish proper to serve.—*Per Holt, C. J.* 6 *Mod.* 42.

How Appointed and how Punishable for refusal to serve.

By 23 *V. c.* 8 (repealing § 10 of *U. C. Stat.* 22 *V. c.* 17) it is enacted: § 2. The magistrates at the first general quarter sessions of the peace to be holden in each county in Upper Canada, in the year 1861, shall appoint (a) a sufficient number of fit and proper persons to act as constables in each township, incorporated village, police village, and place within their respective counties. § 3. The persons so appointed as constables, shall, before entering on the duties of office, take and subscribe the following oath, which any justice of the peace may administer:

“I _____, having been appointed constable for the county of _____, (or united counties of _____, as the case may be,) do solemnly swear that I will truly, faithfully, and impartially per-

(a) And by 24 *V. c.* 48, § 1, a County High Constable.

form the duties appertaining to the said office, according to the best of my skill and ability. So help me God."

§ 4. Every such constable so appointed, and having taken the aforesaid oath, shall continue in office at least one year, and shall further continue in office, from year to year, without re-appointment, unless he shall claim exemption from serving as such constable, in which case he shall be released at any time after the end of the first year, when he shall legally claim, and be entitled to, such exemption:—provided always that the magistrates, at any time, in general quarter sessions of the peace assembled in any county, may dismiss any person from the office of constable, and may at any time appoint such additional number of constables as they, in their discretion, may consider necessary.

If a constable being duly appointed refuse to take the oath, he may be indicted at the assizes or sessions, when, if found guilty, he may be committed—*Rex. v. Lane*, 2 *Str.* 920.

Powers and Duties of the Office.

The *high constable* has the superintendence and direction of all *petty constables* within his district, and he is, in a manner, responsible for their default, for the neglect of which duty he is in fact presentable himself.

Every high and petty constable is, by the common law, a conservator of the peace—2 *Haw.*, c. 8, §6; therefore he is authorised, without any warrant, to arrest all traitors, felons, and suspicious persons, and all those whom he shall see upon the point of committing treason or felony, or doing any act which would manifestly endanger life.—2 *Haw.*, c. 12, § 19; 1 *Bac. Ab.* 441. And by C. Stat. 22 V. c. 99, § 5, any constable or peace officer may, without a warrant, take into custody any person whom he finds lying or loitering in any highway, yard, or other place during the night, and whom he has good cause to suspect of having committed, or being about to commit any felony, and may detain such person until he may be brought before a justice of the peace, to be dealt with according to law. § 6. No person so apprehended shall be detained after noon of the following day, without being brought before a justice of the peace. In case of any breach of the peace committed, or one about to be committed, in the presence of a constable—as where violent attempts are used by any person to beat or hurt another—the constable may arrest the party, and carry him before a magistrate, or detain him till he can conveniently do so—*Dalt. c.* 1, 116,

§ 3. A constable has no right to execute a warrant out of the jurisdiction of the justice who grants it—*Milton v. Green*, 5 *East* 223—unless in case of fresh pursuit, or the same being backed by a magistrate of the district in which the offender is found.

By C. Stat. 22 V. c. 102, § 18, the warrant must be under the hand and seal of the justice granting the same. § 20. It may be executed by apprehending the offender at any place in the territorial division of the justice or justices issuing the same, or in case of *fresh pursuit*, at any place in the next adjoining territorial division, and within seven miles of the border of such first mentioned territorial division, without having such warrant backed. § 21. If directed to all constables, any constable within such territorial division may execute the same. § 24. If the person against whom such warrant is issued, cannot be found within the jurisdiction of the justice issuing the same, or if he escapes, goes into, resides, or is supposed or suspected to be in any place within the province, whether Upper or Lower Canada, any justice of the peace of the jurisdiction within which such person escapes or goes, or in which he resides, is, or is suspected to be, upon proof made on oath of the handwriting of the justice issuing the same, and without any security being given, shall make an endorsement on such warrant, signed with his name, authorising the execution of such warrant within the jurisdiction of such justice, and which shall be sufficient authority for the person bringing such warrant, and all others to whom the same was originally directed, and also to all constables and peace officers of the locality where such warrant has been so endorsed, to execute the same in such other territorial division, and to carry the person named in the warrant before the justice who first issued the same, or before some other justice for the same territorial division, or before some justice of the peace of the division where the offence is alleged to have been committed. § 25. If the prosecutor, or any of his witnesses, be then in the territorial division where the arrest is made, the constable, if so directed by the justice backing the warrant, is to convey the prisoner before him, or some other justice of the same division; and such justice, or justices, may thereupon take the examination of the prosecutor or witnesses, and proceed in every respect as if the offence had been committed in such other territorial jurisdiction.

It is said, however, that a constable is not obliged to execute a warrant out of his district.— *Norman*, 1 *Ld.*

R. 736. A constable cannot imprison a person arrested by him for any longer time than he can conveniently bring him before a magistrate.—*Sav.* 98; *H.* 92; *Com. Dig. Leet*, *M.* 9. A constable (after giving notice that he is one) may break open the door of a house to arrest a felon, if he be concealed therein, and peaceable entrance is denied—2 *H. P. C.* 90, 82.—*Dalt. c.* 1, *Cro. Eliz.* 375, 376. But he must allow a reasonable time to elapse before doing so.—*Wilson's Cons. Guide*, p. 43. In case of felony, or a suspicion of felony, he may break open the house to take the party; but no private person, without a warrant can, on suspicion of felony, if none have been committed, break open the door.—*Ib.* So also upon a *capias* from the Court of Queen's Bench or Common Pleas, or other court of justice having jurisdiction, to compel one to find sureties of the peace.—*Ib.* Or a *capias* founded on an indictment for any crime.—*Ib.* Or (in the *day time*) a warrant to search for stolen goods, if accompanied with a direction to bring the party before a justice, on the charge or suspicion of felony.—*Ib.* Or to enforce the law where a forcible entry or detainer is found by justices, either on an inquest or their own view.—*Ib.* Or a warrant of justices for levying a fine in execution of a judgment, or conviction, grounded on a statute which gives all or any part of the penalty to the Queen.—*Ib.* And if an officer have entered the house in a legal manner, and the outer door is fastened upon him, he and others in his aid may break open the door to set himself at liberty.—*Ib.* He may arrest to prevent a felony.—*Moore*, 284; *H. P. C.* 136, and if one be menaced, he may compel the menacer to find surety, or commit him to prison till he does.—4 *Inst.* 265, *Cro. Eliz.* 375-6; he may break open a house when entrance is denied to abate an affray, or to suppress disorderly drinking, or noise, at an unreasonable hour of the night.—2 *Hale*, *P. C.* 95, 97; he may imprison one who insults or assaults himself, or opposes him, though verbally, in the execution of his office, (a) and may beat another in his own defence.—*Crompt. J. P.* 131. He may arrest (without warrant) any person found committing an offence punishable by indictment, or upon summary conviction, and take the offender, forthwith, before some neighbouring justice, to be dealt with according to law.—*C. Stat.* 22 *V. c.* 99, § 1. Or

(a) But he should take him with all expedition before a justice to be dealt with according to law.

any person guilty of cruelty to animals, either upon his own view, or upon the information of any other person, (who shall declare his or their name, or names, and places of abode, to the peace officer,) and convey such offender before a justice, within whose jurisdiction the offence was committed, to be dealt with according to law.—*C. Stat.* 22 *V. c.* 96, § 5. Or any person found committing any trespass upon the lands of another, taking the offender before the nearest justice.—*U. C. Stat.* 22 *V. c.* 105, § 2—25 *V. c.* 22, in amendment. The words in the statute are, “found committing,” therefore, if the offender be gone, the arrest should not be without warrant. He may arrest one for selling wares, or using unlawful sports on Sundays.—*Com Dig.* “Leet.” *M.* 9. He may arrest any one for playing with false dice, or committing any other indictable fraud affecting the public.—*Com. Dig.* “Pleader,” 3 *M.* 22. He may arrest any one for keeping a common gaming-house, for it is a nuisance and a misdemeanor.—1 *Haw. P. C.*, c. 25, § 6. And so also for cock-fighting; for it is illegal and indictable at the common law.—*Bac. Ab.* “Gaming,” A. He may arrest night-walkers, and persons who frequent bawdy-houses, that is, he may arrest persons found misdoing; but he cannot take up a woman of ill fame on mere suspicion, who is not misconducting herself.—*H. P. c.* 93; *Rex v. Bouttie*, 2 *Bur.* 864. If a warrant be directed generally, “to bring before me, or some other justice,” he may carry the prisoner before what justice he chooses in the district—but not if specially directed—5 *Rep.* 596; he has no right to handcuff a prisoner except he has attempted to escape, or that it is necessary in order to prevent an escape—3 *Ma. Ca.* 299; he should seize the goods of felons who fly the country for the King’s use.—*Cromp. J. P.* 201; he is to aid and assist in the appraisement and sale of goods distrained for rent, and may swear the appraisers—2 *W. & M. sess.* 1, c. 5; he is also to aid landlords in seizing, as a distress for rent, goods fraudulently removed to avoid such distress, and they may break open a house wherein they are deposited—(oath being first made before a justice of reasonable suspicion of their being there.)—11 *G. II.*, c. 21, § 3. Constables may seize a stranger guilty of profane cursing and swearing, and carry him before a justice; but if known, he may lay an information.—19 *G. II.*, c. 21, § 3. A constable making a distress under a justice’s warrant, shall, on demand, shew the same to the party, and permit a copy to be taken.—27 *G. II.*, c. 20. But if the constable be duly sworn, and com-

monly known to be an officer, and act within his own precinct, he need not show the party his warrant, though he should demand it; but he ought to acquaint the party with the substance of it.—2 *Haw. c.* 13; 1 *East P. C.* 319. He is not discharged from his office until his successor is sworn.—12 *Mod.* 256. The voluntary confession of a person after his arrest, made to the constable, will be admissible in evidence against him. But it must be purely voluntary, and not procured by any threat or promise that it will be better or worse for him. The proper course for the constable to observe on such occasions is to caution the prisoner that any confession he makes will be admissible against him on his trial. It is not necessary, or proper, that the constable should do or say more than this. He should not *dissuade* him from making confession if he wishes to do so. But after telling the prisoner he need not say any thing, and cautioning him as above, he should leave the prisoner to act and judge for himself. “A prisoner is not to be entrapped into making any statement; but when a prisoner is willing to make a statement, it is the duty of the magistrate to receive it”—and of course the constable to hear it—*per Lord Denman, Reg. v. Walker*, 8 *C. & P.* 621; *Wilson’s C. G.*, p. 60. It will be the same also, although the constable or other person did not use such means himself; but, being present, allowed another to draw the confession from the prisoner by such inducements.—*Reg. v. Laugher*, 2 *C. & K.* 225; 1 *Tayl. Ev.* 588.

It seems doubtful whether, in this province, a constable can appoint a deputy. *Wilson’s Constable’s Guide*, 1859, p. 18.

No bailiff or constable shall directly or indirectly purchase any goods or chattels by him exposed to sale under any execution.—*U. C. Stat. 22 V. c.* 38, § 11.

See also title “*Arrest.*”

Indemnity and Protection.

An action against a constable for any act done in the execution of his office must be brought in the district where the offence was committed, to which action he may plead the general issue, and give the special matter in evidence; and if he recover, he shall have double costs—21 *Jac. I. c.* 12. And every man aiding a constable in the execution of his office has by law the same protection as the constable.—2 *Hale, P. C.* 97. A justice’s warrant is a good justification of a constable, in any matter within the jurisdiction of such justice, but not otherwise.—*Str.* 711.

By stat. 24 G. II. c. 44, the constable is not answerable for the execution of a warrant, in case the magistrate who made it has no jurisdiction, if he complies with the requisitions of that statute; and by § 6, no action shall be brought against him, or any person acting by his order and in his aid, for any thing done in obedience to a warrant under the hand or seal of a justice, until demand in writing hath been made, or left at his usual place of abode, of the perusal and copy of the warrant, and the same hath been refused or neglected for *six* days after such demand; and if, after compliance therewith, any action shall be brought without making the justice a defendant, the jury shall, on production of the warrant, give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. If the action be brought jointly against the justice and constable, the jury shall, on proof of the warrant, find for the constable, notwithstanding such defect of jurisdiction. By § 8, no action shall be brought against any constable acting in the execution of his office, unless commenced within six calendar months after the act committed.

If a constable acting under a distress warrant seize the goods of A., mistaking them for the goods of B., he is entitled to the protection of the statute.—*Carton v. Williams*, 3 B. A. 330. A constable who arrests a person given him in charge, is not liable to an action for false imprisonment, though the charge be ill-founded, unless he make himself a party in oppressing the person so arrested, knowing the charge to be false—*White v. Taylor*, 4 Esp. 80.

Of his Punishment.

He may be fined or imprisoned, or both, for refusing to serve the office when appointed.—*Arch. C. P.* 384. He is indictable for neglecting his duty, either at common law or by statute.—1 *Salk.* 381. And may be fined for not endeavouring to pacify an affray in his presence.—*Cromp. J. P.* 130. If he will not return his warrant, or what he has done under it (for he ought to keep the warrant for his own justification) the sessions may fine him.—6 *Mod.* 83. He is guilty of felony, if he lets a felon out of the stocks.—*Hale, P. C.* 696. He may be dismissed from office at any time by the magistrates in General Quarter Sessions.—*C. Stat.* 23 V. c. 8, § 4.

Special Constables.

By C. Stat. 22 V. c. 104, § 1. In case it be made to appear to any two or more justices of the peace, upon the

oath of any credible witness, that any tumult, riot, or felony has taken place, or is continuing, or may be reasonably apprehended, in any territorial division within the limits for which such justices usually act, and in case such justices shall be of opinion that the ordinary officers appointed for preserving the peace are not sufficient for the preservation of the peace, and for the protection of the inhabitants and security of property in any such territorial division or place, then such justices may, by precept or writing under their hands, nominate and appoint so many as they shall think fit of the householders or other persons (not legally exempt from serving the office of constable) residing in such territorial division or place, or in the neighbourhood thereof, to act as special constables, for such time and in such manner as to the said justices seem necessary for the preservation of the public peace, and for the protection of the inhabitants, and the security of property in such territorial division or place. § 2. Such justices, or any one of them, or any other justice acting for the same limit, may administer to any person so appointed the following oath:—

I, A. B., do swear that I will well and truly serve our sovereign lady the Queen, in the office of special constable, for the of without favour or affection, malice or ill-will; and that I will, to the best of my power, cause the peace to be kept and preserved, and will prevent all offences against the persons and properties of her Majesty's subjects, and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law. So help me God.

§ 3. Notice of such appointment is to be transmitted by such justices to the secretary of the province. § 4. Such justices, or any two of them, or the justices for the limit, or the major part of such last mentioned justices, at a special session, may make orders and regulations from time to time, for rendering such special constables more efficient, and remove any of them for misconduct or neglect of duty. § 5. Every such special constable shall have, throughout the entire jurisdiction of the appointing justices, all such powers, &c., as any constable duly appointed by law. § 6. Under special circumstances, such justices may authorise such special constables to act in an adjoining division. § 8. Any special constable so appointed refusing to be sworn when required by any two justices of the limit, may be convicted thereof before such justices, and shall forfeit and pay such sum, not exceeding \$20, as to the said justices shall seem meet. § 9.

And if any special constable neglects or refuses to appear for the purpose of taking the oath, at the time and place for which he has been summoned, he may be convicted thereof before any two justices of the limit, and shall forfeit and pay such sum, not exceeding \$20, as to them shall seem meet, unless he shall prove to their satisfaction that he was prevented by sickness, or some unavoidable accident. § 10. The like penalty is also imposed on neglect or refusal to serve or obey lawful orders and directions. § 11. Justices at a special session may also suspend or determine the service of all or any of such special constables; and notice thereof shall be forthwith transmitted to the secretary of the province. § 12. Special constables shall, within one week after the expiration of their office, deliver over to their successors (or such other persons as any justice for the limit may direct) every staff, weapon, and other article provided for such special constable under this act, under a penalty not exceeding \$8, upon conviction before *two* justices. § 13. If any person assaults or resists any special constable while in the execution of his office, or encourages any other person so to do, every such person shall, on conviction before *two* justices, forfeit and pay any sum, not exceeding \$40, or shall be liable to such other punishment as by law established. § 14. Justices at a special sessions may order a reasonable allowance to special constables, not exceeding one dollar a day. § 15. To be paid by order upon the treasurer of the division. § 16. Special sessions under this act may be adjourned from time to time. § 17. Prosecutions under this act to be commenced within two months after the offence. § 18. Penalties to be paid to the treasurer of the territorial division, or other municipal division within which the offence was committed. § 19. Inhabitants may be competent witnesses. § 20. Convicting justices may adjudge offenders to pay immediately, or within a certain time; and in case of non-payment penalties may be levied by distress and sale of the offender's goods, with reasonable charges of distress; and for want of sufficient distress such offender shall be imprisoned in the common gaol for any term not exceeding one month, when fine does not exceed \$20, and not exceeding two months in any other case; imprisonment to cease upon payment of the sum due. § 21. Conviction to be in the following form:—

County of , } Be it remembered, that on the day of
to wit. } in the year of our Lord in the
of in the county of , J. N. is convicted before us A. B.

and C. D., two of her Majesty's justices of the peace for the said county of _____, for that he the said J. N., (*here specify the offence and the time and place when and where the same was committed, as the case may be,*) and we do adjudge that the said J. N. shall for the said offence forfeit the sum of _____, and shall pay the same immediately, (*or shall pay the same on or before the _____ day of _____*) to the treasurer of the _____, given under our hands the day and year first above mentioned.

A.B.

C.D.

§ 22. Convictions not to be quashed for want of form—nor removed by *certiorari*—nor any warrant of commitment held void by reason of any defect therein, provided it be alleged therein that it is founded on a conviction, and there be a valid conviction to sustain the same. § 23. And no distress shall be deemed unlawful, nor the party a trespasser on account of any defect or want of form in the summons, conviction, warrant, distress, or other proceeding; but the party aggrieved by such irregularity may recover full satisfaction for the *special damage*, if any, in an action upon the case. § 24. All prosecutions against persons acting under this act shall be tried in the county where committed, and commenced within six months; and one month's previous notice in writing given to the defendant. § 25. Defendant may tender amends; and no costs allowed to plaintiff unless the court shall certify it was a proper action.

Every officer, non-commissioned officer and man of any volunteer militia corps, called out by a municipality for quelling any riot, shall, when so called out, be special constables, and act as such when so called out—27 *V. c.* 3, § 19.

Constables' Fees established by the Judges under the 8 V., c. 38.

	£	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
Serving Summons or Subpœna	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
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
Mileage in going to serve summons or warrant, when 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.).....	0	0	6

Taking prisoners to gaol, 4d. per mile, exclusive of disbursements necessarily 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

Attending inquest for each day other than the first... 0 5 0

Serving notice of appointment of constables, when personally served 0 2 6

Levying upon distress warrant and returning the same, where charge not provided by law 0 5 0

Travelling to make distress, or to search for goods to make distress when no goods are found, 4d. per mile, when charge not otherwise provided by law.

Appraisement, whether by one appraiser or more, 4d. in the pound on the value of the goods.

Note.—The above costs are by the 9 V., c. 58, chargeable (with other costs) on the public revenue, and by order of council are to be rendered in duplicate to the treasurer of the county during the sitting of the quarter sessions by the justice under whose authority the services were performed. See further under title “Costs.”

Indictment for refusing to serve the office of High Constable, (Archbold).

County of , } The jurors for our lady the Queen, upon
to wit. } their oath present, that at the general quarter
sessions of the peace holden at the city of , in and for the
county of , on the day of , in the year of the
reign of our sovereign lady Victoria, to wit, at the city aforesaid,
in the county aforesaid, before A. B. and C. D., Esquires, and
others their associates, justices of our said lady the Queen assigned
to keep the peace of our said lady the Queen in and for the said
county, and also to hear and determine divers felonies, trespasses
and other misdemeanors in the said county committed, one J. S.,
late of the township of , in the county of , yeoman,
then, and long before, being an inhabitant and residing in
the township last aforesaid, in the county aforesaid, and a
fit and able person to execute the office of high constable
within the said county, at the said sessions, by the justices
aforesaid in due manner, was then and there elected to be high
constable of the said county, in stead of one J. N. ; whereof the
said J. S. afterwards, to wit, on the day and year aforesaid,
at the township aforesaid, in the county aforesaid, had notice :
nevertheless the said J. S. not regarding his duty in that behalf
but contriving and intending the due execution of justice to hind-
er and prevent, afterwards, to wit, on the day and year aforesaid,
at the township aforesaid, in the county aforesaid, unlawfully,
wilfully, obstinately and contemptuously did refuse, and from
thence continually, until the day of the taking of this inquisition,

unlawfully, wilfully, obstinately and contemptuously hath refused and still doth refuse, to take upon himself and execute the said office of high constable within and for the county aforesaid, to wit, at the township aforesaid, in the county aforesaid, contrary to his duty in that behalf, in manifest contempt and delay of justice, against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

The above form, with a slight variation, will answer for petty constables also.

CONSTITUTIONAL ACTS.

By the imperial stat. 14 G. III., c. 83, § 3, (1774,) entitled "An Act for making more effectual provision for the government of the province of Quebec, in North America," it is enacted that his Majesty's subjects professing the religion of the church of Rome in the said province of Quebec may have, hold, and enjoy the free exercise of the religion of the Church of Rome, subject to the king's supremacy declared and established by the 1 Q. Eliz. over all the dominions and countries which then did, or thereafter should, belong to the imperial crown of this realm; and that the clergy of the said church may hold, receive and enjoy their accustomed dues and rights, with respect to such persons only as shall profess the said religion. § 5. And that it shall be lawful for his Majesty, his heirs or successors, to make such provisions out of the rest of the said accustomed dues and rights for the encouragement of the Protestant religion, and for the maintenance and support of a Protestant clergy within the said province, as he or they shall from time to time think necessary and expedient. § 6. Provided that no person professing the religion of the Church of Rome, and residing in the said province, shall be obliged to take the oath required by the said statute 1 Q. Eliz., or any other oaths substituted by any other act in the place thereof, but that every such person who by the said statute is required to take the oath therein mentioned, shall be obliged to take and subscribe the following oath, before the Governor, or such person in such court of record as her Majesty shall appoint.

Form of the Oath.

I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to his Majesty King George, and him will defend to the utmost of my power, against all traitorous conspiracies and attempts whatsoever which shall be made against his

person, crown and dignity ; and I will do my utmost endeavour to disclose and make known to his Majesty, his heirs and successors, all treasons and traitorous conspiracies and attempts, which I shall know to be against him or any of them ; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any power and person whomsoever to the contrary. So help me God.

And every such person who shall neglect or refuse to take the said oath, shall incur the penalties of the 1 Q. Eliz.

§ 8. That in matters of controversy relative to property and civil rights, resort shall be had to the laws of Canada, as the rules for the decision of the same.

§ 17. And that nothing herein contained shall extend, or be construed to extend, to prevent his Majesty, his heirs and successors from erecting, constituting, and appointing such courts of criminal, civil, and ecclesiastical jurisdiction, as he or they shall think necessary and proper for the circumstances of the province.

By the imperial statute 18 G. III., c. 12, 1778, it is declared that the imperial parliament will not impose any duty or tax on any colony except only for the regulation of commerce, the net produce of such duty or tax to be applied for the use of the colony in the same manner as duties imposed by the local legislature.

By the imperial statute 31 G. III. c. 31, 1791, entitled, "An Act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign, entitled 'An Act for making more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the said province.'" After noticing that his Majesty had been pleased to signify, by his message to both houses of parliament, his royal intention to divide his province of Quebec into two separate provinces, to be called the province of Upper Canada, and the province of Lower Canada, certain provisions were thereby made for the division of the said province, and providing a separate legislature for each province. But as the two provinces have been since re-united by an act of the imperial legislature, and now again constitute but one province, it will be sufficient here to give the provisions of the act by which the re-union has been effected.

By imp. stat. 3 & 4 V. c. 35, 1840, entitled, "An Act to re-unite the provinces of Upper and Lower Canada, and for the government of Canada:" after reciting that it was necessary that provisions be made for the good government

of the provinces of *Upper Canada* and *Lower Canada*, in such manner as might secure the rights and liberties and promote the interests of all classes of her Majesty's subjects within the same, and that to this end it was expedient that the said provinces be re-united and form one province for the purposes of executive government and legislation: it is enacted, that it should be lawful for her Majesty, with the advice of her privy council, to declare or authorise the Governor-General of the said two provinces to declare by proclamation that the said provinces, upon, from and after a certain day in such proclamation to be appointed, which day shall be within fifteen calendar months next after the passing of this act, should form and be one province, under the name of the Province of Canada, and thenceforth the said provinces should constitute and be one province, under the name aforesaid, upon, from, and after the day so appointed. § 2. Provided that so much of the 31 Geo. III., c. 31, as provides for constituting and composing a Legislative Council and Assembly within each of the said provinces respectively, and for the making of laws; and the whole of Lower Canada acts 1 & 2 V. c. 9; 2 & 3 V. c. 53; 1 & 2 W. IV. c. 23, should continue in force until the union by proclamation, and should be repealed from that day, but not revive any former enactment by such repeal. § 3. After the re-union there shall be within the province of Canada one Legislative Council and one Assembly, to be called the Legislative Council and Assembly of Canada, with power to her Majesty, by and with the advice and consent of such council and assembly, to make laws for the peace, welfare and good government of the province of Canada; such laws not being repugnant to this act, &c. § 4. It shall be lawful for her Majesty, by an instrument under the sign manual, to authorise the Governor, in her Majesty's name, by an instrument under the great seal of the province, to summon to the Legislative Council (a) such persons, being not fewer than *twenty*, as her Majesty shall think fit, and from time to time in like manner to summon to the said council such other person or persons as her Majesty shall think fit, and every person so summoned shall thereby become a member of the Legislative Council; but no person shall be so summoned who shall not be of the full age of 21 years, and a natural born subject, or naturalized by act of

(a) The Legislative Council is now by the 19 & 20 V. c. 140, made elective. See C. Stat. 22 V. c. 1.

Parliament of Great Britain, or by the legislature of Upper or Lower Canada. § 5. Members to hold their seats for life, subject to the provisions hereinafter contained. § 6. Authorises members to resign their seats. § 7. And if any Legislative Councillor shall be absent two successive sessions without permission of the Governor, or shall take the oath of allegiance to any foreign power, or do any act whereby he may become a subject or citizen of any foreign power, or become entitled to the rights or immunities of such, or shall become bankrupt or insolvent, or a public defaulter, or be attainted of treason, or convicted of felony or of any infamous crime, his seat shall thereby become vacant. § 8. Legislative Council to determine questions of vacancy, subject to an appeal to her Majesty. § 9. The Governor to appoint and remove the speaker. § 10. Ten members, including the speaker, to constitute a *quorum*; and all questions to be decided by the majority, and the speaker to have a casting vote. § 11. Authorises the Governor from time to time, in her Majesty's name, to summon and call together a Legislative Assembly. § 12. Upper and Lower Canada to be represented by an equal number of representatives.

Sections 13 to 25, both inclusive, relate to boundaries of constituencies in Upper Canada and Lower Canada, returning officers, writs of elections, and time and place of holding elections, and are superseded by the Provincial Acts, 16 V. c. 152, 12 V. c. 27, 14 & 15 V. c. 108, &c., passed under the powers given by § 26 of this act, except the provision in § 24 referred to in § 15 of c. 3 of the Consol. Stats. of C., which requires that in cases of vacancy, "the writ for the election of a new member shall be issued within six days after notice thereof shall have been delivered to or left at the office of the proper officer for issuing such writs of election, and that the writs of election shall be issued within fourteen days after the sealing of the instrument summoning and calling together such Legislative Assembly."

§ 26. Authorises the legislature to alter the divisions and extent of the several counties, ridings, cities and towns, and to establish new divisions; and to alter the apportionment of representatives, and alter and regulate the apportionment of returning officers, and make provision for issuing and return of writs of election.

The proviso to this section, that a bill for altering the number of representatives must be passed by a two-third vote in each house, &c., is repealed by the Imperial Act 17 & 18 V. c. 118, § 3.

§ 27. Continuing provincial laws relative to elections, returning officers, controverted elections, vacating seats of members, &c., and declaring them applicable to elections, &c., under this act, until other provision should be made by the provincial legislature, is superseded by the provincial enactments on those subjects.

§ 28. No person shall be capable of being elected a member who shall not be legally or equitably seised as of freehold, for his own use, of lands or tenements held in free and common soccage; or seised or possessed, for his own use, of lands or tenements held in *fief* or *en roture*, within the province of Canada, of the value of £500 sterling over and above all incumbrances; and every candidate, before he shall be capable of being elected, shall, if required by any other candidate, or by the returning officer, make the following declaration:—

I, A. B., do declare and testify, that I am duly seised at law or in equity as of freehold, for my own use and benefit, of lands or tenements held in free and common soccage (or duly seised and possessed, for my own use and benefit, of lands or tenements held in *fief* or *in roture*, as the case may be) in the province of Canada, of the value of five hundred pounds of sterling money of Great Britain, over and above all rents, mortgages, charges or incumbrances charged upon or due or payable out of or affecting the same; and that I have not collusively or colourably obtained a title to or become possessed of the said lands and tenements, or any part thereof, for the purpose of qualifying or enabling me to be returned a member of the Legislative Assembly of the province of Canada.

(But, see provincial act 12 V. c. 27, § 48, requiring a description of the property, and § 49, as to the mode of making and filing the declaration.)

§ 29. False declaration to be deemed a misdemeanor, and punished as false and corrupt perjury. § 30. It shall be lawful for the Governor for the time being to fix such place or places, within any part of the province of Canada, and such times for holding the first and every other session of parliament, as he may think fit; to be afterwards changed or varied, as the Governor may judge desirable and most consistent with general convenience and the public welfare, giving sufficient notice thereof; and also to prorogue the parliament and dissolve the same by proclamation, or otherwise, whenever he shall deem it expedient. § 31. A session to be held once at the least every year, so that twelve calendar months shall not intervene between the last sitting in one session and the first sitting of the next; and every assembly

shall continue for *four* years from the day of the return of the writs; subject, nevertheless, to be sooner prorogued or dissolved by the Governor. § 32. (Fixing the period within which the first session should be held is *effete*.) § 33. The assembly, at the first meeting after every general election, shall elect one of their number to be speaker; and in case of his death, resignation, or removal, forthwith elect another. § 34. Twenty members at the least, including the speaker, to constitute a *quorum*. All questions to be decided by the majority present, and the speaker to have a casting vote. § 35. No member of the council or assembly shall sit or vote until he shall have taken and subscribed the following oath before the Governor, or some other person or persons by him authorised:—

I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to her Majesty Queen Victoria, as lawful sovereign of the United Kingdom of Great Britain and Ireland, and of this province of Canada, dependent on and belonging to the said United Kingdom; and that I will defend her to the utmost of my power against all traitorous conspiracies and attempts whatever which shall be made against her person, crown and dignity; and that I will do my utmost endeavour to disclose and make known to her Majesty, her heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against her or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or persons whatever to the contrary. So help me God.

§ 36. Affirmation may be made where authorised by law.

§ 37. The Governor may, in her Majesty's name, assent to or reserve bills for her Majesty's pleasure. § 38. Bills assented to may be disallowed within two years. § 39. No reserved bill to be in force until the Governor, by speech or message to both houses, or by proclamation, shall signify her Majesty's assent. § 40. Provision made for the appointment of a Lieutenant-Governor by her Majesty, and a deputy or deputies by the Governor, with adequate powers. § 41. Enacting that legislative records, &c., shall be in the English language only is repealed by the imperial act 11 & 12 V. c. 56, § 1. § 42. Requiring that bills relating to ecclesiastical rights and matters, waste lands of the Crown, &c., shall be reserved and laid before parliament before being assented to, is also repealed by imperial act 17 & 18 V. c. 118, § 6.

Section 44, relating to the provincial court of appeals,

and the place and sitting of certain courts in Upper Canada, until it should be otherwise provided by the provincial legislature, is superseded by the provincial act 12 V. c. 63, other acts making other provision for the same matter.

§ 45. Powers, authorities, and functions of the government to be vested in and exercised by the Governor of the province of Canada, with the advice, or with the advice and consent of, or in conjunction with the Executive Council, or any member thereof, as may be appointed by her Majesty for the affairs of the province; or by the said Governor *individually* and alone, in cases where the advice, consent or concurrence of the Executive Council is not required. § 46. All existing laws in both provinces to remain in force, except in so far as repealed by this or any subsequent act of the legislature. § 47. The courts of civil and criminal jurisdiction within both provinces to remain until otherwise provided. § 48. Provides for temporary enactments. § 49. Repeals the provisions contained in the 3 G. IV., c. 119, respecting the revenue claims of the two provinces.

Sections 50 to 57, both inclusive, (constituting the consolidated revenue fund, and the charges upon it,) with the schedules therein referred to, are repealed by the imperial act 10 & 11 V. c. 71; by which repeal the provisions substituted for them by the provincial act 9 V. c. 114, were brought into force, under § 9 of the said provincial act.

§ 58. Authorises the Governor to constitute new townships, under the great seal, § 59. The powers given to the Governor shall be exercised in conformity with her Majesty's instructions and orders. § 60. The Magdalens may be annexed to the island of Prince Edward, at her Majesty's pleasure. § 61. Interpretation clause. § 62. This act may be amended or repealed during the present session.

By imperial statute 17, 18 V., c. 118, power was given to the Provincial Legislature to alter the constitution of the Legislative Council.

By provincial statute 19, 20 V. c. 140, (*reserved, and assented to 24th June, 1856, proclaimed 14th July, 1856,*) the Legislative Council was made elective, to be composed of the present members thereof, and of forty-eight members to be elected as provided by the act; and to this end the act provides, that the province shall be divided into forty-eight electoral divisions, twenty-four in Upper Canada, and twenty-four in Lower Canada, as set forth in schedule A. to the act; no person shall be eligible to sit or vote as a Legislative Councillor, unless he be a British subject by birth, or natur-

alization, resident in Canada, of the full age of thirty years, and legally or equitably seised of real estate to the value of £2,000 currency, over and above all incumbrances; nor unless his residence or property, to the value aforesaid, be within the limits of the electoral division for which he is elected.

The other provisions of the act with respect to the mode of elections, qualification of voters, electoral divisions, &c., will be found under the general heads of "*Parliamentary Representation*" and "*Elections.*"

CIVIL LIST.

See 22 *Victoria*, c. 10.

CONTEMPT.

A contempt is, in legal meaning, either an open resistance or insult to the power of a court of record committed by any person in the face of the court; or disobedience to its rules, orders or process, by a party who is not present in court—4 *Bl. Com.* 283; so, where abusive words are spoken to a *justice of the peace* in the execution of his office, whilst sitting as a magistrate, he may commit for the contempt; but if the words are spoken of him behind his back the party can then only be indicted.—*R. v. Revel*, 1 *Str.* 420. A commitment by the sessions or other court of record need not be under seal, as the memorial thereof, which may at any time be entered of record, is sufficient without any warrant—1 *Hale*, 583, 584; but a justice cannot commit for contempt, except by warrant in writing—*Mayhew v. Lock*, 7 *Taunton*, 63; and, unless the words be spoken under circumstances which render it probable they may prevent the due administration of justice, it will be safer for the magistrate to abstain from summary punishment, and proceed by indictment, which will certainly lie for words addressed to him while in the discharge of his duty—*Dickenson*, *Q. S.* 43; if, however, the party be imprisoned *instanter*, the commitment must be for a time certain, and a commitment *until the defendant is discharged by due course of law* is bad.—*Rex v. James*, 5 *B. & A.* 894. It has been held, that a commitment which charged the party, generally, with having insulted justices of the peace in the execution of their office, without specifying what he said or did, is sufficient—2 *Barnard*, 155; it is, however, in general advisable to describe the offence concisely, but in substance as in an indictment.—*Chitty*, *C. L.* p. 112. A justice of the peace may commit for contempt while in the execution of his office out of the sessions,

but the commitment must be by warrant in writing, and for a specified period.—*Jones v. Glarford, Michs. 2 V., Cameron's Digest, 544.*

Commitment for Contempt.

PROVINCE OF CANADA :

County of } To the keeper of
to wit. }

Receive into your custody the body of C. D. herewith sent you by me A. W., Esquire, one of her Majesty's justices of the peace in and for the said county, and convicted (or charged, as the case may be) by me, the said justice, with contempt and indecent behaviour in my presence, by insulting and obstructing me, the said justice, in the due execution of my office, as such justice as aforesaid, (*and for saying, &c., in the presence and hearing of me, the said justice,*) [*here set forth the particulars, if the justice shall think it necessary,*] and him the said C. D. detain in your custody, in the gaol aforesaid, for the space of hours, to be computed from the hour of o'clock, in the forenoon of this present day of instant, for his contempt aforesaid, (or until he find two sufficient sureties for his appearance at the next general quarter sessions of the peace for the said county, to answer to the charge aforesaid, or be otherwise discharged by the due course of law.) Given under my hand and seal, at , in the said county, the day of .

CONVICTIONS AND FINES.

A conviction ought to be in words and figures at length. It is not usual, or necessary, for the convicting justices to draw up a formal conviction in the first instance, in every case in which a penalty is inflicted, but to make minutes of the proceedings (without attending to the precise form) at the time of pronouncing the judgment, from which they may afterwards, if occasion require, make out a regular conviction; nor is it necessary that it should be drawn up in due form before the penalty is levied.—*Paley on Con. 316.* Even after an action brought, it seems that justices may draw up a conviction and give it in evidence, by way of defence, provided the date is warranted in fact by the time when the conviction actually took place.—*Massey v. Johnson, 12 East 82.*

When the statute prescribes a particular form of conviction it must be exactly followed; but when it is merely directory, "that the justice be authorised or empowered to draw up the conviction in the form or to the effect following," then the justice is not bound to any precise form of words, although it will be prudent for him to adhere to the form

given, as nearly as possible, and pursue the words of the statute.—*Pal. on Conv.*

In the case of "summary conviction" the C. Stat. 22 V. c. 103, § 88, enacts that the several forms in the schedule to this act shall be deemed good, valid, and sufficient in law; for which see *post* title "*Summary Conviction.*"

A defendant is entitled to a copy of the conviction, and the justice is bound to give it him, if requested.—*R. v. Midlum, Burr*, 1720. But the justice is not thereby precluded from drawing up and returning a conviction in a formal shape; for this last is to be taken as the only authentic record of the proceedings.—*R. v. Barber*, 1 *East*. 82; *R. v. Allan*, 15 *East* 332.

A justice should, in all cases, return a conviction to the sessions, whether the party appeal or not, or whether an appeal is or is not given, in order that the Crown may not be deprived of its share of forfeitures.—*R. v. Eaton*, 2 *T. R.* 285.

By U. C. Stat. 22 V. c. 124, § 1, every justice of the peace before whom any trial or hearing is had, under any law giving jurisdiction in the premises, and who convicts and imposes any fine, forfeiture, penalty, or damage upon the defendant, shall make a return thereof in writing, under his hand, to the next general quarter sessions of the peace for the county in which such conviction takes place, and of the receipt and application by him of the moneys received from the defendant; and in case the conviction takes place before two or more justices, such justices being present and joining in such conviction, shall make an immediate return thereof, as nearly as circumstances permit, as set forth in the following form:

Returns of Convictions made by me (or us, as the case may be) in the month of 18 .

Name of the Prosecutor.	Name of the Defendant.	Nature of the Charge.	Date of Conviction.	Name of Convicting Justice.	Amount of penalty, fine, or damage.	Time when paid or to be paid to said Justice.	To whom paid over by said Justice.	If not paid, why not, and general observations, if any.

A.B. convicting justice, or A.B. & C.D. convicting justices, (as the case may be.)

And the justices, to whom any such moneys shall be afterwards paid, shall make a return of the receipts and application thereof to the next general quarter sessions, which return shall be filed by the clerk of the peace with the records of his office. § 2. In case the justice or justices before whom any such conviction takes place, or who receive any such money, neglect or refuse to make such return thereof, or in case any such justice or justices wilfully make a false, partial, or incorrect return, or wilfully receive a larger amount of fees than by law authorised to be received, in every such case such justices or justices, and each and every of them so neglecting or refusing, or wilfully making such false, partial, or incorrect return, or wilfully receiving a larger amount of fees as aforesaid, shall forfeit and pay the sum of \$80, with full costs of suit, to be recovered by any person who sues for the same by action of debt, or information, in any court of record in Upper Canada; one moiety to be paid to the party suing, and the other to the Receiver-General, for the use of the province. § 3. Penalties to be sued for within six months after cause of action, and tried in the county where such penalties incurred; and in case of verdict for the defendant, or nonsuit, or discontinuance, the defendant shall recover full costs. § 4. Clerk of the peace, within seven days after the general quarter sessions shall have first adjourned, shall publish said returns in one public newspaper in the county, and fix up a schedule of such returns in the court house, and some conspicuous place in his office for public inspection, and the same to continue fixed up until the end of the next ensuing general quarter sessions; and for every schedule so made and exhibited he shall be allowed the fee of \$4, besides the expense of publication, in his accounts with the county. § 5. Clerk of the peace, within twenty days after the end of each quarter sessions, shall transmit to the Minister of Finance a true copy of all such returns within his county. § 6. Justices of the peace not exonerated from duly returning convictions to the general quarter sessions, as by law required, nor to prevent any person aggrieved from prosecuting by indictment a justice of the peace for any offence, the commission of which would subject him to indictment at the time of passing this act. § 7. Sheriff required to transmit quarterly, to the Minister of Finance, an account, upon oath, of fines, or be liable to the same penalty as justices.

See also *post* title "*Summary Conviction.*"

CORONER.

The court of the coroner is a court of record, to enquire when any one dies in prison, or comes to a violent or sudden death, by what manner he came to his end, and this he is only entitled to do *super visum corporis*, (upon view of the body.)—4 *Inst.* 271; *Hale's P. C.* 53. The coroner's duty being partly judicial it cannot be executed by deputy.—*Impey, G. C.* 473.

By stat. 4 Ed. I. c. 2, called the statute *de officio coronatoris*, it is enacted, "that the coroner, upon information, shall go to the place where any be slain, or suddenly dead, or wounded, and shall forthwith command four of the next towns, or five, or six, to appear before him in such a place; and when they are come, the coroner upon the oath of them, shall enquire if they know where the person was first slain, whether it were in any house, field, &c., and who were there. Likewise it is to be enquired, who were culpable either of the act, or of the force, and who present, and of what age they be, (if they can speak, and have discretion,) and as many as shall be found culpable by the inquest shall be committed to gaol; and such as shall be found there, and be not culpable, shall be attached until the coming of the justices; and their names shall be written in the rolls. If any man be slain suddenly, which is found in the fields, or in the woods, first it is to be seen whether he were slain in the same place or not, and if he were brought there, they shall do as much as they can to follow their steps that brought him; it shall be enquired also, if the dead person were known, and where he lay the night before. And if any be found culpable of the murder, the coroner shall go to his house and enquire what goods he hath, and what corn he hath in his grange; and if he be a freeman, they shall enquire how much land he hath, and what it is worth yearly, and what crop he hath upon the ground. And they shall cause all the land, corn, and goods to be valued, and delivered to the townships, (a) which shall be answerable before the justices; and likewise of his freehold, how much it is worth yearly, and the land shall remain in the King's hands until the lords of the fee have made fine for it. And these things being enquired, the body shall be buried."

"In like manner it is to be enquired of them that be drowned, or suddenly slain, whether they were drowned, slain, or strangled, by the sign of the cord about their necks, or any other hurt found upon their bodies; and if he were not

(a) Obsolete.

slain, then ought the coroner to attach the finder and all others in the company. A coroner also ought to enquire of treasure found, who were the finders, and who is suspected thereof; and that may be perceived where one liveth riotously, haunting taverns, and hath done so of long time, hereupon he may be attached for this suspicion by four, or six, or more pledges. Also all wounds ought to be viewed, the length, breadth and deepness, and with what weapons, and in what part of the body the wound is; and how many be culpable, and how many wounds there be, and who gave the wound: all which things must be enrolled in the roll of the coroners. Concerning horses, boats, carts, &c., whereby any are slain, they shall be delivered unto the towns, as before is said. If any be suspected of the death of a man, being in danger of life, he shall be taken and imprisoned. In like manner hue-and-cry shall be levied on all murderers, burglars, and for men slain, or in peril of death; as is used in *England*, and all shall follow the hue and steps as near as can be; and he that doth not, and is convict, shall be attached to be afore justices of the gaol." § 2.

Of Sudden or Violent Deaths, which are all within the Coroner's Office to enquire, and Inquisitions.

Sudden or violent deaths are of these kinds:—1. *By the visitation of God*:—2. *By misfortune*, where no other had a hand in it; as if a man fall from a horse or cart. 3. By his own hand, as *felo de se*. 4. By the hand of another, where he is known, whether by murder, manslaughter, *se defendendo*, or *per infortunium*.—2 *Hale, P. C.* 62.

Coroners are not to obtrude themselves into private families where there is no pretence for supposing that the deceased died otherwise than by a natural death.—11 *East* 231. (a)

1. The dying suddenly is *not* to be understood of a fever, apoplexy, or other visitation of God, for then the coroner might be sent for in every case.—*Umfr.* 208. If the inquisition find that he died *by visitation of God*, there is no more to be done, only the inquisition, together with the examination, are to be returned to the next gaol delivery.

2. If the inquest find the death *per infortunium* simply,

(a) See also post U. C. Stat. 22 V. c. 125, which expressly enacts that no inquest shall be held until it has been made appear to the coroner that there was reason to believe death ensued from violent means, or culpable or negligent conduct.

as a *fall*, &c., then the coroner is to take examination, and return the same, with the inquisition, *to the next gaol delivery*, and to enquire of the *deodand* and the value, and in whose hands, and to seize and deliver the same to the township, to be answerable for the same to the township, to be answerable for the same to the King.—4 *Ed.* 1.

3. If the inquest find a man *felo de se*, who is one that puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death: as, if attempting to kill another, he runs upon his antagonist's sword; or shooting at another, the gun bursts and kills himself; they ought to find the *special matter*, and also what goods and chattels he had, of what value, and seize and deliver the same to the township, to be answerable to the King, or his almoner, or the lord of the franchise, to whom they belong, and shall bind over the first finder of the body to the next gaol delivery.—2 *H. P. C.* 62.

4. If a party be slain, and the felon is *not known*, they are to find their inquisition accordingly, and shall bind over the first finder of the body to the next gaol delivery, and return his examinations, together with his inquisitions.—2 *H. P. C.* 63.

5. But if the person was slain, and the party that did it was known, and the inquisition found him guilty of the death, or that he died by his own hand, there were these proceedings, viz:—the inquest were also to enquire of all that were *present, aiding and abetting*; they shall also enquire of all accessories *before the fact*; but they cannot enquire of accessories *after the fact*. If they find him guilty, as principal, or accessory before the fact, they shall enquire whether *he fled* for the same; if the inquisition find that he fled, it is a forfeiture of his goods; but they cannot be seized before he be convicted of the felony.—1 *R. III.* c. 3; 2 *H. P. C.* 63.

If the persons that are found guilty by the inquest be taken, the coroner may and must commit them to the sheriff, (a) and he is to send them to the gaol; but if they be not found he is not to proceed to *outlawry*, but return his inquisition to the next gaol delivery, and the justices of gaol delivery are to proceed against the offenders if in gaol; if not, then to certify the inquisition into the King's Bench, and then process of outlawry to go against them upon that inquisition.—4 *Ed.* 1.; 3 *H. VII.* c. 1; 2 *H. P. C.* 64.

(a) The modern practice is to commit the prisoner to the common gaol direct, for which see the form of such commitment—*post.*

It is clearly agreed that the inquest shall be taken on the *view* of the body, and that an inquest otherwise taken by the coroner is void.—2 *Haw. P. C. c. 9, § 23*. But when the body cannot be found, or is so putrefied that a view would be of no service, the coroner, without a special commission, cannot take the inquest; but in such cases it shall be taken by justices of the peace, or other justices authorised, by testimony of witnesses.—*Vent. 352; Haw. P. C. c. 9, § 25*. It is an indictable offence to bury the body before, or without sending for the coroner.—1 *Salk. 377*. And a coroner may, within a convenient time, take up a dead body out of the grave, in order to view it and hold an inquest. The coroner may enquire of accessories *before* the fact, but not of accessories *after* the fact.

Where there is no pretence for supposing that the deceased died otherwise than by a natural death—for instance, if he died of fever, apoplexy, or other visitation of God—an inquisition ought not to be held.—*Umfr. 208*. The coroner ought also to enquire of the death of all persons who die in prison; that it be known whether they die by violence or any unreasonable hardships; for if a prisoner, by the duress of the goaler, come to an untimely death, it is murder in the goaler.—3 *Inst. 52, 91*. And this inquest upon prisoners ought to consist of a party jury—that is, six of the prisoners (if so many there be) and six of the next ville or parish not prisoners.—*Umfr. 212, 213*.

Of Crimes.

The crimes which are likely to come under the cognizance of a coroner, and the law thereon, are fully set forth under the title “Homicide,” with the exception of the crime of *Felonia de se*, or suicide; which is committed when a person of the age of discretion and *compos mentis* kills himself by stabbing, poison, or any other way.—1 *Hale, P. C. 411*. If he lose his memory by sickness, infirmity or accident, and kills himself, he is not a *felo de se*, neither can he be said to commit murder upon himself or any other. It is not every melancholy or hypochondriacal distemper that denominates a man *non compos mentis*, for there are few who commit this offence but are under such infirmities, but it must be such an alienation of mind that renders them to be madmen, or frantic, or destitute of the use of reason. A lunatic killing himself in a fit of lunacy is not *felo de se*; but if he kills himself in lucid interval he is *felo de se*.—1 *Hale, P. C. 412*. If a man voluntarily give himself a mortal wound, and die within

a year and a day of that wound, he is *felo de se*, and he cannot purge the crime nor the forfeiture inflicted by the law by his repenting what he had done.—*Ib.* 411. It must be simply *voluntary* and with an *intent* to kill himself. If A., to prevent a *gangrene* beginning in his hand, doth, without advice, cut off his hand, by which he dies, he is not thereby *felo de se*; for though it was a voluntary act, yet it was not with an intent to kill himself.—*Ib.* 412. A *felo de se* shall be buried in the highway, with a stake driven through his body.—4. *Bl. Com.* 190. This barbarous custom has, however, been repealed in England, by statute 4 G. IV., and will of course be dispensed with in this province. The forfeiture of *felo de se* is of goods and chattels only.—1 *Hale, P. C.* 413.

Of Deodands.

A deodand is where any man kills himself, or is by misfortune slain by a horse, cart, or any other thing that *moveth* to his death; then the thing which is the cause of, or moved to his death shall be forfeited to the King.—*Lill. Pr. Reg.* 607. No deodand is due when an infant, under the age of discretion, is killed by a fall from a cart, or horse, or the like, not being in motion.—1 *Hale*, 422. But if a horse, or ox, or other animal, of his own motion kill, as well an infant as an adult, or if a cart run over him, they shall in either case be forfeited as deodands. Where a thing *not in motion* is the occasion of death, that part only which is the immediate cause is forfeited; as if a man climbing up the wheel of a cart is killed by falling from it, the wheel alone is deodand; but wherever the thing is in motion, not only that part which immediately gives the wound, (as the wheel which runs over the body,) but all things which move with it and help to make the wound more dangerous, as the cart and loading, are *deodand*.—1 *Haw. P. O. c.* 23.

Where the act of one Coroner shall be as effectual as if done by all.

Wherever coroners are authorised to act as judges, as in the taking of an inquisition of death, the act of any one of them who first proceeds in the matter is of the same force if all had joined in it.—1 *Hale, P. C.* 56. But it is said, that *after* such proceeding by any one of them the act of any other will be void.—*Ib.* 59. Also, it is certain that when coroners are empowered to act only ministerially, as in the execution of a process directed to them upon the

default or incapacity of the sheriff, all their acts will be void wherein they do not all join. *Staunf. P. C.*, 53, a. One coroner may execute the writ, as in the case of an *exigent*; but if there be more coroners than one for the county the return must be in the name of all.—2 *Hale, P. C.* 56. The taking of an inquisition cannot be done by deputy.—2 *Hale, P. C.*, 58, 60. In the case of process to coroners upon any disability in the sheriff, the sheriff is no longer considered as an officer of the court in that suit; and the coroners may do all such lawful acts as the sheriff himself might have done, and they may take the *posse comitatus*.—*Hob.* 85. If the sheriff be sued, the writ is to be directed to the coroners.—*Impey*, 490. If there be above two coroners in a county, and a writ be directed to the coroners, though one die, the others may execute; but if one only survive, he can neither execute nor return the writ till another be made.—2 *Hale, P. C.*, 56. Where the sheriff and coroners of particular places and liberties have been all challenged, in such cases *elisors* have not been appointed, but *venires* have been directed to the sheriff of the county at large to summon a jury from the next adjacent *visne*; and two *elisors* at least ought to be appointed.—*Bendl.* 23; *Dy.* 367. The same challenges that may be made to the sheriff may also be made to the coroners; in which case if all the coroners be challenged, the *venire* may then be awarded to *elisors*, who are always chosen and appointed by the court, by rule to return the jury.

By 12 V. c. 81, § 136, one or more coroners shall and may be appointed for every city and town incorporated under the authority of this act.

His Duties by Provincial Statute.

By C. Stat. 22 V. c. 102, § 62, every coroner upon any inquisition taken before him whereby any person is indicted for manslaughter, or murder, or as an accessory 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 any thing material touching the said manslaughter or murder, or the said offence of being accessory 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 county attorney or to the proper officer of the court in which the trial is to be at the time specified in the 39th section of this act. (a)

§ 63. When any person has been committed for trial by any coroner, such prisoner, his counsel, attorney or agent may notify the coroner that he will, as soon as counsel can be heard, move one of her Majesty's courts of superior jurisdiction, or one of the judges thereof, for an order to the coroner to admit such prisoner to bail, whereupon such coroner shall, with all convenient expedition, transmit to the office of the clerk of the Crown, or the chief clerk of the court, close, under hand and seal, a certified copy of all informations, examinations, and other evidences touching the offence wherewith such prisoner has been charged, together with a copy of the warrant of commitment and inquest, if any such there be, and that the packets 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.

§ 64. Upon any application to her Majesty's Court of Superior Criminal Jurisdiction, 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 on *habeas corpus*.

§ 65. If any coroner neglects or offends against this act, the court to whose officer such examination, &c., ought to have been delivered, shall, upon examination and proof of the offence, in a summary manner set such fine upon such coroner as the court thinks meet.

By C. Stat. 22 V. c. 76, § 6, the coroner who presides at any inquest on any body found publicly exposed and unclaimed by any *bonâ fide* friend or relative, shall give notice thereof to the inspector of anatomy of the locality, if there be one, failing which he shall cause the body to be interred as has been customary.

By C. Stat. 23 V. c. 33, § 35, the coroner is to return a list of inquests and findings of juries to the Board of Registration and Statistics, on or before the first day of January yearly.

(a) Without delay.

By U. C. Stat. 22 V. c. 125, entitled, "An act respecting inquests by coroners," it is enacted by § 1, that no inquest shall be held on the body of any deceased person by any coroner, until it has been first made to appear to such coroner that there is reason to believe that the deceased died from violence or unfair means, or by culpable or negligent conduct, either of himself or of others, under such circumstances as require investigation, and not through accident or mischance.

§ 2. But upon the death of any prisoner, or of any lunatic confined in any lunatic asylum, it shall be the duty of the warden, gaoler, keeper or superintendent of any penitentiary, gaol, prison, house of correction, lock-up house, or lunatic asylum, in which such prisoner or lunatic dies, immediately to give notice thereof to some coroner of the county or city in which death has taken place, and such coroner shall proceed forthwith to hold an inquest upon the body.

§ 3. If any person, having been duly summoned as a juror to serve, or witness to give evidence upon any coroner's inquest, does not, after being openly called three times, appear and serve as such juror, or appear and give evidence as such witness, the coroner may impose a fine upon the delinquent not exceeding *four dollars*; and shall thereupon make out and sign a certificate, containing the name, residence, trade or calling of such person, the amount of the fine imposed, and the cause of the fine, and shall transmit such certificate to the clerk of the peace in the county in which such person resides on or before the first day of the quarter sessions of the peace then next ensuing, and shall cause a copy of such certificate to be served upon such person, by leaving it at his residence within a reasonable time after the inquest. § 4. The fines so certified shall be estreated, levied and applied in like manner, and subject to the like powers, provisions and penalties in all respects as if they had been part of the fines imposed at such quarter sessions. § 5. Nothing herein contained shall be construed to affect any power otherwise by law vested in any coroner for compelling any person to appear and give evidence before him, or for punishing any person for contempt of court in not so appearing and giving evidence, or otherwise.

§ 6. No inquisition found upon or by any coroner's inquest, nor any judgment recorded upon or by virtue of any such inquisition, shall be quashed, stayed or reversed, for want of the averment therein of any matter unnecessary to be proved,

nor for the omission of any technical words of mere form, and in all cases of technical defect, either of the superior courts of common law, or any judge thereof, any judge of assize or gaol delivery may, upon any such inquisition being called in question before them or him, order the same to be amended.

§ 7. Whenever upon the summoning or holding of any coroner's inquest the coroner finds that the deceased was attended during his or her last illness, or at his or her death, by any legally qualified medical practitioner, the coroner may issue his order for the attendance of such practitioner as a witness at such inquest, in the form following:

Coroner's Inquest at ———, upon the body of———.

By virtue of this my order, as coroner for _____, you are required to appear before me and the jury at _____ on the day of _____ at _____ o'clock, to give evidence touching the cause of death of _____, (*and when the witness is required to assist at a post mortem examination, add*) and make or assist in making a *post mortem* examination of the body, with (*or without*) an analysis (*as the case may be*) and report thereon at the said inquest.

Signed,

Coroner.

§ 8. If the coroner finds that the deceased was not so attended, he may issue his order for the attendance of any legally qualified medical practitioner being at that time in actual practice in or near the place where the death happened; and the coroner may, at any time before the termination of the inquest, direct a *post mortem* examination, with or without an analysis of the contents of the stomach or intestines, by the medical witness summoned to attend at such inquest. But, if any person shall state upon oath before the coroner, that in his belief the death was caused partly or entirely by the improper or negligent treatment of a medical practitioner or other person, such medical practitioner or other person shall not assist at the *post mortem* examination.

§ 9. Whenever it appears 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 witnesses examined in the first instance, such majority may name to the coroner, in writing, any other legally qualified medical practitioner or practitioners, and 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* examinations as in the last preceding section mentioned; and if the coroner refuses to issue such order, he is guilty of a misdemeanor, and shall be punishable by a fine not exceeding \$40, or by imprisonment not exceeding one month, or by both fine and imprisonment.

§ 10. Where any legally qualified medical practitioner has attended in obedience to any such order as aforesaid, he shall receive for such attendance, if without a *post mortem* examination, \$5; if with a *post mortem* examination, without an analysis of the contents of the stomach or intestines, \$10; if with such analysis, \$20; together with the sum of 20 cents per mile for each mile he has to travel to and from such inquest, such travel to be proved by his own oath to the coroner, who may administer the same; and the coroner shall make his order on the treasurer of the county in which the inquest is holden, in favour of such medical practitioner, for the payment of such fees or remuneration, and such treasurer shall pay the sum mentioned in such order, to such medical witness, out of any funds he may then have in the county treasury.

§ 11. Where any such order for the attendance of any medical practitioner has been personally served, or if not personally served has been received by him, or left at his residence in sufficient time for him to have obeyed such order, and he has not obeyed the same, he shall forfeit the sum of \$40 upon complaint by the coroner who held, or any two of the jury who sat on the inquest, made before any two justices of the peace of the county where the inquest has been held, or of the county where such medical practitioner resides; and such justices shall proceed to hear and adjudicate upon the complaint, and if such medical practitioner does not shew a sufficient reason for not having obeyed such order, they shall enforce the said penalty by distress and sale of the offender's goods in the same manner as they are empowered to do by the Consolidated Statute of Canada respecting the duties of justices of the peace in relation to summary convictions.

In every case of inquisition found before coroners, the inquisition and every recognizance taken before them with the written information (if any) and the depositions and statements (if any) of the accused, shall be forthwith delivered to the county attorney for the county in which such inquisition has been found.—*C. Stat. 22 V. c. 106, § 9.*

Coroners are now also authorised by statute to hold

inquests in case of fires.—*C. Stat. 22 V. c. 88.* See *post* title "*Fire.*"

Of Discharging the Coroners, and for what misdemeanors punished.

The coroner in this province holds his office during her Majesty's pleasure, and is therefore removable at any time upon just cause shewn.

By stat. 3 H. VII., "If any coroner be remiss, and make not inquisition upon the view of the body slain or murdered, he shall forfeit for every default 100s."

And by 1 H. VIII., it is enacted, "that if any coroner shall not endeavour himself to do his office upon any person dead by misadventure, he shall forfeit 40s."

Also, by 3 H. VII., it is enacted, "that if any coroner do not certify his inquisition, he shall forfeit 100s."

The inquisition so returned by the coroner must be engrossed, indented at the top, and be an exact copy of that signed by the jurors, and in words at length; and such return is to be made under his hand and seal only, with the name of his office.—*Umfrev. 312.*

By stat. 25 G. II., "If any coroner, who is not appointed by virtue of an annual election or nomination, or whose office of coroner is not annexed to any other office, shall be lawfully convicted of *extortion*, or wilful neglect of his duty, or misdemeanor in his office, it shall be lawful for the court before whom he shall be convicted to adjudge that he shall be removed from his office."

This statute is only in furtherance of the powers which before existed for their removal.

By stat 1 H. VIII., justices of assize, and justices of the peace within the county, have power to enquire of, and punish the defaults of coroners.

Coroner's Fees.

By U. C. Stat. 22 V. c. 119, § 2, the table of fees for services rendered in the administration of justice, and for county purposes, by sheriffs, coroners, clerks of the peace, &c., heretofore framed by the justices of the peace of their respective counties in quarter sessions assembled, and confirmed by the judges of the court of Queen's Bench at Toronto, is to continue until otherwise appointed. And the chief justice and other judges of the superior courts of common law at Toronto, may, from time to time, as occasion requires, by rule or rules

by them made in term time appoint the fees to be taken and received by such sheriffs, coroners, &c., for such services aforesaid.

Table of Fees.

*Coroner's Fees as established by the Judges under the
8 V. c. 38.*

Precept to summon jury.....	£0	2	6
Impanelling a jury.....	0	5	0
Summons for witnesses, each.....	0	1	3
Information or examination of each witness.....	0	1	3
Taking every recognizance.....	0	2	6
Necessary travel to take an inquest, per mile.....	0	1	0
Taking inquisition and making return.....	1	0	0
Every warrant.....	0	5	0

NOTE.—The costs of inquisitions are by the U. C. Stat. 22 V. c. 120, chargeable (with other costs relative to the administration of justice) on the public revenue, and by order in council are to be rendered in *duplicate* to the treasurer of the county during the sittings of the Court of Quarter Sessions, or within three days thereafter, and verified by affidavit. See further under title "Costs."

Juror's Fees.

The law makes no provision for the payment of any fees to jurors on coroner's inquests.

Proceedings by the Coroner.

When the coroner receives notice of a violent death, casualty, or misadventure, which regularly ought to be given from the peace officer of the parish, place or township, where the body lies dead, he is then to issue his precept, or warrant to summon a jury to appear at a particular time and place named, to enquire when, how, and by what means the deceased came by his death; which warrant is directed to the peace officers of the parish, place or precinct, where the party lies dead.

Form of the Warrant.

PROVINCE OF CANADA :

County of , } To the constables and peace officers of the
to wit. } township of , in the county of .

By virtue of my office, these are in her Majesty's name to charge and command you, that on sight hereof, you summon and warn twenty-four able and sufficient men of your township personally to be and appear before me, on the day of at o'clock in the forenoon of the same day, at the house of A.B., called or known by the name or sign of the , situate in

the said township, then and there to do and execute all such things as shall be given them in charge, on behalf of our sovereign lady the Queen, touching the death of R.F., (a) and for so doing this shall be your sufficient warrant; and that you also attend at the time and place above mentioned, to make a return of the names of the persons whom you shall have so summoned, and further, to do and execute such other matters as shall be then and there enjoined on you. And have you then and there this warrant. Given under my hand and seal, this day of 18 .

G.H. (L.S.)

Coroner.

If there be not sufficient jurors in the place, the coroner may summon them from the adjoining township or parish.—*Impey*, 512.

The coroner should furnish a sufficient number of blank summonses to the constable, for service by him upon the jurors, pursuant to the above warrant.

Form of the Summons.

PROVINCE OF CANADA :

County of , } To R. M., of the township of , in the
to wit. } county of , yeoman.

By virtue of a warrant, under the hand and seal of G. H., gentleman, one of her Majesty's coroners for the said county, you are hereby summoned to be and appear before him as a jurymen, on the day of at of the clock in the forenoon of the same day, at the house of known by the sign of the in the township of in the said county, then and there to enquire in her Majesty's name touching the death of R. F., and further to do and execute such other matters and things as shall be then and there given you in charge, and not to depart without leave. Herein fail not, at your peril. Dated the day of 18 .

E. F., *Constable.*

On the day appointed the coroner attends, and having received the return of the jurors, and precept, &c., the first thing he does is to direct the officer to open the court by proclamation, viz., by proclaiming "Oyez" three times, and to repeat after him as follows:—

"You, good men of this county, summoned to appear here this day, to enquire for our sovereign lady the Queen, when, how and by what means R. F. came to his death, answer to your names as you shall be called, every man at the first call, upon the pain and peril that shall fall thereon."

The coroner then proceeds to call over the jury by name,

(a) Or if unknown then say "of a man, (or woman,) male, or female, infant child, whose name is unknown."

marking the names of such as appear in the list. There must be twelve at the least to constitute a jury, but it is usual to swear thirteen or more; the jurors then proceed to elect their foreman; when done, he is called to the book and sworn first, the coroner at the same time saying to the rest of the jurors, "Gentlemen, hearken to your foreman's oath: for the oath he is to take on his part, you are severally to observe and keep on your part."

Foreman's Oath.

"You shall diligently enquire and true presentment make of all such matters and things as shall be here given you in charge on behalf of our sovereign lady the Queen touching the death of R. F. now lying dead, of whose body you shall have a view; you shall present no man for hatred, malice or ill-will, nor spare any through fear, favour or affection; but a true verdict give according to the evidence. So help you God."

The rest of the jurors are then sworn thus, four at a time:

"The same oath your foreman has taken on his part, you and each of you are severally well and truly to observe and keep on your part. So help you God."

After they are sworn it is usual for the coroner to give a charge acquainting them with the purpose of the meeting, as thus:

"Gentlemen, you are sworn to enquire on behalf of the Queen, how and by what means R. F. came to his death: your duty is to take a view of the body of the deceased, wherein you will be careful to observe if there be any marks of violence thereon, from which, and on the examination of the witnesses intended to be produced before you, you will endeavour to discover the cause of his death, so as to be able to return me a true verdict on this occasion."

When the charge is finished the coroner goes with the jury to take a view, and examine the body of the deceased. As soon as the view is taken it is usual for the coroner again to call them over, and add to his former charge some necessary observations he has made on view of the body; and add, "that he shall now proceed to hear and take down the evidence respecting the fact, to which he must crave particular attention." Particular charges are not necessary, but in particular cases arising from the fact or in the course of evidence, such as lunacy, *felo de se*, deodand, flight, forfeiture, &c. The deodand requires no other charge than of a value to be put upon what caused the death, and of whose property, and in whose possession. As to the particular charge in case

of a flight, which induces a forfeiture, where the party charged is not forthcoming, it may be necessary to add something to the general charge, as thus:—

“Your charge will be further to enquire in what degree the party charged is guilty, whether of murder or manslaughter, or of a killing in his own defence; if you find him guilty of murder or manslaughter, you are then to enquire what goods and chattels, lands or tenements he had at the time of the act committed or at any time since; if you find the fact to be of a justifiable homicide, from inevitable necessity, or in defence of his own person, life, or property, or where a suspected person doth fly and resist the proper officer, and is from necessity slain because he could not be otherwise taken: this flight and resistance presumes a guilt, and will incur a forfeiture; and therefore you are to enquire whether, in either of the instances the party fled for it; this is a presumptive confession of the charge; and you are then to enquire of his goods and chattels, but not lands or tenements, in the same manner as if you had found him guilty.”

The latter charge may be given after the evidence taken, so as to have a perfect verdict.

If the enquiry be of the death of one man by another, and it be doubtful whether the wound be mortal or not, a surgeon should be present to examine and shew the wound.

After the general charge is given by the coroner, the officer then calls silence, and repeats after the coroner thus:—

“If any one can give evidence on behalf of our sovereign lady the Queen, when, how and by what means R. F. came to his death, let them come forth and they shall be heard.”

The witness appearing, the coroner takes down his name, place of abode and occupation, and then the officer tenders to him the following oath:—

“The evidence you shall give to this inquest on behalf of our sovereign lady the Queen, touching the death of R. F., shall be the truth, the whole truth, and nothing but the truth. So help you God.”

The evidence shall be taken down in writing, (a) and as nearly as possible in the words of the witness.

The examinations should be entitled thus:—

PROVINCE OF CANADA :

County of } Informations of witnesses severally taken and
to wit. } acknowledged on the behalf of our sovereign
lady the Queen, touching the death of R. F., at the dwelling
house of J. B., known by the name or sign of the , in the

(a) And in cases of “murder” or “manslaughter” in the presence of the party accused, if apprehended.—See *ante C. Stat.* 22 V. c. 102, p. 210.

township of _____, in the county of _____, on the _____ day of _____, in the _____ year of the reign of our sovereign lady Queen Victoria, &c., before G. H., Esquire, one of the coroners of the said county, on an inquisition then and there taken on view of the body of the said R. F., then and there lying dead, as follows, to wit :

A. B., of the township of _____, in the said county, yeoman, being sworn, saith, &c.

Before the witness signs his examination it should be read over to him, and he should be asked "if that is the whole of the evidence he can give." He then signs it to the right hand of the paper. The coroner generally asks the jurors before the witness signs, whether they have any questions for him to ask the witness; and if any be asked, and the answer prove material, it should be added to the deposition. When the witness has signed his name to the examination taken, the coroner writes thus, to the left hand side, "taken and acknowledged the day, year, and at the place above mentioned, before G. H., coroner;" or if there are several witnesses, then at the end of the last information, thus, "all the above informations were severally taken and acknowledged on the day and year and at the first place above mentioned, before G. H., coroner."

If the evidence be not all taken, the coroner may adjourn the jury to another day, to the same or another place, to take and receive other evidence, first binding the jurors in a recognizance to appear at the adjournment, thus:—

"Gentlemen, you acknowledge yourselves severally to owe to our sovereign lady the Queen the sum of ten pounds, to be levied on your goods and chattels, lands and tenements, for her Majesty's use, *upon condition* that you and each of you do personally appear here again (or other appointed place) on the _____ day of _____ instant, at _____ of the clock in the forenoon precisely, then and there to make further enquiry on behalf of our said lady the Queen, touching the death of the said R. F., of whose body you have already had the view. Are you all content?"

The coroner then adjourns the court, thus:—

Gentlemen, the court doth dismiss you for this time: but requires you severally to appear here again (or at the adjourned place) on the _____ day of _____ instant, at _____ of the clock in the forenoon precisely, upon pain of £10 a man, on the condition contained in your recognizance entered into.

The coroner may in his discretion grant his warrant to bury the body of the deceased to prevent infection. Then the officer adjourns the court by making proclamation, thus:—

“Oyez ! oyez ! oyez ! all manner of persons who have any thing more to do at this court before the Queen’s coroner for this county, (or city) may depart hence and give their attendance here again (or other adjourned place) on the day of instant, at of the clock in the forenoon precisely. God save the Queen.”

The coroner will make a proper entry in his minutes of the recognizance and the adjournment, &c.

When the jury are met at the adjourned time and place, the officer opens the court by proclamation as in the first instance, with this addition :—

“And you, gentlemen of the jury, who have been empannelled and sworn on this inquest to enquire touching the death of R.F., severally answer to your names, and save your recognizance.”

If foreigners are examined as witnesses, the coroner is to have an interpreter, who is to be sworn thus :—

“You shall well and truly interpret unto the several witnesses here produced on behalf of our sovereign lady the Queen, touching the death of R. F., the oath that shall be administered to them, and also the questions and demands which shall be made to the witnesses by the court or jury, concerning the matters of this enquiry, and you shall well and truly interpret the answers which the witnesses shall thereunto give. So help you God.”

He then interprets the oath to the witnesses, and their answers, which the coroner takes down in writing in the same way as other depositions.

After the additional evidence has been taken down in writing and subscribed by the witnesses, the coroner then sums up the whole of the evidence to the jury, at the same time explaining to them the law upon the case when necessary. He then desires the jury to consider their verdict. If they withdraw to consider their verdict, the officer is sworn to take care of them, thus :—

“You shall well and truly keep the jury upon this enquiry without meat, drink, or fire : you shall not suffer any person to speak to them, nor you yourself, unless it be to ask them whether they be agreed to their verdict, until they shall be agreed. So help you God.”

The officer takes them to a convenient room, and attends the door on the outside until they are agreed ; when agreed, they return, and the coroner calls over their names, and afterwards asks them if they be agreed in their verdict ; if the foreman replies in the affirmative, the coroner asks them “who shall say for you ?” to which they reply “our foreman.” Then the coroner says, “Mr. Foreman, how do you find that

R.F. came to his death, and by what means?" The foreman then delivers the verdict, which the coroner records.

It seems that twelve at least must agree if there be no division; but if there be a division, the coroner then collects their voices, beginning with the last on the panel and rising upwards to the foreman, who declares last. The coroner collects the numbers and declares the majority into which the minority sinks, and the finding (which is to be given by the foreman) is from necessity taken and considered as the verdict of all. When the verdict is given, the coroner then draws up his inquisition in form, and at the foot affixes a seal for himself and each of the jurymen. The coroner and jurors then sign their names opposite the seals; to the coroner's name he adds "the office" thus, G.H., "*coroner.*"

The inquisition being thus completed, the coroner then addresses the jury as follows:—

"Gentlemen, hearken to your verdict, as delivered by you, and as I have recorded it. You find, &c." (*Here repeat the substance of the verdict.*)

If it is a case that will come to the assizes, the coroner binds all proper persons over in a recognizance to appear, prosecute and give evidence.

He should in the first place bind over one of the parties (generally the next of kin to the deceased) to appear and prosecute.

If the grand jury should return, "no bill," the party may still be arraigned and tried on the coroner's inquisition.

The usual manner of taking a recognizance is by calling the parties by name and thus addressing them:

"You J. R., E. D., and G. B., severally acknowledge to owe to our sovereign lady the Queen, the sum of each, of good and lawful money of this province, to be made and levied upon your respective goods and chattels, lands and tenements, by way of recognizance, to her Majesty's use if default shall be made in the condition following."

(*For condition see below.*)

The coroner then says "are you content?"

Form of a Recognizance to Appear and Prosecute.

PROVINCE OF CANADA :

County of } Be it remembered that on the day of in
to wit. } the year of our Lord J. R. of yeoman,
personally came before me, one of her Majesty's coroners for the
said county, and acknowledged himself to owe to our sovereign

lady the Queen the sum of _____, of good and lawful money of this province, to be made and levied on his goods and chattels, lands and tenements, by way of recognizance to her Majesty's use, if default shall be made in the condition following :

The condition of this recognizance is such, that if the above bounden J. R. do personally appear at the next session of general gaol delivery to be holden in and for the county of _____, and shall then and there prefer, or cause to be preferred, to the grand jury, a bill of indictment against C. D. late of _____, labourer, and now in custody for the wilful murder of A. B., late of, &c., and that the said J. R. do then and there personally appear and give evidence upon such bill of indictment to the said grand jury, and in case the said bill of indictment be found by the grand jury a true bill, that then the said J. R. do personally appear at the said general gaol delivery, and there prosecute the said C. D. on such indictment, and do then and there give evidence to the jury that shall pass on the trial of the said C. D. touching the premises, and in case the said bill of indictment shall be returned not found, that then the said J. R. do personally appear at the said general gaol delivery, and then and there prosecute and give evidence to the jury that shall pass on the trial of the said C. D., upon an inquisition taken before me, one of her Majesty's coroners for the said county, on the view of the body of the said A. B., and not depart the court without leave, then this recognizance to be void, otherwise to remain in full force. Taken and acknowledged this _____ day of _____ before me.

G. H., Coroner.

Form of a Recognizance to Appear and give Evidence.

PROVINCE OF CANADA :

County of _____ } Be it remembered that on the _____ day of _____ in
to wit. } the year of our Lord _____, S. R. of _____ yeoman,
E. D. of _____ blacksmith, and G. B. of _____, mason, personally
came before me, one of her Majesty's coroners for the said county,
and severally acknowledged themselves to owe to our sovereign
lady the Queen the sum of _____ of good and lawful money of this
province, to be made and levied on their respective goods and
chattels, lands and tenements, by way of recognizance, to her
Majesty's use if default shall be made in the condition following :

“The condition of this recognizance is such, that if the above bounden S. R., E. D. and G. B. do severally appear at the next session of general gaol delivery to be holden in and for the said county, and then and there give evidence upon a bill of indictment to be then and there preferred to the grand jury against C. D., late of the township of _____ in the said county, labourer, for the wilful murder of R. F. late of _____ &c. And in case the bill of indictment be found by the grand jury a true bill, then if they the said S. R., E. D. and G. B. do severally appear and give evi-

dence to the jury that shall pass on the trial of the said C. D. upon the said indictment : and in case the said indictment shall be returned by the grand jury aforesaid "not found," then if they the said S. R., E. D. and G. B. do severally appear at the said session of general gaol delivery, and then and there give evidence to the jury that shall pass on the trial of the said C. D. upon an inquisition taken before me, one of her Majesty's coroners for the said county, on the view of the body of the said R. F., and not depart the court without leave, then this recognizance to be void, otherwise to remain in full force. Taken and acknowledged this day of before me.

G. H., *Coroner.*

If one of the witnesses be a married woman and the husband not present to enter into a recognizance for her, she is not to be bound in any sum penal, but "on pain of imprisonment," thus: S. the wife of J. S. of, &c., labourer, on pain of imprisonment, in case she shall make default in such condition ; but if the husband be present, he is also to be bound for the appearance of his wife ; and if the witness happen to be an infant, (or minor under the age of twenty-one years,) the parent or master should be bound in a recognizance for his appearance.

Form of Recognizance by Husband and Wife.

PROVINCE OF CANADA :

County of } Be it remembered that J. P. of the town-
to wit. } ship of in the county of , yeoman,
and E. P., his wife, severally acknowledged themselves to be
bound by recognizance to our sovereign lady the Queen, as follows,
that is to say, the said J. P. in the sum of £20 of lawful money
of the province of Canada, to be levied on his goods and chattels,
lands and tenements, by way of recognizance, to her Majesty's use,
and the said E. P. his wife, on pain of imprisonment, in case de-
fault shall be made in the condition following:—the condition of
this recognizance is such that if the said E. P., the wife of the
said J. P., do and shall personally appear, &c. (*as in the former
Recognizance, page 223.*)

*Form of Recognizance by a Master (parent or guardian)
for the appearance of an Apprentice or Minor.*

PROVINCE OF CANADA :

County of } Be it remembered, that on the day of
to wit. } in the year of our Lord J. P., of the
township of } in the said county, shopkeeper, the *mainpernor*
of J. J. his apprentice, (*or son,*) an infant, personally came before
me, one of her Majesty's coroners for the said county, and ac-
knowledged himself to owe to our sovereign lady the Queen the

sum of good and lawful money of this province, to be levied on his goods and chattels, lands and tenements, by way of recognizance, to her Majesty's use, if default shall be made in the condition following.

The condition of this recognizance is such that if the above named J. J. the apprentice (*or son*) of the said J. P., do appear at the next session of general gaol delivery to be holden in and for the said county, and then and there give evidence upon a bill of indictment to be then and there preferred to the grand jury, against C. D., late of the township of in the said county, labourer, for the wilful murder of R. F. late of &c. And in case the bill of indictment be found by the grand jury a true bill, then if the said J. J. do appear and give evidence to the jury that shall pass on the trial of the said C. D. upon the said indictment; and in case the said indictment shall be returned by the grand jury aforesaid "not found," then if the said J. J. do appear at the said session of general gaol delivery, and then and there give evidence to the jury that shall pass on the trial of the said C. D. upon an inquisition taken before me, one of her Majesty's coroners for the said county, on the view of the body of the said R. F., and not depart the court without leave, then this recognizance to be void, otherwise to remain in full force. Taken and acknowledged this day of before me.

G. H., *Coroner.*

The business of the court being concluded, the officer then makes proclamation thus:—

"You good men of this township, who have been empannelled and sworn of the jury to enquire for our sovereign lady the Queen, touching the death of R. F., and who have returned your verdict, may now depart hence and take your ease. God save the Queen."

The following forms of inquisitions, summonses, warrants, &c., are transcribed from *Impey's Office of Coroner.*

Forms of Inquisition.

Accident by a Cart.

PROVINCE OF CANADA :

County of } An inquisition indented, taken for our sovereign
to wit. } lady the Queen, at the township of in the
county of the day of in the year of the reign of
our sovereign lady Queen Victoria, &c., before G. H., gentleman,
one of the coroners of our said lady the Queen for the said county,
on view of the body of A. P., then and there lying dead, upon the
oath of A.B., &c., (*here insert the names of all the jurors sworn,*)
good and lawful men of the said township, duly chosen, and who
being then and there duly sworn and charged to enquire for our

said lady the Queen, when, where, how, and after what manner the said R. F. came to his death, do upon their oath say, that W. C., late of the township aforesaid, in the county aforesaid, carman, on _____, at the township aforesaid, in the county aforesaid, in a certain public street or highway, there called _____, being negligently driving in a cart, drawn by one horse, and loaded with twelve barrels of flour; it so happened that the said A. P. being in the street and highway aforesaid, was then and there accidentally, casually, and by misfortune forced to the ground by the horse so drawing the said cart as aforesaid, and the said cart so loaded as aforesaid was then and there by the said horse violently and forcibly drawn to and against the said A. P., and the wheel of the said cart, so drawn and loaded as aforesaid, did then and there accidentally, casually and by misfortune violently go upon, and pass over the breast and body of the said A. P., by means whereof the said A. P., from the weight and pressure of the said cart, so loaded and drawn as aforesaid, did then and there receive one mortal bruise in and upon his said breast and body, of which said mortal bruise he the said A. P. then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say that the said A. P., in manner and by the means aforesaid, accidentally, casually, and by misfortune came to his death, and not otherwise; and that the said horse, cart, and loading were the cause of the death of the said A. P., and that the said twelve barrels of flour are of the value of _____, the said cart of the value of _____, and the said horse of the value of _____, amounting in the whole to the sum of _____, of lawful money of the province of Canada, and are the property and in the possession of D. E. of _____ yeoman, or of his assigns. In witness, &c.

(a) If it be intended to impose a nominal fine or deodand only then say,

“And that the said horse, cart, and loading are of the value of five shillings of lawful money, &c.” (*as before.*)

By a Fire.—That on _____, at, &c., the warehouse of C. D., situate in the same township and county, casually took fire, and the said A. B., being then and there present, aiding and assisting to extinguish the said fire; it so happened that a piece of timber, by the force and violence of the said fire, then and there accidentally, casually, and by misfortune fell from the top of the said warehouse, in and upon the head of him, the said A. B., by reason whereof he the said A. B. then and there received a mortal fracture on the head of him, the said A. B., of which said mortal fracture he, the said A. B., from the said _____ day

(a) The amount is generally regulated by the nature of the case; if purely accidental the deodand is nominal: but in cases of gross or culpable negligence the amount is accordingly.

of _____, in the year aforesaid, until the _____ day of _____, in the year aforesaid, there did languish, and languishing did live; on which said _____ day of _____, in the year aforesaid, at the township aforesaid, in the county aforesaid, he, the said A. B., of the mortal fracture aforesaid, did die. And so the jurors aforesaid, &c., and that the said piece of timber was the occasion of the death of the said A. B., and is of no value: (or it is of the value of, &c.) and in the possession, &c. In witness, &c.

Accidental Burning.—That the said A. B., on the _____ day of _____ in the year aforesaid, then and there being and inhabiting a certain dwelling-house of C. D., situate at, &c., it so happened that the said dwelling-house was by accident set on fire, and the said A. B. was then and there in the flames thereof accidentally and by misfortune burned to death. And so the jurors aforesaid, upon their oath aforesaid, do say that the said A. B., in manner, and by the means aforesaid, accidentally, casually, and by misfortune came to his death, and not otherwise.

By Clothing set on Fire.—That on the _____ day of _____ in the year aforesaid, at the township and in the county aforesaid, the clothing and apparel of the said A. B., wherewith the said A. B. was then and there clothed, accidentally and by misfortune took fire, by means whereof the said A. B. then and there received divers mortal burns and injuries upon the head, neck, shoulders, arms, legs, and other parts of the body of her the said A. B., of which mortal injuries the said A. B., from the said _____ day of _____ in the year aforesaid, to the _____ day of _____ in the year aforesaid, at the township and in the county aforesaid, did languish and languishing did live; on which said _____ day of _____ in the year aforesaid, at the township aforesaid, in the county aforesaid, she, the said A. B., of the mortal injuries aforesaid did die. And so the jurors, &c., (as in last form.)

By Drowning.—That the said A. B. on _____ aforesaid, in a certain river, called _____, at the township, and in the county aforesaid, having gone into the same to bathe himself, accidentally, casually, and by misfortune was in the waters of the said river then and there suffocated and drowned; of which said suffocation and drowning he, the said A. B., then and there instantly died. And so the jurors, &c.

Other Causes.

Natural Death.—That the said A. B., on _____ and for a long time before, at, &c., did labour and languish under a grievous disease of body, to wit, an asthma; and that on the said _____ day of _____, in the year aforesaid, at, &c., she the said A. B. departed this life, by the visitation of God, in a natural way, to wit, of the disease and distemper aforesaid, and not by any hurt or injury received from any person, to the knowledge of the said jurors. In witness, &c.

Found Dead.—That the said A. B., on, &c., at, &c., in a certain brick-field, in the possession of one C. D., was found dead. That he the said A. B., for some time before, had been very ailing and infirm, and not able to work; that he had no marks of violence appearing on his body, and departed this life by the visitation of God, in a natural way, to wit, of his said ailment and infirmity, and not by any violent means whatsoever, to the knowledge of the said jurors. In witness, &c.

Stranger Found Dead.—That the said man, unknown, on, &c., at, &c., to wit, in a certain wood, there called the long wood, was found dead. That the said man, unknown, had no marks of violence appearing on his body; but how, or by what means he came to his death, no evidence thereof doth appear to the said jurors. In witness, &c.

By Excessive Drinking.—That the said A. B., on, &c., at, &c., departed this life by the excessive drinking of ardent spirits, and not from any hurt, injury or violence done or committed by any person or persons whatsoever to the knowledge of the jurors. In witness, &c.

Inclemency of the Weather.—That the said man, unknown, was found dead in a certain lane, situate in the said township, commonly called _____, that the said man unknown had no marks of violence appearing on his body, but died through want and inclemency of the weather, and by no violent ways or means whatsoever, to the knowledge of the said jurors. In witness, &c.

Death in Prison.—That the said A. B., being a prisoner for debt in the gaol of _____, at, &c., in the gaol aforesaid, departed this life by the visitation of God, in a natural way, to wit, of a fever, and not otherwise. In witness, &c.

Falling out of a Boat.—That the said C. D., on, &c., being in a certain boat with a certain sail and oars, the property of him the said C. D., at, &c., it so happened, that by the violence of the the wind and waves the said boat was then and there accidentally, casually, and by misfortune upset, by means whereof the said C. D. was then and there accidentally, casually, and by misfortune cast and thrown into the waters of the said river, and in the waters of the said river was then and there suffocated and drowned, of which said suffocation and drowning he the said C. D. then and there instantly died. And so the jurors, &c., and that the said boat, and the sail and oars thereof, did occasion the death of the said C. D., and are of the value of 10s., and in the possession of _____, or his assigns. In witness, &c.

Homicide.

Murder.—That C. D., late of, &c., labourer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on, &c., with force and arms, at, &c., in and

upon the said A. B., in the peace of God, and of our said lady the Queen, then and there being, feloniously [*wilfully and of his malice aforethought*] did make an assault, and that the said C. D. with a certain iron poker of the value of 1s., which the said C. D. then and there had and held in both his hands, him, the said A. B., in and upon the head of him the said A. B., then and there, divers times, feloniously [*wilfully, and of his malice aforethought*] did strike and beat, then and there giving unto him, the said A. B., in and upon the back part of the head of him the said A. B., with the iron poker aforesaid, one mortal fracture of the length of two inches, of which said mortal fracture he the said A. B. then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said C. D. him, the said A. B., in manner, and by the means aforesaid, feloniously [*wilfully, and of his malice aforethought*] did [*kill and murder,*] against the peace of our lady the Queen, her crown and dignity, and that the said C. D. after the doing and committing of the said felony and [*murder*] aforesaid, withdrew and fled for the same, and that neither at the time of the doing and committing thereof, nor at any time since, he the said C. D. had any goods or chattels, lands or tenements within the said county or elsewhere, to the knowledge of the said jurors. In witness, &c.

By Suffocating a Bastard.—That A. B., late of &c. , single woman, on, &c. , being then and there big with a female child, afterwards, to wit, on the same day and year, at the township aforesaid, in the county aforesaid, the said female child, alone and secretly from her body, by the providence of God, did bring forth alive, which said female child by the laws of this province was a bastard; and that the said A. B. not having the fear of God, &c., (as before), afterwards, to wit, on the same day and year aforesaid, with force and arms, at the township aforesaid, in the county aforesaid, in and upon the said new-born female bastard child so alive, and in the peace of God and of our lady the Queen then and there being, feloniously, wilfully, and of her malice aforethought, did make an assault, and that the said A. B., her the said newborn female bastard child, with both her hands, in a certain linen cloth of no value, then and there feloniously, wilfully and of her malice aforethought, did wrap up and fold, by means of which said wrapping up and folding of her the said new-born female bastard child, in the linen cloth aforesaid, she the said new-born female bastard child was then and there suffocated and smothered, of which said suffocation and smothering she the said new-born female bastard child then and there instantly died; and so the jurors aforesaid do say that the said A. B. her, the said new-born female child, in manner and by the means aforesaid, feloniously, wilfully and of her malice aforethought, did kill and murder, against the peace of our said lady the Queen, her crown and dignity, [*flight, forfeiture,—as before*]. In witness, &c.

By throwing down a Privy.—And that the said A. B. him the said new-born male child, did then and there take into both her hands, and him the said new-born male child into a certain privy, or necessary house, there situate, then and there feloniously, wilfully and of her malice aforethought, did violently cast and throw down, by means whereof he, the said new-born male child, in the soil or filth then and there contained in the said privy or necessary house, was then and there suffocated and smothered, of which said suffocation and smothering he the said new-born male child then and there instantly died; and so the jurors, &c. [as before] [flight, forfeiture—as before.] In witness, &c.

Against Aiders and Abettors in Murder or Manslaughter.—And the jurors aforesaid, upon their oath aforesaid, do further say that S. W., late of &c. labourer, and G. W., late of the same place, labourer, at the time of the doing and committing of the felony and murder (*or felony and manslaughter*) aforesaid, were present, aiding, abetting, assisting, comforting and maintaining the said C. D. to kill and murder (*or kill and slay*) the said A. B., in manner aforesaid; and so the jurors aforesaid, upon their oath aforesaid, do say that the said C. D. and E. F. him, the said A. B., in manner and by the means aforesaid, feloniously, wilfully and of their malice aforethought, did kill and murder, (*and in cases of manslaughter say, feloniously did kill and slay*), against the peace, &c., (*conclude with flight and forfeiture*). In witness, &c.

Manslaughter.—The form is precisely the same, except that the words “wilfully and of his malice aforethought,” are to be left out, and the words “feloniously did *kill and slay*,” substituted for “kill and murder,” and the word “manslaughter,” for “murder,” in another part.—See the parts marked with brackets.

Se Defendendo.

That on the day of in the year aforesaid, at the township aforesaid, in the county aforesaid, the said A. B. being in a certain common drinking room belonging to a public house there situate, known by the name or sign of , in which said common drinking room one C. D., late of the township aforesaid, in the county aforesaid, labourer, and divers other persons was and were then and there present; and that the said A. B., without any cause or provocation given by the said C. D., did then and there menace and threaten the said C. D. to turn him the said C. D. out of the said common drinking room, and for that purpose did then and there lay hold of him the said C. D., and on him the said C. D., in the peace of God and of our said lady the Queen then and there being, did violently make an assault, and him the said C. D., without any cause or provocation whatsoever, did then and there beat, abuse and evilly entreat, whereupon the said C. D. for the preservation and safety

of his person, and of inevitable necessity, did then and there with the hands of him the said C. D. defend himself against such the violent assault of him the said A. B. as it was lawful for him to do; and the said A. B. did then and there receive against the will of him the said C. D., by the falls and blows which he the said A. B. then and there sustained by him the said C. D.'s. so defending himself as aforesaid, divers mortal bruises, in and upon the head, back and loins of him the said A. B., of which said mortal bruises he the said A. B. from the said day of , in the year aforesaid, until the day of the same month in the same year, at the township aforesaid, did languish, &c., (*as in former precedent,*) and so the jurors aforesaid, upon their oath aforesaid, do say, that the said C. D. him the said A. B. in the defence of himself the said C. D. in manner and by the means aforesaid, (a) did kill and slay; but what goods or chattels the said C. D. had at the time of the doing and committing the said manslaughter in his defence as aforesaid, the said jurors know not. In witness, &c.

Chance Medley.

That C. D., late of the township of in the county aforesaid, on the day of in the year aforesaid, at the township aforesaid, in the county aforesaid, a certain gun of the value of 10s., then and there charged with gunpowder and a leaden bullet, which he the said C. D. then and there had and held in both his hands, then and there casually, and by misfortune, and against the will of him the said C. D., was discharged and shot off. And that the said C. D., with the leaden bullet aforesaid, then and there discharged and shot out of the said gun by the force of the gunpowder aforesaid, him the said A. B. in and upon the left breast of him the said A. B. casually, by misfortune, and against the will of him the said C. D., did then and there strike and penetrate, giving unto him the said A. B. then and there with the bullet aforesaid, out of the gun aforesaid, so as aforesaid shot off and discharged, by the force of the said gunpowder, in and upon the said left breast of him the said A. B., one mortal wound, of the breadth of one inch, and of the depth of three inches, of which said mortal wound he, the said A. B., then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said C. D., him the said A. B., in manner and by the means aforesaid, *casually and by misfortune, and against the will* of him the said C. D., did kill and slay; (b) but what goods or chattels the said C. D. had at the time of the killing and slaying by misfortune as aforesaid, the said jurors know not. In witness, &c.

(a) Omit the word "feloniously," this not being a felony but a justifiable homicide.

(b) Omit the word "feloniously," this not being a felony.

Delirium.

That the said A. B. labouring under a grievous disease of body, (or a fever,) and by reason of the violence of the said disease, being delirious and out of his mind, on the day of in the year aforesaid, at the township and in the county aforesaid, a certain pistol, charged with gunpowder and a leaden bullet, which he the said A. B. then and there had and held in his right hand, to and against the head of him the said A. B., "*so delirious and out of his mind as aforesaid,*" and then and there shot off and discharged, by means whereof he, the said A. B., did then and there give unto himself, "*so delirious and out of his mind as aforesaid,*" with the leaden bullet aforesaid, so discharged and shot out of the pistol aforesaid, by the force of the gunpowder aforesaid, in and upon the head of him the said A. B., one mortal wound of the breadth of one inch, and depth of four inches, of which said mortal wound he, the said A. B., then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said A. B., "*being delirious and out of his mind as aforesaid, by reason of the fever aforesaid,*" in manner aforesaid, and by the means aforesaid, did kill himself. In witness, &c.

If the death be occasioned by any *distraction of the mind*, and not by *disease* of the body, instead of the words above printed in *italics*, you say, "not being of sound mind, memory and understanding, but lunatic and distracted," and this difference it is necessary to remember.

Lunacy.

Throwing out of a Window.—That the said A. B., "not being of sound mind, memory and understanding, but lunatic and distracted, on the day of in the year aforesaid, from and out of a certain one pair of stairs window, then and there being in the chamber or apartment of him the said A. B., in the dwelling house of C. D., situate, &c., did violently cast and throw himself to the ground, to and against the stone pavement of the yard belonging to the said dwelling-house, by means of which said casting and throwing, he, the said A. B., did then and there receive one mortal wound, on the upper part of the head of him the said A. B., of which said mortal wound, he, the said A. B., then and there instantly died. And so the jurors aforesaid upon their oath aforesaid, do say that the said A. B., in manner and by the means aforesaid, *not being of sound mind, memory and understanding, but lunatic and distracted,* did kill himself. In witness, &c.

By Hanging.—That the said A. B., not being of sound mind, memory, and understanding, but lunatic and distracted, on the day of in the year aforesaid, at the township and in the county aforesaid, one end of a certain piece of small cord, unto an iron staple fastened into the wainscot in the lodging

room, or apartment of him the said A. B., in the dwelling house of C. D., situate, &c., and the other end thereof about his own neck, did fix, tie, and fasten, and therewith did then and there hang, suffocate and strangle himself, of which said hanging, suffocation and strangling he, the said A. B.; then and there died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said A. B., not being of sound mind, memory, and understanding, but lunatic and distracted, in manner and by the means aforesaid, did kill himself. In witness, &c.

Felo de se.

By Hanging.—As in the former precedent to the words, *upon their oath say*: That the said K. F. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the day of in the year aforesaid, with force and arms, at the township aforesaid, in the county aforesaid, in and upon himself, in the peace of God, and of our said sovereign lady the Queen, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said R. F. one end of a certain piece of cord, of no value, unto a certain iron bar then and there fixed in the ceiling of the round-house, then and there situate and being, (wherein the said R. F. was then and there a prisoner in custody charged with felony,) and the other end thereof about his neck did fix, tie, and fasten, and therewith did then and there hang, suffocate, and strangle himself; of which said hanging, suffocation, and strangling he the said R. F. did then and there die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F. in manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder himself, against the peace of our said lady the Queen, her crown and dignity. And that the said R. F. at the time of the committing the felony and murder aforesaid, had no goods or chattels, lands or tenements, within the said county, or elsewhere, to the knowledge of the said jurors. In witness, &c.

By Stabbing, (as before, to the word Assault.)—And that the said R. F., with a certain drawn sword made of iron and steel, of the value of 5s., which he the said R. F. then and there had and held in his right hand, did then and there give unto himself one mortal wound in and upon the body of him the said R. F. under the left breast, of the breadth of one inch, and of the depth of six inches, of which said mortal wound he the said R. F. then and there instantly died. And so the jurors aforesaid, &c. (*Conclude as in last precedent.*)

By Shooting (as before.)—And that the said R. F., a certain pistol of the value of 10s., charged with gunpowder and a leaden bullet, which he the said R. F. then and there had and held in his right hand, feloniously, wilfully, and of his malice afore-

thought, to and against the head of him the said R. F. did then and there shoot off and discharge ; and that by means of the shooting off and discharging of the pistol aforesaid, he the said R. F. did then and there give unto himself with the leaden bullet aforesaid, so as aforesaid discharged, and shot out of the pistol aforesaid, by the force of the gunpowder aforesaid, in and upon the head of him the said R. F. one mortal wound of the breadth of one inch, and depth of three inches, of which said mortal wound he the said R. F. then and there instantly died. And so the jurors aforesaid, &c., (*as before.*)

By Drowning, (to the word assault.)—And that the said R. F., into a certain river or stream of water, commonly called the river, at the township aforesaid, in the county aforesaid, feloniously, wilfully, and of his malice aforethought, did violently cast and throw himself, by means of which said casting and throwing he the said R. F., in the waters of the said river, was then and there suffocated and drowned, of which said suffocation and drowning he the said R. F. then and there instantly died. And so the jurors aforesaid, &c., (*as before.*)

By Poisoning (as before, to the word assault.)—And that the said R. F. a certain quantity of white arsenic, being a deadly poison, into a certain quantity of tea, infused in warm water, feloniously, wilfully, and of his malice aforethought, did then and there put and mix, and then and there well knowing the said white arsenic to be a deadly poison ; and that the said R. F., afterwards, to wit, on the same day and year aforesaid, at the township aforesaid, feloniously, wilfully, and of his malice aforethought, did take, drink, and swallow down a great quantity of the said tea in which the said white arsenic was so put and mixed as aforesaid, by means whereof he, the said R. F., then and there became sick and distempered in his body ; and of the said poison and the said sickness and distemper thereby occasioned, from the said day of in the year aforesaid, until the day of in the same year, at the township aforesaid, in the county aforesaid, did languish, and languishing did live ; on which said day of in the year aforesaid, at the township aforesaid, in the county aforesaid, he, the said R. F., of the poison, sickness, and distemper aforesaid did die. And so the jurors, &c., (*as before.*)

By Cutting his Throat.—(*As before to the word assault.*) And that the said R. F., with a certain razor made of iron and steel of the value of one shilling, which he, the said R. F., then and there had and held in his right hand, the throat or gullet of him the said R. F., feloniously, wilfully, and of his malice aforethought, did then and there strike and cut, thereby then and there giving unto himself with the razor aforesaid in and upon the said throat or gullet of him the said R. F. one mortal wound of the length of three inches, and depth of one inch, of which said mortal wound he the said R. F. then and there instantly died. And so the jurors aforesaid, &c., (*as before.*)

Warrant to Bury after a View.—Lunacy.

PROVINCE OF CANADA :

County of } To the minister and churchwardens of the
to wit. } township of , in the county of , and
to all others whom it may concern.

Whereas I, with my inquest, the day and year hereunder written, have taken a view of the body of J. D., who not being of sound mind, memory and understanding, but lunatic and distracted, shot himself, (*or agreeably to the finding of the jury*), who now lies dead in your township, and have proceeded therein according to law. These are therefore to certify that you may lawfully permit the body of the said J. D. to be buried: and for so doing this shall be your warrant. Given under my hand and seal the day of .

G. H., Coroner.

Warrant to Bury a Felo de se, after Inquisition found.

PROVINCE OF CANADA :

County of } To the churchwardens and constables of the
to wit. } township of , in the county of .

Whereas by an inquisition taken before me, one of her Majesty's coroners for the said county, this day of , in the year of the reign of her present Majesty Queen Victoria, at the township of , in the said county, on view of the body of J. D., then and there lying dead, the jurors in the said inquisition named have found that the said J. D. feloniously, wilfully and of his malice aforethought, killed and murdered himself (*as the finding may be*); these are therefore, by virtue of my office, to will and require you forthwith to cause the body of the said J. D. to be buried according to law; and for your so doing this is your warrant. Given under my hand and seal this day of .

G. H., Coroner.

N.B.—The last form of warrant should not be directed to the minister.

The Return thereto.

By virtue of the within warrant to us directed, we have caused the body within named to be buried according to law.

C. D. } Churchwardens.
E. F. }
I. D. Constable.

Warrant to Bury without a View, where no effectual Inquest can be taken.

PROVINCE OF CANADA :

County of } To the minister and churchwardens in the
to wit. } township of in the county of .

Whereas I am credibly informed that on the day of , the body of a new-born male child was found dead in a coffin, in the churchyard of the said township, and that there is not any evidence to be found to make appear to the jury either by what means the said male child was there laid, or who was the mother thereof, or how it came to his death, nor are there any marks of violence appearing on its body. These are therefore to certify that in ease of the county charge you may permit the body of the said new born male child to be buried : and for so doing this is your warrant. Given under my hand and seal this day of .

G. H., Coroner.

Another form of Warrant to Bury without a View.

PROVINCE OF CANADA :

County of } To the minister and churchwardens of the
to wit. } township of , in the county of .

Whereas I am credibly informed, that on the day of instant, A. B. died suddenly in the street, to wit, (*name the street,*) in the township of , in the said county, as supposed by a fit of apoplexy or other sudden visitation of God, and that he came not to his death by any violent means whatsoever. These are therefore to certify that in ease of the county charge you may permit the body of the said A. B. to be buried : and for so doing this shall be your warrant. Given under my hand and seal this day of .

G. H., Coroner.

Warrant to Bury without a View, when the Body was found Drowned.

PROVINCE OF CANADA :

County of } To the minister and churchwardens of the town-
to wit. } ship of , in the county of .

Whereas I am credibly informed that on the day of the body of a man unknown was taken up dead, and floating in the river , in the township of in the said county, and that no marks of violence do appear on the body of the said man unknown ; and whereas there is no evidence to make appear to a jury how or by what means the said man unknown came to his death. These are therefore to certify that in ease of the county charge you may permit the body of the said man unknown to be buried : and for so doing this is your warrant. Given under my hand and seal, this day of .

G. H. Coroner.

Warrant to take up a Body interred.

PROVINCE OF CANADA :

County of } To the minister and churchwardens of the town-
to wit. } ship of , in the county of .

Whereas complaint hath been made unto me, one of her Majesty's coroners for the said county, on the day of that the body of one G. R. was privately and secretly buried in your township, and that the said G. R. died not of a natural, but violent death: and whereas no notice of the violent death of the said G. R. hath been given to any of her Majesty's coroners for the said county, whereby, on her Majesty's behalf, an inquisition might have been taken on view of the body of the said G. R., before his interment, as by law required. These are, therefore, by virtue of my office, in her Majesty's name to charge and command you, that you forthwith cause the body of the said G. R. to be taken up and safely conveyed to in the said township, that I with my inquest may have a view thereof, and proceed therein according to law. Herein fail not, as you will answer the contrary at your peril. Given under my hand and seal, the day of .

G. H., Coroner.

Warrant to Apprehend a Person for Murder.

PROVINCE OF CANADA :

County of } To the constables of the township of , in the
to wit. } county of , and all other her Majesty's
peace officers in the said county.

Whereas by an inquisition taken before me , one of her Majesty's coroners for the said county, this day of , at , in the said county, on view of the body of G. R., then and there lying dead, one C. D., late of , in the said county, labourer, stands charged with the wilful murder of the said G. R., these are, therefore, by virtue of my office, in her Majesty's name, to charge and command you, and every of you, that you or some one of you, without delay, do apprehend and bring before me the said coroner, or one of her Majesty's justices of the peace of the said county, the body of the said C. D., of whom you shall have notice, that he may be dealt with according to law. And for your so doing this is your warrant. Given under my hand and seal, this day of .

G. H., Coroner.

Commitment for Murder.

PROVINCE OF CANADA :

County of } To the constables of the township of in the
to wit. } county of , and all other her Majesty's
officers of the peace for the said county, and to the keeper of her Majesty's gaol at , in the said county.

Whereas by an inquisition taken before me, one of her Majesty's coroners for the said county, the day and year here under-mentioned, on view of the body of R. L., lying dead in the said township of , in the county aforesaid, J. K., late of

the township of _____, in the said county, labourer, stands charged with the wilful murder of the said R. L. These are, therefore, by virtue of my office, in her Majesty's name to charge and command you, the said constables and others aforesaid, or any of you, forthwith safely to convey the body of the said J. K. to her Majesty's gaol at _____ aforesaid, and safely to deliver him to the keeper of the said gaol; and these are likewise by virtue of my said office, in her Majesty's name, to will and require you, the said keeper, to receive the body of the said J. K. into your custody, and him safely to keep in the said gaol, until he shall be thence discharged by due course of law, and for your so doing this shall be your warrant. Given under my hand and seal, the _____ day of _____.

G. H., Coroner.

Summons to a Witness.

PROVINCE OF CANADA :

County of _____ } To A. P., of the township of _____, in the county
to wit. } of _____, yeoman.

Whereas I am credibly informed that you can give evidence on behalf of our sovereign lady the Queen, touching the death of A. P., now lying dead in the township of _____, in the said county. These are, therefore, by virtue of my office, in her Majesty's name, to charge and command you personally to be and appear before me, at the dwelling-house of J. R., known as the sign of _____, situate at _____, in the said township, at _____ o'clock in the forenoon, on the _____ day of _____ instant, then and there to give evidence and be examined on her Majesty's behalf before me and my inquest touching the premises: herein fail not, as you will answer the contrary at your peril. Given under my hand and seal this _____ day of _____.

G. H., Coroner.

Warrant for Contempt against a Witness for not appearing to give evidence.

PROVINCE OF CANADA :

County of _____ } To the constable of the township of _____,
to wit. } in the county of _____, and to all other her
Majesty's officers of the peace in and for the same county.

Whereas I have received credible information that A. P. of _____ in the township of _____, in the said county, can give evidence on behalf of our sovereign lady the Queen, touching the death of C. D., now lying dead in the said township; and whereas the said A. P. having been duly summoned to appear and give evidence before me and my inquest touching the premises, at the time and place in the said summons specified, of which oath hath been duly made before me, hath refused and neglected so to do, to the great hindrance and delay of justice. These are,

therefore, by virtue of my office, in her Majesty's name, to charge and command you, or one of you, without delay to apprehend and bring before me, one of her Majesty's coroners of the said county, now sitting at the township aforesaid, by virtue of my said office, the body of the said C. D., that he may be dealt with according to law : and for your so doing this is your warrant. Given under my hand and seal the day of .
G. H., Coroner.

Warrant to Commit a Witness refusing to give Evidence.

PROVINCE OF CANADA :

County of } To the constables of the township of in the
to wit. } county of , and all other her Majesty's
officers of the peace in and for the county aforesaid, and also to
the keeper of the gaol in the said county.

Whereas I heretofore issued my summons under my hand, directed to A. P. of, &c., requiring his personal appearance before me, then and now one of her Majesty's coroners for the said county, at the time and place therein mentioned; to give evidence and be examined on her Majesty's behalf, touching and concerning the death of C. D., then and there lying dead, of the personal service of which said summons oath hath been duly made before me ; and whereas the said A. P. having neglected and refused to appear pursuant to the contents of the said summons, I thereupon afterwards issued my warrant, under my hand and seal, in order that the said A. P., by virtue thereof, might be apprehended and brought before me to answer the premises. And whereas the said A. P., in pursuance thereof, hath been apprehended and brought before me, now duly sitting by virtue of my office, and hath been duly required to give evidence, and be examined before me and my inquest on her said Majesty's behalf, touching the death of the said C. D., yet the said A. P. notwithstanding, hath absolutely and wilfully refused, and still doth wilfully and absolutely refuse to give evidence and be examined touching the premises, or to give sufficient reason for his refusal, in wilful and open violation and delay of justice : these are, therefore, by virtue of my office, in her Majesty's name, to charge and command you, or any one of you, the said constables and officers of the peace in and for the said township and county, forthwith to convey the body of the said A. P. to the gaol of the said county, at the city of , in the said county, and him safely to deliver to the keeper of the said gaol ; and these are likewise by virtue of my said office, in her Majesty's name, to will and require you, the said keeper to receive the body of the said A. P. into your custody, and him safely to keep until he shall consent to give his evidence, and be examined before me and my inquest on her Majesty's behalf, touching the death of the said C. D., or until he shall be from thence otherwise discharged by due course of law, and for

so doing this is your warrant. Given under my hand and seal,
the day of . G. H., Coroner.

Commitment of a Witness for refusing to sign his Information.

PROVINCE OF CANADA :

County of } To the constables of the township of in the
to wit. } county of , and all other her Majesty's
officers of the peace in and for the said county, and also to the
keeper of the gaol of the said county.

Whereas A. B. of is a material witness on behalf of our
sovereign lady the Queen, against J. P., late of the township
of , in the county aforesaid, labourer, now charged before
me, one of her Majesty's coroners for the said county, and my
inquest, with the wilful murder of C. D., there now lying dead ;
and whereas the said A. B. at the time of my enquiry, on view of
the body of said C. D., how and by what means the said C. D.
came by his death, hath personally appeared before me and my
said inquest, and on her Majesty's behalf hath given evidence and
information on oath touching the premises, which said informa-
tion having by me been reduced into writing, and the contents
thereof by me, in the presence of the said inquest, openly and
truly read to him the said A. B., who doth acknowledge the same
to be true, and that the same doth contain the full substance and
effect of the evidence by him given before me and my said inquest,
and the said A. B. having by me been requested and desired to
sign and set his hand to his said testimony and information, and
to acknowledge the same as by law is required, yet, notwith-
standing, the said A. B. doth wilfully and absolutely refuse so to
do, in open defiance of law, and to the great hindrance of justice.
These are, therefore, by virtue of my office, in her Majesty's name
to charge and command you, or some one of you, the said consta-
bles and other her Majesty's officers of the peace in and for the
said county, forthwith to convey the body of the said A. B. to the
gaol of the said county, at in the said county, and him safely
to deliver to the keeper of the said gaol ; and these are likewise
by virtue of my said office, in her Majesty's name to will and
require you the said keeper to receive the body of the said A. B.
into your custody, and him safely to keep in prison until he shall
duly sign and acknowledge his said information, or shall be from
thence otherwise discharged by due course of law : and for so
doing this is your warrant. Given under my hand and seal,
this day of . G. H., Coroner.

Commitment of a Witness for refusing to enter into Recognizance to appear to give Evidence.

PROVINCE OF CANADA :

County of } To the constables of the township of ,
to wit. } county of , and all other her Majesty's

officers of the peace in and for the same county, and also to the keeper of the gaol of the said county.

Whereas upon an inquisition this day taken before me, one of her Majesty's coroners for the county aforesaid, at in the said county, on view of the body of C. D. then and there lying dead, one J. U., late of the township aforesaid, in the county aforesaid, labourer, was by my inquest then and there sitting found guilty of the wilful murder of the said C. D.; and whereas one U. B. of the township and county aforesaid, yeoman, was then and there examined and gave information in writing before me and my inquest touching the premises, and which said information he, the said U. P., then and there before me and my inquest duly signed and acknowledged, and by which said information it appears that the said U. P. is a material witness on her Majesty's behalf against the said J. U. now in custody, and charged by my inquest with the said murder, and the said U. P. having wilfully and absolutely refused to enter into the usual recognizance for his personal appearance at the next general gaol delivery to be holden in and for the county of aforesaid, and then and there to give evidence on her Majesty's behalf against the said J. U., to the great hindrance and delay of justice. These are, therefore, by virtue of my office, in her Majesty's name to charge and command you, or one of you, the said constables and other her Majesty's officers of the peace in and for the said county, forthwith to convey the body of the said U. P. to the gaol of the said county, at in the said county, and him safely to deliver to the keeper of the said gaol there; and these are likewise by virtue of my said office in her Majesty's name to will and require you the said keeper to receive the body of the said U. P. into your custody, and him safely to keep in prison until he shall enter into such recognizance before me, or before one of her Majesty's justices of the peace for the said county, for the purposes aforesaid, or in default thereof, until he shall be from thence otherwise discharged by due course of law; and by doing so this is your warrant. Given under my hand and seal, this day of .

G. H., *Coroner.*

COSTS.

By 8 V., c. 38, justices of the peace, at the general quarter sessions in July next, (1845,) were required to frame a table of fees for all services rendered in the administration of justice, and for other district purposes, by any sheriff, coroner, clerk of the peace, constable and crier, not remunerated by any law now in force; and the several clerks of the peace were required forthwith to transmit such table to the clerk of the Crown at Toronto, to be laid before the judges of the Court of Queen's Bench; and such judges were authorised, by rule in term, from time to time, to

appoint the fees to be taken by such officers accordingly. § 3. All per centage, fees, or allowances, on levying fines and recognizances, may be levied over and above the amount of such fines and recognizances, and all fees on services in the nature of a civil remedy for individuals, at whose instance and for whose benefit the same are performed, shall be paid by such individuals, and the judges shall, in tables to be by them framed as aforesaid, distinguish the fee to be paid by private individuals, and, except as herein or otherwise provided by law, all other fees shall be paid out of the county funds. § 4. In case any person be convicted before any court of quarter sessions of any assault and battery, or other misdemeanor, such person shall pay such costs as may be allowed and taxed by the court; but in case any defendant or defendants be acquitted, the costs of the prosecution, when not otherwise provided by law, shall be paid out of the county funds. § 5. When any person is prosecuted for felony, and convicted or acquitted, or otherwise discharged, the costs of prosecution, when not otherwise provided by law, shall be paid out of the county funds. § 6. This act not to deprive parties of such other statutable fees for other services not therein provided for. § 7. Treasurer of the county to pay fees when allowed in quarter sessions, without further order, in the order prescribed by law. § 8. Any officer exacting greater fees than established by law, shall for every offence forfeit \$40 to any person who shall sue for the same in any court of competent jurisdiction. § 9. All suits under this act to be brought within six months after offence committed.

For schedule of fees to be taken by justices of the peace or their clerks, see *post* title "*Justices of the Peace.*"

By U. C. Stat. 22 V. c. 119, § 2, the table of fees for services rendered in the administration of justice, and for other county purposes, by sheriffs, coroners, clerks of the peace, constables and criers, heretofore framed by the justices of the peace of their respective counties in quarter sessions assembled, and confirmed by the Judges of the Court of Queen's Bench at Toronto, is to continue until otherwise appointed; and the Chief Justices and other Judges of Superior Courts of common law at Toronto, may from time to time, by rule or rules in term time, appoint the fees to be taken and received by such sheriffs, coroners, clerks of the peace, constables and criers for such services as aforesaid.

For table of fees see titles "*Constables—Clerk of the Peace—Coroner.*"

By the C. Stat. 22 V. c. 103, (Summary Convictions Act,) § 53, in all cases of summary conviction, or of orders made by a justice or justices of the peace, the justice or justices making the same may, in his or their *discretion*, award and order in and by such conviction or order, that the defendant shall pay to the prosecutor or complainant such costs as to the said justice or justices seem reasonable in that behalf, and not inconsistent with the fees established by law to be taken on proceedings had by and before justices of the peace. § 54. In cases of dismissal such justice or justices may award and order that the prosecutor or complainant shall pay to the defendant such costs as to the said justice or justices seem reasonable and consistent with law as aforesaid. § 55. The costs so allowed shall in all cases be specified in the conviction or order or orders of dismissal, and recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid, in and by such conviction or order. § 56. In cases where there is no penalty or money to be recovered, such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of such distress, by imprisonment with or without hard labour for any time not exceeding one month, unless sooner paid.

See also *post* title "*Summary Conviction.*"

Administration of Justice—Expenses of.

By U. C. Stat. 22 V. c. 120, entitled, "An act respecting the expenses of administration of justice in criminal matters in Upper Canada," it is by § 1 enacted, that the whole of the expenses of the administration of criminal justice in Upper Canada shall be paid out of the consolidated revenue of this province. § 2. All accounts of, or relative to the said expenses, shall be examined, credited, vouched and approved, under such regulations as the Governor in council, from time to time, directs. § 3. The several heads of expense mentioned in the schedule to this act shall be deemed expenses of the administration of criminal justice, within the meaning of this act.

For the Schedule, see "the Act."

NOTE.—It comprises certain fees payable to the clerk of the peace, sheriff, coroner, constable, crier, and includes other matters relative to the maintenance of prisoners confined on criminal charges, a portion of the gaoler's salary, and other items.

With reference to the above act the following order in council has been made as to the mode of rendering accounts:

“That all accounts for the payment of which, or any part of which, the province is by act liable, shall be rendered in duplicate to the treasurer of each county during the sittings of the court of quarter session, or within three days thereafter, and shall include all the demands of the party rendering the same, (payable as aforesaid by the province,) and refer to the authority of the charge.”

“That such account, before being rendered to the treasurer, shall be verified by the oath of the party, that it is just and correct, to the best of his knowledge and belief. And in cases where mileage is charged, there shall be an affidavit stating the places to which, and from which, the mileage is reckoned, as well as the number of miles; and that in no case shall more than the actual number of miles travelled be allowed, nor a greater number of miles than the distance from the court house to the place of service.”

COUNTIES.

Territorial Division of, under U. C. Stat. 22 V. c. 3.

1. *County of Glengarry.*—Townships of, 1, Charlottenburgh, 2, Kenyon, 3, Lancaster, 4, Lochiel.

2. *County of Stormont.*—Townships of, 1, Cornwall, 2, Finch, 3, Osnabruck, 4, Roxborough, and the *Town* of Cornwall.

3. *County of Prescott.*—Townships of, 1, Alfred, 2, Caledonia, 3, Hawkesbury East, 4, Hawkesbury West, 5, Longueil, 6, Plantagenet North, 7, Plantagenet South, and the *Town* of L'Original.

4. *County of Russell.*—Townships of, 1, Clarence, 2, Cumberland, 3, Cambridge, 4, Russell.

5. *County of Carleton.*—Townships of, 1, Fitzroy, 2, Goulbourn, 3, Gower, North, 4, Gloucester, 5, Huntley, 6, March, 7, Marlborough, 8, Nepean, 9, Osgoode, 10, Tarbolton, the *City* of Ottawa, and the *Village* of Richmond.

6. *County of Renfrew.*—Townships of, 1, Admaston, 2, Alice, 3, North Algona, 4, South Algona, 5, Blithfield, 6, Bagot, 7, Bromley, 8, Buchanan, 9, Brougham, 10, Canonto, 11, Fraser, 12, Grattan, 13, Griffith, 14, Horton, 15, McNab, 16, Miller, 17, Matawachan, 18, McKay, 19, Pembroke, 20, Petawawa, 21, Ross, 22, Rolph, 23, Stafford, 24, Sebastopol, 25, Westmeath, 26, Wylie, 27, Wilberforce, and the *Villages* of Renfrew and Pembroke.

7. *County of Lanark.*—Townships of, 1, North Burgess, 2, Bathurst, 3, Beckwith, 4, Drummond, 5, Dalhousie, 6, Darling,

7. Elmsley North, 8, Lanark, 9, Lavant, 10, Montague, 11, Pakenham, 12, Ramsay, 13, Sherbrooke North, 14, Sherbrooke South, the *Town* of Perth, and the *Village* of Smith's Falls.

8. *County of Dundas*.—Townships of, 1, Mountain, 2, Matilda, 3, Winchester, 4, Williamsburgh, and the *Village* of Iroquois.

9. *County of Grenville*.—Townships of, 1, Augusta, 2, Edwardsburgh, 3, Gower South, 4, Oxford (on Rideau), 5, Wolford, the *Town* of Prescott, and the *Village* of Kemptville.

10. *County of Leeds*.—Townships of, 1, Burgess, 2, Bastard, 3, Front of Escott, 4, North Crosby, 5, South Crosby, 6, Elmsley, 7, Elizabethtown, 8, Kitley, 9, Front of Leeds and Lansdown, 10, Rear of Leeds and Lansdown, 11, Front of Yonge, 12, Rear of Yonge and Escott, and the *Town* of Brockville.

11. *County of Frontenac*.—Townships of, 1, Barrie, 2, Bedford, 3, Clarendon, 4, Howe Island, 5, Hinchinbrooke, 6, Kennebec, 7, Kingston, 8, Loughborough, 9, Olden, 10, Oso, 11, Portland, 12, Palmerston, 13, Pittsburgh, 14, Storrington, 15, Wolfe Island, (including Simcoe Island, Garden Island, Horse Shoe Island, and Mud Island,) and the *City* of Kingston.

12. *County of Adlington*.—Townships of, 1, Anglesea, 2, Amherst Island, 3, Camden, 4, Ernestown, 5, Kalader, 6, Sheffield.

13. *County of Lennox*.—Townships of, 1, Adolphustown, 2, North Fredericksburgh, 3, South Fredericksburg, 4, Richmond, and the *Village* of Napanee.

14. *County of Prince Edward*.—Townships of, 1, Athol, 2, Ameliasburgh, 3, Hillier, 4, Hallowell, 5, Marysburgh, 6, Sophiasburgh, and the *Town* of Picton.

15. *County of Hastings*.—Townships of, 1, Bangor, 2, Carlow, 3, Cashel, 4, Dunganan, 5, Elzevir, 6, Faraday, 7, Grimsthorpe, 8, Herschel, 9, Huntingdon, 10, Hungerford, 11, Lake, 12, Limerick, 13, McClure, 14, Madoc, 15, Marmora, 16, Mayo, 17, Monteagle, 18, Rawdon, 19, Sidney, 20, Tyendinaga, 21, Thurlow, 22, Tudor, 23, Widdow, 24, Wollaston, the *Town* of Bellville, and the *Village* of Trenton.

16. *County of Northumberland*.—Townships of, 1, Alnwick, 2, Brighton, 3, Cramahe, 4, Haldimand, 5, Hamilton, 6, Murray, 7, Monaghan South, 8, Percy, 9, Seymour, and the *Town* of Cobourg.

17. *County of Durham*.—Townships of, 1, Clarke, 2, Cavan, 3, Cartwright, 4, Darlington, 5, Hope, 6, Manvers, the *Towns* of Port Hope, Bowmanville, and the *Village* of Newcastle.

18. *County of Peterborough*.—Townships, 1, Asphodel, 2, Anstruther, 2, Belmont, 4, Bruton, 5, Burleigh, 6, Cardiff, 7, Cavendish, 8, Chandos, 9, Douro, 10, Dudley, 11, Dummer, 12, Dysart, 13, Ennismore, 14, Galway, 15, Glamorgan, 16, Guilford, 17, Harburn, 18, Harcourt, 19, Harvey, 20, Minden, 21, Methuen, 22, Monaghan North, 23, Monmouth, 24, Otanaba,

25, Smith, 26, Snowdon, 27, Stanhope, and the *Town* of Peterborough and *Village* of Ashburnham.

19. *County of Victoria*.—Townships of, 1, Anson, 2, Bexley, 3, Carden, 4, Dalton, 5, Digby, 6, Draper, 7, Eldon, 8, Emily, 9, Fenelon, 10, Hindon, 11, Laxton, 12, Longford, 13, Lutterworth, 14, Macaulay, 15, Mariposa, 16, Oakley, 17, Ops, 18, Ryde, 19, Somerville, 20 Verulam, and the *Town* of Lindsay.

20. *County of Simcoe*.—Townships of, 1, Adjala, 2, Balaclava, 3, Essa, 4, Flos, 5, Gwillimbury West, 6, Innisfil, 7, Muskoka, 8, Matchedash, 9, Medonte, 10, Mulmur, 11, Mono, 12, Nottawasaga, 13, Orillia, 14, Oro, 15, Morrison (23 V. c. 40), 16, Sunnidale, 17, Tay, 18, Tiny, 19, Tecumseth, 20, Tosorontio, 21, Vespra, with (exclusive of the townships of Balaclava, Muskoka, and Robinson) the tract of land bounded on the east by the line between the late Home and Newcastle Districts, prolonged to French River, on the west by Lake Huron, on the north by French River, and on the south by the River Severn, and the township of Rama, and the islands in Lakes Simcoe and Huron, lying wholly or for the most part opposite to the said county of Simcoe, or any part thereof, and contiguous thereto, and the *Towns* of Barrie, Bradford, and Collingwood.

21. *County of York*.—Townships of, 1, Etobicoke, 2, Gwillimbury East, 3, Gwillimbury North, 4, Georgina, 5, King, 6, Markham, 7, Scarborough, 8, Vaughan, 9, Whitchurch, 10, York, the *City* of Toronto, and the *Villages* of Newmarket and Yorkville.

22. *County of Peel*.—Townships of, 1, Albion, 2, Caledon, 3, Chinguacousy, 4, Toronto, 5, Toronto Gore, and the *Villages* of Brampton and Streetsville.

23. *County of Ontario*.—Townships of, 1, Brocke, 2, Mara, 3, Pickering, 4, Rama, 5, Reach, 6, Scugog, 7, Scott, 8, Thora, 9, Uxbridge, 10, Whitby, 11, East Whitby, the *Town* of Whitby and the *Village* of Oshawa.

24. *County of Halton*.—Townships of, 1, Esquesing, 2, Nassagaweya, 3, Nelson, 4, Trafalgar, and the *Towns* of Milton and Oakville.

25. *County of Waterloo*.—Townships of, 1, North Dumfries, 2, Waterloo, 3, Wilmot, 4, Woolwich, 5, Wellesley, the *Town* of Galt and the *Villages* of Berlin, New Hamburg, Preston and Waterloo.

26. *County of Brant*.—Townships of, 1, Brantford, 2, Burford, 3, South Dumfries, 4, Onondaga, 5, Oakland, 6, Tuscarora, and the *Towns* of Brantford and Paris.

27. *County of Wellington*.—Townships of, 1, Arthur, 2, Amaranth, 3, Erin, 4, Eramosa, 5, Guelph, 6, Garafraxa, 7, Luther, 8, Maryborough, 9, Minto, 10, Nichol, 11, Pilkington, 12, Puslinch, 13, Peel, the *Town* of Guelph, and the *Villages* of Elora and Fergus.

28. *County of Grey.*—Townships of, 1, Artemosia, 2, Bentinck, 3, Collingwood, 4, Derby, 5, Euphrasia, 6, Egremont, 7, Glenelg, 8, Holland, 9, Keppel, 10, Melancthon, 11, Normanby, 12, Osprey, 13, Picton, 14, Sydenham, 15, Saint Vincent, 16, Sullivan, 17, Sarawak; together with (exclusive of the townships of Keppel and Sarawak) that portion of the peninsular tract of land known as the Indian Reserve, and situated between lines drawn northward from the north-east angle of Arran, and the north-west angle of Derby, until they respectively strike Colpoy's Bay on the east side of the Indian Village, and the waters of the Georgian Bay, and the islands contiguous thereto, and the *Town* of Owen Sound.

29. *County of Bruce.*—Townships of, 1, Arran, 2, Amable, 3, Albermarle, 4, Brant, 5, Bruce, 6, Culross, 7, Carrick, 8, Eastnor, 9, Elderslie, 10, Greenock, 11, Kinloss, 12, Kincardine, 13, Lindsay, 14, Saugeen, 16, St. Edmund; (together with all that portion of the peninsular tract of land known as the Indian Reserve, and not included in the county of Grey, and the islands in Lake Huron and the Georgian Bay contiguous thereto,) and the *Villages* of Walkerton and Southampton.

30. *County of Huron.*—Townships of, 1, Ashfield, 2, Bidulph, 3, Colborne, 4, Grey, 5, Goderich, 6, Hay, 7, Howick, 8, Hullett, 9, McGillivray, 10, McKillop, 11, Morris, 12, Stephen, 13, Stanley, 14, Turnberry, 15, Tuckersmith, 16, Osborne, 17, Wananosh, the *Town* of Goderich, and the *Village* of Clinton.

31. *County of Perth.*—Townships of, 1, Blanchard, 2, Downie, (including the Gore of Downie,) 3, Ellice, 4, Easthope North, 5, Easthope South, 6, Elma, 7, Fullarton, 8, Hibbert, 9, Logan, 10, Mornington, 11, Wallace, the *Town* of Stratford, and the *Villages* of Mitchell and St. Mary's.

32. *County of Lambton.*—Townships of, 1, Bosanquet, 2, Brooke, 3, Dawn, 4, Euphemia, 5, Enniskillen, 6, Moore, 7, Plympton, 8, Sarnia, 9, Sombra, (including Walpole Island, St. Ann's Island, and the other islands at the mouth of the River St. Clair,) 10, Warwick, and the *Town* of Port Sarnia.

33. *County of Kent.*—Townships of, 1, Camden, 2, Chatham, 3, Dover East, 4, Dover West, 5, Howard, 6, Harwick, 7, Oxford, 8, Raleigh, 9, Romney, 10, Tilbury East, 11, Zone, and the *Town* of Chatham.

34. *County of Essex.*—Townships of, 1, Anderson, 2, Colchester, 3, Gosfield, 4, Mersea, 5, Maidstone, 6, Malden, 7, Rochester, 8, Sandwich, 9, Tilbury West, and the *Towns* of Amherstburgh, Sandwich and Windsor.

35. *County of Elgin.*—Townships of, 1, Aldborough, 2, Bayham, 3, Dunwich, 4, Malahide, 5, Southwold, 6, South Dorchester, 7, Yarmouth, and the *Villages* of St. Thomas and Vienna.

36. *County of Middlesex*.—Townships of, 1, Adelaide, 2, Carradoc, 3, North Dorchester, 4, Delaware, 4, Ekfrid, 6, Lobo, 7, London, 8, Mosa, 9, Metcalfe, 10, Nissouri West, 11, West Williams, 12, East Williams, 13, Westminster, and the *City* of London.

37. *County of Norfolk*.—Townships of, 1, Charlotteville, 2, Houghton, 3, Middleton, 4, Townsend, 5, Windham, 6, Woodhouse, 7, Walsingham, (including Long Point,) and the *Town* of Simcoe.

38. *County of Oxford*.—Townships of, 1, Blenheim, 2, Blandford, 3, Dereham, 4, North Norwich, 5, South Norwich, 6, Nissouri East, 7, Oxford North, 8, Oxford East, 9, Oxford West, 10, Zorra East, 11, Zorra West, the *Town* of Woodstock, and the *Villages* of Ingersoll and Embro.

39. *County of Haldimand*.—Townships of, 1, North Cayuga, 2, South Cayuga, 3, Canborough, 4, Dunn, 5, Moulton, 6, Oneida, 7, Rainham, 8, Seneca, 9, Sherbrooke, 10, Walpole, and the *Village* of Caledonia.

40. *County of Welland*.—Townships of, 1, Bertie, 2, Crowland, 3, Humberstone, 4, Pelham, 5, Stamford, 6, Thorold, 7, Willoughby, 8, Wainfleet, the *Town* of Clifton, and the *Villages* of Chippewa, Fort Erie, Merrittsville, Thorold, and Welland.

41. *County of Lincoln*.—Townships of, 1, Clinton, 2, Caistor, 3, Grimsby, 4, Grantham, 5, Gainsborough, 6, Louth, 7, Niagara, and the *Towns* of Niagara, Queenston, and St. Catherines.

42. *County of Wentworth*.—Townships of, 1, Ancaster, 2, Beverly, 3, Binbrook, 4, Barton, 5, Flamboro' East, 6, Flamboro' West, 7, Glanford, 8, Saltfleet, the *City* of Hamilton, and the *Town* of Dundas.

§ 2. *Counties united for Municipal, Judicial, and other Purposes.*

1, Frontenac, Lennox and Addington; 2, Stormont, Dundas and Glengarry; 3, Leeds and Grenville; 4, Huron and Bruce; 5, Lanark and Renfrew; 6, Northumberland and Durham; 7, Peterboro' and Victoria; 8, Prescott and Russell; 9, York and Peel.

For Municipal Purposes, the Cities of

1, Toronto; 2, Hamilton; 3, Kingston; 4, London; 5, Ottawa.

§ 4. The court houses and gaols, county grammar schools, and all other property, real and personal, and all the offices and officers of the united counties, existing at the time this act comes into force, shall belong to and continue in the counties, and united counties, until the dissolution thereof, under the act for the "Regulation of Municipal Institutions in Upper Canada."

COUNTY ATTORNEY.

By U. C. Stat. 22 V., c. 37, § 1. In every county in Upper Canada there shall be a local Crown Attorney for the county, to aid in the local administration of justice.

§ 2. To be appointed by the Governor, holding office *during pleasure*.

§ 3 To be a barrister of not less than three years' standing at the Upper Canada bar, and a resident in the county; but any person holding the office of clerk of the peace, who is a barrister-at-law, may be appointed county attorney for the county of which he is clerk of the peace.

§ 4. No county attorney shall, by himself or partner, act or be directly or indirectly concerned as counsel, or attorney, for any prisoner or party chargeable with any offence punishable under the criminal law.

His duties under U. C. Stat. 22 V., c. 20.

§ 1. To be the receiver of fee funds from, 1, surrogate courts, 2, county courts, 3, division courts, 4, insolvent debtors' courts, within his county, receiving a per centage therefor of four per cent. on the gross amount. § 3. To render half-yearly accounts to the Minister of Finance.

Under the U. C. Stat. 22 V., c. 106.

§ 1. To receive and examine informations, &c., transmitted by magistrates and coroners, make further investigation when necessary, sue out process for compelling attendance of witnesses at trials, 2, conduct prosecutions for felonies and misdemeanors at general quarter sessions and recorder's courts, 3, watch over private prosecutions, 4, deliver over all papers connected with criminal business at the assizes, to the crown officer, and assist in prosecuting, if required, and in the absence of the crown officer to conduct such assize business, 5, to institute and conduct local revenue prosecutions before magistrates, 6, to advise magistrates upon application, 7, to conform to rules and regulations of the Governor in council. § 2. To take the oath as prescribed (see the act.) § 3. Entitled to certain fees for prosecutions at sessions, where costs payable by the defendant. § 4. And certain fees on trials for felony and misdemeanor. § 5. To render to the Minister of Finance annual account of the emoluments of his office. § 6. The Governor in council authorised to make rules and regulations respecting county attorneys. § 7. Clerks of the peace to be barristers. § 8. In case of illness or absence, the judge of

the county court may appoint *pro tem.* § 10. Allowed *four* per cent. on all public moneys coming into his hands.

As to county courts, and division courts, see those acts U. C. Stat. 22 V. c. 15, 22 V. c. 19.

COUNTY COUNCILS.

See title "*Municipal Institutions.*"

COUNTY COURTS.

By U. C. Stat. 22 V. c. 15, § 1. A county court established in every county, or union of counties. § 2. The Governor to appoint a judge and senior judge, being barristers of at least five years' standing. § 3. To hold office during good behaviour. § 6. The junior judge to preside over division courts.

Non-jurisdiction.—Not to have cognizance in cases, 1, where the title to land is brought in question. 2. In which the validity of any devise, bequest or limitation under any will or settlement is disputed. 3. For any libel or slander. 4. For criminal conversation or seduction. 5. Of any action against a justice of the peace for any thing done by him in the execution of his office *if he objects thereto.*

Jurisdiction.—1. In all personal actions where the debt or damages claimed do not exceed \$200. 2. In all causes and suits relating to debt, covenant and contract to \$400, when the amount is liquidated or ascertained by the act of parties. 3. To any amount, on bail-bonds to sheriff in any case in a county court, whatever the penalty. 4. On recognizance of bail in the court, whatever the amount.

§ 21. May issue writs of *feri facias* against goods, and against lands, and writs of *capias ad satisfaciendum* against the prisoner, as in the superior courts of law. § 22. Such writs may run into other counties.

Clerk to county court.—§ 24. To be appointed by the Governor. § 26. Office to be kept open daily (Sundays, Christmas day, New Year's day, Good Friday, Easter Monday, the Sovereign's birth day, and any day appointed by royal proclamation for a general feast or thanksgiving day, excepted) from 10 A. M. to 3 P. M. And in *Term* time, from 9 A. M. to 4 P. M.

§ 28. The county clerk to render to the county attorney quarterly account of fees, or oftener if required. § 29. And pay over the amount to the county attorney.

Equity jurisdiction.—§ 33. Conferred upon county courts in, 1, matters of partnership. 2. Creditors seeking pay-

ment of debts out of the estate of deceased persons. 3. Legacies. 4. Residuary estate. 5. Executors or administrators seeking administration of personal estate under \$800. 6. Foreclosure suits, where the sum claimed does not exceed \$200. 7. Redemption suits, not exceeding \$200. 8. And in all equitable matters not exceeding \$200.

Injunctions to restrain waste.—§ 35. Power to grant for one month only.

COUNTY FUNDS.

See post title "*Municipal Institutions.*"

COURT HOUSE—GAOL.

By U. C. (Municipal Act) 22 V. c. 54, § 344, any provisional council may acquire the necessary property, as the county town of the junior county, on which to erect a court house and gaol, and may erect such thereon in conformity with any statutory or other rules and regulations respecting such buildings, and may pass by-laws for such purposes.

§ 420. The sheriff shall have the care of the county gaol, offices and yards and gaoler's apartments, and the appointment of keepers thereof.

§ 421. The county council shall have the care of the court house, and of all the offices and rooms connected therewith, and shall have the appointment of the keepers thereof, and shall provide all necessary and proper accommodation for the courts of justice other than the division courts, and for all offices connected with such courts.

§ 422. The care of a city gaol, or court house, shall be regulated by the by-laws of the city council.

See also title, "*Municipal Institutions.*"

CRIMINAL LAW.

By imp. statute 14 G. III. c. 83, § 11, it was enacted that the criminal law of England should continue to be administered and observed as law in the province of Quebec (of which the province of Upper Canada then formed a part) as well in the description and quality of the offence, as in the method of prosecution and trial, and the punishments and forfeitures thereby inflicted, to the exclusion of every other rule of criminal law, or mode of proceeding, which prevailed in the said province before the year 1764; subject to such alterations as the provincial legislature might thereafter make therein.

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After the division of the said province into the late provinces of Upper Canada and Lower Canada, by U. C. Stat. 40 G. III. c. 1, entitled, "An Act for the further introduction of the criminal law of England into the province," it is enacted, that the criminal law of England, as it stood on the 17th day of September, 1792, shall be, and the same is, thereby declared to be the criminal law of Upper Canada.

Subsequently, many alterations and improvements were made in the criminal law of Upper Canada; and since the re-union various acts relating to criminal matters were passed extending throughout the union. The whole being now embodied in the Consolidated Statutes of Canada, passed in the 22nd year of her Majesty's reign, and referred to in different parts of this work under their appropriate titles.

CRIMINAL LUNATIC ASYLUM.

By stat. 22 V. c. 108, § 1, provision is made for the erection of an asylum at Kingston for the reception of lunatic convicts, and the Governor may appoint thereto a medical superintendent and other officers with the same powers and duties as those possessed by similar officers of the provincial lunatic asylum at Toronto. § 2. Provision made for the removal of convicts to the criminal lunatic asylum; and for re-conveyance to the penitentiary upon their recovery. § 4. Provision in case of escape. § 5. If the term of imprisonment expires while at the asylum, the party may be detained until discharged as sane, or delivered to his friends under a warrant from the Governor. § 6. Relates to the confinement and safe keeping therein of insane and dangerous lunatics under the 20 V. c. 28, § 31, and is repealed by the 24 V. c. 13, § 1, and other provision made, for which see the act.

CRUELTY TO ANIMALS—PREVENTION.

By the municipal acts U. C. stat. 22 V. c. 54, § 266, the municipalities in incorporated towns, villages and cities respectively, are empowered to make by-laws for preventing cruelty to animals, and for preventing the destruction of birds.

By C. stat. 22 V. c. 96, § 1. If any person wantonly, cruelly or unnecessarily beats, binds, illtreats or tortures any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, pig or other cattle, or any poultry, or any dog or domestic animal or bird, or if any person

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driving any cattle or other animal, shall, by negligence or ill-usage in the driving thereof, be the means whereby any mischief, damage or injury is done by any such cattle or other animal, every such offender being convicted of any or either of the said offences before any one justice of the peace for the city, town, district or county in which the offence has been committed, shall, for every such offence, forfeit and pay (over and above the amount of damage or injury, if any, done thereby, which damage or injury shall and may be ascertained and determined by such justice) such a sum of money not exceeding \$10, nor less than \$1, with costs, as to such justice seems meet. § 2. The offender shall, in default of payment, be committed to the common gaol or house of correction for the city, town, district or county in which the offence was committed, there to be imprisoned for any time not exceeding fourteen days. § 3. Nothing in this act contained shall prevent or abridge any remedy by action against the employer of any such offender, where the amount of the damage is not sought to be recovered by virtue of this act. § 4. Nothing hereinbefore contained shall make it unlawful for any person to bind any sheep, lambs, calves or pigs, for the purpose of conveying and delivering them to or at any market at a distance not exceeding fifteen miles from the owner's house or premises; but such animals shall not remain so bound for a longer space than half-an-hour after their arrival at such market.

§ 5. When any of the said offences happen, any constable or other peace officer, or the owner of any such cattle, &c., upon view thereof, or upon the information of any other person, (who shall declare his or their name or names, and place or places of abode to the said constable or other peace officer,) may seize and secure by the authority of this act, and forthwith and without any other authority or warrant, may convey any such offender before any justice of the peace of the locality, to be dealt with according to law, and such justice shall forthwith proceed to examine upon oath any witness or witnesses.

§ 6. If any person apprehended for having committed any offence against this act, refuses to discover his place of abode to the justice before whom he is brought, such person shall immediately be delivered over to a constable or other peace officer, and shall by him be conveyed to the common gaol or house of correction for the city, town, &c., within which the offence has been committed, or in which the offender has been apprehended, there to remain for a space

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not exceeding one month, or until he makes known his name and place of abode to such justice.

§ 7. Offences to be prosecuted within three months; and the evidence of the complainant to be sufficient in the absence of other evidence.

§ 8. In case of non-payment of the damage or penalty immediately after conviction, or within such period as such justice at the time of conviction may appoint, such justice (unless where otherwise specially directed) may commit the offender to the common gaol or house of correction, there to be imprisoned with or without hard labour, for any term not exceeding *fourteen days*, where the amount awarded, or penalty imposed, or both, (as the case may be,) with costs, shall not exceed \$20, and for any term not exceeding *two months*, where exceeding \$20. The commitment in either case to be determinable on payment of the amount and costs.

§ 9. In all cases in which no other mode of proceeding is provided for by this act, and in case where any person is not conveyed before any justice by the authority of this act, any such justice as aforesaid, upon information or complaint made by any person of any offence against this act, within *fourteen days* next after the commission of the offence, shall summon the accused to appear before him, or any other justice, at a time and place to be by him named, and on his appearance, or default, such justice, or any other justice at the time and place mentioned for such appearance, may proceed to examine into the matter, and upon due proof, by voluntary confession, or by oath of a credible witness, shall award, order, give judgment or convict for the damage or injury, penalty or forfeiture, as the case may be.

§ 10. The conviction to be in the following form, or to the effect thereof, or as near thereto as may be :

County (as the case } Be it remembered that on the day
may be) of } of in the year of our Lord,
at , in the county (or as the case may be) of , A. B. is
convicted before me J. P., one of her Majesty's justices of the
peace for the said county (or as the case may be) for that the said
A. B. on the day of in the year at in the said
did ; (here specify the offence ;) and I the said J. P. do adjudge
the said A. B. for his said offence to forfeit and pay the sum of
(here state the penalty actually imposed, or the penalty, and also
the amount of damages for the injury done, or as the case may
be,) and also to pay the sum of for costs, and in default of
immediate payment of the said sums, to be imprisoned in the ,

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(*and as the case may be,*) to be there kept to hard labour for the space of _____ unless the said sums shall be sooner paid; and I direct that the said sum of *the penalty* shall be paid as follows; that is to say, one moiety thereof to the _____ of the said _____ of _____ to be by _____ applied according to _____; and the other moiety thereof to C. D. of _____ the prosecutor, (*or as the case may be,*) and that the said sum of _____ (*the sum for the amount of injury done, if any sum is awarded*) shall be paid to E. F. (*or the said C. D. as the case may be;*) and I do order that the said sum of _____ for costs shall be paid to the said C. D.

Given under my hand and seal, the day and year first above-mentioned.
J. P. [L.S.]

§ 11. Summons against the offender may be served personally or left at his usual or last place of residence in whatever county or place. § 12. Any constable or peace officer refusing or neglecting to serve or execute any summons or warrant under this act, upon conviction thereof by one of the justices of the peace, shall forfeit any sum not exceeding \$20; and in default of payment be committed by such justice to the county gaol or house of correction of the city, town, district or county for one month unless sooner paid. § 13. Penalties under this act to be distributed as follows, viz., one moiety to the treasurer of the locality, to be applied on the streets or roads, and the other moiety with full costs to the prosecutor or such other person as to such justice shall seem proper. § 14. And all damages shall be paid to the person sustaining the same. § 15. Any person giving information shall be deemed a competent witness, notwithstanding he may be entitled to any part of the penalty. § 16. All actions brought against any person for any thing done in pursuance of this act shall be commenced within *one month*, and shall be brought and tried in the county or place where arising. § 17. And notice in writing thereof shall be given to the defendant *fourteen* clear days before the commencement. § 18. The defendant may plead the general issue and give this act in evidence. § 19. If the cause of action shall appear to arise in respect of any matter or thing done in pursuance or under the authority of this act, or if brought after the expiration of one month, or be brought in any other county or place, or if notice shall not have been given as aforesaid, or if *tender* of sufficient amends shall have been made before action commenced, or a sufficient sum paid into court afterwards, the verdict shall be for defendant. § 20. If a verdict pass for the defendant, or the plaintiff become nonsuit, or discontinues, or if on demurrer or otherwise

judgment be given against him, the defendant shall recover full costs of suit as between attorney and client. § 21. If verdict be given for the plaintiff, he shall not have costs unless the judge shall certify his approbation of the action, and verdict obtained thereupon. § 22. Any person aggrieved by conviction of any justice under this act, may appeal against such conviction, giving *fourteen* days' notice of such appeal, and of the cause and matter thereof to such justice to the next quarter sessions, to be held next after the expiration of the said fourteen days. § 23. And such court shall have power to hear and determine such appeal in the usual manner, and award costs. § 24. Interpretation clause, defining the meaning of certain words and expressions. § 25. This act not to affect any municipal by-law, except so far as the same may be at variance or inconsistent with this act.

CURRENCY.

By C. Stat. 22 V. c. 15. § 1. 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 the same proportionate value as they had on the 1st August, 1854. The dollar shall be one-fourth of a pound, the cent 100th part of a dollar, and the mill $\frac{1}{10}$ th of a cent; and in any statement as to money, or money value in any agreement, *indictment*, or *legal proceeding*, the same may be described in pounds, shillings, and pence, or in dollars, cents, and mills, or in either denomination. § 2. And all accounts may be settled in any of the aforesaid denominations.

Current Coins.

Gold.—§ 3. The pound currency shall be equivalent to 101 grains, and 321 thousandths of a grain troy weight of gold of the standard of fineness now prescribed by law for the gold coins of the United Kingdom on the 1st day of August, 1854, and the dollar currency shall be equivalent to $\frac{1}{4}$ th part of the weight aforesaid of gold of the same standard; and any gold coins of the standard aforesaid struck at the Royal mint shall by such names as shall be assigned to them in any proclamation declaring them lawful money, pass current, and be a legal tender.

§ 4. The pound sterling shall be equal to £1 4s. 4d., or \$4 86 cents and $\frac{2}{3}$ ds of a cent currency; and any British sovereign of lawful weight shall pass current and be a legal tender for that sum; and the other gold coins of the United

Kingdom, of lawful weight, shall pass current, and be a legal tender for sums in currency equal, according to the proportions aforesaid, to their sterling value.

§ 5. Proviso as to the meaning of the word "Sterling" in contracts, &c., made before the 26th of April, 1842.

Silver.—§ 6. Silver coins struck at the Royal mint of the fineness fixed by law for the silver coins of the United Kingdom on the 1st August 1854, shall, by such names as shall be assigned to them by proclamation, pass current and be a legal tender at the rates assigned.

§ 7. Silver coins of the United Kingdom, until otherwise ordered by proclamation, shall pass current for sums in currency equal to the sums in sterling for which they pass current in the United Kingdom, but after the proclamation shall cease to be current. And no other silver coins than those declared by this act shall be a legal tender.

§ 8. Silver coins not to be a legal tender over \$10 or £2 10s. in any one payment.

9. *Copper.*—Copper coins of the United Kingdom, while lawfully current therein, shall pass current, and be a legal tender in this province to the amount of twenty cents, or *one shilling* currency at the following rates, viz., the copper penny for *two* cents, the copper half-penny for *one* cent, and any other subdivision of the said copper penny in proportion. Any copper coins of like weight, which her Majesty may direct to be struck for the purpose, shall pass current, and be a legal tender at the rates aforesaid, and if such coins are struck, her Majesty may by proclamation declare the copper coins of the United Kingdom shall not be lawful money of this province.

§ 10. *Foreign gold coin.* The gold eagle of the U. S. coined before the 1st July, 1834, and weighing 11 penny weights 6 grains troy weight, shall pass current and be a legal tender for 10 dollars and 66 $\frac{2}{3}$ cents, or £2 13s. 4d. currency; and the half eagle of like date, and proportionate weight, for only half the said sum. The gold eagle coined after the last-mentioned day, and before the 1st of January, 1852, or after that day, but while the standard for fineness for gold coins then fixed by the laws of the U. S. remains unchanged, and weighing 10 penny weights, 18 grains troy weight, shall pass current and be a legal tender in this province for 10 dollars, or £2 10s. currency; and the multiples or halves of said eagle of like date and proportionate weight shall pass current and be a legal tender for proportionate sums.

§ 11. Other foreign gold coins may be made current by proclamation.

See also title "Coin."

CUSTOMS.

By Con. Stat. V. c. 17. After various provisions relative to importation and entry of goods, &c., it is enacted by § 23. That *ad valorem* duties shall be ascertained by appraisement. Appraisers to be appointed by the Governor, and such appraisers, before acting, shall take and subscribe an oath of office (in the form given) before some justice of the peace having jurisdiction where such oath is taken.

§ 55. If any person knowingly and wilfully with intent to defraud the revenue of this province, smuggles or clandestinely introduces into this province any goods subject to duty without paying or accounting for the duty thereon, or makes out or passes or attempts to pass through the custom house any false, forged, or fraudulent invoice, or in any way attempts 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 *misdeemeanor*, and on conviction, liable to a penalty not exceeding \$200, or to imprisonment for a term not exceeding one year, or both, in the discretion of the court.

§ 56. If any person offers for sale any goods *under pretence* that the same are prohibited, or have been unshipped and run on shore, or brought in by land, or otherwise, without payment of duties, such goods (although not liable to duties or prohibited) shall be forfeited, and the offender shall forfeit *treble* the value of such goods, or the penalty of \$200, at the election of the prosecutor, recoverable in a summary way, before any one or more justices, and in default of payment the offender shall be committed to any of her Majesty's gaols for a period not exceeding sixty days.

§ 58. If any five or more persons in company are found together, and they, or any of them, have any goods liable to forfeiture under this act, every such person shall be guilty of a *misdeemeanor*, and be punishable accordingly.

§ 60. If any warehoused goods are fraudulently concealed in or removed from any public or private warehouse in this province, such goods shall be forfeited; and any person fraudulently concealing or removing such goods, or aiding or abetting such removal, shall incur the penalties imposed on

persons illegally importing or smuggling goods into this province.

63. If any person, whether pretending to be the owner or not, either secretly or openly, and whether with or without force or violence, takes or carries away any goods, vessel, carriage, or other thing which has been seized or detained on suspicion, as forfeited under this act, before the same has 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.

§ 66. If any such goods shall be stopped or taken by such police officer, on suspicion that the same have been feloniously stolen, he shall convey the same to the police office to which the offender is taken, there to remain until trial. And the police officer shall give notice in writing to the collector or principal officer of her Majesty's customs at the nearest port of his having so detained such goods with particulars of the same; and immediately after the trial, such goods shall be deposited in the custom house or other place appointed, and proceedings had according to law. (2.) And in case any police officer having detained such goods, neglects to convey the same to such warehouse, or to give such notice of having stopped the same as before described, he shall forfeit \$100, recoverable in a summary way before any one or more justices, and in default of payment be committed to any of her Majesty's gaols for a period not exceeding thirty days.

§ 67. If any person forges or counterfeits any mark or brand to resemble any mark or brand which shall be provided for the purposes of this act, or forges or counterfeits the impression of any such mark or brand, or sells or exposes to sale, or has in his, her or their custody or possession any goods with a counterfeit mark or brand, knowing the same to be counterfeit, or uses or affixes any such mark or brand to any other goods required to be stamped as aforesaid, other than those to which the same was originally affixed, such goods, so falsely marked, shall be forfeited, and every such offender, and his, her or their aiders, abettors or assistants, shall, for every such offence, forfeit and pay the sum of \$200, which penalty shall be recoverable in a summary way before any two justices of the peace in this province, and in default of payment the offender shall be committed to

any of her Majesty's gaols in this province, for a period not exceeding twelve months. 2. And if any wilfully false oath be made in any case, where, by this act, an oath is required or authorised, the offender shall be guilty of wilful and corrupt perjury, and punishable accordingly.

§ 68. If any person counterfeits, falsifies or uses 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 by any false statement procures such document, or forges or counterfeits 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, on conviction, punished accordingly.

§ 70. Contains provisions for custom-house officers making search for smuggled goods, detaining vessels, carriages, &c., engaged in smuggling, and then provides that all masters or persons in charge of any such vessels, and all drivers or persons conducting or having charge of such vehicles or conveyances, refusing to stop when required so to do by such officer or person in the Queen's name, and any person being present at any such seizure or stoppage, and being called upon in the Queen's name by such officer or person to aid and assist him in a lawful way, and refusing so to do, shall forfeit and pay the sum of \$200, recoverable before any two justices of the peace, and in default of payment the offender shall be committed to any of her Majesty's gaols for a period not exceeding six months.

§ 72. If any person, under any pretence, either by actual assault, force or violence, or by threats of such assault, force or violence, in any way resists, opposes, molests or obstructs any officer of customs or any person acting in his aid or assistance in the discharge of his or their duty under this act, or any other law of this province relating to customs trade or navigation; or wilfully or maliciously shoots at, or attempts to destroy or damage any vessel or boat belonging to her Majesty, or in the service of the province, or maims or wounds any officer of the army, navy, marine or customs, or any person acting in his aid or assistance, while duly employed for the prevention of smuggling, and in execution of his or their duty; or if any person is 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 staves, breaks, or in any way destroys any such goods

before or after the actual seizure thereof, or scuttles, sinks, or cuts adrift any vessel, or destroys or injures any vehicle before or after such seizure, or wilfully and maliciously destroys or injures 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 judged guilty of *felony*, and be punishable accordingly.

The above clauses appear to be all that in any way relate to justices of the peace, or which bring offenders within their cognizance. There are numerous other penalties imposed for contravention of the other clauses, but such penalties are recoverable in another form, and not before justices of the peace.

See also *post* title "*Provincial Revenue.*"

CUTTING AND MAIMING.

Stabbing, cutting or wounding any person with intent to *commit murder* is made a capital offence, punishable by death by C. Stat. 22 V. c. 91, § 5.

See "*Capital Punishment.*"

And if with intent to disfigure or do some grievous bodily harm, or prevent the apprehension or detainer of any person is made *felony* by the same statute, § 7.

And *unlawfully* and maliciously cutting, stabbing, or wounding any person, is by the same statute declared to be a *misdemeanor*, and the offender liable to imprisonment with hard labour in any gaol or prison for any term less than two years, or in the penitentiary for any time not less than two nor more than five years. § 8. (a)

DEATH—SENTENCE OF.

May be pronounced after conviction for murder in the same manner as after conviction for other capital offences—C. Stat. 22 V. c. 99, § 90.

§ 93. When any offender has been convicted before any court of criminal jurisdiction of an offence for which such offender is liable to and receives sentence of death, and the court is of opinion that under the circumstances of the case the judgment of the law ought to be carried into effect, such court shall order and direct execution to be done on the

(a) This clause supposes the cutting and stabbing to be without felonious intent, such as might in fact occur in an affray, or originate in a common assault. The offence is then reduced to a misdemeanor.

offender in the same manner as any court is empowered to order and direct execution by the law as it stands at the time this act takes effect.

§ 94. It shall not be necessary for the court or judge before whom such prisoner has been convicted to make any report of the case, previously to the sentence being carried into execution.

§ 95. 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, except in case of receiving the Sacrament, or in case of sickness or wound, in which case the surgeon of the prison may order other necessaries; 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 has been tried, or of the sheriff or his deputy.

§§ 91, 92, (relating to the recording of the sentence only in cases where the court, under particular circumstances, might be of opinion the offender was a proper subject to be recommended for the Royal mercy,) have been repealed by a subsequent statute, 24 V. c. 9.

By another statute respecting new trials in criminal cases, (U. C. Stat. 22 V. c. 113, § 5,) it is provided, that in a case of capital felony, no sentence of death shall be passed *to take effect* until after the expiration of the term of the superior courts of common law next succeeding the sitting of the court at which the sentence of death is passed.

See *post* title, "*New Trial.*"

DEER.

See "*Game.*"

DESERTERS.

By U. C. Stat. 22 V. c. 100, § 1, if any person, other than an enlisted soldier in her Majesty's service, or a sailor engaged in the naval service of her majesty, by words, or with money, or by any ways, methods, or means whatsoever, directly or indirectly, persuades, encourages, prevails upon or procures any such soldier or sailor to desert or leave her Majesty's naval or military service, such offender is guilty of a *misdemeanor*, and upon conviction before any court of oyer and terminer and general gaol delivery in Upper Canada, shall be punished by fine and imprisonment in the common gaol of the county in which the conviction takes

place, for such period, being less than two years, as the court may impose, or by imprisonment at hard labour in the penitentiary for a period not less than two years, in the discretion of the court. § 2. If any person, other than an enlisted soldier or sailor, or a sailor engaged in the naval service of her Majesty, conceals, receives, or assists any deserter from her Majesty's naval or military service, knowing him to be a deserter, the person so offending is guilty of a misdemeanor, and, upon conviction, shall be liable to the same punishment.

DISTILLERS—BREWERS.

By C. Stat. 22 V. c. 19, § 2, no person shall act as a distiller, unless licensed, under a penalty of \$40 for each day, and forfeiture of stock and apparatus. § 3. None but licensed persons shall act as brewers under the like penalty. § 4. Revenue inspector to issue licenses, on payment of (by a subsequent statute, 25 V. c. 5, § 3,) for a distiller and rectifier, by any process other than filtration, \$200; as a distiller, and as a rectifier by filtration only, \$100; as a rectifier by filtration only, \$100; as a brewer, \$60; license to remain in force until 5th January next after date thereof. (4) No license to be granted except on a written requisition signed by the party. § 5. Parties obtaining license to give bond with two sureties, for rendering accounts and payment of duties. § 6. Such bond to remain in force during the license; a new bond to be entered into when a new license is granted. § 7. Distillers and brewers to have their names and calling inscribed in legible characters in front of the building, under a penalty of \$20 for each day of omission. §§ 8, 9. Certain additional duties made payable, (which by the 25 V. c. 5, are fixed at 9 cents per gallon on spirits, and 3 cents per gallon on beer.) § 10. Directs the appropriation of duties. § 11. Distillers and brewers to keep a book in the form to be furnished by the revenue inspector, and to be open at all seasonable times to his inspection, wherein such distiller or brewer shall enter, daily, the quantity of grain or other vegetable production, or other substance, put by him into the mash tub, or otherwise used by him for the purpose of producing beer or wash, or consumed by him in any way for the purpose of producing spirits, or otherwise disposed of, and the quantity of spirits, beer or other malt liquor by him distilled, manufactured, or made, shewing the quantities produced each time, if there shall have been any distinct sets of operations by reason of which

duties shall have become payable, under a penalty of \$200, for neglect or false entry; and the inspector may at all times demand to be shown the stock of grain, &c., on hand.

§ 12. Account to be rendered by distillers and brewers twice a month to the inspector of the quantity of dutiable spirits and beer produced each time; and shewing also the quantity of grain, &c., used; such account to be on oath, and in the form following:—

I do solemnly swear, that the account above written, to which I have also subscribed my name, contains a true account of the total quantity of every kind of spirits, or strong waters, or spirituous liquors, distilled, manufactured, or made up of every kind of beer, ale, porter, lager beer, or other malt liquor brewed, manufactured or made) by me, (or by _____ as the case may be,) within the time mentioned in the same account, and on which duty is payable, and of the quantities of each kind respectively, and (if the affidavit relate to spirits say) _____ the strength thereof, and also of the quantities produced at each separate time therein mentioned. by a distinct set of operations; and also of the quantities of all grain or other vegetable production or substance consumed by me, (or by the said _____) during the said time. So help me God.

Such affidavit to be made before a justice and delivered with the account to the inspector, who may further interrogate the party, on oath, as to such account, before a justice. False statements to be perjury.

§ 13. Duties to be paid when account rendered, under a penalty of \$80 and forfeiture of license. § 18. Distillers to produce books to the inspector at any seasonable time, and inspector to have free access to the premises at all times, under a penalty of \$80 for such neglect or refusal; no admittance to be required between sunset and sunrise, except when the distiller is at work, or unless the inspector be accompanied by a peace officer. § 19. Distiller not to work his distillery without *ten* days' previous notice, in writing, to the inspector; such notice not to extend to a longer period than *thirty* days; and any distiller working his distillery without giving such notice shall be liable, each day, to the same penalty and forfeiture as if doing so without a license. § 20. Distillers required to furnish the inspector with lights, ladders, and measures for examining, gauging, &c., any still, vessel, or stock on such premises, under a penalty of \$80. § 21. Revenue inspector and persons acting under him to have free access to the premises at any hour of the day or night, and make all necessary inquiries and searches, subject to

the restrictions aforesaid. § 22. Inspectors, or any other persons acting under them, having first obtained a search warrant from a justice of the peace, on affidavit shewing reasonable grounds for issuing thereof, may, at any hour between sunrise and sunset, search any house, building, or place mentioned in such warrant, suspected of having any unlicensed still, auxiliary vessel, mash tub, or other vessel illegally in use therein. § 23. Duties recoverable although account not rendered, but with three times the amount, as additional penalty. § 24. Payment of penalties not to release parties from the duties; duties to be recovered with full costs in any court of competent jurisdiction; and the stock in trade and apparatus on the premises are made specially liable therefor; and if forfeited under this act, may be seized, marked and secured by the inspector until condemned, or released by competent authority, and shall not be used in the meantime. § 25. Penalties under this act may be recovered before any *two* or more justices of the peace, where the offence is committed, on the oath of two credible witnesses, and if not paid, levied by distress and sale; or such justices may, in their discretion, commit the offender to the common gaol until the penalty and costs are paid—*one moiety* of the penalty to belong to her Majesty, and the other moiety to the prosecutor. § 26. Contains a provision also for recovery of the penalties in civil courts. § 27. Revenue officers to be competent witnesses if not prosecutors. § 28. No person making any seizure under this act shall be liable for damages, if the court shall certify there was *probable cause*. § 29. Imposes a penalty of \$20 on persons refusing to give evidence when summoned, to be recovered as other penalties.

For forms of proceeding see title "*Summary Conviction.*"

DISTRESS.

To justify taking a distress, the party must have a regular warrant for so doing, and must take care that the things taken are distrainable, and that the distress is made in due time and place.—*Co. Lit.* 47. All distresses must be made in the day time, unless in the case of cattle distrained *damage feasant*.—1 *Inst.* 142; *Bull, N. P.* 61. Persons making a lawful distress may sell the same upon the premises, in like manner as may be done off the same.—2 *W. & M. Sess.* 1, c. 5.

Of Distress by Warrant of Justices of the Peace.

By statute 27 G. II. c. 20, it is enacted as follows:—In all cases where any justice of the peace is, or shall be required or empowered by any act of parliament to issue a warrant of distress, for the levying of any penalty inflicted, or any sum of money directed to be paid by such act, it shall be lawful for the justice granting such warrant, therein to order and direct the goods and chattels, so to be distrained, to be sold and disposed of within a certain time, to be limited in such warrant, so as such time be not less than *four* days, nor more than *eight* days, unless the penalty or sum of money for which such distress shall be made, together with the reasonable charges for taking and keeping such distress, be sooner paid; and the officer making such distress shall and may deduct the reasonable charges of taking, keeping and selling such distress, out of the money arising by such sale, and the overplus, if any, (after such charges, and also the said penalty or sum of money shall be satisfied and paid,) shall be returned, on demand, to the owner of the goods so distrained; and the officer executing such warrant, if required, shall shew the same to the person whose goods are distrained, and shall suffer a copy thereof to be taken.

When an act of parliament orders a distress and sale of goods, it is in the nature of an execution, and replevin will not lie.—*Bac. Abr.* title "*Replevin.*"

If, in seizing for the whole amount, the first distress is found insufficient, from mistaking the value of the goods seized, a second distress may be made.—*Burr.* 589.

By C. Stat. 22 V. c. 103, § 57, it is enacted as follows: Where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorising such conviction or order, the penalty, compensation or sum of money, is to be levied upon the goods and chattels of the defendant by distress and sale thereof; and also in cases where by the statute in that behalf no mode of raising or levying such penalty, compensation or sum of money, or of enforcing the payment of the same is stated or provided, the justice or any one of the justices making such conviction or order, or any justice of the peace for the same territorial division, may issue his warrant of distress (N. 2) for the purpose of levying the same, which said warrant of distress shall be in writing, under the hand and seal of the justice making the same. § 58. If after the delivery of such

warrant of distress to the constable or constables to whom the same has been directed, sufficient distress cannot be found within the limits of the jurisdiction of the justice granting such warrant, then, upon proof being made upon oath of the handwriting of the justice granting such warrant, before any justice of any other territorial division, such justice shall thereupon make an endorsement (N. 3) on such warrant signed with his hand authorising the execution of such warrant within the limits of his jurisdiction, by virtue of which said warrant and endorsement the penalty or sum aforesaid and costs, or so much thereof as may not have been before levied or paid, shall be levied by the person bringing such warrant, or by the person or persons to whom the same was originally directed, or by any constable or other peace officer of such last mentioned territorial division, by distress and sale of the goods and chattels of the defendant therein. § 59. Whenever, it appears to any justice to whom application is made for any warrant of distress as aforesaid that the issuing thereof would be ruinous to the defendant and his family; or whenever it shall appear, by the confession of the defendant, or otherwise that he has no goods and chattels whereon to levy such distress, then, such justice, *if he deems fit*, instead of issuing a warrant of distress, may commit the defendant to the common gaol, house of correction, or lock-up house of the locality, there to be imprisoned with or without hard labour, for the time and in the manner the defendant could by law be committed, in case such warrant of distress had issued and no goods or chattels had been found whereon to levy the penalty or sum and costs aforesaid.

§ 60. In all cases where a justice of the peace issues any such distress warrant, he may suffer the defendant to go at large, or verbally, or by a written warrant, order the defendant to be kept and detained in safe custody until a return has been made to such warrant of distress, unless the defendant gives sufficient security, by recognizance or otherwise, to the satisfaction of such justice for his appearance before him at the time and place appointed for the return of such warrant of distress, or before such other justice or justices for the same territorial division as may then be there.

§ 61. If the defendant does not appear pursuant to such recognizance, the justice or justices then present upon certifying (F) on the back of the recognizance of the defendant, may transmit the same to the clerk of the peace to be proceeded upon as other recognizances. § 62. If the constable

return (N. 4) that he could find no goods or chattels, or no sufficient goods or chattels, whereon he could levy the sum or sums therein mentioned, together with the costs of, or occasioned by, the levy of the same, the justice before whom the same is returned may issue his warrant of commitment (N. 5) under his hand and seal directed to the same or any other constable, reciting the conviction or order shortly, the issuing of the warrant of distress and the return thereto, and requiring such constable to convey such defendant to the common gaol, house of correction, or lock-up house of the territorial division for which such justice is then acting, and there to deliver him to the keeper thereof, and requiring such keeper to receive the defendant into such gaol, house of correction, or lock-up house, and there to imprison him, or to imprison and keep him to hard labour, in such manner and for such time as is directed and appointed by the statute on which the conviction or order mentioned in such distress warrant is founded, unless the sum or sums adjudged to be paid and all costs and charges of distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice think fit so to order, (the amount being ascertained and stated in such commitment) shall be sooner paid.

§ 68. In all cases where a warrant of distress has issued as aforesaid against any person, and he pays or tenders to the constable the sum or sums mentioned in such warrant, together with the expenses of such distress up to the time of payment or tender, such constable shall cease to execute the same.

For the requisite forms see *post* title "*Summary Conviction.*"

DIVISION COURTS.

By U. C. Stat. 22 V. c. 19, § 2, the division courts existing are to continue until altered by law. § 3. Not being less than *three* nor more than *twelve* courts in each county or union of counties. § 5. Not to be courts of record. § 6. To be holden once every *two* months or oftener, in the discretion of the judge. § 8. Quarter sessions may alter the divisions. § 16. The county court judges to preside. (a) § 21. A clerk and one or more bailiffs to each court. § 23. To be appointed by the judge, and removable at his pleasure. § 24. Clerks and bailiff to give security. § 33. Clerk to issue summons. § 35. The plaintiff and defendant to furnish him with par-

(a) The junior judge to preside—U. C. Stat. 22 V. c. 15, § 6.

particulars of claim or set-off. § 36. Clerk to issue executions. § 40. To furnish the judge with an account upon oath of moneys received and paid by suitors. § 43. To make out an annual list of moneys paid and unclaimed. § 44. To be posted up in clerk's office and court-house, or where the court is held. § 49. Clerks and bailiffs' fees to be hung up in some conspicuous place in the office.

Jurisdiction of the Court, § 54.

Non-jurisdiction.—1. Actions for any gambling debt. 2. For spirituous or malt liquors drunk in a tavern or ale-house. 3. On notes of hand given in consideration thereof. 4. Actions of ejectment, or actions in which the right or title to any corporeal or incorporeal hereditaments may arise; or any toll, custom or franchise comes in question. 5. In which the validity of any devise, bequest or limitation under any will or settlement may arise. 6. For malicious prosecution, libel, slander, criminal conversation, seduction, or breach of promise of marriage. § 7. Actions against a justice of the peace, for any thing done by him in the execution of his office, if he objects thereto.

Jurisdiction.—1. All personal actions, where the debt or damages claimed do not exceed \$40. 2. All claims and demands of debt, account or breach of contract or covenant, or money demand, whether payable in money or otherwise, where the amount or balance claimed does not exceed \$100, and the judgment to be final and conclusive.

Proceedings.—§ 56. Upon any contract for payment of a sum certain in labour or goods, the judge, after the day has passed for delivery of the goods, or labour performed may give judgment for the amount in money. § 57. Executors or administrators may sue or be sued therein. § 58. A minor may sue for any sum not exceeding \$100 due him for wages. § 60. Judgment for any balance sued for to be in full of all demands. § 61. If the debt or damages claimed amount to \$40 or upwards, suit may, with approbation of the judge, be removed by *certiorari* into a superior court. § 71. Suit may be entered and tried in the division where the cause of action arose, or where the defendant resides. § 72. Or in an adjacent division, by special order of the judges, [or in the court nearest to the defendant's residence, although the defendant may not be residing within the division—27 & 28 V. c. 27.] § 75. Summons with a copy of the account or particulars of demand attached to be served ten days before the return day. § 76. If none

of the defendants reside in the county, but one resides in an adjoining county, then *fifteen* days. If none reside in the county or adjoining county, then *twenty* days. § 77. If the amount claimed exceeds \$8, the service must be personal, otherwise on the wife, servant, or grown-up person at the defendant's residence. § 81. One of several partners may be sued if the others reside out of the division. § 84. The judge may try causes and give judgment. § 85. In the absence of the defendant if he does not appear. § 86. Or adjourn the case. § 87. Plea of tender to be filed with the clerk six days before the trial. § 90. The defendant may at any time six days before the court pay damages and costs into court. § 93. Defendant to give notice of set-off to the plaintiff six days before the trial. § 97. Subpœnas to witnesses to be issued by the clerk of the court. § 99. If a witness fails without sufficient excuse to attend after service of subpœna and tender of his expenses, he will be liable to a fine not exceeding \$8, and imprisonment not exceeding ten days, in the discretion of the judge. § 101. Parties to the suit may be summoned as witnesses and examined by the opposite party. § 102. The judge may require the examination of either party, and judgment may be given on the plaintiff's own evidence where the amount does not exceed \$8. § 103. Plaintiff's books of account may be received as evidence. § 104. Affidavits used may be sworn before any county judge, clerk or deputy clerk, or before any judge or commissioner in the superior courts. § 105. Wilful false evidence to be perjury. § 106. The judge may decide *instanter*, or postpone his decision. § 107. May order in what proportion the amount shall be paid. § 108. Execution not to be postponed beyond fifty days from the service of the summons, except in case of new trial, or sickness, or other sufficient cause upon affidavit. § 109. The judge with consent of parties may refer the cause to arbitration. § 111. The award of the arbitrator or umpire to be entered as final judgment. § 112. Award may be set aside if the judge thinks fit on application within *fourteen days* after entry. § 114. The judge may apportion costs. § 117. Clerks and bailiffs may take confessions. § 119. Either party may require a jury in actions of *tort* where the amount exceeds \$10, and in all other cases where it exceeds \$20. § 120. If required by the plaintiff, he must give notice in writing to the clerk at the time of his entering the account and pay the fees; if by the defendant, he must within *five* days after service of the summons give notice to the clerk and pay the

fees. § 124. Summons to jurors to be served at least three days before the court. § 125. In case of non-attendance, jurors liable to a fine not exceeding \$4. § 130. The jury list of causes to be first disposed of. § 131. Five jurors to be empannelled.

Judgments and Executions.—In case of cross judgments, the party only obtaining judgment for the largest sum to have execution, and for the balance only. § 135. If the amount be not paid as ordered, execution may be sued out against the goods and chattels of the party. § 137. If the debtor removes to another county, the judge in that county may upon proof of the judgment order execution against the party. § 138. Before actual sale, the defendant may pay the amount to the clerk or bailiff. § 139. Transcripts of judgments may be transmitted to other courts for proceedings thereon. § 141. Executions to be returnable in thirty days.

Bailiff's Neglect of Duty.—§ 147. Liable therefor for damages. § 148. If the bailiff neglects to return any execution after *three* days from the return day, or makes a false return, he and his sureties may be sued for the amount. § 149. Immediate execution to follow.

Mortgagor's Interest.—§ 150. In goods and chattels saleable under execution.

Goods and Chattels.—§ 151. Of the party may be sold under execution—except certain articles. (a) § 152. Cheques, bills of exchange, promissory notes, bonds, specialties, or other money securities may be held by the bailiff and sued upon in the name of the plaintiff when due. § 155. Bailiff after seizure of goods to endorse on execution the date, and give *eight* days' notice of sale. § 157. Officers of the court not to be purchasers. § 158. In special cases judge may order immediate execution.

Judgment debtors.—§ 160. May be examined upon oath as to their estate. § 162. Examination to be in judge's chambers unless otherwise ordered. § 165. Defendant not attending or refusing to be sworn, or not answering to the satisfaction of the judge, or it appearing that he had obtained credit or incurred the debt under false pretences, or by fraud, or breach of trust, or without having had at the time a reasonable expectation of being able to pay, or had made any transfer of property, or removed or concealed the same with the intention to defraud his credi-

(a) For which see title "*Indigent debtors.*"

tors, or if it appear that the party since the judgment had sufficient means to pay, the judge may, if he think proper, commit him to the common gaol for any period not exceeding *forty* days. § 166. Not to be committed for default of appearance unless wilful, or the party has failed to attend after being *twice* summoned; and if it appear to the judge upon examination that he ought not to have been summoned; or if the judgment creditor fail to appear, the judge may award compensation. § 169. Debtor in custody on payment of debt and costs to be discharged. § 170. The judge, at such examination, may rescind or alter the original order, and make further order as to payment § 171. Judge at the trial may examine the defendant as to such matters, and commit him to prison and make the like order as if he had been summoned. § 173. Imprisonment not to discharge the judgment.

Goods Claimed.—§ 175. For rent and other causes may be adjudicated upon by the judge.

Landlord's Rights.—§ 176. Reserved, in case of weekly tenant *four* weeks rent in arrear, two terms of payment for less than a year, and not exceeding one year's rent in any case. § 179. Provision in case of replevin.

Forgery.—§ 181. Of seal or process of the court, or serving forged process, or delivering any paper falsely purporting to be a copy of a process of the court, knowing the same to be false; or knowingly acting under any false colour of process, to be felony.

Contempt of Court.—§ 182. Wilfully insulting the judge, or interrupting proceedings of the court, punishable by fine not exceeding \$20, and in default of payment *imprisonment* not exceeding one month unless fine and costs sooner paid.

Bailiffs.—§ 183. May act as constables. § 184. Any person assaulting or rescuing property seized will be liable to a fine not exceeding \$20, recoverable by order of the court, or before a justice of the peace, and to imprisonment for any term not exceeding three months.

Misconduct of Officers.—§ 185. Any bailiff or officer, acting under colour or pretence of process, guilty of extortion or misconduct, or not paying over money levied, the judge at any sitting of the court may hear the complaint and make such order as he thinks just; and in default of payment the amount may be levied by distress and sale of the offender's goods, and in default of distress the judge may commit the offender to the common gaol for any period not exceeding three months.

Extortion.—§ 186. Of illegal fees by clerk, bailiff or other officer, punishable by dismissal and liability to damages.

Fines, how enforced.—§ 187. In like manner as a judgment.

§ 188. If recoverable before a justice, such justice may, with or without information in writing, summon the party, and hear and determine the complaint, and on proof of the offence convict the offender, and adjudge him to pay the penalty or forfeiture, and proceed to recover the same.

§ 189. Form of conviction. (See the act.) § 190. Disposal of fines. § 191. Judgment not to be reversed for want of form.

Actions, limitation of.—§ 193. Informal proceedings not to make parties trespassers *ab initio*, but liable for special damage. § 193. Actions against parties for any thing done in pursuance of this act to be commenced within six months.

§ 194. Defendant may tender amends. § 195. No action to be commenced against any bailiff until after written demand and refusal of copy of the warrant for six days.

§ 196. Bailiff after such demand and compliance entitled to verdict.

Absconding Debtor.—See corresponding title.

For Table of Fees, see *Statute*.

DOGS.

By the municipal act, U. C. Stat. 22 V. c. 54, § 266, the several municipalities are empowered to make by-laws for imposing a tax on the owners, possessors or harbourers of dogs, and for killing dogs running at large contrary to by-laws.

A mastiff going at large, unmuzzled, from the ferocity of his nature being dangerous, seems to be a common nuisance and the owner may be indicted.—1 *Burn*, 918.

The stealing of dogs is not a *felony*, either at common law or by statute—4 *Bl. Com.* 236; but is punishable by the following statute:

By C. Stat. 22 V. c. 92, § 33, if any person steals any dog, or steals any beast or bird ordinarily kept in a state of confinement, not being the subject of larceny at common law, such offender being convicted thereof before a justice of the peace shall forfeit and pay over and above the value of the dog, beast or bird, such sum of money not exceeding \$20, as to the justice may seem meet.

For form of procedure, see title "*Summary Conviction.*"

DOMESTIC ANIMALS.—BIRDS, &c.

See title "Dogs," "Birds," "Insectivorous Birds."

DOWER.

The wife is entitled by law to be endowed of one-third part of all such lands and tenements of which her husband was seised in fee-simple or fee-tail, at any time during the coverture or marriage: to hold the same during the term of her natural life.—*Co. Litt.*—31. She is now entitled to dower in land in which her husband had only an equitable interest.—U. C. Stat. 22 V. c. 84, § 1. But that she may be entitled thereto, she must be the wife of the party at the time of his decease; for if she be divorced *a vinculo matrimonii*—that is from the band of matrimony—she shall not be endowed. By statute 13 *Edw. I.*, c. 34, if a woman elope from her husband and live with an adulterer, she shall lose her dower, unless her husband be voluntarily reconciled to her. And the widows of traitors, or persons attainted of treason, are barred of dower; but not the widows of felons.—2 *Bl. Com.* 131. Formerly an alien could not be endowed unless being the queen consort.—*Co. Litt.* 31. But now, by C. Stat. 22 V. c. 8, § 7, any woman married to a natural born British subject, or person naturalised, shall be deemed to be herself naturalised, and have all the rights of a natural born British subject. The wife's dower may also be excluded by the husband taking a conveyance to himself and a trustee.—*Co. Litt.* 31. And a wife cannot be entitled to dower out of an estate which at the time of her marriage was subject to a mortgage in fee.—*Co. Litt.* 208, note 1, 13 *edit.* But upon the mortgage being paid off, and the estate reverting to her husband, the wife will become dowable.

The mode of Barring Dower.

By the U. C. statute 22 V. c. 84, § 4, a married woman may bar her dower in any lands in Upper Canada by joining with her husband in a deed or conveyance thereof in which a release of dower is contained. § 5. She may also bar her dower by executing either alone, or jointly with other persons, a deed of conveyance, to which her husband is not a party. § 6. A married woman barring her dower by a deed or conveyance to which her husband is *not* a party, shall be examined by one of the judges of the court of Queen's Bench, or Common Pleas, or the judge of the County Court, or chairman, or presiding magistrate of the court of Quarter

Sessions, or two justices of the peace for the county in which she resides, or happens to be touching her consent to be barred of her dower.

DROWNING.

By C. Stat. 22 V. c. 91, § 6, any person who attempts to drown, suffocate or strangle any person with intent to commit the crime of murder shall, although no bodily injury be effected, be guilty of felony, and shall be imprisoned in the provincial penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

DUELLING.

By C. Stat. 22 V. c. 78, the principal as well as the seconds are rendered liable to be sued for damages by the executor or administrator of any person whose death shall be caused in a duel, and the amount shall be apportioned among the surviving relations, as the jury shall by their verdict direct.

See also *post* title "*Homicide.*"

ELECTIONS.*Qualification of Members, House of Assembly.*

By the imperial statute 3 & 4 V. c. 35, entitled, "An Act to re-unite the provinces of Upper and Lower Canada, and for the government of Canada." § 28. No person shall be capable of being elected a member of the Legislative Assembly of *Canada* who shall not be legally or equitably seised, for his own use and benefit, of lands or tenements, held in free and common soccage, or seised or possessed, for his own use and benefit, of lands or tenements, held in fief or en roture, within the said province of Canada, of the value of £500 sterling, over and above all incumbrances; and every candidate, before he shall be capable of being elected, shall, if required by any other candidate, or by any elector, or by the returning officer, make the following declaration:

I, A. B., do declare and testify, that I am duly seised at law, or in equity as of freehold, for my own use and benefit, of lands or tenements held in free and common soccage (or duly seised or possessed, for my own use and benefit, of lands or tenements held in fief or en roture [*as the case may be*] in the province of *Canada*, of the value of five hundred pounds of sterling money of *Great Britain*, over and above all rents, mortgages, charges and incum-

branches, charged upon or due and payable out of or affecting the same; and that I have not collusively or colourably obtained a title to or become possessed of the said lands and tenements, or any part thereof, for the purpose of qualifying or enabling me to be returned a member of the Legislative Assembly of the province of *Canada*.

§ 29. Making a false declaration shall be deemed a misdemeanor, and punishable as wilful and corrupt perjury.

Legislative Council and Assembly, C. Stat. 22 V. c. 6.

Disqualified from voting. § 1. The chancellor, vice-chancellor, the judges of the court of Q. B. and C. P., county court judges, recorders of cities, officers of the customs, clerks of the peace, registrars, sheriffs and deputies, deputy clerks of the crown, crown land agent, &c., excise officers. § 2. Under the penalty of \$2000. § 2. Returning officers, deputies, election clerks, poll clerks, counsel, agents and attorneys for candidates are also disqualified from voting. § 3. And women.

Qualified Voters. § 4. For cities and towns entitled to representation, owners, tenants, or occupiers of real property, of the assessed value of \$300 or upwards, or assessed yearly value of \$30, or upwards, or entered on the assessment roll of any township, within the limits of any such city or town, for the purposes of representation, of the assessed value of \$200, or yearly value of \$20.

For Electoral Divisions.—(2) Owners, tenants, or occupiers of real property entered on the last assessment roll for property of the assessed value of \$200, or upwards, or yearly value of \$20, (3,) partners and joint tenants entitled to vote, provided their shares be equal to the required amount. (4) And if the property situated within two polling places, the party may vote in either.

Registration of Voters, U. C.—§ 6. Lists to be made from the assessment rolls, by the clerk of the municipality, certified upon oath, and completed on or before the 1st day of October, yearly (4) Under the penalty of \$200. (5) No person to vote unless his name appears on such list. (6) Such list subject to revision and correction, by the court of revision for the municipality, or judge of the county court upon appeal. § 19. Copies to be furnished at the rate of *three cents* for every ten voters. § 20. Wilfully falsifying or altering lists of voters to be felony.

Legislative Assembly, U. C.

Returning Officers.—§ 22. High sheriffs for counties and

unions of counties for judicial purposes, and for cities and towns within their counties; and for other counties or union of counties, where no sheriff is *ex officio* returning officer, then the registrars of deeds. 2. For the county of Peel, the sheriff of the united counties. 3. If more than one person may act, the writ may be directed to either. 4. For ridings, the high-sheriff or registrar of deeds. 5. Proviso as to Leeds and Grenville.

Legislative Council.

Returning Officers.—§ 23. To be appointed by the Governor, from among those above mentioned. § 24. In case of absence or sickness, the Governor may appoint others. § 25. Such others if appointed, to be electors and residents twelve months before appointment. (2.) Penalty for acting without such qualification \$200.

Legislative Council and Assembly.

Disqualifications.—§ 26. As returning officers, deputies, election and poll clerks. 1. Members of the executive council. 2. Members of the legislative council. 3. Members of assembly. 4. The clergy. 5. Judges. 6. Members of either house in the session next preceding the election. Under the penalty of \$100.

Exemptions.—§ 27. 1. Physicians. 2. Millers. 3. Post-masters. 4. Persons above 60 years of age. 5. Persons who have previously served.

Penalty for refusing to act.—§ 28. \$200.

Issue of the Writ.—§ 29. To be directed to the returning officer *ex officio*.

Proceedings on receipt of the Writ.—§ 31. Date of receipt to be endorsed. 2. Proclamation for election to be issued within eight days. 3. And posted up eight days before the nomination day. 4. Place to be central, the hour fixed to be between eleven in the forenoon and two in the afternoon. 5. Polling days to be named in the proclamation. 6. In cities or towns proclamation to be posted up in each ward. 7. If for a county or riding in Upper Canada at the town hall, and at least one place in each township. 8. The eight days' proclamation to be exclusive of the day of polling and nomination. 10. Penalty \$100 for refusal or neglect. § 32. Returning officer before election to take and subscribe oath of office before a justice of the peace, under a penalty of \$40.

Election Clerks.—§ 33. To be appointed by the returning officer, 2, to take and subscribe oath of office before a justice

of the peace, 3, under the penalty of \$40, 4, another to be appointed if necessary, 5, election clerk to act as a returning officer in case of death, illness, absence or otherwise of such officer.

Nomination Day.—§ 34. Returning officer to make proclamation, and read commission, and call on the electors to name candidates. 2. If the choice agreed upon by the electors present upon a show of hands, and no poll demanded, the election to be closed, and proclamation made of the person elected. 3. If poll demanded (and any elector or candidate may do so) the returning officer shall grant the same, and in case of refusal and neglect the election to be *null*, and penalty incurred of \$800.

Agents for Absent Candidates.—§ 35. In the absence of authorised agent, any elector in the *interest* of such candidate may act. 2. Paid agents not to vote under a penalty of \$100.

Candidate's Qualification.—§ 36. The candidate, when required, shall before election give and insert at the foot of the declaration required by the imperial statute, (for re-uniting the provinces,) a correct description of the lands or tenements on which he claims to be qualified; any wilful false statement to be a *misdemeanor*, punishable as perjury. § 37. May be made voluntarily beforehand. 2. Need not be made unless personally required on or before the nomination day and before a poll has been granted, and when so required, may be made at any time during the election before the proclamation at the close. 3. To be made before a returning officer, or a justice of the peace, or alderman of the city. 4. And delivered to the returning officer any time before the proclamation, at the close of the election, the returning officer on requisition being bound under a penalty of \$200 to give to such candidate an acknowledgment under his hand of the delivery of such declaration.

Proceedings when a Poll Granted.—§ 38. A poll to be opened and kept in each parish, township, union of townships, or ward, or part of the same, as the case may be, within the electoral division. 2. In townships forming part of counties and ridings, and not divided into wards, in some building at or near the place of the last township meeting; and in cities and towns at the most convenient place in each ward. 3. In townships divided into wards, at the town hall where the municipal council meets, if any, otherwise, where the municipal council held its first meeting in the year in which such poll is held, or if no meeting that year, then where the last meeting was held. 4. If no such place, the deputy returning officer

then to appoint the place. 5. A separate poll to be held for each incorporated village or town, not divided into wards, and a separate poll for each ward in incorporated towns divided into wards, the returning officer appointing a deputy for such village, town or ward. 6. In towns divided into wards, electors to vote in the ward in which the property voted on lies. 8. No poll to be held at a tavern, or place of public entertainment, and free access secured to electors.

§ 39. Electors to vote at the polling place in the parish, township or ward where the property lies, under a penalty of \$40. § 42. Polling places and day to be proclaimed immediately after the poll granted. 2. Six days at least, and not more than *ten* to intervene. 4. After proclaiming the poll, the returning officer to adjourn until the closing day, which shall be one of the ten days next following for opening the polls. § 43. Poll not to be held on Sundays or holidays named. 2. Polling days to be the same in each parish, township or ward, and be kept on that and the following day. 3. To be consecutive days, unless Sunday or one of the holidays intervene, and then the day next following. 4. To commence at *nine* in the forenoon and finish at *five* in the afternoon each day.

Deputy-returning Officers.—§ 44. To be appointed by the returning officer. 2. Deputy to take and subscribe oath of office before a justice of the peace. 3. Refusal or neglect to serve, &c., subject to a penalty of \$100. § 45. In electoral divisions for the *Legislative Council* the deputy to be the town clerk, and in case of absence, sickness, &c., the assessor or collector. 2. Any township attached to a town for electoral purposes to be considered a ward. 3. Where a township is divided, the town clerk to be deputy for the one first mentioned in the law dividing the township; the assessor or collector for the other. 4. The foregoing provisions to apply to incorporated villages not divided into wards, as regards the person to be appointed; and the clerk of the village or town, or the assessor or collector to be appointed accordingly; but in towns divided into wards any person may be appointed. 5. If more than one person eligible, the returning officer may appoint either, and if no person eligible, or such person be unable to act, the returning officer may appoint whom he thinks proper. § 46. He may appoint others in case of death, illness or absence, &c. § 47. Warrants to be issued by returning officers for holding the polls.

Lists of Electors.—§ 48. Returning officers required to

ascertain that every deputy is in possession of a certified list of voters. 2. And procure such lists for them. 3. And charge for the same in his expenses.

Poll Clerks, their duties, &c.—§ 49. To take oath of office before a justice of the peace or the returning officer. 2. Refusal to act, penalty \$40. § 50. He shall aid and assist at the poll. 2. Act as deputy, in case of the death, illness, absence or otherwise of his principal. 3. May appoint another poll clerk and administer oath of office to him. 4. Whenever any poll clerk refuses to act or becomes unable, the deputy returning officer may appoint another.

Taking and recording Votes.—§ 51. Poll books to be prepared and certified on each page. § 52. The votes to be recorded in the order given, adding the word sworn after the name, if necessary. § 53. Votes objected to, to be noted in the poll book. § 54. Voters to take a certain oath if required. § 55. Deputy-returning officer apprehending violence or fraudulent voting, shall administer to the elector the oath required, under the penalty of \$200. 2. Penalty for voting without taking such oath, \$40. 3. Voter refusing to take such oath when required, his refusal shall be stated in the poll book, and the vote shall not be taken, and if taken, shall be null and void, and the deputy-returning officer forfeit \$40.

Oath of Allegiance.—§ 56. May be administered by the deputy returning officer.

Interpreter.—§ 57. May be appointed by the returning officer if necessary.

Poll Book.—§ 58. To be certified each day by the deputy returning officer.

Scrutiny.—§ 59. None allowed.

Penalties for Polling Fraudulently.—§ 60. The offender to be guilty of a misdemeanor, and on conviction to be liable to a fine not exceeding \$200, or imprisonment not exceeding six months. § 61. Wilfully voting without all the qualifications required, subject to a penalty of \$80, and the vote declared void; and any person voting more than once shall incur a penalty of \$40, and his second vote be void.

Fraudulent Conveyances.—§ 62. To entitle any person to vote, and voting thereon, subject to a penalty of \$100; but the conveyance shall remain valid.

Proceedings after Close of the Polls.—§ 63. Poll books to be verified by oath of the poll clerk. 2. Deputy to make oath as prescribed before return of the poll book, and return the same to the returning officer on or before the day for

closing the election, 3, under certain penalties, viz., deputy returning officer \$200, poll clerk \$80. § 64. Poll books to be delivered by the deputies in person to the returning officer; and in case of sickness under sealed cover; in default thereof the offender to be guilty of misdemeanor, and incur a penalty of \$400, or be imprisoned for a term not less than six months and not more than one year, or by both fine and imprisonment.

Closing the Election.—§ 65. On the day fixed, the returning officer shall attend, and in the presence of the electors declare the state of the general poll, and then and there proclaim the member or members elected, having the greatest number of votes; but not unless all the poll books have been returned. § 66. If poll books not all returned the proceedings to be adjourned from day to day until all have been returned. § 67. After the close of the election the returning officer shall forthwith execute under his hand and seal an indenture in the form stated, in duplicate or triplicate, as the case may require, and deliver one copy to each person so elected; transmitting one copy to the clerk of the Crown in Chancery with the return of the writ of election. § 68. In case any poll book shall be stolen or taken away, lost or destroyed, such deputy returning officer shall attend personally on the returning officer and report the fact, and the poll clerk, so soon as informed of the loss, shall also forthwith attend on such returning officer. 2. Both to be examined upon oath as to the loss and contents of such poll book, and such examination annexed to the return in lieu thereof, and the number of votes ascertained in this way shall be included in the summing up of the votes. 3. In case of refusal to attend and be sworn, the party in default liable to the penalty of \$200, and may be committed by the returning officer to the common gaol until discharged by the legislature. § 69. If the returning officer after the return of any poll-book has reason to believe it has been altered or additions made thereto, proceedings to be adjourned and facts established as in case of loss of any poll book. § 70. Copies of the poll books to be made and deposited with the registrar for the county within ten days after the election, 2, originals to be transmitted with writ of election to the clerk of the Crown in Chancery, § 71, with copies of the lists of voters used at the election.

Keeping the Peace and good order.—§ 72. Returning officer and deputies to be, *pro tem.*, conservators of the peace. 2. And may require the assistance of all justices, constables,

and other persons present at the election, and swear in *special constables*, 3, and arrest by verbal order and keep in custody, for such time he deems expedient, any person disturbing the peace, or cause such person to be imprisoned under written order, until any period not later than the final closing of the election; to be obeyed by all persons under a penalty of \$20; 4, such arrest or imprisonment not to exempt the party from other pains or penalties.

Special Constables.—§ 73. To be sworn in on a requisition in writing by any candidate or his agent, or any two or more electors.

Offensive Weapons.—§ 74. May be demanded by returning officer or deputy from any person armed therewith. § 75. Refusal to deliver up to be a misdemeanor, punishable by fine not exceeding \$20, or imprisonment not exceeding three months, in the discretion of the court.

Assault and Battery.—§ 75. Parties convicted thereof at, or within two miles of the polling place, to be guilty of an aggravated assault and punished accordingly.

Entertainment.—§ 76. Not to be furnished by any candidate or agent before or at the election, 2, except by private persons at their own residence.

Strangers.—§ 77. Non-residents for six months before the day of election not to come armed with offensive weapons into the localities, or within *two* miles of the poll.

Flags, &c.—Prohibited to be used at elections, or within eight days before, § 79, and party badges.

Contravention.—§ 80. Of any of the four preceding sections to be a misdemeanor, punishable by fine not exceeding \$100, or imprisonment not exceeding six months, or both, in the discretion of the court.

Taverns, Hotels, &c.—§ 81. To be closed during the two polling days, and no spirituous or fermented liquors sold or given, under a penalty of \$100 against the keeper neglecting to do so: and the like penalty if he sells or gives any such.

Bribery and Corruption.—§§ 82, 83, repealed by 23 V. c. 17, which enacts:

[§ 1. Every person who shall directly or indirectly give, lend, or agree to give, or lend or offer, or promise to procure any money or valuable consideration to or for any voter, or to induce any voter to vote or refrain from voting, (2,) or to procure any office place or employment to for such voter, (3,) or make any gift, loan, offer, promise, procurement, or agreement as aforesaid, (4,) or upon any such gift, &c., promise or

endeavour to procure the return of any member, (5,) or advance or cause to be paid any money to be expended in bribing at any election, or re-pay any money so expended, shall be guilty of a misdemeanor, and liable to forfeit \$200, (*bona fide* costs for professional services, printing and advertising, &c., excepted.)

§ 2. The following persons shall also be deemed guilty of bribery. 1. Every voter receiving or contracting for any money, gift, &c., during such election for voting or refraining to vote, (2,) or receiving any money or consideration after such election for having voted or refrained to vote, shall be guilty of a misdemeanor, and liable to the penalty of \$200.

§ 3. Hiring, or promising to pay for any horse, team, carriage, cab, or other vehicle, by any candidate, or agent, to convey voters to or from the poll at any election, or the payment of travelling expenses of any voter, shall be illegal acts, and the offender forfeit \$30 for each offence, and any elector who shall hire such to any candidate or agent for such purpose shall be disqualified from voting, and forfeit \$30.

§ 4. Every person using or threatening any force, violence, or restraint, or inflicting or threatening any injury, damage, harm, or loss to any voter, or by abduction, duress, or any fraudulent device or contrivance interfering with the free exercise of the franchise of any voter, or thereby prevailing upon any voter to give or refrain from giving his vote, shall be deemed guilty of *undue influence* and a misdemeanor, and forfeit \$200.

§ 5. Offenders not to be excused from answering before any judge, commissioner, or select committee. § 6. All contracts, even for payment of lawful expenses, to be void in law.]

§ 84. Voters at elections proved before the proper tribunal of the legislature to have been bribed to be struck off the roll.

Penalties and Punishments.—§ 85. Stealing, or unlawfully or maliciously, by violence or stealth, taking from any deputy-returning officer or person having the lawful custody thereof, or from its lawful place of deposit, or unlawfully or maliciously destroying, injuring or obliterating, or making any erasure, addition of names, or interlineation in, to, or upon, or aiding or assisting therein, of any list of voters, or any writ of election, or any return thereto, or any indenture, poll book, certificate or affidavit, 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 be liable to be imprisoned in the penitentiary for any term not exceeding

seven nor less than two years, or imprisoned in any other place of confinement for any term less than two years, or to suffer such other punishment by fine or imprisonment, or both, as the court shall award. § 86. Aiders and abettors in misdemeanors under this act liable to be punished as principals.

Recovery of Penalties.—§ 87. By action of debt or information in any of her Majesty's courts having competent jurisdiction, and in default of payment, the offender to be imprisoned in the common gaol until payment. 5. Actions to be commenced within nine months.

§ 88. Wilful false swearing under this act to be perjury.

§ 89. Provision for fees and expenses at elections.

Controverted Elections.

By C. Stat. 22 V. c. 7, § 1, the petition to the House of Assembly may be signed by any elector or candidate. § 2. If arising out of an election on the expiration or dissolution of any parliament, must be presented to the House of Assembly within the first fourteen days of the session: provided the house has, on the last of such fourteen days, gone through with the daily routine of presenting and bringing up petitions; and if not, then such petition shall be presented on the first day after the house shall have gone through such daily routine. § 3. Petitions against other elections to be presented within the first fourteen days of the session next after such return. § 4. If parliament in session at the time of such return, then such petition shall be presented within the first fourteen days after such return brought into the office of the clerk of the Crown in Chancery. § 5. Such petition may be brought up as a matter of privilege during any part of the day. § 6. No session which shall not have lasted fifteen days to be deemed a session in such cases. § 7. In cases of alleged bribery or corruption, the petition may be presented within twenty-eight days, instead of fourteen. § 8. If not presented in time, not to be deemed an election petition. § 9. May be withdrawn on certain conditions.

Recognizances.—§ 10. Before presentation of any petition the petitioner to give security by recognizance for \$800 for payment of costs. § 11. Sitting member to give security for costs to the amount of \$400 before issuing a commission on his behalf to take evidence. § 12. Sureties to justify upon oath for the amount they are bound for. § 13. To be desig-

nated by their names, residence and occupation. § 14. Recognizances to be entered into before the Speaker or a justice of the peace. § 15. Money may be deposited instead of giving security. § 17. Petition not to be received unless the Speaker certify by endorsement that the requisite security has been entered into, or amount deposited. The other clauses relate to subsequent proceedings, for which the reader is referred to the act.

For *Electoral Divisions*, see title "*Parliamentary Representation*."

EMBEZZLEMENT.

By C. Stat. 22 V. c. 92, § 42, if any clerk or servant, or any 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 fraudulently embezzle the same or any part thereof, 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 such offender shall be liable to any of the punishments which the court may award, as in said act mentioned. § 43. If any money or security for the payment of money shall be intrusted to any banker, merchant, broker, attorney or other agent, with direction in writing to apply the same, or the proceeds of such security, for any purpose specified in such direction, and such person in violation of good faith, contrary to the purpose so specified, in anywise converts to his own use or benefit such money, security or proceeds, or any part thereof, every such offender shall be guilty of a misdemeanor, and imprisoned in the penitentiary for any term not less than two years, or imprisoned in any other prison or place of confinement for any term less than two years, or to suffer such other punishment by fine or imprisonment, or by both, as the court may award. § 44. If any banker, merchant, broker, attorney, or other agent having been intrusted with 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, for

safe custody or for any *special purpose*, without any authority to sell, negotiate, transfer, or pledge the same, and such person, in violation of good faith, and contrary to the purpose for which such chattel, security, or power of attorney has been intrusted to him, sells, negotiates, transfers, pledges, or in any manner converts 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 relates, or any part thereof, such offender shall be guilty of a misdemeanor, and liable to any of the punishments which the court may award, as last hereinbefore mentioned. § 45. This act not to affect any trustee in or under any instrument whatever, or any mortgagee of real or personal property; nor restrain any banker, merchant, broker, or attorney or other agent, from receiving any money due and payable 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 has any lien or claim, entitling him by law to do so: unless such sale or transfer shall extend to more than what shall be requisite for satisfying such lien, claim or demand. § 46. If any factor or agent intrusted for the purpose of sale with any goods or merchandise, or with any bill of lading, warehouse keeper's or wharfinger's certificate, or warrant or order for delivery of goods or merchandize, deposits or pledges for his own benefit, and in violation of good faith, any such goods or merchandize, 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, such offender shall be guilty of a misdemeanor, and shall be imprisoned in the penitentiary for any term not less than two years, or imprisoned in any other prison or place of confinement for any term less than two years, or suffer such other punishment by fine or imprisonment, or by both, as the court may award. § 47. No such factor or agent shall be liable to any prosecution for depositing or pledging any such goods or merchandize or any of the said documents, in case the same were not made a security for or subject to the payment of any greater sum than the amount at the time 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. § 48. This act not to deprive the party aggrieved of any remedy at law or in equity. § 49. Nor shall the conviction of any offender be evidence against him. § 50. Nor shall any accused party be convicted upon any evidence disclosed by him in any court of law or equity, or before commissioners of bankruptcy.

Trustees.—§ 51. If any person being a trustee of any property, either wholly or partially, of some other person, or for any public or charitable purpose, does, with intent to defraud, convert or appropriate the same, or any part thereof, to or for his own use or purposes, or does with intent as aforesaid otherwise dispose of or destroy such property, or any part thereof, he shall be guilty of a misdemeanor.

Charities.—§ 52. If any person being a trustee of any money or other property, for the benefit wholly or partially of some other person, or for any public or charitable purpose, converts or appropriates the same, or any part thereof, to or for his own use or purposes, or otherwise wilfully disposes of the same, contrary to his duty, so that such money or other property is not forthcoming, and paid and delivered when such person is ordered, or decreed by the Court of Chancery, or other court having jurisdiction in the matter to pay the same, he shall be deemed to have converted or disposed of the same with intent to defraud, within the meaning of the last preceding section.

Bankers, Merchants, Brokers, &c.—§ 53. If any person being a banker, merchant, broker, attorney, or agent, and being intrusted for safe custody with the property of any other person, does, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate to his own use such property or any part thereof, he shall be guilty of a misdemeanor.

Powers of Attorney.—§ 54. If any person intrusted with any power of attorney for the sale or transfer of any property, does fraudulently sell or transfer, or otherwise convert such property, or any part thereof to his own use or benefit, he shall be guilty of a misdemeanor.

Bailees.—§ 55. If any person being a bailee of any property, fraudulently takes and converts the same to his own use, or the use of any person other than the owner thereof, although he shall not break bulk, or otherwise determine the bailment, he shall be guilty of larceny.

Directors, &c.—§ 56. If any person being a director, mem-

ber, or public officer of any body corporate or public company fraudulently takes or applies for his own use any of the moneys or other property of such body corporate or public company, he shall be guilty of a misdemeanor.

Receivers.—§ 60. If any person receives any chattel, money, or valuable security which has been so fraudulently disposed of as to render the party disposing thereof guilty of a misdemeanor, under any of the nine (a) preceding sections of this act, knowing the same to have been so fraudulently disposed of, he shall be guilty of a misdemeanor, and may be indicted and convicted thereof whether the party guilty of the principal misdemeanor has or has not been amenable to justice.

Punishment.—§ 61. Every person found guilty of a misdemeanor, under the *ten* preceding sections of this act, shall be liable at the discretion of the court to be imprisoned in the penitentiary, for any term not exceeding three years, nor less than two years, or by imprisonment for any term less than two years, and with or without hard labour, as the court shall award.

Prosecution.—§ 64. For any offence included in the 51 or 52 sections, not to be commenced without the sanction of her Majesty's Attorney-General.

§ 65. If upon the trial of any person under the 51 section, or under any section between the 51 section and the present section, it appears that the offence proved amounts to larceny, he shall not by reason thereof be entitled to be acquitted of a misdemeanor under the said sections. § 66. No misdemeanor against any of the sections, in the last mentioned section, shall be prosecuted or tried at any court of general or quarter sessions of the peace.

See also title "Fraudulent Accounts."

By C. Stat. 22 V. c. 99, § 58, it is enacted that if upon the trial of any person indicted for embezzlement as a clerk, servant, or as a person employed in that capacity, it be proved that he took or disposed of the property in any manner, so as to amount in law to larceny, he may be found guilty of larceny and punished accordingly: § 59, and so *vice versa* upon an indictment for larceny the defendant may be found guilty of embezzlement according to the facts and punished accordingly.

See also Bank of Upper Canada Amendment Act, 19 & 20 V. c. 121, § 40, which makes it felony for any cashier,

(a) This includes 51, 52, 53, 54, 55, 56, 57, 58, 59.

assistant cashier, manager, clerk or servant of said bank to secrete, embezzle or abscond with any bond, bill or note, or any security for money or any moneys or effects of said bank, or other parties, deposited with said bank. § 41. Punishment therefor imprisonment in the provincial penitentiary for any term not less than two years, or in any other gaol for a lesser term.

See also title, "*Post Office*," "*Provincial Revenue*."

*Form of Indictment for Embezzlement pursuant to
C. Stat. 22 V. c. 99.*

County of } The jurors for our lady the Queen upon their
to wit. } oath present that A. B. on the day
of in the year of our Lord one thousand eight hundred
and at the county of being a servant, (*or clerk*) then
employed in that capacity by one C. D. did then and there in
virtue thereof receive a certain sum of money, to wit, to the
amount of for and on account of the said C. D., and the
said money did feloniously embezzle.

EMBRACERY.

Is an attempt to influence a jury corruptly to one side by promises, persuasions, entreaties, money, entertainments and the like. The punishment for the person embracing is by fine and imprisonment; and for the juror so embraced, if it be by taking money, the punishment is (by divers statutes of the reign of E. III.) perpetual infamy, imprisonment for a year, and forfeiture of the tenfold value.—*Bl. Com.* p. 140, 16 *Ed.*

See also "*Jurors' Act*," U. C. Stat. 22 V. c. 31, § 166, which provides for the punishment of offenders guilty of this offence.

EMIGRANTS.

C. Stat. 22 V. c. 40.

§ 1. Certain rates or duties are imposed on the master or person in command of every vessel arriving in the ports of Quebec or Montreal from the United Kingdom or Europe, with passengers or emigrants therefrom, viz. : *one dollar* for every passenger or emigrant above the age of one year who embarked under the sanction of her Majesty's government, and *one dollar and fifty cents* for every passenger embarking without the sanction of her Majesty's government. § 2. Imposes a penalty of from \$2 to \$20 upon the master of any vessel arriving from any port or place in Europe or any

other port of her Majesty's dominions, having on board, or having had on board during the voyage, more than one adult passenger for every twelve clear superficial feet on the lower or platform deck, appropriated to the use of passengers, or a greater number of persons (including the master, crew, and cabin passengers) than one person for every two tons of the tonnage of such ship. § 3. And for every passenger not included in the list of passengers, in addition to the above rates, the additional sum of \$8 currency. § 4. The master or person in command of any such vessel permitting any passenger to leave the vessel, until permission given, and duties paid, liable to a penalty of not less than \$20, nor more than \$100, for each passenger so leaving. § 5. Passengers allowed to leave the vessel before arriving at the ports aforesaid under particular circumstances, but in such case the names of passengers so leaving shall be entered in the manifest on the emigrant list, and certified by the signatures of the passengers so leaving. And in case the number remaining on board shall not correspond with such manifest, after deducting the number leaving, the master shall incur a penalty of \$20 for each person not found on board. § 6. Any pilot having charge of any such vessel, knowing that any passenger has left contrary to the provisions of this act, and not reporting the same to the collector within twenty-four hours after the arrival of such vessel, shall incur a penalty not exceeding \$20 for every such passenger. § 7. The master, within twenty-four hours after the ship's arrival, shall deliver to the collector a correct list of all his passengers, under a penalty of \$20 per diem, and \$8 for every passenger omitted in such list. § 8. The master shall also report to the collector the name and age of all the passengers embarked on such voyage who shall be lunatic, idiotic, deaf and dumb, blind or infirm, stating whether they are accompanied by relatives able to support them; and in case of making any false report, shall incur a penalty of from \$20 to \$100 for every such passenger omitted, or in regard to whom any such false report shall have been made, and for which penalty the owners of the vessel shall also be liable. § 9. The report shall also contain the name, age, and last residence of every passenger dying during the voyage, and whether accompanied by relatives or others entitled to take charge of the deceased's property, and if no such persons, then the report shall specify the property (money or otherwise) of such passenger, and he shall pay over and account for the same to the collector, and in case of default

the master shall incur a penalty of from \$20 to \$1000 for every such case of neglect or refusal.

§ 10. The medical superintendent, at the quarantine station, forthwith, after the arrival thereof of any passenger vessel, shall examine into the condition of the passengers; and if on such examination there shall be found any lunatic, idiotic, deaf and dumb, blind or infirm person, not belonging to any emigrant family, and any such person shall, in the opinion of such medical superintendent, be likely to become a permanent public charge, the superintendent shall forthwith report the same to the collector, who shall require the master, in addition to the rate or duty payable for the passengers generally, to execute with two sufficient sureties a bond to her Majesty in \$300, for every such passenger so reported, conditioned to indemnify the province or any municipality, village, city, town or county, or charitable institution therein, from any expense, or charge for three years for the maintenance of such passenger. § 12. And in case any such passenger shall become chargeable within the three years, such bond shall be enforced for his support. § 13. The master of any vessel refusing to execute such bond shall incur a penalty of \$400. § 14. Such bond, when executed, to be transmitted to the Receiver-General. And it shall be the duty of the chief emigrant agent to report any claims made for the support of such passengers to the Governor, and the penalty in such bond shall be sued for. § 15. Passengers entitled to remain on board with their baggage after the ship's arrival *forty-eight* hours, and if compelled by the master to leave sooner, the master shall incur a penalty not exceeding \$20 for every such passenger; nor shall the master, during the same period, remove the berth or accommodation of any passenger under the like penalty, except with the permission of the medical superintendent at the quarantine station. § 16. Passengers to be landed with their baggage on wharves free of expense, at the usual landing place of the port, at reasonable hours, under a penalty of \$40 for any offence. §§ 17, 18. Contain provisions for the protection of foreign emigrants. § 19. Is repealed by the 27 & 28 V. c. 16, which authorises the Governor by proclamation to appoint the place of landing, and by § 2, the master of the vessel shall land such emigrants and their baggage free of expense at the place appointed. § 20. Repealed by 25 V. c. 8, § 1. § 21. Keepers of taverns receiving emigrant boarders to keep list of prices posted up in the public rooms and passages, under a penalty

of from \$5 to \$20. § 22. The Governor in council is authorised to make such regulations with respect to quarantine and purifying vessels, as may be necessary for the preservation of public health, and the prevention of disease from spreading; and by such regulations may impose fines not exceeding \$400 on persons contravening the law. § 23. The quarantine at Grosse Isle to consist of a superintendent of emigration and a medical superintendent, with subordinate help, as the Governor in council shall deem necessary. § 24. Regulations to be published in the official "Gazette." § 25. All duties and penalties imposed by this act to be a special lien on the vessel. §§ 26, 27. Penalties, how recoverable. § 29. Conviction not to be quashed for want of form. § 30. Expenses under this act to be defrayed out of public moneys. 31. Moneys levied to be paid over to the Receiver-General. § 32. Moneys raised under this act to be applied in defraying emigrant expenses.

By Stat. 25 V. c. 8, no *unlicensed* person shall solicit or recommend any emigrant in behalf of any steamboat owner, railway company, lodging house keeper, &c., under the penalty of \$250.

By the General Customs Act 22 V. c. 17, the following articles are exempt from duties, viz.: wearing apparel and other personal effects, and implements of husbandry (not merchandize) in actual use of persons coming to settle in the province and accompanying the owner; books, maps, and charts, do.; household furniture and effects in actual use for one month or more, do.; tools and implements of trade of handicraftsmen, do.

ESCAPE.

Where a person hath another in lawful custody upon an arrest, whether made by himself or another, if he suffer him to go at large, before he is delivered by lawful authority, it is an escape, for which he is punishable; but the arrest must be for a real and not a supposed crime.—2 *Haw. c.* 19, § 2. And the imprisonment must be for a criminal offence.—*Ib.* § 3. And a gaoler is guilty of the offence, if he give a prisoner more liberty than the law allows; or, if he suffer the prisoner to go out for a time though he afterwards return.—*Ib.* § 5, and *Dalt. c.* 159. Where a person is found guilty of an indictment for a negligent escape, he is punishable by fine and imprisonment, according to the quality of the offence.—2 *Haw. c.* 19; 1 *Hale*, 600, 604. And if a voluntary escape, he is punishable in the same degree as

the offence of which the party is guilty; but no one shall be deemed guilty but the actual offender.—2 *Haw.* c. 19, § 23.

By statute 16 G. II., c. 31, to assist a prisoner convicted of treason or felony to attempt an escape is felony and subjects the offender to transportation for seven years; and if the party be committed for petit larceny or upon a civil process for debt, amounting to £100, he shall be guilty of a misdemeanor, and liable to fine and imprisonment; and for conveying any disguise, or instrument, or arms, to facilitate the escape of prisoners convicted of, or committed for treason or felony, the offender may be transported for seven years; or if for petit larceny, or civil process for a debt, &c., amounting to £100, he shall be deemed guilty of a misdemeanor, and be liable to fine and imprisonment. § 2 & 3. And assisting a felon to escape from a constable is by this statute also made felony, and subjects the offender to transportation for seven years.—*Ib.*

This statute does not extend to cases where an *actual escape* is made, but only to cases where an *attempt* is made, without effecting the escape.—*R. v. Tilly and others, O. B. Sess.* 1795.

ESTREAT.

An estreat (from *extractum*) is a true copy or extract of some original writing or record, containing an entry of fines or americiaments imposed by a court of record, or other competent authority; but when applied to a recognizance itself, is *extracted* or taken out from among the other records, and sent up to the Exchequer.—4 *Bl. Com.* 253.

By the U. C. Stat. 22 V. c. 117, § 3, all fines, issues, and americiaments, and forfeited recognizances not otherwise provided for, set, imposed, lost, or forfeited, by or before any general quarter sessions of the peace, shall within 21 days after the adjournment of the court be fairly entered on a roll by the clerk of the peace, which roll shall be made out in duplicate and signed by the clerk of peace. § 4. One of the said rolls to remain deposited in the office of the clerk of the peace, and the other shall, as soon as prepared, be sent by the clerk of the peace with a writ of *feri facias* and *capias*, according to the form annexed to the act, to the sheriff of the county. § 5. Such writ shall be authority to the sheriff for levying the same on the goods and chattels, lands and tenements of the parties, or for taking into custody the bodies of such persons, in case sufficient goods, &c., cannot

be found ; and every person so taken shall be lodged in the common gaol of the county until satisfaction be made, or until the general quarter sessions shall, upon cause shewn by the party as hereinafter mentioned, make an order in the case, and such order be fully complied with. § 6. Except in cases of persons bound by recognizance for their appearance, or for whose appearance any other person has been bound to prosecute or give evidence, and for which provision is made in the Consolidated Statutes of Canada respecting the procedure in criminal cases, in every case of default whereby a recognizance has become forfeited, if the cause of absence be made known to the court, such court on consideration of such cause, and also considering whether by the non-appearance of such person the ends of justice have been defeated or delayed, may forbear to order the recognizance to be estreated; and with respect to all recognizances estreated in court, and fines imposed for the non-attendance of any juror or constable, or of any public officer bound to attend at such court, if it appear to the chairman and to the sessions, and any two justices that preside at such court, that the absence of parties was owing to circumstances rendering such absence justifiable, such chairman and justices aforesaid may make an order directing that the sum forfeited upon such recognizance, or the fine imposed be not levied. § 7. And for such purpose the clerk of the peace, before sending to the sheriff any roll with a writ as directed by this act, shall submit the same to the chairman for his revision, who, taking to his assistance two of the presiding justices, may make a minute on the roll and writs of any such forfeited recognizances and fines as he or they may think fit to direct not to be levied, and the sheriff shall forbear to levy the same. § 8. The sheriff upon taking lands or tenements in execution, shall advertise the same in like manner as lands in execution in other cases, and no sale shall take place in less than twelve months from the time the writ shall come into the sheriff's hands. § 9. The clerk of the peace shall at the foot of each roll make and take the following affidavit: "I A. B. (describing his office) make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, recognizances and forfeitures, which were set, lost, imposed or forfeited, at or by the court therein mentioned, and which in right and due course of law ought to be levied and paid, are to the best of my knowledge and understanding inserted in the said roll, and that in the said roll are also contained and expressed

all such fines as have been paid to or received by me, either in court or otherwise, without any wilful discharge, omission, misnomer, or defect whatsoever. So help me God!" Which oath any justice of the peace for such county may administer. § 8. The justice before whom any recognizance shall be entered into, shall give at the time of entering into such recognizance to the person or persons entering into the same, and to each of his sureties, a written or printed paper or notice, in the form in the schedule marked C., and every such justice shall in such recognizance state and specify particularly the profession, art, or trade of every person so entering into such recognizance, together with the christian name and surname, and also the place of his or her residence. § 10. Persons on whom levies are made for forfeited recognizances may give security to the sheriff or other officer for their appearance in court at the return day of the writ, to abide the decision of the court, and to pay such forfeited recognizance or money to be paid in lieu or satisfaction thereof, together with such lawful expenses as shall be ordered by the court, and thereupon the sheriff may discharge such person out of custody; and in case such party does not appear, the court may forthwith issue a writ of *feri facias* and *capias* against the sureties. § 11. The court of general quarter sessions into which any writ of *feri facias* or *capias* under this act is returnable, may inquire into the circumstances of the case, and in its discretion order the discharge of the recognizance, or money paid or to be paid in lieu thereof, and make such order thereon as to such court may appear just. § 12. The sheriff shall return the writ on the day the same is returnable, and state on the back of the roll attached to such writ what shall have been done in the execution thereof, which return shall be filed in the court. § 13. And a copy thereof certified by the clerk of the peace shall be forthwith transmitted to the Receiver-General, with a minute thereon of any sums remitted by order of the court, in the whole, or in part, or directed to be forborne. § 14. The sheriff shall without delay pay over all moneys by him collected to the Receiver-General. § 15. This act not to effect the Consolidated Statutes of Canada, respecting the procedure in criminal cases relating to estreat of recognizances in any case of felony or misdemeanor. § 16. The words "Quarter Sessions" to include Recorder's courts.

Victoria, by the Grace of God, &c.

To the Sheriff of _____, Greeting :

You are hereby commanded to levy of the goods and chattels,

lands and tenements, of all and singular the persons mentioned in the roll or extract to this writ annexed, all and singular the debts and sums of money upon them respectively imposed and charged, as therein is specified, and if any of the said several debts cannot be levied, by reason of no goods or chattels, lands, or tenements, being to be found, belonging to the said parties respectively, then and in all such cases, that you take the bodies of such parties, and keep them safely in the gaol of your county, there to abide the judgment of, [our court of general quarter sessions for the said county,] upon any matter to be shewn by them respectively, or otherwise to remain in your custody, as aforesaid, until such debt respectively is satisfied, unless any of such persons gives sufficient security for his appearance at the said court, on the return day hereof, for which you will be held answerable; and what you do in the premises make appear at the next court of general quarter sessions of the peace for the said county, on the day of , and have then and there this writ. Witness, C.D., clerk of the peace for the county of , this day of 18 .

By C. Stat. 22 V. c. 99, § 120. (Referred to in the last statute, § 15.) In case any person bound by recognizance for his appearance (or for whose appearance any other person has become 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 makes default, the officer of the court by whom the estreats are made out shall prepare a list in writing, specifying the name of every person so making default, and the nature of the offence, in respect of which such person or his surety was so bound, together with the residence, trade, profession or calling of every such person, and surety, and shall state the cause, if known, why each such person did not appear, and whether by reason of the non-appearance of such person the ends of justice have been defeated or delayed.

§ 121. Every such officer shall before any such recognizance be estreated lay such list, if at a court of oyer and terminer, or gaol delivery, before one of the justices of said court, or if at a session of the peace before two justices of the peace, who attended such court, who are respectively required to examine such list, and to make such order touching the estreating or putting in process any such recognizance as appears just, and no officer of any such court shall estreat or put in process any such recognizance without the written order of the justice or justices of the peace, before whom respectively such list has been laid.

EVIDENCE.

Evidence, in its general sense, is the testimony of witnesses, given upon an issue joined between parties in a civil or criminal suit.—1 *Inst.* 283. In general, a person is a competent witness unless interested in the event of the suit, either directly or indirectly—7 *T. R.* 62; and by the common law, informers who participate in any penalty are not competent witnesses; but they are sometimes rendered so by act of parliament in particular cases.—1 *Ph. Ev.* 117. The confession of a defendant taken on an examination before justices, is allowed to be evidence against the party confessing, but not against third persons.—2 *Haw. c.* 46. § 3. The distinction between a *credible* and a *competent* witness is, that the former is not disabled from being sworn, but the *credit* of his testimony depends upon his moral character; the latter may be disabled by interest, and other causes, from giving evidence, and on that account is *incompetent*.—2 *H. H.* 276, 277.

Formerly persons convicted of treason, felony, forgery, perjury, and other offences of the same description, which involved the charge of falsehood or infamy, were incompetent to give evidence. But now, by U. C. Stat. 22 V. c. 32, § 3, no person offered as a witness, shall by reason of incapacity from crime or interest be excluded from giving evidence either in person or by deposition, according to the practice of the court, on the trial of any issue joined, or of any matter or question, or on any enquiry arising in any suit, action or proceeding, civil or criminal, in any court, or before any judge, jury, sheriff, coroner, *magistrate*, officer, or person having by law or consent of parties authority to hear, receive and examine evidence. § 4. Every person so offered shall be admitted and be competent to give evidence on oath or solemn affirmation where an affirmation is receivable, notwithstanding that such person has or may have an interest in the matter in question, or in the event of the trial of some issue, matter, question, or enquiry, or of the suit, action, or proceeding in which he is offered as a witness, and notwithstanding that such person so offered as a witness had been previously convicted of a crime or offence. § 5. Except parties in civil suits, unless called by the opposite party.

A witness cannot be asked any question, the answer to which would criminate himself; but he may be asked whether he has not been in the pillory for perjury.—*T. R.* 440. An

infant fourteen years of age, and even under, if of competent discretion, may be sworn to give evidence.—2 *H. H.* 278. The deposition of a witness taken *extra judicially* before a magistrate is not evidence.—*Leach* 397. Husband and wife are not admitted as evidence against each other, except in treason; but in polygamy (for the second marriage being void) the second wife may be admitted as a witness. A wife may also be permitted to swear the peace against her husband, and *vice versa*.—*Buller, N. P.* 286. A woman living with a man as his wife, though not actually so, cannot be examined as a witness on his behalf.—*Campbell v. Twemlow*, 1 *Price*, 81; 1 *Phil. Ev.* 82. Quakers, Meronists and Tunkers, &c., are admissible as witnesses upon their simple affirmation.—*U. C. Stat.* 22 *V. c.* 32, § 1.

EXAMINATION.

Summary Convictions.

By C. Stat. 22 *V. c.* 103, § 27, it is enacted that every such complaint and information shall be heard, tried, determined and adjudged by one or more justices (as may be directed by the act or acts upon which such complaint or information is framed, or by any other act or acts in that behalf.) § 28. If there be no such direction in the act, then such complaint or information may be heard, tried, determined and adjudged, by any one justice of the division where the matter of complaint arose. § 29. The room or place in which such justice or justices sit to hear and try any such complaint, shall be deemed an *open and public court*, to which the public generally may have access, so far as the same can conveniently contain them. § 30. The party against whom such complaint is laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf. § 31. Every complainant shall be at liberty to conduct such complaint, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

See further on this subject under the title "*Summary Conviction.*"

Indictable Offences.

By C. Stat. 22 *V. c.* 102, § 30, it is enacted that in all cases where any person shall be brought before any justice or justices charged with an indictable offence, such justice or justices, before he or they shall commit the accused to

prison for trial, or admit him to bail, shall *in the presence* of such person, (who shall be at liberty to put questions to any witness produced against him,) take the statement [M] 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 by the witnesses, and by the justice or justices taking the same.

§ 32. After the examination of all the witnesses on the part of the prosecution shall have been completed, the justice or one of the justices, by or before whom such examinations have been so completed, 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 any thing in answer to the charge? You are not obliged to say any thing unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial;" and whatever the prisoner then says in answer thereto shall be taken down in writing, [N] and read over to him, and shall be signed by the said justice or justices, and kept with the depositions of the witnesses, and be transmitted with them as hereinafter mentioned. § 33. Upon the trial of the accused person, the examinations may, if necessary, be given in evidence against him without further proof, unless it be proved that the justice or justices purporting to have signed the same, did not in fact sign the same. § 34. The said justice or justices, before such accused person makes any statement, shall state to him, and give him clearly to understand "that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatever he then says may be given in evidence against him upon his trial, notwithstanding such promise or threat." § 35. Nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession, or other statement made at any time by the person accused or charged, which by law would be admissible as evidence against him. § 36. The room or building in which the justice or justices take the examinations and statement as aforesaid *shall not be deemed an open court* for that purpose; and such justice or justices, in his or their discretion, may order that no person shall have access to, or be, or remain in such room or building without their consent or permission, if it appears

to him or them that the ends of justice will be best answered by so doing.

§ 69. After the examination is completed, and before the first sitting of the court, the accused is entitled to have copies of the depositions from the officer in charge, on payment of a reasonable sum, not exceeding the rate of *five cents* for each folio of 100 words.

See also C. Stat. 22 V. c. 99, §§ 7, 8.

EXECUTION.

Execution is the last stage of criminal proceedings. This must, in all cases, be performed by the sheriff, or his deputy, whose warrant for so doing was anciently by precept, under the hand and seal of the judge. For a long time past, however, it has been the established practice for the judge to command execution to be done without any writ. The usage is for the judge to sign the calendar or list of all the prisoners, with their separate judgments in the margin, which is left with the sheriff. Thus, for a capital felony, it is written opposite to the prisoner's name—" *Let him be hanged by the neck ;*"—formerly, in the days of latin and abbreviation—*sus. per. coll.* for *suspendatur per collum*. This is the only warrant which the sheriff has for so material an act as taking away the life of another.—4 *Bl. Com.* 402. The place, however, ought to be somewhere in the county where the criminal was tried and convicted—unless the record of attainder be removed into the King's Bench: which court may award execution in the county where it sits.—3 *Inst.* 31, 211, 217; 4 *Bl. Com.* 404. If upon judgment to be hanged by the neck till dead, the criminal be not thoroughly killed, but revives, the sheriff must hang him again, for the former hanging was no execution of the sentence; and if a false tenderness were to be indulged in such cases, a multitude of collisions might ensue.—2 *Hale*, 412; 2 *Haw.* 463; 4 *Bl. Com.* 406. The body of a traitor or felon is, in strictness of law, forfeited to the king, by the execution, and he may dispose of it as he pleases; but it is usual in all cases, except *murder*, to give up the body for interment. Execution may be avoided by a *reprieve*, or a *pardon*; the former is only temporary, but the latter is permanent. Every judge who hath power to order execution, hath also power to grant a reprieve.—2 *Hale*, 412. When a woman *quick* with child is condemned, although this is no cause to stay the judgment, yet it is good cause to respite the execution until she be delivered. Upon this plea being made, the judge must direct a jury of twelve

matrons, or discreet women, to enquire the fact; and if they bring in their verdict *quick with child*—for barely *with child*, unless it be alive in the womb, is not sufficient—execution shall be stayed generally till the next assizes, until she is either delivered, or proves, by the course of nature, not to have been with child at all.—4 *Bl. Com.* 395. If a prisoner become *non compos mentis* between the judgment and award of execution the judge ought in this case also to relieve him, for *furiosus solo furiose punitur*; and the law knows not but he might have offered some reason, if in his senses, to have stayed the execution.—*Ibid.* Execution may be also avoided by a plea of diversity of persons, viz., that he is not the same that was attainted, and the like. In this case, a jury shall be empanelled to try the facts. In all such collateral issues, the trial must be *instanter*, and no time allowed the prisoner to make his defence, or produce his witnesses, unless he will make oath he is not the person attained.—*Post.* 42.

By C. Stat. 22 V., c. 99, § 95. 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 food or liquor except in case of receiving the sacrament, or in case of any sickness or wound, in which case the surgeon of the prison may order other necessaries 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 has been tried, or of the sheriff or his deputy.

EXTORTION.

Extortion is an abuse of public justice, consisting in the unlawful taking by an officer, by *colour of his office*, of any money or thing of value, where either none at all is due to him, or not so much is due, or before any is due.—*Co. Lit.* 368; 10 *Rep.* 102. This offence, it has been justly observed, may be, in some cases, considered more odious than robbery, because it carries with it an appearance of truth, and is often accompanied with perjury, by the breach of an oath of office. The punishment for this offence, at common law, is by fine and imprisonment, and also by a removal from the office, in the execution of which it was committed. And there is a further additional punishment by the statute of Westminster 1, (3 *Ed. I.*, c. 26,) by which any sheriff, or

other king's officer, who shall take any reward to do his office, shall yield twice as much, and shall be punished at the king's pleasure; under which statute an action lies also to recover this double value.—3 *Com. Dig.* 323. But justices of the peace, whose office was instituted after the act, are bound by their oath of office to take nothing for the execution of their office but of the king, and fees accustomed, and costs limited by statute. And generally, no public officer can take any other fees or rewards than those given him by the statute, or such as have been anciently and accustomedly taken, without being guilty of extortion.—*Dalt. c.* 41.

It is extortion in a gaoler to obtain money from his prisoner, by colour of his office.—*R. v. Broaghton, Trem. P. C.* 111; in a coroner to refuse taking an inquest till his fees are paid—3 *Inst.* 149; or in an *under sheriff* to obtain his fees by refusing to execute process till they are paid, or to take a bond for his fee, before execution is sued out.—1 *Salk.* 330. It is also extortion in a miller or ferryman to take more toll than is due by custom.—*R. v. Burdett*, 1 *Ld. Ray.* 149. It is also an indictable offence to persuade another to extort money from a person, whereby money was actually extorted from him.—*R. v. Tracy*, 3 *Salk.* 192.

By C. Stat. 22 V., c. 92, § 6. Any person who accuses or threatens to accuse any person of the abominable crime of buggery, committed with mankind or with beast, or of any assault with intent to commit the said abominable crime, or of any attempt, or endeavour, 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 to extort or gain from such person, and by intimidating such person by such accusation or threat, extorts or gains from such person any property, shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than *two* years.

EXHIBITIONS, SHOWS, &c.

By the U. C. (Municipal) Act, 22 V. c. 54, § 266.—Municipalities are empowered to make by-laws for preventing or regulating, and licensing exhibitions of wax work, menageries, circus riding, and other such like shows, and for requiring the payment of license fees not exceeding

\$100, and for imposing fines and penalties for infringement.

EXPLOSIVE SUBSTANCES.

By C. Stat. 22 V. c. 91, §. 14. Any person who unlawfully and maliciously sends or delivers to, or causes to be taken, or received by any person, any explosive substance, or any other dangerous or noxious thing, or casts or throws upon or otherwise applies 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 is burnt, maimed, disfigured, or disabled, or receives some other grievous bodily harm, shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other place of confinement for any term less than two years.

§ 15. Any person who unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burns, maims, or disfigures, disables or does any grievous bodily harm to any person, shall be guilty of felony.

§ 16. Any person who unlawfully and maliciously causes any gunpowder or other explosive substance to explode, or sends or delivers to or causes to be taken or received by any person any explosive substance, or any other dangerous or noxious thing, or casts or throws at or upon, or otherwise applies 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 do some grievous bodily harm to any person, shall, although no bodily injury be effected, be guilty of felony.

§ 17. Any person guilty of any felony in the two last preceding sections mentioned, shall be imprisoned in the penitentiary for any term not less than two years.

Possessing explosive substances with illegal intent.

§ 18. Any person who knowingly makes or manufactures, or has in his possession, any gunpowder, explosive substance or other dangerous or noxious thing, or any machine, engine, instrument or other 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 shall be imprisoned in any common gaol for any term less than two years.

By C. Stat. 22 V. c. 93, § 2. If any person unlawfully and maliciously by the explosion of gunpowder or other explosive substance, destroys, throws down or damages the whole or any part of any dwelling house, any person being therein, such offender shall be guilty of felony.

§ 3. If any person unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroys or damages any building with intent to murder any person, or whereby the life of any person is endangered, such offender shall be guilty of felony.

§ 11. If any person unlawfully and maliciously places or throws in, into, upon, against or near any building or vessel, any gunpowder or any 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 be guilty of felony, and such offender shall be imprisoned in the penitentiary for any time not exceeding seven years, nor less than two years, or be imprisoned in any common gaol for any period less than two years.

§ 34. 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, may upon reasonable cause assigned upon oath by any person or persons, issue a warrant 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 so made or kept, and every person acting in the execution of any such warrant may seize any gunpowder, explosive substance or any dangerous or noxious thing, or any machine, engine or instrument or thing which he has good cause to suspect is 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 shall remove the same to such proper place as he thinks fit, and detain the same until ordered by a judge of one of her majesty's superior courts of criminal jurisdiction to restore it to the person who may claim the same.

§ 35. The searcher or seizer shall not be liable to any suit for such detainer, or for any loss of or damage which may happen to the property other than by the wilful act or neglect of himself or of the persons whom he entrusts with the keeping thereof.

§ 36. Any gunpowder, explosive substance, or dangerous or noxious thing, or any machine, engine, instrument, or thing intended to be used in committing or enabling any other person to commit any offence against this act, and seized and taken possession of under the provisions hereof, shall, in the event of the person in whose possession the same may be found, or of the owner 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 may be convicted, and the proceeds thereof shall be paid into the hands of the Receiver-General to and for the use of the province.

§ 39. Neither the justices of the peace acting in and for any district, county; 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 the second, third, eleventh, or thirteenth sections of this act.

EXTRADITION.

See title "*Fugitive Felons.*"

FALSE ACCUSATION.

See "*Extortion.*"

FALSE LIGHTS.

Hanging out false lights to cause shipwreck is made felony by C. Stat. 22 V. c. 93, § 8.

See "*Wreck.*"

FALSE PRETENCES.

By C. Stat. 22 V. c. 99, § 62, if upon the trial of any person indicted for obtaining any chattel, money or valuable security by any false pretence, with intent to cheat or defraud any person of the same, it 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 removable by *certiorari*; and no person tried for such misdemeanor shall be afterwards prosecuted for larceny upon the same facts.

See "*Cheats.*"

Form of Indictment for False Pretences, C. Stat. 22 V. c. 99.

County of	}	The jurors for our lady the Queen on their oath	
to wit.	}	present, that A.B., on the	day of
			, in

the year of our Lord one thousand eight hundred and , at , in the county of , unlawfully, fraudulently and knowingly, by false pretences, did obtain from one C. D. [*six yards of muslin*] of the goods and chattels of the said C. D. with intent to defraud.

FALSE RECEIPTS.

By C. Stat. 22 V. c. 92, § 68, 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 a clerk or other person employed in or about the business of such factor or agent, knowingly and wilfully gives to any person a writing, purporting to be a receipt for, or an acknowledgment of any goods or other property as having been received in his warehouse, or in the warehouse in or about which he is employed, or in any other manner received by him or by the person in or about whose business he is employed, before the goods or other property named in such receipt 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 knowingly and wilfully accepts or transmits or uses any such false receipt or acknowledgment, the person *giving* and the person *accepting*, transmitting, or using such receipt or acknowledgment shall severally be guilty of a *misdemeanor*, and shall be imprisoned in the penitentiary for any term not exceeding three years, or be imprisoned in any other prison or place of confinement for any term less than two years but not less than one year. § 69. In case any merchandize having, in the name of the owner or any other person, been delivered to the keeper of any warehouse, or to any other factor, agent or carrier, to be shipped or carried, the consignee afterwards advances any money, or gives any negotiable security to such owner or other person, then, if after any such advance the said owner or other person for his own benefit, and in violation of good faith, and without the consent of such consignee first had and obtained, makes any disposition of such merchandize 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, the owner or other person aforesaid, and every other person knowingly and wilfully acting

and assisting in making such disposition for the purpose of deceiving, defrauding or injuring such consignee, shall be guilty of a misdemeanor, and shall be imprisoned in the penitentiary for any period not more than three years nor less than two years, or be imprisoned in some other place of confinement for any term less than two years, but not less than one year. But no person shall be subject to prosecution under this section who had before making a disposition of the merchandize as aforesaid paid or tendered to the consignee the full amount of any advance thereon.

FEES.

See titles "*Costs.*"—"*Justices of the Peace.*"

FELLING TREES.

By U. C. Stat. 22 V. c. 47, § 1, except in the case of round or squared timber, or of trees, masts, staves, deals, boards or other sawed or manufactured lumber or saw-logs prepared for transportation to a market, any person, and every employer of such person who cuts and fells any trees into the Grand River, the River Thames, River Nith, Otter Creek, the River Credit, the River Otonabee from Sturgeon Lake to Rice Lake, the River Scugog and River Trent from Rice Lake to the Bay of Quinte, Crow River, Rivers Gananoque, Rideau, Petite Nation, Mississippi, Bonnechere, Madawaska and Goodwood in Upper Canada, or upon such parts of the banks thereof as are usually overflowed in the autumn or spring, by the rising of the water of the said rivers or creeks, and who does not lop off the branches of such trees, and cut up the trunks thereof into lengths of not more than eighteen feet, before they are allowed to be floated or cast into the said rivers or streams, shall, for every such offence, forfeit and pay a sum not exceeding \$10. § 6. Fines and penalties under this act recoverable before any one or more justices of the county, upon the oath of one credible witness, and unless appealed against, levied by distress and sale; and in default of such distress or payment of the fine within three days after conviction, the offender shall be committed to the common gaol of the county for the space of ten days, if the conviction be under the first section, or thirty days if under the second section, (a) unless the said fine and

(a) Which relates to other obstructions, for which see title "*Rivers and Navigation.*"

costs be sooner paid. § 8. All fines levied under this act to be paid, one-third to the informer, and the other two-thirds to the treasurer of the municipality, and applied to the improvement of the public highways within the same.

FELONY.

Felony, in its general sense, comprises every species of crime which occasioned, at common law, the forfeiture of lands or goods—4 *Bl. Com.* p. 94; and by the common law is against the life of a man—as murder, manslaughter, *felo de se*, &c.; against a man's goods—as larceny and robbery; against his habitation—as burglary, arson; and against public justice—as breach of prison.—3 *Inst.* 31. And by statute—as forgery, &c.

Before the reign of Hen. I. felonies were punished with pecuniary fines; for he was the first who, about the year 1108, ordered felons to be hanged. Since his reign the judgment for felony continued the same by the common law, unless the offender was allowed to pray the benefit of clergy.—4 *Inst.* 124. But this custom was abolished by U. C. Stat. 3 Wm. IV. c. 3, and now by C. Stat. 22 V. c. 99, § 101, every person convicted of felony not punishable by death, shall be punished in the manner prescribed by the statute or statutes relating to such felony; and every person convicted of felony for which no punishment is specially provided, shall be kept at hard labour in the provincial penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years. § 130. No person shall be prosecuted for any attempt to commit any felony or misdemeanor who has been previously tried for the same offence; and by C. Stat. 22 V. c. 97, § 9, any person convicted of felony not punishable by death, committed after a previous conviction for felony, such person shall upon a *subsequent* conviction be imprisoned in the penitentiary for any term not less than two years, or in any other prison or place of confinement for any term less than two years.

See further on this subject title "*Punishment.*"

In all felonies the offender forfeits to the king all his goods and chattels, absolutely, and the profits of all his freehold estates for life, and for a year and a day after his death.—1 *Inst.* 391.

But now, by the C. Stat. 22 V. c. 99, § 114, after punishment endured, the same shall have the like effect as a

pardon. § 87. Costs of prosecution, in all cases of felony, shall be paid out of the public funds, and no fees shall in any case be demanded of or payable by the accused.

FENCES—FENCE VIEWERS.

By U. C. Stat. 22 V. c. 54, the council of every county, township, city, town and incorporated village may pass by-laws for appointing fence viewers and regulating their fees, charges and duties. § 266. And for regulating the height, extent and description of lawful division fences, and for determining how the cost thereof shall be apportioned, and for directing that any amount so apportioned shall be recovered in the same manner as penalties not otherwise provided for may be recovered under this act. But until such by-laws be made, the act (a) respecting line fences and water courses shall continue applicable to the municipality.

By C. Stat. 22 V. c. 92, § 37, if any person steals or cuts, breaks or throws 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 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 \$20, as to the justice may seem meet.

By C. Stat. 22 V. c. 93, § 27, if any person unlawfully and maliciously cuts, breaks, throws down, or in any wise destroys any fence, of any description whatsoever, or any wall, stile or gate, or any part thereof, 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 \$4, as to the justice shall seem meet.

See also *post* title, "*Line Fences and Water Courses.*"

FERRIES.

By U. C. Stat. 22 V. c. 46, § 1, no license in future shall be granted to any body corporate beyond the limits. § 2. License to be issued by the Governor. § 3. On public competition. § 4. When granted to others than municipalities limits not to extend over one mile and a half on each side of the ferry. § 5. When between two municipalities, license

(a) U. C. Stat. 22 V. c. 57. See "*Line fences and Water courses.*"

may be granted to either. § 6. Certain rights conferred by such license. § 7. Steamboats to be employed. § 8. Municipalities may sub-let. § 9. Incorporated cities, towns, and villages to have the preference over townships in the issuing of licenses.

§ 10. If any person unlawfully interferes with the rights of any licensed ferryman, by taking, carrying and conveying at any such ferry across the river or stream on which the same is situate, any person, cattle, carriage or wares, in any boat, vessel or other craft, for hire, gain, reward, profit or hope thereof, or unlawfully does any other act to lessen the tolls and profits of any lessee of the Crown of such ferry, such offender, upon being convicted thereof before a justice of the peace, shall forfeit and pay such sum, not exceeding \$20, as the justice may direct, to be paid to the party aggrieved, (*except when examined as a witness,*) and in such case the money shall be applied in the same manner as for a breach of the peace. § 11. But parties may keep boats for their own private use. § 12. If the penalty be not immediately paid after conviction, the convicting justice may commit the offender to the common gaol of the county, for a term not exceeding two months, unless the penalty and costs sooner paid. § 13. Defendant may appeal under the conditions and provisions of the act respecting appeals in summary convictions.

§ 15. Municipal councils authorised to make by-laws for regulating ferries between any two municipalities and establishing rates of ferriage, to be first assented to by the Governor in council, and, until such by-laws made, the Governor shall regulate such fines and rates.

By C. Stat. 22 V. c. 31, § 33, ferrymen are not bound to carry the mails *free*. But the amount is to be fixed by contract, or arbitration.

By the Municipal Act U. C. Stat. 23 V. c. 54, § 284, municipalities may make by-laws for regulating ferries between any two places in the municipality, and for establishing the rates of ferriage, to be first assented to by the Governor in council. § 285. Until such by-law passed, and in cases of ferries not between two places in the same municipality, the rates and regulations shall be made by the Governor in council.

FINES AND FORFEITURES.

By U. C. Stat. 22 V. c. 118, § 1, in all cases not other-

wise provided for in which, by the criminal law of England in force in Upper Canada, the whole or any part of any fine or penalty, imposed for the punishment of any offence, is in any manner appropriated for the support of the poor, or to any parochial or other purpose, inapplicable to the existing state of Upper Canada, such fine or penalty, or the part thereof so appropriated, shall be paid, when received, to the treasurer of the county or chamberlain of the city, for the use of the same, and be accounted for in the same manner as assessments.

§ 2. Fines not otherwise appropriated shall form part of the Consolidated Fund. (a)

§ 3. Fines and penalties imposed upon and levied in the several counties in Upper Canada, not payable to the Receiver-General, or to any municipal corporation, and all fines upon jurors for non-attendance, shall be paid to the treasurer of the counties, and form part of the "petit juror's fund."

See also titles "*Convictions and Fines*," "*Penalties*."

By C. Stat. 22 V. c. 5, § 6, sub-sec. 18, any duty penalty or sum of money, or the proceeds of any forfeiture which is by any act given to the Crown shall, if no other provision be made respecting it, form part of the Consolidated Revenue Fund of this Province, and be accounted for and otherwise dealt with accordingly.

By the Municipal Act U. C. Stat. 22 V. c. 54, § 208, all fines under any municipal by-law shall go, one-moiety to the informer, and the other to the municipality; and the whole to the municipality in case of prosecution by them.

By C. Stat. 22 V. c. 5, § 5, sub-sec. 17, whenever any pecuniary penalty or any forfeiture is imposed for any contravention of any such act (b) as aforesaid, then if no other mode be prescribed for the recovery thereof, the same shall be recoverable with costs by civil action at the suit of the Crown, or of any private party suing as well for the Crown as for himself, before any court of competent jurisdiction, upon the evidence of one witness; and if no other provision made for the appropriation of the same, one half shall belong to the Crown, and the other half to the private plaintiff; and if there be none, the whole shall belong to the Crown.

FIRE.

By the General Municipal Act U. C. Stat. 22 V. c. 54,

(a) See also C. Stat. 22 Vic. c. 5, § 6, sub-section 18.

(b) Acts in general.

§ 294, the council of every city, town and incorporated village may pass by-laws.

Sub-§ 33.—For appointing fire wardens, fire engineers and firemen, and promoting, establishing and regulating fire companies, hook and ladder companies and property saving companies. 34. For providing medals or rewards for persons who distinguish themselves at fires, and for granting pecuniary aid or otherwise assisting the widows and orphans of persons who are killed by accident at such fires. 35. For preventing or regulating the use of fire or lights in stables, cabinet makers' shops, carpenters' shops and other combustible places. 36. For preventing or regulating the carrying on of manufactories or trades dangerous in causing or promoting fire. 37. For preventing and for removing or regulating the construction of any chimney, flue, fire place, stove, oven, boiler or other apparatus or thing which may be dangerous in causing or promoting fire. 38. For regulating the construction of chimnies as to dimensions and otherwise, and for enforcing the proper cleaning of the same. 39. For regulating the mode of removal and safe keeping of ashes. 40. For regulating and enforcing the erection of party walls. 41. For compelling the owners and occupants of houses to have scuttles on the roofs thereof, and stairs or ladders leading to the same. 42. For causing buildings and yards to be put in other respects into a safe condition to guard against fire or other dangerous risk or accident. 43. For requiring the inhabitants to provide so many fire buckets in such manner and time as may be prescribed, and for regulating the examination of them and the use of them at fires. 44. For authorising appointed officers to enter at all reasonable times upon any property, subject to the regulations of the council, in order to ascertain whether such regulations are obeyed, or to enforce or carry into effect the same. 45. For making regulations for suppressing fires, and for pulling down or demolishing adjacent houses or other erections, when necessary, to prevent the spreading of fire. 46. For regulating the conduct and enforcing the assistance of the inhabitants present at fires, and for the preservation of property at fires.

Inquests on Fires.

By C. Stat. 22 V. c. 88, § 1, the coroner within whose jurisdiction any city or incorporated town, or incorporated

village, in this province lies, whenever any fire has occurred whereby any house or other building in such city, town or village, has been wholly or in part consumed, shall institute an enquiry into the cause or origin of such fire, and whether it was kindled by design or was the result of negligence or accident, and act according to the result of such enquiry.

§ 2. For the purpose aforesaid, such coroner shall summon and bring before him all persons whom he deems capable of giving information or evidence touching or concerning such fire, and shall examine such persons on oath, and shall reduce their examinations to writing, and return the same to the clerk of the peace for the district or county within which they have been taken.

§ 3. It shall not be the duty of the coroner to institute an inquisition into the cause or origin of any fire, until it first appears that such fire arose through culpable negligence or design.

§ 4. The coroner may in his discretion, or in conformity with the written requisition of any agent of an insurance company, or of any three householders in the vicinity of any such fire, impanel a jury chosen from among the householders resident in the vicinity of the fire, to hear the evidence that may be adduced touching or concerning the same, and to render a verdict under oath thereupon in accordance with the facts.

§ 5. If any person summoned to appear before any coroner acting under this act neglects or refuses to appear at the time and place specified in the summons, or if any such person appearing in obedience to any such summons, refuses to be examined, or to answer any questions put to him in the course of his examination, the coroner may enforce the attendance of such person or compel him to answer, as the case may require, by the same means as such coroner might use in like cases at ordinary inquests before him.

§ 6. If any person having been duly summoned as a juror upon any such enquiry does not, after being openly called three times, appear and serve as such juror, the coroner may impose upon the person so making default such fine as he thinks fit not exceeding \$4; and such coroner shall make out and sign a certificate containing the name, residence, trade, or calling of such person, together with the amount of fine imposed and the cause of such fine, and shall transmit the certificate to the clerk of the peace in the district or county in which such defaulter resides, on or before the first day of the quarter sessions of the peace then next ensuing for said district or county, and shall cause a copy of such certificate to be served on the person so fined by leaving it at his residence, within a reasonable time after such

inquest; and all fines and forfeitures so certified by such coroner shall be collected, levied, and applied in like manner, and subject to like powers, provisions, and penalties in all respects as if they had been parts of the fines imposed at such quarter sessions. § 7. Nothing herein contained shall affect any power by law vested in any coroner for compelling any person to attend and act as a juror, or to appear and give evidence before him on any inquest or other proceeding, or for punishing any person for contempt of court in not so attending and acting, or appearing and giving evidence or otherwise, but all such powers shall extend to and be exercised in respect of injuries under this act. § 8. Applies to inspectors of police at Quebec and Montreal. § 9. The coroner holding any enquiry under this act shall be entitled to \$10, and if the enquiry extend beyond one day then to \$10 per diem for each of two days afterwards, and no more to be paid by the treasurer on the official order of such coroner.

By the 23 V. c. 35, the above act is extended to country parts, and the fees for holding such enquiries in the county are \$5 for the first day, and \$4 for each of two days after, if the enquiry should extend beyond one day.

By Stat. 24 V. c. 33, § 3, the party requiring any such investigation shall be responsible for the costs. § 2. No municipality shall be liable for any such expense, unless the investigation be required by an instrument under the hand and seal of the mayor, or other head officer, and at least two other members of the council. § 3. Expense of any adjournment not to be payable by the party or municipality, unless clearly shown and certified by the coroner that it was necessary.

FIREMEN.

By C. Stat. 22 V. c. 87, § 1, whenever any company or companies have been regularly enrolled in any city, town, or place in which the formation of companies of firemen is by law authorised and regulated, the corporate authorities or board of police in such city or town, or if no such authorities, the justices of the peace of the county in general quarter sessions assembled, or the majority of them, being satisfied of the efficiency of such persons and accepting their enrolment, shall direct the clerk of the peace for the district or county to grant to each member of such company a certificate that he is enrolled in the same, which certificate shall exempt the party during his enrolment and continuance in actual duty as such fireman, from militia duty in time of

peace, from serving as juryman or a constable, and from all parish and town offices. § 2. Such authorities may upon complaint to them made of neglect of duty by any individual of such fire company examine into the same, and in case he be convicted of a breach of any of the rules legally made for the regulation of the same, may strike off the name of such individual from the list of the company, and thence forward the certificate granted to such individual shall have no effect in exempting him from any duty or service mentioned in the preceding section. § 3. It shall be in the discretion of the corporate authorities or boards of police, or of the justices of the peace for the county as aforesaid, respectively to consent to the formation as aforesaid of any fire company in any such city, town, or place as aforesaid, or to defer the same, as may be deemed expedient: and may in their discretion discontinue or renew any such company. § 4. Members of enrolled companies of firemen who have regularly and faithfully served seven consecutive years, shall be entitled to a certificate thereof from the clerk of the peace, which shall exempt them from serving in the militia in time of peace, and from all parish and town offices, but not as jurors. § 5. City municipalities are authorised to make by-laws for granting such certificates which by § 6 shall exempt the parties from statute labour and from serving on juries.

FIREWORKS.

By the Municipal Act U. C. Stat. 22 V. c. 54, § 294, subsec. 25, the municipalities are authorised to make by laws for preventing or regulating the firing of guns or other fire-arms, firing or setting off of fire-balls, squibs, crackers, or fireworks, and for preventing charivaries and other like disturbances of the peace.

FISHERIES.—FISH.

By C. Stat. 22 V. c. 62, § 1. The Governor is authorised to grant special fishing leases and licenses on Crown lands. § 2. And appoint two superintendents, one for Upper and one for Lower Canada. The following sections only appear to relate to the inland fisheries. § 19. Nets and seines for fishing in Burlington Bay and Dundas Marsh prohibited. § 20. No one shall fish for, catch or kill salmon in any way between the first day of August and the first day of March. Except salmon fishing with rod and line in the manner known as fly fishing, from the first of March to the first of September. § 21. Taking salmon in any way at any salmon leap, pools or ponds for spawning, prohibited. § 22. Main

channels of rivers not to be obstructed by fishing apparatus, under a penalty not exceeding \$20, and forfeiture of fishing apparatus. § 23. Fishways to be attached to mill dams for the passage of fish, under the direction of the superintendent, and penalty of \$4 per day for default after two months' notice. § 24. Any salmon taken in contravention of the 20th section shall subject all parties concerned, whether actual transgressors or accessories, to a penalty of not more than \$40 nor less than \$20, together with the forfeiture of the fish, canoe, boat or other vessel, or to imprisonment for a period of not more than six months nor less than three. § 26. Nets or seines not to be less than one and a half inches on the square in any lake, river or bay, or in any of the waters of Upper Canada. § 28. Killing of speckled trout between the twentieth of October and first of April prohibited. § 29. Nets or seines for such purpose also prohibited. § 30. Except in lakes Huron and Superior, salmon trout not to be caught between the fifteenth of November and the first of February. § 31. Nor except as aforesaid, maskinongè, pickerel, nor black bass, between the fifteenth of March and the fifteenth of May. § 32. Buying or selling any such fish between the aforesaid periods prohibited, the fish forfeited, and any person found in possession of any shall be held to have unlawfully obtained the same, unless upon legal proof to the contrary. § 33. No one shall construct any fish pond in any river. § 34. The superintendent may grant permission for taking spawn for *bonâ fide* artificial or scientific purposes during the close season: any person who wilfully injures or destroys any place set apart for the artificial propagation of fish shall incur a fine not less than \$20 nor more than \$40. § 36. Lime or drugs not to be used in catching fish under the like penalty. § 37. Penalties and forfeitures to be recovered before the superintendent or any stipendiary or other magistrate in a summary way, upon the oath of one credible witness, and the proceedings and costs shall be the same as provided by law in cases of summary conviction. § 38. In all cases of contravention, for which no other penalty is provided, the offender shall incur a fine of not less than \$8 nor more than \$20. § 39. To be sued for within twelve months.

§ 40. Committal to gaol in case of non-payment for not less than one month, nor more than six months. § 42. Offenders may be convicted on view. § 44. Search warrants may be issued for concealed fish. § 45. One moiety of fines to belong to her Majesty, the other to the complainant. § 46. The Governor in council authorised to make rules and

regulations for preventing or regulating fishing with nets or lines, the use of fishing lights, weirs for eels, or other fish in any harbour, river, or public water in Upper Canada.

White Fish.

§ 47. Any person using or employing any line or other nets of a greater length than 50 fathoms, for the taking of white fish in any of the rivers, Detroit, Saint Clair, or Niagara, within Upper Canada, shall for every such offence forfeit the sum of \$500. § 48. Any person found fishing for white fish in either of the said rivers within Upper Canada with seines, gill nets, or other nets on the first day of the week, called Sunday, shall forfeit for every such offence \$200.

§ 49. Any person who attempts to divert the natural progress or running of the white fish within Upper Canada, by shingling or other device, shall forfeit for every offence \$500, or be imprisoned, not exceeding three months, at the discretion of the court.

Recovery of Penalties.—§ 50. Under the three last preceding sections, to be by action of debt before any court of competent jurisdiction.

§ 51. Forms set forth in the schedule to be used in prosecutions; the other clauses relate to “bounties” for the encouragement of fisheries.

*Inspection of Fish and Oil.**

By C. Stat. 22 V. c. 50. § 1. Inspectors to be appointed by the Governor. Such inspector to take the oath prescribed before a justice of the peace, and to be filed with the clerk of the peace; the following clauses prescribe the duties of inspectors, and the qualities of fish and oil, and the mode of packing and branding casks, &c.

Branding.—§ 16. If any inspector brands any cask, keg or box, of any description of fish or oil mentioned in this act, without inspection, or knowingly permits any other person to use his brands, he shall on conviction incur a penalty of \$4 for each cask, keg or box, and be removed from office.

§ 17. If any person, other than an inspector, wilfully effaces or obliterates any brands or marks, or fraudulently impresses any, or empties any cask, keg or box, already branded, in order to put other fish or oil therein, for sale or exportation, he shall on conviction incur a penalty not exceeding \$80.

* Seal oil or whale oil.

Inspectors.—§ 18. Not to trade in fish or oil, under the penalty of \$100 for each act.

Fines and Forfeitures.—§ 19. One moiety to belong to her Majesty, the other to the complainant.

Limitation of Prosecutions.—§ 20. Three months.

Imprisonment.—§ 21. If the offender does not forthwith pay the fine and costs, he shall be committed to gaol for a term not less than one month, nor more than six months, at the discretion of the magistrate.

Recovery of Penalties.—§ 22. Before the superintendent, or any stipendiary or other magistrate, in a summary way, and the proceedings and costs to be the same as in other cases of summary jurisdiction.

FISH DAMS.

By C. Stat. 22 V. c. 93, § 23, maliciously destroying any dam to any fish-pond or private fishery, or destruction of fish by any noxious material, is made a misdemeanor.

FLOUR AND MEAL.

C. Stat. 22 V. c. 47.

Board of Examiners.—§ 1. To be appointed by municipal authorities, except in certain cities. § 2. To take the oath prescribed. § 3. Boards of examiners in the cities of Quebec, Montreal, Toronto, Kingston and Hamilton to be appointed yearly by the council of the board of trade in those cities. § 4. Board of examiners to be assisted by competent persons.

Inspectors and Assistants.—§ 5. Inspectors to be appointed by the mayor of said cities. § 6. To give security. § 9. And take the prescribed oath of office. § 10. Inspectors for Quebec and Montreal to have assistants. (a) § 11. To be paid by the inspector appointing them. § 12. Complaints against inspectors or assistants to be examined into by the board of trade of any city or place, and, if well founded, the mayor or other head of the municipality shall remove such inspector and assistant and appoint others.

Inspecting and branding Flour, &c.—§ 13. Mode of inspection. § 14. Flour taken from the barrel to be delivered if required to the owner under the penalty of \$20. § 15. Inspectors to have proper branding irons, and after inspection brand the name of the city where inspection made, the

(a) And City of Toronto, by 23 V. c. 26, § 1.

initials of his name and the quality of the flour or meal. 2. Sour flour to be branded with the word "sour." 3. If unsound or unmerchantable, with the word "rejected." 4. Manufacturers' brands to be corrected when necessary, with the date of inspection. 5. Barrels to be branded on the head. 6. Fees for inspection: 1 penny or $1\frac{2}{3}$ cents for each barrel and half barrel. 7. Bill of inspection to be furnished by the inspector gratis. 8. Penalty \$80 for false statement or giving such bill without personal inspection. 9. Proviso as to re-inspection. 10. Inspector not to brand any flour unless the name of the manufacturer or packer, place, quality and weight are branded or marked legibly thereon.

Mode of Branding.—§ 16. Space not exceeding 14 inches long by 8 inches broad, under a penalty of \$20. § 17. (as amended by 23 V. c. 26, § 2) Qualities of flour to be designated, superior quality, by the words "superior extra;" second quality, "extra superfine;" third quality, "fancy superfine;" fourth quality, "superfine;" fifth quality, "superfine No. 2;" sixth quality, "fine;" seventh quality, "fine middlings;" eighth quality, "ship stuffs" or "pollards."

Weight of Flour.—§ 19. $\frac{1}{2}$ barrel, 98 lbs. net; barrel, 196 lbs. net. *Rye*— $\frac{1}{2}$ barrel, 98 lbs. net; barrel of rye flour, 196 lbs. net. *Indian meal*— $\frac{1}{2}$ barrel, 98 lbs. net; barrel, 196 lbs. net. *Oatmeal*— $\frac{1}{2}$ barrel, 112 lbs. net; barrel, 224 lbs. net. Packer or manufacturers' initials, mill, or place of packing, quality, weight, tare of the cask, to be marked on one end of each barrel, &c., of flour or meal packed for sale, under the penalty of 40 cents for each barrel or half barrel.

Barrels, size of, &c.—§ 20. Diameter of the heads of barrels from $16\frac{1}{2}$ to 17 inches, and half barrels from $13\frac{1}{2}$ to 14 inches, bound with ten wooden hoops, secured by nails, under the penalty of 40 cents for each cask offered for sale or exported.

Inspection, Costs of.—§ 21. When sold subject to inspection, to be paid by the vendor, unless stipulation to the contrary.

Weight.—§ 23. To be made up by the owner, if deficient on inspection. 2. Inspector to weigh a portion of the flour, deficiency to be made good. 3. Penalty of \$80 on inspector or assistant neglecting to weigh, besides damages.

Disputes.—§ 24. In case of dispute between the inspector and owner, (at other places than the aforesaid cities,) upon the application of either party, one justice of the peace of

the locality may issue a summons to three persons of skill and integrity, one to be appointed by the inspector, one by the owner, the third by the justice, who shall inspect under oath, and the determination of the majority to be final. 2. Costs to be paid by the party in the wrong. § 25. In cities (aforesaid) disputes to be settled by the board of examiners or three of them, the decision of the majority to be final. 2. Costs paid accordingly.

Miscellaneous, Penalties, &c.—§ 26. Inspector or assistant neglecting to inspect within two hours after application between sun-rise and sun-set, to incur a penalty of \$20, recoverable by the party before any one justice, on the oath of one credible witness other than the prosecutor, besides liability to damages. § 27. Adulterated flour to be seized and reported to a justice, and detained, and every person wilfully and fraudently mixing or blending any flour or meal, by him packed for sale or exportation, with any foreign matter, shall for each offence incur a penalty not exceeding \$80. Prosecution to be commenced within one month, and flour forfeited to the corporation. § 28. Every manufacturer or packer who undermarks the tare of any barrel, &c., or puts in a less quantity of flour than branded, shall incur a penalty of \$4, for each barrel, &c., unless deficiency caused by accident unknown. § 29. Inspectors to make weekly returns of flour or meal inspected. § 30. If any person knowingly offers for sale any barrel, or half barrel of flour or meal, upon which the tare shall be undermarked, or in which there shall be a less quantity of flour or meal than is branded thereon, he shall incur a penalty of \$4 for every cask. § 31. Inspectors or their assistants trading or dealing in flour to incur a penalty of \$200, and be removed from office. § 32. Any person effacing or obliterating inspector's marks, or counterfeiting, or branding any marks purporting to be the marks of the inspector, manufacturer or packer, either with the proper marking tools of such inspector, manufacturer or packer, or with counterfeits, on any barrel, &c., or emptying any barrel after inspection, in order to put in other meal or flour, or using any old barrel without destroying the old brand marks before offering the same for sale; or not being an inspector or assistant branding any flour or meal with the inspector's marks, and every person in the employ of the manufacturer or packer, hiring or loaning out the marks of his employer, conniving at or privy to any fraudulent evasion of this act, shall incur a penalty of \$200: and any inspector or assistant branding any flour or

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meal out of his local limits, or hiring out his marks to any person, or conniving, or privy to any fraudulent evasion of inspection by others, shall for each such offence incur a penalty of \$200. § 33. All penalties under this act not exceeding \$40, may (except otherwise provided) be recoverable by any inspector, or any other person, in a summary way, before any two justices of the locality, and in default of payment levied by distress and sale. 2. If over \$40, then by bill, plaint, information or civil action in a recorder's court, or any other court of competent jurisdiction. 3. One moiety when recovered to be paid to the treasurer of the locality, the other to the prosecutor, unless an officer of the corporation, and in such case the whole to the corporation.

Limitation of Suits.—§ 34. Actions against any person for any thing done in pursuance of this act to be commenced within *six months*.

§ 35. Inspection not to be compulsory. § 36. The word meal, to include Indian meal.

FORCIBLE ENTRY AND DETAINER.

What is a Forcible Entry.

A forcible entry is committed by violently taking possession of lands and tenements, with menaces, force and arms, and without the authority of the law.—4 *Bl. Com.* 148. And even if a man have a good right to the land, and enter forcibly, he may be indicted.—*Dalt. (Ed. 1727) c.* 129. A single person may commit a forcible entry as well as a number of persons.—1 *Haw. c.* 64, 8, 12, 29. A forcible entry is made with a strong hand, with unusual weapons; an unusual number of servants or attendants; or with menace of life or limb; or by breaking open the doors of a house, whether any person be in it at the time or not; and though a man enter peaceably, yet if he turn the party out of possession by threats, or violence, this also amounts to a forcible entry.—*Haw. c.* 64, § 25. But merely drawing a latch, and entering a house; or opening the window or door with a key; or entering by an open window, do not constitute a forcible entry.—*Ibid.*

What is a Forcible Detainer.

A forcible detainer, is where a person who enters peaceably, though unlawfully, detains possession by force; and the same circumstances of violence or terror which makes an entry forcible, will also constitute a forcible detainer.

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Therefore, whoever, after an unlawful entry, keeps in the house an unusual number of persons, or weapons, or threatens to do some bodily hurt to the former possessor, is guilty of a forcible detainer. So, if a man shuts the door against a justice of the peace, coming to view the force, and obstinately refuses to let him come in; so a lessee, who, after the end of his term, keeps arms in his house to oppose the entry of the lessor, is guilty of a forcible detainer; and the same with regard to a lessee at will, after the will is determined; or of a mortgagor, after the mortgage is forfeited.—2 *Haw. c. 64*, § 30; 4 *Com. Dig.* 201. But the mere refusal to go out of a house, and continuing therein in despite of another, does not amount to a forcible detainer.—1 *Haw. c. 64*, § 30. Therefore, if a lessee at will (after the determination of his tenancy) merely denies possession to the lessor, or even shuts the door against the lessor, when he would enter, this is not a forcible detainer.—*Cro. Car.* 486. And a man who breaks open the doors of his own dwelling-house, forcibly detained by one who has the bare custody of it, is not guilty of a forcible entry or detainer.—1 *Haw. c. 64*, § 32.

Of the Remedy.

At common law, a man disseised of any lands or tenements, if he could not prevail by fair means, might lawfully regain the possession thereof by force.—1 *Haw.* 140. But this indulgence of the common law having been found, by experience, to be very prejudicial to the public peace, it was thought necessary, by many severe laws, to restrain all persons from the use of such violent methods of doing themselves justice.—*Ibid*, 141. Accordingly by 5 *R. 2*, c. 8, none shall make entry into lands but where entry is given by law, and in such case not with strong hand nor with multitude of people, but only in peaceable and easy manner. And if any do the contrary, and thereof be convicted, he shall be punished by imprisonment and ransomed at the king's will.

By Action at Law.

If any person be put out or disseised of any lands or tenements in forcible manner, or put out peaceably, and after holden out with strong hand; the party grieved shall have assize of *novel disseisin*, or writ of trespass against the disseiser, and if he recovers he shall have treble damages, and the defendant moreover shall make fine and ransom to the king.—8 *H. 6*, c. 9, § 6.

By Indictment at the Sessions.

The party grieved, if he will lose the benefit of his treble damages and costs, may be aided and have the assistance of the justices at the general sessions, by way of indictment, on the statute 8 *H.* 6, which being found there, he shall be restored to his possession by a writ of restitution granted out of the same court to the sheriff.—*Dalt.* c. 129.

The indictment may be in the form given (F).

And the tenement in which the force was made must be described with convenient certainty; and the indictment must set forth that the defendant actually entered and ousted the party grieved; and continued his possession at the time of finding the indictment; otherwise he cannot have restitution, because it doth not appear that he needed it.—1 *Haw.* 147, 149, 150.

But if a man's wife, children, or servants, do continue in the house, or upon the land, he is not ousted of his possession; but his cattle being upon the ground do not preserve his possession.—*Dalt.* c. 132.

An indictment for forcible entry was quashed, for not setting forth that the party was seised or disseised, or what estate he had in the tenement; for if he had only a term of years, then the entry must be laid, into the freehold of A., in the possession of B.—3 *Salk.* 169.

If three or more be concerned, it is also a riot, and the parties may be proceeded against accordingly.—*Dalt.* c. 44.

On View of one (or more) Justices out of Sessions.

By statute 15 *R.* 2, c. 2, at all times that forcible entries be made, and complaint thereof cometh to justices of the peace, (or any of them,) the same justices or justice shall take sufficient power of the county, and go to the place where such force is made; and if they find any that hold such place forcibly, they shall be taken and put in the next gaol, there to abide convict by the record of the justices (or justice) till they have made fine and ransom to the king. And all they of the county, as well the sheriff as others, shall attend upon the justices, to assist them to arrest such offenders, upon pain of imprisonment, and to make fine to the king.

Power of the County.—All people of the county, as well the sheriff as others, shall be attendant on the justices to arrest the offenders; on pain of imprisonment and fine to the king.—15 *R.* 2, c. 2.

And if the doors be shut, and they within the house shall

deny the justice to enter, it seems he may break open the house to remove the force.—*Dalt. c. 44.*

And if after such entry made the justice shall find such force, he shall cause the offenders to be arrested.—*15 R. 2, c. 2; 8 H. 6, c. 9, § 2.*

He shall also take away their weapons and armour, and cause them to be appraised, and after to be answered to the king as forfeited, or the value thereof.—*Dalt. c. 44.*

Also such justice ought to make a record (A) of such force by him viewed; which record shall be a sufficient conviction of the offenders, and the parties shall not be allowed to traverse it; and this record, being made out of the sessions, by a particular justice, may be kept by him, or he may make it indented (that is in duplicate) and certify the one part into the King's Bench, or leave it with the clerk of the peace, (a) and the other he may keep himself.—*15 R. 2, c. 2; Dalt. c. 44.*

And the offenders being arrested (as before is said) shall be put into the next gaol, (B) there to abide convict by the record of the same justice, until they have made fine and ransom to the king.—*15 R. 2, c. 2.*

Shall be put in the next Gaol.—It is said that the justice hath no power to commit the offender to gaol, unless he do it upon his own *view* of the fact, and not upon the jury finding the same afterwards.—*Dalt. c. 44, 1 Haw. 142.*

And if such offenders, being in the house at the coming of the justice, shall make no resistance, nor make shew of any force, then the justice cannot arrest or remove them at all upon such view.—*Dalt. c. 44.*

But if the force be found afterwards, by the enquiry of the jury, the justice may bind the offenders to the peace; and if they be gone, he may make his warrant to take them, and may after send them to the gaol until they have found sureties of the peace.—*Dalt. c. 44.*

Until they have made Fine.—The fine must be assessed upon every offender severally, and not upon them jointly; and the justice ought to estreat the fine, and to send the estreat into the exchequer, that from thence the sheriff may be commanded to levy it for his Majesty's use.—*Dalt. c. 44.*

A conviction by a justice for a forcible entry, on view, must set a fine upon the defendant, otherwise the Court of King's Bench will discharge him from a commitment on such

(a) Or to the next general quarter sessions—with other fines and convictions—U. C. Stat. 22 V. c. 124; which would be the most correct course.

conviction by *habeas corpus*.—*R. v. Elwell, Str.*, 794; *Ld. R.*, 1514. If a fine be set, the conviction cannot be quashed on motion, but the defendant must bring his writ of error; but if no fine be set, it may then be quashed on motion.—*R. v. Layton*, 2 *Salk.* 450.

But upon payment of the fine to the sheriff, or upon sureties found (by recognizance) for the payment thereof, it seemeth that the justice may deliver the offenders out of prison again at his pleasure.—*Dalt. c.* 44.

Inquisition—Restitution.

And so much concerning removing the *force*; but the party ousted cannot be restored to his possession by the justice's *view* of the force; nor unless the same force be found by the enquiry of a jury. Concerning which it is enacted as follows: by stat. 8 *H.* 6, c. 9, where any doth make forcible entry into lands, tenements, or other possessions, or them hold forcibly, after complaint made to the justices of the peace, (or one of them,) by the party grieved, the justices or justice, within a convenable time, shall cause the statute duly to be executed at the costs of the party grieved.—§ 2.

And though the person making such entry be present, or else departed before the coming of the justice; he may notwithstanding, in some good town next to the tenement so entered, or in some other convenient place, by his discretion, have power to enquire by the people of the county, as well of them that make such forcible entry, as of them which hold the same with force. And if such forcible entry or detainer be found before such justice, he shall cause to re-seise the lands and tenements so entered or holden, and restore the party so put out to full possession of the same.—§ 3.

When the justice makes such enquiry, he shall cause his precept (C) to be directed to the sheriff, commanding him in the king's behalf to cause to come before him sufficient and indifferent persons dwelling next about the lands so entered to enquire of such entries, whereof every man shall have lands or tenements of the yearly value of 40s. above reprises. And the sheriff shall return issues on every of them at the day of the first precept returnable, 20s.; and at the second day, 40s.; at the third time, 100s.; and every day after, the double. And the sheriff making default, shall on conviction before the same justice, or before the judge of assize, shall forfeit £20, half to the king and half to him who shall sue, with costs, and moreover make fine and ransom to the king.—§ 4.

The said Justice.—It seems to be agreed, that no other justices of the peace, except those before whom the indictment shall be found, shall have any power either at the session, or out of it, to make any award of restitution.—1 *Haw.* 152.

And the defendant should have notice of holding the inquisition that he might appear and defend himself.—1 *Haw.* 154.

The inquisition or finding of the jury should be in the form given. (D)

An inquisition for a forcible entry taken before magistrates under 8 H. VI., c. 9, must shew what estate the party expelled had in the premises, and if it do not, the inquisition will be quashed, and the court will award restitution. The inquisition will also be bad if it appear to the court that the defendant had no notice, or that any of the jury had not lands or tenements of the yearly value of 40s., or that the party complaining was sworn as a witness.—*Rex v. Mc-Heavrey et al.*, and *Mitchell v. Thompson*, *Michs.* 1 *Vic.*; *Cameron's Digest*, p. 38.

By 31 Eliz., c. 11, no restitution upon any indictment of forcible entry, or holding with force, shall be made, if the persons indicted had the occupation or had been in quiet possession three years together next before the indictment found, and his estate therein not determined; which the party indicted may allege for stay of restitution; and if the other traverse the same, and the allegation be found against the party indicted, he shall pay costs.—§ 3.

By 21 Jac. I., c. 15, a justice of the peace may also give like restitution of possession to tenants for terms of years.

If the offenders being in the house make no resistance, then the justice can neither arrest nor remove them on his view, and the party cannot be arrested unless the *force* be found by the enquiry of a jury; and if such forcible entry and detainer be found, then the justice shall cause the lands to be restored.—*Dalt.* I., 44.

Although one justice alone may proceed in such cases, yet it may be advisable for him, if the time for viewing the force will suffer it, to take to his assistance one or two more justices.—*Burns, J.*, 179. And if the case should be at all complicated, it would be prudent to seek the aid and advice of the crown attorney.

Restitution.—Must be awarded by the same justices before whom the inquest was found.—See the form (E). If a restitution shall appear to have been illegally awarded or

executed, the Court of King's Bench will set it aside, and grant a re-restitution to the defendant.—1 *Haw. c.* 94, §§ 63, 64, 65.

The sheriff, in executing the writ of restitution, may raise the power of the county to assist; but the justices may, if they think proper, make restitution in person. A justice, or the sheriff, may break open a house to make restitution; and if the possession be avoided by a fresh force, the party may have a second writ of restitution without a new inquisition, if applied for within a reasonable time.—*Haw. c.* 64, § 49, 52; 4 *Com. Dig.* 204.

[A]

Record of a Forcible Detainer, upon view, before three Justices. (Burn.)

[Or it may be before one justice only.]

County of } Be it remembered, that on the day of
to wit. } , in the year of the reign of our
sovereign lady Victoria, at , in the county aforesaid,
complained to us and Esquires, three of the justices of
our said lady the Queen, assigned to keep the peace in the said
county, and also to hear and determine divers felonies, trespasses,
and other misdemeanors, in the said county committed, that
and , late of , in the said county, yeomen, into the messuage
of her the said , situate within the township of , in
the county aforesaid, did enter, and her the said , of the
messuage aforesaid, whereof the said , at the time of
the entry aforesaid, was seized, as of the freehold of her the
 , for the term of her life, unlawfully ejected, expelled and
amoved, and the said messuage from her the said , unlaw-
fully, with strong hand and armed power, do yet hold and from
her detain, against the form of the statute in such case made and
provided; whereupon the said then, to wit, on the said
day of , in the year aforesaid, at the township of , in
the county aforesaid, prayeth of us, so as aforesaid being justices,
that a due remedy be provided to her in this behalf, according
to the form of the statute aforesaid; which complaint and prayer
by us the aforesaid justices being heard, we the aforesaid ,
justices, aforesaid, to the messuage aforesaid, personally have
come, and do then and there find and see the aforesaid , the
aforesaid messuage, with force and arms unlawfully, with strong
hand and armed power detaining, against the form of the statute
in such case made and provided, according as she the ,
hath so as aforesaid unto us complained; therefore it is consid-
ered by us, the aforesaid justices, that the aforesaid of the
detaining aforesaid, with strong hand, by our own proper view,
then and there as is aforesaid had, are convicted, and every of them

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is convicted, according to the form of the statute aforesaid, whereupon we, the justices aforesaid, upon every of the aforesaid do set and impose severally a fine of of good and lawful money of this province, to be paid by them and every of them, severally, to our said sovereign lady the Queen, for the said offences, and do cause them and every of them then and there to be arrested; and the said and being convicted, and every of them being convicted, upon our own proper view of the detaining aforesaid with strong hand, as is aforesaid, by us the aforesaid justices, are committed, and every of them is committed to the common gaol of our said lady the Queen, at , aforesaid, in the county aforesaid, being the next gaol to the messuage aforesaid, there to abide respectively until they shall have paid their several fines respectively, to our said lady the Queen, for their respective offences aforesaid, concerning which, the premises aforesaid, we do make this our record. In witness whereof, we the said , the justices aforesaid, to this record our hand and seals do set, at , aforesaid, in the county aforesaid, on the day of , in the year of the reign of our said sovereign lady the Queen, and in the year of our Lord .

[B]

Mittimus for a Forcible Detainer, upon view by one Justice. (Burn.)

To all or any of the constables or other peace officers in the county of , and to the keeper of the common gaol at in the said county of .

PROVINCE OF CANADA.

County of } Whereas upon complaint this day made unto
to wit } me J. C., Esq., one of her Majesty's justices of
the peace for the county of , by A. B. of , in the said
county, yeoman, I, the said justice, did immediately go to the
dwelling-house of the said A. B. at , aforesaid, and there
found upon mine own view C. D. late of , labourer, E. F.,
late of the same place, labourer, and G. H. late of , car-
penter, forcibly with strong hand and armed power holding the
said house, against the peace of our said lady the Queen, and
against the statute in such case made and provided; therefore
I send you, by the bringers hereof, the bodies of the said C. D.,
E. F. and G. H. convicted of the said forcibly holding, by mine own
view, testimony and record; commanding you, in her Majesty's
name, to receive them into your said gaol, and there safely to
keep them and every of them, respectively, until they shall
have respectively paid the several sums of , of good and
lawful money of this province, to our said sovereign lady the
Queen, which I have set and imposed upon every of them
separately, for a fine and ransom for their said trespasses, re-

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spectively. Herein fail you not, on the pain that will ensue thereon. Given at aforesaid, in the county aforesaid, under my hand and seal, the day of , in the year of the reign of our sovereign lady the Queen, and in the year of our Lord 18 .

[C]

Justice's Precept to Summon a Jury. (Burn.)

PROVINCE OF CANADA.

County of } J. C., Esq., one of the justices of our lady the
to wit. } Queen, assigned to keep the peace in the said
county, and also to hear and determine divers felonies, trespasses
and other misdemeanors, in the said county committed—to the
sheriff of said county, greeting :

On behalf of our said lady the Queen, I command you that you cause to come before me, at , in the said county, on the day of , next ensuing, twenty-four sufficient and indifferent men of the neighbourhood of aforesaid, in the county aforesaid, every one of whom shall have lands and tenements of 40s. yearly at the least, above reprises, to enquire upon their oaths, for our said lady the Queen, of a certain entry made with a strong hand, as it is said, into the messuage of one A. B. at ; aforesaid, in the county aforesaid, against the form of the statute in such case made and provided ; and you are to return upon every of the jurors by you in this behalf to be impanelled 20s. of issues at the aforesaid day, and have you then and there this precept, and this you will in no wise omit, upon the peril that thereon shall ensue. Witness the said J. C., at , in the said county, the day of , in the year of the reign of our sovereign lady Victoria, and in the year of our Lord .

Foreman's Oath.

You shall true enquiry and presentment make of all such things as shall come before you concerning a forcible entry [or detainer] said to have been lately committed in the dwelling-house of A. B. at ; you shall spare no one for favour or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you. So help you God.

To the other Jurors.

The oath that A. B., your foreman, hath taken on his part, you and every of you shall truly observe and keep on your parts. So help you God.

[D]

The Inquisition or Finding of a Jury. (Burn.)

PROVINCE OF CANADA.

County of } An inquisition for our sovereign lady the Queen,
 to wit. } indented and taken at , in the county
 of , the day of , in the year of the reign of our
 sovereign lady Victoria, by the oath of good and lawful men
 of the said county, before J. C., Esquire, one of the justices of
 our said lady the Queen, assigned to keep the peace for the said
 county, and also to hear and determine divers felonies, trespasses
 and other misdeeds, in the said county committed, who say upon
 their oath aforesaid, that A. B. of , long since lawfully and
 peaceably was seised in his demesne as of fee (*if not freehold say,*
"possessed") of and in one messuage with the appurtenances
 in , aforesaid, in the county aforesaid, and his said possession
 (*or seisin*) so continued, until C. D., late of , &c., E. N., of,
 &c., and G. H., of, &c., and other malefactors unknown, on the
 day of , now last past, with strong hand and armed power,
 into the messuage aforesaid, with the appurtenances aforesaid,
 did enter, and him the said A. B. thereof disseised (*or dispos-*
seised), and with strong hand expelled, and him the said A. B. so
 disseised (*or dispossessed*) and expelled from the said messuage,
 with the appurtenances aforesaid, from the day of until
 the day of the taking this inquisition, with strong hand and
 armed power did keep out, and do yet keep out, to the great
 disturbance of the peace of our said lady the Queen, and against
 the form of the statute in such case made and provided. We,
 whose names are hereunto set, being the jurors aforesaid, do
 upon the evidence now produced before us, find the inquisition
 aforesaid true. A. B., &c.

[E]

Warrant to the Sheriff for Restitution. (Burn.)

PROVINCE OF CANADA.

County of } J. C., Esquire, one of the justices of our
 to wit. } sovereign lady the Queen assigned to keep
 the peace in the county of , and also to hear and determine
 divers felonies, trespasses and other misdemeanors, in the said
 county committed; to the sheriff of the said county of ,
 greeting:

Whereas, by an inquisition taken before me, the justice afore-
 said, at , in the county aforesaid, on this present day
 of , in the year of the reign of , upon the oaths
 of , and by virtue of the statutes made and provided in cases
 of forcible entry and detainer, it is found that C. D., &c., into a
 certain messuage, &c. (*as in the inquisition*) as by the inquisition
 aforesaid more fully appeareth of record; therefore, on the behalf

of our said sovereign lady the Queen, I charge and command you, that, taking with you the power of the county (*if it be needful*) you go to the said messuage, and other the premises, and the same with the appurtenances you cause to be re-seised, and that you cause the said A. B. to be restored and put into his full possession thereof according as he before the entry aforesaid was seised, according to the form of the said statutes; and this you shall in no wise omit, on the penalty thereon incumbent. Given under my hand and seal at _____ in the said county, the _____ day of _____, in the _____ year of the reign _____, and in the year of our Lord _____.

[F]

*Indictment for a Forcible Entry and Detainer at
Common Law.*

PROVINCE OF CANADA.

County of _____ }
to wit. } The jurors for our lady the Queen, upon their
of _____, in the county of _____, gentleman, K. T., of the same
township, carpenter, and L. W., of the same township, labourer,
together with divers other evil disposed persons, to the number
of six or more, to the jurors aforesaid unknown, on the _____ day
of _____, in the _____ year of the reign of our sovereign lady
Victoria, with force and arms, to wit, with pistols, sticks,
staves and other offensive weapons, in the township of _____ in
the county aforesaid, into a certain barn and a certain orchard,
there situate and being, and then and there being in the
possession of one J. N., unlawfully, violently, forcibly, in-
juriously and with strong hand did enter, and the said J. S.,
K. T. and L. W., together with the said other evil disposed
persons, to the jurors aforesaid unknown as aforesaid, then and
there, with force and arms, to wit, with pistols, swords, sticks,
staves and other offensive weapons, unlawfully, violently, forcibly,
injuriously and with a strong hand, the said J. N., from the pos-
session of the said barn and orchard, did expel, remove and put
out, and the said J. N. so as aforesaid, expelled, removed and put
out, from the possession of the said barn and orchard, then
and there, with force and arms, to wit, with pistols, swords,
sticks, staves and other offensive weapons, unlawfully, violently,
forcibly, injuriously, and with a strong hand did keep out, and
other wrongs to the said J. N. then and there did, to the great
damage of the said J. N., and against the peace of our lady the
Queen, her crown and dignity.

FOREIGN AGGRESSION.

By U. C. Stat. 22 V. c. 98, § 1, if any person, being a citizen or subject of any foreign state or country at peace with her Majesty, be or continues in arms against her

Forestalling.

Majesty, within Upper Canada, or commits any act of hostility therein, or enters Upper Canada with design or intent to levy war against her Majesty, or to commit any felony therein, for which any person would, by the laws of Upper Canada, be liable to suffer death, then the Governor may order the assembling of a militia general court martial for the trial of such person, agreeably to the militia laws, 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. § 2. If any subject of her Majesty, within Upper Canada, levies war against her Majesty, in company with any of the subjects or citizens of any foreign state or country then at peace with her Majesty, or enters Upper Canada in company with any such subjects or citizens with intent to levy war on her Majesty, or to commit any such act of felony as aforesaid, or if with the design or intent to aid and assist he joins himself to any person or persons whatsoever, whether subjects or aliens who have entered Upper Canada with design or intent to levy war on her Majesty, or to commit any such felony within the same, then such subject of her Majesty may be tried and punished by a militia court marshal, in like manner as any citizen or subject of a foreign state or country at peace with her Majesty. § 3. Every citizen or subject of any foreign state or country who offends against this act, is guilty of felony, and may, notwithstanding the above provisions, be prosecuted and tried before any court of oyer and terminer and general gaol delivery, in and for any county in Upper Canada, in the same manner as if the offence had been committed in such county, and upon conviction shall suffer death as a felon.

FOREIGN SERVICE.

An engagement with a foreign state is a contempt against the prerogative, and a high misdemeanor at common law.—*4 Bl. Com.*, 122.

FORESTALLING.

At the common law, every practice or device to enhance the price of victuals, or other necessaries of life, is held to be a misdemeanor—*3 Inst.*, 196; and forestalling, in its legal signification, anciently comprehended all offences of this description, including those of *ingrossing* and *regrating*. *Ingrossing* is the purchase of the whole of any commodity for

the sake of selling it again at a high price. Re-grating signifies, properly, the scraping or dressing of cloth, or other goods, in order to sell the same again. The offences of forestalling, ingrossing, and re-grating have been also especially provided against by various statutes, from the 3 & 4 Ed. VI., c. 21, downwards to the 12 G. III., c. 71; by which latter statute all the preceding statutes were repealed, leaving the offence only to be dealt with as it stood at common law, under which it still continues an indictable offence, punishable by fine and imprisonment.—*Cr. C. C.*, 232.

By U. C. Stat. 22 V. c. 54, (municipal act,) § 294, the council of every city, town, and incorporated village, is authorised to make by-laws for establishing and regulating markets, and for preventing the forestalling, re-grating or monopoly of market grains, meats, fish, fruits, roots and vegetables.

FORGERY.

Forgery is the fraudulent making or alteration of a writing, to the prejudice of another man's right. It is a *misdemeanor* at common law, punishable by fine, imprisonment, and pillory—4 *Bl. Com.*, 247; but is made *felony* by a variety of statutes; and forgery is complete, although no person be actually prejudiced by it.—*Ward's case, Ld. Raym.*, 1461. The following instances come under the denomination of forgery:—making a fraudulent insertion, alteration, or erasure in any material part of a true instrument: converting a bond for £500 into one for £5000, by adding a 0 to the number.—1 *Haw.*, c. 70. § 2. Altering a banker's note or bill of exchange from £10 to £50.—*R. v. Teague, 2 East, P. C.* 979. Altering the date of a bill, whereby payment is accelerated.—2 *East, P. C.* 852. So, if a man who is ordered to draw a will for a sick person insert legacies in it of his own head.—3 *Inst.* 170. So, a man may be guilty of forgery in signing any instrument in his own name, if he represent himself to be some *other person* of the same name.—*Mard v. Young, 4 T. R.* 28.

As to Forgery by Statute Law.

By 5 Eliz., c. 14, § 2, forging any false deed, charter, or writing sealed, court roll, or the will of any person, or publishing any such as true, shall subject the party to double costs and damages; be set in the pillory, &c.; and by stat. 2 G. II., c. 25, revived and made perpetual by 9 G. II., c. 18—any person forging any deed, will, bond, writing obli-

gatory, bill of exchange, promissory note, endorsement or assignment thereof, or uttering same as true, shall be guilty of felony.

By C. Stat. 22 V. c. 94.

The Great Seal.—§ 1. If any person forges or counterfeits, or utters, knowing the same to be forged or counterfeited, the Great Seal of this province, or of the late province of Upper Canada, or of Lower Canada, such offender shall be guilty of felony, and imprisoned in the penitentiary for any term not less than seven years. § 2. If any person forges or counterfeits, or utters, &c., the *seal at arms* of the Governor, to any commission, purporting to be a grant, appointment, license, warrant, order, or other instrument of a public nature appertaining to the affairs of this province; or any public register or book, or wilfully certifies or utters any writing as and for a true copy thereof, or of any entry therein, knowing the same to be counterfeit or false, shall be guilty of felony, and imprisoned in the penitentiary for not more than fourteen years nor less than five years.

Securities for money, wills, &c.—§ 3. If any person forges or alters, or offers, disposes of or puts off, knowing, &c., any provincial debenture, or any stamp or endorsement on, or assignment thereof, or any government scrip for land, or any will, testament, codicil or testamentary writing, or any license of marriage, or any bank note, bill of exchange, promissory note for the payment of money, or any endorsement on, or any assignment of any bill of exchange, or promissory note for payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant or order for payment of money, with intent to defraud any person, such offender shall be guilty of felony, and imprisoned in the penitentiary for not more than ten years nor less than four years. § 4. When by any law in force before this act the forgery of any instrument or writing is made punishable with death, the offender may be indicted under this act.

Letters Patent.—§ 5. If any person forges or alters, or utters, &c., any copy of letters patent, or enrolment thereof, or any certificate thereof, purporting to be given under any statute, every such offender shall be guilty of felony, and imprisoned in the penitentiary for not more than seven years nor less than three years, or in any common gaol for less than two years.

Bank Stock.—§ 6. If any person forges or alters, or

utters, &c., any transfer of any share or interest in the capital stock of any body corporate, company or society established by charter or act, or any power of attorney or other authority to transfer such stock, or to receive any dividend or profit payable thereon; or who endeavours to effect such transfer; or to receive any dividend or profit 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 to defraud; or if any person falsely and deceitfully personates any owner of any such share, interest, dividend, or profit, and thereby transfers any share or interest belonging to such owner, or thereby receives any money due to such owner, as if he were the true and lawful owner, shall be guilty of felony, and imprisoned in the penitentiary for not more than ten years, nor less than four years.

Personating Owners.—§ 7. If any person falsely and deceitfully personates the owner of any share or interest in the capital stock of any body corporate, company or society, established by charter or act, or any owner of any dividend or profit in respect thereof; or any claimant for land from the Crown; or for any scrip or allowance in lieu thereof; and thereby endeavours to transfer any such, or to receive any money due to the owner, or to obtain such land or scrip or allowance, shall be guilty of felony, and imprisoned in the penitentiary for not more than seven years nor less than three, or imprisoned in any common gaol for any term less than two years.

Forging Names of Witness.—§ 8. If any person forges the name or hand writing of any witness to any power of attorney or other authority, for the transfer of any share or interest in any capital stock aforesaid, or to receive any dividend or profit, or to assign or transfer any right to obtain a grant from the Crown of lands, or to obtain any scrip or other allowance in lieu thereof, or utters any such knowingly, shall be guilty of felony, and imprisoned in the penitentiary for not less than three nor more than seven years, or imprisoned in any common gaol for any term less than two years.

Forging Records, Deeds, &c.—§ 9. If any person forges or alters, or utters, &c., any notarial act or copy, *process verbal* of any surveyor, or like copy thereof, 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 exemplification, or authenticated or certified copy of any such documents or entry as aforesaid, or any deed, bond, writing obligatory, assignment of right to land, certificate of registration, or affidavit of execution, or any memorial of any deed, will, or other instrument, or any acquittance or receipt for goods, or any accountable receipt for money or goods, as for any note, bill or other security for payment of money, or any warrant, order or request for delivery or transfer of goods, or delivery of any note, bill, or other security for money, or any contract, promise or agreement, such offender shall be guilty of felony, and be imprisoned in the penitentiary for not less than four, nor more than ten years.

Recognizances—Cognovits.—§ 10. If any person acknowledges any recognizance or bail in the name of another, not privy or consenting thereto, or any *cognovit actionem*, or judgment, or any deed to be registered or enrolled, every such offender shall be guilty of felony, and confined in the penitentiary for not less than four, nor more than ten years.

Possession of Forged Notes, &c.—§ 11. If any person, without lawful excuse, purchases or receives, or has in his custody any forged bank note, or blank bank note, knowing the same to be forged, such offender shall be guilty of felony, and confined in the penitentiary for not less than two nor more than seven years, or in any common gaol for less than two years.

Engraving Bank Notes.—§ 12. If any person engraves or makes upon any plate, wood, or stone, or other material, any bank note, bill of exchange, or promissory note for money, without authority; or any subscription thereto without such authority; or has in his custody any plate, wood, stone, or other material, or any subscription so engraved or made; or knowingly utters or has in his possession any paper upon which any part of such bank note, &c., or supercription shall be made or printed, such offender shall be guilty of felony, and imprisoned in the penitentiary for not less than two nor more than seven years: or imprisoned in any common gaol for not less than two years.

Foreign Bills, &c.—§ 13. If any person forges or alters, or utters knowingly, any forged or altered bill of exchange, promissory note, undertaking or order for payment of money, in whatever language expressed; or engraves or makes upon any plate, wood, stone or other material, any such instrument, without authority: or without such authority uses, or

without lawful excuse has in his possession, any platé, stone, wood or other material, upon which any such foreign bill, &c., has been engraved or made; or without authority knowingly utters or has in his possession any *paper* upon which any part of such foreign bill, &c., has been made or printed, every such offender shall be guilty of felony and imprisoned in the penitentiary for not less than two nor more than seven years, or imprisoned in any common gaol for less than two years.

Railway Tickets.—§ 14. If any person knowingly forges or utters any ticket or order for a free passage on any railway, steam or other vessel, with intent to defraud, such offender shall be guilty of felony, and imprisoned in the penitentiary for not more than three nor less than two years.

Postage Stamps.—§ 15. If any person forges or counterfeits any postage stamp, provincial or foreign, or knowingly uses such, or engraves or makes any plate or die, except by permission lawfully granted, or has any such in his possession without, or forges, counterfeits, or unlawfully imitates, uses or affixes upon any letter any stamp, &c., such offender shall be guilty of felony, and be imprisoned in the penitentiary for life.

Statute of Elizabeth.—§ 16. Every person convicted of any of the offences first enumerated under that act shall be guilty of felony, and in lieu of the pains and penalties thereby enforced, be imprisoned in the penitentiary for not less than two nor more than seven years; or imprisoned in any common gaol less than two years.

Foreign Matter.—§ 17. Where the forging or uttering any matter is in this act expressed to be an offence, if any person in this province knowingly forges or utters the same, in whatsoever place or country out of this country, foreign or otherwise, such matter may purport to be made, and in whatever language expressed, every such person and his aiders and abettors shall be deemed to be an offender within the meaning of this act, and punishable as if the matter had purported to be made in this province. § 18. If any person in this province forges or knowingly utters any forged bill of exchange, promissory note for money, or any endorsement on or assignment of such, or any deed, bond, writing obligatory, for payment of money, in whatever place or country out of this province the same may purport to be payable, and in whatever language expressed, such person, his aiders and abettors, shall be an offender within the mean-

ing of this act, and punishable as if the money had been payable in this province.

General Clause.—§ 19. When by any law in force, any person falsely forging any matter whatsoever, or knowingly uttering the same, or demanding or causing any thing to be done by virtue of any forged matter; or falsely personating another, or demanding or receiving any money by virtue of any probate or letters of administration, knowing the will to be forged, or such probate, &c., obtained by false oath, would be guilty of felony, and liable to any other punishment than is provided by this act: any person convicted of such a felony, his aiders and abettors, (if no other punishment be provided under this act,) shall be imprisoned in the penitentiary for not more than ten nor less than two years: or imprisoned in any common gaol for less than two years. This act not to alter any law respecting coin.

Counterfeiting Marks, Labels, &c.—§ 20. With respect to any goods, wares or merchandize, is made felony, punishable by imprisonment in the common gaol for a term less than two years.

Vending Goods.—§ 21. With forged marks, to be a misdemeanor, punishable by imprisonment in the common gaol not exceeding six months, or fine not exceeding \$100, or by both, in the discretion of the court.

Venue.—§ 22. Offenders may be tried in the county where apprehended or in custody.

Accessories.—§ 23. Principals in the second degree, and accessories before the fact, shall be punished in the same manner as principals in the first degree; and accessories after the fact imprisoned in the common gaol for less than two years.

Indictment.—§ 24. Fac simile of any matter not required to be inserted; but it shall be sufficient to describe the same as in an indictment for stealing.

Possession.—§ 25. Either actual possession of, or *knowingly* having such matter in any dwelling-house or other building, lodging or apartment, field or other place, open or inclosed, whether occupied by the offender or not; and whether such matter be for his own use or for the use of another, shall be deemed actual possession.

Witnesses.—§ 26. Parties interested may be competent witnesses.

By U. C. Stat. 22 V. c. 101.

Seal, Stamp, Signature, &c.—§ 1. Forging any seal, stamp, or signature, or any document mentioned in the act

respecting witnesses and evidence, (a) or tendering the same in evidence is made felony and the offender liable to imprisonment in the penitentiary for any term not exceeding ten years, or in any common gaol with hard labour for any term not exceeding one year, nor less than two months.

§ 3. Forging the seal or process of any division court, or serving or enforcing such forged process, or delivering to any person any paper falsely purporting to be a summons or process of such court, knowing the same to be false; or acting or professing to act under any false colour or pretence of process, is felony.

§ 4. Forging the signature to any affidavit under the Common Law Procedure Act, or tendering the same in evidence knowing the same to be forged, is felony, and the offender liable to imprisonment in the penitentiary for any term not more than ten years nor less than four.

§ 5. Forging any debenture issued under any act providing for the accommodation of the superior courts, or any stamp, endorsement or writing thereon, is felony.

§ 6. Forging or altering or uttering any certificate or copy under the act respecting the reservation of points of law in criminal cases tried at any assizes, sessions, or recorder's court, with intent to procure any person to be discharged from custody, is felony, and the offender liable to imprisonment in the penitentiary for not more than seven nor less than three years.

§ 7. Offenders may be tried in the county where apprehended. § 8. Accessories before or after the fact may also be tried where the principal offender is tried.

FRAUDULENT ACCOUNTS.

Under C. Stat. V. c. 92.

Fraudulent Accounts.—§ 57. If any person being a director, public officer, or manager of any body corporate or public company, does as such receive or possess himself of any of the money or other property of such body corporate or public company otherwise than in payment of a just debt or demand, and does with intent to defraud omit to make, or to cause or direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company, he shall be guilty of a misdemeanor.

Destroying Books, &c.—§ 58. If any director, &c., does with intent to destroy, alter, mutilate, or falsify any of the

(a) U. C. Stat. 22 V. c. 32.

Fugitive Felons.

books, papers, writings, or securities belonging to the body corporate or public company of which he is a director or manager, public officer or member, or makes or concurs in the making of any false entry or any material omission in any book of account or other document, he shall be guilty of a misdemeanor.

Publishing Fraudulent Statements.—§59. If any director, &c., makes, circulates, or publishes, or concurs in making, circulating, or publishing any written statement or account which he knows to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any money or property to such body corporate or public company, or to enter into any security for the benefit thereof, he shall be guilty of a misdemeanor.

See also title "*Embezzlement.*"

FREE GRANTS.

By C. Stat. 22 V. c. 22, § 10, free grants not exceeding 100 acres may be made to actual settlers on the line of roads in new settlements. § 11. Or for markets, and other public purposes, to the extent of *ten* acres.

FREE TRADE.

See "*Reciprocity.*"

FRUIT TREES.

See *post* titles "*Gardens,*" "*Orchards,*" "*Trees.*"

FUGITIVE FELONS.

From other Provinces.

By U. C. Stat. 22 V. c. 95, if any person, against whom a warrant has been issued by the Chief Justice, or any other magistrate in any of her Majesty's provinces in North America, for any felony or other crime of a high nature, escapes into or is found in any part of Upper Canada, any justice of the peace, where such person resides or is supposed to be, may (upon due proof of the hand-writing of the magistrate issuing the warrant) endorse the same, which warrant so endorsed shall be a sufficient authority for the execution thereof, and for apprehending the party and conveying him into the province from which such warrant was originally issued.

§ 2. Before any warrant is so endorsed the person having such warrant shall enter into recognizance with sufficient sureties, in not less than \$200, to indemnify the province against any expense arising from the apprehension of, or bringing such offender to trial, and the magistrate to whom such application is made may take such recognizance.

From Foreign Countries.

The U. C. Stat. 22 V. c. 96, respecting the apprehension of fugitive offenders from foreign countries, and delivering them up to justice, has been repealed by the 23 V. c. 41, and the only statute now remaining on the subject is the C. Stat. 22 V. c. 89, as amended by the 24 V. c. 6. the provisions of which are as follows :

Fugitive Felons.

The C. Stat. 22 V. c. 89, is entitled "An Act respecting the treaty between her Majesty and the United States of America for the apprehension and surrender of certain offenders." The act recites the treaty signed at Washington on the 9th day of August, 1842, and ratifications exchanged at London, on the 30th of October in the same year, and then enacts, § 1, (as amended by a subsequent statute, the 24 V. c. 6,) upon complaint made under oath or affirmation, (when affirmation is allowed,) charging any person found within the limits of this province with having committed within the jurisdiction of the United States of America, any of the crimes enumerated or provided for by the said treaty, (viz., the crime of *murder*, or assault to commit murder, *piracy*, *arson*, *robbery*, *forgery*, or the *utterance* of forged paper,) it shall be lawful for any judge of the superior courts in this province, or any judge of a county court in Upper Canada, or any recorder of a city in this province, or any police magistrate, or stipendiary magistrate in this province, or any inspector and superintendent of police empowered to act as a justice of the peace in Lower Canada, to issue his warrant for the apprehension of the person so charged that he may be brought before such judge or other officer, and upon being brought before him, under the said warrant, it shall be lawful for such judge or other officer to examine upon oath any person or persons touching the truth of such charge; and upon such evidence as, according to the laws of this province, would justify the apprehension and committal for trial of the person so accused, if the crime of which he shall be so accused had been committed herein, it

shall be lawful for such judge or other officer to issue his warrant for the commitment of the person so charged to the proper gaol, there to remain until surrendered according to the stipulation of the said treaty, or until discharged according to law; and the said judge or other officer shall thereupon forthwith transmit or deliver to the Governor all the testimony taken before him, that a warrant may issue upon the requisition of the United States for the surrender of such person pursuant to the said treaty.

§ 2. (*As amended by same statute.*) 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 the original warrant may have been granted in the United States, certified under the hand of the person or persons issuing such warrant, 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. (*As amended by same statute.*) It shall be lawful for the Governor, upon a requisition made as aforesaid by the United States, by warrant under his hand and seal, to order the person so committed to be delivered to the person or persons authorised to receive such person in the name and on the behalf of the United States, to be tried for the crime of which such person stands accused; and such person shall be delivered up accordingly; and the person or persons authorised as aforesaid may hold such person in custody, and take him to the territories of the said United States pursuant to the said treaty; and if the person so accused *escapes* out of any custody to which he stands committed, or to which he has been delivered as aforesaid, such person may be retaken in the same manner as any person accused of any crime against the laws of this province, may be retaken upon an escape.

§ 4. Provides that any person so arrested if not delivered up within two months after such commitment, any of the judges of the superior courts having power to grant a writ of *habeas corpus* upon application made and proof given of notice to the provincial secretary, may order such person to be discharged out of custody, unless sufficient cause be shewn to the contrary.

§ 5. Act to continue in force during the treaty.

GAME.

The U. C. Stat. 22 V. c. 61, is repealed by the 23 V. c.

55, which enacts: § 2. No deer or fawn, elk, moose or cariboo, shall be hunted, taken or killed between 1st January and 1st September. § 3. Nor wild turkey, grouse, partridge or pheasant between 1st February and 1st October. § 5. Nor woodcock between 1st March and 15th July. § 6. Wild swan, goose, duck, widgeon or teal, between 1st April and 1st August. § 7. No wild turkey, grouse, partridge or pheasant, quail or woodcock, shall be trapped or taken by nets, snares, or other means than shooting at any time whatever. § 8. Nor deer trapped or snared at any time. § 9. No person shall have in his possession any of the animals or their hides, or any of the birds aforesaid, within the periods prohibited, without lawful excuse, nor shall any sale of game take place within *fourteen* days from the termination of the several periods hereinbefore respectively fixed, nor possession lawful save within such fourteen days. § 10. No eggs of such birds shall be wantonly destroyed. § 11. Offences punishable on summary conviction by a fine not exceeding \$50 nor less than \$5, in the discretion of the justice, with costs, or in default of payment by imprisonment in a common gaol not exceeding three months, without fine: one-half to go to the municipality, and the other to the informer. § 12. Confiscation of game to follow conviction, to be given to some charitable institution. § 13. Any person may destroy traps, nets, or snares. § 14. No beaver, muskrat, mink, sable, otter or fisher shall be trapped, hunted, taken or killed, nor any trap or snare laid for the same, between 1st May and 1st November, under the like penalties as above. § 15. This act to apply to Upper Canada only.

GAMING.

By 16 Car. II. c. 7, § 2, if any person by any *fraud*, unlawful device, or ill practice, in playing at or with cards, dice tables, tennis, bowls, skittles, shovel-boards, or in or by cock-fighting, horse-races, dog-matches, foot-races, or *other* pastimes, or by betting thereon, shall win any money, &c., the offender shall forfeit treble the value, with treble costs, one moiety to the king and the other to the party grieved, if he shall sue within six months; and by § 3, if any person shall play at any of the said games, or any other pastime or game whatsoever (other than with and for ready money) or shall bet on such as play, and lose above £100 at any one time, upon ticket or credit, or otherwise, the securities shall be void, and the winner shall forfeit treble the value, with

treble costs, if sued within a year; one moiety to the king and the other to the informer.

By 9 Anne c. 14, § 2, any person who shall at any time or sitting, by playing at cards, &c., or by betting, lose and pay £10, the loser may, within three months, recover the same by action; and if he shall not sue within three months, then any other person may recover the same, with treble value and costs; half to the prosecutor and half to the poor. § 5. And if any person shall *fraudulently* win at cards, &c., or acquire by betting, &c., any sum of money or other valuable thing, above £10, and being convicted on indictment and information, he shall forfeit five times the value, to be recovered by the person who shall sue. § 6. Any two justices on just cause of suspicion, may cause any person to be apprehended who has no visible means of living except by gaming, and may require security for his good behaviour for twelve months, or commit him until such security be given. § 8. And any person assaulting or challenging another, for money won by gaming or betting, shall forfeit to the king all his goods and personal estate, and be imprisoned two years.

Upon these statutes it has been held, that a wager above £10 on a horse race is illegal—2 *Str.* 1159; 2 *Wils.* 309; and a wager to any amount, on a horse race, where the race is for less than £50, cannot be recovered; for all such races are illegal by the 13 G. III. c. 19, § 3; and if two persons play at cards from Monday evening to Tuesday evening, without any interruption, except for an hour or two at dinner, and one of them win a balance of 17 guineas, this is won at one sitting, within the 9 Anne c. 14.—2 *Bl. Rep.* 1226. A foot race is also an illegal game—2 *Wils.* 36; and so is cricket, so far as to invalidate a bet of more than £10 upon the players.—1 *Wils.* 220.

The U. C. Municipal Stat. 22 V. c. 54, § 282, authorises the council of every county, city and town to make by-laws. 7. For preventing, or regulating and licensing exhibitions, bowling alleys and other places of amusement. 8. For suppressing gambling houses, and for seizing and destroying faro banks, *rouge et noir*, roulette tables, and other devices for gambling found therein.

See also title "*Lotteries.*"

GAOL.—GAOLER.

The gaol is the king's, but the keeping thereof is incident to the office of sheriff.—2 *Burn's J.* 430,

By the 3 Hen. VII. c. 3, those that have the custody of gaols must certify the names of all prisoners to the justices of gaol delivery, in order to their trial or discharge, on pain of £5.

By stat. 31 Ch. II. c. 2, if any person shall be committed to any prison, for any criminal or supposed criminal offence, he shall not be removed thence, unless it be by *habeas corpus*, or some other legal writ; or where he is removed from one prison to another within the same county, in order to his trial or discharge; or in case of sudden fire, or infection, or other necessity, on pain that the person signing any warrant for such removal, and the person executing the same, shall forfeit for the first offence £100, and for the second £200 to the party grieved. § 9. But on emergent occasions, as in the case of infectious diseases, the sheriff or gaoler, with the advice and consent of three or more justices, may, if they shall find it needful, provide other safe places (with the owner's consent) for the removal of sick or other persons out of the usual gaols.—19 C. II. c. 4, § 2. The gaoler shall not put, keep or lodge prisoners for debt and felons together in one room or chamber, on pain of forfeiting his office, and treble damages to the party grieved.—22 & 23 Ch. II. c. 20, § 13. And if the gaoler keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler by the common law; and this is the cause, that if a prisoner die in gaol the coroner ought to hold an inquest.—3 *Inst.* 91.

By U. C. Stat. 22 V. c. 127, § 1, the sheriff shall have the care of the county gaol, gaol offices and yard and gaoler's apartments, and the appointment of the keepers thereof. (a) § 3. In any city not being a separate county for all purposes, but having a gaol or court house separate from the county gaol or court house, the care of such city gaol or court house shall be regulated by the by-laws of the city council. § 5. The justices in quarter sessions shall fix a yearly salary to be paid to the gaoler in lieu of all fees.

§ 11. Until houses of correction shall be erected, the common gaol in each county shall be a house of correction, and every idle and disorderly person or rogue and vagabond, and other persons by law subject to be committed to a house of correction shall be committed to such common gaol.

Spirituuous Liquors.—By U. C. Stat. 22 V. c. 127, § 4. No license shall be granted for retailing any within any

(a) See also U. C. Municipal Act 22 V. c. 54, § 420.

gaol or prison; and if any gaoler, keeper or officer of any gaol or prison, sells, lends, uses or gives away, or knowingly permits or suffers any spirituous liquors or strong waters to be sold, used, lent or given away in such gaol or prison, or to be brought into the same, other than such spirituous liquors or strong waters as may be prescribed by or given by the prescription and direction of a regular physician, surgeon, or apothecary, such gaoler, keeper or other officer shall, for every such offence, forfeit the sum of \$80, one moiety thereof to her Majesty for the public use of the province, and the other moiety with full costs of suit to the person who sues for the same in any of her Majesty's courts of record in Upper Canada; and in case any gaoler or other officer having been so convicted offends again in like manner and be thereof a second time convicted, such second offence shall be a forfeiture of his office.

§ 6. If any person gives, conveys or supplies to any prisoner confined in any common gaol or house of correction in Upper Canada, any rum, brandy, whiskey or other spirituous liquors, contrary to the rules and regulations established by law, such offender, being duly convicted thereof before two justices, shall be fined a sum not exceeding \$20. § 7. Any person being charged on the oath of one credible witness before any one justice, with any offence against this act, such justice may summon such person to appear at a time and place to be named in such summons, and if he do not appear, then (upon proof of the due service of the summons upon such person personally) any *two* justices of the county may hear and determine the case, *ex parte*, or issue their warrant for apprehending such person, or any one justice may, if he thinks fit, without any previous summons, issue such warrant. § 8. Such justices may summon witnesses in support of the prosecution, or for the defendant; such witnesses neglecting to attend, without some reasonable excuse, may be fined by the justices assembled to try the offence in any sum not exceeding \$20. § 9. In default of payment of any fine imposed under this act, together with the costs, within the time specified at the time of the conviction by the justices, such justices may issue their warrant to any constable to levy the same within a certain time, expressed in the warrant; and in default of sufficient distress, may commit the offender to the common gaol or house of correction, for any time not exceeding one month, unless the fine and costs be sooner paid. § 10. No

conviction under this act shall be quashed for want of form, and no warrant of committal held void by reason of any defect therein; provided it be alleged that the party has been convicted, and there is a good and valid conviction to sustain the same.

Gaol Limits.—By U. C. Stat. 22 V. c. 24, § 24, the limits of each county for judicial purposes shall be the limits of the gaols of such counties.

For all purposes of arrest the limits constitute the gaol, and the debtor while confined within the limits is in custody.

—*Harrison's C. L. Procedure Act*, p. 501, note 1.

Rules and Regulations.—By C. Stat 22 V. c. 110, § 1.—The Governor is authorised to appoint five fit persons to be inspectors of all common gaols and prisons, who are empowered by § 22 to frame a set of rules and regulations for the government thereof extending to, 1. The maintenance of the prisoners in regard to diet, clothing, and other necessaries. 2. Their employment. 3. Medical attendance. 4. Religious instruction. 5. The conduct of prisoners and the restraint and punishment to which they may be subjected. 6. Also the treatment and custody of the prisoners generally, the whole internal economy and management of the gaol, and all such matters connected therewith as may be thought by them expedient. Rules and regulations to be submitted to the Governor for his approval and confirmation; but nothing herein contained shall prevent the county councils in Upper Canada from making such special regulations as the peculiar circumstances of their respective gaols and localities may in their opinion require, the same not being inconsistent with this act, or the general rules and regulations made by the inspectors and approved by the Governor.

For the treatment of prisoners after sentence, see title "*Execution.*"

GARDENS, ORCHARDS.

By C. Stat. 22 V. c. 93, § 26. If any person unlawfully and maliciously destroys, or damages, with intent to destroy, any plant, root, fruit, or vegetable production growing in any garden, orchard, nursery ground, hot house, green house, or conservatory, 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 \$8, as to the justice shall seem meet.

By C. Stat. 22 V. c. 92, § 39. If any person steals, destroys, or damages with intent to steal any tree, sapling,

shrub, bush, plant, root, fruit, or vegetable production growing in any garden, orchard, nursery ground, hot house, green house, or conservatory, 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 \$20 as to the justice may seem meet: and if any person so convicted afterwards commits any of said offences, such offender shall be guilty of felony, and shall be punished as in the case of simple larceny.

See also *post* title, "*Malicious Injury.*"

GAS AND WATER WORKS.

By C. Stat. 22 V. c. 65, § 1. Any five or more persons may form a company for the purpose of supplying any city, town, or incorporated village with gas or water upon the conditions mentioned in the act. § 50. Municipalities where the works are erected may subscribe for stock. § 53. The company may break up streets for laying the mains and pipes. § 55. And may carry pipes over and through private property in certain cases and on certain terms. § 58. The works in no wise to endanger public health or safety. § 60. If any person wilfully or maliciously damages or destroys any main pipe, engine, waterhouse, pipe, plug or other works or apparatus, or any materials, or, 2, does any injury or damage for the purpose of obstructing or hindering the construction or repairing of any such works; or, 3, bathes, washes or cleans any cloth, wool, leather, skin, animals or any nauseous or offensive thing, or casts, throws or puts any filth, dirt or nauseous thing, or suffers the water of any sink, sewer or drain to run into, or cause any other annoyance to the water within any reservoir, cistern, pool, ponds, sources or fountains supplying water; or, 4, increases the supply of gas or water by increasing the number or size of the holes in gas burners, or otherwise wrongfully, negligently or wastefully burning the same, or by wrongfully or improperly wasting the water or gas, such person on conviction thereof before a justice of the peace, or any other person authorised to act in that capacity in the locality, shall pay for the use of the company a penalty not exceeding \$20, together with the costs of prosecution, or be confined in the common gaol for a space not exceeding *three* months, as to such justice shall seem meet. § 63. If any person wilfully or maliciously damages or suffers to be damaged any meter, lamp, lustre, service pipe, or fittings belonging to the

company, or impairs or alters the same so that the meter or meters indicate less gas than actually passes, such person shall incur to the use of the company for every such offence a penalty not less than \$4, nor exceeding \$20, and shall pay all charges of repairs, and double the value of the surplus gas so consumed, to be recovered with costs as hereinafter provided. § 64. If any person wilfully extinguishes any of the public lamps, or lights, or wilfully removes, destroys, damages or fraudulently alters, or in any way injures any pipe, pedestal, post, plug, lamp, or other apparatus belonging to such company he shall forfeit and pay to the use of the company a penalty not less than \$4, nor more than \$20, and shall be liable to make good all damages. § 65. The company authorised to cut off gas or water from persons neglecting to pay their rent. § 66. And may enter the premises for such purpose, giving 48 hours' notice, and if any person refuses to permit the servants and officers of the company to enter and perform the acts aforesaid, every person so refusing or obstructing shall incur a penalty to the company for every offence of \$40, and a further penalty of \$4 a day, for each continued refusal. § 76. All fines and penalties imposed by this act may be recovered with costs in the manner hereinbefore directed, or before a justice or justices of the peace, or person authorised to act in that capacity where the offence is committed, on the oath of any one credible witness. § 78. And when damages as well as a penalty may be given, such damages and penalty may be sued for separately, and levied by distress from the goods of the defendant, and in default of distress the defendant to be committed to the common gaol for such period not exceeding *two* months, as the justice or the court may direct.

§ 84. Company restrained from taking, using or injuring for the purposes of the company any house, building, garden, orchard, yard, park, paddock, plantation, walk or avenue, nursery ground, or to convey from the premises any water appropriated for domestic uses, without the owner's consent.

By the Municipal Act U. C. 22 V. c. 54, § 298, the municipalities of cities and towns are authorised to make by-laws for constructing gas and water-works.

GENERAL QUARTER SESSIONS.

The sessions of the peace is a court of record, holden before two or more justices, for the execution of their general

authority, given them by the commission of the peace, as well as by certain statutes.—*Lamb.* 349; *Dalt.* 456. There must also be two justices (at the least) present in order to adjourn the sessions legally; and two justices, also, to hold an adjournment.—*Rex. v. Westington*, 2 *Bolt.* 739; 1 *Blk. Com.* 354, n. When the session is adjourned, the style of the court ought to run thus: “at such a session, held by adjournment:” but the original meeting of the sessions should be first set forth; and then it should be stated that the sessions were “continued from thence to such further time by adjournment.”—2 *Stra.* 832, 865; *R. v. Walker*, *Sess. Cas.* 21.

Any two justices may direct their precept under their *teste* to the sheriff for the summons of the sessions—2 *Haw.* 41; and such precept should bear date fifteen days before the return, and ought forthwith to be delivered to the sheriff, to the end he may have sufficient time to proclaim the sessions, to summon and return the juries, and to warn all officers and others that have business there to attend.—*Nels. Introduct.* 35; 4 *Burn's Justice*, 6 *Ed.* 198.

Those who are bound to appear at the sessions besides the justices of the peace, are—1. The *Custos Rotulorum*, or his sufficient deputy, who is the clerk of the peace, for the *Custos Rotulorum* has the custody of the rolls or records of the county. 2. The sheriff, either by himself or his deputy; it being his duty to return jurors, receive fines, and execute process. 3. All coroners, whose duty is to summon jurors, and execute process upon the default or neglect of the sheriff, in case of his absence, or having an interest in the matter before the court. 4. The constables of the several townships within the county, and all other officers to whom any warrant has been directed, in order to make a return thereof. 5. The keeper of the gaol, who is bound to bring up the prisoners and to receive such as may be committed. 6. All persons returned as jurors by the sheriff, by virtue of the above mentioned precept. 7. All persons bound by recognizance to appear and answer, or to prosecute and give evidence.—*Dalt. c.* 185; 4 *Burn*, 6 *Ed.* 199.

By 22 G. II. c. 46, § 12, no person shall act as *solicitor*, *attorney*, or *agent* at the sessions, unless he is admitted and enrolled according to law, under the penalty of £50. And by § 14, *clerks of the peace*, *under-sheriffs*, and their respective *deputies*, are prohibited under the like penalty from practising at the sessions.

Of the Jurisdiction of the Sessions.

The jurisdiction of the court is limited to the trial of simple cases of larceny. The commission of the peace provides that if any case of difficulty arises they shall not proceed to judgment but in the presence of one of the justices of the Court of Queen's Bench, or one of the judges of the assize. The trial of capital felonies is expressly prohibited by Stat. 24 V. c. 14, § 1, and the court may even leave cases of simple larceny for trial at the assizes, if from the importance of the case, or for any other cause it appears to them proper to do so. *U. C. Stat. 22 V. c. 17, § 8.* The sessions have no commission of *gaol delivery*, neither have they any jurisdiction over *forgery* or *perjury* at common law; *R. v. Gibbs*, 1 *East*. 473; *R. v. Yarrington*, 1 *Salk.* 406; *R. v. Bainton*, 2 *Str.* 1088; 2 *Haw. c. 8* § 38: nor over any *new created* offence, as usury; unless express jurisdiction is given to them by the statute creating the offence.—*R. v. Smith*, 2 *Ld. R.* 1144; 1 *Bl. Rep.* 369; 2 *Salk.* 680. The general words in the commission of the peace, including *all trespasses*, comprehend not only direct breaches of the peace, but also such offences as have a tendency thereto; and on this ground, *conspiracies* and *libels*, or any *illegal solicitations*, *attempts*, or *endeavours* to commit any crimes, have been holden to be cognizable by the sessions.—*R. v. Higgins*, 2 *East. R.* 23; *R. v. Summers*, 3 *Salk.* 194; *R. v. Rispal*, 3 *Burr.* 1320; 1 *Bl.* 369. The sessions have, like every other court, the power to fine for a contempt committed in the face of the court.—*R. v. Davison*, 4 *B. & A.* 334. But they cannot award an attachment for a contempt in disobeying any of their orders, the ordinary and proper method being by *indictment*.—*R. v. Bartlett*, 2 *Sess. Cas.* 176; *R. v. Robinson*, 2 *Burr.* 800; *R. v. Kingdon*, 8 *East*, 41; 4 *Burn's J.* 204, *Ed.* 16. The sessions have also power to fine jurors for non-attendance at the court, upon proof of their having been duly summoned—*U. C. Stat. 22 V. c. 31, § 167*, (*Juror's Act*,) also to commit to gaol any person guilty of contemptuous or disrespectful conduct in the presence of the court. But the sessions have no power to amerce any justice for his non-attendance at the sessions, as the judges of assize may for the absence of any such justice at the gaol delivery.—2 *Haw.* 41, 42. Nor are justices punishable for what they do in sessions—*Stam.* 173—unless there be some manifest act of oppression, or wilful abuse of power.—2 *Barnardist*, 249, 250.

Orders passed in sessions are not to be rescinded unless by the same number of justices.—U. C. Stat. 22 V. c. 17, § 6.

Justices in sessions have also the appointment of constables, and by 24 V. c. 48, a high constable.

By the Municipal Act U. C. Stat. 22 V. c. 54, § 361. Every city and town separated shall be a county of itself for municipal purposes, and for such judicial purposes as are herein specially provided for in the case of cities.

§ 365. But the general and adjourned quarter sessions of the peace for the county may be held, and the jurisdiction thereof exercised within the city.

Fees.

By U. C. Stat. 22 V. c. 110, § 2, the table of fees for services rendered in the administration of justice, and for other county purposes by sheriffs, coroners, clerks of the peace, (a) constables, and criers heretofore framed by the justices of the peace of their respective counties in quarter sessions assembled and confirmed by the judges of the court of Queen's Bench, at Toronto, is to continue until otherwise appointed; and the chief justices and other judges of the superior courts of common law at Toronto may from time to time as occasion requires by such rule or rules in term time, appoint the fees to be taken and received by such sheriffs, coroners, clerks of the peace, constables, and criers for such services as aforesaid.

§ 8. Any officer who wilfully and knowingly demands or receives any other or greater fees, unless allowed by some other act of parliament, shall for every such offence forfeit and pay the sum of \$40 to any person suing therefor in any court of competent jurisdiction. § 9. All such suits to be brought within six months after the offence committed.

Costs.

By the same statute, § 4, in case any person be convicted before any court of quarter sessions of any assault or battery, or other misdemeanor, such person shall pay such costs as may be allowed and taxed by the court, but in case any defendant be acquitted the costs of the prosecution, when not otherwise provided for, shall be paid out of the county funds. § 5. In cases of *felony* the costs shall be paid out of the county

(a) And in case of any vacancy occurring in the office of the clerk of the peace, not being also county attorney, the county Crown attorney shall be *ex officio* clerk of the peace, 27, 28 V. c. 33

funds whether the party be acquitted or convicted when not otherwise provided by law.

Periods for holding the Session

Are the second Tuesday in March, June, September, and December, U. C. Stat. 22 V. c. 17, § 3.

Chairman of Quarter Sessions.

The judge of the county court shall preside as chairman at the general quarter sessions, and in case of his absence the junior or deputy judge, and in case of their absence from sickness or other unavoidable causes, the justices present shall elect another chairman *pro tem.* U. C. Stat. 22 V. c. 17, § 5.

The Proceedings at a General Quarter Sessions.

The court having assembled, the session is then usually proclaimed by a bailiff, in the following terms :

“Oyez! Oyez! Oyez! the Queen’s justices do strictly charge all manner of persons to keep silence while the Queen’s commission (a) of the peace for this county is openly read, upon pain of imprisonment.”

The clerk of the peace then calls upon the sheriff thus : “Sheriff of the county, return the precept to you delivered;” which the sheriff does accordingly.

Then the grand jury are called in order, every one by his name. The foreman, by himself, lays his hand on the book, and the clerk of the peace administers to him the following oath :

“SIR,—You, as foreman of this grand inquest, for the body of this county, shall diligently enquire and true presentment make of all such matters and things as shall be given you in charge. The Queen’s counsel, your fellows’, and your own, you shall keep secret ; and you shall present no one for envy, hatred or malice ; neither shall you leave any one unrepresented for fear, favour or affection, or hope of reward ; but you shall present all things truly, as they come to your knowledge according to the best of your understanding. So help you God.”

The rest of the grand jury by “three” at a time, in order, are sworn in the following manner :

“The same oath which your foreman hath taken on his part, you and every of you shall well and truly observe and keep on your part. So help you God.”

(a) The commission of the peace need not now be read.—U. C. Stat. 22 V. c. 17, § 7.

The clerk of the peace then calls over their names thus :

“ Gentlemen of the grand jury, answer to your names, and say *sworn* if you are sworn.”

The chairman then delivers his charge to the grand jury.

The bailiff is then sworn to attend the grand jury, thus :

“ You shall swear that you will diligently attend the grand inquest during the present sessions, and carefully deliver to them all such bills of indictment or other things as shall be sent to them by the court, without alteration. So help you God.”

By U. C. Stat. 22 V. c. 80, § 15, the claims of persons claiming under the “ Heir and Devisee Act,” shall be proclaimed by the crier, at every session, immediately after the charge to the grand jury.

The prosecutors and bail are then called in the following manner (if need be) by the crier :

“ A. B. come forth and prosecute, and give evidence against C. D., or you will forfeit your recognizance.”

Calling Persons out upon Bail.

“ A. B. of the township of _____, come forth and save you and your bail, or you will forfeit your recognizance.”

Calling Bail to bring forth Principals.

“ C. D. and E. F. (*with their additions*) bring forth the body of A. B. whom you have undertaken to appear here this day, or you will forfeit your recognizance.”

Oath of Witness on Indictment before Grand Jury. (a)

“ The evidence you shall give to the grand inquest upon this bill of indictment against A. B. for larceny shall be the truth, the whole truth, and nothing but the truth. So help you God.”

If the witness be a Quaker, his evidence is admissible under the U. C. Stat. 22 V. c. 32, § 1, upon making the following affirmation, in lieu of oath :

“ I, A. B. do solemnly, sincerely and truly declare, that I am one of the society called Quakers, [Mennonists, Tunkers, Unitas Fratrum, or Moravians.” *as the case may be.*]

Upon the return of the grand jury into court with any bills of indictment, the clerk of the peace calls them severally by their names, and says, “ Gentlemen, have you agreed upon any bills ?”

Upon the foreman presenting the same, the clerk of the peace addresses the grand jury as follows :

(a) By the U. C. Stat. 22 V. c. 109, § 2, the foreman of the grand jury may swear the witnesses themselves.

“ You are content the court shall amend matter of form altering no matter of substance without your privity, in those bills you have found.”

The grand jury signify their assent and return to their business again—viz., to examine other bills.

Then the court proceeds to arraign such prisoners as are indicted, in the manner following :

The clerk of the peace says, “ A. B., hold up your hand : you stand indicted by the name of A. B., late of _____, for that you,” so reads the indictment through, and then asks the prisoner “ Are you guilty or not guilty ?” If he says “ not guilty,” then the clerk of the peace enquires if he be ready for his trial.

The clerk of the peace then proceeds to call the petit jury, thus :

“ You good men that are impannelled to try the issue joined between our sovereign lady the Queen and the prisoner at the bar, answer to your names, upon pain and peril that shall fall thereon.”

When the jurors have appeared, then the clerk of the peace calls to the bar the prisoners that are to be tried by the jury, and says thus :

“ These good men that you shall now hear called are those that are to pass between our sovereign lady the Queen and you, if therefore you [or any of you] will challenge them, or any of them, you must challenge them as they come to the book to be sworn, before they are sworn, and you shall be heard.”

Then the clerk of the peace calls the jury to be sworn, in cases of felony, one by one. thus :

“ You shall well and truly try and true deliverance make between our sovereign lady the Queen and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to the evidence. So help you God.”

But in cases of misdemeanor, the jury may be sworn three at one time, thus :

“ You shall well and truly try the issue joined between our sovereign lady the Queen and the defendant, and a true verdict give according to the evidence. So help you God.”

The clerk of the peace then calls over the jury, and says, “ Gentlemen, answer to your names and say ‘ sworn,’ if you are sworn.”

The prisoner being at the bar, the clerk of the peace then proceeds to read the indictment, thus :

“ A. B. stands indicted by the name of A. B.,” &c, reading the whole of the indictment as he did upon the arraignment, then

says, "upon this indictment the defendant (*or the prisoner at the bar, as the case may be*) hath been arraigned, and upon his arraignment hath pleaded not guilty, your duty therefore is to enquire whether he be guilty or not guilty, and to hearken to the evidence."

And then the court proceeds to examine the witnesses upon oath, as well for the Queen as for the prisoner.

Oath of Witnesses.

"The evidence you shall give to the court and jury sworn, between our sovereign lady the Queen and the defendant, (*or the prisoner at the bar, as the case may be,*) shall be the truth, the whole truth, and nothing but the truth. So help you God."

Upon the evidence being closed for the prosecution, the prisoner's counsel, in cases of felony as well as misdemeanor, may address the jury and call witnesses. If the prisoner have no counsel, he should be asked by the chairman if he have any thing to say in his defence, or any questions to ask. Upon the case being closed, the chairman sums up the evidence to the jury, commenting upon it as he proceeds, shewing the consistency or inconsistency of any part of it, and the bearing it has upon the guilt or innocence of the prisoner. The chairman then desires the jury to retire and consider their verdict. Upon the jury retiring to consider their verdict, the following oath is administered to the bailiff:

"You swear you will keep every person of this jury together in some private and convenient place, without meat, drink, lodging or fire (candle excepted ;) you shall not suffer any person to speak to them or any of them, neither shall you speak to them yourself, unless it be to ask them whether they are agreed upon their verdict, without leave of the court. So help you God."

When the jury return, their names are called over by the clerk of the peace, who says, "Gentlemen, are you agreed on your verdict?—how say you, is the defendant (*or prisoner, as the case may be*) guilty or not guilty?"

The verdict is then endorsed by the clerk of the peace, on the indictment, and signed by the chairman, which being done, the former addressing the jury, says, "Gentlemen, hearken to the verdict as the court records it. You find the defendant (*or prisoner*) guilty," (*or not guilty, according to the verdict.*)

Should the defendant, however, upon being arraigned, be permitted to traverse to the next sessions, he may be admitted to bail, as follows:

"A. B. (principal) you acknowledge to owe to our sovereign

lady the Queen the sum of (£ , whatever sum the court may approve,) and you C. D. and E. F. (sureties) severally acknowledged to owe to our said lady the Queen the respective sums of (£) and (£), to be respectively levied of your goods and chattels, lands and tenements, to her Majesty's use, by way of recognizance, upon condition that you (A. B.) shall appear at the next general quarter sessions of the peace, to be holden for this county, to try your traverse upon this indictment, to which you have now pleaded not guilty, and not depart the court without leave of the court. How say you, A. B., C. D., and E. F., are you content?"

If a juror be taken ill during a trial, another juror may, (with the consent of the prisoner,) be sworn and added to the other eleven, and the evidence re-delivered to the jury.—*Joyce's case cor.*; *Lord Keeper, Leach*, 621, n. But even without the consent of the prisoner, the court may, under, such circumstances, discharge the jury and charge a fresh jury with the prisoner. But the prisoner must be again allowed his challenge to each of the eleven former jurymen.—*R. v. Edwards*, 4 *Taunt.* 309.

Trial of a Traverse.

The proceedings upon a traverse are the same as in an original trial, except that the defendant is not arraigned nor called upon to plead, this having been already done at the former sessions.

The jury are to be sworn and indictment read as before directed.

Oath of a Jury on a Traverse.

"You shall well and truly try the issue of this traverse between our sovereign lady the Queen and the defendant, and a true verdict give according to the evidence. So help you God."

Oath of Witness on a Traverse.

"The evidence you shall give to the court and jury sworn, touching the issue of this traverse, shall be the truth, the whole truth, and nothing but the truth. So help you God."

In discharging the defendant's recognizance for default of the prosecutor appearing, (which ought not to be done till the close of the session), proclamation is made thus:

"Oyez! Oyez! Oyez! If any can say aught why the defendant (naming him) should any longer be bound, let them come forth and they shall be heard, otherwise the court does discharge him, paying his fees."

The court cannot commit for non-payment of fees: for if there is right, there is a remedy; and *indebitatus assumpsit*, will lie if the fee is certain, if uncertain, *quantum meruit*.—*L. Ray.* 703.

When there are no more bills to be laid before the grand jury, and they have finished all other business before them, it is usual for the court to inform them that there is no other business to come before them, and that they are therefore discharged.

The court having disposed of the business, then adjourn.

The clerk of the peace, during the sitting of the court, enters a minute of all proceedings, commencing with the day of the session, and before whom the same is held, inserting the names of the grand jurors and petit jurors, and every other minute particular attending the proceedings throughout.

Precept to Summon the Session. [BURN.]

County of) J. P. and K. P. esquires, justices of our sove-
to wit.) reign lady the Queen, assigned to keep the
peace in the county aforesaid, and also to hear and determine
divers felonies, trespasses and other misdemeanors committed
in the said county; to the sheriff of the county of , greet-
ing; On the part of our sovereign lady the Queen, we command
you, that you omit not by reason of any liberty within your
county, but that you cause to come before us and other of our
fellow justices assigned to keep the peace in the said county, and
also to hear and determine divers felonies, trespasses, and other
misdemeanors, in the said county committed, on the
day of , now next ensuing, at the hour of ten in the fore-
noon of the same day, at in the said county,
good and lawful men. of the body of your county, then and there
to enquire, present. do and perform all and singular such things,
which on the behalf of our sovereign lady the Queen shall be en-
joined on them; also, that you make known to all coroners,
keepers of gaols, and houses of correction, high constables, and
bailiffs of liberties within the county aforesaid, that they be then
and there to do and fulfil such things which by reason of their
offices shall be done: moreover, that you cause to be proclaimed
through the said county, in proper places, the aforesaid sessions of
the peace, to be holden at the day and place aforesaid; and do
you be then there to do and execute those things which belong
to your office; and have you then there, as well the names of
jurors. coroners. keepers of gaols and of houses of correction, high
constables and bailiffs aforesaid, as also this precept.

Given under our hands and seals, at in the county afore-
said, the day of in the year of the reign of , &c.

The Style of the Sessions. (BURN.)

County of _____, } The general quarter sessions of the peace,
 to wit. } holden at _____, in and for the said county,
 on the _____ day _____, in the _____ year of the reign of our sovereign
 lady Victoria, of Great Britain and Ireland, Queen, defender of
 the faith, and so forth, before J.P. and K.P. esquires, and others,
 justices of our said sovereign lady the Queen assigned to keep the
 peace in the said county, and also to hear and determine divers
 felonies, trespasses and other misdemeanors in the said county
 committed, and so forth.

Subpœna to give Evidence.

Victoria, by the grace of God of the United Kingdom of Great
 Britain and Ireland, Queen, defender of the faith; to A. B., C.
 D., &c, greeting; We command you, and every of you, that all
 business being laid aside, and all excuses ceasing, you do in your
 proper persons appear before our justices assigned to keep our
 peace in the county of _____, and also to hear and determine divers
 felonies, trespasses and other misdemeanors in our said county
 committed, at the general quarter sessions of the peace to be
 holden at _____, in and for the said county, on the _____ day
 of _____ now next ensuing, at the hour of _____ o'clock in the fore-
 noon of the same day, to testify the truth, and give evidence
 before the grand inquest as well as the court, touching a bill of
 indictment to be preferred against A. O. in a case of larceny,
 [trespass and assault, or any other cognizable offence,] and this
 you, and every of you, are in no wise to omit, under the penalty
 of _____ pounds for you and every of you. Witness, J. P., esquire,
 the _____ day of _____.

A Subpœna Ticket for a Witness.

Mr. A. W.—By virtue of a writ of subpœna to you and others
 directed and herewith shewn unto you, you are required person-
 ally to be and appear at the next general quarter sessions of the
 peace to be holden at _____, in and for the county of _____, to testify
 the truth, and give evidence before the grand inquest as well as
 the court, touching a bill of indictment to be preferred against A.
 O. in a case of larceny, [*trespass and assault, &c., as the case may
 be.*] and herein you are to fail not, upon pain of _____ pounds.
 Dated the _____ day of _____, in the year of our Lord

See also title "*Sessions.*"

GRAMMAR SCHOOLS.

U. C. Stat. 22 V. c. 63.

§ 1. One or more grammar schools to be in each county
 or union of counties. § 2. That situate at the county town
 to be the senior county grammar school. § 3. Other gram-

mar schools to remain where now held, subject to change by the board of trustees and approval of the Governor. § 4. Upper Canada grammar school fund, how constituted. § 5. Out of the annual income \$400 to be appropriated for the senior grammar schools, unless the average number of scholars are under ten, and then \$200. § 6. Residue to be apportioned to the several counties according to the ratio of population. § 10. Additional parliamentary grant of \$20,000. § 11. Inspectors to be appointed by the council of public instruction. § 12. Grammar schools to prepare pupils for the university and other colleges. § 13. Masters to obtain certificate of qualification from a committee of examiners. § 14. Heads of college to be members of the council of public instruction. § 15. Council to prescribe rules.

Municipal Councils.—§ 16. To raise money by assessment for sites or rental of grammar schools, teachers' salaries, &c. § 17. May establish additional grammar schools.

Apportionment of Funds.—§ 18. To be notified to county councils by chief superintendent on or before 1st July.

Trustees.—§ 20. Board of, in each county of not less than six nor more than eight fit persons. § 23. Two to be appointed annually on retirement of others. § 24. Board to be a corporate body. § 25. Prescribes their duties.

Special Grants of School Sites.—§ 28. Provision for.

GRAND JURY.

It has been laid down in general terms, by some of the greatest lawyers, that the grand jury ought only to hear the evidence for the King—that is to say, on the side of the prosecution.—2 *Hale*, 157. But others have received this position with some qualifications—(4 *Bl. Com.* 303,) as indeed it ought to be; for the inquest are sworn to present the truth, and nothing but the truth; and it may so happen that they may not be able to elicit truth from the witnesses on the part of the prosecution only; and they may actually be convinced of that circumstance. The true intention seems to be this, viz.: *prima facie* the grand jury have no concern with any testimony but that which is regularly offered to them with the bill of indictment, on the back of which the names of the witnesses are written; their duty being merely to enquire whether there be sufficient ground for putting the accused party on his trial before another jury of a different description. If nothing ambiguous or equivocal appear on this testimony, they certainly ought not to seek any further; but if their mind be not satisfied of the truth, so far as is neces-

sary for their preliminary enquiry, they are not prohibited from requiring other evidence in explanation of mere facts; but they can proceed no further; for that would be to *try*, although their duty is confined merely to the question "whether there be sufficient pretence for trial."—3 *Inst.* 25; *Q. S.* 96.

The grand jury are sworn to enquire *pro corpore comitatis*; and therefore, by common law, they cannot regularly indict or present any offence which does not arise within the county or precinct for which they are returned. But it seems by the common law, if a fact done in one county prove a nuisance to another, it may be indicted in either. Also by the common law, if one guilty of larceny in one county carry the goods stolen into another, he may be indicted in either.—*Haw. B.* 2, c. 25.

The grand jury being sworn, proceed, in a private room, to consider the bills brought before them. Although sworn to secrecy, they may, in cases of difficulty, allow the prosecutor, or his attorney, to assist them, by marshalling the evidence, and examining the witnesses. If any doubt occur on points of law, they should return into court and obtain the opinion of the court. A majority of twelve, at the least, is necessary to find the bill; if they be equally divided, or the majority be less than twelve, it is thrown out.

A grand jury must find a *true bill*, or *no bill*, for the whole, which is now usually done by endorsing on it the words "a true bill," or "no true bill," as their decision is; and if they take upon them to find it specially or conditionally, or to be true for one part only, and not for the rest, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew.

But this rule relates only to cases where the grand jury take upon themselves to find part of *the same count* to be true, and part false, and do not either affirm or deny the fact submitted to their enquiry. But where there are two distinct counts, viz., one for riot, and the other for an assault, the grand jury may find a true bill as to the assault, and endorse *ignoramus* as to the riot.

The grand jury may *present* any offence within their own knowledge, without a bill being sent before them, at the instance of an individual prosecutor, if the offence be one of which they can legally take cognizance.—*Haw. B.* 2, c. 2, § 51. The presentment is delivered into court, and the clerk of the peace then puts it into the form of an indictment, on which process may issue as in ordinary cases.

By U. C. Stat. 22 V. c. 109, "*Act to facilitate the dispatch of business before grand juries,*" the foreman of the grand jury is authorised to administer oaths to witnesses on bills of indictment before them.

For the mode of selecting grand jurors see *post* title "*Jury.*"

GRAND LARCENY.

The crime of larceny was formerly distinguished by two degrees: 1, grand larceny, which by *Ord. Qu.* 29 G. III., c. 4, included the stealing of goods and chattels above *twenty shillings* sterling, and *petit larceny*, property *under* twenty shillings. But now, by C. Stat. 22 V. c. 92, § 19, the distinction between grand larceny and petty (or *petit*) larceny is abolished, and every larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature, and subject to the same incidents, as grand larceny.

See further on this subject title "*Larceny.*"

GUARDIANS.

By the U. C. Stat. c. 74, § 1, the appointment of guardians of infants not having a father living or legal guardian, shall belong exclusively to the surrogate court of the county. § 2. Upon the written application of any such infant, or the friends of such infant residing within the jurisdiction of the court, and after proof of 20 days' public notice of such application, and notice to the mother of such infant, or that such infant has no mother living in Upper Canada, the judge may appoint some suitable and discreet person or persons to be guardian or guardians of such infant. § 4. Such guardians shall give a bond in the name of such infant, in such sum and with such securities as the judge shall direct, conditioned for the faithful performance of the trust, and that such guardians will, when their ward shall become of age, or whenever such guardianship shall be determined or sooner if thereto required by the said court, render to such ward a true and just account of the property of such ward which shall have come into their hands, and without delay deliver and pay over to said ward the property or balance in hand, deducting a reasonable sum for expenses, which bond shall be recorded by the registrar of said court. § 5. The guardians during their office shall have authority to act on behalf of their ward, and prosecute or defend in his name, and shall have the charge and management of the real and personal estate of such ward, and the

care of his or her person and education, and if the infant be under 14 years, may, with the approbation of two justices and consent of the ward, or above that age, then with consent of ward only, bind him or her apprentice to any lawful trade; in case of males, not extending beyond 21, and in case of females, 18 years, or marriage. § 6. The judge, or his successor, shall have power to remove such guardians upon reasonable complaint and appoint others. § 8. Any of the superior courts may on the petition of the mother order access to such infant, and if under 12, order the delivery of such infant to her. § 11. But no such order to be made in case of *crim. con.*

GUNPOWDER.

By the municipal act U. C. Stat. 22 V. c. 54, § 294, municipalities are authorised to make by-laws for regulating magazines for, and for the sale of gunpowder. § 312. And in police villages, gunpowder for sale shall be kept in boxes of copper, tin or lead, under a penalty of \$5 for first offence, \$10 for every subsequent offence, and none to be sold at *night* under a penalty of \$10 for the first offence and \$20 for every subsequent offence. § 360, *sub-§* 23. Recoverable by summary conviction before any justice of the municipality, and in default of payment imprisonment not exceeding 14 days, unless fine and costs sooner paid.

HABEAS CORPUS.

If bail cannot otherwise be obtained, the law hath provided a remedy in most cases, by the Habeas Corpus Act, 31 C. II. c. 2, the substance of which is briefly this:—If the commitment is for treason or felony, plainly and specially expressed in the warrant of commitment; also, if any person is committed, and charged as accessory before the fact to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and especially expressed in the warrant of commitment; in such cases the person shall not be bailed on a writ of *habeas corpus*; otherwise he may be bailed. Also, if a person is committed for treason or felony, specially expressed, yet, if he shall in open court the first week of the term, or first day of assize, petition to be tried, and shall not be indicted some time in the next term or assize after the commitment, he shall upon motion, the last day of the term or assize, be bailed, unless it shall appear to the judge, upon oath, that the king's witnesses could not be produced

within that time, and then, if he is not tried in the second term or assize, he shall be discharged. Previous to the aforesaid bailment, the prisoner, or some person on his behalf, shall demand of the officer or keeper a true copy of the warrant of commitment, which he shall deliver in *six hours*, on pain of £100, to the party grieved, for the first offence; and £200 and forfeiture of his office for the second: then application may be made in writing by the prisoner, or any person for him, attested and subscribed by two witnesses, who were present at the delivery thereof to the Court of Chancery, King's Bench, Common Pleas, or Exchequer; or if out of term time, to the Lord Chancellor or one of the judges; and a copy of the warrant of commitment shall be produced before them, or oath made that such copy was denied; but if any person hath wilfully neglected by the space of two terms to apply for his enlargement, he shall not have an *habeas corpus* granted in the vacation. This being done, the Lord Chancellor or judges respectively shall award an *habeas corpus*, under the seal of the court, on pain of £500, to be marked in this manner, *per statutum tricesimo primo Caroli secundi regis*, and signed by the person that awards the same, and shall be directed to the officer or keeper, returnable *immediate*; and the charges of bringing the prisoner shall be ascertained by the judge or court that awarded the writ, and endorsed thereon, not exceeding twelve pence a mile: then the writ shall be served on the keeper, or left at the gaol with any of the under officers; and the charges, so endorsed, shall be paid or tendered to him, and the prisoner shall give bond to pay the charges of carrying him back, if he shall be remanded, and that he will not make any escape by the way. This done, the officer shall within three days after service (if it is within twenty miles) return the writ, and bring the body, and shall then certify the true cause of the imprisonment; if above twenty miles and less than one hundred, then within ten days; if above one hundred, then within ten days; if above one hundred, then within twenty days; on like pain as before. But after the assizes are proclaimed for the county where the prisoner is detained he shall not be removed. Then if it shall appear to the said Lord Chancellor or judges that the prisoner is detained on a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by warrant of a judge or justice of the peace, for matters for which by the law he is not bailable, in such case the prisoner shall not be discharged: if he shall be discharged, he shall thereupon en-

ter into recognizance to appear on his trial, and the writ and return thereon, and recognizance, shall be certified into court where the trial must be; but persons charged in debt, or other action, or with process in any civil cause, after their discharge for a criminal offence, shall be kept in custody for such other suit; and persons so set at large shall not be re-committed for the same offence, unless by order of court, on pain of £500 to the party grieved.

By C. Stat. 22 V. c. 102, § 64, upon application to the Court of Queen's Bench or any judge thereof, the same order touching the person being bailed or continued in custody, shall be made as if the party were brought upon *habeas corpus*.

HARBOURS—DOCKS, &c.

By the U. C. Municipal Act 22 V. c. 54, § 294, the council of every city, town, and incorporated village may make by-laws—1. For regulating or preventing the encumbering, injuring, or fouling by animals, vehicles, vessels or other means of any public wharf, dock, slip, drain, sewer, shore, bay, harbour, river or water. 2. For directing the removal of door steps, porches, railing or other erections or obstructions projecting into or over any wharf, dock, slip, drain, sewer, bay, harbour, river or water, or the banks or shores thereof, at the expense of the proprietor or occupant. 3. For making, opening, preserving, altering, improving and maintaining public wharves, docks, slips, shores, bays, harbours, rivers or waters, and the banks thereof. 4. For regulating harbours, preventing the filling up and encumbering thereof; for erecting and maintaining beacons, and for erecting and renting wharves, piers and docks therein, and also floating elevators, derricks, cranes and other machinery for loading, discharging or repairing vessels; for regulating vessels, crafts and rafts arriving at any harbour; and for imposing and collecting harbour dues thereon, as may serve to keep the harbour in good order, and to pay a harbour master.

HAWKERS AND PEDLERS.

By the Municipal Act U. C. Stat. 22 V. c. 54, § 284, the municipal council of every county, city and town separated for municipal purposes, is authorised to make by-laws for licensing, regulating and governing hawkers or petty chapmen, and other persons carrying on petty trades, who have not become householders or permanent residents in the county or city, or

who go from place to place, or to other men's houses on foot, or with any animal bearing or drawing any goods, wares or merchandize for sale, or in or with any boat, vessel or other craft, or otherwise carrying goods, wares or merchandize for sale, and for fixing the sum to be paid for a license, for exercising such calling within the county or city, and the time the same shall be in force. But no duty shall be imposed for hawking or peddling any goods, wares or merchandise, the growth, produce, or manufacture of this province, not being spirituous liquors.

HIGH BAILIFF AND CONSTABLES.

High Bailiff.—By U. C. Stat. 22 V. c. 54, § 381, until the organisation of the board of police, the council of every city shall appoint annually a high bailiff, but may provide by by-law, that the offices of high bailiff and chief constable shall be held by the same person.

Chief Constable.—§ 392. Until such organization the council of the city, or town, shall appoint one chief constable for the municipality, and one or more constables for each ward, and the persons so appointed shall hold office during the pleasure of the council.

Arrest without Warrant.—§ 393. In case any person complains to a chief of police, or to a constable or bailiff in a town or city of a breach of the peace having been committed, and in case such officer has reason to believe that a breach of the peace has been committed, though not in his presence, and that there is good reason to apprehend that the arrest of the person charged with committing the same is necessary to prevent his escape, or to prevent immediate violence to person or property, then, if the person complaining give satisfactory security to the officer that he will without delay appear and prosecute the charge before the police magistrate, or before the mayor, or sitting justice, such officer may *without warrant* arrest the person charged in order to his being conveyed as soon as conveniently may be, before the magistrate, mayor or justice to be dealt with according to law.

Suspension of Chief Constable.—§ 394. Until the organization of a board of police every mayor, recorder, and police magistrate may, within his jurisdiction, suspend from office for any period in his discretion, the chief constable or constable of the town, or city, and may if he choose appoint some other person to the office during such period, and in case he considers the suspended officer deserving of dismissal, he shall, immediately after suspending him report the

case to the council, and the council may dismiss such officer or direct him to be restored to his office after the period of his suspension has expired; and the recorder and city council respectively shall have the like powers as to the high bailiff of a city.

§ 395. During the suspension of such officer he shall not be capable of acting in his office except by the written permission of the mayor, recorder, or police magistrate, who suspended him, nor during such suspension shall he be entitled to any salary or remuneration.

HIGHWAYS.

A highway is a public passage for all the king's liege subjects, for which it is denominated in legal proceedings the king's highway.—*Deacon's C. L.* 567. A way may also become a public highway by a dedication of it by the owner of the soil to the public use; and eight years, without any impediment, has been held sufficient dedication.—11 *East*, 375.

All injuries to a highway—as by digging a ditch, or making a hedge across it, or laying logs of timber on it, or by doing any other act which renders it less commodious, are public nuisances at common law, and indictable.—1 *Haw. c.* 76, § 144. On an indictment for obstruction to a highway, the judgment of the court is usually a fine, as well as an order on the defendant to abate the nuisance; in order to warrant a judgment for *abating* a nuisance, it must be alleged in the indictment to be continuing.—*R. v. Stead*, 8 *T. R.* 142.

Where in the original plan of a township, a piece of ground was laid out as a highway, which was subsequently granted by the Crown in fee to several individuals, and was occupied by them and others claiming from them for upwards of thirty years, held, that an indictment for nuisance, for stopping up that piece of ground, claiming it as a highway could not be sustained.—*Rex v. Allan*, Tr. 1 & 2 W. IV., *Cameron's Digest*, p. 40.

An indictment for obstructing a highway laid out under 50 G. III., c. 1, cannot be supported, when the highway has not been established in the manner marked out by the statute, as when the report to the magistrates in quarter sessions by the surveyor of roads does not express the exact width of the road, nor the precise line in which it is to run; and *semble*, in such a case, all the steps necessary to be taken before a highway can be legally established under that act, should be proved by the prosecutor to have been taken,

before the defendant can be found guilty.—*Rex v. Sanderson, Easter 3 W. IV., Cameron's Digest, p. 41.*

By U. C. Stat. 22 V. c. 54, § 313, all allowances for roads made by the Crown surveyors in any town, township or place already laid out, or hereafter laid out; and also all roads laid out by virtue of any act of parliament of Upper Canada, or any roads whereon the public money has been expended for opening the same, or whereon the statute labour hath been usually performed, or any roads passing through Indian lands, shall be deemed common and public highways, unless where such roads have been already altered, or may be hereafter altered according to law.

Vested in the Crown.—§ 314. (Unless otherwise provided for,) the soil and freehold of every highway or road, altered, amended, or laid out according to law, shall be vested in her Majesty, her heirs and successors.

Road Allowances.—§ 315. Subject as hereinafter provided, every municipal council shall have jurisdiction over the original allowances for roads, highways and bridges, within the municipality.

Exception.—§ 316. Of all provincial public roads and bridges. § 317. Ordnance roads.

Closing Roads.—§ 318. No road to be closed whereby any person will be excluded from ingress and egress to and from his lands or residence.

Encroachment.—§ 319. Not allowed on any dwelling-house, barn, stable, out-house, orchard, garden, yard or pleasure ground, without consent of the owner.

Width of Roads.—§ 320. No road or lane to be laid out more than ninety, nor less than thirty feet in width, but when altered may be of the same width as formerly.

Notice of Alteration.—§ 321. No by-law to be passed for stopping up or altering, widening, diverting, or selling any original road allowance, public highway, road, street, or lane until, 1, written or printed notices posted up one month previously in six public places in the neighbourhood, 2, and published weekly for four successive weeks in some local newspaper; 3, nor until parties affected have been heard by counsel or attorney. 4. Notices to be given by the clerk upon payment of expenses.

Witnesses.—§ 322. In case of disputed roads, boundaries, or concessions, in course of investigation before the council, witnesses may be sworn by the head of the council.

Compensation.—§ 323. To be made by the council to

owners of real property entered upon, taken, or used by the corporation in respect to roads, streets, drains, sewers, &c., for any damage necessarily resulting, if not agreed upon, to be settled by arbitration.

Titles to Lands acquired.—§ 324. Provision made for conveyance of the same.

Joint Jurisdiction.—§ 327. Of any road or bridge between municipalities provided for. § 328. Both councils to concur in by-laws respecting the same. § 329. In case of dispute for six months the matter to be referred to arbitration.

Statute Labour.—§ 330. The council of every township, town, and incorporated village may pass by-laws—1. For commutation not exceeding five years, nor exceeding one dollar for each day's labour. 2. For compulsory commutation. 3. For fixing the number of days. 4. For enforcing performance. 5. For regulating divisions and expenditure.

General Powers.

By-laws.—§ 331. The council of every township, county, city, town, and incorporated village, may pass by-laws—1. For opening, making, preserving, improving, repairing, widening, altering, diverting, stopping up, and pulling down drains, sewers, water-courses, roads, streets, squares, alleys, lanes, bridges, or other public communications within their jurisdiction, and for entering upon, breaking up, taking or using any land necessary or convenient for the purposes. 2. For raising money by toll on any bridge, road, or other work to defray expenses. 3. For regulating the driving and riding on public bridges. 4. For making regulations as to pits and precipices, deep waters and dangerous places. 5. For preserving or selling timber-trees, stone, land, or gravel, on road allowances. 6. For selling original road allowances to the parties next adjoining, when a public road has been opened in lieu of the original allowance, and for selling to the owners of adjoining land any road legally stopped up, or altered by the council, and in case of refusal, then for the sale thereof to any other person. 7. For granting privileges to road or bridge companies. 8. For taking stock in the same. 9. For granting right to take tolls on planked, gravelled, or macadamised roads, or building bridges, for not more than twenty-four years.

Old Road Allowances.—§ 332. To be granted to the owner of adjoining lands upon the report of the surveyor,

that the new or travelled road which he has laid out and opened is sufficient for a public highway. § 333. The party in possession of any road allowance enclosed by a lawful fence, and not opened up for public use, by reason of another road in lieu thereof, shall be deemed legally possessed as against private persons, until by-law passed for opening up the same. § 334. Notice in writing to be given to such party eight days before the meeting of the council of application for opening up such road allowance.

Aid to Counties for New Roads.—§ 335. Municipalities may pass by-laws—1. For granting to counties aid by loan or otherwise towards opening new roads or bridges. 2. For executing the work at their joint expense.

Highways, Streets, &c.—§ 336. In cities, townships and towns, or incorporated villages to be vested in the municipality, subject to individual rights or claims. § 337. To be kept in repair by the corporation; default to be a misdemeanor, punishable by fine, and the corporation civilly liable for damages; action to be brought within three months after damage sustained. But this section not to apply to any road or highway until assumed by by-law.

Local Improvements.—§ 338. Municipal council of cities, towns and incorporated villages may pass by-laws—1. For assessment on proprietors for local improvement, excepting cities. 2. For watering and sweeping streets, upon the petition of at least two-thirds of the resident freeholders and householders, representing one-half in value of the rateable property. 3. For preventing obstructions and nuisances. 4. For directing the removal of door steps or other projections. 5. For surveying, settling and marking boundaries of streets and roads, and giving and affixing names thereto.

Counties.

Exclusive Jurisdiction.—§ 339. To be held by the county council over all roads and bridges lying within any township, and assumed by the by-law of the county council; and over all bridges crossing streams between two townships, and over roads and bridges dividing townships.

Roads or Bridges Assumed.—§ 340. The roads to be planked, gravelled or macadamised.

Powers of Justices in Sessions.—§ 341. Possessed at any time before the 1st January, 1850, transferred to the council of the county, or if between two counties, to both; and the neglect or disobedience of any regulations or direc-

tions made by such council or councils, shall subject the offenders to the same penalties.

General Powers of Counties.

By-laws.—§ 342. County councils authorised to pass by-laws—1. For stopping up and sale of original road allowances, or parts thereof, within the county, under the control of the councils, and not within the limits of any village, town or city. 2. For preventing immoderate riding or driving on highways. 3. For opening drains, sewers and public communications in townships, or between two or more townships, or between the county and adjoining county or city, or on the bounds of any town or village, and for entering upon land and using the same for such purposes. 4. For directing the removal by the proprietor of trees for a space not exceeding 25 feet on each side of a highway passing through a wood. 5. For levying by assessment local rates for improvement of roads and bridges between two townships. 6. No such by-law referred to in the last sub-section to be passed, except, 1, upon the petition of one-half of the electors, 2, nor until a printed notice of the petition, with the names of the signers and limits, has been given one month in four places within such parts of the township, and at the place for holding the sittings of the township council, and for four weeks in some local newspaper. 7. For granting aid to every town, township, or incorporated village in the county, by loan or otherwise, for new roads or bridges. 8. For requiring the opening of any county road by any local municipality.

Townships.

By-Laws.—§ 343. Township councils authorised to pass by-laws—1. For granting aid to any adjoining county in making or improving any highway, road, street, bridge, or communication between the township and any other municipality, and for aid to the county in which such township lies for any highway, road, &c., within the township assumed by the county. 2. For the stopping and sale of any original allowance for road or any part thereof. 3. For directing trees to be cut down on each side of a highway passing through a wood 25 feet each side.

Roads in Villages.

§ 344. Provision for stopping up and selling road allowances through. § 345. When situate in two townships.

Railways.

§ 346. Municipalities are empowered to pass by-laws—1. For taking stock therein, 2, or guaranteeing debentures, 3, issuing debentures, 4, to be confirmed by public vote.

§ 347. Debentures valid without corporate seal. § 348. When stock held to the amount of \$20,000 the head of the council to be *ex officio* a director. § 349. Council may pass by-law for a branch railway.

Arbitrations.

§ 358. In all cases directed by this act proceedings to be as follows—1. If between municipalities, each to appoint one. 2. The two arbitrators to appoint the third. 3. In case of neglect to appoint, the Governor in council may appoint. 4. If between a municipality and the owner of property, notice of the appointment of an arbitrator to be given by the owner to the head of the council, who shall within three days appoint a second. 5. If the owner neglects to appoint one month after service of the by-law, the head of the council (if authorised by by-law) may appoint an arbitrator for the council, and the owner shall within seven days name his arbitrator. 6. Such two arbitrators to appoint the third. 7. In case of neglect by the owner to appoint, or the two appointed do not within seven days appoint the third, the judge of the county court may appoint a *sole* arbitrator. 8. All appointments to be in writing. 9. Arbitrators on behalf of a municipality to be appointed by the head, if authorised by by-law. 10. Provision made in case of several owners. 11. Arbitrators to be sworn. 12. Award when to be binding. 13. Notes of the evidence taken to be filed with the clerk of the council. 14. Award to be under the hand of at least two arbitrators and subject to jurisdiction of superior courts.

By U. C. Stat. 22 V. c. 93, § 35.—All allowances for roads, streets, or commons in towns and villages in Upper Canada, and upon which lots of land fronting thereon have been sold to purchasers shall be public highways. By 24 V. c. 49, § 1.—But a new survey and plan may be made, altering the first plan and survey, provided it does not interfere with lots sold.

Joint Stock Road Companies.

By U. C. Stat. 22 V. c. 49, § 1, all existing companies are continued. § 3. Any number of persons not less than *five* may form a company for the purposes of constructing in, along or over any public road, highway, allowance for road,

or over any land, a plank, macadamised or gravelled road not less than *two* miles in length, and also any bridge, pier or wharf connected therewith. § 4. The consent of the owner or occupier of any land being first obtained. § 5. The owner may make such road himself within a fixed period. § 6. No such road shall be constructed or pass within the limits of any city or incorporated town or village, except by permission under a by-law of the same. § 7. Bridges in the line of road to be deemed part thereof, unless specially excepted. § 8. Such road not to be of a higher grade than one foot elevation to twenty feet, without the sanction of the county engineer. § 9. Former chartered companies not to be interfered with. § 10. Thirty days' notice to be served on the head of the municipality previous to commencing any such work, which municipality may prohibit the same. § 11. If no such by-law passed the company may proceed. § 12. When any new road is opened, or the line of any old road changed, the municipality may direct by by-law the old road to be closed up, and embraced within the enclosure of the owner adjoining, whose land is taken to form such new road. § 13. Conditions on which such companies may be formed as to capital and means, &c. § 14. Instrument of co-partnership to be registered. § 15. Their general powers after formation. § 16. May explore the country, take land, make drains, &c., on adjoining lands. § 17. Cut standing timber each side of the road on making compensation. § 19. Mode of appointment of arbitrators to settle the amount. § 20. Arbitrators to take into account the benefit accruing to such owners from the road. § 21. Amount awarded to be tendered, and deed executed. § 22. After tender made, the company may enter. § 23. Road not to encroach on any building, pleasure ground, garden, yard or orchard, or materials taken therefrom without the owner's consent. § 24. Owner not to build or enclose in order to evade. § 25. Mode of appointing arbitrators in case of absentee owners, disputed titles, &c. § 26. Award to be registered. § 27. Costs of arbitration by whom to be paid. § 28. Award to be payable on demand. § 29. Provision respecting Indian lands. § 30. Meetings and proceedings of arbitrators. § 31. Lands taken to be held free from incumbrances. § 32. Provision for widening the road and issuing new stock. § 33. List of new stockholders to be registered. § 34. Their liabilities. § 35. Calling in of stock. § 36. Shares to be \$20 each. § 37. Affairs of the company to be managed by five directors. § 38. By-law for regulating election. § 39. Notice of by-law to be pub-

lished. § 40. Annual election. § 41. One vote for each share. § 42. Any stockholder not in arrear may be a director. § 43. Directors may elect a president and appoint officers and servants. § 44. Vacancies, how filled up. § 45. Directors to make calls on shares. § 46. Shares to be forfeited if calls not paid by time appointed. § 47. Forfeitures to be declared. § 48. Forfeiture to relieve against all actions, &c. § 49. Forfeited shares to be sold. § 50. Transfer to purchasers to be made by certificate. § 51. Certificate to be registered. § 52. Purchasers indemnified. § 53. Company may sue for calls. § 54. Allegations in such suit. § 55. Proof. § 56. When no transfer made. § 57. Any two or more companies may unite. § 58. Instrument to be registered. § 59. Rights and liabilities of united companies. § 60. Roads and materials to be vested in companies. § 61. Existing companies may search for and take materials for making or repairing roads. § 62. Description of materials. § 63. Municipalities may take stock in such companies. § 64. Raise money to pay for stock. § 65. Loan money to such companies. § 66. Issue debentures. § 67. The last four sections to apply to all companies chartered under or before this act. § 68. Companies may sell to municipalities. § 69. Municipalities may also sell. § 70. Sale to pass all rights. § 71. Roads to be completed within *two* years, if not exceeding five miles in length, and in default charter to be forfeited. § 72. If the road exceeds five miles, then five miles annually after the first two years.

Tolls.—§ 73. To be fixed by the company. § 74. And tolls taken when two miles of the road completed. § 75. May be taken each time of passing each gate for any portion of such road on either side, or on both sides of the gate (not being more than five miles) to the next gate, and not exceed five miles in the whole; or for the whole of such road, if the length do not exceed five miles, and there be only one gate thereon, at the following rates per mile:—

	PER MILE.		
	£	s.	d.
1. For every vehicle whether loaded or other- wise, and for the horse or other beast, or one of the horses or other beasts drawing the same	0	0	1
And for every additional horse or other beast drawing any such vehicle.....	0	0	0½
2. For every horse, with or without a rider...	0	0	0½
For each head of neat cattle.. ..	0	0	0½
For every score or number less than a score of sheep or swine.....	0	0	0½

5. And in addition to the above rates the sum of *one half-penny* for every 100 pounds over and above 4000 pounds each loaded vehicle may weigh. § 76. Every vehicle loaded with masts, spars, hewn or round timber, or otherwise, exceeding in weight *two tons*, shall, when loaded, at each time of passing each gate, pay for each ton over and above *two tons* the sum of fifty cents. And all vehicles with wheels, used for the above purpose, shall have not less than five inch tires, under penalty of paying double the amount of toll above provided. § 77. Whenever any road constructed under this act intersects a road constructed or owned by another chartered company, no higher rate of toll shall be demanded from persons travelling along the said last-mentioned road for the distance travelled between such intersection, and either of its *termini*, than the rate per mile charged by the said company for travelling along the entire length of their road so intersected. But it shall be incumbent on such persons to produce a ticket from the last toll gate on the intersecting road as evidence of their having travelled only from such intersection. § 78. Tolls at bridges may, with the consent of the municipal council, exceed the said rates. § 79. And be collected in like manner. § 80. Companies authorised to erect toll gates, check gates and side bars, and fix the tolls to be collected thereat not exceeding the rates aforesaid. § 81. No tolls shall be taken for merely crossing any road, or for travelling thereon in crossing from one transverse road to another not exceeding one hundred yards. § 82. Tolls not to be demanded at check-gates when taken at the principal gate, and *vice versa*, the distance regulating the toll to be calculated between the principal gates only. § 83. Directors may commute with any person residing within half a mile of the nearest gate. § 84. After any road, bridge, or work constructed or acquired by any company or municipality under the authority of this act, or of any former act, has been completed, and tolls established thereon, the company or municipality shall keep the same in repair. § 85. If suffered to get out of repair, the judge of the county court where such road is situated may, upon the requisition of *twelve* freeholders of the county, stating that such road is so much out of repair as to impede or endanger her Majesty's subjects and others travelling thereon, direct the engineer for the county, and if none, then any competent engineer to examine the road. § 86. If, upon examination, the road shall be found so much out of repair as to impede or endanger

travelling thereon, then such engineer shall notify the president of the company or head of the municipality to whom the road may belong, by leaving a written notice with any of the keepers of the toll gates, that he has inspected and found the road out of repair, and requiring them to take notice thereof and cause the same to be repaired within a certain time, to be named in such notice, sufficient for making such repairs. § 87. If the repairs shall not be made within the time, then after the expiration of such period no toll shall be demanded or taken from any person passing through the nearest toll gates on either side of the portion or portions of the road so reported out of repair. § 88. If after the period limited in the notice and before the repairs are completed, any toll-gate keeper demands or takes any toll, or refuses to allow any person travelling to pass through such toll-gates without payment thereof, such person shall, upon conviction before a justice of the peace for the county, upon the oath of one credible witness, forfeit and pay not less than *one dollar* nor more than \$4 for every such offence. § 89. If any renter or collector of such tolls at any gate on any such road shall take a greater toll than is authorised by law, he shall for every such offence forfeit and pay the sum of \$20. § 90. Gate-keepers not bound to give change for a larger amount than *one dollar*.

Exemption from Toll.—§ 91—1. All her Majesty's officers and soldiers being in proper staff or regimental uniform, dress or undress, and their horses, (but not when passing in any hired or private vehicles.) 2. Recruits marching by route: 3. Prisoners under military escort. 4. Enrolled pensioners in uniform when called out for training or in aid of the civil power. 5. Carriages and horses belonging to her Majesty's service, conveying such persons or their baggage, or returning. 6. Persons, horses or carriages going to or returning from a *funeral*. 7. Any person with horse or carriage going to or returning from his or her usual place of religious worship on the *Lord's day*. § 8. Any farmer residing on the line of any such road passing any toll-gate opposite to and immediately adjoining his farm, when going to or returning from his work on such farm.

§ 92. Tolls may be charged on mail carriages, except on roads and bridges constructed by the provincial government or board of works, and transferred to any company on condition that the mail should pass free; but no such exemption shall exist in favour of any mail stage drawn by two horses and carrying the mail and containing more than four passengers,

or drawn by *four* horses and containing more than *eight* passengers. § 93. But for each passenger over *four* or *eight* a toll of one penny shall be payable. § 94. Roads under lease before the 14th July, 1863, not to be affected. § 95. If any person, not exempted by law, wilfully passes or attempts to pass any toll-gate, check-gate or side-bar lawfully established, without first paying the legal toll, he shall forfeit a sum not exceeding \$20 and costs, to be recovered in the same manner as other fines and forfeitures under this act; and in case no sufficient distress can be found to satisfy any warrant issued against the goods and chattels of the offender, he shall then be committed to the common gaol of the county for any period not exceeding *one month*. § 96. If the offender after conviction neglects or refuses to pay the amount of fine and costs, and if it be by affidavit made to appear to such justice that the offender has no goods or chattels within his jurisdiction, a warrant of commitment may issue, and the party may be imprisoned thereon in the first instance upon any conviction under the last preceding section, without issuing any warrant of distress.

§ 97. If any person liable shall, after demand, refuse to pay the toll, the collector taking such assistance as he may think necessary, may seize or distrain any horse, beast, cattle, carriage or other thing in respect of which such toll is imposed, together with their bridles, saddles, gear, harness, or accoutrements, (except the bridle or reins of any horse or beast separated therefrom,) or any carriage in respect of the horses or cattle drawing the carriage on which such toll is imposed, or any of the goods and chattels of the party so required to pay. § 98. If the toll and the reasonable charges of such seizure and distress shall not be paid within *four* days after such seizure, the person so seizing and distraining, after giving *four* days' public notice, may sell the horse, beast, cattle, carriage, and things so distrained, or a sufficient part thereof, returning the overplus and what shall remain unsold, upon demand, to the owner, after such tolls and the reasonable charges occasioned by such seizure, distress and sale shall be deducted.

§ 99. If any person shall, after proceeding on such road with any waggon, carriage, or other vehicle or animal liable to toll, turns out of the road into any other road or field or piece of land, for the purpose of avoiding payment of toll, and enters the road beyond any of the said gates or check-gates, by crossing the road or otherwise without paying toll, whereby the toll is evaded, such person or the owner of such

vehicle or animals shall, for every such offence, forfeit and pay \$2 and costs: and any one justice of the peace for the county shall, on conviction, fine such offender in the said penalty and costs, and cause the same to be levied as aforesaid.

§ 100. If any person permits or suffers any person to pass through any lands occupied by him, or through any gate, passage or way thereon with any carriage, sleigh, horse, mare, or any other animal liable to toll, (such other person before or after passing through such lands having travelled more than one hundred yards upon the road,) whereby payment of the toll is avoided, the person so offending, and also the person riding or driving, or the owner of the animal or animals or carriage whereon such payment is avoided, shall on conviction before any one justice as aforesaid incur a penalty not exceeding \$4, and not less than one dollar, to be levied as aforesaid with costs.

§ 101. If any person leaves upon a toll road any horse, cattle, beast, or carriage by reason whereof the payment of any toll or duty is avoided or lessened; or takes any horse or cattle from any vehicle either before or after having passed through any toll gate, adds or puts any horse or other beast to any such carriage and draws therewith upon any part of such road, so as to increase the number of horses or other beasts drawing the vehicle, after the same has passed through such toll-gate, whereby the payment of toll has been evaded, he shall forfeit and pay a sum not exceeding \$4 to be levied as aforesaid with costs.

§ 102. In case any person falsely claims exemption, or evades the toll by any false representation or other fraudulent act, he shall forfeit to the company or municipality owning the road \$4 and costs, to be recovered summarily before any justice of the peace in the manner provided for recovery of other penalties.

§ 103. If any person wilfully and maliciously burns, breaks down, injures, cuts, removes, or destroys 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 toll at such gate, or any house, building, engine, weighing-machine erected or used for the better ascertainment or security of any such toll, shall be guilty of a misdemeanor, and on conviction, punished either by imprisonment in the penitentiary for a term not exceeding

three years, or by fine and imprisonment in the common gaol for any term less than *two* years, at the discretion of the court.

§ 104. If any person removes any earth, stone, plank, or other materials used or intended to be used in or upon the said road, for the construction, maintenance and repair thereof; 2, drives any loaded wheel carriage or other loaded vehicle upon that part of any road constructed under this act, or any former act, between the stones, plank, or hard road and the ditch further than may be necessary in passing any other vehicle, or in turning off or upon such roads; 3, causes any injury or damage to be done to the bridges, culverts, posts, rails, or fences; 4, hauls or draws upon any part of any road constructed as aforesaid, any timber, stone, or other thing carried principally or in part upon wheeled carriages, or upon sleighs, so as to drag or trail upon such road to the prejudice thereof; 5, leaves any waggon, cart, or other carriage upon such road without some person in care thereof, longer than may be necessary to load and unload the same; (except in case of accident, and in case of accident for any longer time than necessary to remove the same,) 6, lays any timber, stones, rubbish, or other thing whatever upon the said road to the prejudice, interruption and danger of any person travelling thereon; 7, having blocked or stopped any cart, waggon, or other carriage in going up a hill, or rising ground, causes or suffers to remain on such road, any stone, or other thing with which such cart or carriage shall have been blocked or stopped; 8, pulls down, damages, injures, or destroys any lamp or lamp-post, put up, erected or placed in or near the side of such road, or any toll-house erected thereon, or wilfully extinguishes the light of any such lamp; 10, wilfully pulls down, breaks, injures, or damages any table of tolls, put or fixed at any gate, check-gate, or bar, on any part of such road, or any sign board erected by any company upon any road or bridge constructed by them, or will fully defaces or obliterates any of the letters, figures, or marks thereon, or on any finger-post, or mile-post, or stone; 11, throws any earth, rubbish, or any other matter or thing into any drain, ditch, culvert, or other water-course made for draining such road; 12, without permission, carries away any stones, gravel, sand, or other materials, dirt or soil from any part of any such road, or digs any holes or ditches on the allowance for the same; 13, allows any swine to run at large to the injury of the said road; every such person shall upon conviction in a summary

way before any justice of the peace in or near the place where the injury has been done, be sentenced to pay all damages sustained, to be ascertained by the justice on hearing the complaint; and to pay a fine of not more than \$10, nor less than \$1 with costs: such damages, fines, and costs to be paid within a time to be limited by such justice, and, in default, levied as hereinafter provided.

§ 105. No company, municipality, contractor or sub-contractor, or person employed by them, shall leave or place upon the graded part of any road, whether or not macadamised, gravelled or planked, any stone, gravel, plank, timber, or other materials, so as to prevent the public from using, or to impede the free use of the whole of such graded portion of the road; and for any offence against this section, such company, &c., shall be responsible for all damages arising from the offence; and such contractor, sub-contractor or other person as aforesaid shall also incur a penalty of not less than \$1, nor more than \$20, to be recovered summarily before any justice of the peace, in the manner provided by this act for the recovery of other penalties. § 106. Such penalties to be paid as directed. § 107. Every fine and forfeiture authorised to be summarily imposed by this act, may be recovered upon information and complaint before any justice of the peace of the county within which the same shall have been incurred; and may be levied and collected by distress and sale of the offender's goods and chattels by warrant of distress for that purpose to be issued, and in case there shall be no goods or chattels to satisfy the warrant the offender may be committed to the common gaol of the county, for any period not exceeding *one month*: but nothing in this section shall interfere with the provisions made in the 96 § of this act, for issuing a warrant of commitment in the first instance, upon conviction for any offence therein mentioned.

§ 108. The offender to be summoned; and in default of his appearance upon proof of the service of such summons on the party personally, or by leaving a copy at his usual place of abode, the justice may proceed to hear and determine the case *ex parte*, or issue his warrant to bring the party before him or some other justice; or the justice may, if he thinks fit, without previous summons, issue such warrant, and the justice before whom such party appears or is brought shall hear and determine the case.

§ 109. Fines and forfeitures collected under this act shall,

unless otherwise provided, be paid to the treasurer of the company or municipality owning the road.

§ 110. Suits for any thing done in pursuance of this act to be commenced with six months. § 111. Officers and stockholders or servants of the company may be witnesses. § 112. Companies formed *bona fide* under former acts confirmed notwithstanding any informality in their formation, &c. § 114. Directors to make annual reports to the municipality of expenditure, &c. § 115. Company to keep regular books, § 116, to be open to inspection. § 117. Inspector may take copies or extracts. § 118. After 21 years from the completion of the work, the municipality may purchase the stock of the company at its current value. § 119. Value of the stock to be determined by arbitration. § 120. Provision for amending the act. § 121. The provisions contained in §§ 10, 11, 12, 16 to 36, 43, 45 to 69, 71, 73 to 119 sections of this act, all inclusive, shall extend to and regulate all turnpike road companies in Upper Canada in the collection of tolls or otherwise, whether constructed under any act in the first section mentioned, or under the 12 V., c. 5, entitled, "*An Act for the better management of the Public Debts, Accounts, Revenue, and Property,*" or constructed by or belonging to any municipality under any act. But lower rates of tolls upon any road hereafter transferred to any company by the last recited act, may be fixed or established in the order in council transferring the same. And the provisions contained in §§ 16 to 36, 57 to 69, 73, 74, 80 to 90, 92 to 110, 118 to 120, all inclusive, together with this proviso, shall also extend to road companies having private acts of incorporation, but no other section of this act shall apply to such companies.

§ 122. Road companies required to lay down in grass all cleared lands belonging to them, and adjoining their roads, and to cause thistles and weeds thereon to be cut down and rooted out, under a penalty of \$2 a day. § 123. Or after eight days' notice the reeve may cause such things to be done at the expense of the company.

See also titles "*Public Works,*" "*Travellers,*" "*Railways.*"

Indictment for Digging a hole in a Street, being the Queen's Highway C. C. C.

PROVINCE OF CANADA :

County of , } The jurors, &c. That A.F. late of, &c., yeo-
to wit. } man, on the, &c., with force and arms, at the
township aforesaid, in the county aforesaid, in a certain street,

being the Queen's common highway there, called _____, used for all the Queen's subjects, with their horses, coaches, carts, and carriages, to go, return, ride, pass, repass, and labour at their free will and pleasure, unlawfully did dig, and cause to be dug, a certain pit, containing in circumference fifteen feet, and in depth thirteen feet; and the same pit so as aforesaid dug and caused to be dug in the street and highway aforesaid, from the _____ day of _____, in the year aforesaid, until the _____ day of the same month, in the year aforesaid, at the township aforesaid, in the county aforesaid, unlawfully and injuriously did continue; by reason whereof the Queen's subjects, during the time aforesaid, could not go, return, pass, repass, ride and labour, with their horses, coaches, carts and other carriages, in, by, and through the same street and highway, as they were wont, and ought to do, without great peril and danger of their lives, to the great damage and common nuisance of all the liege subjects of our said lady the Queen, in, by, and through the same street and highway, going, returning, passing, repassing, riding and labouring, and against the peace, &c.

Indictment for Stopping up a Watercourse, whereby the Highway is overflowed

PROVINCE OF CANADA :

County of _____, } The jurors, for our lady the Queen, upon their
to wit. } oath present, that A. O., late of the town-
ship of _____, in the county aforesaid, on the _____ day of _____, in
the _____ year of the reign _____ with force and arms, at the township
aforesaid, in the county aforesaid, a certain ancient watercourse
adjoining to the Queen's common highway, within the same town-
ship, leading from _____ to _____, with gravel and other materials
unlawfully and injuriously did obstruct and stop up, and the said
watercourse so as aforesaid obstructed and stopped up from the
said _____ day of _____ in the year aforesaid, until the day of the
taking of this inquisition, at the township aforesaid, in the county
aforesaid, unlawfully and injuriously hath continued, and still
doth continue, by reason whereof the rain and waters that were
accustomed, and ought to flow and pass through the said water-
course, on the same day and year, and divers other days and times
afterwards, between that day and the day of the taking of this
inquisition, did overflow and remain in the Queen's common
highway aforesaid, and thereby the same was, and yet is, greatly
hurt and spoiled, so that the liege subjects of our said lady the
Queen, through the same with their horses, waggons, carts and
carriages, then and on the said other days and times could not, nor
yet can, go, return, pass, ride and labour, as they ought and were
accustomed to do, to the great damage and common nuisance, &c.

HOMICIDE.

Homicide in law signifies the killing of a man by a man.—

1 *Haw.* 66. And may be classed according to the following degrees :—

- | | |
|------------------------------|------------------|
| 1. Justifiable homicide. | 4. Manslaughter. |
| 2. Homicide by misadventure. | 5. Murder. |
| 3. Homicide by self-defence. | 6. Self-murder. |

Justifiable Homicide.

To make homicide justifiable, it must be owing to some unavoidable necessity to which the person who kills another must be reduced, without any manner of fault in himself.—

1 *Haw.* 69. If any evil disposed person shall attempt feloniously to rob or murder any person in any dwelling-house or highway, or feloniously attempt to break any dwelling-house in the night time, and shall happen in such felonious intent to be slain, the slayer shall be discharged.—24 *H.*

VIII. c. 5. So, if rioters, or forcible enterers or detainers, stand in opposition to the justices' lawful warrant and any of them be slain, it is no felony.—*Hale's Pl.* 37. And if a man come to burn my house and I shoot out of my house, or issue out of my house and kill him, it is no felony.—*Hale's Pl.* 38. So, if a woman kill him that assaulteth to ravish her, it is no felony.—*Ib.* 36. If a person having actually committed a felony, will not suffer himself to be arrested, but stands on his own defence, or flies, so that he cannot possibly be apprehended alive by those who pursue him, whether private persons or public officers, with or without a warrant, he may be lawfully slain by them.—1 *Haw.* 70. So, if a felony hath actually been committed, and an officer having lawful warrant arrest an innocent person, and such person assault the officer, the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwise avoid it, but in striving, kill him, it is no felony.—3 *Inst.* 56. Also, if a person arrested for felony break away from his conductors to gaol, they may kill him if they cannot otherwise take him. But in this case likewise there must have been a felony actually committed.—*Hale's Pl.* 36, 37. Also, if a criminal endeavouring to break the gaol, assault his gaoler, he may be lawfully killed by him in the affray.—1 *Haw.* 71. In *civil cases*, although the sheriff cannot kill a man who flies the execution of a civil process, yet if he resist the arrest, the sheriff or his officers need not give back, but may kill the assailant.—*Hale's Pl.* 37. So, if in the arrest and striving together, the officer kill him, it is no felony.—*Ib.* 37. In all these

cases (a) the party upon arraignment having pleaded not guilty, the special matter must be found: whereupon the party shall be dismissed without any forfeiture or pardon purchased.—*Ib.* 38.

2. Homicide by Misadventure.

Homicide by misadventure is where a man is doing a lawful act without intent of hurt to another, and death *casually* ensues.—*Hale's Pl.* 31. As, where a labourer being at work with a hatchet the head flies off, and kills one who stands by.—1 *Haw.* 73. Or where a third person whips a horse, on which a man is riding, whereupon he springs out and runs over a child and kills him, in this case the rider is guilty of homicide by misadventure, and he who gave the blow, of manslaughter.—1 *Haw.* 73. But if a person riding in the street whip his horse to put him into speed, and run over a child and kill him, it is homicide, and not by misadventure; and if he ride so, in a press of people with intent to do hurt, and the horse killeth another, it is murder in the rider.—1 *H. H.* 476. If a person drive his cart carelessly, and it run over a child in the street, if he have seen the child and yet drive on upon him, it is murder; but if he saw not the child, yet it is manslaughter; but if the child had run the cross way, and the cart run over him before it were possible for the carter to make a stop, it is by misadventure.—1 *H. H.* 476. So, where workmen throw stones, rubbish, or other things from a house, in the ordinary course of their business, by which a person underneath happens to be killed, if they look out and give timely warning to those below, it will be homicide by misadventure; if without such caution it will amount to manslaughter, at least, if it was a lawful act, but done in an improper manner.—*Fost.* 262, 263. If the act be unlawful it is murder; and if a person meaning to *steal* a deer in another man's park, shoot at the deer and by the glance of the arrow killeth a boy that is hidden in a bush, this is murder; for that the act was unlawful, although he had no intent to hurt the boy, nor knew of him. But if the owner of the park had shot at his own deer, and without any ill intent had killed the boy by the glance of his arrow, this had been homicide by misadventure, and no felony.—3 *Inst.* 56. And it is a

(a) Although such may be the law as laid down by ancient writers, common humanity will prompt *officers* to act with the greatest possible forbearance; and it must be a *very extreme case of necessity* that would justify *homicide*.

general rule in case of all felonies, that wherever a man intending to commit one felony happens to commit another, he is as much guilty as if he had intended the felony which he actually commits.—1 *Haw.* 74.

Homicide by misadventure, though not felony, yet a person guilty thereof is not bailable by justices of the peace, but must be committed to the assizes.—1 *Haw.* 75. But if he is taken only on a slight suspicion, the justices of the peace may bail him.—2 *Haw.* 305.

3. *Homicide by Self-defence.*

Homicide in a man's own defence is, where one who hath no other possible means of preserving his life from one who combats with him, on a sudden quarrel, kills the person by whom he is reduced to such an inevitable necessity. 2. And not only he, who upon assault, retreats to a wall or some such strait, beyond which he can go no farther, before he kills the other, is judged by law to act upon unavoidable necessity; but also he, who being assaulted in such a manner and in such a place, that he cannot go back without manifestly endangering his life, kills the other without retreating at all. 3. And notwithstanding a person who retreats from an assault to the wall, gives the other wounds in his retreat, yet, if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *se defendendo* only.—1 *Haw.* 74. 4. But if the mortal wound was first given, then it is manslaughter.—*Hale's Pl.* 42. 5. And an officer who kills one who resists him in the execution of his office (a); and even a private person that kills one who feloniously assaults him in the highway, may justify the fact, without ever giving back at all.—1 *Haw.* 75. 6. But if a person upon malice *prepense* strike another, and then fly to the wall, and there in his own defence kills the other, this is murder.—*Hale's Pl.* 42. A person guilty of this offence cannot be bailed by justices of the peace.—1 *Haw.* 76. But otherwise, if taken only on a slight suspicion.—2 *Haw.* 105.

4. *Manslaughter.*

By manslaughter it is to be understood—1. Such killing of a man as happens on a sudden quarrel, or in the commission of an unlawful act without any deliberate intention of doing any mischief at all.—1 *Haw.* 76. 2. The difference

(a) See note at foot of page 384.

between murder and manslaughter is, that murder is committed upon *malice aforethought*, and manslaughter *without malice aforethought*, upon a sudden occasion only: as, if two meet together, and striving for the wall the one kill the other, this is manslaughter and *felony*; and so it is if they had upon a sudden occasion gone into a field and fought, and the one had killed the other, this had been but manslaughter, and no murder; because all that followed was but a continuance of the first sudden occasion, and the blood was never cooled till the blow was given.—3 *Inst.* 55. There can be no accessories to this offence before the fact, because it must be done without premeditation.—1 *Haw.* 76. But there may be accessories after the fact.—3 *Inst.* 55.

The offence being a *felony* is notailable by justices, but the party must be committed for trial at the assizes.

The punishment for this offence, formerly, was burning in the hand and forfeiture of goods and chattels, for which punishment that of imprisonment for a year and the imposition of a fine was afterwards substituted by the 19 G. III. c. 74.

But now, by C. Stat. 22 V. c. 91, § 3, it is punishable, at the discretion of the court, with imprisonment in the penitentiary for life, or for any term not less than two years; or imprisonment in any other prison or place of confinement for any term less than two years, or to pay such fine as the court may impose.

Form of Indictment for Manslaughter, C. Stat. 22 V. c. 99.

County of , } The jurors for our lady the Queen upon their
to wit. } oath present, that A.B. on the day of
in the year of our Lord one thousand eight hundred and at
in the county of did feloniously kill and slay one C.D.

5. Murder.

Murder, is when a man of sound memory and of the age of discretion unlawfully killeth another under the king's peace, with malice aforethought, either expressed by the party or implied by law, so as the party wounded or hurt die of the wound or hurt within a year and a day.—3 *Inst.* 47.

By *malice expressed*, is meant a deliberate intention of doing any bodily harm to another, whereunto by law a person is not authorised—1 *H. H.* 451, the evidences of which are—1. Lying in wait. 2. Menacing antecedents. 3. Former grudges. 4. Deliberate compassings and the like.—1 *H. H.* 451.

Malice implied is in several cases, as where one voluntarily

kills another without provocation; for in this case the law presumes it to be malicious, and that he is a public enemy of mankind. 2. Poisoning also implies malice, because it is an act of deliberation. 3. Also, when an officer is killed in the execution of his duty it is murder, and the law implies malice.—*H. H.* 455, 456, 457. 4. Also, where a prisoner dieth by duress of the gaoler, the law implies malice, by reason of the cruelty.—*3 Inst.* 52. 5. And in general, any formed design of doing mischief may be called malice; and therefore not such killing only as proceeds from premeditated hatred or revenge, but also such as is accompanied with those circumstances that shew the heart to be perversely wicked, is adjudged to be of *malice prepense*, and consequently murder.—*2 Haw.* 80; *Strange*, 766. No breach of a man's word or promise, no trespass either to lands or goods, no affront by bare words or gestures, however false or malicious and aggravating, will excuse him from being guilty of murder, who is so far transported thereby as immediately to attack the person who offends him in such a manner as manifestly endangers his life, without giving him time to put himself upon his guard, if he kills him in pursuance of such an assault, whether the person slain did at all fight in his defence or not.—*1 Haw.* 82.

If two fall out upon a sudden occasion, and agree to fight in such a field, and each of them go and fetch his weapon, and the one killeth the other—this is no *malice prepense*; for the fetching of the weapon and going out into the field is but a continuance of the sudden falling out and the blood was never cooled; but if there were deliberation—as, where they meet the *next* day—nay, though it were the same day, if there were such a competent distance of time that in common presumption they had time to deliberate—then it is murder.—*3 Inst.* 51; *1 H. H.* 453. And the law so far abhors all duelling in cold blood, that not only the principal who actually kills the other, but also his seconds, are guilty of murder, whether they fought or not; and the seconds of the party slain are likewise guilty, as accessories.—*1 Haw.* 82.

If a physician or surgeon gives a person medicine with intent to cure or prevent a disease, and contrary to his expectation it kills the person—this is no homicide.—*1 H. H.* 429. But if a woman be with child, and any one give her a potion to destroy the child within her, and it work, and so strongly that it kills the woman—this is murder.—*1 H. H.* 430. But if a woman quick with child, by a potion or otherwise killeth it in her womb; or if a man beat her, whereby

the child dieth in her body, and she is delivered of a dead child—this is not murder, but a great misprision. If the child be born alive, and then die of the potion, battery, or other cause—this is murder.—3 *Inst.* 50. Lord Hale says, that in this case it cannot be legally known whether the child were killed or not; and that if the child die after it is born and baptised, of the stroke given to the mother, yet it is not homicide.—*H. H.* 433. And Mr. Dalton says, whether it die within her body or shortly after her delivery, it maketh no difference.—*Dalt.* 330. But Mr. Hawkins says, that (in the latter case) it seems clearly to be murder, notwithstanding some opinions to the contrary.—1 *Haw.* 80. And if a person counsel or advise a woman to kill her child when it shall be born, and she afterwards kill it in pursuance of such advice, he is an accessory to the murder. 1 *Haw.* 80

They that are present when any man is slain, and do not their best endeavour to apprehend the murderer or manslayer, shall be fined and imprisoned.—3 *Inst.* 53.

Punishment.

By C. Stat 22 V. c. 91, § 2. Every person guilty of murder, or of being an accessory *before* the fact, shall suffer death as a felon, and every accessory *after* the fact, shall be imprisoned in the penitentiary for life, or for any term not less than two years.

By C. Stat. 22 V. c. 99, § 95. Convicts for murder shall, after judgment, be confined in some safe place within the prison apart from all other prisoners, and fed with bread and water only, except in case of receiving the sacrament, or in case of sickness or wounds.

By Stat. 24 V. c. 8, § 1. When any person dies abroad of hurt received within the limits of this province. the offence may be dealt with, tried and punished in this province.

Form of Indictment for Murder, C. Stat. 22 V. c. 99.

County of } The jurors for our lady the Queen upon their
to wit. } oath present, that A. B., on the day of
in the year of our Lord one thousand eight hundred and at
in the county of did feloniously, wilfully, and of his
malice aforethought, kill and murder C. D.

See also title "*Execution.*"

Self-murder.

A *felo-de-se*, or felon of himself, is a person who, being of sound mind, and of the age of discretion, voluntary killeth

himself.—3 *Inst.* 54; 1 *H. H.* 411. The offender herein incurs a forfeiture of goods and chattels, but not of lands; for no man can forfeit his land without an attainder by course of law.—3 *Inst.* 54. He shall also be buried ignominiously in the highway, with a stake driven through his body.—4 *Bl.* 190. This barbarous custom has however been abolished in England by statute 4 G. IV.

For forms see *post* title "*Indictable Offences.*"

HOPS—INSPECTION OF.

By C. Stat. 22, V. c. 52, § 1. Upon the requisition of not less than twenty persons engaged in the production of hops, inspectors may be appointed by the Governor in council. § 7. Inspector to provide suitable premises. § 8. Examine, inspect, classify, and sort each bale or package into the grades to be denominated No. 1; Merchantable; No. 2. Each bale or package to be marked in plain letters, accordingly, and upon any bale or package which seems unsaleable, the word "unmerchantable."

Offences and Penalties.—§ 13. Any inspector or assistant concerned in buying or selling hops, or dating any weigh note or bill of inspection differently from the time of inspection, or issuing the same without date, or not conforming to the provisions of this act, shall for every offence incur a penalty not exceeding \$200, and be disqualified from holding office, and every inspector or assistant, or other person, who makes, or causes to be made, any fraudulent bill of inspection of hops, shall be guilty of felony, and upon conviction be confined at hard labour in the penitentiary for any term not exceeding seven years. § 14. Any inspector or assistant, not being then employed in the inspection of hops, refusing or neglecting, between sunrise and sunset, to receive any hops, or neglecting or delaying to inspect for the space of three hours after application shall, for each offence, forfeit \$20 to the use of the person delayed. § 15. Any person counterfeiting any hand marks—or without the inspector's consent impressing or branding the same, or any other mark purporting to be the mark of such inspector—on any package of hops, either with the inspector's tools or any counterfeit thereof, or who empties any package branded or marked, in order to put therein hops for sale or exportation without first obliterating any previous brand marks thereon, or fraudulently packs other hops therein, or if any person in the employ of such inspector hires or lends out his marking tools, or connives or is privy to any fraudulent evasion of

this act, he shall for every offence incur a penalty of \$200. § 16. Penalties and forfeitures to be recovered before any court of competent jurisdiction.

HORSES:

The stealing of a horse is a felony at common law, and by C. Stat. 22 V. c. 92, § 21, is punishable at the discretion of the court by imprisonment in the penitentiary for any term not exceeding fourteen years nor less than two years, or imprisonment in any other prison or place of confinement for any term less than two years.

By 2 & 3 P. & M., c. 7, and 31 E., c. 12, the keeper of every fair and market shall yearly appoint a certain special and open place where horses shall be sold in any fair or market overt; § 2, and shall appoint one or more persons to take toll there, and to keep the same place from ten in the forenoon till sunset. § 3. And the sale or exchange, in any fair or market overt, of any stolen horse shall not alter the property, unless the same shall be in the time of the said fair or market openly ridden, led, walked, driven, or kept standing, for one hour together at least, between ten of the clock and sunset, in the open place of the fair or market wherein horses are commonly used to be sold, and not within any house, backside or other privy or secret place. § 4. Nor unless all the parties to the bargain shall come together, and bring the horse to the open place appointed for the toll-taker, or for the book-keeper, where no toll is due. § 5. Nor unless such toll-taker, or (*where no toll is paid*) the book-keeper, or chief officer of the fair or market, shall take upon him perfect knowledge of the seller, and of his true christian name and surname and place of abode, and shall enter all the same down in a book to be kept for that purpose, or else that the seller shall bring to the toll-taker, or other officer aforesaid, one credible person that shall testify that he knoweth the seller, and his true name, surname, mystery and dwelling place, and there enter the same and also the name, surname, mystery, and dwelling place of him that so avoucheth his knowledge. § 6. Nor unless he also cause to be entered the true price. § 7. And also the colour, and one special mark at least. § 8. And the buyer shall pay the toll if any is due, if not then 1d. for the entry. § 9. Which done, the person entering the same shall give to the buyer, requiring, and paying 2d. for the same, a note in writing of all the contents of such entry, subscribed with his hand. § 10. Every person offending in any of the premises shall forfeit £5; half to the

king and half to him that shall sue before the justices in sessions, or in any ordinary court of record; and the sale shall be void; and the owner may seize and take his horse again, or have an action.

And if any horse shall be stolen, and shall afterwards be sold in open market, and the sale shall be in conformity with the above provisions, yet, nevertheless, such sale, in six months after the felony done, shall not take away the owner's property, so as claim be made in six months, where the horse shall be found, before the mayor, if in a town corporate, or else before a justice near the place where found, and so that proof be made before such magistrate in forty days next ensuing, by two witnesses, that the property of such horse was in the party claiming, and was stolen from him within six months next before such claim; but the party from whom the same was stolen may at all times after, notwithstanding such sale, take again the said horse, on payment, or readiness to offer, to the party who hath possession, so much as he shall swear, before such magistrate, that he paid for the same.

Where a horse was stolen from the plaintiff and bought by the defendant at public auction, but not in *market overt*, and the plaintiff afterwards seeing the horse took possession of it, and the defendant immediately re-took it; held that the plaintiff had a right to re-take it.—*Bowman v. Yielding*, Michs. 3 V., *Cameron's Digest*, p. 82.

See also title "*Cattle Running at large.*"

HOUSE-BREAKING.

See "*Burglary.*"

HOUSE OF CORRECTION.

By U. C. Stat. 22 V. c. 127, § 11, it is enacted, that until houses of correction shall be erected, the common gaol in each of the counties shall be a house of correction; and that all idle and disorderly persons, rogues, vagabonds, and incorrigible rogues, or any persons by law subject to be committed to a house of correction, shall, unless otherwise provided by law, be committed to the said common gaols.

By U. C. Stat. 22 V. c. 54, § 403, the municipality of each county is authorised to make by-laws for the erection, preservation, improvement or repair of a shire-hall, court-house, gaol, *house of correction*, &c.

§ 404. The gaol, court-house, and house of correction of the county in which a town or city, not separated for all

purposes from a county, is situate, shall be the gaol, court house, and house of correction *of such town or city*, and in the case of a city shall continue to be so until the council of the city otherwise directs, and the sheriff, gaoler, and keeper of the gaol and house of correction, shall receive and safely keep until duly discharged all persons committed thereto by any competent power or authority of the town or city.

§ 407. Authorises the council of any city also to make by-laws for (*inter alia*) establishing and providing for a house of correction, &c.

HOUSE OF INDUSTRY AND REFUGE.

By U. C. Stat. 22 V. c. 54, § 403. County councils may pass by-laws for erecting, improving and repairing a court house, gaol, house of correction, and *house of industry* upon land the property of the municipality. § 415. And may establish a house of industry and house of refuge, and provide by by-law for the erection and repair thereof, and for the appointment and duties of inspectors, keepers, matrons, and other servants for the superintendence, care and management of the same, with rules and regulations (not repugnant to law) for the government thereof.

§ 416. Any two justices, or inspectors, may commit to such house of industry or refuge—1. All poor and indigent persons incapable of supporting themselves. 2. All persons without means of maintaining themselves, and able of body to work, and who refuse or neglect so to do. 3. All persons leading a lewd, dissolute, or vagrant life, and exercising no ordinary calling or lawful business sufficient to gain or procure an honest living. 4. And all such as spend their time and property in public houses, to the neglect of any lawful calling. 5. And idiots. § 417. Every person committed to the house of industry, or of refuge, if fit and able, shall be kept diligently employed at labour during his continuance there; and in case any such person is idle and does not perform such reasonable task or labour as may be assigned, or is stubborn, disobedient, or disorderly, such person shall be punished according to the rules in that behalf. § 418. Inspector to keep and render accounts of expenditure, &c.

See also title "*Work-houses.*"

HUSBAND AND WIFE.

By U. C. Stat. 22 V. c. 73, § 5, no married woman shall

be entitled to her earnings during coverture without an order of protection under the provisions hereinafter contained.

§ 6. Any married woman having a decree for alimony against her husband, or any married woman who lives apart from her husband, having been obliged to leave him for cruelty or other cause which by law justifies her leaving him, and renders him liable for her support; or any married woman whose husband is a lunatic, with or without lucid intervals; or any married woman whose husband is undergoing a sentence of imprisonment in the provincial penitentiary, or in any gaol for a criminal offence; or any married woman whose husband, from habitual drunkenness, profligacy, or other cause, neglects, or refuses to provide for her support and that of his family; or any married woman whose husband has never been in this province; or any married woman who is deserted or abandoned by her husband, may obtain an order of protection entitling her, notwithstanding her coverture, to have and enjoy all her earnings and those of her minor children, and any acquisitions therefrom, free from the debts and obligations of her husband, and from his control or disposition, and without his consent, in so full and ample a manner, as if she continued sole and unmarried, any law, usage or custom to the contrary notwithstanding.

§ 7. The unmarried woman may at any time apply, or the husband or any of the husband's creditors may, at any time on notice to the married woman, apply for the discharge of the order of protection; and if an order for such discharge be made, the same may be registered or filed like the original order.

§ 8. Either order may issue in duplicate, and when the married woman resides in a city or town where there is a recorder or police magistrate, the order for protection, or any order discharging the same, shall be made by the recorder or police magistrate, and shall be registered in the registry office of the county.

§ 9. When residing elsewhere, the order shall be made by the judge, or one of the judges, or the acting or deputy judge of the division court of the county in which she resides, and instead of being registered shall be filed for public inspection with the clerk of the division court.

§ 10. The hearing may be public or private, § 11, and the order shall have no effect until registered or filed.

See also "*Married Woman*," "*Wife*."

ILLEGITIMATE CHILDREN.

By U. C. Stat. 22 V. c. 77, § 4, any person who furnishes food, clothing, lodging or other necessaries, to any child not born in lawful wedlock, may maintain an action for the value thereof against the father of such child, if the child was a minor at the time the necessaries were furnished, and was not then residing with his or her reputed father, and maintained by him as a member of his family. § 5. Where the person suing for the value of such necessaries is the mother of such child, or a person to whom the mother has become accountable for such necessaries, the fact of the defendant being the father of such child shall be proved by other testimony than that of the mother. § 6. No action shall be sustained under the last two sections unless it be shown upon the trial thereof, that while the mother of such child was pregnant, or within six months after the birth of her child, she did voluntarily make an affidavit in writing, before some one of her Majesty's justices of the peace for the county or city in which she resides, declaring that the person who may be afterwards charged in such action is really the father of such child, nor unless she deposited such affidavit, within the time aforesaid, in the office of the clerk of the peace of the county or clerk of the council of the city, as the case may be. § 7. Such affidavit not to be evidence of the fact. § 8. Other remedies not to be affected by this act.

See also titles "*Bastard*"—"*Concealing Birth*."

INDECENCY.

All open and gross indecency is a *misdemeanor* at common law, and is indictable, not only as a nuisance to the rest of the community, but as being injurious to public morals.—2 *Str.* 790; 4 *Bl. Com.* 65. It is an indictable offence for a man to undress himself on the beach and bathe himself near inhabited houses.—*R. v. Crumden*, 2 *Camp.* 89. This offence is punishable by fine or imprisonment, or both.

By the Municipal Act U. C. Stat. 22 V. c. 54, § 282, the council of every county, city and town may pass by-laws "for preventing indecent public exposure of the person, and other indecent exhibitions."

Indictment against a man, for publicly exposing his naked person. (Archbold.)

PROVINCE OF CANADA.

County of _____, } The jurors for our lady the Queen upon their
to wit, } oath present, that J.S., late of the township

of _____, in the county of _____, labourer, being a scandalous and evil disposed person, and devising, contriving and intending the morals of divers liege subjects of our lady the Queen to debauch and corrupt, on the _____ day of _____, in the _____ year of the reign of our sovereign lady Victoria, at the township aforesaid, in the county aforesaid, on a certain public and common highway there situate, in the view of divers liege subjects of our said lady the Queen, then and there being, and within sight and view of divers other liege subjects, through and on the said highway, then and there passing and repassing, unlawfully, wickedly and scandalously did expose to the view of the said persons so present and so passing and repassing as aforesaid, the body and person of him the said J. S. naked and uncovered, for a long space of time, to wit, for the space of one hour, to the great scandal of the said liege subjects of our lady the Queen, to the manifest corruption of their morals, in contempt of our said lady the Queen and her laws, to the evil example of all others in the like case offending, and against the peace of our lady the Queen, her crown and dignity.

INDIANS.

By imperial statute 43 G. III. c. 138, all offences, committed within any of the Indian territories, not within the limits of this province, or of the United States, shall be tried in the same manner, and subject to the same punishment as if the same had been committed within this province.

Sale of Spirituous Liquors to Indians.

By C. Stat. 22 V. c. 9, § 2, no person shall take any *confession* of judgment or warrant of attorney from any Indian. § 4. Pawns taken for spirituous liquors not to be retained.

By Stat. 23 V. c. 38, § 2, no person shall sell, barter, exchange or give to any Indian man, woman or child within Canada, any kind of spirituous liquors in any manner or way, or cause or procure the same to be done for any purpose whatsoever, under a penalty not exceeding \$20, recoverable on conviction before a justice of the peace upon the evidence of any one credible witness, other than the informer or prosecutor; one moiety to go to the informer, and the other to her Majesty. But no such penalty shall be incurred by furnishing to any Indian, in case of sickness, any spirituous liquor, either by a medical man, or under his direction.

By the Pawnbrokers' Act C. Stat. 22 V. c. 61, § 56, no pawn taken from any Indian for spirituous liquors shall be retained, but may be recovered back with costs by the Indian.

INDIAN LANDS.

By U. C. Stat. 22 V. c. 81, § 2, the Governor may appoint two or more commissioners to enquire concerning trespasses on Indian lands. § 3. If such commissioners find upon investigation any person is unlawfully in possession, they may give notice to such person to remove from the occupation of such lands within thirty days, and in case of neglect, the commissioners or any one of them may issue a warrant directed to the sheriff of the county commanding him to eject the person named in such warrant. § 4. In cases of doubt notice to quit is to be given, and persons disobeying such notice may be removed by warrant directed to the sheriff. § 7. If any person after removal returns or enters, he may be may removed by process from one of the superior courts. § 9. If any person so removed returns, the commissioners or any one of them, upon complaint and proof, may order such person to be committed to the common gaol for a term not exceeding thirty days, and pay a fine to her Majesty not exceeding \$80. § 10. Penalty not exceeding \$80 for unlawfully cutting or removing timber on Indian lands, or in default of payment committal to gaol for a term not exceeding three months. § 12. Commissioners may order timber cut down or stone quarried, but not removed, to be seized and sold according to instructions from the Governor. § 13. Commissioners may summon witnesses. § 14. Moneys and fines collected under this act to be paid to the Receiver-General for the benefit of the Indians. § 15. The accused party to be first summoned. § 16. Sheriffs and gaolers bound to execute commissioners' warrants. § 17. Commissioners entitled to the same protection as justices of the peace. § 18. Appeal to the Court of Chancery. § 19. Commissioners and superintendents to be *ex officio* justices of the peace. § 21. No purchase or contract for the sale of land, made of or with Indians, shall be valid, unless under government authority. § 22. If any person without such authority or consent, purchases or leases any lands from Indians, or makes any contract with them for or concerning any such lands, or in any manner gives, sells, demises, or conveys, or otherwise disposes of any such lands or any interest therein, or offers to do so, or enters on or takes possession of, or settles on any such lands, under colour of any right or interest in consequence of any such purchase or contract, unless with such consent as aforesaid, he shall be deemed guilty of a *misdemeanor*, and on conviction every such person shall forfeit and pay to her Majesty \$800,

with further fine and punishment, at the discretion of the court.

§ 23. No taxes to be levied or assessed upon Indian lands. § 24. Indians to be liable to statute labour on roads through Indian lands if so required by the Indian department. § 25. None but Indians or those intermarried with them shall reside on Indian lands. § 26. If any person or persons other than Indians or those intermarried with them, do, without license of the commissioners, settle, reside upon, or occupy any such lands, roads or allowances for roads, the commissioners, or any of them, upon complaint made, and due proof, may issue their or his warrant, directed to the sheriff of the county, commanding him to remove such settlers. But the provisions in this and the four next following sections shall extend to such Indian lands only as the Governor by proclamation shall designate. § 27. If any person so removed returns and settles, the commissioners, or any one of them, upon *view*, or proof, may by warrant to the sheriff of the county, or to any literate person therein, command him to arrest and commit such person to the common gaol, for a period not exceeding thirty days. § 28. Arrest to be made accordingly. § 29. No *certiorari* or appeal allowed. § 30. If any person without license cuts any timber on such Indian lands, or removes any stone or soil, he shall forfeit and pay \$20 for every tree, and for every sapling, shrub, underwood or timber under the value of \$1, the sum of \$4; if over \$1, then the sum of \$20, and for removing any stone or soil \$20, to be imposed and recovered by the commissioners by distress and sale of the goods of the party fined, or the said commissioners may without proceeding by distress and sale, upon the non-payment of the fine, order the party to be imprisoned in the common gaol for a period not exceeding *thirty* days, when the fine does not exceed \$20, *three* months when it does. § 31. If the offender's names are unknown, they may be described in any order, warrant, &c., in any manner by which they may be capable of being identified. § 32. Sheriffs and gaolers, &c., bound to obey process from the commissioners, and to aid and assist on requisition.

INDICTMENT.

The venue must appear in the margin, and be laid in the county where the offence was committed, and it is not necessary to state any venue in the body of any indictment, and

the county, city, or other jurisdiction named in the margin shall be the venue of all the facts stated, but in cases of local description required, such local description shall be given in the body thereof.—*C. Stat. 22 V. c. 99, § 21.* The exceptions to this rule are provided for by *C. Stat. 22 V. c. 99, § 11*, which enacts that where any felony or misdemeanor has been committed on the boundaries of two or more districts or counties, or within the distance of five hundred yards of any such boundaries, or shall be begun in one district or county and completed in another, the same may be tried in any of the said districts or counties, as if wholly committed therein. § 12. Offences committed on any person or in respect of any property in or upon any coach, waggon, cart or other carriage employed in any journey or voyage upon any navigable river, canal or inland navigation, may be prosecuted in any district or county which shall have been passed in the course of such journey or voyage. § 13. And where the side, centre, bank or other part of any such river, canal or navigation shall constitute the boundary of any two districts or counties, such prosecution may be had in either of such districts or counties.

Every indictment must have a precise and sufficient certainty, otherwise the defendant may demur, move in arrest of judgment, or bring a writ of error (*a*).—*R. v. Mason, 2 T. R. 581.* It should state the facts, circumstances, and intent with which the act is committed, and the time and place, without any repugnancy, or uncertainty, and in terms direct and positive. No part of the indictment must contain any abbreviation, or express any number or date in figures. *2 Hale, 170; 4 G. II., c. 26; 6 G. II., c. 6.* The only exception is the case of forgery, (*b*) libel, and sending a threatening letter, in either of these cases a fac-simile of the instrument is requisite.—*R. v. Mason, 1 East, 180.* The christian and surname of the defendant must be stated, with his addition, state and degree, and the place where he is known. If it be doubtful which of two names is his real surname, he may be described with an *alias dictus*, as *George Jackson*, otherwise called *George Johnston*. Where prisoner's name is not known, and he refuses to discover it, he may be then described as a person whose name is to the jurors unknown, but who is personally brought before the jurors by the keeper of the prisoner.—*Russ. & Ry.* The addition should

(a) But see *C. Stat. 22 V. c. 99, § 34.*

(b) And § 28 same statute.

be given after the first name, and not after the *alias dictus*—2 *Inst.* 699; though this defect is cured by the defendant pleading to the indictment.—1 *Leach*, 420.

In indictments for felony, if the property be stolen out of the possession of a *bailee*, it may be described as the property either of the bailor or bailee—2 *Hale*, 181; therefore goods entrusted to a carrier, a tailor, or a laundress, may be laid as the property of the person to whom they are so entrusted or of the real owner, at the option of the prosecutor.—2 *Hale*, 181; 1 *Leach*, 356.

Clothes or other necessaries furnished by a father to his child may be laid to be the property of the father, if the child be of tender age—2 *East, P. C.* 654; but where the child is old enough to acquire property, they must then be laid to be the property of the child; where the goods are stolen from a married woman they must be laid to be the property of her husband; and the goods of a deceased person must be laid as the property of his executor or administrator; of a corporation, as the property of the corporation in their corporate name.—2 *East, P. C.* 1059.

Where the party injured is unknown, or does not come forward, he may be described as a “certain person to the jurors unknown”—2 *Hale*, 181; but if it appears in evidence that his name is known, the defendant will be acquitted.—2 *East, P. C.* 651, 781.

The time stated should be a day certain, that is the day of the month and year upon which the act is alleged to have been committed; the year of the king’s reign is usually stated, but the year of our Lord is equally good. A mistake in the day and year will not, in general, vitiate the indictment—1 *Salk.* 287; but upon some occasions the time is material, as in the case of murder, when the indictment may lay the time of the death within a year and a day of the mortal stroke.—*Fost.* 249; 4 *Bl. Com.* 306. So in an indictment for bigamy, it is necessary to state, with correctness, the time of the second marriage and to aver that the first wife was alive at the time; the dates of all instruments must likewise be truly stated, the place at which the alleged offence was committed must also be stated; but though the place should be laid with certainty in statement, it is not necessary to be laid according to the fact, and a variance in this respect will not be material, provided the place proved be within the county, except where the place stated is matter of local description, as in describing the situation of a house in the case of *burglary* or *arson*.

An indictment for stopping up the king's highway must shew what particular part was stopped up.—*Snow*. 389. In larceny of written instruments it is sufficient to describe them in a general manner, as “one bank note for the payment of £5.”—2 *East*, *P. C.* 602. 777. And in an indictment for embezzling *several* bank notes, it was held sufficient to describe them as “nine bank notes, for the payment of divers sums of money, amounting in the whole to £9,” without specifying the amount of each particular note.—*R. v. Johnston*, 3 *M. & S.* 589. But now by *C. Stat.* 22 *V. c.* 99, § 32, it is sufficient to describe the same simply as *money*.

With respect to personal chattels, they must be described with certainty and by the names usually appropriated to them, and the number and value of each species or kinds of goods, as “one watch” or “one sheep:” if “*twenty wethers and ewes*” were stated the indictment would be bad for uncertainty, as it should specify how many of each.—2 *Hale* 182, 183. Where any *live* animal is mentioned in an indictment, and it turns out to have been *dead* when stolen, the defendant must be acquitted. *R. v. Holloway*, 1 *C. & P.* 128; *R. v. Edwards*, *R. & R.* 497. Money is described as so many pieces of the current gold or silver coin of this province, called sovereigns or shillings, as the case may be. A variance in the number of articles or in their value is immaterial, if the value proved be sufficient to constitute the offence in law; so if there be ten different species of goods enumerated, and the prosecutor prove a larceny of any one or more of a sufficient value, it will support the indictment, though he fail in his proof of the rest.

The indictment is bad for uncertainty, if it charge the defendant in the disjunctive with one or the other of two offences—as that he murdered, *or* caused to be murdered; that he forged, *or* caused to be forged.—2 *Haw. c.* 25, § 58. Or if it charge him in the disjunctive—as that, being the servant *or* deputy of A. B., he embezzled certain property.—2 *Rd. Rep.* 263.

The indictment must not in any one *count* charge the defendant with having committed two or more offences; but it seems that a defendant may be indicted for the battery of two or more persons in the same count, if committed at the same time.—2 *Burr.* 994. The court will, in general, upon application, quash an indictment for duplicity; but it seems doubtful whether it can be taken advantage of in arrest of judgment, or by writ of error.

Where one part of the indictment is repugnant to another, the whole is void—as, when the indictment charges the prisoner with forging a bond, by which J. S. was *bound*; for this fact would be impossible, if the instrument were *forged*.—2 *Haw. c.* 25, § 62.

But in all cases where any fact or circumstance is stated in an indictment, which is not a necessary ingredient in the offence, it may be rejected as surplusage, and need not be proved; and if there be any defect in the mode of stating such matter, it will not vitiate the indictment.—4 *Co.* 41 a; 5 *Co.* 121; *R. v. Howarthe*, 3 *Str.* 26.

All indictments for offences at common law should conclude, “against the peace of our said lady the Queen” [or the late king,] as the case may be; (a) and an indictment for an offence at common law concluding “against the *form of the statute*,” would be bad.

Where a statute creates an offence, or makes an offence at common law one of a higher nature—as where a misdemeanor is made felony—the indictment should conclude “against the form of the statute.”

Where several persons actually join in the commission of the same felony, they may be indicted either *jointly* or *separately*.—2 *Hale*, 173. But where the offence is in its nature several and distinct, each defendant must then be indicted separately.

The consequence of a misjoinder of several defendants is, that application may be made to the court to quash the indictment.—*R. v. Kingston*, 8 *East*, 41.

The same defendant, also, ought not to be charged with different felonies, in different counts of an indictment—as a *murder* in one count, and a *simple larceny* in another; or a burglary, in the house of A. in one count, and a burglary in the house of B. in another. In the first case the objection is fatal on arrest of judgment, or in error, because the judgment is different for the two offences. In the last case, if the objection is made before the defendant has pleaded, or the jury are charged, the judge may in his discretion quash the indictment; and though it be not made till after the jury are charged, the prosecutor may still be put to his election for which offence he will proceed. But this last misjoinder is no ground to arrest the judgment, the offence being of the same species, and for which the judgment is precisely the same.

(a) But see C. Stat. 22 V. c. 93, § 84, which enacts that the want of these words shall not vitiate the indictments.

The *same* felony, however, may be charged in different ways in several counts, in order to meet the facts of the case as they may come out in evidence—thus: if it be doubtful whether the house in which a burglary is committed belongs to A. or B. it may be stated in one count to be the house of A., and in another count the house of B.; and the like in an indictment for a larceny of goods, where it is doubtful whose property they are.—2 *B. & P.* 508. And by C. Stat. 22 V. c. 99, § 34, three distinct acts of embezzlement may be charged in the same indictment within six months.

In misdemeanors, it is no objection to an indictment that it contains several charges, provided the judgment is the same.—3 *T. R.* 98, 106; 8 *East*, 46; 2 *Burr.* 984; *R. v. Jones*, 2 *Camp.* 131.

By C. Stat. 22 V. c. 99, § 14, offenders may be indicted where the property shall be found, although stolen elsewhere. §§ 15 & 16. And so with regard to receivers. § 20. Indictments, except in cases of high treason, need not be on *parchment*. § 23. In indictments for murder or manslaughter, the particular manner in which the death was caused need not be stated. § 24. In an indictment it shall be sufficient to state partnership property to belong to one or more of the partners. § 26. And with respect to any church or place of religious worship, bridge, or other public building, canal, &c., or any subdivision thereof, it shall not be necessary to state the same as the property of any person. § 27. Property under turnpike trusts may be laid as the property of the trustees or commissioners, without naming them. § 28. In an indictment for forging, uttering, stealing, embezzling, destroying or concealing, or obtaining by false pretences any instrument, a copy or fac simile thereof need not be set out. § 29. In indictments for forging, &c., it shall be sufficient to allege “intent to defraud,” without naming any particular person. § 30. And so for engraving or making any instrument, matter, or thing, or using or having the unlawful possession of any plate or other material upon which the same has been engraved. § 31. And in all other cases a general designation without a fac simile copy will be sufficient. § 32. In any indictment relating to money or bank notes, it shall be sufficient to describe both “as money.” § 33. In any indictment for stealing any written or printed evidence of title, it shall be sufficient to allege the thing stolen to be evidence of title, mentioning the estate without alleging *value*. § 34. In an indictment for embezzlement *three* distinct acts only to be charged within *six months*.

§ 35. And in any indictment for obtaining or attempting to obtain property by false pretences, it shall be sufficient to state that the defendant did so by false pretences, without stating further particulars. § 36. In an indictment for stealing, a count may be inserted for receiving, and *vice versa*. § 37. And the prosecutor shall not be put to his election, but the jury may find a verdict on either count; and if an indictment be preferred against two or more persons, the jury may find all or any of such persons guilty, either of stealing or receiving; or find one or more guilty of stealing, and the other or others of receiving. § 39. In indictments for perjury it shall be sufficient to set forth the substance of the offence, by what court, or before whom the oath, &c., was taken, without setting forth the whole document. § 43. Any number of accessories to any felony, or receivers, may be charged with the substantive felony, notwithstanding the principal felon shall not be included in the indictment. § 44. No indictment shall abate by reason of any dilatory plea, but may be amended instanter. § 45. Matters unnecessary to be proved need not be averred. § 46. Every objection to an indictment for any formal defects shall be by demurrer, or motion to quash, before the jury are sworn; and the court, if it think proper, may immediately order the indictment to be amended. § 51. Provides that indictments may be in the forms annexed to the act. The forms given are for "simple larceny," "false pretences," "embezzlement," "stealing money," "murder," "manslaughter," "perjury," "subornation of perjury." § 77. The court may order an indictment to be amended upon trial, when any variance appears between any matter in writing or in print, and the averment in the indictment. § 78. And so between any statement in the indictment and the evidence, in names, dates, places or other matters, not material to the merits of the case, and the amendment is not prejudicial to the defendant. § 84. Indictments not to be vitiated after verdict, or otherwise, for omission of the words, "as appears by the record," or of the words, "with force and arms," "against the peace," nor for the insertion of the words "against the form of the statute," instead of "statutes," or *vice versa*: nor for the wrong designation of any party mentioned in the indictment; nor for omitting to state the time when the offence was committed, in any case where the 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 on an impossible day; nor for want of a proper venue, where the court appears by the indictment to have that jurisdiction. § 85. Nor for defect in the anterior proceedings.

Of the Finding by the Grand Jury.

The names of all witnesses who are to be examined before the grand jury should be endorsed on the bill of indictment, and formerly it was necessary that the witnesses should be previously sworn by the officer of the court. But now by U. C. Stat. 22 V. c. 109, § 2, witnesses need not be sworn in open court, but may be sworn before the grand jury, § 4, their names being first submitted to the grand jury by the Crown counsel. The evidence is gone through by the grand jury in the order in which the names of the witnesses appear on the back of the bill; and if a majority of the grand jury, consisting of twelve at least, agree in thinking that there is sufficient evidence to put the defendant on his trial, they endorse on the bill of indictment "*a true bill*;" but if the majority think there is not sufficient evidence, or if the majority (if a number less than twelve) should even think there is, then the words "*no bill*" are endorsed. The bill of indictment is then returned publicly into court by the foreman of the grand jury; and if the indictment is found (for it is previously in law only termed a bill) the prisoner is arraigned in due course and put upon his trial.

The grand jury may insist upon the same strictness of proof as is required on the trial, though it is not usual to do so, nor to weigh the evidence with that degree of scrutiny with which it is afterwards sifted by the judge and jury. They are to hear evidence only on behalf of the prosecution; for the finding of an indictment is merely in the nature of an enquiry or accusation, which is afterwards to be tried and determined; and their duty in this respect is solely to enquire upon their oaths, whether there be sufficient cause to call upon the party to answer it; they are therefore not to try the prisoner, but merely to determine whether the evidence *against* him is of such a nature as to render necessary a more formal investigation into the fact of his innocence or his guilt; but they ought nevertheless to be thoroughly persuaded of the truth of the indictment, as far as the evidence goes, and not to rest satisfied merely with remote probabilities, a doctrine that Blackstone rightly observes might be applied to very oppressive purposes.—4 *Bl. Com.* 303

Where there is only one count in the indictment, the grand jury cannot find “*a true bill*” as to part, and “*not a true bill*” as to the other part; for they ought to find the whole or nothing.—1 *Haw. c.* 64, § 40; 2 *Id. c.* 25, § 2. But where the indictment contains two counts, as one for a riot, and one for an assault, they may then return “*a true bill*” as to one count, and *ignoramus* as to the other.—*R. v. Fieldhouse, Cowp.* 335. But where the evidence bears upon all the counts, and the offence is only stated in a *different form*, it is better to find the whole bill, than to elect one count and ignore the others, since it is possible that the prosecution upon trial might fail upon the one so elected, and might have succeeded upon one of those ignored. When a bill is thrown out by the grand jury, it cannot again be preferred to the same jury during the same assizes or sessions; but it may be preferred at the next assizes or sessions, if the prosecutor is not prevented by any lapse of time limited for the prosecution. It is improper to prefer two bills at the same time for the same offence before the grand jury, that is to say, one bill treating the offence as a felony, and the other as a misdemeanor: but after a bill for felony has been returned “*no bill*” by the grand jury, it would not be improper, if the facts warranted such a course, to prefer another bill before the same grand jury, for a misdemeanor; as for instance, if a bill of indictment be preferred for rape, and *ignored*, another may very properly, and perhaps successfully, be preferred for the misdemeanor, viz., an assault with intent to commit a rape.

Of granting a Copy of the Indictment.

In cases of high treason, the prisoner is by virtue of the 7 Anne, c. 21, entitled to a copy of the indictment with a list of the witnesses and jurors, ten days before the trial.

And by U. C. Stat. 22 V. c. 110, § 1, the prisoner is entitled to a copy of the indictment whether for felony, or misdemeanor, on payment of certain charges, viz., fifteen cents per folio of 100 words.

INDICTABLE OFFENCES.

All felonies and misdemeanors, whether at common law or by statute, are indictable offences, and as such triable at the sessions, or the assizes, according to the enormity of the offence. All felonies such as murder, manslaughter, rape, burglary, arson, and the like can only be tried at the assizes. But simple larcenies and misdemeanors (perjury excepted)

may be tried at the sessions, or in the recorder's court of any city where the offence is committed.

With respect to the forms and mode of procedure upon indictable offences, see "*Indictable Offences*," under the head of "*Justices of the Peace*."

INDIGENT DEBTORS.

By Stat. 23 V. c. 25, § 4, the following chattels are exempt from seizure under any writ issued out of any court: 1. The beds, bedding, and bedsteads in ordinary use by the debtor and his family. 2. The necessary and ordinary wearing apparel of the debtor and family. 3. One stove and pipes, and one crane and its appendages, one pair of gridirons, one set of cooking utensils, one pair of tongs and shovel, one table, six chairs, six knives, six forks, six plates, six teacups, six saucers, one sugar basin, one milk jug, one teapot, six spoons, all spinning wheels and weaving looms in domestic use, and ten volumes of books, one axe, one saw, one gun, six traps, and such fishing nets and seines as are in common use. 4. All necessary fuel, meat, fish, flour and vegetables actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of \$40. 5. One cow, four sheep, two hogs, and food therefor for thirty days. 6. Tools and implements of trade or chattels ordinarily used in the debtor's occupation to the value of \$60.

INDUSTRIAL FARMS.

By the Municipal Act U. C., Stat. 22 V. c. 54, § 297, the council of every city and town may pass by-laws. 8. For acquiring any estate in landed property within or without the city or town for an industrial farm, &c., and for the disposal thereof when no longer required. 9. For the erection thereon of buildings and fences. 10. For the management of the same.

§ 419. For establishing thereon a workhouse or house of correction, and regulating the government thereof; 2, for committing to such industrial farm by the mayor, recorder, police magistrate, or two justices of the peace, for such city or town, such description of persons as may by the council be deemed, and by by-law declared expedient.

INFANT.

An infant (or minor) in law, is any one who is under the age of 21 years. But with respect to criminal offences, the

law considers the age of 14 years the age of discretion, and that any one above that age has a sufficient knowledge of right and wrong to be criminally answerable for his actions. An infant under 14 is presumed by law to be incapable of committing a rape.—1 *Wale*, 630. With respect to the competency of an infant to be a witness, the old rule was, that none could be admitted under nine years of age; but a more reasonable rule has since been adopted; and it is now settled that their admissibility depends on the understanding of the child, and the notion it has of the danger and impiety of falsehood, and that this must be collected from the child's answers to questions propounded by the court.—1 *East*, *P. C.* 442; 1 *Wale*, 302.

By U. C. Stat. 22 V. c. 12, § 50, the real estate of any infant may be sold by order of the Court of Chancery.

By U. C. Stat. 22 V. c. 74, § 8, any of the superior courts of law or equity, or any judge thereof upon the petition of the mother of any infant, in the sole custody or control of the father, or of any person by his authority, or of any guardian after the death of the father, may make order for the access of the petitioner to such infant, at such times and under such regulations as such court or judge thinks convenient and just; and if such infant be within the age of *twelve* years, may make order for the delivery of such infant to the petitioner, to remain in her care and custody until such infant attains that age, subject to such regulations as the court or judge may direct; and also make order for the maintenance of such infant by the father, or out of the infant's estate, as such court or judge thinks just and reasonable. § 11. No such order to be made in favour of any mother against whom adultery has been established by judgment in an action for criminal conversation at the suit of her husband.

See also title* "*Guardians.*"

INFORMATION.—INFORMERS.

An information, in its confined sense, is a complaint exhibited before one or more justices of the peace, upon oath or otherwise, which the defendant is summoned to answer, or upon which a warrant issues to apprehend him: in its more enlarged and comprehensive sense, it is an accusation or complaint exhibited against a person for some criminal offence, either against the king or against a private person, which, from its enormity, the public good required to be immediately restrained; and it differs only from an indictment

in this particular, viz., that the latter is an accusation founded on the oath of twelve men; whereas an information is only an allegation of the officer who exhibits it.

Informations at the suit of the king are filed by the Attorney-general, *ex-officio*, and without any previous application to the court for a rule to file the same, and these are properly the king's own suits. But in those at the relation of private persons, the king is only the nominal prosecutor, and none such could be filed without a rule on the person complained of, to shew cause to the contrary; which rule is never granted but upon motion made in open court, and an affidavit of the facts in relation to the charge of complaint.

When justices of the peace act uprightly, though they mistake the law, the court will not grant an information against them—1 *T. R.* 653; but the party will be left to the ordinary remedy by indictment or action; nor for an improper conviction, unless the party complaining make an exculpatory affidavit, denying the charge.—3 *T. R.* 388.

Information will be granted against a justice for convicting a person without a previous summons.—*Str.* 677.

A criminal information may be moved for against magistrates, for misconduct in their office, in the second term after the offence committed, there being no assize intervening—13 *E. R.* 270; but the application must be made sufficiently early in the second term to give the defendants an opportunity of shewing cause against it in the same term.—13 *E.* 322. And the court will grant a rule *nisi* for a criminal information against a justice for malpractices *during the term*; but not for misconduct before the term.—7 *T. R.* 80.

Compounding informations, on penal statutes, is an offence punishable by 18 Eliz. c. 5, which enacts, that any person informing under pretence of any penal law, who shall make any composition without leave of the court, or take any money or promise from the defendant to excuse him, shall forfeit £10, and shall stand two hours in the pillory, and be disabled in future to sue on any popular or penal statute.—2 *Haw. P. C.* c. 26.

By the *Summary Convictions Act*, C. Stat. 22, V. c. 103, § 20, it is enacted that in all cases of complaint upon which a justice or justices may make an order for the payment of money or otherwise, such complaint shall be in writing and *on oath*, unless otherwise enacted by any statute upon which such complaint is framed.

§ 21. Any variance between the information and evidence as to the *time* such offence is alleged to have been committed

shall not be material if it be proved that such information was in fact laid within the time limited by law; and any variance between the information and evidence as to the place, shall not be deemed material if the offence or act be proved to have been committed within the jurisdiction of the justice or justices by whom the case is heard.

§ 24. All cases of complaint upon which a justice or justices are authorised by law to make an order, and all cases of information for any offence punishable upon summary conviction (unless some particular act otherwise permits) shall be laid on *oath* or *affirmation*. § 25. And in all cases where the justice or justices receiving the same issue a warrant in the first instance thereupon, the matter of such information shall be substantiated by the *oath* or affirmation of the informant, or by some witness or witnesses on his behalf before any such warrant shall be issued: and shall be for *one matter of complaint* only, and not for two or more matters of complaint, and for one offence only, and not two or more offences, and such complaint or information may be made by the complainant in person, or by his counsel or attorney.

§ 26. In all cases where no time is limited for making such complaint in the act relating thereto, it shall be made within *three months* from the time the matter of complaint arose.

§ 70. In all cases of summary proceedings before justices out of sessions *one* justice may receive the information and grant the summons or warrant to appear, even in cases where the statute requires such complaint to be made and determined before two or more justices. § 72. It shall not be necessary that the justice who so acts before or after such hearing shall be the justice or one of the justices at the hearing.

By Stat. 27 & 28 V. c. 36, § 1. If any action or suit shall be brought or commenced by the plaintiff as an informer for the recovery of any penalty, it shall be lawful for the defendant, his attorney or agent to apply to the court in which such action is pending for security for costs, upon affidavit by the defendant shewing to the court that such action is brought to recover a penalty, and that in the belief of the deponent, the plaintiff or informer is not possessed of property sufficient to answer the costs of the suit, in case a verdict shall be given or judgment rendered for the defendant, and that he, the defendant, has a good defence to such action upon the merits, as he is advised and believes, and it shall be lawful for the judge or judges of the court, in his or their discretion, to make an order that the plaintiff or in-

former shall give security for the costs to be incurred in such suit in the same manner and in accordance with the practice in cases where the plaintiff resides out of the province, with a stay of proceedings until such security is given.

For a general form of information upon oath, see titles "*Summary Conviction*," "*Indictable Offences*."

INNS AND INN-KEEPERS.

Detaining Goods for the Reckoning.

It is said an inn-keeper may detain the horse of any guest for his feed till payment.—*Bac. Abr. Inns.* But a horse committed to an inn-keeper may be detained only for his own meat, and not for the meat of his guest, or of any other horse.—*Ib.*; *Bulst.* 207. An inn-keeper that detains a horse for his meat cannot use him.—*Bac. Abr. Inns.*

Goods of a Guest Stolen out of an Inn.

An inn-keeper is answerable for those things which are stolen within the inn, though not delivered to him to keep, and though he was not acquainted that the guests who brought the goods to the inn; for it shall be intended to be through his negligence, or occasioned by the fault of him or his servants.—8 *Co.*, *Caley's case.* So, if he puts a horse to pasture without the direction of his guest, and the horse is stolen, he must make satisfaction; but otherwise, if with his direction.—*Ib.* In like manner, if an inn-keeper bids his guest take the key of his chamber and lock the door, and tells him that he will not take charge of the goods, yet if they are stolen, he shall be answerable, because he is charged by law for all things which come to his inn, and he cannot discharge himself by such or the like words.—*Dalt.* c. 56. A person is a guest who merely leaves his horse at an inn, as much as if he had stayed himself, because the horse must be fed, by which the inn-keeper has gain; otherwise, if he had left a trunk or a dead thing.—1 *Salk.* 388.

Granting of Licenses.

By Imperial Stat. 14 G. III. c. 88, a duty of £1 16s. sterling is imposed on all tavern licenses, and the following additional provincial duties by C. Stat. 22 V. c. 20, § 1, viz.: \$12, if situate within the limits of any city, \$10, if within the limits of an incorporated town, and \$5 if elsewhere or the license be for a vessel. § 3. License to have no effect until duties paid.

By U. C. Stat. 22 V. c. 54, § 246, the council of every township, city, (a) town and incorporated village may respectively pass by-laws. 1. For granting tavern licenses. 2. For declaring the terms and conditions. 3. The security to be given for observance of the by-laws. 4. For limiting the number of tavern and shop licenses. 5. For regulating the houses or places licensed; such licenses to be in force not exceeding one year, and the sums to be paid therefor respectively. § 6. For prohibiting the sale by retail of spirituous, fermented or other manufactured liquors in any inn or other house of public entertainment, and for prohibiting the sale thereof in shops and places other than houses of public entertainment: provided the by-law has been first duly approved by the electors of the municipality as provided by the act. § 247. The sum to be paid for a tavern license is to include as well the imperial duty, 14 G. III. c. 88, as the duty payable to the province, and shall not be less than \$25. § 248. The provincial duty to be paid to the Receiver-General. But the imperial duty to be applied to the use of the corporation. § 249. No tavern or shop license required for selling in any original package from the importer or manufacturer, provided such packages contain respectively not less than five gallons, or one dozen bottles. § 250. Tavern keepers may without additional license sell liquors by retail to be consumed out of the house, in the same quantities as if consumed in the house. § 251. Tavern keepers to exhibit over the door of such tavern, the words, "*licensed to sell wine, beer and other spirituous or fermented liquors,*" under a penalty in default of one dollar, recoverable with costs, before any justice of the peace. The following sections, 254 to 258, relating to the sale of intoxicating liquors between Saturday night and Monday morning, have been repealed by the 27, and 28 V. c. 18, hereafter noticed, and other provisions substituted.

Inspectors of Licenses.

§ 259. (b) To be appointed, one or more, by by-law, and their powers, duties and remuneration defined. § 260. With authority for any such inspector (subject to by-laws) to endorse on any license permission to sell at any place out of the house, or remove from the house licensed, to another within the same municipality. § 264. The mayor

(a) The first five sub-sections repealed as to cities by 25 V. c. 23.

(b) Repealed as to cities by 25 V. c. 23, and power vested in commissioners of police—§ 4.

or police magistrate of a town or city, with any one justice, or the reeve of a township or village with any one justice, upon complaint made on oath of riotous or disorderly conduct in any inn, tavern, ale or beerhouse within their jurisdiction, may summon the keeper, and investigate the same summarily, and either dismiss the complaint with costs, to be paid by the complainant, or convict the keeper, and annul his license, or suspend the same for not more than sixty days, with or without costs.

By 23 V. c. 53, § 1, (a) no tavern license shall be issued unless upon petition signed by at least 30 of the resident electors of the municipality, nor unless such tavern be provided with certain accommodations. § 2. Nor licenses granted in a proportion greater than one for every 250 souls resident in the municipality, as shewn by the last census, or by a special enumeration taken by order of the council. § 3. Every such tavern is to contain in addition to what may be needed for family use, not less than four bed-rooms, with suitable bedding and furniture, and stabling (attached) for at least six horses. § 6. Any officer of the municipality, or person authorised, issuing a license contrary to this act, shall be guilty of a *misdemeanor*, and pay a fine of not less than \$40 nor more than \$100, or may be imprisoned thirty days, or both, at the discretion of the court.

By Stat. 25 V. c. 6, § 1, licenses are to be issued by the revenue inspector of the division. § 2. On production to such inspector from the municipal authority of a *certificate* that the requirements of the law and by-laws of the municipality, or regulations of the board of commissioners of police in *cities* have been complied with. § 7. Any officer or person who issues a license or *certificate*, contrary to the provisions of this act, or of any other act in force, shall be guilty of a *misdemeanor*, and pay a fine not less than \$40 nor more than \$100, or may be imprisoned for a period not exceeding thirty days, at the discretion of the court.

By Stat. 25 V. c. 23, § 25, in *cities* the board of commissioners of police are authorised, 1. To grant certificates for tavern licenses. 2. Determine the conditions. 3. The security to be given for observance of the by-laws. 4. To limit the number of tavern and shop licenses. 5. Make regulations for the houses or places licensed, the time the licenses shall be in force, not exceeding one year, and the sum to be paid to the city chamberlain before license granted, subject

(a) Repealed as to cities by 25 V. c. 23, and power vested in the commissioners of police.

always to the provisions of the 247th § of the U. C. Stat. 22 V. c. 54. 6. To classify the houses licensed as taverns, and the places licensed as shops. § 3. But no certificate for a tavern license shall be granted or issued unless upon petition signed by at least 30 of the resident municipal electors of the city; nor shall the board of commissioners of police in any *city* grant certificates for tavern licenses in any year in a proportion greater than one for every 250 souls resident in such city according to the last census, or any subsequent special enumeration by order of the city council; nor more than one in every twenty certificates for tavern licenses granted in any city for any house unprovided with the following accommodations, viz.: four or more bedrooms, with suitable bedding and furniture, in addition to those needed for the use of the family of the tavern-keeper. § 5. The board of commissioners to appoint *city inspectors* of shop and tavern licenses, and prescribe their duties. § 7. Any officer or person issuing a license contrary to this act shall be guilty of a misdemeanor, and pay a fine not less than \$40 nor more than \$100, or may be imprisoned for a period not exceeding thirty days, or both, at the discretion of the court.

Death from excessive drinking.

By Stat. 27, 28 V. c. 18, § 40, whenever in any inn, tavern, or other house of public entertainment, any person has drunk to excess of intoxicating liquors of any kind therein furnished to him, and while in a state of intoxication from such drinking has come to his death by suicide, or drowning, or perishing from cold, or other accident caused by such intoxication, the keeper of such inn, tavern, &c., and also any other person or persons who for him, or in his employ delivered to such person the liquor whereby such intoxication was caused shall be jointly and severally liable to an action as for personal wrong if brought within *three* months thereafter, but not otherwise, by the legal representatives of the deceased; and such legal representatives may bring either a joint and several action against them, or a separate action against either or any of them and recover such sum not less than \$100, nor more than \$1000, as may therein be assessed by the court or jury.

§ 42. The husband, wife, parent, brother, sister, tutor, guardian, or employer of any person who has the habit of drinking intoxicating liquors to excess, or the parent, brother, or sister of the husband or wife of such person, or the tutor

or guardian of any child or children of such person, may give notice in writing signed by him or her to any person licensed to sell, or who sells, or is reported to sell intoxicating liquors of any kind, not to deliver intoxicating liquors to the person having such habit; and if the person so notified does at any time within twelve months after such notice, either himself or by his clerk, servant or agent, otherwise than in terms of a special requisition for medicinal purposes, signed by a licensed medical practitioner deliver, or in or from any building, booth, or place occupied by him and wherein or wherefrom any such liquor is sold, suffer to be delivered, any such liquor to the person having such habit, the person giving the notice may, in an action as if for personal wrong, (if brought within six months thereafter, but not otherwise,) recover of the person notified such sum not less than \$20 nor more than \$500, as may be assessed by the court or jury as damages; and any married woman may bring such action in her own name, without authorisation by her husband; and all damages recovered by her shall in that case go to her separate use; and in case of the death of either party, the action shall survive to or against his legal representatives.

§ 44. In all places where by law intoxicating liquors, or any particular description of such liquors are allowed to be sold by retail, no sale or other disposal of such liquors shall take place therein, or on the premises thereof, or out of or from the same to any person whomsoever, from the hour of *nine* on Saturday evening, till the hour of *six* on the Monday morning thereafter, except on requisition for medicinal purposes, signed by a licensed medical practitioner, or by a justice of the peace; nor shall any such liquors be permitted to be drunk in any such place, except by travellers or persons *bona fide* resident, lodging or boarding thereat, during the time prohibited by this section for the sale of them. 2. Under a penalty of not less than \$10 nor more than \$50 with costs, recoverable against the person or persons who are the proprietors in occupancy or tenants or agents in occupancy of such place or places, and who are found by himself, herself, or themselves, or his, her or their servants or agents, to have committed or aided in such offence.

§ 45. Any police officer or constable being thereunto authorised in writing, as hereinafter provided, may at any time enter into any inn, tavern, or other house or place of public entertainment, or wherein refreshments or intoxicating liquors are sold, or reputed to be sold, whether legally or

illegally, and any person being therein or having charge thereof, who refuses, or after due summons fails to admit such police officer or constable into the same, or offers any obstruction to his admission thereto, shall be liable to a penalty of not less than \$10 nor more than \$50 for every such offence. 2. Any two or more justices of the peace may grant such authorisation within their jurisdiction for any term not exceeding three months. 2. And may afterwards cancel the same by a written order; and every police officer or constable thereafter assuming to act under the same shall be guilty of a misdemeanor.

Recovery of Penalties.—§ 46. Any person may be informant under the last two preceding sections, (44 and 45.) All proceedings shall be begun within thirty days from the date of the offence; and may be had before any one or more justices of the locality: the mode of procedure to be the same as in the Consolidated Statutes of Canada respecting the duties of justices of the peace out of sessions, in relation to summary convictions, and all penalties recovered therein shall belong to the municipality.

See also title "*Intoxicating Liquors.*"

INOCULATION.

By C. Stat. 22 V. c. 39, § 1, any person producing or attempting to produce by inoculation with variolous matter, or by wilful exposure to variolous matter, or to any matter, or thing impregnated with variolous matter, or wilfully by any other means whatsoever the disease of small pox in any person in this province shall be liable to be proceeded against summarily before any *two* justices, and upon conviction be imprisoned for any term not exceeding one month.

§ 2. Any licensed medical practitioner convicted of an offence against this act, shall forfeit his license, and be liable to the same penalty as unqualified practitioners in the event of his practising: provided always, that after the term of imprisonment, such party may be again licensed by the Governor.

INSANE DESTITUTE.

By U. C. Stat. 22 V. c. 122, § 1, the clerk of the peace shall, once in the year, lay before the grand jury of the quarter sessions a detailed account of all sums of money expended the last preceding twelve months, or necessary to be advanced during the next ensuing twelve months for the support of insane destitute persons received into the gaol of

the county, and the grand jury may at such quarter sessions present such just and reasonable sums as are necessary for their support in any gaol or other place within the county for the year next ensuing. § 2. The chairman of the quarter sessions may from time to time issue his warrant for payment, not exceeding the amount presented, payable by the treasurer of the county out of county funds. § 3. And the court of quarter sessions may from time to time, by *subpœna*, call before them any person required by the grand jury to answer upon oath all questions to be asked of him by the grand jury concerning such insane destitute persons and their maintenance and support.

See also "*Lunatics Dangerous.*"

INSANE CRIMINALS.

By C. Stat. 22 V. c. 109, § 1, upon the acquittal of any person on the ground of insanity, the jury shall find specially whether the party was insane at the time of committing the offence, and whether acquitted by them on that ground. In such case the court shall order such person to be kept in strict custody, until her Majesty's pleasure be known: § 2, and the Governor may give such order for his safe custody as he shall think fit. § 4. If any person indicted shall be insane, and upon arraignment be found so by a jury lawfully empannelled for that purpose, or if upon trial, such person appears to the jury to be insane, the court may order such finding to be recorded, and the party kept in strict custody until her Majesty's pleasure be known. § 5. If any person be brought up before the court to be discharged for want of prosecution, and appears to be insane, the court may order a jury to be empannelled to try the sanity of such person. The court may order him to be kept in strict custody until her Majesty's pleasure be known. § 6. And in all cases of such insanity the Governor may give direction for the safe custody of the person.

§ 8. If any person, while imprisoned under any sentence of death, transportation, or imprisonment, or under a charge of any offence, or for not finding bail for good behaviour, or to keep the peace, or to answer a criminal charge, or in consequence of any summary conviction, or order by any justice or justices, or under any other than civil process, appears to be insane, any two justices of the peace of the locality, of whom the chairman of the quarter sessions shall be one, shall enquire with the aid of two physicians or surgeons as to the insanity of such person; and if it be duly certified

by such justices and physicians or surgeons that such person is insane, the Governor upon receipt of such certificate, through the provincial secretary, may direct by warrant that such person shall be removed to such public lunatic asylum, or other receptacle for insane persons, as he may judge proper. § 9. And he shall remain under confinement there, or in any other public lunatic asylum, or other proper receptacle, until it be certified to the Governor through the provincial secretary by two physicians or surgeons that he has become of sound mind, whereupon the Governor may order the removal of such person back to the prison from whence he had been taken, or if the period of his imprisonment shall have expired, then to be discharged.

See also "*Criminal Lunatic Asylum*," "*Lunatics Dangerous*."

INSECTIVEROUS BIRDS.

By Stat. 27 & 28 V. c. 52, the preamble reciting: whereas the destruction of insectivorous birds is prejudicial to agriculture, and the killing and capturing of singing birds, and other small birds is a useless and cruel practice, it is enacted by § 1. That it shall not be lawful to shoot, destroy, kill, wound or injure, or to attempt to shoot, destroy, kill, wound or injure any bird whatsoever, save and except eagles, falcons, hawks, ravens, crows and other birds of the eagle kind, wild pigeons, rice birds and kingfishers, between the first day of March and the first day of August in any year. § 2. Nor to take, capture, buy, sell, expose for sale or have in possession any bird whatsoever, save the kinds above excepted; or to set, either wholly or in part, any net, trap, spring, snare, cage, or other machine or engine, by which any bird whatsoever, save as above excepted, might be killed or captured, between the periods aforesaid. § 3. Nor to take, injure, destroy, or have in possession any nest, young, or egg of any bird whatsoever, except of eagles, falcons, hawks, and other birds of the eagle kind, and kingfishers, between the same periods. § 4. Provided always, that this act shall not apply to any imported birds, or to any domesticated birds commonly known as poultry; nor shall it be unlawful to buy, sell, expose for sale or possess any bird taken or captured at a season not forbidden by this act, but the proof thereof shall be wholly upon the party accused, whose oath alone shall be sufficient proof. § 5. The violation of any provision of this act shall subject the offender to a penalty of not less than *one dollar* nor more

than *ten dollars*, to be recovered in a summary manner by summons before one justice of the peace where the offence is committed, who shall award the penalty to be paid to the prosecutor with all fees and costs, and in default of immediate payment the defendant shall be forthwith imprisoned in the nearest common gaol for a period not less than two and not more than twenty days, at the discretion of such justice. § 6. Any person may seize on view any bird unlawfully possessed and carry the same before a justice to be by him confiscated; and it shall be the duty of all market clerks and police officers on the spot to seize and confiscate, and if alive, to liberate such birds; and every person is authorised to destroy all nets, traps, &c., whereby any bird (save the kinds excepted) might be unlawfully killed or captured. § 7. But the Minister of Agriculture may grant written permissions for obtaining birds or eggs for *bona fide* scientific purposes. § 8. Convictions not to be annulled for defect in form. § 9. This act not to annul or vacate any of the game acts.

INSOLVENT DEBTORS.

By U. C. Stat. 22 V. c. 26, § 1, if a debtor in close custody upon *mesne process*, or in execution or upon an attachment or other process, make oath, that he is unable to find security, (for the limits,) or bail, (if on *mesne process*,) and is not worth £5, the court may order the plaintiff to pay to such debtor on the third Monday after service of the order and on each Monday afterwards so long as he shall be detained in prison the sum of \$2: § 2, and in default of payment such debtor will be entitled to his discharge. § 3. But the plaintiff may file interrogatories against such debtor for the discovery of property, and until fully answered the court may order such weekly allowance to be suspended.

§ 5. Any debtor in close custody, *in execution*, after ten days' notice, and making oath that he is not worth \$20 exclusive of his necessary wearing apparel, and that of his family, their beds and bedding and ordinary household utensils, not exceeding in the whole the value of \$60, and having fully answered all interrogatories filed, &c., shall be, by rule or order, discharged from custody, § 10, upon such terms with respect to assignment of any rights to property as the court or judge may require; § 11, but if it shall appear that the debt for which such debtor is confined was contracted by any manner of fraud, or breach of trust,

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or under false pretences, or that he incurred such liability without reasonable assurance of being able to pay, or that he is confined upon a judgment in an action for breach of promise of marriage, seduction, criminal conversation, libel or slander, the court or judge may order the applicant to be re-committed for any period not exceeding *twelve* months, and then to be discharged.

See also "*Indigent Debtors.*"

INSPECTORS OF GAOLS AND HOSPITALS, &c.

By C. Stat. 22 V. c. 110, § 1, the Governor is authorised to appoint five fit persons to be inspectors of all public asylums, hospitals, common gaols and other prisons in this province. § 14. Inspectors, singly or together, shall visit and inspect every gaol, house of correction and prison, or place kept or used for the confinement of persons in any part of the province other than the provincial penitentiary, as often as may be required by the Governor, and at least twice in the year; and every inspector singly making such inspection, shall report the state of every place of confinement so visited by him to the Board of Inspectors. § 15. Gaols hereafter erected to be built according to a plan approved by the inspectors, and sanctioned by the Governor, and without this the same shall not be deemed in law the gaol of the district or county. § 16. Inspectors to report to the Governor on the improvements required in gaols erected. § 17. Certain matters to be taken into consideration by the inspectors in determining upon the plan of any gaol to be erected. § 18. Provisions made for securing the requisite improvements in county gaols. § 20. County councils authorised to raise money for making such improvements. § 22. Inspectors to frame rules and regulations for the government of common gaols to be submitted to the Governor for his approval. § 27. Inspectors also required to visit and report to the Governor twice in the year at the least, on the state and management of all hospitals or other benevolent institutions supported by public money, § 30, 31, and every private lunatic asylum, also asylums for idiots, or for the deaf, dumb, or blind. Inspectors to make their annual report on or before the 1st day of April, 24 V. c. 11, § 6.

INSPECTORS OF TAVERNS.

See "*Inns and Inn-Keepers.*"

INTELLIGENCE OFFICE.

The council of any city or town may pass by-laws,—

1. For licensing intelligence offices for registering the names and residence of, and giving information to, or procuring servants for employers in want of domestics or labourers, and for registering the names and residences of, and giving information to, or procuring employment for domestics, servants, and other labourers desiring employment, and for fixing the fees to be received by the keepers of such offices.

2. For the regulation of such intelligence offices.

3. For limiting the duration of or revoking any such license.

4. For prohibiting the opening or keeping any such intelligence office within the municipality without license.

5. For fixing the fee to be paid for such license, not exceeding one dollar for one year.—U. C. (Municipal) Act 22 V. c. 54, § 297.

INTERPRETATION ACTS.

Under C. Stat. 22 V. c. 5, § 6.

Art. 7.—Words importing the singular number or masculine gender shall include more persons, parties or things of the same kind than one, and females as well as males, and the converse. (*a*)

Art. 8.—The word “person” shall include any body corporate or politic or party, and the heirs, &c., of such person. (*b*)

Art. 9.—The words “writing,” “written,” or any term of like import, shall include words printed, painted, engraved, lithographed or otherwise traced or copied.

Art. 11.—The word “month” shall mean a calendar month. (*c*)

Art. 12.—The word holiday shall include Sundays, New Year’s Day, the Epiphany, the Annunciation, Good Friday, the Ascension, *Corpus Christi*, St. Peter and St. Paul’s Day, All Saints’ Day and Christmas Day, and any day appointed by proclamation for a general fast or thanksgiving.

Art. 13.—The word “oath” shall be construed as meaning a solemn affirmation, whenever the context applies to any person and case by whom and in which a solemn affirmation may be made instead of an oath. (*d*)

(*a*) (*b*) (*c*) (*d*) (*e*) Similar provisions in the U. C. Stat. 22 V. c. 2.

Art. 15.—Any wilful contravention of any such act as aforesaid, which is not made any offence of some other kind, shall be a misdemeanor, punishable accordingly.

Art. 20.—The word “magistrate” shall mean a justice of the peace. The words “two justices” shall mean two or more justices of the peace assembled and acting together; and if any thing is directed to be done by or before a magistrate or justice of the peace, or other public functionary or officer, it shall be done by or before one whose jurisdiction or powers extend to the place where such thing is to be done; and whenever power is given to any person, officer or functionary to do or enforce the doing of any act or thing, all such powers shall be understood to be also given as are necessary to enable such person to do or enforce the same. (e)

Art. 21.—Imprisonment, if no other place be mentioned or provided by law, to be in the common gaol of the locality, or if no common gaol there, then in the common gaol nearest to such locality.

Art. 23.—Words directing or empowering a public officer or functionary to do any act or thing, shall include his successors and his or their lawful deputies.

Under U. C. Stat. 22 V. c. 2.

§ 7. The word county shall include united counties.

§ 18. *Art. 2.*—The word “shall” is to be construed as imperative, and the word “may” as permissive.

See also title, “*Perjury.*”

NOTE.—The above extracts are given as those which appear more particularly to relate to the administration of criminal justice, and may serve to elucidate such doubtful words or expressions as justices of the peace in the course of their duties may in the reading of the statutes frequently meet with. The act contains many more “interpretations” of words and expressions in relation to other matters, the perusal of which will well re-pay the reader for his time and trouble.

INTOXICATING LIQUORS.

By the U. C. (Municipal) Act 22 V. c. 54, § 246, the council of every township, city, town and incorporated village may by by-law prohibit the sale by retail of spirituous, fermented, or other manufactured liquors in any inn or other house of public entertainment: and in shops and places other than houses of public entertainment. *Provided*, the by-law before the final passing thereof has been duly approved by the electors of the municipality in the manner provided by this act.

27 & 28 V. c. 18.

Act to amend the laws in force respecting the sale of intoxicating liquors and the issue of licenses therefor, and otherwise for repression of abuses resulting from such sale.

The act provides, 1. That the municipal council of every county, city, town, township, parish or incorporated village in this province, besides the power at present conferred by law, shall have power at any time to pass a by-law for prohibiting the sale of intoxicating liquors, and the issue of licenses therefor within the locality, subject to the following provisions: 2. Such by-law shall be drawn up and passed in ordinary form, and shall not have embodied therein any other provision than the simple declaration that the sale of intoxicating liquors and the issue of licenses therefor is by such by-law prohibited. 3. Any municipal council may order such by-law to be submitted for the approval of the municipal electors, and in that case shall not take effect unless approved. Any 30 or more qualified electors of any municipality, or if the by-law is for a county, then of each municipality in the county, may at any time by a requisition in the form A 1, signed by them and delivered to the clerk of the municipality, require that any by-law to be passed under this act at any time within one year from the date of such requisition, be submitted for the like approval, and in that case such by-law shall not take effect unless approved. 4. Any 30 or more duly qualified electors of any municipality, the council whereof has not passed a by-law under this act, or after passing has repealed the same, or wherein such by-law having been submitted for approval has not been approved or adopted, or after approval or adoption has been repealed, may at any time (not less than two years after such vote of non-approval or repeal, by a requisition in the form A 2) propose a by-law to that end for adoption by the electors, and require a poll to be taken. 5. On the passing of any order for the submission of a by-law, or the passing of any by-law upon requisition, the clerk or secretary-treasurer shall cause such by-law, or requisition therefor, to be published for four consecutive weeks in some newspaper within the municipality, and by posting copies of the same in four public places (at least) in the municipality; and if for a county, then in four public places, at least, in each municipality, with a notice, that at the expiration of such time on some day to be named, a meeting of the electors will be held to decide whether or not such by-law is approved

or adopted. The act then provides for the mode of proceeding at such election and taking the poll, and if one-half or more of the votes polled are against the by-law, the same shall be held to be not approved or adopted. 6. Every by-law passed under this act shall be communicated by the clerk or secretary-treasurer to the collector of inland revenue; and as regards the prohibition of issue of licenses, shall come in force from the day of the communication to the collector of inland revenue; and as regards the prohibition of sale, if on the day of such communication there is any other by-law in force under the Municipal U. C. Stat. 22 V. c. 54, shall come into force as the substitute therefor from that day, otherwise from the first day of March next following. 9. No such by-law shall be repealed within one year from the day of such communication. The act then provides for the confirmation of by-laws between two or more neighbouring municipalities. 11. In Lower Canada, no collector of inland revenue, from the day of communication to him of such prohibitory by-law, shall, while it remains in force, issue any license for keeping an inn, tavern or other house or place of public entertainment, and for retailing wine, ale, beer, porter, cider, or other vinous or fermented liquors, but not brandy, rum, whiskey, or other spirituous liquors, or for vending or retailing in any store or shop, brandy, rum, whiskey, or other spirituous liquors, in a quantity not less than three-half pints at any one time. In Upper Canada, from the like day and for the like period, no such collector shall issue to take effect within the limits, either any tavern license, that is license for the retail of spirituous, fermented or other manufactured liquors to be drunk in the inn, alehouse, beerhouse, or other house of public entertainment in which the same is sold, or any shop license, that is, license for the retail of such liquors in shops, stores or places other than inns, alehouses, beerhouses or places of entertainment. 12. From the day such by-law takes effect, no person, unless for medicinal or sacramental purposes, or *bonâ fide* use in some art, trade, or manufacture, or as hereinafter authorised, shall, within the municipality, by himself, clerk, servant or agent, expose or keep for sale, or directly or indirectly, on any pretence, or by any device, sell or barter, any spirituous or other intoxicating liquor, or any mixed liquor capable of being used as a beverage, and part of which is spirituous or intoxicating. Excepting licensed distillers or brewers who may expose and keep for sale (at their distillery or brewery) liquor manufactured thereat in quantities

not less than five gallons, and bottled ale or porter of their manufacture in quantities not less than one dozen bottles, of at least three-half pints each, at one time; and excepting merchants or traders having a store or place for sale of goods in the municipality, and selling in quantities not less than five gallons, (or in case of bottled ale or porter,) one dozen bottles as aforesaid.

Penalty.—13. Whoever by himself, clerk, servant or agent, exposes or keeps for sale, or directly or indirectly, on any pretence or by any device sells or barter, or in consideration of the purchase of other property, gives to any other person, any spirituous or intoxicating liquor, or any mixed liquor, in violation of the 12th section, shall incur a penalty of not less than \$20 nor more than \$50 for each offence. Persons employed to be held equally guilty as principals. 14. Prosecutions to be brought in the name of the collector or municipality, before any stipendiary magistrate, or two justices of the peace of the locality, recorder, police magistrate or mayor of any city or town not having a recorder or police magistrate. § 15. Such prosecutions to be commenced within three weeks after the alleged offence. § 16. It shall not be necessary in any such prosecution to set forth on the face of the complaint, summons, conviction, warrant of distress, or warrant of commitment the by-law in question, but such complaint, summons, &c., may be in the forms appended to the act. § 17. Two or more offences may be included in any such complaint. But the maximum in such case is not to exceed \$100. § 18. If the defendant fails to appear the justice may proceed *ex parte*. § 19. Complaints may be amended before final hearing. § 20. No prosecution shall be dismissed for any defect, informality, error or omission. § 21. Defendant not entitled to costs if probable cause shewn. § 22. Process to be served by any bailiff, constable, or peace officer of the locality. § 23. Depositions if reduced to writing to be paid for to the clerk at the rate of ten cents for each 100 words, or \$2 per diem. § 24. The precise day of the offence need not be proved. § 25. The delivery of intoxicating liquor from any building, booth or place, other than a private dwelling house or its dependencies, or in or from any dwelling house or its dependencies if any part thereof used as a tavern, eating house, grocery, shop or other place of common resort, not being to a *bona fide* resident therein, shall *prima facie* be evidence of a sale in violation of the 12th & 13th sections of this act, and any such delivery in or

from a private dwelling house or its dependencies, or in or from any other building, booth or place, to any one resident therein or not, with payment or promise of payment, shall be deemed a violation of the said sections. § 26. Such party may be summoned as a witness, and if he refuses to be sworn may be committed until he consents. § 27. No person shall be incompetent on account of interest. § 28. Witnesses bound to disclose the facts. § 29. Any person tampering with or threatening a witness shall be liable to a penalty of \$50. § 30. If it appears upon examination the defendant has no goods available for seizure, or fails to answer enquiries, he may be imprisoned by warrant in the common gaol for a period not less than one month nor more than three months; but he may be liberated on payment of penalty and costs. § 31. If absent when judgment rendered, and it appears to the satisfaction of the justice that a distress warrant would be fruitless, the defendant may be forthwith imprisoned in such common gaol for a period not less than one month nor more than three months, but may obtain his liberation as above. § 32. In other cases penalties and costs may be levied by distress warrant, and in default of sufficient distress the defendant shall be committed as above. § 33. Relates to Lower Canada. § 34. In Upper Canada penalties when recovered to be appropriated as directed. § 36. No conviction shall be removed by *certiorari*, nor shall any appeal be allowed when the conviction has been made by a stipendiary magistrate, recorder, or police magistrate. § 37. No by-law under this act shall be set aside for any defect of procedure or form.

The subsequent clauses in this act relate chiefly to the sale of intoxicating liquors by inn-keepers and others under license, and will be found under the head of "*Inns—Inn-Keepers.*"

§ 52. This act may be cited as "*The Temperance Act of 1864.*" For the necessary forms see the act.

JOINT STOCK COMPANIES.

By C. Stat. 22 V. c. 63, § 1, any five or more persons may form a company for the purpose of carrying on any kind of manufacturing, shipbuilding, mining, mechanical or chemical business, for a term not exceeding *fifty* years, upon complying with the requisitions of this act. § 34. Stockholders to be liable for the debts of the company only to the amount of their shares, *save and except* by § 36, the stockholders shall be jointly and severally liable for debts due the labourers, servants and apprentices of such com-

pany ; but no stockholder shall be liable in this or any case for any debt *not payable* within one year, nor unless suit be brought within the year ; nor shall any person ceasing to be a stockholder be liable for any debt unless sued for within *two* years after he shall have ceased to be a stockholder, nor until execution issued against the company and *nulla bona* returned.

JURISDICTION.

By C. Stat. 22 V. 99, § 12. In case any felony or misdemeanor be committed on any person, or in respect of any property in or upon any coach, waggon, cart or carriage, in any journey ; or in respect of any property on board any vessel in any voyage or journey upon any navigable river, canal or inland navigation, the same may be dealt with, tried and punished in any county through which such coach, waggon, cart, carriage, or vessel passed in the course of the journey or voyage, as if it had actually been committed in such county.

§ 13. And when the side, centre, bank or highway, or if any river, &c., constitutes the boundary of any two counties, such felony or misdemeanor may be enquired of and tried in either of such counties.

§ 14. And when any larceny has been committed in any part of her Majesty's dominions, and the offender has the property *in his possession* in any part of the province, he may be dealt with, tried, and punished for such offence in that part of the province, as if he had committed the offence in that part of Canada.

§ 15. Receivers of stolen goods may also be tried in the county in which he has *or had* the property in his possession.

§ 16. And so the receiver of any property stolen or unlawfully taken in any part of her Majesty's dominions, knowing the same to have been stolen or unlawfully taken, may be indicted and tried where he so received or *had* the stolen property, as if it had been stolen in that part of Canada.

§ 17. When any person is feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of this province and dies in this province, or being feloniously stricken, poisoned or hurt in this province dies upon the sea, or at any place out of the province, the offender or accessory may be tried in the county or place in this province where such death, stroke, poisoning, or hurt happened.

JURY.

Sir W. Blackstone says, the trial by jury, or the country *per patriam*, is also that trial by the peers of every Englishman which, as the grand bulwark of his liberties, is secured to him by the great charter.—4 *Bl. Com.* 349. And again, that the founders of the English law have, with excellent forecast, contrived that no man should be called to answer to the king for any capital crime, unless upon the preparatory accusation of twelve or more of his fellow-subjects, the *grand jury*, and that the truth of every accusation, whether preferred in the shape of indictment, information or appeal, should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbours, indifferently chosen and superior to all suspicion.—*Ib.*

Act for the Regulation of Juries.

By U. C. Stat. 22 V. c. 31, intituled, “An act respecting jurors and juries,” various provisions are made, of which the following is an abridgement:—

Qualification of Jurors.—§ 2. Every male person twenty-one years of age (not infirm or decrepit) assessed as mentioned in the act, shall be liable to serve on grand and petit juries. § 6. Three-fourths of the assessed inhabitants are to be copied from the assessment roll of the township, &c., commencing with the person rated at the highest amount and proceeding successively to the person rated at the lowest amount, until the names of three-fourths of the persons assessed shall have been copied from the roll, and the amount for which the last of such persons shall be assessed shall be the qualification for a juror.

Exemptions.—§ 7. All persons upwards of sixty years of age, government clerks, clerks and servants in public departments, judges, sheriffs, coroners, clergymen of whatever denomination; members of the law society, barristers, students, attorneys, solicitors and proctors actually practising, officers of courts of justice, physicians, surgeons and apothecaries, officers in the army and navy on full pay, pilots and seamen, officers of the post office, customs and excise, sheriff’s officers and constables, county, township, city, town and village treasurers, clerks and town clerks, collectors and assessors, professors, masters and teachers of any university, &c., and officers and servants of any such establishment, editors, reporters, and printers of newspapers, railway employees, telegraph operators, millers and firemen.

§ 8. Members of parliament, wardens and members of county councils, mayors, town-reeves, justices of the peace and members or officers of any corporation are exempt from serving as jurors in inferior courts.

§ 9. Jurors drawn and serving the year preceding shall also be exempt, if *two* complete jury lists can be made up without, and with one year's additional exemption for each jury list made up over two. § 10. But service as county juror shall not exempt from serving as a city juror, and so *vice versa*.

Selection and distribution of Juries.—§ 11. The mayor or reeve, the city, town, village or township clerk and assessors shall be, *ex-officio*, selectors.

Disqualification.—§ 12. Aliens. § 13. Persons attainted of any treason or felony, or convicted of any infamous crime, unless pardoned.

Annual Meeting.—§ 15. Selectors to assemble annually on the 1st day of September for the purpose of selecting juries. § 23. And make duplicate reports, one to be deposited with the clerk of the peace and the other with the town clerk.

Jurors' Book.—§§ 25, 26, 27. The clerk of the peace, between the 15th September and 31st October annually, shall transcribe the names of jurors so selected into the jurors' book into four rolls, to be called—1. Roll of grand jurors to serve in superior courts. 2. Roll of grand jurors to serve in inferior courts. 3. Roll of petit jurors for superior courts. 4. Roll of petit jurors for inferior courts.

Balloting Jury Lists.—§ 39. The clerk of the peace shall on the first day of the sessions annually next after the 10th day of November, publicly in court deliver to the chairman the jurors' book for the then next year, with the jurors' books for so many of the next *preceding* years as may be required, and make oath of their accuracy, § 45, whereupon the court shall determine upon balloting a full, two-thirds, or half jury list, composed of the following numbers:—

	Full list.	Two-thirds list.	Half list.	
Grand Jurors.....	48	38	24	} Superior Courts.
Petit Jurors.....	144	96	72	
Grand Jurors.....	96	64	48	} Inferior Courts.
Petit Jurors.....	288	216	144	

Selectors of Juries.—§ 51. To be the chairman of the court of quarter sessions, the clerk of the peace, the warden, the treasurer, the reeves then present, and the sheriff, or any *three*

of them *ex officio*, § 53, who shall proceed to ballot the jurors in the form prescribed by the act, beginning with grand jurors for the superior courts; and if the party balloted be not exempt, nor any cause shewn by him, or by his counsel or attorney, his name shall be inserted in such jury list, after which the names balloted, alphabetically arranged, shall by the clerk of the peace be copied in the jurors' book with the title of "the grand jury list for the superior courts." § 54. The other jury lists to be balloted in like manner. § 56. Such lists to be certified and deposited in the office of the clerk of the peace.

Jury Process.—§ 59. Precepts are to be issued by the judges of the respective courts for the return of a competent number of grand and petit jurors. § 61. The number of *petit* jurors to be returned on any general precept to be not less than forty-eight nor more than seventy-two, unless by direction of the judge.

Drafting Panels from Jury Lists.—§ 78. The sheriff shall give notice by public advertisement in his office and on the doors of the court-house of the time he will attend at the office of the clerk of the peace to draft such panel; at which time he shall publicly draft such panel by ballot in the presence of the clerk of the peace and any *two justices*, and of any other person or persons who may desire to attend. § 79. *Eight days'* previous notice to be given. § 81. The heading to the panels and jury lists to be prepared by the sheriff. § 83. Prescribes the manner in which the *drafting* by ballot is to be made; after the names are drafted, such names, with place of residence and addition of the parties arranged alphabetically, shall, by the sheriff or other officer be transcribed and numbered; and the panel so alphabetically arranged and numbered, with a short statement of the writ, the date and place of drafting, the name of the officers and justices present, or at least two of them, shall be entered in the jurors' book and attested by the sheriff, clerk of the peace, and justices, or at least two of them. § 84. And the sheriff shall upon his return of the *venire facias* annex a panel thereto containing the names, places of abode and additions of the persons so drafted, and shall transmit one copy to the clerk of the peace, and another to the clerk of the Crown and pleas of the Queen's Bench at Toronto, to be open for public inspection

Summoning Jurors.—§§ 87, 88. Grand and petit jurors to be summoned *eight days* beforehand, by note in writing, under the hand of the sheriff or proper officer, delivered to

the party, or, in case of absence, left at his usual place of abode; and in case of *special jurors* three days' notice to be sufficient.

Empannelling Grand Jury.—§ 92. Where twelve do not appear the number is to be made up by persons present in the court named by the sheriff

Drawing Jury at the Trial.—§ 93. The jurors' names, places of abode, and addition shall be distinctly written by the sheriff on pieces of parchment, card, or paper, of a certain form or size to be deposited by him in a box or urn and delivered to the clerk of assize, marshal, or other clerk of the court. § 94. And upon the trial of any issue, such clerk of assize, marshal, or other clerk shall, in open court, cause such box or urn to be shaken so as to mix the names, and then draw out *twelve* of the cards, or papers, (the box or urn being shaken after drawing each name,) and in case of absence or challenge, others are to be drawn out until the number is completed. The jury are then to be sworn and kept apart by themselves until their verdict is rendered, or they are discharged by consent of parties or leave of the court, and then the same names are to be returned to the box or urn.

Challenges.—§ 98. Want of qualification to be a sufficient ground; but not want of property qualification alone. § 99. Persons arraigned for *murder* not admitted to challenge above the number of *twenty*. § 100. Defendants arraigned for *misdemeanor*, if tried together, may unite in challenge of any *three* of the jurors without assigning cause. § 101. Cause to be assigned if the challenge be made on the part of the Crown, § 102. In all civil cases either party may challenge *three* jurors without assigning cause, except in case of special jurors.

Special Juries.—§ 108. The Crown, plaintiff or defendant in any civil or criminal case, may have the issue joined tried by a special jury. § 111. Giving notice to the opposite party. § 112. And be struck in the manner prescribed by this section. § 132. In cities the clerk of the recorder's court shall perform the same duties as clerk of the peace, and the recorder, mayor, clerk of the court and high bailiff perform the duties of preparing and selecting jurors' lists, &c.

Grand Jurors' Fees.—§ 140. To be provided for by county by-law, if the county council think fit.

Petit Jurors.—§ 141. To be paid *one dollar* for each day's attendance, and *ten cents* per mile travel. § 143.

Pay lists to be made out by the sheriff. § 144. And paid by the treasurer.

Penalties.—§ 167, authorises the court to set such fine for non-attendances of jurors as it may think fit unless reasonable cause be shewn. § 168. *Viewers* neglecting to attend to be subject to a penalty of \$20 at the least. § 169. The sheriff, upon writs of enquiry, &c., may impose a fine not exceeding \$20 on absent jurors (unless reasonable cause be shewn). § 172. The sheriff returning any man on a jury not drawn upon the panel; or clerk of assize, &c., wilfully recording the appearance of any person summoned who did not appear, to be subject to such fine as the court shall think proper. § 173. Any sheriff or other officer taking any reward to excuse jurors; or any bailiff, &c., summoning any person not specified in the warrant, or not the full time required by law, shall be liable to such fine as the court may think proper. § 174. Any sheriff or other officer making any alteration in the rolls, lists or panels, (except in compliance with this act,) or neglecting to prepare the jurors' book and ballots, or omitting to return the same to the court, or to perform any other duty required by this act, or doing any thing inconsistent with this act, 2, or any clerk of the Crown, or deputy making any alteration in the rolls, lists or panels, or wilfully certifying as true any copy of any jurors' book not being true, 3, or any assessor neglecting to complete his assessment roll and return the same to the clerk of the township, &c., on or before the 1st September, 4, or any municipal officer having, at the time of the annual meeting of the selectors of jurors, in his charge or custody the assessment roll or rolls of such city, town, village or township, who shall neglect to perform the duties required in § 17 as regards the production of the same. 5. Any selector wilfully making a false report, or taking reward, or neglecting to make report and deposit the same in the proper office on or before the 15th September, 6, or any clerk of the peace, or clerk of the recorder's court omitting to perform any duty required by this act; in all such cases the offender shall forfeit \$200, one moiety to her Majesty the other to the prosecutor. § 175. Except as provided by § 151, all fines imposed under this act by any of the courts of law shall be levied and applied in like manner as any other fines imposed by such courts. § 176. And all other penalties imposed by this act (for which no other remedy is given) may be recovered by summary proceeding before any justice of the peace having jurisdiction, who may, if he think fit,

mitigate the penalty *one half*, and unless the penalty be forthwith paid such justice shall by warrant levy the same; and for want of sufficient distress the offender shall be committed by warrant under the hand and seal of such justice to the common gaol or house of correction for such term not exceeding six months, as such justice shall think proper, unless penalty sooner paid; and all penalties shall be paid to the treasurer as hereinbefore provided.

Of Challenges.

Challenges are of two kinds, viz., either to the *array*, which must be in writing; or the *polls*, which may be verbal, and may be made either on the part of the king, (*i. e.* the prosecutor,) or of the prisoner.—4 *Bl. Com.* 352. A challenge to the array is an exception to the whole panel in which the jury are arrayed. There are two descriptions of causes of challenge to the array, viz., *principal causes* of challenge, and causes of challenge to *favour*. The following are principal causes of challenge to the array, viz., if the sheriff, or other officer, be of kindred to the plaintiff or defendant; if any one or more of the jury be returned at the nomination of either party; if the plaintiff or defendant have an action of battery against the sheriff, or the sheriff against either party; so, if either party have an action of debt against the sheriff; but otherwise, if the sheriff have an action of debt against either party; or if the sheriff have parcel of land depending upon the same title; or if the sheriff, or his bailiff which returned the jury, be under the distress of either party; or if he be counsel, attorney, officer or servant, of either party; gossip, or arbitrator in the same matter, and treated thereof.—1 *Inst.* 156. A challenge to the *array* for favour, arises from matter fit to be left to the conscience and discretion of the triers, under the particular circumstances of each individual case. Thus, it is said, that if one of the jurors returned be a tenant to the sheriff; or if there be a family connexion between one of the jurors and the sheriff, this may be ground of challenge to the array for favour: that is, matter to be left to the triers to decide whether it indicates such partiality as should avoid the array.—3 *Bl. Com.* 359.

Challenges to the *polls*, are challenges of individual jurymen, and are either peremptory or for cause; peremptory challenges are at the mere will of the party, without any reason given.—*Co. Lit.* 156. In cases of treason or felony, the prisoner by the common law might peremptorily chal-

lenge 35, but by stat. 22 H. VIII., c. 14, § 6, the number was reduced to 20, in petit treason, murder and felony; and in case of high treason and misprision of treason, it was taken away by stat. 33 H. VIII., c. 23, but revived by stat. 1 & 2 P. & M., c. 10. And by the "jurors act," § 99, no person arraigned for murder or felony shall challenge peremptorily above the number of *twenty*.

By C. Stat. 22 V. c. 99, § 53, every peremptory challenge by any person indicted for treason or felony, beyond the number by law allowed, shall be void, and the trial may proceed as if no such challenge had been made.

A challenge to the *polls*, or of individual jurymen, is like a challenge to the array, a principal challenge, or a challenge to the favour. The grounds of principal challenge, are—1. The rank of the party, as being a peer of the realm. 2. For some personal incapacity, as if a jurymen be an alien or a minor. 3. On account of some palpable ground of bias, as if the juror be of the blood or kindred of either party; or under his power or influence; as tenant or servant; or of counsel with him—4 *Bl. Com.* 361; or if he has declared his opinion beforehand *Haw. b. 2, c. 43, § 29*; or has indicted the party for the same cause—*Lamb, 554*; or been upon a former jury upon the same matter, though between other persons; or arbitrator, unless indifferently chosen by either party; or action pending between the juror and either of the parties; or bribing a juror.—1 *Inst.* 157. 4. On account of some crime or misdemeanor affecting the juror's character, as a conviction of treason, felony or perjury; or if he be outlawed; or hath been attained of false verdict; proemunire; or forgery: but it seems that none of the above cited challenges are principal ones, but only to the favour, unless the record of the outlawry, judgment or conviction be produced, if it be a record of another court, or the term be shewn, if it be a record of the same court.—3 *Bl. Com.* 363.

As to challenges for suspicion of favour, although a juror has not given apparent marks of partiality, yet there may be sufficient reason to suspect he may be more favourable to one side than the other, and this is the reason for a challenge to the favour. The causes of favour are infinite, and in these inducements to suspicion of favour, the question is, "whether the jurymen be indifferent as he stands unsworn," for a jurymen ought to be perfectly impartial to either side.—*Co. Lit.* 157. (b).

As the challenge to the *array* must be before any of the jury are sworn, so challenge to the *polls* must be before the

particular jurors are sworn.—*Bull N. P.* 307. After a challenge to the array, the party may challenge the polls; but after a challenge to the polls there can be no challenge to the array; and he who has more than one cause of challenge against a juror must take them all at once; but if he challenge a juror, and the cause be found insufficient, he may, nevertheless, afterwards challenge him peremptorily, for perhaps the very challenge may create a prejudice in the mind of the juror so challenged.—*3 Bl. Com.* 363.

A principal cause of challenge being grounded on a manifest presumption of partiality, if it be found true, it unquestionably sets aside the array without any other trial than its being made out to the satisfaction of the court before which the same is returned. But a challenge to the favour, when the partiality is not apparent, must be left to the discretion of the triers.—*Co. Lit.* 158.(a). If the array be challenged, it lies in the discretion of the court to determine *how* it shall be tried; sometimes it is done by two attorneys, sometimes by two coroners; and sometimes by two of the jury; with this difference—that if the challenge be for kindred in the sheriff, it is most fit to be tried by two of the jurors returned; if the challenge be on account of partiality, then by any other two assigned thereunto by the court.—*2 Hale*, 275. When a challenge is made to the array, for favour, the prosecutor may either confess it or plead to it; if he plead, the judges assign triers to try the array, who seldom exceed two; who being chosen and sworn, the clerk of the peace declares to them the challenge, and concludes to them thus—“*and so the charge is, to enquire whether it be an impartial array or a favourable one*”; and if they affirm it, the clerk enters underneath the challenge, “*affirmatur*”; but if the triers find it favourable, then thus—“*calumnia vera,*” or words to that effect.

As to challenges to the polls—if a juror be challenged before any juror be sworn, two triers are appointed by the court; and if he be found indifferent, and sworn, he and the two triers shall try the next challenge; and if he be tried, and found indifferent, then the two first triers shall be discharged; and the two jurors tried, and found indifferent, shall try the rest. But if the prosecutor challenge ten, and the prisoner one, and the twelfth be sworn, then he that remains shall have added to him one chosen by the prosecutor, and another by the prisoner, and they three shall try the challenge; and if six be sworn, and the rest challenged, the court may assign any two of the six sworn to try the challenges.—*2 Hale*, 275.

The truth of the matter alleged, as cause of challenge, must be made out by witnesses to the satisfaction of the triers; also, the juror challenged may, on a *voir dire*, be asked such questions as do not tend to his disgrace; but a juror may not be asked any questions as tend to discover matters of infamy or shame.—*Salk.* 183. Nor may a juror be asked whether he has expressed an opinion hostile to the party challenging.—*R. v. Edmonds*, 4 B. & A. 471.

JUSTICES OF THE PEACE.

The Queen's Majesty is, by her office and dignity royal, the principal conservator of the peace within all her dominions; and may give authority to any other to see the peace kept, and to punish such as break it; hence it is usually called the Queen's peace. Justices of the peace are appointed by the Queen's special commission under the great seal, which appoints them all jointly and separately to keep the peace, any two or more of them to enquire of and determine felonies and other misdemeanors.

Nature of the Office.

The office of a justice of the peace is partly ministerial, and partly judicial. His ministerial duties extend to the investigation of such criminal charges as are brought before him and are properly the subjects of indictment at the sessions or assizes; also to the bailment or commitment of prisoners, according to the nature of the offence, and the rules prescribed by law. In all such cases a justice of the peace is the ministerial officer by or through whom the party accused is compelled to appear and stand his trial before the proper tribunal. In matters of minor importance he is also invested by various statutes with a judicial authority, and may himself proceed to adjudication in a summary way. His decision is, however, in all cases open to appeal, unless the right of appeal be expressly taken away by the particular statute under which he may be acting. His judgment is termed a "conviction," and the manner of proceeding in such cases is defined by the C. Stat. 22 V. c. 103, the particulars of which will be found under the head of "*Summary Conviction.*"

No individual of the community is capable of rendering more valuable service to the state than a "justice of the peace," whether considered in relation to his ministerial or his judicial duties. He is the connecting link between the law as a mere passive enactment, and the enforcement of its

provisions ; the mainspring in fact by which the law is put in motion and made subservient to the ends of justice. He is emphatically a coservator of the peace, and without his rule and oversight the community at large would be continually exposed to acts of violence and outrage. The peaceable and well-disposed confide in his presence : in his neighbourhood offenders pause before the commission of the crime meditated, and are no doubt oftentimes deterred from doing that which but for the proximity of a vigilant magistrate they might otherwise be tempted to do.

It is important that those selected to fill the office of justices of the peace should therefore be duly qualified ; that they should be, in fact, in the words of the C. Stat. 22 V. c. 100, § 1, "the most sufficient persons dwelling in the said districts and counties." This statute contains the following provision with respect to their property qualification:—

Qualification.—§ 2. No attorney, (a) solicitor, or proctor shall be a justice of the peace while so practising. § 3. No person shall be a justice, or act as such, who shall not have in his actual possession, to his own use, a real estate, either in free or common soccage, or *en fief*, or *en rōiure*, or *en franc aleu*, in absolute property or for life, or by *emphyteose* or lease for one or more lives, or originally created for a term not less than twenty-one years, or by usufructuary possession for his life in lands, tenements, or other immovable property, lying and being in this province, of or above the value of \$1200, over and above all incumbrances, or who before he takes upon himself to act as a justice of the peace does not take and subscribe the following oath, before some one justice of the peace for the district or county where he intends to act :

I, A. B., do swear, that I truly and *bona fide* have, to and for my own proper use and benefit, such an estate (*specifying the same by its local description, rents, or any thing else*) as doth qualify me to act as justice of the peace for the district or county of _____, according to the true intent and meaning of the act respecting the qualification of justices of the peace, (*nature of such estate, whether land, and if land, designating,*) and that the same is lying and being (or issuing out of lands, tenements and hereditaments, situate) within the township (*parish or seigniority of _____*), or in the several townships, (*parishes, or seigniories of _____*), or as the case may be.) So help me God.

§ 4. A certificate of which oath having been so taken shall be forthwith deposited by the said justice, who shall

(a) But see U. C. Municipal Act, 22 V. c. 54, § 362.

have taken the same, at the office of the clerk of the peace, to be filed among the records of the sessions. § 5. The clerk of the peace shall, upon demand, deliver a true and attested copy of such oath to any person on payment of *twenty cents*, which copy shall be evidence at law. § 6. Any justice acting without taking and subscribing said oath, or without being qualified according to the act, shall for every offence forfeit \$100, one moiety to her Majesty, and the other to the informer; to be recovered, with full costs, in any court of competent jurisdiction in the district or county, and in such action the proof of qualification shall be upon the *defendant*. § 7. If any defendant shall intend to insist upon any lands, tenements or real estate, not mentioned in the oath, as constituting the whole or any part of his qualification to act as a justice at the time of the alleged offence, he shall, at or before the time of pleading, deliver to the plaintiff, or his attorney, notice in writing, specifying such lands, tenements or real estate, and the township or place, and the district or county, where situate, and the plaintiff may thereupon, with leave of the court, discontinue such action, on payment of the defendant's costs. § 8. Upon trial, no other lands or real estate than such as are mentioned in such oath or notice shall be insisted upon by the defendant. § 9. When the property mentioned in the oath or notice shall be liable to incumbrances, together with other lands, the property mentioned in the oath or notice shall be deemed liable only so far as the other lands are not sufficient to pay the same. § 10. When the qualification consists of *rent*, it shall be sufficient to specify so much of the property, out of which such rent is issuing, as shall be sufficient to secure such rent. § 11. In case the plaintiff shall discontinue such action, otherwise than as aforesaid, or judgment be given against him, the defendant shall recover *treble* costs. § 12. After action brought and due notice given, the court may stay proceedings in any subsequent action for any *prior* offence: provided such first action be prosecuted with effect. § 13. The court in which any such action is brought shall require the plaintiff to declare upon oath that such action is brought without fraud, and not for the purpose of protecting the defendant from any other action which might be brought by any other person for the same offence, and if not made to the satisfaction of the court the action shall be immediately dismissed with costs. § 14. False statements in any oath under this act to be treated as wilful and corrupt perjury. § 15. Actions to be commenced within *six months*

after the fact. § 16. Exemptions from the act: members of her Majesty's Legislative Council, Executive Council, judges of the Superior Courts of Law and Equity, County Courts, Majesty's attorney-general, solicitor-general, or advocate-general, Queen's counsel, mayor, alderman, reeve or deputy-reeve of any municipality. § 17. Sheriffs and coroners are disqualified from acting as justices *pro tem.* under the penalties aforesaid. (a) § 19. Fines and penalties, payable to her Majesty under this act, shall be paid to the receiver-general for the use of the province.

By the General Municipal Corporation Act, (U. C. Stat. 22 V. c. 54,) § 362. The head of every council, the aldermen of a city, the justices of the peace, and the reeve of every town, and the deputy reeve of every township, town and incorporated village, shall *ex officio* be justices of the peace for the whole county, or union of counties in which their respective municipalities lie, and shall not be disqualified by being an attorney, solicitor or coroner.

§ 363. Justices of the peace for any town shall have the same property qualification, and take the same oaths as other justices of the peace; but no warden, mayor, recorder, police magistrate, alderman, reeve, or deputy reeve, after taking the oaths or making the declarations as such, shall require to have any property qualification, or to take any further oath to enable him to act as a justice of the peace.

§ 364. When a town has been erected into a city and the council of the city duly organised, every commission of the peace theretofore issued for the town shall cease. § 365. Justices of the peace for a county in which a city lies, shall as such have no jurisdiction over offences committed in the city, and the warrants of county justices shall require to be endorsed before being executed in a city, in the same manner as required by law when to be executed in a separate county; but the general and adjourned quarter sessions of the peace for the county may be held, and the jurisdiction thereof exercised within the city.

By C. Stat. 22 V. c. 101, § 1, the Governor in council is authorised to appoint justices of the peace in remote parts of the province, not being within the constituted limits of any district; and such justices need not be stated residents, nor possess any property qualification. § 2. They may hold and exercise all the powers and shall be subject to the laws in force regarding the office of justices of the peace not inconsistent with the removal of the restrictions thereby intended.

(a) But see the U. C. Municipal Act 22 V. c. 54, § 362.

§ 3. Commitments made by them to be to the nearest common gaol. § 4. And appeals against their decision shall lie to the nearest general quarter sessions, at any time within six months.

Form of the Commission of the Peace.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, &c.

To *(the names of the justices being here inserted)*, esquires, greeting : KNOW YE, that we have assigned you, jointly and severally, and every one of you, our justices, to keep the peace in our county of _____, and to keep, and cause to be kept, all ordinances and statutes for the good of the peace, and for the preservation of the same, and for the quiet rule and government of our people, made in all and singular their articles in our said county, according to the force, form and effect of the same ; and to chastise and punish all persons that offend against the form of those ordinances and statutes ; and to cause to come before you, or any one of you, all those who to any one or more of our people concerning their bodies, or the firing of their houses, having used threats, to find security for the peace or their good behaviour towards us and our people ; and if they shall refuse to find such security, then them in our prisons, until they shall find such security, to cause to be safely kept. We have also assigned you, and every two or more of you, our justices, to enquire more fully the truth, by the oaths of the good and lawful men of the county aforesaid, by whom the truth of the matter may be better known, of all and all manner of felonies, poisonings, trespasses, forestallings, regratings, engrossings and extortions whatsoever ; of all and singular the crimes and offences of which the justices of the peace may and ought lawfully to enquire, by whomsoever, and after what manner soever, in the said county, had done or perpetrated, or which hereafter shall there happen to be done or attempted. And also, of all those who in the aforesaid county, in companies, against our peace in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride. And also, of all those who shall have lain in wait, or hereafter shall presume to lie in wait, to maim, or cut, or kill our people. And also, of all victuallers, and all and singular other persons who in the abuse of weights and measures, or in selling victuals, against the form of the ordinances and statutes, or any one of them, therefore made for the common benefit of our province of Canada, and our people thereof, have offended or attempted, or hereafter shall presume, in our said county, to offend or attempt. And also of the sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers who, in the execution of their offices about the premises, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been, or hereafter shall happen to be careless, remiss

or negligent, in our said county ; and of all and singular articles and circumstances, and all other things whatsoever that concern the premises, or any of them, by whomsoever, and after what manner soever, in our aforesaid county, done or perpetrated, or which shall hereafter happen to be done or attempted in what manner soever. And to inspect all indictments whatsoever before you or any of you taken or be taken, or before others, late our justices of the peace in our aforesaid county made or taken and not yet determined ; and to make and continue process thereupon against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted, until they can be taken, surrender themselves, or be outlawed. And to hear and determine all and singular the felonies, poisonings, trespasses, forestallings, regratings, engrossings, extortions, unlawful assemblies and indictments aforesaid, and all and singular other the premises according to the laws and statutes of our said province of Canada, or form of the ordinances and statutes aforesaid, it has been accustomed or ought to be done to chastise and punish : *provided always*, that if a case of difficulty upon a determination of any of the premises before you, or any two or more of you, should happen to arise, then let judgment in nowise be given before you or any two or more of you unless in the presence of one of our justices appointed to hold the assizes in the said county ; and therefore we command you, and every of you, that to keeping the peace, ordinances and statutes, and all and singular other the premises, you diligently apply yourselves, and that at certain days and places which you or any such two or more of you as is aforesaid shall appoint for the purposes, into the premises you make enquiries, all and singular the premises you hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains according to the law and custom of Canada ; saving to us our amerciements and other things thereupon belonging. And we command, by the tenor of these presents, our sheriff of our said county, and at certain days and places which you, or any such two or more of you, shall make known unto him, he cause to come before you, or any such two or more of you as is aforesaid, such and so many good and lawful men of his county, by whom the truth of the matter in the premises shall be better known and enquired into.

In testimony, &c.

The commission is determinable,—first—By the demise of the Crown, that is, (by the 1 Anne, c. 8) in six months afterwards. Secondly—By express writ under the great seal.—*Lamb* 67. Thirdly—By writ of *supersedeas*, but this does not totally destroy it, as it may be revived again by another writ, called a *procedendo*. Fourthly—By a new commission, which virtually, though silently, discharges all the former justices that are not included in it, for two

commissions cannot subsist at once : and lastly (by 1 *Mar. Sess.* 2, c. 8) by accession to the office of sheriff ; and according to some opinons, also, by succeeding to the office of coroner.—*Dalt. c.* 3, —1 *Bl. Com. p.* 353.

Oath of Office. (BURN.)

Ye shall swear, that as justices of the peace, in the county of _____, in all articles in the Queen's commission to you directed, you shall do equal right to the poor and to the rich, after your cunning, wit, and power, and after the laws and customs of the province of Canada, and statutes thereof made ; and ye shall not be of counsel of any quarrel hanging before you ; and that ye hold your sessions after the form of the statutes made ; and the issues, fines, and amerciaments, that shall happen to be made, and all forfeitures which shall fall before you ye shall cause to be entered without any concealment, (or embezzleling,) and truly send them to the Queen's exchequer ; ye shall not let, for gift or other cause, but well and truly you shall do your office of justice of the peace in that behalf ; and that you take nothing for your office of justice of the peace to be done, but of the Queen, and fees accustomed, and costs limited by statute ; and ye shall not direct, nor cause to be directed, any warrant (*by you to be made*) to the parties, but ye shall direct them to the bailiffs of the said county, or other indifferent persons, to do execution thereof.—So help you God.

Of their Power, Duty, and Office.

First—The commission empowers him to conserve the peace. Second—It empowers any two, or more, to hear and determine all felonies and other offences mentioned in the commission. His jurisdiction is confined to the county for which he is commissioned. It seems, however, that recognizances and informations, voluntarily taken before him, in any place, are good.—2 *Haw.*, c. 8, § 28. But a justice has no jurisdiction, either over the offence or the offender, when the one is committed, and the other abiding in another county. There are cases, however, where the presence of an offender within the county gives the justice authority, arising out of the necessity of preserving the peace, to proceed against the party offending. Thus, if a man commit a felony in one county and goes into another county, a justice of such other county may take his examination, and the information against him, in that county, and may commit him, and bind over the witnesses to give evidence at the trial ; and in short, proceed in all respects as if the offence had been committed within his jurisdiction.—2 *Hale*, 51 ; *C. Stat.* 22 *V. c.* 102, § 47, 48.

Although the commission of the peace under which justices

of the peace derive their authority empowers them to enquire concerning all felonies, and of all and singular crimes and offences, of which justices of the peace may and ought lawfully to enquire, it also admonishes them in cases of difficulty to let judgment in no wise be given before them unless in the presence of "one of our justices of our Court of Bench, or one of our justices appointed to hold the assizes in the said county." The offences of *murder* and *manslaughter* are not mentioned in the commission, from which circumstance it may be inferred, that justices of the peace (in sessions) could never claim jurisdiction over these offences.—*Fitz. & Straund*, 9 H. IV. 24 Coron. 457. By Stat. 1 & 2 P. & M. c. 13. In cases of *manslaughter* and *felony*, justices of the peace are directed to take the examination merely of the prisoner, and certify the same at the next gaol delivery. By U. C. Stat. 22 V. c. 17, § 8, it is also enacted, that it shall not be necessary for any court of quarter sessions to deliver the gaol of all prisoners who may be confined upon the charge of simple larceny, but the court may leave any such cases to be tried at the next court of oyer and terminer and general gaol delivery, if by reason of the *difficulty* or *importance* of the case, or for any other cause it appears to them proper so to do: otherwise, (except in cases of felony, by the law declared to be *capital offences*,) it would seem that justices in sessions have a general jurisdiction over all other felonies and misdemeanors, (a) unless expressly taken away by statute—exceptional cases are mentioned in the C. Stat. 22 V. c. 91, §§ 15, 16, 18—relating to bodily injury occasioned by the explosion of gunpowder; or manufacturing, or having in possession any such explosive substance, or any machine, instrument, or thing for an unlawful purpose; and in the C. Stat. 22 V. c. 92, § 51 to 65, as to certain frauds; and in the C. Stat. 22 V. c. 93, §§ 2, 3, 11, 13, the offences of destroying or damaging any dwelling-house or building by explosive substance, any person being therein; or maliciously placing or throwing into, upon, or against any building or vessel, any gunpowder or other explosive substance, with intent to do bodily injury, or damage to such property; such cases, as well as all *capital offences*, are not cognizable by justices in sessions, and can only be tried before one of her Majesty's justices at the session of oyer and terminer and general gaol delivery. If therefore the crime charged be a *capital offence*, or one in which, as in the cases referred to, the jurisdiction of the sessions has

(a) Perjury excepted, an indictment for which cannot be preferred at the quarter sessions.—2 Haw. c. 8, § 38. See title "*Perjury*."

been taken away, or if it be a case of *difficulty* or *importance* such as that contemplated in the commission of the peace, the offender should be committed to take his trial at the next session of oyer and terminer and general gaol delivery, and not at the general quarter sessions of the peace. With respect to capital offences they are easily distinguishable from other felonies by the words *shall suffer death*, immediately following the word "felony."

By Stat. 24 V: c. 14, § 1, all powers and jurisdictions to try treasons and felonies punishable with *death* by any court of quarter sessions, or recorder's court in this province, are expressly and absolutely revoked.

Where a matter of right or title to property comes in question, justices of the peace have then no jurisdiction.—*R. v. Barnaby*, 3 *Salk.* 217; 2 *Ld. R.* 900. A justice ought not to act in any case in which he himself is interested, but should cause the party to be convened or carried before some other justice, or desire the aid of some other justice who is present.—*Dalt.* 173. And in all cases where a justice is empowered to hear and determine a matter out of sessions, he should make a *record* in writing, under his hand, of all the matters and proofs; and all convictions should be returned by him to the sessions.—*Dalt. c.* 115; 2 *T. R.* 385.

By *U. C. Stat.* 22 V., c. 124, § 1, justices of the peace are required to make a return of convictions for fines and penalties to the next general quarter sessions, and of the receipt and application of the moneys, (§ 2) under the penalty of \$80.

See further on this subject under the title "*Convictions*," page 203.

The Official Duties of a Justice of the Peace.

These duties extend to indictable offences, as well as those of minor importance, which by statutory law may be disposed of judicially by summary conviction, (a) such as assault and trespass, or the infringement of some statutory enactment imposing a fine or penalty for the offence committed. There are some cases, however, of larceny, which may now also be disposed of summarily, with other minor offences enumerated in the statute. Where the value of the property stolen does not exceed *one dollar* the recorder of any city may, under the *C. Stat.* 22 V., c. 105, § 1, convict and sentence the offender

(a) See title "*Summary Conviction*."

to imprisonment, with or without hard labour, for a period not exceeding *three* months; and by § 9, where the property stolen *exceeds* the value of *one dollar*, and the recorder is of opinion it is a case that may be disposed of in a summary way, he is authorised to do so, upon the confession of the party charged, and to sentence the offender to imprisonment, with or without hard labour, for any term not exceeding *six* months.—§ 18. And where any person is charged before any justice or justices with any offence mentioned in this act, and in the opinion of such justice or justices the case may be a proper one to be disposed of by a recorder, or by a police magistrate, such justice or justices may, if he or they see fit, remand the accused for further examination before the recorder, or nearest police magistrate. And so juvenile offenders whose age does not exceed sixteen years, may under the C. Stat, 22 V., c. 106, in cases of simple larceny, upon conviction, upon confession or proof before two or more justices in open court, be committed to the common gaol, or house of correction within the jurisdiction of such justices, with or without hard labour, for any term not exceeding *three* months, or, in their discretion, forfeit and pay a sum not exceeding \$20, § 2. And if upon the hearing they deem the offence not proved or that it is not expedient to inflict any punishment they may dismiss the party charged with or without sureties for good behaviour, § 4. But if such justices shall be of opinion that the charge is a fit subject for prosecution by indictment, or the party charged shall object to summary trial under this act, then they shall deal with the case as if this act had not been passed.

These statutes will be found more fully detailed under their respective titles of "*Larceny*" and "*Juvenile Offenders*," and are here incidentally noticed in order that the attention of justices may be drawn to them.

We have now to consider the course of proceeding with regard to indictable offences.

All felonies and misdemeanors are strictly speaking indictable offences.

Felonies comprise as well the highest order of offences, such as murder, manslaughter, burglary, arson, robbery, forgery and the like, as also cases of simple larceny, such as the commission of a bare theft unattended by any other aggravation of the crime; all which, as such, are indictable offences; misdemeanors are offences of a lesser degree than felony. Every attempt to commit a felony is a misdemeanor, and so is any incitement or solicitation to commit a crime a

misdemeanor ; as where the offender incited and solicited a servant to steal his master's property ; the servant was honest, and informed his master, and no theft was committed ; but the instigator was indicted for the misdemeanor and convicted. Lord Kenyon observing that the bare solicitation of a crime was a misdemeanor, *R. v. Higgins*, 2 *East*, 5 ; so parties guilty of any public nuisance, such as obstructing a public highway and the like may be indicted for a misdemeanor ; and the publication of a defamatory libel is a misdemeanor. More upon this subject will be found under the head of misdemeanor, to which the reader is referred.

The course of procedure for indictable offences is provided for by C. Stat, 22 V. c. 102, as follows :

Indictable Offences.

Complaint.—§ 1. In all cases where a charge or complaint (A) is made before any one or more of her Majesty's justices of the peace for any territorial division of Upper Canada, that any person has committed, or is suspected to have committed, any treason or felony or any indictable misdemeanor or offence *within* the limits of the jurisdiction of such justice or justices of the peace, or that any person guilty or suspected to be guilty of having committed any such crime or offence *elsewhere* out of the jurisdiction of such justice or justices, is residing or being, or is suspected to reside or be within the limits of the jurisdiction of such justice or justices, then, and in every such case, if the person so charged or complained against is not then in custody, such justice or justices of the peace *may* (a) issue his or their warrant (B) to apprehend such person, and to cause him to be brought before such justice or justices, or any other justice or justices for the same territorial division. § 2. In all cases such justice or justices to whom the charge or complaint is preferred, instead of issuing in the first instance his or their warrant to apprehend the person so charged or

(a) And it may be as well here to remind the reader of the " Interpretation Act," which gives a definite meaning to certain words and expressions in acts of parliament, viz. : The word " month " means a " calendar month." The word " oath " includes " affirmation." Words importing the singular number, or the masculine gender, include more persons, or things, than one, and females as well as males, and the *converse*. So the word " shall," where it occurs, is to be construed as " imperative," and the word " may " as permissive. For instance, if the act says that the justice *may* issue his warrant or summons against the party, this is *permissive*, and leaves the justice at his discretion to issue either. But if the act says the justice *shall* cause the party to be apprehended and brought before him by warrant, &c., this is *imperative*, and a warrant must be issued.

complained against, *may* if he or they think fit issue his or their summons (C) directed to such person, requiring him to appear before the said justice or justices, at the time and place to be therein mentioned, or before such other justice or justices of the same territorial division as may then be there, and if, after being served with such summons in manner hereinafter mentioned, he fails to appear at such time and place, in obedience to such summons, the said justice or justices, or any other justice or justices of the peace, for the said territorial division, may issue his or their warrant (D) to apprehend such person so charged or complained against, and cause such person to be brought before him or them, or before some other justice or justices of the peace for the same territorial division, to answer to the said charge or complaint, and to be further dealt with according to law; but any justice or justices of the peace may issue the warrant hereinbefore first mentioned, at any time before or after the time mentioned in such summons for the appearance of the accused party.

Indictment—Warrant thereon.—§ 3. In case an indictment be found by the grand jury in any court of oyer and terminer or general gaol delivery, or in any court of general quarter sessions of the peace, against any person then at large, and whether such person has been bound by any recognizance to appear to answer to any such charge or not, and in case such person has not appeared and pleaded to such indictment, the person who acts as clerk of the Crown, marshal, or clerk of assize at such court of oyer and terminer or gaol delivery, or as clerk of the peace at such sessions, shall, at any time afterwards after the end of the sessions of oyer and terminer or gaol delivery, or sessions of the peace, at which such indictment has been found, upon application of the prosecutor, or of any person on his behalf, and on payment of a fee of twenty cents, grant unto such prosecutor or person a certificate (F) of such indictment having been found; and upon production of such certificate to any justice or justices of the peace for the territorial division in which the offence is in such indictment alleged to have been committed, or in which the person indicted resides, or is supposed or suspected to reside or be, such justice or justices, shall issue his or their warrant (G) to apprehend the person so indicted, and to cause him to be brought before such justice or justices or any other justice or justices for the same territorial division to be dealt with according to law: § 4, if such person be thereupon ap-

prehended and brought before any such justice or justices, such justice or justices, upon its being proved upon oath or affirmation before him or them, that the person so apprehended is the same person charged and named in such indictment, shall without further enquiry or examination, commit (H) him for trial, or admit him to bail in manner hereinafter mentioned; § 5, if the person so indicted is confined in any gaol or prison for any other offence than that charged in such indictment at the time of such application and production of such certificate to such justice or justices as aforesaid, such justice or justices, upon its being proved before him or them upon oath or affirmation, that the person so indicted and the person so confined in prison are one and the same person, shall issue his or their warrant, (I) directed to the gaoler or keeper of the gaol or prison in which the person so indicted is then confined as aforesaid, commanding him to detain such person in his custody, until, by her Majesty's writ of *Habeas Corpus*, he be removed therefrom for the purpose of being tried upon the said indictment, or until he be otherwise removed or discharged out of his custody by due course of law. § 6. Nothing herein before contained shall prevent the issuing or execution of bench warrants, whenever any court of competent jurisdiction may think proper to order the issuing of any such warrant.

Warrant on Sunday.—§ 7. Any justice or justices of the peace may grant or issue any warrant as aforesaid, or any search warrant on a Sunday as well as on any other day.

Information and complaint—Search Warrant, &c.—§ 8. In all cases when a charge or complaint for an indictable offence is made before any justice or justices aforesaid, if it be intended to issue a warrant in the first instance against the party charged, an information and complaint thereof (A) in writing, on the oath or affirmation of the informant, or of some witness or witnesses in that behalf, shall be laid before such justice or justices. § 8. When it is intended to issue a summons instead of a warrant in the first instance, the information and complaint shall also be in writing, and be sworn to or affirmed in manner aforesaid; except only in cases where by some act of parliament it is specially provided that such information and complaint may be by *parol* merely, and without any oath or affirmation to support or substantiate the same. § 10. No objection shall be taken or allowed to any such information or complaint for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution, before the justice or justices who take the examination of the witnesses

in that behalf as hereinafter mentioned. § 11. If any credible witness prove on oath (E 1) before a justice of the peace, that there is reasonable cause to suspect any property whatsoever, on or with respect to which any larceny or felony has been committed, is in any dwelling-house, out-house, garden, yard, croft or other place or places, the justice may grant a warrant (E 2) to search such dwelling-house, garden, yard, croft or other place or places, for such property.

Summons or Warrant on Information.—§ 12. Upon such information and complaint being so laid as aforesaid, the justice or justices receiving the same may, if he or they think fit, issue his or their summons or warrant as hereinbefore directed, to cause the person charged to be and appear before him or them, or any justice or justices of the peace for the same territorial division, to be dealt with according to law: and every summons (C) shall be directed to the party so charged in and by such information, and shall state shortly the matter of such information, and shall require the party to whom it is directed to be and appear at a certain time and place therein mentioned, before the justice who issues such summons, or before such other justice or justices of the peace for the same territorial division as may then be there, to answer to the said charge, and to be further dealt with according to law. § 13. Every such summons shall be served by a constable or other peace officer upon the person to whom it is so directed, by delivering the same to the party personally, or, if he cannot conveniently be met with, then by leaving the same for him with some person at his last or most usual place of abode. § 14. the constable or other peace officer who serves the same in manner aforesaid, shall attend at the time and place, and before the justice or justices in the said summons mentioned, to depose, if necessary, to the service of such summons. § 15. If the person served does not appear before such justice or justices, at the time and place mentioned in such summons, in obedience to the same, such justice or justices may issue his or their warrant (D) for apprehending the party so summoned, and bringing him before such justice or justices, or before some other justice or justices for the same territorial division, to answer the charge in the information and complaint mentioned, and to be further dealt with according to law. § 16. No objection shall be taken or allowed to any such summons or warrant for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part

of the prosecutor before the justice or justices who take the examination of the witnesses in that behalf as hereinafter mentioned. § 17. If it appears to the justice or justices that the party charged has been deceived or misled by any variance, such justice or justices, at the request of the party so charged, may adjourn the hearing of the case to some future day, and in the meantime remand the party or admit him to bail in the manner hereinafter mentioned.

Warrant—Form of, &c.—§ 18. Every warrant (B) hereafter issued by any justice or justices of the peace to apprehend any person charged with any indictable offence shall be under the hand and seal of the justice or justices issuing the same, and may be directed to all or any of the constables or other peace officers of the territorial division within which the same is to be executed, or to such constable and all other constables or peace officers in the territorial division within which the justice or justices issuing the same has jurisdiction, or generally to all the constables or peace officers within such last-mentioned territorial division; and it shall state shortly the offence on which it is founded, and shall name or otherwise describe the offender; and it shall order the person or persons to whom it is directed to apprehend the offender, and bring him before the justice or justices issuing such warrant, or before some other justice or justices of the peace for the same territorial division, to answer to the charge contained in the said information, and to be further dealt with according to law. § 19. It shall not be necessary to make such warrant returnable at any particular time, but the same may remain in force until executed. § 20. Such warrant may be executed by apprehending the offender at any place within the territorial division within which the justice or justices issuing the same have jurisdiction, or, in case of fresh pursuit, at any place in the next adjoining territorial division, and within *seven miles of the border* of such first mentioned territorial division, without having such warrant backed, as hereinafter mentioned. § 21. In case any warrant be directed to all constables or other peace officers in the territorial division within which such justice or justices have jurisdiction, any constable or other peace officer for any place within such territorial division may execute the warrant at any place within the jurisdiction for which the said justice or justices acted when he or they granted such warrant, in like manner as if such warrant had been directed specially to such constable by name, and notwithstanding the place within which such warrant is executed

be not within the place for which he is constable or peace officer. § 22. No objection shall be taken or allowed to any such warrant for any defect therein, in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice or justices who take the examination of the witnesses in that behalf as hereinafter mentioned. § 23. If it appears to the justice or justices that the party charged has been thereby deceived or misled by any such variance, such justice or justices, at the request of the party charged, may adjourn the hearing of the case to some future day, and in the meantime may remand the party, or admit him to bail, in manner hereinafter mentioned.

Backing Warrant.—§ 24. If the person against whom any such warrant has been issued cannot be found within the jurisdiction of the justice or justices by whom the same was issued, or if he escapes, goes into, resides or is supposed or suspected to be in any place within this province, whether in Upper or in Lower Canada, out of the jurisdiction of the justice or justices issuing such warrant, any justice of the peace within the jurisdiction of whom such person so escapes or goes, or in which he resides, or is supposed or suspected to be, upon proof made on oath of the hand-writing of the justice who issued the same, and without any security being given, shall make an endorsement (K) on such warrant signed with his name, authorising the execution of such warrant within the jurisdiction of the justice making such endorsement, and which endorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, and also to all constables and other peace officers of the territorial division where such warrant shall be so endorsed, to execute the same in such other territorial division, and to carry the person against whom such warrant issued, when apprehended, before the justice or justices of the peace who first issued the warrant, or before some other justice or justices of the peace for the same territorial division, or before some justice or justices of the territorial division where the offence in the said warrant mentioned appears therein to have been committed. § 25. If the prosecutor or any of the witnesses upon the part of the prosecution be then in the territorial division where such person has been so apprehended, the constable, or other person or persons who have apprehended him, may, if so directed by the justice backing the warrant, take and convey him before the justice who backed the war-

rant, or before some other justice or justices for the same territorial division or place; and the said justice or justices may thereupon take the examination of the prosecutor or witnesses, and proceed in every respect in manner hereinafter directed with respect to persons charged before a justice or justices of the peace with an offence alleged to have been committed in another territorial division than that in which such persons have been apprehended.

Summoning Witnesses.—§ 26. If it be made to appear to any justice of the peace, by the oath or affirmation of a credible person, that any person within the jurisdiction of such justice is likely to give material evidence for the prosecution, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of the witnesses against the accused, such justice shall issue his summons (L 1) to such person under his hand and seal, requiring him to be and appear, at a time and place mentioned in the summons, before the said justice, or before such other justice or justices of the peace for the same territorial division as may then be there, to testify what he knows concerning the charge made against such accused party. § 27. If any person so summoned neglects or refuses to appear at the time and place appointed by the said summons, and no just excuse be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or with some person for him at his last or most usual place of abode) the justice or justices before whom such person should have appeared may issue a warrant (L 2) under his or their hands and seals, to bring such person at a time and place to be therein mentioned, before the justice who issued the said summons, or before such other justice or justices of the peace for the same territorial division as may then be there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who issued the same. § 28. If the justice be satisfied by evidence upon oath or affirmation that it is probable the person will not attend to give evidence unless compelled so to do, then, instead of issuing such summons, the justice may issue his warrant (L 3) in the first instance, and the warrant, if necessary, may be backed as aforesaid. § 29. If on the appearance of the person so summoned before the said last mentioned justice or justices, either in obedience to the said summons or upon being brought before

him or them by virtue of the said warrant, such person refuses to answer the questions concerning the premises then put to him, without giving any just excuse for such refusal, any justice of the peace then present, and there having jurisdiction, may, by warrant (L 4) under his hand and seal, commit the person so refusing to the common gaol or house of correction for the territorial division where the person so refusing then is, there to remain and be imprisoned for any time not exceeding ten days, unless he in the meantime consents to be examined and to answer concerning the premises.

Examination in presence of the Accused.—§ 30. In all cases where any person appears or is 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 appears voluntarily upon summons or has been apprehended, with or without warrant, or is in custody for the same or any other offence, such justice or justices before he or they commit such accused person to prison for trial, or before he or they 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,) take the statement (M) on oath or affirmation of those who 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 examined, and shall be signed also by the justice or justices taking the same. § 31. The justice or justices before whom any such witness appears 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 are hereby empowered to do; and if, upon the trial of the person so accused as first aforesaid, it be proved upon the oath or affirmation of any credible witness, that any person whose deposition has been taken as aforesaid is dead, or is so ill as not to be able to travel, and if it be also proved that such deposition was taken in the presence of the person so accused, and that he, 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 read as evidence in such prosecution without further proof thereof, unless it be proved that such deposition was not in fact signed by the justice purporting to have signed the same.

Statement of the Accused Party.—§ 32. After the examinations of all the witnesses on the part of the prosecution

as aforesaid have been completed, the justice of the peace, or one of the justices by or before whom such examinations have been so completed, 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 any thing in answer to the charge? You are not obliged to say any thing unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial," and whatever the prisoner then says shall be taken down in writing (N) 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. § 33. Upon the trial of the accused person, the examinations may, if necessary, be given in evidence against him without further proof thereof, unless it be proved that the justice or justices purporting to have signed the same did not in fact sign the same. § 34. The said justice or justices, before such accused person makes any statement, shall state to him, and give him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatever he then says may be given in evidence against him upon his trial, notwithstanding such promise or threat. § 35. Nothing herein contained or enacted shall prevent any prosecutor from giving in evidence any admission or confession, or other statement made at any time by the person accused or charged, which by law would be admissible as evidence against him.

Place of Examination.—§ 36. The room or building in which the justice or justices shall take the examinations and statement as aforesaid, shall not be deemed an open court for that purpose; and such justice or justices, in his or their discretion, may order that no person shall have access to, or be or remain in such room or building without the consent or permission of such justice or justices, if it appear to him or them that the ends of justice will be best answered by so doing.

Recognizances of Witnesses.—§ 37. Any justice or justices before whom any witness is examined, may bind by recognizance (O 1) 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 prose-

cute, or 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 with his christian and surname, and the parish, township or place of his residence, and if his residence be in a city, town or borough, and when convenient so to do, the name 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. § 38. 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 is acknowledged, and a notice (O 2) thereof, signed by the said justice or justices, shall at the same time be given to the person bound thereby. § 39. 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) shall be delivered to the proper officer of the court in which the trial is to be had, that is to say, in Upper Canada to the county attorney for the county without delay. § 40. If any such witness refuses to enter into or acknowledge such recognizance as aforesaid the justice or justices of the peace by his or their warrant (P 1) may commit him to the common gaol or house of correction for the territorial division 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 duly enters into such recognizance as aforesaid before some one justice of the peace for the territorial division in which such gaol or house of correction is situated.

§ 41. If afterwards, for want of sufficient evidence in that behalf, or other cause, the justice or justices before whom such accused party has been brought does not commit him or hold him to bail for the offence charged, such justice or justices, or any other justice or justices for the same territorial division, by his or their order (P 2) in that behalf, may order and direct the keeper of such common gaol or house of correction where such witness is in custody, to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly.

Remanding the Accused.—§ 42. If from the absence of witnesses, or from any other reasonable cause, it becomes necessary or advisable to defer the examination or further examination of the witnesses for any time, the justice or justices before whom the accused appears or has been brought, by his

or their warrant (Q 1) may from time to time remand the party accused for such time as by such justice or justices in their discretion may be deemed reasonable, not exceeding eight clear days at any one time, to the common gaol or house of correction or other prison, lock-up house, or place of security in the territorial division for which such justice or justices are then acting. § 43. If the remand be for a time not exceeding three clear days, such justice or justices may *verbally* order the constable, or other person in whose custody such party accused may then be, or any constable or person to be named by the said justice or justices in that behalf, to continue or keep such accused party in his custody, and to bring him before the same, or such other justice or justices as may be there acting at the time appointed for continuing the examination. § 44. Any such justice or justices may order such accused party to be brought before him or them, or before any other justice or justices of the peace for the same territorial division, at any time before the expiration of the time for which such party has been remanded, and the gaoler or officer in whose custody he then is shall duly obey such order. § 45. Instead of detaining the accused party in custody during the period for which such accused party has been so remanded, any one justice of the peace before whom such party has so appeared or been brought as aforesaid, *may* discharge him, upon his entering into a recognizance (Q 2, 3) with or without a surety or sureties, at the discretion of such justice, conditioned for his appearance at the time and place appointed for the continuance of the examination. § 46. If such accused party does not afterwards appear at the time and place mentioned in such recognizance, then in Upper Canada the said justice, or any other justice of the peace who may then and there be present, having certified (Q 4) upon the back of the recognizance the non-appearance of such accused party, may transmit the recognizance to the clerk of the peace for the territorial division within which the recognizance was taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said accused party.

Where Offence committed in another jurisdiction.—§ 47. Whenever a person appears or is brought before a justice or justices of the peace in the territorial division wherein such justice or justices have jurisdiction, charged with an offence alleged to have been committed by him within any territorial division wherein such justice or justices have not jurisdiction,

such justice or justices shall examine such witnesses, and receive such evidence in proof of the said charge as may be produced before him or them within his or their jurisdiction; and if, in his or their opinion, such testimony and evidence be sufficient proof of the charge made against the accused party, such justice or justices shall thereupon commit him to the common gaol or house of correction for the territorial division where the offence is alleged to have been committed, or shall admit him to bail as hereinafter mentioned, and shall bind over the prosecutor (if he has appeared before him or them) and the witnesses, by recognizance accordingly as hereinbefore mentioned. § 48. If such testimony and evidence be not, in the opinion of such justice or justices sufficient to put the accused party upon his trial for the offence with which he is charged, then the justice or justices shall by recognizance bind over the witness or witnesses whom he has examined to give evidence as hereinbefore is mentioned; and such justice or justices shall, by warrant (R 1) under his or their hand and seal, or hands and seals, order the said accused party to be taken before some justice or justices of the peace in and for the territorial division where the offence is alleged to have been committed, and shall at the same time deliver up the information and complaint, and also the depositions and recognizances so taken by him or them to the constable who has the execution of such last mentioned warrant, to be by him delivered to the justice or justices before whom he takes the accused, in obedience to the said warrant, and the said depositions and recognizances shall be deemed to be taken in the case, and shall be treated to all intents and purposes as if they had been taken by or before the said last mentioned justice or justices, and shall, together with such depositions and recognizances as such last mentioned justice or justices take in the matter of such charge against the accused party, be transmitted to the clerk of the court or other proper officer where the said accused party is to be tried, in the manner, and at the time hereinbefore mentioned, if such accused party should be committed for trial upon the said charge, or be admitted to bail. § 49. In case such accused party be taken before the justice or justices last aforesaid, by virtue of the said last mentioned warrant, the constable, or other person or persons to whom the said warrant is directed, and who has conveyed such accused party before such last mentioned justice or justices, shall, upon producing the said accused party before such justice or justices, and delivering

him into custody of such person as the said justice or justices shall direct or name in that behalf, be entitled to be paid his costs and expenses of conveying the said accused party before the said justice or justices. § 50. Upon the said constable delivering to the said justice or justices the warrant, information, (if any), depositions and recognizances as aforesaid, and proving by oath the hand-writing of the justice or justices who has subscribed the same, such justice or justices before whom the said accused party is produced shall thereupon furnish such constable with a receipt or certificate (R 2) of his or their having received from him the body of the said accused party, together with the said warrant, information, (if any,) depositions and recognizances, and of his having proved to him or them, upon oath, the hand-writing of the justice who issued the said warrant. § 51. The said constable, on producing such receipt or certificate to the sheriff or high bailiff, if he was employed by such officer, and if not, then to the treasurer of the municipality or division in which such accused party was apprehended, shall be entitled to be paid all his reasonable charges, costs and expenses of conveying such accused party into such other territorial division, and returning from the same.

Bail.—§ 52. When any person appears before any justice of the peace charged with a *felony* or suspicion of felony, and the evidence adduced is in the opinion of such justice sufficient to put such accused party on his trial as hereinafter mentioned, but does *not furnish such a strong presumption of guilt* as to warrant his committal for trial, such justice *jointly with some other justice* of the peace may 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 the offence; and thereupon such two justices shall take the recognizance (S. 1, 2) of the said accused person and his 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. § 53. 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 such bail to justify on oath as to their sufficiency, which oath the said justice or justices may 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. § 54.(a) In Upper Canada in all cases of felony, where the party accused has been finally committed as hereinafter provided, any county judge who is also a justice of the peace for the county within the limits of which such accused party is confined may in his discretion, on application made to him for that purpose, order such accused party or person to be admitted to bail on entering into recognizance with sufficient sureties before two justices of the peace in such amount as the said judge directs, and thereupon such justices shall issue a warrant of deliverance (S. 3.) as hereinafter provided, and shall attach thereto the order of the judge directing the admitting of such party to bail. § 55. 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, and nothing herein contained shall prevent such courts or judges admitting any person accused of misdemeanor or felony to bail when they may think it right so to do.

Warrant of Deliverance.—§ 56. In all cases where a justice or justices of the peace admits to bail any person who is then in any prison charged with the offence for which he is so admitted to bail, such justice or justices shall send to or cause to be lodged with the keeper of such prison a warrant of deliverance (S. 3) under his or their hand and seal, or hands and seals, requiring the said keeper to discharge the person so admitted to bail if he be detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with such keeper he shall forthwith obey the same.

Discharge or Commitment.—§ 57. When all the evidence offered upon the part of the prosecution against the accused party has been heard, if the justice or justices of the peace then present shall be of opinion that *it is not sufficient* to put such accused party upon his trial for any indictable offence, such justice or justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under enquiry; but if in the opinion of such justice or justices such evidence is sufficient to put the accused party

(a) This section is substituted for the original section by the 24 V. c. 15, § 2.

upon his trial for an indictable offence, although it may not raise such a strong presumption of guilt as would induce such justice or justices to commit the accused for trial without bail, or if the offence with which the party is accused be a *misdemeanor*, then such justices shall admit the party to bail as hereinbefore provided; but if the offence be a *felony*, and the evidence given be such as to raise a strong presumption of guilt, then such justice or justices shall by his or their warrant (T. 1) commit him to the common gaol for the territorial division to which he may by law be committed, or in the case of an indictable offence committed on the high seas, or on land beyond the sea, to the common gaol of the territorial division within which such justice or justices have jurisdiction, to be there safely kept until he shall thence be delivered by due course of law.

Conveyance to Gaol.—§ 58. The constable or any of the constables, or other persons to whom any warrant of commitment authorised by this or any other act is directed shall convey the accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with the warrant, to the gaoler, keeper, or governor of such gaol or prison, who shall thereupon give the constable or other person delivering the prisoner into his custody a receipt (T. 2) for such prisoner, setting forth the state and condition of the prisoner when delivered into the custody of such gaoler, keeper or governor.

Copies of Depositions.—§ 60. At any time after all the examinations aforesaid have been completed, and before the first day of the sessions, 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 has been committed or bailed, on payment of a reasonable sum for the same, not exceeding the rate of five cents for each folio of one hundred words.

Police or Stipendiary Magistrate, &c.—§ 61. Any one inspector and superintendent of police, any police magistrate or stipendiary magistrate appointed for any territorial division, may do alone whatever is authorised by this act to be done by any two or more justices of the peace, and the several forms in this act contained may be varied so far as necessary to render them applicable to such inspector and superintendent of police, or to such police magistrate or stipendiary magistrate.

§ 63. When and so often as any person has been committed for trial by any justice or justices, or coroner, as aforesaid, such prisoner, his counsel, attorney or agent, may notify the said committing justice or justices, or coroner, that he will, so soon as counsel can be heard, move one of her Majesty's courts of superior criminal jurisdiction for that part of the province in which such person stands committed, or one of the judges thereof, or the judge of the county court, if it is intended to apply to such judge under the fifty-fourth section of this act for an order to the justices of such the peace, or coroner, for the territorial division where prisoner is confined, to admit such prisoner to bail, whereupon such committing justice or justices, or coroner, shall with all convenient expedition transmit to the office of the clerk of the Crown or the chief clerk of the court, or the clerk of the county court, (as the case may be,) close under the hand and seal of one of them, a certified copy of all informations, examinations, and other evidences touching the offence wherewith such prisoner has been charged, together with a copy of the warrant of commitment and inquest, if any such there be, and 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. § 64. Upon application to any of her Majesty's courts 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*.

Penalties on Justices.—§ 65. If any justice or coroner neglects or offends in any thing contrary to the true intent and meaning of any of the provisions of the sixty-second and following sections of this act, the court to whose officer any such examination, information, evidence, bailment, recognizance or injunction ought to have been delivered, shall, upon examination and proof of the offence in a summary way, set such *fine* upon every such justice or coroner as the court thinks meet.

General Provisions.—§ 66. The provisions of this act relating to justices and coroners shall apply to the justices and coroners not only of districts and counties at large, but also of all other territorial divisions and jurisdictions.

Forms.—§ 67. The several forms in the schedule to this act contained, or forms to the like effect, shall be good, valid, and sufficient in the law.

SCHEDULES.

(A.)

Information and Complaint for an Indictable Offence.

PROVINCE OF CANADA : } The information and complaint of C.
 (County or united } D. of (yeoman),
 counties, or as the } taken this day of ,
 case may be,) of } in the year of our Lord
 before the undersigned, (one) of her Majesty's justices of the
 peace in and for the said (county or as the case may be) of ,
 who saith that (&c., stating the offence.)

Sworn before (me) the day and year first above mentioned, at)
 J. S.

(B.)

Warrant to Apprehend a Person charged with an Indictable Offence.

PROVINCE OF CANADA : } To all or any of the constables or
 (County or united } other peace officers in the (county or
 counties, or as the } united counties, or as the case may
 case may be,) of } be,) of

Whereas A. B., of (labourer,) hath this day
 been charged upon oath before the undersigned, (one) of her
 Majesty's justices of the peace, in and for the said (county or
 united counties, or as the case may be,) of , for that
 he, on , at , did (&c., stating shortly
 the offence.) These are therefore to command you, in her
 Majesty's name, forthwith to apprehend the said A. B., and to
 bring him before (me) or some other of her Majesty's justices of
 the peace in and for the said (county or united counties, or as the
 case may be,) of , to answer unto the said charge,
 and to be further dealt with according to law.

Given under (my) hand and seal, this day of
 . at , in the county, &c.) aforesaid.
 J. S. [L. s.]

(C.)

Summons to a Person charged with an Indictable Offence.

PROVINCE OF CANADA : } To A. B. of (labourer)
 (County or united } Whereas you have this day been
 counties, or as the } charged before the undersigned (one) of
 case may be,) of } her Majesty's justices of the peace in and for the said (county or
 united counties, or as the case may be,) of
 for that you on , at , (&c., stating
 shortly the offence.) These are therefore to command you, in
 her Majesty's name, to be and appear before (me) on ,
 at o'clock in the (fore) noon, at , or before

Justices of the Peace.

such other justice or justices of the peace for the same (*county or united counties, or as the case may be,*) of _____, as may then be there, to answer to the charge, and to be further dealt with according to law.

Given under (*my*) hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the (*county, &c.*) aforesaid.

J. S. [L. s.]

(D.)

Warrant when the Summons is disobeyed.

PROVINCE OF CANADA :

(<i>County or united counties, or as the case may be,</i>) of _____ of _____ :	}	To all or any of the constables or other peace officers in the said (<i>county or united counties, or as the case may be</i>)
--	---	---

Whereas on the _____ day of _____ (*instant or last past*) A. B. of the _____, was charged before, (*me or us,*) the undersigned, (*or name the magistrate or magistrates, or as the case may be*) (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be.*) of _____, for that (*&c., as in the summons*). And whereas (*I, he, the said justice of the peace, we, or they, the said justices of the peace*) then issued (*my, our, his or their*) summons to the said A. B., commanding him in her Majesty's name, to be and appear before (*me*) on _____, at _____ o'clock in the(*fore*) noon, at _____, or before such other justice or justices of the peace as should then be there, to answer to the said charge, and to be further dealt with according to law. And whereas the said A. B. hath neglected to be or appear at the time and place appointed in and by the said summons, although it hath now been proved to (*me*) upon oath, that the said summons was duly served upon the said A. B. These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*) of _____, to answer the said charge, and be further dealt with according to law.

Given under (*my*) hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the (*county*) of _____ aforesaid.

J. S. [L. s.]

(E 1.)

Information to obtain a Search Warrant.

PROVINCE OF CANADA :

(<i>County or united counties, or as the case may be,</i>) of _____ the year of our Lord _____	}	The information of A. B. of the _____ in the (<i>county, &c.</i>) (<i>yeoman,</i>) taken this _____ day of _____, in _____, before me, W. S., Esquire,
--	---	--

one of her Majesty's justices of the peace, in and for the (county or united counties, or as the case may be) of _____, who saith that on the _____ day of _____, (insert description of articles stolen,) of the goods and chattels of deponent, were feloniously stolen, taken and carried away, from and out of the (dwelling-house, &c.) of this deponent, at the (township, &c.) aforesaid, by (some person or persons unknown, or name the person,) and that he hath just and reasonable cause to suspect, and doth suspect that the said goods and chattels, or some part of them, are concealed in the dwelling-house, &c., of C. D.) of _____ in the said (county, here add the causes of suspicion whatever they may be.) Wherefore, (he) prays that a search warrant may be granted to him to search (the dwelling-house, &c.) of the said C. D. as aforesaid, for the said goods and chattels so feloniously stolen, taken and carried away as aforesaid.

Sworn before me the day and year first above mentioned, at _____ in the said (county) of _____

W. S., J. P.

(E 2.)

Search Warrant.

PROVINCE OF CANADA :

(County or united counties, or as the case may be,) of _____	}	To all or any of the constables, or other peace officers, in the (county or united counties, or as the case may be) of _____ .
--	---	--

Whereas A. B., of the _____, of _____, in the said (county &c.) hath this day made oath before me the undersigned, one of her Majesty's justices of the peace, in and for the said (county or united counties, or as the case may be,) of _____, that on the _____ day of _____ (copy information as far as place of supposed concealment.) These are therefore in the name of our sovereign lady the Queen, to authorise and require you, and each and every of you, with necessary and proper assistance, to enter in the day time into the said (dwelling house, &c., of the said, &c.) and there diligently search for the said goods and chattels, and if the same or any part thereof shall be found upon such search, that you bring the goods so found, and also the body of the said C. D. before me, or some other justice of the peace, in and for the said (county or united counties, or as the case may be) of _____ to be disposed of and dealt with according to law.

Given under my hand and seal, at _____, in the said (county, &c.) this _____ day of _____, in the year of our Lord, one thousand eight hundred and _____

W. S., J. P. [L. S.]

(F.)

Certificate of Indictment being found.

I hereby certify that at a court of _____ (oyer and terminer, or

general gaol delivery, or general sessions of the peace) holden in and for the (*county or united counties, or as the case may be,*) of _____, at _____, in the said (*county, &c.,*) on _____, a bill of indictment was found by the grand jury against A. B., therein described as A. B., late of _____, *labourer*, for that he (*&c., stating shortly the offence.*) and that the said A. B. hath not appeared or pleaded to the said indictment.

Dated this _____, day of _____ one thousand eight hundred and _____

Z. X.

Clerk of the Crown or deputy clerk of the Crown for the (*county or united counties, or as the case may be*)

or

Clerk of the peace of and for the said (*county or united counties, as the case may be.*)

(G.)

Warrant to Apprehend a Person Indicted.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be,*) of _____ } To all or any of the constables, or other peace officers, in the said (*county or united counties, or as the case may be*) of _____

Whereas it hath been duly certified by J. D., clerk of the Crown of (*name the court*) (or E. G., deputy clerk of the Crown, or clerk of the peace, *as the case may be*) in and for the (*county or united counties, or as the case may be*) of _____ that (*&c., stating the certificate*). These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other justice or justices of the peace in and for the said (*county or united counties, or as the case may be*) to be dealt with according to law.

Given under my hand and seal, this _____ day of _____ in the year of our Lord _____, at _____, in the (*county, &c.,*) aforesaid.

J. S. [L. s.]

(H.)

Warrant of Commitment of a Person Indicted.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be,*) of _____ } To all or any of the constables, or other peace officers in the said (*county, &c.,*) of _____ and to the keeper of the common gaol at _____, in the said *county or united counties, or as the case may be,*) of _____

Whereas by a warrant under the hand and seal of (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be,*) of _____ (a) [under

(a) The words within the brackets [] are in the form given, but they seem to be a mere repetition of the words preceding.

hand and seal] , dated the day of , after reciting that it had been certified by J. D., (&c., as in the certificate,) () the said justice of the peace commanded all or any of the constables, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*him*) the said justice of the peace in and for the said (*county or united counties, or as the case may be*) to be dealt with according to law ; and whereas the said A. B. hath been apprehended under and by virtue of the said warrant, and being now brought before (*me*) it is hereupon duly proved to (*me*) upon oath that the said A. B. is the same person who is named and charged by in the said indictment. These are therefore to command you the said constables and peace officers, or any of you, in her Majesty's name, forthwith to take and convey the said A. B. to the said common gaol at , in the said (*county or united counties or as the case may be*) of , and there to deliver him to the keeper thereof, together with this precept ; and (I) hereby command you the said keeper to receive the said A. B. into your custody in the said gaol, and him there safely keep until he shall thence be delivered by due course of law.

Given under (*my*) hand and seal, this . day of , in the year of our Lord , at , in the (*county, &c.*) aforesaid

J. S. [L. s.]

(I.)

Warrant to Detain a Person Indicted, who is already in custody for another offence.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } To the keeper of the common gaol at
in the said (*county or united counties, as the case may be*) of

Whereas it hath been duly certified by J. D., clerk of the crown of (*name the court*) or deputy clerk of the crown, or clerk of the peace of and for the (*county or united counties, as the case may be*) of that, (&c. stating the certificate.) And whereas (*I am*) informed that the said A. B. is in your custody in the said common gaol at aforesaid, charged with some offence, or other matter ; and it being now duly proved upon oath before (*me*) that the said A. B. so indicted as aforesaid, and the said A. B. in your custody as aforesaid are one and the same person. These are therefore to command you, in her Majesty's name, to detain the said A. B. in your custody in the common gaol aforesaid, until by her Majesty's writ of *Habeas Corpus* he shall be removed therefrom for the purpose of being tried upon the

Justices of the Peace.

said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under (*my*) hand and seal, this day of , in the (*county, &c.*,) aforesaid.

J. S. [L. s.]

(K.)

Endorsement in Backing a Warrant.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } Whereas proof upon oath hath this day been made before me, one of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*) of , that the name of J. S., to the within warrant subscribed, is of the hand writing of the justice of the peace within mentioned; I do therefore authorise W. T., who bringeth me this warrant, and all other persons to whom this warrant was originally directed, or by whom it may be lawfully executed, and also all constables and other peace officers of the said (*county or united counties, or as the case may be*) of , to execute the same within the said last mentioned (*county or united counties, or as the case may be*).

Given under my hand, this day of , in the year of our Lord , at , in the (*county, &c.*,) aforesaid.

J. L.

(L. I.)

Summons to a Witness.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } To E. F. of , (*labourer*).
 } Whereas information hath been laid before the undersigned, one of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*) of , that A. B. (*&c., as in the summons or warrant against the accused,*) and it hath been made to appear to me upon (*oath*) that you are likely to give material evidence for (*prosecution*). These are therefore to require you to be and to appear before me on next, at o'clock in the (*fore*) noon, at , or before such other justice or justices of the peace for the same (*county or united counties, as the case may be*) of , as may then be there, to testify what you shall know concerning the said charge so made against the said A. B. as aforesaid. Herein fail not.

Given under my hand and seal, this day of in the year of our Lord , at , in the (*county, &c.*,) aforesaid.

J. S. [L. s.]

(L. 2.)

Warrant when a Witness has not Obedied a Summons.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } To all or any of the constables, or other peace officers, in the said (*county, or united counties, or as the case may be*) of

Whereas information having been laid before (one) of her Majesty's justices of the peace, in and for the said (*county, &c.*, of , that A. B., (*&c.*, as in the summons). And it having been made to appear to (me) upon oath, that E. F. of , (*labourer*) was likely to give material evidence for the prosecution, (I) did duly issue (*my*) summons to the said E. F., requiring him to be and appear before (me) on , at , or before such other justice or justices of the peace for the same (*county or united counties, or as the case may be*) as might then be there, to testify what he should know respecting the said charge so made against the said A. B. as aforesaid. And whereas proof hath this day been made upon oath before (me) of such summons having been duly served upon the said E. F. And whereas the said E. F. hath neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect, these are therefore to command you to bring and have the said E. F. before (me) on at o'clock in the (*fore*) noon, at or before such other justice or justices of the peace for the same (*county or united counties, or as the case may be*) as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under (*my*) hand and seal, this day of , in the (*county, &c.*) aforesaid.

J. S. [L. s.]

(L. 3.)

Warrant for a Witness in the First Instance.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } To all or any of the constables or peace officers in the said (*county or united counties, or as the case may be*) of

Whereas information has been laid before the undersigned, (one) of her Majesty's justices of the peace, in and for the said (*county or united counties, or as the case may be*) of , that (*&c.*, as in the summons) ; and it having been made to appear to (me) upon oath, that E. F. of , (*labourer*), is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence unless compelled to do so ; these are therefore to command you to bring

Justices of the Peace.

and have the said E. F. before (*me*) on _____, at _____ o'clock in the (*fore*) noon, at _____, or before such other justice or justices of the peace for the same (*county or united counties, or as the case may be*) as may then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal, this _____ day of _____ in the year of our Lord _____, at _____, in the (*county, &c.*) aforesaid.
J. S. [L.S.]

(L. 4.)

Warrant of Commitment of a Witness for Refusing to be Sworn or to give Evidence.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of _____ } To all or any of the constables or other
 _____ } peace officers in the (*county or united
 counties, or as the case may be*) of _____,
 and to the keeper of the common gaol at _____, in the said
county or united counties, or as the case may be) of _____.

Whereas A. B. was lately charged before _____, (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*) of _____, for that (*&c., as in the summons*). And it having been made to appear to (*me*) upon oath that E. F. of _____, was likely to give material evidence for the prosecution, (*I*) duly issued (*my*) summons to the said E. F. requiring him to be and appear before me on _____, at _____, or before such other justice or justices of the peace for the same (*county or united counties, or as the case may be*) as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid. And the said E. F. now appearing before (*me*) (*or being brought before me*) by virtue of a warrant in that behalf, to testify as aforesaid,) and being required to make oath or affirmation as a witness in that behalf, hath now refused so to do, (*or being duly sworn as a witness doth now refuse to answer certain questions concerning the premises which are now here put to him, and more particularly the following*) without offering any just excuse for such refusal. These are therefore to command you, the said constables, peace officers, or any one of you, to take the said E. F. and him safely convey to the common gaol at _____, in the (*county, &c.*) aforesaid, and there to deliver him to the keeper thereof, together with this precept; and (*I*) do hereby command you, the said keeper of the said common gaol to receive the said E. F. into your custody in the said common gaol, and him there safely keep for the space of _____ days, for his said contempt, unless he shall in the meantime consent to be examined, and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

(O. 1.)

Recognizance to Prosecute or give evidence.

PROVINCE OF CANADA:

(*County or united counties, or as the case may be.*) of } Be it remembered, that on the
 day of _____ in the year of our Lord
 of _____, C. D., of _____, in the
 _____, in the (*township*) of _____, in the said (*county*) of
 _____, (*farmer,*) (*or C. D., of No. 2,* _____ street, _____, in the
 town or city of _____, *surgeon,* of which said house he is *tenant,*)
 personally came before me, one of her Majesty's justices of the peace
 in and for the said (*county or united counties, or as the case may
 be*) of _____, and acknowledged himself to owe to our sovereign
 lady the Queen the sum of _____, of good and lawful current
 money of this province, to be made and levied of his goods and
 chattels, lands and tenements, to the use of our said lady the
 Queen, her heirs and successors, if he the said C. D. shall fail in
 the condition endorsed.

Taken and acknowledged the day and year first above mentioned at _____ before me. _____ J. S.

Condition to Prosecute.

The condition of the within (*or above*) written recognizance is such, that whereas one A. B. was this day charged before me, J. S., justice of the peace within mentioned, for that (*&c., as in the caption of the depositions;*) if, therefore, he, the said C. D., shall appear at the next court of oyer and terminer *or* general gaol delivery, (*or at the next court of general or quarter sessions of the peace,*) to be holden in and for the (*county or united counties, or as the case may be*) of _____,* and there prefer or cause to be preferred a bill of indictment for the offence aforesaid, against the said A. B., and there also duly prosecute such indictment, then the said recognizance to be void, or else to stand in full force and virtue.

Condition to Prosecute and give Evidence.

(*Same as last form, to the asterisk,* and then thus:—*“ And there prefer or cause to be preferred a bill of indictment against the said A. B. for the offence aforesaid, and duly prosecute such indictment, and give evidence thereon, as well to the jurors who shall then enquire into the said offence, as also to them who shall pass upon the trial of the said A. B., then the said recognizance to be void, or else to stand in full force and virtue.”

Condition to give Evidence.

(*Same as the last form but one, to the asterisk,* and then thus:*) “ And there give such evidence as he knoweth upon a bill of indictment to be then and there preferred against the said A. B.,

for the offence aforesaid, as well to the jurors who shall there enquire of the said offence, as also to the jurors who shall pass upon the trial of the said A. B., if the said bill shall be found a true bill, then the said recognizance to be void, otherwise to remain in full force and virtue."

(O. 2.)

Notice of the said Recognizance to be given to the Prosecutor and his Witness.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } Take notice that you, C. D., of _____, are bound in the sum of _____ to appear at the next court of oyer and terminer and general gaol delivery, (*or at the next court of general quarter sessions of the peace, in and for the county or united counties, or as the case may be*) of _____, to be holden at _____, in the said (*county, &c.*,) and then and there (*prosecute and*) give evidence against A. B.; and unless you then appear there and give evidence accordingly, the recognizance entered into by you will be forthwith levied on you.

Dated this _____ day of _____, one thousand eight hundred and _____

J. S.

(P. 1.)

Commitment of a Witness for refusing to enter into the Recognizance.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } To all or any of the constables or other peace officers in the said (*county or &c.*,) of _____, and to the keeper of the common gaol of the said (*county or united counties, or as the case may be*) at _____, in the said (*county or as the case may be*) of _____

Whereas A. B. was lately charged before the undersigned, (*or name of justice of the peace.*) (*one*) of her Majesty's justices of the peace in and for the said (*county, or &c.*,) of _____ for that (*&c., as in the summons to the witness,*) and it having been made to appear to (*me*) upon oath that E. F., of _____, was likely to give material evidence for the prosecution, (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before (*me*) on _____, at _____, or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before (*me*) (*or being brought before (me) by virtue of a warrant in that behalf to testify as aforesaid,* hath been now examined before (*me*) touching the premises, but being by (*me*) required to enter into a recognizance conditioned to give evidence against the said A. B., hath

now refused so to do; these are therefore to command you the said constables or peace officers, or any of you, to take the said E. F., and him safely to convey to the common gaol at _____, in the (county, &c.,) aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said common gaol to receive the said E. F., into your custody in the said common gaol, there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime the said E. F. shall duly enter into such recognizance as aforesaid, in the sum of _____ before some one justice of the peace for the said county or united counties, or as the case may be,) conditioned in the usual form to appear at the next court of (oyer and terminer, or general gaol delivery, or general quarter sessions of the peace,) to be holden in and for the said (county or united counties, or as the case may be,) of _____, and there to give evidence before the grand jury upon any bill of indictment which may then and there be preferred against the said A. B. for the offence aforesaid, and also to give evidence upon the trial of the said A. B. for the said offence, if a true bill should be found against him for the same.

Given under my hand and seal, this _____, day of _____, in the year of our Lord _____, at _____ in the (county, &c.,) of _____ aforesaid.

J. S. [L. s.]

[P. 2.]

Subsequent Order to Discharge the Witness.

PROVINCE OF CANADA :

(County or united } To the keeper of the common gaol, at
counties, or as the } in the (county) of _____ aforesaid.
case may be) of } Whereas by (my) order dated the
day of _____ (instant,) reciting that A. B. was lately before then
charged before (me) for a certain offence therein mentioned, and
that E. F. having appeared before (me,) and being examined as
a witness for the prosecution in that behalf, refused to enter into
a recognizance to give evidence against the said A. B., and I
therefore thereby committed the said E. F. to your custody, and
required you safely to keep him until after the trial of the said
A. B. for the offence aforesaid, unless in the meantime he should
enter into such recognizance as aforesaid. And whereas for want
of sufficient evidence against the said A. B., the said A. B. has
not been committed or holden to bail for the said offence, but on
the contrary thereof has since been discharged, and it is therefore
not necessary that the said E. F. should be detained longer in
your custody. These are therefore to order and direct you the
said keeper to discharge the said E. F. out of your custody, as to
the said commitment, and suffer him to go at large.

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

in the year of our Lord ; at , in the (*county, &c.*)
of aforesaid.

J. S. [L. S.]

(Q. 1.)

Warrant Remanding a Prisoner.

PROVINCE OF CANADA :

(*County or united } To all or any of the constables or other
counties, or as the } peace officers in the said (county or united
case may be) of } counties, or as the case may be) of ,
and to the keeper of the (common gaol or lock-up house) at ,
in the said (county, &c.,) of*

Whereas A. B. was this day charged before the undersigned (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*) of , for that (*&c., as in the warrant to apprehend,*) and it appears to (*me*) to be necessary to remand the said A. B. These are therefore to command you the said constables or peace officers, or any of you, in her Majesty's name, forthwith to convey the said A. B. to the (*common gaol or lock-up house*), at , in the said (*county, &c.*) and there to deliver him to the keeper thereof, together with this precept ; and I hereby command you the said keeper to receive the said A. B. into your custody in the said (*common gaol or lock-up house*), and there safely keep him until the day of (*instant*), when I hereby command you to have him at , at o'clock in the (*fore*) noon of the same day before (*me*) or before some other justice or justices of the peace for the said (*county or united counties, or as the case may be*) as may then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal, this day of , in the year of our Lord, , at , in the *county, &c.*) of aforesaid.

J. S. [L. S.]

(Q. 2.)

Recognizance of Bail instead of Remand, on an Adjournment of Examination.

PROVINCE OF CANADA :

(*County or united } Be it remembered, that on the
counties, or as the } day of , in the year of our Lord
case may be) of } , A. B. of (*labourer*), L.
M. of , (*grocer*), and N. O. of , (*butcher*), personally came before me, (*one*) of her Majesty's justices of the peace, for the said (*county or united counties, or as the case may be*), and severally acknowledged themselves to owe to our lady the Queen the several sums following, that is to say ; the said*

A. B. the sum of _____, and the said L. M. and N. O. the sum of _____ each, of good and lawful current money of this province, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said A. B. fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at _____ before me.

J. S.

CONDITION.

The condition of the within written recognizance is such, that whereas the within bounden A. B. was this day (*or, on last past,*) charged before me for that (*&c., as in the warrant*): and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the _____ day of _____ (*instant*); if therefore the said A. B. shall appear before me on the said _____ day of _____ (*instant*), at _____ o'clock in the forenoon. or before such other justice or justices of the peace for the **said** (*county or united counties*) of _____ (*as the case may be*) as may then be there, to answer (*further*) to the said charge, and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

(Q. 3.)

Notice of Recognizance to be given to the Accused and his Sureties.

PROVINCE OF CANADA :

County or united counties, or as the case may be of _____ } Take notice that you A. B. of _____, are bound in the sum of _____, and your sureties L. M. and N. O. in the sum of _____ each, that you A. B. appear before me J. S., one of her Majesty's justices of the peace for the (*county or united counties, or as the case may be*) of _____, on _____, the _____ day of _____ (*instant*), at _____ o'clock in the (*fore*) noon, at _____ or before such other justice or justices of the same (*county or united counties, or as the case may be*) as may be then there, to answer (*further*) to the charge made against you by C. D., and to be further dealt with according to law; and unless you A. B. personally appear accordingly, the recognizance entered into by yourself and sureties will be forthwith levied on you and them.

Dated this _____ day of _____, one thousand eight hundred and _____.

J. S.

(Q. 4.)

Certificate of Non-appearance to be endorsed on the recognizance.

I hereby certify that the said A. B. hath not appeared at the

time and place, in the above condition mentioned, but therein hath made default, by reason whereof the within written recognizance is forfeited.

J. S.

(R. 1.)

Warrant to convey the accused before a justice of the county in which the offence was committed.

PROVINCE OF CANADA :

(County or united } To all or any of the constables, or other
counties, or as the } peace officers, in the said (county or
case may be) of } united counties, or as the case may be)
of

Whereas A. B. of (labourer,) hath this day been charged before the undersigned (one) of her Majesty's justices of the peace, in and for the (county or united counties, or as the case may be) of , for that (&c. as in the warrant to apprehend.) And whereas (I) have taken the deposition of C. D. a witness examined by (me) in this behalf, but inasmuch as (I) am informed that the principal witnesses to prove the said offence against the said A. B. reside in the (county or united counties, or as the case may be) of where the said offence is alleged to have been committed; these are therefore to command you, in her Majesty's name, forthwith to take and convey the said A. B. to the said county or united counties, or as the case may be) of and there carry him before some justice or justices of the peace in and for that (county or united counties, or as the case may be) and near unto the (township of) where the offence is alleged to have been committed, to answer further to the said charge before him or them, and to be further dealt with according to law; and (I) hereby further command you to deliver to the said justice or justices the information in this behalf, and also the deposition of C. D. now given into your possession for that purpose, together with this precept.

Given under my hand and seal, this day of , in the year of our Lord , at , in the (county, &c.) of aforesaid.

J. S. [L. S.]

(R. 2.)

Receipt to be given to the Constable by the Justice for the County in which the offence was committed.

PROVINCE OF CANADA :

(County or united } I, J. P., one of her Majesty's justices of
counties, or as the } the peace for the (county, &c.) of ,
case may be) of } hereby certify that W. T., constable
or peace officer, of the (county or united counties, as the case may
be) of , has on this day of , one thousand
eight hundred and , by virtue of and in obedience to a

warrant of J. S., Esquire, one of her Majesty's justices of the peace in and for the (*county or united counties, or as the case may be*) of produced before me, one A. B. charged before the said J. S. with having (&c., *stating shortly the offence,*) and delivered him into the custody of by my direction to answer to the said charge, and further to be dealt with according to law, and has also delivered unto me the said warrant, together with the information (*if any*) in that behalf, and the deposition (s) of C. D. (*and of*) in the said warrant mentioned, and that he has also proved to me upon oath the hand-writing of the said J. S. subscribed to the same.

Dated the day and year first above mentioned, at in the said *county, &c.*) of

J. P.

(S. 1.)

Recognizance of Bail.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } Be it remembered, that on the day of in the year of our Lord A. B. of , (*labourer,*) L. M. of , (*grocer,*) and N. O. of , (*butcher,*) personally came before (*us*) the undersigned, two of her Majesty's justices of the peace for the said (*county or united counties, or as the case may be,*) and severally acknowledged themselves to owe to our lady the Queen, the several sums following, that is to say: the said A. B. the sum of , and the said L. M. and N. O. the sum of each, of good and lawful current money of this province, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said A. B. fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at before us.

J. S.

J. N.

Condition.

The condition of the within written recognizance is such, that whereas the said A. B. was this day charged before (*us,*) the justices within mentioned for that (*&c. as in the warrant*). If therefore the said A. B. will appear at the next court of oyer and terminer or general gaol delivery (*or court of general quarter sessions of the peace*) to be holden in and for the *county or united counties, or as the case may be*) of , and there surrender himself into the custody of the keeper of the (*common gaol or lock-up house*) there, and plead to such indictment as may be found against him by the jury, for and in respect to the charge aforesaid, and take his trial upon the same, and not depart the said court without leave, then the said recognizance to be void, or else to stand in full force and virtue.

(S. 2.)

*Notice of the said Recognizance to be given to the Accused
and his Bail.*

Take notice that you A. B., of _____, are bound in the sum of _____, and your sureties (*L. M. and N. O.*) in the sum of _____, each, that you A. B. appear (*&c. as in the condition of the recognizance,*) and not depart the said court without leave; and unless you the said A. B., personally appear and plead, and take your trial accordingly, the recognizance entered into by you and your sureties shall be forthwith levied on you and them.

Dated this _____ day of _____, one thousand eight hundred and _____ J. S.

(S. 3.)

*Warrant of Deliverance, on Bail being given for a Prisoner
already Committed.*

PROVINCE OF CANADA :

(*County or united counties, or as the case may be.*) } To the keeper of the common gaol of the
(*county or united counties, or as the case may be.*) } (*county or united counties, or as the case may be.*) at _____, in the said (*county or united counties, or as the case may be.*) of _____

Whereas A. B., late of _____, (*labourer*) hath before (*us*) (*two*) of her Majesty's justices of the peace in and for the said (*counties or united counties, or as the case may be.*) of _____, entered into his own recognizance, and found sufficient sureties for his appearance at the next court of oyer and terminer or general gaol delivery (*or court of general quarter sessions of the peace*) to be holden in and for the (*county or united counties, or as the case may be.*) of _____, to answer our sovereign lady the Queen, for that (*&c., as in the commitment,*) for which he was taken and committed to your said common gaol. These are therefore to command you, in her Majesty's name, that if the said A. B. do remain in your custody in the said common gaol for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals, this _____ day of _____, in the year of our Lord _____, at _____, in the (*county, &c.*)

J. S. [L. S.]
J. N. [L. S.]

(T. 1.)

Warrant of Commitment.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be.*) } To all or any of the constables, or other
(*county or united counties, or as the case may be.*) } peace officers, in the (*county or united counties, or as the case may be.*) of _____, and to the keeper of the common gaol of the (*county or united*

counties, as the case may be) at _____, in the said (county, &c.) of _____.

Whereas A. B. was this day charged before (me) J. S. (one) of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be) of _____, on the oath of C. D., of _____ (farmer,) and others, for that, (&c., stating shortly the offence;) these are therefore to command you the said constables or peace officers, or any of you, to take the said A. B., and him safely to convey to the common gaol at aforesaid, and there deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, and there safely to keep him until he shall be thence delivered by due course of law.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the (county, &c.,) of aforesaid.

J. L. [L. s.]

(T. 2.)

Gaoler's receipt to the Constable for the Prisoner, and Justice's order thereon for the payment of the Constable's expenses in executing the Commitment.

I hereby certify that I have received from W. T., constable, of the (county, &c.,) of _____, the body of A. B., together with a warrant under the hand and seal of J. S., Esquire, one of her Majesty's justices of the peace for the said (county or united counties, or as the case may be) of _____, and that the said A. B.; was (sober, or as the case may be) at the time he was delivered into my custody.

P. K.

Keeper of the common gaol of said (county, &c.) at _____
To R. W., Esquire, Treasurer of the (county or united counties, or as the case may be) of _____.

Whereas W. T., constable, of the (county or united counties, or as the case may be) of _____, hath produced unto me, J. P., one of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be) of _____, the above receipt of P. K., keeper of the common gaol at _____. And whereas in pursuance of the statute in such case made and provided, I have ascertained that the sum which ought to be paid to the said W. T. for arresting and conveying the said A. B., from _____, in the (county) of _____ to the said common gaol is _____, and that the reasonable expenses of the said W. T., in returning will amount to the further sum of _____, making together the sum of _____. These are therefore to order you, as such treasurer for the said (county or united counties, as the case

may be) of _____, to pay unto the said W. T. the said sum of _____, according to the form of the statute in such case made and provided, for which payment this order shall be your sufficient voucher and authority.

Given under my hand, this _____ day of _____ one thousand eight hundred _____,

J. P.

Received the _____ day of _____, one thousand eight hundred and _____, of the treasurer of the (county or united counties, or as the case may be) of _____ the sum of _____, being the amount of the above order.

\$ _____ cts.

W. T.

Presence of Counsel or Attorney.

It is in the discretion of a magistrate, when he takes the examination of a prisoner, whether he will allow the presence of an attorney or other legal adviser, either for the prisoner or prosecutor: it cannot in either case be claimed as a matter of right, (a) as information might thereby be obtained and conveyed which would defeat the course of justice. In the case, however, of a trial on summary conviction, before a magistrate, there is a difference; in the latter case, it is reasonable that a party upon his trial should have professional assistance; and by the C. Stat. 22 V. c. 103, § 30, this is expressly provided for, and the same privilege is extended to complainants by § 31.

Contempt.

It seems that a magistrate may commit a party for contempt, who makes use of scandalous and insulting language to him whilst in the execution of his office; but as such a commitment is by way of punishment, it must be made by warrant in writing—*Mayhew v. Locke*, 7 *Tuunt.* 63; 2 *Marsh*, 377; *R. v. Revel*, 1 *Str.* 421; and must not be a general one “till the party is discharged by due course of law,” but must be for a time certain.—*R. v. James*, 5 *B. & A.* 894. The better course for a magistrate to adopt in such cases is, first, to require the offender to find sureties for his good behaviour, and in default of his doing so, then to commit him until the next quarter sessions, unless he sooner find such sureties, and enter also into his own recognizance for his good behaviour.—*R. v. Langley*, 2 *Ld. R.* 10; 30 *per Holt, C. J.*

See also “*Contempt*,” page 201.

(a) See C. Stat. 22 V. c. 102, § 36.

Administering Oath.

A justice of the peace is empowered, in all matters properly brought before him in his judicial character, or by particular statutes, to administer an oath; but it is very questionable how far he is justifiable in taking a voluntary affidavit, in any *extra judicial* matter, as is now too frequently the practice upon every petty occasion; for it is more than possible that by such idle oaths, a man may frequently in *foro conscientiæ* incur the guilt, and at the same time evade the penalties of perjury.—4 *Bl. Com.* 137. Lord Coke, indeed, says that it is a high contempt to administer an oath not warranted by law, and that the offence is punishable by fine and imprisonment—3 *Inst.* 166; and in a case, Lord Kenyon said, that “he did not know but a magistrate subjected himself to a criminal information for taking a voluntary extra-judicial oath.”—*Wm. Prec.* 14; 3 *Burns, J.*, 588.

Of their Liability, Indemnity, Protection.

First.—As every person ought to be heard in his own defence before he is convicted, if a justice, therefore, in the case of a summary conviction, proceed against a party without previously summoning him to appear, it is such a misdemeanor as will render him liable to a criminal information.—1 *Salk.* 181. If a justice also will not, on complaint to him made, execute the duties of his office as a magistrate, or is guilty of any wilful misconduct, the party grieved may not only move for an information, but may also apply to put him out of the commission.—*Cromp.* 7; 2 *Atk.* 2; 1 *T. R.* 692; 7 *T. R.* 374. Where a justice, however, refuses to proceed in any matter which he is authorised or required to do by act of parliament, and his refusal does not arise from any corrupt or improper motive, the proper course for the party complaining is to move for a *mandamus* to compel him to proceed.—*R. v. Todd*, 1 *Str.* 530. But as cases may and do frequently arise in which a justice of the peace may well doubt whether he has power to act, and therefore declines acting for fear of incurring personal risk or responsibility, the 6th sec. of the U. C. Stat. 22 V. c. 126, is framed with the express view of meeting such cases. It (as will be seen on reference to the statute, § 6) enables the party requiring the act to be done to apply to either of the superior courts of common law or to a judge of the county court, for a rule on such justice to shew cause why such act should not

be done, which rule, when made absolute, will justify such justice in acting, so that no action can be afterwards legally brought against him for having done the act required. Where a criminal information is applied for against a magistrate, the question for the court is not whether the act done be found on investigation to be strictly right or not, but whether it proceeded from any unjust, oppressive or corrupt motive, or from mistake or error only: in the latter case, the court will not grant an information, but leave the party complaining to his remedy by action or indictment; for it must be a case of clear and apparent partiality, or wilful misbehaviour, to induce the court to proceed by information against a magistrate.—*R. v. Barron*, 3 B. & A. 432; *Burr.* 556; 2 *Burr.* 1162. The party complaining, also, must make a prompt application to the court, otherwise this proceeding will not be entertained: thus, where the facts complained of against a magistrate took place twelve months before-hand, an information was refused.—*R. v. Bishop*, B. & A. 612. Neither is a justice liable to be punished both ways—that is, criminally and civilly; for before the court will grant an information, they will require the party to relinquish his *civil* action, if any such is commenced—*R. v. Fielding*, 2 *Burr.* 719; and so in the case of an indictment, the Attorney-General, on application, will grant a *nolle prosequi*, if it appear to him a prosecutor is determined to carry on a *civil* action at the same time.—*Ib.* When a justice is convicted on an information, he must appear in person to receive judgment—*R. v. Harwood*, 2 *Str.* 1088; 3 *Burr.* 1716. A justice of the peace, however, is upon all occasions strongly protected by the law in the just execution of his office; for, though the judgment be wrong, yet if his intention was pure, the Court of King's Bench will never interfere by way of punishment.—*R. v. Young*, 1 *Burr.* 556; *R. v. Cox*, 2 *Burr.* 785. Nor will the court even grant a *mandamus* against him, to command him to do what *may* render him liable to an action.—*R. v. Dayrell*, 1 B. & C. 485. Where a magistrate, however, in committing a party for further examination, commits him for an *unreasonable* length of time, this has been lately determined to be altogether a void commitment, and to render him liable to an action of trespass.—*Davis v. Capper*, K. B. *Mich. T.* 1289.

Calling a justice of the peace “rascal, villain, and a liar,” when spoken of him as a justice, are *actionable*, as well as *indictable*.—2 *Str.* 617, 1168; 2 *Ld. R.* 1396; *R. v. Revil*, 1 *Str.* 420.

Vexatious Actions against.

By U. C. Stat. 22 V. c. 126, entitled, "An Act to protect Justices of the Peace in Upper Canada from Vexatious Actions."

Form of Action.—§ 1. Every action brought against any justice of the peace for any act done by him in the execution of his duty as such justice, with respect to any matter within his jurisdiction as such justice, or against any other officer or person fulfilling any public duty for any thing by him done in the performance of such public duty, whether any of such duties arise out of the common law or be imposed by an act of parliament, either imperial or provincial, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done maliciously and without reasonable or probable cause; and if at the trial of any such action, upon the general issue being pleaded, the plaintiff fails to prove such allegation, he shall be nonsuit, or a verdict shall be given for the defendant.

Allegation.—§ 2. For any act done by a justice of the peace in a matter of which by law he has not jurisdiction, or in which he has exceeded his jurisdiction, or for any act done under any conviction or order made or warrant issued by such justice in any such matter, any person injured thereby, may maintain an action against such justice in the same form and in the same case as he might have done before the passing of this act, without making any allegation in his declaration that the act complained of was done maliciously and without reasonable and probable cause.

Conviction quashed.—§ 3. No such action shall be brought for any thing done under such conviction or order until the conviction or order has been quashed, either upon appeal or upon application to one of the superior courts of common law for Upper Canada; nor shall any such action be brought for any thing done under any such warrant issued by such justice to procure the appearance of the party, and which has been followed by a conviction or order in the same matter, until the conviction or order has been quashed as aforesaid.

Summons—Warrant.—§ 4. If such last mentioned warrant has not been followed by conviction or order, or in case it be a warrant upon an information for an alleged indictable offence, if a summons was issued previously to such warrant, and such summons was served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode,

and he did not appear according to the exigency of such summons, in such case no such action shall be maintained against the justice for any thing done under such warrant.

Other Justices.—§ 5. Where a conviction or order has been made by one or more justice or justices of the peace, and a warrant of distress or of commitment has been granted thereon by some other justice of the peace *bona fide* and without collusion, no action shall be brought against the justice who granted such warrant by reason of any defect in conviction or order, or for any want of jurisdiction in the justice or justices who made the same, but the action (if any be brought) shall be against the justice or justices who made the conviction or order.

Refusing to Act.—§ 6. In all cases where a justice or justices of the peace shall refuse to do any act relating to the duties of his or their office as such justice or justices, the party requiring such act to be done may, upon an affidavit of the facts, apply to either of the superior courts of common law in Upper Canada, or to the judge of the county court of the county or united counties in which such justice or justices may reside, for a rule calling upon such justice or justices, and also the party to be affected by such act, to shew cause why such act should not be done; and if after due service of such rule good cause shall not be shewn against it, the said court may make the same absolute, with or without, or upon payment of costs, as may seem meet; and the justice or justices upon being served with such rule absolute shall obey the same, and shall do the act required; and no action or proceeding whatsoever shall be commenced or prosecuted against such justice or justices for having obeyed such rule and done such act so thereby required as aforesaid.

Defects—§ 7. In case a justice of the peace has granted a warrant of distress or commitment upon any conviction or order which, either before or after the granting of the warrant, has been confirmed upon appeal, no action shall be brought against such justice by reason of any defect in such conviction or order for any thing done under the warrant.

Action—Proceedings—Set aside.—§ 8. In case any action be brought, where by this act it is enacted that no action shall be brought under particular circumstances, a judge of the court in which the action is pending shall, upon application of the defendant, and upon an affidavit of facts, set aside the proceedings in such action, with or without costs, as to him seems meet.

Limitation of.—§ 9. No action shall be brought against

any justice of the peace for any thing done by him in the execution of his office, unless the same be commenced within *six months* after the act complained of was committed.

Notice.—§ 10. No such action shall be commenced against any justice of the peace until one month at least after notice in writing of the intended action has been delivered to him, or left for him at his usual place of abode, by the party intending to commence such action, or by his attorney or agent, in which notice the cause of action, and the court in which the same is intended to be brought, shall be clearly and explicitly stated; and upon the back thereof shall be endorsed the name and place of abode of the party intending to sue, and also the name and place of abode or business of his attorney or agent, if the notice be served by such attorney or agent.

Venue.—§ 11. In every such action the venue shall be laid in the county where the act complained of was committed, and in actions in county or division courts the action must be brought in the county or division within which the act complained of was committed or in which the defendant resides, and the defendant may plead the general issue, and give any special matter of defence, excuse or justification in evidence under such plea, at the trial of such action. § 12. No action shall be brought in any county or division court against a justice of the peace for any thing done by him in the execution of his office, if the justice objects thereto; and if within six days after being served with a notice of any such action, such justice or his attorney or agent gives a written notice to the plaintiff in the intended action that he objects being sued in such county or division court for such cause of action, no proceedings shall afterwards be had in such county or division court in any such action, but it shall not be necessary to give another notice of action in order to sue such justice in any other court.

Amends.—§ 13. In every such case after notice of action has been given as aforesaid, and before an action has been commenced, the justice to whom such notice has been given may tender to the party complaining, or to his attorney or agent, such sum of money as he thinks fit as amends for the injury complained of in such notice; and after the action has been commenced, and at any time before issue joined therein, such defendant, if he has not made such tender, or in addition to the tender, may pay into court such sum of money as he thinks fit, and such tender and payment of money into

court, or either of them, may afterwards be given in evidence by the defendant at the trial under the general issue.

Verdict after.—§ 14. If the jury at the trial be of opinion that the plaintiff is not entitled to damages beyond the sums so tendered or paid into court, they shall give a verdict for the defendant, and the plaintiff shall not be at liberty to elect to be nonsuit, and the sum of money, if any, so paid into court, or so much thereof as is sufficient to pay or satisfy the defendant's costs in that behalf, shall thereupon be paid out of court to him, and the residue, if any, shall be paid to the plaintiff.

Payment out of Court.—§ 15. In case money be paid into court in any such action, and the plaintiff elects to accept the same in satisfaction of his damages in the action, he may obtain from any judge of the court in which the action has been brought an order that the money shall be paid out of court to him, and that the defendant shall pay him his costs to be taxed, and thereupon the said action shall be determined, and such order shall be a bar to any other action for the same cause.

Proof required.—§ 16. If at the trial of any such action the plaintiff does not prove, 1, that such action was brought within the time hereinbefore limited in that behalf; 2, that such notice as aforesaid was given one month before the action was commenced; 3, the cause of action stated in such notice; 4, does not prove that the cause of action arose in the county or place laid as venue in the margin of the declaration; and 5, when the plaintiff sues in a county or division court that the cause of action arose within the county or united counties for which such court is holden, then and in every such case such plaintiff shall be nonsuit, or the jury shall give a verdict for the defendant.

When Plaintiff actually guilty.—§ 17. In case the plaintiff in any such action is entitled to recover, and he proves the levying or payment of any penalty or sum of money, under any conviction or order as parcel of the damages he seeks to recover, or if he proves that he was imprisoned under such conviction or order, and seeks to recover damages for such imprisonment, and it be proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and that with respect to such imprisonment, that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was so ordered to

pay, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of three cents as damages for such imprisonment, or any costs of suit whatsoever.

Costs.—§ 18. If the plaintiff in any such action recovers a verdict, or the defendant allows judgment to pass against him by default, the plaintiff shall be entitled to costs in the same manner as if this act had not been passed.

§ 19. If in any such case it be stated in the declaration, or in the summons and particulars, if he sues in the division court, that the act complained of was done maliciously and without reasonable and probable cause, the plaintiff, if he recovers a verdict for any damages, or if the defendant allow judgment to pass against him by default shall be entitled to his full costs of suit to be taxed as between attorney and client; and in every action against a justice of the peace for any thing done by him in the execution of his office, the defendant, if he obtain judgment upon verdict or otherwise, shall in all cases be entitled to his full costs in that behalf, to be taxed as between attorney and client.

§ 20. So far as applicable, this act shall apply for the protection of every officer and person mentioned in the first section for any thing done in the execution of his office, as therein expressed.

Justice's Fees.

By U. C. Stat. 22 V. c., 119; s. 11, the following fees and no others are authorised to be taken by justices of the peace, or by their clerks :

For information and warrant for apprehension, or for an information and summons for assault, trespass or other misdemeanor.....	00 50
For each copy of summons to be served on defendant or defendants.....	00 10
For a <i>subpœna</i> , only one on each side being charged for in each case, and which may contain any number of names; and if the justice of the case require it, additional <i>subpœna</i> shall be issued without charge.....	00 10
For every recognizance, only one to be charged in each case.....	00 25
For every certificate of recognizance under the Act respecting Estreats.	00 25
For information and warrant for surety of the peace or good behaviour, to be paid by complainant.....	00 50
For warrant of commitment for default of surety to keep	

the peace or good behaviour, to be paid by complainant..... 00 50

§ 12. *In all cases of convictions where the fees are not expressly prescribed by any statute, the same shall be as follows, viz.:*

- For information and warrant for apprehension, or for information and summons for service..... 00 50
- For every copy of summons to be served upon defendant or defendants..... 00 10
- For every *subpœna* to a witness (as provided in the 11th § of this act)..... 00 10
- For hearing and determining the case..... 00 50
- For warrant to levy penalty..... 00 25
- For making up every record of conviction when the same is ordered to be returned to the sessions, or on *certiorari* 1 00

§ 13. But in all cases which admit of a summary proceeding before a single justice of the peace, and wherein no higher penalty than \$20 can be imposed, for the conviction *there shall be only charged*..... 00 50

And for the warrant to levy the penalty..... 00 25

And in all cases where persons are *subpœnaed* to give evidence before justices of the peace in cases of assault, trespass or misdemeanor, the witnesses shall be entitled, in the discretion of the magistrate, to receive for every day's attendance when the distance travelled in coming to and returning from such adjudication does not exceed *ten* miles..... 00 50

And for each mile above *ten*..... 00 5

§ 14. Every bill of costs when demanded to be made out in detail..... 00 10

§ 15. This act shall not authorise any claim being made for fees of any description connected with cases above the degree of *misdemeanor*; (a) nor shall witnesses in such cases be allowed any thing for their attendance or travel, except under the order of the court, before which the trial of the case is had.

Commitment for Insulting a Justice of the Peace in the execution of his office.

PROVINCE OF CANADA:

County of _____, } To all or any of the constables or peace
to wit: } officers of the said county of _____, and
to the keeper of the common gaol of the said county of _____,
at _____, in the said county of _____.

(a) *Viz.*: No fees are chargeable in cases of Felony.

Whereas A. B. being personally present this day at _____, before me, J. C., Esq., one of her Majesty's justices of the peace in and for the county of _____, to answer and make his defence to a certain information before exhibited against him, [*state the offence,*] and being so personally present before me, hath this day been guilty of divers gross insults and contemptuous behaviour to me the said justice, then being in the actual execution of my office as such justice of the peace as aforesaid [*by accusing me of partiality and injustice in the execution of my office [or as the case may be setting forth particulars.]* And whereas the said A. B., in consequence of such his insolent and contemptuous behaviour, is now here, by me, the said justice, required to find sureties for his good behaviour, that is to say, two sufficient sureties to become bound with him in a recognizance in the sum of _____ each, conditioned for the personal appearance of the said A. B. at the next general quarter sessions of the peace to be holden in and for the said county, to answer for his contemptuous conduct aforesaid, and that in the meantime he should be of good behaviour towards all her Majesty's subjects; but the said A. B. hath refused to find such sureties and to become bound in such recognizance as aforesaid: these are therefore to command you the said constables and peace officers, or any of you, to take the said A. B. and him safely to convey to the common gaol of the said county at _____, in the said county, and there deliver him to the keeper thereof together with this my warrant, and I hereby command you, the said keeper, to receive the said A. B. into your custody in the said common gaol, and him there safely to keep until he find such sureties and enter into such recognizance as aforesaid, or be from thence otherwise delivered in due course of law. Given under my hand and seal this _____ day of _____, in the year of our Lord 186____, at _____ in the county of _____ aforesaid.

Commitment for a time certain.

PROVINCE OF CANADA:

County of _____ } To all or any of the constables or peace officers in the said county of _____ and to the keeper of the common gaol of the said county of _____
to wit: } _____

Whereas A. B. stands convicted before me (*or us*) one (*or two*) of her Majesty's justices of the peace for the said county of _____ upon my (*or our*) view of insolent and contemptuous behaviour towards me (*or us*) the said justice (*or justices*) this _____ day of _____ 186____, and in my (*or our*) presence while being and acting in the due execution of my office as such justice of the peace, as aforesaid, (*or our respective offices of justices of the peace as aforesaid,*) and obstructing me (*or us*) in the due execution of the same, (*here set forth the particular acts or expressions complained of,*) against the peace of our said lady the Queen. These are therefore to require and command you the said constables or

any of you, forthwith to apprehend, take and convey the said A. B. to the common gaol (a) of the said county of at in the said county, and to deliver him to the keeper thereof together with this warrant ; and you the said keeper are hereby commanded by me (or us) the said justice (or justices) to receive and detain the said A. B. in your custody in the said common gaol. for the space of (six hours, or such other reasonable time as the justice, or justices may see fit,) from the time of delivery of the said A. B. into your custody under this warrant, and for his offence aforesaid, whereof he stands convicted as aforesaid. Given under my hand and seal, &c.

Notice of Motion for leave to file a Criminal Information against a Justice.

To C. A., Esquire, one of her Majesty's justices of the peace in and for the county of

Take notice, that I shall move her Majesty's Court of Queen's Bench, at Toronto, on the day of next term, or so soon after as counsel can be heard, for leave to file a criminal information against you in the Crown office there for misconduct in your office of justice of the peace, in illegally and without any reasonable or probable cause whatsoever causing me to be apprehended, on the day of last, and to be committed to the common gaol at in the said county, and there to be detained for a long space of time, to wit, for the space of days, on a supposed charge of . Dated, &c.

Yours, &c.

A. B.

JUVENILE OFFENDERS.

Act respecting the Trial and Punishment of Juvenile Offenders, C. Stat. 22 V. c. 106. (b)

§ 1. Every person charged with having committed, or having attempted to commit, or with having been an aider, abettor, counsellor, or procurer in the commission of any offence which is *simple larceny*, or punishable as such, and whose age at the period of the commission or attempted commission of such offence does not in the opinion of the justice before whom he is brought, exceed the age of *sixteen years*, shall, upon conviction thereof in open court upon his own confession, or upon proof before two or more justices of the peace for any city, county or union of counties in Upper Canada, be committed to the common gaol or house of cor-

(a) Or the offender may be committed to the lock-up house, under the Municipal Act 22 V. c. 54, § 111, but not exceeding 24 hours, see title "*Lock-up House*."

(b) This act is general, and relates to both sections of the province.

rection within the jurisdiction of such justices, there to be imprisoned with or without hard labour, for any term not exceeding *three months*, or in the discretion of such justices shall forfeit and pay such sum not exceeding \$20, as they shall adjudge. § 2. If such justices upon the hearing of any such case deems the offence not proved, or that it is inexpedient to inflict any punishment, they shall dismiss the party charged on finding surety for his future good behaviour, or without sureties, and then make out and deliver to the party charged a certificate under the hands of such justices, stating the fact of such dismissal. § 3. Such certificate to be in the form or to the effect following:—

Form of Dismissal.

PROVINCE OF CANADA :

County of _____, } We _____ of her Majesty's justices
 to wit: _____ } of the peace for the _____ of _____, (or
 if a recorder, &c., under section seven, I, a _____, of the
 of _____ as the case may be) do hereby certify that on the
 day of _____ in the year of our Lord _____ at _____ in the
 said _____ of _____ M. N. was before us the said justices (or
 me the said _____) charged with the following offence. that is
 to say, (*here state briefly the particulars of the charge,*) and that
 we the said justices (or I the said _____) thereupon dismissed
 the said charge. Given under our hands (or my hand) this
 day of _____ .

Charge.—§ 4. If such justices be of opinion, before the party charged has made his defence, that the charge is from any circumstance a fit subject for prosecution by indictment, or if the party charged upon being called upon to answer the charge, objects to summary trial under this act, such justices shall, instead of summarily adjudicating thereupon, deal with the case as if this act had not been passed.

Proceedings.—§ 5. The justices before whom any person is charged and proceeded against under this act before such person is asked whether he has any cause to shew why he should not be convicted, shall say to the person so charged, these words, or words to the like effect: "We shall have to hear what you wish to say in answer to the charge against you; but if you wish to be tried by a jury, you must object now to our deciding upon it at once," and if such person, or a parent or guardian of such person then objects, such person shall be dealt with as if this act had not been passed.

Court.—§ 6. Any two or more justices of the peace for any city, county, or union of counties in Upper Canada, sitting in open court, before whom any such person as aforesaid

charged with any offence punishable under this act is brought or appears, may hear and determine the case under the provisions of this act. § 7. Any judge of a county court in Upper Canada, being a justice of the peace, any recorder of a city in Upper Canada being a justice of the peace, any police magistrate in Upper Canada, and any stipendiary magistrate in Upper Canada sitting in open court, and having by law the power to do acts usually required to be done by two or more justices of the peace shall and may within their respective jurisdictions hear and determine every charge under this act, and exercise all the powers herein contained as fully and effectually as two or more justices of the peace can or may do by virtue of this act.

§ 9. A certificate of dismissal or conviction under this act shall be a release from all further proceedings for the same cause.

§ 10. In case any person whose age is alleged not to exceed *sixteen* years be charged with any such offence on the oath of a credible witness, before any justice of the peace, such justice may issue his summons or warrant to summon or to apprehend the person so charged, to appear before any two justices of the peace, at a time and a place to be named in such summons or warrant.

Remand.—§ 11. Any justice or justices, if he or they think fit, may remand for further examination or for trial, or suffer to go at large upon his finding sufficient sureties, any such person charged before him or them with any such offence as aforesaid. § 12. Every such surety shall be bound by recognizance, to be conditioned for the appearance of such person before the same or some other justice or justices for further examination, or for trial before two or more justices of the peace as aforesaid; or for trial at some superior criminal court, as the case may be. § 13. Every such recognizance may be enlarged from time to time by any such justice or justices or court to such further time as he or they may appoint; and every such recognizance not so enlarged shall be discharged without fee or reward when the party has appeared according to the condition thereof.

Fines.—§ 14. Every fine imposed under this act shall be paid to the justices imposing the same, or to the clerk of the recorder's court, clerk of the county court, or clerk of the peace, as the case may be, and by him paid over to the county treasurer for county purposes.

Summons.—§ 15. Any justice of the peace shall by summons require the attendance of any person as a witness

upon the hearing of any case before two justices under the authority of this act at a time and place to be named in such summons.

Recognizance.—§ 16. And may bind by recognizance all persons whom he considers necessary to be examined touching the matter of such charge, to attend at the time and place to be appointed by him, and then and there to give evidence upon the hearing of such charge. § 17. In case any person so summoned or required or bound as aforesaid, neglects or refuses to attend, then upon proof of his having been duly summoned as hereinafter mentioned, or bound by recognizance as aforesaid, either of the justices before whom any such person ought to have attended, may issue a warrant to compel his appearance as a witness.

§ 18. The summons may be served by delivering a copy thereof to the party, or to some inmate at his usual place of abode.

Conviction.—§ 19. The justices before whom any person summarily convicted of any such offence as aforesaid, may cause the conviction to be drawn up in the following form, or in any other form of words to the same effect:—

Form of Conviction.

PROVINCE OF CANADA :

County of , } Be it remembered that on the day
to wit : } of in the year of our Lord one
thousand eight hundred and , at in the county (or
united counties, &c., as the case may be) of A. O. is
convicted before us, J. P. and J. R. of , two of her Majesty's
justices of the peace for the said county, (or city, &c.,) or we, S.
J., recorder of the of , (or as the case may be) for that
he the said A. O. did (*specify the offence and the time and place,
when and where the same was committed, as the case may be, but
without setting forth the evidence.*) And we the said J. P. and J.
R. (or I the said J. J.) adjudge the said A. O. for his said offence
to be imprisoned in the (or to be imprisoned in the)
and there kept at hard labour for the space of and we, (or I)
adjudge the said A. O. for his said offence to forfeit and pay
(*here state the penalty actually imposed*) and in default of immedi-
ate payment of the said sum to be imprisoned in the (or
to be imprisoned in the ,) and there kept to hard labour
for the space of , unless the said sum shall be sooner
paid. Given under our hands and seals (or my hand and seal) the
day and year first above mentioned.

And the conviction shall be good and effectual to all intents and purposes.

Conviction valid.—§ 20. No such conviction shall be quashed for want of form, or removed by *certiorari* or otherwise into any superior court; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

§ 21. Such conviction and recognizances shall be forthwith transmitted to the clerk of the peace for the city, county or union of counties, wherein the offence was committed. § 22. And said clerk of the peace shall transmit to the provincial secretary a *quarterly* return of the names, offences and punishments, mentioned in the convictions, with such other particulars as may from time to time be required.

Restitution.—§ 23. No conviction under this act shall be attended with any *forfeiture*, but whenever any person is deemed guilty under this act the presiding justices may order restitution of the property in question to the owner or his representatives. § 24. And if not forthcoming, the same justices, whether they award punishment or dismiss the complaint, may enquire into and ascertain the value thereof, and order payment thereof in money to the owner, by the person convicted, either at one time, or by instalments at such periods as the court deems reasonable. § 25. And the party shall be liable to be sued for the same as a debt, with costs.

Penalty.—§ 26. Whenever any justices of the peace adjudge any offender to forfeit and pay a pecuniary penalty under this act, and such penalty is not forthwith paid, such justices if they deem it expedient, may appoint some future day for payment, and order the offender to be detained in safe custody until the day so appointed, unless such offender gives security to the satisfaction of such justices for his appearance on such day; such security to be taken by way of recognizance or otherwise, at their discretion. § 27. If at the time appointed such penalty has not been paid, the same or any other justices of the peace, may, by warrant under their hands and seals, commit the offender to the common gaol or house of correction within their jurisdiction, for any time not exceeding *three* months, reckoned from the day of such adjudication: such imprisonment to cease on payment of the penalty.

Costs of Prosecution.—§ 28. Justices of the peace, before whom any person is prosecuted or tried under this act, may at their discretion at the request of the prosecution

or others appearing on recognizance or summons to give evidence, order payment to the prosecutor and witnesses of such sums of money as to them seem reasonable, sufficient to reimburse the expenses they shall severally have incurred in attending before them, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein; and to order payment to the constables and other peace officers for the apprehension and detention of any person so charged. § 29. And although no conviction shall actually take place, such justices may order all or any of the payments aforesaid when they shall be of opinion that the parties acted *bona fide*. § 30. And all such expenses shall be ascertained and certified under the hands of such justices; provided that the costs to be paid as aforesaid do not in any case exceed *eight dollars*.

§ 31. Such orders for payment of expenses shall be forthwith made out and delivered by said justices or one of them, or by the clerk of the recorder's court, county court, or clerk of the peace (as the case may be) unto such prosecutor or other person upon payment of *twenty cents* fee and no more to such clerk, and shall be made upon the officer to whom fines imposed by this act are required to be paid over in the (district) city, county or union in which the offence was committed, who is required to pay the same upon sight.

Actions.—§ 32. Action against any person for any thing done in pursuance of this act shall be laid and tried in the county or union of counties in Upper Canada, where the fact was committed, and be commenced within *three months*. § 33. And notice in writing of such action shall be given to the defendant *one month* at the least before action. § 34. The defendant may plead the general issue and give this act and special matter in evidence. § 35. And no plaintiff shall recover, if tender of sufficient amends was made before action, or if a sufficient sum has been paid into court. § 36. If verdict passes for the defendant, or plaintiff become nonsuit, &c., the defendant shall recover full costs.

See also "*Reformatory Prison.*"

KIDNAPPING.

Is the forcible abduction or stealing away of a man, woman, or child, from their own country, and sending them into another—4 *Bl. Com.*, p. 219; and is punishable at common law with fine, imprisonment, and pillory—*Ib.*; and also by statute 11 & 12 Wm. III., c. 7, though principally in-

tended against pirates, it is enacted "that if any captain of a merchant vessel shall (during his being abroad) force any person on shore, or wilfully leave him behind, or refuse to bring home all such men as he carried out, if able and desirous to return, he shall suffer three months' imprisonment." Upon this subject the learned commentator on *Blackston* (*Christian*) has this note: where a child is stolen for the sake of its clothes, it is the same species of felony as if the clothes were stolen without the child; but, without referring it to that class of offences, stealing a child from its parents is an act so shocking and horrid, that it would be considered the highest misdemeanor, punishable by fine, imprisonment and pillory upon the same principle on which it was decided to be a misdemeanor to steal a dead body from a grave. A special provision, however, is now made against this offence, by Con. Stat. 22 V. c. 91, § 27; for which see title "*Child Stealing*," p. 138.

KING'S BENCH, OR QUEEN'S BENCH.

The jurisdiction of this court is very high and transcendent. It keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined there, or prohibit their progress in the court below. It superintends all civil corporations; it commands magistrates and others to do what their duty requires in every case where there is no specific remedy; it protects the liberty of the subject by speedy and summary interposition, and is empowered to find redress in every matter of enquiry.—2 *Haw.* c. 3, § 3. It takes cognizance both of civil and criminal causes. On the Crown side, its jurisdiction extends to all manner of offences, from high treason down to the most trivial misdemeanor, or breach of the peace, and it may award process into any part of the province. Into this court, also, indictments from all inferior courts may be removed, by writ of certiorari, and tried either at the bar, or by writ of *nisi prius*, at the assizes for the county out of which the indictment is brought.

In most cases of misdemeanor, it is in the discretion of the Court of King's Bench to inflict such fine and imprisonment, and even infamous punishment (not prohibited by statute) on offenders, as the nature of the crime requires; and the court may commit to any prison in the district.—2 *Haw.* c. 5, § 5.

The Court of King's Bench, in this province, was created

and established by statute 34 G. III., c. 2, and the change of style of the court to the "Queens Bench" was effected by the *2 V. c. 1.

KING'S EVIDENCE.

Is obtained by the admission of an accomplice against his fellows upon an implied confidence, which the judges of gaol delivery have usually countenanced and adopted, that if such accomplice makes a full and complete discovery of that and of all other felonies, to which he is examined by the magistrate, and afterwards gives his evidence without prevarication or fraud, he shall not himself be prosecuted.—4 *Bl. Com.* 331. The discretionary power, however, thus exercised by justices of the peace, is founded in practice only, and cannot control the authority of the court of gaol delivery, and exempt the accomplice at all events from being prosecuted; for a motion must be made to a judge for leave to admit an accomplice to be a witness, though the judge, unless he should see some particular reason to the contrary, will prefer the one to whom this encouragement has been held out by the justice of the peace.—*Ibid.* Such admission to be a witness, does not *entitle* the accomplice to a pardon of right, but amounts merely to a promise of a recommendation to mercy, upon condition, that the accomplice makes a full and fair disclosure of the circumstances of the crime for which the other prisoners are tried, and in which he has been concerned in concert with them: upon failure, on his part, of this condition, he forfeits all claims to protection.—*R. v. Rudd, Cowp.* 331; 1 *Leach*, 115. Thus, where upon a trial before *Buller, J.*, at York, (England,) the accomplice (who was admitted a witness) denied in his evidence all that he had before confessed, upon which the prisoner was acquitted—the judge ordered an indictment to be preferred against the accomplice for the same crime; and upon his previous confession, and other circumstances, he was convicted and executed.—4 *Bl. Com.* 331, *note* 6. And the claim of an accomplice does not extend beyond *those offences* in which he has been connected with the prisoner, and concerning which he has previously undergone an examination.—*R. v. Duce*, 1 *Chetw.*; *Burn.* 212.

Until the trial, the accomplice so to be admitted as king's evidence, will of course, be kept in custody, as well as the principal.

See also further on this subject, title "*Approvers*," ante p. 44.

KINGS' STORES.

By U. C. Stat. 22 V. c. 97, § 13, if any person within Upper Canada wilfully and maliciously sets on fire or burns or otherwise destroys, or causes to be set on fire or burnt or otherwise destroyed, or aids, procures, abets or assists in the setting on fire or burning, or otherwise destroying any of her Majesty's ships or vessels of war, whether on float or building, or begun to be built in any of her Majesty's dock-yards, or building or repairing by contract in any private yard for the use of her Majesty, or any of her 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 her Majesty's military, naval, or victualling stores or other ammunition of war, or any place or places where any such stores or ammunition is or are kept, placed or deposited, such offender is guilty of felony and shall suffer death.

LAKES AND RIVERS.

By the U. C. Stat. 22 V. c. 3, § 5, the limits of all the townships lying on the River St. Lawrence, Lake Ontario, the River Niagara, Lake Erie, the River Detroit, Lake St. Clair, the River St. Clair and Lake Huron, shall extend to the boundary of the province in such lake or river in prolongation of the outlines of each township respectively; and unless herein otherwise provided, such townships shall also include all the islands, the whole or the greater part of which are comprised within the said outlines so prolonged.

By C. Stat. 22 V. c. 99, § 11, when any felony or misdemeanor has been committed on the boundaries of two or more districts or counties, or within the distance of five hundred yards of any such boundaries, or was 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.

§ 12. In case any felony or misdemeanor be committed on board any vessel, &c., in any voyage or journey upon any navigable river, canal or inland navigation, the same may be dealt with, enquired of, tried, determined and punished in any district or county through which such vessel, &c., passed in the course of the journey or voyage.

§ 13. In all cases where the side, centre, bank, or other part of any highway or of any river, canal, or navigation

constitutes the boundary of any two districts or counties, any felony or misdemeanor mentioned in the two last preceding sections may be dealt with, enquired of, tried, determined and punished in either of such districts or counties.

LANDLORD AND TENANT.

Distress for Rent in Arrear.

First.—Distress for rent must be for rent in arrear; therefore it may not be made on the same day on which the rent becomes due; for if the rent is paid in any part of that day whilst a man can see to count money the payment is good. Second.—It must not be after tender of payment.—*Inst.* 107. Third.—Persons having rent in arrear upon any lease determined, may distrain for such arrears after the determination of the lease, in the same manner as if it had not been determined; provided that such distress be made within six calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due.—8 *An. c.* 14, § 6, 7. (a) Before the statute of the 17 C. II., c. 7, in case a distress was too little, where sufficient distress was to be had, a man could not distrain again, be the demand never so great. But now, by said statute, in all cases where the value of the cattle distrained shall not be found to be of the amount distrained for, the party to whom such arrears were due, his executors or administrators, may distrain again for the residue. § 4. So, in like manner, where the distress is made by virtue of the warrant of a justice of the peace, in nature of an execution; and the distinction appears to be this—where a person hath an entire duty, he shall not split the entire sum, and distrain for part of it at one time, and for part of it at another time; and so *toties quoties* for several times, for that is great oppression; but if a man seizeth for the *whole* sum that is due to him, and only *mistakes* the value of the goods seized, there is no reason why he should not complete his execution, by making a further seizure.—*Burrow, Mansfield*, 589; 3 *Bl. Com.* 12. If any distress and sale shall be made for rent in arrear and due, when none is in truth due, the owner shall recover double value, with full costs.—2 *W. & M.*, sess. 1, c. 5, § 5.

Distresses must be proportionate to the thing distrained

(a) A similar provision in U. C. Stat. 22 V. c. 78, § 4.

for by the statute of Marlbridge, 52 Hen. III. c. 4, if any man takes a great or unreasonable distress for rent-arriere, he shall be heavily amerced for the same. As if the landlord distrains two oxen for twelve-pence rent; the taking of *both* is an unreasonable distress; but if there were no other distress nearer to the value to be found, he might reasonably have distrained *one* of them. The remedy for excessive distress is by a special action on the statute of Marlbridge, for an action of trespass is not maintainable upon this account, it being no injury at common law.—3 *Bl. Com.* 12.

What Goods may be distrained, and what not.

Distress for rent must be of a thing whereof a valuable property is in some body; and therefore dogs, bucks, does, conies, and the like, that are *feræ naturæ*, cannot be distrained.—1 *Inst.* 47. Although it be of valuable property, as a horse, yet, if when a man or woman is riding on him, or an axe in a man's hand cutting of wood, and the like, they are for that time privileged, and cannot be distrained.—1 *Inst.* 47. And it hath been held, that the horses joined to a cart, with a man upon it, cannot be distrained, for rent, (although they may for damage feasant,) but both cart and horses may, if the man be not upon the cart.—*Vent.* 36. Valuable things shall not be distrained for rent if brought to the premises for the benefit and maintenance of trades, which by consequence are for the commonwealth, and are there by the authority of law, as a horse in a smith's shop; nor the cattle or goods of a guest at an inn; nor the materials in a weaver's shop for making cloth; nor cloth or garments in a tailor's shop: nor sacks of corn or meal in a mill; nor any thing distrained for damage feasant; for it is in the custody of the law and the like.—1 *Inst.* 47; 2 *Burr.* 1498. But a chariot or horses standing at livery are not exempt.—*Id.* Beasts belonging to the plough shall not be distrained, (which is the ancient common law of England, for no man shall be distrained by the utensils or instruments of his trade or profession, as the axe of the carpenter, or the books of a scholar,) while goods or other beasts may be distrained.—1 *Inst.* 47. But this rule holds only in distresses for rent in arrear, and the like; but doth not extend to cases where a distress is given in the nature of an execution, by any particular statute, as for poor rates, and the like.—3 *Salk.* 136; 1 *Burr.* 579; *Ld. Raym.* 384. Implements of trade may be distrained when they are not in actual use and no other sufficient distress can be found

on the premises.—*Co. Litt.* 47, (a) 4 *T. R.* 565; 6 *Price, Rep.* 3; 2 *Chitty's R.* 167. Furnaces, cauldrons or other things fixed to the freehold, or the doors or windows of a house, or the like, cannot be distrained.—1 *Inst.* 47. Things for which a replevin will not lie, so as to be known again, as money out of a bag cannot be distrained.—2 *Bac. Abr.* 109. But money in a bag sealed, may be distrained, for that the bag sealed may be known again. By the 2 W. & M. sess, 1. c. 5, § 3, persons having rent in arrear, on any demise, lease or contract, may seize and secure any sheaves or cocks of corn, or corn loose, or in the straw, or hay being in any barn or granary, or upon any hovel stack or rick, or otherwise, upon any part of the land charged with rent, and may lock up or detain the same, in the place where found, in the nature of a distress, so as the same be not removed, to the damage of the owner, out of the place where found and seized, but kept there (as impounded) till replevied or sold. Also by the 11 Geo. II. ch. 19, § 8, the landlord may take and seize corn, grass, hops, roots, fruits, pulses, or other products growing, as a distress; and the same may cut, gather, make, cure, carry, and lay up, when ripe, in the barns or other proper place, on the premises; and if there shall be no barn or other proper place on the premises, then in any other barn or proper place which he shall procure so near as may be to the premises; the appraisement whereof shall be taken when cut, gathered, cured, and made, and not before. And notice of the place where the goods so distrained shall be lodged, shall in one week after the lodging thereof be given to the tenant or left at the last place of his abode. § 9. And generally, whatever goods and chattels the landlord finds upon the premises, whether they in fact belong to the tenant or a stranger, are distrainable by him for rent, (with the exceptions in favour of trade above specified;) for otherwise a door would be opened to infinite frauds upon the landlord; and the stranger hath his remedy over by action on the case against the tenant, if by the tenant's default the goods are distrained.—3 *Blackstone*, 8. With regard to a stranger's beasts, if they are put in by consent of the owner of the beasts they are distrainable immediately afterwards for rent-arriere by the landlord; so also if the strangers's cattle break the fences, and commit a trespass by coming on the land, they are distrainable immediately by the lessor for his tenant's rent. But if the lands were not sufficiently fenced so as to keep out cattle, the landlord cannot distrain them, till they have been *levant and couchant* on the

land; that is, have been long enough there to have lain down, and rose up to feed; which in general is held to be one night at least: and then the law presumes that the owner may have notice whether his cattle have strayed, and it is his own negligence not to have taken them away: yet if the lessor of his tenant were bound to repair the fences, and did not, and thereby the cattle escaped into their grounds, without the negligence or default of the owner, in that case, though the cattle may have been *levant* and *couchant*, yet they are not distrainable for rent, till actual notice is given to the owner that they are there and he neglects to remove them: for the law will not suffer the landlord to take advantage of his own, or his tenant's wrong.—3 *Bl. Com.* 8, 9. But cattle put into a field by a drover with the consent of the occupier to graze only one night on their way to a fair or market, are not liable to distress for rent.—2 *Vern.* 130.

Goods of a principal in the hands of a factor are privileged from distress, being for the benefit of trade.—6 *Moore, Rep.* 243; so goods landed at a wharf, and consigned to a broker as agent of the consignor, for sale, and placed by the broker in the wharfinger's warehouse, as they were brought there in the course of trade.—1 *Bing.* 283. So goods carried to be weighed, even at a private house, if in the way of trade, are exempt: so is a horse that has carried corn to mill to be ground.—*Cro. Eliz.* 548, 596. Goods in possession of a carrier are also exempt, and this though the carrier was not a public one.—1 *Salk.* 249. But horses or cattle sent to a gist (or pasture) may be immediately distrained by the landlord for rent in arrear, and the owner must seek his remedy by action against the tenant. The principle of this rule extends to public livery stables, to which if horses and carriages are sent to stand they are distrainable by the landlord.—3 *Burr.* 1498. So upon the same principle the goods of lodgers, or any other person on the premises, are liable to be distrained; and to exempt goods being at an inn, they must be within the very precincts of the inn, and not on other premises at a distance belonging to it.—*Barnes*, 472.

A rent may not be distrained for in the night, but in the day time.—1 *Inst.* 142. For before sunrise or after sunset no man may distrain but for damage feasant.—*Mirroure*, c. 2, § 26.

Distress how to be Demeaned.

When the distress is thus taken, the next consideration is the disposal of it; for which purpose the things distrained

must, in the first place, be carried to some pound, and there impounded by the taker. But in their way thither they may be *rescued* by the owner in case the distress was taken without cause or contrary to law, as if no rent be due; if they were taken upon the highway, or the like, in these cases the tenant may lawfully make rescue. But if they be once impounded, even though taken without any cause, the owner may not break the pound and take them out, for they are in the custody of the law.—3 *Bl. Com.* 12; *Co. Litt.* 160, 161. But the ordinary and most usual course of treating a distress when made is that provided for by the following statute:

By 11 Geo. II., c. 19, any person distraining may impound or otherwise secure the distress of what kind soever it be, in such place or in such part of the premises as shall be most convenient; and may appraise and sell the same as any person before might have done off the premises.—§ 10.

Cattle distrained may not be worked or used, unless for the owner's benefit, as a cow milked, or the like—*Cro. Jac.* 148; and if the distress be lost by the act of God, as if the distress dies in the pound without any default in the distrainer, in such case he may distrain again.—1 *Salk.* 248.

By statute 2 W. & M., sess. 1, c. 5, where any goods shall be distrained for rent, and the tenant or owner shall not, within *five* days after such distress, and notice thereof left at the premises, replevy the same, the person distraining, with the sheriff, under sheriff, or *constable* of the peace, shall cause the goods distrained to be appraised by two sworn appraisers, whom such sheriff or constable shall swear, to appraise the same truly, and after such appraisement, the same shall be sold for the best price that can be got, for satisfaction for the rent and charges of the distress, appraisement and sale; leaving the overplus (if any) with the sheriff or constable, for the owner's use. The *five* days are reckoned inclusive of the day of sale; as if the goods are distrained on the 1st, they must not be sold before the 6th.—1 *H. Bla.* 13. But by consent of the tenant the landlord may continue in possession longer than the five days without incurring any liability.—7 *Price*, 690.

Replevin.

Where the tenant disputes the validity of the distress, his remedy is by action of replevin. The tenant may replevy the goods seized at any time within the five days, or at any time before the sale.—5 *Taunt.* 451; *Marsh* 135. The party intending to replevy sues out a writ of *replevin*. If the

distress exceed \$200, the writ is sued out from the Queen's Bench (or Common Pleas;) if not exceeding \$200 then from the county court, in case the title to land does not come in question.—*U. C. Stat. 22 V. c. 29, § 3.* The writ is directed to the sheriff, commanding him to replevy the goods to the plaintiff, and to summon the defendant (the landlord.) The statute requires that before the sheriff shall proceed to replevy he shall take pledges from the plaintiff by bond, in treble the value, (with sureties,) in the form prescribed, conditioned for the prosecution of the action, and the return of the goods, if such return be adjudged.

Fraudulent Removal of Goods, &c.

By 11 G. II. c. 19, § 1, if any tenant for life, years, at will, sufferance, or otherwise, shall fraudulently, or clandestinely, convey off the premises his goods or chattels, to prevent the landlord from distraining, such landlord, or any person by him lawfully empowered, may, in thirty days next after such conveying away, seize the same wherever they shall be found, and dispose of them in such manner as if they had been distrained on the premises. § 2. But no landlord shall distrain any goods sold *bonâ fide*, and for a valuable consideration, before such seizure made, to any person not privy to such fraud. § 3. And if any tenant shall so fraudulently remove and convey away his goods or chattels, or if any person or persons shall wilfully and knowingly aid or assist him in such fraudulent conveying away or carrying off any part of his goods or chattels, or in concealing the same, any person so offending shall forfeit to the landlord *double the value* of such goods, to be recovered in any court of record. § 4. But if the goods and chattels so fraudulently carried off or concealed shall not exceed the value of £50, the landlord or his agent may exhibit a complaint in writing before *two* justices of the peace of the same county or division, residing near the place where such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed; who may summon the parties concerned, examine the fact, and all proper witnesses, upon oath, (or if a Quaker, upon affirmation,) and in a summary way determine whether such person or persons be guilty of the offence with which he or they are charged; and to enquire in like manner of the value of such goods and chattels, and upon full proof of the offence, by order under their hands and seals, the said justices shall adjudge the offender or

offenders to pay *double the value* of the said goods and chattels to such landlord, his bailiff, servant or agent, at such time as the said justices shall appoint; and if the offender or offenders, having notice of such order, shall refuse or neglect so to do they shall, by their warrant, levy the same by distress; and for want of such distress may commit the offender or offenders to the house of correction, there to be kept to hard labour, without bail or mainprise, for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied. § 5. Persons aggrieved by order of such justices may appeal to the next general quarter sessions, who may give costs to either party. § 6. And where the party appealing shall enter into recognizance, with one or two sureties, in double the sum so ordered to be paid, with condition to appear at such sessions, the order of the justices shall not be executed against him in the meantime. § 7. Where any goods or chattels, fraudulently or clandestinely conveyed or carried away, shall be put, placed or kept in any house, barn, stable, out-house, yard, close, or place locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall be lawful for the landlord, or his steward, bailiff, receiver, or other person or persons empowered to take and seize, as a distress for rent, such goods and chattels (first calling to his assistance the constable, headborough or other peace officer of the district, &c.); and in case of a dwelling-house, (oath being first made before a justice of the peace of a reasonable ground to suspect that such goods or chattels are therein,) in the day time, to break open and enter into such house, barn, stable, out-house, yard close or place, and to take and seize such goods and chattels for the said arrears of rent, as he might have done if they had been in any other place.

Notice to Quit.

If the tenancy be from year to year, six months notice to quit by the landlord or the tenant is requisite to put an end to the tenancy. The notice cannot be given at any time of the year, but must be given six months clear before the end of the current year of the tenancy. If the tenancy be by the quarter, month, or week, corresponding notice must be given; that is three months, one month, or one week, as the case may be, such notice transpiring at the end of the quarter, month, or week, of the original holding. In the case of a

tenancy for a time certain, that is, if the tenant take the premises for one year certain, and not by the year, or from year to year, notice to quit is not necessary, but the landlord is entitled to his possession at the expiration of the year; and so likewise where the tenancy is for a time certain for a shorter period than a year.

Case of Tenant Holding Over.

By 4 G. II., c. 28, if any tenant for life, or years, or other person who shall come into possession by, from, or under him, shall wilfully hold over any lands after the determination of such term, and after demand made, and notice in writing given for delivering the possession thereof, he shall for the time he shall so hold over pay double the yearly value, to be recovered by action of *debt* in any court of record—§ 1.

By 11 G. II., c. 19, § 18, if any tenant shall give notice of his intention to quit the premises at a time mentioned in such notice, and shall not accordingly deliver up possession at the time in such notice contained, he, his executors or administrators shall from thenceforward pay *double rent*, to be recovered in like manner as the single rent.

By U. C. Stat. 22 V. c. 27, § 63, where a tenant, after the expiration of his tenancy (by parol or writing) wrongfully refuses upon demand made in writing to go out of possession, the landlord may apply to either of the superior courts in term, or to a judge in vacation, upon affidavit, who shall order a writ to issue for summoning a jury of twelve men, before the commissioner named to determine the matter; and if in favour of the landlord, a writ of possession may be issued by order of the court or judge.

Deserting the Premises.

By 11 G. II., c. 19, § 16, if any tenant at rack-rent, or where the rent reserved shall be full *three-fourths* of the yearly value of the demised premises, who shall be in arrear for *one year's rent*, shall desert the premises and leave the same uncultivated or unoccupied, so as no sufficient distress can be had, two justices (having no interest in the premises) may at the request of the landlord go upon and view the same, and affix on the most notorious part of the premises notice in writing what day (at the distance of *fourteen days* at the least) they will return to take a second view, and if on such *second view* the tenant shall not appear and pay the rent, or there shall not be suffi-

cient distress on the premises, then the justices may put the landlord into possession, and the lease as to such demise shall from thence be void. § 17. But the tenant may appeal to the next justice or justices of assize, who may award costs to either party.

Rent how far Recoverable by Executors.

By U. C. Stat. 22 V. c. 78, § 3, the executors or administrators of any lessor or landlord may distrain upon the premises, for the arrearages of rent due to such lessor or landlord in his life-time in like manner as if living. § 4. Or within six months after the determination of the term, and during the continuance of the tenant in possession.

Costs.

By the U. C. Stat. 22 V. c. 123, § 1, no person making any distress for rent or for any penalty, when the sum demanded and due does not exceed the sum of \$80, in respect of such rent or penalty, and no person employed in making such distress, or doing any act in the course of such distress, or for carrying the same into effect, shall take or receive from any person, or out of the produce of the chattels distrained upon and sold, any other costs in respect of such distress, than such as are set forth in the schedule annexed, and no person shall make any charge for any thing mentioned in the schedule not really done. § 2. If any person offends herein, the party aggrieved may apply to any justice for the county, city or town where the offence was committed, for the redress of such grievance, whereupon such justice shall summon the person complained of to appear before him at a reasonable time, and examine into the matter of such complaint and hear the defence, and if it appears to the justice that the person so complained of has offended, he shall order and adjudge *treble the amount* of the money unlawfully taken to be paid by the offender to the complainant, together with full costs. § 3. And in case of non-payment, such justice shall forthwith issue his warrant to levy the same by distress and sale of the goods and chattels of the offender. § 4. And in case of insufficient distress, such justice shall by warrant under his hand commit the party to the common gaol, there to remain until such order or judgment be satisfied. § 5. Such justice may summon and examine witnesses on oath touching such complaint or the defence against it. § 6. And in case of non-attendance, without lawful excuse, or refusal to be examined, such person

shall forfeit a sum not exceeding \$8, to be enforced by distress or commitment in like manner as aforesaid, except as regards the form thereof, which may be made in such form as the justice thinks fit. § 7. Any party preferring an unfounded complaint may be adjudged to pay costs not exceeding \$4 to the defendant, to be enforced in manner aforesaid. § 8. No order or judgment shall be made against the landlord, unless such landlord personally levied such distress. § 9. No person aggrieved by any such distress, or any proceedings had in the course thereof, or by any costs or charges levied in respect of the same, shall be barred from any legal remedy, excepting so far as any complaint to be preferred by this act shall have been determined, and such order and judgment may be given in evidence under the plea of the *general issue*. § 10. Orders and judgments on such complaints shall be made in the form in the schedule annexed, and may be proved before any court by proof of the signature of the justice. § 11. Every person who makes and levies any distress, shall give a copy of demand, and of all the costs and charges of the distress signed by him to the person on whose goods and chattels the distress is levied, although the rent or penalty demanded exceeds \$80.

SCHEDULE.

Form of the Order and Judgment of the Justices before whom complaint is preferred, when the Order and Judgment is for the Complainant.

In the matter of complaint of A. B. against C. D., for the breach of the provisions of the Consolidated Statutes for Upper Canada, intituled, "An Act," [*insert the title of this act.*] I, E. F., a justice of the peace in and for the _____, do order and adjudge, that the said C. D. shall pay to A. B. the sum of _____, as a compensation and satisfaction for unlawful charges and costs levied and taken from the said A. B. under a distress for, [*as the case may be,*] and the further sum of _____ for costs in this complaint.

(Signed,) E. F.

Form of the Order and Judgment of the Justice, when he dismisses the complaint as unfounded, with or without costs, as the case may be.

In the matter of complaint of A. B. against C. D. for the breach of the provisions of the Consolidated Statutes for Upper Canada, intituled, "An Act," [*insert the title of this act.*] I, E. F., a justice of the peace in and for the _____, do order and

adjudge that the complaint of the said A. B. is unfounded, [if costs are given,] and I do further order and adjudge that the said A. B. shall pay unto the said C. D. the sum of

(Signed,) E. F.

Schedule of Costs and Charges on Distresses for small Rents and Penalties.

	\$	cts.
Levying distresses under \$80.....	1	00
Man keeping possession, per diem.....	0	75
Appraisalment, whether by one appraiser or more—two cents in the dollar on the value of the goods.		
If any printed advertisement—not to exceed in all.....	1	00
Catalogues, sale and commission, and delivery of goods five cents in the dollar on the net produce of the sale.		

By the C. Stat. 22 V. c. 92, § 35, the stealing of any chattel or fixture by the tenant is made felony, for which see title "*Larceny*."

Form of Notice to Quit.

SIR.—I hereby (as agent of Mr. Nokes, your landlord, on his behalf) give you notice to quit and deliver up possession of the [house, lands, and premises, with the appurtenances] situate at _____, in the _____ county, which you hold of [him] as tenant thereof, on the _____ day of _____ next, or at the expiration of the current year of your tenancy, which shall expire next after the end of one-half year from the date of this notice. Dated the _____ day of _____, 1864.

JAMES NOKES.

Warrant to Distrain.

To Mr. A. B., my bailiff, greeting: Distrain the goods and chattels of Joseph Stiles, in the house he now dwells in, [or "upon the farm he now occupies," as the case may be], situate at _____, in the county of _____, for £22 10s. 6d., being the amount of [one year's] rent due to me for the same, on the _____ day of _____ last; and for so doing this shall be your sufficient warrant and authority. Dated this _____ day of _____ 186 _____.

JOHN NOKES.

Inventory of Goods Distrained.

An inventory of the several goods and chattels distrained by me, whose name is hereunder written, the _____ day of _____, in the year _____, in the houses, out-houses, and lands of A. T., in _____, by the authority, and on the behalf of A. L., of _____ pounds arrears of rent due to him, the said A. L.

In the Dwelling-house.

One Table,
Six Chairs, &c.

In the Cow-house.

Six Cows,
Two Calves, &c.

Notice of Distress.

Mr. A. T.

Take notice, that by the authority, and on the behalf of your landlord, A. L., I have this day of , in the year of our Lord distrained the several goods and chattels specified in the schedule hereunto annexed, in your house, out-houses, and grounds, at , for £ , arrears of rent due to him the said A. L. for the said premises on the day of instant (or last), and if you shall not pay the said rent so due and in arrear as aforesaid, together with the costs and charges of such distress hereunto annexed, or replevy the said goods and chattels, I shall after the expiration of five days from the date hereof cause the said goods and chattels to be appraised and sold according to the statute in that case made and provided.

Given under my hand, the day and year first above written.

A. D.

Appraiser's Oath.

You, and each of you, shall well and truly appraise the goods and chattels mentioned in the inventory, according to the best of your understanding. So help you God.

Form of Appraisement.

The appraisement may be in the form of an inventory, specifying the particulars, and their respective valuations; and then add at the end,

Appraised by us, this day of in the year .

A. A. }
B. P. } Sworn Appraisers.

Form of Complaint upon oath to be made before a Justice, in case of a dwelling-house where goods and chattels are fraudulently and clandestinely removed, and conveyed away and secured, so as to prevent them from being taken and seized as a distress for rent.

PROVINCE OF CANADA :

County of , } The information and complaint of A. J.,
to wit. } of taken upon oath before us the under-
signed, two of her Majesty's justices of the peace in and for the
said county of at in the said county of this

day of in the year of our Lord one thousand eight hundred and , who saith that A. O. of , is justly and truly indebted to this informant in the sum of for arrears of rent for a [house and lot situate at] due to this informant by the said A. O. on the day of , and that the said A. O. hath fraudulently and clandestinely conveyed and carried away, or caused to be so conveyed or carried away, certain goods and chattels of him the said A. O. from the said [house and lot] after the said arrears had so become due, in order to prevent the said goods and chattels from being seized and distrained by this informant for the said arrears of rent, and that the said goods and chattels are, as this informant hath good cause to suspect, and verily believes, put, placed, or kept in the dwelling house, barn, stable, out-house, yard, close, or other place, of at locked up, fastened or otherwise secured, so as to prevent the said goods and chattels from being taken and seized by this informant as a distress for such arrears of rent as aforesaid; wherefore the said A. J. prayeth our warrant in the premises.

 Taken and sworn at the A. J.
 day of before .

Warrant upon the preceding Complaint and Oath.

PROVINCE OF CANADA :

County of } To all or any of the constables or other peace
 to wit. } officers in the said county.

Whereas A. J. of , yeoman, hath this day of exhibited his complaint, and made oath before us the undersigned, two of her Majesty's justices of the peace for the said county, that A. O. of has fraudulently and clandestinely conveyed and carried away or caused to be so conveyed and carried away, certain goods and chattels of him the said A. O., from a certain house and lot, situate at , to prevent the said A. J. from distraining the said goods and chattels for £ arrears of rent due to the said A. J. for the said , and that the said goods and chattels are, as the said A. J. hath good cause to suspect, and doth suspect and verily believes, put, placed, or kept in the dwelling-house, barn, stable, out-house, yard, close or other place of at , locked up, fastened, or otherwise secured, so as to prevent the said goods and chattels from being taken and seized by the said A. J. as a distress for such arrears of rent, as aforesaid. These are therefore to command you, and each and every of you, to aid and assist the said A. J., his steward, bailiff, receiver or other persons empowered by him to take and seize, as such distress for rent, as aforesaid, the said goods and chattels, and in the day time to break open and enter into the said dwelling-house, barn, stable, out-house, yard, close or other place of the said at , and to take and seize the said goods and chattels for the said arrears of rent, according to law.

 Given under our hands and seals at , the day of .

*Information and Complaint under 11 G. II., c. 19, of
Tenant having deserted the Premises.*

PROVINCE OF CANADA :

County of , } The information and complaint of A. B.,
to wit. } of , in the said county, taken this day
of , 186 , before us J. C. and S. R., esquires, two of her Ma-
jesty's justices of the peace for the said county, who saith that he the
said A. B. did, in and by a certain indenture bearing date the
day of in the year of our Lord 186 (or, by written or verbal
agreement *as the case may be*,) demise unto A. S., of in the
county aforesaid a certain messuage (or other premises, *as the
case may be*,) situate and being at , in the county aforesaid,
at rack rent, (or three-fourths of the yearly value), that is to
say, at the yearly rent of , payable quarterly (*if so*) on
the day of &c.; and that the said A. B. further
complaineth, that on the day of now last past there was
in arrear and due unto him the said A. B., from the said A. S.,
the tenant of the said demised premises, one whole year's rent
thereof, and that he the said A. S. hath deserted the said demised
premises, and left the same uncultivated and unoccupied, so as no
sufficient distress can be had to countervail the said arrears of
rent, and that the said arrears of rent have been duly demanded
according to law. Wherefore the said A. B. doth request us the
aforesaid justices of the peace, to go and view the said demised
premises, and affix on the most notorious part thereof a notice
in writing, what day we shall return and take a second view
thereof, and that a remedy may be given to the said A. B.
according to the form of the statute in that case made and
provided.

Taken before us, the said justices, the day of 186 .

Notice to be affixed on the premises being deserted. (Burn.)

Mr. Abraham Sutcliff :

Take notice, that upon the complaint of A. B., of , yeo-
man, made unto us, J. C. and S. R., esquires, two of her
Majesty's justices of the peace for the county of , that you
the said A. S. have deserted the messuage and tenement, situate,
lying and being at , unto you demised at rack-rent, by him
the said A. B., and that there is in arrear and due from you the
said A. S., unto him the said A. B., one whole year's rent for
the said demised premises, and that you have left the said pre-
mises uncultivated and unoccupied, so that no sufficient distress
can be had to countervail the said arrears of rent: we the said
justices (having no interest, nor either of us having any interest
in the said demised premises,) on the said complaint as aforesaid,
and at the request of him the said A. B., have this day come
upon and viewed the said demised premises, and do find the said

complaint to be true ; and on the day of this present month of we will return to take a second view thereof, and if upon such second view you or some person on your behalf shall not there appear and pay the said rent in arrear, or there shall not be sufficient distress on the said premises, then we the said justices will put him the said A. B. into the possession of the said demised premises, according to the form of the statute in such case made and provided. In witness whereof we have hereunto set our hands and seals, and have caused this notice to be affixed on the out door of the dwelling house, the same being the most notorious part of the said premises, this day of , in the year of our Lord 186 .

Record of putting the Landlord into Possession.

PROVINCE OF CANADA :

County of } Be it remembered that on the day of
to wit. } in the year of the reign of our
sovereign lady Victoria, and A.D., 186 , at in the said county
of , A. B., of complaineth unto us J. C. & S. R., esquires,
two of her Majesty's justices of our said lady the Queen assigned to
keep the peace within the said county, and also to hear and deter-
mine divers felonies, trespasses, and other misdemeanors in the said
county committed, that he the said A. B. did demise, at rack-rent,
unto A. S. of yeoman, a certain messuage, tenement, or dwell-
ing-house, lying and being at aforesaid ; and that on the said
day of in the year aforesaid, there was in arrear and due
unto him the said A. B. from him the A. S. tenant of the said
demised premises, one whole year's rent thereof, and that he the
said A. S. had deserted the said premises and left the same uncul-
tivated and unoccupied, so as no sufficient distress could be had
to countervail the said arrears of rent, whereupon the said A. B.
then and there, to wit, on the said day of in the year
aforesaid, at aforesaid, in the county aforesaid, requested of
us, so as aforesaid being justices, that a due remedy should be
provided to him in this behalf, according to the form of the statute
in that case made, which complaint and request by us the aforesaid
justices being heard, we the said J. C. and S. R., justices aforesaid,
(having no interest in the said demised premises,) on the said
day of in the year aforesaid, at aforesaid, did personally
go and view the said demised premises, and then and there upon
our own proper view did find the said complaint to be true, and
did then and there affix on the most notorious part of the said
premises, to wit, upon the out-door of the dwelling house afore-
said, a notice in writing, under our hands and seals, that we the
said justices, on the day of the month of in
the year aforesaid, would return to take a second view thereof,
upon which said day of in the year aforesaid, we, the
said justices, do now return and take a second view of the pre-

mises aforesaid, and there upon our own proper view do find that he the said A. S. doth not appear, nor doth any person on his behalf appear and pay the said rent in arrear, and that there is no sufficient distress upon the premises aforesaid, nor upon any part thereof, to countervail the said arrears of rent ; therefore we, the said justices, at aforesaid, on the day of in the year aforesaid, do put the said A. B. into the possession of the said demised premises according to the form of the statute aforesaid. In witness whereof, we, the said justices, unto this record do set our seals, at aforesaid, in the county aforesaid, on the said day of in the year of our Lord 186 .

LAND SURVEYORS.

By the C. Stat. 22 V. c. 77, § 1, a board of examiners to be appointed at Quebec and Toronto. § 5. No person shall act as a surveyor unless duly authorised by this act, or under former acts. § 6 to 26 contain provisions for qualification and admission. § 28. Standard measures to be procured by the commissioner of crown lands, and deposited at Toronto and Quebec with the secretary of the board of examiners. § 29. Surveyors to have a standard measure of length, stamped or otherwise certified by the commissioner of crown lands or his deputy for this purpose, or secretary aforesaid, under the penalty of forfeiture of license ; and shall, previously to any survey, verify the length of his chains and instruments by such standard. § 30. Chain-bearers to be sworn to act justly and exactly, and to render a true account to the surveyor, and not to be related to any of the parties interested within the fourth degree—viz., of cousin-german ; such oath to be administered by the surveyor. § 31. Any person molesting any surveyor in the discharge of his duty shall be deemed guilty of *misdemeanor*, and punishable by fine or imprisonment, or both, in any court of competent jurisdiction : such imprisonment not to exceed two months, nor fine to exceed \$20. § 32. Any surveyor in the performance of his duties is authorised 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 purpose may pass over the lands of any person, doing no actual injury. § 101. Surveyors to keep regular journals and field notes, and furnish copies to parties interested, upon payment of one dollar for each copy, if not exceeding 400 words, and ten cents for every additional 100 words. § 102. May administer oaths to persons he may examine upon any survey. § 103. Such evidence to be reduced to writing and signed by the party ; or, if unable to write, acknowledged by him to be

correct before *two* witnesses, who shall sign the same, as also the surveyor; and such evidence shall, and any document or plan prepared and sworn to as correct before a justice of the peace, by any surveyor, with reference to any survey by him performed, may be filed and kept in the registry office of the county, for production in evidence in any court of law or equity. § 104. Wilful false swearing by any person concerning any matter under this act to be *perjury*, and punishable accordingly. § 107. Contains a provision for the punishment of persons removing or defacing land marks, similar to that in the U. C. Stat. 22 V. c. 93, § 4, for which see title "*Boundary Lines*."

By C. Stat. 22 V. c. 77, § 108, any surveyor summoned to attend as a witness upon any trial, and giving evidence in his professional capacity, shall be entitled to 20s. per diem of attendance, besides travelling expenses.

See also title "*Boundary Lines*."

LARCENY.

Larceny is the felonious and fraudulent taking and carrying away by any person of the mere personal goods and chattels of another.—1 *Haw.* 89.

Until lately there were two degrees of larceny—1. *Grand larceny*—which signified the stealing of any goods or chattels above the value of *twenty shillings* sterling.—*Ordinance of Quebec*, 29 G. III., c. 3. And 2. *Petit larceny*—which included those cases where the property stolen was under the value of *twenty shillings*.—*Id.* But now the distinction between grand larceny and petit larceny is abolished; and by C. Stat. 22 V. c. 92, § 19, every larceny, whatever may 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 such distinction was abolished. § 20. Every person guilty of simple larceny, shall (except in cases hereinafter otherwise provided for) be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

See also *post* title "*Punishment*."

Of Larceny in General.

Trespass.—As every larceny includes a trespass, a party who is not guilty of a trespass in taking the goods cannot be guilty of felony, at *common law*, in carrying them away.—1 *Haw.*, c. 33, § 1. Formerly where goods were

delivered by the owner to another, upon a trust, or on account of the owner, the possessor would not be guilty of felony in converting them to his own use, unless by some distinct act of taking; as, by severing part of the goods from the rest, with intent to convert them to his own use, whereby the privity of the bailment was determined and the special property thereby conferred upon him.—*Ibid.*; 1 *Haw.* 504. But now by C. Stat. 22 V. c. 92, § 55, if any person being a bailee of any property fraudulently takes or converts the same to his own use, or the use of any other person, other than the owner, although he shall not break bulk, or otherwise determine the bailment, he shall be guilty of larceny. A bare charge of goods, such as that which a servant has over the goods of his master; or of a mere liberty to make use of a thing for a particular purpose, (such as a traveller at an inn has with respect to the furniture,) does not prevent the party from being guilty of felony, if he take or convert the goods to his own use; in both cases the law presumes the property to be still in the possession of its owner.—1 *Hale*, 506.

Felonious taking.—There must be a felonious taking, as well as a *severance*, to complete the felony; but the least removal of the thing from its place is sufficient, as where a guest at an inn took off the sheets from his bed with an intent to steal them, but was apprehended in the hall, the larceny was held to be complete; and so where a man had taken a horse in a field, and while leading him away was apprehended; and again where a man took plate out of a chest, with intent to steal it, and after laying it on the floor was detected before he could move it further, the felony in either case was held to be complete.—3 *Inst.* 109, *R. v. Simpson*, *Kel.* 31.

Severance.—But where some goods in a shop were tied to a string, fastened by one end to the counter, and a thief took up the goods and carried them towards the door, as far as the string would permit, and was then stopped, this was held to be *no felony*, as there was no actual *severance* of the property.

Where the felony is once completed, the offence is not purged by returning the goods, as where a robber, on finding little in a purse, restores it to the owner.—3 *Inst.* 69.

Felonious Intent.—There must also be a felonious intent, and the usual and most direct evidence of this is, where the party takes the goods *clandestinely*, or shortly after the taking such goods are found *concealed* in his possession, or

where he *falsely denies* either the taking or the possession ; but where a man takes a plough from a field, and after ploughing his own land returns it to the place whence he took it, telling the owner that he had used the same, it would be wrong to impute a felonious intent.

Recent Possession.—With respect to the recent possession of the property, it may be laid down as a general rule, that where the stolen goods are found in the possession of another man, *shortly after* the theft or robbery, it is incumbent on him to prove how he came by them, otherwise the presumption is that he obtained them feloniously, and this presumption is strengthened by proving that the prisoner was seen near the spot from which the goods were taken about the time of the felony, and by his conduct and demeanor at the time the goods are found in his possession.—2 *East, P. C.* 656.

Identity.—The identity of the goods should in general be satisfactorily proved, by marks or otherwise ; but where a man is seen coming out of a barn, upon whom corn is found, of the same kind with that missed from the barn, this is strong presumptive evidence of guilt.—*Ib.* 657.

Claim of Right.—Where the taking of the goods is under a claim of right, this negatives the *animus furandi*, or felonious intent.—*Ib.* 659.

Finding.—If a party finding property know the owner of it, and instead of restoring it converts it to his own use, this will be felony.—*Per Lawrence*, 2 *Russ.* 102. So where a gentleman left a trunk in a hackney-coach, the driver kept it and embezzled the contents, this was held to be felony, as he must have known where he took up the gentleman and ought to have returned the trunk.—*R. v. Lamb*, 2 *East, P. C.* 664. So where the purchaser of a bureau found 700 guineas deposited in a secret drawer therein, which he embezzled, this was said by *Lord Eldon* (after consulting some of the judges) to be felony ; and that if a pocket-book containing bank notes were left in the pocket of a coat sent to be mended and the tailor took the notes, such a taking was clearly felonious.—*Cartwright v. Green*, 8 *Ves.* 405. But in all cases of finding, where it appears that the party *bona fide* endeavoured to discover the owner, a felonious intent cannot be presumed.

Fraud.—where fraud is used to obtain the possession of property, the party therein is as much guilty of felony as if he had taken it from the owner—thus, where A., having a design to steal B.'s horse, which was impounded on a distress, enters a plaint of replevin and (thereby getting it delivered

to him) runs away with it, this is felony.—1 *Hale*, 504, 507. But when the owner of property is induced by fraudulent pretences to give the prisoner *credit* for the goods, this is held not to be larceny but a *cheat*, for which the law has provided an especial remedy, (see *ante* title "*Cheat*,") and so where a party obtained the delivery of a horse, which was exhibited in a fair for sale, by contracting to buy it and to pay for it immediately, but when it was delivered to him he rode off and never returned, it was held that this was no felony, but a complete sale and delivery upon *credit*, in which the owner had parted with the property as well as the possession.—*R. v. Harvey*, 1 *Leach*, 467. But where a man came to Smithfield market to sell a horse, and a jockey coming there to buy a horse, the owner delivered his horse to the jockey to try his paces in the market-place, and the jockey rode off with the horse, this was adjudged to be felony, inasmuch as the possession only and not the *property* of the owner in the horse had been parted with.—*Kel.* 82.

Pretence of Exchange.—Where a prisoner offered to accommodate the prosecutor with gold for bank notes, upon which the prosecutor put down a number of notes, which the prisoner took up and went away, promising to return immediately with the gold, but never came back, this was held to be larceny if the jury believed that the prisoner intended to run away with the notes and not to return with the gold.—*R. v. Oliver*, *cit.* 4 *Taunt*, 247.

Delivery by a Servant.—Where a prisoner ordered a pair of candlesticks from a silversmith to be sent to his lodgings, whither they were sent with a bill by a servant, who was directed to *bring back the money*, but who was sent back by the prisoner under some pretence, when the latter ran away with the candlesticks; this was held to be felony, *no credit* having been given by the owner, and the servant having no legal power to part with the goods till paid for them.

Bailment.—Where the possession of the goods is acquired under a bailment of them from the owner, for a special purpose, and the bailee tortiously converts them to his own use, before the bailment is determined, this now is larceny under the Con. Stat. 22 V. c. 92, § 55.

And first respecting Possession obtained Fraudulently by the Bailee.

Hiring.—The prisoner hired a horse of the prosecutor, on pretence of taking a ride into the country and returning in the evening, but in truth with intent to steal it, and evi-

dencing such felonious intent by immediately selling the horse after possession of it was delivered to him; this was held to be felony.—*R. v. Pear*, 2 *Leach*, 212; 2 *East*, P. C. 689. So, where a prisoner hired a chaise at 5s. a day, saying he should want it for three weeks or a month, as he was going a tour round the north, and no tidings were obtained of him till twelve months afterwards, but no account was ever given of the chaise up to that moment, the presumption being against the prisoner, the jury found him guilty.—*R. v. Semple*, 1 *Leach*, 420, 2 *East*, P. C. 691. In all these cases the question of the *real intention* of the prisoner at the time of the hiring is for the consideration of the jury, and if they find that the original taking of the thing hired was with a felonious intent to steal it, the offence will be *larceny*, although the contract of hiring may not be for any precise and definite time.

But where a prisoner hired a horse for a particular purpose, without any *felonious intention* at the time, and he wrongfully sold the horse after that purpose was executed, it was held that this tortious conversion did *not* constitute a *new taking* in law, so as to make him guilty of larceny.—*R. v. Banks, Russ. & Ry.* 441. All such cases of *hiring*, therefore, will now depend upon the question whether the hiring was *bona fide*, or whether it was only a pretence to get possession of the horse, in order that the party might have a better opportunity of stealing it. So, where the prosecutor's house being on fire, the prisoner in his presence and under his observation removed some of his goods (as the jury expressly found) without an evil intention, though the next morning upon the prosecutor applying to her she denied that she had any of the things belonging to him; the prosecutor, however, upon obtaining a search warrant, not only found his property in her house, but most of the articles were artfully concealed in various ways, yet upon this special finding of the jury, that the intention to steal the goods came upon the prisoner *after* she had taken them, the judges were of opinion that the transaction was not a *felony* but merely a *breach of trust*.—*R. v. Leigh*, 2 *East*, P. C. 604; 1 *Leach*, 411, note. (a)

Larceny by Servant.—Where a servant is entrusted with goods by his master, no legal *possession* is transferred to the servant, who has but a bare charge, the possession of the servant being the possession of the master, the servant may therefore commit larceny by a fraudulent conversion of the goods to his own use.—*R. v. Bass*, 1 *Leach*, 251, 523, 524.

Banker's Clerks.—So if a banker's clerk be sent to the money drawer for a special purpose, or if he be sent to bring money generally out of the drawer, and at the same time he take the opportunity of purloining money for his own use, this is felony.—*R. v. Murray*, 1 *Haw. c.* 33, § 7; 2 *East*, *P. C.* 683; *Leach*, 344.

By Carriers.—A carrier is a bailee and will be guilty of larceny if he convert the goods entrusted to him to his own use.—*Con. Stat.* 22 V. c. 92, § 55.

By Millers.—So, if a miller steal *part* of the meal produced by the corn delivered to him to grind, this being taken out from the rest, is felony.—2 *East*, *P. C.* 698.

Fraudulent Wagers.—A man is frequently swindled out of his money by fraudulent bets and wagers, upon a preconcerted plan to defraud him, when it becomes a material question (as in all other cases of delivery) whether the *property*, or only the *possession* of the money, or other thing, is parted with; in the first case, the offence is held not to amount to larceny, as there is no felonious taking, but in the last it is otherwise, if the possession be gained *animo furandi*. Thus, where several sharpers inveigled the prosecutor to bet with them at *hiding under the hat*, and after suffering him to win at first, contrived to strip him of a large sum of his money on the event of a bet, it was held, that though this was found by the jury to be a preconcerted scheme to get his money, yet it was no felonious taking, as he parted with his property under the idea that it had been fairly won.—*R. v. Nicholson*, 2 *Leach*, 610; 2 *East*, *P. C.* 699. But such offenders may be indicted for cheating.—See title "*Cheats*," page 135.

Card Playing.—But where the prisoners decoyed the prosecutor into a public house, and there introduced the game of cutting cards, and the prosecutor having pulled out some money, but not playing on his own account, one of the sharpers prevailed upon him to cut the cards for him, and then, under pretence that the prosecutor had cut the cards for himself, and had lost, another of them swept his money off the table and went away with it; this was decided to be one of those cases that should be left to a jury to determine *quo animo* the money was obtained, and which would be *felony* if they found that the money was obtained upon a preconcerted plan to steal it.—*R. v. Homer*, 1 *Leach*, 270; *Cald.* 295.

Ring Dropping.—So, where the delivery is by way of pledge or security, the *property* remains in the owner, and

larceny may be committed of it, if the delivery were obtained fraudulently, and with intent to steal; as, where the prisoner and some accomplices being in company with the prosecutor, one of them stooped down and pretended to find a valuable ring, upon which they promised the prosecutor that he should have his share of the value of it, and by that means prevailed on him to deposit his money and watch, and the ring proved to be of little or no value; this was held to be *larceny*, as the possession was obtained by fraud, and the property not altered.—*R. v. Patch*, 2 *East*, P. C. 678; 1 *Leach*, 238. In like manner where several act in concert all will be guilty of the felony. Thus, where three sharpers pretended that prosecutor could not bet £100, when being provoked by the challenge, he produced that sum in notes, which one of them took to count, and then handed to another, who, with the third, pretended to gamble for them; when the first mentioned thief beckoned the prosecutor out of the room, and the other two decamped with the money, and all three afterwards shared it; this was held larceny in all three.—*R. v. Stanley*, *Russ. and Ry.* 305.

Of what things Larceny may be committed.

Every description of personal property (with the exception hereinafter noticed) may be the subject of larceny; such as money, goods, wearing apparel, cattle, and the like. If the personal goods savour any thing of the realty (or freehold) it cannot be larceny; therefore it is no larceny, but a bare trespass, to steal corn or grass growing, or apples on a tree; but it is larceny to take them, being severed from the freehold, as wood cut, grass in cocks, stones dug out of the quarry; and this, whether they are severed by the owner or even by the thief himself, if he sever them at one time, and then come at another and take them.—1 *Haw.* 93; 1 *H. H.* 510.

The goods ought also not to be of a base nature, as dogs, cats, bears, foxes, moneys, ferrets, and the like; which, howsoever they may be valued by the owner, shall never be so highly regarded by law, that for their sakes a man shall die.—1 *Haw.* 93.

Property Unknown.—There may be a felony in taking goods, the owner whereof is unknown; in which case the king shall have the goods, and the offender shall be indicted for taking the goods of a person unknown.—1 *Haw.* 94.

Stealing Securities.—By C. Stat. 22 V. c. 92, § 22, any person who steals any tally, order, or other security whatso-

ever, 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 who steals any debenture, deed, bond, bill, note, warrant, order or other security whatsoever for money or for payment of moneys, whether of this province or of Great Britain, or of any British colony, or any foreign state or colony, or who steals any warrant or order for the delivery or transfer of any goods or valuable thing, shall be 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.

Stealing Wills.—§ 23. Any person who either, during the life of the testator or testatrix, or after his or her death, steals or for any fraudulent purpose destroys or conceals any will, codicil, or other testamentary instrument, whether relating to real or personal estate, or both, shall be guilty of a misdemeanor, and shall be imprisoned in the penitentiary for any period not exceeding fourteen years, or in any other prison or place of confinement for any term less than two years, or suffer such other punishment by fine or imprisonment, or both, as the court shall award; and it shall not be necessary to allege in the indictment that such will, &c., is the property of any person, or of any value.

Stealing Title Deeds.—§ 24. Any person who steals any original paper or parchment, written or printed, or partly written and partly printed, being evidence of the title to any real estate, shall be guilty of a misdemeanor, and shall be liable to any punishment which the court may award, as hereinbefore last mentioned.

§ 25. Nothing in this act contained relating to either of the misdemeanors aforesaid, or to any proceeding, conviction or judgment had thereupon, shall impeach any remedy at law or in equity which the party aggrieved would have had if this act had not been passed; but the conviction of such offender shall not be evidence in any action at law or suit in equity against him, nor shall such offender be convicted by any disclosure made by him on oath upon compulsory process in any action or suit at law or in equity, or before commissioners of bankrupt.

Stealing Records.—§ 26. Any person who steals, or for any fraudulent purpose takes from its place of deposit, or

from any person having the lawful custody thereof, or unlawfully and maliciously obliterates, injures or destroys 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 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, shall be guilty of a misdemeanor, and shall be liable to any punishment which the court may award, as in the twenty-third section. § 27. And it shall not be necessary to allege in the indictment that the article in respect of which the offence was committed is the property of any person, or of any value.

Stealing from Vessels.—§ 28. Any person who steals any goods or merchandize in any vessel, barge, or boat 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 who steals any goods or merchandize from any dock, wharf or quay adjacent thereto, shall be imprisoned in the penitentiary for any term not exceeding fourteen years nor less than two years, or be imprisoned in some other prison or place of confinement for any term less than two years.

Stealing Glass, Lead, &c.—§ 34. If any person steals, rips, cuts, or breaks with intent to steal any glass or wood work belonging 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, fixed in or to any building whatsoever, or any thing made of metal fixed in any land, being private property, or in a fence to any dwelling-house, garden or area, or in any square, street or other place dedicated to public use or ornament, such offender shall be guilty of felony, and shall 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 will not be necessary to allege the same to be the property any person.

Stealing by Tenants.—§ 35. If any person steals 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 be entered into by him or her, or by her husband, or by

any person on behalf of him or her or her husband, such offender shall be guilty of felony, and shall be punished in the same manner as in the case of simple larceny; and in every such case of stealing any chattel, an indictment may be preferred in the common form as for larceny; and in every such case of stealing any fixture, an indictment may be preferred in the same form as if the offender were not a tenant or lodger, and in either case the property may be laid in the name of the owner or person letting to hire.

Stealing by Clerks or Servants.—§ 41. If any clerk or servant steals any chattel, money or valuable security belonging to or in the possession or power of his master, such offender shall be imprisoned in the penitentiary for any term not exceeding fourteen years, nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

Restitution of Stolen Goods.—By C. Stat. 22 V. c. 99, § 88. 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, be indicted for any offence by or on the behalf of the owner of the property, or his heir, curator, executor or administrator and be convicted thereof, the property shall be *restored* to the owner or his representative; and the court before whom any such person has been so convicted may from time to time award writs of restitution for the same property, or order the restitution thereof in a summary manner. § 89. If it appears before any award or order made that any valuable security has been *bona fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument has been *bona 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 restitution of such security.

Apprehension without Warrant.—Any person found committing any offence punishable either upon indictment or summary conviction, may be immediately apprehended, by any peace officer without a warrant, or by the owner of the property on or with respect to which the offence is committing, or by his servant or any other person authorised by such owner, and shall be forthwith taken before some

neighbouring justice, to be dealt with according to law.—*Ib.* § 1.

See also titles "*Embezzlement*," "*Wreck*," "*Search Warrant*," "*Receivers*."

Of Larceny from the Person.

If the goods are taken from a man's person, the offence then receives a further degree of guilt; and if it be attended with putting him in *fear*, it is called robbery.

See title "*Robbery*."

For Summary Conviction for Larceny,

See title "*Summary Trial*."

Form of Indictment for Simple Larceny.

County of } The jurors for our lady the Queen upon their
to wit: } oath present that A. B. on the day of in
the year of our Lord one thousand eight hundred and at in
the county of } did feloniously steal (*a gold watch of C. D.*)

Form of Indictment for Stealing Money.

County of } The jurors for our lady the Queen upon their
to wit: } oath present that on the day of in
the year of our Lord one thousand eight hundred and A. B.
at , in the county of , did feloniously steal a certain
sum of money, to wit to the amount of dollars, the property
of one C. D.

LAW.

By U. C. Stat. 22 V. c. 9, § 1, it is enacted that in all matters of controversy relative to property and civil rights, resort shall be had to the laws of England as they stood on the 15th day of October, 1792, as the rule for the decision of the same, except so far as since repealed, altered, varied, or modified.

LEATHER AND HIDES.

Sole Leather.—Act for the Inspection of.

By C. Stat. 22 V. c. 51, § 1, boards of trades for Montreal and Toronto may appoint examiners of applicants for the office of inspector of sole leather. § 3. Inspectors to furnish security and be sworn. May appoint assistants. § 9. Inspectors to provide brands or marking instruments. § 11. Qualities to be known as No. 1, 2, 3. § 16. Inspectors removable for neglect of duty. § 17. Neglecting to inspect within two hours after notice (between sunrise and sunset)

to forfeit and pay to the applicant \$20 dollars over and above all damages. § 18. No inspector or assistant shall trade in leather of any description; under the penalty of \$40 for each offence, and dismissal from office. § 19. Any person fraudulently effacing any inspector's mark, or counterfeiting, or branding any mark either with the proper marking tools of such inspector, or with counterfeits, or who not being an inspector brands or marks any leather with the inspector's marks, or connives at or is privy to any fraudulent evasion of this act, shall for each offence incur a penalty of \$40. Any inspector who inspects or brands out of his limits, or hires out his marks to any person, or connives at or is privy to any fraudulent evasion or inspection of leather by others, shall for each offence incur a penalty of \$40, and be removed from office. § 20. Penalties under this act recoverable before any justice of the peace. § 22. Inspection not to be compulsory.

Raw Hides.—*Act to Regulate the Inspection of Raw Hides and Sole Leather, 27, 28 V. c. 21.*

§ 1. Boards of examiners to be appointed by the boards of trade for Quebec, Montreal, Kingston, Toronto, and Hamilton. § 3. Who shall examine applicants for the office of inspector. § 4. Inspectors to be appointed by the Governor at the request of any ten resident dealers. § 5. Inspectors to be sworn. § 6. And furnish securities. § 7. Inspectors may appoint assistants. § 11. Any inspector or assistant dealing in hides or leather to be forthwith removed from office.

Mode of Inspection.—§ 13. Inspection to be made at the store or warehouse of the inspector, or, if he think fit, at the store or warehouse of the owner. § 15. Inspectors may charge 10 cents for every 100 pounds weight of raw hides. § 16. May inspect harness leather, and certify the weight. § 17. Also red leather or mocassin leather. § 18. May inspect and measure all kinds of leather sold by the foot, and charge 2 cents for each side or piece. § 19. Any person, excepting the inspector or assistant, who shall stamp or number any of the raw hides, or skins above mentioned, and shall expose them for sale, shall be liable to a fine not exceeding \$20, but he shall be at liberty to mark on the same the weight thereof, with the words "not inspected;" and any person exposing for sale any raw hides or skins, with the weights marked, but without the words "not inspected," shall be liable to a fine not exceeding \$20.

Inspectors.—The inspectors of sole leather already appointed under the C. Stat. 51 V. c. 22, may act as inspectors under this act, provided they first obtain certificates of capacity from the board of examiners.

Branding.—§ 21. Stamps or marking instruments to be provided by the inspector, who shall brand, stamp, or mark immediately after inspection on both sides of each hide or piece of leather the initials of the name of the place of inspection and of the inspector. § 22. All brand or stamp-marks to be neat and legible, and made at one end of the hide or piece of leather, within a space not less than two inches long by one and a half inch broad.

Qualities.—§ 23. Sole leather to be divided into three classes, to be known as Nos. 1, 2, 3.—No. 1, representing the first quality. No. 2, second quality. No. 3, damaged and rejected articles. § 24. Red leather, or mocassin leather and harness leather to be marked or branded with the figures 1, 2, according to quality.

Brand Marks.—§ 25. To be in the form given.

Offences—Penalties.—§ 26. If any inspector or assistant knowingly and willingly gives to any bill of inspection an untrue and incorrect certificate of the weight or quality of any raw hide or leather by him inspected, or gives such a bill without a personal examination and inspection, he shall incur a penalty of not more than \$80 for each offence, and be dismissed from office.

§ 27. Any inspector or assistant refusing or neglecting, on application to him personally or by writing left at his dwelling-house, store, office or warehouse, on any lawful day, between sunrise and sunset, by any owner or possessor of raw hides or leather, (such inspector or assistant not being at the time employed in inspection elsewhere,) shall forthwith, or within two hours thereafter, to proceed to such inspection, shall for every such neglect or refusal incur a penalty of \$20, recoverable by the person so applying before any one justice, on the oath of one credible witness, other than the prosecutor, and shall also be liable for other damages. § 28. Any person who, with fraudulent intention, effaces from any raw hide or leather, having undergone inspection, all or any of the inspector's marks, or counterfeits or alters any such marks, or impresses or brands any mark purporting to be the mark of the inspector, either with the proper marking tools or with counterfeits, on any raw hide or side leather, or who (not being an inspector) brands or marks any raw hide or leather with the inspector's marks, or con-

nives at or is privy to any fraudulent evasion of this act, shall, for every such offence, respectively incur a penalty of not less than \$80; and any inspector who inspects without his limits, or hires out his marks to any person, or connives at, or is privy to any fraudulent evasion, or inspection by others, shall for every such offence incur a penalty of not less than \$80, and be removed from office.

Recovery of Penalties.—§ 29. Every penalty imposed by this act not exceeding \$40 may, unless otherwise herein provided, be recoverable by any inspector, or any other person suing for the same, in a summary way before any two justices for the place, in their ordinary or other sessions, or before the recorder's court, and in default of payment be levied by warrant of distress. § 30. Where such penalty exceeds \$40, then by bill, plaint, information or civil action in a recorder's court, or in any other court having jurisdiction to the amount, and levied by execution as in cases of debt. § 31. The moiety of all such penalties (except as herein otherwise applied) shall be paid to the treasurer of the municipality, and the other to the prosecutor, unless he be an officer of the corporation, the whole then to the corporation. § 32. Actions to be commenced within six months. § 34. Nothing in this act shall oblige any person to cause any raw hide or leather to be inspected; but if inspected the provisions of this act shall then apply.

LEGISLATIVE ASSEMBLY.

For its constitution, &c., see titles "*Constitution*," "*Parliamentary Representation*," and "*Elections*."

Members Indemnity for Expenses.

By C. Stat. 22 V. c. 3, § 18, in each session of the Provincial Parliament there shall be allowed to each member of the Legislative Council, or of the Legislative Assembly, attending at such session *six dollars* for each day's attendance, if the session do not extend beyond thirty days, then there shall be payable to each member of the Legislative Council or Assembly attending at such session a sessional allowance of \$600 and no more.

§ 21. And *ten cents* per mile for going and' coming.

By the 23 V. c. 16, a deduction at the rate of five dollars per day to be made in case of non-attendance except in case of no sitting of the house, or sickness.

Speaker.

By Con. Stat. 22 V. c. 4, whenever the speaker from ill-

ness or other cause finds it necessary to leave the chair during any part of the sittings on any day, he may call upon any member to take the chair and to act as speaker during the remainder of such day, unless the speaker shall himself resume the chair before the close of the sittings for that day.

LEGISLATIVE COUNCIL.

See "*Parliamentary Representation.*"

LIBEL.

A libel has been usually defined to be any scandal *written* or *printed*, or otherwise expressed by symbols—*Lamb* 64; and taken in its largest sense, signifies any *written* or *printed* paper, picture, or the like, of an immoral or illegal tendency; and in a more limited sense, a malicious defamation of any person either living or dead, made public either by printing, writing, signs or pictures, in order to provoke to wrath, or expose him to public hatred, contempt and ridicule.—4 *Bl. Com.* 150. But words *spoken*, however malicious and untrue, and actionable at law, will not amount to libel.

1. *Of Libels which affect the public in general.*

All publications blaspheming the Almighty, or turning the Christian religion into ridicule; all publications tending to vitiate and corrupt the minds and morals of the people; any attempt made to degrade and vilify the constitution, and tending to circulate discontent among the members of the community and stir up insurrection; any written or printed matter tending to vilify or disgrace the king, to lessen him in the esteem of his subjects, weaken the government, or raise jealousies between him and his people—are more or less of a libellous tendency. So any publication reflecting in an improper manner upon either house of parliament, is a libel at common law. To hold up the king's government to contempt and hatred, is also punishable as a libel.—*R. v. Tuchin, Holt's Rep.* 424. And any publication tending to degrade and defame the sovereign or ruler of a foreign state upon terms of amity with this country is a libel at common law.

2. *Of Libels on Private Individuals.*

Not only charges of a flagrant nature are libellous, but also those which place an individual in an ignominious light, and bring him into hatred, contempt, or ridicule, on the ground that all such libels have a direct tendency to a breach

of the peace—4 *Bl. Com.* 150. General imputations, also, on a body of men, though no individuals are pointed out, are indictable.—2 *Barnard*, 138, 166. And a malicious defamation of a *deceased* person, if published with intent to vilify his memory and injure his posterity, is indictable as a libel.—*R. v. Topham*, 4 *T. R.* 126. Any scandal likewise expressed by indirect means is a libel, as well as that which is expressed in direct terms: thus to fix up a gallows against a person's door, conveys a meaning as obvious to common sense as that which is expressed by writing or printing.—1 *Haw., c.* 73, § 2, 3. So a defamatory writing expressed by the *initials* only of a person's name, is as complete as if the whole name had been expressed.—1 *Haw., c.* 73, § 5.

By U. C. Stat. 22 V. c. 103, § 1, upon the trial of any indictment for libel, the jury may give a general verdict of "guilty," or "not guilty," upon the whole matter in issue, without being required to find the defendant guilty merely on the proof of publication, and may also find a special verdict if they think fit; and the defendant may move in arrest of judgment, on such ground and in such manner as he might have done before this act. § 3. In an action for defamation the defendant may give in evidence as mitigation of damages, that he made or offered a written or printed apology before the commencement of such action. § 4. Or defendant may plead in an action for libel, that the same was inserted in the newspaper without actual malice, and without gross negligence, and that before the commencement of such action, or at the earliest opportunity afterwards, he inserted in such newspaper a full apology, or had offered to publish such apology in any newspaper to be selected by the plaintiff. § 5. With liberty also to pay into court a sum of money by way of amends. § 6. Any person who publishes or threatens to publish, any libel, or directly or indirectly 1. threatens to print or publish or, 2. proposes to abstain from printing or publishing 3. or offers 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 person, or with intent to induce any person to confer or procure for any person any appointment, or office of profit or trust, such offender shall upon conviction, be fined in a sum not exceeding \$100, and be imprisoned in the common gaol for any period not exceeding *two years*. § 7. Any person who maliciously publishes any defamatory libel,

knowing the same to be false, shall, being convicted thereof, be fined not more than \$200 and be imprisoned in the common gaol not exceeding one year. § 8. Any person who maliciously publishes any defamatory libel, shall, upon conviction, be fined not exceeding \$100 or be imprisoned not exceeding six months *or both* as the court may award. § 9. To any indictment for a defamatory libel the defendant may plead in defence the truth of the matters charged, alleging that it was for the *public benefit* that the same should be published. § 10. Without such plea the truth of such matters shall not be enquired into. § 11. If pleaded and the defendant convicted, the court may consider the matter in pronouncing sentence. § 13. Under the plea of "not guilty," it shall be competent to the defendant to prove that such publication was made without his authority, consent or knowledge, and that such publication did not arise from want of due care or caution on his part. § 14. In case of any indictment for libel by a private prosecutor, if judgment be given against the defendant he shall be liable to the prosecutor's costs, and *vice versa* the prosecutor shall be liable to the defendant's costs. § 15. Such costs to be taxed by the clerk of the Court of Queen's Bench or Common Pleas, or the deputies, where the trial is had, and recoverable by rule or order of any judge of the superior court, or of the county court where the indictment was tried.

3. *Of the Publication.*

No one is punishable for a libel unless he actually publish it to the world. Reading a libel in the presence of another without any previous knowledge of its libellous qualities, does not amount to publication; but if a man, *knowingly*, lends or shows it to another, or repeats it in the presence of others, this is a publication—1 *Haw.*, c. 73; and not only he who publishes the libel himself, but also he who procures another to publish it, is guilty of the publication.—1 *Haw.*, c. 73, § 10. So, the sale of a book in a book-seller's shop by his shopman, is *prima facie* evidence of publication by the master.—1 *Barnard*, 306.

4. *Jurisdiction.*

In matters of libel, justices of the peace have an original jurisdiction; and a party charged with the publication of a libel may be held to bail by a justice of the peace to appear at the sessions or assizes.—*Butt. v. Conant*, 1 *Brod. & B.* 548.

Information against a Party for Libel.

County of } The information and complaint of A. B.
to wit. } of in the county of taken on oath
this day of 18 , before J. P., Esq., one of her
Majesty's justices of the peace for the said county. The said
informant saith, that in a certain printed book (or newspaper)
printed and published at in the said county, by one G. M.,
and called [*here set out the name or title of the book or paper*] the
following libellous allegation is contained, of and concerning this
informant, [*here insert the libellous passage literatim,*] and the
same informant saith, that he hath been informed, and verily be-
lieves the said book, &c., containing the aforesaid libellous matter,
was printed and published by the said G. M., with a view to
injure, vilify, and defame this informant, and to bring him into
public hatred, ridicule and contempt; wherefore he prayeth a
warrant against the said G. M., and that he may be further dealt
with according to law.

Sworn before me.

Recognizance to Appear at the Sessions.

To be taken in the usual form.—The condition of this recog-
nizance is such, that if the said G. M. shall and do personally
appear at the next general quarter sessions of the peace [or assizes
and general gaol delivery] to be holden in and for the said county,
and then and there answer to a bill of indictment to be preferred
against him, the said G. M., for a libel on one A. B. of in
the said county , and not depart the court without leave,
then this recognizance to be void.

Acknowledged before, &c.

Indictment for a Libel. (Archbold.)

County of } The jurors for our lady the Queen upon their
to wit. } oath present, that J. S, late of the township of
of , in the county of , schoolmaster, contriving, and
unlawfully, wickedly, and maliciously intending to hurt, injure,
vilify, and prejudice one J. N., and to deprive him of his good
name, fame, credit, and reputation, and to bring him into great
contempt, scandal, infamy, and disgrace, on the day of
in the year of the reign of our sovereign lady Victoria, with
force and arms, at the township aforesaid, in the county aforesaid,
unlawfully, wickedly, and maliciously did write and publish, and
cause and procure to be written and published, a certain false,
scandalous and malicious libel, in the form of a letter directed to
the said J. N. [*or if the publication were in any other manner, omit
the words 'in the form,' &c.,*] containing divers false, scandalous,
and malicious matters and things, of and concerning the said J.
N., and of and concerning, &c., [*here insert such of the subjects of
the libel as it may be necessary to refer to by the innuendoes, in set-*

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ting out the libel,] according to the tenor and effect following, that is to say, *here set out the libel, together with such inuendoes as may be necessary to render it intelligible,]* to the great damage, scandal and disgrace of the said J. N., to the evil example of all others in the like case offending, and against the peace of our lady the Queen, her crown and dignity.

LINE FENCES AND WATER COURSES.

By U. C. Stat. 22 V. c. 57, § 1, each of the parties occupying adjacent tracts of land shall make, keep up and repair a just proportion of the division or line fence on the line dividing such tracts, and equally on either side thereof. § 2. Any fence coming within the meaning of a lawful fence in any by-law of the municipal council in that behalf, is to be considered a lawful fence, and when no such by-law exists the fence viewers, when called upon, are to exercise their own judgment and decide what they consider a lawful fence. § 3. The owner of the whole or part of a division line fence, which forms part of the fence inclosing the occupied or improved land of another person shall not take down or remove any part of such fence, 1, without giving *twelve months'* previous notice, 2, to the owner or occupier after demand in writing and refusal to pay, 3, such sum as three fence viewers, or a majority in writing determine to be the reasonable value thereof. § 4. The occupier of vacant land when inclosed shall pay the owner of the division or line fence a just proportion of the value thereof. § 5. Water fences to be made in equal parts. § 6. When lands are divided by a river, brook, pond or creek. the fence to be set up accordingly, as may be just. § 7. Each party to open a just proportion of any ditch or water-course required to let off water from swamps or low miry lands, according to their several interests. § 8. Decision to be left to three fence viewers or a majority of them in case of dispute. § 9. Award of the fence viewers to be in writing and signed by them and transmitted (or a certified copy) to the clerk of the municipality, and a copy delivered to the parties requiring the same. § 10. Either party may notify the fence viewers of any dispute, and name the time and place of meeting, giving notice at the same time to the other party. § 11. Fence viewers to attend and examine the premises, and hear the parties and their witnesses and decide the matter in dispute. § 12. And decide what time each party shall have to open his share of the ditch or watercourse, and if it appears to the fence viewers that the owner of adjacent land

is not sufficiently interested in opening such ditch or water-course, they may award the same to be done at the expense of the other party, who may do so across the tract at his own expense without being a trespasser. § 13. In case of fence viewers being called upon afterwards from any material change of circumstances to review their award, and find no reason for alteration, the cost of reference to be borne by the parties requiring such review. § 14. In case of neglect or refusal upon demand in writing to make or keep open the share of the ditch or water-course awarded within the time allowed, the party after completing his own share may open the share of the other parties and recover the amount, not exceeding *forty cents* per rod from the parties in default. § 15. If after an award of fence viewers, and demand in writing by a party occupying land separated by a river, pond, or creek, either party neglects or refuses for *thirty* days to make or repair his proportion of the fence, the other party, after completing his own share, may make or repair that of the other party, and recover from him the value thereof. § 16. The cost of making or repairing fences, ditches or water-courses to be ascertained as follows: 1. Any party interested may apply to a justice of the peace residing within the municipality or township, or if none there, then to a justice of the peace residing in the adjacent municipality or township, who shall summon *three* fence viewers of the municipality to view and appraise the same. 2. Also summon the party in default. 3. Fence viewers to be personally served at least *four* days before the day named for their attendance. 4. The justice may also summon witnesses at the request of either party. 5. Who may be sworn by the fence viewers as follows:

“You do solemnly swear that you will true answer make to such questions as may be asked of you by either of the fence viewers now present touching the matters which they are now to examine and determine.

“So help you God.”

6. The fence viewers, or any two of them, after examining the fence and receiving evidence are to determine whether the plaintiff is entitled to recover any, and what sum, from the defendant. 7. In case the part which either party should make or repair had not been previously determined by award, the fence viewers then present, or any two of them, shall determine the same; and what distance of fence the defendant should have made or repaired.

8. And give either party (if required) a copy of their determination. 9. And report their determination in writing to the justice, such determination to be final. 10. The justice shall transmit the same to the clerk of the Division Court having jurisdiction, and a certified copy to the clerk of the municipality to be entered on record. 11. After *forty* days, the clerk of the division court shall issue execution against the goods of the defendant in favour of the plaintiff for the amount he is entitled to recover with costs. The following fees and no more to be taken under this act:

To the Justice of the Peace.

For summons to fence viewers	25 cents.
For subpoena, which may contain three names.....	25 “
For transmitting copy of fence viewer's determination to division court and to clerk of the municipality	25 “

To the Fence Viewers.

One dollar per day each. If less than half a day employed, 50 cents.

To the Bailiff or Constable employed.

For serving summon or subpoena.....	20 cents
<i>To witnesses</i> , per day, each	50 “
Mileage, per mile, <i>six</i> and <i>two-third</i> cents	

§ 18. The amount paid for disbursements and proved by affidavit before the clerk of the Division Court, to be included in the execution.

LOCK-UP HOUSES.

By the Municipal Act, U. C. Stat. 22 V. c. 54, § 409, the council of every county may establish a lock-up house, or lock-up houses within the county, and provide for the salary or fees to be paid to the constable in charge. § 410. To be placed in charge of a constable specially appointed by the magistrates in general quarter sessions. § 411. Any justice of the peace of the county may direct by warrant in writing under his hand and seal the confinement in a lock-up house within his county, of any person charged on oath with any criminal offence, until examined and dismissed, or fully committed for trial to the common gaol; also the confinement in such lock-up house, not exceeding *twenty-four* hours, of any person found in a public street or highway in a state of intoxication, or convicted of desecrating the Sab-

bath; and generally any person convicted on view of such justice, or summarily convicted before any justice of the peace, of any offence cognizable by him or them, and liable to imprisonment therefor under any statute or municipal by-law. § 412. The expense of conveying any prisoner to, and keeping him in a lock-up house, shall be defrayed in the same manner as the expense of conveying him to and keeping him in the common gaol. § 414. The municipal council of any city, town, and incorporated village, may by by-laws establish maintain and regulate lock-up houses for the detention and imprisonment of persons sentenced to imprisonment for not more than *ten* days under any by-law of council; and of persons detained for examination on a criminal charge, and of persons detained for transmission to any common gaol or house of correction either for trial or in the execution of any sentence.

LORD'S DAY.

By U. C. Stat. 22 V. c. 104, § 1, it is not lawful for any merchant, tradesmen, artificer, workman, mechanic, labourer or other person on the Lord's day to sell or publicly shew forth or expose or offer for sale, or to purchase any goods, chattels or other personal property, or any real estate whatsoever, or to do or exercise any worldly labour, business, or work of his ordinary calling, (conveying travellers, or her majesty's mail by land or by water, selling drugs and medicines, and other works of necessity and works of charity only excepted.) § 2. Or hold, convene, or attend any public political meeting, or to tittle or allow or permit tipping in any inn, tavern, grocery, or house of public entertainment, or to revel, or publicly exhibit himself in a state of intoxication, or to brawl or use profane language in the public streets or open air, so as to create any riot or disturbance or annoyance to her Majesty's peaceable subjects. § 3. Or play at skittles, ball, foot ball, racket, or any other noisy game, or to gamble with dice or otherwise, or to run races on foot, or on horseback, or in carriages, or in vehicles of any sort. § 4. Or except in defence of his property from any wolf or other ravenous beast, or a bird of prey, on that day, to go out hunting or shooting, or in quest of, or to take, kill, or destroy, any deer or any other game or any wild animal, or any wild fowl or bird, or use any dog, gun, rifle, or other engine, net or trap, for the above mentioned purposes. § 5. Or to go out fishing, or to take, kill or destroy any fish, or to use any gun, fishing rod, net or other engine

for that purpose. § 6. Or to bathe in any exposed situation in any waters within the limits of any incorporated city or town, or within view of any place of public worship or private residence. § 7. Any person convicted before a justice of the peace of any act hereinbefore declared not to be lawful upon the oath or affirmation of one or more credible witnesses, or upon view had of the offence by the said justice himself, shall for every such offence be fined in a sum not exceeding forty dollars nor less than one dollar, with costs. § 8. All sales and purchases, and all contracts and agreements for sale or purchase of any real or personal property whatsoever made on the Lord's day shall be null and void. § 9. The accused party may be summoned by any justice, and if he fails to appear at the time and place named in the summons, then (upon proof of due service of such summons, by delivering or leaving a copy at his house or usual or last place of abode, or by reading the same over to him personally) the said justice may either proceed to hear and determine the case *ex parte* or issue his warrant for apprehending and bringing such person before himself or some other justice within the county or municipality; and the justice before whom he is brought shall proceed to hear and determine the case, or the said justice on view of the offence may verbally order, or if on the complaint of a third party then may in writing order the offender to be at once committed (although it be on the Lord's day) to the common gaol of the place, or into other safe custody, there to remain until the morrow, or some other day, according to circumstances, until the case is heard and disposed of. § 10. The conviction to be drawn up in the following form, or to the same effect:

Form of Conviction.

Be it remembered, that on the day of , in the year of our Lord , at , in the county of (or at the city of (as the case may be), A. B. of , is convicted before me, C. D., one of her Majesty's justices of the peace for the said county, (or city, or as the case may be,) for that he the said A. B. did (specify the offence, and the time and place when and where the same was committed, as the case may be); and I, the said C. D., adjudge the said A. B. for his offence to pay (immediately, or on or before the day of) the sum of , and also the sum of for costs; and in default of payment of the said sums respectively, to be imprisoned in the common gaol of the said county or city (as the case may be) for the space of months, unless the said sums be sooner paid; and I direct that the said sum of (the penalty) shall be paid as follows: that is to say,

one moiety thereof to the party charging the offence, and the other moiety to the treasurer of the county, (*naming the one in which the offence was committed, or chamberlain of the said city, as the case may be*), to be by him applied according to the provisions of the act [*insert the title of this act*]. Given under my hand and seal, the day and year first above mentioned.

C. D., J. P. [L. s.]

§ 11. Conviction not to be quashed for want of form.
 § 12. Penalties and costs to be levied by distress and sale; and in case of insufficient distress the offender may be committed to the common gaol for any term not exceeding *three* months, unless such fine and costs be sooner paid. § 13. Prosecutions to be within one month. § 14. Appeal allowed to the general quarter sessions or recorder's court within *six* days after conviction, and *ten* days before the court, to be held not sooner than twelve days after conviction. § 15. Convictions to be forwarded to the sessions. § 16. Actions against any person acting in the execution of this act to be commenced within *six* months, and one month's previous notice in writing to be given; the general issue may be pleaded, with tender of amends, and full costs to defendant in case of decision in his favour. § 18. Half the penalty to go to the informer, and the other half to the municipality. § 19. This act not to extend to Indians.

By U. C. Stat. 22 V. c. 49, § 91, any person with horse or carriage going to, or returning from, his usual place of religious worship on the Lord's day shall be exempt from toll. By C. Stat. 22 V. c. 102, § 7, search warrants and other warrants may be issued on Sunday.

By the Municipal Act U. C. Stat. 22 V. c. 54, § 282, the municipal authorities in counties, towns and cities are authorised to make by-laws for enforcing the due observance of the Sabbath according to law.

LOTTERIES.

By C. Stat. 22 V. c. 95, § 1, if any person makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised, or published, any proposal, scheme, or plan for advancing, lending, giving, selling, or in any way disposing of any property, either real or personal, by lots, cards, tickets, or any mode of chance whatever, or aids or assists in the sale, barter, exchange, or other disposal of, or offers for sale, barter or exchange any lot, card, ticket, or other means or device, for advancing, lending, giving, selling, or otherwise disposing of any property, real or

personal, by lots, tickets, or any mode of chance whatever, such person shall, upon conviction thereof, before any mayor, alderman, or other justice of the peace, upon the oath of any one or more credible witnesses, or upon confession thereof, forfeit the sum of \$20 for each and every such offence, together with costs, to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of any such mayor, alderman, or other justice of the peace of the city, town, county or place where such offence has been committed, which said forfeiture shall be applied half to the informer, and the other half shall be paid to the treasurer or chamberlain of the municipality in which such offence was committed. § 2. Any person buying, bartering, exchanging, taking or receiving any such lot, card, ticket, or other device as in the first section mentioned aforesaid, shall, upon conviction thereof in like manner as therein mentioned, forfeit the sum of \$20 for each offence, to be recovered and applied as aforesaid. § 3. Any sale, loan, gift, barter or exchange of any real or personal property, by any lottery, ticket, card, or other mode of chance whatever, depending upon, or to be determined by chance or lot, shall be void to all intents and purposes whatsoever, and all such real or personal property so sold, lent, given, bartered or exchanged, shall be forfeited to such persons as shall sue for the same by action, or information in any court of record in this province. § 4. No such forfeiture shall affect any right or title to such real or personal property acquired by any *bona fide* purchaser for valuable consideration without notice. § 5. If any person so convicted as aforesaid, has not sufficient goods and chattels whereon to levy the penalties authorised by this act, or does not immediately pay the said penalties, or give security for the same, such mayor, alderman or justice convicting such person, shall commit him to the common gaol of the county or district in which the offence was committed, for a period not exceeding three months, unless such fine and costs be sooner paid. § 6. The provisions of this act shall extend to the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and to the sale or offer for sale of any ticket, chance or share in any such lottery, or to the advertisement for sale of such ticket, chance or share. § 7. Interpretation of the terms "personal property" and "real property" and what shall be included therein. § 8. Appeal against convictions as in other cases of summary conviction.

§ 9. This act not to extend to the division of property held by joint tenants or tenants in common.

LUNATIC ASYLUM, PROVINCIAL.

By U. C. Stat. 22 V. c. 71, § 1, the provincial lunatic asylum in Toronto, with all the property real and personal, and all its effects belonging to it shall be vested in the Crown. § 2. Its financial affairs shall be managed by a "Bursar," to be appointed by the Governor. § 4. Who shall also appoint a medical superintendent, who shall reside in the asylum, and shall direct and control the medical and moral treatment of the patients, hire and discharge keepers and servants, watch over the internal management and maintain the discipline and due observance of the by-laws of the institution, report the condition thereof to the visiting commissioners, at each visit, and annually to the Governor, and to each house of parliament within ten days after the opening of each session. § 5. No person shall be received into the institution without a certificate from *three* medical licentiates, signed and verified by the reeve of the township or incorporated village, or the mayor of the city, or incorporated town from which the lunatic may have been sent, and in the absence of the reeve or mayor, by the deputy, or or other person who shall for the time being be authorised to act in the place of the reeve or mayor. § 6. Such certificate shall state that the subscribing medical licentiates at the same time, and in the presence of each other, examined the patient, and after due enquiry into all necessary facts relating to his case found him to be a lunatic. § 7. Such certificate shall be sufficient authority to any person to convey the lunatic to the said asylum, and to the authorities there to detain him so long as he shall continue insane. § 8. In case any lunatic sent to the asylum shall be under twenty-one years of age, and has a father or mother able to pay for his maintenance, or a guardian or committee, the bursar and medical superintendent shall send a copy of the certificate hereinbefore mentioned, attested under their hands, to the father, mother, guardian, or committee, as the case may be, with a certificate of the admission of such lunatic, and of the amount payable per quarter to the asylum by the by-laws thereof. § 9. Such amount to be demanded quarterly in January, April, July, and October, by the bursar and medical superintendent from the father, mother, guardian, or committee. § 11. In case of non-payment said bursar may apply to the county court judge upon affidavits,

and upon a rule to shew cause, being satisfied that the father or mother of the lunatic is able to pay for his maintenance, or that such guardian or committee is in possession of property of the lunatic; the bursar shall be entitled to an order for the amount then due, and the costs, and a writ of execution may issue thereon. § 12. Or the judge may, if he thinks fit, direct an issue to be tried before a jury previous thereto. § 13. If any lunatic be possessed of property and have no guardian or committee, and if such property, in the opinion of the bursar, be more than sufficient to maintain the family, (if any,) of such lunatic, the bursar may take possession of the same, or a sufficient part, with full power to manage and appropriate, take or recover possession of, lease, mortgage, *sell* and convey all or any part in the name of the lunatic, or as his committee under this act, as fully as if such lunatic could or might do, if of full age, and *compos mentis*. § 14. Before any sale the bursar shall report the case and terms of proposed sale to the county court judge where the property is situate for his approval. § 15. The bursar shall be accountable and subject to the same responsibility as any trustee, guardian or committee would be. § 16. In case of disputed right to property the county court judge may cause an inquisition to be held to determine such right. § 17. The Governor may fix the salaries of the medical superintendent not exceeding \$2000, and bursar not exceeding \$1200.

By C. Stat. 22 V. c. 110, § 1, the Governor may appoint five fit persons to be inspectors of all public asylums, hospitals, common gaols, and other prisons in this province. § 2. Meetings of the board provided for. § 23. The inspectors shall at least four times in the year thoroughly examine the manner in which the institution is conducted. § 24. Frame by-laws for the peace, welfare, and good government of the same. § 25. (a) Keep an exact record of all their proceedings. § 26. And with their annual report transmit the reports of the medical superintendent and bursar.

LUNATIC ASYLUM, PRIVATE.

By C. Stat. 22 V. c. 73. § 1. Justices of the peace of any county in general quarter sessions are authorised to license any person to keep a house for the reception of lunatics. § 2. Three or more justices to be annually appointed with one physician or more as visitors. § 3. Who shall at their first meeting take the oath of office prescribed. § 4. Vacancies

(a) As amended by 24 V. c. 11, § 1.

to be supplied by the justices in sessions. § 5. A list of such visitors within *fourteen* days from their appointment to be published by the clerk of the peace, and sent to the Governor within *three* days after appointment. § 6. Under a penalty of \$10 for every default. § 7. The clerk of the peace, or some other person, to be appointed by the justices in sessions, to be clerk to the visitors as the justices in sessions shall appoint. § 8. Every such meeting to be held privately, and so that no proprietor, superintendent, or person interested or employed in or about any house to be visited shall have notice of such intended visitation. § 9. Clerk to take a certain oath of office. § 10. And the name of such clerk within *fourteen* days after his appointment shall be published by the clerk of the peace, and within *three* days communicated to the Governor. § 11. Under a penalty not exceeding \$10. Clerk to be allowed such salary as the justices shall direct. § 12. Visitors' clerk may have an assistant, who shall also take the oath of office prescribed. § 14. No person shall act as a visitor, or clerk, or assistant-clerk, or act in granting licenses, who shall within one year next preceding be directly or indirectly interested in any such licensed house. § 15. And no physician, being a visitor, shall sign any certificate for the admission of any patient in any such licensed house or hospital, unless directed to visit such patient by the person upon whose order he has been received into such house or hospital, or by the provincial secretary, chancellor, or vice-chancellors, committee, or by a judge of the superior court. § 16. Any visitor, clerk, or assistant-clerk becoming interested, after his appointment, shall be disqualified to act. § 17. And if continuing to act shall be guilty of a misdemeanor. § 18. If any physician, being a visitor, shall sign any certificate for admission, or shall professionally attend any such patient (except as aforesaid) he shall forfeit for each offence \$200. § 19. Every person desiring to have a house licensed for the reception of lunatics shall give notice to the clerk of the peace *fourteen* clear days before the sessions. § 20. With the name, place of abode, &c., of the party, or of the superintendent who is to reside therein. § 21. Such plan to be laid before two justices, accompanied by a plan of such house, and a statement of the number of patients proposed to be received; and whether for male or female patients, or both. § 23. Superintendent removable upon notice to the visitors. § 25. No alteration to be made in the house without notice and consent in writing of *two* visitors.

§ 26. Any person wilfully giving an untrue or incorrect notice, plan, or statement, or description to be guilty of a misdemeanor. § 27. Clerk of the peace to send a copy to the provincial secretary of any such license granted within *fourteen* days afterwards. § 28. Under a penalty not exceeding \$80. § 29. Applications for renewal of license to be accompanied with statement of names and number of patients of each sex then detained. § 30. Under a penalty of \$40, and every false statement to be a misdemeanor. § 31. License to be under the hands and seals of three or more justices, the chairman being one, and in the form in the schedule to the act; and shall be granted for a period not exceeding *thirteen* months. § 32. Persons obtaining licenses shall give security in \$400, with two sureties in \$200 each, or one surety in \$400. § 33. Rates to be charged for such licenses, viz., \$2 for every proposed patient, but not less than \$60 in the whole. § 35. Moneys derived from licenses to be applied in payment of clerk's salary, and other expenses. § 36. Annual account of receipts and payments signed by two visitors at the least to be laid by the clerk of the peace before the sessions. § 37. In case of incapacity of the persons licensed by sickness or otherwise, or in case of death, such license may be transferred by *three* justices endorsing the same to the superintendent therein, or to such person as such justices shall approve. § 39. Provision for the transfer of patients to a new building in certain events. Description of such new building, with plans, &c., to be first given. §§ 40, 41. The Governor authorised to revoke any license upon the recommendation of a majority of the justices in sessions. § 42. Copy of revocation to be sent to the proprietor or superintendent, and published in the *Gazette*. § 43. No person to be received into any such licensed house as a lunatic, boarder or lodger, without an order under the hand of some person according to the form and particulars required in schedule B.; nor without the medical certificates according to the form in schedule C. of *two* physicians, (not partners,) nor brothers, nor father and son, each of whom shall separately have examined the patient not more than *seven* clear days previous to his reception into the house, and shall have signed and dated the same on the day of examination: any person receiving or detaining any person as aforesaid without such order and medical certificates, and any physician who knowingly signs any such, untruly stating any of the particulars, shall be guilty of a misdemeanor. § 44. The physician signing shall also specify the facts

upon which he has formed his opinion that the person is a lunatic or insane person, idiot, or person of unsound mind.

§ 45. No person shall receive to board or lodge in any house not licensed under this act, or take charge of any insane person, without first having obtained the medical certificates required by this act for admission into a licensed house. § 46. Every person who receives any such insane person to board or lodge, &c., shall within *three* months transmit to the clerk of the visitors of the district or county a copy of such medical certificates, sealed and endorsed "private return," and annually on the 1st of January, or within *seven* days after transmit to such clerk, a certificate signed by two physicians describing the then actual state of mind of such insane person to be endorsed "private return," and every person who shall fail herein shall be guilty of a misdemeanor. § 47. Under special circumstances a patient may be received into such licensed house, upon such order as aforesaid, with the certificate of *one* physician only, provided that such order state the special circumstances which may have prevented the examination of the party by *two* physicians. But in such case such certificate shall be signed by some other physician, not connected with the house, who shall have specially examined the party within *three* days after admission. § 48. Every person, who having received a patient upon the certificate of *one* physician only, permits him to remain beyond *three* days without such further certificate shall be guilty of misdemeanor. § 49. No physician interested in, or a regular professional attendant on a licensed house, shall sign any certificate for reception: nor shall any physician related to or connected with the party signing the order for admission sign any certificate for reception. The offender in any such case shall be guilty of misdemeanor. § 50. Every proprietor or superintendent receiving a lunatic into a licensed house, shall within *two* days make an entry thereof in the "book of admissions" according to the form in schedule D., under a penalty not exceeding \$10. Any person knowingly making an untrue entry of particulars shall be guilty of misdemeanor. § 50. The form of mental disorder of the patient shall be entered in the book of admissions by the medical attendant within *seven* days after admission, under a penalty not exceeding \$10. § 52. Proprietor or superintendent after *two* clear days, and before the expiration of *seven* days from the admission of any patient, shall transmit a copy of the order and medical certificates, and a notice and statement as in

schedule E., to the visitors' clerk, and in case of neglect shall be guilty of misdemeanor. § 53. In case of the escape of any patient the proprietor or superintendent shall within *two* clear days next after transmit a notice thereof to the visitors' clerk, stating the christian and surname of the patient, and his or her state of mind, and the circumstances connected with such escape; and the like notice if the patient shall have been brought back, and when brought back, and the circumstances, and whether with or without a fresh order and certificate, under the penalty of \$40. § 54. An entry shall be made by the proprietor or superintendent within two clear days after the removal, discharge or death of any patient according to the form in schedule F., and he shall also within the same two days transmit a written notice thereof, and the cause of the death, removal or discharge of such patient, if known, to the visitors' clerk according to the form in schedule G., and in case of default or untrue statement, such proprietor or superintendent shall be guilty of misdemeanor. § 55. In case of the death of any patient in the house, a statement of the cause, with the name of the person present, shall be drawn up and signed by the medical attendant of the house, and a copy duly certified by the proprietor or superintendent transmitted to the nearest coroner, and to the visitors' clerk, and to the person who signed the order for such patient's confinement, within forty eight hours after his death, under a penalty not exceeding \$200. § 56. Any superintendent, officer, nurse, attendant, servant or other person employed in any way abusing or ill treating, or wilfully neglecting any patient shall be guilty of misdemeanor. § 57. And in the event of the release of any person who shall consider himself to have been unjustly confined, a copy of the order and certificates upon which he was confined shall, at his request, be furnished to him or his attorney by the visitors' clerk, without fee or reward. And the Governor may direct the prosecution on the part of the Crown of any person concerned in the unlawful taking of any of her Majesty's subjects as an insane patient, or any person concerned in the neglect or ill-treatment of any patient.

Medical Attendance.

§ 58. In every house licensed for 100 patients there shall be a physician resident as superintendent or medical attendant thereof, and every house licensed for less than 100, and more than 50, (in case such house shall not be kept by

or have a resident physician,) shall be visited daily by a physician; and every house licensed for less than 50 patients (in case the same shall not be kept by a resident physician,) shall be visited *twice* in every week by a physician. But the visitors may direct such house to be visited by a physician at any other time or times, not oftener than once a day. § 59. When any house is licensed for less than *eleven* lunatics, any two of the visitors may permit such house to be visited by a physician at greater intervals, but not greater than once in every two weeks. § 60. Every visiting physician shall once in every week (or when distant intervals are permitted, then on every visit) enter and sign in the "medical visitation book" a report shewing, 1, the date thereof, 2, the number, sex, and state of health of all the patients, 3, the christian and surname of every patient under restraint, or in seclusion, or under medical treatment since the date of last report, 4, the condition of the house, and every death, injury, and act of violence affecting any patient since the last report, according to the form in schedule H., under the penalty of \$80; and any untrue statement in such report shall be a misdemeanor. § 61. The mental state and bodily condition and medical treatment of each patient shall be entered by the resident or attendant physician in the "case book," copies of such entries to be furnished to the visitors if required, under a penalty for neglect not exceeding \$40. § 62. Every licensed house shall be visited by *two* at least of the visitors (one a physician) four times at least in every year, at such times as the justices shall direct. § 63. And such visitors shall inspect every part of the house and ground, &c., appurtenant, and see every patient, and enquire if any under restraint, and why, and inspect the order and certificates for reception, and enter a minute in the "visitors' book" of, 1, the then condition of the house and of the patients, 2, and the number under restraint with reasons thereof, 3, and any irregularity in the order or certificates, 4, and whether previous suggestions (if any) have been attended to, 5, and any observations they may deem proper. § 64. The proprietor or superintendent shall shew to the visitors every part of the house, &c., and any concealment, refusal or neglect, shall be a misdemeanor. § 65. Visitors to enquire, 1, where divine service is performed therein, 2, what occupations or amusements are provided for the patients, 3, whether any system of coercion has been adopted and the result thereof, 4, as to the classi-

fication of patients, 5, and such other enquiries as they may think expedient. § 67. Any proprietor or superintendent not giving full and true answers to be guilty of misdemeanor. § 69. The proprietor or superintendent shall lay before the visitors, 1, a list of all the patients in the house, 2, the books required by this act to be kept, 3, all orders and certificates since the last visitation, 4, the license then in force, 5, and all such other orders, certificates and documents relating to any of the patients as they shall require. § 68. A copy of the plan given to the justices on the application for a license, shall be hung up in some conspicuous part of the house, also a copy of this act bound up in the "visitors' book," and the visitors shall enter therein the result of their inspections and enquiries, with such observations as they shall think proper: there shall also be kept in such house a "patients' book," and the visitors shall enter therein their observations respecting the state of mind or body of any patient. § 69. The proprietor or superintendent shall, within *three* days after every such visit, transmit a true copy of the entries made by the visitors in the "visitors' book" to the visitors' clerk. § 70. To be laid before the justices on application for the renewal of the license. § 71. Under a penalty of not exceeding \$40. § 72. Any two visitors may inspect the premises by night, as they shall think fit. § 73. Patients may be removed or discharged by order in writing, signed by the party signing the order for admission. § 74. And in case of his incapacity, or absence, or death, the nearest of kin of the patient may give direction for his discharge or removal. § 75. Patient not to be discharged or removed if certified to be dangerous and unfit to be at large, without consent of the visitors. § 76. Patients may be transferred to another asylum under certain regulations. § 77. Any two of the visitors (one being a physician) may make special visits, and after two such visits, if it appears to them the patient is detained without sufficient cause, may order his discharge. § 78. such order to be signed by them, but not until they have examined the medical attendant as to his opinion, in case he shall tender it. § 79. If the visitors shall discharge such patient, and such medical attendant shall furnish them with his reasons in writing against such discharge, they shall forthwith transmit such statement to the visitors' clerk. § 80. Not less than seven days to intervene between the first and second of such special visits. § 81. Powers of discharge not to extend to criminals. § 82. In-

formation to be furnished upon enquiry as to any particular patient confined in the house. § 83. Any one of the visitors may give an order for the admission to any patient of any friend or relative (or of any medical or other person whom they may desire) to see such patient. § 85. And any proprietor or superintendent refusing admission in such case shall for every such refusal forfeit not exceeding \$80. § 86. The proprietor or superintendent, with the consent in writing of two visitors, may send or take, under proper control, any patient to any specified place for the benefit of his health. § 87. When any patient shall be removed temporarily into any new house, and shall escape and be re-taken within fourteen days, the certificates relating to the original order for his admission shall remain in force. § 88. Authorities to receive and detain patients, and re-take in case of escape. § 89. The order for admission of any patient may be pleaded in bar to legal proceedings. § 90. Visitors may summon and examine witnesses upon oath; any witness refusing, without lawful excuse, shall incur a penalty not exceeding \$200, recoverable before any one justice. § 91. Witnesses to be paid their expenses. §§ 92, 93, 94. Pecuniary penalties under this act recoverable before any two justices, and the summons may be issued by one. § 95. The justices may, if they think fit, reduce any penalty to any sum not less than one-fourth, and may levy the amount, with costs, by distress and sale of the goods and chattels of the offender. § 96. And may order the person convicted to be kept in custody until the return of such warrant, unless the offender shall give security for his appearance within seven days. § 97. Upon return of the warrant, and in default of distress, such justices may commit the offender to the common gaol or house of correction for any term not exceeding *three* months, unless penalty and costs sooner paid. § 98. Penalties, when recovered, to be paid to the clerk of the peace, and accounted for as hereinbefore directed with respect to license moneys. § 99. Conviction to be in the form prescribed in the act, or to the same effect. § 100. Appeal given to the quarter sessions, on giving fourteen days' notice. § 101. Quarter sessions to hear and determine the appeal. § 102. Actions against any person for any thing done in pursuance of this act, to be brought within *twelve* months. § 103. Defendant may plead the general issue, &c. § 104. The visitors' clerk, on their order, may prosecute for penalties. § 106. No other person shall prosecute without order of the visitors, or consent of her Majesty's attorney or soli-

citor-general. § 107. Transmission of any notice, statement or other document required by this act through the post-office, or left at the office of the clerk of the peace, to be deemed sufficient, and a bar to proceedings for omission.

§ 108. Costs and expenses incurred by or under the order of any visitors, to be paid by the clerk of the peace, and included in his accounts. § 109. Interpretation clause. § 110. This act not to extend to the provincial asylum at Toronto, or the asylum at Beauport, near Quebec.

C. Stat. 22 V. c. 110, § 30, inspectors of gaols, &c., under this act, are required to visit and report to the Governor, once in the year, at least, upon the state and management of every private lunatic asylum, with power to the Governor to suspend or revoke any license granted for the same.

LUNATIC ASYLUM FOR CRIMINALS.

Provided for by C. Stat. 22 V. c. 108, to be erected in the vicinity of the penitentiary, and insane convicts removed to it, but to be reconveyed to the penitentiary in the event of their recovery before the term of imprisonment expires.

LUNATICS DANGEROUS.

By C. Stat. 22 V. c. 109, § 7, if any person shall be discovered and apprehended under circumstances that denote a derangement of mind, and a purpose of committing some crime for which, if committed, such person would be liable to be indicted, and any of her Majesty's justices of the peace before whom such person may be brought thinks fit to issue a warrant for committing him as a *dangerous person* suspected to be insane, such cause of commitment being plainly expressed in the warrant, the person so committed shall not be bailed except by two justices of the peace, one whereof being the justice who has issued such warrant, or by the court of general quarter sessions, or by one of the judges of her Majesty's superior courts of law or equity at Toronto. § 10. Any two or more justices residing in the city, town, village, township, parish or place where such lunatic or mad person may be found (of whom the chairman of the quarter sessions, if in Upper Canada, shall be one) may by warrant under their hands and seals directed to the constables or some of them of any such city, town, village, township, parish or other place, cause such person to be apprehended and kept safely locked up in some secure place within the district or county, as such justices shall direct or appoint. § 11. If the last legal settle-

ment, of such person was in any parish, town or place within such district or county, and if such person be not then there such person shall be sent to the place of his legal settlement and shall be locked up in the manner aforesaid by warrant of two justices of the district or county to which such person is so sent, of whom the chairman of the quarter sessions, if in Upper Canada, shall be one, and the reasonable charges of removing, keeping and curing such lunatic, during such restraint, shall be paid by order of two or more justices directing the treasurer of the municipality where any goods, chattels, lands or tenements of such lunatic may be to seize and sell so much of the goods and chattels, or receive so much of the rents as may be necessary to pay the same, and to account for the same to the next quarter sessions. But if such person has not an estate more than sufficient to maintain his or her family, then such charge shall be paid by the municipality to which such person belongs by order of two justices directed to the treasurer. § 16. Municipalities may appeal against such order to the general quarter sessions of the peace of the county where such order was made, giving reasonable notice to the clerk of the peace.

MACHINERY.

By U. C. Stat. 22 V. c. 79, § 1, the owner of every steam boat, steam car, and steam carriage, mill, and other building in which machinery is used, shall erect good and substantial guards round such machinery so as to prevent passengers and other persons from coming in contact with such machinery. § 2. The collector of customs of every port in Upper Canada or his deputy shall enter steamboats, &c., and carefully examine the guards of the machinery, and if not properly erected he or his deputy shall notify the same to the master or person in charge, and direct him to make such proper guards in a substantial manner. § 3. It shall be the duty of every justice of the peace in the county or city in which he resides and usually acts as a justice to enter into or upon all buildings wherein machinery is erected, and examine the same; and if upon such examination he finds proper guards not erected, such justice shall notify the same to the owner or occupier of such building, and direct the necessary guards to be erected. § 4. If, upon inspection by the collectors or justice of any steamboat, or building, &c., the guards are found safe and substantial, such collector or justice shall deliver to the person in charge, and to the proprietor of such building, a cer-

tificate to that effect, which shall be a good protection for six months, *provided* such safeguards shall be kept in good repair. § 5. In case the master or person in charge of any steamboat, &c., or the owner or occupier of any building wherein machinery has been erected, shall neglect or refuse to comply with the directions of such collector or justice, and being thereof convicted before one or more justices, he shall forfeit and pay for every such offence any sum not exceeding \$4, and in default of payment, with the reasonable costs of conviction, such offender shall be sent to the common gaol of the county or city within which such offence shall have been committed for any period not exceeding thirty days.

By Con. Stat. 22 V. c. 93, § 18, if any person unlawfully and maliciously cuts, breaks, destroys, or damages with intent to destroy or render useless, any threshing machine, or any machine or engine, whether fixed or moveable, prepared for or employed in any manufacture whatever, (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 imprisoned at hard labour in the penitentiary for any term not less than two years, or in any other prison or place of confinement for any term less than two years.

See also title "*Manufactures.*"

MAINTENANCE.

Maintenance is an unlawful taking in hand or upholding of quarrels or suits, to the disturbance or hindrance of common right; and is not only *malum prohibitum* both by the common law and by statute, but is also accounted *malum in se*, as having a manifest tendency to oppression by encouraging and assisting persons to persist in harrassing their neighbours with suits, which perhaps they would not venture to prosecute of their own accord. It is punishable at common law, by *fine* and *imprisonment*; and by the 32 H. III., c. 9, with a forfeiture of £10. A court of record, also, may commit a man for an act of maintenance done in the face of the court, as for a contempt.—2 *Inst.* 212, 1 *Haw.* c. 83, § 36. There are some acts of maintenance which under certain circumstances are justifiable. A father, a son, or an heir apparent to a party; or the husband of an heiress apparent, may lawfully lay out money for the party to prosecute his suit. Few prosecutions are, however, now

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instituted for maintenance; for more persons than one are generally implicated in this offence, and then the common practice is to indict them for *conspiracy*.

MALICIOUS INJURY TO THE PERSON.

Poisoning or Wounding.—By C. Stat. 22 V. c. 91, § 5, any person who administers to, or causes to be taken by, any person any poison or other destructive thing, or stabs, cuts, or wounds any person, or by any means whatsoever causes any bodily injury dangerous to life to any person with intent in any of the cases aforesaid to *commit murder*, shall be guilty of felony, and shall suffer death.

Attempt to Murder.—§ 6. Any person who *attempts* to administer to any person any poison or other destructive thing, or shoots at any person, or by drawing a trigger, or in any other manner attempts to discharge any kind of loaded arms at any person, or attempts 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 effected, be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

Shooting, Cutting and Maiming.—§ 7. Any person who unlawfully and maliciously shoots at any person, or by drawing a trigger or in any other manner attempts to discharge any kind of loaded arms at any person, or stabs, cuts, or wounds any person with intent, in any of the cases aforesaid, to maim, disfigure, or disable such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years. § 8. Any person who unlawfully inflicts upon any other person, either with or without any weapon or instrument, any grievous bodily harm; or unlawfully and maliciously cuts, stabs, or wounds any other person, shall be guilty of a *misdemeanor*, and shall be imprisoned with hard labour in any gaol or prison for any time not less than two years, or in the penitentiary for any time not less than two, nor more than five years.

Bowie Knives, &c.—§ 9. Any person who carries about his person any bowie knife, dagger, or dirk, or any weapon

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called or known as iron knuckles, skull crackers, or slung shot, or other offensive weapons of a like character, or who secretly carries about the person any instrument loaded at the end, or who sells or exposes for sale publicly or privately any such weapon, shall be subject on conviction to a fine of not less than *ten* nor more than *forty* dollars, and in default of payment to imprisonment for a term not exceeding *thirty* days, at the discretion of the court wherein the offence is tried. But nothing in this section shall apply to the army or navy, or militia or volunteer force, or to any Highland or national society carrying arms as part of their national costume.

§ 10. Any person charged with having committed any offence against the provisions of the last preceding section, may be tried and dealt with in pursuance of the Consolidated Statute of Canada, respecting the prompt and summary administration of criminal justice in certain cases.

§ 11. It shall be the duty of the court or magistrate before whom any person is convicted under the two last preceding sections to impound the weapon for carrying which such person is convicted, and to cause the same to be destroyed.

§ 12. All proceedings under the preceding ninth and tenth sections shall be commenced within one month from the offence charged; and from any conviction or decision under the said sections, an appeal shall be to the court of general quarter sessions of the peace for the county in Upper Canada wherein the same takes place, subject in Upper Canada to the provisions of the Consolidated Statutes for Upper Canada respecting appeals (a) in cases of summary conviction.

Administering Drugs, &c.—§ 13. Any person who unlawfully applies or administers, or attempts to apply or administer to any person any chloroform, laudanum or other stupifying or over-powering drug, matter or thing, with intent thereby to enable or to assist such offender or any other person to commit any felony, shall be guilty of felony and shall be imprisoned in the penitentiary for any term not less than two years nor more than five years.

Explosive Substances.—§ 14. Any person who unlawfully and maliciously sends or delivers to, or causes to be taken or received by any person, any explosive substance, or any other dangerous or noxious thing, or casts or throws upon or otherwise applies to any person any corrosive fluid or other

(a) See title "*Appeal.*"

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 is burnt, maimed, disfigured or disabled, or receives some other grievous bodily harm, shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or in any other prison or place of confinement for any term less than two years.

See further on this subject title "*Explosive Substance.*"

Miscarriage.—§ 24. Any person who with intent to procure the miscarriage of any woman, unlawfully administers to her, or causes to be taken by her, any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

By C. Stat. 22 V. c. 99, § 65, if upon the trial of any indictment for any felony, (except murder or manslaughter,) the indictment alleges that the defendant did cut, stab or wound any person, and the jury be satisfied that the defendant is guilty of the cutting, stabbing or wounding charged in the indictment, but be not satisfied that the defendant is guilty of the *felony*; the jury may acquit of the felony and find the defendant guilty of *unlawfully* cutting, stabbing or wounding, and such defendant shall be imprisoned with hard labour in any gaol or prison for any term less than two years, or in the penitentiary for any term not less than two years nor more than five years. § 66. On the trial of any person for any of the offences hereinbefore mentioned, (a) or for *any felony* whatever where the crime charged includes an assault against the person, the jury may acquit of the felony, and find a verdict of guilty of assault against the person indicted, if the evidence warrants such finding; and the court shall imprison the person so convicted for any term not exceeding three years.

With respect to the crime of stabbing, cutting or wounding, it may not be unimportant to remark upon its *classification* as an offence. If committed with an intent to *murder* it is a capital offence, punishable with death. If with the intent only of maiming, disfiguring or disabling a party, then,

(a) See the statute.

although a felony, it is punishable with less severity. But where the offence is committed without any manifest felonious or criminal intent, as where it is done in the heat of passion, and without premeditation or design, it is punishable under the above statute 22 V. c. 91, § 8, as a *misdemeanor* only. It is difficult to conceive any case of stabbing or cutting that would not in the eye of the law be deemed both unlawful and malicious; and it is an offence so utterly abhorrent to all true British feeling and spirit that we may well indulge the hope of its seldom occurring in this province.

MALICIOUS INJURY TO PROPERTY.

By C. Stat. 22 V. c. 93, § 12. Unlawfully and maliciously setting fire to agricultural produce is made felony.—See title "*Arson.*"

Hop-binds.—§ 14. If any person unlawfully and maliciously cuts or otherwise destroys any hop-binds growing on poles in any plantation of hops, such offender shall be imprisoned in the penitentiary for any term not exceeding four years, or in any other prison for less than two years.

Fish-ponds.—§ 23. If any person unlawfully and maliciously breaks down or otherwise destroys the dam of any fish-pond, or of any water which is private property, or in which there is 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 unlawfully or maliciously puts any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish therein, or unlawfully and maliciously breaks down or otherwise destroys the dam of any mill-pond, such offender shall be guilty of a misdemeanor, and be punished accordingly.

For cases liable to summary conviction under this statute see titles Roots and plants, § 15. Trees, saplings, shrubs, §§ 24, 25. Gardens, § 26. Fences, § 27.

Damages.—§ 28. If any person wilfully or maliciously commits any damage or injury, or spoil to or upon any real or personal property, either of a public or private nature, for which no remedy or punishment is hereinbefore provided, such person being convicted thereof, before a justice of the peace, shall forfeit and pay such sum of money as may appear to the justice to be a reasonable compensation for the damage, injury or spoil so committed, not exceeding the sum of twenty dollars.

§ 29. In case of private property, to be paid to the party

aggrieved, except where such party shall have been examined in proof of the offence, and in such, and 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. (a) But 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.

Commitment.—§ 37. In every case of a summary conviction under this act where the sum forfeited for the amount of the injury done or imposed as a penalty by the justice is not paid either immediately after the conviction or within such period as the justice at the time of conviction appoints, the convicting justice (when not otherwise specially directed) may commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any time not exceeding two months, where the amount of the sum forfeited or of the penalty imposed, or of both together with costs, do not exceed *twenty dollars*, and for any term not exceeding four months when the amount with costs exceeds twenty dollars, and does not exceed forty dollars, and for any term not exceeding six months where the amount with costs exceeds forty dollars; the commitment to be determinable in each case upon the payment of the amount and costs.

Discharge.—§ 38. In case any person be summarily convicted before a justice of the peace of any offence against this act, and it be a first conviction, the justice, if he thinks fit, may discharge the offender from the conviction, upon his making satisfaction to the party aggrieved for damages and costs, or either of them, to be ascertained by the justice.

Jurisdiction.—§ 39. Neither the justices of the peace acting in and for any district, county 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 the second, third, eleventh or thirteenth sections of this act. (b)

MANDAMUS.

A writ of *mandamus* is a command issuing in the king's name from the court of Queen's Bench, and directed to any

(a) See the act.

(b) These sections relate to explosive substances and arson, for which see titles "*Explosive Substance*," "*Arson*."

person, corporation, or inferior court of judicature, within the king's dominions, requiring them to do some particular thing therein specified, which appertains to their office or duty. This writ is principally used to enforce a civil or municipal right, but it issues also to the judges of any inferior court, commanding them to do justice according to the power of their office, whenever the same is delayed. It is grounded on a suggestion (by the oath of the party injured) of his own right, and of the denial of justice in the court below; whereupon, in order more fully to satisfy the court that there is a probable ground for such interposition, a rule is made (except in some general cases, where the probable ground is manifest) directing the party complained of to shew cause why a writ of *mandamus* should not issue; and if he shews no sufficient cause, the writ itself is issued at first in the alternative—either to do this, or signify some reason to the contrary; to which a return or answer must be made at a certain day; and if the inferior judge, or other person to whom the writ is directed, returns or signifies an insufficient reason, then there issues, in the second place, a *peremptory mandamus*, to do the thing absolutely, to which no other return will be admitted but a certain perfect obedience and due execution of the writ. If the inferior judge or other person makes no return, or fails in his respect and obedience, he is punishable for his contempt by attachment; but if at the first he returns a sufficient cause, although it should be false in fact, the Court of King's Bench will not try the truth of the facts upon affidavit, but will for the present believe him, and proceed no further on the *mandamus*. But then the party injured may have an action against him for his false return, and (if found to be false by the jury) shall recover damages equivalent to the injury sustained, together with a *peremptory mandamus* to the defendant to do his duty.—3 *Bl. Com.* 111.

A *mandamus* to the quarter sessions will be granted, to compel them to hear and decide an appeal which they refuse to hear on the ground of a mistaken notion of law, or an unreasonable rule as to their own practice.—*R. v. Wiltshire*, 10 *East*, 404.

Where a person had been convicted before justices of the peace and fined, and on an appeal to the quarter sessions the justices there admitted more evidence than had been heard on the conviction, and the accused party was acquitted; but, on receiving the opinion of the attorney-general that the additional evidence should not have been admitted, the justices

in session confirmed the conviction, and ordered it to be recorded, but took no notice of the acquittal; the court made absolute a rule for a *mandamus* commanding them to enter the acquittal.—*Rex v. Justices of Bathurst, D. Mich. 6 W. IV., Cameron's D. p. 49.*

A *mandamus* never issues except to admit or restore some person to an ascertained right.—*Barnhart v. Justices H. D. Easter 7 W. IV., Ib.*

Upon a *mandamus nisi* to justices in session, they should return the recorded proceedings had before them, and not collateral matters not embraced in the entries of the court.—*Ib. p. 71.*

MANSLAUGHTER

Is at common law, *felony*; and is defined to be such killing of a man as happens on a sudden quarrel, or in the commission of an unlawful act, without any *deliberate* intention of doing any mischief at all.—1 *Haw.*, 76.

By Con. Stat. 22 V. c. 91, § 3, every person convicted of manslaughter shall be imprisoned in the penitentiary for life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years, or shall pay such fine as the court may impose.

See also *ante* title "*Homicide.*"

Form of Indictment for Manslaughter—Con. Stat. 22 V. c. 99, § 51.

County of	}	The jurors for our lady the Queen, upon their
to wit.	}	oath present that A. B., on the
of	}	day
and	}	in the year of our Lord one thousand eight hundred
at	}	and
kill and slay one C. D.	}	in the county of
		did feloniously

MANUFACTURES.

By Con. Stat. 22 V. c. 93, § 17, if any person unlawfully and maliciously cuts, breaks, destroys, or damages with intent to destroy, or to render useless, any goods or articles 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, being in the loom or frame, or on any machine or engine, or on the rack or tenter's, or in any stage, process or progress of manufacture, or unlawfully and maliciously cuts, breaks, or destroys, or damages with the 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 by force enters into any house, shop, building or place, with intent to commit any of the offences aforesaid, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

See also title "*Machinery.*"

MARKETS.

By the U. C. Municipal Stat. 22 V. c. 54, § 294, the municipal council of every city, town, and incorporated village may make by-laws for

Sub-§ 6. Establishing markets.

7. For regulating all markets established, and to be established; the places, however, already established as markets in such municipality shall continue to be markets, and shall retain all the privileges thereof until otherwise directed by competent authority, and all market reservations or appropriations heretofore made in any such municipality shall continue to be vested in the corporation thereof.

8. For preventing or regulating the sale by retail in the public streets of any meat, vegetables, fruit or beverages.

9. For preventing or regulating the buying and selling of articles or animals exposed for sale or marketed in the open air.

10. For regulating the place and manner of selling and weighing butcher's meat, fish, hay, straw and fodder, and measuring wood and lumber.

11. For preventing the forestalling, regrating or monopoly of market grains, meats, fish, fruits, roots and vegetables.

12. For preventing and regulating the purchase of such things by hucksters or runners living within the municipality, or within one mile of the outer limits thereof.

13. For regulating the mode of measuring or weighing (as the case may be) of lime, shingles, lath, cordwood, coal and other fuel.

14. For imposing penalties for light weight or short count, or short measurement in any thing marketed.

15. For regulating all vehicles, vessels and other things in which any thing is exposed for sale or marketed in any street or public place, and for imposing a reasonable duty thereon, and establishing the mode in which it shall be paid

16. For regulating the assize of bread, and preventing the use of deleterious materials in making bread, and for providing for the seizure and forfeiture of bread made contrary to the by-law.

17. For seizing and destroying all tainted and unwholesome meat, poultry, fish, or other articles of food.

18. For selling after six hours' notice butcher's meat distrained for rent of market stalls.

MARRIAGES.

Solemnization of.

By U. C. Stat. 22 V. c. 72, § 1, the ministers and clergymen of every church and religious denomination in Upper Canada duly ordained or appointed according to the rites and ceremonies of the churches or denominations to which they respectively belong, and resident in Upper Canada, may, by virtue of such ordination or appointment, and according to the rites and usages of such churches or denominations respectively, solemnize the ceremony of marriage between any two persons not under a legal disqualification to contract such marriage. § 2. But no minister or clergyman shall celebrate the ceremony of marriage between any two persons unless duly authorised so to do by *license* under the hand and seal of the Governor, or if not so authorised, then unless the intention of the two persons to intermarry be proclaimed openly, and in audible voice, in the church, chapel, meeting house, or place of public worship of the congregation, or religious community with which the minister or clergyman is connected, on three several Sundays immediately before the service begins, or immediately after it ends, or at some intermediate part of the service, together with the number of such proclamation, as being the first, second or third time of asking. § 3. It shall not be a valid objection to the legality of a marriage that the same was not solemnized in a consecrated church or chapel, or within any particular hours. § 4. Every clergyman or minister celebrating marriage shall, if required, at the time of the marriage, give a certificate of the marriage

under his hand, specifying the names of the parties, time of marriage, and the names of two or more witnesses, and whether by license or banns. § 5. Marriages to be entered in a book, and a yearly return made by the minister to the registrar of the county on or before the 1st of February for the year previous, ending 31st December, and pay one dollar to the registrar for his fee. § 6. Form of the return. § 7. Return to be filed by the registrar, such registry, or a certified copy, in case of the death or absence of witnesses, to be evidence of the marriage. § 8. Minister's fee on solemnizing marriage *two dollars*. § 9. May accept further remuneration if the parties choose. § 10. In case of the death or removal of the minister, his successor shall make the return. § 11. Quakers' marriages, by the clerk or secretary of the society or meeting, to be valid. § 12. Every clergyman, minister, clerk, secretary or other person neglecting to make such annual return, shall forfeit for every day's delay the sum of *four dollars*, recoverable with costs before any magistrate of the county in which the party resides, and applied according to law.

By the 24 V. c. 46, § 1, marriages of persons not under any canonical disqualification contracted before any minister or ministers prior to the act 11 Geo. IV. c. 36, (1830,) allowed to solemnize matrimony before having obtained and without having obtained a license from the quarter sessions under said act, or a certificate from the registrar, under the 10 & 11 V. c. 18, are declared valid.

Illegal Solemnization of.

By U. C. Stat. 22 V. c. 102, § 1, any person who not being a clergyman or minister of a religious denomination existing in Upper Canada solemnizes or pretends to solemnize matrimony in Upper Canada, or falsely personates any clergyman or minister for that purpose, is guilty of a misdemeanor, and shall be imprisoned in the penitentiary for a period not less than two years, or suffer such other punishment by fine or imprisonment less than two years as may be deemed meet and just. § 2. Aiders and abettors liable to the same punishment. § 3. Any clergyman or minister solemnizing marriage without publication of banns or license, is guilty of misdemeanor. But such offence shall not be cognizable at the quarter sessions. § 4. Prosecutions must be commenced within two years.

By the Census Act C. Stat. 22 V. c. 33, § 32, every clergyman, teacher, minister or other person authorised by

law to baptise, marry or perform the funeral service in Upper Canada, shall keep a registry shewing the persons whom he has baptised or married, or who have died within his own cure and belonging to his congregation; and forward the same to the clerk of the peace, city or town council of the municipality where he resides or officiates within five days after the first day of January. § 37. Neglect to be a misdemeanor and punishable accordingly.

MARRIED WOMEN.

By U. C. Stat. 22 V. c. 85, § 1. Any married woman seised or entitled to real estate in Upper Canada, and being of the age of 21 years may, subject to the provisions of this act, convey the same by deed to be executed by her jointly with her husband, to such uses as to her and her husband may seem meet. § 2. In case such married woman executes such deed in Upper Canada, she shall execute the same in the presence of a judge of the court of Queen's Bench or Common Pleas, or of a judge of the county court, or of two justices of the peace for the county in which she resides, or happens to be when the deed is executed, and such judge, or two justices of the peace (*as the case may be*) shall examine such married woman apart from her husband respecting her free and voluntary consent to convey her real estate in manner and for the purposes expressed in the deed, and if she gives her consent such judge or justices shall, on the day of the execution of such deed, certify on the back thereof to the following effect:

“ I (*or we, inserting the name or names, &c.*) do hereby certify that on this day of at the within deed was duly executed in my (*or our*) presence by A. B. of wife of one of the grantors therein named, and that the said wife of the said at the said time and place, being examined by me (*or us*) apart from her husband, did appear to give her consent to convey her estate in the lands mentioned in the said deed freely and voluntarily, and without coercion or fear of coercion on the part of her husband or of any other person or persons whatsoever.”

§ 3. If residing in Great Britain or Ireland or in any colony (other than Upper Canada) she shall execute the same in the presence of the mayor or chief magistrate of a city, borough, or town corporate in Great Britain or Ireland, or of the chief justice, or a judge of the supreme court of such colony; and such mayor, &c., shall examine such married woman apart from her husband, touching her consent in manner and form and to the effect specified in the 2nd section, and if she thereupon gives

her consent such mayor, &c., under his hand and seal shall on the day of the execution of such deed certify on the back thereof to the effect mentioned in the 2nd section.

§ 4. If resident in any foreign state, then in the presence of the governor or other chief executive officer of such state or country, or in the presence of the British consul resident therein, or in the presence of a judge of a court of record therein, with the like formalities and certificate. § 5. Certificate to be *prima facie* evidence of the facts. § 6. Such judge or officer need not be an attesting witness to the deed. § 7. If not executed, acknowledged, and certified as aforesaid, the deed shall not be valid or have any effect.

And see titles "*Dower*," "*Wife*."

MASTER AND SERVANT.

By U. C. Stat. 22 V. c. 75, § 2, no contract of service or indenture shall be binding for a longer term than *nine* years. § 3. All agreements or bargains verbal or written between masters and journeymen in any trade, calling, or craft, or between masters and servants, or labourers, for the performance of any duties or service of whatsoever nature, whether the performance has been entered upon or not, shall be binding on each party for the due fulfilment thereof; but a verbal agreement shall not exceed the term of one year. § 4. If after any such agreement entered into, and during the period of such engagement, whether such employment has been commenced or not, the person who thereby undertook to perform any service or work refuses to go to work, or (without permission or discharge) leaves the employ of the party whom he has engaged to serve, or refuses to obey the lawful commands of the person under whose direction such services are to be performed, or neglects the service or injures the property of his employer, the offender shall (upon the complaint of such employer or any person in charge under him) be liable to punishment for every such offence, as hereinafter provided. § 5. If any tavern-keeper, boarding-house keeper or other person induces or persuades any servants or labourers to confederate for demanding extravagant or high wages, and prevents their hiring, then upon due proof of the offence such tavern-keeper shall forfeit his license in addition to any fine, and such tavern-keeper, boarding-house keeper or other person shall be subject to fine or imprisonment, as hereinafter provided. § 6. No tavern-keeper or boarding-house keeper shall keep the wearing apparel of any servant or

labourer in pledge for any expenses incurred to a greater amount than \$6, and on the payment or tender of any less sum due, such wearing apparel shall be immediately given up, whatever be the amount due by such servant or labourer: but this is not to apply to other property of the servant or labourer. § 7. Any one or more justices of the peace may receive the complaints upon oath of parties complaining of any contravention of the preceding provisions of this act, and may cause all parties concerned to appear before him or them, and shall hear and determine the complaint in a summary and expeditious manner, and punish parties found guilty of the offence alleged, by fine or imprisonment, allowing such costs as may be legal and just. § 8. All fines imposed by this act shall be paid to the treasurer of the county, town or city in which the conviction has been had, to be applied to the general uses of such county, town or city respectively. § 9. No justice or justices shall impose any fine exceeding \$20; and no imprisonment shall exceed one month, nor be less than one day. § 10. In every case of a summary conviction under this act, where the sum forfeited or imposed as a penalty by the justice is not paid either immediately after the conviction or within such period as the justice at the time of conviction appoints, the convicting justice may commit the offender to the common gaol of the county where such conviction has been had, there to be imprisoned for the time limited by such conviction.

§ 11. Any person offending against the preceding provisions of this act may be prosecuted, convicted and punished in any county where found. § 12. Any one or more of such justices, upon oath of any such servant or labourer against his master or employer, concerning any mis-usage, refusal of necessary provisions, cruelty, ill-treatment or non-payment of wages, may summon such master or employer to appear before him or them at a reasonable time, to be stated in the summons; and he or they, or some other justice or justices, shall, upon proof on oath of the personal service of such summons, examine into the matter of such complaint, whether the master or employer appears or not; and upon due proof of the cause of complaint, the justice or justices may discharge such servant or labourer from the service or employment of such master, and direct the payment to him of any wages found to be due, not exceeding \$10, and make such order for payment of the said wages as to him or them seems just and reasonable with costs; and in case of non-payment for the space of twenty-one days after such order made, such

justice or justices shall issue his or their warrant of distress for the levying of such wages, together with the costs of conviction and distress. § 13. Any party who thinks himself aggrieved by any such decision may appeal in the same manner as provided in the act respecting appeals in cases of summary conviction, and in case of the dismissal of the appeal, or affirmance of the conviction or order, the court appealed to shall order and adjudge the offender to be punished according to the conviction; or shall enforce the order for payment of wages, or of dismissal, as the case may be, and for payment of the costs awarded, and shall if necessary issue process for carrying such judgment into effect.

MECHANICS' INSTITUTE.

By C. Stat. 22 V. c. 72, § 1, any number of persons not less than ten having subscribed, or holding not less than \$100 in money or money's worth for the use of their institution, may make and sign a declaration in duplicate of their intention to establish a library association or mechanics' institute. § 4. And on complying with the formalities required, shall be a body corporate and politic, and have power to hold real estate for the use of such corporation. § 6. Any such corporation situate in any village or town having 3000 inhabitants or more, may hold real estate, not exceeding in annual value \$2000. § 7. And in any town or city not having that number, may hold real estate not exceeding in annual value \$1000. § 8. And in other cases not exceeding \$400. § 9. Affairs of the corporation to be managed by the directors or trustees to be appointed, as in the act directed. § 10. With power to make by-laws. § 11. A president, librarian, and other officers to be appointed at their annual meeting. § 12. Trustees to remain in office until successors appointed. § 13. Corporation authorised to make by-laws imposing fines not exceeding \$4 on any member contravening the same. § 17. Such corporation may, if provided in the declaration, be at the same time a mechanics' institute and library association. § 18. Shares may be made transferable in certain cases. § 20. Dissolution of such corporation provided for.

MILITIA.

(As amended by 27 & 28 V. c. 10.) (a)

By 27 V. c. 2, § 1, the Governor-General or public admin-

(a) The amendments in brackets. []

istrator shall, by virtue of his office, be commander-in-chief of the militia.

§ 2. The militia shall consist of all the male inhabitants of the province of the age of 18 or upwards and under 60, not exempted or disqualified by law. § 3. To be divided into three classes, to be called respectively, *first class* service men, *second class* service men, and *reserve* men.

The first class service men to be 18 years of age and upwards, but under 45, unmarried men or widowers without children; and the second class service men shall be those between the ages last aforesaid, who are married men or widowers with children; and the reserve men shall be those of 45 years of age and upwards, but under 60 years.

§ 4. The following persons only between 18 and 60 shall be exempt from enrolment and from actual service :

1. The judges of the superior courts of law or equity—the judge of the court of vice-admiralty—the judges of the county courts—the clergy and ministers of all religious denominations—the professors in any college or university, and all teachers in religious orders—the warden, keepers and guards of the provincial penitentiary.

2. And the following, though enrolled, shall be exempt from attending muster and from actual service at any time, except in case of war, invasion or insurrection:—the reserve men—the members of the Executive and Legislative Councils—the members of the Legislative Assembly—the officers of the said councils and assembly respectively—the attorneys and solicitors general—the provincial and assistant secretaries—all civil officers who shall have been appointed to any civil office in this province under the great seal—all persons lawfully authorised to practise physic or surgery—half-pay and retired officers of her Majesty's army or navy—postmasters and mail carriers—sea-faring men actually employed in their calling—pilots and apprenticed pilots during the season of navigation—masters of public and common schools actually engaged in teaching—ferry-men—one miller for each run of stones in every grist-mill—keepers of public toll-gates—lock masters and labourers employed in attending to locks and bridges on public canals—the engine drivers, conductors and switchmen connected with the several railways actually in use—members of fire companies and of hook and ladder companies, or persons having served as such regularly during *seven* consecutive years, and having a certificate thereof from the proper officer, under the act to exempt firemen from certain local duties and services—

gaolers—constables and officers of courts of justice, not being such solely by virtue of their being non-commissioned officers of militia—officers, non-commissioned officers and men of the volunteer force whilst on the roll of any corps or battalion, and serving therein—students attending seminaries, colleges, schools and academies, who have been attending such at least six months previous to the time of claiming exemption—all persons disabled by bodily infirmities—Quakers, Menonists and Tunkers, and other religious denominations who, from the doctrines of their religion, shall be averse to bearing arms, and shall refuse. Claim of exemption to be filed, with affidavit sworn before a magistrate, at least *one month* beforehand, with the clerk of the municipality.

Regimental Divisions.

§ 5. Each county shall constitute a regimental division, and the commander in chief may name and number the regiment. [And in Upper Canada cities and town withdrawn from the jurisdiction of the county council shall, for the purpose of this act, be held to be in the county in which the same is situate.]

Service Militia.

Service enrolment in Upper Canada.

§ 6. The mode of enrolment as follows, viz.: “The assessors for each municipality shall *annually* commencing with the year 1864, at the same time when taking the assessment of real and personal property, include in their assessment the names and residence of all male persons in their respective municipalities between the ages of 18 and 60, in three columns, headed, First Class Service Militia Roll, Second Class Service Militia Roll, and Reserve Militia Roll. Inserting in each the names of all male persons according to the classification above mentioned. The roll to be certified by the assessor and verified by oath. [And as respects cities and towns in Upper Canada withdrawn from the jurisdiction of the county council, the city clerk and town clerk respectively shall deliver a true copy certified as aforesaid of the militia rolls or any such assessment rolls to the clerk of the county council within fourteen days after the receipt by such city or town clerk from the assessors of the assessment roll.] § 7. County militia roll to be compiled by the clerk of the council within *fourteen* days after receipt of assessment rolls certified and verified upon oath. Such roll to be delivered to

and kept by the clerk of the peace. [And in every county or union of counties in Upper Canada in which is situate any city or town withdrawn from the jurisdiction of the county council, the clerk of the council of such county, &c., shall in such compilation of the county militia rolls include the names and residences of those appearing on the local militia rolls received by him from the city or town clerk, as in the 6th section mentioned, and certified accordingly by the county clerk.] § 8. Chapter 55* of the Consolidated Statutes for Upper Canada shall be applicable to the enrolment of the militia as hereinabove mentioned, and, in so far as such enrolment extends, be read as part thereof, and every assessor, as regards making of said militia rolls, shall have the same duties, powers, and liabilities in case of default as regards assessment rolls. § 9. All tavern-keepers, keepers of boarding houses, persons having boarders in their families, and every master or mistress of any dwelling house shall upon the application of any assessor give information of the names of all persons residing or lodging in such house liable to be enrolled. § 10 to § 15, relate to Lower Canada.

Provisions applying to the whole Province.

§ 17. The commander in chief may call out the militia for actual service in case of war, invasion or insurrection. § 18. Each regiment to be composed as follows:—Each service battalion to be composed of ten companies numbering 750 service men exclusive of non-commissioned officers, to be taken from the names on the rolls as provided for by this section. § 19. To each service battalion may be appointed a lieutenant-colonel, two majors, and such number of regimental staff officers as may be deemed necessary; and for every company of 75 men, a captain, a lieutenant, and an ensign. § 20. In case of war, invasion, or insurrection, or danger thereof, those taken for actual service shall be, firstly, the battalions composed of first class service men; secondly, of second class service men, and lastly of reserve men. § 21. When only part of the militia is required, the commander-in-chief may direct the number of battalions to be furnished from the service militia of the whole province, or of any regimental division thereof. § 22. The commander-in-chief may, from time to time, by general order direct the organisation of such number of service battalions from each regiment as he may think proper, and may direct the ballot to be taken as hereinafter provided for the purpose of organising

battalions, or filling up vacancies. § 23. For the purpose of organising battalions the sheriff in Upper Canada, or the registrar in Lower Canada, of the county shall at some period in the year 1864, to be fixed by the commander-in-chief, and in each *third* successive year, within 21 days after completing and filing the militia roll for the county, summon the county judge and warden of the county in Upper Canada (or in Lower Canada the Warden, &c.) to meet him at the court house at the county town in Upper Canada, and summon the clerk of the peace to attend with the militia roll, for the balloting for the requisite number of men to form a battalion or battalions as may be requisite. § 24. Each battalion so organised shall continue so for *three* years. But in the event of the militia being called out for actual service, shall serve for the period mentioned in the thirty-second section.

§ 25. The mode of balloting to be as follows:—1. Names to be written, and put together in a box or wood, and shaken so as to mix the names. 2. The county judge or warden in Upper Canada shall then draw out a sufficient number of names to complete the number required, and each name as called out shall be transcribed by the clerk of the peace on a battalion or relief roll, with his place of residence, and such roll shall be signed by the sheriff, county judge, warden, and clerk of the peace, or any two of them, and transmitted within ten days to the Adjutant-General; and the clerk of the peace shall on the service roll insert the letter B opposite the name of the person so balloted. § 26. The three preceding sections shall apply to the formation of succeeding battalions. § 27. In the case of united counties the same shall be treated as distinct for militia purposes. § 28. The men drafted must serve or find a substitute. § 29. Infirm persons excepted. § 30. When battalion called out the men to be warned by a notice to be served at their last known place of residence to attend for muster and inspection; and when called out for actual service, each battalion so warned as aforesaid shall attend forthwith at some place, and be marched to such place as the commander in chief may appoint, and be there organised for service. § 31. The service militia, or any battalion or company may at any time in each year be called out by general order for six days' drill, and be paid fifty cents for each day's actual drill. § 32. The service militia or battalions called out for actual service shall serve *three* years from the date of the order, and may then be re-placed by others. § 33. May be marched

to any part of the province, or to any place without the province, but *conterminous* therewith, where the enemy is, and from which an attack on this province is apprehended.

§ 34. The militia when called out shall be subject to the Queen's regulations and articles of war when on active service, except corporal punishment other than death or imprisonment. § 35. Sentence of death restricted to mutiny,

desertion to the enemy, or traitorously delivering up any garrison, fortress, post or guard; or traitorous correspondence with the enemy. § 36. Officers of the regular army on full pay not to sit on any militia court martial.

Officers.—§ 37. Commissions to be granted by the commander-in-chief during pleasure. Oath of allegiance to be taken. § 38. Officers to furnish their own uniform, arms and accoutrements. § 39. Existing commissions continued until cancelled. § 40. Colonels may be appointed in case of exigency. § 41. Officers of the regular army to be reckoned senior to all officers of militia of the same rank. § 42. Officers to pass examination before appointment or promotion. § 43. Boards to be constituted for the examination of officers, and certificate of qualification granted. § 44. Adjutant-general to be appointed by the commander-in-chief. § 45. His pay to be \$3000 per annum, besides allowances. § 46. Deputy adjutant-general \$2000 per annum. § 47. The commander-in-chief may appoint staff officers, and an assistant quarter-master-general § 48. Non-commissioned officers to be appointed by the officer in command of the corps. § 49. Militia when called out for actual service to receive the same pay and allowances as regulars.

Corps for General Service.—§ 50. Additional regiments may be raised in the event of war.

Drill Associations.—§ 51. May be formed for independent companies of infantry, composed of professors, masters or pupils of universities, schools, or other public institutions; or militia officers, or men on the militia rolls, but without pay or clothing.

School of Military Instruction.—§ 52. May be established in each section of the province. § 53. Pupils to be selected by the commander-in-chief, and allowances made to them. § 54. Such pupils to be subject to the Queen's regulations and articles of war, &c.

Department of Militia Affairs.—§ 56. To be under a minister of militia.

Non-Service Militia.

Non-Service Enrolment.—§ 57. To be composed of the sedentary militia. § 58. In time of peace, no actual service or drill to be required, but they shall be carefully mustered from time to time, and those of the first class and second class service men not exempted from muster, shall assemble annually for muster at such place, and how as the commanding officer of each battalion may direct. The muster-day in Upper Canada being the Queen's birth-day. But the day may be changed to the 29th of June. § 59. Such muster may be dispensed with by the commander-in-chief. § 60. Who may by militia general order divide the regimental divisions into battalion divisions. § 61. The militia resident in each battalion division shall form a battalion of the regiment of the regimental division in which it lies; and all the battalions in any regimental division shall form the regiment thereof. § 62. To each battalion a lieutenant-colonel, major, and staff officers may be appointed. § 63. Battalion division to be divided into company divisions of not less than fifty nor more than seventy-five service men. § 64. Officers at present holding commissions in any battalion to retain the same during pleasure. § 65. Appointment of surgeons and assistant surgeons. § 66. Enrolment to be made by the captain of the company with the assistance of other officers. § 67. Each man liable for non-service enrolment shall give in his name, age, and place of residence in writing to the officer commanding the company. § 68. The officer commanding a company of non-service militia shall, within twenty days after the annual muster day, make out a correct roll thereof.

Billeting and Cantoning Troops and Militia on actual service.

§ 69. Every householder shall, when required, furnish them with house-room, fire, and utensils for cooking, and candles, and in cases of emergency by actual invasion or otherwise, the officer in command may direct any officer or non-commissioned officer, after having obtained a warrant from a justice of the peace, to impress horses, waggons, &c., to be paid for at the usual rate of hire. § 70. Billets for the troops to be furnished by a justice of the peace in such manner as may be most commodious to the inhabitants. § 71. No officer shall be obliged to pay for his lodgings when billeted; but each householder shall receive from the government, for each non-commissioned officer, drummer,

and private of infantry, a daily rate of *ten cents*, and for each cavalry soldier and horse, twenty-five cents. § 72. Provisions made for quartering and billeting troops, &c., in cantonment, avoiding as much as possible to incommode the inhabitants. § 73. Any inhabitant considering himself aggrieved by over-billeting may be relieved on complaint before *two* or more justices. § 74. No justice of the peace holding any military office or commission to be concerned in quartering or billeting troops. § 75. No troops to be billeted at any convent or nunnery. § 76. Any justice upon requisition from any officer of troops in cantonment may issue his warrant for impressing carriages, horses, or wag-gons, but not to proceed beyond 30 miles, except in case of necessity, to be paid for at the usual rate of hire. § 79. In case of emergency boats, &c., may also be impressed.

Offences and Penalties.—§ 78. Any officer or non-commissioned officer misapplying militia funds to be guilty of misdemeanor and reduced to the ranks. § 79. Any sheriff or other officer neglecting to perform the duties required, shall be liable to a penalty not exceeding \$50. § 80. False swearing to be perjury. § 81. Any person refusing or neglecting to [make or] (a) transmit any militia roll or return, or wilfully making any false statement therein to incur a penalty of \$100 for each offence. § 82. Any person refusing to give information required by the act to any assessor, militia officer, &c., to forfeit and pay a penalty not exceeding \$20 for each item. § 83. Or notice or information required by the act the like penalty. § 84. Any person refusing to attend muster or obey orders to incur a penalty not exceeding \$5 for each offence. § 85. Any person interrupting drill or trespassing bounds shall incur a penalty not exceeding \$10, and may be taken into custody. § 86. Disobedience to orders of superior officer, penalty not exceeding \$10. § 87. Penalty not exceeding \$5 for neglecting to keep arms, &c., in good order. § 88. Selling or disposing of any horse in use for militia purposes, a penalty not exceeding \$30. § 89. Unlawful disposal of clothes, arms, or accoutrements, or refusal to deliver up the same when lawfully required, penalty therefor, \$10 for each offence, and the offender may be arrested if about to leave the province. § 90. Refusal to obey any lawful order of the superior officer, or any magistrate, penalty \$20 for each offence. § 91. Refusal to receive troops or militia on billet penalty therefor not exceeding

(a) The words "make or" repealed by 27, 28 V. c. 10, § 6.

§10. § 92. Or neglecting to furnish any carriage, &c., the like penalty. § 93. Or any railway car or engine, boat or other craft for the conveyance of troops a penalty, not exceeding \$400 for each offence. § 94. Any other contravention of this act penalty therefor not exceeding \$10. § 95. All penalties under this act may be recovered with costs on the evidence of one credible witness before one justice of the peace if the amount do not exceed \$10, and before two justices if exceeding that sum. § 99. In case of non-payment immediately after conviction the offender to be committed to the common gaol for a period not less than ten days where the penalty does not exceed \$20, and for not less than twenty days nor more than thirty days when exceeding that amount.

Miscellaneous Provisions.—§ 100. Order and notice need not be in writing if given in person. § 101. General orders to be inserted in the *Canada Gazette*. § 102. Regimental orders by insertion in newspaper or posting. § 103. Production of commission warrant, &c., to be *prima facie* evidence thereof. § 104. Bonds entered into before a justice to be valid. § 105. Moneys due to the Crown, how recoverable. § 106. Indemnity clause—actions to be commenced within six months. § 107. If verdict for defendant, full costs allowed. § 108. Moneys required, to be paid out of the consolidated fund. § 109. Account laid before parliament. § 110. Repeal of former acts.—*C. Stat.* 22 *V. c.* 35 ; 25 *V. c.* 1.

MILL-DAMS.

By U. C. Stat. 22 *V.*, c. 48, § 3, subject to the Fishery Act,* in case a mill-dam be legally erected on any stream down which lumber is brought, or in which stream salmon or pickerel abound, the owner shall construct or maintain a good and sufficient apron thereto, not less than eighteen feet wide, by an inclined plane of twenty-four feet eight inches, to a perpendicular of six feet, and so, in proportion to the height, where the width of the stream will admit; and where the stream or dam is less than fifteen feet wide, the whole dam shall be aproned in like manner and with the same inclined plane under a penalty of \$100 per annum. § 4. Aprons or slides to mill-dams shall be altered or constructed so as to afford depth of water sufficient to admit of the passage of saw logs, lumber and timber, such as are usually floated down such streams or rivers whereon such

* Stat. 22 *V. c.* 62.

dams are erected: but any owner or occupier may construct a waste-gate, or put up brackets and slash-boards upon and across the apron to prevent unnecessary waste of water, and may keep the same closed when not required to pass or float any craft, lumber or saw logs over such apron. § 5. The owner or occupier of such dam shall not be bound to remove the brackets or slash-boards until the raft, craft, &c., are ready to pass and have gained the main channel of the stream. § 6. No person shall be required to build such aprons or slides on small streams, unless required for rafting or floating down lumber and saw logs. § 7. Any owner or occupier of any dam neglecting to comply with this act shall pay a penalty of \$2 a day, recoverable before any *two justices* of the county, on the oath of two or more witnesses, and levied by distress and sale of the offender's goods and paid to the treasurer of the municipality.

County of Huron.

§ 8. Owners or occupiers of dams and weirs on any river or stream in the townships of Williams, McGillevray, Stephen, Hay, Stanley, Goderich, Colborne, Hullet, McKillop, Tuckersmith, Hibbert, Logan, Fullarton, Usborne, Biddulph, Blanchard, Downie, including the Gore of Ellice, North East Hope and South East Hope, or any other tracts of land which on the 29th March, 1845, constituted the then District of Huron, to construct aprons at least 28 feet wide (if of any greater width, if not then of the same width as the dam) and at least 8 feet in length for every foot rise of such dam or weir, under a penalty of one dollar a day, recoverable before any two justices for the county on the oath of one credible witness, and if not paid levied by distress and sale, one moiety to her Majesty and the other to the prosecutor.

River Moira.

§ 9. Aprons or dams on this river or its tributaries in the county of Hastings, on which lumber is floated to market, to be at least 32 feet in width, (if the dam be of that or greater width, and if not then of the width of the dam,) and at least 5 feet in length for every foot rise of such dam; and the height of the dam at the place where the apron is constructed shall be at least two feet lower than the top of the said dam at any other place, (unless it occupy the whole width thereof,) but if the rise of the dam be less than four feet, the height of the dam at the place where the apron is constructed shall not exceed one-half its height at every other place. § 10. Such

apron to be constructed on the main channel of the stream, and its highest part shall be one foot below the level of the dam where it joins the same, under a penalty of 25 cents a day. § 11. Said penalty recoverable before any two justices for the county upon the oath of one witness, one-half to her Majesty, the other to the prosecutor, and if not forthwith paid to be levied by distress and sale. § 12. The ninth section not to apply to any dam on the river Moira constructed before the 23rd March, 1848, until the renewal thereof.

On the River Otonabee.

§ 13. Aprons to be not less than 32 feet wide by an inclined plane of five feet to a perpendicular of one foot, and so in proportion to the height of the same; and side pieces of at least one foot in height shall be fixed on the outside of such aprons to confine the water and prevent the timber from falling off at the sides.

As to Penalties when Dams injured by Floods.

§ 14. In case any apron be carried away, destroyed or damaged by flood or otherwise, the owner shall not be liable to any such penalty if such apron be repaired or re-constructed as soon as the state of the stream safely permits.

§ 15. All persons may float saw logs and other timber, rafts and crafts, down all streams in Upper Canada during the spring, summer and autumn freshets. § 16. In case there shall be a convenient apron, slide, gate, lock, or opening in any such dam, or other structure made for the passage of saw logs and other timber, rafts and crafts, floated down as aforesaid. Any person using such streams shall not alter, injure or destroy any dam or other useful erection across any such stream.

By C. Stat. 22 V. c. 93, § 23. The unlawful and malicious breaking down or destroying the dam of any mill-pond is made a misdemeanor, and the offender punishable accordingly.

MILLERS.

By U. C. Stat. 22 V., c. 48, § 1. No owner or occupier of a mill or any person employed by him shall demand or take as a toll more than a twelfth part for grinding and bolting of grain, under a penalty of \$40, one moiety to the Queen and the other to the person that shall sue for the same in any court of record. § 3. No miller shall be answer-

able for the loss of any bag of grain or flour, unless the initials of the christian and surname of the owner be marked thereon, or some other distinguishing mark, and such mark of distinction being previously known to the owner or occupier of the mill or his servant usually attending the same.

See also title "*Flour and Meal.*"

MILLS.

By U. C. Stat. 22 V., c. 48, § 17. In case any action brought against the proprietor or occupier of any mill for the overflowing or injury of any land caused by the erection or continuation of any dam for the purposes of such mill, if it appears that the injury was caused by a dam built before the purchase by, and grant of such land to the grantee of the Crown, and that such purchaser obtained the land at a reduced price, or was otherwise indemnified in consequence thereof, then the jury may take the same into consideration.

MISDEMEANOR.

The word misdemeanor, in its usual acceptation, is applied to all those crimes and offences for which the law has not provided a particular name; and they may be punished according to the degree of offence, by fine or imprisonment, or both.—3 *Burns' Just. tit. Misdemeanor; Russell on Cr. and Misd.* 43. A misdemeanor is, in truth, any crime less than a felony; and the word is generally used in contradistinction to felony; misdemeanors comprehend all indictable offences which do not amount to felony.—4 *Bl. Com* 5. note 2. All disturbances of the peace, oppressions, misbehaviour by public officers, and all other misdemeanors whatsoever, of a public evil example, against the common law, may be indicted.—2 *Haw. P. C.* 25, § 4. And whatever openly outrages decency, and is injurious to public morals, is a misdemeanor at common law.—4 *Bl. Com.* 65, (n) *Ed.* And wherever a statute *forbids* the doing of a thing, the doing of it wilfully, although without any corrupt motive, is indictable as a misdemeanor.—*R. v. Sainsbury*, 4 *T. R.* 457. So, if a statute *enjoin* an act to be done, without pointing out any mode of punishment, an indictment will lie for disobeying the injunction of the legislature.—*Ray v. Davis*, *Say*, 133. Where a statute making a new offence only inflicts a forfeiture, and specifies the remedy, an indictment will not lie.—*R. v. Wright*, 1 *Burr.* 543. The true rule is stated to be this: where the offence was punishable by a common law

proceeding before the passing of a statute which prescribes a particular remedy, by a summary proceeding, then either method may be pursued, as the particular remedy is *cumulative*, and does not exclude the common law punishment; but where the statute creates a new offence, by prohibiting and making unlawful any thing which was lawful before, and appoints a particular remedy against such new offence by a particular method of proceeding, such must be pursued, and no other.—*Russ. Cr. Misd.* 49.

Every attempt to commit a felony is at common law a misdemeanor; and, in general, an attempt to commit a misdemeanor is an offence of the same nature.—*R. v. Scofield, Cald.* 397. So, also, an incitement or solicitation to commit a crime, is a misdemeanor; as in the case of one Higgins, who was indicted for having incited and solicited a servant to steal his master's property. The servant was honest, and informed his master, and no theft was committed: Higgins was found guilty, and sentenced by the court to two years' imprisonment, and to stand once in the pillory: Lord Kenyon observing, that the bare solicitation to commit a crime was a misdemeanor, though the crime was not committed.—*R. v. Higgins, 2 East, 5.*

By C. Stat. 22 V. c. 5, § 6, sub-§ 15, any wilful contravention of an act of parliament is declared to be a misdemeanor, unless made some other offence.

By Stat. 24 V. c. 10. § 1, no bill of indictment for perjury, subornation of perjury, conspiracy, obtaining money or property by false pretences, keeping a gambling house, disorderly house, or for indecent assault, shall be found by any grand jury unless the prosecutor and defendant have been previously bound by recognizance to prosecute or appear, or by direction of a judge of the superior courts of law, or the attorney-general, or a judge of the county court or recorder's court. § 2. If any justice shall refuse to commit or bail the accused, and the prosecutor desires to prefer an indictment, he may then bind over the prosecutor to prosecute, and an indictment may then be preferred.

Aiders and Abettors.—By 27, 28 V. c. 19, § 9, whosoever shall aid, abet, counsel or procure the commission of any misdemeanor, whether the same be a misdemeanor at common law, or by virtue of any act passed or to be passed, shall be liable to be tried, indicted and punished as a principal offender.

By C. Stat. 22 V. c. 92, § 66, no misdemeanor in the last section mentioned shall be prosecuted or tried at any court

of general or quarter sessions. [The sections referred to are from the 51st section to the 65th section. These sections relate to fraudulent acts by trustees, bankers, and persons holding powers of attorney, bailees of property, directors of companies, receivers of property fraudulently disposed of.]

By C. Stat. 22 V. c. 99, § 64. If upon the trial for misdemeanor the facts proved amount to a felony, the party shall not by reason thereof be entitled to an acquittal of such misdemeanor, nor be afterwards indicted upon the same facts for felony, unless the court shall order the jury to be discharged, and direct an indictment for the felony. § 68. Persons indicted for felony or misdemeanor may be found guilty of the *attempt* only, and punishable accordingly. § 130. No person shall be prosecuted for any attempt to commit any felony or misdemeanor who has been previously tried for committing the substantive offence.

By C. Stat. 22 V. c. 102, "respecting the duties of justices of the peace." § 1. Any one justice may issue his warrant in cases of misdemeanor for the apprehension of the offender; or by § 2, a summons only instead of a warrant; and by § 53, *one* justice may take bail in all cases of misdemeanor.

By U. C. Stat. 22 V. c. 108, § 1, defendants, upon any indictment found or removed into the Queen's Bench or Common Pleas, shall not be permitted to *imparle* to a following term, but shall plead or demur thereto in four days after appearance, otherwise judgment. § 2. But the court, on cause shewn, may grant further time. § 3. No person prosecuted shall be entitled to traverse or postpone the trial of any indictment found against him at any session of oyer and terminer, or gaol delivery, session of the peace or recorder's court, except the court shall be of opinion that the defendant ought to be allowed a further time for defence, and then the court may adjourn such trial to the next subsequent session, upon such terms as to bail, or otherwise, as the court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly. § 4. In Crown prosecutions for misdemeanor, if the same be not brought to trial within twelve months after plea of "not guilty," the court may authorise the defendant to bring on the trial unless a *nolle prosequi* be entered.

By U. C. Stat. 22 V. c. 110, § 1, persons indicted for misdemeanor are entitled to a copy of the indictment on payment of charges.

See also "*Indictment*," "*Trial*."

MISPRISION OF FELONY.

Misprision of felony is the concealing of a felony which a man knows, but never consented to; for if he consented, he is either a principal or accessory in the felony, and consequently guilty of misprision of felony, and more.—1 *H. H.* 374. The punishment for misprision of felony, in a common person, is fine and imprisonment; in an officer, as sheriff or bailiff of liberties, imprisonment for a year, and ransom at the king's pleasure, by the stat. 3 *Ewd.* I., c. 9. If any person will save himself from the crime of misprision of felony, he must discover the offence to a magistrate, with all the speed he can.—3 *Inst.* 140.

MONEY.

See title "*Coin.*"

MUNICIPAL INSTITUTIONS.

The provisions relating to municipalities and municipal institutions will be found distributed under their appropriate heads. But the following being of a general nature and applicable to all municipalities, are here introduced so far as can be conveniently done without incumbering the work with fuller details. For such the reader is referred to the act itself, entitled "An Act respecting the Municipal Institutions of Upper Canada," being the U. C. Stat. 22 V. c. 54.

The institutions embodied in the act are—

1. Counties and union of counties.
2. Townships.
3. Cities.
4. Incorporated towns.
5. Incorporated villages.
6. Police villages.

*Names and Governing Body.***1. Corporations.**

§ 4. The name of every body corporate continued or erected under this act shall be *the corporation of the county, city, town, village, township or united counties or united townships*, (as the case may be) *of* (naming the same.)

§ 5. The inhabitants of every junior county upon a provisional council being or having been appointed for the county shall be a body corporate under the name of *The Provisional Corporation of the County of* (naming it.)

§ 6. The powers of every body corporate under this act shall be exercised by the council thereof.

2. *Police Villages.*

§ 7. The police regulations of every police village shall be enforced through the police trustees.

Municipal Council, &c., of whom composed.

The Heads.

§ 65. The head of every county and provisional corporation shall be designated the warden thereof, and of every city and town the mayor thereof, and of every township and incorporated village the reeve thereof.

The Members.

1. *In Cities.*

§ 66. The council of every city shall consist of the mayor, who shall be the head thereof, and of two aldermen, and two councilmen for every ward.

2. *In Towns.*

The council of every town shall consist of the mayor, who shall be the head thereof, and of three councillors for every ward, and if the town has not withdrawn from the jurisdiction of the council of the county in which it lies, one of the councillors of the town shall be elected by the council to be reeve of the town; and if the town had the names of 500 resident freeholders and householders on the last revised assessment roll, then one other of the councillors shall be deputy reeve.

3. *Incorporated Villages.*

The council of every incorporated village shall consist of five councillors, one of whom shall be reeve, and if the village had the names of 500 resident freeholders on the last revised assessment roll, then one other of the councillors shall be deputy reeve.

4. *Townships.*

The council of every township shall consist of five councillors; but when the township is divided into wards, then of one councillor for each ward, one of which councilmen shall be reeve; and if the township had the names of 500 resident freeholders and householders on the last revised assessment roll, then one of the councillors shall be deputy reeve.

5. *In Counties.*

The council of every county shall consist of the reeves and deputy reeves of the townships and villages within the

county, and of any towns within the county which have not withdrawn from the jurisdiction of the council of the county; and one of the reeves or deputy reeves shall be the warden.

§ 67. No reeve or deputy reeve shall take his seat in the council until he has filed with the clerk of the county council a certificate under the hand and seal of the township, village, or town clerk, that such reeve, or deputy reeve was duly elected, and made and subscribed the declarations of office and qualifications (unless exempted therefrom) as such reeve or deputy reeve; nor, in the case of a deputy reeve, until he has also filed with the clerk of the county an affidavit or affirmation of the clerk or other person having the legal custody of the last revised assessment rolls for the municipality which he represents, that there appear upon such rolls the names of at least 500 resident freeholders and householders in the municipality.

6. *Police Villages.*

§ 68. The trustees of every *Police Village* shall be *three* in number, one of whom shall be the "Inspecting Trustee."

Provisional Councils.

§ 69. The reeves and deputy reeves of the municipalities within a junior county for which a provisional council is established shall *ex officio* be the members of the provisional council.

Qualification of Municipal Councillors and Police Trustees.

§ 70. The persons qualified to be elected mayors, members of a council, or police trustees, are such residents of the county within which the municipality or police village is situate, as are not disqualified under this act, and have at the time of the election, in their own right, or in the right of their wives as proprietors or tenants, freehold or leasehold property rated in their own names on the last assessment roll of such municipality, or police village, to at least the value following:

In Townships.—Freehold to \$400, or leasehold to \$800.

In Police Villages.—Freehold or leasehold to \$400.

In Incorporated Villages.—Freehold to \$40 per annum, or leasehold to \$80 per annum.

In Towns.—Freehold to \$80 per annum, or leasehold to \$160 per annum.

And in Cities.—For aldermen, freehold to \$160 per annum, or leasehold to \$320 per annum; and for council-

men, freehold to \$80 per annum, or leasehold to \$160 per annum.

And so in the same proportion in all municipalities and police villages, in case the property is partly freehold and partly leasehold.

The term "leasehold" in this section shall not include a term less than a tenancy for a year, or from year to year.

And the qualification of all persons, where a qualification is required under this act, may be of an estate either legal or equitable.

§ 71. In case of a new township erected by proclamation, for which there has been no assessment roll, every person who at the time of the first election has such an interest in real property and to such an amount as hereinbefore mentioned, shall be deemed to be possessed of a sufficient property qualification.

§ 72. In case in a municipality there are not at least two persons qualified to be elected for each seat in the council, no qualification beyond the qualification of an elector shall be necessary in the persons to be elected.

Disqualification.

§ 73. No judge of any court of civil jurisdiction, no gaoler or keeper of a house of correction, no officer of any municipality, no bailiff of a division court, no sheriff's officer, no innkeeper or saloon keeper, no person receiving any allowance from the corporation, (except as mayor, warden, reeve, deputy reeve or township councillor,) and no person having in himself, or his partner, an interest in any *contract* with or on behalf of the corporation, shall be qualified to be a member of the council of the corporation. (a)

Exemptions.

§ 74. All persons over 60 years of age, all members and officers of the Legislative Council and of the Legislative Assembly, all persons in the civil service of the Crown, all judges not disqualified by the last preceding section, all sheriffs and coroners, all persons in priests' orders, clergymen and ministers of the Gospel of every denomination, all members of the Law Society of Upper Canada whether barristers or students, all attorneys and solicitors in actual practice, all officers of courts of justice, all members of the

(a) Amended by 27, 28 V. c. 37, as to shareholders in incorporated companies.

medical profession whether physicians or surgeons, all professors, masters, teachers and other members of any university, college or school in Upper Canada, and all officers and servants thereof, all millers and all firemen belonging to an authorised fire company, are exempt from being elected or appointed councillors, or to any other corporate office.

Electors.

§ 75. The electors of every municipality for which there is an assessment roll, and the electors of every police village shall be the male freeholders thereof; and such of the householders thereof as have been resident therein, for one month next before the election, who are natural born or naturalized subjects of her Majesty and of the full age of twenty-one years, and who were severally rated on the last revised assessment rolls for real property in the municipality or police village held in their own right, or that of their wives, as proprietors or tenants.

In cities, towns and incorporated villages such real property, whether freehold or leasehold, or partly each, must have been so rated as of at least the annual value following: Incorporated villages, \$12. In towns, \$20. In cities, \$30.

§ 77. At the first election for a newly erected municipality, for which there is no separate assessment roll, every resident male inhabitant, though not previously assessed, shall be entitled to vote if he possesses the other qualifications above mentioned, and has at the time of the election sufficient property to have entitled him to vote if he had been rated for such property; and every person so claiming to vote shall name the property on which he votes, and the returning officer at the request of any candidate or voter shall note the property in his poll book opposite the voter's name.

§ 78. When a municipality is divided into wards or electoral divisions, no elector shall vote in more than one ward or electoral division. And if entitled to vote in the ward in which he resides, he shall not be entitled to vote in any other ward or electoral division.

§ 79. In case both the owner and occupant of any real property are rated therefor, both shall be deemed rated within this act.

§ 80. When any real property is owned or occupied jointly by two or more persons and is rated at an amount sufficient, if equally divided between them, to give a qualification to each, then each shall be deemed so rated.

Elections.

Police Villages.—§ 85. The council by which a police village is established shall by by-law establishing the same name the place for holding the election of the trustees.

Municipalities.—§ 86. Elections to be held annually on the first Monday in January, and for police trustees on the second Monday in January.

Returning Officers.—§ 90. To be appointed by by-law where the election is to be by wards or electoral divisions. § 91. Otherwise the *clerk* shall be the returning officer. § 95. The returning officer to be a conservator of the peace during the election, and he or any justice of the locality may arrest and summarily try and punish by fine and imprisonment or both, or bind over to keep the peace, or for trial, any riotous or disorderly person who assaults, beats, molests or threatens any voter coming to, remaining at, or going from the election; and when thereto required all constables and persons present at the election shall assist the returning officer or justice on pain of being guilty of a misdemeanor. § 96. Returning officers and justices may also swear in special constables, and every person liable to serve as constable and required, if he refuses to be sworn, shall be liable to a penalty of \$20.

Of Mayors of Cities and Towns.

§ 101. To be chosen by the electors of such cities and towns at the annual election on the first Monday in January.

§ 102. The qualification of a mayor shall be the same as that of an alderman in cities, and of a councillor in towns.

§ 113. The mayor elect shall make and subscribe the necessary declarations of office and qualification on the day appointed for the first meeting of the council, and shall afterwards administer the necessary declaration to the other members of the council. § 120. The mayor shall be deemed the head of the council, and be vigilant in causing the laws for the government of the city to be duly executed, &c.

Seats when Vacant.

§ 121. Any member of council convicted of felony, or infamous crime, or declared bankrupt, or charged in execution for debt and in close custody, or upon the gaol limits for one month, or applying for relief as an insolvent debtor, or assigning his property for the benefit of his creditors, or absenting himself from the council meetings for three months without permission, his seat shall become vacant.

Meetings of Councils.

§ 130. The first to be held at noon on the third Monday in January, after the election, or some day thereafter at noon. (Except county councils, who shall hold their first meeting on the fourth Tuesday, or some day thereafter.)

Heads of Councils, Election of.

§ 132. To be elected at the first meeting after the election (except for a city or town) a warden or reeve. § 135. And for towns not withdrawn from the jurisdiction of the county and incorporated villages at the first meeting a reeve, and where the resident freeholders or householders exceed 500 a deputy reeve. (a)

Who to Preside.

§ 143. The head of every council shall preside at council meetings, with power to summon special meetings. In case of the death or absence of the head, the reeve, or in case of his absence the deputy-reeve shall preside. § 144. If of a town council, the reeve or deputy-reeve. § 145. In the absence of the head of the council, and in the case of a town, village or township, in the absence also of the reeve and deputy-reeve, the council may from among the members eligible appoint a presiding officer *pro. tem.* § 146. If the person who ought to preside does not attend within a reasonable time, the members present may appoint a chairman.

Resignation.

§ 148. The warden of a county, or the reeve or deputy-reeve of a town, village or township, may at any time resign, and the vacancy be supplied by the council at a special meeting for the purpose. § 149. Any mayor or other member of the council may also resign with the consent of the majority of the council, and the vacancy supplied as in case of death.

The Clerk, and duties of.

§ 150. Every council shall appoint a clerk, who shall truly record in a book all resolutions, decisions and proceedings of the council, and if required by any member present the name and vote of every member voting on any matter submitted; and shall keep the books, records and accounts of the council; and preserve and file all accounts, and also the originals or certified copies of all by-laws, and minutes of

(a) See 24 V. c. 37, § 1, in amendment of this section.

proceedings, all which he shall so keep in his office, or where appointed by by-law. § 151. Any person may inspect any of the particulars aforesaid at all seasonable times; and the clerk shall furnish copies thereof to any applicant, at the rate of ten cents per hundred words, or at such lower rate as the council may appoint: and on payment of his fee therefor furnish certified copies to any elector, his attorney or agent, or any other person interested therein, of any by-law, order or regulation, under his hand and under the corporate seal.

Other Officers.

§ 159. Every city council shall appoint a chamberlain, and every other council a treasurer. § 162. Also assessors and collectors. § 167. And two auditors.

Salaries.

§ 173. To be provided for by by-law.

Official Declaration.

§ 175. To be made and subscribed by persons elected or appointed under this act.

“I, A. B., do solemnly declare that I am a natural born (or naturalized) subject of her Majesty; that I am truly and *bonâ fide* seised or possessed to my own use and benefit of such an estate (specifying the nature of such estate, and if land, designating the same by its local description, rents or otherwise) as doth qualify me to act in the office of (naming the office) for (naming the place for which such person has been elected or appointed,) according to the true intent and meaning of the municipal laws of Upper Canada.”

§ 176. Returning officers and their clerks, and all municipal officers and justices of the peace for towns, shall, before entering on the duties of their office, make and subscribe the following declaration:

“I, A. B., do solemnly promise and declare, that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the office of (inserting the name of the office) to which I have been elected (or appointed) in this township, (or as the case may be,) and that I have not received, and will not receive any payment or reward, or promise of such, for the exercise of any partiality or malversation, or other undue execution of the said office.”

§ 177. The declaration, to be made by every mayor and alderman, and by every township, village, town, and city councillor, shall also state that he has not by himself or his

partner an interest in any contract with or on behalf of the corporation.

§ 178. The declaration to be made by every auditor shall be as follows :

“I, A. B., having been appointed to the office of auditor for the municipal corporation of _____, do hereby promise and declare that I will faithfully perform the duties of such office according to the best of my judgment and ability ; and I do solemnly declare, that I had not directly or indirectly any share or interest whatever in any contract or employment (*except that of auditor if re-appointed*) with, by, or on behalf of such municipal corporation during the year preceding my appointment, and that I have not any contract or employment (*except that of auditor if re-appointed*) for the present year.

Oath—Affirmation.

§ 181. The head of any council, any alderman, reeve, or deputy reeve, any justice of the peace of a town, and the clerk of the municipality, may within the municipality, administer any oath, affirmation or declaration under this act, relating to the business of the place in which he holds office, except where otherwise provided. § 182. Such oath or affirmation to be subscribed, certified and deposited by the party administering within eight days in the office of the clerk of the municipality, on pain of misdemeanor.

Refusal of Office.

§ 183. By any qualified person duly elected or appointed not making the required declaration of office and qualification within twenty days, or refusal to administer the same, shall be subject to a penalty of not more than \$80 nor less than \$8, recoverable before two or more justices under the summary conviction statute, with costs.

Offences.

§ 184. All books, papers, accounts, documents, moneys, and valuable securities, by any person or officer appointed or employed by or on behalf of any council kept or received by virtue of his office or employment shall be the property of the corporation, and the refusal to deliver up or pay over the same shall be deemed a fraudulent embezzlement, and may be punished in the same manner as a servant fraudulently embezzling the property of his master.

§ 185. Stealing, or unlawfully or maliciously taking from any returning officer or poll clerk or from any other person, or from its lawful place of deposit, or unlawfully or malici-

ously destroying, injuring or obliterating, or making any erasure, or addition, or interlineation of names into or upon any writ of election, return, indenture, poll book, certificate or affidavit, or any other document or paper relating to municipal elections, shall be felony, and the offender liable to be imprisoned in the penitentiary for any time not exceeding seven nor less than two years, or in any other place of confinement for less than two years: or to suffer such other punishment by fine and imprisonment as the court shall award.

Jurisdiction of Councils.

§ 187. Limited to the municipality, except where authority beyond the same is expressly given. § 188. May make regulations respecting its members, and call special meetings; and may repeal, alter and amend by-laws.

By-Laws.

§ 189. Every by-law shall be under the seal of the corporation signed by the head of the corporation, or person presiding at the meeting, and by the clerk. § 190. And a copy (without erasure or interlineation) under the seal of the corporation, certified by the clerk and by any member of the council, shall be evidence in any court without proof of the seal or signature, unless forgery alleged.

Opposition to.—§ 191. Any ratepayer objecting to the the passing of any by-law which is to be preceded by the application of a certain number of the ratepayers, shall on petition be at liberty to attend in person, or by counsel or attorney before the council, and produce evidence against the same. § 192. If the council be satisfied upon such evidence that the application for such by-law did not contain the names of a sufficient number of persons without fraud and good faith, or if satisfied that the notice required by law was not duly given, the council shall not pass the by-law.

When Electors' assent is required.—§ 193. The following proceedings shall be taken except in cases otherwise provided for:—

Sub-§ 1. The council shall by by-law fix the day, hour and place for taking the votes of the electors thereon, 2, and for at least one month before the final passing publish a copy thereof in some newspaper, 3, with a notice signed by the clerk that such by-law will be taken into consideration after one month from the first publication, 4, a poll to be taken, 5, and poll book returned, verified, to the clerk of the

municipality, 6, the votes to be summed up by the clerk of the council and the result certified by him to the council.

When and how Quashed.

§ 195. By production to either of the superior courts of a certified copy, shewing by affidavit that the same was received from the clerk, and that the applicant is a resident or interested, and after eight days' service on the corporation of a rule to shew cause why the same should not be quashed, the court may quash the same in whole or in part for illegality, and award costs for or against the corporation.

§ 196. Application to be made within six months after promulgation. § 202. If quashed for illegality, no action to be brought until one month after, and one month's notice in writing given, and such action shall be brought against the corporation alone, and not against any person acting under the same. § 203. And the corporation may tender amends.

Offences against By-laws.

§ 204. In case any officer neglects or refuses to carry into effect any by-law for paying a debt, and so neglects or refuses under colour of a by-law illegally attempting to repeal such first mentioned by-law, or to alter the same so as to diminish the amount to be levied under it, such officer shall be guilty of a misdemeanor, punishable by fine or imprisonment.

§ 205. In case an offence be committed against a by-law for the prosecution of which no other provision is made, any justice of the peace, having jurisdiction in the locality where the offender resides or offence committed, whether the justice is a member of the council or not, may try and determine any prosecution for the offence.

§ 206. The justice or other authority before whom a prosecution is had for an offence against a municipal by-law, may convict the offender on the oath or affirmation of any credible witness, and award the penalty or punishment imposed by the by-law, with costs of prosecution, and may by warrant under the hand and seal of the justice or other authority, or in case two or more justices act together therein, then under the hand and seal of one of them, cause the penalty and costs, or costs only, if not forthwith paid, to be levied by distress and sale of the offender's goods. § 207. In case there be no distress found out of which the penalty can be levied, the justice may commit the offender to the common gaol or house of correction, or nearest lock-up house,

for the term specified in the by-law. § 208. One moiety of the penalty to go to the informer, and the other to the corporation, unless the prosecution be in the name of the corporation, and in that case the whole shall be paid to the corporation.

§ 209. The police magistrate, or mayor of a town or city, shall have jurisdiction, in addition to his powers, to try and determine all prosecutions for offences against the by-laws of the town or city, and for penalties for refusing to accept office, or make the necessary declarations of qualification and office.

Restrictions upon Councils.

§ 215. Not to act as bankers, or issue any bond, bill, note, debenture, or undertaking in the nature thereof, intended for a circulating medium. § 216. Any person issuing or making, altering, or tendering in payment or exchange any such bond, bill, note, &c., shall be guilty of a misdemeanor. § 217. No council shall give any person an exclusive right to any trade or calling within such municipality. § 218. But may grant exclusive privileges in ferries. § 219. Contracts entered into by members in which the corporation is a party interested shall be void.

Yearly Rates.

§ 222. The council of every township, and the council of every county, and of every provisional corporation, and of every city, town or incorporated village shall assess and levy on the whole rateable property, within its jurisdiction, a sufficient sum to pay all valid debts of the corporation, whether of principal or interest, falling due within the year.

By-laws for Contracting Debts, &c.

§ 223. Subject to the following restrictions and provisions—1. The by-law shall name a day when the same shall take effect. 2. If not contracted for public works, the obligations issued therefor shall be payable in twenty years. If for gas or water-works thirty years. 3. A special annual rate to be specified for payment of debt and interest, 4, according to the last revised assessment rolls, 5, irrespective of any future increase, and of any income arising from the work. 6. The by-law shall recite—1. The amount of the debt and subject. 2. The annual amount required. 3. Amount of rateable property. 4. Annual special rate.

§ 224. And shall receive the assent of electors as provided in § 193, except that in counties, other than cities, the council

may raise by by-laws (without the assent of the electors) any sum over and above that required for its ordinary expenditure, not exceeding in any one year \$20,000. § 225. But not to be valid unless passed at a special meeting of the council, held not less than three months after publication of a copy of the by-law in some public newspaper.

§ 226. Any council may contract for the purchase of public works; and impose by by-law a special rate for payment thereof.

Counties; Townships, Cities, Towns, Incorporated Villages.

§ 243. May pass by-laws.

Sub-§ 1. For obtaining property and personal estate for the use of the municipality.

2. For the appointment of certain officers, viz:—1. Poundkeepers. 2. Fence viewers. 3. Overseers of highways. 4. Road surveyors. 5. And other officers.

3. For regulating their fees and duties. 4. For aiding agricultural and other societies. 5. For taking a local census. 6. For inflicting reasonable fines and penalties not exceeding \$50, exclusive of costs.

(a) Upon any person for the non-performance of the duties of his office.

(b) For breach of any by-law.

7. For collecting such penalties by distress and sale. 8. For inflicting reasonable punishment with or without hard labour in a lock-up house in some town or village in the township, or in the county gaol or house of correction for any period not exceeding 21 days for breach of any of the by-laws of the council in default of payment of the fine inflicted, and insufficient distress.

Townships, Cities, Towns, Incorporated Villages.

§ 245. Members of these councils shall be health officers under the C. Stat. respecting *the public health*. § 246. May also pass by-laws. (a)

Sub-§ 1. For granting tavern licenses and shop licenses. 2. For regulating the terms. 3. The security to be given. 3. For limiting the number. 5. For regulating the houses licensed. 6. For prohibiting the sale by retail of spirituous liquors, provided the by-law before the passing thereof be duly approved by the electors of the municipality in the manner provided by the act.

§ 259. For appointing inspectors of licenses.

§ 261. For licensing billiard tables. 2. Victualling houses.
§ 266, *sub-§ 1*. For ascertaining and establishing boundary lines of the municipality. 2. For acquiring land for school purposes. 3, 4. For establishing cemeteries. 5. For preventing cruelty to animals and destruction of birds. 6. For imposing a tax on dogs. 7. For killing dogs running at large contrary to law. 8. For settling the height and description of lawful fences. 9. For regulating division fences. 10. Destruction of weeds. 11. Regulating and licensing public exhibitions. 12. Preventing the violation of graves. 13. Injury to ornamental trees. 14. Pulling down or defacing sign-boards and painted or written notices. 15. Authorising gas and water-works. 16. For taking stock therein, (subject to the consent of the electors.)

Townships and Counties.

§ 269. For remunerating councillors for attendance in council not exceeding \$1.50 per diem.

Townships.

§ 271. Provision for dividing the same into wards. § 275. Or electoral divisions. § 276. For support of the poor by assessment. § 277. For preventing the obstruction of streams or water-courses. § 279. For drainage.

Counties, Cities, and Towns.

§ 281. For appointing inspectors of weight and measures, and imposing penalties.

Public Morals.

§ 282, *sub-§ 1*. For enforcing the due observance of the Sabbath according to law.

2. For preventing the sale or gift of intoxicating drink to a child, apprentice or servant, without the consent of a parent, master, or legal protector.

3. For preventing the posting of indecent placards, writings, or pictures, or the writing of indecent words, or the making of indecent pictures or drawings on walls or fences in streets or public places.

4. For preventing vice, drunkenness, profane swearing, obscene, blasphemous, or grossly insulting language, and other immorality or indecency in streets, highways and public places.

5. For suppressing tippling houses, and houses of ill fame.

6. For preventing and regulating horse racing.

7. For preventing or regulating and licensing exhibitions held or kept for hire or profit, bowling alleys, and other places of amusement.

8. For suppressing gambling houses, and for seizing and destroying faro banks, rouge et noire, roulette tables, and other devices for gambling found therein.

9. For restraining and punishing vagrants, mendicants, and persons found drunk or disorderly in any street or highway, or public place.

10. For preventing indecent public exposure of the person and other indecent exhibitions.

11. For preventing or regulating the bathing or washing the person in any public water near a public highway.

Counties, Cities, and Separated Towns.

§ 283. For appointing engineers, inspectors of house of industry, and surgeons of the gaol, 2, licensing auctioneers, 3, hawkers and pedlars. 4. Regulating ferries.

§ 286. Purchasing lands for grammar schools, 2, aiding grammar schools, 3, providing for the attendance of pupils at the university, 4, and grammar schools, 5, endowing fellowships.

Cities, Towns, and Incorporated Villages.

§ 294. For the cleanliness of streets, harbours, docks, &c. 2. Removal of door steps. 3. For making and maintaining wharves and docks, &c. 4. For regulating harbours. 5. For public wells and waterworks.

Markets.—6 & 7. Establishing and regulating markets. 8. Regulating sale of provisions in public streets. 9. Or selling in the open air. 10. The sale of butcher's meat. 11. For preventing forestalling. 12. Regulating hucksters. 13. Regulating the weight or measure of lime, shingles, wood, &c. 14. Penalties for light weight. 15. For regulating vehicles used in market vending. 16. For regulating the *assize of bread*. 17. For seizing and destroying unwholesome provisions. 18. For selling meat distrained for rent of butcher's stalls.

Nuisances.—19. For preventing or regulating the bathing or washing the person in any public water in the municipality. 20. For preventing and abating public nuisances. 21. For preventing and regulating the construction of privy vaults. 22. For causing vacant lots to be properly enclosed. 23. For preventing or regulating slaughter houses, gas-works, tanneries, distilleries, or other manufactories or trades which

may prove to be nuisances. 24. Preventing the ringing of bells, blowing of horns, shouting, and other unusual noises in streets and public places. 25. For preventing or regulating the firing of guns, or other fire arms, fire works, and for preventing charivaries, and other like disturbances of the peace. 26. For preventing immoderate riding or driving of horses or cattle upon side walks or other places not proper therefor. 27. For preventing persons in streets or public places from importuning others to travel in or employ any vessel or vehicle, to go to any tavern or boarding house, or for regulating persons so employed.

Public Health.—28. For providing for the same and against contagious or infectious diseases.

Interments.—29. For regulating the same. 30. Keeping bills of mortality.

Livery Stables, &c.—30. For regulating and licensing the owners of, and of horses, cabs, carriages, omnibuses, and other vehicles for hire, establishing rates of fare and enforcing payment.

Gunpowder.—32. For regulating the keeping and transporting of the same.

Fires.—33. For appointing fire wardens, engineers, firemen, fire, hook and ladder companies. 34. Medals and rewards to. 35. Preventing or regulating fire or lights in stables, workshops and combustible places. 36. Dangerous manufactories and trades. 37. Chimneys, flues, fire-places, stoves, ovens, boilers, &c. 38. For cleaning of chimneys. 39. Safe keeping of ashes. 40. Erection of party walls. 41. Scuttles in roofs and ladders. 42. Buildings and yards safe from fire. 43. Providing fire buckets. 44. Inspection of premises by officers appointed. 45. Suppression of fires. 46. Enforcing assistance at fires.

Cities and Towns.

Intelligence Offices.—§ 297.—1. For licensing suitable persons therefor, 2, for regulation thereof, 4, for prohibiting the keeping of the same without license, 5, for fixing license fee not to exceed \$1 per annum.

Wooden Buildings.—6. For regulating or preventing the erection of in specified parts.

Police.—7. For establishing, regulating, and maintaining a police force, but subject to the other provisions of this act on that head.

Municipal Institutions.

Industrial Farm—Exhibition.

8. For acquiring property therefor. 9. Erection of buildings thereon. 10. For the management thereof.

Charity.

11. Establishing and regulating almshouses on the industrial farm, &c.

Snow, Ice and Dirt.

12. For compelling the removal thereof from the roofs of houses, sidewalks, &c.

Numbering Houses and Lots.

13. For numbering and affixing the number to the houses. 14. For keeping a record of streets and numbers.

Drainage.

15. For compelling owners or occupants to furnish levels of cellars. 16. Ground plans of buildings, with levels of the cellar or basement. 17. For regulating the construction of cellars, sinks, vaults, &c., and draining the same. 18. For filling up, draining, &c., grounds, yards, vacant lots, cellars, &c. 19. For making other regulations for sanitary purposes. 20. For sewerage rent.

City or Town.—Gas and Water.

§ 298, sub-§ 1. For appointing a corporation surveyor. 2. For lighting with gas. 3. Laying down gas or water pipes. 4. Constructing gas or waterworks. 5. Estimate to be first published, and a poll had on the by-law. 6. If rejected, not to be renewed within the current year. 7. If any gas or water company incorporated, no rate to be levied until a price offered for the company's works. 8. Inspection of gas meters. 9. Appointment of commissioners for gas or waterworks.

Cities.—Improvements.

§ 299, sub-§ 1. For ascertaining the property benefitted by any local improvement. 2. For assessing such property. 1. By annual rate on the property according to the assessed value. 2. Or by annual rate on the real property benefitted according to value, exclusive of improvements, 3. Or by a foot frontage. 4. Or by a proportionate annual rate on each portion of the property. 5. Or partly by each or any two or three of said methods.

3. For regulating the terms of payment or commutation.
4. For effecting such improvements by private funds.

§ 300. No such local improvement to be undertaken except by by-law passed in pursuance of the fourth sub-section of the preceding section, otherwise than on the petition of two-thirds in number and one-half in value of real property to be benefitted thereby of the owners of such property.

Townships—Towns—Incorporated Villages.

Statute Labour.

§ 330, *sub-1*. For voluntary commutation not exceeding five years. 2. Commutation not to exceed one dollar *per diem*. 3. For increasing or reducing the number of days. 4. For enforcing performance or payment. 5. For regulating the divisions.

Townships—Counties—Cities—Towns—Incorporated Villages.

§ 331, *sub-§ 1*. For opening, improving, widening, diverting, stopping up, &c., drains, sewers, watercourses, roads, streets, squares, alleys, lanes, bridges or other public communications. 2. For raising money by tolls or bridges, roads and other works. 3. Regulating driving and riding on bridges. 4. Regulations as to pits, precipices and deep places. 5. For preserving or selling timber, trees, stone, sand on road allowances. 6. For selling original road allowances. 7. Granting privileges to road companies. 8. For taking stock therein. 9. For granting tolls on any plank, gravelled, or macadamised road to the maker.

§ 335, *sub-§ 1*. For granting to the county aid towards making any new road or bridge. 2. For entering into joint contract with any other council for the construction of any work for their joint benefit.

Cities—Towns—Incorporated Villages.

§ 338, *sub-§ 1*. For local rates for making or repairing any pavement, (excepting cities.) 2. For watering and sweeping streets. 3. For preventing obstructions and nuisances. 4. For removing door-steps, &c. 5. For surveying and settling the boundaries of streets.

Counties.

§ 342, *sub-§ 1*. For stopping up and sale of original road allowances, not being within the limits of any village, town

or city, but subject to the 321st section of this act, (*which see.*) 2. For preventing immoderate riding or driving of horses or cattle on highways. 3. For opening roads, &c., between two or more townships. 4. For removal of trees on each side of the highway. 5. For levying rates for local improvements. 6. Upon petition signed by at least one-half of the electors of the locality. 7. For granting aid to townships or incorporated villages for making roads and bridges. 8. For requiring any part of a county road to be opened by any local municipality.

Townships.

§ 343, *sub-§ 1.* For aiding counties in making or improving roads, &c. 2. For stopping original road allowances, subject to the 321st section, (*which see.*) 3. For removal of trees on each side of the highway by the owners.

Townships—Counties—Cities—Towns.

§ 346, *sub-§ 1.* For taking stock in railway companies. 2. Guaranteeing payment of debentures. 3. Issuing such debentures; by-law to be first assented to by the electors.

Townships—Cities—Towns—Incorporated Villages.

§ 359, *sub-§ 1.* For providing pounds. 2. Restraining or regulating animals running at large, impounding the same. 3. Appraising damages. 4. Compensation.

Counties.

§ 403. For erecting, improving and repairing a court house, gaol, house of correction, and house of industry. § 409. For establishing a lock-up house or houses, and provide for salary or fees of the constable in charge. § 415. For establishing a house of industry and house of refuge.

Cities and Towns.

§ 419, *sub-§ 1.* For establishing a workhouse or house of correction, and regulating the same; for committing thereto such offenders as may by the council be deemed, and by by-law declared expedient.

See also titles "*Cities—Towns—Villages—Police—Highways—Road Allowances,*" &c., &c.

MURDER.

What constitutes the crime of murder will be found under the head of "*Homicide,*" *ante* page 382.

By C. Stat. 22 V., c. 91, § 2, every person guilty of murder, or of being accessory before the fact to murder, shall suffer death as a felon; and every accessory after the fact to murder, shall be imprisoned in the penitentiary for life, or 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.

By C. Stat. 22 V. c. 99, § 90, sentence of death may be pronounced after conviction for murder in the same manner, and the court before which the conviction takes place shall have the same power in all respects as after conviction for other capital offences. (a) § 95. 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 food or liquor, except in case of receiving the sacrament, or in case of sickness or wound, in which case the surgeon of the prison may order other necessaries 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.

Form of Indictment for Murder, C. Stat. 22 V., c. 99, § 51.

County of } The jurors for our lady the Queen, upon their
to wit. } oath present that A. B. on the day of
in the year of our Lord one thousand eight hundred and
at , in the county of , did feloniously, wilfully and
of his malice aforethought, kill and murder one C. D.

See also titles "*Homicide*," "*Punishment*."

MUTE.

By C. Stat. 22 V. c. 99, § 47, if any person being arraigned upon or charged with any indictment for treason felony, piracy or misdemeanor stands mute of malice, or will not answer directly to the indictment or information, the court may order the proper officer to enter a plea of "not guilty" on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

(a) But see U. C. Stat. 22 V., c. 113, respecting new trial, which enacts, "that" no sentence of death in any capital felony shall be passed to take effect until the expiration of the term of the superior courts next succeeding the sitting of the court at which such sentence is passed.—See also title "*New Trial*"

NAVIGATION—INLAND.

By Stat. 27, 28. V. c. 13, entitled "An Act to amend the law respecting the Navigation of Canadian Waters," it is enacted, § 1. This act shall come into force on the first of September next after its passing; and on and after the said day the C. Stat. 22 V. c. 44 shall be repealed.

Regulations for Preventing Collisions.

§ 2. And with respect to lights, fog signals, steering and sailing, and rafts, the following rules shall on and after the day last aforesaid apply to all the rivers, lakes, and other navigable waters whatsoever within this province, or within the jurisdiction of the legislature thereof; that is to say:

Preliminary.

Art. 1. In the following rules every steam ship which is under sail and not under steam is to be considered a sailing ship; and every steam ship which is under steam, whether under sail or not, is to be considered a ship under steam.

Rules concerning Lights.

Art. 2. The lights mentioned in the following articles, numbered three, four, five, six, seven, eight, and nine, and no others, shall be carried in all weathers, from sunset to sunrise.

Art. 3. Steam ships when under weigh shall carry:

(a.) *At the foremast head*, a bright white light, so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass; so fixed as to throw the light ten points on each side of the ship, viz., from right ahead to two points abaft the beam on either side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles.

(b.) *On the starboard side*, a green light so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass; so fixed as to throw the light from right ahead to two points abaft the beam on starboard side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.

(c.) *On the port side*, a red light so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass; so fixed as to throw

the light from right ahead to two points abaft the beam on the port side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.

(d.) The said green and red side lights shall be fitted with inboard screens, projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

Art. 4. Steam ships when towing other ships shall carry two bright white mast-head lights vertically, in addition to their side lights, so as to distinguish them from other steam ships. Each of these mast-head lights shall be of the same construction and character as the mast-head lights which other steam ships are required to carry.

Art. 5. Sailing ships under weigh, or being towed, shall carry the same lights as steam ships under weigh, with the exception of the white mast-head lights, which they shall never carry.

Art. 6. Whenever, as in the case of small vessels during bad weather, the green and red lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for instant exhibition, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with suitable screens.

Art. 7. Ships, whether steam ships or sailing ships, when at anchor in roadsteads or fairways, shall exhibit, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light, in a globular lantern of eight inches in diameter, and so constructed as to show a clear, uniform and unbroken light visible all round the horizon, and at a distance of at least one mile.

Art. 8. Sailing pilot vessels shall not carry the lights required for other sailing vessels, but shall carry a white light at the mast-head, visible all round the horizon,—and shall also exhibit a flare-up light every fifteen minutes.

Art. 9. Open fishing boats and other open boats shall not be required to carry the side lights required for other vessels, but shall, if they do not carry such lights, carry a lantern

having a green slide on the one side and a red slide on the other side; and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

Fishing vessels and open boats when at anchor, or attached to their nets and stationary, shall exhibit a bright white light.

Fishing vessels and open boats shall, however, not be prevented from using a flare-up in addition, if considered expedient.

Rules concerning Fog Signals.

Art. 10. Whenever there is fog, whether by day or night, the fog signals described below shall be carried and used, and shall be sounded at least every five minutes, viz. :—

(a) Steam ships under weigh shall use a steam whistle placed before the funnel, not less than eight feet from the deck.

(b) Sailing ships under weigh shall use a fog horn.

(c) Steam ships and sailing ships, when not under weigh, shall use a bell.

Penalties.

§ 5. All owners, masters, and persons in charge of any ship, vessel or raft, shall obey the rules prescribed by this act, and shall carry and exhibit no other lights and use no other fog signals than such as are required by the said rules; and in case of wilful default, such master or person in charge or such owner if it appears that he was in fault, shall, for each occasion in which such rules are infringed, incur a penalty not exceeding two hundred dollars nor less than twenty dollars.

§ 8. Except as hereinbefore provided, all penalties incurred under this act may be recovered in the name of her Majesty, by any inspector of steamboats, or by any party aggrieved by any act, neglect or wilful omission by which the penalty is incurred, before any two justices of the peace on the evidence of one credible witness; and in default of payment of such penalty, such justices may commit the offender to gaol for any period not exceeding three months; and except as hereinafter provided, all penalties recovered under this act shall be paid over to the Receiver-General, and shall be by him placed at the credit of, and shall form part of "The Steamboat Inspection Fund;" except always, that all penalties incurred for any offence against this act

shall, if such offence be committed within the jurisdiction of the Trinity House of Quebec, or of the Trinity House of Montreal, be sued for, recovered, enforced or applied in like manner as penalties imposed for contravention of the by-laws of the Trinity House within whose jurisdiction the offence is committed.

§ 9. Every inspector of steamboats shall, whenever he visits and inspects any steamship, examine whether such steamship is provided with lights and with the means of making fog signals in pursuance of the rules prescribed by this act, and shall, for that purpose, have all the power vested in him by the *act respecting the inspection of steamboats, and for the greater safety of passengers by them*, for obtaining information as to the observance of the requirements of the said act, and shall refuse to grant any certificate with respect to any steamship which he finds to be not so provided, and shall report such steamship as unsafe to the Governor in Council, who shall, on such report, have all the powers mentioned in section twenty-seven of the said act; and any Order in Council made on such report shall have the effect and be enforced in the manner provided by the said section.

§ 10. Whenever foreign ships are within Canadian waters the rules for preventing collision, prescribed by this act, and all provisions of this act relating to the said rules, or otherwise relating to collisions, shall apply to such foreign ships; and in any cases arising in any court of justice in Canada concerning matters happening within Canadian waters, foreign ships shall, so far as regards such rules and provisions, be treated as if they were British or Canadian ships.

For other provisions see the act.

See title "*Steam Vessels.*"

NEW TRIAL.

Reservation of Points of Law.

By U. C. Stat. 22 V. c. 112, any question of law arising upon the trial of any felony or misdemeanor before any court of Oyer and Terminer, Quarter Sessions, or Recorder's Court may be reserved in the discretion of the judge for the consideration of the judges of the superior courts. In the meantime judgment to respited, and the court in its discretion may commit or bail the prisoner. § 2. A case to be thereupon stated and signed by the judge, recorder, or chairman at the trial, and transmitted by such judge, &c., to one of the superior courts on or before the last day of the first week of the term of such superior court next after such trial. § 3. The decision of the judge of such superior court to be

final. § 4. And certified under the hand of the chief justice or senior judge to the clerk of assize, 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 such clerk of assize, &c., in the form mentioned in the schedule to the acts, shall be transmitted to the sheriff or gaoler, and shall be a sufficient warrant for execution of such judgment: or if the court below be directed to give judgment such court shall do so at the next session.

New Trial Under U. C. Stat. 22 V. c. 113.

Oyer and Terminer.—1. When a person has been convicted of any treason, felony, or misdemeanor before a court of Oyer and Terminer, or gaol delivery, or quarter sessions, such person may apply for a new trial upon any point of law or question of fact, in as ample a manner as any person may apply to the superior courts of common law for a new trial in a civil action. 2. When the conviction takes place at a court of Oyer and Terminer or gaol delivery the application shall be to one of the superior courts of common law; but shall not be entertained unless made on or before the last day of the *first* week of the term next succeeding the court of Oyer and Terminer or gaol delivery at which the conviction takes place. 3. In such case if the conviction be affirmed by the superior court, the person convicted may appeal to the court of error and appeal; provided the appeal be allowed by the superior court or by two judges thereof in term or vacation. But such allowance shall not be granted nor the appeal heard except within six months after the conviction has been affirmed, unless otherwise ordered by the court of error and appeal. 4. Any rule or order of the court of error and appeal shall be final. 5. In case of a capital felony, no sentence of death shall be passed to take effect until after the expiration of the term of the superior court of law next succeeding the sitting of the courts at which the sentence of death is passed.

Quarter Sessions.—6. When the conviction takes place at a court of quarter sessions, the application for a new trial shall be to such court. 7. In such case if the conviction be affirmed a further appeal shall lie to either of the superior courts of common law. 8. In the event of such an appeal the court of quarter sessions shall state in a case to be prepared by the appellant and approved by the court and signed by the chairman or recorder, the question or

questions of law or facts upon which the new trial was applied for together with the circumstances upon which the same arose, and the judgment of the court, and the reasons therefor. 9. The case shall be transmitted by the court of quarter sessions to one of the superior courts of common law on or before the first day of the term of the superior court next after the time when the rule or order was made. 10. The judgment of the superior court on the appeal from the quarter sessions shall be final.

General Powers.

11. The court to which an application for a new trial is made either in the first place or by way of appeal shall have power to hear and determine the question of law and fact involved in the application, and shall affirm the conviction or order a new trial or otherwise as justice requires. 12. In case a new trial be granted the same proceedings shall take place as to any future trial or the commitment or bailing of the person convicted as if no conviction had taken place. 13. In case a new trial be refused the court shall make such order for carrying out the sentence already passed, or for passing sentence if none has been passed, or for the discharge of the person so convicted on bail, or otherwise as justice requires. 14. The court may in every case make such other rules and orders as are necessary to carry into effect any judgment pronounced under this act. 15. The judges of the superior courts of common law, or a majority of them, and the court of error and appeal respectively may from time to time make such general rules and orders as they consider necessary more effectively to carry out the provisions of this act. 16. Provisions for issuing writs of error. 17. The judgment to be pronounced. 18. In this act the words "quarter sessions," include recorder's courts.

For forms of "Notice," "Recognizance," &c., see title "Summary Conviction."

NUISANCE.

Nuisances are of two kinds—*public* and *private*. A public, or common nuisance, is an offence against the public, either by doing a thing which leads to the annoyance of all the Queen's subjects, or by neglecting to do a thing which the common good requires—1 *Haw. c. 75*, § 1; and is an indictable offence.

A private nuisance, is any thing done to the hurt or annoyance of the lands, tenements or hereditaments of another, as

by building a house so near to a neighbour's as to stop his lights, or shoot the rain-water upon his house.—3 *Bl. Com.* 216. This is not an indictable offence, but only the subject of a civil action, in which the party may recover damages for the injury.

At the same time, if a private individual sustain a special grievance, arising out of the common injury, he has a right of action for the particular damage occasioned to him, notwithstanding the nuisance may affect all the Queen's subjects. 3 *Bl. Com.* 219.

What is a Public Nuisance.

The offending qualities of a nuisance are, in general, smell, noise, danger or obstruction; and the existence of it as a *public* nuisance depends on the number of persons annoyed by it.—1 *Burr.* 337. All trades and manufactures which are set up in a town, and occasion inconvenience to the whole neighbourhood, or which are carried on so near a *public highway* as to cause the same inconvenience or danger to persons lawfully passing along it, may be indicted as public nuisances. But where a person sets up a noxious trade remote from human habitations and public roads, and new houses are afterwards built, and new roads constructed near it, the party, in such a case, is not guilty of nuisance; for the public cannot, by their own act of *coming* to settle in the neighbourhood, make that a nuisance which was not so before, on the principle of "*volenti non fit injuria*."—*R. v. Cross*, 2 *C. & P.* 483. Yet, if the trade afterwards become more noxious, he may be indicted for the additional nuisance.—*R. v. Watts, M. & S.* 281. To constitute a nuisance proceeding from a noxious trade, it is not necessary, as Lord Mansfield has observed, that the smell should be *unwholesome*; it was enough if it rendered the enjoyment of life and property *uncomfortable*.—*R. v. White*, 1 *Burr.* 333. To make *candles* in a town, by boiling *stinking stuff* which annoys the whole neighbourhood with stench, is a common nuisance.—*Matthews v. Curry*, 3 *Mod.* 137; 1 *Haw. c.* 75, § 10. So if a *brew-house* or a *glass-house* cannot be carried on without greatly annoying the neighbourhood, it may be indicted as a nuisance.—2 *Haw. c.* 75, § 10. The keeping of hogs in a town is not only a nuisance by statute, (2 *W. & M. sess.* 2 c. 3, § 20,) but also at common law.—*R. v. Wigg.* 2 *Ld. R.* 1163. So also, to steep stinking skins in water near a highway, and also near several dwelling-houses, by which the air is corrupted, is the subject of an indictment.—

R. v. Vappineau, 1 *Str.* 686. Making great noises in the night with a *speaking-trumpet*, to the disturbance of the neighbourhood, has been also decided to be a nuisance.—*R. v. Smith*, 1 *Str.* 764. So, to keep dogs, which make a noise in the night, seems to be an indictable offence.—2 *Chit. Crim. L.* 647. This, however, must be understood only where a whole neighbourhood is disturbed by them, otherwise it will only be a *private* nuisance; for where the noise made by a *tinman*, in carrying on his trade, only affected the inhabitants of three houses, and it appeared that by shutting the windows the noise was in a great measure prevented, it was held that the indictment could not be supported, as the annoyance was, if any thing, a *private* nuisance.—*Rex v. Lloyd*, 4 *Esp.* 200. All disorderly inns or ale houses, bawdy houses, and gaming houses, are also public nuisances.—1 *Haw. c.* 75, § 4; 2 *Bl. Com.* 167. So, whatever outrages *decency*, and is injurious to public morals, is a common nuisance, and indictable as a misdemeanor.—1 *Haw. c.* 5, § 4; 4 *Bl. Com.* 65, *n.* Any thing, also, which is productive of imminent danger, or which causes *reasonable terror* to the inhabitants of a neighbourhood, may be considered as a public nuisance. Thus, to erect *gunpowder mills* or magazines, in or near to a town, or to put on board of a ship a quantity of gunpowder, without giving notice, is indictable as a nuisance.—*R. v. Williams*, 4 *Burns*, 758.

By 9 & 10 W. III. c. 7, making, selling or exposing to sale any *fireworks*, or throwing or firing them into any public street or highway, is declared to be a common nuisance. So, to let a fierce *mastiff* or *bull-dog*, that is used to bite people, go about unmuzzled, to the danger and terror of the neighbourhood, is also a common nuisance; and the owner may be indicted for suffering him to go at large.—4 *Burns' J.* 578. So, for a person affected with an infectious disorder to go or be carried about in the highways and other public places, is an indictable offence. Accordingly, where the defendant was in the habit of carrying her child, while infected with the *small-pox*, along a highway, and near to houses, this was held to be a common nuisance, and indictable as such.—*R. v. Vantandillo*, 4 *M. & S.* 73. So, where a surgeon and apothecary was indicted for *inoculating* children with the *small-pox*, and while they were sick of it, unlawfully and injuriously causing them to be carried along the public street, it was objected that the defendant in this case was, by profession, a person qualified to inoculate with this disease, and that the causing the children to be carried

along the street was no more than his directing his patients to attend him for advice, instead of visiting them, or prescribing what he might deem essential to their recovery—air and exercise; it was held that though *inoculation* may be practised lawfully and innocently, (a) yet it must be done under such safeguards as not to endanger the public health; and that the defendant, in this case, was clearly guilty of an indictable offence.—*R. v. Burnett*, 4 *M. & S.* 272. It is also a public nuisance for any common dealer in provisions to sell *unwholesome* food, or to mix noxious ingredients in any thing made and supplied for the food of man. With respect to nuisances by obstruction in highways and rivers, see *ante* title "*Highways*," p. 367.

Of the Remedy, by Abatement and Indictment.

Any one may pull down, or otherwise destroy, a common nuisance; as a new gate or fence erected across a highway. 1 *Haw. c.* 75, § 12. But if there is no pressing necessity for the exercise of this immediate remedy in abating the nuisance, the better way, in order to prevent a breach of the peace, is to proceed against the party, by indictment or presentment. No length of time will legalize a public nuisance.—7 *East*, 199. The punishment imposed by the law upon a person convicted of a nuisance, is *fine* and *imprisonment*; but as the removal of the nuisance is of course the object of the prosecution, the court will adapt the judgment to the circumstances of the case. If the nuisance, therefore, be continued, the judgment of the court may be, that the defendant shall remove it at his cost—1 *Haw. c.* 75, § 14; or the court may suspend their judgment, upon the defendant entering into recognizance to appear at an adjourned or subsequent sessions, when, if it shall appear to the court satisfactorily that the nuisance has been abated, the court may impose a nominal fine only; but if the contrary shall appear to be the case, the court may then pronounce its judgment, of fine and imprisonment, or either according to the circumstances of the case.

The municipal act U. C. Stat. 22 V. c. 54, § 294, authorises the municipalities of incorporated villages, towns and cities to make by-laws for the abating and removing all public nuisances within their respective localities.

By 5 *W. & M. c.* 11, § 3, if an indictment for a nuisance

(a) Inoculation for small pox is now prohibited by C. Statute 22 V. c. 39. See title "*Inoculation*."

be removed into the King's Bench, and the defendant be convicted, the court may give reasonable costs to the prosecutor.

Indictment for carrying on an Offensive Trade. (Archbold.)

County of } The jurors for our lady the Queen, upon their
to wit. } oath present that J. S., late of the township
of in the county of , labourer, on the day of
in the year of the reign of our sovereign lady Victoria, with
force and arms, at the township aforesaid, in the county aforesaid,
near unto divers public streets, being the Queen's common high-
way, and also near unto the dwelling-houses of divers liege subjects
of our said lady the Queen, there situate and being, unlawfully
and injuriously did (make, erect and set up, and cause and procure
to be made, erected, and set up, a certain furnace and boiler,
for the purpose of boiling tripe and other entrails and offals of
beasts; and that the said J. S. on the day and year aforesaid, and
on divers other days and times, () between that day and the day
of the taking of this inquisition, at the township aforesaid, in the
county aforesaid, unlawfully and injuriously did boil, and cause
and procure to be boiled in the said boiler divers large quantities
of tripe, and other entrails and offals of beasts.) by reason of
which said premises, divers noisome, offensive, and unwholesome
smokes, smells, and stenches, during the time aforesaid, were
from thence emitted and issued, so that the air then and there
was, and yet is, greatly filled and impregnated with the said
smokes, smells, and stenches, and was and is corrupted, offensive,
uncomfortable and unwholesome, to the great damage and com-
mon nuisance of all the liege subjects of our said lady the Queen
there inhabiting, being and residing, and going, returning, and
passing through the said streets and highways, and against the
peace of our lady the Queen, her crown and dignity.

Second Count, for Continuing the Nuisance.

And the jurors aforesaid upon their oath aforesaid, do further
present, that the said J. S. on the said day of in the
year aforesaid, and from that day until the day of the taking of
this inquisition, with force and arms, at the township aforesaid,
in the county aforesaid, (a certain other furnace and boiler, for
the purpose of boiling tripe and other entrails, and offals of
beasts, before that time made, erected, and set up, by certain
persons, to the jurors aforesaid unknown, unlawfully and injur-
iously did continue; and that the said J. S. on the said day
of in the year last aforesaid, and on divers other days and
times) &c., as in the first count from the () to the end.

OATH—AFFIRMATION.

An oath taken on the common prayer book, containing
the epistles, is good.—2 *Kez.* 314.

The stat. 15 Geo. III., c. 39, gives authority to justices to administer oaths where penalties are to be levied, or distresses made in pursuance of acts of parliament.

A Jew should be sworn on the Old Testament—2 *Kib.* 314; and they are allowed to put on their hats when sworn—2 *Str.* 821. A Mahomedan on the Koran—2 *Str.* 1104; and a Gentoo according to the custom of his religion.—1 *Atk.* 21. It is immaterial what the particular opinions of persons are professing Christianity, as far as regards the taking of an oath; it is only necessary that they believe the sanctity of an oath, the existence of a Deity, and a future state of rewards and punishments.—*Peake, R.* 11. But a person having no idea of a God, or a future state of retribution, cannot be admitted to take an oath.—*Leach,* 482.

By U. C. Stat. 22 V., c. 32, § 1, Quakers, Menonists and Moravians, are permitted to affirm in any case criminal or civil, making a certain declaration in the form given in the act, previous to such affirmation.

By the General Interpretation Act, C. Stat. 22 V., c. 5, § 6, art. 13, the word "oath" shall be construed as meaning a solemn affirmation, whenever the context shall be applied to any person and case by whom and in which a solemn affirmation may be made instead of an oath; and in every case where an oath or affirmation is directed to be made before any person or officer, such person or officer shall have full power and authority to administer the same, and to certify its having been made; and the wilful making of any false statement in any such oath or affirmation shall be wilful and corrupt perjury, and the wilful making of any false statement in any declaration required or authorised by any such act as aforesaid shall be a misdemeanor, punishable as wilful and corrupt perjury.

OATHS OF OFFICE

By C. Stat. 22 V. c. 12, § 3, it shall not be necessary for any person appointed to any office in this province, civil or military, or any mayor, or other officer, or member of any corporation therein, or for any person admitted as a barrister, advocate, notary public, attorney, solicitor, or proctor, to make any declaration or subscription, or to take or subscribe any other oath than the following, viz. :

I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, (*or the reigning sovereign for the time being,*) as lawful sovereign of the United Kingdom of Great Britain and Ireland, and of this pro-

vince, dependent on, and belonging to, the said kingdom ; and that I will defend her to the utmost of my power, against all traitorous conspiracies or attempts whatever, which shall be made against her person, crown or dignity ; and that I will do my utmost endeavour to disclose and make known to her Majesty, her heirs and successors, all treasons or traitorous conspiracies and attempts which I shall know to be against her or any of them ; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or power whatsoever to the contrary. So help me God.

And also such oath for the faithful performance of the duties of his office, or for the due execution of his profession or calling, as is required by any law in that behalf.

§ 5. Such oath to be taken within the period, and in the manner and subject to the liabilities and penalties for omission, as by law provided. § 6. Affirmation allowed as in civil cases, instead of oath. § 7. It shall not be necessary for any person, for the purpose of qualifying himself to hold office, or for any other temporal purpose, to take or receive the sacrament of the Lord's Supper, according to the rites of the Church of England.

OFFICER.

If a *public officer* neglects a duty incumbent on him, either by common law, or by statute, he is indictable for his offence ; being considered as amenable to the law for every part of his conduct, and liable to punishment for not faithfully discharging it.—*R. v. Wyatt*, 1 *Salk.* 380 ; *Anon.* 6 *Mod.* 66 ; *R. v. Bambridge*, 1 *Haw. c.* 66, § 1, *Note.*

ORDERS OF MAGISTRATES.

Where a justice of the peace has power to make an order, and direct it to an inferior ministerial officer, if such officer disobey it, and there is no particular remedy prescribed to punish his disobedience, it is an *indictable* offence—*R. v. Davis*, *Say.* 166 ; 1 *Bott.* 388 ; and *a fortiori* the disobedience of an order of sessions, or of an order made by two justices, is indictable ; and this, too, whether there be another remedy or not ; for the prosecutor has his option either to adopt that remedy, or proceed by indictment at common law.—*R. v. Robinson*, 2 *Burr.* 799. If the order is made upon several persons, they must be all personally served with it before they can be indicted for disobeying it. It is no defence to a party, for total disobedience of an order, that when the order

was served upon him, he was not able to perform what was required of him, for he is bound to obey an order as much as lies in his power, and is not justified in utterly disregarding it.—*Deacon's C. L.*

ORPHAN CHILDREN.

By U. C. Stat. 22 V. c. 76, § 3, when the father of an infant child abandons the child with the mother, the mother, with the approbation of two justices, may bind the child as an apprentice to any person, (*master mechanic, farmer or other person carrying on a trade or calling,*) until the age of twenty-one years in the case of a male, and eighteen years in the case of a female; and an indenture to that effect, under the hand and seal of the mother, countersigned by such justices, shall be valid. § 4. In a city or town the mayor, recorder or police magistrate, and in a county the chairman of the quarter sessions, may (in court) bind for the like period to any person mentioned in the act, with the consent of such person and of the minor, any minor who is an orphan, or has been deserted by his or her parents or guardian, or whose parents or guardian has been for the time committed to a common gaol or house of correction, or any minor dependent upon a public charity for support.

See also title "*Guardians,*" "*Apprentices.*"

OUTLAWRY.

By U. C. Stat. 22 V. c. 107, § 1, the courts of quarter sessions in the several counties in Upper Canada shall be in the place and stead of the sheriffs' county courts in England, so far as respects any outlawry. § 2. The process upon every indictment shall be a *capias* from the court where the indictment is found, to bring the person indicted into court; and if not taken during the sitting of the court, then to bring him before some justice, to be dealt with according to law. § 3. Which *capias* shall be made returnable in the Court of Queen's Bench or Common Pleas on the first day of term next after the sitting of the court before which the indictment is found; and if the sheriff return *non est inventus*, then an *alias* shall issue from the Queen's Bench or Common Pleas, tested the first day of term, or if in vacation, on the last day of the preceding term, returnable before the court on the first day of the next term. § 4. And if to the said *alias* writ the sheriff return *non est inventus*, then, upon motion in court, or before a judge, in vacation, a writ of *exigent* shall issue, tested on the first day of term,

or on the last day of the preceding term, if in vacation, directed to the same sheriff, returnable on the first day of the fifth term from that in which the same is awarded, and in the form required, (*vide act.*) § 5. The sheriff shall, at three successive general quarter sessions, before the return of the said writ, in open court, immediately after the charge to the grand jury, make proclamation of the person named in the *exigent* requiring him to render to the indictment. § 6. And if the person so demanded does not appear, the sheriff shall endorse upon the said writ of *exigent* the following return:—

Form of Return.

By virtue of the within writ, to me directed, at the court of general quarter sessions of the peace, held at in and for the county of on the day of in the year within written, the within named A. B. was a first time demanded, and did not appear; and at the court of general quarter sessions of the peace, held at aforesaid, for the county aforesaid, on the day of in the year aforesaid (*or as it may be*) the said A. B. was a second time demanded, and did not appear; and at the court of quarter sessions of the peace, held at aforesaid (*or as the case may be*) the said A. B. was a third time demanded and did not appear, therefore the said A. B. according to the law of Upper Canada is outlawed.

The answer of C. D., Sheriff.

§ 7. In all criminal cases wherein any writ of *exigent* is awarded against any person described in the indictment, as being lately conversant in any other county, a writ of proclamation shall be awarded and made out of the same court or by order of a judge in vacation, with the same teste and return as the writ of *exigent*, directed to the sheriff of such county, in the form prescribed, (*vide act.*) and the sheriff of such county shall at three successive courts of general quarter sessions, before the return of the said writ, in open court, the first day of the court, make proclamation according to the said writ. § 8. And shall return the same in the following form:—

By virtue of the within writ to me directed, I caused the within named A. B. to be proclaimed three several days, according to the effect of the within mentioned statute, as it is within commanded me.

The answer of C. D., sheriff.

§ 9. After the return of the said writ of *exigent* and proclamation, the person against whom the same issued, shall,

in default of appearance, incur the same disabilities, and the like process shall be thereupon had as in cases of outlawry by the criminal law of Upper Canada, as it stood immediately before this act takes effect.

PARDON.

A pardon is a work of mercy extended towards a criminal, whereby the king, either before his attainder, conviction or sentence, or afterwards, forgives him for the crime which he has committed, and remits any punishment, pain or penalty, which he has thereby incurred.—2 *Inst.* 233.

By 27 H. VIII., c. 24, it is enacted, that the king shall have the whole and sole power and authority thereof, united and knit to the imperial crown of this realm, as of good right and equity it appertaineth. The power of pardoning offences is thus inseparably incident to, and inherent in the crown; and is entrusted to the sovereign, upon a special confidence that he will spare those only whose case (could it have been foreseen) the law itself would have excepted out of its general rules, which the wisdom of man cannot make so perfect as to suit every particular case.—1 *Shaw*, 284; *Haw. c.* 37, § 8. But besides a special pardon granted by the king's charter, there may be a *general* pardon or act of grace passed by the legislature; but in this instance also proceeding from the king, for the pardon of certain crimes committed before a certain period named in the acts. Such was the act of grace of 20 G. II., c. 52. But these acts of general pardon have now, for a long time, been discontinued; the special pardon, therefore, proceeding from the king's peculiar grace and favour, is that with which we have now alone to deal. The king may pardon all offences against the Crown or the subject, with some few exceptions. These are, first, *the sending any subject of the realm a prisoner into any parts beyond the seas*; which in order to preserve the liberty of the subject, is, by the *habeas corpus* act (31 Car. II., c. 2, § 12) made a *præmunire*, and unpardonable, even by the king. And see *ante* title "Kidnapping." Neither can the king pardon a *common nuisance*, while it remains unredressed, or so as to prevent its abatement. Nevertheless, where a man is convicted, and fined for a nuisance, the king may after judgment remit the fine.—2 *Haw. c.* 37, § 33. Upon the same principle, the king cannot pardon an offence against a *penal statute* after the information brought; for the informer has then acquired a private property in his share of the

penalty.—3 *Inst.* 338; 4 *Bl. Com.* 398. (a) There is also another restriction of a peculiar nature, that affects the prerogative of pardoning; and that is in the case of parliamentary impeachments, wherein the king's pardon cannot be *pleaded* to any such impeachment, so as to impede enquiry, and stop the prosecution of great and notorious offenders.—12 & 13 W. III., c. 2. This statute however does not restrain the king from pardoning the offender after conviction on impeachment.—4 *Bl. Com.* 399. A pardon is not effectual unless it is under the great seal; for a warrant under the privy seal, or sign manual, though sufficient to admit the party to bail, is not of itself a complete irrevocable pardon.—6 *Str.* 166. (b) It is also a general rule, that wherever it may be reasonably presumed that the king has been deceived, the pardon is void. Therefore, any suppression of truth, or suggestion of falsehood, in a charter of pardon, will vitiate the whole, for the king was misinformed.—3 *Inst.* 238; 2 *Haw.* c. 37, § 8. And this is in conformity with the statute of 27 Ed. III., c. 2, which directs that in every charter of the pardon of felony, the suggestion and the name of him that maketh the suggestion shall be comprised; and if it be found untrue, the charter shall be disallowed. *General words* have a very imperfect effect in pardons; thus a pardon of all "*felonies*" will not pardon a *conviction* or attainder of felony; but the conviction or attainder must be particularly mentioned; and if the party is convicted by verdict, the pardon must recite the indictment and conviction.—2 *Haw.* c. 37, § 8.

The statute 13 R. II., st. 2. c. 1, enacts, that no pardon for *treason, murder, or rape* shall be allowed, unless the offence be particularly specified therein; and particularly in *murder*, that it shall be expressed whether it was committed by lying in wait, assault, or *malice prepense*; upon which Sir Edward Coke observes, that it was not the intention of the parliament that the king should ever pardon murder under these circumstances, and therefore they prudently laid the pardon under this restriction, because they did not conceive it possible that the king would ever excuse an offence by name which was attended with such high aggravation.—3 *Inst.* 236. And it is remarkable enough, says Sir W. Blackstone, that there is no precedent of a pardon in the register for any other homicide than that which happens *se*

(a) But see *contra* Con. Stat. 22 Vic. c. 99, § 112.

(b) See *contra* Con. Stat. *ibid.* § 113.

defendendo, or *per infortunium*; to which two species the king's pardon was expressly confined by the statute of 2 Ed. III., c. 2, and 14 Ed. III., c. 15, which declare that no pardon of homicide shall be granted, but only where the king may do it by the *oath of his crown*; that is to say, where a man slayeth another in his own defence, or by misfortune. But the above statute (Ric. II.) enlarges, by implication, the royal power, provided the king is not deceived in the intended object of his mercy; and, therefore, pardons of murder were always granted with a *non obstante* of the statute of Richard II. till the time of the revolution, when the doctrine of *non obstante* ceasing, it was doubted whether murder could be pardoned generally; but it was determined by the Court of King's Bench that the king may pardon on indictment of murder, as well as a subject might have discharged an appeal for that offence.—*Salk.* 499; 4 *Bl. Com.* 401.

A pardon may also be *conditional*; that is, the king may extend his mercy on what terms he pleases, and consequently may annex to his pardon any condition that he thinks fit, whether precedent or subsequent, on the performance whereof the validity of the pardon will depend.—2 *Haw. c.* 37, § 45. A general pardon by act of parliament containing no exceptions, is more beneficial in one respect than by the king's charter, inasmuch as a man is not bound to plead it; but the court must *ex officio* take notice of it; neither can he lose the benefit of it by his own *laches* or negligence, as he may of the king's pardon — *Post.* 43, 2 *Haw. c.* 37, § 61. But if any persons are excepted out of an act of general pardon, no one can then take the benefit of it without specially pleading it; and he must shew in his plea that he is not one of the persons excepted.—*Ib.* 60. But the king's pardon must, in all cases, be specially pleaded, and produced in court *under seal*; and this, too, at a proper time; for if a man is indicted, and has a pardon in his pocket, and he does not plead it when arraigned, and puts himself upon his trial by pleading the general issue, he thereby waives the benefit of the pardon, and cannot afterwards resort to it.—2 *Haw. c.* 37, § 59, 67.

By 5 & 6 W. & M., c. 13, when a pardon is pleaded by any criminal, the judges have a discretionary power to bind him to his good behaviour, with two sureties, for any term not exceeding seven years.

The *effect* of a free pardon by the king, is to make the offender in all respects a new man; to acquit him of all corporal penalties and forfeitures annexed to that offence for

which he obtains the pardon; and not so much to restore his former, as to give him a new credit and capacity. But nothing can restore or purify the blood when once corrupted—which is the consequence of the attainder of *treason* or *murder* if the pardon be not allowed till after the attainder—but the high and transcendent power of parliament; yet, if a person so attainted receives the king's pardon, and afterwards has a son, that son may be heir to his father; because the father being a new man may transmit new inheritable blood; though had the son been born before the pardon, he could never have inherited at all, nor can he inherit if he has an elder brother living, born before the attainder; for in that case the land will escheat *pro defectu hæredis*.—1 *Hale*, 358; 4 *Bl. Com.* 402. By U. C. Stat. 22 V. c. 116, § 1, corruption of blood is taken away, and except in cases of high treason, including aiders and abettors, an attainder for felony shall not extend to the disinheriting of any heir, nor to the prejudice of the right or title of any person other than of the offender during his natural life only. § 2. Every person to whom, after the death of any such offender, the right or interest to, or in the lands, should or might have appertained, if no such attainder had been, may enter into the same.

By C. Stat. 22 V. 99, § 112, the Governor may extend the royal mercy to any person sentenced to imprisonment, by virtue of any of the foregoing criminal acts, although he be imprisoned for non-payment of money to some party other than the Crown; § 113, and a pardon under the royal sign manual, or by warrant under the hand and seal at arms of the Governor, shall have the effect of a free pardon under the great seal; but shall not mitigate the punishment for any subsequent offence.

By C. Stat. 22 V. c. 111, § 17, in case of *conditional* pardon, such pardon shall have the same effect as the judgment of a competent court legally sentencing such person to such imprisonment for life or other term would have. § 18. And on the production of such pardon, or a certified copy, the warden shall act accordingly.

PARTY PROCESSIONS.

The act 7 V. c. 6, relating to party processions was repealed by 14 & 15 V. c. 50.

PATENT RIGHTS.

By C. Stat. 22 V. c. 34, § 2, the minister of agriculture shall

receive all applications for patents. § 3. Any person being a subject of her Majesty and resident in this province having discovered or invented any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement, or any art, machine, manufacture or composition of matter, the same not being known or used in this province by others before his discovery or invention thereof, and not being at the time of the application for a patent in public use or on sale in this province with his consent or allowance as the inventor or discoverer thereof, and desiring to obtain an exclusive property therein, may make application by petition in the manner provided by this act to the Governor of this province, expressing such desire, and the Governor on due proceedings being had as by this act directed, shall grant such patent, which shall be good and available to the said grantee, his heirs, &c., for the period of *fourteen* years from the granting of the same, and upon the assignment of the same previous to such grant, for the same period after such assignment shall have been recorded in the office of the minister of agriculture.

§ 4. Patents for designs and works of art may also be obtained for the same period. § 5. The original inventor not to be deprived of his rights by reason of his having patented the same in a foreign country. § 6. Every inventor, before he can receive a patent, must make a solemn declaration that he verily believes that he is the true inventor or discoverer of the art, machine, or improvement for which he solicits a patent, before a justice of the peace, or if temporarily residing out of the province, before any minister, plenipotentiary, *charge d' affaires*, consul, or agent, holding commission under the government of Great Britain, or notary public where he happens to be. § 7. The inventor is to deliver a written description or specification (in duplicate) of the invention or improvement, and of the manner and process of compounding the same, so as to distinguish the same from all things before known, 2, and in case of any machine, he shall fully explain the modes, &c., in which it may be distinguished from other inventions, 3, accompanied with drawings and written references, (in duplicate,) when practicable. 4. Such description or specification to be signed by himself and attested by two witnesses, and filed in the office of the minister of agriculture. 5. Duplicate drawings to be furnished when practicable, one to be deposited with the minister of agriculture, the other annexed to the patent, 6, and a model of the machine, if required. § 8. Patents to

contain a brief description of the invention, and to be limited to fourteen years from the grant. § 9. To be previously submitted to the Attorney or Solicitor-General, and certified if conformable to law.

Foreign Inventions.—§ 10. May also be patented by any subject of her Majesty being an inhabitant of this province, who in his travels has discovered any, and is desirous of introducing the same in this province, 2, except inventions used in the United States of America, or in any part of her Majesty's dominions in Europe or America, but this act not to prevent the free importation of the same. § 11. The applicant to make a solemn declaration that he believes himself to be the first introducer of such foreign invention, and that he obtained the knowledge of the same in the course of his travels.

Assignment of Patents.—§ 12. To be recorded in the office of the minister of agriculture within two months from the execution. § 13. Patent may also be issued to the assignee, the assignment being first recorded, and application therefor made, and specification, &c., declared by the inventor.

Deceased Parties.—§ 14. The right to such patent shall devolve on the executor or administrator, in trust for the heir at law, if the inventor died intestate, or on his legal representatives in any other case.

Interfering Applications.—§ 15. To be submitted to the arbitration of three skilled persons, one to be chosen by each of the applicants, and the third by the minister of agriculture or his deputy.

Extension of the Term.—§ 16. May be granted on application to the Governor, and giving notice in the *Gazette*, and two newspapers in the English and French languages, where the party resides. 2. Such application to be heard and determined before the board, as appointed by the act, and if decided upon in favour of the applicant the term to be extended for *seven* years from the expiration of the first term. But application therefor must be made six months before the expiration of the first term.

Amending Patents.—§ 17. Allowed in case of a defective or insufficient description, if the error has arisen from inadvertence, accident or mistake, and without any fraudulent or deceptive intention, by surrendering such patent, and obtaining a new patent for the residue of the term.

Disclaimer.—§ 18. May be made in certain cases where, by mistake, accident or inadvertence, any patentee has made his specification too broad, and the patent shall remain valid as to the residue.

Amending specifications, &c.—§ 19. Provision for.

Repeal of Patents.—§ 20. To be by writ of *scire facias*.

Rights of Patentees as to Improvements.—§ 21. Any person who has discovered an improvement shall not be at liberty to use or vend the original invention, if patented, but the improvement only, nor shall the first inventor be at liberty to use the improvement.

Prior Rights.—§ 22. Any person having purchased, constructed, invented or discovered any new machine, manufacture, or composition, *prior* to the application of a patent therefor by a party claiming to be the inventor, may use and vend the same, without liability to the patentee, and no patent shall be held invalid by reason of such purchase, sale, or use, prior to the application for such patent, except on proof of abandonment of such invention to the public, or that such purchase, sale, or use existed for more than one year prior to such application for a patent.

Infringing Patents.—§ 23. Parties infringing patents shall be liable to action for damages, and costs. § 24. The issue to be tried by a jury.

Printed Publications.—§ 25. Patent not be held void on account of the invention having been known or used in a foreign country, unless it appears that the same, or some material or substantial part thereof had before been patented or described in any printed publication.

Trial.—§ 27. If it appears to the satisfaction of the court and is so pleaded that the specification of the patentee does not contain the whole truth relative to the invention or discovery, or that it contains more than is necessary to produce the described effect, (such concealment or addition having been made for the purpose of deceiving the public,) or that the thing secured by patent was not originally discovered by the patentee, but had not been in use, or had been described in some public work, anterior to the supposed discovery of the patentee, or that the patentee had surreptitiously obtained a patent for the invention or discovery of another person; in either of such cases judgment shall be given for the defendant, with costs, and the patent shall be void.

Patented Articles.—§ 28. Every patentee and assignee of a

patent granted after 30th May, 1849, shall stamp or engrave on each article vended or offered for sale the date of the patent, and in default thereof shall be guilty of a misdemeanor, and be liable to the penalties in the next section.

Penalties.—§ 29. If any person writes, paints, prints, moulds, casts, carves, engraves or stamps upon any thing made, used, or sold by him, for the sole making or selling of which he has not obtained a 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 assignee or representative, or from a vendee, or not having his license or consent in writing, writes, paints, prints, moulds; casts, carves, engraves, stamps, or otherwise makes or affixes the word or words "Patent," "Letters Patent," "By the Queen's Patent," "Patented," or any word or words of the like kind, meaning, or import, with the view of imitating or counterfeiting the stamp, mark, or other device of the patentee—or affixes the same, or any word, stamp, or device of like import, on any imported article, for the purpose of deceiving the public, he shall be deemed to have been guilty of a misdemeanor, and shall be punished by fine or imprisonment, or both, at the discretion of the court, the fine not to exceed \$200, nor imprisonment three months.

Patent Fees.—§ 30. Payable to the minister of agriculture \$20 in full of all fees.

Patents under Former Acts.—§ 31. To remain in force. § 32. And when granted after the 30th May, 1849, to extend throughout the province. § 33. Patents issued after the union, but before the 30th May, 1849, shall, since the 10th June, 1857, be held to extend throughout the whole province, with certain exceptions in favour of purchasers, &c.

PARLIAMENTARY REPRESENTATION.

Legislative Council.

By C. Stat. 22 V. c. 1, § 1, the Legislative Council shall be composed of the members appointed by the Crown before the 14th day of July, 1856, and of forty-eight members to be elected as hereinafter provided; and to this end the province shall be divided into forty-eight electoral divisions, twenty-four in Upper Canada, and twenty-four in Lower Canada, in the manner set forth in schedule A. § 2. The

councillors appointed by the Crown as aforesaid, shall continue to hold their seats as heretofore, subject to the conditions contained in the Imp. Act 3 & 4 V. c. 35. § 3. The elective members shall be elected for eight years. § 4. No person shall be eligible or shall sit or vote as a legislative councillor unless he is a British subject by birth or naturalization, resident in Canada, of the full age of *thirty years*, and is legally or equitably seised as of freehold, for his own use and benefit of lands or tenements held in fief, *franc alleu* or *roture* in this province, of the value of \$8000 over and above all debts, charges and dues, nor unless his residence, or his lands or tenements as aforesaid, to the value aforesaid, be within the limits of the electoral division for which he seeks to be, or has been elected. § 5. No person shall be elected a legislative councillor who is a public defaulter, or has been convicted of felony or of any infamous crime. § 6. No member of one house shall be elected a member of the other. § 7. The seat of an elective legislative councillor shall be forfeited in any of the following cases: if he is a public defaulter, or becomes a bankrupt, or insolvent, or takes the benefit of any law whatsoever in relation to insolvent debtors, or is convicted of felony, or of any infamous crime, or ceases to have the property qualification required by section 4. § 8. Upon or before the first day of September, 1860, the Governor shall issue writs for the election of *twelve* legislative councillors to represent the twelve electoral divisions *thirdly* entitled to return members to the legislative council as hereinafter provided; and the said writs shall be transmitted to the returning officers by the clerk of the Crown in Chancery, and be returnable on the first Tuesday of November following; and in every *second* year thereafter, writs for the periodical elections shall be issued on or before the first day of September, and returnable the first Tuesday of November. § 9. The writs of election shall be in the form of schedule B. § 10. The Governor shall appoint the returning officers for the electoral divisions, from among those persons who might by law be returning officers at elections of members of the Legislative Assembly for places within the limits of such divisions. § 11. The returning officer for any electoral division shall fix a place as nearly as may be in the centre of such division, for the nomination of candidates, and the proclamation of the candidate elected. § 12. The electors of legislative councillors shall, as regards their qualification, be the same as those of the Legislative Assembly, and shall vote at the places at which they ordinarily

vote at the election of the latter : the boundaries and extent of the electoral divisions are defined by schedule A. § 13. The laws relating to the election of members of the Legislative Assembly, as regards the qualification of electors ; the issue and return of writs of election ; returning officers ; the powers and duties of returning officers and of deputy returning officers, and of election and poll clerks ; the prevention or punishment of offences committed at elections or with respect to elections ; to controverted elections, and to all matters connected with or incidental to elections, shall, except where such laws may be inconsistent with this act, apply in analogous cases to elections of legislative councillors. § 14. Every candidate for election to the Legislative Council shall, if thereunto required by another candidate, or by an elector, or by the returning officer, make in person a written declaration in the form of schedule C. ; and the provisions of the election laws which relates to the declaration of qualification of candidates for election to the Legislative Assembly, shall, with the exception of the amount of property qualification, apply in a precisely similar manner to the declaration of qualification of the candidate for election to the Legislative Council. § 15. The period for which the legislative councillors are to serve shall commence on the day of the return of the writs, and shall end upon the day next preceding the return day of the writs for the election of their successors. § 16. Every legislative councillor shall, before taking his seat, take the oath in schedule D. before the clerk of the said council. § 17. The order in which the electoral divisions shall be entitled to return members to the Legislative Council shall be that determined by lot, in the manner prescribed by the act 19 & 20 V. c. 140, and in every *eighth* year after the preceding periodical election. § 18. An elective councillor may resign his seat in the same manner and under the same circumstances as a member of the Legislative Assembly ; and he may hold his seat until the day next preceding that of the return of the writ of election of his successor. In case of his resigning or going out at the expiration of the period for which he is elected, he may be re-elected subject to the conditions contained in this act. § 19. Elective legislative councillors shall, under the same circumstances as members of the Legislative Assembly, be subject to the laws for securing the independence of the Legislative Assembly of this province. § 20. The acceptance by a councillor of the office of the Speaker of the Legislative Council shall not,

however, vacate his seat. § 21. In cases of accidental vacancy provided for by sections 18 & 19, the Speaker of the Legislative Council, the Legislative Council and the several members thereof shall have the same powers and duties as the Speaker of the Legislative Assembly, the Legislative Assembly and the members thereof, and the writs shall be made returnable within fifty days at furthest from the issue thereof. § 22. An accidental vacancy of the seat for any electoral division happening within the three months next before the regular periodical vacancy of such seat, shall not be filled until the time appointed for filling such periodical vacancy. § 23. In case of any accidental vacancy of the seat for any electoral division, not provided for by the next preceding section, the period of service of the councillor elected to fill such vacancy shall be that at which his predecessor would regularly have gone out. § 24. The Speaker of the Legislative Council shall, as heretofore, be appointed by the Governor, and shall be selected from amongst the members of the said council. § 25. Each general election of members of the Legislative Council shall make a new parliament as heretofore.

LOWER CANADA.

SCHEDULE A.

Limits of Electoral Divisions.

Gulf.—The counties of Gaspé, Bonaventure and Rimouski.

Grandville.—The counties of Temiscouata and Kamouraska, the parishes of St. Roch des Aulnets and St. Jean Port Joli, and the prolongation thereof in a straight line to the province line in the county of L'Islet.

De la Durantaye.—The remainder of the county of L'Islet, the counties of Montmagny and Bellechasse and the Parishes of St. Joseph, St. Henri, and Notre Dame de la Victoire, in the county of Lévi.

Lauzon.—The remainder of the county of Lévi, the counties of Dorchester and Beauce.

Kennebec.—The counties of Lotbinière, Mégantic and Arthabaska.

De la Vallière.—The counties of Nicolet and Yamaska, the Townships of Wendover, Grantham and that part of Upton which lies in the county of Drummond.

Wellington.—The remainder of the county of Drummond, the county of Richmond, the town of Sherbrooke, the counties of Wolfe, Compton and Stanstead.

Sauvel.—The counties of Richelieu and Bagot, the Parishes of St. Denis, La Présentation, St. Barnabé and St. Jude in the county of St. Hyacinthe.

- Bedford.*—The counties of Missisquoi, Brome and Shefford.
- Rougemont.*—The remainder of the county of St. Hyacinth, the counties of Rouville and Iberville.
- Montarville.*—The counties of Verchères, Chambly, Laprairie.
- De Lorimier.*—The counties of St. John's and Napierville; St. Jean Chrysostôme and Russeltown in the county of Chateauguay; Hemmingford in the county of Huntingdon.
- The Laurentides.*—The counties of Chicoutimi, Charlevoix, Saguenay and Montmorency, the Seignory of Beauport, the parish of Charlesbourg, the townships of Stoneham and Tewkesbury, in the county of Quebec.
- La Salle.*—The remainder of the county of Quebec, the county of Portneuf, and all that part of the *Banlieue* of Quebec which lies within the parish of *Notre Dame* de Quebec.
- Stadacona.*—The remainder of the city and *Banlieue* of Quebec.
- Shawinigan.*—The counties of Champlain and St. Maurice, the town of Three Rivers, the parishes of *River du Loup*, St. Léon, St. Paulin, and the township of Hunterstown and its augmentation, in the county of Maskinongé.
- De Lanaudière.*—The remainder of the county of Maskinongé, the counties of Berthier and Joliette, with the exception of the parish of St. Paul, the township of Kildare and its augmentation, and the township of Cathcart.
- Repentigny.*—The parish of St. Paul, the township of Kildare and its augmentation and the township of Cathcart in the county of Joliette, the counties of L'Assomption and Montcalm.
- Mille Isles.*—The counties of Terrebonne and Two Mountains.
- Inkerman.*—The counties of Argenteuil, Ottawa, and Pontiac.
- Alma.*—The Parishes of Long Point, *Pointe aux Trembles*, *River des Prairies*, *Sault aux Recollets*, in the county of Hochelaga, and that part of the parish of Montreal which lies to the east of the prolongation of St. Denis Street; the county of Laval, that part of the city of Montreal which lies to the east of Bonsecours and St. Denis Street, and the prolongation.
- Victoria.*—The remainder of the city of Montreal exclusive of the parish.
- Rigaud.*—The remainder of the parish of Montreal and the counties of Jaques Cartier, Vaudreuil and Soulanges.
- De Salaberry.*—The remainder of the county of Chateauguay, the remainder of the county of Huntingdon, and the county of Beauharnois.

UPPER CANADA.

- Western.*—The counties of Essex and Kent.

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- St. Clair.*—The county of Lambton and the West Riding of Middlesex.
- Malahide.*—The East and West Ridings of Elgin, the East Riding of Middlesex and the city of London.
- Tecumseth.*—The counties of Huron and Perth.
- Saugeen.*—The counties of Bruce and Grey and the North Riding of Simcoe.
- Brock.*—The North and South Ridings of Wellington and the North Riding of Waterloo.
- Gore.*—The South Riding of Waterloo and the North Riding of Oxford.
- Thames.*—The South Riding of Oxford and the county of Norfolk.
- Erie.*—The East and West Ridings of Brant and the county of Haldimand.
- Niagara.*—The counties of Lincoln and Welland and the town of Niagara.
- Burlington.*—The North and South Ridings of Wentworth and the city of Hamilton.
- Home.*—The counties of Halton and Peel.
- Midland.*—The North Riding of York and the South Riding of Simcoe.
- York.*—The city of Toronto and the township of York.
- King's.*—The East and West Ridings of York (except the township of York) and the South Riding of Ontario.
- Queen's.*—The North Riding of Ontario, the county of Victoria and the West Riding of Durham.
- Newcastle.*—The East Riding of Durham and the East and West Ridings of Northumberland.
- Trent.*—The county of Peterborough, the North Riding of Hastings and the county of Lennox.
- Quinté.*—The South Ridings of Hastings and the county of Prince Edward.
- Cataraque.*—The counties of Addington and Frontenac and the city of Kingston.
- Bathurst.*—The South Riding of Leeds and the North and South Ridings of Lanark.
- Rideau.*—The counties of Renfrew and Carleton and the city of Ottawa.
- St. Lawrence.*—The town of Brockville and township of Elizabethtown, the South Riding of Grenville, the North Riding of Leeds and Grenville and the county of Dundas.
- Eastern.*—The county of Stormont, Prescott, Russell, Glengarry, and the town and township of Cornwall.

SCHEDULE B.

PROVINCE OF CANADA :

Victoria, by the Grace of God, of the united kingdom of Great Britain and Ireland, Queen, defender of the faith.

To the returning officer of , greeting :

Whereas . We therefore command you, firmly enjoining that having first made proclamation in the said electoral division of , immediately after the receipt of this our writ, and thereby notified (giving not less than eight days' notice thereof) a day and place for electing a legislative councillor to serve for the said electoral division of , in our Legislative Council, you cause on the said day and place a legislative councillor, the most fit and discreet, to be freely and indifferently chosen to represent the said electoral division of in our Legislative Council, by those present at the day of election to be fixed by such proclamation as aforesaid, and the name of such legislative councillor so chosen, in certain indentures between you and those present at such election, (whether the person so chosen be present or absent,) you cause to be inserted and cause the said person so chosen as aforesaid to come to the said Legislative Council, so that the said legislative councillor have full and sufficient power for himself and the commonalty of the said electoral division of , severally from them to do and consent to those things which then and there by the favour of God shall happen to be ordained by the common council of our said province, upon the said affairs, so that for default of such powers, or through improvident election of such legislative councillor, the said affairs remain not undone in anywise.

And we will not that any minister of the churches of England or Scotland, or a minister, priest, ecclesiastic, or teacher, either according to the rites of the church of Rome, or under any other form or profession of religious faith or worship, by any means be chosen ; and that you certify forthwith unto us, into our Chancery at the city of , the said election so made, distinctly and openly, under your seal, and the seals of those present at such election, sending unto us one part of the said indentures annexed to these presents, together with this our writ.

In testimony whereof we have caused these our letters to be made patent, and the great seal of our said province of Canada to be hereunto affixed.

Witness,

At our government house, at the city of , in our said province of Canada, the day of in the year of our Lord one thousand eight hundred and and in the year of our reign.

By command—A. B., Clerk of the Crown in Chancery.

SCHEDULE C.

Declaration of Qualification.—I, A. B., declare and testify that I am of the full age of thirty years ; that I am a British subject, and that I am a resident in (*here insert name of electoral division in which the candidate resides,*) that I am duly seised at law (or in equity) as of freehold for my own use and benefit, of the following lands (or tenements), held in free and common soccage, (or duly seised and possessed for my own use and benefit of lands (or tenements,) held *en fief*, or *en roture*, or *en franc-alleu*, (*as the case may be,*) that is to say, of (*here insert a correct and clear description of the lands or tenements forming the property qualification of the candidate, and of their local situation,*) which said lands (*or tenements*) I declare to be of the full value of eight thousand dollars, over and above all rents, mortgages, charges, and incumbrances charged upon, or due or payable out of, or affecting the same ; and I further declare that I have not collusively or colourably obtained a title to, or become possessed of the said lands (or tenements) or any part thereof, for the purpose of qualifying or enabling me to be returned as a member of the Legislative Council of this province.

SCHEDULE D.

Oath of Allegiance.

I, A. B., do solemnly promise and swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Province of Canada dependent on, and belonging to the said United Kingdom ; and that I will defend her to the utmost of my power against all traitorous conspiracies and attempts whatever against her person, Crown and dignity ; and that I will do my utmost endeavour to disclose and make known to her Majesty, her heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against her or any of them ; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or persons whatever to the contrary.—So help me God.

Legislative Assembly.

By Con. Stat. 22 V. c. 2, § 1.—Except as otherwise provided in this act, the counties herein referred to are those mentioned in the chapters of the Consolidated Statutes for Upper and Lower Canada (or other statutes in force in the said divisions of the province) concerning territorial divisions, as they are therein declared to be bounded for all purposes, or for the purpose of representation in the Legislative Assembly if specially bounded for that purpose ; and the cities

and towns herein referred to are those mentioned in the local or other statutes describing and defining the same for municipal purposes.

§ 2. For the purposes of this act, the counties and ridings include every place lying within their respective limits, and not expressly included by this act within the limits of some city or town entitled to return a member or members to the Legislative Assembly. 2. All augmentations or gores of seignories, parishes or townships, and all towns, villages, or reserves for the same not specially mentioned in this act shall be considered as forming part of the county or riding in which the principal part of such locality, or in the immediate vicinity of which such town, village, or reserve is situate, unless it is otherwise ordered in some statute in force.

§ 3. But the several cities and towns which, under this act, are entitled to elect a member or members to represent them respectively in the Legislative Assembly shall not, for the purpose of representation in the Legislative Assembly or Council, be deemed to form part of the counties or ridings within the limits whereof they respectively lie.

Special Division for purposes of Representation.

In Lower Canada.

§ 3. The city of Quebec shall, for the purposes of this act, comprise the limits it had immediately before the 14th day of June, 1853, and including the parishes of Notre Dame of Quebec, and Saint Roche.

§ 4. The city of Montreal shall be comprised within the limits it had immediately before the 14th day of June, 1853.

§ 5. The city of Three Rivers shall comprehend the Town of Three Rivers within the limits it had immediately before the 14th of June, 1853, and the Banlieue of Three Rivers.

§ 6. The town of Sherbrooke shall, for the purposes of this act, comprise the town of Sherbrooke within the limits it had immediately before the 14th of June, 1853, and the whole of the townships of Oxford and Ascot.

§ 7. The counties of Chicoutimi and Saguenay, Drummond, and Arthabaske, Richmond and Wolfe, shall be united for the purpose of representation, and each such union of two counties shall form an electoral division.

In Upper Canada.

§ 8. The following counties shall be divided into ridings for the purpose of representation, and each of such ridings shall form an electoral division :

1. *The County of York—Three Ridings.*

The North Riding shall consist of the townships of King, Whitchurch, Georgina, East Gwillimbury and North Gwillimbury.

The East Riding, of the townships of Markham, Scarborough, and that portion of the township of York lying east of Yonge-street, and the village of Yorkville.

The West Riding, of the townships of Etobicoke, Vaughan, and that portion of the township of York lying west of Yonge-street.

2. *The County of Middlesex—Two Ridings.*

The East Riding shall consist of the townships of West Nis-souri, North Dorchester, Westminster and London.

The West Riding, of the townships of Mosa, Ekfrid, Caradoc, Metcalfe, Adelaide, East Williams, West Williams, Lobo and Delaware.

3. *The County of Oxford—Two Ridings.*

The North Riding shall consist of the townships of East Nissouri, East Zorra, West Zorra, Blandford, Blenheim, and the town of Woodstock.

The South Riding, of the townships of North Oxford, West Oxford, East Oxford, Norwich and Dereham.

4. *The County of Hastings—Two Ridings.*

The North Riding shall consist of the townships of Lake, Tudor, Grimsthorpe, Marmora, Madoc, Elzevir, Rawdon, Hun-tingdon, Hungerford, McClure, Herschel, Faraday, Wollaston, Wicklow, Monteagle, Dungannon, Limerick, Bangor, Carlow, Mayo and Cashel.

The South Riding, of the townships of Sydney, Thurlow, Tyendinga, the village of Trenton, and the town of Belleville.

5. *The County of Durham—Two Ridings.*

The East Riding shall consist of the townships of Cavan, Manvers, Hope, and the town of Port Hope.

The West Riding, of the townships of Clarke, Darlington and Cartwright.

6. *The County of Northumberland—Two Ridings.*

The East Riding shall consist of the townships of Cramahe, Brighton, Murray, Seymour and Percy.

The West Riding, of the townships of Hamilton, Haldimand, Alnwick, South Monaghan, and the town of Cobourg.

7. *The County of Ontario—Two Ridings.*

The North Riding shall consist of the townships of Reach, Uxbridge, Brock, Scott, Thora, Mara, Rama and Scugog.

The South Riding, of the townships of Whitby and East Whitby, the town of Whitby, and the village of Oshawa.

8. *The County of Wentworth—Two Ridings.*

The North Riding shall consist of the townships of Beverley, Flamborough East, Flamborough West, and the town of Dundas.

The South Riding, of the township of Saltfleet, Binbrook, Glanford, Barton, and Ancaster.

9. *The County Lanark—Two Ridings.*

The North Riding shall consist of the townships of Sherbrooke North, Dalhousie, Lanark, Ramsay, Lavant, Darling and Pakenham.

The South Riding of the townships of Montague, Elmsley North, Burgess North, Sherbooke South, Beckwith, Drummond, Bathurst, and the town of Perth.

10. *The County of Simcoe—Two Ridings.*

The North Riding shall consist of the townships of Nottawasaga, Sunnidale, Vespra, Flos, Oro, Medonte, Orillia, Tiny, Tay, Matchedash, Muskoka, Balaclava, Morrison. (a)

The South Riding, of the townships of West Gwillimbury, Tecumseth, Innisfil, Essa, Adjala, Tosorontio, Mulmur, and Mono.

11. *The Counties of Leeds and Grenville—Three Ridings.*

The North Riding of Leeds and Grenville shall consist of the townships of Kitley, Elmsley, Wolford, Oxford, and South Gower.

The South Riding of Leeds, of the townships rear of Yonge, and Escott, Front of Yonge-Front, of Escott-Front, of Leeds, and Lansdowne, South Crosby, North Crosby, Bastard and Burgess.

The South Riding of Grenville, of the townships of Edwardsburg and Augusta, and the town of Prescott.

12. *County of Wellington—Two Ridings.*

The South Riding shall consist of the town and township of Guelph, and the townships of Puslinch, Eramosa, and Erin.

The North Riding of the townships of Nichol, Garafraxa, Pilkington, Feel, Arthur, Maryborough, Amaranth, Luther and Minto.

13. *The County of Waterloo—Two Ridings.*

The North Riding shall consist of the townships of North Waterloo, Woolwich, and Wellesley, the town of Berlin and the village of Waterloo. (a)

The South Riding shall consist of the town of Galt and village of Preston, and the townships of South Waterloo, North Dumfries and Wilmot.

The present township of Waterloo being divided for the purposes of representation only into two townships of North Waterloo and South Waterloo. *North Waterloo* to consist of that part of the present township of Waterloo lying within the following limits, viz., commencing at the south-west angle of lot No. 45, in said township, then easterly along the southerly limits of said lot, and of lots Nos. 47, 48, 50, 51, and 53, and the prolongation thereof to the middle of the Grand River; thence along the middle of said river against the stream to the prolongation of the limits between lots Nos. 113 and 114, and along the prolongation of the limits between the said lots Nos. 113 and 114, northerly and easterly to the westerly limits of lot No. 107, thence along the westerly limits of said lot No. 107, northerly to the northerly limits thereof, thence along the northerly limits of said lot 107, and of lots Nos. 106, 84, and 96 easterly to the easterly boundary of said township, thence along the easterly, northerly, and westerly boundaries of said township, in a northerly, westerly, and southerly direction to the place of beginning.

South Waterloo to consist of all the remaining part of said present township of Waterloo.

14. *County of Brant—Two Ridings.*

The East Riding shall consist of the townships of South Dumfries, Onondaga, East Brantford, and the village of Paris.

The West Riding of the townships of Burford, Oakland, Tuscarora, West Brantford, and the town of Brantford.

The present township of Brantford being divided, for the purposes of representation only, into the townships of East Brantford, and West Brantford.

East Brantford to consist of all that portion of the present township of Brantford which lies on the east side of the Grand River.

West Brantford to consist of the remainder of said present township of Waterloo.

15. *County of Elgin—Two Ridings.*

The East Riding shall consist of the townships of Bayham, Malahide, Yarmouth, South Dorchester, and the village of St. Thomas.

The West Riding shall consist of the townships of Southwold, Dunwich, and Aldborough.

§ 9. The counties of Huron and Bruce, and the counties of Lennox and Addington, to be united for the purposes of representation; and each such union of two counties shall form an electoral division.

Each of the other counties in Upper Canada, viz., the counties of Carleton, Dundas, Essex, Frontenac, Glengarry, Grey, Haldimand, Halton, Kent, Lambton, Lincoln, Norfolk, Peterborough, Peel, Perth, Prescott, Prince Edward, Renfrew, Russell, Stormont, Victoria, and Welland shall form an electoral division.

But the townships of Gloucester and Osgoode shall for the purpose of representation only be detached from the county of Carleton and attached to the county of Russell.

3. *The City of Toronto* shall form an electoral division.

4. *The City of Kingston* ditto.

5. *The City of Hamilton* do.

6. *The town of Brockville* shall form an electoral division, and shall for the purpose of representation only include in addition to its present limits the whole of the township of Elizabethtown, which shall for that purpose be detached from the county of Leeds.

7. *The town of Niagara* shall form an electoral division, and shall for the purpose of representation only include in addition to its present limits the whole of the township of Niagara, which shall for that purpose be detached from the county of Lincoln.

8. *The town of Cornwall* shall form an electoral division, and shall for the purpose of representation only include in addition to its present limits the whole township of Cornwall, which shall be detached from the county of Stormont.

9. *The City of London* shall form an electoral division.

10. *The City of Ottawa* do.

Lower Canada Representation.

§ 10. The counties of Gaspè, Bonaventure, Rimouski, Temiscouata, Kamouraska, L'Islet, Montmagny, Bellechasse, Lévi, Dorchester, Beauce, Megantic, Lotbinière, Charlevoix, Montmorency, Quebec, Portneuf, Champlain, St. Maurice, Maskinongé, Nicolet, Yamaska, Berthier, Joilette, Montcalm, L'Assomption, Terrebonne, Two Mountains, Argenteuil, Ottawa, Pontiac, Compton, Stanstead, Shefford, Brome, Missisquoi, Richelieu, St. Hyacinthe, Rouville, Bagot, Iberville, Verchères, Chambly, Laprarie, St. John's, Napierville, Chateaugai, Beauharnois, Huntingdon, Soulanges, Vaudreuil, Laval, Hochelaga, and Jacques-Cartier shall be represented each by *one member* in the Legislative Assembly.

The united counties of Chicoutimi and Saguenay by one member. The united counties of Drummond and Arthabaska by one member. The united counties of Richmond and Wolfe, by one member. The cities of Quebec and Montreal, each by *three* members. The city of Three Rivers and the town of Sherbrooke each by *one* member—(total 65 members.)

Upper Canada Representation.

The city of Toronto by two members; and each of the other electoral divisions by one member—(total, 65 members.)

C. Stat. 22 V. c. 3.

Demise of the Crown.—§ 1.—Provincial parliament not to be dissolved thereby, but continue to meet and act in the same manner as if such demise had not happened.

Disqualification of Members.—§ 3. No member of one house shall be elected a member of the other. § 4. No person accepting or holding any office, commission or employment, permanent or temporary, under the Crown, to which an annual salary or profit of any kind is attached, shall be eligible as a member of the Legislative Council or Assembly, nor sit or vote therein during the time he holds such office—2, except any person being a member of the executive council, or holding any of the following offices, namely, Receiver General, Minister of Finance, Secretary of the Province, Commissioner of Crown Lands, Attorney General, Solicitor General, Commissioner of Public Works, President of Committees of the Executive Council, Minister of Agriculture, or Post Master.—3. Any officer in the army or navy, militia, or militia man, (except officers on the militia staff, receiving permanent salaries,) unless otherwise disqualified. 4. The acceptance by a member of the Legislative Council of the office of speaker shall not vacate his seat.

§ 5. No person holding or executing, directly or indirectly, any contract under the Crown, or with any public department, shall be eligible to sit or vote in either house. § 6. The election of any disqualified person shall be null and void.

Penalty.—§ 7, sub-§ 2. Any such disqualified person sitting or voting shall forfeit \$2,000 for every day he sits or votes.

Acceptance of Office.—§ 8. Any member (of either house) accepting office, or becoming party to any contract, his election shall thereby become void, but he may be re-elected,

if eligible under § 4. § 9. Nevertheless, whenever any person holding the office of Receiver-General, (and other offices above enumerated,) and being at the same time a member of the legislature, resigns his office, and within one month afterwards accepts any other of said offices, he shall not thereby vacate his seat.

Resignation of Members.—§ 10. Any member may voluntarily resign. § 11. By giving notice in his place of his intention, in which case the Speaker may issue a writ for a new election—2, or such member may address to the Speaker a declaration of his intention to resign, made in writing, under his own hand and seal, before two witnesses, and the Speaker may thereupon issue a writ for a new election.

§ 12. But no member shall tender his resignation while his election is contested, nor until after the time during which it may be lawfully contested on other grounds than corruption or bribery. § 13. If any member wishes to resign in the interval between two sessions, and there is no Speaker, or such member is himself the Speaker, he may address such declaration to any *two* members, who shall thereupon address their warrant to the clerk of the Crown in Chancery, for the issue of a new writ, and the member so tendering his resignation shall be held to have vacated his seat.

Vacancies.—§ 14. If, by death or acceptance of office, the Speaker being informed thereof by any member in his place, or by notice in writing of any *two* members, he shall forthwith issue his warrant for a new writ—2, and if there be no Speaker, than any *two* members may do so. § 15. Notice given to the clerk of the Crown in Chancery by any warrant of the Speaker, or by two members, as hereinbefore provided, shall be held to be notice under the 24 § of the Imp. Act, 3-4 V., for re-union of the provinces. § 16. A warrant may issue to the clerk of the Crown in Chancery for a new writ to fill up any vacancy arising between a general election and the first meeting of parliament, by reason of death, or acceptance of office.—2. But the decision under such new writ shall not affect the rights of any person entitled to contest the previous elections. § 17. Any accidental vacancy in the legislative council happening within *three* months before the regular periodical vacancy, shall not be filled up until the time appointed for filling up such periodical vacancy.

Indemnity to Members.—§ 18. In each session there shall be allowed to each member of the Legislative Council and Legislative Assembly \$6 for each day in attendance, if

the session does not extend beyond *thirty* days, and if beyond that time, then a sessional allowance to each member of \$60), and no more. § 19. (*As amended by 23 V. c. 16, § 1,*) a deduction of \$5 a day shall be made from the sessional allowance for every day the member does not attend a sitting of the house, or of some committee, provided the house is sitting; but no deduction is to be made for days on which the house does not sit, or absence occasioned by sickness. § 21. Mileage of *ten cents* per mile to be also allowed to members for going and coming. By the above Stat. V. c. 16 § 3, it is provided that if a member is from any cause a member for part only of a session, then, provided he is a member for upwards of thirty days, he shall be entitled to the sessional allowance, subject to the deduction aforesaid for non-attendance, and deduction of \$5 for each day of such session *before or after* he was a member. But if a member for only thirty days, or less, then he shall be entitled to \$6 a day for each day's attendance.

PAWN-BROKERS.

By C. Stat. 22 V. c. 61, § 1, every person exercising the trade of a pawn-broker shall take out a license annually. § 2. Under a penalty of \$200. § 3. License duty \$60 payable to the collector of customs. § 7. Every pawn-broker shall have a sign with his name and the word "pawn-broker" placed over the door outside of the shop. § 8. Under a penalty of \$40, recoverable with costs before any two justices. § 10. Rates to be taken by pawn-brokers on pledges to be as follows :

For every loan not exceeding 50 cents the sum of $\frac{1}{2}$ penny (or $\frac{2}{3}$ th of a cent) per month, and so on progressively up to \$20.

When the sum lent exceeds \$20, then upon all beyond that amount, after the rate of 5 cents for every 4 dollars per month, and so on in proportion for any fractional sum.

§ 12. The same to be in full for all interest due and charges for warehouse room. § 13. The party redeeming within 14 days from the end of the first month may redeem on paying for one month and a half—if after the first 14 days and before the end of the second month the pawnbroker may take for the whole of such second month—and so on, successively. § 14. When the lowest fraction is less than one $\frac{1}{2}$ penny (or $\frac{5}{8}$ of a cent) the pawnbroker may receive the larger amount of $\frac{1}{2}$ penny.

§ 18. Notes to be given by the pawnbroker at the time of pawning, for which he may charge as follows :

If the sum lent be under one dollar the note to be given *gratis*.

If the sum lent is one dollar and under two dollars, the pawn-broker may take $\frac{1}{2}$ penny, (or $\frac{5}{8}$ of a cent.)

If two dollars and under four dollars, he may take one penny, (or $1\frac{2}{3}$ cent.)

If four dollars and under twenty dollars, two-pence, (or $3\frac{1}{3}$ cents.)

If twenty dollars and upwards, four-pence, (or $6\frac{2}{3}$ cents:)

Pawning goods of others.—§ 22. If any person knowingly and designedly pawns, pledges, or exchanges, or unlawfully disposes of the goods of any other person, not being authorised so to do, any justice of the peace resident nearest to the place where the offence is committed may grant his warrant to apprehend the offender; and if convicted thereof by the oath of one witness, or by confession before a justice, he shall forfeit not more than \$20 nor less than \$1, and the value of the goods pawned; and if not forthwith paid the convicting justice shall commit him to the common gaol of the county, there to remain and be kept to hard labour for not more than three months, unless the forfeiture be sooner paid. § 23. Forfeitures when recovered shall be applied towards satisfaction of the party injured and costs.

Forging pawn-notes, &c.—§ 24. To be punished as here after mentioned. § 25. In case any note or memorandum aforesaid is uttered, shown or offered to any person, and such person has reason to suspect that the same has been forged, he may seize the person offering the same and deliver him to a bailiff or constable, who shall convey him before a justice of the peace where the offence has been committed or nearest thereto, and if upon examination it appears to the satisfaction of such justice that such person is guilty he shall commit him to the common gaol of the county, for any time not exceeding three months.

Suspicion of Stealing.—§ 26. If any person offers to any pawn-broker by way of pledge, exchange or sale any goods, and is not able or *refuses* to give a satisfactory account of himself or of the means whereby he became possessed of the goods, or wilfully gives any false information as to the property, or his name and place of abode, or the owner of the goods; or if there is any other reason to suspect that such goods have been stolen, or illegally or clandestinely obtained; or if any person not entitled by law to redeem shall attempt to redeem, the person to whom the goods are offered to be pawned, or to whom the offer is made to redeem, may seize and detain the offender, and convey and deliver him and the goods into the custody of a peace officer or con-

stable, who shall, as soon as may be, convey him before a justice of the peace. § 27. Who may upon examination commit the offender into safe custody, for such reasonable time as may be necessary for obtaining information for further examination; and if upon either examination it appears to the satisfaction of the justice that such goods were stolen, or illegally or clandestinely obtained, or that the person offering to redeem had no right so to do, he shall, unless the offence authorises such commitment by any other law, commit the offender to the common gaol of the county for any time not exceeding three months.

Journeyman, &c.—§ 28. If any person knowingly buys, or takes in pawn or exchange from any journeyman or mechanic any goods of any manufacture, or any materials intended for manufacture, and before such goods or materials have been finished for wear or consumption, or any goods entrusted to any person to wash, scour, iron, mend, manufacture, work up, finish or make up, and is convicted upon confession or on the oath of one witness before a justice of the locality, he shall forfeit the sum lent thereon, and forthwith restore the goods or materials to the lawful owner,

Search Warrant.—§ 29. If any such owner makes out on oath, before a justice, that there is just cause to believe or suspect that any person has taken to pawn or exchange any such goods without the owner's knowledge, such justice may issue his warrant for searching within the hours of business, the books, house, warehouse, or any other place of the person so charged or suspected of having received the same; and if the occupier of such place, upon request made by the peace officer to search, refuses to exhibit his books or permit search to be made, the peace officer may break open the house, warehouse or other place within the hours of business and search for the goods, taking care to do no wilful damage.

§ 30. If upon forced search any such goods are found, and the property of the owner is made out to the satisfaction of the justice upon proof or confession, the justice shall cause the goods to be forthwith restored to the owner, and the occupier shall be fined not less than \$8 nor more than \$20, to be recovered as other fines before mentioned.

Restoration of Goods Pawned.—§ 31. In case within one year after goods are pawned, the pawner tenders the money borrowed and the rate thereon according to this act, and the person who took the same in pawn neglects or refuses without reasonable cause to deliver back the goods pawned, the pawner may make oath thereof before a justice of the locality, who shall cause the person to come before him, and examine

the parties themselves upon oath, and such other persons as appear touching the premises, and if the tender is proved on oath to have been made, then on payment thereof by the borrower to the lender, and in case of his refusal to accept, before such justice, such justice shall by order under his hand direct the goods forthwith to be delivered to the pawner, and if the lender refuses or neglects to deliver or make satisfaction, the justice shall commit him to the common gaol of the county until he delivers up the goods or makes satisfaction.

Prohibitions.—§ 43. No pawnbroker shall—1. Purchase, receive or take any goods in pledge from any person under 15 years of age, or intoxicated with liquor.—2. Nor purchase or take in pawn, &c., any note or memorandum of any other pawnbroker.—3. Nor employ any person under 16 years of age to take any pledge.—4. Nor receive any goods by way of pawn, &c., on any fast or thanksgiving day, Sunday, or any day before eight o'clock in the morning, nor after eight o'clock in the evening, except *Saturday* evenings, and the evenings preceding Good Friday and Christmas Day, at which times the pawnbroker may keep open until ten o'clock in the evening.

Goods Lost or Damaged.—§ 44. Reasonable satisfaction therefor may be awarded by the justice on sufficient proof.

Production of Goods.—§ 47. The pawnbroker is bound to produce the goods upon summons, and in case he neglects or refuses to attend or produce the same in its true and perfect state, he shall, unless good cause shewn, forfeit not less than \$20 nor more than \$40, to be recovered as aforesaid.

Limitation of Proceedings.—§ 48. To be within twelve months,

Summons, Warrant.—§ 51. No fees to be taken by any justice therefor.

Appeal.—§ 52. Allowed to the next general quarter sessions.

Indians.—§ 56. No pawn to be taken from, for spirituous liquor.

PENALTIES.

Appropriation of Penalties.—*C. Stat. 22 V. c. 99.*

§ 122. Every sum of money forfeited for, or as the value of any property stolen or of any injury done (such value or amount to be assessed in each case by the convicting justice or justices) shall be paid to the party aggrieved, if known, except where such party has been examined in proof of the offence, and in that case, or where the party aggrieved is

unknown, such shall be applied in the same manner as a penalty.

§ 123. When several persons join in the commission of the same offence, and upon conviction thereof, each is adjudged to forfeit a sum equivalent to the value of the property, or to the amount of the injury done, no further sum shall be paid to the party aggrieved than the amount forfeited by one of such offenders only, and the corresponding sum, forfeited by the other offenders, shall be applied in the same manner as other penalties imposed by a justice of the peace are directed to be applied.

See also title "*Fines and Forfeitures.*"

PENITENTIARY.

By C. Stat. 22 V. c. 99, § 100, the 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 for life or for a term of years *not less than two years*; and whenever any offender is punishable by imprisonment, such imprisonment, if it be for life, or for two years or any longer term, shall be in the provincial penitentiary; but this shall not 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.

§ 102. The sentence of any person to be imprisoned in the penitentiary shall (whether expressed or not) include hard labour.

§ 106. The period of imprisonment in the penitentiary in pursuance of any sentence shall commence on and from the day of passing such sentence, whether the convict be removed forthwith or detained in any other prison previously to such removal. § 107. For any offence for which by law the offender might formerly have been punished by transportation beyond seas, such offender may if convicted be punished by imprisonment in the penitentiary.

By C. Stat. 22 V. c. 111, § 19, every convict in the penitentiary shall be clothed at the expense of the penitentiary in garments of coarse but comfortable materials, and shall be fed on a sufficient quantity of wholesome food; and be kept constantly employed at hard labour for the benefit of the penitentiary every day in the year except Sundays, Good Friday and Christmas Day, except when confined in

solitude for misconduct, or incapable of labouring by reason of sickness or bodily infirmity.

§ 20. No convict of the Roman Catholic persuasion shall be compelled to labour on the following obligatory holidays, viz.: Circumcision, Epiphany, Annunciation, Corpus Christi, Saint Peter and Saint Paul, All Saints and Conception.

§ 21. The warden shall keep each prisoner single in a cell at night, and during the day when unemployed, except in case of sickness.

§ 22. When congregated together at work, all conversation forbidden not absolutely required in carrying on the work being done at the moment.

§ 42. For every 25 convicts in each art, trade or pursuit conducted in the prison, there shall be a master tradesman to be known as the "overseer," whose duty it shall be to instruct the convicts in business, and act as foreman and master workman and direct the labour of his department to the greatest public advantage.

§ 44. For every 50 convicts, and for every gang of a smaller number employed under any contract there shall be an officer known as the "keeper," who shall have the charge and management of such gang.

§ 45. And such number of guards not exceeding 30 as the inspectors may from time to time find needful: and the said guards shall be employed in safe keeping of the prisoners, and in the maintenance of order and discipline.

§ 58. No raft, craft, or vessel of any description shall be allowed to moor or anchor within 300 feet of the shore or wharf bounding the lands of the penitentiary under a penalty of \$20 recoverable before a justice of the peace, and be levied by distress and sale of the offender's goods and chattles, and in default thereof imprisonment at the discretion of the justice for any period not exceeding two months.

§ 59. No spirituous or fermented liquors shall be sold within the penitentiary, nor brought in for the use of any officer, (except the warden,) or for the use of any convict, and any person giving spirituous or fermented liquors, or tobacco, or snuff, or cigars to any convict, or conveying the same to any convict, shall forfeit and pay the sum of \$40 to the warden for the use of the prison, to be recovered in any court of competent jurisdiction.

§ 60. No person shall, without the 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 write any letter on behalf of a convict—any offender herein

shall be guilty of a misdemeanor, and shall be fined or imprisoned or both at the discretion of the court.

§ 62. A coroner's inquest to be held on any deceased convict if deemed necessary by the officers in charge.

§ 63. The body may be delivered to and taken away by the friends or relatives of the deceased, but if not claimed, may then be delivered to an inspector of anatomy, or decently interred at the expense of the institution.

Punishment.—§ 67. In the event of the refractory conduct of any convict rendering it necessary, the warden may remove such convict apart and place him in a cell until the usual hour of punishment has arrived.

§ 68. Should the inspectors authorise corporal punishment, the warden is to have recourse thereto only in extreme cases, and shall not inflict any more than *seventy-five* lashes for any one offence, to be carried out in the presence of the warden and physician. No corporal punishment to be inflicted on females.

Female Prisoners, § 72, to be kept totally distinct from the males, and under the charge of a matron and assistant matron, subject to the rules and regulations of the prison as far as applicable.

See also "*Criminal Lunatic Asylum*," page 252.

PERJURY.

Perjury (from the latin word, *perjurium*) is the crime of *wilful false swearing* to any matter of fact *material* to the issue or point in question, when a *lawful* oath is administered to the party in some *judicial* proceeding.—3 *Inst.* 174; 1 *Haw. c.* 69, § 1; 1 *T. R.* 69. And it is an offence at common law.

Subornation of perjury is the offence of procuring another to make such false oath as constitutes perjury in the principal, and is an offence under various statutes.

It has been settled that *justices of the peace* have no jurisdiction over perjury at *common law*.—2 *Haw. c.* 8, § 38; *Salk.* 406; 2 *Str.* 1088. But under the statute of *Elizabeth* they have; this statute, however, only relates to the crime of *subornation*, and from the difficulty attending prosecutions under it is now seldom resorted to.

1. *Perjury at Common Law.*

The perjury must be wilful, that is, the false oath must be taken deliberately and advisedly; for, if it originated more from the weakness than the perverseness of the party—as, if

it be occasioned by surprise or inadvertency, or a mistake of the true meaning of the question—it will not then amount to voluntary and corrupt perjury.—1 *Haw.* 69, § 2. It has been said that no oath shall amount to perjury, unless the fact deposed to be sworn *absolutely* and *directly*; but this doctrine is now exploded, and the crime of perjury, it is agreed, may be committed by a man who swears that he *believes* that to be true which he *must know* to be false.—*R. v. Pedley*, 1 *Leach*, 237; *Miller's case*, 3 *Wils.* 427; 2 *Bl. Rep.* 811. The oath must be *false*; upon which head it has been observed, that it is not material whether the fact which is sworn to be in itself true or false, for however the thing sworn may happen to prove agreeable to truth, yet if it were not *known to be so* at the time by him who swears to it, his offence is altogether as great as if it had been false. This position cannot be denied, as constituting perjury, viz., when a witness wilfully swears that he knows a thing to be true, which at the same time he knows nothing of, and thus impudently endeavours to induce those before whom he swears to proceed upon the credit of a deposition which any stranger might make as well as he.—1 *Haw. c.* 69, § 5, *per Lawrence, J.*, 6 *T. R.* 637; *R. v. Edwards*, 2 *Russ.* 518, *note (e.)* All *false oaths* taken before those who are in any way intrusted with the administration of justice, in relation to any matter legally pending before them, are properly perjuries. Therefore all persons are indictable who wilfully forswear themselves in any *judicial proceeding*, depending before a court of law or equity, or any other court, whether the proceedings therein be recorded or not; where an affidavit is falsely made of any matters *material* in a cause, the party making it is indictable for perjury, although the affidavit is never used to found any subsequent proceedings upon—*R. v. White*, 1 *M.* 271, 271; *R. v. Hailey*, *Ry. & M.* 94; 1 *C. & P.*, 258; and so is a false oath before a justice of the peace, in any proceeding within the jurisdiction of the justice, in which he is authorised by law to administer an oath—1 *Haw. c.* 69, § 3; or before a commissioner of the court of K. B., duly authorised; but in all private transactions between man and man, no oath whatsoever, however false it may be, is punishable as perjury in a criminal prosecution; such as a false oath taken by one upon making a bargain that the thing sold is his own. Neither is the breach of a *promissory oath* within the legal definition of perjury. Therefore, no public officer who neglects to perform the duties of his office, which he has previously sworn faithfully to discharge (how-

ever punishable he may be for a misdemeanor, and aggravated as his offence may be by the violation of his oath) is indictable for perjury.—2 *Haw. c.* 69, § 3. Neither can a juror who gives a verdict contrary to evidence be prosecuted for perjury.—1 *Haw. c.* 69, § 5. The oath must be taken before some court, or person *legally authorised* to administer an oath; for no other whatsoever which is taken before persons not legally authorised, or competent to administer an oath, can amount to *perjury* in the eye of the law.—1 *Haw. c.* 69, § 4. The thing sworn must be *material* to the point in question; for if it be wholly foreign from the purpose, or altogether immaterial, not tending to aggravate or extenuate the damages, nor likely to induce the jury to give a readier credit to the substantial part of the evidence, it cannot then amount to perjury; because it is in such case merely idle and insignificant; as if, upon a trial, in which the question was, whether A was *compos* or not, a witness unnecessarily and impertinently describes a journey which he took to see the party, and happens to swear falsely in relation to some of the circumstances of the journey.—1 *Haw. c.* 69, § 8. But if the false oath has any tendency to prove or disprove the matter in issue, however circumstantially; so as if the party wilfully mistakes the colour of a man's coat, or speaks falsely to the credit of another witness, it will in like manner amount to perjury.—*Rex. v. Griebe*, 12 *Mod.* 142; *R. v. Muscot*, 10 *Mod.* 195. With respect to *subornation* of perjury, if the person incited to take a false oath do not actually take it, the person by whom he was so incited is not guilty of *subornation of perjury*; but he is, nevertheless, liable to be punished as for a gross misdemeanor, in attempting to pervert the course of justice.—1 *Haw. c.* 69, § 10.

2. Of the Offence by Statute.

By 5 *Eliz.*, c. 9, (made perpetual by 29 *Eliz.*, c. 5, § 2, and 21 *Jac.* 1, c. 28, § 8,) it is enacted by § 3, that every person who shall unlawfully and corruptly procure any witness to commit any wilful and corrupt perjury, in any matter or cause depending in suit and variance, shall forfeit £40; or (by § 4) if he has not goods to that amount, shall suffer imprisonment for half a year, and stand upon the *pillory* for one hour in some market town, next adjoining to the place where the offence was committed. By § 5, no person so convicted can afterwards be received as a witness in any court of record until the judgment be reversed. By § 6,

any person, either by subornation, unlawful procurement, sinister persuasion, or by means of any others, or by his own act, consent or agreement, committing wilful and corrupt perjury, shall, upon conviction, forfeit £20, and be imprisoned six months, and his oath not afterwards received in any court until judgment be reversed; or if the offender has not goods, shall be set in the pillory, and have both of his ears nailed, and be discredited and disabled for ever to be sworn in any court of record until judgment shall be reversed. By § 9, the judges of any court where the perjury is committed, and the justice of assize and gaol delivery, and the justices of the peace, at their quarter sessions, may enquire of, hear and determine all offences against the act. And by § 13, the act is not to restrain the authority of any other judge having absolute power to punish perjury before the making the statute, so that he set not upon the offender less punishment than is contained in the act.

The above statute of Elizabeth did not alter the nature of the offence at *common law*, but merely enlarged the punishment. It is, however, seldom resorted to in the present day, on account of the difficulty of convicting under it; for, in the first place, it has been held not to apply to any case unless it can be shewn that there is a *party grieved* by the perjury, and that the perjury also was committed in a matter relating to the proof of what was in issue.—3 *Salk.* 270. Nor can a witness who gives false evidence for the Crown be indicted under it; for which a reason is given in the report that does not appear to be a very sound one, namely, because an indictment being *the suit of the king*, he cannot punish his own witness, who swears for him.—*Price's case, Cro. Jac.* 120.

The statute also extends to no other perjury than that of a witness; therefore, perjury committed in an answer to a bill in Chancery, or in swearing the peace against another, cannot be prosecuted under the statute.—1 *Haw. c.* 69, § 20.

A false *affidavit* has been held not to be within the statute.—1 *Roll.* 79; 2 *Roll. ab.* 77; 3 *Keb.* 345; 3 *Salk.* 269. But this appears to be too general a proposition; for if the affidavit be of a nature that either of the parties in variance be grieved, hindered or molested in respect of their cause, by reason of the perjury, the offence then seems to be within the meaning as well as within the letter of the statute.—1 *Haw. c.* 69, § 21.

3. Of other Statutes relating to the Offence.

By the 23 G. II. c. 11, which professes to be passed for

the laudable purpose of facilitating prosecutions for perjury, it is enacted by § 3, that any judge of assize or *nisi prius*, or general gaol delivery, while the court is sitting, or within 24 hours afterwards, may direct any person (examined as a witness upon any trial before him) to be prosecuted for the said offence of perjury, in case there should appear to him reasonable cause for so doing, and to assign the prosecutor counsel, without fee or reward; and such prosecution shall not be subjected to any fees of court, &c.

By 7 & 8 W. III. c. 34; 8 G. I. c. 46; and 22 G. II. c. 46, the false *affirmation* or *declaration* of any of the people called Quakers, is declared to incur the penalties of perjury; and so by several provincial statutes.—*49 G. III. c. 6; *10 G. IV. c. 1, &c.; 12 V. c. 10; C. Stat. 22 V. c. 5, § 6.

By 12 G. I. c. 29, § 4, if any person convicted of perjury, forgery, or common barratry, shall practise as an attorney, solicitor or agent, the judges of the court shall examine the matter in a summary way, in open court, and may sentence the offender to be transported for seven years.

Under Provincial Statute.

By C. Stat. 22 V. c. 5, § 6, art. 13, in every case where an oath or *affirmation* is directed to be made before any person or officer, such person or officer shall have full power and authority to administer the same, and to certify its having been made; and the wilful making of any false statement in any such oath or affirmation shall be wilful and corrupt perjury; and the wilful making of any false statement in any declaration required or authorised by any such act as aforesaid, shall be a misdemeanor punishable as wilful and corrupt perjury. (a)

By U. C. Stat. 22 V. c. 101, § 9, any person who wilfully and corruptly makes any false affidavit out of Upper Canada before any chief justice or other officer or functionary authorised to take the same under the Common Law Procedure Act, shall be deemed guilty of perjury, in like manner as if such false affidavit had been made in Upper Canada before competent authority, and may be dealt with, indicted, tried, and if convicted, sentenced, and the offence may be laid and charged to have been committed in that county or place where he has been apprehended or is in custody.

By C. Stat. 22 V. c. 99, § 39, in any indictment for perjury it shall be sufficient to set forth the substance of the

(a) A similar provision will be found in the U. C. Stat. 22 V. c. 2, § 15.

offence charged, and by what court, or before whom the oath, affirmation or declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing was taken, made, signed or subscribed, without setting forth the bill, answer, information, &c., or any part of any proceeding at law or equity, and without setting forth the commission or authority of the court or person before whom such offence is committed.

§ 40. In every indictment for subornation of perjury, &c., it shall be sufficient to allege the offence, and then to allege that the defendant unlawfully, wilfully and corruptly did cause and procure the said person, the said offence in manner and form aforesaid to do and commit.

4. *Of the Indictment.*

An indictment for perjury at *common law* cannot be preferred at the quarter sessions; for, by the common law, the sessions have no jurisdiction of perjury; though it seems they have jurisdiction over it under the 5 Elizabeth, c. 9.—2 *Haw. v.* 8, § 38. But as prosecutions under the statute are much more difficult than those at *common law*, and are seldom adopted, even in the courts above, they are of course still less in use at the sessions.

Besides the proceedings by indictment, the court before which any glaring offence of perjury is committed has also the power to punish the offender in a summary way, as for a contempt.

5. *Of the Punishment.*

Perjury is punishable at common law with fine, imprisonment and pillory, (a) at the discretion of the court; and by statute 2 G. II. c. 25, § 2, (made perpetual by 9 G. II. c. 18,) the judge may order the party to be transported, or to be imprisoned and kept to hard labour in the house of correction for a term not exceeding seven years.

Subornation of perjury is punishable by £40 fine, six months' imprisonment, and the pillory.—5 *Eliz. c.* 9.

Indictment for Perjury.—C. Stat. 22 V. c. 99.

County of } The jurors for our lady the Queen upon their
to wit: } oath present that heretofore to wit at the
assizes holden for the county of , on the day of , in
the year of our Lord one thousand eight hundred and , before
 , one of the justices of our lady the Queen, a certain issue
between one E. F. and one G. H. in a certain action of covenant

(a) Pillory abolished by C. Stat. 22 V. c. 99, § 98.

was tried, upon which trial A. B. appeared as a witness for and on behalf of the said E. F., and was then and there duly sworn before the said , and did then and there upon his oath aforesaid falsely, wilfully, and corruptly depose and swear in substance and to the effect following, that he saw the said G. H. duly execute the deed on which the said action was brought, which fact was material to the said issue, whereas in truth the said A. B. did not see the said G. H. execute the said deed, and the said deed was not executed by the said G. H., and the said A. B. did thereby commit wilful and corrupt perjury.

Indictment for Subornation of Perjury—22 V., c. 99.

County of } *Same as last form to the end and then proceed :*
 to wit: } And the jurors further present that before
 the committing of the said offence by the said A. B. to wit, on
 the day of , in the year of our Lord one thousand eight
 hundred and , C. D. unlawfully and wilfully and corruptly
 did cause and procure the said A. B. to do and commit the said
 offence in manner and form aforesaid.

PETTY TRESPASS.

By U. C. Stat. 22 V. c. 105, [as amended by Stat. 25 V. c. 22,] any person who unlawfully enters into, comes upon, or passes through, or in any way trespasses upon any land or premises whatsoever being wholly inclosed, and being the property of any other person, shall be liable to a penalty of not less than one dollar, nor more than ten dollars, for any such offence, irrespective of any damage having or not having been occasioned thereby; and such penalty may be recovered, with costs in every case of conviction, before any one justice of the peace who shall decide the matter in a summary way and award costs in case of conviction, which may be had either on view, or on confession of the party complained against, or on the oath of one credible witness; but 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, or to any case within the meaning of the Consolidated Statutes of Canada respecting arson and other malicious injuries to property.

§ 2. Any person found committing any such trespass as aforesaid may be apprehended without a warrant by any peace officer, or by the owner of the property on which it is committed, or the servant of any person authorised by him, and be forthwith taken to the nearest justice of the peace to be dealt with according to law.

§ 3. Except as herein otherwise provided, all proceedings under this act shall be subject to and in accordance with the provisions of the Consolidated Statutes of Canada, respecting "the duties of justices of the peace out of sessions," in relation to summary convictions and orders, which shall apply to cases arising under this act.

§ 4. Nothing in this act contained shall authorise any justice of the peace to hear and determine any case of trespass in which the title to any land, or any interest therein accruing thereupon, shall be called in question, or affected in any manner howsoever, but every such case of trespass shall be dealt with according to law, in the same manner in all respects as if this act had not been passed.

PHYSIC AND SURGERY.

By U. C. Stat. 22 V. c. 40, § 12, except homeopaths duly authorised by law, it shall not be lawful for any person not being licensed as aforesaid, or not having been heretofore licensed by any medical board, or not being actually employed as a physician or surgeon in her Majesty's naval or military service to practise physic, surgery, or midwifery in Upper Canada for hire, gain, or hope of reward. § 13. Females practising midwifery excepted.

§ 14. If any person not licensed or authorised as in the act mentioned, or not being actually employed as a physician or surgeon in her Majesty's naval or military service practises physic, surgery, or midwifery for trial, gain or hope of reward he shall be guilty of a *misdemeanor*, and may be prosecuted and punished accordingly. § 16. But no prosecution shall be commenced after one year from the offence committed. § 17. And no person convicted shall be imprisoned for more than six months, or fined above \$100.

PILLORY.

By Con. Stat. 22 V. c. 99, § 98, the punishment of the pillory is abolished.

PIRACY.

What acts amount to Piracy.

When subjects of the same state commit robbery upon each other upon the high seas, such acts of violence and depredation amount to piracy. And the same if the subjects of different states, connected by ties of amity and friendship, commit robbery upon one another.—4. *Inst.* 154. But where states are at open war with each other, the plundering of an

enemy is then not an act of piracy, but a mere act of hostility and lawful capture. So if persons making a capture at sea do so by authority of any foreign prince or state, this also cannot be considered piracy. Thus, even a capture by authority of the marauding states of Algiers, Tunis, or Tripoli, cannot be treated as piracy.—*Grot.* 2, c. 18, § 2; *Sir L. Jenk*, 790. Formerly, indeed, no subjects of the British empire were deemed pirates if they acted under the commission of any foreign power; but by the 11 and 12 Wm. III., c. 7, (which was levelled against commissions granted by James II. after his abdication,) it is enacted that if any natural-born subjects or denizens of this kingdom shall commit any piracy or robbery, or any act of hostility against others of his Majesty's subjects or states, on pretence of authority from any person whatsoever, the offenders shall be deemed to be *pirates*, felons and robbers; and being convicted under that act, or the 23 Hen. VIII., c. 15, shall suffer capital punishment. In addition to this statute, the 18 Geo. II., c. 30, enacts that all natural-born subjects or denizens, who during any war shall commit any hostility upon the seas, or in any haven, river, creek, or place, where the admiral has jurisdiction, against his majesty's subjects, by virtue or under colour of any commission from any of the king's enemies, or shall be otherwise adherent or giving aid or comfort to his Majesty's enemies upon the sea, or where the admiralty has jurisdiction, may be tried as *pirates*, felons, and robbers, in the court of admiralty, on shipboard, or on land; and being convicted, shall *suffer death*, &c., as under the last statute.

By § 9 of the above statute of 11 & 12 Wm. III., c. 7, if any commander or master of any ship, or any seaman or mariner shall, in any place where the admiral has jurisdiction, betray his trust, and turn pirate, enemy, or rebel, and piratically and feloniously run away with his or their ship, or any barge, boat, ordnance, ammunition, goods or merchandize; or yield them up voluntarily to any pirate; or shall bring any seducing message from any pirate, enemy or rebel; or consult, combine, or confederate with or attempt or endeavour to corrupt any commander, master, officer, or mariner, to yield up or run away with any ship, goods or merchandize, or to turn pirate; or if any person shall lay violent hands on his commander, whereby to hinder him from fighting in defence of his ship and goods; or shall confine his master; or make, or endeavour to make, a revolt in the ship, he shall be adjudged, deemed, and taken to be a pirate,

felon, and robber, and being convicted, shall suffer accordingly.

By 8 Geo. I., c. 24, § 1, (made perpetual by 2 Geo. II., c. 28, § 7,) if any commander or master of any ship, or any other person, shall anywise trade with any pirate, by truck, barter, exchange, or in any other manner; or shall furnish any pirate with any supplies of any kind; or shall *fit out* any vessel to trade with, or shall supply or correspond with any pirate, every such offender shall be deemed and adjudged guilty of piracy, and shall suffer death.

Of Accessories.

Piracy being no felony by the common law, nor made so generally by any statute, the accessories to the offence were only triable by civil law, if their offence was committed on the sea; but if on the land, they were not triable at all till the 11 & 12 Wm. III., c. 7. By § 10 of this statute, it is enacted, that every person who shall knowingly or willingly set forth any pirate, or aid and assist in any piracy, he shall be deemed an accessory. And after any piracy shall be committed, every person who shall receive, entertain, or conceal any such pirate, shall likewise be deemed an accessory. And all such accessories shall be tried after the course of the common law, according to the statute 28 Hen. VIII., as principals, and not otherwise, and shall *suffer death* and loss of land accordingly as such principals. But by 3 Geo. I., c. 24, all persons who by statute 11 & 12 Wm. III. are only deemed accessories, are by this statute declared to be *principals*, and shall and may be dealt with accordingly.

Of the Indictment, Trial and Judgment.

The indictment must allege the fact to have been committed on the *high seas*, within the jurisdiction of the *admiralty*, and lay it to be done *feloniously* and *piratically*. If it turn out that the goods were taken any where within the body of a county, the admiralty can have no jurisdiction to enquire into the offence. So, on the other hand, if goods were taken at sea and afterwards brought on shore, the offender cannot be indicted as for larceny in that county into which they were carried, because the original felony was no taking whereof the common law takes cognizance.—3 *Inst.* 113; 1 *Haw.*, c. 37, § 10.

By 28 Hen. VIII., c. 15, § 1, all treasons, felonies, robberies, murders, and confederacies, committed in or upon the ~~sea~~, or in any haven, river, creek, or place, where the *admi-*

rality has, or pretends to have power, authority or jurisdiction, shall be tried by commissioners of *oyer and terminer*, in such shires and places as shall be limited by the king's commission, in the same manner as if such offences had been committed on the land; and by § 3, the offender is excluded from the benefit of clergy. But notwithstanding this statute, the admiralty can claim no jurisdiction where the haven, river, or creek is within the body of a county; for in that case the offence was always cognizable at common law; and all rivers are within the jurisdiction of the common law, until they flow past the furthest point of land next the sea.

- In order to spare the expense and delay of bringing offenders from remote places to be tried in England, the 11 & 12 Wm. III., c. 7, § 1, provided that the courts of admiralty abroad might be authorised to try piracies, felonies, and robberies upon the sea; but as this act did not include treason, misdemeanors and other offences, the 46 Geo. III., c. 54, enacts that all treasons, piracies, felonies, robberies, murders, conspiracies and other offences, of what nature or kind soever, committed upon the sea, or in any place where the admiralty has jurisdiction, may be tried (according to the course of the common law of this realm used for offences committed upon the land) in her Majesty's colonies, under the great seal. And all persons convicted of such offence shall be liable to the same punishment as persons would be if tried within this realm under the 28 Hen. VIII.

POISON.—POISONING.

Sir W. Blackstone in his commentaries, 4th vol., page 196, says, of all species of deaths the most detestible is that of poison; because it can, of all others, be the least prevented either by manhood or forethought, and therefore by the statute 22 Hen. VIII., it was made treason, and a more grievous and lingering kind of death was inflicted on it than the common law allowed, namely, boiling to death; but this act did not live long, being repealed by 1 E. VI., c. 12. This extraordinary punishment seems to have been adopted by the legislature from the peculiar circumstances of the crime which gave rise to it; for the preamble of the statute informs us, that John Roose, a cook, had been lately convicted of throwing poison into a large pot of broth prepared for the Bishop of Rochester's family, and for the poor of the parish; and the said John Roose was by a retrospective clause of the statute ordered to be boiled to death.—*Ib. note*

(26.) Lord Coke mentions several instances of persons suffering this horrid punishment.—3 *Inst.* 48.

If a physician or surgeon gives his patient a potion or plaister to cure him, which contrary to expectation kills him, this is neither murder nor manslaughter, but misadventure. But it hath been holden that if he was not a *regular* physician or surgeon who administers the medicine, or performs the operation, it is manslaughter at the least.—*Mir. c.* 4, § 16; *Britt. c.* 5; 4 *Inst.* 251. Yet Sir Matthew Hale very justly questions the law of this determination.—1 *H. P. C.* 430. And if one intends to commit another felony, and undesignedly kills a man, this is also murder. Thus if one shoots at A. and misses *him*, but kills B., this is murder, because of the previous felonious intent. The same is the case where one lays poison for A., and B., against whom the poisoner had no malicious intent, takes it and it kills him, this is likewise murder.—1 *H. P. C.*, 466. So also if one gives a woman with child a medicine to procure abortion, and it operates so violently as to kill the woman, this is murder in the person who gives it.—*Ib.* 429.

Our own statute law contains the following provisions with regard to poison:

By Con. Stat. 22 V. c. 91, § 5, administering poison or causing the same to be administered with intention to commit murder, is made felony, and punishable with *death*.

§ 24. If with intent to procure abortion, it is then felony and punishable at the discretion of the court by imprisonment in the provincial penitentiary for life, or any term not less than two years, or in any other place of confinement for any term less than two years.

By Stat. 24 V. c. 7, § 1, whosoever shall unlawfully and maliciously administer or cause to be administered to or taken by any other person, any poison or other destructive or noxious thing so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm shall be guilty of felony, and being convicted thereof shall be liable to be sentenced to imprisonment for any period not less than two years.

§ 2. Whosoever shall unlawfully and maliciously administer to, or cause to be administered to, or taken by any other person any poison or other destructive or noxious thing with intent to injure, aggrieve, or annoy such person shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be sentenced to imprisonment for any period not more than two years.

§ 3. If upon the trial of any person charged with the felony above mentioned, the jury shall not be satisfied that he is guilty thereof, but that he is guilty of the misdemeanor above mentioned, then in every such case the jury may acquit the accused of such felony and find him guilty of such misdemeanor, and he shall be liable to be punished accordingly.

By Con. Stat. 22 V. c. 98, § 1, no apothecary, chemist, druggist, vender of medicines, or other person shall sell or deliver any arsenic, corrosive sublimate, strychnine or other poison, mineral, or vegetable, simple or composite, commonly known as deadly poison, (or which being incautiously or secretly administered may cause immediate death,) to any person who does not then produce and deliver a certificate or note from some physician, priest, or minister of religion resident in the locality, addressed to such apothecary, &c., and mentioning the name, residence, calling or profession of the person requiring the same, § 2, under a penalty for each offence not exceeding \$10, and if not forthwith paid upon conviction the offender shall be committed to gaol for a period not exceeding three months, unless the penalty and costs be sooner paid.

§ 3. Such penalty to be recoverable with costs before any one justice of the peace, on the oath of any one or more credible witnesses other than the prosecutor: prosecution to commence within six months; and one moiety of the penalty to go to the prosecutor, and the other to the public uses of the province.

See also title "*Chloroform*," page 138.

POLICE OFFICE.

By the General Municipal Act, (U. C. Stat. 22 V. c. 54, § 369,) the council of every town and city shall establish therein a police office, and the police magistrate, or in his absence, or where there is no police magistrate, the mayor of the town or city shall attend at such police office daily, or at such times and for such period as may be necessary for the disposal of the business brought before him, as a justice of the peace; and any justice of the peace, having jurisdiction in a town may, at the request of the mayor thereof, act in his stead at the police office. But except in cases of urgent necessity no attendance is required on Sunday, Christmas Day, or Good Friday, or any day appointed by proclamation for a public fast or thanksgiving.

§ 373. Every police magistrate shall receive a salary of

not less than \$400 per annum, to be fixed by, and to be paid quarterly by the council.

§ 375. Every police magistrate shall be appointed by the Crown, and shall hold office during the pleasure of the Crown, and shall be *ex officio* a justice of the peace for the city or town for which he holds office, as well as for the county in which the city or town is situate.

By C. Stat. 22 V. c. 103, § 82, any one police magistrate appointed for any city or town, and sitting at a police court, or other place appointed in that behalf, shall have full power to do alone whatever is authorised by this act to be done by two or more justices of the peace, § 83, and have power to preserve order in the said court during the holding thereof, as by any court of law in this province, or by the judges thereof during the sittings thereof, § 84, and for enforcing the execution of process.

By 27, 28 V. c. 34, the police magistrate in any town in Upper Canada shall have the same summary jurisdiction and powers as recorders in cities.

POLICE VILLAGES.

By C. Stat. 22 V. c. 54, § 9, on the petition of any of the inhabitants of an incorporated village, the council of the county or united counties may by by-law erect the same into a police village. § 68. The trustees to be three in number, one of whom shall be the inspecting trustee. § 70. Qualification to be by assessment on the roll, freehold or leasehold, to the value of \$400. § 86. Elections of trustees to be annual, on the second Monday in January. § 93. After the first election the trustees or any two of them may appoint the returning officer. § 95. Who shall during the election be a conservator of the peace, and may arrest and summarily try and punish by fine or imprisonment, or both, or bind over to keep the peace, or for trial, any riotous or disorderly person. § 96. And may swear in special constables. § 130. First meeting of trustees to be held on the *third* Monday in January, or some day thereafter. § 307. Inspecting trustee to be appointed by the trustees. § 307. Vacancies accruing may be filled up by the remaining trustees. § 308. Any police trustee neglecting to prosecute an offender at the request of any resident householder shall incur a penalty of \$5. § 309. To be sued for within ten days after the offence committed. § 310. The inspecting trustee, or in his absence one of the other trustees shall sue for all penalties under the police regulations, before a resident justice of the

peace, or within five miles of the village ; or if none such then before any justice having jurisdiction in the village who may hear and determine the complaint in a summary way, and convict the offender upon the oath or affirmation of a credible witness, and shall cause the penalty to be levied by distress and sale of the offender's goods, to be paid over to the pathmaster of the division, or to such of the pathmasters as the trustees may direct. § 311. The trustees to be also health inspectors under the Consolidated Statutes respecting public health, or any other act.

Police Regulations.

§ 312. The trustees of every police village shall execute and enforce therein the regulations following :

Fire.—1. Every proprietor of a house more than one story high shall place and keep a ladder on the roof of such house near to and against the chimney, and another from the ground to the roof, under a penalty of *one dollar* for every omission, and a further penalty of \$2 for every week such omission continues.—2. Also two buckets fit for carrying water in case of fire, under a penalty of one dollar for each bucket deficient.—3. No person shall build any oven or furnace unless it adjoins and is properly connected with a chimney of stone or brick at least three feet higher than the house or building, under a penalty not exceeding \$2.—4. No person shall pass a stove pipe through a wooden or lathed partition or floor unless there is a space of *four inches* between the pipe and wood work nearest thereto, and the stove pipe shall be inserted into a chimney, and there shall be ten inches clear between any stove and any lathed partition or wood work, under a penalty of \$2.—5. No person shall enter a mill, barn, outhouse or stable with a lighted candle or lamp, unless well enclosed in a lantern, nor with a lighted pipe, or cigar, or with fire not properly secured, under a penalty of one dollar.—6. No person shall light or have a fire in a wooden house, or outhouse, unless in a brick or stone chimney, or in a stove of iron or other metal, properly secured, under the penalty of one dollar.—7. No person shall carry fire into or through any street, lane, yard, garden or other place without being confined in some copper, iron or tin vessel, under a penalty of one dollar for the first offence, and \$2 for every subsequent offence.—8. No person shall light a fire in a street, lane, or public place, under the penalty of one dollar.—9. No person shall place hay, straw or fodder in a dwelling house under a penalty of one dollar,

and of \$5 for every week of continuance.—10. No person except a manufacturer of pot or pearl ashes shall keep or deposit ashes or cinders in any wooden vessel, box or thing not lined with sheet iron, tin or copper under a penalty of one dollar.—11. No person shall place or deposit any quick or unslacked lime in contact with any wood of a house or other building, under a penalty of one dollar, and \$2 a day until removed or secured to the satisfaction of the inspecting trustee.—12. No person shall erect a furnace for making charcoal of wood under a penalty of \$5.

Gunpowder.—13. To be kept in boxes of copper, tin or lead, under a penalty of \$5 for the first offence, and \$10 for every subsequent offence. 14. No person shall sell any in his house, storehouse, or shop, &c., at night, under a penalty of \$10 for first offence, and \$20 for every subsequent offence.

Nuisances.—15. No person shall throw any filth or rubbish into a street, lane or public place, under a penalty of one dollar, and \$2 for every week he neglects to remove the same after notice from the inspecting trustee.

POOR.

By the U. C. (Municipal) Act, 22 V. c. 54, § 276, every township council may make by-laws for raising money by a rate to be assessed equally on the whole rateable property of the township for the support of the poor resident in the township.

POSSE COMITATUS.

The *posse comitatus*, or power of the county, includes the aid and attendance of every person above fifteen years of age under the degree of peer, except ecclesiastical persons, and such as labour under any infirmity. It may be raised by the sheriff, or justices of the peace, or where a riot is committed, where a forcible entry is made, or where there is any force or rescue contrary to the command of the king's writ, or in opposition to the execution of justice. Persons refusing to assist in this service, when legally required, may be fined and imprisoned. The statutes relating to the *posse comitatus* are the 17 R. II. c. 8; 13 Hen. IV. c. 7, and the 2 Hen. V., c. 8; and see 2 *Inst.* 198; 3 *Inst.* 161.

The mayor of any city or town may call out the *posse* to enforce the law within his municipality, should exigencies require it, but only under the same circumstances in which the sheriff of a county may now by law do so.—U. C. Municipal Act, 22 V. c. 54, § 367.

POST OFFICE.

By C. Stat. 22 V. c. 31, entitled, "An act respecting the Provincial Post office," § 2, the inland posts and post communications in this province, so far as is consistent with the imperial acts now in force, shall be exclusively under provincial management and control; and the revenue arising therefrom shall form part of the provincial revenue. § 3. All privileges, powers, and authority now vested by any provincial act in her Majesty's postmaster-general, with regard to services to be required from any railroad company, respecting the conveyance of the mail, &c., shall be vested in the provincial postmaster-general. § 4. All post offices and postal divisions, stations, districts and establishments, and all commissions or appointments of any officers or persons employed shall continue and remain, subject to the provisions hereinafter made, as well as all bonds and contracts by, with, or to any such officers, and contracts for conveyance of the mails, &c. § 8. The provincial postmaster-general to be appointed by letters patent. § 10. The provincial postmaster-general's salary shall not exceed \$5,000 per annum. § 12. Provincial postage on letters and packets (not being newspapers or printed pamphlets, magazines or books, entitled to pass at a lower rate) shall not exceed the rate of *five cents* per half ounce for any distance within this province, any fraction of a half ounce being chargeable as a half ounce.—2. No *transit* postage shall be charged on any letter or packet passing through this province to any other colony in British North America, unless the sender chooses to *pre-pay* it; nor on any letter or packet from any such colony if pre-paid there.—3. *One penny* sterling the half ounce shall remain as the rate in operation as regards letters by *British mails*, to be extended to countries having postal conventions with the United Kingdom.—4. The pre-payment of provincial postage shall be optional.—7. No privilege of franking shall be allowed as regards provincial postage.—8. *Provincial stamps* for the pre-payment of postage may be prepared under the order of the Governor in council; which stamps shall be evidence of pre-payment. § 13. Provincial postage on unpaid letters to be *seven cents* per half ounce,—2, *one cent* on newspapers.—3. Newspapers printed and published in the united kingdom, or in any British colony, or in France, to be postage free.—7. Letters to or by members of the legislature during the session to be free. § 17. Any person who collects, sends, conveys, or

delivers or undertakes to convey, or deliver any letter within this province, or who shall have in his possession any letter for the purpose of conveying or delivering it otherwise than in conformity with this act, shall for each letter incur a penalty not exceeding \$20, with the following exceptions:—1. Letters sent by a private friend, in his way, journey or travel, provided such letters be delivered by such friend to the party addressed.—2. Letters sent by a messenger on purpose, concerning the private affairs of the sender or receiver.—3. Commissions or returns thereof; and affidavits, or writs, process, or proceedings, or returns thereof, issuing out of a court of justice.—4. Letters addressed to a place out of the province, and sent by *sea*, and by a private vessel.—5. Letters lawfully brought into this province, and immediately posted at the nearest post-office.—6. Letters of merchants, owners of vessels of merchandize, or of the cargo or loading therein, sent by such vessel of merchandize, or by any person employed by such owners for the carriage of such letters according to their respective addresses, and delivered to the person addressed, without pay, hire, reward, advantage or profit for so doing.—7. Letters concerning goods or merchandize sent by common known carriers, to be delivered with the goods to which such letters relate, without hire, reward, profit or advantage for receiving or delivering them: *provided*, that nothing herein contained shall authorise any person to collect any such excepted letters for the purposes aforesaid.

§ 19. Any letters conveyed, received, collected, sent, or delivered in contravention of this act, may be seized by any person or any officer of the provincial post-office, or revenue, and taken to the nearest post-office. § 24. Postage on letters (if not pre-paid) shall be payable by the party to whom addressed; and if refused, or the party addressed cannot be found, then such postage shall be recoverable from the sender. § 26. No postmaster shall be bound to give *change*, but the exact amount of postage on any letter or package shall be tendered or paid in current coin, or provincial postage stamps. § 27. Soldiers' and seamen's letters to be free from provincial postage. § 28. The postmaster-general shall not be liable to any party for the loss of any letter or packet sent by post. § 33. Mails not to be carried across ferries *gratis*, but such service shall be fixed by contract, or arbitration. § 36. Subject to this act and instructions from the Governor the postmaster-general shall have power to open and close post-offices and mail routes;

suspend any postmaster or officer, or servant of the department until the Governor's pleasure be known, and appoint a person in his stead; to enter into and enforce contracts for conveyance of the mail; and to make rules and orders for the management of the department; and sue for penalties. The like powers to be exercised by his deputies.

§ 55. *Offences punishable as Felonies.*

1. 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 penitentiary for life*.

2. To steal from or out of a post letter any chattel, money or valuable security shall be felony, punishable by imprisonment in the penitentiary for life.

3. 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 penitentiary for life.

4. 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 penitentiary for fourteen years.

5. 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 penitentiary for *fourteen* years, and the offender may be indicted and convicted, either as accessory after the fact or for a substantive felony.

6. To forge, counterfeit or imitate any postage stamp issued or used under the authority of this act, or under the authority of the imperial government, or of any British North American province, or 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 permission in writing of the postmaster-general, or some officer or person who under this act may lawfully grant such permission, or to have possession of any such plate, die, or other thing as aforesaid, without such permission as aforesaid, 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

had been paid, shall be felony, punishable by imprisonment in the penitentiary for life.

Offences punishable as Misdemeanors.

1. 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 come 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 addressed or legally entitled to receive the same.

2. To steal, or for any purpose to embezzle, secrete, destroy, wilfully detain or delay, any printed form or proceeding, newspaper, printed paper or book sent by post.

3. Wilfully and maliciously to destroy, damage or detain, or delay any parcel sent by parcel post.

4. To enclose any letter or letters, or any writing intended to serve the purpose of a letter, by parcel post; or to inclose a letter or any writing, or to make any written remarks to serve the purpose of a letter, or to inclose any other thing in a newspaper posted, to pass as a newspaper at the rate of newspaper postage.

5. 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.

6. To cut, tear, rip, or wilfully damage or destroy any post letter bag.

Mail Carrier.—7. It shall be a misdemeanor for any mail carrier or any person employed to carry 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 might 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.

Toll-gate Keepers.—8. 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 the pretence of non-payment 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; and in any case where such officer or person would have passed toll free before the 10th of August, 1859, any officer or person travelling with a mail shall,

in like manner, pass toll free, but not otherwise or elsewhere, unless to be otherwise provided by competent authority; and 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.

9. Any wilful contravention of any regulation lawfully made under this act shall be a misdemeanor, if declared so by such regulation.

10. To solicit or endeavour to procure any person to commit any act hereby made or declared a felony or misdemeanor shall be a misdemeanor.

Punishment.—And every such misdemeanor as aforesaid shall be punishable by fine or imprisonment, or both, in the discretion of the court; 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 person who aids, abets, counsels or procures the commission of any such misdemeanor as aforesaid, shall be guilty of misdemeanor, and punishable as a principal offender; and any imprisonment awarded under this act shall be in the 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.

Embezzlement.—§ 56. If any officer of, or connected with the post office department, converts to his own use, or uses by way of investment in any kind of property or merchandise, or loans with or without interest any of the public moneys entrusted to him for safe keeping, transfer, disbursement, or any other purpose, every such act shall be deemed an embezzlement, and declared to be 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 postmaster-general, shall be *prima facie* evidence of such conversion; and all persons advising or knowingly and willingly participating in such embezzlement, upon conviction, shall for every such offence forfeit and pay to her Majesty a fine equal to the amount embezzled, and shall suffer imprisonment for a term not less than three months, and not more than seven years.

Mail Key, Lock, &c.—§ 57. Stealing, purloining, embezzling, or obtaining by false pretences, or unlawfully making, forging, or counterfeiting any key to any lock in use by the post office department, or any of the mails or mail bags; or having in possession any such mail key or lock with intent unlawfully to use, sell, or otherwise dispose of the same, shall

be deemed felony, punishable by imprisonment in the penitentiary for a period not exceeding seven years.

Procedure.—§ 58. Offences under this act may be dealt with, indicted, tried and punished, and charged to have been committed in the locality where committed, or where the offender shall be apprehended, or be in custody. § 61. All mere pecuniary penalties imposed by this act or by any regulation of the Governor made under it shall be recoverable with costs in any court having jurisdiction to the amount, and shall belong to the Crown, saving the power of the Governor in council to allow any part or the whole to the informer. But all such penalties shall be sued for within one year after being incurred; and if the penalty do not exceed \$40 it may be recovered before any one justice of the peace in a summary manner, and if not paid may be levied by distress under warrant of such justice; and if exceeding \$40 the offender may be indicted for a misdemeanor, (instead of being sued for the penalties,) and if convicted punished by fine or imprisonment, or both, in the discretion of the court. § 62. Penalties may be recovered on the oath of one credible witness.

POT AND PEARL ASHES.

By C. Stat. 22 V. c. 49, § 11, *pot ash* barrels are to be constructed of oak or white ash timber. *Pearl ash*, of oak, white ash, beach, ash, or elm timber, and of the best description. Barrels to be made perfectly tight, and to be well hooped with at least 14 sound oak, ash, hickory, blue beech, or elm hoops, said barrels not to exceed 32 inches in length by 22 inches in diameter on either head, and the chime thereof not to exceed one inch, otherwise to be rejected by the inspectors; and every manufacturer shall be bound to mark in legible characters on the end of each barrel before each is filled the exact weight thereof. § 1. Boards of trade at Quebec, Montreal, Toronto and Kingston and municipal authorities in other places to appoint a board of examiners of applicants for the office of inspector. Board of examiners in Quebec and Montreal to consist of five persons, and other places three fit, proper, and skilful persons resident in the place or vicinity; such examiners before acting to take oath of office as prescribed in the act. § 3. The mayor of Quebec, Montreal, Toronto and Kingston for the time being, and chief municipal officer of any other place authorised to appoint an inspector or joint inspector for the said cities and places. Inspectors to undergo examination before the board

as to fitness, character, and capacity, and not to be appointed unless approved and recommended by such board; nor in any place where there shall be a board of trade, except on the requisition of such board. (a) § 4. Inspectors before acting to furnish two sufficient sureties of \$2000 each, if for Montreal, and \$1000 each for other places. § 5. Bond of suretyship to be kept at the office of the clerk of the corporation. § 7. Board of examiners authorised to require the attendance upon such examination of two or more skilled persons in the manufacture of ashes, who may, in the presence of the board, question the applicant as to his knowledge in the matter. § 6. Persons appointed inspectors to take a certain oath of office prescribed in the act before acting. § 8. Present inspectors and assistants to retire on the 1st of January, 1855. § 10. Mode of inspecting, classifying and marking ashes as *first sort*, *second sort* and *third sort*, and their qualities defined.—2. Inspectors to weigh each barrel and mark on the branded head with *black* the weight thereof, including tare, and the weight of the tare under the same, 3, and brand the same in plain letters and figures on each barrel containing ashes of the first quality the words *first sort*; of the second quality the words *second sort*; and of the third quality the words *third sort*, together with the words *pot ash*, *pearl ash*, as the case may be, with his own name and the place of inspection;—4, he shall collect the crustings (if any) of each separate lot, and deduct the value from the inspection charges to be paid by the proprietor of such lot, or deliver them to him.—5. He shall mark the word *unbrandable* No. 1, 2, 3, 4, or 5, according to its strength, on every barrel adulterated with stone, sand, lime, salt, or any other improper substance, so as not to admit of its being classified as *first*, *second*, or *third*.—6. He shall also make and deliver a separate weight-note or bill of each quality whenever required by the owner or his agent.—§ 7. Inspectors at Montreal and Quebec to appoint assistants and clerks; assistants to give security. § 8. And be removed at pleasure. § 9. Vacancies at Montreal to be supplied by the mayor of the city.

§ 12. Whenever any dispute arises between any inspector or assistant inspector or assistant inspector and the owner or possessor of any pot or pearl ashes with regard to the quality thereof, then, upon application to any justice of the peace for the place such justice shall issue a summons to

(a) See 27 V. c. 7, amending this section.

three persons of skill and integrity, one to be named by the inspector, another by the owner or possessor, and the third by the justice, requiring them to examine and inspect the same, and report their opinion of the quality and condition thereof under oath, (to be administered by such justice,) and their determination, (or that of a majority,) shall be final, and the inspector or his assistant shall brand each and every barrel of the qualities directed by such determination, according to the provisions of this act; and if the opinion of the inspector be confirmed, the reasonable costs of such re-examination, to be ascertained and awarded by such justice, shall be paid by the owner or possessor of the ashes, if otherwise, by the inspector.

§ 13. Inspectors (except in Montreal) to provide convenient premises for storage and inspection, to keep the barrels in some dry place, safe from weather and floods, and under a tight roof, and if in sheds, enclosed on every side; and every inspector violating this provision shall forfeit and pay to the owner 10s. for every barrel not stored as aforesaid, besides actual damage sustained by such owner. § 14. Inspector for Montreal to provide stores, and insure ashes against fire. § 15. Inspectors to receive certain rates of remuneration for their services. § 19. Any inspector or assistant while in office directly or indirectly concerned in the buying or selling of any pot or pearl ashes, or participating in any transaction or profit arising therefrom, (further than the fees or emoluments under this act,) or who permits any cooper or other person by him employed to retain or keep any pot or pearl ashes, or who brands any barrel or barrels of ashes of any description or size other than is prescribed in the act, or who dates any weigh note or bill of inspection differently from the time when the ashes were actually inspected, or who delivers out of his possession any such note or bill of inspection without any date, or who does not conform to the provisions of this act shall, upon being legally convicted, for every such offence incur a forfeiture and penalty of not exceeding \$400, and be for ever disqualified from exercising such office; and any inspector, assistant, or clerk, or other person who makes, or causes to be made any fraudulent bill of ashes, shall be guilty of felony, and shall be punished by imprisonment with hard labour in the penitentiary for any term not exceeding seven years.

§ 20. Any inspector, or his assistant, not being then employed on duty, refusing on application on lawful days, between sunrise and sunset, to receive any ashes, or who

neglects to proceed in such examination and inspection for the space of two hours after such application, so made to him shall, for each offence, forfeit \$20 to the use of the person so delayed. § 21. Every person who counterfeits any of the aforesaid brand-marks of any inspector, or without the authority of the inspector impresses or brands the same, or any other mark purporting to be the mark of any inspector, or manufacturer of pot and pearl ashes, on any barrel containing pot or pearl ashes, either with the proper marking tools of such inspector or manufacturer, or with counterfeit representations thereof, or who empties any barrel of pot or pearl ashes, branded as aforesaid by an inspector or manufacturer, in order to put therein other pot or pearl ashes for sale or exportation, without first cutting out the said brand-marks, or fraudulently packs therein any other substance than the pot or pearl ashes packed in the same by the inspector or manufacturer; and if any person in the employ of any inspector or manufacturer hires or loans out the marks of his employer to any person whatsoever, or connives at or is privy to any fraudulent evasion of the provisions of this act, he shall for every such offence forfeit and incur a penalty of \$200. § 22. Nothing herein contained shall prevent any person from exporting pot and pearl ashes without inspection, provided that at one end of the barrel there shall be neatly and legibly branded or marked the name and address of the manufacturer, the weight and tare of the barrel, and the quality of ashes contained in it; but any person who exports any pot or pearl ashes not so marked as aforesaid, or wilfully marks any such barrel falsely, shall thereby incur a penalty of \$20. § 23. All fines, penalties and forfeitures imposed by this act, not exceeding \$10, shall be recoverable by the inspectors, their assistants, or any other person suing for the same in a summary way before any court of competent jurisdiction, and shall, on failure of payment, be levied by execution, as in the case of debt; and one moiety of such fines, when recovered, shall (except when otherwise provided) be paid to the treasurer of the city or place where such action shall be instituted, for the use of the locality; and the other moiety shall belong to the prosecutor. § 24. Any person not being duly authorised under the said act who in any manner whatever assumes the title or office of inspector of pot or pearl ashes, or exercises any of the duties of such inspector or issues any bill, certificate or declaration purporting to establish the quality of any pot or pearl ashes shall, for every

such offence, incur a penalty of \$20, recoverable in like manner as in the foregoing section, or by summary conviction before any justice of the peace, who, in default of immediate payment, may issue a distress warrant or commit the offender to the common gaol until such penalty be paid.

· POUND BREACH.

Pound breach is the forcibly breaking the pound, in which cattle or goods have been put after being lawfully distrained, for the purpose of rescuing them. It has been doubted whether this is an indictable offence, when unaccompanied by a breach of the peace.—4 *Leon.* 12: 3 *Burr.* 1791, 1731. But as pond breach is considered a greater offence at common law than even a rescue of the goods distrained, and is no doubt an injury and insult to public justice, it seems to be equally indictable as such at common law.—*Mirror*, c. 2, § 26; 2 *Chit. c.* 4, 204, note (b). It is well observed however, that the civil remedy given by the statute of 2 W. & M. c. 5, § 4, will, in most cases of a pound breach, or a rescue of goods distrained for rent, be found the most desirable mode of proceeding, where the offenders are responsible persons.—1 *Russ.* 363. For under the provisions of that statute, the party grieved may, in a special action on the case, recover treble damages and costs against the offenders, or against the owner of the goods, if they come to his use.—See *Bradley on Distresses*, 282; 6 *Bac. Ab. Rescue*, C.

The punishment, upon a conviction or indictment for pound breach, is fine or imprisonment, or both.

Indictment for Breaking Pound. (CHITTY.)

County of } The jurors, &c., that on, &c., at &c., one J. C.
to wit. } took and distrained one mare and two colts,
of the cattle of one J. S., late of the township aforesaid, in the
county aforesaid, yeoman, of the price of twenty pounds, in and
upon a certain close or parcel of land, of him the said J. C.,
situate and being at, &c., aforesaid, wrongfully feeding and de-
pasturing upon the grass growing in and upon the said close
and parcel of land and doing damage to him, the said J. C., there
as a distress for the damage then and there done and doing by
the said cattle, and the said mare and colts so taken and distrained
as aforesaid, he, the said J. C., on the same day and year afore-
said, at, &c., aforesaid in the common pound of the said township
of in the county aforesaid, impounded and kept, and detained
the same in the said common pound there, as a distress, for the
cause aforesaid; and the jurors, &c., do further present, that the
said mare and colts being so impounded, and remaining in the said

common pound there, as a distress for the cause aforesaid. the said J. S on, &c., aforesaid. with force and arms, a', &c., aforesaid, the said common pound broke and entered, and the said mare and colts from and out of the same. without the license, and against the will of the said J. C. and without any satisfaction having been made to the said J. C. for the damage done by the said mare and colts, as aforesaid, unlawfully did rescue, take, lead and drive away. in contempt of our lady the Queen and her laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lady the Queen, her crown and dignity.

POUNDS—POUND-KEEPERS.

By the Municipal Act U. C. Stat. 22 V. c. 54, § 243, the council of every county, township, city, town, and incorporated village, may pass by-laws for appointing pound keepers, and regulating their fees, charges and duties.

§ 359. The council of every township, city, town and incorporated village may respectively pass by-laws, (not being inconsistent with the Consolidated Statutes relating to cruelty to animals.)

Providing Pounds.—1. For providing sufficient yards and enclosures for the safe keeping of such animals as it may be the duty of the pound-keeper to impound.

Animals running at Large.—2. For restraining or regulating the running at large of any animals; and providing for impounding them, and for causing them to be sold in case they are not claimed within a reasonable time, or in case the damages, fines and expenses are not paid according to law.

Damages.—3. For appraising the damages to be paid by the owners of animals impounded for trespassing contrary to the laws of Upper Canada, or of the municipality.

Remuneration.—4. For determining the compensation to be allowed for services rendered in carrying out the provisions of this act with respect to animals impounded or distrained, and detained in the possession of the distrainer.

General Provisions.

§ 360. Until varied or other provisions are made by act of parliament, or by by-laws of the municipality, the following regulations shall be in force:

1. The owner of any animal not permitted to run at large, by the regulations of the municipality, shall be liable for any damage done by such animal, although the fence enclosing

the premises was not of the height required by such regulations.

2. If not previously replevied, the pound-keeper shall impound any horse, bull, ox, cow, sheep, goat, pig or other cattle, or any poultry distrained for unlawfully running at large, or for trespassing and doing damage, delivered to him for that purpose, by any person resident within his division who has distrained the same.

3. When the common pound of the municipality or place wherein a distress has been made is not secure, the pound-keeper may confine the animal in any enclosed place within the limits of the pound-keeper's division within which the distress was made.

4. The person distraining and impounding the animal shall at the time, or within *twenty-four* hours thereafter, deliver to the pound-keeper duplicate statements in writing of his demands against the owner for damages, (if any,) not exceeding *twenty dollars*, done by such animal; and shall at the same time give his written agreement, under seal, (with a surety, if required by the pound-keeper,) in the form following, or to the same effect:—

“I (or we, *as the case may be*) do hereby agree that I (or we) will pay to the owner of the (*describing the animal*) by me (A. B.) this day impounded, all costs to which the said owner may be put in case the distress by me the said (A. B.) proves to be illegal, or in case the claim for damages now put in by me, the said A. B., fails to be established.”

5. In case the animal distrained is a horse, bull, ox, cow, sheep, goat, pig or other cattle, and if the same be distrained by a resident of the township for straying within his premises, such person instead of delivering the animal to a pound-keeper, may retain the animal in his own possession, provided he makes no claim for damage done by the animal, and duly gives the notices hereinafter in that case required of him.

6. If the owner be known to him, he shall forthwith give to the owner notice in writing of having taken up the animal.

7. If the owner be unknown to the person taking up and retaining possession of the animal, such person shall within *forty-eight* hours deliver to the township clerk a notice in writing of having taken up the animal, and containing a description of the colour, age and natural and artificial marks of the animal as near as may be.

8. The township clerk, on receiving this notice, shall forthwith enter a copy thereof in a book to be kept by him

for that purpose, and shall post the notices he receives or a copy thereof in some conspicuous place on or near the door of his office, and continue the same so posted for at least one week, unless the animal is sooner claimed by the owner.

9. If the animal or any number of animals taken up at the same time be of the value of *ten dollars* or more, the distrainer shall cause a copy of the notice to be published in a newspaper in the county, if one is published therein, and if not, then in a newspaper published in an adjoining county, and to be continued therein once a week for three successive weeks.

10. In case an animal be impounded, notices for the sale thereof shall be given by the pound-keeper or person who impounded the animal within *forty-eight* hours afterwards, but no pig or poultry shall be sold till after *four* clear days, nor any horse or other cattle till after *eight* clear days from the time of impounding the same.

11. In case the animal be not impounded, but is retained in the possession of the party distraining the same, if the animal is a pig, goat or sheep, the notices for the sale thereof shall not be given for one month, and if the animal is a horse, or other cattle, the notices shall not be given for two months after the animal is taken up.

12. The notices of sale may be written or printed, and shall be affixed and continued for three clear successive days, in three public places in the municipality, and shall specify the time and place at which the animal will be publicly sold, if not sooner replevied or redeemed by the owner or some one on his behalf, paying the penalty imposed by law, (if any,) the amount of the injury (if any) claimed or decided to have been committed by the animal to the property of the person who distrained it, together with the lawful fees and charges of the pound-keeper, and also of the fence-viewers, (if any,) and the expenses of the animal's keeping.

13. Every pound-keeper, and every person who impounds or confines, or causes to be impounded or confined, any animal in any common pound, or in any open or close pound, or in any enclosed place, shall daily furnish the animal with good and sufficient food, water and shelter during the whole time that such animal continues impounded or confined.

14. Every such person who furnishes the animal with food, water and shelter, may recover the value thereof from the owner of the animal, and also a reasonable allowance for his care, trouble and attendance in the premises.

15. The value or allowance aforesaid may be recovered with costs by summary proceeding before any justice of the peace within whose jurisdiction the animal has been impounded, in like manner as fines, penalties, or forfeitures for the breach of any by-law of the municipality may by law be recovered and enforced by a single justice of the peace; and the justice shall ascertain and determine the amount of such value and allowance when not otherwise fixed by law; adhering so far as applicable to the tariff of pound-keeper's fees and charges that may be established by the by-laws of the municipality.

16. The pound-keeper, or person entitled so to proceed, may, instead of such summary proceeding, enforce the remuneration to which he is entitled in manner hereafter mentioned.

17. In case it be by affidavit proved before one of the justices aforesaid to his satisfaction that all the proper notices have been duly affixed and published in the manner, and for the respective times above prescribed, then if the owner or some one for him does not within the time specified in the notices, or before the sale of the animal, replevy or redeem the same in manner aforesaid, the pound-keeper who impounded the animal, or if the person who took up the animal did not deliver such animal to any pound-keeper but retained the same in his possession then any pound-keeper of the township may publicly sell the animal to the highest bidder at the time and place mentioned in the aforesaid notices, and after deducting the penalty and the damages, (if any,) and fees and charges, shall apply the produce in discharge of the value of the food and nourishment, loss of time, trouble and attendance so supplied as aforesaid, and of the expenses of driving or conveying and impounding or confining the animals, and of the sale and attending the same, or incidental thereto, and of the damage when legally claimable not exceeding *twenty dollars*, to be ascertained as aforesaid, done by the animal to the property of the person at whose suit the same was distrained, and shall return the surplus, (if any,) to the original owner of the animal, or if not claimed by him within three months after the sale, the pound-keeper shall pay such surplus to the treasurer of and for the use of the municipality.

18. If the owner within forty-eight hours after the delivery of such statements as provided in the third sub-section of this clause disputes the amount of the damages so claimed, the amount shall be decided by the majority of three fence-

viewers of the municipality, one to be named by the owner of the animal, one by the person distraining or claiming damages, and the third by the pound-keeper.

19. Such fence-viewers, or any two of them shall within twenty four hours after notice of their appointment as aforesaid, view the fence and the ground upon which the animal was found doing damage, and determine whether or not the fence was a lawful one according to the statutes or by-laws in that behalf at the time of the trespass; and if it was a lawful fence then they shall appraise the damages committed, and, within twenty-four hours after having made the view, shall deliver to the pound-keeper a written statement signed by at least two of them of their appraisal, and of their lawful fees and charges.

20. Any fence-viewer neglecting his duty as arbitrator as aforesaid, shall incur a penalty of two dollars to be recovered for the use of the municipality, by summary proceeding before a justice of the peace upon the complaint of the party aggrieved, or the treasurer or chamberlain of the municipality.

21. If the fence-viewers decide that the fence was not a lawful one, they shall certify the same in writing under their hands together with a statement of their lawful fees to the pound-keeper, who shall upon payment of all lawful fees and charges deliver the animal to the owner if claimed before the sale thereof; but if not claimed, or if such fees and charges be not paid, the pound-keeper after due notice, as required by this act, shall sell the animal in the manner before mentioned, at the time and place appointed in the notices.

22. In case any pound-keeper, or person who impounds or confines, or causes to be impounded or confined, any animal as aforesaid, refuses or neglects to find, provide, and supply the animal with good and sufficient food, water, and shelter as aforesaid, he shall, for every day during which he so refuses or neglects, forfeit a sum not less than one dollar, nor more than four dollars.

23. Every fine and penalty imposed by this act may be recovered and enforced with costs upon summary conviction, under the Summary Convictions Act, before any justice of the peace of the county, or of the municipality in which the offence was committed; and in default of payment, the offender may be committed to the common gaol, house of correction, or lock-up house of such county or municipality, there to be imprisoned for any time in the discretion of the convicting and committing justice, not exceeding fourteen

days, unless the fine and penalty and costs, including the costs of committal, be sooner paid.

24. Upon the hearing of any information or complaint exhibited or made under this act, any person (including the person) giving or making the information or complaint shall be a competent witness, notwithstanding such person may be entitled to any part of the pecuniary penalty on the conviction of the offender.

25. When not otherwise provided, every pecuniary penalty recovered before any justice of the peace under this act shall be paid and distributed in the following manner: one moiety to the city, town, village, or township in which the offence was committed, and the other moiety thereof, with full costs, to the person who informed and prosecuted for the same, or to such other person as to the justice may seem proper.

PRESENTMENT.

A presentment *generally* taken is a very comprehensive term, including not only *presentments*, properly so called, but also inquisitions of office, and indictments by a grand jury. But a presentment, as commonly understood, is the notice taken by a grand jury of any offence from their own knowledge or observation, without any bill of indictment laid before them at the suit of the king; as the presentment of a nuisance, a libel, and the like; upon which the officer of the court must afterwards frame an indictment, before the party presented can be put to answer for it.—2 *Inst.* 739.

See further on this subject, titles "*Grand Jury*," "*Vexatious Indictment*."

PRIMOGENITURE.

The right of an individual heir succeeding to the whole of the real estate of a person dying intestate to the entire exclusion of all others of equal degree of kindred to the deceased was abolished by provincial statute U. C. 14, 15 V. c. 6, passed in 1851, as to persons dying intestate on and after the 1st day of January, 1852. The provisions, &c., of this statute are embodied in the U. C. Stat. 22 V. c. 82, by which the law of descent as to real estate is now regulated as follows: § 23. Whenever on or after the first day of January, 1852, any person shall die seised in fee simple or for the life of another, of any real estate in Upper Canada, without having lawfully devised the same, such real estate

shall descend or pass by way of succession in manner following, viz. :

Firstly. To his lineal descendants, and those claiming by or under them *per stirpes*.

Secondly. To his father.

Thirdly. To his mother.

Fourthly. To his collateral relatives.

Subject in all cases to the rules and regulations hereinafter prescribed.

If the intestate leave several descendants in the direct line of lineal descent, and all of equal degree of consanguinity to the intestate, the inheritance shall descend to them in equal parts.—§ 24.

If some children be living and others dead leaving issue, such issue shall inherit the share which their parent if living would have had.—§ 25.

If the intestate dies without lawful descendants, and leaving a father, then the inheritance shall go to such father unless the inheritance came to the intestate on the part of his mother, and such mother be living; if the mother be dead, the inheritance descending on her part shall go to the father for life, and the reversion to the brothers and sisters of the intestate and their descendants, and if no brothers or sisters, or their descendants, then to the father.—§ 27.

If the intestate die without descendants, leaving no father, or a father not entitled to inherit under the last section, and having a mother, and a brother, or a sister, or their descendants, the inheritance shall descend to the mother for life, the reversion to such brother or sister, or their descendants. If no brother or sister or descendants living then the inheritance shall descend to the mother.—§ 28.

If there be no father or mother capable of inheriting then to collateral relatives of the deceased of equal degree of consanguinity, in equal parts.—§ 29.

If all the brothers and sisters be living, then to such brothers and sisters. But if any dead leaving issue, such issue shall inherit their parent's share.—§ 30.

§ 32. If there be no heir entitled to take under any of the the preceding ten sections, the inheritance, if it came on the part of the father, shall descend :

Firstly. To the brothers and sisters of the father of the intestate in equal shares, if all living.

Secondly. If any dead, leaving issue, then to the brothers

and sisters living and descendants of such deceased brother or sister in equal shares.

Thirdly. If all such brothers and sisters be dead, then to their descendants in the same manner as if all such brothers and sisters had been the brothers and sisters of the intestate.

If there be no brothers or sisters of the father of the intestate or descendants from them, then to the brothers and sisters of the mother of the intestate, and their descendants.—§ 33.

In all cases not provided for by the twelve next preceding sections, if the inheritance came to the intestate on the mother's side, then to the brothers and sisters of the intestate's mother, and their descendants: and if none such, then to the brothers and sisters and their descendants on the father's side.—§ 34.

If the inheritance came to the intestate on the part of neither father or mother then to the brothers and sisters of both father and mother of the intestate, in equal shares, and to their descendants.—§ 35.

Relatives of the *half-blood* shall inherit equally with those of the full blood, and their descendants, unless the inheritance came by descent, devise, or gift of some ancestor, in which case those not of blood of such ancestor shall be excluded.—§ 36.

On failure of heirs, under the preceding rules, the inheritance shall go to the next of kin of the intestate, according to the rules in the English Statute of Distribution of the Personal Estate.—§ 37.

Co-heirs to take as tenants in common.—§ 38.

Descendants and relatives of the intestate begotten *before* his death but born thereafter, to inherit as if born in the life-time of the intestate.—§ 39.

Illegitimate children not to inherit.—§ 40.

Advancement of settlement, if so expressed in writing, to be taken as part of the estate descendible, and if equal or superior to the share of such child, then such child shall be wholly excluded.—§ 42.

If not equal, then such child shall inherit a proportion only sufficient to make the share equal.—§ 43.

Any court authorised to make partition may direct a sale, giving preference to the person who would have been heir if this act had not been made.—§ 48. Upon such terms as the court may direct.

Next of Kin.

The English Statute of Distribution above referred to is the 22 & 23 Car. II. c. 10, commonly called the Statute of Distribution, which directs that after payment of debts, funeral and just expenses, equal and just distribution shall be made (of the intestate's personal estate) among the wife, and children, or children's children, if any such be, or otherwise the next of kindred to deceased, in equal shares, viz.: *one-third* to the wife of the intestate, and the residue by equal portions among his children, and such persons as legally represent such children in case any of them be dead, with due regard to advancement in the life-time of the intestate. If no children nor any legal representatives of them, then one *moiety* to the wife, and the residue equally among the next of kindred in equal degree, and those who legally represent them.

The statute however provides that no representatives shall be admitted among collaterals after brother's and sister's children: and in case there be no wife, then the estate (*personal*) shall be distributed equally among the children: and in case there be no child, then among the next in kindred to the intestate, in equal degree, and their legal representatives as aforesaid, and in no other manner.

But a brother or sister of the *half-blood* shall be equally entitled to share with one of the whole blood, inasmuch as they are both equally near of kin to the intestate.—3 Bac. Abridg. 74, Com. Dig. Admon.; H. Smith v. Tracy, 1 Mod. 209.

PRISON-BREAKING.

Prison breaking is the offence of a party, who is in legal custody upon any charge, effecting his own escape by force. This, by the common law, was anciently accounted *felony*, for whatever cause, criminal or civil, the party was lawfully imprisoned. But by 1 E. II., stat. 2, it is declared that none that should from thenceforth break prison should have judgment of life or member for breaking of prison only; except the cause for which he was taken and imprisoned required such a judgment if he had been convicted thereupon according to the law and custom of the realm; therefore, although to break prison and escape, when lawfully committed for any *treason* or *felony*, still remains felony as at common law, the breaking of prison when lawfully confined upon an inferior charge is punishable only as a high misdemeanor by fine and imprisonment.—4 Bl. Com. 130.

In whatever place a prisoner is restrained of his liberty under a lawful arrest for a supposed crime, whether it be in the stocks or the street, or in the common gaol, or the house of a constable, or private person, such place is properly a prison within the meaning of the statute.—2 *Inst.* 589 ; 2 *Haw* c. 18, § 4.

But if no felony whatever has been committed, and the party is merely in custody on a *mittimus*, without being indicted, then he is not guilty within the statute, by breaking the prison, his imprisonment being, in this instance, unjustifiable.

There must be an actual, and not merely a constructive breaking, to make the offence felony ; therefore, if through the negligence of the gaoler the prison doors are left open, and the party escapes without using any kind of force or violence, he is only guilty of misdemeanor.—2 *Inst.* 590 ; 1 *Hale*, 611. The breaking must be by the prisoner himself, or by his procurement ; for if other persons, without his privity or consent, break the prison, and he escape through the breach so made, he cannot be indicted for the breaking, but only for the escape.—2 *Haw.* c. 18, § 12 ; 2 *Inst.* 590 ; 1 *Hale*, 611.

PRISONER.

If the gaoler keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler, by the common law ; and this is the cause, that if a prisoner die in gaol, the coroner ought to hold an inquest.—3 *Inst.* 91.

Money found upon a prisoner when he is apprehended, will, in general, be directed to be restored to him before trial, if it appear by the depositions that it is in no way material to the charge on which he is tried.—*R. v Barnett*, 3 *C. & P.*, 600.

Depositions.—By C. Stat. 22 V. c. 99, § 7. The person who has the lawful custody of the examinations of witnesses, upon whose depositions any person has been held to bail, or committed to prison for any offence, shall on demand and on payment of a reasonable sum for the same, not exceeding five cents for each folio of one hundred words deliver to such person copies of such examinations and depositions. § 8. If no such demand be made before the day appointed for the commencement of the assizes or sessions at which the trial is to take place, he shall not be entitled to have such copies unless the

judge, or other person to preside at such trial, is of opinion that such copies may be made and delivered without delay or inconvenience to such trial; but such judge or other person so to preside at such trial may, if he thinks fit, postpone such trial on account of such copies not having been previously received by the party charged.

§ 55. 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, or by attorney, in the courts where attorneys practise as counsel.

§ 56. 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 is had.

§ 76. When the attendance of any person confined in the penitentiary or in any prison or gaol in this province, or upon the limits thereof, is required in any court of assize and *nisi prius*, or oyer and terminer, or general gaol delivery, or other court, the court before whom such prisoner is required to attend may make order upon the warden, 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, and such person shall thereupon instantly convey such prisoner to the place where the court issuing such order is sitting, there to receive and obey such further order as to the said court shall seem meet: but no prisoner confined for any debt or damages in any civil suit shall be thereby removed out of the county where he is so confined.

See also titles "*Commitment*," "*Indictable Offences*," "*Summary Conviction*."

PRIZE FIGHTING.

All persons present at and countenancing a prize fight are guilty in law of a misdemeanor. And when such a fight is expected to take place, a magistrate ought to cause the intended combatants to be brought before him, and compel them to find sureties to keep the peace till the assizes or sessions: and if they refuse to do so, he should then commit them till they comply with such requisition.—*R. v. Billingham*, 2 C. & P. 234.

PROVIDENT SOCIETIES.

By C. Stat. 22 V. c. 71, § 1, any number of persons may unite themselves into a society for the purpose of making

provision by means of contributions, subscriptions, donations or otherwise, against sickness, unavoidable misfortune, or death, and for relieving the widows and orphan children of deceased members. § 2. The members and officers of such societies may from time to time establish branches thereof. § 3. Each such society shall have a common seal, and may contract and sue or be sued, &c. § 4. May nominate and appoint proper persons as trustees, treasurers, secretaries, or other officers; and may meet together from time to time to make, alter or rescind, or frame by-laws, rules or regulations for the government of the society or any branches thereof. § 5. Not being repugnant to the laws of this province, or directed to the furtherance of any political or seditious object. § 6. May take security from their officers. § 7. And may, in the name of the society, or of the presiding or other officer thereof, acquire and take by purchase, donation, devise or otherwise, and hold for the use of the members, and according to the rules and regulations aforesaid, all kinds of personal, and also real property in this province, not exceeding *five acres*, and may sell and alienate the same, and purchase other real estate, not exceeding the quantity aforesaid. § 8. If any officer, secretary, treasurer, trustee or member obtains undue possession of, misappropriates, embezzles or withholds from the other members, officers, or other persons entitled to demand and receive the same, the whole or any portion of the funds, moneys or other property of the society, and continues to withhold such property after due demand made for restoration and payment by any member or officer duly appointed on behalf of the society, every such offender shall be guilty of a misdemeanor, and upon conviction thereof, shall, at the discretion of the court, be imprisoned at hard labour in the penitentiary for any term not exceeding three years nor less than two years, or imprisoned in any other prison or place of confinement for any term less than two years, or suffer such other punishment by fine or imprisonment, or both, as the court may award. § 9. The printed or written rules of such societies, and the appointment of any officer, or enrolment of any member, certified under the hand of the presiding officer for the time being, and the seal of such society, and the books, minutes and other documents relative to any portion of the matter in question, shall be evidence before any court of civil or criminal jurisdiction against the parties mentioned in the last section. § 10. Members of such societies not to be liable individually for the debts of such societies.

PROVINCIAL PARLIAMENT.

By C. Stat. 22 V. c. 3, § 1, it is provided, that no provincial parliament summoned or called by the sovereign shall determine or be dissolved by the demise of the Crown, but the same may continue, and may meet, convene and sit, proceed and act, notwithstanding such demise.

PROVINCIAL REVENUE.

By C. Stat. 22 V. c. 16, intituled, "*An Act respecting the collection and management of the revenue, &c.*" § 39. Any revenue officer taking or receiving any fee or reward from any person (not being an officer or person legally authorised to pay or allow the same) on account of any thing done by him in any way relating to his office (except such as he shall receive by order or with the permission of the Governor in council) shall on proof be dismissed from his office or employment; and if any person (not being an officer duly authorised to pay or allow the same) gives, offers or promises any such fee or reward, such offender shall for every offence incur a penalty of \$400, recoverable in any court of competent jurisdiction.

§ 40. All books, papers, accounts and documents of what kind soever kept by, or used, or received into the possession of any revenue officer, by virtue of his employment, as such, shall be deemed chattels belonging to her Majesty; and all moneys or valuable securities received or taken into his possession by virtue of his employment, shall be deemed moneys and valuable securities belonging to her Majesty. 2. And if any such officer or person at any time fraudulently embezzles 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 duly authorised to demand the same shall be a fraudulent embezzlement,) 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 account of his master, and being deemed in law to have feloniously stolen the same, may be indicted, proceeded against, and punished.

§ 42. Any person wilfully making any false statement in any such examination (in revenue matters) upon oath or in

any solemn affirmation or declaration substituted as aforesaid, whether such oath shall have been required by this act, or by any other act relating to the revenue, shall be deemed guilty of wilful and corrupt perjury, or a *misdemeanor* punishable in the same manner as wilful and corrupt perjury, and be punished accordingly.

PROVISIONS.

Selling unwholesome provisions is an indictable offence at common law, and so is the forestalling, engrossing or regrating of provisions, whereby the price is enhanced. See further on this subject title "*Forestalling.*"

PUBLIC HEALTH.

By U. C. Stat. 22 V. c. 59, intituled, "*An Act respecting the public health.*" § 1. The health officers of any municipality or police village in Upper Canada, or any two of them may, in the day time, enter upon any premises within the limits of their office and examine the same. § 2. And order the proprietor or occupant to cleanse the same, and remove whatsoever shall be found there dangerous to public health. § 3. And in case of refusal or neglect, said health officers may, with the assistance of the constables and peace officers, and any other persons they may think fit, enter on the premises and cleanse the same. § 4. The Governor in council may also make rules and regulations concerning the entry and departure of boats and vessels, at the different ports or other places, and the cargoes and passengers. § 5. If any person wilfully disobey or resist any lawful order of the health officers, or any two of them, or wilfully violates any regulation made by the Governor under this act, or wilfully resists or obstructs the health officers in the execution of their duty, such person on conviction before two justices, where such offender resides, shall pay a fine not less than \$4 nor more than \$80, to be paid to the Receiver-General for the use of the province. § 6. Whenever a disease of a malignant and fatal character is discovered to exist in any dwelling-house, &c., situate in any unhealthy situation, or in a neglected and filthy state, or inhabited by too many persons, the board of health of the municipality, or a majority, may, at the expense of the board, compel the inhabitants to remove therefrom, and may place them in sheds or tents, or other good shelter, in some more salubrious situation, until the cleansing and purification of such dwelling-house, &c., has been effected.

By C. Stat. 22 V. c. 38, intituled, "*An Act respecting the preservation of the public health.*" § 1. This act to come into force by proclamation in case of any formidable epidemic, &c. § 2. The 1, 2, 3 and 6 sections of the 59th chapter of the Consolidated Statutes for Upper Canada, and part of the 5th section thereof shall be suspended whilst such proclamation is in force. § 3. After issuing proclamation the Governor is authorised to appoint a "central board of health." § 4. Local boards of health, of not less than three persons, to be appointed by the municipal councils, and in case of neglect the Governor may appoint such local boards. § 5. Central board may issue regulations for prevention, so far as possible, or mitigation of epidemic, endemic or contagious diseases, and require the local boards to see to the execution of the same; and may authorise the removal of patients from their dwellings in cases of disease of a malignant and fatal character, and placing them in sheds or tents, or other good shelter, until measures can be taken for the cleansing and disinfection of such dwellings. § 6. Members of local boards to be called health officers, and may enter and inspect any suspected dwelling-house, &c.; and in case of the owner or occupier's refusal to obey regulations, such health officers may, with the aid of the civil power, enter upon such premises and enforce such regulations. § 7. Expenses of central board to be defrayed by the province; and of local boards by their respective localities. § 8. Regulations of central board to be sanctioned by the Governor and published in the Gazette. § 9. Local by-laws on the subject of health to be suspended, whilst the regulations under this act remain in force. § 10. Any person wilfully offering any obstruction to any person acting under the authority of this act, wilfully violating any regulation of the central board of health, or who shall neglect or refuse to comply with such regulations, or with the requirements of this act in any matter whatsoever, shall be liable to a penalty not exceeding \$20 for every offence, to be recovered before any *two* justices, and levied by distress and sale of the goods and chattels of the offender; and in default of distress the offender to be committed to the common gaol or house of correction, for a period not exceeding fourteen days, unless the amount be sooner paid. § 11. Penalties to be paid to the treasurer of the locality.

By the general municipal act U. C. Stat. 22 Vic. c. 54, § 293, municipalities are authorised to make by-laws for providing for the health of the municipality, and against the spreading of contagious or infectious diseases; for regulating

the interment of the dead; keeping bill of mortality. Imposing penalties on persons guilty of default.

PUBLIC LANDS.

By Con. Stat. 22 V. c. 22, entitled "An Act respecting the Sale and Management of the Public Lands." § 3. The Governor is authorised to appoint agents for carrying out this act. § 6. Which may extend to Indian lands by order of the council. § 7. The Governor in council authorised to make orders for carrying this act into effect. § 8. Except as hereinafter provided, no *free grant* of public land, shall be made to any person. § 9. Provides for the settlement of any claims arising out of the repealed acts. § 10. Free grants may be made to settlers in the vicinity of any new public roads under such regulations as may be made by the Governor in council. Such grants not to exceed 100 acres. § 11. Lands may be set apart for markets, gaols, and other public purposes not exceeding *ten* acres each. § 12. The Governor in council authorised to fix the price per acre of public lands. § 13. Licenses of occupation in the first instance may be granted, giving to the occupant certain rights. § 15. The commissioner of Crown lands to keep a register of assignments of claims, and thereupon the patent may issue to the assignee. § 16. The like privilege extended to claims already registered. § 17. Patent may be granted on application by the heir, assignee, or devisee of the original nominee and proof given to the commissioner of Crown lands. § 18. Licenses of occupation may be revoked in case of fraud or violation of any of its conditions. § 19. Crown and clergy reserve lots may be re-sold when abandoned, or any instalment unpaid for five years or upwards. § 20. The Crown may resume lands when the claim has become forfeited. § 21. Settlers in such case may be dispossessed by order in council. § 22. Erroneous patents may be cancelled and correct ones issued when there is no adverse claim. § 23. In case of a double grant an equivalent may be granted to the loser. § 24. Free grants may be made for deficiencies arising from any false survey. § 25. Court of Chancery in Upper Canada may avoid patents issued in error. § 26. A list of Crown, school, and clergy lands for sale to be published. § 27. Crown land commissioner to transmit yearly to county registrars lists of lands sold, &c. § 28. Affidavits required under this act may be made before the judge or clerk of any county court or any

justice of the peace, or any commissioner for taking affidavits, or agent of the commissioner of Crown lands.

By U. C. Stat. V. c. 81, entitled "An Act to prevent trespass to Public Lands and Indian Lands." § 2. Commissioners to be appointed to enquire concerning trespasses. § 3. On finding parties illegally in possession to give notice to intruders to remove within *thirty* days; and in default of removal such commissioners may by warrant directed to the sheriff cause such parties to be ejected. § 4. In case of doubt as to the claimant, the commissioners are authorised to give a general notice to quit, and any person disobeying such notice may be removed by warrant of the commissioners, or one of them, directed to the sheriff. § 6. *Personal* service of such notice or of the summons to be issued under the said act not requisite, but sufficient if delivered to the wife, or some grown-up person on the premises; at the same time putting up a duplicate notice in some conspicuous place on the premises, or when no grown-up person found on the premises, then by posting duplicate notices in four conspicuous places on the premises. § 7. In case of resumption after removal the sheriff is required to make a special return of the warrant of removal to the court of Queen's Bench, upon which the court may issue a "writ of removal" as often as necessary for the protection of the premises. § 8. Such writs may be superseded upon sufficient cause shewn. § 9. And in case of parties resuming possession the commissioners are authorised to commit the offenders to the common gaol for a term not exceeding *thirty* days, and to pay a fine to her Majesty not exceeding \$80. § 10. The commissioners or any one or more of them upon investigation finding any person charged with cutting down or removing any timber or trees, or for having quarried upon or removed any stone or other materials from the lands aforesaid, guilty thereof, may order and direct the offender to pay a fine to her Majesty not exceeding \$80, and in default of payment that he be committed to the common gaol for a period not exceeding three months. § 11. Convictions by the commissioners may be removed by certiorari into the court of Queen's Bench or Common Pleas. § 12. Timber, &c., cut but not removed may be seized and sold. § 13. Commissioners authorised to summon witnesses. § 14. Fines to be accounted for as part of the revenue of the Crown, or appropriated for the benefit of the Indian tribes, as the Governor in council may direct. § 15. Before the investigation of any charge under this act the parties to be summoned,

and in default of appearance the commissioners may proceed *ex parte*. § 16. Sheriffs and other officers bound to execute warrants of the commissioners. § 17. Commissioners entitled to the same privileges and protection in respect of any action or suit against them as justices of the peace, and may commit for contempt. § 18. Appeal against any judgment of the commissioners to be made to the Court of Chancery, and the decision of the court to be final. § 19. Commissioners to be *ex officio* justices of the peace.

Cutting Timber on.

By C. Stat. 22 V. c. 23, § 1, the commissioner of Crown lands is authorised to grant licenses for. § 2. Form of the license, and its legal effect. § 3. The party licensed to make a return upon oath of the timber cut. § 4. Timber liable to dues may be followed, seized and detained until paid. § 5. The giving of bonds or notes not to affect the lien on the timber. § 6. Provision made for sale of the timber seized for dues. § 7. Any person cutting without license to forfeit \$3 per tree, to be recovered with costs at the suit of and in the name of the commissioner or resident agent in any court of competent jurisdiction. § 8. Timber alleged to be unlawfully cut may, upon affidavit of one or more persons made before a justice of the peace, be seized by the commissioner, officer or agent in her Majesty's name wherever found, and secured until a competent decision obtained. § 9. The seizing officers may command assistance, and if any person under any pretence, either by assault, force or violence, or by threat of such assault, force or violence, in any way resists, opposes, molests, or obstructs any officer or person acting in his aid such offender upon conviction shall be adjudged guilty of felony and punished accordingly. § 10. Any person or persons taking or conveying away any timber seized or detained under this act as subject to forfeiture, before the same shall have been declared by competent authority to have been seized without due cause, such person or persons shall be deemed to have stolen such timber, being the property of the Crown, and to be guilty of felony, and liable to punishment accordingly. § 11. Timber seized under this act to be condemned if not claimed within one month. § 12. In case of any false statement made to evade the payment of dues the timber to be forfeited. § 13. Parties maliciously cutting or loosening booms, or breaking up or cutting boom rafts or cribs, shall be guilty of a misdemeanor, punishable by fine and imprisonment of not less than six months.

PUBLIC MEETINGS.

By C. Stat. 22 V. c. 82, preamble as follows : it being the undoubted right of her Majesty's subjects to meet together in a peaceable and orderly manner, not only when required to do so, in compliance with the express direction of law, but at such other times as they may deem it expedient so to meet, for the consideration and discussion of matters of public interest, &c. § 1. All public meetings of the inhabitants, or of any particular class of the inhabitants of any district, county, riding, city, town, township, ward or parish in this province, required by law, and summoned or called as provided by the fourth section, shall be public meetings within the meaning of this act. § 2. All public meetings called by the high sheriff, or by the mayor, or other chief municipal officer of any city or town, as provided by the 5th section, upon the requisition of any *twelve* or more of the freeholders, citizens or burgesses of such district, county, riding, town, &c., having a right to vote for members in parliament for such locality; and all such meetings called by any *two* or more justices resident in such locality, upon a like requisition of *twelve* or more of such freeholders, citizens or burgesses; § 3, and all public meetings declared to be such by any *two* justices, as prescribed by the 6th section, shall be public meetings within the meaning of this act. § 4. In every notice or summons for calling together any such public meeting, as in the first section, there shall be a notice that such meeting will be within the protection of this act, and such notice may be in the form or to the effect set forth in the act. § 5. The notice to be issued by the sheriff, mayor or chief municipal officer of any city or town, or by two or more justices, as in the second section, shall be issued at least *three* days before such meeting, and shall set forth the names of the requisitionists, or of a competent number of them, &c.; such notice to be in the form or to the effect set forth in the act. § 6. Upon information on oath before any justice of the peace, that any public meeting, not being of the description mentioned in the 1st section of this act, or called under the 2nd section, is appointed to be held at any place within his jurisdiction, and that there is reason to believe that great numbers of persons will be present at such meeting, any two justices of the locality may give notice of such meeting, and may declare the same and all persons attending, within the protection of this act; such notice to be in the form or to the effect set forth in the act. § 7.

Every such sheriff, mayor, justice or other person calling any public meeting under the 2nd section, shall give public notice thereof, as extensively as he reasonably may, by posting and distributing throughout the locality a competent number of printed or written copies of the notice calling the same. § 8. The justices who declare any public meeting to be under the protection of this act, as in the third section, shall give notice thereof, by causing printed or written copies of the public notice or declaration issued by them to be posted and distributed throughout the locality. § 9. Every sheriff, mayor, justice or other person calling such meeting under the 2nd section, or declaring any meeting called by others to be a public meeting within the act under the 3rd section, shall attend such meeting and continue thereat, or near the place appointed until the same has dispersed, and afford assistance in preserving the peace. § 10. The chairman at such meeting shall commence the proceedings by causing the summons, or notice, or declaration to be publicly read. § 11. Authorises the chairman at such meeting to cause by oral direction any person attempting to disturb the meeting to be removed to such a distance as may effectually prevent interruption, and by an instrument under his hand, on his own view, to adjudge any offender guilty of interruption or disturbance, upon which conviction any justice may by warrant under his hand forthwith commit such person to the common gaol, or to any other place of temporary confinement that such justice may appoint, for any period not exceeding *forty-eight* hours, and until the lawful costs of the constable and gaoler shall be paid. § 12. The chairman at any such public meeting may command the assistance of all justices, constables and other persons to aid and assist him in preserving the peace. § 13. Special constables may be sworn in upon the written application of the chairman to any justice attending the meeting. § 14. Any person between the age of eighteen and sixty refusing to be sworn, upon being required by any justice, without lawful excuse, shall be guilty of a *misdemeanor*, and such justice may thereupon record the refusal of such person so to be sworn and to adjudge him to pay a fine of not more than \$8, to be levied as other fines imposed by summary proceedings before justices, or such person may be proceeded against by indictment. § 15. Any justice of the locality where such meeting is appointed to be held, may demand have and take from any person attending such meeting, or on his way to attend the same, any offensive weapon, such as fire-arms,

swords, staves, bludgeons or the like with which any such person is so armed, or which any such person shall have in his possession; and in case of refusal to deliver up the same the offender shall be guilty of a misdemeanor, and such justice may record such refusal, and adjudge him to pay a fine of not more than \$8, to be levied as aforesaid; but such conviction shall not interfere with the power of such justice, or any other justice, to *disarm* such person without his consent, and against his will, by such force as shall be necessary. § 16. Weapons of the value of *one dollar*, or upwards, peaceably and quietly delivered up, shall be returned by such justice to the party on the day next after such meeting, and not before. § 17. No such justice shall be held liable in case by unavoidable accident the same has been destroyed or lost. § 18. Any person convicted of a battery, within *two miles* of the place of meeting, and during any part of the day, shall be punishable by a fine of not more than \$100, and imprisonment for not more than three months, or either, in the discretion of the court pronouncing sentence. § 19. Excepting the civil authorities, no person shall come, during any part of the day of meeting, within two miles of the place *armed* with any offensive weapon; and any person offending herein shall be guilty of a misdemeanor, punishable by fine not exceeding \$100, and imprisonment not exceeding three months, or both, at the discretion of the court. § 20. Any person lying in wait for any person returning from any such public meeting with intent to assault, or by abusive language, opprobrious epithets, or other offensive demeanor, to provoke such person or those who may accompany him to a breach of the peace, shall be guilty of a misdemeanor, punishable by fine, not exceeding \$200, and imprisonment not exceeding six months, or both, at the discretion of the court. § 21. Actions for any thing done under this act to be brought within twelve months.

PUBLIC OFFICERS.

By C. Stat. 22 V. c. 12, § 1, upon the demise of the Crown it shall not be necessary to renew commissions. But a proclamation shall be issued by the Governor authorising all persons in office who held commissions under the late sovereign, and all functionaries, to continue in office; and the incumbents shall as soon as may be take the oath of allegiance before the proper officer in the form prescribed. (a) § 8.

(a) See title "Oath of Office."

Persons holding office required to give security. § 9. Bonds to be registered with the registrar of the province. § 10. Who shall keep separate entries.

§ 11. Officers neglecting to give such security shall forfeit their offices. § 12. In case of death, bankruptcy, insolvency or residence out of the province of any surety the principal shall give notice to the chief secretary of the province, or to the principal officer of the department, within one month upon pain of forfeiting one-fourth of the sum; and neglecting to give other security shall forfeit his appointment. § 13. Sureties for public moneys may relieve themselves from responsibility by giving notice to their principal and the secretary of the province, and such principal shall find other sureties within one month or forfeit his appointment. § 14. Where the neglect has not been wilful the Governor may remit the forfeiture or extend the time for giving such new security. § 17. Period limited for registering bonds to be estimated from the time of the execution by the last party. § 18. Irregularity in bonds not to vacate the same. § 19. Bonds to be registered notwithstanding the period elapsed. § 20. Uniform practice established throughout the province. § 21. Duplicate bonds entered into by registrars in Lower Canada to be deposited. § 22. Statement of bonds to be laid before the legislature within fifteen days after the opening of every session. § 23. This act not to extend to municipal offices.

See also "*Oath of Office.*"

PUBLIC RECORDS.

The stealing or fraudulent taking from its place of deposit, or maliciously obliterating, injuring, or destroying any record, writ, return, panel process, interrogatory, deposition affidavit, rule, order or warrant of attorney, or any original document of or belonging to any court of justice relating to any civil or criminal matter is declared to be a misdemeanor, and the offender punishable as in the twenty-third section of this act.—*C. Stat.* 32 *V. c.* 92, § 26.

PUBLIC WORKS.

By *C. Stat.* 22 *V. c.* 28, entitled "An Act respecting the public works." § 1. The Governor is authorised to appoint a commissioner, to be styled "commissioner of public works," § 6, also a deputy-commissioner, secretary, engineers, superintendents, and other officers. § 10. The public

works in schedule A. and the materials for the same shall be vested in her Majesty, and be under the control of the commissioner; and other works may from time to time be so declared by proclamation. § 14. The commissioner to have the management and control of constructing, maintaining and repairing all canals, harbours, roads or parts of roads, bridges, slides and other public works throughout the province, or buildings constructed or maintained at the public expense out of the provincial funds.

§ 30. The commissioner may authorise engineers to make surveys. § 31. May take possession of lands, waters, &c., required for public works, and enter into contracts for purchase. § 33. And take materials from any land, making compensation. § 34. To be paid within four months. § 41. The Governor in council authorised to appoint one or more, not exceeding three, arbitrators for the whole province, to determine the compensation to owners of land assumed for public works. § 42. Official arbitrators to be sworn in the form prescribed. § 47. Unsettled claims for damages to be referred to arbitration. § 52. Arbitrators to have full power to summon witnesses and swear them; witnesses not attending shall be liable to a penalty of not less than \$4 nor more than \$20, recoverable before any one justice, and levied by distress and sale of the goods of the offender, unless reasonable cause shewn. § 63. Their awards in Upper Canada to be subject to the jurisdiction of the superior courts of law or equity. § 64. In certain cases claims may be referred to other arbitrators, to be subject to the jurisdiction of the superior courts of law or equity.

§ 73. Property no longer required for public works may be sold by order in council.

§ 74. Any public road or bridge built or repaired at the expense of the province, and under the management of the commissioner, may by proclamation be declared to be so no longer.

§ 75. And the same shall then be under the control of the local municipality.

§ 76. Authorises the Governor in council to enter into arrangements with any of the municipal or other local corporations or authorities, or with any company in Lower or Upper Canada, *incorporated* for the purpose of constructing or holding such works, or works of a like nature in the same section of the province, for the transfer to them of any of the public roads, harbours, bridges or public buildings, within or without the locality, which it may be found more con-

venient to place under the management of such local authorities or companies; and, on the completion of such arrangements, to *grant* for ever or for any term of years all or any such roads, harbours, bridges, or public buildings to such municipal council or other local authority or company with whom such arrangement may have been made.

§ 77. Such grant to be effected by order in council; and nothing in this act, or in any order in council, shall exempt any person from punishment or penalty imposed by any act or law, or under the authority of any act or law, for any offence relative to any public work or works; but so much of any such penalty as would otherwise belong to the Crown shall (if so provided in the order in council) belong to the *grantee* under such order; otherwise, it shall belong to the Crown.

§ 79. No such transfer to be made to any company without the reservation of power on the part of the Crown to resume the same any time after *ten* years, and no road, &c., shall be leased to any company for more than *ten* years.

§ 83. The maximum tolls to be taken by any company not to exceed the maximum tolls under this act. But lower maximum tolls may be fixed by order in council transferring the work.

§ 84. Persons residing within half a mile of any city or incorporated town may commute with such company, otherwise a proportion only to be charged according to distance.

§ 85. The Governor may by order in council impose and authorise the collection of tolls and dues upon any canal, harbour, *road*, bridge, ferry, slide, or other public work in this province, vested in her Majesty, or in the commissioner of public works, or in any public officer, person or body corporate, for the public uses of this province, or to be acquired therefor, and may from time to time in like manner alter and charge such tolls or dues, and may declare the exemption therefrom; provided that no such tolls or dues shall exceed the maximum rates in schedule B to this act.

§ 88. The Governor in council may from time on the report of the commissioner of public works place the toll gates on the roads in schedule A at such places and distances from each other as appear to him advisable.

§ 89. Officers and soldiers on duty to pass *toll-free*. § 90. All penalties imposed by this act, or by any regulation under the authority thereof, shall be recoverable, with costs, before any justice of the peace for the district, county or place in which the offence shall be committed, upon proof

by confession, or the oath of any one credible witness; and if not forthwith paid may be levied by distress and sale of the goods and chattels of the offender, by warrant, under the hand and seal of such justice; and in default of payment or of sufficient distress such justice may, by warrant under his hand and seal, commit the offender to the common gaol of the district or county for such time as such justice may direct, not exceeding *thirty* days, unless such penalty and costs be sooner paid; and such penalties shall belong to her Majesty for the public use of the province, provided that in respect to tolls on timber passing any slide, and to penalties for violating regulations, or for non-payment of tolls, the same may be enforced by and before any justice of the peace within any district or county in which such timber may happen to be at the time of application to such justice.

§ 91. Goods, &c., in vessels, or animals attached to any carriage, &c., liable to tolls, may be seized, detained and sold. § 92. Toll to be paid over to the Receiver-General at intervals not exceeding *one month*. § 93. Toll at the gates may be levied and leased by order. § 94. The Governor in council may make regulations for the maintenance and use of such works, and for ascertaining and collecting the tolls, dues and rates thereon. § 95. Impose fines not exceeding in any case \$200 for any contravention or infraction of any such order or regulation for the observance of the same, and payment of tolls, and dues to be imposed as aforesaid; and provide for the non-passing or detention and seizure, at the risk of the owner, of vessels, carriages, animals, timber or goods, on which tolls are unpaid, or regulations not complied with, or for injury done to such public works, or any fine incurred and unpaid. § 96. Such regulations to be published in the *Official Gazette*.

SCHEDULE A.

PUBLIC WORKS VESTED IN THE CROWN BY THIS ACT.

Navigations, Canals, and Slides.

The Welland Canal and feeder, together with the portion of the Grand River from Cayuga Bridge to its mouth; the Welland River, from Port Robinson to its mouth, and the cut at Chipawa; all such portions of the Saint Lawrence navigation from Kingston to the port of Montreal as have been or shall be improved at the expense of the province; the lock and dam at St. Anne's; the Scugog River navigation, and the navigation therewith, viz., from the head of the Lake Scugog to Fenelon Fall,

and from thence to Mud Lake, and Buckhorn Rapids, by Sturgeon, Pigeon and Buckhorn Lakes (hydraulic privileges being specially reserved to owners); that portion of the Otonabee River between Peterborough and Rice Lake, with the lock and dam at Whitler's Rapids; the Rice Lake and the River Trent from thence to its mouth, including the locks, dams and slides between those points; all such portions of the Ottawa improved at the expense of the province; the lock and other improvements on the River Richelieu; the Madawaska River, from the head of the Ragged Chute to the Chats Lake.

Harbours, Lake Erie.

Rideau Harbour, including the piers, breakwater and inner basin; Port Stanley Harbour and inner basin; Port Burwell, do.; Port Dover, do.; Port Maitland, do.; Port Colborne, do.

Lake Ontario.

Port Dalhousie Harbour; Burlington Bay Canal; Windsor Harbour.

Roads.

The main provincial road from Quebec to Sandwich, the main road from Queenston to Hamilton; the Port Hope and Rice Lake road; the Windsor, Scugog and Narrows Bridge road; the main road from Toronto to Lake Huron at Penetanguishine; the Hamilton and Port Dover road; the London and Port Stanley road; the road from the Village of Dundas to the township of Waterloo mentioned in the Upper Canada Statute 7, W. 4, c 79. The Bridge over the River Don on the Kingston road at the east end of the City of Toronto and the said Kingston road east of the said river shall not be held to be within the city limits or liberties, or under the control of the corporation thereof, but shall remain under the control of the commissioner of public works, or of any party to whom they may be transferred by order of the Governor in council. The tolls collected under this act to be applicable to the improvement of the road. Provided always, that the Montreal and Quebec Turnpike Trusts, and such portions of the said roads respectively as lie within the limits of any incorporated city or town, shall not be under the management of the commissioner; nor shall such portions of the said roads as may from time to time be exempted by proclamation, issued by order of the Governor in council, from the operations of this act, which portions shall, during the period of such exemption, remain subject to the same authorities and provisions of law as if this act had not been passed.

Bridges.

Chaudiere bridge, near Quebec; the Cap Rouge bridge; the St. Ann De la Perade bridge; the Batiscan bridge; the St.

Maurice bridge ; the Union, Suspension, and other bridges over the Ottawa river, between Ottawa and Hull ; the Trent bridge at the mouth of the Trent ; the bridge at the narrows of Lake Simcoe ; the Dunnville bridge ; the Caledonia bridge ; the Brantford bridge ; the Paris bridge ; the Delaware bridge ; the Chatham bridge ; and all other canals, locks, dams, slides, bridges, roads, or other public works of a like nature, constructed or to be constructed, repaired or improved, at the expense of the province.

SCHEDULE B.

Maximum tolls to be levied under this Act.

On the several public roads mentioned in the said schedule A at each gate thereon, and for each time of passing such gate.

	£	s.	d.
For each vehicle of any kind, and one horse or other beast of draught, and not more than ten hundred weight of load each additional ten hundred weight being reckoned as one horse, and any fraction of ten hundred weight as ten hundred weight	0	0	6
For each additional horse or beast of draught attached to such vehicle, or saddle horse, or other beast and its rider.. . . .	0	0	2
For each horse not attached to any vehicle and without a rider, ox, cow, or herd of cattle, or non-enumerated quadrupeds	0	0	1
For each sheep, pig, or goat	0	0	0½

On the several public bridges mentioned in the said schedule A, and for each time of passing over the same,—the same tolls as on public roads aforesaid for animals and carriages ; and for each foot passenger 0 0 1

Riots at Public Works.

By C. Stat. 22 V. c. 29, § 1, this act is to come in force in any locality where public provincial works, or works by any incorporated company are being carried on, upon the Governor's proclamation, and to cease upon the like proclamation.

§ 2. After the day fixed in such proclamation, no person employed upon any canal or other public work, within the limits specified therein, shall keep or have in his possession or under his care within such limits any gun, blunderbuss, pistol or other fire-arm, or any stock, lock, barrel or any other part of such gun, &c., or any bullets, swords, sword-blade, bayonet, pike, pike-head, spear, spear-head, dirk, dagger, or other instrument for cutting or stabbing, or other arms, ammunition or weapon of war, under a

penalty of not less than \$2, nor more than \$4, for every such weapon found in his possession. § 3. Within the time appointed in such proclamation every person so employed shall bring and deliver up to some magistrate or commissioner to be appointed by the Governor, every such weapon as aforesaid, taking a receipt for the same. § 4. Such weapons to be returned when the act shall cease to be in force. § 5. Weapons unlawfully kept may be seized by any justice, commissioner, constable or other peace officer and forfeited to her Majesty. § 6. Concealment of any such weapon to be subject to a penalty of not less than \$40 nor more than \$100. § 7. Any justice or commissioner may, on the oath of a credible witness that he believes any such is in the possession of any party contrary to this act, or in any house or place, issue a warrant to search for and seize the same; and in case admission to any such house or place cannot be obtained after demand, such constable or peace officer, and persons in his aid, may enter the same by force, by day or by night, and seize such weapon; and unless the party in possession do, within four days, prove to the satisfaction of such justice or commissioner that the weapon so seized was not in his possession or in his house contrary to the meaning of this act the same shall be forfeited to her Majesty. § 8. Any person employed on any such canal or work carrying any such weapon within the limits or locality where this act shall be in force, may be arrested and detained and committed for trial for a misdemeanor, unless he shall give sufficient bail for his appearance at the next assizes or sessions. § 9. Monthly returns to be made of all weapons delivered up. § 10. Weapons forfeited to be sold and the proceeds paid over to the receiver-general. § 11. Limitation of actions. § 12. Penalties under this act may be prosecuted for and recovered before any two justices of the locality, who may, on complaint on oath, issue their warrant for bringing the offender before them, and if convicted on the oath of one witness other than the informer, or by his own confession, the justices shall impose such penalty. § 13. The Governor authorised to raise a mounted police force for better carrying this act into effect. § 14. Officers to be appointed by the Governor, and to be justices of the peace where the act shall be in force. § 15. The mounted police force constituted as constables. § 16. Expenses of carrying this act into effect to be defrayed by the Board of Works.

By C. Stat. 22 V. c. 30, § 1, intoxicating liquors not to

be sold within three miles of the line of any railway, canal, or other public work in progress of construction, not being within the limits of any city, town, or village incorporated. § 2. Under the penalty of \$20 for the first offence, \$40 for the second, and for the third and every subsequent conviction the like penalty and imprisonment for a period not exceeding six months. Such fine to be paid to the treasurer of the municipality, and in default of payment of any fine and costs the offender shall be imprisoned until the same be paid under warrant of the justice, reeve, mayor, police magistrate, recorder or judge before whom the conviction is had. But no person shall be imprisoned for any separate offence for fine or costs, or both, for a period exceeding six months. § 3. Clerks, servants, and agents liable to be punished as principals. § 4. Any justice of the peace, reeve or mayor, police magistrate, recorder, judge of a circuit or division court, may hear and determine the case in a summary way. § 5. No appeal shall be allowed unless the defendant enters into a recognizance in \$100, jointly and severally with two good and sufficient sureties. § 6. A search warrant may be issued for discovery of any such intoxicating liquors upon the oath of any three voters of the municipality, and the owner summoned, and liquors found forfeited and destroyed, and the owner shall pay a fine of \$40 and costs, or be committed to prison for three months in default. § 7. If the owner be unknown the liquor not to be destroyed until advertised two weeks; and if within that time proof be given the same was not intended for sale or barter it shall be restored to the owner.

PUBLIC WORSHIP.

By Con. Stat. 22 V. c. 92, § 18, any person who wilfully disturbs, interrupts, or disquiets any assemblage of persons met for religious worship, by profane discourse, by rude and indecent behaviour, or by making a noise, either within a place of worship, or so near it as to disturb the order and solemnity of the meeting, such person shall, upon conviction before a justice of the peace, on oath of one or more credible witnesses, forfeit and pay such sum not exceeding \$20 as such justice shall think fit, and costs within the period specified for the payment thereof by the convicting justice, and in default of payment such justice shall issue his warrant to levy the same within a time to be specified in the warrant, and if no sufficient distress can be found, such justice shall commit the offender to the common gaol for any term not exceeding one month, unless the fine and costs be sooner paid.

PUNISHMENT.

The punishment for *specific* offences will, in general, be found under their respective heads or titles, such as Arson, Burglary, Homicide, and the like, and it is therefore unnecessary to recapitulate the same here.

The following provisions may be considered as supplementary or explanatory :

Under the C. Stat. 22 V. c. 92.

Simple Larceny.—§ 20. Every person convicted of simple larceny, or felony, punishable as simple larceny, shall (except in cases otherwise provided for) be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

Under the C. Stat. 22 V. c. 99.

The Pillory.—Is by § 98 abolished.

Penitentiary.—§ 101. If the imprisonment be for life, or for two years, or any longer term, such imprisonment shall be in the penitentiary.

Felony.—§ 101. Every person convicted of felony not punishable with death, shall be punished in the manner prescribed by the statute, or statutes, specially relating to such felony; and every person convicted of any felony for which no punishment is specially provided shall be kept at hard labour in the provincial penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

Hard Labour.—§ 102. The sentence of any person to be imprisoned in the provincial penitentiary shall (whether expressed or not) include hard labour.

Indefinite Terms.—§ 103. When an offender is by law liable to be punished by imprisonment for life, or for any indefinite term of years, the length of any such term shall be in the discretion of the court passing sentence upon the person convicted; and when so liable for a term not exceeding a certain number of years, the length of such term shall likewise be in the discretion of the court within such limits (if any) as may be prescribed by any statute in that behalf.

§ 104. When imprisonment is to be awarded for any criminal offence, and no definite period is fixed by law, the term of such imprisonment shall always be in the discretion of the court passing the sentence within such limits, if any, as may be prescribed by any statute in that behalf.

Common Gaol.—§ 105. When the sentence of imprisonment is for a term less than two years, such imprisonment shall, if no other place be expressly mentioned, be in the common gaol of the locality in which the sentence is pronounced; or if there be no common gaol there, then in that common gaol which is nearest to such locality, or in some other lawful prison or place of confinement other than the provincial penitentiary, in which the sentence of imprisonment may be lawfully executed.

Penitentiary.—§ 106. The period of imprisonment in the provincial penitentiary in pursuance of any sentence shall commence on and from the day of passing such sentence, whether the convict upon whom the sentence is passed be removed to the said penitentiary forthwith or be detained in custody in any other prison or place of confinement previously to such removal.

Transportation.—§ 107. For any offence for which by law the offender might formerly 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 so transported, or by imprisonment for life if he might have been punished by transportation for life.

Offences—Misdemeanor.—§ 108. In case any person be convicted of any of the following offences as misdemeanors, viz. :—1. Of any assault with intent to commit felony.—2. Of any assault upon any peace officer or revenue officer in the due execution of his duty.—3. Or upon any person acting in aid of such officers.—4. Or of an 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 an offence for which such person is liable by law to be apprehended or detained.—5. Or of an assault committed in pursuance of any conspiracy to raise the rate of wages, the court may sentence the offender to be imprisoned for any term less than two years, and may also fine the offender and require him to find sureties for keeping the peace.

Second Conviction—Felony.—§ 109. Whenever sentence is passed for felony on a person already imprisoned under sentence for another crime, the court may award imprisonment for the subsequent offence to commence at the expiration of the imprisonment to which such person had been previously sentenced and where such person is already under sentence of imprisonment, the court may award sentence for the subsequent offence to commence at the expira-

tion of the imprisonment to which such person had been previously sentenced, although the aggregate term of imprisonment may exceed the term for which punishment could otherwise have been awarded. (a)

Solitary Confinement.—§ 110. When a person has been convicted of an offence for which imprisonment other than in the penitentiary may be awarded, the court may sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour in the common gaol or house of correction, and may also direct that the offender shall be kept in solitary confinement for a portion or for portions of the term of such imprisonment, not exceeding one month at any one time, and not exceeding three months in any one year.

Whipping.—§ 111. Every male person under the age of eighteen years convicted of any offence under the 15th, 16th, 17th and 18th sections of the Consolidated Statutes of Canada, respecting "offences against the person," or under the 2nd, 3rd, 11th, 13th or 36th sections of the Consolidated Statutes of Canada, respecting "arson and other malicious injuries to property," or convicted of feloniously setting fire to any building or vessel, or to any stack, may, in addition to any other sentence passed upon him, be sentenced to be publicly or privately whipped in such manner and as often, not exceeding thrice, as the court may direct.

QUAKERS.

By the U. C. Stat. 22 V. c. 32, § 1, in any case, criminal or civil, in which an oath, declaration or affirmation is required by law, or upon any lawful occasion whatever on which the oath of any person is by law admissible, a Quaker, Menonist, or Tunker, or a member of the church known as the "*Unitas Fratrum*," or the United Brethren, sometimes called the Moravian Church, having first made the following declaration or affirmation: "I, A. B., do solemnly, sincerely, and truly declare and affirm that I am one of the society called Quakers, Menonists, Tunkers or *Unitas Fratrum*, or Moravians," (as the case may be,) may make his affirmation or declaration in the form following, viz.: "I, A. B., do solemnly, sincerely, and truly declare and affirm, &c.," and such affirmation or declaration shall have the same force

(a) By a later statute, 27, 28 V. c. 19, § 10, upon a conviction for felony, (not being capital,) the party so convicted shall, on subsequent conviction be imprisoned in the penitentiary for any term, not less than two years, or in any other prison for any term less than two years.

and effect as an oath. § 2. Every person authorised to administer an oath may administer such affirmation.

By C. Stat. 22 V. c. 5, § 6, art. 13, the wilful making of any false statement in any such affirmation shall be wilful and corrupt perjury.

By the Militia Act 27 V. c. 2, § 4, all persons bearing certificates from the society of Quakers, Menonists, and Tunkers, or any inhabitant of this province of any religious denomination, otherwise subject to military duty in time of peace, but who from the doctrine of his religion is averse to bearing arms and refuses personal military service, shall be exempt therefrom. But no person shall have the benefit of such exemption unless he has at least *one month* before he claims such benefit filed his claim thereto with his *affidavit* made before some magistrate (or affirmation in cases where persons are allowed to affirm) of the facts on which he rests his claim with the clerk of the municipality where he resides.

See also title "*Marriages.*"

QUARTER SESSIONS.

See titles "*General Quarter Sessions,*" "*Sessions.*"

RAILWAYS.

Railway Act, Con. Stat. 22 V. c. 66.

The first eleven sections relate to matters connected with the construction of railways and corporate powers, &c. The following only are noticed as being of more general public interest:

Highways and Bridges.

§ 12. The highways and bridges shall be regulated as follows: *Firstly.* The railway shall not be carried along any existing highway, but merely cross the same in the line of the railway, unless leave has been obtained from the proper municipal authority therefor, and no obstruction of such highway with the works shall be made without turning the highways, so as to leave an open and good passage for carriages, and on completion of the works re-placing the highway under a penalty of not less than \$40 for any contravention: but in either case the rail itself, provided it does not rise above or sink below the surface of the road more than one inch, shall not be deemed an obstruction.

Secondly. No part of the railway which crosses any highway without being carried over by a bridge, or under by a

tunnel, shall rise above or sink below the level of the highway more than one inch; and the railway may be carried across or above any highway within the limits aforesaid.

Thirdly. The space of the arch of any bridge erected for carrying the railway over or across any highway shall at all times be and be continued of the open and clear breadth and space under such arch of not less than twenty feet, and of the height from the surface of such highway to the centre of such arch of not less than twelve feet, and the descent under such bridge shall not exceed one foot in twenty feet.

Fourthly. The ascent to all bridges erected to carry any highway over any railway shall not be more than one foot in twenty feet increase over the natural ascent of the highway; and a good and sufficient fence shall be made on each side of the bridge, which fence shall not be less than four feet above the surface of the bridge.

Fifthly. Signboards stretching across the highway crossed at a level by any railway shall be erected and kept up at each crossing at such height as to leave sixteen feet from the highway to the lower edge of the sign board, and having the words, "Railway Crossing," painted on each side of the signboard, and in letters not less than six inches in length; and for every neglect to comply with the requirements of this section a penalty not exceeding \$40 shall be incurred.

Fences.

§ 13. *Firstly.* Fences shall be erected and *maintained* on each side of the railway of the height and strength of an ordinary division fence, with openings or gates or bars therein, at farm crossings of the road for the use of the proprietors of the lands adjoining the railway; and also cattle-guards at all road crossings suitable and sufficient to prevent cattle and animals from getting on the railway.

§ 15. Until such fences and cattle-guards shall be duly made the company shall be liable for all damages which shall be done by their trains or engines to cattle, horses, or other animals on the railway.

§ 16. After the fences or guards have been duly made, and while they are duly maintained, no liability shall accrue for any such damage unless negligently or wilfully done.

§ 17. If any person rides, leads, or drives, any horse or any other animal upon such railway and within the fences and guards, other than the farm crossings, without the consent of the company, he shall for every such offence forfeit a sum not exceeding \$40, and shall also pay to the party aggrieved all damages sustained thereby.

§ 18. No other person than those connected with or employed by the railway shall walk along the track thereof except where the same is laid across or along a highway.

Secondly. Within six months after any lands shall be taken for the use of the railway, and if thereunto required by the proprietors of the adjoining lands respectively, but not otherwise, the company shall at their own cost set and make on the lands so taken, and maintain and keep in repair a sufficient post or rail, hedge, ditch, bank or other fence sufficient to keep off hogs, sheep or cattle, and thereby divide and separate such lands from the lands adjoining thereto.

Tolls.

§ 20. Tolls shall be fixed and regulated by the by-laws of the company, or by the directors, if authorised by the by-laws, or by the shareholders at any general meeting. § 21.

In case of non-payment may be sued for and recovered in any competent court, or the agents or servants of the company may seize the goods and detain the same until payment.

§ 22. If not within *six weeks*, the company may sell the whole or any part, and out of such sale retain the tolls payable, and all charges and expenses of such detention and sale, rendering the surplus, if any, to the person entitled thereto. § 23.

If any goods remain in the possession of the company unclaimed for the space of *twelve months* the company, on giving public notice by advertisement for six weeks in the *Canada Gazette*, and in such other papers as they may deem necessary, may sell the same by public auction, and out of the proceeds pay such tolls and all reasonable charges for storing, advertising and selling; the balance to be kept by the company for a further period of three months, to be paid over to the party entitled thereto.

§ 24. In default of claim, to be then paid over to the Receiver-General for the use of the province until claimed.

§ 25. Tolls may by by-laws be reduced or raised when deemed necessary: provided that the same tolls shall be payable at the same time, and under the same circumstances upon all goods and persons, so that no undue advantage, privilege, or monopoly may be afforded to any person or class of persons.

§ 26. In all cases a fraction in the distance shall be considered as a whole mile; and for a fraction of a ton in weight a portion of the tolls shall be taken according to the

number of quarters of a ton contained therein, and a fraction of a quarter of a ton shall be considered as a whole quarter.

§ 27. A printed board or paper exhibiting all the tolls payable, and particularising the price or sum of money to be charged or taken for the carriage of any matter or thing, shall be stuck up in the office, and in all places where the tolls are to be collected, and in every passenger car, in some conspicuous place.

§ 28. No tolls shall be levied or taken until approved of by the Governor in council, nor until after two weekly publications in the "Canada Gazette" of the by-law and order in council.

§ 29. Every by-law fixing such tolls shall be subject to revision by the Governor in council; and after an order in council reducing such tolls, the toll mentioned in such order shall be substituted for those mentioned in such by-law.

Fines and Penalties.

§ 83. All suits for indemnity for any damage by reason of the railway shall be instituted within six months, and if there shall be a continuation of the damage, then within six months next after the doing or committing such damage shall cease, and not afterwards.

§ 84. Every person who by any means, or in any manner or way whatsoever, obstructs or interrupts the free use of the railway, or the carriages, vessels, engines or other works incidental or relative thereto, or connected therewith, shall be guilty of a misdemeanor, and on conviction thereof punished by imprisonment in the common gaol of the district or county where the conviction takes place, or in the provincial penitentiary for a term not exceeding five years.

§ 85. 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 amounts to a felony, in which case such person shall be deemed guilty of a felony, and the offenders shall 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.

§ 85. All fines and forfeitures imposed by this act, or the special act, (a) or by any by-law, the levying and recovering of which are not particularly herein directed, shall upon proof of the offence before any one or more justices of the peace of the locality, either by the confession of parties, or by the oath or affirmation of any one credible witness to be administered without fee or reward, be levied by distress and sale of the offender's goods and chattels by warrant under the hand and seal, or hands and seals of such justice or justices.

§ 86. All fines, forfeitures and penalties, not otherwise directed, shall be paid to the treasurer of the company for the use thereof.

§ 88. In case of insufficient distress, the offender shall be sent to the common gaol for the county or district, where convicted, there to remain without bail for such term not exceeding one month as such justice or justices shall think proper, unless such penalty and all expenses be sooner paid.

§ 89. Every such person may, within *four* months after conviction, appeal against the same to the quarter sessions.

§ 90. All contraventions of this act, or of the special act, by the company, or by any other party for which no punishment or penalty is herein provided, shall be a misdemeanor, and punishable accordingly.

By-laws.

§ 91. All by-laws, rules and orders regularly made shall be put in writing and signed by the chairman or person presiding at the meeting, and shall be kept in the office of the company; and a printed copy of so much as may relate to or affect any party other than the members or servants of the company, shall be affixed openly in all and every passenger car, and in all places for collection of tolls.

§ 92. All such by-laws, rules and orders shall be submitted to the Governor in council for approval.

§ 93. Copies of the minutes at any general or special meeting to be *prima facie* evidence.

Working of the Railway.

§ 95. Every servant of the undertaking in a passenger train, or at stations, shall wear upon his hat or cap a *badge*

(a) Act of incorporation.

indicating his office, and he shall not, without such badge, be entitled to demand or receive from any passenger any fare or ticket, or exercise any of the powers of his office, nor meddle or interfere with any passenger, or his baggage or property.

§ 96. The trains shall start and run at regular hours, to be fixed by public notice, and shall furnish sufficient accommodation for passengers and goods.

§ 99. Checks shall be affixed by an agent or servant to every parcel of baggage having a handle, loop or fixture of any kind thereupon ; and a duplicate of such check shall be given to the passenger.

§ 100. If such check be refused on demand, the company shall pay to such passenger the sum of \$8, to be recovered in a civil action ; and no fare or toll shall be collected from such passenger, and if he has paid his fare it shall be refunded by the conductor.

§ 101. Any passenger producing such check may himself be a witness in any suit brought by him against the company, to prove the value of his baggage not delivered to him.

§ 102. The baggage, freight, merchandize or lumber cars shall not be placed in rear of the passenger cars, and if any be so placed, the officer or agent directing, or knowingly suffering such arrangement, and the conductors of the train shall be deemed guilty of a misdemeanor, and punished accordingly.

§ 103. Every locomotive engine shall be furnished with a bell of at least 30lbs. weight, or with a steam whistle.

§ 104. The bell shall be rung or the whistle sounded at the distance of at least 80 rods from where the railway shall cross any highway, and be kept ringing or sounded at short intervals until the engine has crossed such highway, under a penalty of \$8 for every neglect, to be paid by the company, who shall also be liable for all damages by reason of such neglect.

§ 105. All persons in charge of a locomotive engine, or acting as the conductor of a car or train of cars, who is intoxicated on the railway, shall be deemed guilty of a misdemeanor.

§ 106. Any passenger refusing to pay his fare and his baggage may, by the conductor of the train and servants of the company, be put out of the cars at any usual stopping place, or near any dwelling-house, as the conductor shall elect, first stopping the train, and using no unnecessary force.

§ 107. Any passenger injured while on the platform of a

car, or on any baggage, wood or freight car, in violation of the printed regulations, posted up at the time in a conspicuous place, inside of the passengers' car, shall have no claim for such injury, provided sufficient room was furnished at the time.

General Provisions.

Trusts.—§ 108. The company shall not be bound to see to the execution of trusts. § 110. Provisions for carrying the mail, troops, and military stores. § 112. Account of names and residence of shareholders to be kept. 113. Map, &c., of the railway to be filed in the office of the board of works. § 115. Annual account of the affairs of the company to be laid before parliament. § 117. Provision for the forfeiture of the railway charter if the work not completed within ten years. § 118. The legislature authorised to reduce the tolls. § 119. The carriage of combustible goods prohibited. § 121. Forging of any debenture or *coupon*, or uttering the same knowingly, or being accessory before or after the fact to be deemed *felony*. § 122. The company bound to make and keep in repair all fences, roads, and water courses, &c., in Lower Canada. § 123. Every special act to be a public act. § 124. Power for the legislature to annul or dissolve any corporation formed under this act. § 125. Saving all Crown rights.

Weeds.—§ 134. The cleared ground adjoining any railway and belonging thereto, shall be laid down with grass or turf, and thistles and other noxious weeds thereon destroyed. § 135. If any railway company fail to comply with this section within *twenty* days after notice from the chief officer of the municipality, such company shall incur a penalty of \$2 for the use of the municipality, for each day of such neglect; and such chief officer may cause the same to be done, and the municipality recover the expense and charges and the said penalties, with costs of suit, in any civil court of competent jurisdiction.

Bridges.—§ 140. The Governor, upon the report of the board, may authorise and require the company to construct and fix *permanent* bridges, or substitute such bridges in the place of swing, draw or moveable bridges, under the penalty of \$200 a day for using such swing, draw or moveable bridges.

§ 141. Certain powers vested in railway commissioners with respect to any railway not already commenced crossing public highways on a level.

Crossings.—§ 142. An officer to be stationed at railway

crossings each other. § 143. Train to stop three minutes before crossing. § 144. Speed limited in passing through any city, town, or village to six miles per hour, unless the track is perfectly fenced. § 145. Trains moving reversely to give warning to parties standing on or crossing the tract under a penalty of \$100. § 146. Foot passengers to use the foot bridge, if provided for that purpose, at level crossings.

Stray Cattle.—§ 147. No horses, sheep, or swine or other cattle shall be permitted to be at large upon any highway within half a mile of the intersection of such highway with any railway or grade, unless in charge of some person to prevent their loitering or stopping on such highway at such intersection. § 148. All cattle found at large may be impounded by any person finding the same, in the nearest pound to the place, and there detained, subject to the like regulations as to the care and disposal thereof as cattle impounded for distress on private property. § 149. And no person whose cattle being at large shall be killed by any train at such point of intersection shall have any action against any railway company in respect thereof. § 150. All crossings at every road and farm to be sufficiently fenced on both sides.

Displacing Switch, &c.—§ 152. If any person wilfully and maliciously displaces or removes any railway switch or rail of any railroad or any portion thereof, or places 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, such person shall be guilty of misdemeanor, and be punished by imprisonment, with hard labour, in the common gaol of the territorial division where the offence was committed, for any period not exceeding one year; and if in consequence of such act done, any person so passing over and along such railroad suffers bodily harm, or any property be injured, the same shall be an aggravation of the offence, and then such offence shall be a *felony*, and subject the offender to punishment by imprisonment in the penitentiary for two years, or in any other prison for any period exceeding one year and less than two years. § 153. If any person wilfully and maliciously displaces or removes any railway switch or rail of any railroad, or breaks down, rips up, injures or destroys any railroad track or railroad bridge, or fence of any railroad, or any portion thereof, or places any obstruction whatever on any such rail or railroad track or bridge, or does or causes to be

done any act whatever whereby any engine, machine, or structure, or any matter or thing appertaining thereto is 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, the offender shall be deemed guilty of manslaughter, and punished by imprisonment in the penitentiary for any period not more than ten years nor less than four. § 154. If any person wilfully and maliciously does or causes to be done any act whatever whereby any building, fence, construction or work of any railroad, or any engine, machine or structure of any such railroad, or any matter or thing appertaining to the same is stopped, obstructed, impaired, weakened, injured, or destroyed, the offender shall be guilty of a misdemeanor, and punished by imprisonment with hard labour, not exceeding one year in the common gaol of the territorial division in which the offence was committed or tried.

Obstructing Inspectors.—§ 155. Every person wilfully obstructing any railway inspector in the execution of his duty shall on conviction before a justice of the peace forfeit and pay any sum not exceeding \$40, and in default of payment by the time appointed may be committed by such, or any other justice, to prison for any period not exceeding three months.

Misdemeanor.—§ 158. Any wilful or negligent contravention by any officer, servant, or person employed by any company, of any by-law or regulation thereof, whereby any injury to person or property shall be incurred or subjected, shall be a misdemeanor, punishable on conviction by fine or imprisonment: fine not to exceed \$400, nor imprisonment the term of five years. § 159. If no injury be actually done, then by a penalty not exceeding 30 days' pay, nor less than 15, recoverable with costs before any one justice. § 162. The company authorised by by-law to impose penalties on its officers and servants of not less than 30 days' pay, for contravention of any such by-law.

Passing Bridges.—§ 170. In all cases where a railroad passes any draw or swing bridge over a navigable river, canal, or stream, the trains shall in every case be stopped at least *three minutes*, to ascertain from the bridge tender that the said bridge is closed and in perfect order for passing, and in default of so stopping the company shall be liable to a penalty of \$400. § 171. The company shall use the best apparatus for communi-

cating between conductors and engine drivers, and for stopping or disconnecting cars, and for securely fixing seats in cars. § 172. And shall make proper by-laws and regulations for the conduct of their officers. § 173. Under the penalty of \$200 for every day's default therein.

Accidents—Returns.—§ 174. Returns of accidents on railways to be made within ten days after the first days of January and July every year, by the company, to the board of commissioners, under oath: also of existing by-laws, rules and regulations. § 176. And if not made within the time prescribed the company shall forfeit \$100 for every day's neglect.

Railway Inspectors, their duties.

§ 180. Inspectors (not exceeding three) to be appointed by the Governor, whose duties shall be from time to time to inspect railways. § 182. With power to use railway telegraphs for the purpose of communicating with railway officials. § 183. Any operator refusing to obey orders shall forfeit for each offence \$40.

§ 185. Any bridge, tunnel, culvert, fence, cutting, cattle guard, or any portion of the railway, or any locomotive or carriage condemned by the inspectors, must be made sufficient by the company. § 186. If, in the opinion of any such railway inspector, it is dangerous for trains or vehicles to pass over any particular railway, or any portion of a railway, until alterations, substitutions or repairs have been made thereon, or that any particular car, carriage or locomotive should be run or used, the inspector may forthwith forbid the running of any train or vehicle over any such railway or portion of railway, or the running or using any such car, carriage or locomotive, by notice in writing to the president, managing director, secretary, or superintendent of the company. § 187. The inspector shall forthwith report the same to the board of commissioners, who with the sanction of the Governor in council, may either confirm, modify or disallow such act or order of the inspector. § 188. The said board of commissioners may, with the sanction of the Governor in council, limit the number, or times, or rate of speed of running of trains or vehicles upon such railway or portion of railway, until such alterations or repairs, as they may think sufficient, shall have been made; and for every act of non-compliance therewith, the company shall forfeit to her Majesty the sum of \$2000. § 189. In case of serious accident attended with serious personal injury to or upon any

railway, notice thereof shall be given by the company to the board of railway commissioners within 48 hours, under the penalty of \$200 for every day of omission.

Malicious Acts.

By C. Stat. 22 V. c. 93, § 30, if any person wilfully and maliciously puts, places, casts or throws upon or across any railway, any wood, stone, &c., or removes, or displaces any rail, sleeper or other matter or thing belonging to any railway, or wilfully and maliciously turns, moves or diverts any point or other machinery belonging to any railway, or wilfully and maliciously makes or shews, hides or removes, or omits to make or shew, any signal or light upon or near any railway, or wilfully and maliciously does or causes to be done, or omits or neglects, or causes to be omitted or neglected, any other matter or thing, with intent to obstruct, upset, overthrow, injure or destroy, any engine, tender, carriage, or truck using such railway, or to endanger the safety of any person travelling or being upon such railway, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than three nor more than seven years.

Throwing Stones, &c.

§ 31. If any person wilfully and maliciously casts, or throws, any wood, stone, or other matter or thing, or causes the same to fall or strike against, into or upon any carriage, engine, tender, or truck used upon any railway, with intent to endanger the safety of any person being in or upon such carriage, engine, tender or truck, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than three nor more than seven years.

Arson.

§ 32. If any person wilfully and maliciously sets fire to any station-house, engine-house, warehouse, or other building belonging or appertaining to any railway, lock, canal, or other navigation, or to any goods or chattels being in any building, the setting fire to which is made felony by this or any other act of parliament, such offender shall be guilty of felony, and shall be punished as in the last preceding section is mentioned.

Special Constables.

By stat. 23 V. c. 29, § 1, justices of the peace for any

county in Upper Canada, in Quarter Sessions assembled, may on the application of any railway company appoint any person recommended by the board of directors to act as special constables along the line of railway for the preservation of the peace and security of persons and property against felonious and other unlawful acts on such railway works, trains, wharves, quays, landing places, warehouses, lands and premises of the company, with full power to take offenders punishable by summary conviction before any justice or justices. § 2. Any two justices may dismiss any such constable, as well as the board of directors, or any clerk or agent of the company. § 4. Every such constable guilty of any neglect or breach of duty shall be liable on conviction to a penalty of not more than \$80, to be deducted from his salary, if in receipt of a salary; or to imprisonment with or without hard labour, for not more than two months in the common goal. § 5. Any person assaulting or resisting any such constable in the execution of his duty shall be liable to the like penalty or imprisonment.

Opening Packages.

§ 6. Any person who shall bore, pierce, cut open, or otherwise injure any cask, box or package containing wine, spirits or other liquors, or any case, box, wrapper, package, or roll of goods, in or about any car, waggon, boat, vessel, &c., belonging to such company with intent feloniously to steal or otherwise unlawfully to obtain or injure the contents thereof, or who shall unlawfully drink, or wilfully spill or allow to run to waste any such liquors shall be liable on summary conviction to a penalty of not more than \$20 over and above the value of the goods taken or destroyed, or to imprisonment with or without hard labour for not more than one month. § 7. Prosecution to be under the Con. Stat. 22 V. c. 103, respecting *summary convictions*. § 8. With power to appeal.

Traffic.

By stat. 24 V. c. 17, § 4, railway companies are bound to afford each other every facility for the forwarding of traffic, without preference or favour. § 5. If any officer, servant or agent of any railway company having the superintendence of the traffic at any station or depot, refuses or neglects to receive, convey or deliver at any station or depot of the company for which they may be destined, any passenger, goods, or things brought, conveyed or delivered to him or to

such company for conveyance over or along their railway for that or any other company intersecting with or coming near to such first mentioned railway, or in any way contravenes the fourth section, such company, officer, servant or agent personally shall for each offence forfeit a penalty not exceeding \$50 over and above damages sustained, recoverable with costs in a summary way before a justice of the peace.

False Tickets.

By C. Stat. 22 V. c. 92, § 74, if any person by means of any false ticket or order, or of any other ticket or order, fraudulently and wilfully obtains or attempts to obtain any passage on any railway or in any steam or other vessel, such offender shall be guilty of a misdemeanor, and shall be liable to imprisonment in any common gaol or prison with or without hard labour, for any period not exceeding six months.

RAPE.

Of Rape in General.

Rape signifies the carnal knowledge of a woman forcibly and against her will, and above the age of ten years, and was felony at common law.—2 *Inst.* 180.

The offence of rape is in no way mitigated by shewing that the woman at least yielded to the violence, if such her consent was forced, by fear of death or of duress.—1 *Haw.* 108. Nor is it any excuse that the woman is a common prostitute; for she is still under the protection of the law, and may not be forced—1 *Haw.* 108—nor that she consented after the fact.—*Ibid.* It is said by Mr. Dalton, that if a woman at the time of the supposed rape do conceive with child, by the ravisher, this is no rape; for (he says) a woman cannot conceive, except she doth consent. But Hawkins observes, that this opinion seems very questionable not only because the previous violence is in no way extenuated by such a subsequent consent, but also because, if it were necessary to shew that the woman did not conceive, the offender could not be tried until such time as it might appear whether she did or did not; and likewise, because the philosophy of the notion may be very well doubted of.—1 *Haw.* 108. And L. Hale says, this opinion in Dalton seems to be no law.—1 *H. H.* 731.

Evidence in Rape.

The party ravished may give evidence on oath, and is in law a competent witness; but the credibility of her testi-

mony, and how far forth she is to be believed, must be left to the jury, and is more or less credible, according to the circumstances or facts that occur in the testimony.—1 *H. H.* 632. For instance, if the witness be of good fame; if she *presently* discovered the offence and made pursuit after the offender; shewed circumstances and signs of the injury; if the place where the offence was committed was *remote* from habitation; if the offender *fled* for it: these and the like are concurring evidences to give greater probability to her testimony, when proved by others as well as herself.—1 *H. H.* 633. On the other hand, if she concealed the injury for any length of time after she had the opportunity to complain; if the place where the offence was alleged to have been committed were *near* to inhabitants, or a thoroughfare for passengers, and she made no outcry when the offence was perpetrated, so that she might have been heard by others; or if a man prove himself to have been in another place, or in other company, at the time she charges him with the fact; or if she is wrong in the description of the place, or swears the fact to have been in a place where it was impossible the man could have access to her at that time—as, if the room was locked up, and the key in custody of another person: these and the like circumstances carry a strong presumption that the testimony is false or feigned.—1 *H. H.* 633.

Upon the whole, rape, it is true, is a most detestable crime, and therefore ought severely and impartially to be punished with death; but it must be remembered that it is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, though never so innocent: therefore, a wise jury will be cautious upon trials of this nature, that they be not so much transported with indignation at the heinousness of the offence as to be over-hastily carried to the conviction of the person accused thereof, by the confident testimony, sometimes of malicious and false witnesses.—1 *H. H.* 635, 636.

A male infant, under the age of fourteen years, is presumed by law to be incapable to commit a rape, and therefore, it seems, cannot be found guilty of it.—4 *Bl.* 212; 1 *Hale. P. C.* 631.

Punishment for Rape.

By C. Stat. 22 V. c. 91, § 19, every person guilty of the crime of rape shall suffer death as a felon. § 20. Any person who unlawfully and carnally knows and abuses any girl under the age of ten years, shall be guilty of felony, and shall

suffer death as a felon. § 21. Any person who unlawfully and carnally knows and abuses any girl, being above the age of *ten* years and under the age of *twelve* years, shall be guilty of a misdemeanor, and shall be imprisoned for such term as the court may award.

§ 23. Any person who commits an assault with intent to commit rape, shall be imprisoned in the penitentiary for any term not exceeding three nor less than two years, or be imprisoned in any other prison for any term not less than *two* years.

See also title "*Punishment.*"

RECEIVERS OF STOLEN GOODS.

Misdemeanor.—By C. Stat. 22 V. c. 92, § 75, if any person receives any chattel, money, valuable security or other property whatsoever, the stealing, taking, obtaining or converting whereof is made an indictable misdemeanor by this act, excepting sections 51 to 67, (a) such person knowing the same to have been unlawfully stolen, taken, obtained or converted, every such receiver shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor has or has not been convicted thereof, or amenable to justice; and every such receiver shall be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

Felony.—§ 76. If any person receives any chattel, money, valuable security, or other property whatsoever, the stealing or taking whereof amounts to 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 felony, and 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 has or has not been previously convicted, or be not amenable to justice.

§ 77. Every such receiver, howsoever convicted, shall be imprisoned in the penitentiary for any term not exceeding fourteen nor less than two years, or imprisoned in any other prison or place of confinement for any term not exceeding two years; provided always that no person, however tried

(a) These sections relate to trustees, bankers, persons holding powers of attorney, bailees, directors, and receivers from any of them.

for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence.

Second Offence.—§ 78. Where the stealing or taking of any property whatsoever, is by this act punishable on summary conviction, either for every offence, or for the first offence only, or for the first and second offences only, any person who receives any such property, knowing the same to have been unlawfully come by, shall, on conviction thereof before a justice of the peace, be liable, for every first, second and subsequent offence of receiving, to the same forfeiture or punishment to which a person guilty of a first, second and subsequent offence of stealing such property is by this act made liable.

Taking Rewards.—§ 79. If any person corruptly takes 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 whatsoever, which by any felony or misdemeanor has been stolen, taken, obtained or converted as aforesaid, such offender shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

Advertising Rewards.—§ 80. If any person publicly advertises a reward for the return of any property whatsoever which has been stolen or lost, and in such advertisement uses any words purporting that no question will be asked, or makes use of any words in any public advertisement purporting that a reward will be given or paid for any property which has been stolen or lost, without seizing or making any enquiry after the person producing such property, or promises or offers in 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 the property, or if any person prints or publishes any such advertisement in any of the above cases, the offender shall forfeit the sum of \$80 for the offence to any person who will sue for the same by action of debt, to be recovered with full costs of suit.

Trial.—By C. Stat. 22 V. c. 99, § 15, if any person receives any chattel, money, valuable security or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained or converted,

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 has or had any such property in his possession, or in any district, county or place in 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.

§ 38. If upon the trial of two or more persons for jointly receiving any property, it be proved that one or more of such persons *separately* received any part of such property, the jury may convict such of the said persons as are proved to have received any part of such property.

RECOGNIZANCE.

A recognizance is an obligation of record entered into before some magistrate or magistrates, duly authorised, with condition to appear at the sessions or assizes, or to keep the peace, &c. If a person refuse to give recognizance, he may be committed.—*Dalt. c. 168.* A recognizance must be made to the king; it must contain the names, places of residence, and additions of the principals and sureties, and the penalty in which they are bound: the parties need not sign it; it becomes a matter of record as soon as taken and acknowledged, although not made up by the justice, and only entered in his book.—*Dalt. c. 168.* Recognizances taken for the peace must be certified to the next sessions, that the party may be called, and if they do not appear they will be estreated; and by C. Stat. 22 V. c. 102, § 39, recognizances taken in felony or misdemeanor must be delivered to the county attorney without delay. § 37. When a charge is made before a magistrate, he may bind over the party making the charge to prosecute and give evidence, and also all who can give material evidence. § 40. And, on their refusal, may commit them. A married woman is incapable of entering into a recognizance; but if she altogether refuse to appear at the sessions and to find sureties for such appearance, when such appearance is essential to the conviction of the offender, she may be committed. The proper course where a married woman is a material witness, is to bind over her husband or some other competent person, as surety for her appearance—*Dickenson, Q. S. 74;* also infants (that is, persons under 21 years of age) who cannot legally bind

themselves, must procure others to be bound for them, and in default thereof may be committed.—*Chitty's C. L.* p. 91. The usual manner of taking a recognizance is by calling the parties by name.

For the form of recognizances to prosecute, appear and answer, or to give evidence, &c., see "*Justices of the Peace*," page 470.

The justice should demand of each party "*if he is content*;" and upon their answering that he is so, the recognizance is complete, and the defendant is at liberty to depart.

If the condition of recognizance is not complied with, it is estreated by the court; but during the sitting of the court, upon the party exhibiting a satisfactory affidavit of any sufficient reason for non-compliance with the terms, it has been the invariable practice of the court, on motion being made for that purpose, to take off the estreat, upon such terms as the court may require, such as entering into new recognizances, &c.—*Dickenson Q. S.* p. 668.

See also title "*Estreat*," ante p. 296.

RECORDER'S COURT.

By U. C. Stat. 22 V. c. 54, § 370, there shall be in every city a court of record to be called the Recorder's Court of the city, and therein the recorder alone or assisted by one or more of the aldermen shall preside, or in the absence of the recorder, or when there is no recorder, the mayor, (and in his absence one of the aldermen elected by themselves,) assisted by one or more aldermen, shall preside; and the court shall as to crimes and offences committed in the city, and as to matters of civil moment therein have the same jurisdiction and powers and use the like process and proceedings as courts of quarter sessions of the peace in counties.

§ 371. The recorder to be a barrister of not less than five years' standing. § 372. Salary not less than \$1000.

§ 375. Such recorder to be appointed by and hold office during the pleasure of the Crown, and shall be *ex officio* a justice of the peace for the city or town as well as the county. § 376. The clerk of the council of every city

or town, or such other person as the council may appoint, shall be the clerk of the police office, and perform the same duties and receive the same emoluments as clerks of justices, and the city clerk or such other person as the council may appoint shall be clerk of the recorder's court. § 378. The panels of grand jurors shall consist of twenty-four persons, and the panel of petit jurors of not less than 36, nor

more than 60 persons residents of the city. § 379. The high bailiff of a city, not made a separate city, shall ballot for and summon the jurors under a precept signed by the recorder, or by the mayor, or the alderman elected to act in the recorder's place, in the manner appointed by the law relating to jurors. § 380. On the acquittal of any defendant, the court may if satisfied there was a reasonable and probable cause for the prosecution, order the costs thereof to be taxed and paid out of the city funds. § 394. Until the organization of a board of police the recorder shall have the power of suspending from office the chief constable, or constable of the city for any period in his discretion, and appoint another, reporting the same with the cause thereof to the council, who may dismiss such officer or direct him to be restored to his office after the period of his suspension has expired; and the recorder and city council shall have the like powers as to the high bailiff of a city.

The 25 V. c. 19, which repeals the 23 V. c. 50, as to the sittings of the recorder's court, provides by § 3, that the recorder's court shall hold four sessions in every year, and such sessions shall commence on the first Monday in March, June and September, and on the *third* Monday in September.

REEVE.

See "*Town Reeve.*"

REFORMATORY PRISONS.

By C. Stat. 22 V. c. 107, § 1, the Governor is authorised to cause to be erected or provided two buildings, one in Lower Canada, and one in Upper Canada, to be used as prisons for the confinement and reformation of such offenders as are hereinafter specified. § 5. So soon as the said buildings shall be declared by proclamation to be reformatory prisons as aforesaid, any court of criminal jurisdiction in this province may in its discretion sentence any person, whose age at the time of trial does not in the opinion of the court exceed 21 years, and who has been convicted before such court of any offence punishable, by imprisonment in the penitentiary, to be imprisoned in one of the said reformatory prisons instead thereof. § 6. In no case shall the sentence be less than six months, or more than five years in such reformatory prison; and when the imprisonment is fixed by law to be more than five years, it shall be in the penitentiary. § 8. Whenever, after such reformatory

prisons shall be declared by proclamation as aforesaid, any person under the age of 16 years is convicted of any offence punishable by law on summary conviction, and thereupon sentenced and committed to prison in any common gaol, then any judge of either of the superior courts of Upper Canada, and any judge of any county court (in any case occurring within his county) may examine and enquire into the circumstances of such case and conviction, and direct such offender to be sent forthwith or at the expiration of his sentence to the reformatory prison aforesaid, to be there detained for a period of not less than six months and not exceeding two years, and such offender shall be liable to be detained accordingly. § 9. No offender shall be directed to be so sent and detained as aforesaid unless the sentence of imprisonment to the common gaol shall be for fourteen days at the least. § 10. The Governor may at any time order such offender to be discharged from such reformatory prison. § 11. Juvenile offenders may be removed from the penitentiary to reformatory prison. § 12. And transferred from one reformatory prison to another. § 13. Incurable offenders in the reformatory prison may be removed to the penitentiary for the remainder of the term of imprisonment. § 14. The warden of a reformatory prison shall have and perform the same powers and duties with respect thereto as are vested in the warden of the provincial penitentiary, except in so far as altered by this act or by rules made under the next section. § 15. Inspectors empowered to frame rules for the government and regulation of the said reformatory prisons, and for the discipline of the offenders, subject to the approval of the Governor. § 16. A farm not exceeding 200 acres may be attached to such reformatory prison.

REGISTRY OFFICE.

By U. C. Stat. 22 V. c. 89, § 81, any person forswearing himself before any registrar or his deputy, or before any judge, commissioner or other person duly authorised to administer an oath in any of the cases aforesaid, and lawfully convicted, shall incur and be liable to the same penalties as if the oath had been taken in any court of record in Upper Canada.

§ 82. Any person who forges or counterfeits any certificate by this act authorised or directed, or any affidavit of the execution of any memorial, or any such memorial, is guilty of felony, and shall be imprisoned at hard labour in the penitentiary for any term not less than four years nor more than ten years.

RELIGION.

The Christian religion, according to high authority, is part and parcel of the law of England. To reproach or blaspheme it, therefore, is to speak in subversion of the law; and to say that religion is a cheat, manifests plainly a wish and endeavour to dissolve all those obligations whereby civil society is preserved, and is held to be an indictable offence at common law.—*R. v. Taylor, vintr.* 293; 3 *Keb.* 607. By 1 E. VI. c. 1, and 1 Eliz. c. 1, it is enacted, that whoever shall revile the sacrament of the Lord's supper, shall be punished by fine and imprisonment. And by 1 E. c. 2, § 4, if any minister shall speak any thing in derogation of the book of common prayer, he shall be liable to heavy penalties. Also by § 9 of the last statute, if any person shall, in plays, songs, or other open words, speak any thing in derogation, depraving or despising of said book, or shall forcibly prevent the reading of it by any clergyman, or compel or cause him to read any other service in its stead, the offender shall for the first offence forfeit 100 marks; for the second, 400; and for the third all his goods and chattels, and moreover be liable to imprisonment for life. And by 3 Jac. 1 c. 21, if any person shall use the name of the Holy Trinity profanely or jestingly in any stage plays, interlude, or show, he shall be liable to a *qui tam* penalty of £10. By 9 & 10 W. III. c. 32, it is enacted, that if any person educated in, or having made profession of the Christian religion, shall by writing, printing, teaching, or advised speaking, deny the Christian religion to be true, or the holy scriptures to be of divine authority, he shall, for the first offence, be rendered incapable to hold any office or place of trust; and for the second, be rendered incapable of bringing any action, being guardian, executor, legatee or purchaser of lands; and shall suffer three years' imprisonment without bail. But if within four months after the first conviction, the offender appear in open court and publicly renounce his error, he shall be discharged that once from all disabilities. The provisions of this statute have been held to be cumulative, and therefore do not prevent the offender from being indicted at common law.—*R. v. Carlisle*, 3 B. & A. 171. By 14 G. III. c. 83, § 5, it is enacted, that his Majesty's subjects, professing the religion of the Church of Rome of and in the province of Quebec, may enjoy the free exercise of their said religion, subject to the king's supremacy, declared and established by the 1 Eliz. over all the dominions and countries belonging to the imperial Crown of

this realm : and that the clergy of the said church may hold, receive, and enjoy their accustomed dues and rights, with respect to such persons only as should profess the said religion. And by § 7, the following oath shall be taken by persons professing the said religion in place of the oath required by the statute of Elizabeth, or any other oaths substituted by any other act in place thereof:

I, A. B., do promise and swear, that I will be faithful and bear true allegiance to his Majesty King George, and him will defend to the utmost of my power against all traitorous conspiracies and attempts whatsoever which shall be made against his person, crown, and dignity, and I will do my utmost endeavour to disclose and make known to his Majesty, his heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against him or any of them ; and all this do I swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any power or person whomsoever to the contrary, so help me God.

And every such person refusing to take the said oath shall incur the pains and penalties, forfeitures, disabilities, and incapacities of the 1st of Eliz.

RELIGIOUS SOCIETIES.

By U. C. Stat. 22 V. c. 69, § 1, when any religious society or congregation of Christians in Upper Canada desire to take a conveyance of land, for the site of a church, chapel, meeting-house, burial-ground, or residence for the minister, or where any religious congregation or society of Presbyterians, Lutherans, Calvinists, Methodists, Congregationalists, Independents and Baptists, Quakers or Moravians, desire to take a conveyance of lands for the support of public worship, and the propagation of Christian knowledge, such society may appoint trustees, to whom and their successors, to be appointed in such manner as may be specified in the deed of conveyance, the land requisite for any of the purposes aforesaid may be conveyed ; and such trustees and their successors in perpetual succession, by the name expressed in the deed, may hold and possess the land, and maintain and defend actions in law or equity for the protection thereof. § 2. But such trustees shall within twelve months after the execution of such deed cause the same to be registered in the county registry office.

§ 3. The trustees or a majority of them may mortgage to secure any debt contracted ; or may borrow the money on

mortgage. § 4. Trustees named in any letters patent from the Crown, of lands granted for the use of a religious body, and any other trustees holding lands in trust for any religious congregation or body may lease the same for any term not exceeding 21 years. § 5. And covenant for the renewal of such lease. § 6. But shall not lease such land without the consent of a majority of the members present at a meeting of the congregation duly called for the purpose, nor shall such trustees lease any land necessary for the purpose of erecting a church or place of worship, or other buildings thereon, or for a burial-ground for the congregation. § 7. The trustees may also distrain for rent in arrear as other landlords. § 8. When such land becomes unnecessary to be retained for use and it is deemed advantageous to sell, the trustees may give public notice of an intended sale; and after publication of the notice for four successive weeks, in a weekly paper published where the lands are, they may sell the land at public auction according to the notice, but not obliged if an adequate price be not offered. § 9. They may afterwards sell by private contract, but not at a less sum than offered at public sale. § 10. Before a deed is executed, the congregation shall be duly notified thereof, and the sanction of the Court of Chancery obtained. § 11. Trustees selling or leasing land under this act shall annually, on the first Monday in July, have open and ready for the inspection of the congregation a detailed statement of the rents accrued the preceding year, and of all moneys derived from the lands under their control and the expenditure thereof. § 12. The trustees liable to account to the Court of Chancery for any misfeasance or misconduct. § 13. Rights and privileges under this act to extend also to the Roman Catholic Church.

RELIGIOUS WORSHIP.

See title "*Public Worship.*"

RESCUE

Is defined by 4 *Bl. Com.* p. 131, to be the forcibly and knowingly freeing another from arrest and imprisonment; and it is generally the same offence in a stranger so rescuing as it would have been in a gaoler voluntarily suffering an escape; but here, as upon voluntary escapes, the principal must be first attained or receive judgment before the rescuer can be punished; for by possibility there may have been no offence committed—1 *Hale's P. C.* 607; neverthe-

less, as the rescue is in contempt of some legal process, the offender may be committed and punished for a misdemeanor, according to the degree of his offence. To hinder a person who has committed felony from being arrested is a misdemeanor only; but if rescued after the arrest, and the arrest was for felony, the rescuer is a felon; if for treason, a traitor; and if for a trespass, fineable—*Hale Pl.* 116; 3 *Haw. c.* 21; *Russ. & Ry. C. C. R.* 458; but it seems necessary that the rescuer should have knowledge of the criminal offence, if the party be in custody of a private person, but not necessary if in custody of an officer.—2 *Hale* 606.

*By U. C. Stat. c. 97, § 4, the rescue of any person committed for or found guilty of murder, is made felony, and is punishable by *death*.

RESTITUTION OF STOLEN GOODS.

By the common law there was no restitution of stolen goods, but it being considered that the party prosecuting the offender by indictment deserved to have his goods restored, it was enacted by the statute 21 H. VIII., c. 11, that if any felon do rob or take away any man's money or goods, and thereof be indicted and arraigned and found guilty, or otherwise attainted by reason of evidence given by the party robbed, or owner of the money or goods, or by any other, by their procurement; then the party robbed, or owner of the goods, shall be restored to such his money or goods; and the justice may award a writ of restitution.

The writ of restitution has fallen into disuse; but upon production of the goods at the trial, the court will order them to be restored to the owner; and if not restored, he may maintain an action of trover for them, after conviction, notwithstanding they may have been sold to the person claiming in *market overt*.—1 *Hale*, 543; 6 *Kel.* 48; 2 *Inst.* 714. Although this may seem hard upon the buyer, yet the rule of law is that "*spoliatus debet ante omnia restituti*," especially when he has used all diligence in his power to convict the felon; and as the case is reduced to this hard necessity, that either the owner or the buyer must suffer, the law prefers the right of the owner, who has done a meritorious act by pursuing a felon to condign punishment, to the right of the buyer, whose merit is only negative, that he has been guilty of no unfair transaction.—4 *Bl. Com.* 363. However, by 31 Eliz. c. 12, where a horse is stolen and sold in open market, according to the provisions of this act, the owner can

only be entitled to it again upon payment of the buyer's costs.

See further on this subject, *ante* title "*Horses*," p. 391.

If the thief sell the goods and be taken with the money which he sold them for, and the goods cannot be heard of, it has been questioned whether the prosecutor shall have the money.—*W. Jones*, 148; 2 *East*, P. C. 789. But the better opinion seems to be where it is clearly ascertained that the money is the produce of the goods stolen, that the prosecutor would be then entitled to it within the equity of the above statute.—*Hamberrie's case*, Cro. Eliz. 661; *Harris's case*, Noy, 128; 1 *Hale*, 542; 2 *East*, P. C. 789.

Restitution, however, can only be had from the person in possession of the goods at the time of, or after the felon's attainder. Therefore, if a party purchase them *bona fide*, in *market overt*, and sell them again before conviction, no action will in this case lie against him for the value, though notice were even given him not to sell.—*Horwood v. Smith*, 2 R. 653. But the necessity of prosecuting and convicting or attainting the felon, in order to have restitution, is only when the property is changed by some intermediate act, as when they have been sold in *market overt*. For otherwise the owner may, at common law, peaceably retake his goods wherever he finds them, without any writ of restitution.—*Kel.* 48; 2 *Haw.* c. 25. And now by Con. Stat. 22 V. c. 99, § 88, restitution shall be made to the owner of the property stolen upon conviction of the offender.

See title "*Larceny*," p. 523.

RIOT, ROUT, &c.

A riot is the forcibly doing an unlawful thing, by three or more persons assembled together for that purpose. By the common law, peace officers may suppress a riot, and may command all other persons to assist them.—1 *Haw.* c. 65, § 11. A *rout* is where three or more meet together to do some unlawful act upon a common quarrel, as forcibly breaking down fences upon a right claimed of common or way, and making some advance towards it, but without actually executing it.—*Ibid.* An unlawful assembly is where three or more assemble themselves together, with intent to do an unlawful act, as to pull down enclosures, &c., but part without doing it, or making any motion towards it.—*Ibid.* A riot at *common law* is a misdemeanor only, punishable by fine and imprisonment.—1 *Haw.* c. 65, § 12. But under

particular circumstances, which will be seen hereafter, it is in some cases, by statute, made felony.

Riot at Common Law (Misdemeanor.)

If the riotous assembly meet for a public purpose—as to redress a general grievance; to pull down *all* enclosures; or to reform religion; or with a determination to resist the king's forces, if legally called in to keep the peace—their proceedings then may amount to overt acts of high treason, by levying war against the king.—4 *Bl. Com.* 147.

To constitute a riot, there must be some circumstances of actual force or violence, or at least of an apparent tendency thereto, which are calculated to strike terror among the people, such as the show of offensive weapons, threatening speeches, or turbulent gestures. But it is not necessary that personal violence should have been actually committed.—1 *Haw. c.* 65, § 5; *Clifford & Brandon*, 2 *Camp.* 369. Nor will it amount to a riot if the object is to do a lawful act, as to remove a nuisance.—1 *Haw. c.* 65, § 8; *R. v. Soley*, 11 *Mod.* 117; 5 *Burns' J. Riot*, § 1. Where a person on seeing others actually engaged in a riot joins himself to them and assists them, he is as much a rioter as if he had at first assembled with them for the same purpose.—1 *Haw. c.* 65, § 3. And whosoever encourages, or promotes, or takes part in a riot, whether by words, signs or gestures, or by wearing the badge, or ensign of the rioters, is himself to be considered a rioter; for in this case all are principals.—2 *Camp.* 370; 4 *Burr.* 2073; 1 *Hale*, 463.

To incite persons to assemble in a riotous manner appears to be an indictable offence.—*Cro. Cir. Comp.* 420; 8 *Ed. II.*, *Chit. C. L.* 506. Women are punishable as rioters; but *infants*, under the age of discretion, are not.—1 *Haw.*, c. 65, § 14. Where an infant is indictable, he may appear by attorney.—*R. v. Turner*, 2 *Ld. R.* 1284.

Thus much for a riot at *Common Law*.

Riot by Statute (Felony).

By U. C. Stat. 22 V. c. 97, § 6, in case any persons to the number of twelve or more, being unlawfully, riotously and tumultuously assembled together, to the disturbance of the public peace, be by proclamation in the Queen's name, made in the form in this act directed by any one or more justice or justices of the peace, or by the sheriff of the county, or his deputy sheriff, or by the mayor, or other head officer, or justice of the peace of any city or town cor-

porate, where such persons are so assembled, required or commanded, to disperse themselves, and peaceably to depart to their habitations or to their lawful business, and in case such persons, to the number of twelve or more, (notwithstanding such proclamation made,) unlawfully, riotously and tumultuously, remain or continue together by the space of one hour after such command or request, such continuing to the number of *twelve* or more, after such command or request so made by proclamation is *felony*, and the offenders shall suffer death. § 7. The order and form of the proclamation to be made by the authority of this act, shall be as follows, viz.: the justice (or person authorised to make the 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 commanded 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 lady the Queen chargeth and commandeth 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 relating to high treason, to tumults and riotous assemblies, and to other offences. God save the Queen.”

§ 8. Every such justice and justices, sheriff, deputy sheriff, mayor, and other head officer, within the limits of their respective jurisdictions shall, on notice, or knowledge of any such riotous and tumultuous assembly, resort to the place, and there make or cause to be made such proclamation as in manner aforesaid. § 9. If twelve or more of the persons so unlawfully, riotously, and tumultuously assembled, continue together after proclamation made in manner aforesaid, and do not disperse themselves within one hour, then every justice, sheriff, deputy sheriff, &c., and any persons commanded to assist, shall seize and apprehend the persons so unlawfully, and riotously and tumultuously continuing together after proclamation made, and carry such persons before one or more justices of the peace, to be proceeded against according to law. § 10. If in the dispersing or apprehending such persons, any happen to be killed, maimed or hurt by reason of their resisting, all persons aiding or assisting in such apprehension shall be indemnified. § 11. If any person or persons with force and arms wilfully oppose, hinder, or hurt any person who begin or go to make such proclamation whereby the same cannot be made, it is

felony, and the offenders shall suffer death, and every person or persons so unlawfully, riotously, and tumultuously assembled, to the number of *twelve* or more, to whom proclamation should or ought to have been made if the same had not been hindered, who to the number of twelve, or more, continue together, and do not disperse themselves within one hour after such let or hindrance so made, are guilty of felony, and shall suffer death. § 12. Prosecutions under this act must be commenced within twelve months.

By C. Stat. 22 V. c. 93, § 5, if any persons riotously and tumultuously assembled together to the disturbance of the public peace, 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 any branch thereof, every such offender shall be guilty of felony and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

The volunteer militia force are liable to be called out in aid of the ordinary civil power in case of riot or other emergency, and receive pay from the municipality at special rates,—27 V. c. 3, § 18; and act as special constables while so called out.—*Ibid.*, § 19.

See also title "*Public Works, Riot at.*"

Indictment for a Riot and Assault. (Archbold.)

County of } The jurors for our lady the Queen, upon their
to wit. } oath present, that J. S., late of the township
of , in the county of , labourer, J. R., late of the same,
carpenter, E. W., late of the same, yeoman, together with divers
other evil disposed persons, to the number of , and now to
the jurors aforesaid unknown, on the day of , in the
year of the reign of our sovereign lady Victoria, with force and
arms, at the township aforesaid, in the county aforesaid, unlaw-
fully, riotously and routously did assemble and gather together,
to disturb the peace of our said lady the Queen, and so then and
there assembled and gathered together, in and upon one A. the
wife of J. N., in the peace of God and of our lady the Queen,

then and there being, unlawfully, riotously and routously did make an assault, and her the said A. then and there unlawfully riotously and routously did beat, wound, and ill-treat, so that her life was greatly despaired of, and other wrongs to the said A., then and there unlawfully, riotously and routously did, in contempt of our said lady the Queen and her laws, to the evil example of all others in the like case offending, and against the peace of our lady the Queen, her crown and dignity.—(Add also another count for a common assault.)

Indictment for a Riot and Tumult.

Commencement as in the last form, &c.] with force and arms to wit, with sticks, staves and other offensive weapons, at the township aforesaid, in the county aforesaid, unlawfully, riotously and routously did assemble and gather together, to disturb the peace of our said lady the Queen; and being so assembled and gathered together, armed as last aforesaid, did then and there unlawfully, riotously and routously make a great noise, riot and disturbance, and did then and there remain and continue armed as last aforesaid, making such noise, riot and disturbance for the space of an hour and more, then next following, to the great disturbance and terror, not only of the liege subjects of our lady the Queen there being and residing, but of all other the liege subjects of our lady the Queen then passing and re-passing in and along the Queen's common highway there, in contempt of our said lady the Queen and her laws, to the evil example of all others in the like case offending, and against the peace of our lady the Queen, her crown and dignity.

RIVERS AND NAVIGATION.

A navigable river is, with respect to the right of the public to pass along it for the conveyance of themselves or their goods and merchandizes, in the nature of a public highway.—1 *Haw. c.* 76, § 1; 3 *Com. Dig.* 23. A nuisance occasioned to a public river by obstruction, is indictable on the same principle as a similar nuisance to a highway. Thus, the *laying of timber* in a public river, whereby the passage of vessels is obstructed, is as much a nuisance as laying logs in a highway.—5 *Bac. Ab. nuisance* (A.)

By U. C. Stat. 22 V. c. 47, § 1, except in the case of round or square timber, masts, staves, deals, boards or sawed or manufactured lumber or saw logs prepared for transportation to a market, every person and every employer who cuts and fells any trees into the Grand River, River Thames and other rivers and Lakes therein specified in Upper Canada, or upon the banks thereof usually overflowed in

the autumn or spring, and who does not lop off the branches of such trees and cut up the trunk into lengths of not less than 18 feet, before they are allowed to be floated or cast into said river or streams shall for every such offence forfeit a penalty not exceeding \$10.

§ 2. In case any person throws or in case any owner or occupier of a mill suffers or permits to be thrown into any river, rivulet or watercourse in Upper Canada, excepting those hereinafter mentioned, any slabs, bark, waste stuff, or refuse of any saw-mill (except saw-dust) or any stumps, root, shrubs, tan-bark, or waste-wood, timber or leached ashes; or in case any person fells or causes to be felled in or across any such river, rivulet, or watercourse, any timber or growing or standing trees, and allows the same to remain in or across any such river, rivulet, or watercourse, he shall incur a penalty not exceeding \$20 nor less than twenty cents every day such obstruction remains in, over, or across such river, &c., over and above all damage. § 3. This act not to apply to any dam, weir, or bridge, or to any thing done *bona fide* in erecting the same, or to any tree cut down or felled across any such river, &c., as a means of passage.

§ 4. This act not to extend to the river St. Lawrence, nor to the river Ottawa, nor to any river or rivulet wherein salmon or pickerel, black bass or perch, do not abound.

§ 5. No such obstruction happening without wilful default shall subject the party to any fine or forfeiture unless in default of removal of such obstruction after notice and reasonable time afforded.

§ 6. Fines and penalties, forfeitures and damages, not together exceeding \$20, may be recovered with costs in a summary way upon the oath of one credible witness, as provided by the act of the province of Canada relating to malicious injury to property, before any one or more justices, and levied by distress and sale of the offender's goods, or in default of sufficient distress or payment within three days after conviction, the offender may be committed to the common gaol for the term of *ten* days in case the conviction be under the first section of this act, or *thirty* days if under the second section, unless the penalty or damages and costs be sooner paid. § 7. Appeal allowed. § 8. One-third of the penalty to go to the informer, the other two-thirds to the municipality for the improvement of highways. § 9. Damages to be assessed by the convicting justice and paid to the party aggrieved, except in case he has been examined as a witness, then to be applied in the improvement of the highways.

ROAD ALLOWANCES.

See title "*Highways.*"

ROBBERY.

Robbery signifies a larceny from the person, committed openly and violently; and may be defined to be the felonious and forcible taking of goods or money of any value from the person of another, or in his presence, against his will, by violence or putting him in fear.—4 *Bl. Com.* 243; 2 *East, P. C.* 797.

Of the Felonious taking.

The gist of the offence being the force and terror used by the offender, the value of the property stolen is quite immaterial; for a penny as well as a pound, forcible taken or extorted, constitutes in law a robbery.—3 *Inst.* 69; 1 *Hale*, 532; 1 *Haw. c.* 34, § 16; 4 *Bl. Com.* 243. The taking also must be such as to give the robber a possession of the property stolen; therefore, if a man having his purse fastened to his girdle, be assaulted by a thief, and the thief, in order the more readily to take the purse, cut the girdle, and the purse thereby falls to the ground, this is no taking so as to amount to robbery, for the thief never had the purse in his possession; but, if he had taken it up from the ground, though but for one moment, and afterwards let it fall in the struggle, this would then have been a sufficient taking, the purse having been once in his possession.—3 *Inst.* 69. And when once the offence of robbery is completed it cannot be purged by a re-delivery. There may be a taking in law, however, as well as a taking in fact, which will amount to robbery. Thus, if upon A. assaulting B. and bidding him deliver his purse, B. refuse to do so, and then A. prays B. to give or lend him money, and B. does so accordingly under the influence of fear, the taking will be complete.—1 *Hale*, 533. So, when thieves, finding no property on a man, force him by menace of death to fetch them money, which he delivers to them while the fear of the menace continues upon him, and they receive it, this is a sufficient taking in law.—*Id.* 3 *Inst.* 68. The taking, however, need not be immediately from the person, it is enough if it be *in his presence*. Thus, if A. upon being attacked by a robber throws his purse or his cloak into a bush, or lets his hat fall while he is endeavouring to escape, and the thief takes either of these things up and carries it away,

such a taking being done in the presence of A., will amount to robbery—3 *Inst.* 68; 1 *Hale*, 533; 1 *Haw.*, 34, § 6; but no stealing will amount to robbery unless done in the presence of the owner.—*R. v. Grey*, 2 *East*, P. C. 708.

What Violence or Fear is necessary.

The principle of robbery being violence, some degree of force is therefore necessary to constitute the offence; but there may be a constructive as well as an actual force, for where such terror is impressed on the mind as not to leave the party a free agent, and in order to get rid of that terror he delivers his money, this is a sufficient force in law; and where actual violence is used there need not be actual fear, for the law will presume it.—*Donally's case*, 2 *East*, P. C. 727. With respect to the degree of violence, where there is no putting in fear, the amount of force used in such cases must be something more than a sudden taking or snatching, for unless some greater force is used by the thief to overpower or prevent resistance, or there is some resistance or actual struggle on the part of the owner to retain his property, this will not amount to a robbery, being divested of both its ingredients of the crime, *corporal violence and terror*.—*R. v. Macaulay*, 1 *Leach*, 287; *R. v. Baker*, *Id.* 290; *R. v. Robins*, *Id.* 290, (note A.); *R. v. Steward*, 2 *East*, P. C. 702; but if any injury be done to the person, or there is any struggle of the owner to retain his property, then it is robbery. As, where a lady's ear-ring was pulled so violently from her ear that the ear was torn through and made to bleed and she was otherwise much hurt—*R. v. Lapiet*, 1 *Leach*, 320; and so where the prisoner pulled the prosecutor's watch from his fob, which being fastened by a steel chain round his neck, the thief with two jerks broke the steel chain in order to get the watch, for the prisoner in this case had to overcome the resistance made by the steel chain, and used actual force for that purpose.—*R. v. Mason*, R. & By. 419. The violence used also will not the less amount to robbery, because it is accompanied by some specious pretence of law or justice; thus, where the prosecutor was carrying his cheeses along the highway and was stopped by the prisoner, who insisted on seizing them for want of a permit, which was found to be a mere pretence, no permit being necessary, and on some altercation they agreed to go before a magistrate to determine the matter, when other persons, who were riotously assembled and in confederacy with the prisoner, carried away the goods in

the absence of the prosecutor, this was held to be robbery, and the seizure of the cart and goods by the prisoner was sufficient to constitute the offence.—*Merriman v. Hundred of Chippenham*, 2 East, P. C. 709. With respect to a constructive violence by *putting in fear*, it matters not whether the fear excited is of injury to the *person*, the *property*, or the *character* of the party robbed; as if a person with a drawn sword or other circumstances of terror, indicating a felonious intent, beg alms of another, who gives it to him through mistrust and misapprehension, this pretence of asking charity will not prevent the offence from being considered as robbery—4 Bl. Com. 244; 2 East, P. C. 711. The *degree* of fear need not be the extremest state of alarm and terror, but only such a reasonable apprehension of danger as may induce a man, for his own safety, to part with his property. So, where a man is compelled through fear to part with his money, in order to prevent his *house* or *property* from being burnt or destroyed, this will be a sufficient putting in fear to make the offence of those who take his money amount to the crime of robbery; so, where a person is induced to part with his money through fear, upon the threat of another to accuse him of an unnatural offence or any other crime, whereby his character or reputation may be injured, extorting money under a threat of this description will amount to the crime of robbery, whether the party threatened has been guilty of the crime or not (a).—*R. v. Gardiner*, 1 C. & P. 79.

By C. Stat. 22 V. c. 92, § 1, any person who robs any other person, and at the time of or immediately before or immediately after such robbery stabs, cuts, or wounds any person, shall be guilty of felony, and shall suffer death. § 2. Any person who robs any other person, or steals any chattel, money or valuable security from the person of another, shall be imprisoned in the penitentiary for any term not exceeding fourteen years nor less than two years, or be imprisoned in any other place of confinement for any term less than two years.

Of Assault with Intent to Rob.

By the same statute, § 3, any person who assaults any other person with intent to rob, shall be guilty of felony, and (except in cases where a greater punishment is provided by

(a) See also title "Extortion," p. 302, § 6, on this subject.

this act) be imprisoned in the penitentiary for any term not exceeding three years nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years. By the same statute, §5, any person, who being armed with any offensive weapon or instrument, robs or assaults with intent to rob any person, or together with one or more person or persons, robs or assaults with intent to rob any person, and at the same time, or immediately before or immediately after such robbery, beats, strikes, or uses any other personal violence to any person, shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

§ 4. Any person who, with menaces or by force, demands any chattel money or valuable security of any other person, with intent to steal the same, shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not exceeding three years, or in any other prison or place of confinement for any term less than two years.

Robbing the Mail.

By Con. Stat. 22 V. c. 31, § 55, is made felony and punishable by imprisonment in the penitentiary *for life*.

See also title "*Post Office*."

Of Principals and Accessories.

With respect to persons aiding and abetting in a robbery, the same rules are applicable as in every case of principal and accessory. Thus, where several persons come to rob a man, and they are all *present*, whilst one of them takes his money, they are all guilty of robbery. So, if three persons come to commit a robbery, and one stands sentinel at the corner of a field, to watch if any one should approach, while the others commit the robbery, this will be a robbery in the third also, though he stood at a distance from them and not within view—1 *Hale*, 534, 537; but though several come out with a common design to rob in the highway, yet if one of the party (before any robbery takes place) entirely leaves them and goes another way, rendering them no manner of assistance, either at the time or after the commission of a robbery by the others, he cannot then be said to be guilty, either as principal or accessory.—*R. v. Hyde*, 1 *Hale*, 537.

See also *ante* title "*Accessories*."

ROOTS AND PLANTS.

By Con. Stat. 22 V. c. 93, § 15, if any person unlawfully and maliciously destroys or damages 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, 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 \$4, as to the justice seems meet.

SABBATH.

See "*Lord's Day.*"

SACRILEGE.

Sacrilege (*sacrilegium*) is, at common law, the robbery of a church, or a felonious taking out of a holy place things consecrated to pious purposes; as the vessels, goods or ornaments of the church—3 *Cro.* 153; but to steal any thing belonging to private persons in a church is *larceny*, and not sacrilege. Sacrilege was originally punished with greater severity than other robberies by our law: for it denied the benefit of clergy to a person convicted of this offence, which was formerly granted to all other felons.—2 *Inst.* 250; 23 *H. VIII.*, c. 1, § 3; 1 *Ed. VI.*, c. 12, § 10.

But now, by Con. Stat. 22 V. c. 92, § 17, any person who breaks and enters any church or chapel, and steals therein any chattel, or having stolen any chattel, money or valuable security, in any church or chapel, breaks out of the same, shall be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

SALMON.

See "*Fisheries,*" "*Fish.*"

SEARCH-WARRANT.

It seems that formerly it was not unusual for justices to grant general warrants to search all suspected places for stolen goods: yet such practice is generally condemned by the best authorities; and Lord Hale, in his pleas of the crown, says a general warrant to search for felons or stolen goods is not good—*H. Pl.* 93; likewise, upon a *habeas sur-*

mise, a justice cannot legally grant a warrant to break any man's house to search for a felon or stolen goods—4 *Inst.* 177; but in case of a complaint, and oath made, of goods stolen, and that the complainant suspects the goods are in a certain house or place, and shews the ground of his suspicion, the justice may grant a warrant to search in those suspected places mentioned in his warrant, and to attach the goods and the party in whose custody they are found, and bring them before him, or some other justice, to give an account how he came by them; and further, to abide such order as to law doth appertain.—2 *H. H.* 113, 150. But in cases not merely of probable suspicion but of positive proof, it is right to execute the warrant in the *night time*, lest the offenders and goods also be gone before morning—*Barl. Search W.*; such warrant must be directed to the *constable*, or a peace officer, and not to any private person; though the complainant may aid and assist, because he knows the goods.—2 *H. H.* 150. Whether the stolen goods are in a suspected house or not, the officer and his assistants in the day time, may enter, the doors being open, to make search, and it is justifiable by this warrant.—2 *H. H.* 151. If the door be shut, and upon demand it be refused to be opened by them within, if the stolen goods are in the house, the officer may break open the door.—1 *H. H.* 151. If the goods be not in the house, yet it seems the officer is excused that breaks open the door to search, because he searched by warrant. and could not know whether the goods were there till search made; but it seems the party that made the suggestion is punishable in such case; for as to him the breaking of the door is *in eventu* lawful or unlawful—to wit, lawful if the goods are there; unlawful if not there.—*H. H.* 151. On the return of the warrant, if it appear the goods were not stolen, they are to be restored to the possessor; if it appear they were stolen, they are not to be delivered to the proprietor, but deposited in the hands of the constable; to the end that the party robbed may proceed, by indicting and convicting the offender, to have restitution.—2 *H. H.* 151. As touching the *party* that had the custody of the goods, if they were not stolen, then he is to be discharged; if stolen, but not by him, but by another, that sold or delivered them to him, if it appear that he was ignorant that they were stolen, he may be discharged as an offender, and bound over to give evidence as a witness against him that stole them; if it appear that he knew they were stolen, he must be committed, or bound over to answer the felony.—2 *H. H.* 152.

By Con. Stat. 22 V. c. 99, § 2, (a) if any credible witness proves upon oath before a justice of the peace, that there is reasonable cause to suspect that any property on or with respect to which any offence punishable by indictment or summary conviction has been committed, is in any dwelling-house, out-house, garden, yard, or other place, the justice may grant a warrant to search such dwelling house, &c., for such property, as in the case of stolen goods. § 3. In case any person to whom any property is offered to be sold, pawned or delivered, has reasonable cause to suspect that any such offence has been committed on or with respect to such property, he may, and if in his power shall, apprehend and forthwith carry before a justice of the peace, the party offering the same, together with such property, to be dealt with according to law.

By C. Stat. 22 V. c. 102, § 7, search warrants may be issued on a Sunday as well as any other day.

SEAMEN.

By C. Stat. 22 V. c. 91, § 33, any person who unlawfully and with force, hinders any seaman from working at or exercising his lawful trade, business or occupation, or beats, wounds, or uses any other violence to him with intent to deter or hinder him from working at or exercising the same, may be convicted thereof before two justices of the peace, and kept to hard labour in the common gaol, or house of correction, for any term not exceeding three months.

SEDITION.

Sedition is understood to comprise within its meaning all offences against the Queen and the government, which are not capital, and do not amount to the crime of high treason. It includes all offences of like tendency with treason, but without any such direct intent or overt act of the party formed or executed as to bring it within the more serious offence. All contempts against the Queen and her government, and riotous assemblies for political purposes, may be ranked under the head of sedition; though it has been held, that when the object of the riot is to redress a general grievance, as to pull down *all* enclosures, or to reform religion, or the like, it may then amount to an overt act of high treason; being in the nature of a levying of war

(a) A similar provision is contained in the C. Stat. 22 V. c. 102, respecting the duties of justices of the peace out of sessions."—§ 11.

against the Queen. And in general, it may suffice to remark, that all contemptuous, indecent or malicious observations, upon the person of the Queen or her government, whether by writing or speaking, or by tokens calculated to lessen her in the esteem of her subjects, to weaken her government, raise jealousies of her amongst the people, will fall under the head of sedition; as well as all direct or indirect acts or threats, tending to overcome her measures, or disturb the course of her government, not amounting to overt acts of treason. All these attempts are highly criminal at common law, and punishable with fine and imprisonment.—4 *Bl. Com.* 147; 1 *Haw. c.* 65, § 6; 1 *E. P. C.* 76.

SERVANTS.

A servant may be discharged at a moment's warning for immorality or gross misconduct.—*R. v. Brampton, Cald*; or for wilful disobedience of orders.—*Spain v. Amot*, 2 *Star. Rep.* 256. And if a servant, of his own accord, go away before his time expires, he runs the risk of losing all his wages—*Dalt. c.* 58, p. 141; and when discharged for misconduct, will be entitled only to wages due at the time of his discharge.—3 *Esp.* 235. If a servant, however, not having been guilty of any misconduct, be discharged without warning, he is entitled in such case, if hired by the month, to a month's wages above those that may be due.—2 *Sel. N. P.* 1032.

See also title "*Master and Servant.*"

SESSIONS.

See "*General Quarter Sessions.*"

SHEEP.

By Stat. 27, V. c. 20, § 1, it shall be lawful for any person to kill any dog in the act of pursuing or worrying, or destroying sheep elsewhere than on land belonging to the owner of such dog.

§ 2. On complaint made in writing on oath before any justice of the peace for any city, town, or county, or union of counties in Upper Canada, that any person residing in such city, town, or county, or union of counties, owns or has in his possession a dog which has within six months previous worried and injured or destroyed any sheep, such justice may issue his summons, directed to such person, stating shortly the matter of such complaint, and requiring such person to appear before him at a certain time and place therein stated, to

answer to such complaint, and to be further dealt with according to law.

§ 3. The proceedings on such complaint and summons shall be regulated by the act respecting the duties of justices of the peace out of sessions, in relation to summary convictions and orders which shall apply to cases under this act.

§ 4. In case any person is convicted, on oath of a credible witness, of owning or having in his possession a dog which has worried and injured or destroyed any sheep, the justice of the peace may make an order for the killing of such dog (describing the same according to the tenor of the description given in the complaint and in the evidence) within *three* days, and in default thereof may, in his discretion, impose a fine upon such person not exceeding twenty dollars with costs, and all penalties imposed under this act shall be applied to the use of the municipality in which the defendant resides.

§ 5. No conviction under the act shall be a bar to any action by the owner or possessor as aforesaid of any sheep for the recovery of damages for the injury done to such sheep, in respect of which such conviction is had.

§ 6. It shall not be necessary for the plaintiff in any action of damages for injury done by a dog to a sheep, to prove that the defendant was aware of the propensity of the dog to pursue or injure sheep; nor shall the liability of the owner or possessor as aforesaid of any dog, in damages for any injury done by such dog to any sheep, depend upon his previous knowledge of the propensity of such dog to injure sheep.

SHERIFF.

The sheriff is an officer of very great antiquity, his name being derived from the Saxon word *scirgerefa*, signifying the *reeve*, *bailiff*, or officer of the shire. He is called in Latin *vice-comes*, as being the deputy of the *earl* or *comes*, to whom the custody of the shires in England is said to have been committed at the first division of the kingdom into counties: but, though the sheriff be called *vice-comes*, yet he is entirely independent of the earl; the king, by his letters patent, committing *custodiam comitatus* to the sheriff, and to him alone.—1 *Bl. Com.* 339; 5 *Burn*, 230.

In this province, the sheriff is appointed by letters patent under the great seal, and holds his office during pleasure.

In his ministerial capacity the sheriff is bound to execute all process issuing from the king's courts of justice. In the commencement of civil causes he is to serve the writ,

to arrest, and to take bail: when the cause comes on for trial, he must summon and return the jury; when it is determined, he must see the judgment of the court carried into execution. In criminal matters he also arrests and imprisons; he returns the jury; he has the custody of the delinquent; and he is bound to execute the sentence of the court, even if it extend to death itself; and it is no excuse to the sheriff to return that he could not execute any process because of resistance, for he may take with him, in every case of need, the power of the county, to enforce obedience to the king's writs or other processes of law.—13 *Ed.* 1., stat. 1, c. 39. He is also compelled to execute the warrant of a justice of the peace, if upon any extraordinary occasion it should be directed to him—though magistrates' warrants are, in practice, usually directed to constables, and other inferior officers; but he need not go in person to execute, but may authorise another to do so,—2 *Haw.* c. 13, § 29. He is also bound to attend to the sessions of the peace, there to return his precepts; to take charge of the prisoners; to receive fines for the king, and the like.—2 *Haw.* c. 8, § 45. And for any default in executing the writs or precepts of the sessions, he is punishable by the justices in sessions as for a contempt.—*Id.* c. 22, § 2.

The sheriff has also the keeping of the gaols, and is answerable for all escapes suffered by the gaolers, to the king, if it be a criminal matter; or in a civil cause, to the party injured; and by provincial statute U. C. Stat. 22 V. c. 127, § 1, he has the appointment of the gaoler.

As the *King's bailiff*, it is the business of the sheriff to preserve the rights of the king within his bailiwick.—*Fortescue*, c. 24. He must seize to the king's use, all lands devolved to the Crown by *attainder* or *escheat*.—*Bl. Com.* 344.

By 3 G. I., c. 15, § 17, a sheriff guilty of extortion forfeits to the party grieved, treble damages, and double the sum extorted, and also £200.

When a new sheriff is appointed and sworn, his predecessor, (or in case of his decease, his under sheriff) sets over by indenture all the prisoners severally by their names, together with all the writs, wherein must be comprehended all the actions which the old sheriff had against every prisoner; and till the delivery of the prisoners to the new sheriff they remain in custody of the old sheriff.—*Wood, Inst.* 6, 1, c. 7.

By Stat. 27, 28 V. c. 28, § 1, the U. C. Stat. 22 V. c.

§ 38, respecting the office of sheriff, is repealed. § 2. The Governor is authorised to appoint any fit and proper person to the office, who shall hold such office during pleasure only. § 4. And take the oath of allegiance before he enters upon the duties of his office. § 6. And execute a bond (within one month after his appointment) to her Majesty, with two or four sureties, in such penalty as shall be fixed by order in council, and enter into a joint and several covenant in duplicate, with two or four sureties, for such amount as may also be determined by order in council, with affidavit of justification attached. § 7. One to be filed with the clerk of the peace and the other transmitted to the provincial secretary. § 19. Such covenant to be open to public inspection on payment of twenty-five cents. § 29. No sheriff or deputy sheriff shall directly or indirectly keep a shop, or trade, &c. § 30. Nor purchase any goods, chattels, lands, or tenements by him sold under execution. § 31. If any bailiff or constable entrusted with the execution of any process, shall wilfully misconduct himself in the execution of the same, or make a false return thereto, unless by consent of the party in whose favour such process issued, he shall be guilty of misdemeanor, and on conviction be liable to fine and imprisonment in the discretion of the court, and be answerable for damages. § 47. In case of death, the deputy sheriff shall continue to act until another sheriff is appointed. § 48. Every sheriff shall make quarterly returns to the minister of finance of all fines, penalties, and forfeitures levied, and the application thereof, and pay over to the proper officer the amount collected by him within twenty days after collection, under the like penalty as provided with regard to justices of the peace by the U. C. Stat. 22 V. c. 124.

For other provisions and forms of bond, covenant, &c., see the act.

SHIPS.

By C. Stat. 22 V. c. 93 § 7, If any person unlawfully and maliciously sets fire to, casts away or in anywise destroys any ship or vessel, either with intent to murder any person, or whereby the life of any person shall be endangered, such offender shall be guilty of felony, and shall suffer death. § 8. If any person unlawfully exhibits any false light or signal, with intent to bring any ship or vessel into danger, or unlawfully and maliciously does any thing to the immediate destruction of any ship or vessel in distress, such offender shall be guilty of felony, and shall suffer death.

§ 9. If any person unlawfully and maliciously sets on fire to or in anywise destroys any ship or vessel; whether the same be completed or in an unfinished state; or unlawfully and maliciously sets fire to, casts away, or in anywise destroys 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 the underwriter of any policy of insurance upon such ship or vessel, or on the freight thereof, or on any goods on board the same, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any other term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years. § 11. Any attempt to damage or destroy any vessel by explosive substance is made felony, and punishable by imprisonment in the penitentiary for not more than seven, nor less than two years; or in the common gaol for less than two years.

See also "*Steam-Vessels.—Vessels.—Wreck.*"

SHOP-KEEPERS.

See "*Spirituous Liquors.*"

SOLDIERS.

By statute 2 & 3 Anne, intituled, "An Act for punishing mutiny, desertion, and false musters, and for better payment of the army, and their quarters," &c., it is enacted, that if any officer or soldier in her Majesty's army shall either upon land, out of England, or upon sea, hold correspondence with any rebel or enemy of her Majesty, or give them advice or intelligence, either by letters, messages, signs or tokens, or any manner of way whatsoever, or shall treat with such rebels or enemies, or enter into any condition with them, without her Majesty's license, or license of the general, lieutenant-general or chief commander, then every such person, so offending, shall be deemed and adjudged to be guilty of high treason, and suffer such pains and penalties as in case of high treason.

See also "*Deserters*"

SPIRITUOUS LIQUORS.

See title "*Inns, Inn-Keepers.*"

STANDARD MEASURE.

By C. Stat. 22 V. c. 103, § 1, the hundred weight for

weighing all goods, wares and other commodities, sold by the hundred weight or ton weight in this province, shall consist of 100 pounds avoirdupois, and not of 112 pounds, as before the 4th May, 1859: and the ton weight shall consist of twenty hundred weights, or 2000 pounds avoirdupois, and not 2240 pounds, as before the said day.

§ 3. The following shall be the standard weights, which in all cases shall be held equal to the Winchester bushel of the grain, pulse or seeds, opposite to which they are set:—

Wheat.....	Sixty pounds.
Indian corn.....	Fifty-six pounds.
Rye.....	Fifty-six pounds.
Peas.....	Sixty pounds.
Barley.....	Forty-eight pounds.
Oats.....	Thirty-four pounds.
Beans.....	Sixty pounds.
Clover seed.....	Sixty pounds.
Timothy seed.....	Forty-eight pounds.
Buck wheat.....	Forty-eight pounds.

§ 4. The following shall be the standard weights, which in all cases shall be held equal to the Winchester bushel of the articles opposite to which they are respectively set, viz:—

Potatoes, turnips, carrots, parsnips, beets and onions.....	Sixty pounds.
Flax seed.....	Fifty pounds.
Hemp seed.....	Forty-four pounds.
Blue grass seed.....	Fourteen pounds.
Castor beans.....	Forty pounds.
Salt.....	Fifty-six pounds.
Dried apples.....	Twenty-two pounds.
Dried peaches.....	Thirty-three pounds.
Malt.....	Thirty-six pounds.

§ 5. Upon any sale and delivery of any description of grain, pulse or seeds, or other articles mentioned in this act, and in every contract for the sale or delivery of any such, the bushel shall be taken and intended to mean the weight of a bushel as regulated by this act, and not a bushel in measure, or according to any or greater or less weight, unless the contrary appears to have been agreed upon between the parties.

§ 8. The provisions of chapter 56 of the Consolidated Statutes for Upper Canada, (respecting weights and measures,) shall be subject to and controlled by those of this act, as if they were incorporated in the said act.

See also "*Weights and Measures.*"

STAMP DUTIES.

By Stat. 27, 28 V. c. 4, § 1, the following duties are imposed:

On each promissory note, draft, or bill of exchange, executed singly, for the first \$100, a duty of.....	3c.
For each additional \$100, or fraction thereof.....	3c.
On a draft or bill of exchange executed in duplicate, for the first \$100, on each part, a duty of.....	2c.
For each additional \$100 or fraction thereof.....	2c.
If executed in more than two parts, on each part for the first \$100.....	1c.
For each additional \$100 or fraction thereof.....	1c.

Interest payable at the maturity of every bill; &c., to be counted as part of the amount.

§ 2. The duty to be paid by affixing thereto an adhesive stamp to the value of such duty, upon which the signature of the maker or drawer, or in case of a foreign draft or bill, of the acceptor or endorser in this province, or his initials, or some integral or material part of the instrument shall be written, so as (as far as practicable) to identify each stamp with the instrument.

§ 3. Every bill, draft, order or instrument—

For the payment of any sum of money by a bill or promissory note, whether such payment be required, to be made to the bearer or order.

Every document usually termed a letter of credit, or whereby any person is entitled to have credit with, or to receive from or draw upon any person for any sum of money,—and every receipt for money, given by any bank or person, which shall entitle the person paying such money, or the bearer of such receipt, to receive the like sum from any third person,

Shall be deemed a bill of exchange or draft chargeable with duty under this act.

§ 4. Bills, &c., drawn by or on officers of the government, shall be free of duty; also bank notes, cheques, post office orders, and municipal debentures and coupons.

§ 9. Penalty for not affixing proper stamps to be \$100, and the instrument to be invalid. But subsequent parties may make the same valid by affixing stamps for double duty.

§ 10. Affixing stamps previously used to be a misdemeanor, and a penalty incurred of \$500.

§ 13. If any person forges, counterfeits or imitates, or procures to be forged, &c., any such stamp; or knowingly

uses, offers, sells or exposes to sale any such forged, counterfeited or imitated stamp, or engraves, cuts, sinks or makes any plate, die or other thing whereby to forge, counterfeit or imitate such stamp, except by lawful permission, or has possession of any such plate, die, &c., without such permission had, or has possession of any such plate, die, &c., lawfully engraved, cut or made, or tears off or removes from any instrument, on which a duty is payable under this act, any stamp by which such duty has been wholly or in part paid, or removes from any such stamp any writing or mark indicating that it has been used, such person shall be guilty of felony, and shall, on conviction, be liable to imprisonment in the penitentiary for any term not exceeding twenty-one years; and every such offence shall be forgery within the meaning of the Consolidated Statutes 22 V. c. 94.

On Law Proceedings.

By C. Stat. 27, 28 V. c. 5, § 2, stamps are to be used in lieu and in payment of law fees and charges. § 13. Every matter and proceeding not duly stamped shall be void. § 20. Stamps to be obliterated by the proper officer after the same have been used. § 29. Every person who shall knowingly issue, receive, procure or deliver, or who shall knowingly serve or execute any writ, rule, order, matter or proceeding, upon which any fee is due or payable to the Crown, without the same being duly stamped, shall be subject, for the first offence, to a fine not exceeding \$10;—for the second offence, a fine not exceeding \$50;—and for the third and every subsequent offence, a fine of \$200; and in default of payment, to an imprisonment not exceeding one month for the first, three months for the second, and one year for the third and every subsequent offence.

Fines.—§ 31. Recoverable before any court of competent jurisdiction, at the instance of the Crown officer.

Copying or re-issuing.—§ 32. Copying or imitating any stamp issued under this act shall be forgery, and punishable as such; and the using again or re-issuing any stamp which has been obliterated and cancelled, shall be a misdemeanor punishable by fine not exceeding \$20, or by imprisonment not exceeding two months, or both, at the discretion of the court.

STATUTE LABOUR.

By the U. C. Municipal Act, 22 V. c. 54, § 330, the council of every township, town, and incorporated village, may pass by-laws:—1. For empowering any person (resi-

dent or non-resident) liable to statute labour within the municipality, to compound for such labour, for any term not exceeding five years, at any sum not exceeding one dollar for each day's labour.

2. For providing that a sum of money, not exceeding one dollar for each day's labour, may or shall be paid in commutation of such statute labour.

3. For increasing or reducing the number of days' labour, to which the persons rated on the assessment roll or otherwise shall be liable, in proportion to the statute labour to which such persons are, in respect of the amounts at which they are assessed or otherwise, respectively liable.

4. For enforcing the performance of statute labour, or payment of a commutation in money in lieu thereof, when not otherwise provided by law.

5. For regulating the manner and the divisions in which statute labour or commutation money shall be performed or expended.

By the U. C. Assessment Act, 22 V. c. 55, § 82, every person assessed upon the assessment roll of a township shall, if his property is assessed—

At more than \$200 be liable to two days' labour.

At more than \$200 but not more than \$400 to 3 days' labour.

“	400	“	600 to 4	“
“	600	“	800	5 “
“	800	“	1,200	6 “
“	1,200	“	1,600	7 “
“	1,600	“	2,000	8 “
“	2,000	“	2,400	9 “
“	2,400	“	3,200	10 “
“	3,200	“	4,000	12 “

And for every 800 above 4,000 1 “

But the council of any township, town or village, by a by-law operating generally and ratably, may reduce or increase the number of days labour in proportion to the amount at which he is assessed.

§ 85. Where no by-law has been passed the statute labour in the townships against non-residents shall be commuted at fifty cents per day.

Cities, &c.—§ 79. Every male inhabitant in a city, town, or village, of the age of 21 and upwards, and under 60, (and not otherwise exempt) who has not been assessed upon the roll, or whose taxes do not amount to *two dollars*, shall instead of such labour be taxed at two dollars yearly therefor, to be levied and collected as other local taxes.

STEAMBOAT.

By Con. Stat. 22 V. c. 45, § 1, the Governor in council is authorised to appoint inspectors. § 2. Inspectors to form a board. § 3. The board to meet once a year at least, in Quebec and Toronto, and at such other places as the chairman may appoint. § 3. With power to frame regulations.

Inspection.—§ 4. The hull, boiler, and machinery of every steamboat shall be inspected once a year at least, under a penalty of \$400. § 8. The inspector authorised to examine persons on board any steamer, as to the boiler or machinery, or any accident that may have incurred, and such persons are to answer truly or in default incur a penalty of \$40. § 10. The owner or person in charge, within 48 hours, shall report to one of the inspectors any material damage to the boiler or machinery, under the penalty of \$200 per diem.

Explosion.—§ 11. Every steamboat shall be furnished with a steam gauge accessible to the passengers, shewing the pressure of the steam. 2. Safety-valve to be opened, so as to reduce the pressure to certain limits when the boat stops, under the penalty of \$200. 3. Any master or engineer permitting the pressure to exceed the limits shall incur a penalty of \$200. § 12. Steam gauge to be fixed under the order of the inspector. § 13. Water gauges also to be provided, shewing the water level in the boiler. § 14. Safety valves to be examined by the inspector. § 15. Condensing engines to have a bilge, injection, valve and pipe.

Boats.—§ 16. Steamboats to be provided with two long boats, or yawls, sufficient to contain twenty persons, if the tonnage of such steamboat do not exceed 200 tons, and not less than three such boats, if over 200 tons, under a penalty of \$200. § 17. If the steamboat be over a hundred tons burthen, one of the boats shall be a life boat, and the boats to be well furnished with oars and other necessary apparatus.

Precautions against Fire.—§ 18. Steamboats to be provided with at least 25 fire buckets and five axes, and a good life-preserver for each passenger. § 19. Combustible materials to be kept at a distance of six inches at least from the heated metal. § 20. Steamboats to be provided with at least three double acting force pumps, kept ready for immediate use. 2. Vessels under certain tonnage not required to have so many. § 21. A valve for blowing steam into the hold in case of fire to be provided. § 22. Means of escape to the upper deck to be provided. § 23. A painted notice to be posted up for the information of passengers as to the number of pumps, boats, life-preservers, &c.

Inspector's Duties.—§ 27. To report to the Governor in council, if he considers the steamboat unsafe or unfit to carry passengers. Order in council to be made for stopping the running of such boat until permission given, under the penalty of seizure and forfeiture of the boat.

Damages.—§ 33. If any damage to any person or property is sustained in consequence of the non-observance of any of the provisions of this act, the owner, master or person in charge, shall be held liable in all proceedings, civil or criminal.

Penalties.—§ 34. For any contravention of this act, or any order in council, the owner or master shall incur a penalty of not more than \$200, nor less than \$40.

Recovery of Penalties.—§ 35. All penalties under this act may be recovered in the name of her Majesty by any inspector, or party aggrieved by any act, neglect or omission, on the evidence of one credible witness before any two justices of the peace, and in default of payment of such penalty, such justices may commit the offender to gaol for any period not exceeding three months: and all penalties so recovered shall form part of the "Steamboat Inspection Fund."

Foreign Vessels.—§ 36. This act not to apply in such cases.

Provisions for Upper Canada only.—§ 37. Every steamboat carrying passengers shall be provided with good and sufficient gang-boards, with substantial hand rails. The gang-boards to be firmly secured to the vessel and wharf or landing place, for the safe and convenient transit of passengers, with good and sufficient lights in the night time. § 38. The owner or occupier of such wharf or landing place shall also, in the night time, cause to be shewn conspicuously, on such wharf or landing place, and at every angle or turn thereof, a good and sufficient light. § 39. The night to extend from one hour after sunset, till one hour before sunrise, at all seasons of the year. § 40. Any person commanding or having charge of any steamboat, schooner, or other vessel, navigating the waters of any of the lakes or rivers in Upper Canada, who offends against the 37th § of this act, shall be liable to a penalty of \$20 and costs, to be recovered on conviction before any two justices, upon the oath of any one credible witness. § 41. In default of payment of the penalty and costs, the justices, or one of them, shall commit the offender to the gaol of the county for a period of not more than 30 days, unless such penalty and costs are sooner paid.

Civil Remedies.—§ 42. The owners of steamboats, &c.,

shall be also liable for damages sustained by any person, from any accident arising from non-compliance with the provisions of this act, such damages to be recoverable in any of the superior courts of law.

STILLS.

See "*Distillers.*"

SUMMARY CONVICTION.

Under this title it will be sufficient to refer the reader to the different heads or titles of the several matters set forth in this work, which justices of the peace are authorised to dispose of summarily, and to notice that in all such cases, where the statute creating the offence prescribes no particular form of procedure, the case may be disposed of under the following act, C. Stat. 22 V. c. 103, respecting the duties of justices of the peace, in relation to summary convictions and orders. But where the act in question prescribes some particular mode of procedure, it will of course be proper to adhere to the requirements of the act in question.

C. Stat. 22 V. c. 103.

Summons.—§ 1. In all cases where an information is laid before one or more of Her Majesty's justices of the peace, for any territorial division of the province, that any person has committed or is suspected to have committed any offence or act within the jurisdiction of such justice or justices, for which he is liable by law, upon a summary conviction for the same before a justice or justices of the peace, to be imprisoned or fined or otherwise punished; and also in all cases where a complaint is made to any such justice or justices, upon which he or they have authority by law to make any order for the payment of money or otherwise, such justice or justices of the peace may issue his or their summons (A), directed to such person, stating shortly the matter of the information or complaint, and requiring him to appear at a certain time and place, before the same justice or justices, or before such other justice or justices, for the same territorial division as may then be there, to answer to the said information or complaint, and to be further dealt with according to law. § 2. Every such summons shall be served by a constable or other peace officer, or other person to whom the same shall be delivered, upon the person to whom it is directed, by delivering the same to the party personally, or by leaving the same with some person for him, at his last

or most usual place of abode. § 3. The constable, peace officer, or person who serves the same, shall attend at the time and place, and before the justices in the said summons mentioned, to depose, if necessary, to the service thereof.

§ 4. But nothing hereinbefore contained shall oblige any justice or justices of the peace to issue any such summons in any case where the application for any order of justices is by law to be made *ex parte*. § 5. No objection shall be taken or allowed to any information, complaint or summons, for any alleged defect therein, in substance or in form, or for any variance between such information, complaint or summons, and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint, but if any such variance appears to the justice or justices present and acting at such hearing to be such that the party summoned and appearing has been thereby deceived or misled, such justice or justices may, upon such terms as he or they think fit, adjourn the hearing of the case to a future day.

Warrant.—§ 6. If the person served with a summons does not appear before the justice or justices at the time and place mentioned in such summons, and it be made to appear to such justice or justices, by oath or affirmation, that such summons was duly served within what the justice or justices deem a reasonable time, before the time therein appointed for appearing to the same, then such justice or justices, upon oath or affirmation being made before him or them, substantiating the matter of such information or complaint to his or their satisfaction, may, if he or they think fit, issue his or their warrant (B) to apprehend the party so summoned, and to bring him before the same justice or justices, or before some other justice or justices of the peace in and for the same territorial division, to answer to the said information or complaint, and to be further dealt with according to law; or upon such information being laid as aforesaid for any offence punishable on conviction, the justice or justices before whom such information is laid, upon oath or affirmation being made before him or them substantiating the matter of such information to his or their satisfaction may, if he or they think fit, instead of issuing such summons as aforesaid, issue in the first instance his or their warrant (C) for apprehending the person against whom such information has been so laid, and bringing him before the same justice or justices, or before some other justice or justices of the peace in and for

the same territorial division, to answer to the said information, to be further dealt with according to law. § 7. If where a summons has been issued as aforesaid, and upon the day and at the place therein appointed for the appearance of the party so summoned, the party fails to appear in obedience to the summons, then if it be proved upon oath or affirmation to the justice or justices present, that a summons was duly served upon the party a reasonable time before the time so appointed for his appearance as aforesaid, such justice or justices of the peace may proceed *ex parte* to the hearing of such information or complaint, and adjudicate thereon as fully and effectually to all intents and purposes as if the party had personally appeared before him or them in obedience to the said summons.

Form of Warrant, and Backing.—§ 8. Every warrant to apprehend a defendant, that he may answer to an information or complaint as aforesaid, shall be under the hand and seal, or hands and seals of the justice or justices issuing the same, and may be directed to all or any of the constables or other peace officers of the territorial division within which the same is to be executed, or to such constables and all other constables within the territorial division within which the justice or justices issuing such warrant hath or have jurisdiction, or generally to all the constables within such last mentioned territorial division; and it shall state shortly the matter of the information or complaint on which it is founded, and shall name or otherwise describe the person against whom it has been issued, and it shall order the constable or other peace officer to whom it is directed, to apprehend the defendant, and to bring him before one or more justice or justices of the peace of the same territorial division, as the case may require, to answer to the said information or complaint, and to be further dealt with according to law. § 9. It shall not be necessary to make such warrant returnable at any particular time, but the same may remain in full force until executed; and such warrant may be executed by apprehending the defendant at any place in the territorial division within which the justices who issued the same have jurisdiction, or, in case of fresh pursuit, at any place in the next adjoining territorial division, within seven miles of the border of such first mentioned territorial division, without having such warrant backed as hereinafter mentioned. § 10. In all cases where the warrant is directed to all constables or peace officers in the territorial division within which the justice or justices who issued the same have jurisdiction, any

constable or peace officer for any place within the limits of such jurisdiction may execute such warrant in like manner as if the warrant was directed especially to such constable by name, and notwithstanding that the place in which such warrant is executed, be not within the place for which he is such constable or a peace officer. § 11. If the person against whom any such warrant has been issued be not found within the jurisdiction of the justice or justices by whom it is issued, or if he escapes, goes into, resides, or is supposed or suspected to be in any place within this province, whether in Upper or Lower Canada, out of the jurisdiction of the justice or justices who issued the warrant, any justice of the peace, within whose jurisdiction such person may be or be suspected to be as aforesaid, upon proof upon oath of the hand-writing of the justice or justices issuing the warrant, may make an endorsement upon it, signed with his name, authorising the execution of the warrant within his jurisdiction; and such endorsement shall be a sufficient authority to the person bringing the warrant, and to all other persons to whom it was originally directed, and to all constables or other peace officers of the territorial division wherein the endorsement has been made, to execute the same in any place within the jurisdiction of the justice of the peace endorsing the same, and to carry the offender, when apprehended, before the justice or justices who first issued the warrant, or some other justice having the same jurisdiction. § 12. No objection shall be taken or allowed to any warrant issued as aforesaid for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the informant or complainant; but if it appears to the justice or justices present and acting at such hearing, that the party apprehended under such warrant has been deceived or misled by any such variance, such justice or justices may, upon such terms as he or they think fit, adjourn the hearing of the case to some future day, and in the meantime commit (D.) the said defendant, to the common gaol, house of correction, lock-up house, or other prison or place of security within the territorial division, or place within which the said justice or justices may be acting, or to such other custody as the said justice or justices think fit, or may discharge him upon his entering into a recognizance, (E.) with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing is so adjourned. § 13. In all cases where a defendant is discharged upon

recognizance as aforesaid, and does not afterwards appear at the time and place in such recognizance mentioned, the justice who took such recognizance, or any justice or justices who may then be there present, having certified (F.) upon the back of the said recognizance the non-appearance of the defendant, may, in Upper Canada, transmit such recognizance to the clerk of the peace of the territorial division within which such recognizance was taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the said defendant.

Description of Property.—§ 14. In any information or complaint or proceedings thereon, in which it is necessary to state the ownership of any property belonging to or in the possession of partners, joint tenants, parceners or tenants in common, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another or others, as the case may be; and whenever in any information or complaint, or the proceedings thereon, it is necessary to mention, for any purpose whatsoever, any partners, joint partners, parceners or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and whenever in any such information or complaint, or the proceedings thereon, it is necessary to describe the ownership of any work or building made, maintained, or repaired at the expense of any territorial division or place, or of any materials for the making, altering or repairing the same, they may be therein described as the property of the inhabitants of such territorial division or place.

Aiders and Abettors.—§ 15. Every person who aids, abets, counsels, or procures the commission of any offence which is punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable, on conviction, to the same forfeiture and punishment as the principal offender, and may be proceeded against and convicted either in the territorial division or place where the principal offender may be convicted, or in that in which the offence of aiding and abetting, counselling or procuring was committed.

Summoning Witnesses.—§ 16. If it be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence on behalf of the prosecutor, or complainant, or defendant, and will

not voluntarily appear as a witness at the time and place appointed for the hearing of such information or complaint, such justice shall issue his summons (G. 1.) to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons, before the said justice, or before such other justice or justices of the peace for the same territorial division as may then be there, to testify what he knows concerning the said information or complaint. § 17. If any person so summoned neglects or refuses to appear at the time and place appointed by the said summons, and no just excuse be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode) the justice or justices before whom such person should have appeared, may issue a warrant (G. 2.) under his or their hands and seals, to bring and have such person, at a time and place to be therein mentioned, before the justice who issued the said summons, or before such other justice or justices of the peace for the same territorial division as may be then there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore mentioned, in order to its being executed out of the jurisdiction of the justice who issued the same. § 18. If such justice be satisfied, by evidence upon oath or affirmation, that it is probable that such person will not attend to give evidence without being compelled so to do, then instead of issuing such summons he may issue his warrant (G. 3.) in the first instance, and which, if necessary, may be backed as aforesaid. § 19. If on the appearance of such person so summoned before the said last mentioned justice or justices, either in obedience to the summons, or upon being brought before him or them by virtue of the said warrant, such person refuses to be examined upon oath or affirmation concerning the premises, or refuses to take such oath or affirmation, or having taken such oath or affirmation, refuses to answer such questions concerning the premises as are then to be put to him, without offering any just excuse for such refusal, any justice of the peace then present, and having jurisdiction, may by warrant (G. 4.) under his hand and seal, commit the person so refusing to the common gaol or house of correction for the territorial division where such person then is, there to remain and be imprisoned for any time not exceeding ten days, unless he in the meantime consents to be examined and to answer concerning the premises.

Complaint in Writing.—§ 20. In all cases of complaints upon which a justice or justices of the peace may make an order for the payment of money or otherwise, such complaint shall be in writing, and on oath, unless it is enacted or provided to the contrary by some particular act of parliament upon which such complaint is framed.

Variance.—§ 21. In all cases of information for offences or acts punishable upon summary conviction, any variance between such information and the evidence adduced in support thereof as to the time at which such offence or act is alleged to have been committed, shall not be deemed material, if it be proved that such information was in fact laid within the time limited by law for laying the same; and any variance between such information and the evidence adduced in support thereof, as to the place in which the offence or act is alleged to have been committed, shall not be deemed material, provided the offence or act be proved to have been committed within the jurisdiction of the justice or justices by whom such information is heard and determined. § 22. If any such variance, or any other variance between the information and the evidence adduced in support thereof, appears to the justice or justices present and acting at the hearing, to be such that the party charged by such information has been thereby deceived or misled, such justice or justices, upon such terms as he or they think fit, may adjourn the hearing of the case to some future day, and in the meantime commit (D.) the said defendant to the common gaol, house of correction or other prison, lock-up house or place of security, or to such other custody as the said justice or justices think fit, or may discharge him upon his entering into a recognizance (E.) with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing is adjourned. § 23. In all cases where a defendant has been discharged upon recognizance as aforesaid, and does not afterwards appear at the time and place in such recognizance mentioned, the said justice who took the said recognizance, or any other justice or justices who may then be there present, having certified (F.) upon the back of the said recognizance the non-appearance of the defendant, may in Upper Canada transmit such recognizance to the clerk of the peace of the territorial division within which such recognizance was taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the said defendant.

Complaint on Oath.—§ 24. All cases of complaint upon which a justice or justices of the peace are authorised by law to make an order, and all cases of information for any offence or act punishable upon summary conviction, (unless some particular act of parliament otherwise permits,) shall be made or laid on oath or affirmation as to the truth thereof.

§ 25. In all cases of informations where the justice or justices receiving the same thereupon issue his or their warrant in the first instance, to apprehend the defendant as aforesaid; and in every case where the justice or justices issue his or their warrant in the first instance, the matter of such information shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such warrant shall be issued, and every such complaint shall be for one matter of complaint only, and not for two or more matters of complaint, and every such information shall be for one offence only, and not for two or more offences, and every such complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney, or other person authorised in that behalf.

Limitation of Time.—§ 26. In all cases where no time is specially limited for making any such complaint or laying any such information, in the act or acts of parliament relating to the particular case, such complaint shall be made, and such information shall be laid within three months from the time when the matter of such complaint or information arose. (a)

Hearing.—§ 27. Every such complaint and information shall be heard, tried, determined and adjudged by one or two or more justice or justices of the peace, as may be directed by the act or acts of parliament upon which such complaint or information is framed, or by any other act or acts of parliament in that behalf. § 28. If there be no such direction in any act of parliament, then such complaint or information may be heard, tried, determined and adjudged by any one justice for the territorial division, where the matter of such information or complaint arose. § 29. The room or place in which such justice or justices sit to hear and try any such complaint or information, shall be deemed an open and public court, to which the public generally may have access, so far as the same can conveniently contain them. § 30. The party against whom such complaint is

(a) A similar provision in C. Stat. 22 V. c. 99, § 124.

made or information laid, shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf. § 31. Every complainant or informant in any such case shall be at liberty to conduct the complaint or information, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

Non-appearance by Defendant.—§ 32. If at the day and place appointed in and by the summons aforesaid for hearing and determining the complaint or information, the defendant, against whom the same has been made or laid, does not appear when called, the constable or other person who served him with the summons in that behalf, shall declare upon oath in what manner he served the said summons; and if it appear to the satisfaction of the justice or justices that he duly served the said summons, in that case such justice or justices may proceed to hear and determine the case in the absence of such defendant, or the said justice or justices, upon the non-appearance of such defendant, as aforesaid, may, if he or they think fit, issue his or their warrant in manner hereinbefore directed, and shall adjourn the hearing of such complaint or information until the said defendant be apprehended. § 33. When the defendant has been apprehended under such warrant he shall be brought before the same justice or justices, or some other justice or justices of the peace for the same territorial division, who shall thereupon, either by his or their warrant (H.,) commit the defendant to the common gaol; house of correction, or other prison, lock-up house, or place of security, or if he or they think fit, verbally to the custody of the constable or other person who apprehended him, or to such other safe custody as he or they deem fit, and may order the said defendant to be brought up at a certain time and place before such justice or justices, of which said order the complainant or informant shall have due notice.

Appearance by Defendant.—§ 34. If upon the day, and at the place so appointed as aforesaid, the defendant appears voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the said justice or justices by virtue of a warrant, then, if the complainant or informant having had due notice as aforesaid, does not appear by himself, his counsel, or attorney, the justice or justices shall dismiss the complaint or information, unless for some reason he or they think proper to adjourn the hearing of the same until some other day, upon such terms as he or they think fit,

in which case such justice or justices may commit (D.) the defendant in the meantime to the common gaol, house of correction, or other prison, lock-up house, or place of security, or to such other custody as such justice or justices think fit, or may discharge him upon his entering into a recognizance (E.) with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing may be so adjourned.

§ 35. If the defendant does not afterwards appear at the time and place mentioned in said recognizance, then, in Upper Canada, the justice who took the recognizance, or any justice or justices then there present, having certified (F.) on the back of the recognizance the non-appearance of the defendant, may transmit the recognizance to the clerk of the peace for the territorial division in which the recognizance was taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the defendant.

§ 36. If both parties appear, either personally or by their respective counsel or attorneys, before the justice or justices who are to hear and determine the complaint or information, then the said justice or justices shall proceed to hear and determine the same.

Proceedings at Hearing.—§ 37. In case the defendant be present at the hearing, the substance of the information or complaint shall be stated to him, and he shall be asked if he has any cause to shew why he should not be convicted, or why an order should not be made against him, as the case may be.

§ 38. If he thereupon admit the truth of the information or complaint, and shew no cause or no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, the justice or justices present at the said hearing shall convict him, or make an order against him accordingly.

§ 39. If he does not admit the truth of the information or complaint as aforesaid, the justice or justices shall proceed to hear the prosecutor or complainant and such witnesses as he may examine, and such other evidence as he may adduce in support of his information or complaint, and shall also hear the defendant and such witnesses as he may examine, and such other evidence as he may adduce in his defence, and also to hear such witnesses as the prosecutor or complainant may examine in reply, if such defendant has examined any witnesses or given any evidence other than to his, the defendant's, general character.

§ 40. The prosecutor or complainant shall not be entitled to

make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply as aforesaid. § 41. The justice or justices having heard what each party has to say as aforesaid, and the witnesses and evidence so adduced, shall consider the whole matter, and, unless otherwise provided, determine the same, and shall convict or make an order upon the defendant or dismiss the information or complaint, as the case may be. § 42. If he or they convict or make an order against the defendant a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction (I. 1, 3) or order (K. 1, 3) shall afterwards be drawn up by the said justice or justices in proper form, under his or their hand and seal, or hands and seals, and he or they shall cause the same to be lodged with the clerk of the peace, to be by him filed among the records of the general or quarter sessions of the peace. § 43. If the said justice or justices dismiss the information or complaint, such justice or justices may, when required so to do, make an order of dismissal of the same (L), and shall give the defendant on that behalf a certificate thereof (M), which certificate upon being afterwards produced shall, without further proof, be a bar to any subsequent information or complaint for the same matters respectively against the same party. § 44. If the information or complaint in any such case negative any exemption, exceptions, proviso, or condition in the statute on which the same is framed, it shall not be necessary for the prosecutor or complainant to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same.

Evidence.—45. Every prosecutor of any such information, not having any pecuniary interest in the result of the same, and every complainant in any such complaint as aforesaid, whatever his interest may be in the result of the same, shall be a competent witness to support such information or complaint; and every such witness, at any such hearing as aforesaid, shall be examined upon oath or affirmation, and the justices before whom any such witness appears for the purpose of being so examined, shall have full power and authority to administer to every such witness the usual oath or affirmation.

Adjournment.—§ 46. That before or during the hearing of any such information or complaint, any one justice, or the justices present may, in their discretion, adjourn the hearing

of the same to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties, or of their respective attorneys or agents then present, and in the meantime the said justice or justices may suffer the defendant to go at large, or may commit (D) him to the common gaol, or house of correction, or other prison, lock-up house, or other place of security within the territorial division for which such justice or justices are then acting, or to such other safe custody as the said justice or justices think fit, or may discharge such defendant upon his recognizance (E,) with or without sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing or further hearing is adjourned. § 47. If at the time and place to which such hearing or further hearing has been adjourned, either or both of the parties do not appear personally or by his or their counsel or attorneys, respectively, before the said justice or justices, or such other justice or justices as may then be there, the justice or justices then there present may proceed to such hearing or further hearing as if such party or parties were present. § 48. If the prosecutor or complainant do not appear, the said justice or justices may dismiss the said information or complaint with or without costs, as to such justice or justices seem fit. § 49. In all cases where a defendant is discharged upon his recognizance as aforesaid, and does not afterwards appear at the time and place mentioned in such recognizance, the justice or justices who took the said recognizance, or any other justice or justices who may then be there present, having certified (F) on the back of the recognizance, the non-appearance of such accused party, may, in Upper Canada, transmit such recognizance to the clerk of the peace for the territorial division in which such recognizance was taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

Form of Conviction.—§ 50. In all cases of conviction, where no particular form of conviction is given by the statute creating the offence or regulating the prosecution for the same, and in all cases of conviction upon statutes hitherto passed, whether any particular form of conviction has been therein given or not, the justice or justices who convict may draw up his or their conviction, on parchment or on paper, in such one of the forms of conviction (I 1, 3,) as may be applicable to the case, or to the like effect. § 51. In case an order be made, and no particular form of order is given by

the statute giving authority to make such order, and in all cases of orders made under the authority of any statutes hitherto passed, whether any particular form of order is therein given or not, the justice or justices by whom such order is made, may draw up the same in such one of the forms of orders (K. 1, 3) as may be applicable to the case, or to the like effect. § 52. In all cases when, by an act of parliament, authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying any order of a justice or justices, the defendant shall be served with a copy of the minute of such order before any warrant of commitment or of distress is issued in that behalf, and such order or minute shall not form any part of such warrant of commitment or of distress.

Costs.—§ 53. In all cases of summary conviction or of orders made by a justice or justices of the peace, the justice or justices making the same, may, in his or their discretion, award and order in and by such conviction or order that the defendant shall pay to the prosecutor or complainant respectively such costs as to the said justice or justices seem reasonable in that behalf, and not inconsistent with the fees established by law to be taken on proceedings had by and before justices of the peace. § 54. In cases where such justice or justices, instead of convicting or making an order, dismiss the information or complaint, he or they, in his or their discretion, may in and by his or their order of dismissal, award and order that the prosecutor or complainant, respectively, shall pay to the defendant such costs as to the said justice or justices seem reasonable and consistent with law. § 55. The sums so allowed for costs shall in all cases be specified in the conviction or order, or order of dismissal, and the same shall be recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by the conviction or order is to be recovered. § 56. In cases where there is no such penalty or sum of money to be recovered as aforesaid, such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of such distress, by imprisonment, with or without hard labour, for any time not exceeding one month, unless the costs be sooner paid.

Warrant of Distress.—§ 57. Where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorising such conviction or order, the penalty,

compensation, or sum of money is to be levied upon the goods and chattels of the defendant, by distress and sale thereof, and also in cases where, by the statute in that behalf, no mode of raising or levying such penalty, compensation or sum of money, or of enforcing the payment of the same, is stated or provided, the justice or any one of the justices making such conviction or order, or any justice of the peace for the same territorial division may issue his warrant of distress (N 1, 2) for the purpose of levying the same, which said warrant of distress shall be in writing, under the hand and seal of the justice making the same.

§ 58. If, after delivery of such warrant of distress to the constable or constables to whom the same has been directed to be executed, sufficient distress cannot be found within the limits of the jurisdiction of the justice granting such warrant, then, upon proof being made upon oath of the handwriting of the justice granting such warrant, before any justice of any other territorial division, such justice shall thereupon make an endorsement (N. 3) on such warrant, signed with his hand, authorising the execution of such warrant within the limits of his jurisdiction, by virtue of which said warrant and endorsement the penalty or sum aforesaid and costs, or so much thereof as may not have been before levied or paid, shall be levied by the person bringing such warrant, or by the person or persons to whom such warrant was originally directed, or by any constable or other peace officer of such last mentioned territorial division, by distress and sale of the goods and chattels of the defendant therein.

§ 59. Whenever it appears to any justice, to whom application is made for any warrant of distress as aforesaid, that the issuing thereof would be ruinous to the defendant and his family, or whenever it appears to the said justice, by the confession of the defendant or otherwise, that he hath no goods and chattels whereon to levy such distress, then such justice, if he deems fit, instead of issuing a warrant of distress, may (O. 1, 2) commit the defendant to the common gaol, house of correction, or lock-up house in the territorial division, there to be imprisoned, with or without hard labour, for the time and in the manner the defendant could by law be committed, in case such warrant of distress had issued and no goods or chattels had been found whereon to levy the penalty or sum and costs aforesaid.

Liberation of Defendant.—§ 60. In all cases where a justice of the peace issues any such warrant of distress, he may suffer the defendant to go at large, or verbally, or by a

written warrant in that behalf, may order the defendant to be kept and detained in safe custody, until return has been made to such warrant of distress, unless the defendant gives sufficient security, by recognizance or otherwise, to the satisfaction of such justice, for his appearance before him at the time and place appointed for the return of such warrant of distress, or before such other justice or justices for the same territorial division as may then be there. § 61. In all cases where a defendant gives security by recognizance as aforesaid, and does not afterwards appear at the time and place in the said recognizance mentioned, the justice who hath the same, or any justice or justices who may then be there present, upon certifying (F.) on the back of the recognizance the non-appearance of the defendant may, in Upper Canada, transmit such recognizance to the clerk of the peace of the territorial division within which the offence is laid to have been committed, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

Commitment in default of distress.—§ 62. If at the time and place appointed for the return of any such warrant of distress, the constable who has had execution of the same, returns (N. 4) that he could find no goods or chattels whereon he could levy the sum or sums therein mentioned, together with the costs of, or occasioned by the levy of the same, the justice of the peace before whom the same is returned, may issue his warrant of commitment (N. 5) under his hand and seal, directed to the same or any other constable, reciting the conviction or order shortly, the issuing of the warrant of distress and the return thereto, and requiring such constable to convey such defendant to the common gaol, house of correction, or lock-up house, of the territorial division for which such justice is then acting, and there to deliver him to the keeper thereof, and requiring such keeper to receive the defendant into such gaol, house of correction, or lock-up house, and there to imprison him, and keep him to hard labour, in such manner and for such time as is directed and appointed by the statute on which the conviction or order mentioned in such warrant of distress is founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice thinks fit so to order (the amount thereof being ascertained and stated in such commitment) be sooner paid.

Imprisonment.—§ 63. Where a justice or justices of the peace, upon such information or complaint as aforesaid, adjudges the defendant to be imprisoned, and such defendant is then in prison undergoing imprisonment upon conviction for any other offence, the warrant of conviction for such subsequent offence shall be forthwith delivered to the gaoler or other officer to whom the same is directed, and the justice or justices who issue the same, if he or they may think fit, may award and order therein, that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which such defendant was previously adjudged or sentenced.

Dismissal of Complaint.—§ 64. When any information or complaint is dismissed with costs as aforesaid, the sum awarded for costs in the order for dismissal, may be levied by distress (Q 1) on the goods and chattels of the prosecutor or complainant in the manner aforesaid; and in default of distress or payment, such prosecutor or complainant may be committed (Q 2) to the common gaol or other prison, or lock-up house, or house of correction, in manner aforesaid, for any time not exceeding one month, unless such sum, and all costs and charges of the distress, and of the commitment and conveying of such prosecutor or complainant to prison (the amount thereof being ascertained and stated in such commitment,) be sooner paid.

Proceedings after Appeal.—§ 65. In case an appeal against any such conviction or order as aforesaid be decided in favour of the respondents, the justice or justices who made the conviction or order, or any other justice of the peace for the same territorial division, may issue the warrant of distress or commitment as aforesaid for execution of the same, as if no such appeal had been brought. § 66. If upon any such appeal the court of general or quarter sessions orders either party to pay costs, the order shall direct the costs to be paid to the clerk of the peace of the court, to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid. § 67. If the same be not paid within the time so limited, and the party ordered to pay the same has not been bound by any recognizance conditioned to pay such costs, the clerk of the peace or his deputy, on application of the party entitled to such costs, or of any person on his behalf, and on payment of a fee of twenty cents, shall grant to the party so applying

a certificate (R) that such costs have not been paid, and upon production of such certificate to any justice or justices of the peace for the same territorial division, he or they may enforce the payment of such costs by warrant of distress (S 1) in manner aforesaid, and in default of distress he or they may commit (S 2) the party against whom such warrant has issued, in manner hereinbefore mentioned, for any time not exceeding two months, unless the amount of such costs and all costs and charges of the distress, and also the costs of the commitment and conveying of the said party to prison, if such justice or justices shall think fit so to order, (the amount thereof being ascertained and stated in such commitment,) be sooner paid.

Payment of Penalty.—§ 68. In all cases where a warrant of distress has issued as aforesaid against any person, and such person pays or tenders to the constable having the execution of the same, the sum or sums in such warrant mentioned, together with the amount of the expenses of such distress up to the time of payment or tender, such constable shall cease to execute the same. § 69. In all cases in which any person is imprisoned as aforesaid for non-payment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison in which he is imprisoned, the sum in the warrant of commitment mentioned, together with the amount of the costs, charges and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge such person if he be in his custody for no other matter.

Information, &c., before one Justice.—§ 70. In all cases of summary proceedings before a justice or justices of the peace out of sessions, upon any information or complaint as aforesaid, one justice may receive such information or complaint, and grant a summons or warrant thereon, and issue his summons or warrant to compel the attendance of any witnesses for either party, and to do all other acts and matters necessary, preliminary to the hearing, even in cases where by the statute in that behalf, such information and complaint must be heard and determined by two or more justices. § 71. After a case has been heard and determined, one justice may issue all warrants of distress or commitment thereon. § 72. It shall not be necessary that the justice who so acts before or after such hearing, shall be the justice or one of the justices by whom the case is or was

heard and determined. § 73. In all cases where by statute it is required that any information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices must be present and acting together during the whole of the hearing and determination of the case.

Police Magistrate.—§ 82. Any one inspector and superintendent of police, police magistrate or stipendiary magistrate, appointed for any city, borough, town, territorial division or place, and sitting at a police court or other place appointed in that behalf, shall have full power to do alone whatever is authorised by this act to be done by two or more justices of the peace; and the several forms hereinafter contained may be varied so far as it may be necessary to render them applicable to the police courts aforesaid, or to the court or other place of sitting of such stipendiary magistrate.

Police Court.—§ 83. Any inspector and superintendent of police, police magistrate or stipendiary magistrate as aforesaid, at any police court or other place appointed in that behalf, shall have such and like powers and authority to preserve order in the said courts during the holding thereof, and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any courts of law in this province, or by the judges thereof respectively, during the sittings thereof.

Powers.—§ 84. The said inspectors and superintendents of police, police magistrates and stipendiary magistrates, in all cases where any resistance is offered to the execution of any summons, warrant of execution or other process issued by them, may enforce the due execution of the same by the means provided by the law for enforcing the execution of the process of other courts in like cases.

Intpretation.—§ 86. The word "territorial division," means county, union of counties, townships, city, town, or other place to which the context may apply.

Meaning of the word Prison.—§ 87. Any place where parties charged with offences against the law are usually kept and detained in custody.

§ 88. The several forms in the schedule to this act contained, or forms to the like effect, shall be deemed good, valid, and sufficient in law.

By Con. Stat. 22 V. c. 99, § 116, a summary conviction after sentence enforced will bar all further proceedings for the same cause, and so if the case be dismissed.

SCHEDULES.

Summons to the defendant on an Information or Complaint.

(A.)—§ 1.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } To A. B. of (*labourer*):
 } Whereas information hath this day been laid (*or complaint hath this day been made*) before the undersigned, (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, city, town, &c., as the case may be*) of , for that you (*here state shortly the matter of the information or complaint*): these are therefore to command you in her Majesty's name, to be and appear on at o'clock in the forenoon, at , before me or such justices of the peace for the said (*county or united counties, as the case may be*) as may then be there, to answer to the said information (*or complaint*), and to be further dealt with according to law.

Given under (*my*) hand and seal, this day of in the year of our Lord , at in the (*county, or as the case may be*) aforesaid.

J. S. [L. s.]

(B.)—§ 6.

Warrant when the Summons is Disobeyed.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } To all or any of the constables
 } or other peace officers in the
 (*County or united counties, or as the case may be*), of .

Whereas on last past, information was laid (*or complaint was made*) before , (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*), of , for that A. B. (*&c., as in the summons*): and whereas (I) the said justice of the peace then issued (*my*) summons unto the said A. B., commanding him in her Majesty's name to be and appear on , at o'clock in the forenoon, at , before (*me*) or such justices of the peace as might then be there, to answer unto the said information (*or complaint*) and to be further dealt with according to law; and whereas the said A. B. hath neglected to be and appear at the time and place appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons hath been duly served upon the said A. B.; these are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (*me*) or some one or more of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*) to answer to the said information (*or complaint*), and to be further dealt with according to law.

Given under my hand and seal, this day of , in the year of our Lord at , in the (county or as the case may be) aforesaid.

J. S. [L. s.]

(C.)—§ 6.

Warrant in the first instance.

PROVINCE OF CANADA :

(County or united counties, or } To all or any of the constables
as the case may be) of } or other peace officers in the
said (county or united counties, or as the case may be) of

Whereas information hath this day been laid before the undersigned, (one) of her Majesty's justices of the peace in and for the said (county or united counties, as the case may be) of , for that A. B. (here state shortly the matter of information) : and oath being now made before (me) substantiating the matter of such information : these are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (me) or some one or more of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be,) to answer to the said information, and to be further dealt with according to law.

Given under my hand and seal, this day of , in the year of our Lord , at , in the (county, or as the case may be) aforesaid.

J. S. [L. s.]

(D.)—§§ 12, 22, 34, 46.

Warrant of Committal for Safe Custody during an Adjournment of the Hearing.

PROVINCE OF CANADA :

(County or united } To all or any of the constables or peace
counties, or as the } officers in the said (county or united
case may be) of } counties, or as the case may be) of ,
and to the keeper of the (common gaol or lock-up house) at ,

Whereas on last past, information was laid (or complaint made) before , (one) of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be) of , for that (&c., as in the summons) : and whereas the hearing of the same is adjourned to the day of (instant) at o'clock in the (fore) noon, at , and it is necessary that that the said A. B. should in the meantime be kept in safe custody : these are therefore to command you, or any one of the said constables or peace officers, in her Majesty's name, forthwith to convey the said A. B. to the (common gaol or lock-house,) at , and there deliver him into the custody of the keeper

thereof, together with this precept : and I hereby require you, the said keeper, to receive the said A. B. into your custody in the said (*common gaol or lock-up house*) and there safely keep him until the day of , (*instant*), when you are hereby required to convey and have him, the said A. B., at the time and place to which the said hearing is so adjourned as aforesaid, before such justices of the peace for the said (*county or united counties, as the case may be*) as may then be there, to answer further to the said information (*or complaint*), and to be further dealt with according to law.

Given under my hand and seal, this day of in the year of our Lord , at , in the (*county, or as the case may be*) aforesaid.

J. S. [L. s.]

(E.)—§§ 12, 22, 34, 46.

Recognizance for the Appearance of the Defendant when the case is adjourned, or not at once proceeded with.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } Be it remembered, that on
A. B. of , (*labourer*), and L. M.
of , (*grocer*), and O. P. of ,
(*yeoman*), personally came and appeared before the undersigned, (one) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*) of , and acknowledged themselves to owe to our sovereign lady the Queen the several sums following, that is to say : the said A. B. the sum of , and the said L. M. and O. P. the sum of , each, of good and lawful current money of this province, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said A. B. shall fail in the condition endorsed (*or hereunder written*).

Taken and acknowledged the day and year first above mentioned at before me.

(J. S. [L. s.]

The condition of the within, (*or the above*) written recognizance is such that if the said A. B. shall personally appear on the day of , (*instant*), at o'clock in the (*forenoon*), at before me or such justices of the peace for the said (*county or united counties, or as the case may be*) as may then be there, to answer further to the information (*or complaint*) of C. D. exhibited against the said A. B. and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

Notice of such Recognizance to be given to the Defendant and his Sureties.

Take notice, that you, A. B., are bound in the sum of and you, L. M. and O. P., in the sum of each, that you A. B. appear personally on at o'clock in the (*fore*) noon at , before me or such justices of the peace for the (*county or united counties, or as the case may be*) of as shall then be there, to answer further to a certain information (*or complaint*) of C. D. the further hearing of which was adjourned to the said time and place, and unless you appear accordingly, the recognizance, entered into by you, A. B., and by L. M. and O. P., as your sureties, will forthwith be levied on you and them.

Dated this day of , one thousand eight hundred and.

J. S. [L. s.]

(F.)—§§ 13, 23, 25, 49, 61.

Certificate of Non-appearance to be Endorsed on the Defendant's Recognizance.

I hereby certify, that the said A. B., hath not appeared at the time and place in the said condition mentioned, but therein hath made default, by reason whereof the within written recognizance is forfeited.

J. S. [L. s.]

(G. 1.)—§ 16.

Summons to a Witness.

PROVINCE OF CANADA :

(*County or united counties, as the case may be*) of } To E. F. of , in the
or as the case may be of } said (*county or united counties,*

Whereas information was laid (*or complaint was made*) before (one) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*) of , for that (*&c., as in the summons,*) and it hath been made to appear to me upon (*oath*) that you are likely to give material evidence on behalf of the (*prosecutor or complainant, or defendant*) in this behalf; these are therefore to require you to be and appear on , at o'clock in the (*fore*) noon, at before me or such justices of the peace for the said (*county or united counties, as the case may be*) as may then be there, to testify what you shall know concerning the matter of the said information (*or complaint.*)

Given under my hand and seal, this day of in the year of our Lord , at in the (*county, or as the case may be*) aforesaid.

J. S. [L. s.]

(G. 2.)—§ 17.

Warrant where a Witness has not obeyed a Summons.

PROVINCE OF CANADA :

(County or united counties, as } To all or any of the constables,
 the case may be) of } and other peace officers, in the
 said (county or united counties, or as the case may be) of :

Whereas information was laid (or complaint was made) before
 (one) of her Majesty's justices of the peace, in and for the said
 (county or united counties, or as the case may be,) of for that
 (&c., as in the summons,) and it having been made to appear to
 (me) upon oath, that E. F., of , in the said (county or united
 counties, or as the case may be) (labourer) was likely to give
 material evidence on behalf of the (prosecutor,) (I) did duly
 issue (my) summons to the said E. F., requiring him to be and
 appear on , at o'clock in the (fore) noon of the same day,
 at , before me or such justice or justices of the peace for the
 said (county or united counties, or as the case may be) as might
 then be there, to testify what he should know concerning the
 said A. B. or the matter of the said information (or complaint)
 and whereas proof hath this day been made before me, upon oath,
 of such summons having been duly served upon the said E. F. ;
 and whereas the said E. F. hath neglected to appear at the time
 and place appointed by the said summons, and no just excuse
 hath been offered for such neglect ; these are therefore to com-
 mand you to take the said E. F., and to bring and have him on
 , at o'clock in the noon, at before me or such
 justice or justices of the peace for the said (county or united
 counties, or as the case may be), as may then be there, to testify
 what he shall know concerning the said information (or complaint.)

Given under my hand and seal, this day of , in the
 year of our Lord , at in the (county, or as the case may
 be) aforesaid.

J. S. [L. S.]

(G. 3.)—§ 19.

Warrant for a Witness in the first instance.

PROVINCE OF CANADA :

(County or united counties, or } To all or any of the constables
 as the case may be) of } or other peace officers, in the
 said (county or united counties, or as the case may be) of :

Whereas information was laid (or complaint was made) before
 (one) of her Majesty's justices of the peace, in and for the
 said (county or united counties or as the case may be,) of for
 that (&c., as in the summons,) and it having been made to appear
 to (me) upon oath, that E. F., of , in the said (county or
 united counties, or as the case may be) (labourer) was likely to give

material evidence on behalf of the (*prosecutor*) in this matter, and it is probable that the said E. F. will not attend to give evidence without being compelled so to do; these are therefore to command you to bring and have the said E. F. before me, on _____, at o'clock in the (*fore*) noon, at _____, or before me or such other justice or justices of the peace for the said (*county or united counties, or as the case may be,*) as may then be there, to testify what he shall know concerning the matter of the said information (*or complaint.*)

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the (*county, or as the case may be,*) aforesaid.

J. S. [L. S.]

(G. 4.)—§ 19.

Commitment of a Witness for refusing to be sworn or give evidence.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be,*) of _____ } To all or any of the constables, or other peace officers in the said (*county or united counties, or as the case may be*) of _____ and to the keeper of the common gaol of the said (*county or united counties, as the case may be,*) at _____; whereas information was laid (*or complaint was made*) before (*me*) _____ (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be,*) of _____, for that (&c., *as in the summons,*) and one E. F., now appearing before me, such justice as aforesaid, on _____, at _____, and being required by me to make oath or affirmation as a witness in that behalf, hath now refused so to do, (*or being now here duly sworn as a witness in the matter of the said information (or complaint), doth refuse to answer a certain question concerning the premises which is now here put to him, and more particularly the following question, (here insert the exact words of the question,) without offering any just excuse for such his refusal.* These are therefore to command you, or any one of the said constables or peace officers, to take the said E. F., and him safely to convey to the common gaol at _____ aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said common gaol, to receive the said E. F. into your custody, in the said common gaol, and there imprison him for such his contempt for the space of _____ days, unless he shall in the meantime consent to be examined and to answer concerning the premises, and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the (*county, or as the case may be*) aforesaid.

J. S. [L. S.]

(H.)—§ 33.

Warrant to Remand a Defendant when Apprehended.

PROVINCE OF CANADA :

(County or united counties, or } To all or any of the constables,
 as the case may be,) of } or other peace officers, in the
 said (county or united counties, or as the case may be) of , and
 to the keeper of the (common gaol or lock-up house) at .
 Whereas complaint was made (or information) was laid before
 (one) of her Majesty's justices of the peace, in and for the
 (county or united counties, or as the case may be) of , for
 that (&c., as in the summons or warrant); and whereas the said
 A. B. hath been apprehended under and by virtue of a warrant,
 upon such information (or complaint), and is now brought before
 me as such justice as aforesaid; these are therefore to command
 you, or any one of the said constables, or peace officers, in her
 Majesty's name, forthwith to convey the said A. B. to the
 (common gaol or lock-up house) at , and there to deliver
 him to the said keeper thereof, together with this precept; and
 I do hereby command you, the said keeper, to receive said A. B.
 into your custody, in the said (common gaol or lock-up house),
 and there safely keep him until next, the day of
 (instant,) when you are hereby commanded to convey and have
 him at , at o'clock, in the noon of the same
 day, before me, or such justice or justices of the peace, of the
 said (county or united counties, or as the case may be), as may
 then be there, to answer to the said information (or complaint),
 and to be further dealt with according to law.

Given under my hand and seal, this day of , in the
 year of our Lord , at , in the (county, or as the case
 may be), aforesaid.

J. S. [L. s.]

(I. 1.)—§§ 42, 50.

Conviction for a penalty to be Levied by Distress, and in default of sufficient distress, by Imprisonment.

PROVINCE OF CANADA :

County or united counties, or } Be it remembered that on the
 as the case may be) of } day of , in the year of
 our Lord , at , in the said (county or united counties, or
 as the case may be), A. B. is convicted before the undersigned,
 (one) of her Majesty's justices of the peace for the said (county or
 united counties, or as the case may be,) for that he, the said A.
 B., (&c., stating the offence, and the time and place when and
 where committed,) and I adjudge the said A. B., for his said
 offence, to forfeit and pay the sum of , (stating the penalty,
 and also the compensation, if any) to be paid and applied accord-
 ing to law, and also to pay to the said C. D. the sum of , for

his costs in this behalf; and if the said several sums be not paid forthwith, (or on or before the of next,) *I order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress, *I adjudge the said A. B. to be imprisoned in the common gaol of the said (county or united counties, or as the case may be), at , in the said county of , (there to be kept to hard labour,) for the space of , unless the said several sums, and all costs and charges of the said distress, (and of the commitment and conveying of the said A. B. to the said gaol,) shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at , in the (county or united counties, or as the case may be,) aforesaid.

J. S. [L. s.]

**Or, when the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks ** say, "then inasmuch as it hath now been made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B., and his family," (or, "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress)," I adjudge, &c., (as above to the end.)*

(I. 2.)

Conviction for a penalty, and in default of payment, imprisonment.

PROVINCE OF CANADA :

(County or united counties, or } Be it remembered, that on the
as the case may be) of } day of , in the year of
our Lord , at , in the said (county or united counties, or
as the case may be,) A. B. is convicted before the undersigned,
(one) of her Majesty's justices of the peace for the said (county or
united counties, or as the case may be,) for that he, the said A. B.,
(&c., stating the offence, and the time and place when and where it
was committed,) and I adjudge the said A. B. for his said offence
to forfeit and pay the sum of (stating the penalty and the com-
pensation, if any,) to be paid and applied according to law; and
also to pay to the said C. D. the sum of for his costs in this
behalf; and if the said several sums be not paid forthwith (or on
or before next,) I adjudge the said A. B. to be imprisoned in
the common gaol of the said (county or united counties, or as the
case may be,) at in the said county of , unless the said
sums and the costs and charges of conveying the said A. B. to the
said common gaol shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at in the (county, or as the case may be) aforesaid.

J. S. [L. s.]

(I. 3.)—§§ 42, 50,

Conviction when the Punishment is by Imprisonment, &c.

PROVINCE OF CANADA :

(County or united counties, or } Be it remembered, that on the
 as the case may be) of } day of, in the year of
 our Lord , in the said (county or united counties, or as the case
 may be) A. B. is convicted before the undersigned (one) of her
 Majesty's justices of the peace in and for the said (county or
 united counties, or as the case may be) for that he, the said A. B.,
 (&c., stating the offence, and the time and place when and where it
 was committed;) and I adjudge the said A. B. for his said offence
 to be imprisoned in the common gaol of the said (county or united
 counties, or as the case may be,) at in the county of (and
 there to be kept at hard labour) for the space of ; and I also
 adjudge the said A. B. to pay to the said C. D., the sum of
 for his costs in this behalf, and if the said sum for costs be not
 paid forthwith, (or on or before next,) then * I order that the
 said sum be levied by distress and sale of the goods and chattels
 of the said A. B.; and in default of sufficient distress in that
 behalf, * I adjudge the said A. B. to be imprisoned in the said
 common gaol (and there kept at hard labour) for the space of ,
 to commence at and from the term (a) of his imprisonment afore-
 said, unless the said sum for costs shall be sooner paid.

Given under my hand and seal, the day and year first above
 mentioned at in the (county or united counties, or as the case
 may be) aforesaid.

J. S. [L. S.]

* Or, when the issuing of a distress warrant would be
 ruinous to the defendant or his family, or it appears that
 he has no goods whereon to levy a distress, then, instead of
 the words between the asterisks, say,** "inasmuch as it
 hath now been made to appear to me that the issuing of a
 warrant of distress in this behalf would be ruinous to the
 said A. B. and his family," (or, "that the said A. B. hath
 no goods or chattels whereon to levy the said sum by dis-
 tress,") I adjudge, &c.

(K. 1.)—§§ 42, 51.

*Order for Payment of Money to be Levied by Distress, and
 in default of distress, imprisonment.*

PROVINCE OF CANADA :

(County or united counties, or } Be it remembered, that on
 as the case may be) of } complaint was made before the

(a) *Quære*—The beginning or end of such term? The end is probably
 intended.

undersigned, (one) of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be) of for the (stating the facts entitling the complainant to the order, with the time and place when and where they occurred,) and now at this day, to wit, on at , the parties aforesaid appear before me the said justice, (or the said C. D. appears before me the said justice,) but the said A. B., although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. hath been duly served with the summons in this behalf, which required him to be and appear here on this day before me, or such justice or justices of the peace for the said (county or united counties, or as the case may be) as should now be here, to answer the said complaint, and to be further dealt with according to law; and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of forthwith, (or on or before next, or as the statute may require,) and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums be not paid forthwith (or on or before next) then * I hereby order that the same be levied by distress, and sale of the goods and chattels of the said A. B. and in default of sufficient distress in that behalf * I adjudge the said A. B. to be imprisoned in the common gaol of the said (county or united counties, or as the case may be) at in the said county of , (and there kept to hard labour) for the space of , unless the said several sums and all costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said common gaol,) shall be sooner paid.

Given under my hand and seal, this day of , in the year of our Lord, at in the (county, or as the case may be) aforesaid

J. S. [L. s.]

* Or, when the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears he has no goods whereon to levy a distress, then, instead of the words between the asterisks,** say, "inasmuch as it hath now been made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (or, "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress,") I adjudge, &c.

(K. 2.)

Order for Payment of Money, and in default of payment, imprisonment.

(County or united counties, or } Be it remembered, That on
as the case may be) of } complaint was made before the

undersigned (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*) of for that (&c., *stating the facts entitling the complainant to the order, with the time and place when and where they occurred,*) and now at this day, to wit, on _____, at _____, the parties aforesaid appear before me the said justice, (*or the said C. D. appears before me the said justice*) but the said A. B. although duly called doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. has been duly served with the summons in this behalf, requiring him to be and appear here on this day before me or such justices of the peace for the said (*county or united counties, or as the case may be*) as should now be here, to answer the said complaint, and be further dealt with according to law; and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of _____, forthwith, (*or on or before next, or as the statute may require,*) and also to pay to the said C. D. the sum of _____ for his costs in this behalf; and if the said several sums be not paid forthwith (*or on or before next,*) then I adjudge the said A. B. to be imprisoned in the common gaol of the said (*county or united counties, or as the case may be*) at _____ in the said county of _____ (*there to be kept to hard labour*) for the space of _____, unless the said several sums (*and costs and charges of commitment and conveying the said A. B. to the said common gaol*) shall be sooner paid.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____ in the (*county, or as the case may be*) aforesaid.

J. S. [L. S.]

(K. 3.)—§§ 42, 51.

Order for any other matter where the disobeying of it is punishable with imprisonment.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of _____ } Be it remembered, that on _____ complaint was made before the undersigned, (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be,*) of _____, for that (*stating the facts entitling the complainant to the order, with the time and place where and when they occurred,*) and now at this day, to wit, on _____ at _____, the parties aforesaid appear before me the said justice (*or the said C. D. appears before me the said justice,*) but, the said A. B. although duly called doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me upon oath that the said A. B. has been duly served with the summons in this behalf, which required him to be and appear here this day before me, or such justice or justices of the peace for the said (*county or united counties, or as*

the case may be,) as should now be here, to answer to the said complaint, I do therefore adjudge the said A. B. to (*here state the matter required to be done,*) and if upon a copy of the minute of this order being served upon the said A. B., either personally or by leaving the same for him at his last or most usual place of abode, he shall neglect or refuse to obey the same, in that case I adjudge the said A. B., for such his disobedience, to be imprisoned in the common gaol of the said (*county or united counties, or as the case may be,*) at in the said county of (*there to be kept at hard labour*) for the space of unless the said order be sooner obeyed, (*if the statute authorise this ;*) and I also adjudge the said A. B. to pay to the said C. D. the sum of for his costs in this behalf, and if the said sum for costs be not paid forthwith, (*or on or before next,*) I order the same to be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf, I adjudge the said A. B. to be imprisoned in the common gaol, (*there to be kept at hard labour*) for the space of , to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.

Given under my hand and seal, this day of , in the year of our Lord , at in the (*county, or as the case may be*) aforesaid.

[J. S. [L. S.]

(L.)—§ 43.

Order of Dismissal of an Information or Complaint.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } Be it remembered that on information was laid (*or complaint was made*) before the undersigned, (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*) of , for that (&c., *as in the summons to the defendant,*) and now at this day, to wit, on at , both parties appear before me in order that I should hear and determine the said information (*or complaint*), (*or the said A. B. appeareth before me,*) but the said C. D., although duly called, doth not appear, whereupon the matter of the said information (*or complaint*) being by me duly considered, it manifestly appears to me that the said information (*or complaint*) is not proved,* and I do therefore dismiss the same, and do adjudge that the said C. D. do pay to the said A. B., the sum of , for his costs incurred by him in his defence in this behalf: and if the said sum for costs be not paid forthwith, (*or on or before ,*) I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress

* *If the Informant or Complainant do not appear, these words may be omitted.*

in that behalf, I adjudge the said C. D. to be imprisoned in the said (*county or united counties, or as the case may be,*) at in the said county of , (*and there to be kept at hard labour,*) for the space of , unless the said sum for costs and charges of the said distress (*and of the commitment of the said C. D. to the said common gaol*) shall be sooner paid.

Given under my hand and seal this day of , in the year of our Lord , at , in the (*county, or as the case may be*) aforesaid.

[J. S.] [L. s.]

(M.)—§ 43.

Certificate of Dismissal.

I hereby certify that an information (*or complaint*) preferred by C. D. against A. B. for that, (*or as in the summons,*) was this day considered by me, one of her Majesty's justices of the peace in and for the (*county or united counties, or as the case may be*) of , and was by me dismissed (*with costs.*)

Dated this day of , one thousand eight hundred and .

[J. S.] [L. s.]

(N. 1.)—§ 57.

Warrant of a Distress upon a Conviction for a Penalty.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } To all or any of the con-
 } stables, or other peace officers
 in the said (*county or united counties, or as the case may be*)
 of :

Whereas A. B., late of . (*labourer,*) was on this day (*or on last past*) duly convicted before , (*one*) of her Majesty's justices of the peace, in and for the said (*county or united counties, or as the case may be*) of , for that (*stating the offence as in the conviction,*) and it was thereby adjudged that the said A. B. should for such his offence forfeit and pay, (&c., *as in the conviction,*) and should also pay to the said C. D. the sum of for his costs in that behalf; and it was thereby ordered that if the said several sums should not be paid (*forthwith*) the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was thereby also adjudged that the said A. B., in default of sufficient distress, should be imprisoned in the common gaol of the said (*county or united counties, or as the case may be*) at in the said county of , (*and there be kept at hard labour*) for the space of , unless the said several sums, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said common gaol, should be sooner paid; and whereas the said A. B., being so convicted as

aforesaid, and being (*now*) required to pay the said sum of and hath not paid the same, or any part thereof, but therein hath made default; these are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the distress, shall not be paid, then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto me, (*the convicting justice, or one of the convicting justices,*) that I may pay and apply the same, as by law is directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress can be found, then, that you certify the same unto me, to the end that such further proceedings may be had thereon as to law doth appertain.

Given under my hand and seal, this day of , in the year of our Lord , at , in the (*county, or as the case may be*) aforesaid.

J. S. [L. s.]

(N. 2.)—§ 57.

Warrant of Distress upon an order for the payment of money.

PROVINCE OF CANADA :

(*County, or united counties, or as the case may be*) of } To all or any of the constables,
 said (*county or united counties, or as the case may be*) of } or other peace officers, in the

Whereas on last past, a complaint was made before (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*) for that (&c., *as in the order,*) and afterwards, to wit, on , at , the said parties appeared before , (*as in the order,*) and thereupon having considered the matter of the said complaint, the said A. B. was adjudged (*to pay the said C. D. the sum of on or before then next,*) and also to pay to the said C. D. the sum of for his costs in that behalf; and it was ordered that if the said several sums should not be paid on or before the said then next, the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was adjudged that in default of sufficient distress in that behalf, the said A. B. should be imprisoned in the common gaol of the said (*county or united counties, or as the case may be,*) at in the said county of (*and there kept at hard labour,*) for the space of unless the said several sums and all costs and charges of the distress (*and of the commitment and conveying of the said A. B. to the said common gaol*) should be sooner paid; and * whereas the time in and by the said order appointed for the payment of the said several sums of and hath elapsed, but the said

A. B. hath not paid the same, or any part thereof, but therein hath made default; these are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of _____ days after the making of such distress, the said last mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto me, (*or some other of the convicting justices, as the case may be*) that I (*or he*) may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein, as to law doth appertain.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____ in the (*county, or as the case may be*) aforesaid.

J. S. [L. s.]•

(N. 3.)—§ 58.

Endorsement in Backing a Warrant of Distress.

PROVINCE OF CANADA:

(*County or united counties, or as the case may be*) of _____ } Whereas proof upon oath hath
me, one of her Majesty's justices of the peace in and for the said } this day been made before
(*county or united counties, or as the case may be,*) that the name }
of J. S., to the within warrant subscribed, is of the handwriting }
of the justice of the peace within mentioned, I do therefore }
authorise U. T., who bringeth me this warrant, and all persons to }
whom this warrant was originally directed, or by whom the same }
may be lawfully executed, and also all constables and other peace }
officers in the said (*county or united counties, or as the case may }
be,*) of _____ to execute the same within the said (*county or }
united counties, or as the case may be*) of _____

Given under my hand, this _____ day of _____, one thousand eight hundred and _____

O. K.

(N. 4.)—§ 62.

Constable's return to a Warrant of Distress.

I, W. T., constable of _____, in the (*county or united counties, or as the case may be*) of _____, hereby certify to J. S., Esq., one of her Majesty's justices of the peace for the (*county or united counties, or as the case may be,*) that by virtue of this warrant, I have made diligent search for the goods and chattels of the within mentioned A. B., and that I can find no sufficient goods or chattels of the said A. B., whereon to levy the sums therein mentioned.

and to the keeper of the common gaol for the said (*county or united counties, or as the case may be*) of at in the said county of

Whereas A. B. late of (*labourer,*) was on this day convicted before the undersigned, (*one*) of her Majesty's justices of the peace, in and for the said (*county or united counties, or as the case may be*) for that (*stating the offence as in the conviction*) and it was thereby adjudged that the said A. B., for his offence, should forfeit and pay the sum of (*&c., as in the conviction,*) and should pay to the said C. D. the sum of for his costs, in that behalf; and it was thereby further adjudged, that, if the said several sums should not be paid (*forthwith*) the said A. B. should be imprisoned in the common gaol of the said (*county or united counties, or as the case may be*) at in the said county of (*and there kept at hard labour*) for the space of , unless the said several sums (*and the costs and charges of conveying the said A. B. to the said common gaol*) should be sooner paid; and whereas the time in and by the said conviction appointed for the payment of the said several sums hath elapsed, but the said A. B. hath not paid the same, or any part thereof, but therein hath made default. These are therefore to command you, the said constables or peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol at aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (*and keep him at hard labour*) for the space of , unless the said several sums (*and costs and charges of carrying him to the said common gaol, amounting to the further sum of*), shall be sooner paid; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year of our Lord at , in the (*county, or as the case may be*) aforesaid.

¶

J. S. [L. S.]

(O 2.)

Warrant of Commitment on an Order in the first instance.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } To all or any of the constables
and other peace officers in the
said (*county or united counties, or as the case may be*) of ,
and to the keeper of the common gaol of the (*county or united
counties, or as the case may be*) of at in the said
county of

Whereas on last past, complaint was made before the undersigned, (*one*) of her Majesty's justices of the peace, in and

for the said (*county or united counties, or as the case may be*) of
 for that (&c., *as in the order*) and afterwards, to wit, on the
 day of , at , the parties appeared before me, the
 said justice, (*or as it may be in the order*) and thereupon having
 considered the matter of the said complaint, I adjudged the said
 A. B. to pay to the said C. D. the sum of , on or before the
 day of then next, and also to pay to the said C. D. the
 sum of for his costs in that behalf; and I also thereby ad-
 judged, that if the said several sums should not be paid on or
 before the day of then next, the said A. B. should
 be imprisoned in the common gaol of the (*county or united
 counties, or as the case may be*) of at in the said county
 of (*and there be kept at hard labour*) for the space of
 unless the said several sums (*and the costs and charges of convey-
 ing the said A. B. to the said common gaol, as the case may be*)
 should be sooner paid; and whereas the time in and by the
 said order appointed for the payment of the said several sums of
 money hath elapsed, but the said A. B. hath not paid the same
 or any part thereof, but therein hath made default; these are
 therefore to command you, the said constables and peace officers
 or any of you, to take the said A. B. and him safely convey to
 the said common gaol, at aforesaid, and there to deliver him
 to the keeper thereof, together with this precept; and I do
 hereby command you, the said keeper of the said common gaol,
 to receive the said A. B. into your custody in the said common
 gaol, there to imprison him (*and keep him at hard labour*) for
 the space of , unless the said several sums (*and the costs and
 charges of conveying him to the said common gaol, amounting to
 the further sum of* ,) shall be sooner paid unto you, the said
 keeper; and for so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in
 the year of our Lord at , in the (*county, or as the
 case may be*) aforesaid.

J. S. [L. s.]

(Q. 1.)—§ 64.

*Warrant of Distress for Costs upon an order for dismissal
 of an information and complaint.*

PROVINCE OF CANADA :

(*County or united counties, or*) To all or any of the constables,
as the case may be,) of } or other peace officers in the
 said (*county or united counties, or as the case may be,*) of .

Whereas on last past, information was laid (*or complaint
 was made*) before (*one*) of her Majesty's justices of the peace in
 and for the said (*county or united counties, or as the case may be*)
 of for that (&c., *as in the order of dismissal,*) and afterwards, to
 wit, on at , both parties appearing before in order that

(I) should hear and determine the same, and the several proofs adduced to (me) in that behalf being by (me) duly heard and considered, and it manifestly appearing to (me) that the said information (or complaint) was not proved (I) therefore dismissed the same, and adjudged that the said C. D. should pay to the said A. B. the sum of for his costs incurred by him in his defence in that behalf; and (I) ordered that if the said sum for costs should not be paid (forthwith) the same should be levied on the goods and chattels of the said C. D., and (I) adjudged that in default of sufficient distress in that behalf the said C. D. should be imprisoned in the common gaol of the said (county or united counties, or as the case may) of , at , in the said county of (and there kept at hard labour) for the space of , unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said common gaol, should be sooner paid;* and whereas the said C. D. being now required to pay the said A. B. the said sum for costs, hath not paid the same, or any part thereof, but therein hath made default; these are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said C. D., and if within the space of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, then that you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to me (the justice who made such order or dismissal as the case may be) that (I) may pay and apply the same as by law directed, and may render the overplus (if any,) on demand to the said C. D., and if no such distress can be found, then that you certify the same unto me, (or to any other justice of the peace for the same) (county or united counties, or as the case may be,) to the end that such proceedings may be had therein as to law doth appertain.

Given under my hand and seal, this day of , in the year of our Lord , at , in the (county or as the case may be) aforesaid.

J. S. [L. S.]

, (Q 2.)—§ 64.

Warrant of Commitment for want of Distress in the last case.

PROVINCE OF CANADA :

(County or united counties, or } To all or any of the constables,
as the case may be) of } or peace officers, in the said
(county or united counties, or as the case may be,) of , and to
the keeper of the common gaol of the said (county or united coun-
ties, or as the case may be,) of , at in the said county
of .

Whereas (&c., as in the form, to the asterisk,* and then thus :) and whereas afterwards, on the day of , in the year aforesaid, I, the said justice, issued a warrant to all or any of the constables or other peace officers of the said (*county or united counties, or as the case may be*) commanding them, or any of them, to levy the said sum of for costs, by distress and sale of the goods and chattels of the said C. D. And whereas it appears to me, as well by the return to the said warrant of distress of the constable (*or peace officer*) charged with the execution of the same, as otherwise, that the said constable hath made diligent search for the goods and chattels of the said C. D., but that no sufficient distress whereon to levy the sum above mentioned could be found. These are therefore to command you, the said constables and peace officers, or any one of you, to take the said C. D. and him safely convey to the common gaol of the said (*county or united counties, as the case may be,*) at aforesaid, and there deliver him to the keeper thereof, together with this precept; and I hereby command you, the said keeper of the said common gaol, to receive the said C. D. into your custody in the said common gaol, there to imprison him (*and keep him at hard labour*) for the space of (unless the said sum, and all the costs and charges of the said distress) *and of the commitment and conveying of the said C. D. to the said common gaol, amounting to the further sum of , shall be sooner paid up unto you the said keeper; and for your so doing, this shall be your sufficient warrant.*

Given under my hand and seal, this day of in the year of our Lord , at , in the (*county or as the case may be*) aforesaid.

J. S. [L. s.]

(R.)—§ 67.

Certificate of the Clerk of the Peace that the costs of an Appeal are not paid.

Office of the clerk of the peace for the (*county or united counties, or as the case may be*) of

Title of the Appeal.

I hereby certify, that at a court of general quarter sessions of the peace, holden at , in and for the said (*county or united counties, or as the case may be,*) on last past, an appeal by A. B. against a conviction (*or order*) of J. S., Esquire, one of her Majesty's justices of the peace, in and for the said (*county or united counties, or as the case may be,*) came on to be tried, and was there heard and determined, and the said court of general quarter sessions thereupon ordered that the said conviction (*or order*) should be confirmed (*or quashed,*) and that the said (*appellant*) should pay to the said (*respondent*) the sum of , for costs incurred by him in the said appeal and which sum was

thereby ordered to be paid to the clerk of the peace of the said county or united counties, or as the case may be), on or before the day of instant, to be by him handed over to the said (respondent), and I further certify, that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order.

Dated the . day of , one thousand eight hundred and .

G. H.

Clerk of the Peace.

(S. 1.)—§ 67.

Warrant of Distress for Costs of Appeal against a conviction or order.

PROVINCE OF CANADA :

(County or united counties, or } To all or any of the constables, or
as the case may be) of } other peace officers, in the said
(county or united counties, or as the case may be), of :

Whereas (&c., as in the warrants of distress, N 1, 2, ante, and to the end of the statement of the conviction or order, and then thus): And whereas the said A. B. appealed to the general quarter sessions of the peace, for the said (county or united counties, or as the case may be), against the said conviction or order, in which appeal the said A. B. was the appellant, and the said C. D. (or J. S., Esquire, the justice of the peace who made the said conviction, or order,) was the respondent, and which said appeal came on to be tried, and was heard and determined at the last general quarter sessions of the peace for the said (county or united counties, or as the case may be) holden at , on , and the said court of general quarter sessions thereupon ordered, that the said conviction (or order) should be confirmed, (or quashed,) and that the said (appellant) should pay to the said (respondent) the sum of , for his costs incurred by him in the said appeal, which said sum was to be paid to the clerk of the peace of the said (county or united counties, or as the case may be) on or before the day of , one thousand eight hundred , to be by him handed over to the said (C. D. ;) and whereas the clerk of the peace of the said (county or united counties, or as the case may be) hath on the day of instant, duly certified that the said sum for costs had not been paid ;* these are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said (A. B.), and if within the space of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to the clerk of the peace for the said (county or united counties, or as the case may be,) of , that he may pay and apply the same as by law directed ;

and if no such distress can be found, then that you certify the same unto me or any other justice of the peace for the same (*county or united counties, or as the case may be,*) to the end that such proceedings may be had therein as to law doth appertain.

Given under my hand and seal, this day of , in the year of our Lord , at , in the (*county, or as the case may be,*) aforesaid.

O. K. [L. s.]

(S. 2.)—§ 67.

Warrant of Commitment for want of Distress in the last case.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } To all or any of the constables, or
 (*county or united counties, or as the case may be,*) of , and to } other peace officers, in the said
 the keeper of the common gaol of the said (*county or united coun-*
ties, or as the case may be) of , at , in the said county }
 of

Whereas (&c., *as in the last form, to the asterisk,* and then thus* :) And whereas, afterwards, on the day of , in the year aforesaid, I, the undersigned, issued a warrant to all or any of the constables and other peace officers in the said (*county or counties, or as the case may be,*) of , commanding them, or any of them, to levy the said sum of , for costs, by distress and sale of the goods and chattels of the said A. B.; and whereas it appears to me, as well by the return to the said warrant of distress of the constable (*or peace officer,*) who was charged with the execution of the same, as otherwise, that the said constable hath made diligent search for the goods and chattels of the said (A. B.,) but that no sufficient distress whereon to levy the said sum above mentioned could be found; these are therefore to command you, the said constables or peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol of the said (*county or united counties*) of (*as the case may be,*) at , aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (*and keep him at hard labour*) for the space of , unless the said sum and all costs and charges of the said distress (*and of the commitment and conveying of the said A. B. to the said common gaol, amounting to the further sum of*) shall be sooner paid unto you, the said keeper; and for so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year of our Lord , at , in the (*county, or as the case may be,*) aforesaid.

O. K. [L. s.]

(T.)—§ 20.

General Form of Information on Oath.

PROVINCE OF CANADA :

(County or united counties, or } The information (or complaint)
 as the case may be.) of } of C. D., of the township of
 in the said (county or united counties, or as the case may be) of
 (labourer.) (If preferred by an attorney or agent, say : “ by
 D. E., his duly authorised agent (or attorney), in this behalf,
 taken upon oath, before me, the undersigned, one of her
 Majesty’s justices of the peace, in and for the said (county or
 united counties, as the case may be) of , at N., in the said
 (county, or as the case may be) of , this day of in the
 year of our Lord, one thousand eight hundred and , who
 saith* that he hath just cause to suspect and believe, and doth
 suspect and believe, that A. B., of the (township) of , in the
 said (county, or as the case may be) of (within the space
 of ,) the time within which the information or complaint must
 be laid,) last past, to wit, on the day of instant, at
 the township of , in the (county, or as the case may be) afore-
 said, did (here set out the offence, &c.) contrary to the form of
 the statute in such case made and provided.

C. D. (or D. E.)

Taken and sworn before me, the day and year and at the
 place above mentioned.

Form of Order of Dismissal of an information or Complaint.

PROVINCE OF CANADA :

(County or united counties, or } Be it remembered that on ,
 as the case may be.) of } information was laid (or com-
 plaint was made) before the undersigned, (one) of her Majesty’s
 justices of the peace in and for the said (county or united coun-
 ties, or as the case may be) of for that (&c., as in the sum-
 mons to the defendant,) and now at this day, to wit, on , at
 ,* both the said parties appear before me in order that I
 should hear and determine the said information (or complaint,) (or
 the said A. B. appeareth before me, but the said C. D., although
 duly called, doth not appear;) whereupon the matter of the said
 information (or complaint) being by me duly considered (it manifestly
 appears to me that the said information, or complaint is not proved,
 and (†) I do therefore dismiss the same, and do adjudge that the
 said C. D. do pay to the said A. B. the sum of for his costs
 incurred by him in his defence in this behalf; and if the said sum
 for costs be not

* If at an adjournment, insert here: “ To which day the hearing of this
 case hath been duly adjourned, of which the said C. D. had due notice.”

† If the informant or complainant do not appear, these words may be
 omitted.

paid forthwith, (or on or before ,) I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the common gaol of the said (county or united counties, or as the case may be) of

at in the said county of (and there kept at hard labour) for the space of , unless the said sum for costs, and all costs and charges of the said distress (and of the commitment and conveying of the said C. D. to the said common gaol) shall be sooner paid.

Given under my hand and seal, this day of , in the year of our Lord , at in the (county, or as the case may be) aforesaid. J. S. [L. S.]

Form of Certificate of Dismissal.

I hereby certify, that an information (or complaint) preferred by O. D. against A. B. for that (&c., as in the summons,) was this day considered by me, one of her Majesty's justices of the peace in and for the (county or united counties, or as the case may be) of , and was by me dismissed (with costs.)

Dated this day of , one thousand eight hundred and

J. S.

General Form of Notice of Appeal against a Conviction.

To C. D., of, &c., and (the names and additions of the parties to whom the notice of appeal is required to be given.)

Take notice, that I, the undersigned A. B., of, &c., do intend to enter and prosecute an appeal at the next general quarter sessions of the peace, to be holden at , in and for the (county or united counties, or as the case may be,) of , against a certain conviction (or order) bearing date on or about the day of instant, and made by (you) C. D., Esquire, (one) of her Majesty's justices of the peace for the said (county or united counties, or as the case may be,) of , whereby I, the said A. B., was convicted of having, or was ordered to pay , (here state the offence as in the conviction, information or summons, or the amount adjudged to be paid, as in the order, as correctly as possible :) and further, take notice that the grounds of my appeal are, first, that I am not guilty of the said offence: secondly, that the formal conviction drawn up and returned to the sessions is not in law sufficient to support the said conviction of me the said A. B., (together with any other grounds, care being taken that all are stated, as the appellant will be precluded from going into any other than those stated.)

Dated this day of one thousand eight hundred and

A. B.

MEM.—If this notice be given by several defendants, or by an attorney, it can easily be adapted.

Summary Conviction.

Form of Recognizance to try the Appeal.

Be it remembered, that on _____, A. B., of _____ (*labourer,*) and L. M., of _____ (*grocer,*) and N. O., of _____ (*yeoman,*) personally came before the undersigned, (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be,*) of _____, and severally acknowledged themselves to owe to our sovereign lady the Queen the several sums following, that is to say, the said A. B. the sum of _____, and the said L. M. and N. O. the sum of _____, each, of good and lawful money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said A. B. shall fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at _____, before me.

J. S.

The condition of the within written recognizance is such, that if the said A. B. shall, at the (*next*) general quarter sessions of the peace, to be holden at _____, on the _____ day of _____ next, in and for the said (*county or united counties, or as the case may be,*) of _____, enter and prosecute an appeal against a certain conviction bearing date the _____ day of _____ instant, and made by me, the said justice, whereby he the said A. B. did on the day of _____, at the township of _____, in the said (*county or united counties, or as the case may be,*) of _____ (*here set out the offence as stated in the conviction ;*) and further, that if the said A. B. shall abide by and duly perform the order of the court to be made upon the trial of such appeal, then the said recognizance to be void, or else to remain in full force and virtue.

Form of Notice of such Recognizance to be given to the Defendant (Appellant) and his Surety.

Take notice, that you, A. B., are bound in the sum of _____ pounds, and you, L. M. and N. O. in the sum of _____ each, that you, the said A. B., at the next general quarter sessions of the peace to be holden at _____, in and for the said (*county or united counties, or as the case may be,*) of _____, enter and prosecute an appeal against a conviction dated the _____ day of _____ (*instant,*) whereby you, A. B., were convicted of (*stating offence shortly,*) and abide by and perform the order of the court to be made upon the trial of such appeal; and unless you prosecute such appeal accordingly, the recognizance entered into by you will forthwith be levied on you.

Dated this _____ day of _____ one thousand eight hundred and _____

SURETIES.

Complaint by the Party Threatened for Sureties for the Peace.

Proceed as in the form (T.) to the asterisk, then :* that A. B., of the township of _____, in the county of _____, did, on the _____ day of _____ (*instant, or last past, as the case may be,*) threaten the said C. D. in the words or to the effect following, that is to say, (*set them out with the circumstances under which they were used :*) and that from the above and other threats used by the said A. B. towards the said C. D., he the said C. D. is afraid that the said A. B. will do him some bodily injury, and therefore prays that the said A. B. may be required to find sufficient sureties to keep the peace and be of good behaviour towards him the said C. D. ; and the said C. D. also saith that he doth not make this complaint against, nor require such sureties from the said A. B. from any malice or ill-will, but merely for the preservation of his person from injury.

Form of Recognizance for the Sessions.

Be it remembered, that on the _____ day of _____, in the year of our Lord _____, A. B., of _____ (*labourer,*) L. M., of _____ (*grocer,*) and N. O., of _____ (*butcher,*) personally came before (*us,*) the undersigned, (*two*) of her Majesty's justices of the peace for the said (*county or united counties, or as the case may be,*) of _____ and severally acknowledged themselves to owe to our lady the Queen the several sums following, that is to say : the said A. B. the sum of _____, and the said L. M. and N. O. the sum of _____ each, of good and lawful money of Canada, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said A. B. fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at _____, before us.

J. S.
J. T.

The condition of the within written recognizance is such that if the within bounden A. B. (of, &c.) shall appear at the next court of general quarter sessions of the peace to be holden in _____ and for the said (*county or united counties, or as the case may be,*) of _____, to do and receive what shall be then and there enjoined him by the court, and in the meantime shall keep the peace and be of good behaviour towards her Majesty and all her liege people, and especially towards C. D. [of, &c.] for the term of now next ensuing, then the said recognizance to be void, or else to stand in full force and virtue.

Form of Commitment in Default of Sureties.

PROVINCE OF CANADA :

(County or united counties, or } To the constable of the in
 as the case may be) of } the county of (one of the
 united counties of , or as the case may be) and to the keeper
 of the common gaol of the said county, (or united counties, as the
 case may be) at , in the said county (or in the county of :

Whereas on the day of , instant, complaint on oath
 was made before the undersigned (or J. L. Esquire,) (one) of her
 Majesty's justices of the peace in and for the said (county or united
 counties, or as the case may be) of by C. D., of the township
 of , in the said (county, or as the case may be) (labourer,) that
 A. B. of, &c., on the day of , at the township of , did
 threaten (&c., follow to end of complaint, as in form above, in the
 past tense, then): And whereas the said A. B. was this day brought
 and appeared before the said justice, (or J. S., Esquire,) one of her
 Majesty's justices of the peace in and for the said (county or
 united counties, as the case may be) of , to answer the said
 complaint: and *having been required by me to enter into his
 own recognizance in the sum of , with two sufficient sureties
 in the sum of , each, as well for his appearance at the next
 general quarter sessions of the peace, to be held in and for the
 said (county or united counties, as the case may be) of to do
 what shall be then and there enjoined him by the court, as also in
 the meantime to keep the peace, and be of good behaviour towards
 her Majesty and all her liege people, and especially towards the
 said C. D., hath refused and neglected, and still refuses and
 neglects to find such sureties; these are therefore to command
 you, the said constable of the township of , to take the said
 A. B., and him safely to convey to the (common gaol) at
 aforesaid, and there to deliver him to the keeper thereof, together
 with this precept: and I do hereby command you, the said keeper
 of the said (common gaol) to receive the said A. B. into your
 custody, in the said (common gaol,) there to imprison *him until
 the said next general sessions of the peace, unless he in the mean-
 time find sufficient sureties as well for his appearance at the said
 sessions, as in the meantime to keep the peace as aforesaid.

Given under my hand and seal, this day of , in the
 year of our Lord , at , in the (county, or as the case may
 be) aforesaid.

J. S. [L.S.]

SUMMARY TRIAL.

For Larceny and other Offences.

By C. Stat. 22 V. c. 105, § 1, where any person is
 charged before the recorder of any city with having com-
 mitted 1. simple larceny, and the value of the whole property

alleged to have been stolen does not in the judgment of the recorder exceed one dollar; or

2. With having attempted to commit larceny from the person; or

3. With simple larceny; or

4. With having committed an aggravated assault, by unlawfully and maliciously inflicting upon any other person, either with or without a weapon or instrument, any grievous bodily harm, or by unlawfully and maliciously cutting, stabbing, or wounding any other person; or

5. With having committed an assault upon any female whatever, or upon any male child whose age does not, in the opinion of such recorder, exceed *fourteen* years, such assault being of a nature which cannot, in the opinion of the recorder, be sufficiently punished by a summary conviction before him under any other act, and such assault, if upon a female, not amounting, in his opinion, to an assault with intent to commit a rape; or

6. With having assaulted any magistrate, bailiff, or constable, or other officer in the lawful performance of his duty, or with intent to prevent the performance thereof; or

7. With keeping or being an inmate, or habitual frequenter of any disorderly house, house of ill fame, or bawdy house.

Such recorder may hear and determine the case in a summary way.

§ 2. Whenever the recorder proposes to dispose of the case summarily under this act, such recorder, before the examination of witnesses for the prosecution, shall state to such person the substance of the charge, and, if it is in the election of the person charged, shall say to him these words, or words to the like effect, "Do you consent that the charge against you shall be tried by me, or do you desire that it shall be sent for trial by a jury at the (*naming the court at which it could be soonest tried*), and if the defendant consent to a summary trial, or if it be a case not within the election of the person charged, then the recorder shall reduce the charge into writing and read the same to such person, and ask him whether he is "guilty" or "not."

§ 3. If he confess the charge, the recorder shall then proceed to pass sentence according to the provisions of this act in respect to such offence; and if he say "not guilty," the recorder shall then examine the witnesses for the prosecution, and when completed shall enquire if he has any de-

fence, and if he states that he has, the recorder shall hear the defence, and dispose of the case summarily.

§ 4. If convicted of larceny under the 1, 2, or 3 sub-secs. of the first section of this act, the offender may be committed to the common gaol or house of correction, with or without hard labour, for any period not exceeding *three months*. § 5. Convictions to be in the forms A and B, or to the like effect.

§ 6. If the case be not proved, the charge to be then dismissed and a certificate given.

§ 7. If the person charged, having the election, refuses to have the case tried by the recorder, or if it appear to the recorder that the offence is one which, owing to a previous conviction, is by law a felony, or if such recorder be of opinion that the charge is, from any other circumstances, fit for prosecution by indictment, then he shall deal with the case as if this act had not been passed.

§ 8. If, upon hearing the charge, the recorder is of opinion that circumstances in the case render it inexpedient to inflict any punishment, he may then dismiss the person charged, without proceeding to a conviction.

§ 9. Where any person is charged before any recorder with simple larceny, of property *exceeding* in value *one dollar*, or with stealing from the person, or with larceny as a clerk or servant, and the evidence in support of the prosecution is, in the opinion of the recorder, sufficient to put the party on his trial; the recorder, if the case appear to him to be one that may be properly disposed of in a summary way, and adequately punished under this act, shall reduce the charge into writing, and shall read it to the defendant, and explain to him that he is not obliged to plead or answer before such recorder at all, and that if he do not plead or answer before him, he will be committed for trial in the usual course.

§ 10. The recorder shall then ask him whether he is guilty or not of the charge. If he say "guilty," the recorder shall cause a plea of guilty to be entered on the proceedings, and shall convict him of the offence, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any term not exceeding *six months*. Such conviction may be in the form C, or to the like effect.

§ 11. In every case of summary proceeding under this act the accused shall be allowed to defend by counsel or attorney.

§ 12. The recorder may compel the attendance of witnesses by summons.

§ 14. In cases of charges against the keepers or inmates of houses of ill fame, the jurisdiction of the recorder shall be absolute.

§ 15. And so in case of seafaring men, not having permanent domicile.

§ 16. Parties convicted under the 4, 5, 6, or 7 sub-sections of the first section to be imprisoned with or without hard labour for any period not exceeding six months, or to pay a fine not exceeding \$100, or both.

§ 18. Where any person is charged before any justice or justices with any offence mentioned in this act, and in the opinion of such justice or justices the case may be a proper one to be disposed of by a recorder, or by [an inspector and superintendent of the police,] or by a police magistrate, as herein provided, such justice or justices may, if he or they see fit, remand him for further examination before the recorder, or before [the inspector and superintendent of the police of the nearest city,] or before the nearest police magistrate, in like manner as a justice or justices are authorised to remand a party accused under the general act, respecting justices of the peace. § 19. But no such remand shall be from Upper to Lower Canada, or *vice versa*.

§ 20. Any person so remanded for examination before the recorder, may be examined and dealt with by the inspector and superintendent of police, or police magistrate of the same city, and if remanded for examination before the inspector or police magistrate, may be examined and dealt with by the recorder.

§ 21. If the party suffered to go at large upon recognizance, as authorised under the last mentioned act conditioned for his appearance before a recorder under the preceding sections of this act, does not appear accordingly, the recorder, before whom he ought to have appeared, shall certify (under his hand) on the back of the recognizance, to the clerk of the peace of the county or unions (in Upper Canada) the fact of non-appearance, and such recognizance shall be proceeded upon in like manner as other recognizances.

§ 22. Convictions and other proceedings under this act to be returned to the next quarter sessions.

§ 24. Restitution of the stolen property may be ordered by the recorder in cases authorising restitution.

§ 25. Recorder's court to be an open public court.

§ 26. The provisions of the acts relating to summary convictions and justices of the peace shall not be considered as applying to any proceeding under this act.

§ 27. Conviction by recorder to have the same effect as a conviction upon indictment, save that of *forfeiture*.

§ 28. Proceedings under this act to be a bar to further proceedings.

§ 29. Convictions not to be quashed for want of form.

§ 30. (The inspector and superintendent of police for the cities of Quebec and Montreal,) and the police magistrate for any city in Upper Canada, sitting in open court, may respectively, in the case of persons charged before them, do all acts by this act authorised to be done by recorders, and all the provisions of this act referring to recorders and recorder's courts, and the clerks of the recorder's courts, shall be read and construed also as referring to such inspectors and superintendents, police magistrates, and their courts and clerks respectively.

§ 34. This act not to affect the provisions of the act *Respecting the trial and punishment of juvenile offenders*.

FORM A.—§ 5.

Conviction.

to wit, } Be it remembered that on the day of ,
 } in the year of our Lord , at , A. B.
 being charged before me the undersigned of the said city,
 and consenting to my deciding upon the charge summarily, is
 convicted before me, for that he the said A. B., &c., (*stating the
 offence, and the time and place when and where committed*); and
 I adjudge the said A. B. for his said offence to be imprisoned
 in the , (and there kept to hard labour,) for the space of

Given under my hand and seal, the day and year first above-mentioned, at aforesaid.

J. S. [L. S.]

FORM B.—§ 5.

Certificate of Dismissal.

to wit } I, the undersigned , of the city of , cer-
 } tify that on the day of , in the year of
 our Lord , at aforesaid, A. B. being charged before me,
 and consenting to my deciding upon the charge summarily,
 for that he the said A. B., &c., (*stating the offence charged, and
 the time and place when and where alleged to have been committed*),
 I did, having summarily adjudicated thereon, dismiss the said
 charge.

particular form of notice or summons is required by a statute, that must be strictly pursued.—*Paley*, 18. Where the defendant, after being duly served with the summons, neglects to appear before the magistrate; if it be on a criminal charge, a warrant may then be issued for his arrest. But if it be a case for *summary conviction*, then upon proof of the service of the summons, the justice may proceed to hear the case *ex parte* in his absence, and adjudicate thereon accordingly.—*C. Stat. 22 V. c. 103*, § 7. In a case where a defendant was convicted without a previous summons, the court of King's Bench granted a criminal information against the justice.—*R. v. Venables, Ld. R. 1407*. The defendant should be allowed a reasonable time for his appearance, for a summons to appear *immediately*, or upon the *same day*, would be bad, unless cured by the defendant's appearance.—*R. v. Mallison, Burr. 681*; *R. v. Johnson, 1 Str. 261*. If a witness be summoned to attend and give evidence upon any case, and neglects to attend, without lawful excuse, the justice may then issue his warrant to compel the attendance of such witness.—*C. Stat. 22 V. c. 103*, § 17.

For the form of Summons, see "*Justices of the Peace, and Summary Conviction.*"

SUNDAY.

See "*Lord's Day.*"

SURETY FOR GOOD BEHAVIOUR.

A man may be compelled to find sureties, both for the good behaviour, and for the peace; and yet the good behaviour includeth the peace, and he that is bound to the good behaviour, is therein also bound to the peace.—*Dalt., c. 122*. The authority under which a justice of the peace may require surety for the good behaviour, is founded upon the statute 34 Ed. III., c. 1; and the commission of the peace. No one ought to be bound to the good behaviour for any rash, quarrelsome, or unmannerly words, unless they either tend to a breach of the peace, or to scandalise the government, by abusing those who are intrusted by it with the administration of justice, or to deter an officer from doing his duty; and therefore it seems that he who barely calls another "rogue," or "rascal," "liar," or "drunkard," ought not for such cause to be bound to the good behaviour. However, says Mr. Hawkins, I cannot find any certain or precise rules for the

direction of the magistrate in this respect, and therefore am inclined to think that he has a discretionary power to take such surety of all those who he shall have just cause to suspect to be dangerous, quarrelsome, or scandalous; as of those who sleep in the day and go abroad in the night; and of such as keep suspicious company: and of such as are generally suspected to be robbers, and the like; and of eavesdroppers; and of common drunkards; and all other persons whose misbehaviour may reasonably be intended to bring them within the meaning of the statute; or persons of evil fame, who, being described by an expression of so great a latitude, seem in a great measure to be left to the judgment of the magistrate. But if he commit one for want of sureties, he must shew the cause with sufficient certainty.—1 *Haw.* 132.

Mr. Dalton (who wrote towards the latter end of the reign of king James the first,) in order to determine the same with some kind of certainty, has inserted the following, as instances in which sureties for the good behaviour may be granted, viz.:

Against, 1. Rioters. 2. Barrators. 3. Common quarrelers and common breakers of the peace. 4. Such as lie in wait to rob; or shall be suspected to lie in wait to rob; or shall assault or attempt to rob another; or shall put passengers in fear or peril; or shall be generally suspected to be robbers on the highway. 5. Such as are like to commit murder, homicide, or other grievance to any of the king's subjects in their bodies. 6. Such as shall practise to poison another; one instance of which may be the poisoning of their food; thus, Mr. Dalton granted a warrant for the good behaviour against one who had bought ratsbane, and mingled it with corn, and then cast it amongst his neighbours' fowls, whereby most of them died. 7. Such as in the presence of the justice shall misbehave himself in some outrageous manner of force or fraud. 8. Such as are greatly defamed for resorting to houses suspected to maintain adultery, or incontinency. 9. Maintainers of houses commonly suspected to be houses of common bawdry. 10. Common whoremongers and common whores. 11. Night-walkers, that shall eaves-drop men's houses; or shall cast men's gates, carts, or the like, into ponds; or commit other outrages or misdemeanors in the night; or shall be suspected to be pilferers, or otherwise like to disturb the peace; or that be persons of ill behaviour, or of evil fame or report generally; or that shall keep company with such, or with any other suspicious persons in the night.

12. Suspected persons, who live idly, and yet fare well, or are well apparelled, having nothing whereon to live, unless, upon examination, they shall give a good account of such their living. 13. Common gamesters. 14. Such as raise hue-and-cry without cause. 15. Libellers. 16. Putative father of a bastard.*. 17. Such as persuade or procure the putative father of a bastard child to run away. 18. Such as abuse a justice's warrant, or shall abuse him, or the constable in executing his office. Nay, it seemeth, he says, that he who shall use words of contempt, or contrary to good manners, against a justice of the peace, though it be not at such a time as he is executing his office, yet he shall be bound to his good behaviour. 19. Such as charge another before a justice with felony, riot, or forcible entry, and yet will not prosecute or give evidence. 20. In general, whatsoever act or thing is in itself a misbehaviour.—*Dalt. c. 124.*

To which may be added—21. Forcible entry.—1 *Haw.* 124. 22. The author of any writing full of obscene ribaldry.—1 *Haw.* 195. 23. For striking a person in the presence of the justices.—*Crom.* 124. 24. For threatening so as to deter witnesses from attending a court of justice—*Ib.* 125.

For what it shall be forfeited.

Mr Hawkins says, it has been laid down as a general rule that whatever will be good cause to bind a man to his good behaviour, will forfeit a recognizance for it; but this has since been denied, and indeed seems to be by no means maintainable; because the statute, in ordering persons of *evil fame* to be bound in this manner, seems in many places chiefly to regard the prevention of that mischief, which they may justly be suspected to be likely to do; and in that respect requires them to secure the public from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them or not; and it would be extremely hard, in such cases, to make persons forfeit their recognizance who may yet justly be compelled to give one, as those who keep suspicious company; or those who spend much money idly, without having any visible means of getting it honestly; or those who lie under a general suspicion of being rogues and the like.—1 *Haw.* 132, 133. However, it seems that such a recogni-

(a) There being no poor-laws in this province, an offender of this sort would not, probably, be liable.

zance shall not only be forfeited for such actual breaches of the peace, for which a recognizance for the peace may be forfeited, but also for some others for which such a recognizance cannot be forfeited; as for going round with great numbers to the terror of the people, or speaking with words tending to sedition; and also for such actual misbehaviours which are intended to be prevented by such recognizance, but not for barely giving cause of suspicion of what perhaps may never happen.—1 *Haw.* 133.

For the forms requisite under this title, see “Articles of the Peace,” the forms in which may be easily adapted in any case that may arise under this head, observing throughout to confine the subject matter to “surety of the good behaviour,” omitting the words “surety of the peace.”

SURVEYORS.

See “*Highways*,” “*Land Surveyors*.”

SWEARING.

By Stat. 19, G. II., c. 21, the following penalties are imposed on offenders who shall profanely curse or swear, and be convicted thereof on confession, or oath of one witness, before one justice, viz.: every day-labourer, common soldier, or common seaman, *one shilling*; every other person under the degree of a gentleman, *two shillings*; and every person of or above the degree of a gentleman *five shillings*; and for a second offence after conviction, *double*; and for every subsequent offence after conviction, *treble*; which said penalties shall go to the poor of the parish. (a) If such person shall curse or swear in the presence and hearing of a justice, he shall convict him without any other proof.

And by the Municipal Act, U. C. Stat. 22 V., c. 54, § 282, power is given to the municipal authorities incorporated under that act to make by-laws for, amongst other things enumerated, preventing vice, drunkenness, *profane swearing*, obscene, blasphemous or grossly insulting language, and any other species of immorality and indecency in streets, highways, and public places.

TAVERN LICENSES.

See “*Inns and Inn-keepers*.”

TELEGRAPH COMPANIES.

By Con. Stat. 22 V., c. 67, § 1, any number of persons

(a) See “*Fines and Forfeitures*,” as to the application.

not less than three may form a company. § 2. Certificate to be made shewing name, route, capital, &c., § 3, and filed in the office of the provincial secretary. § 4. Incorporation of the company. § 6. Corporate powers. § 7. May appoint directors and make by-laws. § 8. Construct line.

§ 14. Required to transmit despatches in the order in which they are received, under a penalty of not less than \$20 nor exceeding \$100, recoverable with costs by the party whose despatch has been postponed. § 15. Messages in relation to the administration of justice, arrest of criminals, discovery or prevention of crime, and government messages or despatches to have the preference. § 16. Any operator divulging the contents of a private despatch, shall be guilty of misdemeanor, and on conviction liable to a fine not exceeding \$100, or imprisonment not exceeding three months, or both, in the discretion of the court. § 17. The government may at any time temporarily assume possession, and the operators bound to obey orders under a penalty not exceeding \$100 for every refusal or neglect. § 18. The government may also at any time, on giving two month's notice, assume the property entirely. § 19. Compensation for, in case of difference, to be settled by arbitration.

§ 21. Any person who wilfully and maliciously cuts, breaks, molests, injures, or destroys, any instrument, cap, wire, post, line, pier, or abutment, or the materials or property belonging thereto, or any other erection used for or by any line of electro-magnetic telegraph in operation in this province, under any act in force herein, or who wilfully and maliciously in any way obstructs, disturbs, or impedes the action, operation, or working of any such line of telegraph, shall, on conviction thereof, be deemed guilty of misdemeanor, and be punished by a fine not exceeding \$40, or imprisonment not exceeding one month, or both, at the discretion of the court before which the conviction is had.

§ 22. The jurisdiction over all offences against this act shall be in any justice of the peace, in any parish, village, city, town, or county where the offence has been committed, or in which the offender may be found, and the proceedings thereon shall be summary.

§ 23. The fine imposed may, if not forthwith paid, be levied, with all costs of the prosecution, by warrant of distress against and by sale of the goods and chattels of the offender, or such offender may (in the discretion of the magistrate) whether imprisonment be or be not part of the sentence, be imprisoned for a period not exceeding thirty days, in addi-

tion to and after the expiration of any other imprisonment making part of his sentence; unless such fine and all expenses incurred in the prosecution be sooner paid; and all such fines, when collected, shall belong to the party aggrieved by, and complaining of the offence, and be paid over to such party.

THEFTBOTE.

Theftbote (from the Saxon *theft* and *bote*, boot or amends) is, where one not only knows of a felony, but takes his goods again, or other amends not to prosecute.—1 *Hdw.* 125.

See also “*Compounding Felony.*”

THREATS.

If one man threaten another, to deter him from doing some lawful act, or to compel him to do some unlawful one, or with intent to extort money from him, or obtain any other benefit (whether real or imaginary) to the person who makes use of the threat; this has always been considered a misdemeanor at common law. Thus, to threaten a plaintiff for suing a defendant, or a counsellor or attorney for being employed against any party in a suit; a juror for his verdict; or a gaoler, or other ministerial officer, for keeping a prisoner in custody and properly executing his duty, are offences for which the party may be indicted and punished by fine or imprisonment.—2 *Inst.* 141: 4 *Bl. Com.* 126; 2 *Chit. C. L.* 149.

With respect to *threats* of personal violence, or any other threats by which a man is put in fear, and by means of which money or other property is actually extorted from him, the C. Stat. 22 V. c. 92, § 4, enacts as follows:—Any person, who with menaces, or by force demands any chattel, money, or valuable security of any person, with intent to steal the same, shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not exceeding three years, or in any other prison, or place of confinement, for any term less than two years.

§ 6. Any person who accuses, or threatens to accuse, any person of the abominable crime of buggery, committed either with mankind or with beast, or 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 by intimidating such person by such accusation or threat, extorts or gains from such person any property, shall be guilty of felony, and shall be imprisoned in the penitentiary for life, or any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

§ 7. Any person who knowingly sends or delivers any letter or writing, demanding of any person, with menaces and without any reasonable or probable cause, any chattel, money, or valuable security; and any person who accuses, or threatens to accuse, or knowingly sends or delivers 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 rape, with a view or intent to extort or gain from such person any chattel, money, or valuable security, shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

§ 11. Any person who steals any chattel, money or valuable security in any dwelling-house, and, by any menace or threat, puts any one being therein in bodily fear, shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not exceeding fourteen years, nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years.

TIMBER RAFTS.

By C. Stat. 22 V. c. 23, § 13, parties maliciously cutting booms, or breaking up or casting loose rafts or cribs, shall be guilty of a misdemeanor, punishable with fine and imprisonment of not less than six months.

TIMBER, TRANSMISSION OF.

By C. Stat. 22 V. c. 68, entitled, "*An Act respecting joint stock companies, to construct works to facilitate the transmission of timber down rivers and streams.*" § 67. If any person wilfully and maliciously burns, breaks down, injures, cuts, removes, or destroys 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 impedes or blocks up any channel or passage intended for the transmission of timber, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine,

and imprisonment in the common gaol, not exceeding one year. § 68. If any person resists or impedes any of the servants of the company in the transmission of any timber through any such works, or resists any such servants requiring access to any raft or timber, to ascertain the tolls thereon, or in any way molests the company or its servants in the exercise of any rights under this act, such person shall, upon summary conviction before a justice of the peace of the locality, be sentenced to pay a fine of not more than \$10, nor less than one dollar, with costs. § 69. The offender to be summoned, and, in default of appearance, the justice may proceed to hear and determine the case *ex parte*, or issue his warrant to apprehend the offender. § 70. The fines and forfeitures imposed by this act summarily, may be recovered upon information, before any one justice of the peace of the county, and levied by distress and sale of the offender's goods and chattels. § 71. And in default of distress, the offender to be committed to the common gaol for any period not exceeding one month.

TOBACCO MANUFACTURE.

See Addenda, title "*Excise*."

TOLLS.

By C. Stat. 22 V. c. 28, § 85, the Governor in council may, by order in council, impose and authorise the collection of tolls upon any canal, harbour, road, bridge, ferry, slide, or other public work in this province, and from time to time, alter and change such tolls and dues; provided the same do not exceed the maximum rates in schedule B. to the act, (and for which, see title "*Public Works*," page 692.)

By the U. C. Stat. 22 V. c. 49, for the formation of joint stock road companies, the president and directors of any such company are authorised from time to time to fix, regulate, and receive certain tolls and charges upon any road belonging to such company, and for which, see title "*Highways*," page 374; and by § 121, certain provisions contained in that act are to extend to and regulate all turnpike road companies in Upper Canada in the collection of tolls, or otherwise, whether constructed under any act in the first section mentioned, or under the 12 V. c. 5, or constructed by or belonging to any municipality under any act.

By C. Stat. 22 V. c. 86, § 1, all persons going to or returning from divine service on any *Sunday* or *obligatory* holiday with their own carriages, &c., shall, as also their

families, &c., pass *toll free*, whether such turnpike road and the tolls belong to the province or to any local or municipal authority, or body of trustees or commissioners for local purposes, or to any incorporated or unincorporated company, or any other body, person or persons.

§ 2. No vehicle, laden or unladen, horses or cattle, belonging to the proprietor of any lands divided by any turnpike road, shall be liable to toll on passing through any toll-gate, (at whatever distance from any city or town,) for the sole purpose of going from one part of his lands to another: provided the same do not proceed more than half a mile along such road either in going or in returning, for farming or domestic purposes only.

§ 3. Vehicles laden solely with manure brought from any city or incorporated town in Upper Canada, and employed to carry the same into the country for the purposes of agriculture, and the horse or horses, or other beasts of draught drawing such vehicle, shall pass *toll free* through every turnpike-gate, or toll-gate, or any turnpike road within *twenty* miles of such city or town, as well in going as in returning, if empty.

§ 4. This act not to extend to any toll-bridge vested in any party other than the Crown.

By U. C. Stat. 22 V. c. 49, § 91, the following persons are also exempt from toll:—1. Military officers, in uniform, and soldiers, and their horses. 2. Recruits. 3. Prisoners under military escort. 4. Enrolled pensioners, in uniform, when called out. 5. Carriages and horses in her Majesty's service. 6. Funerals. 7. Any person with horse or carriage going to or returning from worship on the Lord's day. 8. Any farmer residing on the line of any road opposite to and adjoining his farm, when going to or returning from his work on such farm.

See also "*Highways*," "*Public Works*."

TOWNS, INCORPORATION OF.

The General Municipal Act. U. C. Stat. 22 V. c. 54, § 15, provides for the erection of an incorporated village into a town when it appears by the census return that it contains over 3,000 inhabitants. The provision is as follows:—The council of the village shall, for three months after the census return, insert a notice in some newspaper published in the village, or, if no newspaper be published therein, then the council shall for three months post up a notice in four of the most public places in the village, and insert the same in a

newspaper published in the county in which the village is situate, setting forth in the notice the intention of the council to apply for the erection of the village into a town, and state the limits intended to be included therein. *Secondly.*—The council of the village shall cause the census returns to be certified to the governor in council, under the signature of the seal of the corporation, and under the corporate seal, and shall also cause the publication aforesaid to be proved to the governor in council, then, the governor may, by proclamation, erect the village into a town by a name to be given thereto in the proclamation. § 25. And the council and members thereof, having authority in the municipality before such election, shall, until the council for the newly erected corporation be organised, continue to have the same powers as before.

§ 66, *Art. 2.* The council of every town shall consist of the mayor, who shall be the head thereof, and of three councillors for every ward; and if the town has not withdrawn from the jurisdiction of the council of the county in which it lies, one of the councillors of the town shall be elected by the council to be reeve of the town; and if the town had the names of 500 resident freeholders and householders on the last revised assessment roll, then one other of the councillors shall be deputy reeve.

For further provisions respecting incorporated towns see the General Municipal Act.

TOWN REEVE.

By the general Municipal Act, U. C. Stat. 22 V. c. 54, § 362, town reeves and deputy town reeves shall be *ex officio* justices of the peace within their localities.

TOWNSHIP COUNCILS.

See title "*Municipal Institutions.*"

TRADE MARKS.

By Stat. 24 V. c. 21, the Stat. 23 V. c. 27, respecting trade marks, is repealed. § 2. Trade marks may be registered. § 3. With the "Board of Registration and Statistics." § 5. If any person other than the party who has registered the same shall mark any goods or article with any trade mark so registered, or shall knowingly sell or offer for sale any article marked with such trade mark, with intent to deceive, he shall be guilty of a misdemeanor, and forfeit for such offence a sum not less than \$20, and not exceeding

\$100, to be paid to the proprietor of such trade mark, with costs. § 6. Any person knowingly and wilfully registering as his own any trade mark, the property of a person not resident in this province, shall be guilty of a misdemeanor, and liable to the same penalty, and the entry of such trade mark, in the trade marks' register, shall be cancelled by the secretary, upon a certificate signed by the clerk of the court, or the justices of the peace, before whom conviction is had, and one-half of the penalty shall go to the prosecutor, the other half to the Crown. § 7. Any person counterfeiting or using the trade mark of any person not resident in the province, with intent to deceive, although not registered, shall forfeit not less than \$10, nor more than \$50, with costs, to be applied as aforesaid. § 8. Penalties to be recovered as provided in this act respecting the registration and protection of designs. § 17. In any court of competent jurisdiction.

TRAINING, UNLAWFUL.

By U. C. Stat. 22 V. c. 99, § 1, it is enacted that all meetings and assemblies of persons for the purpose of training or drilling, or of being trained or drilled to the use of arms, or for the purpose of practising military exercises or evolutions, without lawful authority, are prohibited; and every person who attends any such meeting or assembly, for the purpose of training or drilling any other person or persons to the use of arms, or to the practice of military exercise or evolution as aforesaid, or who aids or assists therein, is guilty of a misdemeanor, and shall be confined in the penitentiary for the term of two years; and every person who attends any such meeting or assembly and is trained or drilled to the use of arms or to the practice of military exercise or evolutions, is guilty of a misdemeanour, and shall be punished by fine and imprisonment in the common gaol for any period less than two years, at the discretion of the court. § 2. Any justice of the peace, or any constable or peace officer, or any person acting in their aid, may disperse any such unlawful meeting or assembly as aforesaid, and arrest and detain any person present at, aiding, assisting or abetting any such assembly or meeting; and the justice of the peace who arrests any such person, or before whom any person so arrested is brought, may commit him for trial, unless such person gives bail for his appearance at the then next assizes, to answer to any indictment which may be preferred against him for any offence against this act. § 3. This act shall not

prevent any prosecution by indictment or otherwise, for any thing that is an offence within the meaning of this act, and which might have been so prosecuted if this act had not been made, unless the offender has been prosecuted and convicted or acquitted under this act. § 4. All justices in any county in Upper Canada shall have concurrent jurisdiction as justices of the peace with the justices of any other county, in all cases as to the carrying into execution the provisions of this act, and as to all matters relating to the preservation of the public peace. § 5. The governor may declare by proclamation this act to be no longer in force in any particular county therein specified. § 6. Prosecutions under this act to be commenced within six months. § 7. Actions against justices, &c., for any thing done under this act, to be commenced within six months.

TRANSPORTATION.

Any person sentenced to transportation or banishment afterwards found at large within the province without lawful excuse, before the expiration of his term, shall be guilty of felony, and imprisoned for any term not exceeding four years.—*C. Stat.* 22 *V. c.* 90, § 34.

Offences formerly punishable by transportation may now be punished by imprisonment in the penitentiary.—*C. Stat.* 22 *V. c.* 99, § 107.

Every offender returning from transportation or banishment may be tried in the county where found at large, or where the sentence was passed.—*Ibid.*, § 10.

TRAVELLING ON HIGHWAYS.

By U. C. Stat. 22 *V. c.* 56, § 1—*Wheeled carriages, &c., meeting*—in case any person travelling, or being upon any highway in charge of a vehicle drawn by one or more horses, or one or more other animals, meet another vehicle drawn as aforesaid, he shall turn out to the right from the centre of the road, allowing to the vehicle so met one half of the road. § 2. In case any person travelling or being upon any highway in charge of a vehicle as aforesaid, or on horseback, be overtaken by any vehicle or horseman travelling at a greater speed, the person so overtaken shall quietly turn out to the right, and allow the said vehicle or horseman to pass. § 3. In the case of one vehicle being met or overtaken by another, if by reason of the extreme weight of the load on either of the vehicles so meeting, or in the vehicle so overtaken, the driver finds it impracticable to turn out as

aforesaid, he shall immediately stop, and if necessary for the safety of the other vehicle, and if required so to do, he shall assist the person in charge thereof to pass without damage.

Intoxicated Driver.—§ 4. In case any person in charge of a vehicle or of a horse or other animal, used as the means of conveyance, travelling or being on any highway as aforesaid, be, through drunkenness, unable to drive or ride the same with safety to other persons travelling, on or being upon the highway, he shall incur the penalties imposed by this act.

Racing.—§ 5. No person shall race with or drive furiously any horse or other animal, or shout or use any blasphemous or indecent language upon any highway. § 6. In case any person so races, or drives, or shouts, or uses blasphemous or indecent language, he shall incur the penalties imposed by the act.

Sleigh bells.—§ 7. Every person travelling upon any highway with a sleigh, sled, or cariole drawn by horse or mule, shall have at least two bells attached to the harness.

Bridges.—§ 8. Every person who has the superintendence and management of any bridge exceeding thirty feet in length, shall cause it to be put up at each end thereof conspicuously placed, a notice legibly printed in the following form :—

“Any person or persons riding or driving on or over this bridge at a faster rate than a walk, will, on conviction thereof, be subject to a fine as provided by law.”

§ 9. In case any person injures or in any way interferes with such notice, he shall incur a fine of not less than one nor more than eight dollars, to be recovered in the same manner as other penalties imposed by this act. § 10. If while such notice continues up, any person rides or drives a horse or other beast of burden over such bridge at a pace faster than a walk, he shall incur the penalties imposed by this act.

Penalties.—§ 11. In cases not otherwise specially provided for, if any person contravenes this act, and such contravention be duly proved by the oath of one credible witness before any justice of the peace having jurisdiction within the locality where the offence has been committed, the offender shall incur a penalty of not less than one dollar nor more than twenty dollars in the discretion of such justice with costs. § 12. If not paid forthwith, the penalty and costs shall be levied by distress and sale of the goods and chattels of the offender under a warrant signed and sealed by the convicting justice, and the overplus, if any, after de-

ducting the penalty and costs and charges of sale, shall be returned on demand to the owner of such goods and chattels. § 13. In default of payment or distress the offender shall, by warrant signed and sealed as aforesaid, be imprisoned in the common gaol for a period not less than one day nor more than twenty days, at the discretion of the justice, unless such fine, costs, and charges be sooner paid. § 14. No such fine or imprisonment shall be a bar to the recovery of damages by the injured party before any court of competent jurisdiction. § 15. Every fine collected under this act shall be paid to the chamberlain or treasurer of the local municipality or place in which the offence was committed, and shall be applied to the general purposes thereof. § 16. Any conviction under this act may be appealed in the manner provided in the act respecting appeal in cases of summary convictions.

TRAVERSE.

By U. C. Stat. 22 V. c. 108, § 3, no person prosecuted shall traverse or postpone the trial of any indictment found against him at any session of oyer and terminer and gaol delivery : or at any session of the peace, or recorder's court. But if the court, upon his application or otherwise, be of opinion that the defendant ought to be allowed a further time, either to prepare for his defence or otherwise, such court may adjourn the trial to the next subsequent session, upon such terms as to bail or otherwise, as to the court may seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly, and without entering into fresh recognizances.

TREASON.

Treason, according to Lord *Coke*, is derived from *trahir*, to betray ; and *trahison*, by contraction, treason, is the betraying itself.—3 *Inst.* 4. Treason, generally spoken, is intended not of petit treason, but of high treason only.—1 *H. H.* 316.

Of High Treason.

By the statute of the 25 Ed. III. st. 5, c. 2, which Lord *Hale* calls a sacred act, and Lord *Coke* an excellent act, and the king who made it a *blessed* king, and the parliament a *blessed* parliament, all treasons which had been uncertain before, were settled ; which act, by the 1 Mar. sess. 1, c. 1, is reinforced, and again made the only standard of treason ;

and all statutes, between the said statutes of 25 Ed. III. and 1 Mar., which made any offence high or petit treason, or misprision of treason, are abrogated, so that no offence is at this day to be esteemed high treason, unless it be either declared to be such by the said statute of the 25 E. III., or made such by some statute since the 1 Mar.

The 25 Ed. III., is as follows:—"Whereas divers opinions have been before this time, in what case treason shall be laid, and in what not, the king, at the request of the Lords and Commons, hath made a declaration in the manner as hereinafter followeth—that is to say: when a man doth compass or imagine the death of our lord the king, or of our lady the queen, or of their eldest son and heir; or if a man do violate the king's companion (that is, his wife.—3 *Inst.* 9), or the king's eldest daughter, unmarried; or the wife of the king's eldest son and heir; or if a man do levy war against our lord the king in his realm; or be adherent to the king's enemies in his realm, giving them aid and comfort in the realm and elsewhere, and thereof be proveablement, (proveably) attainted of open deed by the people of their condition; and if a man counterfeit the king's great or privy seal, or his money; and if a man bring false money into the realm, counterfeit to the money of England, knowing the same to be false; and if a man slay the chancellor, treasurer, or the king's justices of the bench or the other justices in eyre, or justices of the assize; and all other justices assigned to hear and determine, being in their places doing their offices."

And by the statute 1 Mar. sess. 1, c. 1 (which Lord Hale calls another excellent law), "no act, deed or offence, being by act of parliament made treason, by words, writing, ciphering, deeds, or otherwise whatsoever, shall be adjudged to be treason, but only such as be declared by the said statute of the 25. Ed. III." And this, he says, at one blow laid flat all the numerous treasons at any time enacted since the 25 Ed. III.—1 *H. H.* 308.

Lord Coke (3 *Inst.* 14, 140) seems to be of opinion, upon the said act of the 25 Ed. III., that *bare words* are not a sufficient *overt act* or *open deed*, whereby to convict a person of treason; but they are misprision of treason only. So also Lord Hale seems to think that words, unless put into writing, are not regularly an overt act.—1 *H. H.* 111, 118. But Mr. Hawkins argues the contrary; and amongst other reasons for his opinion, he observes that to charge a man with speaking treason is unquestionably actionable,

which could not be if no words could amount to treason. Also, that as in the case of felony, he who by command or persuasion induceth another to commit felony, is an accessory in felony, so he who does the same in treason is a principal traitor (there being no accessories in treason, but all being principals): and yet such person doth not act but by words.—1 *Haw.* 39. And it has been the constant practice, ever since the revolution at least (1688), where a person, by treasonable discourses, hath manifested a desire to murder or depose the king, to convict him upon such evidence. And in Lowick's case, Holt, C. J., declared that *express words* were not necessary to convict a man of high treason; but if from the tenor of his discourse, the jury is satisfied he was engaged in a design against the king's life, this is sufficient to convict the prisoner.—*Read. Treat.* 147.

Offences in relation to the coin, in England, are made treason by many statutes, but are scarcely applicable to this province.

The different treasons relating to the papists, or persons exercising the Roman Catholic religion, namely, that created by 5 *Eliz.*, c. 1, of defending the Pope's jurisdiction in this realm; that created by the 27 *Eliz.*, c. 2, of a popish priest tarrying three days in England without taking the oaths; that created by the 3 *Jac.* 1., c. 4, of any natural-born subject being reconciled to the See of Rome—have long become obsolete, and seem indeed to be now virtually repealed by the 31 *G.* III., c. 32.

But there is one kind of treason declared by the 23 *Eliz.*, c. 1, that is distinct from any treason of the last description, although the statute was made ostensibly against maintaining the authority of the See of Rome. By § 2, it is enacted, that all persons who shall pretend to have power, or shall by any means put in practice to absolve, persuade, or withdraw any subject from his natural obedience to her Majesty, or to promise any obedience to the See of Rome, or of any other prince, state or potentate; or shall do any overt act to that intent or purpose, shall be guilty of high treason.

So by the 3 *Jac.* 1., c. 4, § 22, if any person shall, either upon the seas or beyond the seas, or in any other place within the dominions of her Majesty, his heirs and successors, put in practice to absolve, persuade, or withdraw, any of the subjects of the king, or of his heirs or successors of the realm of England, from their natural obedience to his Majesty, his heirs or successors, or to move them, or any of them, to promise obedience to any prince, state or potentate—every

such person shall suffer as in case of high treason. And by § 3, the like penalty attaches to any one being willingly so absolved or withdrawn from his allegiance, or who shall promise obedience to any such prince, state or potentate.

In high treason there are no accessories, but all are principals, and therefore whatever act or consent will make a man accessory to a felony before the act done, the same will make him a principal in case of high treason.—3 *Inst.* 9, 21.

By 7 W. III., c. 3, no person shall be prosecuted for high treason but within three years after the offence committed, except in the case of designing to assassinate the king's person. And by the 31 C. II., c. 2, persons committed for high treason shall be indicted the next term, or next assize, otherwise they shall be let to bail, unless it appear to the court, upon oath, that the witnesses for the king could not be produced in that time; and in such case, they shall be indicted the second term or assize, or else discharged.

By 7 Anne, c. 21, § 11, persons indicted for high treason, or misprision of treason, shall have a copy of the indictment, and lists of the jurors and witnesses, delivered to them ten days before the trial; and by 7 W. III., c. 3, shall have two such council as they shall desire assigned to them by the court, who shall have access to them at reasonable times.

The judgment for high treason (not relating to the coin) formerly was, that the offender should be carried back to the place from whence he came, and from thence to be drawn to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out and burnt before his face, and his head cut off, and his body divided into four quarters, and his head and quarters disposed of at the king's pleasure—2 *Haw.*, 443; but now, by U. C. Stat. 22 V. c. 97, § 3, the sentence is, 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 anatomised."

In the said judgment is implied forfeiture of lands and goods to the King; loss of dower; and corruption of blood.—3 *Inst.* 211. But after the death of the Pretender (and of his issue), no attainder for treason shall disinherit or prejudice any heir or other person, other than the offender, during his life—7 *An. c.* 21, § 10; 17 *G. II. c.* 39, § 3.

By C. Stat 22 V., c. 99, § 54, the jury impanelled to try any person for treason, or felony, shall not be charged to inquire concerning his lands, tenements or goods, nor whether he fled for such treason or felony.

By C. Stat. 22 V., c. 102, § 55, no justice or justices of the peace, or county judge, shall admit any person to bail on account of treason or murder, except by order of the Court of Queen's Bench, Common Pleas, or one of the judges thereof.

Petit Treason,

Is where a servant slayeth his master, or a wife her husband, and is distinguishable from high treason in this way; high treason can only be committed against the King, petit treason against the King's subjects.—3 *Inst.* 20.

By C. Stat. 22 V., c. 91, § 1, the punishment for petit treason is the same as in cases of murder.

Misprision of Treason.

Misprision cometh of the French word *mespris*, which properly signifieth neglect or contempt; and misprision of treason in legal understanding, signifieth when one knoweth of any treason, though no party or consentor to it, yet conceals it and doth not reveal it in convenient time.—3 *Inst.* 36; 1 *H. H.* 371. The judgment of misprision of treason is, to be imprisoned during life, to forget his goods for ever, and the profits of his lands during his life.—3 *Inst.* 36.

Every man, therefore, that knoweth a treason, ought with all speed to reveal it to the King, his privy council, or other magistrate.—*H. Pl.* 127. But it seemeth that misprision of petit treason is not subject to the judgment of misprision of high treason, but only is punishable by fine and imprisonment, as in the case of misprision of felony.—1 *H. H.* 375.

TREES—SAPLINGS—SHRUBS.

By C. Stat. 22 V., c. 92, § 36, if any person steals, cuts, breaks, roots up, or otherwise destroys or damages *with intent to steal*, the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be growing—the stealing of such article or articles, or the injury done being to the amount of *twenty cents*, at the least—such offender, being convicted before a justice of the peace, shall 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 \$20 as to the justice may seem meet.

By C. Stat. 22 V., c. 93, § 24, if any person unlawfully and *maliciously* cuts, breaks, barks, roots up, or otherwise destroys or damages 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, such offender shall be guilty of a *misdemeanor*, and shall be punished accordingly; and if any person unlawfully and maliciously cuts, breaks, roots up, or otherwise destroys or damages 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, such offender (in case the amount of the injury done exceeds \$4) shall be guilty of a misdemeanor, and be punished accordingly.

§ 25. If any person unlawfully and *maliciously* cuts, breaks, barks, roots up, or otherwise destroys or damages the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be growing, the injury done being to the amount of *twenty cents* at the least, 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 \$4, as such justice may award.

Growing Timber.

By Stat. 23 V., c. 37, § 1, if any person steals or cuts, breaks, roots up, or otherwise destroys or damages with intent to *steal*, or unlawfully carry away, or procures any person or persons to steal, &c., any tree or sapling standing, growing, or being upon the lands of any other, the injury done being in amount more than *ten dollars*, every such offender shall be guilty of a misdemeanor, and punishable by fine not exceeding one hundred dollars, or imprisonment in any common gaol for a term not exceeding six months, or by both; and the court may award such fine, or any part thereof, to the person injured. § 2. Receivers also to be guilty of a misdemeanor, and liable to the same punishment.

See also "*Felling Trees, Malicious Injury to Property.*"

TRIAL.

By Con. Stat. 22 V. c. 99, § 38, if upon the trial of two or more persons for jointly receiving any property, it shall be proved that one or more received the same, the jury may convict the actual receivers only. § 58. If upon the trial of any clerk or servant for embezzlement the facts proved amount to larceny, the jury may return as their verdict "not guilty" of the embezzlement, but "guilty" of simple larceny, or of larceny as a clerk or servant, and thereupon the party shall be punished accordingly. § 59. And if upon a trial for larceny the facts proved amount to embezzlement, the jury

may return their verdict accordingly, and the party shall be punished for the embezzlement. § 61. If on a trial for larceny it appears that the property has been obtained by fraud, not amounting to larceny, then the jury may acquit for the larceny and find the defendant guilty of obtaining such property by false pretences, and he shall be punished accordingly. § 62. If on a trial for false pretences, the offence amounts to larceny, the defendant shall not by reason thereof be acquitted of the *misdemeanor*. § 63. If on the trial of any indictment for larceny, it appears the property was stolen at different times, the prosecutor shall not be required to elect upon which he will proceed, unless there be more than three takings, or that more than six months elapsed between the first and last of such takings; and in either such case, the prosecutor shall then elect to proceed for such number of takings, not exceeding three, as appears to have taken place within six months from the first to the last of such takings. § 64. If on a trial for misdemeanor it appears that the facts amount to felony, the defendant shall not be acquitted of such misdemeanor: and no person tried for such misdemeanor shall be afterwards prosecuted for the felony, unless the court shall think fit in its discretion to discharge the jury, and direct the party to be indicted for the felony. § 68. If on the trial of any person charged with felony or misdemeanor the evidence be incomplete, and shew an attempt only to commit the same, the jury may find the defendant "not guilty" of the principal offence, but "guilty" of the attempt, and defendant shall be punished accordingly. § 78. Whenever on the trial of any indictment for any felony or misdemeanor, any variance appears between the statement in such indictment and the evidence in names, dates, places, or other matters not material to the merits of the case, and by the mistatement whereof the person on trial cannot be prejudiced in his defence on such merits, the court may order such indictment to be amended according to the proof by some officer of the court or other person, on such terms as to postponing the trial before the same or another jury as the court shall think reasonable. § 79. And after any such amendment the trial shall proceed, whenever the same is proceeded with, in the same manner and with the same consequences as to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had occurred. § 80. And in case such trial is had at *nisi prius*, the order for amendment shall be indorsed on the record, and returned therewith. § 81. And

in all other cases the amendment shall be endorsed on or filed with the indictment, and returned among the proper records of the court. § 82. When any such trial is had before a second jury, the crown and defendant shall be entitled to the same challenges as in the swearing of the first jury.

TURNPIKE GATES.

By Con. Stat. 22, V. c. 93, § 22, if any person unlawfully or maliciously throws down, levels or otherwise destroys 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 ordinance 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 shall be punished accordingly.

See also "*Highways.*"

UNORGANISED TRACTS.

§ 1. By U. C. Stat. 22 V. c. 128, § 1. The governor may from time to time, by proclamation, declare certain unorganised tracts bordering on Lakes Superior and Huron (including islands,) and all other parts of Canada not included within the settled limits of any county or districts, into temporary judicial districts, and divide each into two or more divisions. § 3. And appoint a stipendiary magistrate for each district. § 5. Who shall be *ex officio* a justice of the peace therein. § 6. And appoint justices of the peace therein. § 7. Such stipendiary magistrate shall have the power to appoint constables. § 9. Temporary gaols to be provided therein, but offenders to be committed for trial, as heretofore, to the common gaol of the proper county in this province. § 13. Provides for the constitution of a civil court and the disposal of civil matters between party and party. § 92. The Governor may from time to time, by proclamation, form provisional judicial districts out of certain unorganised tracts adjacent to Lakes Superior and Huron, and authorise the holding of courts of assize, &c., therein. § 94. And appoint judges. § 96. The acts and laws in force with respect to the holding of courts of quarter sessions, (a) county courts and division courts, and appointment of judicial officers, shall

(a) Extended by 27, 28 V. c. 35..

apply to such provisional districts. § 98. Justices of the peace therein shall have the same powers therein as justices of the peace in Upper Canada had previous to the 27th of August, 1841, and without any property qualification. § 100. All crimes and offences committed in any of the unorganised tracts of country in Upper Canada, not being within the limits of any organised county, or within any provisional district, may be inquired of, tried and punished within any county, and may be laid and charged to have been committed within the jurisdiction of the court which shall try the same. § 101. When any provisional district or new county is formed, crimes and offences committed therein shall be tried and punished within the same. § 102. All buildings provided by the commissioners of public works, shall, under the direction of the Governor, be the court houses and gaols of such provisional districts. § 103. And the sheriff of such district may summons any of the inhabitants as jurors. § 104. Any person inciting Indians or half breeds, frequenting or residing in such tracts, to the disturbance of the public peace, or to the commission of any indictable offence, shall be guilty of *felony*, and, upon conviction, be sentenced to imprisonment for not more than *five* years, nor less than two years, in the provincial penitentiary. § 105. And may be committed to any common gaol in Upper Canada.

USURY.

Usury is the offence of extorting an unreasonable rate of interest for the loan of money, beyond what is allowed by law, and from what is said in the books, it appears that usury was originally considered as an offence at common law. —2 *Roll.* 800 ; 3 *Inst.* 151, 152; 5 *Com. Dig.*; *Usury (A.) Anon. Hardr.* 410. By C. Stat. 22 V. c. 58, § 3, any rate of interest may now be agreed upon between parties. § 4. Excepting banks, which are restricted to *seven* per cent. § 8. *Six* per cent. to be the legal rate of interest where no other rate has been fixed between parties. By this statute all the penalties for taking a greater rate of interest than six per cent. are abolished, as between private persons; but with respect to other associations taking interest beyond the rate allowed, the same will incur the forfeiture of *treble* the value of the money lent.

VACCINATION.

By Stat. 24 V. c. 24, the council of certain cities (in

Upper Canada, Kingston, Toronto, Hamilton and London, and the town of Sherbrooke) may contract yearly with a qualified practitioner, at the expense of the city, for the vaccination of the poor, and others, at their own expense, (3,) and appoint a convenient place in each ward for the poor-house. § 4. Parents bound within three calendar months after the birth of any child, or in case of death, sickness, or inability of the father or mother, then the person in charge of such child, within four calendar months, to take such child to be vaccinated at the appointed place, unless previously vaccinated by some legal medical practitioner. § 5. And on the eighth day afterwards take such child again to such practitioner for examination. § 6. Who shall give a certificate under his hand (in case of successful vaccination) to the party, and transmit a duplicate to the clerk of the city. § 7. If the child be found unfit for vaccination, then a certificate to be given accordingly, to remain in force two months, the child to be then re-presented for vaccination every two months. § 8. But if the medical practitioner shall be of opinion that such child is insusceptible of vaccine disease, he shall certify accordingly. § 10. Penalty for contravention of this act not exceeding \$5, recoverable on summary conviction before any police magistrate, or if no such officer, then before two justices of the city; and the provisions of the 103 ch. of the C. Stats. of Canada shall be applicable for the recovery of such penalties.

VAGRANTS.

1. *Idle and Disorderly Persons.*

By 7 J. c. 4, idle and disorderly persons shall be sent to the house of correction; and by 17 Geo. II. c. 5, idle and disorderly persons are thus described *inter alia*:—1. All persons who not having wherewith to maintain themselves, live idle without employment, and refuse to work for the usual and common wages given to other labourers in the like work in the parishes or places where they are. 2. All persons going about from door to door, or placing themselves in streets, highways, or passages, to beg or gather alms in the parishes or places where they dwell—all these shall be deemed idle and disorderly persons. And it shall be lawful for one justice to commit such offenders (being convicted thereof before him, by his own view or confession, or oath of one witness) to the house of correction, to be kept to hard labour, not exceeding one month. And any person may apprehend

and carry before a justice, any such persons going about from door to door, or placing themselves in streets, highways or passages, to beg alms in the parishes or place where they dwell, and if they shall resist or escape from the person apprehending them, they shall be punished as rogues and vagabonds.

2. *Rogues and Vagabonds.*

By 17 G. II., c. 5, the following persons shall be deemed rogues and vagabonds:—1. All persons going about as patent gatherers, or gatherers of alms, under pretences of loss by fire, or other casualty. 2. Persons going about as collectors for prisons, gaols or hospitals. 3. Fencers. 4. Bearwards. 5. Common players, not authorised by law. 6. Minstrels. 7. Jugglers. 8. Gypsies. 9. Or pretending to have skill in physiognomy, palmistry, or like crafty science, or to tell fortunes. 10. Or using any subtle craft to deceive and impose on any of his Majesty's subjects. 11. Or playing or betting at any unlawful games or plays. 12. All persons wandering abroad, and lodging in ale-houses, barns, out-houses or in the open air, not giving a good account of themselves. 13. All persons wandering abroad and begging, pretending to be soldiers, mariners, or seafaring men. 14. Or pretending to go to work in harvest. 15. And all other persons wandering abroad and begging, shall be deemed rogues and vagabonds.

Incorrigible Rogues are thus described by 17 G. II. c. 5.

1. All end-gatherers offending against the statute of 13 G. II., c. 23, being convicted of such offence. 2. All persons apprehended as rogues and vagabonds, and escaping from the persons who apprehend them. 3. All rogues or vagabonds who shall break or escape out of any house of correction, before the expiration of the term for which they were committed or ordered to be confined by this act. 4. All persons who, after having been punished as rogues and vagabonds, and discharged, shall again commit any of the said offences: all these shall be deemed incorrigible rogues.

4. *Apprehending Rogues.*

If any person shall be found offending against this act, the constable shall apprehend him, and convey, or cause him to be conveyed, to a justice of the peace—17 G. II., c. 5, § 5, under the penalty of 10s. for such refusal.—*Ib.* And any other person may apprehend and carry him to the constable, or to a justice.

5. *Punishment.*

By U. C. (Municipal) Act, 22 V. c. 54, § 282, the council of any county, city, and town, may pass by-laws. § 9. For restraining and punishing vagrants, mendicants, and persons found drunk or disorderly in any street, highway, or public place.

VEGETABLES.

By C. Stat. 22 V., c. 92, § 39, if any person steals, destroys or damages, with intent to *steal*, any tree, sapling, shrub, bush, plant, root, fruit or vegetable production, growing in any garden, orchard, nursery-ground, hot-house, green-house, or conservatory, 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 \$20, as to the justice may seem meet; and if any person so convicted afterwards commits any of the said offences, such offender shall be guilty of felony, and shall be punished as in the case of simple larceny. § 40. If any person steals, destroys, or damages, with intent to *steal*, any cultivated root or plant used for the food of man or beast, or for medicine, 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, such offender, being convicted thereof before a justice of the peace, shall forfeit and pay, over and above the value of the article stolen, or the amount of the injury done, such sum of money, not exceeding \$4, as to the justice may 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 month, unless payment be sooner made.

By C. Stat. 22 V., c. 93, § 13, the attempt to set fire 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, &c., is made felony, and punishable accordingly.

For forms of proceeding see title "*Summary Conviction.*"

VESSELS.

By C. Stat. 22 V. c. 92, § 28, any person who steals any goods or merchandise 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 therewith, or from any dock, wharf, or quay adjacent, shall be imprisoned in the penitentiary for any term not exceeding fourteen years, nor less than two years, or in some other prison or place of confinement for any term less than two years.

See also "*Navigation*," "*Wreck*."

VEXATIOUS INDICTMENTS.

Act for prevention of, 24 V. c. 10.

See title "*Misdemeanors*."

VICTUALLING HOUSES.

By the Municipal Act U. C. Stat. 22 V. c. 54, § 261, the municipal council of a township, city, town or incorporated village, may pass by-laws for limiting the number of and regulating victualling houses, ordinaries, and houses where fruit, oysters, clams, or victuals are sold to be eaten therein, and all other places for the reception, refreshment or entertainment of the public, and for *licensing* the same, when no other provision exists therefor, and for fixing the rates of such licenses, not exceeding \$20.

VILLAGES—INCORPORATION OF.

The General Municipal Act, U. C. Stat. 22 V. c. 54, § 10, provides for the incorporation of villages containing over 750 inhabitants by petition of not less than 100 resident freeholders and householders to the county council, who may by by-law erect the village and neighbourhood into an incorporated village. § 66, Art. 3. The council of every incorporated village shall consist of five councillors, one of whom shall be reeve, and if the village had the names of 500 resident freeholders and householders on the last revised assessment roll, then one other of the councillors shall be deputy reeve.

For further provisions respecting incorporated villages, see the General Municipal Act.

VOLUNTEER FORCE.

By 27 V. c. 3, as amended by 27, 28 V. c. 10, (a) § 1, the Governor shall be the commander-in-chief. § 2. He may raise a volunteer militia force, to serve within the province for defence of the same in case of need, and in aid of the

(a) Amendments shewn in brackets. []

civil power, to consist of not more than 35,000, exclusive of commissioned officers. § 3. Officers and men on enrolment, to take the oath of allegiance before a justice of the peace. § 4. Volunteers may consist of troops of cavalry, military train, field batteries of artillery, garrison batteries of artillery, companies of engineers, and battalions or companies of rifles or infantry, and naval companies.

Cavalry.—Each troop to consist of a captain, lieutenant, a cornet, second lieutenant or ensign, three sergeants, three corporals, a trumpeter or bugler, and not exceeding 45 privates, except when sanctioned by the commander-in-chief, and then not exceeding 75.

Artillery.—2. A captain, two first lieutenants, a second lieutenant, a sergeant-major, four sergeants, four corporals, four bombardiers, a trumpeter, farrier, 59 gunners and drivers, including wheelers, collarmaker, and shoe smith, 45 horses, exclusive of officers' horses, and four spare horses, when in actual service.

Naval Company.—3. One captain, and such other officers and number of seamen, not exceeding 75, as may be appointed by the commander-in-chief.

§ 7. Companies may be formed into battalions, and such battalions shall be subject to the Queen's regulations for the army. Staff sergeants to be appointed. Other companies may be attached, if necessary, to constitute a battalion. The officer highest in rank to command.

Clothing, &c.—§ 8. Uniforms to be supplied by the province. § 9. And arms. 2. Officers and men to be responsible therefor. § 10. To be renewed and kept in repair by the province. If injured from the neglect or default of the party, then at the cost of such party, recoverable before any two or more justices, who may make an order for payment, not exceeding \$10, with costs. § 11. To appear in uniform only when on duty. § 12. Clothing and arms to be exempt from seizure, and if not kept in proper order, or worn when not on duty, or specially authorised, the offender to incur a penalty of \$5.

The following sections up to section 17, relate to drill and exercise, &c., [each non-commissioned officer and private to be paid 50 cents for each day's drill, not exceeding 10 days in each year.

Aiding Civil Power.—§ 18. The volunteers shall be liable to be called out in aid of the ordinary civil power in case of riot or other emergency, and shall, when so employed, receive pay from the municipality. § 19. To be called out on requi-

sition in writing, by the mayor, warden, or other head of the municipality, or by any two magistrates, and to obey instructions lawfully given by any magistrate in regard to the mode of quelling such riot. The officers and men to be *special constables pro tem.* § 20. To be exempt from serving as jurors or constables. § 21. Engagement to be for not less than five years.

Regulations, &c.—§ 22. Respecting the appointment and promotion of officers, courts of enquiry, and general government and discipline of the force, to be made by the commander-in-chief. § 23. With respect to discipline. 1. The commanding officer may discharge any volunteer, either for disobedience of orders, or neglect of duty or misconduct, or other sufficient cause, and upon such discharge, he shall deliver up in good order all arms, clothing and equipments issued to him, and pay all fines, &c., and be liable to such further penalty as may be imposed for his offence. 2. Any officer or private disobeying any lawful order of his commanding officer, or guilty of any misconduct, may be arrested. § 24. Volunteer corps may enter into rules and regulations for the discipline and management of the corps, as they may think proper, subject to the approval of the commanding officer and commander-in-chief. § 27. To be subject to the Queen's regulations and orders for the army, and when called out for actual service, to be subject to the rules and articles of war, and the Mutiny Act. § 28. Sentence of death only to be inflicted in case of mutiny, desertion to the enemy, or traitorously delivering up any garrison, fortress, post, or guard, or for traitorous correspondence.

Officers.—§ 30. Commissions to be granted by the commander-in-chief. § 31. Commissioned officers to furnish their own uniform. § 32. No rank above lieutenant-colonel in time of peace. § 33. But when called out the commander-in-chief may appoint colonels. § 34. Volunteer corps, when on duty, to be commanded by the officer highest in command present; or when militia called out, then by the officer of her Majesty's army, or of volunteers or militia highest in rank on duty and in uniform. § 35. Officers to pass an examination before appointment. § 36. Provision for the appointment of a commodore over the naval force. § 37. [Board of examiners to be appointed by the commander-in-chief, to examine any such officers of the volunteers as may desire to have investigated their knowledge of, and proficiency in drill, &c., and the board thereupon shall report the result thereof to the commander-in-chief, and shall, after the

approval thereof by him, deliver to any such officer as may have satisfactorily passed such examination a certificate thereof, to be recorded in a book to be kept in the office of the Adjutant General, and delivered to the officer so examined.] § 39. Brigade-majors already appointed to continue; pay not exceeding \$600 per annum, besides travelling expenses, &c. § 42. Volunteers, when called out for active service, to receive pay, the same as in her Majesty's service.

Billeting, Cantonment, Penalties, &c.—The clauses in the Militia Act to apply.

Selling Arms, &c.—§ 44. If any person designedly makes away with, sells, pawns, wrongfully destroys, damages or negligently loses any property or thing issued to him, or in his possession, as a volunteer, the value thereof shall be recoverable from him, with costs, as a penalty under this act is recoverable; and he shall also, for every such offence, be liable, on the prosecution of the commanding officer of the corps or battalion, to a penalty not exceeding \$20, nor less than \$5, with or without imprisonment, not exceeding six months.

Buying Arms, &c.—§ 45. If any person knowingly buys or takes in exchange from any volunteer, or any person acting on his behalf, or solicits or entices any volunteer to sell, or knowingly assists or acts for any volunteer in selling, or has in his possession or keeping, without satisfactorily accounting for the same, any arms, clothing, or appointments, being the property of the Crown, or property of any volunteer corps or battalion, or any public stores or ammunition, issued for the use of any such corps or battalion, he shall for the first offence be liable to a penalty not exceeding \$50, and on a second, and every subsequent offence, a penalty not exceeding \$50, nor less than \$25, with or without imprisonment, for any term not exceeding six months, with or without hard labour.

Damaging Targets, &c.—§ 46. Or searching for bullets and disturbing the fire, a penalty not exceeding \$20, with or without imprisonment, not exceeding six months. § 49. The commander-in-chief, with a view to public safety, may make by-laws for the regulation of shooting grounds, with power to impose penalties, not exceeding \$20, for infraction.

WAREHOUSE.

By C. Stat. 22 V., c. 92, § 14, any person who breaks and enters any shop, warehouse, or counting house, and steals therein any chattel, money, or valuable security, shall

be liable to any of the punishments which the court may award, as therein mentioned.

See title "*Punishment.*"

WAREHOUSE-MAN.

By C. Stat. 22 V., c. 92, § 68, any warehouse-man, forwarder, carrier, agent or clerk, giving a false receipt, with intent to defraud, shall be guilty of a misdemeanor, and shall be imprisoned in the penitentiary for any term not less than two years, or in any other prison or place of confinement for any term less than two years, but not less than one year.

See further "*False Receipts.*"

WARRANT.

A warrant is a precept under the hand and seal of a magistrate, or other public functionary, directed to some officer, either to arrest an offender, or to seize or distrain upon his goods, to be dealt with respectively in either case according to law. A warrant can only be executed by some one or more of the persons to whom it is directed, unless indeed it be directed to the sheriff, who may, either by parol or by precept in writing, authorise an officer, sworn and known, to execute it, but the sheriff cannot empower any other person without a precept in writing.—1 *Haw. c.* 60, § 11. If the warrant direct the officer to cause the party complained of to come before some justice of the peace, to find surety for keeping the peace, the officer, before he makes any arrest, ought first to require the party to go with him, and find sureties to the purport of the warrant, and if he refuses, the officer may carry him by force before the magistrate, or confine him in some gaol till he can be conveniently brought before the magistrate.—*Ibid.* If the warrant specially direct that the party shall be brought before the justice who issued it, the officer ought not to carry him before any other; but if the warrant be general, to bring him before any justice, the officer has then the election to bring him before any justice he pleases, and may carry him to prison for refusing to obey the warrant.—*Ibid.*

By C. Stat. 22 V., c. 102, § 7, any warrant or search warrant may be granted or issued on a Sunday as well as on any other day.

In what cases, and in what form a warrant may be granted

for the apprehension of a party, see titles "*Arrest*," "*Justices of the Peace*."

For what cause, and in what form a warrant of commitment may be issued, see title "*Commitment*."

See also "*Distress*," "*Search Warrant*," and "*Habeas Corpus*."

WATER COURSES.

By the U. C. (municipal) Act, 22 V. c. 54, §. 277. Every township council may make by-laws for preventing the obstruction of streams, creeks and water courses, by trees, brushwood, timber, or other materials, and for removing such obstructions at the expense of the offender, and levying the amount.

WATER-WELLS.

The municipal council of every city, town and incorporated village may make by-laws for establishing, protecting, and regulating public wells, reservoirs, and other public conveniences for the supply of water, and for making reasonable charges for the use thereof, and for preventing the waste and fouling of public water. U. C. (Municipal) Act, 22 V., c. 54, § 294-5.

WEAPONS, UNLAWFUL.

By C. Stat. 22 V. c. 91, § 9. Any person who carries about his person any bowie-knife, dagger or dirk, or any weapons called or known as iron-knuckles, skull-crackers, or slung-shot, or other offensive weapons of a like character, or who secretly carries about his person, any instrument loaded at the end, or who sells or exposes for sale publicly or privately, any such weapon, shall be subject, on conviction, to a fine of not less than ten nor more than \$40, and in default of payment thereof, to imprisonment for a term not exceeding thirty days, at the discretion of the court wherein the offence is tried; but nothing in this section shall apply to H. M. Army and Navy, Militia, or Volunteer force, nor to any Highland or national society carrying arms as part of their national costume.

§ 10. Any person charged with having committed any offence against the last section, may be tried and dealt with under the Consolidated Statute of Canada, respecting the prompt and summary administration of criminal justice in certain cases, (C. Stat. 22 V. c. 105.)

See titles "*Summary Trial*," "*Malicious Injury*" to the person.

WEEDS.

The council of any township, city, town, or incorporated village, may make by-laws for preventing the growth of weeds detrimental to good husbandry. U. C. (municipal) Act, 22 V. c. 54, § 266—10.

WEIGHTS AND MEASURES.

By U. C. Stat. 22 V. c. 58, § 3. The municipal council of every city may by by-law appoint one or more inspectors of weights and measures. § 4. The municipal council of every incorporated town may by by-law appoint one inspector. § 5. The municipal council of every county may by by-law appoint one or more such inspectors. § 8. The inspector or *senior* inspector (where more than one) shall have the charge of the standard weights and measures. § 9. Inspectors to be sworn. § 10. Shall carefully examine and compare with the standard furnished, any weights and measures presented to him for that purpose, and if found true, mark, stamp, or brand the same, with the stamp or brand furnished for the purpose. § 11. Inspectors to attend at such time and place as may be appointed, (but not oftner than twice a year,) with the stamps and standard weights and measures to examine and compare, and if found correct, stamp all weights and measures brought for that purpose. § 12. Giving one month's notice in one or more newspapers. § 13. May demand and receive *ten cents*, and no more, for each weight or measure marked or stamped.

§ 13. The following to be the standard weight, and in all cases allowed to be equal to the Winchester Bushel:

Wheat.....	Sixty pounds.
Indian corn.....	Fifty-six pounds.
Rye.....	Fifty-six pounds.
Peas.....	Sixty pounds.
Barley.....	Forty-eight pounds.
Oats.....	Thirty-four pounds.
Beans.....	Sixty pounds.
Clover seed.....	Sixty pounds.
Timothy seed.....	Forty-eight pounds.
Buck wheat.....	Forty-eight pounds.

§ 15. Sale and delivery to be regulated by this act unless otherwise agreed between the parties. § 16. Every store-keeper, miller, distiller, butcher, baker, huckster, or other trading person, and every wharfinger or forwarder who, two months after the appointment of an inspector, uses any weight or measure not duly stamped according to law, or which

may be light or unjust, shall on conviction forfeit a sum of not more than *twenty*, nor less than *eight* dollars, and such light weights shall be seized, and, on conviction, forfeited and broken up by the inspector.

§ 17. Inspector may at any reasonable time enter any shop, &c., within his division and examine all weights, measures, steelyards, or other weighing machines, and compare and try the same with the standard weights and measures provided by law. § 18. And if upon examination any of them have not been stamped, or are light or unjust, the same shall be liable to be seized and forfeited, and the person in whose possession found, shall, on conviction, forfeit a sum not exceeding eight dollars for the first, and twenty dollars for every subsequent offence.

Steelyards.—§ 19. Found incorrect, or any person neglecting or refusing to produce for examination all weights, measures, steelyards, or other weighing machines in his possession, or who obstructs or hinders such examination, shall be liable to a like penalty.

Penalties how recoverable.—§ 20. No penalty shall be incurred until two months after a standard of weights and measures has been received. § 21. All penalties under this act shall be recoverable before any justice of the peace on the oath of the inspector or of any one credible witness, and if not forthwith paid, levied by distress and sale of the goods and chattels of the offender; and in default of distress the offender shall be committed to the common gaol for a term not exceeding one month, and all penalties shall be for the use of the province.

§ 22. Forging or counterfeiting any stamp or mark shall be a misdemeanor, punishable by fine and imprisonment in the common gaol, such fine not exceeding eighty dollars, nor imprisonment exceeding three months.

Selling with counterfeit Weights.—§ 23. The offender for every such offence, shall forfeit on conviction, a sum not exceeding \$40, nor less than \$8, recoverable as in the 21 section.

§ 24. Any inspector stamping or branding any weight or measure, without having first duly compared the same by the standard weights and measures, or guilty of any other breach of duty, shall on conviction forfeit a sum not exceeding \$20, recoverable as aforesaid.

Appeals.—§ 27. As in cases of summary conviction.

§ 28. This act to be subject to and controlled by the Consolidated Statute, respecting weights and measures, c. 53.

WHIPPING.

See title "*Punishment.*"

WIFE.

The wife of a man (in legal language a *feme covert*) is so much favoured in law on account of the matrimonial subjection due from her to her husband, that if she commit theft, or even a burglary, by his coercion, or merely in his company (when the law presumes a coercion), she is held to be exempt from punishment; being considered as acting in either of these instances by compulsion, and not of her own free will. This doctrine, Sir William Blackstone observes, is at least a thousand years old, being to be found among the laws of king Ina, the West Saxon.—4 *Bl. Com.* 28. The presumption of coercion, does not amount to more than a *prima facie* presumption of law, and therefore if it appear in evidence that the wife was not drawn to the offence by the husband, but that she was in fact the principal instigator of it, or was acting herself as a free and independent agent, she is in this case guilty as well as the husband. If the wife also procure her husband to commit the offence, she is then an accessory before the fact, in the same manner as if she had been sole.—1 *Hale*, 516; 2 *Haw.*, 29, § 34.

There are also some exceptions to the impunity of the wife in committing crimes, even though acting under the coercion of her husband, by reason of the heinousness of the offence committed. Thus, in treason, no plea of *coverture* shall excuse the wife.—4 *Bl. Com.* 29. In murder also, and offences of the like description, which are prohibited by the law of nature, and are *mala in se*, the wife is held a responsible agent notwithstanding the coercion of her husband.

In inferior misdemeanors, there is also another exception as to the responsibility of the wife, for she may be indicted and punished *with* her husband for keeping a *brothel*; this being considered to be an offence touching the domestic economy of the *house*, in which the wife has necessarily a principal share, and of that description, moreover, which the law presumes to be generally conducted by the intrigues of the female sex.—1 *Haw.*, c. 1, § 12. But a prosecution for a *conspiracy* is not maintainable against husband and wife only, because they are esteemed but one person in law; and in order to support an indictment for conspiracy there must be a conspiring between *two* persons at the least.—1 *Haw.*, c. 72, § 8. In all cases, however, where the wife

offends *alone*, without the company or coercion of her husband, she is then as much responsible for her offence as any *feme sole*.—4 *Bl. Com.* 29. And whenever she commits an offence in the absence of her husband, it will be no excuse that she committed it by his order.—*R. v. Morris, R. & R.* 270. If a woman receives stolen goods into her house, knowing them to be so, or lock them up in her chest or chamber, without the knowledge of her husband, she alone may be indicted. But if the ignorance of the husband is not satisfactorily proved, as by his continued absence from home, or by other circumstances, the law will, in most cases, impute the receiving to him, and not to the wife.—*Dalt. c.* 357, p. 353. Although the husband may be indicted as an accessory for receiving by the wife, knowing her to have committed a felony, yet the wife shall not be deemed an accessory for receiving by her husband. Neither is the wife affected by receiving jointly with her husband a *third person*, who has committed felony; except in case of treason. But if she alone, in the absence of her husband, and without his knowledge, knowingly receive a felon, she may then be indicted as an accessory, and not the husband.—1 *Hale*, 47, 621; 1 *Haw.*, c. 1, § 10. A wife cannot be convicted of felony in stealing her husband's goods. But if the wife take the goods of her husband and deliver them to B., who elopes with her and the goods, as her *adulterer*, this will then be felony in B.—*Dalt. c.* 36, *Pl.* 268; *R. v. Tolfree, Ry. & M.* 243. Husband and wife being but one person in law, and their interest absolutely the same, they cannot give evidence for the benefit of each other.—*Gilb. Ev.* 119; not even by the consent of the other party.—*Cas. Temp. Hard.* 264; neither can they be witnesses against each other—1 *Phil.* 84; except in cases of personal injury to the wife, when she is, on the principal of humanity and justice as well as necessity, admitted as a witness against her husband; as where the husband is indicted for shooting at her, or attempting to poison her, or for assaulting and beating her.—1 *Str.* 633, *B. N. P.* 287; *R. v. Whitehouse*, 2 *Russ.* 606; *R. v. Jagger, Ib.* But in these cases, the wife ought only to be admitted to prove facts which cannot be proved by any other witness.—*Per Holroyd, J.*, 2 *Russ.* 606. So her dying declarations are admissible against him, in the case of murder.—*R. v. Woodcock*, 1 *Leach.* 500, *R. v. John, Ib.* 504, *n* (a). So the wife is always permitted to swear the peace against her husband.—*Ib.* Finally, it seems to be allowed that in all cases where a wife is a competent witness *against*

her husband, she is also an admissible witness for him.—*R. v. Perry, cit. in R. v. Serjeant*, 1 *Ry. & M.* 354. And the same rules of necessity which admit the wife to give evidence against her husband, will also permit the husband to be a witness against the wife, in cases of personal injury,—such as murder, assault, and surty of the peace where any violence is threatened by the wife against the husband. There is a foolish notion prevalent with the lower orders in England, that if a man sell his wife with a halter round her neck, in *market overt*, this operates as a divorce, “*a vinculo matrimonii*,” and that both buyer and seller may lawfully make such a bargain. Such a brutal act is, however, grossly illegal, and indictable at common law as a misdemeanor.

WILLS.

See “*Forgery.*”

WINES.

See “*Inns, Inn-keepers.*”

WITNESS.

Witnesses may be compelled to give their evidence in criminal cases by recognizance or subpœna. If a witness examined before a justice refuses to be bound over, the justice may commit him—2 *Hale*, 284. And where a *married woman* refused to undertake to appear at the trial, or to find sureties for her appearance, the magistrate was held justified in committing her.—3 *M. & S.* 1. But though a person may be committed for not entering into recognizance to prosecute and give evidence, yet the party shall not be committed for his inability to find a person to join in such recognizance to prosecute and give evidence; his own recognizance is all that can or ought to be required.—*Arch. Com.* 12. If the witness, after being served with a *subpœna*, neglect to appear, an application may be made in the Court of King’s Bench for an attachment against him.—*R. v. Ring*, 8 *T. R.* 585; 1 *Star. Ev.* 119. A witness, whether bound over or subpœnaed, or attending vo’untarily for the *bona fide* purpose of giving evidence, is privileged from arrest, *eundo, redeundo et morando*, if no more than a necessary time is occupied by him upon either of those occasions.—1 *H. B.* 636; 2 *Bl.* 1113. In allowing witnesses time sufficient for these purposes, the courts are always disposed to be liberal.—1 *Phil. Ev.* 4. If a witness, under such circumstances, be arrested, the court out of which the *subpœna* issued, or

the judge of the court in which the cause has been tried, will, upon application, order him to be discharged; but this privilege of a witness does not extend to arrest by his bail, for the purpose of surrender; for he is supposed to be in their custody even while he is attending as a witness.—*Exp. Lyne*, 3 *Star. Rep.* 132.

By U. C. Stat. 22 V., c. 12, § 3, no person shall, by reason of incapacity from crime or interest, be excluded from giving evidence in any civil or criminal case.

By Con. Stat. 22 V., c. 99, § 75, witnesses in criminal cases may be summoned by subpoena from any part of the province. § 76. If confined in the penitentiary, or in any gaol, or upon the limits, may be brought up by order of the court requiring the attendance of any such prisoner.

To dissuade, or endeavour to dissuade a witness from giving evidence against a person indicted, is an offence at common law, though the persuasion should not succeed, and for which the party may be indicted as for a misdemeanor.—1 *Haw, P. C.*, c. 21, § 15; *R. v. Lawley*, 2 *Str.* 904.

Payment of the Expenses of Witnesses.

In civil cases a witness is not bound to attend unless his reasonable expenses be previously tendered to him, but in criminal cases he is bound to attend unconditionally.—2 *Haw. c.* 46, § 173.

By U. C. Stat. 22 V., c. 119, § 13, in all cases of summary proceedings where persons are subpoenaed to give evidence before justices in cases of assault, trespass, or misdemeanor, such witnesses shall be entitled, in the discretion of the magistrate, to receive at the rate of fifty-cents for every day's attendance, where the distance travelled in coming to and returning from such adjudication does not exceed ten miles; and *five cents* for each mile above ten. § 15. In all cases above the degree of misdemeanor witnesses shall not be allowed any thing for their attendance or travel, except under the order of the court before which the trial is had.

By Con. Stat. 22 V., c. 106, § 28, (Act for the Summary Trial of Juvenile Offenders,) justices of the peace, before whom the party shall be tried, may order payment to the prosecutor and witnesses of their reasonable expenses.

See title "*Juvenile Offenders*," p. 489.

For the mode of procuring the attendance of witnesses upon any examination or hearing, see "*Indictable Offences*," "*Summary Conviction*."

Form of an Indictment for dissuading a Witness to give Evidence.

(CHITTY.)

County of _____, } The jurors, &c. That on, &c., a certain
to wit : } writ of our lady the Queen, called a *subpœna*
ad testificandum, had been and was duly issued and tested, by
and in the names of C. D. of, &c., at &c., the same day and year
aforesaid, the said C. D. then and there being *custos rotulorum*,
in and for the same county, which said writ was directed to E.
F. and G. H., by which said writ our said lady the Queen com-
manded, &c., (*recite the writ.*) And the jurors, &c., do further
present that a copy of the said writ was on, &c., at, &c., duly
served on the said J. K., who then and there had notice to
appear and give evidence according to the exigency of such
writ, and that the evidence of the said J. K. at the time of issu-
ing the said writ, and from thence until and upon the said, &c.,
therein mentioned, was material and necessary to have been given
before the said grand jury, on the said bill of indictment so to be
preferred against the said A. B. as aforesaid; and that at the
sessions of the peace, holden by adjournment at _____
aforesaid, in and for the said county, on, &c., aforesaid, such bill of indictment
was preferred against the said A. B. to and before a certain grand
jury, then and there assembled in that behalf. And the jurors,
&c., do further present that A. B., late of, &c., being an evil dis-
posed person, and contriving and intending to obstruct and impede
the due course of justice, on, &c., unlawfully and unjustly dis-
suaded, hindered, and prevented, the said J. K. from appearing
before the said justices, at the said sessions of the peace, holden
as aforesaid, to testify the truth, and give evidence before the said
grand jury, on the said bill of indictment so preferred against the
said A. B. as aforesaid; (and the said A. B. in consequence
thereof, did not so appear and give evidence according to the
exigency of the said writ;) and to the great obstruction, hind-
rance, and delay of public justice, in contempt, &c., to the evil,
&c., and against the peace, &c. And the jurors aforesaid, upon
their oath aforesaid, do further present, that on the said, &c., a
certain other writ of our said lady the Queen had duly issued,
directed to the said E. F. and G. H., by which last mentioned
writ our said lady the Queen commanded the said E. F. and G. H.
that, &c., (*recite the writ.*) And the jurors, &c., do further pre-
sent, that the evidence of the said J. K., at the time of issuing the
said last mentioned writ, and from thence until and upon the said,
&c., therein mentioned, was material and necessary to have been
given before the said grand jury, in the said bill of indictment,
to be preferred against the said A. B. as aforesaid. And the
jurors, &c., do further present, that the said A. B. being an evil
disposed person, &c., (*same as first count, saying, "endeavoured
to dissuade," &c., and omitting the allegation between the brackets.*)

WOLVES.

U. C. Stat. 22 V. c. 60, § 1. If any person produces the head of a wolf with the ears on before any justice of the peace, acting for any county in this province, and makes oath or affirmation, as the case may be, or otherwise proves to the satisfaction of the justice that the wolf was killed within that county, or within one mile of an actual settlement in the county, he shall be entitled to receive of the treasurer of the county the sum of six dollars as a bounty for the same. § 2. In case the justice, before whom the head of the wolf shall be produced, be satisfied of the fact that the wolf was killed as in the preceding section, he shall first cut off the ears thereof, and then give the person a certificate that the fact of the wolf having been so killed has been proved to his satisfaction, and such certificate shall authorise the person holding the same to demand and receive from the treasurer of the county the said bounty of six dollars. § 3. Who shall pay the same on presenting such certificate, provided the funds of the county on hand shall enable him, otherwise out of the first moneys which shall come into his hands. § 4. Annual expenses for building a court-house and gaol, and keeping the same in repair, the fees of the clerk of the peace, and salary of the gaoler, the maintenance of prisoners, *to be first paid*. § 5. When the funds of the county are insufficient, such certificate shall be a lawful tender towards any county rate or assessment, wherein such wolf was destroyed.

WOMEN.

If a women, quick with child, be condemned either for treason or felony. she may allege her being with child, in order to get the execution respited, and thereupon the sheriff shall be commanded to take her into a private room and impanel a jury of matrons, to try and examine whether she be quick with child or not; and if they find her quick with child, the execution shall be respited till her delivery. But a woman cannot demand such respite of execution by reason of her being quick with child more than once.—2 *Haw.* 464.

See also "Abduction," "Rape."

WOOD.

By C. Stat. 22 V. c. 92, § 38, if the whole or any part of any tree, sapling or shrub, or any underwood, or any live or dead fence, or any post, pale, rail or stile, or gate, or any part thereof, being of the value of forty-cents at the least,

by virtue of a search warrant, to be granted as in the said act is mentioned, is found in the possession of any person, or on the premises of any person with his knowledge; and if such person being carried before a justice of the peace, does 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 \$8.

WORKMEN.

By Stat. 2 & 3, Ed. IV., c. 15, § 1. If any artificers, workmen, or labourers do conspire, covenant or promise together, or make any oaths, that they shall not make or do their works but at a certain price or rate; or shall not enterprise or take upon them to finish that another hath begun; or shall do but a certain work in a day; or shall not work but at certain hours and times; that then every person so conspiring, covenanting, swearing or offending, being lawfully convicted thereof, by witness, confession or otherwise, shall forfeit, for the first offence, £10 to the King, if he have sufficient to pay the same, and do also pay the same within six days next after his conviction; or else shall suffer for the same offence twenty days' imprisonment, and shall have only bread and water for his sustenance: and for the second offence, shall forfeit £20 to the King, if he have sufficient to pay the same, and also do pay the same within six days next after his conviction; or else shall suffer for the second offence punishment of the pillory; (a) and for the third offence, shall forfeit £40 to the King, if he have sufficient to pay the same, and also do pay the same within six days next after his conviction, or else shall sit on the pillory and lose one of his ears; and also shall, at all times after that, be taken as a man infamous, and his saying, depositions on oath, not to be credited at any time, in matter of judgment. § 3. Justices of the assize, justices of the peace, &c., at all and every other sessions and courts, shall have full power and authority to enquire, hear and determine all and singular such offences committed against this statute, and to punish, or cause to be punished, the offenders, according to the statute. Any one workman may refuse to work, till he is paid the price he pleases to fix upon his *own* labour; but if *two* or more enter into an engagement of this kind, they are

(a) Punishment of the pillory abolished by C. Stat. 22 V. c. 99, § 98.

guilty of a *conspiracy*, and may be prosecuted by an indictment, or an information.—4 *Bl. Com.* p. 160.

By C. Stat. 22 V. c. 99, § 108. In case of any assault committed in pursuance of any conspiracy to raise the rate of wages, the court may sentence the offender to be imprisoned for any term less than two years, and may also fine the offender, and require him to find sureties for keeping the peace.

See also titles "*Conspiracy*," and "*Master and Servant*."

WRECK.

By C. Stat 22 V. c. 91 § 31, any person who by force, prevents or impedes any person endeavouring to save his life from any ship or vessel in distress or wrecked, stranded or cast on shore, (whether he be on board or has quitted the same) shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or in any other prison or place of confinement for any term less than two years.

§ 32. Any person who assaults and strikes or wounds any magistrate, officer, or other person whatsoever, lawfully authorised, 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, shall be imprisoned in the penitentiary for any term not less than two years, or in any other prison or place of confinement for any term less than two years.

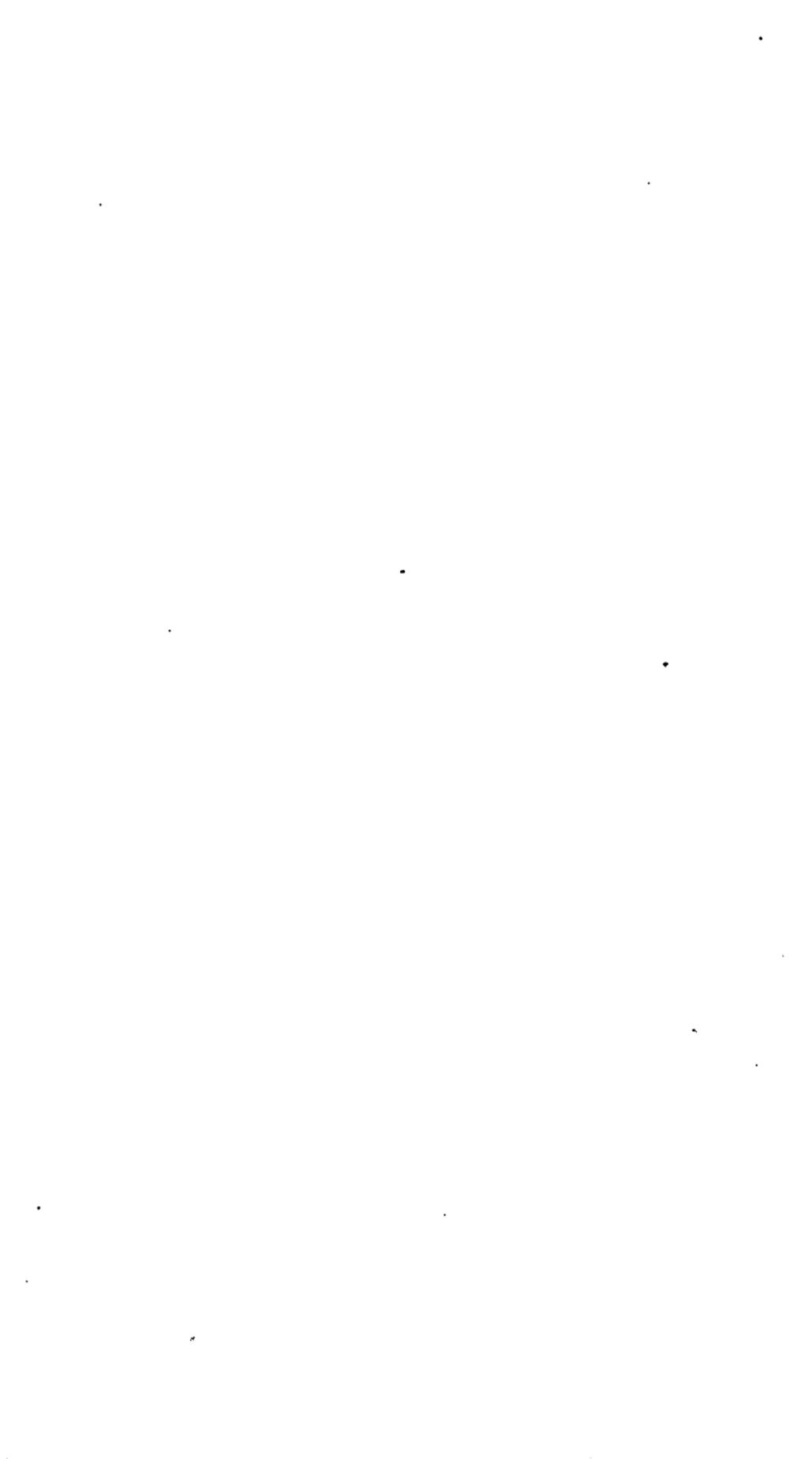
By C. Stat. 22 V. c. 92, § 29, any person who plunders or steals any part of any ship or vessel which is in distress or has been wrecked, stranded or cast on shore, or any goods, merchandise or articles of any kind belonging to such ship or vessel, shall be liable to any of the punishments which the court may award, as hereinbefore last mentioned. § 30. In case any goods, merchandise or other articles, belonging to any ship or vessel in distress, or wrecked, stranded or cast on shore, as aforesaid, be, by virtue of a search warrant to be granted as hereinafter mentioned, 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, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof; and the offender, on conviction before the justice, shall forfeit and pay such sum of money,

not exceeding \$80, as to the justice may seem meet. § 31. If any person offers or exposes for sale any goods, merchandise, or articles whatsoever which shall have been unlawfully taken, or which are reasonably suspected to have been so taken from any ship or vessel in distress or wrecked, stranded or cast on shore, as aforesaid, any person to whom the same are offered for sale, or any officer of the customs or peace officer, may seize the same, and in such event shall with all convenient speed carry the same, or give notice of such seizure, to some justice of the peace; and if the person who offered or exposed the same for sale, being duly summoned by such justice, shall not appear and satisfy the justice that he came lawfully thereby, then the same shall, by order of the justice, be forthwith delivered over to the rightful owner thereof, upon payment of a reasonable reward (to be ascertained by the justice) to the person who seized the same; and the offender upon conviction shall forfeit and pay such sum of money, not exceeding \$80, as to the justice shall seem meet.

By C. Stat. 22 V. c. 93, § 8, if any person unlawfully exhibits any false light or signal with intent to bring any ship or vessel into danger, or unlawfully and maliciously does any thing to the immediate loss or destruction of any ship or vessel in distress, such offender shall be guilty of felony, and shall suffer death.

§ 10. If any person unlawfully and maliciously destroys any part of any ship or vessel in distress, or wrecked, stranded or cast on shore, or any goods, merchandise, or article of any kind belonging to such ship or vessel, he shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two years, or in any other prison or place of confinement for any term less than two years.

For proceedings to recover penalties see title "*Summary Conviction.*"



ADDENDA.

EXCISE.

By Stat. 27, 28, V. c. 3, the C. Stat. 22 V. c. 19—respecting the excise on distillers and brewers—and the 25 V. c. 5, on the same subject, are both repealed, and certain duties are imposed on spirits, beer, and manufactured tobacco, for which the reader is referred to the act.

§ 6. No person except such as shall have been licensed shall carry on the business or trade of a distiller, or brewer, or of a manufacturer of tobacco, or use any utensil, machinery, or apparatus subject to excise,—except utensils used for beer brewed for private use—or tobacco grown and manufactured for private use.

DUTIES ON LICENSES.

§ 22. For distilling, including rectifying by any process, \$200.

§ 23. For distilling, including rectifying by filtration only, \$100.

§ 24. For rectifying of spirits only, by any process, \$100.

§ 25. For brewing, \$60.

§ 26. For manufacturing tobacco, \$25.

The act then imposes a variety of obligations on persons licensed with respect to the progress of their manufactures and giving notice to the excise of their various stages, for which the reader is referred to the act.

Penalties.

§ 101. Any person who, after the passing of this act, and without having a license under it then in force, or a permit having the effect of a license under § 21, shall—

1. Distil or rectify any spirits for sale; 2, brew any beer for sale, or otherwise than for the use of himself and his family, or, 3, manufacture or prepare for sale or consumption any tobacco or snuff, except tobacco grown by himself and manufactured by himself for his own private use, shall forfeit and pay a penalty of \$200.

§ 104. Every person who, after the passing of this act, shall have in his or her possession any still, or worm, or brew-

ing apparatus, or any machinery used in manufacturing tobacco without having made a return thereof, as by the act is required, shall forfeit and pay a penalty of \$100, besides forfeiture of the apparatus.

§ 105. Every person who shall put into any packages or casks which have been stamped or marked under this act, any article or commodity subject to excise, on which the duty has not been paid, or which has not been inspected as required, without first defacing and destroying the said stamp or brand, and every vendor of any package of tobacco or snuff labelled, branded, or sealed as required by this act, who shall fail to obliterate or deface such label, brand or seal before delivery to the purchaser, shall be guilty of a misdemeanor, and shall forfeit and pay for every such offence \$50, and in addition thereto be punishable, at the discretion of the court, by imprisonment for not less than one month, nor more than twelve months.

§ 106. Every person carrying on any business subject to excise who shall—

1. Neglect to return, or omit to make a true and correct return as required by the act, of all workshops, utensils, apparatus, &c. 2. Or use any apparatus in his distillery, brewery, or tobacco manufactory not known or reported to the proper officer. 3. Or make any change or addition thereto without notice. 4. Or use any secret connection or communication between the compartments of the premises other than shown on the return or entry made thereof. 5. Allow any pipes, pumps, &c., to lead from one part of such premises to another, or from one vessel to another, other than such as clearly indicated on the returns, diagrams, or entries made or known to the proper officer. 6. Or permit any utensils or apparatus, store room, &c., to be used or occupied for other purposes. 7. Or who shall neglect or refuse to designate such purposes. 8. Or who shall refuse to admit the collector of inland revenue or other officer of excise, or his assistants, to the premises or manufactory at any hour of the day or night. 9. Or refuse to admit any officer of the excise to inspect any place or premises where any utensil or apparatus for carrying on the business is placed or deposited. 10. Or do anything to mislead any officer of excise in the discharge of his duty, or prevent him from ascertaining true quantities, shall forfeit and pay for every such offence \$500, and a further penalty of \$50 for each and every day upon which such offence has been committed.

§ 108. Every person who shall refuse or neglect to aid

any officer of excise in the execution of any act or duty required under this act, shall be guilty of misdemeanor, and subject to a penalty of not less than \$50 nor more than \$100, and be liable to imprisonment in the common gaol for a period not less than three, nor exceeding six months.

§ 109. Every person carrying on any business subject to excise, who shall neglect—2. To keep stock-books. 3. Make true entries therein. 4. Alter, falsify, or make untrue entries. 5. Remove such books or any leaf. 6. Deface or erase any entry therein. 7. Neglect or refuse to make any return. 8. Falsify such return, or give false information. 9. Neglect or refuse to produce books, &c., shall forfeit and pay for every such offence \$200, with a further penalty of three times the amount of license, fees, duty or impost payable under this act, on any stock or apparatus in respect of which any false entry has been made, or return neglected or refused to be made; and all such stock, utensils, &c., shall be forfeited to the Crown.

§ 111. Every person who shall obstruct, impede, or interfere with any officer of excise, or his assistant, in the discharge of his duty, shall be guilty of a misdemeanor. § 112. If any person under any pretence, or by threats of violence, in any way resists, opposes, molests or obstructs any such officer, or assistant, or wilfully or maliciously shoots at, maims or wounds any such officer or assistant while duly employed for the prevention of illicit distillation, and in execution of his duty, shall be adjudged guilty of felony, and punishable accordingly.

§ 113. Every person who opens or breaks any lock or seal, or other contrivance, attached to any vessel, pipe, trough, safe, warehouse or apartment, &c., used for the security of revenue; or who abstracts any spirits, malt liquors, or tobacco from any place where retained, under the supervision of any officer of excise, without the consent of the proper officer, or who counterfeits any label, stamp or seal under this act, or in any way perforates any vessel or receiver containing any spirit on which duties have not been paid, without the knowledge or consent of the collector, shall be guilty of felony. § 114. Every person who shall violate any of the provisions of this act, or neglect any duty imposed by this act, for which no penalty is specially provided, shall be subject to a penalty of \$100.

Recovery of Penalties.—The pecuniary penalty or forfeiture incurred for any offence against the provisions of this act, may be sued for and recovered before any two or more

justices of the peace, having jurisdiction where the offence was committed, on the oath of two or more credible witnesses; and if not forthwith paid, may be levied by distress and sale; or the said justices may, in their discretion, commit the offender to the common gaol until the penalty and costs are paid; one moiety of such penalty or forfeiture shall belong to her Majesty, and the other to the prosecutor.

§ 122. Excise officers may be competent witnesses. § 123. Any person refusing or neglecting to appear and give evidence when summoned, or before any officer authorised to examine such person, shall incur a penalty of \$100, to be recovered in like manner as other penalties.

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