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B I L L .

**An Act to simplify and alter the Practice,
Pleadings and Proceedings in the Superior
Courts of Law and Equity, and
County Courts in Upper Canada.**

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The Honorable Mr. RICHARDS.

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BILL.

An Act to simplify and alter the Practice, Pleadings and Proceedings in the Superior Courts of Law and Equity, and County Courts in Upper Canada.

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PREAMBLE.

WHEREAS it is expedient to abolish the present distinctions of form in Actions or Suits at Law and in Equity, to simplify the practice and establish one uniform course of pleading and proceeding so far as is practicable in Actions or

Preamble.

Suits at Law and in Equity in Upper Canada : Be it therefore enacted by &c. as follows :

OF THE FORMS OF ACTIONS AND PARTIES THERETO.

- Section* 1. Distinctions in forms of Civil Action abolished. Only one form hereafter. Parties to actions how styled. Jurisdiction of Courts preserved.
2. Action to be in the name of party really interested. Exceptions.
3. Assignment of a thing in action not to prejudice defence.
4. When a married woman is a party, her husband must be joined. Exceptions.
5. Infante must sue or defend by Guardian.
6. Guardian, how appointed.
7. Lunatic, Idiot or Person judicially declared of unsound mind, how to sue or be sued.
8. Who may be joined as Plaintiffs.
9. Who may be joined as Defendants.
10. Parties united in interest when to be joined. When one or more may sue or defend for the whole.
11. Parties liable on a Bill of Exchange, Promissory Note or Contract, may all be sued in one action. What costs allowed if sued separately.
12. No abatement of action by death, marriage or other disability or by transfer. Proceedings in such cases.
13. The Court when to decide controversy between the parties, or order other parties brought in. When to allow parties applying to defend.

Distinctions in forms of Civil Action abolished.

I. The distinctions in the forms of Civil Actions and Suits, are hereby abolished, and—

Only one form hereafter.

Parties to actions how styled.

1. Hereafter, there shall be but one form of action in the Courts of Record both of Law and Equity in Upper Canada, for the enforcement or protection of private rights and the redress of private wrongs, which shall be denominated *an action on the case*, and in which the party complaining shall be known as the Plaintiff, and the adverse party as the Defendant.

Jurisdiction of Courts preserved.

2. But the Jurisdiction of the Court of Chancery, the Court of Queen's Bench, the Court of Common Pleas and the County Courts, respectively, in Upper Canada, as regards the subject matter of actions and proceedings (but without regard to the form thereof) and as regards the powers of such Courts, and the Judges thereof individually and collectively, shall remain as now fixed by law, except in so far as the same may be varied, increased or diminished by the provisions of this Act.

Action to be in the name of party really interested.

II. Every action shall be prosecuted in the name of the real party in interest, except that an Executor or Administrator,—a Trustee of an express trust,—a Receiver appointed under any Decree, Order or Judgment of a Court of Record of Upper Canada,—a Person with whom or in whose name a contract is made for the benefit of another,—or a person or corporation expressly authorized by statute, may sue without joining with

him or with such corporation the person for whose benefit the action is brought. This Section shall not be deemed to authorize the assignment of a *chose* or thing in action not arising out of contract. Exceptions.

5 III. In case of an assignment of a thing in action arising out of contract, the action by the Assignee shall be without prejudice to any set off or other defence existing at the time of or before notice of the assignment; but this Section shall not apply to any negotiable promissory note or bill of exchange
10 transferred in good faith and upon good consideration before it shall have become due. Assignment of a thing in action not to prejudice defence.

IV. When a married woman is a party, her husband shall be joined with her, except that when the action is between herself and her husband, or where her husband cannot be
15 joined, she may be sued alone, but may sue or defend by her next friend. When a married woman is a party, her husband must be joined. Exceptions.

V. When an Infant is a party, such Infant must sue or defend by Guardian who may be appointed by the Court in which the action is pending or is to be brought or a Judge
20 thereof, either as a general Guardian, or merely to prosecute or defend in the action or suit, in case there be no known General Guardian to such Infant in Upper Canada, or if it be doubtful who is such general Guardian, or if such general Guardian refuse or neglect to appear or defend for the Infant. Infants must sue or defend by Guardian.

25 VI. The Guardian in such case shall be appointed as is now provided by law in Upper Canada, or as follows: Guardian, how appointed.

1. When the Infant is to sue, upon the application of the Infant if he be of the age of fourteen years or upwards, or if he be under that age, upon the application of a relative or
30 friend of the Infant. If the application be made by a relative or friend of the Infant, notice thereof in writing must be given to the person with whom such Infant resides, or is employed, or under whose care or control he is.

2. When the Infant is Defendant, upon the application of
35 the Infant if he be of the age of fourteen years, and apply within twenty days after service of the Summons: If he neglect so to apply or be under the age of fourteen years, then upon the application of any other party to the action or of a relation or friend of the Infant, after notice of such appli-
40 cation has been given to the known general Guardian, if there be any in Upper Canada, refusing or neglecting to appear and defend, and to the person with whom, if any in Upper Canada, such Infant resides, if he has no such known general Guardian within Upper Canada, then to the Infant himself if
45 over fourteen years of age and within Upper Canada, or if under that age and within Upper Canada, to the person with

whom such Infant resides or is employed, or under whose care or control he is.

3. No general Guardian appointed for an Infant shall be permitted to receive or intermeddle with the property of the Infant, until he shall have given sufficient security approved 5 by a Judge of the Court, or by a County Court Judge, to account for and apply the same under the direction of the Court of Chancery.

Lunatic, Idiot or person judicially declared of unsound mind, how to sue or be sued.

VII. A Lunatic or Idiot, or person judicially declared of unsound mind, or incapable of conducting his own affairs from 10 habitual drunkenness or any other cause, must sue or be sued with the Committees if any, of the person and estate of such Lunatic, Idiot, or such person declared of unsound mind : If there be only a Committee of the person or estate of the Lunatic, Idiot, or Person so declared of unsound mind, then 15 with such Committee of the person or estate, but if there be neither a Committee of the person nor estate of such Lunatic, Idiot, or Person so declared of unsound mind, then with such person as the Court or a Judge thereof shall appoint Guardian only to prosecute or defend with such Lunatic, Idiot, or Person 20 so declared of unsound mind, on the application of any party intending to sue or of a relative or friend of such Lunatic, Idiot, or Person so declared of unsound mind, after such notice as the Court or a Judge thereof, shall consider reasonable, has been given to the person with whom such Lunatic, 25 Idiot or Person so declared of unsound mind, resides or who has the care of his person, and to any relative or other person, if any, whom the Judge or Court may direct.

Who may be joined as Plaintiffs.

VIII. All persons having an interest in the subject of the action and in obtaining the relief demanded, may be joined as 30 Plaintiffs, except as otherwise hereinafter provided.

Who may be joined as Defendants.

IX. Any person may be made a Defendant who has or claims an interest in the controversy adverse to the Plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved therein. 35

Parties united in interest when to be joined.

X. Of the parties to the action those who are united in interest must be joined as Plaintiffs or Defendants, but if the consent of any one who should be joined as Plaintiff cannot be obtained, application may be made to the Court wherein the action is to be brought, or a Judge thereof, or a Judge of 40 the County Court of the County in which such action is to be brought, upon reasonable notice being served on the person not consenting, for an order that such person be joined in the action as a Plaintiff, and the Court or such Judge may refuse the application or make such order thereon as shall 45 appear reasonable, or such person may be made a Defendant, the reason thereof being stated in the complaint, and when

the question is one of a common or general interest of many persons, or when the parties are very numerous, and it may be impracticable or attended with great expense to bring them all before the Court, one or more may sue or be sued, or may defend for the benefit of the whole, as the Court or a Judge thereof, on the summary application of any one of them, or any party interested, supported by affidavit, may deem reasonable and shall order.

When one or more may sue or defend for the whole.

XI. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all or any of them be included in the same action, at the option of the Plaintiff; but if separate actions, or more than one action, be brought thereon, there shall be recovered by the Plaintiff the taxed costs of one suit only at the election of the Plaintiff, unless before action brought an order shall have been made by a Judge of the Court in which such actions are to be brought on reasonable and strong special grounds, to be shown by affidavit, allowing more actions thereon than one (but limiting the number) to be brought with full costs.

Parties liable on a Bill of Exchange, Promissory Note or Contract, may all be sued in one action.

What costs allowed if sued separately.

XII. No action shall abate by the death, marriage or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of death, marriage or other disability of a party, the Court, on motion at any time within one year thereafter, may allow the action to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action shall be continued in the name of the original party, or the Court may allow the person to whom the transfer is made to be substituted in the action.

No abatement of action by death, marriage or other disability or by transfer.

Proceedings in such cases.

XIII. The Court may determine any controversy between the parties before it, when it can be done without prejudice to the right of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the Court may cause them to be brought in, and when in an action for the recovery of real or personal property, a person, not a party to the action, but having an interest in the subject thereof, makes application to the Court to be made a party, it may order him to be brought in by the proper amendment.

The Court when to decide controversy between the parties, or order other parties brought in.

When to allow parties applying to defend.

1. A Defendant against whom an action is pending upon a contract, or for specific, real or personal property, may, at any time before answer, upon affidavit that a person not a party to the action and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and to the adverse party, apply to the Court for an order to substitute such person in his place, and discharge him from liability to either party on his depositing in Court

the amount of the debt or delivering the property, or its value, to such person as the Court may direct, and the Court may in its discretion make the Order.

OF THE PLACE AT WHICH ANY CIVIL ACTION MAY BE BROUGHT AND TRIED.

Section 14. Certain actions to be brought and tried where the subject or some part thereof is situate.

15. Other actions where the cause or some part thereof arose.

16. Other actions according to the residence of the parties.

17. Actions may be tried in any County, unless Defendant demand trial in proper County. When the Court may change place of trial. Proceedings thereafter.

Certain actions to be brought and tried where the subject or some part thereof is situate.

XIV. Actions for the following causes must be tried in the County in which the subject of the action or some part thereof is situate, and must be brought in such County, if the party sued or any of the real parties sued reside therein when the action is commenced, subject to the power of the Court to change the place of trial in the cases provided by Statute :

10

1. For the recovery of real property or of an estate or interest therein or for the determination in any form of such right or interest, and for injuries to real property ;

2. For the partition of real property ;

3. For the foreclosure of a mortgage of real property ; 15

4. For the recovery of personal property distrained for any cause.

Other actions where the cause or some part thereof arose.

XV. Actions for the following causes must be tried in the County where the cause or some part thereof arose, and must be brought in such County if the party sued or any of the real parties sued reside therein when the action is commenced, subject to the like power of the Court to change the place of trial in the cases provided by Statute :

1. For the recovery of a penalty or forfeiture imposed by Statute ; except that when it is imposed for an offence committed on a Lake, River, or other Stream of water situate in two or more Counties, the action may be brought in any County bordering on such Lake, River or Stream, and opposite to the place where the offence was committed ;

2. Against a public Officer or person specially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command or in his aid, shall do any thing touching the duties of such Officer. 30

XVI. In all other cases the action shall be brought and tried in the County in which the parties or any of them shall reside at the commencement of the action, or if none of the parties shall reside in Upper Canada, the same may be brought and 5 tried in any County which the Plaintiff shall designate in his complaint; subject, however, to the power of the Court to change the place of trial in cases provided by Statute.

Other actions according to the residence of the parties.

XVII. If the County designated for that purpose in the complaint be not the proper County, the action may notwithstanding 10 be tried therein, unless the Defendant, before the time of answering expires, demand in writing that the trial be had in the proper County, and the place of trial be thereupon changed by consent of parties or by order of the Court, as is provided in this section.

Actions may be tried in any County, unless Defendant demand trial in proper County.

15 The Court may change the place of trial in the following cases:

When the Court may change place of trial.

1. When the County designated for that purpose in the complaint is not the proper County.

2. When there is reason to believe that an impartial trial 20 cannot be had therein.

3. When the convenience of witnesses and the ends of justice would be promoted by the change.

When the place of trial is changed, all other proceedings shall be had in the County to which the place of trial is 25 changed, unless otherwise provided by the consent of the parties in writing duly filed, or order of the Court, and the papers shall be filed or transferred accordingly.

Proceedings thereafter.

OF THE MANNER OF COMMENCING CIVIL ACTIONS.

Section 18. Civil actions how commenced. Requisites of summons.

19. Copy of complaint not to be served with summons. How obtained.
20. If Defendant make default in entering appearance, Plaintiff may sign interlocutory judgment. If Plaintiff make default in leaving copy of complaint after demand, Defendant may sign interlocutory judgment. Complaint need not be filed when summons issued. Proceedings in such cases.
21. Where a Defendant is served against whom Plaintiff has no personal claim, he may give notice thereof. Consequences if such Defendant unreasonably defend.
22. The determination of a suit is not to affect the interest of any person not made a party thereto.
23. Summons, &c. by whom served, &c.
24. How Summons to be served.
25. Service by publication when Defendant cannot be found, and other special cases.
26. Proceedings where there are several Defendants and part only served.

27. When service deemed made in case of publication.
 28. Service of Summons how proved.
 29. When jurisdiction of the action acquired.

Civil actions
how com-
menced.

XVIII. Civil actions in the Courts of Record in Upper Canada shall be commenced by the service of a Summons, subscribed by the Clerk or Deputy Clerk of the Court in the County wherein the action is commenced, and issued upon a Præcipe indorsed on the complaint filed by the Plaintiff or his Attorney.

Requisites of
summons.

1. The Summons shall be directed to the Defendant, and shall state that the Plaintiff's complaint has been filed in the Office of the Clerk or Deputy Clerk of the (naming the Court) in the County of (naming the County or Union of 10 Counties), and that the Defendant must either in person or by Attorney file his appearance in the same Office, and serve a written notice thereof on the Plaintiff or his Attorney (as the case may be), within eight days after the service of the Summons, and file his answer to the complaint and leave a copy 15 thereof for the Plaintiff or his Attorney in the same Office, within twenty days after service of the Summons, and that otherwise the Plaintiff will be at liberty to sign judgment against the Defendant. The Summons shall bear date on the day and at the place of issuing the same, but need not be 20 tested in the name of any Judge of the Court.

Copy of com-
plaint not to
be served with
summons.

XIX. A copy of the complaint shall not be served with the Summons, but there shall be indorsed on such Summons or annexed thereto a notice to the Defendant (not exceeding three folios in length), subscribed by the Plaintiff or his 25 Attorney, stating the particulars, and as fully as can be done in such three folios, the nature of the Plaintiff's action, the amount of the debt or damages claimed, or the relief or redress demanded, and that if the Defendant desires a copy of the complaint, he must demand the same in his notice of appear- 30 ance, and in such case that it will be left for him at the Office of such Clerk or Deputy Clerk within twelve days after the service of the Summons.

How obtained.

If Defendant
make default
in entering
appearance,
Plaintiff may
sign interlocu-
tory judg-
ment.

XX. A copy of the Summons and Notice must be personally served on the Defendant, except as hereinafter provided, 35 and in case the Defendant makes default in filing his appearance, and serving a notice thereof on the Plaintiff or his Attorney within eight days after the service of the Summons, or makes default in filing his answer and leaving a copy thereof for the Plaintiff or his Attorney with the Clerk or Deputy 40 Clerk who issued the Summons, within twenty days after the service of such Summons, the Plaintiff may sign interlocutory judgment against him.

If Plaintiff
make default

1. If the Defendant files his appearance and serves notice of appearance within the time limited therefor, and in such 45

notice demands a copy of the Plaintiff's complaint, and the Plaintiff or his Attorney does not leave a true copy of the complaint with the Clerk or Deputy Clerk where the original copy is filed, within twelve days after service of the summons, 5 the Defendant may sign interlocutory judgment against the Plaintiff.

in leaving copy of complaint after demand, Defendant may sign interlocutory judgment.

2. The Summons may, at the Plaintiff's option, be issued and served before filing the complaint, and without the notice of particulars of the Plaintiff's cause of action mentioned in 10 section *nineteen*, the body of the Summons being altered to correspond with the fact; but in that case the complaint shall afterwards be filed, and a notice of the filing thereof stating the Plaintiff's cause of action in the manner required by section *nineteen* must be served (without charge to the Defendant for 15 service or travelling fees to serve or any attendances thereon). The time for answering by the Defendant will, in such case, be within twenty days after the service of such notice.

Complaint need not be filed when summons issued.

Proceedings in such cases.

XXI. In case there shall be any Defendant in the action against whom no personal claim or complaint is made, the 20 Plaintiff may add to the notice indorsed on or annexed to the Summons, that such Defendant (naming him) is served, in order that any interest or claim he may have in respect of the subject matter of the action, may not be affected by its determination without notice, but if any such Defendant shall 25 unreasonably defend the action, he shall pay such costs to the Plaintiff as the Court shall award.

Where a Defendant is served against whom Plaintiff has no personal claim, he may give notice thereof.

Consequences if such Defendant unreasonably defend.

XXII. Any person who has an interest or right in the subject matter of the action, shall not be affected or injured as to such interest or right by the result of any proceeding in such action, 30 unless he be made a party thereto.

The determination of a suit is not to affect the interest of any person not made a party thereto.

XXIII. The Summons or any other paper in the action may be served by the Sheriff of the County where the Defendant or party to be served may be found, or by any of the Sheriff's Officers, or by any other literate person not a party to the 35 action; the service shall be made, and the Summons or other paper delivered to the Plaintiff or his Attorney whose name may be indorsed on the Summons or paper, together with a proper affidavit of service, with all reasonable diligence. The Plaintiff or his Attorney may, at his option, (but without 40 charge therefor) by indorsement on the Summons or paper, limit the time for service thereof, and the service shall be made accordingly. The Plaintiff or his Attorney may, at any time, where the time for service has not been limited by such indorsement, or if the time for service has been so limited at 45 any time after the expiration of the time so limited, call for a return as to service of the Summons or paper, which the Sheriff or other person employed to serve the same shall be bound to give forthwith, and if such Sheriff or person has not used due

Summons, &c. by whom served, &c.

diligence in effecting such service, or has been guilty of any unreasonable neglect or delay in respect of effecting a service of such Summons or paper, he shall be liable to an action at the suit of the Plaintiff for the recovery of damages in respect thereof. 5

How Sum-
mons to be
served.

XXIV. The Summons shall be served by delivering a copy thereof, as follows :

1. If the suit be against a Corporation, to the President or other Head of the Corporation, Secretary, Cashier, Treasurer or Director, or Managing Agent thereof, or other person de- 10
signated for the purpose by Statute, but such service can be made in respect of a foreign Corporation only when it has property within Upper Canada or the cause of action arose therein.

2. If against a Minor, to such Minor personally, and also 15
to his Father, Mother or Guardian, or if there be none within the Upper Canada, then to any person having the care and control of such Minor or with whom he shall reside, or in whose service he shall be employed.

3. If against a Lunatic, or Idiot, or a person judicially de- 20
clared to be of unsound mind or incapable of conducting his own affairs in consequence of habitual drunkenness, or other cause, and for whom a Committee or Committees have been appointed, to such Committee or Committees, and to the Defendant personally. 25

4. In all other cases to the Defendant personally, but the mode of service may be varied as in the cases hereinafter provided.

Service by
publication
when De-
fendant cannot
be found, and
other special
cases.

XXV. Where the person on whom the service of the Sum-
mons is to be made, cannot after due diligence be found 30
within Upper Canada, and that fact appears by affidavit to the satisfaction of the Court or a Judge thereof, or of the County Judge of the County where the trial is to be had, and in like manner appears that a cause of action exists against the De-
fendant in respect to whom the service is to be made, or that 35
he is a proper party to an action relating to real property in Upper Canada, such Court or Judge may grant an order that the service be made by the publication of a Summons in any of the following cases :

1. Where the Defendant is a Foreign Corporation, and has 40
property within Upper Canada or the cause of action arose therein.

2. Where the Defendant being a resident of Upper Canada
has departed therefrom with intent to defraud his Creditors,

or to avoid the service of a Summons, or keeps himself concealed therein with the like intent.

3. Where he is not resident in Upper Canada but has property therein and the action arises on contract, and the Court has jurisdiction of the subject of the action.

4. Where the subject of the action is real or personal property in Upper Canada and the Defendant has or claims a lien or interest, actual or contingent therein, or the relief demanded consist wholly or partly in excluding the Defendant from any interest or lien therein.

5. Where the action is for any other cause, in the cases prescribed by law.

6. The Order must direct the publication to be made in two newspapers to be designated as most likely to give notice to the person to be served and for such length of time as may be deemed reasonable, not less than once a week for six weeks. In case of publication the Court or Judge must also direct a copy of the Summons and complaint to be forthwith deposited in the Post Office directed to the person to be served at his place of residence, unless it appear that such residence is neither known to the party making the application, nor can with reasonable diligence be ascertained by him. When publication is ordered, personal service of a copy of the Summons and complaint out of Upper Canada is equivalent to publication and deposit in the Post Office.

7. The Defendant against whom publication is ordered, or his representatives, on application and sufficient cause shewn at any time before judgment, must be allowed to defend the action; and the Defendant against whom publication is ordered or his representatives may in like manner upon good and reasonable cause shewn, be allowed to defend after judgment, or at any time within one year after notice thereof and within seven years after its being rendered on such terms as may be just, and if the defence be successful and the judgment or any part thereof have been collected or otherwise enforced, such restitution may thereupon be compelled as the Court shall direct, but the title to property sold under such judgment to a purchaser in good faith shall not be thereby affected, and in all cases where publication is made, the complaint must be first filed and the summons as published must state the time and place of such filing.

XXVI. Where the action is against two or more Defendants, and the Summons is served on one or more, but not on all of them, the Plaintiff may proceed as follows :

Proceedings where there are several Defendants and part only served.

1. If the action be against Defendants jointly indebted upon contract, he may proceed against the Defendant served, unless the Court otherwise direct, and if he recover judgment it may be entered against all the Defendants thus jointly indebted, so far only as it may be enforced against the joint property of all and the separate property of the Defendants served, and if they are subject to arrest, against the persons of the Defendants served ; or 5

2. If the action be against Defendants severally liable, he may proceed against the Defendants served, in the same manner as if they were the only Defendants. 10

3. If all the Defendants have been served, judgment may be taken against any or either of them severally, when the Plaintiff would be entitled to judgment against such Defendant or Defendants if the action had been against them or any of them alone. 15

When service deemed made in case of publication. XXVII. In the cases mentioned in section *twenty-five*, the service of Summons shall be deemed complete at the expiration of the time prescribed by the order for publication.

Service of Summons how proved. XXVIII. Proof of the service of the Summons and Notice accompanying the same must be made as follows : 20

1. If served by the Sheriff or any of his Officers, or by any other person, by his affidavit thereof ; or

2. In case of publication by the affidavit of the Printer or his Foreman or principal Clerk shewing the same ; and by an affidavit of a deposit of a copy of the Summons in the Post Office as required by law, if the same shall have been deposited ; or 25

3. By the written admission of the Defendant or his Attorney. 30

4. In case of service otherwise than by publication, the affidavit or admission must state the time and place of the service.

When jurisdiction of the action acquired. XXIX. From the time of the service of a Summons in a Civil Action or the allowance of a provisional remedy, the Court shall be deemed to have acquired jurisdiction and to have control over all the subsequent proceedings. A voluntary appearance of a Defendant shall be equivalent to personal service of the Summons upon him. 35

OF THE PLEADINGS IN CIVIL ACTIONS.

Section 30. Forms of Pleadings heretofore existing abolished, except as allowed by this Act.

XXX. All the forms of pleadings heretofore existing are abolished, except as allowed by this Act, and hereafter the forms of pleadings in Civil Actions in Courts of Record in Upper Canada, and the Rules by which the sufficiency of the pleadings are to be determined, shall be those prescribed by this Act. But nothing herein contained shall be construed as prohibiting the use of such forms and parts of forms of pleading heretofore in use as are consistent with the provisions and spirit of this Act.

Forms of Pleadings heretofore existing abolished, except as allowed by this Act.

OF THE COMPLAINT.

Section 31. The first pleading to be the complaint.

32. What the complaint shall contain.

10 XXXI. The first pleading on the part of the Plaintiff shall be the complaint.

The first pleading to be the complaint.

XXXII. The complaint shall contain :

What the complaint shall contain.

15 1. The title of the cause, specifying the name of the Court and County in which the action is brought, the name of the County in which the Plaintiff desires the trial to be had, the date of filing the complaint and of issuing the Summons, and the names of the parties to the action, Plaintiff and Defendant.

2. A plain and concise statement of the facts constituting the cause of action without unnecessary repetition.

20 3. A demand of the relief to which the Plaintiff supposes himself entitled. If the recovery of money be demanded, the amount thereof shall be stated.

OF THE ANSWER.

Section 33. The only pleading by Defendant to be an answer.

34. What the Answer must contain.

35. The Answer may state as many defences as the Defendant has within certain limitations. Sham Answers may be struck out on motion.

25 XXXIII. The only pleading on the part of the Defendant shall be an answer, which must be in plain and concise language, without unnecessary repetition. The answer must be filed and a copy left as required by Section twenty.

The only pleading by Defendant to be an answer.

XXXIV. The answer of the Defendant must contain :

What the Answer must contain.

1. A general or specific denial of each material allegation of the complaint disputed by the Defendant.

2. A statement of any matter constituting a defence, set off or counter claim.

The Answer may state as many defences as the Defendant has within certain limitations.

XXXV. The counter claim or set off mentioned in the last section, must be one existing in favor of a Defendant and against a Plaintiff between whom a several judgment might be had in the action, and arising out of one of the following causes of action :

Sham Answers may be struck out on motion.

1. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the Plaintiff's claim, or connected with the subject of the action ;

2. In an action arising on a contract, any other cause of action arising also on contract or of the same nature, and existing at the commencement of the action ;

3. The Defendant may set forth by answer as many defences and counter claims as he may have, except that such as have been denominated "equitable" cannot be pleaded to an action in a Court of law without leave granted by a Judge of the Court, unless the action in a Court of law be one of an equitable nature, and such as before the passing of this Act could only have been brought in the Court of Chancery. They must be separately stated and refer to the causes of action which they are intended to answer, in such a manner that they may be intelligibly distinguished.

4. Sham and irrelevant answers and defences may be struck out on motion in Court or summary application to a Judge thereof or a Judge of the County Court of the County in which the action is brought, after six days' notice to the adverse party, and upon such terms as the Court or a Judge thereof shall impose.

OF THE REPLY.

Section 36. In what cases and within what time Plaintiff may reply.

37. Proceeding if the answer contain new matter, and the Plaintiff fail to reply.

In what cases and within what time Plaintiff may reply.

XXXVI. When the answer contains new matter constituting a counter claim, the Plaintiff may within twenty days reply to such new matter denying generally or specifically each allegation controverted by him, and he may allege in ordinary and concise language without repetition, any new matter, not inconsistent with the complaint, constituting a defence to such new matter in the answer.

XXXVII. If the answer contain new matter constituting a defence and the Plaintiff fail to reply within the time prescribed by Section *thirty-six*, the Defendant may sign interlocutory judgment for want of such reply to such new matter, and if the case require it, contingent damages may be assessed at the trial of the cause, to abide the judgment of the Court in respect thereof, or the judgment of the Court may be first obtained and damages in respect thereof be subsequently assessed as the Court may order.

Proceeding if the answer contain new matter, and the Plaintiff fail to reply.

- 10 1. If a reply of the Plaintiff to any defence set up by the answer of the Defendant be insufficient, the Defendant may sign interlocutory judgment, stating the ground thereof, and contingent damages may, if the case require it, be assessed as if the Plaintiff had failed to reply to an answer requiring a
15 reply.

GENERAL RULES OF PLEADING.

Section 38. Pleas in Abatement and Demurrers abolished, and applications to the Court to set aside any proceeding, substituted in the cases specified.

39. Court to make order and decide as to Costs.

40. No further pleading allowed except on special application and order.

41. By whom pleadings must be subscribed. As to verification of pleadings.

42. Case of an account provided for.

43. Pleadings to be liberally construed.

44. How the decision of any Court must be pleaded.

45. Performance of conditions of a contract how pleaded.

46. Private Statute how pleaded.

47. What must be stated in complaint in an action for Slander or Libel.

48. And in the answer of the Defendant.

49. And in the answer in action to recover property distrained doing damage &c.

50. In what cases Plaintiff may unite several causes of action.

51. Causes of action united must all belong to the same class and affect the same parties, &c.

52. What matters may be pleaded in defence. By way of set off, or in reply.

53. Material allegations in pleadings to be taken as true if not denied.

XXXVIII. Pleas in abatement and demurrers are abolished, and instead thereof an application may be made to the Court or a Judge thereof by the adverse party, after giving six days' notice thereof, that the writ, action, complaint, answer, or
25 reply, or the part thereof objected to may be abated, stricken out or amended, as the case may require, in any of the following cases, and the Court or a Judge thereof may make such order in relation thereto and as to costs on account thereof as may appear reasonable :

Pleas in Abatement and Demurrers abolished, and applications to the Court to set aside any proceeding, substituted in the cases specified.

- 25 1. Where the Court has no jurisdiction over the Defendant or the subject of the action ;

2. Where the Plaintiff has not a legal capacity to sue or to sue with or by others named in the summons or complaint;
3. Where there is another action pending between the same parties or some one or more of them, for the same cause;
4. Where there is a defect of parties Plaintiff or Defendant; 5
5. Where several causes of action or defence different in their nature have been improperly united in the complaint, answer or reply;
6. Where the complaint, answer or reply does not state facts sufficient to constitute a cause of action, defence or 10 reply;
7. Where the pleading contains irrelevant or redundant matter;
8. Where the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defence is 15 not apparent;
9. Where a sham answer and defence or reply is pleaded.

Court to make order and decide as to Costs.

XXXIX. The Court or Judge upon any application made under section *thirty-eight*, may make such order in relation thereto, and as to the costs thereof, as shall be deemed proper 20 and reasonable.

No further pleading allowed except on special application and order.

XL. No other pleading shall be allowed than the complaint, answer and reply, except by the special order of the Court or a Judge thereof.

By whom pleadings must be subscribed.

XLI. Every pleading in a Court of Record must be sub- 25 scribed by the party or his Attorney, and when any pleading is verified, every subsequent pleading must be verified also.

As to verification of pleadings.

XLII. It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged, but he shall deliver to the adverse party, within six days after a demand 30 thereof in writing. The Court or a Judge thereof, or a County Judge, may order a further account, when the one delivered is defective, and the Court may, in all cases, order a bill of particulars of the claim of either party to be furnished. 35

Case of an account provided for.

Pleadings to be liberally construed.

XLIII. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed with a view to substantial justice between the parties.

XLIV. In pleading a judgment or other determination of a Court or Officer of special jurisdiction, it shall not be necessary to state the facts conferring the jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be denied, the party pleading shall be bound to establish, on the trial, the facts conferring jurisdiction.

How the decision of any Court must be pleaded.

XLV. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part, and if such allegation be denied, the party pleading shall be bound to establish, on the trial, the facts showing such performance. In an action or defence founded upon an instrument for the payment of money only, it shall be sufficient for the party to give a copy of the instrument or so much thereof as is necessary to the action or defence, and to state that there is due to him thereon, from the adverse party, a specified sum which he claims.

Performances of conditions of a contract how pleaded. Private

XLVI. In pleading a private statute or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the date of its passage, and the Court shall thereupon take judicial notice thereof.

Statute how pleaded.

XLVII. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the Plaintiff of the defamatory matter out of which the cause of action arose, but it shall be sufficient to state generally that the same was published or spoken concerning the Plaintiff, and if such allegation be controverted, the Plaintiff shall be bound to establish, on trial, that it was so published or spoken.

What must be stated in complaint in an action for Slander or Libel.

XLVIII. In the actions mentioned in the last section, the Defendant may, in his answer, deny generally or specially the allegations in the Plaintiff's complaint, or may allege the truth of the matter charged as defamatory, and that the same was not published or spoken maliciously and any mitigating circumstances to reduce the amount of damages, and whether he prove the justification or not, he may give in evidence the mitigating circumstances; but if he allege the truth or any mitigating circumstances, he must show *prima facie* the absence of malice on his part towards the Plaintiff, otherwise he shall not be allowed to go into evidence of the truth or of the mitigating circumstances.

And in answer of the Defendant.

XLIX. In an action to recover the possession of property distrained doing damage, an answer that the Defendant or person by whose command he acted was lawfully possessed of the real property upon which the distress was made, and

And in the answer in action to recover property dis-

trained doing damage, &c. that the property distrained was at the time doing damage thereon, shall be good without setting forth the title to such real property.

In what cases Plaintiff may unite several causes of action. L. The Plaintiff may unite in the same complaint several causes of action where they shall arise out of 5

1. The same transaction or transactions connected with the same subject of action ;

2. Contract express or implied ; or

3. Injuries with or without force to person and property or either ; or 10

4. Injuries to character ; or

5. Claims to recover real property with or without damages for the withholding thereof, and the rents and profits of the same ; or

6. Claims to recover personal property with or without 15 damages for the withholding thereof ; or

7. Claims against a Trustee by virtue of a contract or by operation of law.

Causes of action united must all belong to the same class and affect the same parties, &c. LI. But the causes of action so united must all belong to one of these classes, and must affect all the parties to the 20 action and not require different places of trial, and must be separately stated, and if the action be either in the Court of Queen's Bench, or of Common Pleas or in a County Court, the causes of action so united must be such as are within the jurisdiction of and can be sued in such Courts respectively, 25 or, if in the Court of Chancery, the causes of action so united must be such as can be sued in that Court.

What matters may be pleaded in defence. LII. Matters pleaded in defence must be of the same nature as the causes of action set forth in the complaint, except the defence pleaded be a release or accord and satis- 30 faction, or shall directly operate to bar, discharge or merge the cause of action to which the answer is applicable. Matters pleaded by way of set off must be such as are capable of being the subject of a set off and of the same nature as the matters constituting the cause of action set forth in the 35 complaint. Every pleading in reply must go to support the complaint.

Material allegations in pleadings to be taken as LIII. Every material allegation of the complaint not denied by the answer, as prescribed in section *thirty-four*, and every material allegation of new matter in the answer constituting 40 a counter-claim not denied by the reply, as prescribed in

section *thirty-six*, shall for the purposes of the action be taken as true, but the allegation in the answer of new matter not relating to a counter-claim, or of new matter in a reply, is to be deemed denied by the adverse party, as upon a direct denial or avoidance, as the case may require. true if not denied.

OF MISTAKES IN PLEADINGS AND OF AMENDMENTS.

Section 54. Variance between allegation and proof, when to be immaterial.

55. Court may order the fact to be found according to evidence or immediate amendment.

56. What variance shall be deemed a failure of proof.

57. One amendment allowed without costs in certain cases, and on certain conditions.

58. What amendments the Court may allow upon or after judgment.

59. As to amendments consequent upon facts occurring after the pleading was filed.

60. Court may relieve a party from a judgment, order, &c., on certain conditions and within a certain time.

61. When the true name of Defendant is unknown.

62. Court may always disregard errors or defects not substantially affecting the rights of parties.

LIV. When the cause of action or defence is substantially proved, no variance between the allegation in a pleading and the proof shall be deemed material, unless it have actually misled the adverse party to his prejudice in maintaining his action or defence upon the merits. Wherever it shall be alleged that a party has been so misled, that fact shall be shown to the satisfaction of the Court and in what respect he has been misled, and thereupon the Court may order the pleading to be amended upon such terms as shall be just. Variance between allegation and proof, when to be immaterial.

LV. Where such variance is not material the Court may direct the fact to be found according to the evidence, or may order an immediate amendment without costs. Court may order the fact to be found according to evidence or immediate amendment.

LVI. Where, however, the allegation of the cause of action or defence, to which the proof is directed, is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the two last sections, but a failure of proof, and be dealt with accordingly. What variance shall be deemed a failure of proof.

LVII. Any pleading may be once amended by the party, of course, without costs and without prejudice to the proceedings already had at any time before the period for answering or replying expires, or it may be so amended, at any time, within twenty days after the service of the answer or reply to such pleading, on payment of costs of the adverse party arising from such amendment, unless it be made to appear to the Court or a Judge thereof, or a Judge of the County Court of the County in which the action is brought, that it was made for the purpose of delay, or that the Plaintiff or One amendment allowed without costs in certain cases, and on certain conditions.

Defendants will thereby lose the benefit of a trial, for which a notice has been or might otherwise be given; and if it appear to the Court or such Judge that such amendment was made for such purpose or delay, or that the Plaintiff or Defendant will lose the benefit of a trial thereby, the same may be stricken out, or such terms imposed as to the Court or such Judge may seem just. In case of amendment, a copy of the amended pleading must be served on the adverse party. The Court may, in its discretion and upon such terms as may be just, order any action to be divided into as many actions as may be necessary to the proper determination of the causes of action therein mentioned. 5

What amendments the Court may allow upon or after judgment.

LVIII. The Court may upon or after Judgment, in furtherance of Justice and on such terms as may be proper, amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in any other respect, or by inserting other allegations material to the case, when the amendment does not change substantially the claim or defence by making the pleading or proceeding conformable to the facts proved. 20

As to amendments consequent upon facts occurring after the pleading was filed.

LIX. The Court or a Judge thereof may, before trial, upon such terms as may be just, allow an answer or reply to be made, or a complaint, answer or reply to be amended, so as to allege facts material to the case, which occurred after such complaint, answer or reply was filed, or of which the party was ignorant at the time of the filing thereof, or may allow any other act to be done after the time limited by this Act or by an order enlarge such time. 25

Court may relieve a party from a judgment, order, &c., on certain conditions and within a certain time.

LX. The Court, on motion, may, in its discretion and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order or other proceeding taken against him through his neglect, inadvertence, surprise or excusable neglect, and may supply an omission in any proceeding; and whenever any proceeding, taken by a party, is not conformable, in any respect, to the provisions of this Act, the Court may, in like manner and upon like terms, permit an amendment of such proceeding so as to make it conformable thereto. 35

When the true name of Defendant is unknown.

LXI. When the Plaintiff shall be ignorant of the name of a Defendant, such Defendant may be designated, in any pleading or proceeding, by the name of Richard Roe, stating that his true name is unknown to the Plaintiff, and when his true name shall be discovered, the pleading or proceeding may be amended accordingly. 40

Court may always disregard errors or

LXII. The Court may, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party, and 45

no judgment shall be reversed or affected by reason of such error or defect.

defects not substantially affecting the rights of parties.

OF PROVISIONAL REMEDIES IN CIVIL ACTIONS, ARREST AND BAIL.

Section 63. No person to be arrested in civil action except under this Act or as a fraudulent debtor.

64. In what cases a person may be arrested under this Act.

65. Who may make the Order for the arrest on affidavit that the Defendant is about to leave Canada with intent to defraud his creditors.

66. And in other cases.

67. Affidavit or copy thereof to be attached to the Order.

68. When such Order may be made: and what it shall require the Sheriff to do. Notice to be indorsed if the Order is made before Summons issued: effect of Order and Notice indorsed, &c. Proceedings consequent thereupon.

69. Affidavit and Order to be delivered to Sheriff: Defendant may require a copy.

70. How the Sheriff shall execute the Order.

71. Release of Defendant on giving Bail, or depositing money.

72. In what manner Bail may be given.

73. During what time, and in what manner, Defendant may be surrendered or may surrender himself in discharge of his Bail.

74. Bail may arrest Defendant or empower a proper person to do so.

75. In case of failure Bail to be proceeded against only by action.

76. How the Bail may become exonerated.

77. Sheriff to deliver Order, Return and Bail Bond to the Plaintiff or his Attorney.

78. Notice of time when Bail will justify to be given to Plaintiff.

79. What qualifications the Bail must have.

80. Attendance and examination of Bail for the purpose of justifying.

81. Sheriff exonerated if the Bail be found sufficient.

82. Defendant may deposit money in place of giving Bail.

83. Proceedings by Sheriff in case of such deposit.

84. But Bail may still be given at any time before judgment, and the money repaid to Defendant.

85. If the money remain until judgment, it may be applied in satisfaction, &c.

86. Liability and rights of Sheriff in case of an escape before Bail is given or justified.

87. Proceedings against the Sheriff on his official Bond if he be liable and the judgment remains unsatisfied on execution.

88. Original Bail liable to the Sheriff until they justify or other Bail be put in.

89. Defendant may apply to vacate order of arrest or reduce the amount of Bail, and when.

90. Motion how to be opposed by Plaintiff.

91. In certain cases the Defendant may obtain his discharge by delivering up property claimed by Plaintiff, and paying costs, &c.

No person to be arrested in civil action except under this Act or as a fraudulent debtor.

LXIII. No person shall be arrested in a civil action, except as provided by this Act or by any Act for the punishment of 5 fraudulent debtors.

In what cases
a person may
be arrested
under this
Act.

LXIV. Any Defendant may be arrested and held to Bail in the proper Court, according to its jurisdiction, where the sum, debt, damages or property to be recovered shall not be less in amount or value than ten pounds as hereinafter prescribed, and in the following cases: 5

1. In an action for the recovery of a debt or money demand for a sum certain, where the Defendant is about to remove or depart from Upper Canada with intent to defraud the Plaintiff or his creditors;

2. In an action for the recovery of a fine or penalty or for 10 the recovery of unliquidated or uncertain damages arising out of a contract, or from a promise to marry, or from seduction or from an injury to person or character, or from wrongfully taking, or detaining any money, account book, promissory note, bond, evidence of debt or property, mortgage, title, 15 deed, or other valuable written instrument, or personal property, or from wrongfully taking possession or withholding, or trespass upon or injury to real property or fixtures thereof, or from any misconduct or neglect in office, or in a professional or other employment where the Defendant is about to remove 20 or depart from *Upper Canada*, with intent to prevent the recovery of such fine, penalty or such damages, or where by reason of such removal or departure, the Plaintiff would lose his remedy.

3. In an action for monies or property, or valuable account 25 books, evidences of debt, deeds or papers embezzled or fraudulently misapplied by a Public Officer, or by an Attorney, Solicitor, Counsellor or Barrister, or by an Officer or Agent of a Corporation or Banking Association in the course of his employment as such, or by any Factor, Agent, Broker or 30 other Person in a fiduciary capacity.

4. In an action to recover the possession of personal property unjustly detained, where the property or any part thereof has been concealed, removed or disposed of, so that it cannot be found or taken, or with the intent that it should not be 35 found or taken by a Sheriff or other person having lawful authority from any Court or Judge to attach, seize or take the same, or with intent to deprive the Plaintiff of the benefit thereof.

5. Where a Defendant has been guilty of a fraud in con-40 tracting the debt or incurring the obligation for which the action is brought, or in concealing or disposing of the property for the injuring, detention or conversion of which the action is brought.

6. When a Defendant has secreted, removed or disposed of 45 his property, or property in which he has an interest, or is

about to do so, with intent to defraud his Creditors or other person having a valuable *bonâ fide* interest therein.

LXV. In all cases coming within the first subdivision of Section *sixty-four*, the Clerk or Deputy Clerk of the Court, or any Judge thereof, or of the County Court of any County where the action is brought, or any Commissioner for taking affidavits in such County, may make the Order for the arrest of the Defendant where it shall appear from the affidavit of the Plaintiff or other person, that the Defendant is justly and truly indebted to the Plaintiff in a sum, stating the same, not less in amount than *ten pounds* for a debt or sum certain, (specifying on what account), and that the person making the affidavit has good reason to believe and does verily believe that the Defendant is about to leave *Upper Canada*, with intent to defraud the Plaintiff or his creditors of his or their just debts.

Who may make the Order for the arrest on affidavit that the Defendant is about to leave Canada with intent to defraud his creditors.

LXVI. In all other cases, an Order for the arrest of the Defendant must be obtained from the Court or a Judge of the Court, in which the action is brought, or from a County Judge of such County, and the Order may be made where it shall appear to the Judge by the affidavit of the Plaintiff, or of any other person, that a sufficient cause of action exists, and that the case is one of those mentioned in Section *sixty-four*.

And in other cases.

LXVII. The affidavit on which the order is made, or a true copy if made by the Clerk or Deputy Clerk of the Court, must in all cases be attached to the Order and returned to the Plaintiff or the Attorney by whom the Order is endorsed at the time specified in section *sixty-eight*.

Affidavit or copy thereof to be attached to the Order.

LXVIII. The Order may be made to accompany the Summons, or at any time before or afterwards before judgment. It shall require the Sheriff of the County where the Defendant may be found, forthwith to arrest him and hold him to Bail in a specified sum, and to return the Order at a time and place therein mentioned, to the Plaintiff or Attorney by whom it shall be endorsed, who shall forthwith file the same with the Clerk or Deputy Clerk of the Court in which the action is brought. If the Order for arrest be made before Summons issued, a notice to the Defendant must be endorsed on or annexed to the Order and signed by the Plaintiff or his Attorney, stating in effect that the Plaintiff's complaint will be filed in the Office of the Clerk or Deputy Clerk of the Court in which the action is brought, on or before the return day mentioned in the Order, and that the Defendant must file his answer to the complaint and leave a copy thereof with the Plaintiff or his Attorney, in the same Office within twenty days after such return day, otherwise the Plaintiff will be at liberty to sign judgment against the Defendant.

When such Order may be made: and what it shall require the Sheriff to do.

Notice to be indorsed if the Order is made before Summons issue: effect of Order and Notice indorsed, &c.

Proceedings consequent thereupon.

1. The Order and endorsed or annexed notice shall thereupon stand in the place of the Summons as to the Defendant for whose arrest the Order is made, and if arrested thereon, he shall be bound, in case the Plaintiff's complaint has been filed according to such notice, to file his answer within twenty five days from such return day, and leave a copy with the Clerk or Deputy Clerk for the Plaintiff or his Attorney, in like manner and subject to the like consequences in case of default as if he had been served with a Summons and notice thereon and the Plaintiff must reply where a reply is allowed and 10 required as in other cases. No Summons need afterwards be, served on such Defendant in the action except in case of the neglect of the Plaintiff as hereinafter mentioned. When the Defendant is arrested, the Sheriff shall show or read to him the endorsement on the Order, and give him a copy of it and 15 of the Order, if requested.

2. If the Defendant for whose arrest the Order was made, serves the Plaintiff or his Attorney, within eight days after the return day of the Order, with a demand of a copy of the complaint, such copy must be left for him at the Office of the Clerk or Deputy Clerk in which the complaint is filed, within twelve days after the return day of the Order, or in default the Defendant may sign interlocutory judgment against the Plaintiff, and the Plaintiff will lose the benefit of the arrest of such Defendant, and be liable for costs as in other cases. 25

3. If the Order be not for the arrest of all the Defendants, or the Plaintiff neglect to file his complaint at or before the return day stated therein, a Summons must be issued and the like proceedings had thereon as if no Order for arrest had been made. 30

4. If the Order be granted for the arrest of all the Defendants and the issue of a Summons becomes necessary in consequence of the neglect of the Plaintiff to file his complaint at or before the return day of the Order, no fees shall be allowed him for the service of such Summons or mileage thereon. 35

5. If the Order be made for the arrest of all the Defendants in the action, no Summons shall be issued except in case of the Plaintiff's neglect to file his complaint at or before the return day of the Order, as mentioned in the last subdivision of this section. 40

Affidavit and Order to be delivered to Sheriff: Defendant may require a copy.

How the She-

LXIX. The affidavit or a copy and the Order of arrest shall be delivered to the Sheriff, who, upon arresting the Defendant, shall deliver to him a copy thereof if required.

LXX. The Sheriff shall execute the Order by arresting the Defendant and keeping him in custody, or causing it to be 45 done until he be discharged by law, and may call the power

of the County to his aid in the execution of the arrest, as in case of process. iff shall execute the Order.

LXXI. The Defendant, at any time before execution, shall be discharged from arrest, either upon giving Bail or upon 5 depositing the amount mentioned in the Order of arrest, as provided in section *eighty-two*. Release of Defendant on giving Bail, or depositing money.

LXXII. The Defendant may give Bail in the action by causing a written joint and several undertaking to be executed by himself and two or more sufficient Bail, stating their places 10 of residence and occupations, to the effect that the Defendant shall pay such sum and sums of money and costs as may be recovered against him, and do whatever may be adjudged against him in the action, and at all times render himself amenable to the process and orders of the Court during the 15 pendency of the action, and to such as may be issued or made to enforce the judgment therein. In what manner Bail may be given.

LXXIII. At any time before a failure to comply with the undertaking, the Bail may surrender the Defendant in their exoneration, or he may surrender himself to the Sheriff of the 20 County where he was arrested in the following manner : During what time, and in what manner, Defendant may be surrendered or may surrender himself in discharge of his Bail.

1. A certified copy of the undertaking of the Bail shall be delivered to the Sheriff who shall detain the Defendant in his custody thereon as upon an Order of arrest, and shall by a Certificate in writing acknowledge the surrender.

25 2. Upon the production of a copy of the undertaking and Sheriff's Certificate, a Judge of the Court or a County Judge may, upon a notice to the Plaintiff of eight days, with a copy of the Certificate, order that the Bail be exonerated, and on filing the order and the papers used on such application they 30 shall be exonerated accordingly.

LXXIV. For the purpose of surrendering the Defendant, the Bail, at any time or place before they are finally charged, may themselves arrest him, or by a written authority endorsed on a certified copy of the undertaking, may empower any 35 person of suitable age and discretion to do so. Bail may arrest Defendant or empower a proper person to do so.

LXXV. In case of failure to comply with the undertaking, the Bail may be proceeded against by action only. In case of failure Bail to be proceeded against only by action.

LXXVI. The Bail may be exonerated either by the death of the Defendant or his imprisonment in the Provincial Peni- 40 tentiary, or by paying such sum or sums of money and costs as may be recovered against the Defendant, and doing whatever may be adjudged against him in the action, or by his legal discharge from the obligation to render himself amenable to the process or orders of the Court, or by his How the Bail may become exonerated.

surrender to the Sheriff of the County where he was arrested, in execution thereof, within twenty days after the commencement of the action against the Bail or within such further time as may be granted by the Court.

LXXVII. Within the time limited for that purpose, the Sheriff to deliver Order, Return and Bail Bond to the Plaintiff or his Attorney. 5
 Sheriff shall deliver the Order of arrest to the Plaintiff or Attorney by whom it is endorsed, with his return endorsed, and a certified copy of the undertaking of the Bail. The Plaintiff within ten days thereafter may serve upon the Sheriff a notice that he does not accept the Bail, or he shall be 10
 deemed to have accepted it, and the Sheriff shall be exonerated from liability.

LXXVIII. On receipt of such copy of the undertaking and notice, the Sheriff or Defendant may within ten days thereafter, give to the Plaintiff or Attorney by whom the Order 15
 of arrest is endorsed, notice of the justification of the same or other Bail, specifying the places of residence and occupations of the latter, before a Judge of the Court or a County Court Judge, or a Commissioner for taking affidavits in the County Town of the County where the arrest was made, at a specified 20
 time and place—the time to be not less than five nor more than ten days thereafter. In case other Bail be given, there shall be a new undertaking to the effect prescribed in section *seventy-two*.

LXXIX. The qualification of Bail must be as follows : 25
 What qualifications the Bail must have.

1. Each of them must be a resident and householder or freeholder within Upper Canada.

2. Each of them must be worth double the amount specified in the Order of arrest, exclusive of property exempt from execution, and over and above what will pay all his debts ; but 30
 the Judge or Commissioner, on justification, may allow more than two Bail to justify severally in amounts less than double that expressed in the order, if the whole justification be equivalent to that of two sufficient Bail.

LXXX. For the purpose of justification, each of the Bail 35
 Attendance and examination of Bail for the purpose of justifying. shall attend before the Judge or Commissioner at the time and place mentioned in the notice, and may be examined on oath on the part of the Plaintiff touching his sufficiency, in such manner as the Judge or Commissioner in his discretion may think proper. The examination shall be reduced to 40
 writing, and subscribed by the Bail if required by the Plaintiff.

LXXXI. If the Judge or Commissioner find the Bail sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed with the Clerk, and the Sheriff shall thereupon be exonerated 45
 Sheriff exonerated if the Bail be found sufficient. from liability.

LXXXII. The Defendant may at the time of his arrest, instead of giving Bail, if the action is for the recovery of money or damages only, deposit with the Sheriff the amount mentioned in the Order and the costs of the suit so far as the same has proceeded. The Sheriff shall thereupon give the Defendant a Certificate of the deposit, and the Defendant shall be discharged out of custody.

Defendant may deposit money in place of giving Bail.

LXXXIII. The Sheriff shall, within four days after the deposit, pay the same into Court, and shall take from the Officer receiving the same, two Certificates of such payment, one of which he shall deliver to the Plaintiff and retain the other himself. For any default in making such payment, the same proceedings may be had on the Official Bond or Covenant of the Sheriff to collect the sum deposited as in other cases of default by him.

Proceedings by Sheriff in case of such deposit.

LXXXIV. If the money be deposited as provided in the last two Sections, Bail may be given and justified upon notice, as prescribed in Sections *seventy-two, seventy-eight, seventy-nine, eighty* and *eighty-one*, at any time before judgment, and thereupon the Judge or Commissioner before whom the justification is had, shall direct in the Order of allowance that the money deposited be refunded by the Sheriff; or paid out of Court to the Defendant, and it shall be refunded or paid out accordingly.

But Bail may still be given at any time before judgment, and the money repaid to Defendant.

LXXXV. Where money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the Plaintiff, the Clerk shall, under the direction of the Court, apply the same in satisfaction thereof, and after satisfying the judgment shall refund the surplus, if any, to the Defendant. If the judgment be in favor of the Defendant, the Clerk shall refund to him the whole sum deposited and remaining unapplied.

If the money remain until judgment, it may be applied in satisfaction, &c.

LXXXVI. If after being arrested the Defendant escape or be rescued, or in such case if Bail be not given or justified, or a deposit be not made instead thereof, where a deposit is allowed, the Sheriff shall himself be liable as Bail; but he may discharge himself from such liability by the giving and justification of Bail as provided in Sections *seventy-two, seventy-eight, seventy-nine, eighty* and *eighty-one* at any time before process against the person of the Defendant; to enforce an order or judgment in the action.

Liability and rights of Sheriff in case of an escape before Bail is given or justified.

LXXXVII. If a judgment be recovered against the Sheriff, upon his liability as Bail, and an execution thereon be returned unsatisfied in whole or in part, the same proceedings may be had on the Official Bond or Covenant of the Sheriff to collect the deficiency, as in other cases of default by him.

Proceedings against the Sheriff or his official Bond if he be liable and the judgment remains unsatisfied on execution.

Original Bail
liable to the
Sheriff until
they justify or
other Bail be
put in.

LXXXVIII. The Bail taken upon the arrest shall, unless they justify or other Bail be given or justified, be liable to the Sheriff in an action for damages which he may sustain by reason of such omission.

Defendant
may apply to
vacate order
of arrest or
reduce the
amount of
Bail, and
when.

LXXXIX. A Defendant arrested may at any time before 5 the justification of Bail apply by motion to vacate the Order of arrest or reduce the amount of Bail.

Motion how
to be opposed
by Plaintiff.

XC. If the motion be made upon affidavit, on the part of the Defendant, but not otherwise, the Plaintiff may oppose the same by affidavit or other proofs, in addition to those on 10 which the order of arrest was made.

In certain
cases the De-
fendant may
obtain his dis-
charge by de-
livering up
property
claimed by
Plaintiff, and
paying costs,
&c.

XCf. If the arrest be for the cause mentioned in the *fourth* subdivision of Section *sixty-four*, the Defendant may deliver up to the Sheriff all the property referred to in the Order of arrest, and verify the fullness of such delivery by affidavit, 15 and if the Plaintiff or his Attorney shall thereupon, by a note in writing to the Sheriff, express himself satisfied with such delivery, and state that he has been paid the costs of the action, including Sheriff's or Officer's fees attending the arrest and detention, the Sheriff shall forthwith discharge such Defen- 20 dant. If the Plaintiff or his Attorney on request refuse, or do not forthwith give such note to the Sheriff, the Defendant or his Attorney may apply to a Judge of the Court, or a Judge of the County Court of the County in which the Defendant is detained, for an Order for his discharge, and such Judge may 25 grant a Summons requiring the Sheriff to produce the Defendant before such Judge at a time and place to be mentioned therein, and also requiring the Plaintiff or his Attorney at the same time and place to show cause why the Defendant should 30 not be discharged from such arrest. A copy of such Summons having been served on the Plaintiff or his Attorney, and another copy on the Sheriff, not less than two days before the return day of such Summons, the Sheriff shall, at the time and place appointed, produce the Defendant before such Judge, and if the Plaintiff, or any one on his behalf, shall 35 attend, the Defendant may be examined on oath on the part of the Plaintiff, in such manner as the Judge may think proper, and thereupon, or in case no one shall attend on the part of the Plaintiff, such Judge may make an Order for the discharge of the Defendant from the arrest, either on or without terms, 40 or may refuse to order such discharge, as shall appear to him just and reasonable.

OF INJUNCTIONS.

Section 92. Writ of Injunction abolished, and Order of Injunction substituted. By whom such Order may be made.

93. Temporary Injunction may be granted in certain cases.

94. Injunction may be granted at any time before Judgment.

95. After Defendant has answered, Injunction to be granted only after motion to shew cause.
96. Security to be required from party praying an Injunction, unless it be otherwise provided by Statute.
97. Court may hear Defendant, if they deem it advisable, before granting Injunction.
98. As to Injunction to suspend the ordinary business of a Corporation.
99. Defendant may apply to vacate or modify Injunction granted without notice to him.
100. Plaintiff may oppose such application, on affidavit in certain cases.

XCII. The Writ of Injunction, as a provisional remedy, is abolished, and an Injunction by Order is substituted therefor. The Order may be made by the Court in which the action is brought, or by a Judge thereof, or by a County Court Judge in the cases provided by the next Section, and when made by a Judge may be enforced as the Order of the Court in which the action is brought.

Writ of Injunction abolished, and Order of Injunction substituted.

Bywhom such Order may be made.

XCIII. Where it shall appear by the complaint that the Plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the Plaintiff, or when during the litigation it shall appear that the Defendant is doing, or threatens, or is about to do, or is procuring or suffering some act to be done in violation of the Plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act, and where during the pendency of an action it shall appear, by affidavit, that the Defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors, a temporary injunction may be granted to restrain such removal or disposition.

Temporary Injunction may be granted in certain cases.

XCIV. The injunction may be granted at the time of commencing the action or at any time afterwards before judgment, upon its appearing satisfactorily to the Court or Judge, by the affidavit of the Plaintiff or of any other person, that sufficient grounds exist therefor. A copy of the affidavit must be served with the injunction.

Injunction may be granted at any time before Judgment.

XCv. An injunction shall not be allowed after the Defendant shall have answered, unless upon notice or upon an order to show cause; but in such case the Defendant may be restrained, until the decision of the Court or Judge be given granting or refusing the Injunction.

After Defendant has answered, Injunction to be granted only after motion to shew cause.

XCvi. Where no provision is made by Statute as to security upon an Injunction, the Court or Judge shall require a written undertaking on the part of the Plaintiff, with or without sureties, to the effect that the Plaintiff will pay to

Security to be required from party praying an Injunction, unless it be

otherwise provided by Statute. the party enjoined such damages, not exceeding an amount to be specified, as he may sustain by reason of the Injunction, if the Court shall finally decide that the Plaintiff was not entitled thereto. The damages may be ascertained by a reference or otherwise, as the Court shall direct. 5

Court may hear Defendant, if they deem it advisable, before granting Injunction. XCVII. If the Court or Judge deem it proper that the Defendant or any of several Defendants should be heard before granting the injunction, an Order may be made requiring cause to be shown at a specified time and place, why the injunction should not be granted and the Defendant may in 10 the mean time be restrained.

As to Injunction to suspend the ordinary business of a Corporation. XCVIII. An injunction to suspend the general and ordinary business of a Corporation, shall not be granted except by the Court or a Judge thereof. Nor shall it be granted without due notice of the application therefor to the proper Officers of 15 the Corporation, except where the Crown is a party to the proceeding, unless the Plaintiff shall give a written undertaking executed by two sufficient sureties to be approved by the Court or Judge, to the effect that the Plaintiff will pay all damages not exceeding the sum to be mentioned in the 20 undertaking, which such Corporation may sustain by reason of the injunction, if the Court shall finally decide that the Plaintiff was not entitled thereto. The damages may be ascertained by a reference, or otherwise, as the Court may direct. 25

Defendant may apply to vacate or modify Injunction granted without notice to him. XCIX. If the injunction be granted by a Judge of the Court or by a County Court Judge, without notice, the Defendant, at any time, before the trial, may apply upon notice to a Judge of the Court in which the action is brought to vacate or modify the same. The application may be made 30 upon the complaint, and the affidavits on which the injunction was granted, or upon affidavits on the part of the Defendant with or without the answer.

Plaintiff may oppose such application, on affidavit in certain cases. C. If the application be made upon affidavits on the part of the Defendant, but not otherwise, the Plaintiff may oppose 35 the same by affidavits or other proofs in addition to those on which the injunction was granted.

ATTACHMENT.

- Section* 101. Attachment allowed when the Defendant is a foreign corporation, or against a non-resident or absconding Defendant.
102. From whom the order may be obtained.
 103. On what affidavit it may be made.
 104. Security to be given by Plaintiff demanding it.
 105. What the order shall require the Sheriff or Sheriffs to do.
 106. Proceedings to be taken by the Sheriff upon such order: seizure of property of Defendant and collection of debts to him.
 107. As to perishable property seized.

108. As to shares in any Corporate Company, &c.
 109. How property not susceptible of manual delivery shall be seized.
 110. Officers of Corporation to furnish particulars of Defendant's shares, &c., to Sheriff.
 111. Sheriff to satisfy judgment against Defendant out of property seized, and in what manner.
 112. Plaintiff may bring actions against the Debtors of Defendant on certain conditions.
 113. Proceedings if the Defendant recover judgment.
 114. Defendant having appeared may apply to have the order for Attachment discharged: proceedings if he succeeds.
 115. What security Defendant shall give in such case.
 116. Return to be made by Sheriff, and when.

CI. In an action for the recovery of money against a corporation created by or under the laws of any *other* Government, State or Country, or against a Defendant who is not a resident of *Upper Canada*, or against a Defendant who has
 5 absconded or concealed himself as hereinafter mentioned, the Plaintiff, at the time of issuing the Summons or at any time afterwards, may have the property of such Defendant attached in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as the Plaintiff may recover.

Attachment allowed when the Defendant is a foreign corporation, or against a non-resident or absconding Defendant.

CII. An Order of Attachment must be obtained from a
 10 Judge of the Court in which the action is brought or from a County Court Judge.

From whom the order may be obtained.

CIII. The Order may be issued whenever it shall appear by affidavit that a cause of action exists against such Defendant, specifying the amount of the claim and the grounds thereof,
 15 and that the Defendant is either a foreign corporation, or not a resident of *Upper Canada*, or has departed, or is about to depart therefrom with intent to defraud his Creditors or to avoid the service of a Summons, or keeps himself concealed with the like intent.

On what affidavit it may be made.

CIV. Before issuing the Order of Attachment the Judge shall require a written undertaking on the part of the Plaintiff with sufficient security, to the effect that if the Defendant recover judgment, the Plaintiff will pay all the costs that may
 20 be awarded to the Defendant, and all damages which he may sustain by reason of the Attachment, not exceeding the sum specified in the undertaking which shall be at least fifty pounds.

Security to be given by Plaintiff demanding it.

CV. The Order shall require the Sheriff of any County in which the property of such Defendant may be, to attach
 30 and safely keep all the property of such Defendant within his County, or so much thereof as may be sufficient to satisfy the Plaintiff's demand, together with costs and expenses, the amount of which must be stated, in conformity with the complaint, together with costs and expenses. Several Orders may
 35 be issued at the same time to the Sheriffs of different Counties.

What the order shall require the Sheriff or Sheriffs to do.

Proceedings to be taken by the Sheriff upon such order: seizure of property of Defendant and collection of debts to him.

CVI. The Sheriff referred to in such Order of Attachment shall proceed thereon in all respects, in the manner required of him by Law in cases of Attachments against absconding and concealed debtors, except in so far as may be otherwise provided in this Act, and shall make and return an inventory, 5 and shall keep the property seized by him or the proceeds of such as shall have been sold, to answer any judgment which may be obtained in such action, and shall, subject to the direction of the Court or Judge, collect and receive into his possession all debts, credits and effects of the Defendant. 10 The Sheriff may also take such legal proceedings either in his own name or in the name of such Defendant, as may be necessary for that purpose, and discontinue the same at such times and on such terms as the Court or Judge may direct.

As to perishable property seized.

CVII. If any property so seized shall be perishable, the 15 same proceedings shall be had in all respects, as are provided in such case by Law upon Attachments against absconding or concealed debtors.

As to shares in any Corporation, &c.

CVIII. The rights or shares which such Defendant may have in the stock of any Association or Corporation, together 20 with the interest and profits thereon, and all other property in *Upper Canada* of such Defendant, shall be liable to be attached and levied upon, and sold to satisfy the judgment and execution.

How property not susceptible of mutual delivery shall be seized.

CIX. The execution of the Attachment upon any such 25 rights, shares or any debts or other property incapable of manual delivery to the Sheriff, shall be made by leaving a certified copy of the Order of Attachment with the President or other Head of the Association or Corporation, or the Secretary, Cashier or Managing Agent thereof, or with the debtor 30 or individual holding such property with a notice showing the property levied upon.

Officers of Corporation to furnish particulars of Defendant's shares, &c., to Sheriff.

CX. Whenever the Sheriff having an Order of Attachment or Execution against the Defendant, shall apply to such officer, debtor or individual for the purpose of attaching or 35 levying upon such property, such officer, debtor or individual shall furnish him with a Certificate under his hand, designating the number of rights or shares of the Defendant in the stock of such Association or Corporation, with any dividend or any incumbrance thereon, or the amount and 40 description of the property held by such Association, Corporation or individual for the benefit of, or debt owing to the Defendant. If such officer, debtor or individual refuse to do so, he may be required by the Court or Judge to attend before them or him, and be examined on oath concerning the 45 same, and obedience to such orders may be enforced by Attachment.

CXI. In case judgment be entered for the Plaintiff in such action, the Sheriff shall satisfy the same out of the property attached by him, if it shall be sufficient for that purpose ;

Sheriff to satisfy judgment against Defendant out of property seized, and in what manner.

1. By paying over to such Plaintiff the proceeds of all sales of perishable property, or of any debts or credits collected by him, or so much as shall be necessary to satisfy such judgment.

2. If any balance remain due and an execution shall have been issued on such judgment, he shall proceed to sell under such execution so much of the attached property, real or personal, except as provided in subdivision *four* of this section, as may be necessary to satisfy the balance if enough for that purpose shall remain in his hands, and in case of the sale of any rights or shares in the stock of a Corporation or Association, the Sheriff shall execute to the purchaser a Certificate of sale thereof, and the purchaser shall thereupon have all the rights and privileges in respect thereto which were had by such Defendant.

3. If any of the attached property belonging to the Defendant shall have passed out of the hands of the Sheriff without having been sold or converted into money, such Sheriff shall repossess himself of the same, and for that purpose shall have all the authority which he had to seize the same under the attachment, and any person who shall wilfully conceal or withhold such property from the Sheriff, shall be liable to double damages at the suit of the party injured.

4. Until the judgment against the Defendant shall be paid, the Sheriff may proceed to collect the notes and other evidences of debt, and the debts which may have been seized or attached under the Order of Attachment, and to prosecute any Bond he may have taken in the course of such proceedings, and apply the proceeds thereof to the satisfaction of the judgment ; when the judgment and all costs of the proceedings and of actions commenced by the Sheriff or Plaintiff shall have been paid, the Sheriff, upon reasonable demand, shall deliver over to the Defendant the residue of the attached property or the proceeds thereof, and the Sheriff or Plaintiff, as the case may require, shall make over all suits in progress and all unsatisfied judgments obtained thereon which may thereafter be proceeded upon by the Defendant at his own risk and costs, an entry having first been made upon the roll of the proceedings, or filed with the Clerk of the Court to be entered thereon, setting forth such making over of the same.

5. The foregoing provisions are subject nevertheless to the Law now in force relative to the distribution rateably of the proceeds of property seized under attachment amongst the Creditors of the party, who shall take out their orders for

attachment within months of the publication of the first notice of attachment.

Plaintiff may bring action against the Debtors of Defendant on certain conditions.

CXII. The actions herein authorized to be brought by the Sheriff may be prosecuted by the Plaintiff or under his direction upon the delivery by him to the Sheriff of an under-5 taking executed by two sufficient sureties, to the effect that the Plaintiff will indemnify the Sheriff from all damages, costs and expenses on account thereof. Such sureties shall in all cases, when required by the Sheriff, justify by making each an Affidavit that he is a householder in Upper Canada and 10 worth double the amount of the penalty of the Bond over and above all demands and liabilities.

Proceedings if the Defendant recover judgment.

CXIII. If the foreign Corporation or absent or absconding or concealed Defendant recover judgment against the Plaintiff in such action, then any Bond taken by the Sheriff, except such 15 as is mentioned in the last section, and all the proceeds of sales and monies collected by him and all the property attached remaining in his hands, shall be delivered by him to the Defendant or his Agent on request, and the Order shall be discharged, and the property released therefrom. 20

Defendant having appeared may apply to have the order for Attachment discharged: proceedings if he succeeds.

CXIV. Whenever the Defendant shall have appeared in such action, he may apply to the Judge who issued the Attachment, or to the Court, for an Order to discharge the same, and if the same be granted all the proceeds of sales and monies collected by the Sheriff, and all the property attached remaining in his 25 hands, shall be delivered or paid by him to the Defendant or his Agent and released from the Attachment.

What security Defendant shall give in such case.

CXV. Upon such application, the Defendant shall deliver to the Court or Judge an undertaking executed by at least two sureties resident and freeholders in Upper Canada, approved 30 by such Court or Judge, to the effect that the sureties will on demand pay to the Plaintiff the amount of the judgment that may be recovered against the Defendant in the action, not exceeding the sum specified in the undertaking, which shall be at least double the amount claimed by the Plaintiff in his 35 complaint.

Return to be made by Sheriff, and when.

CXVI. When the Order of Attachment shall be fully executed or discharged, the Sheriff shall return the same with his proceedings thereon to the Court in which the action was brought. 40

RECEIVERS.

- Section* 117. Courts may appoint Receivers, who shall give security.
 118. Court of Chancery may appoint Committees, who shall give security.
 119. Receivers and Committees to account to the Court.
 120. Courts may order deposit or delivery of money, and grant other provisional remedies as at present.

CXVII. Each of the Superior Courts of Law or Equity or County Courts, or any Judge of such Courts, in actions or proceedings within their respective jurisdictions, may appoint or remove a Receiver or Receivers as occasion may render 5 necessary, and every such Receiver before entering on the discharge of his duties as such, shall enter into a Bond to the Clerk or Deputy Clerk of the Court where the action or proceeding is pending or had, with two good and sufficient sureties, in such sum as the Court or a Judge thereof shall direct, with a 10 condition to the same effect in respect of such Court or Judge, as the condition of the recognizance hitherto required to be entered into by Receivers of the Court of Chancery.

Courts may appoint Receivers, who shall give security.

CXVIII. The Court of Chancery in Upper Canada, or any Judge thereof (but not any of the Courts of Law or a Judge of 15 any such Court), may, when it shall be considered necessary, appoint or remove a Committee or Committees, of the person and Estate (or either of them), of any Lunatic or Idiot or person judicially declared of unsound mind, or incapable of conducting his own affairs, from habitual drunkenness or other cause, 20 and before entering on the discharge of their duties, such Committee or Committees shall enter into a Bond with two or more good and sufficient sureties, in such sum as the Court of Chancery or a Judge thereof shall direct, with a condition to the same effect as the condition of the recognizance hitherto 25 required to be entered into in cases of Lunatics or Idiots in the Court of Chancery.

Court of Chancery may appoint Committees, who shall give security.

CXIX. Every Receiver and every Committee so appointed, and having given such security, shall be liable to account and be subject to the Orders of the Court, by whom such Receiver 30 or Committee was so appointed, and the Orders of any Judge thereof, and shall be under the like responsibilities and have and exercise the like powers, and discharge the like duties as a Receiver or Committee appointed by the Court in Chancery in Upper Canada, as heretofore existing, except as may be 35 otherwise provided in this Act.

Receivers and Committees to account to the Court.

CXX. The Courts may respectively direct the deposit of monies or other thing into Court, and the paying or delivering out or other disposition of the same, and grant other provisional remedies now existing, according to the present practice, or 40 as may be provided by any general rule of Court authorized to be made by this Act, except as may be otherwise provided by this Act.

Courts may order deposit or delivery of money, and grant other provisional remedies as at present.

OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS.

- Section* 121. If the Defendant makes default to appear or confesses judgment, and the amount or property demanded be clear, Plaintiff may enter judgment.
122. In certain cases judgment may be entered against one or more of a greater number of Defendants &c.
123. Judgment may be entered if the Defendant confess the cause of action by his answers.
124. Or if Defendant confesses the cause of action and consents to judgment.
125. Judgment may be entered on verdict, if a new trial be not moved for.
126. Or if a point be reserved, then after the same is determined.
127. As to entering judgment by Defendant if Plaintiff makes default to reply to his answers, &c.
128. Defendant may serve notice of trial, or enter judgment of *non pros.* if Plaintiff neglects during six months to carry the suit to trial.
129. Judgment of *non pros.* if successful party delays unreasonably to enter judgment.
130. In certain cases judgment not to be entered until the issues are tried.
131. Time allowed after trial, assessment, &c., for motion for new trial, &c. In what cases the same may be granted: provision as to including costs.
132. Judgments *non obstante* abolished: change of place of trial allowed.
133. Affidavit to be made before entering judgment in cases of default to answer complaint, under Section 121.
134. Mode of trying issues in the Superior Courts of Law or Equity or County Courts.
135. Judges of Court of Chancery to be Judges of Assise and *Nisi Prius*, as well as the Judges of the Superior Courts of Law. Commissions of Assise and *Nisi Prius* abolished, and assises and sittings at *Nisi Prius* to be held at certain periods: particular time of holding them in any County to be fixed by the Judges, as at present.
136. Judges appointed to sit at Courts of Assises and *Nisi Prius* in any County, to have, as regards such County, the powers of Judges of each of the Courts of Law and Equity respectively.
137. Judge may at trial order a reference or direct a verdict subject to a reference, in certain cases.
138. Notice of trial may be given by Plaintiff, or by Defendant in his default: party giving the notice to prepare a Roll of Pleadings, &c.
139. Order in which cases entered on the Docket shall be tried.
140. Value of property in dispute, &c., to be assessed in cases where it has not been delivered to Plaintiff or Defendant; claims that it be returned.
141. General or Special Verdict may be given, &c.
142. At what time final judgment may be entered after verdict.

CXXI. Where proof by affidavit has been duly made and filed with the Clerk or Deputy Clerk of the Court in which the action is brought, of the service of the Summons and complaint in the manner required by the provisions of this Act, and the Defendant neglects to file his answer and leave a copy ⁵ at the Office of the Clerk or Deputy Clerk for the Plaintiff or his Attorney, within the time provided by this Act, or if some

If the Defendant makes default to appear or confesses judgment, and the amount or property demanded be clear, Plaintiff

of the Defendants by confession of judgment, or in answering, confess the Plaintiff's cause of action, and others make default in answering within the time limited therefor, and it appears by the complaint that the action is for the recovery of money due on a Promissory Note, Bill of Exchange, Bond, Mortgage or Contract for the payment of a sum or sums certain, the amount of which may be ascertained by computation, or for the recovery of possession of clearly described real or personal property where no damages are claimed for detention or injury, and that the cause of action is clearly stated so as to give due notice to the Defendant of the amount sought to be recovered, or as the case may be, of the actual property of which possession is required, the Plaintiff may file interlocutory judgment with such Clerk or Deputy Clerk against the Defendant or any Defendant making default, and may thereupon enter final judgment in the action.

CXXII. If the complaint be for one or more of the causes of action specified in Section *one hundred and twenty-one* or there be more Defendants than one in the action, and some of them file and serve answers to the complaint, and the others make default, or if some of them, by confession of judgment or in answering, confess the Plaintiff's cause of action, and some deny it or set up a defence in answering, and some make default within the time limited therefor, the Plaintiff may sign interlocutory judgment against such as make default, on proof of service of the Summons and complaint as aforesaid, and will be entitled to final judgment against such as have confessed the cause of action, and have so made default, but in such case the entry of final judgment against such as so confess and make default, shall be delayed until the determination of the issues to be tried in the action (unless the Court on cause shown shall otherwise order,) and on the trial of such issues the sum or the specific property for which final judgment ought to be entered against the Defendant so confessing and making default shall be ascertained, and such final judgment shall be entered as the circumstances of the case may require or the Court may order.

CXXIII. When the Defendant in answering the Plaintiff's complaint confesses his cause of action, and the complaint is for one or more of the causes of action specified in section *one hundred and twenty-one* he may enter final judgment thereon.

CXXIV. Where a cause of action exists, and a Defendant either before or after action brought executes a confession of judgment thereon, and admits the right of action and consents that the Plaintiff shall enter judgment for a specified sum thereon, or for the recovery of possession of any specific property, personal or real, without damages or with specified damages, or with or without costs as may be stipulated in such confession, the Plaintiff may enter final judgment.

In certain cases judgment may be entered against one or more of a greater number of Defendants, &c.

Judgment may be entered if the Defendant confesses the cause of action by his answer.

Or if Defendant confesses the cause of action and consents to judgment.

Judgment may be entered on verdict, if a new trial be not moved for.

CXXV. Where on trial of the action or inquiring of damages therein, the Judge or Jury on the trial or inquiry shall give a verdict or determination in favor of the Plaintiff or Defendant, or any of the Plaintiffs or Defendants, final judgment may be entered by the successful party according to such verdict or determination, in case a new trial is not granted as provided in this Act.

Or if a point be reserved, then after the same is determined.

CXXVI. Where on trial of the action or giving of the verdict or determination, such verdict or determination is given or made subject to any matter or point reserved for the decision of the Court in Term or *Banc*, final judgment may be entered by the party entitled thereto after such decision of the Court is given.

As to entering judgment by Defendant if Plaintiff makes default to reply to his answers, &c.

CXXVII. Where new matter is pleaded in the Defendant's answer requiring a reply and the Plaintiff neglects to reply within the time provided by this Act, the Defendant may sign interlocutory judgment, and shall be entitled to enter final judgment for his costs, unless such interlocutory judgment be set aside on terms by the Court or a Judge thereof, or the Judge of the County Court of the County where the action is brought. If the default of the Plaintiff in replying is to an answer which goes to the whole merits of the action, the signing of interlocutory judgment by the Defendant (unless the same be set aside) will preclude the Plaintiff from proceeding further in his action, but shall not debar the Plaintiff from bringing another action for the same cause, after he has satisfied the Defendant of his costs in the previous action, unless the Court or a Judge thereof shall, on cause shown, so order.

Defendant may serve notice of trial, or enter judgment of non pros. if Plaintiff neglects during six months to carry the suit to trial.

CXXVIII. If the Plaintiff neglect to carry the action down to trial for six calendar months, after issue joined the Defendant may sign judgment of *non pros.* or may serve notice of trial and carry the cause down to trial. If judgment of *non pros.* is signed, the Plaintiff will be precluded from proceeding further with his action, unless the Court or a Judge thereof, or the Judge of the County Court where the action is brought, shall set the same aside on terms, and if such judgment of *non pros.* is not so set aside, the Defendant will be at liberty to enter final judgment for his costs.

Judgment of *non pros.* if successful party delays unreasonably to enter judgment.

CXXIX. Judgment of *non pros.* may also be signed in any action by leave of the Court after a trial or inquiry if the successful party unreasonably delays the entry of final judgment thereon.

In certain cases judgment not to

CXXX. If the action be wholly or in part for a cause of action not coming within the description of causes of action mentioned in section one hundred and twenty-one, the signing

of interlocutory judgment for want of an answer to the whole or any part of the cause of action, shall not entitle the plaintiff to enter final judgment thereon, until all the issues in the action, if any have been tried, or the damages, or the remedy demanded, shall have been determined by the Judge or Jury on the trial or inquiry respecting the same, unless the Court in which the action was brought or a Judge thereof, shall otherwise order.

be entered until the issues are tried.

CXXXI. 1. After a trial, assessment or enquiry in any action before a Judge of Assize and *Nisi Prius*, or before a County Court Judge out of term time, has been had or a reference ordered at the time of such trial or assessment, the party entitled to judgment shall not enter the same until after the expiration of the first *four* days of the next general term of the Court in which such Judgment is to be entered; and any party may during such *four* days apply to the Court in which the Judgment is to be entered for a new trial or assessment, or for the disposal of points or matters reserved or to be determined, or to set aside the report, or for a new reference or other purpose, or for a rule *Nisi* therefor respectively, and in case of any such application final Judgment shall not be entered in such action or matter until such application or rule *Nisi* is finally disposed of by the Court.

Time allowed after trial, assessment, &c., for motion for new trial, &c.

In what cases the same may be granted: provision as to including costs.

2. No new trial, assessment, inquiry or reference shall be granted by the Court, when it shall appear that substantial justice has been done between the parties on the merits of the action, proceeding or reference, unless it appear that some right or interest of other persons, not parties to the action or reference, will be injured by a refusal.

3. When a party is entitled to enter final judgment in any action or proceeding, or on any report of a referee or referees, he shall always be entitled to include his taxed costs of the action or of the particular proceeding as to which final judgment is entered, unless otherwise ordered by the Court or a Judge thereof, or the Judge who tried the action, or otherwise agreed between the parties to the action or proceeding, and upon such Judgment being entered, he will be entitled to such Writ or Writs of Execution, possession or order thereon, as the case may require, to carry it into effect.

CXXXII. Judgments *non obstante veredicto* are abolished, but the Court in which any action is pending when of opinion that substantial justice has not been done between the parties upon the merits, may grant a new trial; the Court may if it shall seem proper, direct the second or third trial to be had in another County than that in which the first trial was had.

Judgments *non obstante* abolished: change of place of trial allowed.

CXXXIII. Where interlocutory judgment is signed as allowed in section *one hundred and twenty-one*, the plaintiff

Affidavit to be made before

entering judgment in cases of default to answer complaint, under Section 121.

shall not enter final Judgment thereon, until an affidavit is filed in the action, made by him or some other person cognizant of the circumstances if the action is for a money demand, that the debt or money claimed in the Plaintiff's complaint is wholly due and unsatisfied to him, or if a part has been paid either before or after the action was commenced excepting and mentioning the amount so paid; and the Clerk or Deputy Clerk of the Court in which the action is brought shall compute the amount due to the Plaintiff, tax his costs and enter final judgment for the amount so found due and costs taxed; but if the action is for the recovery of possession of personal or real property, the affidavit shall be that the Plaintiff or such Agent verily believes that the Plaintiff is justly entitled to the possession of such property, and that the action was not brought by the Plaintiff from any malicious or vexatious motive, and thereupon the Clerk or Deputy Clerk shall tax the Plaintiff's costs and enter final judgment in the action; when there are more Plaintiffs than one, any one or more of them may make the affidavit; and any Defendant who has filed an appearance in the action shall be entitled to five days' notice of the time and place of the computation.

Mode of trying issues in the Superior Courts of Law or Equity or County Courts.

CXXXIV. In all actions in the Superior Courts of law or Equity, or County Courts in Upper Canada, every issue to be tried, damages to be assessed or inquiry to be made before final judgment (unless final judgment has been entered in the cases and as allowed in section *one hundred and twenty-one*) shall be tried, assessed or inquired of as follows, that is to say:

1. Every issue of fact or law, or of fact and law together, assessment of damages or inquiry to be made in an action in 30 a County Court shall be tried, assessed or inquired of in the usual manner before a Judge thereof, with a jury, or if the parties require it, then by the Judge alone without a Jury, at the usual sittings for the trial of causes therein, except that all issues of law alone shall be tried by the Judge without a 35 Jury, and except as may be otherwise provided in this Act.

2. If the action be in one of the Superior Courts of law, any issue of law or of fact, or of fact and law together, assessment of damages or inquiry to be made therein, shall be tried, assessed or inquired of in the usual manner before a Judge of 40 Assize and *Nisi Prius* with a Jury, or if the parties request it, without a Jury, at the sittings of Assize and *Nisi Prius* in the County where the action is pending or is directed to be tried, except that all issues of law alone shall be tried by such Judge without a Jury, and except as may be otherwise 45 provided in this Act.

3. If the action, matter or proceeding be in the Court of Chancery, every issue of fact or law or of fact and law

together, assessment or inquiry, shall be tried, assessed or inquired of by the Judge of Assize and *Nisi Prius* without a Jury (or if the parties desire it and such Judge consents, then with a Jury) in the County where the action, matter or proceeding is pending or directed to be tried or determined, in like manner as if the same had been heard or determined before the Judges of the Court of Chancery in *Banc*, except in so far as may be otherwise provided in this Act.

CXXXV. After the passing of this Act, the Judges of the Court of Chancery in Upper Canada shall, together with the Judges of the Court of Queen's Bench and Common Pleas, be Judges of Assize and *Nisi Prius* and Oyer and Terminer and General Gaol Delivery, and shall have the same powers and discharge the same duties, civil and criminal, in every respect and with the same effect respectively, as the Judges of the Courts of Queen's Bench and Common Pleas, or any of them, when acting as Judges of Assize and *Nisi Prius* or Oyer and Terminer and General Gaol Delivery.

1. It shall not be necessary to issue, nor shall there hereafter be issued by the Governor, Lieutenant Governor or person administering the Government of this Province, any Commission of Assize and *Nisi Prius*, or Oyer and Terminer and General Gaol Delivery in Upper Canada (except that a Special Commission of Oyer and Terminer and General Gaol Delivery may be issued as heretofore for the trial of one or more offender or offenders as now provided for by law), but such Courts of Assize and *Nisi Prius*, and Oyer and Terminer and General Gaol Delivery, or either of them shall, at the periods now provided, or which may hereafter be provided by law, be held in the several Counties in Upper Canada in which the same are or may hereafter be required to be held by law, and in the same manner and with the same power and authority, civil and criminal, to all intents and purposes, as if the same had been holden under any such Commission or Commissions of Assize and *Nisi Prius*, or Oyer and Terminer and General Gaol Delivery; and the particular time for holding any such Court of Assize and *Nisi Prius*, or Oyer and Terminer and General Gaol Delivery in the respective Counties, shall be fixed by the Judges of the said Court of Chancery, Queen's Bench and Common Pleas, in the same manner as such time is now by law fixed by the Judges of the Courts of Queen's Bench and Common Pleas, and notice thereof shall be given in like manner.

CXXXVI. From and immediately after the fixing the time by the said Judges of the holding of the Courts, of Assize and *Nisi Prius* for any County in Upper Canada, until the first day of the next General Term for the sitting in *Banc* of the Superior Courts of Law and Equity as hereinafter mentioned, every Judge of the Queen's Bench, Common Pleas or Court of

Judges of Court of Chancery to be Judges of Assize and *Nisi Prius*, as well as the Judges of the Superior Courts of Law, Commissions of Assize and *Nisi Prius* abolished, and assizes and sittings at *Nisi Prius* to be held at certain periods: particular time of holding them in any County to be fixed by the Judges, as at present.

Judges appointed to sit at Courts of Assizes and *Nisi Prius* in any County, to have, as re-

gards such County, the powers of Judges of each of the Courts of Law and Equity respectively.

Chancery, whether acting as a Judge of Assize and *Nisi Prius* in such County or not, shall have and exercise all the power and authority in any County in Upper Canada, of a Judge of the Court of Chancery or of the Courts of Queen's Bench or Common Pleas in Upper Canada, in like manner and effect as if he were a Judge of each of such Courts respectively, and may do all such acts and make all such orders, and with the same force and effect as might be done or made by a Judge of any or all of such Courts.

Judges may at trial order a reference or direct a verdict subject to a reference, in certain cases.

CXXXVII. Whenever a reference is manifestly necessary 10 by reason of the length of an account to be examined or taken, or of the nature of an inquiry to be made in any action, matter or proceeding, in any of the Superior Courts of Law or Equity, the Judge of Assize and *Nisi Prius*, when the action, matter or proceeding comes on for trial or inquiry before him, 15 may, if he shall think proper, order a reference therein, or may give a verdict or direct the Jury, if any empannelled in respect thereof, to give a verdict therein, subject to reference ; and in case the parties in the action, matter or proceeding do not agree in writing upon the referee or referees and the terms 20 of reference, such Judge may fix such terms and appoint a referee as provided in this Act. A Judge of a County Court shall not be at liberty to make any such reference in any action, matter or proceeding before him, unless the parties to the action or interested in the matter or proceeding shall 25 consent thereto, but he may give a verdict therein, or direct the jury, if any, empannelled in respect thereof, to give a verdict therein, subject to his own subsequent decision on the merits or on points reserved, whenever he shall be of opinion that such a course is necessary under the circumstances of the case : 30 but the decision of any referee shall be subject to appeal to the Superior Court in which the action is pending.

Notice of trial may be given by Plaintiff, or by Defendant in his default : party giving the notice to prepare a Roll of Pleadings, &c.

CXXXVIII. At any time after issue or interlocutory Judgment, or after any matter or proceeding before the Court is ripe for inquiry or trial, at the sittings of Assize and *Nisi Prius* or County Court, and at least eight days before the 35 Sittings of such Court of Assize and *Nisi Prius* or County Court, the Plaintiff may give notice of the time and place of trial, assessment or inquiry, or the Defendant after the Plaintiff has neglected for six calendar months after issue 40 joined to take the cause down to trial, may give such notice of trial, or the party conducting such matter or proceeding may give notice of inquiry or trial thereon. No such trial or inquiry, at Assize and *Nisi Prius* or County Court out of term, shall take place without such notice, and the party 45 giving such notice, if in an action, shall prepare a Roll of the pleadings or proceedings in the action, to which shall be annexed the Summons and a copy of any particulars delivered in the action ; if not in an action, the Roll shall contain such a statement of the proceeding or matter, and such copies of 50

papers as shall be necessary to the inquiry in such matter or proceeding, and the party preparing such Roll shall have the same examined, approved and filed, and such examination and approval certified by the Clerk or Deputy Clerk of 5 the Court where the pleadings or proceedings are filed, two days before the time of the trial or inquiry, and such Clerk or Deputy Clerk shall thereupon enter the action, matter or proceeding for trial or inquiry upon the Docket, according to the date of the issue, and shall produce or cause 10 such Roll to be produced, at the time for trial or inquiry, before the Judge of Assize and *Nisi Prius* or the County Court Judge; no award of *venire* or *jurata* shall be entered on such Roll, but marginal notes of the issues or points to be tried or disposed of shall be made thereon by the party giving 15 the notice of trial or inquiry.

CXXXIX. The issues on the Docket shall be disposed of in the following order, unless for the convenience of parties or the dispatch of business, the Court shall otherwise direct :

Order in which cases entered on the Docket shall be tried.

1. Issues of fact and of law, and fact to be tried by a Jury ;
- 20 2. Issues of fact and of law, and fact to be tried by the Judge alone ;
3. Issues of law to be tried by the Judge alone.

CXL. In an action for the recovery of real or personal property or damages for the detention or injury thereof, if the 25 property have not been delivered to the Plaintiff, or the Defendant by his answer claim a return thereof, the Judge or Jury shall assess the value of the property, if the verdict be in favor of the Plaintiff, or if in favor of the Defendant and that he is entitled to a return thereof; and the Judge or Jury 30 shall assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property.

Value of property in dispute, &c., to be assessed in cases where it has not been delivered to Plaintiff or Defendant; claims that it be returned.

CXLI. Upon trial or inquiry in any action, matter or proceeding, of which notice shall have been given, as in 35 section *one hundred and thirty-eight*, the Judge or Jury may give a general verdict upon all the issues or matters to be tried or inquired of, or a special verdict finding the fact and leaving the determination to the Court, or may give such other verdict as is provided in section *one hundred and thirty-seven*; and 40 where the action is for the recovery of money only, the Judge or Jury shall assess the amount recovered, unless final Judgment has been entered as provided in section *one hundred and twenty-one*.

General or Special Verdict may be given, &c.

CXLII. Final Judgment may be entered after the expiration of the first four days of the next General Term in con- 45

At what time final judgment

may be entered after verdict.

formity to the verdict or the report of a Referee or Referees, unless there shall remain some matter necessary to be decided before such entry of final Judgment, or an application shall be made for a new trial, assessment, inquiry or reference, as provided in section *one hundred and thirty-one*, or an appeal shall be made as now allowed by law, or the Court shall grant a stay of proceedings. After the determination of such matter, or application, or stay of proceedings, or appeal, final judgment may be entered by the party entitled thereto, in conformity with such determination. 10

TRIAL BY REFEREES.

Section 143. References may be made in any case by written consent of parties: and in certain cases without such consent.

144. Parties may agree upon a Referee or Referees: provision in case they do not agree. Their powers.

145. Reference may be made in certain cases before action brought.

References may be made in any case by written consent of parties: and in certain cases without such consent.

CXLIII. Besides the References provided for in section *one hundred and thirty-seven*, all or any of the issues, whether of law or of fact, in any action or matter, in any of the Superior Courts of law or equity or a County Court, may be referred by the written consent of the parties: 10

1. But if the parties do not consent, the Court in which the action or matter is pending, may, when sitting in *Banc*, upon the application of either or of its own motion, except where the investigation will require the decision of difficult questions of law, direct a reference in the following cases: 20

2. Where the trial of an issue of fact shall require the examination of a long account on either side, in which case the Referees may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein; or 25

3. Where the taking of an account shall be necessary for the information of the Judge of Assize or Jury, on trial, or of the Court before judgment, or for carrying a judgment or order into effect, or

4. Where a question of fact other than upon the pleadings shall arise upon motion or otherwise in any stage of the action. 30

Parties may agree upon a Referee or Referees: provision in case they do not agree.

CXLIV. In all cases of reference in actions, the parties may agree upon a person or persons, not exceeding three, and the reference shall be ordered accordingly. In case the parties do not agree, the Judge of Assize or the Court in *Banc* may appoint one or more Referees, not exceeding three, who shall be free from exception, and reside in the County where the action is triable. In case the Judge of Assize or the Court shall appoint but one Referee, such Referee may be the 35

Judge of the County or Surrogate Court, or the Sheriff, or Clerk of the Peace, or the Clerk or Deputy Clerk of the Court wherein the action or matter is pending in the County where the action or matter is triable, and such Judge, Sheriff, Clerk 5 of the Peace, Clerk or Deputy Clerk of the Court, shall not be at liberty to refuse to act upon such reference, but shall proceed thereon with due diligence. Every Referee appointed pursuant to this Act shall have power to administer Oaths in any proceeding before him, and shall have generally the powers 10 vested in a Referee by law. Their powers.

CXLV. Upon the application of any party interested, any of the Courts of Law or Equity sitting in *Banc* may, after twenty days notice to all parties concerned or having an interest therein, in its discretion, before action, order a reference as 15 to any cause of action, matter or difference coming within the jurisdiction of the Court making the Order, and if the parties interested do not agree upon a Referee or Referees and the terms of the reference, such Court may appoint a Referee or Referees, not exceeding three, who shall be free from excep- 20 tion, and fix the terms of reference, and the report or award of such Referee or Referees shall be considered by the Court in like manner as a Report made on reference at Assize and *Nisi Prius*, and the like proceedings may be had, and judgment entered and enforced thereon. References may be made in certain cases before action brought.

MANNER OF ENTERING JUDGMENT.

Section 146. Different modes of rendering judgment.

147. Relief granted to Plaintiff not to exceed what is demanded in his complaint. Exception.

148. Recovery of damages by Plaintiff.

149. How judgment may be rendered in actions for recovering possession of personal property.

150. Judgment Roll.

151. Where final judgment may be entered, and duties of Clerks of Court with respect thereto.

152. Docketting of final judgments.

25 CXLVI. Judgment may be given for or against one or more of several Plaintiffs and for or against one or more of several Defendants, and it may determine the ultimate rights of the parties on each side as between themselves, and it may grant to the *Defendant any affirmative relief* to which he 30 may be entitled. In an action against several Defendants, the Court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a general judgment may be proper. The Court may also dismiss the complaint with costs in favor of 35 one or more Defendants in case of unreasonable neglect on the part of the Plaintiff to serve the Summons on other Defendants, or to proceed in the cause against the Defendant or Defendants served. Different modes of rendering judgment.

Relief granted to Plaintiff not to exceed what is demanded in his complaint.

Exception.

Recovery of damages by Plaintiff.

How judgment may be rendered in actions for recovering possession of personal property.

Judgment Roll.

When final judgment may be entered, and duties of Clerks of Court with respect thereto.

CXLVII. The relief granted to the Plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint, but in any other case the Court may grant him any relief consistent with the case made by the complaint and embraced within the issue. 5

CXLVIII. Whenever damages are recoverable, the Plaintiff may claim and recover, if he show himself entitled thereto, any rate of damages which he might have heretofore recovered for the same cause of action.

CXLIX. In an action to recover the possession of personal property, judgment for the Plaintiff may be for the possession or for the recovery of possession, or the value thereof, in case a delivery cannot be had, and of damages for the detention. If the property has been delivered to the Plaintiff and the Defendant claims a return thereof, judgment for the Defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same. 15

CL. The party entitled to enter final judgment shall prepare the judgment Roll, and where a Roll has been previously prepared for the trial or inquiry in the action or matter, the same shall form part of such judgment Roll, and such further entries shall be made therein as shall truly express the judgment and the true amount and nature thereof, and as shall be necessary to the entering of the judgment, and the Clerk or Deputy Clerk of the Court, who enters the same, shall see that the same is correct. When the judgment is for the recovery of money, interest from the time of the verdict or report, or from such time as may be directed in such verdict or report, or, if on a confession of judgment, from the time directed therein, shall, together with the costs of the party entering such judgment, be included in the final judgment, and such final judgment shall express the true sum recovered and bear interest from the day of entering the same. 20 25 30

CLI. Where the action or matter was commenced in any County Court, final judgment must be entered in such Court by the Clerk thereof. Where the action or matter was commenced in one of the Superior Courts of Law or Equity, final judgment may be entered in the County where the action or matter was commenced by the Deputy Clerk or Chief Clerk of such Court, or may, in any case, be entered by the Chief Clerk of such Court at Toronto. Where final judgment has been entered by any such Deputy Clerk, all the papers and proceedings in the action or matter must forthwith be transmitted by him to the office of the Chief Clerk of the Court at Toronto, free from any charge for postage, which must be paid by the party entering such final judgment, and may be taxed in his costs. The Chief Clerk or Deputy Clerk of any 35 40 45

Court entering such final judgment shall mark the time of entering judgment in the margin of the judgment roll and sign the same; and where the same is for the recovery of money, any Deputy Clerk of the Court, entering the judgment, may grant the like certificate as is now granted by the Clerks of the Courts of Queen's Bench and Common Pleas at Toronto, which may be registered in the office of the Registrar for any County in Upper Canada, and shall operate as a lien or charge upon the real estate in such County of the party against whom such final judgment was entered, in like manner and to the same extent as any certificate granted by the Clerk of the Crown and Pleas in the Court of Queen's Bench or Common Pleas and so registered would operate.

CLII. All final judgments entered shall be docketted, if in any County Court, by the Clerk of such Court, if in the Superior Courts of Law or Equity, by the Clerk of the Judgments hereinafter mentioned, in suitable books for the purpose. The judgments of each Court shall be docketted in a book or books kept exclusively for each Court.

Docketting of final judgments.

THE EXECUTION.

Section 153. Judgments to be enforced within five years after entry.

154. Leave must be granted by Court to enforce judgments after five years.

155. How judgments may be enforced.

156. Writs of Execution to be of three kinds.

157. To whom the Execution shall be directed.

158. Execution against the person.

159. Execution, to whom directed, and duties which it shall require of the officer charged therewith.

160. Execution, when returnable.

161. Advertisement of sales of property taken in execution.

162. Existing laws with respect to executions, to apply for the present when they do not conflict with this Act.

CLIII. Writs of Execution for the enforcement of judgments as now used in the Courts of Law, are modified in conformity to this Act, and the party in whose favor judgment has been heretofore or shall hereafter be given, may at any time within five years after the entry of judgment proceed to enforce the same as prescribed by this Act.

Judgments to be enforced within five years after entry.

CLIV. After the lapse of five years from the entry of judgment, no execution shall be issued except by leave of the Court upon motion with personal notice to the adverse party, unless he be absent or non resident or cannot be found to make such service, in which case such service may be made by publication, or in such other manner as the Court shall direct. Such leave shall not be given unless it be established by the oath of the party or other satisfactory proof, that the judgment or some part thereof remains unsatisfied and due.

Leave must be granted by Court to enforce judgments after five years.

How judgments may be enforced.

CLV. Where a judgment requires the payment of money or the delivery of real or personal property, the same may be enforced in those respects by execution as provided by this Act, where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or the person or officer who is required thereby or by law to obey the same, and his obedience thereto may be enforced. If he refuse he may be punished by the Court as for a contempt.

Writs of Execution, to be of three kinds.

CLVI. There shall be three kinds of execution, one against the property of the judgment debtor, another against his person, and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same. They shall be deemed the process of the Court, and need not be sealed, but must be subscribed by the Clerk or Deputy Clerk of the Court in which the judgment is entered issuing the same.

To whom the Execution shall be directed.

CLVII. Where the execution is against the property of the judgment debtor, it may be directed to the Sheriff of any County. Where it requires the delivery of real or personal property, it must be directed to the Sheriff of the County where the property or some part thereof is situate. Executions may be directed at the same time to the Sheriffs of different Counties. Real property adjudged to be sold must be sold in the County where it lies by the Sheriff of the County or by a Referee appointed by the Court for that purpose, and thereupon, the Sheriff or Referee must execute a conveyance to the purchaser, which conveyance shall be effectual to pass the rights and interests of the parties in the property sold.

Execution against the person.

CLVIII. If the action be one in which the Defendant has been or might have been arrested as provided in this Act, an execution against the person of the judgment debtor, may be issued to any County within the jurisdiction of the Court, *either before or* after the return of an execution against his property unsatisfied in whole or in part, the like affidavit in effect as for an order of arrest, having been or being first filed with the Clerk where the judgment is entered.

Execution, to whom directed, and duties which it shall require of the officer charged therewith.

CLIX. The execution must be directed to the Sheriff or Coroner, when the Sheriff is a party or interested, it must be subscribed by the Clerk or Deputy Clerk issuing it, and must intelligibly refer to the judgment, stating the Court, the names of the parties, and the amount of the judgment if it be for money; it shall require the Officer substantially as follows:

1. If it be against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of the real property be

longing to him on the day when the entry of the judgment was registered in the County or at any time thereafter.

2. If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of 5 real property or trustees, it shall require the officer to satisfy the judgment out of such property.

3. If it be against the person of the judgment debtor, it shall require the officer to arrest such debtor, and commit him to the Gaol of the County, until he shall pay the judgment or be 10 discharged according to law.

4. If it be for the delivery of the possession of real or personal property, it shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the officer 15 to satisfy any costs, damages, or rents and profits recovered by the same judgment out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered shall be specified therein. If a delivery thereof cannot be had, and if sufficient personal 20 property cannot be found, then out of the real property belonging to him, and it shall, in that respect, be deemed an execution against real property.

5. The party obtaining the same, or his attorney shall endorse the amount actually due on the judgment to be levied 25 for debt and costs, and subsequent costs, and subscribe such endorsement.

CLX. The execution shall be returnable within ninety days after its receipt by the officer, to the Clerk with whom the record of judgment is filed, or the party or his attorney who 30 obtained the same, and shall by him be forthwith filed with the Clerk or Deputy Clerk who issued the same, but if the money to be made or any part thereof has to be made from the sale of land, such execution need not be returned earlier than six calendar months after the receipt thereof by the 35 Sheriff or Coroner. Where a levy has been made on an execution, the completion of the enforcement of such levy may, if necessary, take place after the return day.

Execution,
when return-
able.

CLXI. If the execution be for the levy of any money, the Sheriff or Coroner shall advertise any sale to be made of per- 40 sonal property, for the space of eight days before the time of sale, in the manner now provided by law, and where real estate is to be sold thereunder, the Sheriff shall advertise such sale once a week in a newspaper in the County, if any published therein, if not, then in a newspaper published in 45 some adjoining County, or if none in any adjoining County, then in the newspaper published nearest to the County where

Advertis-
ment of sales
of property
taken in exe-
cution.

the property is to be sold is situate, and by a like advertisement posted conspicuously on the Court House door or wall of the passage way to the Court room of the County Court House for the County in which such property is situate, and by a like advertisement posted in three other conspicuous public places in different parts of the County, for the space of fifty days before the time of sale. The advertisement shall contain the names of the parties to the action, the particulars of the property to be sold, and the time and place appointed for the sale. Publication of the advertisement in the Canada 10 Gazette is hereby dispensed with.

Existing laws with respect to executions, to apply for the present when they do not conflict with this Act.

CLXII. Until it be otherwise provided by the Legislature, the existing provisions of Law not in conflict with and not providing for matters otherwise provided for in this Act, relating to executions and their incidents, the property liable to sale 15 on execution, the sale thereof, the powers and rights of officers, their duties thereon, and the proceeding to enforce those duties, and the liability of their sureties, shall apply to the executions issued under this Act.

OF PROCEEDINGS SUPPLEMENTARY TO EXECUTION.

- Section 163.* Proceedings to be had when an execution is returned unsatisfied.
164. Party indebted may pay amount of debt to Sheriff after execution issued.
165. Third parties having money in their hands belonging to judgment debtor, may be summoned to appear and answer concerning the same.
166. Appearance of witnesses.
167. Before whom and how party or witnesses shall be examined.
168. Judge may order property of debtor to be applied to satisfaction of judgment.
169. Judge may forbid transfer of property of judgment debtor.
170. When parties having property of judgment debtor, deny the same or claim an interest therein, judgment creditor may bring an action against them for the recovery thereof.
171. Judge may order a reference of the evidence as to any debt, to be made to a Referee who shall report thereon.
172. Allowance of witnesses' fees and disbursements.
173. Disobedience of Judge's or Referee's Orders how punished.

Proceedings to be had when an execution is returned unsatisfied.

CLXIII. When an execution against the property of the 20 judgment debtor or of any one of the several debtors in the same judgment, issued to the Sheriff of the County where he resides, is returned unsatisfied in whole or in part, the judgment creditor at any time after such return made is entitled to an Order from a Judge of the Court or a County Judge of the 25 County to which the execution was issued, requiring such judgment debtor to appear and answer concerning his property before such Judge, at a time and place specified in the Order, within the County to which the Execution was issued :

1. After the issuing of an Execution against property, and upon proof by affidavit of a party or otherwise, to the satisfaction of the Court or a Judge thereof, or County Judge, that any judgment debtor, residing in the County where such Judge or Officer resides, has property which he unjustly refuses to apply towards the satisfaction of the judgment, such Court or Judge may, by an Order, require the judgment debtor to appear, at a specified time and place, in such County, to answer concerning the same, and such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment, as are provided upon the return of an execution ;

2. On an examination under this section, either party may examine witnesses in his behalf, and the judgment debtor may be examined in the same way as a witness ;

3. Instead of the Order requiring the attendance of the judgment debtor, the Judge may, upon proof by affidavit or otherwise to his satisfaction, that there is danger of the debtor's leaving *Upper Canada* or concealing himself, and that there is reason to believe he has property which he unjustly refuses to apply to such judgment, issue a Warrant requiring the Sheriff of any County where such debtor may be, to arrest him and bring him before such Judge or the Judge of the County Court in the County where such judgment debtor may be arrested or reside ;

4. Upon being brought before the Judge, he may be examined upon oath, and if it then appear that there is danger of the debtor's leaving *Upper Canada*, and that he has property which he has unjustly refused to apply to such judgment, he may be ordered to enter into an undertaking, with one or more sureties, that he will from time to time attend before the Judge as he shall direct, and that he will not, during the pendency of the proceedings, dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison, by Warrant of the Judge, as for contempt. No person shall, on examination pursuant to this Act, be excused from answering any question on the ground that his examination will tend to convict him of the commission of a fraud; but his answer shall not be used as evidence against him in any indictment, criminal proceeding or prosecution, except for perjury alleged to be committed in such examination.

CLXIV. After the issuing of execution against property, any person indebted to the judgment debtor may pay to the Sheriff the amount of his debt, or so much thereof as shall be necessary to satisfy the execution, and the Sheriff's receipt, specifying the amount, from whom and when received and on what execution paid, shall be a sufficient discharge for the amount so paid.

Party indebted
may pay
amount of
debt to Sheriff
after execu-
tion issued.

Third parties having money in their hands belonging to judgment debtor, may be summoned to appear and answer concerning the same.

CLXV. After the issuing or return of an execution against property of the judgment debtor or of any one of several debtors in the same judgment, and upon an affidavit that any person or Corporation has property of such judgment debtor, or is indebted to him in an amount exceeding five pounds, 5 the Judge of the Court or County Court of the County wherein such person or any member of such Corporation may reside, may, by an order, require such person or Corporation, or any officer or member thereof, to appear, at a specified time and place, in such County, and answer concerning the same. 10 The Judge may also, in his discretion, require notice of such proceeding to be given to any party to the action, in such manner as may seem to him proper.

Appearance of witnesses.

CLXVI. Witnesses may be required to appear and testify on any proceedings under this Act in the same manner as 15 upon the trial of an issue.

Before whom and how party or witnesses shall be examined.

CLXVII. The party or witness may be required to attend before the Judge or before a Referee, appointed by the Court or Judge; if before a Referee, the examination shall be taken by the Referee and certified to the Judge. All examinations 20 and answers, before a Judge or Referee, under this Act, shall be on oath, except that when a Corporation answers, the answer shall be on the oath of an officer thereof.

Judge may order property of debtor to be applied to satisfaction of judgment.

CLXVIII. The Judge of the Court or County Court Judge may order any property, so far as may be necessary, of the 25 judgment debtor, not exempt from execution, in the hands either of himself or of any other person, or any debt due to the judgment debtor, to be applied towards the satisfaction of the judgment, except that the earnings of the debtor for his personal services, at any time within sixty days next preceeding 30 the Order, cannot be so applied, when it is made to appear, by the debtor's affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

Judge may forbid transfer of property of judgment debtor.

CLXIX. A Judge of the Court or County Court Judge may 35 also, by Order, forbid a transfer or other disposition of the property of the judgment debtor, not exempt from execution, and any interference therewith.

When parties have property of judgment debtor, deny the same or claim an interest therein, judgment creditor may bring an action against them for the

CLXX. If it appear that a person or Corporation alleged to have property of the judgment debtor or to be indebted to him, 40 claims an interest in the property adverse to him or denies the debt, such interest or debt shall be recoverable only in an action against such person or Corporation by the judgment creditor, but the Judge may, by order, forbid a transfer or other disposition of such property or interest, till a sufficient oppor- 45 tunity be given to the judgment creditor to commence the action and prosecute the same to judgment and execution,

but such order may be modified or dissolved by the Judge granting the same, at any time, on such security being given as he shall direct. recovery thereof.

CLXXI. A Judge of the Court or County Court may, in his discretion order a reference to a Referee agreed upon or appointed by him, to report the evidence or the facts as to any property or debt. Judge may order a reference of the evidence as to any debt, to be made to a Referee who shall report thereon.

CLXXII. The Judge acting in the matter may allow to the judgment creditor, or to any party so examined, whether a party to the action or not, witnesses' fees and disbursements, and a fixed sum in addition, as reasonable costs. Allowance of witnesses' fees and disbursements.

CLXXIII. If any person or witness disobey an order of the Judge or Referee in any inquiry or proceeding in reference to procuring satisfaction of any execution or judgment duly served, such person, party or witness may be punished by the Judge as for a contempt; and in all cases of commitment under this Act the person committed may, in case of inability to perform the act required or to endure the imprisonment, be discharged from imprisonment by the Court or Judge committing him or the Court in which the judgment was rendered, on such terms as may be just. Disobedience of Judge's or Referee's Orders how punished.

OF THE COSTS IN CIVIL ACTIONS.

Section 174. Repeal of existing laws fixing fees.

175. In what actions costs shall be allowed of course to Plaintiff, and what amount of costs.

176. Costs allowed to Defendant.

177. As to costs which may be allowed in discretion of Court.

178. Fees or costs to be such as set forth in Schedule A.

179. Sum payable on postponement of a trial.

180. Costs on a motion.

181. Costs against an infant Plaintiff.

182. Costs in actions by or against executors, &c.

183. Costs on reviews or appeals.

184. Costs in actions in the name of the Crown, &c.

185. Persons not being parties to the action, but who shall become so after the commencement thereof, to be as liable to payment of costs as if they had been originally parties.

CLXXIV. All existing provisions of law and general rules and orders of Court fixing the fees to be allowed or taxed to Attornies, Solicitors, Counsel, Judges, Clerks, Deputy Clerks, Sheriffs, Coroners, Witnesses, Juries, Criers and others in any action or matter in the Superior Courts of Law or Equity or in the County Courts in civil actions, are repealed. Repeal of existing laws fixing fees.

CLXXV. Costs shall be allowed of course to the Plaintiff upon a recovery in any action properly brought in any of the Superior Courts of Law or Equity or County Courts according to the respective jurisdiction of each Court in the following cases: In what actions costs shall be allowed of course to Plaintiff, and what amount of costs.

1. In an action for the recovery of real property or an interest in real property or damages for any injury or trespass to real property, or when a claim of title to real property arises on the pleadings, or is certified by the Court to have come in question at the trial. 5

2. In an action to recover the possession of personal property.

3. In an action for the recovery of money.

4. But in any action brought in any of the Superior Courts of Law or Equity which is properly within the jurisdiction of a County Court or Division Court, or in any action brought in a County Court which is properly within the jurisdiction of a Division Court, no costs except the actual disbursements (not being disbursements to an Attorney, Solicitor or Counsel in the suit) shall be allowed or taxed, unless the Judge who presided at the trial or assessment, shall certify that there was good reason for such action being brought in the Court wherein it was brought. 15

5. And in an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the Plaintiff recover less than forty shillings currency damages, he shall recover no more costs than damages. 20

6. When several actions shall be brought on one Bond, Recognizance, Promissory Note, Bill of Exchange or other Instrument in Writing, or in any other case, for the same cause of action against several parties who might have been joined as defendants in the same action, no costs other than disbursements (not being disbursements to an Attorney, Solicitor or Counsel) shall be allowed to the Plaintiff in more than one of such actions, which shall be at his election, provided that the party or parties proceeded against in such other action or actions shall at the time of the commencement of the previous action or actions have been within Upper Canada and not secreted, and could have been served with process. 30 35

7. In cases, if any, when the right of any person or party to recover costs or the *quantum* of costs in any civil action properly brought in any of the Superior Courts of Law or Equity, or County Courts according to their respective jurisdictions is not provided for in this Act, or does not necessarily result from its provisions, the same shall be determined according to law as now in force, and such law when applicable heretofore to actions of a particular form or name, shall be construed so as to apply to any action hereafter brought for a like cause, although the same is by this Act required to be brought under the one common form or name of an *action on the case*. 40 45

CLXXVI. Costs shall be allowed of course to the Defendant on any recovery by him in the actions mentioned in the next preceding section, unless the Plaintiff be entitled to costs therein. Costs allowed to Defendant.

5 CLXXVII. In other actions costs may be allowed or not, in the discretion of the Court. As to costs which may be allowed in discretion of Court.

1. In all actions where there are several Defendants not united in interest and making separate defences by separate answers, and the Plaintiff fails to recover judgment against all, the Court may award costs to such of the Defendants as have judgment in their favor, or any of them.

2. In the following cases, the costs of an appeal shall be in the discretion of the Court :

When a new trial shall be ordered ;

15 When a judgment shall be affirmed in part and reversed in part.

CLXXVIII. Wherever any Plaintiff or Defendant, Judge, Clerk or Deputy Clerk of any of the Superior Courts of Law or Equity or County Courts, Attorney, Solicitor, Counsel, Commissioner, Jury, Sheriff, Referee, or other officer or person, shall be entitled to recover or receive, or be allowed or paid any costs in any civil action, matter or proceeding in such Courts, or for any civil service, labour, act or duty performed or to be performed therein, no other or greater fees shall be taxed or allowed, paid, recovered or taken on account thereof than are mentioned and set forth in the Table of Fees in Schedule A, appended to this Act, and no other or greater fees or costs shall be taxed, allowed or recovered as between Attorney or Solicitor and client, in relation to any such action, matter or proceeding, than can be taxed, allowed or recovered between party and party ; but nothing in this section contained or existing in any law heretofore in force, shall hereafter prevent any Attorney, Solicitor, Counsel or Barrister from receiving any reasonable extra fee or compensation in any such action, matter or proceeding if paid in hand or secured by a promissory note or other security from the party agreeing to pay the same. Fees or costs to be such as set forth in Schedule A.

CLXXIX. When an application shall be made to a Court or a Referee or Referees to postpone a trial, the payment to the adverse party of a sum not exceeding five pounds, besides the fees of witnesses, may be imposed as the condition of granting the postponement. Sum payable on postponement of a trial.

CLXXX. Costs may be allowed on a motion, in the discretion of the Court, not exceeding five pounds. Costs on a motion.

Costs against
an infant
Plaintiff.

CLXXXI. When costs are adjudged against an Infant Plaintiff, the Guardian by whom he appeared in the action, unless he be a Guardian for the prosecution only, shall be responsible therefor, and payment thereof may be enforced by attachment.

5

Costs in ac-
tions by or
against exe-
cutors, &c.

CLXXXII. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by Statute, costs shall be recovered as in an action by and against a person prosecuting and defending in his own right, but such costs shall be chargeable only upon, 10 or collected out of the estate fund or party represented, unless the Court shall direct the same to be paid by the Plaintiff or Defendant personally, for mismanagement or bad faith in such action or defence; but this Section shall not be construed to allow costs against executors or administrators where they 15 are now exempted therefrom; and the Court may, in its discretion, in the cases mentioned in this Section, require the Plaintiff to give security for costs.

Costs on re-
views or ap-
peals.

CLXXXIII. When the decision of a Court of inferior jurisdiction in a special proceeding, shall be brought before a Su-20 perior Court for review or on appeal, such proceeding shall, for all purposes of costs, be deemed an action at issue on a question of law, from the time the same shall be brought into the Superior Court, and costs therein shall be awarded and collected in such manner as the Court shall direct, according 25 to the nature of the case.

Costs in ac-
tions in the
name of the
Crown, &c.

CLXXXIV. In an action prosecuted in the name of the So-
vereign, or of the Governor, or Lieutenant-Governor, or person
administering the Government, or by the Attorney General, for
the recovery of money or property, or to establish a right 30
or claim for the benefit of any County, City, Town, Village,
Corporation or person, costs awarded against the Plaintiff
shall be a charge against the party only for whose benefit
the action was prosecuted.

Persons not
being parties
to the action,
but who shall
become so
after the com-
mencement
thereof, to be
as liable to
payment of
costs as if
they had been
originally
parties.

CLXXXV. In actions in which the cause of action shall, 35
by assignment after the commencement of the action, or in
any other manner become the property of a person not a party
to the action, such person shall be liable for the costs in the
same manner as if he were a party, and payment thereof may
be enforced by attachment or execution, as the case may be. 40

OF APPEALS IN CIVIL ACTIONS.

Section 186. Appeals how to be brought; revision of Orders and Rules re-
lating thereto; and costs recoverable therein.

Appeals how
to be brought;

CLXXXVI. Appeals may be brought and prosecuted in like
manner as heretofore, from the Courts of Chancery, Queen's

Bench and Common Pleas to the Court of Error and Appeal in Upper Canada, and from the several County Courts to the said Courts of Queen's Bench and Common Pleas, or in mortgage foreclosure or redemption cases, in like manner to the said Court of Chancery, Courts of Queen's Bench or Common Pleas; and the forms and manner of proceeding in such cases of Appeal may continue to be the same, except in so far as the same may be altered, or become necessary to be altered, in consequence of the provisions of this Act, and the Judges of the said Court of Error and Appeal shall, as soon as may be after the passing of this Act, revise such General Rules and Orders as may have been made by them in relation thereto, and make such alterations therein as may have become necessary in consequence of the passing of this Act; but in any case of Appeal the costs and fees taxable, recoverable and payable therein, shall only be such as are mentioned in the Table of Fees in the said Schedule A, appended to this Act.

revision of Orders and Rules relating thereto; and costs recoverable therein.

SUBMITTING A CONTROVERSY WITHOUT ACTION

Section 187. Questions may be decided upon by the Court without an action being instituted.

188. Judgment in such cases.

189. Enforcing of such judgment.

CLXXXVII. Parties to a matter in dispute which might be the subject of a civil action may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any Court which would have jurisdiction if an action had been brought, but it must appear by affidavit that the controversy is real, and the proceeding in good faith, to determine the rights of the parties. The Court shall thereupon hear and determine the case at a general term, and render judgment thereon as if an action were pending.

Questions may be decided upon by the Court without an action being instituted.

CLXXXVIII. Judgment shall be entered in the judgment book, as in other cases, but without costs for any proceeding prior to notice of trial. The case, the submission and a copy of the judgment shall constitute the judgment roll.

Judgment in such cases.

CLXXXIX. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be subject to appeal in like manner.

Enforcing of such judgment.

OF PROCEEDINGS AGAINST JOINT DEBTORS, HEIRS, DEVISEES, LEGATEES AND TENANTS HOLDING UNDER A JUDGMENT DEBTOR.

Section 190. Parties not originally summoned to answer complaint, may be nevertheless bound by judgment, unless they show cause to the contrary.

191. Enforcement of judgment against heirs, devisees, &c., of a deceased judgment debtor.
 192. Summons in preceding cases.
 193. To be accompanied by affidavit.
 194. Answering of Summons.
 195. Reply to answer, trial of issue and judgment.
 196. Answer and reply to be verified, &c. as in an action.

Parties not originally summoned to answer complaint, may be nevertheless bound by judgment, unless they show cause to the contrary.
 Enforcement of judgment against heirs, devisees, &c., of a deceased judgment debtor.

CXC. When a judgment shall be recovered against one or more of several persons jointly indebted upon a contract, by proceeding as provided in Section *twenty-six*, those who were not originally summoned to answer the complaint may be summoned to show cause why they should not be bound by the judgment, in the same manner as if they had been originally summoned.

CXCI. In case of the death of a judgment debtor, the heirs, devisees or legatees of the judgment debtor, or the tenants of real property owned by him, and affected by the judgment may, after the expiration of three years from the time of granting letters testamentary or of administration upon the estate of the testator or intestate, be summoned to show cause why the judgment should not be enforced against the estate of the judgment debtor in their hands respectively, and the personal representatives of a deceased judgment debtor may be summoned at any time within one year after their appointment.

Summons in preceding cases.

CXCII. The Summons provided in the last two sections, shall be subscribed by the Clerk or Deputy Clerk of the Court in the County where the action was tried, shall describe the judgment and require the person summoned to show cause within twenty days after service of the Summons, and shall be served in like manner as the original Summons.

To be accompanied by affidavit.

CXCIII. The Summons shall be accompanied by an affidavit of the judgment creditor, that the judgment has not been satisfied to his knowledge, or information and belief, and shall specify the amount due thereon.

Answering of Summons.

CXCIV. Upon such Summons, the party summoned may answer within the time specified therein, denying the judgment or setting up any defence which may have arisen subsequently and in addition thereto; if he be proceeded against according to section *one hundred and ninety-one*, he may make the same defence which he might have originally made to the action, except the statute of limitations.

Reply to answer, trial of issue and judgment.

CXCV. The party issuing the Summons, may reply to the answer, and the issues may be tried, and judgment may be given in the same manner as in an action and enforced by an execution, or the application of the property charged to the payment of the judgment may be compelled by attachment if necessary.

CXCVI. The answer and reply shall be subject to the same rules as the answer and reply in an action.

Answer and reply to be verified, &c. as in an action.

OF CONFESSION OF JUDGMENT WITHOUT ACTION.

Section 197. Judgments by confession, without action, may be entered.

198. Confession of judgment to be duly executed, and what it shall state.

199. Confession of judgment to state also when Plaintiff may enter judgment and sue out execution.

CXCVII. Besides the cases mentioned in section *one hundred and twenty-four*, a judgment by confession may be entered without action for money to become due or to secure any person against a contingent liability on behalf of the Defendant.

Judgments by confessions, without action, may be entered.

CXCVIII. Where a confession of judgment is given, it must be duly executed by the Defendant, and the execution proved by the oath of a subscribing witness, and such confession of judgment must state to the following effect :

Confession of judgment to be duly executed, and what it shall state.

1. It must state the amount for which judgment may be entered, and authorize the entry of judgment therefor.

2. If it be for money due or to become due, it must state concisely the facts out of which it arose, and must show that the sum confessed therefor is justly due or to become due.

3. If it be for the purpose of securing the Plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and must show that the sum for which judgment is confessed does not exceed the same.

4. If it be for the recovery by the Plaintiff of the possession of real or personal property from the Defendant, it must specify the property, and if damages be confessed, it must specify the amount of such damages.

CXCIX. Every confession of judgment must state when the Plaintiff is to be at liberty to enter judgment and when execution may be sued out thereon, otherwise the Plaintiff will be at liberty to enter judgment and sue out execution at any time after the time for entering judgment on a confession has expired : the Plaintiff having prepared a judgment roll may enter the judgment with the Clerk or Deputy Clerk of the Court. If the confession has been given before action, the judgment roll will substantially set out the confession without any *introductory* statement and add the judgment and award of execution. If the confession of judgment be after the action brought, the Roll must contain a copy of the body of the pleadings, and the confession of the Defendant, with the addition of the judgment and award of execution.

Confession of judgment to state also when Plaintiff may enter judgment and sue out execution.

OF OFFERS BY THE DEFENDANT TO COMPROMISE AS TO THE WHOLE OR A PART OF THE SUBJECT MATTERS OF THE ACTION.

Section 200. Offer by Defendant, in writing, to allow judgment to be taken against him.

201. Offer by Defendant that damages be assessed at a sum certain if he fail in his defence.

202. Effect of Refusal of Plaintiff to accept offer.

Offer by Defendant, in writing, to allow judgment to be taken against him.

CC. The Defendant may at any time before the trial or verdict serve upon the Plaintiff an offer in writing to allow judgment to be taken against him for the sum or property, or to the effect specified in the complaint, with costs. If the Plaintiff accept the offer and give notice thereof in writing within ten 5 days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the Clerk shall thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer is to be deemed withdrawn and cannot be given in evidence, and if the Plaintiff fail to obtain a more 10 favorable judgment, he shall not recover costs subsequent to the offer, but must pay the Defendant's costs from the time of the offer.

Offer by Defendant that damages be assessed at a sum certain if he fail in his defence.

CCI. In an action arising on contract, the Defendant may with his answer serve upon the Plaintiff an offer in writing, 15 that if he fail in his defence the damages be assessed at a specified sum, and if the Plaintiff signify his acceptance thereof in writing with or before the notice of trial, and on the trial have a verdict, the damages shall be assessed accordingly.

Effect of refusal of Plaintiff to accept offer.

CCII. If the Plaintiff do not accept the offer, he shall prove 20 his damages as if it had not been made, and shall not be permitted to give it in evidence, and if the damages assessed in his favor shall not exceed the sum mentioned in the offer, the Defendant shall recover his expenses incurred in consequence of any necessary preparation or defence in respect to 25 the question of Damages. Such expense shall be ascertained at the trial.

OF THE ADMISSION OR INSPECTION OF WRITINGS.

Section 203. Proceedings in relation to admission or inspection of writings.

Proceedings in relation to admission or inspection of writings.

CCIII. Either party may exhibit to the other or to his attorney at any time before the trial, any paper material to the action, and request an admission in writing of its genuine- 30 ness. If the adverse party or his attorney fail to give the admission within four days after the request, and if the party exhibiting the paper be afterwards put to expense in order to prove its genuineness, and the same be finally proved or admitted on the trial, such expense (to be ascertained at the trial) shall 35 be paid by the party refusing the admission, unless it appear

to the satisfaction of the Court that there were good reasons for the refusal. The Court before which an action is pending, or a judge thereof, may in their or his discretion and upon due notice, order either party to give to the other within a specified time an inspection and copy or permission to take a copy of any books, papers and documents in his possession or under his control, containing evidence relating to the merits of the action or the defence therein. If compliance with the order be refused, the Court on motion may exclude the paper from being given in evidence, or punish the party refusing it for contempt, or both.

OF THE EXAMINATION OF PARTIES.

Section 204. Action to obtain discovery in aid of another action not to be allowed.

205. Party to an action may be examined at the instance of the adverse party.

206. Examination may be had at any time before the trial.

207. Party may be compelled to attend.

208. Rebuttal of examination of party.

209. Refusal of party to attend.

210. Party summoned as witness, to be examined as any other witness.

211. Party benefited by action may be examined.

212. Examination of co-Plaintiffs or co-Defendants.

CCIV. No action to obtain discovery under oath in aid of the prosecution or defence of another action, shall be allowed, nor shall any examination of a party be had on behalf of the adverse party, except in the manner prescribed by this Act.

Action to obtain discovery in aid of another action not to be allowed.

CCV. A party to an action may be examined as a witness at the instance of the adverse party, or of any one of several adverse parties, and for that purpose may be compelled in the same manner, and subject to the same Rules of examination as any other witness to testify either at the trial or conditionally, or upon commission.

Party to an action may be examined at the instance of the adverse party.

CCVI. The examination instead of being had at the trial as provided in the last section, may be had at any time before the trial at the option of the party claiming it, before a Judge of the Court, or a County Court Judge, on a previous notice to the party to be examined and any other adverse party, of at least five days, unless, for good cause shown, the Judge order otherwise, but the party to be examined shall not be compelled to attend in any other County than that of his residence, or where he may be served with a Summons for his attendance.

Examination may be had at any time before the trial.

CCVII. The party to be examined as in the last section provided, may be compelled to attend in the same manner as a witness, who is to be examined conditionally, and the examination shall be taken and filed by the Judge or Clerk, or

Party may be compelled to attend.

Deputy Clerk, or other person authorized as provided in this Act as an Examiner of witnesses, in like manner, and may be read by either party on the trial.

Rebuttal of examination of party.

CCVIII. The examination of the party thus taken, may be rebutted by adverse testimony. 5

Refusal of party to attend.

CCIX. If a party refuse to attend and testify as in the next preceding four sections provided, he may be punished as for a contempt, and his complaint, answer or reply may be stricken out.

Party summoned as witness, to be examined as any other witness.

CCX. A party examined by an adverse party as in this Act provided, shall be considered as a witness in the cause, and subject to examination in the same way as any other witness. 10

Party benefited by action may be examined.

CCXI. A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness in the same manner, and subject to the same Rules of examination, as if he were named as a party. 15

Examination of co-Plaintiffs or co-Defendants.

CCXII. A party may be examined on behalf of his co-Plaintiff or a co-Defendant as to any matter in which he is not jointly interested or liable with such co-Plaintiff or co-Defendant, as to which a separate and not joint verdict or judgment can be rendered, and he may be compelled to attend in the same manner, as at the instance of an adverse party, but the examination thus taken shall not be used in behalf of the party examined. 25

EXAMINATION OF WITNESSES.

Section 213. Witnesses not excluded by reason of interest.

214. Assignor of a thing in action may be examined as witness.

Witnesses not excluded by reason of interest.

CCXIII. No person offered as a witness, shall be excluded by reason of his interest in the event of the action.

Assignor of a thing in action may be examined as witness.

CCXIV. The last section shall not apply to a party to the action, nor to any person for whose immediate benefit it is prosecuted or defended, nor to the wife of any such person. An assignor of a thing in action or contract may be examined as a witness on behalf of any person deriving title through or from him, but such assignor shall not be admitted to be examined in behalf of such person unless at least ten days' notice of such intended examination of the assignor specifying the points upon which he is intended to be examined, shall be given in writing to the adverse party. 30 35

OF MOTIONS AND ORDERS. ENTITLING AFFIDAVITS. COMPUTATION OF TIME.

- Section 215. What is an Order.
 216. What is a motion. Motions how made and proceedings thereupon.
 217. Service of notice of motion.
 218. County Court Judge may exercise powers of a Judge of the Superior Court at Chambers.
 219. Transfer of motion in case of absence, &c., of Judge.
 220. Enlargement of time within which proceedings must be had.
 221. Affidavits to be entitled.
 222. Affidavits may be sworn to before Commissioners.
 223. Computation of time within which an act is to be done.

CCXV. Every direction of a Court or Judge made or entered in writing, and not included in a judgment, is denominated an Order. What is an Order.

CCXVI. An application for an Order is a motion :

What is a motion.

5 1. Such motions as are allowed by this Act to be made before a County Court Judge, in any action or proceeding in any of the Superior Courts of Law or Equity, must be made in the County where the action or proceeding was commenced or is triable, all other motions allowed to be made before a single Judge of the Court in which the action or proceeding was commenced, may be made before a Judge of such Court in any part of Upper Canada. Motions how made, and proceedings thereupon.

2. Any motion necessary to be made during a trial or inquiry at Assize and *Nisi Prius* in an action or proceeding in any of the Superior Courts of Law or Equity, may be made before the Judge of Assize and *Nisi Prius* at such trial or inquiry, and any motion which may be made before a single Judge of the Superior Courts of Law or Equity, in which the action or proceeding was commenced, may be made before the Judge of Assize and *Nisi Prius*, in the County where the action or proceeding is triable, at any time between the commencement of such Assize and *Nisi Prius*, and the first day of the next general term.

3. When a motion is allowed to be made before a single Judge of the Superior Courts of Law or Equity or County Courts, such Judge may grant or refuse the motion, or make such order thereon as he may deem reasonable, not being contrary to law, and may enforce the performance of such order in like manner as the Court in which it was made might enforce any order made by it.

4. All proceedings before and orders made by a single Judge in any action or matter, may be reviewed and set aside or confirmed by the Court wherein such action or matter was commenced.

5. No order to stay proceedings for a longer period than twenty days shall be granted by a single Judge out of Court, except upon such previous notice to the adverse party as the Judge may deem reasonable, not being less than four days ; and in no case shall any single Judge after judgment grant 5 an order to stay proceedings longer than until the Monday of the second week of the General Term of the Court in which the judgment is entered next thereafter.

Service of notice of motion. C CXVII. When a notice of motion is necessary, it must be served four days before the time appointed for the hearing, 10 unless otherwise provided in this Act, but the Court or a Judge may, by an order to show cause, prescribe a shorter time.

County Court Judge may exercise powers of a Judge of the Superior Court at Chambers. C CXVIII. In an action in any of the Superior Courts, a County Court Judge, in addition to the powers conferred 15 upon him by this Act, may exercise, within his County, the powers of a Judge of the Superior Court at Chambers according to the existing practice, except as otherwise provided in this Act, and in all cases where an order is made by a County Court Judge, it may be reviewed in the same manner 20 as if it had been made by a Judge of the Superior Court.

Transfer of motion in case of absence, &c., of Judge. C CXIX. When notice of a motion is given or an order to show cause is returnable before a Judge out of Court, and at the time fixed for the motion he is absent or unable to hear it, the same may be transferred by his order to some other Judge 25 before whom the motion might originally have been made.

Enlargement of time within which proceedings must be had. C CXXX. The time within which any proceeding in any action or other matter must be had after its commencement, except the time within which an Appeal must be taken, may be enlarged upon an affidavit, showing grounds therefor, by a 30 Judge of the Court, or if the action be in a Superior Court of Law or Equity, by a County Court Judge. The affidavit or a copy thereof must be served with a copy of the order, or the order may be disregarded.

Affidavits to be entitled. C CXXXI. Affidavits are to be entitled in the action, matter 35 or proceeding, but an affidavit made without a title or with a defective title, shall be as valid and effectual for the purpose of staying proceedings until a correct affidavit is procured, as if it were duly entitled, if it intelligibly and clearly refer to the action, matter or proceeding in which it is made ; Provided 40 however that the Judge or other person before whom such affidavit is produced, shall think such stay just and reasonable.

Affidavits may be sworn to before Commissioners. C CXXXII. Any affidavit, required to be made in any of the Superior Courts of Law or Equity or County Courts, may be sworn to before any commissioner now or hereafter appointed 45 and authorized to take affidavits in the Courts of Queen's

Bench or Common Pleas, or hereafter appointed by the Court of Chancery in Upper Canada, or before any Judge, Clerk or Deputy Clerk of the Superior Courts of Law or Equity, or of any County Court in any part of Upper Canada, or any person acting as Clerk of the Courts of Assize and *Nisi Prius*, Oyer and Terminer and General Gaol delivery, during the Sittings of such Courts respectively. The Judges of the Court of Chancery may, in like manner as the Judges of the Courts of Queen's Bench or Common Pleas are now allowed to do by law, appoint and authorize by commission such and so many persons as they may think proper, for the taking of affidavits in any part of Upper or Lower Canada, and such Commissioners shall severally have the like power and authority as is now vested in any Commissioner for taking affidavits in the said Courts of Queen's Bench or Common Pleas.

CCXXIII. The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded and the act, may be done on the next following judicial day.

Computation of time within which an act is to be done.

OF NOTICES AND OF THE FILING AND SERVICE OF PAPERS.

Section 224. Service of notices and orders, &c.

225. Service may be personal or by leaving it for the party or the Attorney.

226. Service by mail.

227. How such service shall be made.

228. Time allowed in service by mail.

229. Delay for notices of trial, &c.

230. Service need not be made on non-appearing Defendant, unless imprisoned.

231. Delay for filing summons and pleadings.

232. When there is an Attorney in the action, service to be upon him.

233. Write of Summons and Execution by whom to be served.

234. If the Sheriff neglect to make the service, it may be made by any literate person.

CCXXIV. Notices shall be in writing, and notices and other papers may be served by copy on the party or Attorney, in the manner prescribed by the next three sections where not otherwise provided by this Act. Any order, process or paper, or a copy thereof, intended to bring the party into contempt, must be served personally, or as may be directed by the Court under the provisions of this Act, when a personal service cannot be effected.

Service of notices and orders, &c.

CCXXV. The service may be personal or by leaving it for the party or Attorney on whom the service is required to be made :

Service may be personal or by leaving it for the party or the Attorney.

1. If upon an Attorney, it may be made during his absence from his office by leaving the paper with his Clerk therein, or with a person having charge thereof, or when there is no person in the office, by leaving it between the hours of six in the morning and nine in the evening in a conspicuous place 5 in the office, or if it be not open so as to admit of such service, then by leaving it at the Attorney's residence with some persons of suitable age and discretion.

2. If upon a party, it may be made by leaving the paper at his residence, between the hours of six in the morning and 10 nine in the evening, with some person of suitable age and discretion.

Service by Mail. CCXXVI. Service by mail can only be made in the manner provided by this Act.

How such service shall be made. CCXXVII. In case of service by mail where allowed by 15 this Act, the paper must be deposited in the Post Office addressed to the person on whom it is to be served at his place of residence, and the postage paid.

Time allowed in service by mail. CCXXVIII. Where the service is by mail, the time allowed shall be *double* of that required in cases of personal service; 20 but if the party to be served resides more than two hundred miles from the County in which the action, matter or proceeding is brought, such further time shall be allowed after service, before proceeding thereon, as the Court or a Judge of the Court may order. 25

Delay for notices of trial, &c. CCXXIX. Notice of trial, assessment or inquiry must be given at least eight days, and of a motion or other proceeding before a Court or Judge at least four days before the time appointed therefor, unless otherwise provided in this Act.

Service need not be made on non-appearing Defendant, unless imprisoned. CCXXX. Where a Defendant shall not have appeared or 30 answered, service of notice of papers in the ordinary proceedings in an action need not be made upon him, unless he be imprisoned for want of bail, but if he has filed an appearance or answer in the action, giving in such appearance notice where papers in the action may be served, such service 35 shall be made upon him or his Attorney, as required by this Act.

Delay for filing summons and pleadings. CCXXXI. The Summons and the several pleadings in an action shall be filed with the Clerk within ten days after the service thereof respectively, or the adverse party, on proof of 40 the admission, shall be entitled without notice to an order from a Judge that the same be filed within a time to be specified in the order, or be deemed abandoned.

CCXXXII. Where a party shall have an Attorney in the action, the service of papers shall be made upon the Attorney instead of the party, except as otherwise provided in this Act. When there is an Attorney in the action, service to be upon him.

CCXXXIII. All Writs of Summons and Execution, and where mileage is charged, all orders or other papers to be served or executed in any action, matter or proceeding in any of the Superior Courts of Law or Equity or County Courts, unless otherwise provided in this Act, shall be served or executed by the Sheriff of the County in which the person or party to be served is resident, or by his Deputy or one of his Officers, or other person by his consent, or by a literate person as herein provided, and the Sheriff or Deputy Sheriff shall mark and sign on the Writ, Order or paper, the day of its receipt in the Office of such Sheriff, which marking shall be considered on taxation as sufficient proof that the service, if any made thereof, was by his consent; no charge for mileage on a service or execution shall be allowed in any case, unless so served or executed by the Sheriff, or his Deputy Sheriff, or one of his Officers or other person with his consent, except as hereinafter provided. Where a fee for a service is allowed, such fee is to include the affidavit of service, and no extra charge is to be made for drawing or attending on such affidavit, except the sum allowed and paid for swearing the same, which is to be allowed. Writs of Summons and Execution by whom to be served.

CCXXXIV. If however the Sheriff or his Officer do not serve the Summons, order or other paper abovementioned, within days from the time it is left at his office for that purpose, then any literate person may serve the same and charge and tax mileage and other Sheriff's fees therefor, and the Sheriff shall mark on the Summons, order or other paper the time when it is delivered by him to the Plaintiff or his Attorney. If the Sheriff neglects to make the service, it may be made by any literate person.

DUTIES OF SHERIFFS AND CORONERS.

Section 235. Duty of Sheriff and Coroner, and liability for neglect of duty.

CCXXXV. Whenever, pursuant to this Act, the Sheriff may be required to serve or execute any Summons, Order or Judgment, or to do any other act, he shall be bound to do so in like manner as upon Process directed to him, and shall be equally liable in all respects for neglect of duty; and if the Sheriff be a party, the Coroner shall be bound to perform the service as he is now bound to execute Process where the Sheriff is a party, and all the provisions of this Act relating to Sheriffs shall apply to Coroners when the Sheriff is a party. Duty of Sheriff and Coroner, and liability for neglect of duty.

MISCELLANEOUS PROVISIONS.

Section 236. Loss of originals.

237. Undertakings to be filed with Clerk.

238. Computation of time for publication of legal notices.

239. Admission of printed Statutes, &c. as evidence.

Loss of originals.

CCXXXVI. If an original pleading or paper be lost or withheld by any person, the Court may authorize a copy thereof to be filed and used instead of the original.

Undertakings to be filed with Clerk.

CCXXXVII. The various undertakings required to be given by this Act, must be filed with the Clerk of the Court in which they are taken, unless this Act or the Court expressly provides for a different disposition thereof.

Computation of time for publication of legal notices.

CCXXXVIII. The time for publication of legal notices shall be computed so as to exclude the first day of publication, and include the day on which the act or event of which notice is given is to happen, or which completes the full period required for publication.

Admission of printed Statutes, &c., as evidence.

CCXXXIX. Printed copies in volumes of statutes, code or other written law enacted by the Imperial Parliament, or by any Province, or Colony of Great Britain or foreign State or Government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the Courts and judicial tribunals of the United Kingdom, or of such Province, or Colony of Great Britain or foreign State or Government, shall be admitted by the Courts and Officers of this Province, on all occasions, as presumptive evidence of such laws. The unwritten or common law of any other Province, or Colony of Great Britain, or foreign State or Government, may be proved as facts by parol evidence, and the books of reports of cases adjudged in their Courts, may also be admitted as presumptive evidence of such law.

OF ACTIONS IN PLACE OF PROCEEDINGS BY *SCIRE FACIAS*, *QUO WARRANTO*, AND OF INFORMATIONS IN THE NATURE OF *QUO WARRANTO*.

Saction 240. *Scire facias*, &c. abolished, &c.

241. Action by Attorney General for annulling Charter of a Corporation.

242. In what cases such action may be brought.

243. Notice to be given to Corporation.

244. Actions by Attorney General in certain cases.

245. Actions by Attorney General for annulling Letters Patent.

246. Name of Informer may be joined as Plaintiff in actions on behalf of the Crown, &c.

247. In actions for usurpation of office, &c. name of person rightfully entitled, may be set forth, &c.

248. Judgment in such cases.

249. When judgment is rendered in favor of person entitled, he may take upon himself the office.

250. Refusal of Defendant to deliver books, &c.

251. Damages to be recovered by person declared entitled.

252. Case of several persons claiming same office.

253. Judgment against persons, &c. who have usurped offices.
 254. Judgment in the case of Corporations forfeiting their corporate rights.
 255. Costs in such cases.
 256. Court to have power to restrain Corporations, &c.
 257. Copy of Judgment-Roll to be filed in Provincial Secretary's Office.
 258. Secretary to register judgment.
 259. Action for recovery of property forfeited to the Crown, &c.

CCXL. The Writ of *scire facias*, the Writ of *quo warranto*, and proceedings by information in the nature of *quo warranto* are abolished, and the remedies heretofore obtainable in those forms may be obtained by civil actions under the provisions of this Act, or in a case where a *scire facias* might formerly have been obtained and the remedy sought is a private right, or belonging to a private corporation or individual, the same may be obtained on motion to the Court ; but any proceeding heretofore commenced or judgment rendered or right acquired shall not be affected by such abolition.

Scire facias,
&c. abolished,
&c.

CCXLI. An action may be brought by the Attorney General for Upper Canada, in his own name on behalf of the Crown, whenever the same shall become requisite, against a corporation for the purpose of vacating or annulling the Act of incorporation or an Act renewing its corporate existence, on the ground that such Act or renewal was procured upon some fraudulent suggestion or concealment of a material fact by the persons incorporated or by some of them or with their knowledge and consent.

Action of Attorney General for annulling Charter of a Corporation.

CCXLII. An action may be brought by the Attorney General for Upper Canada, in the like name on leave granted by a Superior Court of Law or Equity or a Judge thereof, for the purpose of vacating the Charter or annulling the existence of a corporation other than municipal, wherever such corporation shall

In what cases such action may be brought.

1. Offend against any of the provisions of the Act or Acts creating, altering, or renewing such corporation ; or
2. So violate the provisions of any law as that such Corporation shall have forfeited its Charter by abuse of its powers ; or
3. Whenever it shall have forfeited its privileges or franchises by failure to exercise its powers ; or
4. Whenever it shall have done or omitted any Act which amounts to a surrender of its corporate rights, privileges and franchises ; or ,
5. Whenever it shall exercise a franchise or privilege not conferred upon it by law : And it shall be the duty of the

Attorney General for Upper Canada, whenever he shall have reason to believe that any of these acts or omissions can be established by proof, to apply for leave, and upon leave granted to bring the action in every case of public interest, and also in every other case in which satisfactory security shall be given to indemnify as well the Government of this Province, as the said Corporation against the costs and expenses to be incurred thereby. But no such action to be brought without the consent or direction of the Governor General.

Notice to be given to Corporation. **CCXLIII.** Leave to bring the action may be granted upon the application of the Attorney General for Upper Canada; and the Court or Judge may in his or their discretion direct notice of such application to be given to the Corporation or its Officers, previous to granting such leave, and may hear the Corporation in opposition thereto. 15

Actions by Attorney General in certain cases. **CCXLIV.** An action may be brought by the Attorney General in the like manner upon his own information, or upon the complaint of any private party against the parties offending in the following cases :

1. When any person shall usurp, intrude into or unlawfully hold, or exercise any Public Office, Civil or Military, or any franchise within Upper Canada, or any Office in a Corporation in Upper Canada lawfully created, or
2. When any Public Officer, Civil or Military, shall have done or suffered an act which by law shall make a forfeiture of his office, or
- 25
3. When any association or number of persons shall act within Upper Canada as a Corporation without being duly incorporated.

Actions by Attorney General for annulling Letters Patents. **CCXLV.** An action may be brought by the Attorney General in the like manner, for the purpose of vacating or annulling Letters Patent granted by the Crown either before or since the Union of the late Provinces of Upper and Lower Canada. 30

1. When he shall have reason to believe that such letters patent were obtained by means of some fraudulent suggestion or concealment of a material fact, made by a person to whom the same were issued or made with his consent or knowledge, or
- 35
2. When he shall have reason to believe that such letters patent were issued through mistake or in ignorance of a material fact, or
- 40
3. When he shall have reason to believe that the patentee or those claiming under him, have done or omitted an act in

violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same.

CCXLVI. When an action shall be brought by the Attorney General by virtue of this Act, on the relation or information of a person having an interest in the question, the name of such person shall be joined as Plaintiff with the Crown.

Name of In-
former may
be joined as
Plaintiff in
actions on be-
half of the
Crown, &c.

CCXLVII. Whenever such action shall be brought against a person for usurping an office, the Attorney General for Upper Canada, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightfully entitled to the office with a statement of his right thereto, and in such case upon proof by affidavit, that the Defendant has received fees or emoluments belonging to the office and by means of his usurpation thereof, an order may be granted by a Judge of the Superior Courts of Law or Equity, for the arrest of such Defendant and for holding him to bail in the manner and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the Defendant is subject to arrest.

In actions for
usurpation of
office, &c.,
name of per-
son rightfully
entitled, may
be set forth,
&c.

CCXLVIII. In every such case judgment shall be rendered upon the right of the Defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the Defendant, as justice shall require.

Judgment in
such cases.

CCXLIX. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office and executing such official Bond as may be required by law, to take upon himself the execution of the office, and immediately thereafter to demand an Order of the Court or of a Judge thereof, requiring the Defendant in the action to deliver over to him all the books and papers in his custody or within his power, belonging to the office from which he shall have been excluded.

When judg-
ment is
rendered in
favor of per-
son entitled,
he may take
upon himself
the office.

CCL. If the Defendant shall refuse or neglect to deliver over such books or papers on being served with the order, he shall be deemed guilty of a contempt of the Court, and the same proceedings shall be had, and with the same effect, to compel the delivery of such books and papers, as are allowed in other cases of contempt of the Court or its orders.

Refusal of De-
fendant to de-
liver books,
&c.

CCLI. If judgment be rendered upon the right of the person so alleged to be entitled in favor of such person, he may recover by action the damages which he shall have sustained by reason of the usurpation by the Defendant of the office from which such Defendant has been excluded.

Damages to
be recovered
by person de-
clared en-
titled.

Case of several persons claiming same office. CCLII. Where several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

Judgment against persons, &c., who have usurped offices. CCLIII. When a Defendant, whether a natural person or corporation, against whom such action shall have been brought, shall be adjudged guilty of usurping or intruding into or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that such Defendant be excluded from such office, franchise or privilege, and also that the Plaintiff recover costs against such Defendant. The Court may also in its discretion fine such Defendant in a sum not exceeding which fine when collected shall be paid to the Receiver General and make part of the consolidated Revenue Fund of this Province. 15

Judgment in the case of Corporation forfeiting their corporate rights. CCLIV. If it be adjudged that a Corporation against which an action shall have been brought pursuant to this Act, has by neglect, abuse or surrender forfeited its corporate rights, privileges and franchises, judgment shall be rendered, that the Corporation be excluded from such corporate rights, privileges and franchises, and that the Corporation be dissolved. 20

Costs in such cases. CCLV. If judgment be rendered in such action against a Corporation or against persons claiming to be a Corporation, the Court may cause the costs therein to be collected by execution against the persons claiming to be a Corporation, or by attachment or process against the Directors or other Officers of such Corporation. 25

Court to have power to restrain Corporations, &c. CCLVI. When such judgment shall be rendered against a Corporation, the Court shall have power to restrain the Corporation, to appoint a Receiver of its property, and to take an account and make such distribution thereof among its creditors as shall appear just in respect thereof, and it shall be the duty of the Attorney General, immediately after the rendering of such judgment, to institute proceedings for such purpose. 30

Copy of Judgment-Roll to be filed in Provincial Secretary's Office. CCLVII. Upon the rendering of such judgment against a Corporation, or for the vacating or annulling of Letters Patent, it shall be the duty of the Attorney General to cause a copy of the Judgment-Roll to be forthwith filed in the Office of the Secretary of this Province. 40

Secretary to register judgment. CCLVIII. Such Secretary shall thereupon, if the record relates to Letters Patent, cause such judgment to be registered on the books of the Registrar of this Province, and the real property (if any) granted by such Letters Patent may thereafter be disposed of by the Crown in the same manner as if such Letters Patent had never been issued. 45

CCLIX. Whenever by the provisions of law any property real or personal shall be forfeited to the Crown, an action for the recovery of such property alleging the ground of the forfeiture, may be brought by the Attorney General in some one of the Superior Courts of Law or Equity.

Action for recovery of property forfeited to the Crown, &c.

OF ACTIONS FOR THE PARTITION OF REAL PROPERTY.

Section 260. Statute Laws relating to partition of Real Estate, &c., to apply to actions brought under this Act.

CCLX. The provisions of the Statute Laws applicable to Upper Canada, relating to the partition of any estate in lands, tenements or hereditaments in Upper Canada, held by joint tenants, tenants in common or co-parceners, shall apply to all 10 actions for such partition brought under this Act so far as the same can be applied to the substance and subject matter of the action without regard to its form which must be conformable to this Act. Such actions may hereafter be brought in any of the Superior Courts of Law or Equity in Upper 15 Canada, or where the Plaintiff shall make oath or prove by the oath of any other credible person acquainted with its nature, that the estate of which partition is sought does not exceed in value the sum of *two hundred and fifty pounds*, such action may be brought in the County Court of the County 20 in which the estate of which partition is sought is situate.

Statute Laws relating to partition of Real Estate, &c., to apply to actions brought under this Act.

OF ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY AND FOR WASTE AND NUISANCE.

Section 261. Actions to determine conflicting claims to Real Property may be prosecuted under this Act.

262. Action of waste abolished.

263. Provisions of this law respecting Action of waste to apply without regard to form.

264. Judgment of forfeiture and eviction.

265. Writ of nuisance abolished.

266. As to injuries remediable by writ of nuisance.

CCLXI. An action or actions to determine conflicting claims to real property may be prosecuted under this Act in like manner as other actions, in any of the Superior Courts of Law or Equity, or where the value of the property does not 25 exceed £100, in the County Court of the County where the property is situate, and the judgment obtained therein shall be conclusive, subject to appeal as provided by law with regard to other actions.

Actions to determine conflicting claims to Real Property may be prosecuted under this Act.

CCLXII. The action of waste is abolished, but any pro- 30 ceeding heretofore commenced or judgment rendered or right acquired shall not be affected thereby; wrongs heretofore remediable by action of waste shall hereafter be subjects of

Actions of waste abolished.

action as other wrongs, in which action there may be judgment for damages, forfeiture of the estate of the party offending and eviction from the premises.

Provisions of this law respecting Action of waste to apply without regard to form.

CCLXIII. The provisions of the law relating to the action of waste shall apply to an action for waste brought under this Act, without regard to the form of the action, so far as the same can be so applied.

Judgment of forfeiture and eviction.

CCLXIV. Judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, when the injury to the estate in reversion shall be adjudged in the action to be equal in value to the tenant's estate or unexpired term, or to have been done in malice.

Writ of nuisance abolished.

CCLXV. The writ of nuisance is abolished, but any proceeding heretofore commenced, or any judgment rendered or right acquired, shall not be affected thereby.

As to injuries remediable by writ of nuisance.

CCLXVI. Injuries heretofore remediable by writ of nuisance shall be subjects of action as other injuries, and in such action there may be judgment for damages or for the removal of the nuisance, or both. 20

PROVISIONS RELATING TO EXISTING SUITS.

Section 267. No Writ of Error to be hereafter issued.

268. Issuing of Executions upon Judgments entered before passing of this Act.

269. Trial of Issues joined before passing of this Act.

No Writ of Error to be hereafter issued.

CCLXVII. No Writ of Error shall be hereafter issued in any case whatever. Wherever a right now exists to have a review of a judgment rendered, or order or decree made before the passing of this Act, such review shall only be had upon an Appeal brought in the manner provided by this Act, or the Statute laws relating to Upper Canada; and all Appeals heretofore brought from judgments, orders or decrees heretofore made, which are still pending in an Appellate Court and not dismissed, shall be effectual and valid, but this Act shall not extend such right of review to any case or question to which it does not now extend nor, the time for appealing, nor shall it apply to a case where a Writ of Error has been already issued. 25

Issuing of Executions upon Judgments entered before passing of this Act.

CCLXVIII. An Execution may be issued without leave of the Court upon a judgment entered before the passing of this Act or now or hereafter to be rendered in an action heretofore pending, at any time within five years after the rendering of the Judgment. 35

CCLXIX. Issues joined in any action before the passing of this Act shall be tried as other issues in actions hereafter brought, and such alterations may be made as shall be necessary in the species or modes of proceeding therein, in order to such trial and subsequent judgment and proceedings, conformably to the provisions of this Act.

Trial of Issues joined before passing of this Act.

JURISDICTION OF THE COURTS VARIED.

Section 270. Actions for foreclosure of mortgages, &c.

271. Questions of priority arising after affidavit filed, not to stop proceedings.

272. Jurisdiction of County Court in certain actions.

273. Judges of Assize, &c. may take account, &c. within jurisdiction Court in which action is pending.

CCLXX. Besides the alterations and variations hereinbefore specified in the jurisdiction of the Courts of Queen's Bench and Common Pleas and County Courts, actions and proceedings for the foreclosure of mortgages, or the sale or redemption of mortgaged premises, where no question of priorities shall arise, may be brought or had and carried on in the Court of Queen's Bench or Common Pleas, or where the mortgage debt, or amount remaining due thereon, does not exceed one hundred pounds, in the County Court of the County wherein the mortgaged premises are situate; provided that when such action is to be brought in any of the Courts of Queen's Bench or Common Pleas, or County Courts, an affidavit by the mortgagee or his assignee, or his Attorney or Agent, be first made and filed in the Court, that he has made diligent search and inquiry, and has good reason to believe and does verily believe that no question of priorities as to liens, judgments or mortgages upon the mortgaged premises or any part thereof, held by different persons in different rights, is likely to arise in such action or proceeding.

Actions for foreclosure of mortgages. &c.

CCLXXI. If after such affidavit an action is brought for the foreclosure of the mortgage or redemption, or sale of the mortgaged premises, and any question as to priorities shall arise therein, such action shall not be abated nor discontinued on account thereof, but may be prosecuted and such proceedings had therein and with the like effect in every respect as if the same had been originally instituted in the Court of Chancery.

Questions of priority arising after affidavit filed, not to stop proceedings.

CCLXXII. The County Court shall have jurisdiction in actions to recover the possession of personal property, where the damages demanded shall not exceed £30.

Jurisdiction of County Court in certain actions.

CCLXXIII. The Judge of Assize and *Nisi Prius*, or County Court Judge, may take any account or perform any other act necessary to be taken or done at the trial or inquiry of any action, matter or proceeding within the jurisdiction of the Court respectively in which the same is pending.

Judges of Assize, &c. may take account, &c. within jurisdiction Court in which action is pending.

CLERKS OF THE COURTS, THEIR DUTIES, &c.

- Section* 274. Registrar of Court of Chancery to be called Clerk thereof.
 275. Deputy Clerks of Court of Chancery.
 276. Vacancies in office of Clerk, how filled.
 277. Certain offices to be hereafter united into one.
 278. Deputy Clerk may sign and issue writs, &c.
 279. Fixed Salary to be paid to Deputy Clerk of Crown, &c.
 280. Deputy Clerk of Superior Court, &c. to be also Clerk of Assize, and provision in case of his death, &c.
 281. Death, &c. of Clerk of County Court.
 282. Certain Offices abolished, &c.
 283. Salary of Assistant Clerks.
 284. Office of Master of Court of Chancery, &c. abolished.
 285. Clerk of Judgments to be appointed, and his duties.
 286. All judgments &c., to be delivered over to him.
 287. His salary.
 288. Terms extended.
 289. During term a Judge of Chancery Court may sit in *Banc* on certain days.
 290. Chancellor and Vice-Chancellor to sit in Chambers in rotation.
 291. Clerks of Judges in Chambers.
 292. Their Salaries.
 293. Clerks to account for fees to Inspector General.
 294. Clerks to enter into obligation faithfully to discharge the duties of their offices.
 295. Records, exhibits, &c. where to be kept.
 296. Deputy Assistant Clerk.
 297. Salaries to be paid quarterly.

Registrar of Court of Chancery to be called Clerk thereof.

CCLXXIV. The Registrar of the Court of Chancery shall hereafter be known by the name of Clerk of the said Court; and the several Offices of Deputy Registrar of such Court are hereby abolished, but such changes shall not affect any proceedings heretofore had in such Court. 5

Deputy Clerks of Court of Chancery.

CCLXXV. Hereafter, there shall be a Deputy Clerk of the Court of Chancery in every County or union of Counties where there is now, or shall hereafter be, a Deputy Clerk of the Crown and Pleas in the Court of Queen's Bench or Common Pleas. The Clerk of the Court of Chancery shall continue to be Clerk of the Court of Error and Appeal in Upper Canada, in the same manner as if he had continued to be known by the name of Registrar of the Court of Chancery. 10

Vacancies in office of Clerk, how filled.

CCLXXVI. In case of any vacancy in any of the Offices or of any appointments to be made to any of the Offices of Clerk or Deputy Clerk of the Court of Chancery, or of Clerk or Deputy Clerk of the Crown and Pleas in the Court of Queen's Bench or Common Pleas or of Clerk of the County Court, in any County or United Counties in Upper Canada, the appointment shall be made by the Governor of this Province. 20

Certain offices to be hereafter united into one.

CCLXXVII. As soon hereafter as arrangements shall be made by the Executive Government of this Province for that purpose, the several Offices of Deputy Clerk of the Court of

Chancery, Deputy Clerk of the Crown and Pleas in the Court of Queen's Bench, Deputy Clerk of the Crown and Pleas in the Court of Common Pleas, and Clerk of the County Court in the several Counties or United Counties in Upper Canada, shall be united in one and the same person in each County or Union of Counties in Upper Canada.

10 CCLXXVIII. Each and every such Deputy Clerk of any of the Superior Courts of Law or Equity within his County or United Counties, shall and may sign and issue Writs and Orders, and file papers and exercise powers and perform duties, in the like manner and with the same effect as if such Deputy Clerk had been the Chief Clerk of each of the said Courts of Law or Equity.

15 CCLXXIX. The person who shall fill the Offices mentioned in the last section, in any County or Union of Counties, shall be paid a fixed salary for discharging the duties of the whole, the amount of such salary to be determined by the Governor of this Province in Council, but shall not in any case exceed nor be less than

Deputy Clerk
may sign and
issue writs,
&c.
Fixed Salary
to be paid to
Deputy Clerk
of Crown, &c.

per annum.

20 CCLXXX. The person filling the said several Offices of Deputy Clerk of the Superior Courts of Law and Equity, and of Clerk of the County Court in any County or Union of Counties in Upper Canada, shall act and discharge the duties of Clerk of Assize and *Nisi Prius* and *Oyer* and Terminer and General Gaol delivery, in such County and Union of Counties, except that in the County of York or United Counties of York, Ontario and Peel, William A. Campbell, Esquire, shall, as is now provided by law, while he shall hold such Office, continue to act and discharge the duties of Clerk of Assize and Marshall

25 30 therein, and in case the said William A. Campbell, or any Clerk or Deputy Clerk authorized to act as Clerk of Assize and Marshall, shall die or be unable from sickness or other lawful cause, to attend for that purpose, the Judge of Assize and *Nisi Prius* and *Oyer* and Terminer and General Gaol delivery,

35 may appoint a Clerk of Assize and Marshall, to act in his stead *pro tem*, who may in that case retain one half of all the fees payable to the Clerk of Assize or Marshall, as his compensation therefor, the other half to be paid over to the person then or next after holding the several Offices of Deputy Clerk

40 of the Superior Courts of Law and Equity, and of Clerk of the County Court in such County or Union of Counties, and be by the latter accounted for and paid over to the Receiver-General of the Province, in like manner as other fees received by him must be accounted for and paid over.

Deputy Clerk
of Superior
Court, &c., to
be also Clerk
of Assize, and
provision in
case of his
death, &c.

45 CCLXXXI. In case the Clerk of the County Court in any County or Union of Counties, shall suddenly die, or by reason of sickness or other lawful cause, shall be unable to attend at the usual sittings of such County Court, either in or out of

Death, &c. of
Clerk of
County Court.

term time, the Clerk of the Peace of such County or Union of Counties shall discharge the duties of such Clerk of the County Court *pro tem*, and shall be allowed to retain all the fees payable to the Clerk of the County Court, at such sittings, as his compensation while so acting as Clerk of the County *pro tem*.

Certain Offices
abolished, &c.

CCLXXXII. At the expiration of three calendar months, from the day on which this Act shall come into force, the Offices heretofore existing of Clerk in the Court of Chancery, and of Senior and Junior Clerk in each of the Courts of Queen's Bench and Common Pleas, shall be deemed vacant and abolished, and from thenceforth there shall be an Assistant Clerk in each of the Offices of Clerk of the Court of Chancery, Clerk of the Crown and Pleas in the Court of Queen's Bench, and Clerk of the Crown and Pleas in the Court of Common Pleas in Upper Canada, to be selected and appointed thereto and removable at pleasure therefrom by the Chief Clerks of the said three Superior Courts of Law and Equity respectively, who shall respectively be responsible for the due and faithful performance of the duties of their respective Assistant Clerks, and who may take from such Assistant Clerks respectively such security by Bond or otherwise in writing as may be deemed reasonable for the due, faithful and proper discharge of their respective duties.

Salary of As-
sistant Clerks.

CCLXXXIII. The said Assistant Clerks shall each be paid by a salary not exceeding per year, out of the consolidated Revenue Fund of this Province.

Office of Mas-
ter of Court of
Chancery, &c.
abolished.

CCLXXXIV. The Offices of Master and Deputy Master of the Court of Chancery, and of Clerk in the Office of such Master, shall be abolished from the time this Act shall come into force; and so far as relates to the suits, actions, matters and proceedings now pending or undetermined in the said Court of Chancery, the Clerk or Deputy Clerks of the Court of Chancery shall respectively be in the place and stead of the said Master and Deputy Masters respectively, and shall may perform all such acts, matters and things in their respective Counties or Union of Counties as may be necessary in the progress of such suits, actions, matters and proceedings now pending or undetermined in the said Court of Chancery, and with the like effect as if the same had been performed by the said Master and Deputy Master respectively.

Clerk of Judg-
ments to be
appointed, and
his duties.

CCLXXXV. There shall hereafter be an Officer to be appointed by the Governor, who shall be called and known as Clerk of the Judgments, who shall keep his Office in Osgoode Hall, or such other place as may be provided for the purpose by the Government of the Province, and in the same building in which the Chief Offices of the Superior Courts of Law and Equity are kept, which office shall be appurtenant

to the Courts of Error and Appeal, Chancery, Queen's Bench, and Common Pleas; and the Clerk of the Judgments shall have charge of all the Orders, Decrees, Proceedings, Records and Judgments in all actions, matters and proceedings, and 5 papers in the said Courts of Error and Appeal, Chancery, Queen's Bench, and Common Pleas, in which judgment has been entered or given, or decree or final determination made, or in which the same may hereafter be entered, given, or made, and shall keep all the papers relating to each action, 10 suit, matter or proceeding together, and properly classed and labelled so as to be readily found, but shall keep the papers in actions, matters, and proceedings for each Court in separate divisions or apartments in his office, and shall preserve the Docket Books and Indexes of judgments already made in the 15 said Courts of Queen's Bench and Common Pleas, and shall provide from time to time, as the same may be required, separate Docket Books, and Index Books for each of the said Courts of Chancery, Queen's Bench, and Common Pleas, and shall docket and enter all judgments hereafter given in 20 the said Courts respectively, in the said books provided for the said Courts respectively, and make proper entries in such books of index for each Court; and the Clerk of the Judgments shall also arrange the papers and docket the several judgments or decrees of a final nature heretofore given in the said Court 25 of Chancery, and shall keep and preserve all exhibits and books heretofore or hereafter brought in or filed, and not delivered out in any suit, matter, or proceeding in any of the said Superior Courts of Law or Equity in which judgment or final determination shall have been or may hereafter be entered 30 or given, and shall when directed by a Judge's order or *fiat* produce in any of the said Courts any of the Records, Books, Papers, Exhibits and Proceedings kept in his office, or deliver out the same to the party or parties to whom they belong, and shall also make searches as to the Papers, Judgments, Pro- 35 ceedings, Exhibits, and Books kept in his office and make copies thereof, or extracts therefrom when required, the charge or fees for such searches, copies and extracts mentioned in the table of fees in Schedule A appended to this Act, being paid to him therefor, and the said Clerk of the Judgments 40 shall also discharge such other duties as shall be required of him by any joint general Order of the said Courts of Chancery, Queen's Bench, and Common Pleas, and do and perform such other acts as may be requisite in the proper and efficient discharge of the duties appertaining to such office.

45 CCLXXXVI. All Records, Books, Papers and Proceedings, and Exhibits filed, and Books and Papers brought in, in any civil suit, matter or proceedings, shall immediately after judgment entered or final determination had, be delivered over by every Clerk of the Courts of Chancery, Queen's Bench, 50 or Common Pleas, or by an Officer of the said Courts respectively, having the same in possession or under his care, to the

All judgments, &c., to be delivered over to him.

said Clerk of the Judgments. The Judges and Clerks of the Superior Courts of Law and Equity, shall at all times have full liberty to make or cause to be made searches in the said office of Clerk of the Judgments, and to make extracts, memoranda or copies relating thereto without charge. 5

His salary. CCLXXXVII. The said Clerk of the Judgments shall be paid by a salary not exceeding _____ pounds, payable out of the consolidated Revenue Fund of this Province.

Terms extended. CCLXXXVIII. The several Terms heretofore known by the names of Hilary, Easter, Trinity and Michaelmas in the 10 said Courts of Queen's Bench and Common Pleas, shall hereafter be extended by the addition of one week to each Term, and the said Terms by the same names respectively, shall hereafter be the General Terms of the said Courts of Chancery, Queen's Bench and Common Pleas respectively, and the said 15 Courts of Chancery, Queen's Bench and Common Pleas, respectively, may on the second Tuesday after each Term, as is now provided by Law, in respect of the said Courts of Queen's Bench, and Common Pleas, sit separately as in *Banc* for the delivery of judgments in the said Courts respectively. 20

During term, a Judge of Chancery Court may sit in Banc on certain days. CCLXXXIX. Hereafter, during general Term, it shall and may be lawful for one of the Judges of the said Court of Chancery to sit in *Banc* apart from his brethren on the Mondays, Wednesdays and Fridays of each week, during such 25 terms, either while they are actually so sitting, or while their sittings within such term are suspended or adjourned, and every such Judge while so sitting apart in *Banc* as aforesaid, shall have all the same powers and authority as belong to or may hereafter be vested in the said Court of Chancery, touching or concerning, or in any way relating to the business of administering oaths and hearing and determining matters, on 30 motion, and making rules and orders in causes and business depending in the said Court of Chancery, and in transacting such other business to be transacted in such Court, as such Court may assign or direct to be transacted before such single Judge so sitting apart, or as may be transacted before a single 35 Judge thereof, in the same manner and with the same force, validity and effect as might be done by the said Court of Chancery; and the Clerk of the Judge's Chambers of the said Court of Chancery hereinafter mentioned shall perform the duties of Clerk of such Court of Chancery, so far as such 40 duties apply to the business to be transacted before such Judge of the Court of Chancery so sitting apart in *Banc* as aforesaid.

Chancellor and Vice Chancellor to sit in Chambers in rotation. CCXC. The Chancellor and Vice Chancellors of the said Court of Chancery shall, after the passing of this Act, sit in 45 Chambers in rotation, or otherwise, as they shall agree among themselves, on the Mondays, Wednesdays and Fridays of each week out of General Term (except during the usual vacation

and holydays,) to transact such business and make such Orders as may, according to law and the provisions of this Act, be transacted or made by a single Judge of the Court of Chancery at Chambers; or elsewhere, but nothing in this section 5 contained shall deprive any party interested of the right to appeal to the full Court of Chancery, for the purpose of having the decision of such Judge rescinded or altered.

CCXCI. There shall hereafter be an Officer who shall be called and known as the Clerk of the Judges in Chambers 10 of the said Court of Chancery, to be appointed from time to time as may be necessary by the Governor, and such Clerk in Chambers shall discharge the several duties usually appertaining to a Clerk of a Judge in Chambers, and also all other duties prescribed for him by the said Court of 15 Chancery, or any Judge thereof sitting in Chambers, or apart from the other Judges of the said Court of Chancery, or by any General Orders of the Judges of the said Superior Courts of Law and Equity.

Clerks of Judges in Chambers.

CCXCII. The said Clerk in Chambers of the said Court of 20 Chancery and the Clerk in Chambers of the said Courts of Queen's Bench and Common Pleas, shall hereafter respectively be paid for discharging all the duties appertaining to their respective offices by a Salary of Their salaries. each, payable out of the consolidated Revenue Fund of this 25 Province.

CCXCIII. The several Clerks of the said Courts of Error and Appeal, Chancery, Queen's Bench, Common Pleas, and County Courts, Deputy Clerks of the said Courts of Chancery, Queen's Bench and Common Pleas, and the Clerks in 30 Chambers of the said last mentioned three Courts; the said Clerk of the Judgments; and the Clerks of Assize and Marshalls, shall severally collect the fees payable to them as such Clerks or Deputy Clerks respectively, and shall account for the same to the Inspector General of Public Accounts of this 35 Province; and shall severally pay over the whole amount thereof without deduction to the Receiver-General of this Province; at the several times and in the same manner as is provided by the Statute Laws of this Province; as to the Clerks of the Crown and Pleas, in each of the Courts of 40 Queen's Bench and Common Pleas; and such fees so paid to the Receiver General shall form part of the Consolidated Revenue Fund of this Province, and shall be accounted for to Her Majesty, Her Heirs and Successors through the Lords Commissioners of Her Treasury, for the time being, in such 45 manner and form as Her Majesty, Her Heirs and Successors shall direct; and if default shall be made in such payment, the amount due by the Officer, making such default, shall be deemed a specialty debt to Her Majesty.

Clerks to account for fees to Inspector General.

Clerks to enter into obligation faithfully to discharge the duties of their offices.

CCXCIV. Each of the Clerks, Assistant Clerks and Deputy Clerks of any of the said Courts of Chancery, Queen's Bench and Common Pleas, and of the Clerks of the County Courts, and of the said Clerks in Chambers, and the said Clerk of Judgments, hereafter to be appointed shall, before 5 entering on the duties of his office, make and subscribe an oath in writing before a Judge of one of the Superior Courts of Law or Equity, or of the County Courts, that he will diligently, honestly and faithfully discharge the duties of his office (naming it) to the best of his knowledge, skill and 10 ability, and shall cause a certificate of the due taking of such oath to be filed in the office of the Clerk of the Court to which he shall belong; except that the Clerk of Judgments may cause such certificate to be filed in any of the said Superior Courts. 15

Records, exhibits, &c. where to be kept.

CCXCV. All the records, exhibits and papers, in any civil action, suit or proceeding heretofore, by any provision of the Statute Laws of this Province, required to be transmitted to or kept by the Clerk in Chambers of the said Courts of Queen's Bench and Common Pleas, and the like description 20 of records, exhibits and papers, in the said Court of Chancery, shall hereafter be transmitted to and kept in the respective offices of the Chief Clerks of the respective Courts in which such action, suit or proceeding was brought or had, until delivered over to the respective parties entitled to the same, or as 25 required by the provisions of this Act, to the Clerk of the Judgments; and the said Clerk in Chambers of the Courts of Queen's Bench and Common Pleas shall forthwith deliver over to the Clerk of the respective Courts in which the actions, suits or proceedings respectively were brought or had, the 30 several records, exhibits and papers belonging to the same respectively, heretofore transmitted to or remaining with him, who shall respectively deliver such of them to the Clerk of the Judgments, as are, by this Act, required to be kept in his office. 35

Deputy Assistant Clerk.

CCXCVI. Whenever it shall be made to appear clearly and satisfactorily, by reason of the increase of business in the Courts in any County or Union of Counties, that the person holding the offices of Deputy Clerk of the Superior Courts of Law and Equity and Clerk of the County Court in such 40 County or Union of Counties, is unable to discharge the duties of such Offices, the Governor, of this Province, may appoint an Assistant Clerk of the Deputy Clerk of such Superior Courts and Clerk of the County Courts, at a salary not exceeding a year, which shall be paid out 45 of the consolidated Revenue Fund of this Province.

Salaries to be paid quarterly.

CCXCVII. The several salaries and allowances hereinbefore authorized to be paid out of the Fund last named shall be paid to the several Clerks, Deputy Clerks, and As-

sistant Clerks, and persons entitled to the same, quarter yearly, on the first day of January, April, July and October of each year, by the Receiver General of this Province, upon the Warrant of the Governor, of this Province.

MISCELLANEOUS AND GENERAL PROVISIONS.

Section 298. Interpretation Clause.

299. No fictions in date permitted.

300. Issuing of *alias, pluries* writs, &c.

301. Compelling attendance of witnesses, &c.

302. Writs need not be sealed.

303. Commissioners for taking affidavits.

304. Issuing of Commissions for taking evidence.

305. Commissions for taking evidence in any part of Canada.

306. Examiners of Witnesses, &c.

307. Arrest of persons in Lower Canada.

308. Actions to be issued in the Superior Courts of Law alternately.

309. What shall be a folio.

310. In case of difficulty in carrying this Act into effect, Court may make order for remedy thereof.

311. Present rules abrogated unless consistent with this Act.

312. Revision of general rules of Courts.

313. A certain rule of Common Law inapplicable to this Act.

314. Statutory provisions inconsistent with this Act repealed.

315. Certain proceedings not affected for the present, by this Act.

316. Act to apply to Upper Canada only.

5 CCXCVIII. In construing the meaning of this Act, certain words occurring therein are to be interpreted as follows, that is to say: the words "real property" as being co-extensive with "lands, tenements and hereditaments;" the words "personal property" as including money, goods, chattels, things in action and evidences of debt; the word "property" as including property real and personal; the word "County" as including 10 Union of Counties; the words "Superior Courts of Law" as meaning the Courts of Queen's Bench and Common Pleas; and the words "Superior Courts of Law and Equity" as meaning 15 the Courts of Queen's Bench, Common Pleas and Chancery; the word "Plaintiff" and the word "Defendant" as including Plaintiffs and Defendants respectively; all words of singular import as include the plural of such words; the word "Attorney" as including Solicitor; and the word "Coun- 20 sel" as including Barrister.

Interpretation Clause.

CCXCIX. No fictions in date or law will hereafter be permitted in any Writ, pleading or proceeding in actions at law or in equity, but all dates and statements in any Writ or pleading must be, or purport to be, true dates and statements; 25 except that the name of "Richard Roe," may be substituted for the true name of a party where the true name is unknown, in the single case provided for in this Act.

No fictions in date permitted.

CCC. An *alias, pluries* or a duplicate, triplicate or quadruplicate Writ of Summons or Execution, may be issued 30 where the first, second or third Writ could not be served or

Issuing of *alias, pluries* writs, &c.

executed, or where it may be necessary to serve or execute such Writs in different Counties or some in and others out of Upper Canada.

Compelling attendance of witnesses, &c.

CCCI. The attendance of witnesses and the production of papers and books may be compelled as heretofore by a Writ or Writs of Subpœna or Subpœna *duces tecum*, in which the names of any number of witnesses may be inserted, and of which a copy must be served on the party required to attend or produce the papers or books, the original being shewn to him at the time of service, and his expences paid or tendered, as now required by law.

Writs need not be sealed.

CCCII. Writs of Summons, Execution, Subpœna and all other Writs required in any action, matter or proceeding may be signed, but need not be sealed by the Clerk or Deputy Clerk of the Court in which the action, matter or proceeding is pending, or if Writs of Subpœna by the Clerk of Assize and *Nisi Prius*. A Præcipe for any Writ must be filed with the Clerk or Deputy Clerk who issues any Writ except a Subpœna.

Commissioners for taking affidavits.

CCCIII. A Commissioner appointed to take affidavits in any of the Courts of Law or Equity in Upper Canada, shall be a Commissioner for such purpose in all such Courts and for every County and County Court in Upper Canada. The Judges of each of the Superior Courts of Law and Equity may by Commission under their hands, appoint as many fit persons as they shall consider necessary in any or every of the Counties of either Upper or Lower Canada, to be Commissioners for taking affidavits in all or any of the Courts of Law and Equity in Upper Canada. Any person wilfully or knowingly swearing falsely in any affidavit sworn before such Commissioner, shall be deemed guilty of wilful and corrupt perjury.

Issuing of Commissions for taking evidence.

CCCIV. Commissions for taking the evidence of witnesses residing or being out of the jurisdiction of the Court, may be issued by the Court of Chancery to be used in any action, matter or proceeding in such Court, in like manner as the same are now issued out of the Courts of Queen's Bench and Common Pleas respectively, and with the like effect, and such Commission may be obtained on an Order of a Judge of the Court or of a Judge of the County Court of the County in which the action was brought, from the Clerk or Deputy Clerk of the Court or Clerk of the County Court in such County.

Commissions for taking evidence in any part of Canada.

CCCV. Where the procuring of the attendance of any witness residing in any part of the Province may be attended with great expense, or where the witness is unable to attend from infirmity, a Commission for taking the evidence of such

witness may be had, as in other cases, upon an Order of a Judge of the Court in which the action is pending, or of a Judge of the County Court of the County in which the action was brought.

5 CCCVI. The Officers heretofore known as Masters Extra-ordinary and Examiners of the Court of Chancery, shall hereafter be known by the name of Examiners of Witnesses, and by that name shall hereafter be Examiners of Witnesses for all and every of the Courts of Law and Equity in Upper
 10 Canada, and may continue to take the evidence of witnesses in the manner heretofore practised, unless otherwise provided by this Act, to be used in any action, matter or proceeding in any of such Courts. And the several Superior Courts of
 15 Law and Equity in Upper Canada may, by Commission under the hands of the Judges, or a majority of the Judges of the Court, appoint and authorize such and as many competent and proper persons to be such Examiners of Witnesses in any
 20 County of Upper Canada, or in any County of Lower Canada, as they may think necessary, and each of the persons hereby authorized to act, or as may hereafter be appointed Examiners of Witnesses, may act as such in any part of Upper
 Canada, or in any part of Lower Canada.

Examiners of
Witnesses,
&c.

CCCVII. Any person for whose arrest in any civil action in any of the Courts of Law or Equity in Upper Canada, an
 25 Order has been obtained, may be arrested, detained or held to Bail on such Order by the Sheriff of any District or place in Lower Canada, upon an endorsement being made thereon by the Sheriff of the County in Upper Canada by whom the Order was originally intended to be executed, authorizing
 30 such Sheriff in Lower Canada to make the arrest, and the like proceedings shall and may be had and taken thereon in Lower Canada by such Sheriff, as to the detention, Bail or otherwise, as if such person had been arrested in Upper
 35 Canada ; any Judge of the Superior Court or of the Circuit Court in Lower Canada, being hereby substitute and authorized to do the several acts which the Judge who issued the Order, or a County Court Judge in Upper Canada might do, had the arrest been in Upper Canada ; when the
 40 Order of arrest has been executed, the same with all papers and proceedings thereon or relating thereto shall be transmitted to the Sheriff of Upper Canada who endorsed the Order, and be by him filed in the Office of the Court in which the action was brought, and the same may thereafter be proceeded upon in like manner as if the arrest had been made
 45 in Upper Canada by the Sheriff who endorsed the Writ.

Arrest of persons in Lower
Canada.

CCCVIII. In order to the equalization of the business in the Superior Court, of Law in Upper Canada, the Clerk or Deputy Clerk of the Courts of Queen's Bench and Common Pleas in any County or Union of Counties, shall hereafter issue Writs
 Actions to be issued in the Superior Courts of Law alternately.

of Summons for the commencement of actions alternately in such Courts, so that the number of actions in each of such Courts hereafter commenced shall be equal or so far equal that the number of suits hereafter brought in such County or Union of Counties in the one Court shall not exceed the number in the other by more than one.

What shall be a folio.

CCCIX. In the taxation of costs or other proceeding in any action, matter or proceeding in the Superior Court, of Law or Equity, or County Courts, one hundred words, or figures representing words, shall be considered a folio of words. 10

In case of difficulty in carrying this Act into effect, Court may make order for remedy thereof.

CCCX. If any difficulty shall arise in carrying into effect the provisions of this Act according to its intent and meaning in any action, matter or proceeding, the Court in which such action, matter or proceeding is pending, may on application, make such Order or Orders as shall appear just and reasonable (not being contrary to law) for the remedy thereof. 15

Present rules abrogated unless consistent with this Act.

CCCXI. The present rules and practice of the said several Courts in civil actions inconsistent with this Act are abrogated, but where consistent with this Act, they shall continue in force, subject to the power of the respective Courts to rescind, relax, modify or alter the same. 20

Revision of general rules of Court.

CCCXII. The Judges of the Superior Courts of Law and Equity in Upper Canada, shall, as soon as practicable after the passing of this Act, meet together and revise the General Rules of the said Courts respectively, and make such amendments thereto, and alterations therein, and such further Rules not inconsistent with this Act as may be necessary to carry it into full effect, and may rescind, alter, amend or add to such General Rules at any time hereafter. The Rules so made, amended or altered shall govern the said Courts and the County Courts, so far as the same may be applicable. 25

A certain rule of Common Law inapplicable to this Act.

CCCXIII. The Rule of Common Law that statutes in derogation of that law are to be strictly construed, shall have no application to this Act.

Statutory provisions inconsistent with this Act repealed.

CCCXIV. All statutory provisions inconsistent with this Act are repealed, but this repeal shall not revive a Statute or Law which may have been repealed or abolished by the provisions hereby repealed. All rights of action given or secured by existing laws may be prosecuted in the manner provided by this Act. If a case shall arise in which an action for the enforcement or protection of a right, or the redress or prevention of a wrong cannot be had under this Act, the practice heretofore in use may be adopted so far as may be necessary to prevent a failure of justice. 40

CCCXV. Until the Legislature shall otherwise provide, this Act shall not affect proceedings upon Mandamus or prohibition, nor any special statutory remedy not heretofore obtained by action, nor any existing statutory provisions relating to actions not inconsistent with this Act and in substance applicable to the actions hereby provided, except that when in consequence of any such proceeding, a civil action shall be brought, such action shall be conducted in conformity to the provisions of this Act, and except also that where any particular provision enumerated in this section shall be plainly inconsistent with this Act, such provision shall be deemed repealed.

Certain proceedings not affected for the present, by this Act.

CCCXVI. This Act shall apply to Upper Canada only, except as otherwise expressed therein, and shall come into force on the first day of January, in the year of our Lord, one thousand eight hundred and _____ and not before.

Act to apply to Upper Canada only.

SCHEDULE OF FEES

REFERRED TO IN THE FOREGOING ACT.

ATTORNEY OR SOLICITOR.	Court of Chancery, Queen's Bench or Common Pleas.			County Court.		
	£	s.	d.	£	s.	d.
Taking instructions including Warrant to prosecute or defend, Letter of Notice before commencing proceedings, to each adverse party when sent, including attendances,.....	0	7	6	0	5	0
Every appearance filed when necessary, including attend- ance,.....	0	2	6	0	1	6
Complaint or Answer including Draft and attending to file,...	0	2	6	0	2	0
Replication including draft, and attending to file,.....	0	10	0	0	7	6
If over 10 and not exceeding 20 folios (no more than 20 to be charged or allowed), per folio,.....	0	1	0	0	0	9
Taking instructions for Brief for the trial, or hearing, or as- sessment, or for special argument before the Court in Banc, (no instructions to be charged or allowed for any other Brief,).....	0	5	0	0	3	9
Preparing Brief thereon, (no other Brief to be charged or allowed) including Draft and attending Counsel, under 10 folios,.....	0	5	0	0	2	6
The same if over 10 folios,.....	0	10	0	0	5	0
On examining and passing Record or Roll for trial, hearing or assessment, including attendance,.....	0	5	0	0	2	6
On every Writ (except a Subpoena,) Judge's Order, or Order or Rule of Court, including attendance for same,.....	0	5	0	0	2	6
Affidavit, common or special, under 3 folios, including Draft and attendance to swear,.....	0	2	6	0	1	6
The same if necessarily over 3 folios, (no more than 10 folios to be charged or allowed,) per folio,.....	0	1	0	0	0	9
Notice or other paper, (where not otherwise provided in this Schedule,) when drawn by Attorney or Solicitor, under 3 folios, including Draft and attendance if any to serve or deliver for service or to obtain Judge's Signature,.....	0	2	6	0	1	6
The same if necessarily over 3 folios, (no more than 10 folios to be charged or allowed,) per folio,.....	0	1	0	0	0	9
Entries on Record or Roll, per folio,.....	0	0	6	0	0	4
Copy of any paper drawn by the Attorney or Solicitor, half the amount allowed for the Original.						
All other Copies, per folio,.....	3	0	6	0	0	4
Cognovit, including attending Execution,.....	0	5	0	0	2	6
Every common attendance in the course of a cause, not otherwise provided for in this Schedule,.....	0	1	3	0	1	0
Attending Court on Trial, assessment, hearing, argument or reference or other special occasion not exceeding 1 hour (no Counsel fee being charged,).....	0	5	0	0	2	6
The same for every full hour after the first,.....	0	5	0	0	2	6
Signing interlocutory Judgment, including attendance,.....	0	2	6	0	1	3
Bill of Costs, including draft and attending Taxation (and for Allocatur when necessary) after Verdict, Assessment or Hearing,.....	0	5	0	0	2	6

SCHEDULE OF FEES—Continued.

	Court of Chancery, Queen's Bench or Common Pleas.			County Court.		
	£	s.	d.	£	s.	d.
ATTORNEY OR SOLICITOR—Continued,						
The same in all other cases.....	0	2	6	0	1	3
Travel by Attorney or Solicitor, his Clerk or Agent over first mile to serve notices or papers, (no fee for serving except attendance to be charged or allowed) per mile,.....	0	0	6	0	0	4
Drawing Writ of Trial or Enquiry, when cause sent down to County Court from the Queen's Bench or Common Pleas, same as Entries on Nisi Prius, Record or Roll.						
All other charges and disbursements in relation thereto, to be according to the Schedule for the Queen's Bench and Common Pleas.						
N. B.—All necessary postages, and all necessary disbursements incurred, to be allowed to the Attorney, Solicitor or party incurring the same in the course of any proceeding or suit. No fee to be charged or allowed for preparing any paper, or for any service performed which is not necessary. Every folio is to contain 100 words.						
COUNSEL.						
Fee to Counsel (not being an Attorney or Solicitor in the suit) to revise complaint or other pleading when very special. . .	0	10	0	0	5	0
Fee on an argument before a Judge in Chambers when Counsel attend,.....	0	10	0	0	5	0
To be increased in the discretion of the Judge to a sum not exceeding.....	1	0	0	0	10	0
Fee on a motion of course or common motion in Court.....	0	10	0	0	5	0
Fee on a special motion or a special argument in Court.....	1	5	0	0	15	0
To be increased in the discretion of the Court to a sum not exceeding.....	3	0	0	1	10	0
Fee with Brief at Trial Assesment or hearing.....	1	5	0	1	0	0
To be increased in the discretion of the Judge presiding to a sum not exceeding.....	7	10	0	2	10	0
No more than one Counsel fee to be charged or allowed without fiat of a Judge.						
No costs to be taxed for obtaining a Judge's fiat for increased fees.						
CLERKS AND DEPUTY CLERKS. (For the Fee Fund.)						
On every Writ, except a Subpœna.....	0	5	0	0	2	6
On every Subpœna.....	0	3	0	0	1	6
On every Rule or Order, except Order of Reference signed by the Clerk or Deputy Clerk,.....	0	3	0	0	2	0
Every Order of Reference, per folio,.....	0	1	0	0	0	9
On every Rule or Order signed by a Judge when filed by the Clerk or Deputy Clerk.....	0	3	0	0	2	0
For every Oath administered by a Clerk or Deputy Clerk.....	0	1	0	0	1	0
Every Certificate signed by a Clerk or Deputy Clerk.....	0	2	6	0	1	3
Examining and passing Record or Roll of proceedings,.....	0	5	0	0	2	6

SCHEDULE OF FEES.—Continued.

CLERKS AND DEPUTY CLERKS—Continued. (For the Fee Fund.)	Court of Chancery, Queen's Bench or Common Pleas.			County Court.		
	£	s.	d.	£	s.	d.
Taxing Costs (including allocatur when required).....	0	5	0	0	2	6
Entering Judgment,.....	0	2	6	0	1	3
On the admission of an Attorney or Solicitor,.....	0	10	0	0	0	0
Every Commission for taking Affidavits.....	0	5	0	..	..	..
Every Computation of Debt or Damages by Clerk or Deputy Clerk,.....	0	5	0	0	2	6
Acting as a Referee while engaged in Hearing, per hour,....	0	5	0	0	2	6
Preparing Draft Report on reference to Hear, per folio,	0	1	0	0	0	9
Copy of any Report, or other Paper, per folio,.....	0	0	6	0	0	4
Search in any Cause or Proceeding, at one time,.....	0	1	0	0	0	6
Attendance out of the Office,.....	0	1	3	0	1	0
Entering Satisfaction on Roll or Exonerator of Bail,.....	0	2	6	0	1	3
Entering Complaint, Answer and <i>Replication</i> in a Book to be kept for the purpose,.....	0	2	6	0	1	3
On each Cause entered for Trial, Assessment or Hearing at the Assize or County Court withdrawn before Jury Sworn or Cause heard.	0	5	0	0	2	6
On each Cause in which a Jury is sworn, or Hearing commenced at an Assize, for every Service rendered in Court, including Swearing Witnesses, Constable and Jury, Entering their names, Reading and Filing Exhibits, &c.,.....	0	5	0	0	5	0
Preparing Return from Minutes of Judge of County Court to a Writ of Trial or Enquiry sent down from the Queen's Bench or Common Pleas, attending for Judge's Signature, and entering and returning same by Mail to the Clerk or Deputy Clerk of the County where the original proceedings were had in the cause,.....	..	..	..	0	10	0
N. B.—All Postages to be paid by the Party or his Attorney or Solicitor in whose behalf the same were incurred or are to be incurred in any cause.						
CLERK IN CHAMBERS. (For the Fee Fund.)						
On each Summons or Warrant or Order of a Judge,.....	0	2	6	..	..	..
Every Oath administered,.....	0	1	0	..	..	..
Copy of any Paper, per folio,.....	0	0	6	..	..	..
Marking Exhibits, each,.....	0	1	0	..	..	..
CLERK OF THE JUDGMENTS. (For the Fee Fund.)						
Copies of Papers, per folio,.....	0	0	6	..	..	..
Each Certificate of verification or other Certificate,.....	0	2	6	..	..	..
Search in each Cause at one time,.....	0	1	3	..	..	..
Attending in Court with Papers on request,.....	0	1	3	..	..	..

SCHEDULE OF FEES—Continued.

	Court of Chancery, Queen's Bench or Common Pleas.			County Court.		
	£	s.	d.	£	s.	d.
CLERK OF ASSIZE.						
<i>(When Any.)</i>						
On each Cause entered for Trial, Assessment, or Hearing at an Assize or County Court withdrawn before Jury sworn or Cause heard,	0	5	0	..	..	..
On each Cause in which a Jury is sworn or hearing commenced at an Assize for every service rendered in Court including Swearing Witnesses, Constable and Jury, Entering names, Reading Exhibits, &c.,	0	10	0	..	..	..
Every Subpœna issued by him,	0	3	0	..	..	..
SHERIFF AND HIS UNDER OFFICERS.						
Every Warrant to Arrest, Levy or Attach, or execute any Process, Writ or Order given at the special request of any Party, Attorney or Solicitor,	0	2	6	0	1	3
Arrest for each person arrested, besides mileage in going to arrest and conveying to Gaol,	0	6	3	0	5	0
Bail Bond for limits or other Bond or Recognizance when prepared by the Sheriff,	0	5	0	0	2	6
Assignment of any Bond required when drawn by the Sheriff,	0	2	6	0	1	3
Service of Summons, Injunction, Subpœna or other Process, Complaint, Order, Rules, Notices or Papers, on each person served, where no arrest is to be made, besides mileage (only one service or mileage to be charged for any number of Papers in the cause served on the same person at the same time),	0	2	6	0	1	3
Receiving, Filing and Entering each Writ or Paper, to be served or executed (only one Fee to be charged for any number of Papers in the same cause received at the same time,)	0	1	3	0	0	6
Indorsing Return on each Writ or Order for Arrest or Attachment or of Execution or Injunction,	0	2	6	0	1	3
Every search by any person not being a party in the cause or his Attorney or Solicitor,	0	1	3	0	1	0
Certificate of result of search when required,	0	2	6	0	1	3
Fee on Striking a Special Jury,	0	15	0	..	..	..
Serving each Special Juror,	0	1	3	..	..	..
Necessary travel from the Court House in Summoning Special Jury, per mile,	0	0	6	..	..	..
Returning Panel of Special Jurors,	0	5	0	..	..	..
Attending view if any, per diem,	0	15	0	..	..	..
Poundage on Executions or Orders or Attachments, in the nature of executions on the sum actually levied and made as follows, viz :						
If not exceeding £100, per cent,	5	0	0	5	0	0
After the first £100 and not exceeding £1000, per cent,	2	10	0	..	..	..
On all exceeding £1000, per cent,	1	5	0	..	..	..

SCHEDULE OF FEES—Continued.

	Court of Chancery, Queen's Bench or Common Pleas.			County Court.		
	£	s.	d.	£	s.	d.
SHERIFF AND HIS UNDER OFFICERS—Continued.						
Such Poundage to be in lieu of all charges for services or disbursements, including drawing, advertisement, attendances, &c., except mileage in going to seize, necessary disbursements for advertisements, and disbursements necessarily incurred in the removal of property when the sum levied and made does not exceed £100.						
For Schedule of Goods seized or attached including copy to Defendant, if not exceeding 5 folios,.....	0	5	0	0	1	3
For every folio necessary thereafter,.....	0	0	6	0	0	4
Advertisement of lands in a public Newspaper, the sum actually disbursed.						
Service of Writ or Order of possession or restitution, besides travel,.....	1	0	0	0	10	0
Bringing up Prisoner on Attachment or Habeas Corpus or Order of Court, besides travel,.....	0	5	0	0	2	6
For Travel from Court House to place of Service or Execution of any Process or Paper when actually served or executed, per mile,	0	0	6	0	0	4
The like mileage for ineffectual attempt by Sheriff or his under officer to make a personal service or arrest when necessary, on his making affidavit, to be prepared without charge of the miles necessarily travelled in making such attempt, that he served no other process or paper on the same occasion. That he made due enquiries and went to the place of residence of the person to be arrested (or served) or where he had reason to believe such person might be found and that after using due diligence he was unable to effect such service or arrest, stating also the reason of failure.						
Seizure of Estate and Effects on Attachment, under absconding Debtor's Acts,.....	0	10	0	0	5	0
Taking Inventory thereof, same as on Executions.						
Removing, or retaining or advertising the same, such reasonable disbursements as are actually made and allowed by the Taxing Officer, the Court or a Judge thereof, or as provided by statute law.						
THE CORONER.						
For summoning Jury and returning the Panel to the Clerk, Deputy Clerk or Clerk of Assize, acting at the Assizes or County Court, for each Juror actually and necessarily summoned, besides travel.....	0	1	0	0	1	0
For mileage and all other services, the same fees as are allowed to Sheriffs for mileage and like services.						
CRIER.						
Calling and swearing each Jury,.....	0	2	6	0	1	3
Calling Plaintiff on nonsuit,.....	0	1	0	0	1	0
Swearing each Witness or Constable,.....	0	0	6	0	0	6

SCHEDULE OF FEES.—Continued.

	Court of Chancery, Queen's Bench or Common Pleas.			County Court.		
	£	s.	d.	£	s.	d.
JURORS.						
Common Jurors, (to be paid as provided by Statute)						
Special Jurors, each,.....	0	5	0	0	5	0
WITNESSES.						
To each Witness residing within three miles of the Court House or place of holding a reference, per diem.....	0	2	6	0	2	6
To each Witness residing over three miles from Court House or place of holding a reference, per diem.....	0	5	0	0	5	0
And for every twenty miles necessarily travelled in coming to and returning from the Court House or place of holding a reference,.....	0	5	0	0	5	0
Attornies, Solicitors, Barristers, Physicians, Surgeons or Land Surveyors, when called to give Evidence in consequence of any professional advice or services, or to give professional opinions or evidence depending upon their skill or judgment, per diem, attendance or twenty miles travel, as above.....	0	10	0	0	10	0
REFEREES.						
Acting as a Referee while engaged in a hearing, per hour...	0	5	0	0	2	6
Preparing Draft Report, per folio,.....	0	1	0	0	0	9
Fair copy or any other copy made by Referee when required, per folio.....	0	0	6	0	0	4