

# L A W S,

18863

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His Majesty's PROVINCE of

## U P P E R - C A N A D A,

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*N O R T H A M E R I C A ;*

C O M P R I S I N G

A L L T H E A C T S O F T H E H O N O R A B L E T H E L E G I S L A T U R E,

O F T H E P R O V I N C E A F O R E S A I D,

Enacted at their First, Second, Third and Fourth Sessions,

1792, 1793, 1794 and 1795.



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1795.

L A W S

His Majesty's PROVINCE of

# UPPER-CANADA

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NORTH AMERICA

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1795-97

COMPRISING

ALL THE ACTS OF THE HONORABLE THE LEGISLATURE

OF THE PROVINCE ABOVE SAID

Passed at their First, Second, Third and Fourth Sessions

1792, 1793, 1794 and 1795



NIAGARA

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L A W S  
OF HIS MAJESTY'S PROVINCE OF  
U P P E R - C A N A D A .

PASSED IN THE FIRST SESSION OF THE PROVINCIAL PARLIAMENT OF UPPER-CANADA, MET AT NEWARK, ON THE SEVENTEENTH DAY OF SEPTEMBER, IN THE THIRTY-SECOND YEAR OF THE REIGN OF OUR SOVEREIGN LORD GEORGE THE THIRD, AND PROROGUED ON THE FIFTEENTH DAY OF OCTOBER FOLLOWING.

C H A P. I.

An ACT to repeal certain parts of an Act passed in the Fourteenth Year of his Majesty's Reign, entitled "An act for making more effectual Provision for the Government of the province of Quebec, in North-America, and to introduce the English Law, as the Rule of Decision in all Matters of Controversy relative to Property and Civil Rights."

WHEREAS by an act passed in the fourteenth year of the reign of his present majesty, entitled "An act for making more effectual provision for the government of the province of Quebec in North-America," it was among other things provided, "That in all matters of controversy relative to property and civil rights, resort should be had to the laws of Canada as the rule for the decision of the same;" such provision being manifestly and avowedly intended for the accommodation of his majesty's Canadian subjects: and whereas since the passing of the act aforesaid, that part of the late province of Quebec, now comprehended within the province of Upper-Canada, having become inhabited principally by British subjects, born and educated in countries where the English laws were established, and who are unaccustomed to the laws of Canada, it is inexpedient that the provision aforesaid contained in the said act of the fourteenth year of his present majesty, should be continued in this province, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An Act for making more effectual provisions for the government of the province of Quebec, in North-America, and to make further provision for the government of the said Province," and by the authority of the same, That from and after the passing of this act, the said provision contained in the said act of the fourteenth year of his present majesty, be, and the same is hereby repealed, and the authority of the said laws of Canada, and every part thereof, as forming a rule of decision in all matters of controversy relative to property and civil rights, shall be annulled, made void, and abolished throughout this province; and that the said laws, nor any part thereof, as such, shall be of any force or authority within the said province, nor binding on any of the inhabitants thereof.

Preamble.

Recital of Act  
14 Geo. III.

The same repealed in so far as it constitutes the laws of Canada a rule of decision, in matters of controversy, relative to property and civil rights.

Without affecting claims on real property or contract already executed.

II. *Provided always, and be it enacted by the authority aforesaid,* That nothing in this act, shall extend to extinguish, release or discharge, or otherwise to affect any existing right, lawful claim or incumbrance, to and upon any lands, tenements or hereditaments within the said Province, or to rescind or vacate or otherwise to affect any contract or security, already made and executed conformably to the usages prescribed by the said laws of Canada.

The laws of England to be henceforth the rule of decision

III. *And be it further enacted by the authority aforesaid,* That from and after the passing of this act, in all matters of controversy relative to property and civil rights, resort shall be had to the laws of England as the rule for the decision of the same.

But the ordinances of the province of Quebec are no further repealed than by this act is necessary

IV. *Provided always, and be it enacted by the authority aforesaid,* That nothing in this act, shall extend, or be construed to extend, to repeal or vary any of the ordinances made and passed by the governor and legislative council of the province of Quebec, previous to the division of the same into the Provinces of Upper and Lower-Canada, otherwise than as they are necessarily varied by the provisions herein mentioned.

The rules of evidence to be regulated by those established in England.

V. *And be it further enacted by the authority aforesaid,* That all matters relative to testimony and legal proof in the investigation of fact, and the forms thereof, in the several courts of law and equity within this Province, be regulated by the rules of evidence established in England.

But no alteration is made in the subsisting provisions respecting the clergy, courts of justice poor and bankrupts.

VI. *Provided always, and be it enacted by the authority aforesaid,* That nothing in this act, contained, shall vary, or interfere with any of the subsisting provisions respecting ecclesiastical rights or dues in this Province, or with the forms of proceeding in civil actions or the jurisdiction of the courts already established, or to introduce any of the laws of England respecting the maintenance of the poor, or respecting bankrupts.

## C H A P. II.

### *An ACT to establish Trials by Jury.*

Preamble.

**W**HEREAS the trial by jury has been long established and approved in our mother country, and is one of the chief benefits to be attained by a free constitution; Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great-Britain; entitled, an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the Province of Quebec in North-America, and to make further provision for the government of the said Province," and by the authority of the same, That from and after the first day of December, in this present year of our Lord one thousand seven hundred and ninety-two, all and every issue and issues of fact, which shall be joined in any action, real, personal or mixed, and brought in any of his majesty's courts of justice within the Province aforesaid, shall be tried and determined by the unanimous verdict of twelve jurors, duly sworn for the trial of such issue or issues, which jurors shall be summoned and taken, conformably to the law and custom of England.

All issues of fact to be determined by verdict of 12 jurors conformably to the law and custom of England.

Who may bring in a special verdict.

II. *Provided always, and be it further enacted by the authority aforesaid,* That nothing herein contained shall prevent, or be construed to prevent the said jurors, in all cases where they shall be so minded, from bringing in a special verdict,

C H A P. III.

An ACT to establish the Winchester Measure, and a Standard for other Weights and Measures throughout this Province.

**W**HEREAS an uniformity of weights and measures is much desired in this province, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled, an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provisions for the government of the province of Quebec, in North-America, and to make further provision for the government of the said province," and by the authority of the same, That from and after the first day of May in the year of our Lord one thousand seven hundred and ninety-three, there shall be one just beam or balance, one certain weight and measure, and one yard, according to the standard of his majesty's exchequer in England, used throughout this province, and whoever shall keep any other weight, measure or yard whereby any corn, grain, or other thing is bought or sold, shall forfeit for every offence two pounds, Quebec currency, being thereof convicted before any two justices of the peace, to be levied by distress and sale of the offenders goods, one half of which penalty shall be paid to the informer or informers, and the other half to his majesty, his heirs and successors, for the public use of the said province and towards the support of the government thereof.

Preamble.

Standard for weights and measures.

Penalty for not complying.

How levied and applied.

II. And be it further enacted by the authority aforesaid, That from and after the day above mentioned, there shall be appointed certain judicious persons in every district throughout this province, by the magistrates in quarter sessions assembled, in and for such district, to ascertain the bushel, half bushel, or other measures by which grain or other dry articles shall be bought or sold, and who shall mark and seal such bushel, half bushel or other measure with the letters and figures G. III. R. and receive for the same the sum of four-pence Quebec currency, without which letters and figures, no measure for grain or other dry articles shall be used for the purposes aforesaid under the penalty above mentioned.

Persons appointed to mark measures.

How marked. Penalty.

III. Provided always, That this act, and the provisions and penalties therein contained, shall not extend or be construed to extend to the Western district in this province until the twenty-fifth day of October, which will be in the year of our Lord one thousand seven hundred and ninety-three.

When this act commences in the Western District.

C H A P. IV.

An ACT to abolish the Summary Proceedings of the Courts of Common Pleas in actions under Ten Pounds Sterling.

**W**HEREAS the introduction of the trial by jury hath materially altered the constitution of the courts of common pleas, held for the trial of causes under the value of ten pounds sterling, so that their times of sitting and forms of process must become manifestly inconvenient, Be it enacted by the kings most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled "An act for making more effectual provisions for the government of the province of Quebec in North America, and to make further provision for the government of the said province, and by the authority of the same, That from and after the passing of this act, all causes of

Preamble.

How to proceed in actions above 40s.

actions that exceed in value the sum of forty shillings, Quebec currency, shall be commenced and proceeded in at the same times and in the same manner as is directed for the trial of causes above ten pounds sterling.

C H A P. V.

*An ACT to guard against accidents by Fire in this Province.*

Preamble.

Magistrates in quarter sessions authorized to make regulations to prevent accidental fires, where 40 store and dwelling-houses are erected within half a mile square.

**W**HEREAS the inhabitants of the province of Upper-Canada, are liable to receive great injuries from accidental fires that may happen therein, Be it therefore enacted by the kings most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled "An act for making more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the said province," and by the authority of the same, that from and after the first day of November in the year of our Lord one thousand seven hundred and ninety-two, it shall and may be lawful for the magistrates of each and every district in this province, in quarter sessions assembled, to make such orders and regulations for the prevention of accidental fires within the same as to them shall seem meet and necessary, and to appoint fire-men or other officers for the prevention of accidental fires, or for the purpose of extinguishing the same when such may happen, and to make such orders and regulations, as to them may seem fit or necessary, in any town or towns or other place or places in each district within this province, where there may be forty store-houses and dwelling houses within the space of half a mile square.

C H A P. VI.

*An ACT for the more easy and speedy Recovery of small Debts.*

Preamble.

Two or more justices may hold a court of requests on the 1st & 3d Saturday of every month, within their respective divisions to be ascertained in qr. sessions.

And give judgment, & award execution thereupon as shall seem just.

**W**HEREAS it will contribute to the conveniency of the inhabitants of this province to have an easy and speedy method of recovering small debts, Be it therefore enacted by the kings most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the said province;" and by the authority of the same, that from and after the passing of this act, it shall and may be lawful, for any two or more justices of the peace, acting under and by virtue of his majesty's commission within the respective limits of their said commissions, to assemble, sit and hold a court of justice, to be called a court of requests, on the first Saturday and third Saturday in every month, at some fixed place within their respective divisions, which division shall be ascertained and limited by the justices assembled in their general quarter sessions or the greater part of them, and the place for holding the said court, shall be fixed by the justices acting in and for the said division or the greater part of them; and the said justices are hereby declared, constituted and appointed to be commissioners to hear and determine all such matters of debt as are herein after mentioned, and shall have power and authority by virtue of this act to give judgment and decree, and award execution thereupon, with such costs as shall be herein after specifi-

ed, against the goods and chattels, of all and every the person and persons against whom they shall give any judgment or decree, as to them shall seem just in law and equity.

II. *And be it further enacted by the authority aforesaid,* That from and after the first day of February next, it shall and may be lawful to and for every inhabitant within the limits of this province, who then or thereafter shall have any debt or debts owing to him, her or them, not exceeding the sum of forty shillings Quebec currency, by any person or persons whatsoever inhabiting the said province, to cause such debtor or debtors to be warned or summoned by a writing under the hand of a justice of the peace, acting under and by virtue of his majesty's commission, to be left with some grown person at the dwelling house or place of abode of such debtor or debtors, or by service of the same on the person of such debtor, to appear before the said justices of the said court; and that the said justices shall after such summons as aforesaid, have full power and authority by virtue of this act to make or cause to be made such acts, orders, decrees, judgments and proceedings between such plaintiff, and his, her or their debtors defendants, touching such debts not exceeding the sum of forty shillings, Quebec currency, in question before them, as they shall find consistent with equity and good conscience, and all such acts, orders, decrees, judgments and proceedings shall be entered in a book to be kept for that purpose.

III. *And for the more due and regular proceeding in the said court,* it is hereby further enacted, that it shall and may be lawful, for the said justices to administer an oath to the plaintiff or defendant, as well as to such witnesses as shall be produced by each party, and to all the officers of the said court, when the said justices shall think it meet.

IV. *And be it further enacted by the authority aforesaid,* That in case any person or persons shall make oath or give evidence, in any cause depending before the said justices in the said court, whereby he or they, shall commit wilful or corrupt perjury, and thereof be duly convicted according to law, that such person or persons shall suffer the pains and penalties inflicted on wilful or corrupt perjury, by the statute passed in the fifth year of the reign of queen Elizabeth.

V. *And be it further enacted by the authority aforesaid,* That no person or persons, shall be capable of acting as a commissioner or commissioners in the execution of the power given by this act, until such time as he or they, shall respectively have taken an oath, to the following effect:

“ I A. B. do swear, that I will faithfully, impartially and honestly, according to the best of my judgement, hear and determine, such matters and things as shall be brought before me, by virtue of an act of the legislature of this province, entitled an act for the more easy and speedy recovery of small debts, without favor or affection to either party.”

“ SO HELP ME GOD.”

VI. *And be it further enacted by the authority aforesaid,* That the several fees and sums of money herein after limited and expressed, and no more, shall and may be taken; for every summons, six pence; for every judgment, two shillings and six pence; for every execution, two shillings; for every subpoena, six pence; for every copy of judgment, if demanded, one shilling;—the allowance to all and every of the witnesses to be left to the discretion of the justices, but not to exceed two shillings and six pence per day to each witness;—and for serving every summons or subpoena, within one mile of the justices house, one shilling; and for every mile in traveling to execute the same, when the distance exceeds one mile, four pence; for serving writ of execution, serving and selling effects, and making return, two shillings.

In matters not exceeding 40s. Summons.

Service.

Judgment.

Record.

May administer an oath to either party & to their witnesses.

Perjury punished as by 5 Eliz.

Commissioners shall be sworn.

Oath.

Fees.

## C H A P. VII.

*An ACT to Regulate the Toll to be taken in Mills.*

Preamble.

**W**HEREAS it is expedient to ascertain and determine the quantity of grain to be taken by way of toll, for grinding the said grain into flour and bolting the same, and whereas different customs have obtained within the several districts of this province; Be it enacted by the kings most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of and under the authority of an act, passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provisions for the government of the province of Quebec, in North America, and to make further provision for the government of the said province;" and by the authority of the same, That from and after the first day of January in the year of our Lord one thousand seven hundred and ninety-three, no owner or occupier, or owners or occupiers of any mill or mills within this province, or any person employed by him or them, shall demand take or receive any quantity or proportion of grain, brought to him or them to be ground and bolted greater than one twelfth share or part for grinding and bolting such grain.

No greater proportion to be taken for grinding and bolting grain than one 12th.

Penalty,

II. *And be it further enacted by the authority aforesaid,* That any owner or occupier or owners or occupiers of a mill or mills within the said province, or any person employed by him or them, who shall demand and take after the day and year above mentioned, any quantity or proportion of grain greater than the twelfth share or part of such grain as aforesaid, shall for every such offence forfeit and pay the sum of ten pounds Quebec currency, one moiety thereof to his majesty his heirs and successors for the public uses of the said province and the support of the government thereof, and the other moiety of the said sum, to any person who shall sue for the same in any of his majesty's courts of record within this province.

how applied & levied.

Bags must be marked.

III. *And whereas much inconvenience and confusion has arisen from the custom of bringing bags of grain without any distinguishing mark to whom the said bags of grain belong,* Be it enacted by the authority aforesaid, that no owner or occupier of any mill, shall be bound to receive, or be chargeable with the loss of any bag or bags of grain or flour, unless the same be marked with the initial letters of the christian and surname of the owner of the said grain, or with some mark distinguishing the said bag or bags, which mark of distinction, shall be previously communicated and made known to the said owner or occupier, or his servant usually attending the said mill.

## C H A P. VIII.

*An ACT for building a Gaol and Court House in every district throughout this Province, and for altering the names of the said Districts.*

Preamble.

**W**HEREAS great inconveniences have been suffered by the inhabitants of this province, from the want of prisons and court houses in the several districts thereof, and whereas such buildings are manifestly necessary for the regular administration of justice and the due execution of the laws, Be it enacted by the kings most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision



for the government of the province of Quebec in North-America, and to make further provision for the government of the said province ;" and by the authority of the same, That a gaol and court-house, shall be erected in manner herein after to be mentioned in each and every district throughout the said province.

I. *And be it further enacted by the authority aforesaid,* That from and after the passing of this act the name of the district at present known by the name of the district of Lunenburgh, and bounded as in a certain proclamation issued by his excellency GUY LORD DORCHESTER, in the twenty-eighth year of his majesty's reign, is described, shall cease, and that the said district shall hereafter in all public proceedings be called and known by the name of the EASTERN District.

II. *And be it further enacted by the authority aforesaid,* That from and after the passing of this act, the name of the district at present known by the name of the district of Mecklenburgh, and bounded as in a certain proclamation issued by his excellency Guy lord Dorchester, in the twenty-eighth year of his majesty's reign, is described, shall cease, and that the said district shall hereafter in all public proceedings be called and known by the name of the MIDLAND District.

III. *And be it further enacted by the authority aforesaid,* That from and after the passing of this act, the name of the district at present known by the name of the district of Nassau, and bounded as in a certain proclamation issued by his excellency Guy lord Dorchester, in the twenty-eighth year of his majesty's reign, is described, shall cease, and that the said district shall hereafter in all public proceedings be called and known by the name of the HOME District.

IV. *And be it further enacted by the authority aforesaid,* That from and after the passing of this act, the name of the district at present known by the name of the district of Hesse, and bounded as in a certain proclamation issued by his excellency Guy lord Dorchester in the twenty-eighth year of his majesty's reign, is described, shall cease, and that the said district shall hereafter in all public proceedings be called and known by the name of the WESTERN District.

V. *Provided always, and it is hereby enacted,* That such alteration of the names of the several districts, shall not impeach or be construed to impeach, the legality of any existing commission granted for the exercise of any authority or jurisdiction, within the limits of the said districts, or any of them, by the names herein before mentioned, or to make void any legal or other proceeding, had under and by virtue of the said commissions, or otherwise to affect the said commissions in any respect whatever.

VI. And for the better effectuating the building the said gaol and court-house in each of the said districts, *Be it further enacted by the authority aforesaid, and it is hereby enacted,* That the justices of the peace within the respective limits of their commissions at the general quarter sessions assembled, shall be authorized, and they are hereby authorized, by such means as shall to them seem most fitting and convenient, to procure different plans and elevations of a gaol and court-house, to be laid before them, for the purpose of selecting and determining upon one of the said plans and elevations, which shall be approved of by the greater part of the said justices then and there assembled as aforesaid.

VII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for any two or more of the said justices, assembled in manner aforesaid, in the name and on the behalf of the inhabitants of the several districts, to contract with, and they are hereby enabled and authorized to contract with any person or persons who shall be willing to build the said gaol and court-house, according to the plan so approved of as aforesaid, upon a site or situation to be determined upon by the said justices, or the greater part of them so assembled as aforesaid, and for that purpose the said plan and elevation shall remain and continue in the office of the clerk of the peace of the several districts for general inspection, and public notice shall be given to all persons willing to contract for the building of the said gaol and court-house, to deliver in

A gaol & court house to be built in each district.

The district of Lunenburgh to be henceforth called the Eastern district.

The district of Mecklenburgh to be henceforth called the midland district.

The district of Nassau to be henceforth called the Home district.

The district of Hesse to be henceforth called the Western district.

Such alteration of names not to avoid commissions or legal proceedings.

Magistrates in quarter sessions to procure different plans & elevations of a gaol and court house, & to approve of one,

and to contract for building the same agreeably thereto.

Public notice being given for receiving proposals, & the same examined the lowest shall be accepted provided the security be sufficient.

When to be completed.

Where to be built in the Eastern district.

in the Midland district.

in the Home district.

in the Western district.

Sheriff to appoint the gaoler.

No license to be granted for retailing spirituous liquors within such gaols.

Penalty on gaolers transgressing in this respect.

Penalty for a second transgression.

Rules made in quarter sessions when approved by a judge shall be binding on the gaoler & prisoners.

within a certain limited time, written proposals or offers under seal, of the sum of money for which he or they will engage to build such gaol and court-house, conformably to certain articles and conditions, to be agreed upon by the justices then present, or the greater part of them as aforesaid, and that the said justices shall on a day for that purpose previously to be fixed, openly examine the said proposals so delivered in as aforesaid, and shall be empowered and are hereby required to contract with such person or persons as shall offer to undertake and perform the said buildings for the lowest price, provided the person or persons making such proposals, shall give and enter into good and sufficient security, to be approved of by the said justices or the greater part of them in manner aforesaid, for the due performance of their contract.

VIII. *Provided always,* That it be an article within the said contract, and the person or persons so contracting shall engage that the said gaol and court-house shall be completed within eighteen calendar months, after the execution of the said contract.

IX. *And be it further enacted by the authority aforesaid,* That a gaol and court-house for the Eastern District, shall be built in manner aforesaid, in the town of New-Johnston, in the township of Edwardsburgh.

X. *And be it further enacted by the authority aforesaid,* That a gaol and court-house for the Midland District, shall be built in manner aforesaid, in the town of Kingston.

XI. *And be it further enacted by the authority aforesaid,* That a gaol and court-house for the Home District, shall be built in manner aforesaid in the town of Newark.

XII. *And be it further enacted by the authority aforesaid,* That a gaol and court-house for the Western District, shall be built in manner aforesaid, as near to the present court-house as conveniently may be.

XIII. *And be it further enacted by the authority aforesaid,* That in each and every district, the sheriff thereof shall have power and authority to nominate and appoint such person as he shall judge most proper to the office of gaoler and keeper of the gaol and court-house, and also to remove and discharge such gaoler and keeper.

XIV. *Provided always,* That no licence shall be granted for retailing any spirituous liquors, within any of the said gaols or prisons, and if any gaoler, keeper or officer of any gaol or prison, shall sell, use, lend, or give away or knowingly permit, or suffer any spirituous liquors or strong water, to be sold, used, lent, or given away in such gaol or prison, or brought into the same, other than except such spirituous liquors or strong waters as shall be prescribed or given by the prescription and direction of a regular physician, surgeon or apothecary; every such gaoler, keeper or other officer, shall for every such offence forfeit and lose the sum of twenty pounds, current money of this province, one moiety thereof to his majesty, his heirs and successors, for the public uses of the said province, and the support of the government thereof, and the other moiety of the said sum with full costs of suit, to the person or persons who will sue for the same in any of his majesty's courts of record in this province, by action of debt, bill, plaint or information, and in case any such gaoler or other officer being convicted thereof as aforesaid, shall again offend in like manner, and be thereof a second time lawfully convicted, such second offence shall be deemed a forfeiture of his office.

XV. *Provided also,* That it shall and may be lawful for the said justices at their quarter sessions assembled, as aforesaid, or the greater part of them, to frame and draw up such rules and regulations to be observed and obeyed within the said gaol, respectively, as to them shall seem most proper and convenient, which having received the approbation and signature of one of the judges of the supreme court, shall be binding on the gaoler and prisoners.

XVI. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said justices within the respective limits of their commissions, assembled as aforesaid, or the

greater part of them, and they are hereby authorized and empowered, to ascertain and appoint a reasonable yearly salary according to their discretion to be paid to the gaoler, and that the said salary shall be in place of all fees, perquisites or impositions of any sort or kind whatever, and that it shall not be lawful for the said gaoler or officer belonging to the said gaol, to demand or receive any fee, perquisite or other payment from any prisoner who may be confined within any of the said gaols or prisons.

A yearly salary shall be appointed to such gaoler in place of all fees, perquisites or impositions whatever.

# L A W S

## OF HIS MAJESTY'S PROVINCE OF

### U P P E R - C A N A D A .

PASSED IN THE SECOND SESSION OF THE PROVINCIAL PARLIAMENT OF UPPER-CANADA, MET AT NEWARK, ON THE THIRTY-FIRST DAY OF MAY, IN THE THIRTY-THIRD YEAR OF THE REIGN OF OUR SOVEREIGN LORD GEORGE THE THIRD, AND PROROGUED ON THE NINTH DAY OF JULY FOLLOWING.

#### C H A P. I.

*An ACT for the better Regulation of the Militia, in this Province.*

**W**HEREAS the establishment of a respectable militia, under proper officers is essential for the protection and defence of the province; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great Britain, entitled, an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled "An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," and by the authority of the same, That from and after the passing of this act, an ordinance of the province of Quebec, passed in the seventeenth year of his majesty's reign, entitled, "An Ordinance for regulating the militia of the province of Quebec, and rendering it of more general utility towards the preservation and security thereof," shall be repealed, and the same is hereby repealed accordingly. And be it enacted by the authority aforesaid, That the governor, lieutenant governor or person administering the government of this province, shall and may from time to time, constitute and appoint a lieutenant in each and every county and riding thereof, who shall have full power and authority, and is hereby required to call together, arm and array, and cause to be trained and exercised, such persons, in such manner as herein after directed, once in every year, and the said lieutenants severally shall from time to time, constitute and appoint one such person as they shall think fit, qualified as herein after directed, and living

Preamble.

Ordinance for regulating the militia repealed.

Lieutenant of counties to be appointed,

with power to constitute their deputies, train the militia and appoint the officers thereof.

The names of such officers, & their ranks, being certified to the governor &c. those not disapproved shall receive commissions

Their rank in the army.

Powers vested in the deputy lieutenants of counties.

The lieutenant to command the militia, & have a deputy. Proportion of land to be possessed by the deputy lieutenant and officers of the militia respectively.

When and in what manner they shall take the oath of allegiance.

General meetings of the lieutenancy to be holden.

within their respective counties and ridings, to be their deputy lieutenant, (the names of such persons having been first presented to and approved of by the governor, lieutenant governor or person administering the government of the province for the time being) and shall appoint a sufficient number of colonels, lieutenant colonels, majors, and other officers qualified as herein after directed, to train, discipline, and command the persons so to be armed and arrayed according to the rules, orders and directions herein after mentioned, and shall certify to the governor lieutenant governor or person administering the government of the said province, the names and ranks of all such officers so appointed; and in case the governor, lieutenant governor or person administering the government of the province, shall within two months after such certificate shall have been laid before him, signify his disapprobation of any of the persons so appointed, it shall not be lawful for the said lieutenants to grant a commission to the person so disapproved, but commissions shall be granted to all such persons so appointed who shall not be so disapproved of, as aforesaid, and the officers so appointed for the militia, to be armed and arrayed as herein after directed, shall rank with the officers of such of his majesty's forces, as may for the time being serve within this province, as youngest of their respective rank.

II. *And be it further enacted*, That when the lieutenant of any county or riding shall be out of the province, or when there shall be no lieutenant, it shall be lawful for the governor, lieutenant governor or person administering the government of the province, to authorize the deputy lieutenant of such county or riding, to grant commissions and do all such acts, matters and things as might lawfully have been done by the said lieutenant, and the same shall be good and valid in law as if done by the said lieutenant, and such commissions so granted by such lieutenant or deputy lieutenant, to the officers aforesaid, shall not be revoked or made void by the death of the party granting the same.

III. *And be it further enacted*, That the lieutenant of every county or riding, shall have the chief command of the militia within such county or riding, and that one deputy lieutenant shall be appointed within each county and riding for the purposes of this act.

IV. *And be it further enacted by the authority aforesaid*, That every person so to be appointed a deputy lieutenant, shall be possessed of five hundred acres of land, within the district in which the county or riding to which he is appointed a deputy lieutenant is situated, to and for his own use and benefit, free and clear of and from all mortgages or other incumbrances whatsoever, and every person so to be appointed a colonel, shall in like manner be possessed of four hundred acres of land within the district in which the county or riding where he is so appointed colonel is situated, to and for his own use and benefit, free and clear of and from all mortgages or other incumbrances whatsoever, and every lieutenant colonel so to be appointed in such county or riding as aforesaid, shall be possessed of four hundred acres of land in like manner and form and under the conditions aforesaid. And every major and captain, so to be appointed in such county or riding as aforesaid, shall be possessed of three hundred acres of land in like manner and form and under the conditions aforesaid, and every lieutenant and ensign so to be appointed in such county or riding as aforesaid, shall be possessed of two hundred acres of land, in like manner and form and under the conditions aforesaid, which said deputy lieutenants, colonels, lieutenant colonels, majors, captains and other officers respectively, shall within six months next after their several appointments take the oath of allegiance to his present majesty, his heirs and successors, before the magistrates assembled in quarter sessions, within the limits aforesaid.

V. *And be it further enacted by the authority aforesaid*, That general meetings of the lieutenancy of each county and riding, shall be holden at the most convenient place within such county or riding, and such general meetings shall consist of the lieutenant together with the deputy lieutenant or one justice of the peace for the said district, or on the death or removal, or in the ab-

sence of the lieutenant thereof, the deputy lieutenant aforesaid and justice of the peace of each county and riding respectively. And one such general meeting shall be holden within every county and riding annually on the fourth day of June, or in case that day should happen to be Sunday, on the Monday following, in every year; and the lieutenant together with the deputy lieutenant, or one justice of the peace or (on the death or removal or in the absence of the lieutenant) any deputy lieutenant of any county or riding together with a justice of the peace as aforesaid, when and so often as they shall find it necessary for carrying the purposes of this act into execution, may summons or cause to be summoned other general meetings of the lieutenancy on any days to be fixed by such summons giving at least one month's notice of such intended meeting in the most public manner that the same can be made and circulated throughout the county or riding, and in case any annual or other general meeting shall not be attended by the lieutenant or deputy lieutenant or justice of the peace, or by the deputy lieutenant and one justice of the peace as herein before required, the said meeting shall and may be adjourned by the lieutenant or deputy lieutenant then present, to some other time and to any other place within such county or riding as shall and may to them seem meet and convenient.

VI. *And be it further enacted*, That where the extent of the county or riding may be such as to require sub-division meetings, that the meetings of the deputy lieutenant within the respective counties or ridings shall be holden as herein after directed, which sub-division meeting shall consist of the deputy lieutenant of such county or riding respectively, and one justice of the peace, to do all acts, matters and things, which are by this act directed to be done by the deputy lieutenants at the respective sub-division meetings, and if it shall happen that there shall not appear at such sub-division meeting one deputy lieutenant and one justice of the peace, the clerk at such meeting shall by notice given in writing to the deputy lieutenant of such sub-division, to be left at their respective places of abode, appoint another meeting to be holden within fourteen days at the same place where such meeting was to have been holden, such notice being given five days at least previous to such meeting.

VII. *And be it further enacted*, That in those counties or ridings where it may be necessary to hold sub-division meetings, the lieutenant and deputy lieutenant at their general meeting, shall and may apportion the same into divisions as may best suit the general convenience of the county or riding, and shall and may by public notice, declare the limits of each division respectively, and the parishes, townships or places contained therein, and shall and may at such general meeting where it shall be deemed necessary, appoint two or more meetings in every year, in different parts of the said county or riding, giving three weeks previous notice at least to the inhabitants of the respective parishes, townships or places within the division, of the time and place where such meeting is to be holden, and shall and may appoint a clerk to attend the same.

VIII. *And be it further enacted*, That every male inhabitant from sixteen years of age to fifty, shall be deemed capable of bearing arms, and shall enrol or cause to be enrolled his name as a militia man at the first meeting for that purpose to be holden for the division in which his place of abode may be, and shall at such meeting give in his name, his age and place of residence, and if he has thereto but lately removed, he shall make known the same together with the place whence he removed. And each and every such inhabitant as aforesaid who shall not at the first meeting for that purpose to be holden for the division in which his place of abode may be, either attend in person and give in his name in writing, or cause himself to be made known in some certain way to the lieutenant, deputy lieutenant or person presiding at such meeting, so that his name may be enrolled as a militia man, shall for such neglect, upon conviction thereof before any one justice of the peace, forfeit and pay the sum of twenty shillings, to be raised and applied in manner herein after mentioned.

Where and when, annually

and oftener, if necessary, due notice being given.

Annual or general meetings may be adjourned.

Sub-division meetings.

Of what persons to consist, and powers thereof.

On notice, another such meeting may be appointed.

Sub-division of counties.

Annual meetings in consequence thereof

Clerk to attend the same.

Persons to enrol in the militia.

In what manner to enrol.

Penalty for neglect.

Persons enrol-  
ed exempted  
from attending  
other enrol-  
ment meetings

Copies of en-  
rolments in the  
sub-division  
meetings to be  
transmitted to  
the clerk of the  
general meet-  
ing,

and by him to  
the constables  
of every pa-  
rish, &c.

Annual review

Penalty for not  
attending

may be appoin-  
ted at several  
times & places

Captains to  
discipline  
their compa-  
nies.

Penalty for dis-  
obeying their  
notice.

In cases of e-  
mergency, the  
militia to be  
called forth for  
service, to any  
place within  
the province.

Penalty for dis-  
obedience on  
such occasions.

IX. *Provided always*, That when such inhabitant shall have once enrolled or cause to be enrolled his name in manner aforesaid, he need not attend any other meeting for the said division, to be holden for the purpose of enrolment unless thereunto summoned in writing.

X. *And be it further enacted*, That after every sub-division meeting, the clerk of the said meeting, shall within fourteen days transmit to the clerk of the general meeting, a fair and true copy of the rolls, signed at the said meeting, and to the end that it may be better known whether any inhabitant liable to be enrolled and serve as aforesaid, shall have omitted to cause his name to be enrolled, the clerk of the said meeting, shall and is hereby required to transmit to the constable of every parish, township or place within the said division, a list of the persons living within such parish, township, or place, respectively, who shall have delivered in their names as aforesaid, which list or a copy thereof, the said constable shall fix in some public place within such parish, township or place for public inspection.

XI. *And be it further enacted*, That the lieutenant of each county or riding shall once in every year, call out the militia of such county or riding, to be reviewed and exercised, and in his absence from the county, or in case of his removal, or death, the said militia shall be called out by the deputy lieutenant of such county or riding, and every person liable to serve in such militia whether officer or private neglecting or refusing to attend (except in case of sickness or having obtained leave of absence) shall forfeit and pay if an officer, forty shillings, and if a non-commis- sioned officer or private, ten shillings. But if it shall appear to the lieutenant of any county or riding to be more conducive to the interest and convenience of such county or riding, that the militia of the same be reviewed at different times and in separate bodies, it shall and may be lawful for the lieutenant to call out a part of the militia of his county or riding, at some convenient time and place, and the remaining part at some other convenient time and place, as shall to him seem meet.

XII. *And be it further enacted*, That the captains of the militia shall draw out their respective companies not less than twice, nor more than four times in every year, giving ten days notice thereof, at the most convenient time and place in the county or riding, and shall inspect their arms and instruct them in their duties, and every person after such notice as aforesaid, who shall neglect to attend or shall disobey whether subaltern officer or private, (except in case of sickness or on leave of absence) shall forfeit and pay, every officer the sum of forty shillings, and every non-commissioned officer or private the sum of ten shillings for every such disobedience.

XIII. *And be it further enacted*, That in time of war, rebellion or any other pressing exigency of the state, it shall and may be lawful for the governor, lieutenant governor or person administering the government, to call forth the different companies of the militia, and to march them from their respective counties or ridings, towns, townships, or parishes and there to serve in conjunction with the other militia, or with his majesty's forces under the guidance and superintendance of the officers whom the governor, lieutenant governor or person administering the government shall appoint, so as the said militia be not marched out of the province, and the said officers and privates upon being regularly dismissed may return to their own homes, and any person refusing to obey such order or command, or absconding from or neglecting to repair to the place he is ordered to, being a commissioned officer shall forfeit and pay the sum of fifty pounds and be held to be unfit to serve his majesty in any military capacity, and being a non-commissioned officer or private shall forfeit and pay the sum of twenty pounds, and in default of payment for such refusal or neglect, such officer, non-commissioned officer, or private, shall be committed to the common gaol of the district, for any time not less than six, or more than twelve calendar months, except such person shall satisfy the lieutenant of such county or riding of which he is a militia man, that such neglect or refusal arose from sickness or that he was absent upon leave.

XIV. And whereas it may be expedient on certain occasions to call out detachments of the militia, Be it enacted by the authority aforesaid, that it shall and may be lawful for the governor, lieutenant governor or person administering the government so to do, and to limit and fix the number of men to be called out on such detachment. And in cases of emergency by actual invasion or otherwise, when it may not be practicable to consult the governor, lieutenant governor or person administering the government of the province, it shall and may be lawful for the lieutenant or deputy lieutenant of the several counties and ridings, to limit and appoint the number of men that he shall judge necessary to be called out, and for that purpose to issue his orders to the several commanding officers and also to direct and authorize any officer, having first obtained a warrant for such purpose from one of his majesty's justices of the peace, to impress such carriages and horses as the service may require, for the use of which the owner or owners thereof, shall be entitled to receive the sum of seven shillings and six pence per day, for every cart or carriage with two horses or oxen, during such time as the same shall be employed or detained on public service. Provided always, that whenever it shall happen that only part of the body of the militia of this province, shall be called out for actual service, it shall and may be lawful for any person being of the militia of the county or riding that may be so called out, to provide and send an able bodied man to serve in the said militia in his stead, and such able bodied man, shall be taken and received as a proper substitute for such person, living in the county or riding that would otherwise be obliged to serve in the said part of the militia called out as aforesaid.

XV. *And be it further enacted,* That every person who shall sell or barter any part of the arms, ammunition or equipments, which may be delivered out of his majesty's stores to the militia, or any ammunition which may be furnished by his majesty for training and exercising the said militia, and every person who shall buy, or by barter obtain the same, shall severally and respectively forfeit and pay the sum of five pounds for every offence on conviction thereof, by the oath of any one credible witness before any justice of the peace residing within the county where the same has been committed, and in case the person or persons so selling any part of his or their arms, ammunition or equipments as aforesaid, or the person or persons obtaining the same in manner aforesaid, being thereof convicted as aforesaid, shall neglect or refuse to pay the said sum of five pounds, it shall and may be lawful for the justice by a warrant under his hand, to commit such person or persons to the gaol of the county or district where the offence shall be committed, for any space of time not exceeding two months. Provided always, That it shall and may be lawful for the said justice to discharge the person or persons so offending, any time before the expiration of the said two months. when the person or persons so convicted as aforesaid shall tender to the said justice the penalty inflicted by this act.

XVI. *And be it further enacted,* That in the several counties and ridings where the number of men is sufficient, the militia shall be formed into regiments, consisting of not more than ten, nor less than five companies, which companies shall consist of not more than fifty, nor less than twenty private men, and the field officers of such regiments shall be as follows, that is to say, one colonel, one lieutenant colonel and one major, and where the number of militia shall amount to a number under eight, and not less than five companies, such militia shall be formed into a battalion, and the field officers of such battalion, shall be one lieutenant colonel, and one major only, and in each regiment or battalion of militia, there shall be one captain, one lieutenant, and one ensign to each company. Provided always, That it shall and may be lawful for every battalion consisting of five companies or upwards, to have one company of grenadiers or light infantry, to which two lieutenants shall be appointed instead of one lieutenant and one ensign. And it shall be lawful for every regiment consisting of eight companies or upwards to

Or in detachments, of a limited number when expedient.

Provisional powers vested in the lieutenants of counties, and their deputies to call forth the same.

and impress carriages for the service.

Serving by substitute admissible.

Penalty for the sale or purchasing of arms, ammunition, &c. issued to the militia.

Persons convicted shall be imprisoned for non-payment.

Disposition of the militia into regiments.

Officers thereof.

Into battalions Officers thereof.

Regulation for companies of grenadiers & light infantry

have one company of grenadiers and one of light infantry, to each of which companies two lieutenants shall be appointed instead of one lieutenant and one ensign.

Appointment of adjutants & qr. masters.

XVII. *And be it further enacted*, That to every regiment or battalion of militia which shall consist of five or more companies, there shall be in addition to the officers already mentioned, one adjutant and one quarter master.

Formation of independent companies.

XVIII. *And be it further enacted*, That in the several counties and ridings where the militia men are not in number sufficient to form a regiment or battalion according to the intent and meaning of this act, the militia of such counties or ridings shall be formed into independant companies, each company to consist of not more than fifty, nor less than twenty private men, with one captain, one lieutenant, and one ensign to each company, and that the governor, lieutenant governor or person administering the government, may when he shall think proper join together any number of such independant companies, and form a battalion or battalions, or may incorporate them with any other regiment or battalion of militia. Provided the number of companies in any such regiment or battalion be not thereby made to exceed the number of companies of which a regiment or battalion of militia is herein before directed to consist.

Junction of several thereof into a battalion

or incorporation into other regiments, &c.

Lieutenants of counties to act as colonels, while that appointment is vacant.

XIX. *And be it further enacted*, That it shall and may be lawful for the lieutenant of any county or riding to act as colonel or commanding officer of any regiment, battalion or independant company of militia for such county or riding for and during such time as there shall not be any colonel or commanding officer appointed to such regiment, battalion or independant company, but no such lieutenant of any county or riding, shall at any one time act as colonel or commanding officer, to more than one body of militia, whether regiment, battalion or independant company, and when the lieutenant of any county or riding shall take the command of any body of militia not being by this act deemed a regiment, he shall be entitled to the rank of colonel, except when the said company shall be formed into battalion as aforesaid.

To one body of militia only, and rank as such.

Exception.

The militia when embodied for actual service shall be under the command of the governor,

XX. *And be it further enacted*, That at all times when the militia may be called out and embodied for actual service, the officers, non-commissioned officers and private men of the several regiments, battalions and independant companies of militia, shall from the time of their being drawn out and embodied as aforesaid, and until they shall be returned again to their respective towns, townships, parishes or places of abode remain under the command of his excellency the governor, lieutenant governor or other general officer having the command of them, and shall be liable to the provisions of such act or acts of this province as may be in force for the punishment of mutiny, desertion, and other crimes, or may hereafter be made, and be in force for the explanation, amendment or enforcement of this act, and for want of any act or acts of this province, or where the same shall not extend to punish desertion to the enemies of this province, or any treasonable correspondence that may be held with them by any person or persons acting in the said militia, during the time they shall be called out, that then and in such case, the said militia and every part thereof, shall be and considered to be under the rules and regulations, pains and penalties of any act or acts of the British parliament that may be in force for the punishment of mutiny and desertion. Provided always, that no officer serving in any of his majesty's other forces, shall sit in any court martial upon the trial of any officer or private man serving in the militia.

and subject to the provisions of acts of this province made or to be made in this respect,

and in certain cases to those of the british parliament.

No officer of other forces to sit on court martials.

Persons exempted from serving in the militia except in time of actual service.

XXI. *And be it further enacted*, That except in time of actual service, the judges of the supreme court and clergy, the members of the legislative and executive councils and their respective officers, the members of the house of assembly for the time being and the officers thereto belonging, his majesty's attorney-general, the secretary of the province, and all other civil officers who shall have been, or hereafter may be appointed to any civil office in this province, under the great seal of the same, as well as all magistrates, sheriffs, coroners, half-pay officers, militia offi-



cers having served under and by virtue of a commission from any of his majesty's governors in the different provinces, now states of America, the surveyor general and his deputies duly appointed, sea-fairing men actually employed in the line of their calling, physicians, surgeons, the masters of public schools, ferry-men, and one miller to every grist mill, shall be and they are hereby excused from serving in the said militia. Provided always, that this act and the exceptions herein contained shall not prevent, and it is hereby declared, that the same shall not be construed to prevent any, or every above mentioned person or persons from holding commissions as officers in the militia of this province. Provided always, that it shall and may be lawful for the governor, lieutenant governor or person administering the government of this province, by warrant under his hand and seal, to exempt any of the persons herein before enumerated, to whom such warrant shall be granted from being called out for the service aforesaid.

XXII. *And be it further enacted,* That the persons called quakers, menonists and tunkers; who from certain scruples of conscience, decline bearing arms, shall not be compelled to serve in the said militia, but every person professing that he is one of the people called quakers, menonists or tunkers, and producing a certificate of his being a quaker, menonist or tunker, signed by any three or more of the people (who are or shall be by them authorized to grant certificates for this or any other purpose of which a pastor, minister or preacher shall be one) shall be excused and exempted from serving in the said militia, and instead of such service, all and every such person or persons, that shall or may be of the people called quakers, menonists or tunkers, shall pay to the lieutenant of the county or riding, or in his absence to the deputy lieutenant, the sum of twenty shillings per annum in time of peace, and five pounds per annum in time of actual invasion or insurrection, upon producing such certificate, and being thereby exempted from such service as aforesaid, and if any such person or persons being of the people called quakers, menonists or tunkers, and producing a certificate as aforesaid, shall omit or refuse to pay the sum of twenty shillings per annum in time of peace, and five pounds per annum in time of actual invasion or insurrection, instead of such service, it shall and may be lawful upon the oath of any one credible witness of such omission or refusal before any justice of the peace, for such justice to issue his warrant to levy the same by distress and sale of the offender or offenders goods and chattels, returning so much of the said distress as shall exceed the sum of twenty shillings per annum in time of peace, and five pounds per annum in time of actual invasion or insurrection, after deducting the expences of levying the same, to the person or persons upon whom such distress shall be made. And if any measures shall be used in making such distresses which may by such person or persons be thought oppressive, he or they may complain to the lieutenant or deputy lieutenant at the next meeting; who shall hear and finally determine the same.

XXIII. *And be it further enacted,* That it shall and may be lawful for the governor, lieutenant governor or person administering the government, to appoint a proper person to be the adjutant general of the said militia, who shall do all matters and things appertaining to the said office of adjutant general, and be paid for and during the time of his serving in the said militia, as such adjutant general as aforesaid, the sum of one dollar per day, per annum, free and clear of and from all deduction whatsoever.

XXIV. *And be it further enacted by the authority aforesaid,* That the fines, penalties and forfeitures by this act imposed, shall be sued for and recovered by and upon the oath of any one credible witness before any one of his majesty's justices of the peace, and within two months after such conviction and recovery shall be transmitted by the justice before whom such information shall be laid to the lieutenant, in case there be no lieutenant or that he be absent, to the deputy lieutenant of the county where the offence has been committed. And the said lieutenants shall and are hereby required, yearly and every year, to transmit to his majesty's receiver general the

but may not  
withstanding  
hold commis-  
sions

governor &c.  
may grant ex-  
emptions from  
actual service

Exceptions in  
favor of qua-  
kers menonists  
and tunkers;

composition  
money to be  
paid by such  
for being ex-  
empted.

composition  
money to be  
levied by dis-  
tress on omi-  
sion or refusal  
to pay the same

persons dis-  
trained may  
appeal if op-  
pressed

Appointment  
of an adjutant  
general & his  
salary.

Fines &c. to  
be recovered  
before one ma-  
gistrate,

and transmit-  
ted to the lie-  
utenant or his  
deputy.

and by him annually, along with the composition monies to the receiver general, to satisfy the salary of the adjutant general, and other purposes of the militia.

the several sums of money by them received by way of composition from the persons permitted by virtue of this act to make such composition, and the said receiver general shall out of the monies aforesaid, pay to the said adjutant general upon his producing a warrant for such purpose, to be signed by the governor, lieutenant governor or person administering the government, the sum herein before directed to be paid. And in case any surplus of such monies shall remain in the hands of the said receiver general after making such payment as aforesaid, such surplus shall be disposed of as the governor, lieutenant governor, or person administering the government shall direct, to purposes only that shall respect the said militia, and the other fines, forfeitures and penalties, shall be appropriated to the purchase of such necessaries as may be requisite towards the establishing of and better providing for the militia aforesaid.

Limitation of actions, within 6 months, for things done by virtue of this act.

XXV. *And be it further enacted by the authority aforesaid,* That if any action shall be brought against any lieutenant or deputy lieutenant, or against any deputy lieutenant and justice of any county or riding, or against any justice or justices of the peace, for any thing done by virtue of this act, that such action or suit shall be commenced within six months next after the fact has been committed, and not afterwards, and shall be laid in the district, county or place where the cause of complaint did arise, and not elsewhere, and the defendant or defendants in such action or suit shall and may plead the general issue, and give the special matters and this act in evidence, and where the plaintiff or plaintiffs shall be non-suited or discontinue his or their action, after the defendant or defendants shall have appeared, and if upon any demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs, and have the like remedy for the same as the defendant hath in other cases to recover costs by law.

Plaintiffs if non-suited, to pay treble costs.

C H A P. II.

*An ACT to provide for the Nomination and Appointment of Parish and Town Officers within this Province.*

Preamble.

**W**HEREAS it is requisite for the maintenance of good order and the regular execution of the laws, that proper officers should be appointed to superintend the observance thereof; Be it enacted by the kings most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec in North America; and to make further provision for the government of the said province," and by the authority of the same, That it shall and may be lawful as soon as conveniently may be after the passing of this act, for any two of his majesty's justices of the peace, acting within the division in which any parish, township, reputed township or place may be, to issue their warrant giving eight days previous notice to the constable of such parish, township, reputed township, or place, authorizing him on a day to be fixed by the said justices in the present year, and on the first Monday in the month of March in every ensuing year, to assemble the inhabitant householders, paying or liable to pay, to any public assessment or rate of such parish, township, reputed township, or place, in the parish church or chapel, or in some convenient place within the said parish, township, reputed township, or place, for the purpose of choosing and nominating the parish or town officers herein after mentioned to serve in their respective offices for the year next ensuing, at which meeting the constable shall preside.

Annual town meetings to be holden, assembled by warrant of two magistrates.

When,

II. *And be it enacted by the authority aforesaid,* That it shall and may be lawful for the said inhabitant householders, or the greater part of them so assembled, to choose one fit and proper person from among the inhabitants to be clerk of the said parish, town or township, who shall

for the purpose of choosing parish or town officers.

Election of a parish or town clerk,

and is hereby required to make a true and complete list of every male and female inhabitant within the limits of his parish, town or township, and return the same to the justices acting as aforesaid, so as they may produce the said list at the general quarter sessions in the month of April to be holden, and the said clerk shall and is hereby required to enter and record all such matters, as shall relate to the said parish, town or township, and shall appertain to his office, which records shall be faithfully and carefully kept and preserved by such clerk, and by him delivered to his successor duly nominated and appointed.

duties of his office.

III. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said inhabitant householders, in manner aforesaid, to choose two fit and proper persons from among the said inhabitants to serve the office of assessors for the said parish, township, reputed township or place, who shall assess all such rates and taxes, as shall be imposed by any acts of the legislature of this province, and be payable by the inhabitants thereof.

Election and duties of assessors.

IV. And also to choose and nominate in manner aforesaid, one fit and proper person to serve the office of collector for such parish, township, reputed township, or place, who shall and may, and is hereby authorized, from time to time, to demand and receive from the inhabitant householders, under the said assessment, such monies as may be due and payable from the said inhabitants in respect of the matters aforesaid, which collector shall account for and pay over the monies so received by him, in such manner as shall be directed by any act or acts of the said legislature, that may authorize the imposing and levying such rates and taxes respectively.

Election and duties of collector.

V. And also to choose and nominate in manner aforesaid, not less than two or more than six persons, as shall be specified in the warrant to be issued by the said justices, to serve the office of overseers of highways and roads, to oversee and perform such things as shall be directed by any act to be passed touching or concerning the highways and roads in this province, which said overseers shall also serve the office of fence-viewers, and are hereby authorized and required upon receiving proper notice, to view and determine upon the height and sufficiency of any fence or fences within their respective parish, township, reputed township, or place, conformably to any resolutions that may be agreed upon by the said inhabitants at such meeting to be holden, under and by virtue of such warrant as aforesaid.

Election and duties of the overseers of the highways

the sufficiency of fences to be within their cognizance.

VI. And also to choose and nominate in manner aforesaid, a person or persons to serve the office of pound keeper, who is hereby authorized to impound all cattle, and each and every horse, sheep and hog that shall trespass on the lands of any person, having inclosed the same by such high and sufficient fence, as shall have been agreed on in manner aforesaid, and also to impound any stoned horse, more than one year old, that shall be running at large upon the highways or commons, and to detain such horse until the owner thereof shall have paid the sum of twenty shillings, one half to be paid to the person taking such horse, the other half thereof to the collector towards the public stock of the district.

Nomination of a pound keeper and duties incident to his office.

VII. And also to choose and nominate in manner aforesaid, two fit and discreet persons to serve the office of town wardens for such parish, township, reputed township, or place; but as soon as there shall be any church built for the performance of divine service, according to the use of the church of England, with a parson or minister duly appointed thereto, then the said inhabitant householders shall choose and nominate one person, and the said parson or minister shall nominate one other person, which persons shall jointly serve the office of church warden, and that such town wardens or church wardens and their successors duly appointed, shall be as a corporation to represent the whole inhabitants of the township or parish, and as such may have a property in goods or chattels of or belonging to the said parish, and shall and may sue, prosecute or defend in all presentments, indictments or actions, for, and on the behalf of the inhabitants of the said parish.

Nomination of town wardens.

Provision in behalf of parish churches when built.

Powers vested in town wardens.

A list of persons nominated at such meeting shall forth with be communicated to a magistrate of the division.

Whom may swear the same into office.

Oath.

Persons sworn shall be held lawfully appointed.

Penalty for neglecting or refusing to be sworn into office after nomination.

Application of such penalties.

Magistrates to name other persons into offices vacant by refusal.

penalty for refusing such office.

Nomination of a high constable annually, for each district,

and of constables for each township, &c.

Oath.

Period of exemption from an office after serving the same.

VIII. And be it further enacted, That the constable presiding at such meeting, shall and is hereby required to cause a list to be made out, containing the names of the persons chosen and nominated to serve and execute the several offices herein before mentioned in manner aforesaid, which list shall be signed by the said constable, who shall forthwith communicate the same to either of the justices, having signed the warrant by virtue of which such meeting was holden, and it shall and may be lawful for either of the said justices, or for any justice of the peace, acting within the division, and he is hereby authorized and empowered to administer an oath of office, to each and every person or persons so chosen and nominated as aforesaid, within seven days after such meeting as aforesaid, in the following form :

“ You A. B. do promise and swear, that you will faithfully, diligently and justly serve and perform the office and duties of for according to the best of your abilities, so help you God.”

And that every person having taken such oath, shall be held to be lawfully appointed to such office for which he shall have been chosen and nominated as aforesaid.

IX. Provided always, that any person so chosen and nominated to serve any of the offices herein before mentioned in manner aforesaid; who shall refuse or neglect to signify his consent to enter upon such service, and to take the oath herein before set forth by the space of seven days after such nomination as aforesaid, shall forfeit and pay the sum of forty shillings for every such neglect or refusal, to be recovered upon proof thereof on confession, or by the oath of one credible witness, before any one justice of the peace, acting within the said division, to be levied by warrant of distress, and sale of the goods and chattels of the party so neglecting or refusing ; and to be paid into the hands of the treasurer, towards the public stock of the district, except in the case of forfeiture of any person or persons nominated to be overseers of the high ways and roads, and refusing to act, whose penalties shall be paid into the hands of the commissioners of the high ways and roads, and that it shall and may be lawful, in case of refusal as aforesaid, for any two of his majesty's justices acting within the said division to hold a special session for the purpose of naming one or more person or persons to serve the office, that may have been refused by the party chosen to serve the same and fined in manner aforesaid, and if the person or persons so named by the said justices upon being served with due notice thereof, which notice the constable is hereby required to serve upon the person, or leave the same at his usual place of abode, shall neglect or refuse by the space of seven days after the service of such notice to accept the said office, and take the oath herein before prescribed, he shall for every such neglect or refusal forfeit the sum of forty shillings, to be levied by distress and sale and paid over in manner herein before mentioned.

X. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the justices of the peace, within the respective limits of their commissions at their general quarter sessions in the month of April assembled, or the greater part of them, to nominate and appoint yearly and every year, a sufficiently discreet and proper person to serve the office of high constable in each and every district, and also to nominate and appoint such a sufficient number of persons as in their discretion will be necessary to serve the office of constable in each and every parish, township, reputed township, or place, and the said constable and constables before they enter upon their office, shall severally take the following oath, which it shall and may be lawful for any justice of the peace to administer,

“ You shall well and truly serve our sovereign lord the king, in the office of for the of for the year ensuing according to the best of your skill and knowledge, so help you God.”

XI. Provided always and be it further enacted by the authority aforesaid, That no person having been appointed and served any of the offices mentioned in this act, shall be liable to be appointed

ted, or serve the same office, within three years from such appointment and service, unless he shall consent thereto.

XII. *Provided also*, That when any township, or reputed township, shall not contain thirty inhabitant householders, it shall not be lawful for the said justices to issue their warrant for calling a meeting therein, but the said inhabitant householders shall be joined to, and be reputed and taken as inhabitants of the township adjacent thereto, which shall contain the smallest number of inhabitants.

provision for townships, &c. thinly inhabited.

XIII. *And be it enacted*, That it shall and may be lawful for the justices of the peace within the respective limits of their commissions, at the general quarter sessions in the month of April to be holden, assembled, or the greater part of them, to limit and appoint such fees and perquisites as to them shall appear reasonable to be demanded and taken by every town clerk, and pound keeper of the several parishes or townships within their respective districts.

Fees and perquisites of the town clerks & pound keepers to be regulated in the April sessions.

SCHEDULE.

Justice's warrant to assemble the inhabitants.

To the Constable for the township of \_\_\_\_\_ in the said district.

HOME DISTRICT. } BY virtue of a power for such purpose granted by a certain act of the legislature of this province, made and passed in the thirty-third year of his present majesty's reign, to us A. B. esquire, and C. D. esquire, two of his majesty's justices of the peace in and for the said district, these are to authorize and require you, giving eight days previous notice, to assemble the inhabitant householders, paying or liable to pay to any public assessment or rate living within your parish or township, to meet at \_\_\_\_\_ on \_\_\_\_\_ for the purpose of choosing and nominating certain fit and proper persons to serve the offices herein specified for the ensuing year, that is to say, one town clerk, two assessors, one collector, two or more overseers of the high ways and roads, one or two pound keepers, two town wardens, according to the directions in the said act contained, and for so doing this shall be a sufficient warrant.

Form of a warrant for a town meeting.

Given under our hands and seals at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the reign of \_\_\_\_\_

Constable's notice to be given on a nomination to an office by the justices.

HOME DISTRICT } WHEREAS at a special session for that purpose holden on the \_\_\_\_\_ day of \_\_\_\_\_ Township of \_\_\_\_\_ by A. B. esquire, and C. D. esquire, two of his majesty's justices of the peace for the said district, you were by the said justices nominated and appointed to serve the office of \_\_\_\_\_ for the township of \_\_\_\_\_ for the year next ensuing, by virtue of a power to them for that purpose granted by a certain act of the legislature of this province. These are therefore to notify unto you, that unless you accept the said office and take the oath prescribed, within seven days from the receipt of this notice, you shall for such neglect or refusal, forfeit and pay the sum of forty shillings, as by the said act is directed.

Form of notice on a nomination by the justices.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ in the year,

To Mr. L. M.

G. H. constable.

## C H A P. III.

*An ACT to Authorize and Direct the Laying and Collecting of Assessments and Rates, in every District within this Province, and to Provide for the Payment of Wages to the Members of the House of Assembly.*

Preamble.

**W**HEREAS it is necessary to make provision for defraying the expences of building a court house and gaol, and keeping the same in repair, for the payment of gaolers salary, for the support and maintenance of prisoners, for building and repairing houses of correction, for the construction and the repair of bridges, for the fees of the coroner and other officers, for the destroying of bears and wolves, and other necessary charges within the several districts of this province; Be it enacted by the kings most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," and by the authority of the same, That the assessors of every parish, township, reputed township or place within this province, shall and they are hereby required as soon as conveniently may be after the passing of the present act, and hereafter yearly and every year, within thirty days next after they shall be appointed to their office, to make out a true and compleat return of every inhabitant householder living within the limits of the said parish, township, reputed township or place, and to divide each and every of them into eight different classes, in the following manner, that is to say:

The assessors to make out a list in 8 classes of the inhabitants within their respective townships.

1st class.

II. That the first class to contain the names of such householders as aforesaid, as the said assessors to the best of their knowledge and judgment believe are possessed of real or personal property, goods or effects to their own use, to the value of fifty pounds and not amounting to one hundred pounds.

2nd class.

III. And that the second class do contain the names of such householders as aforesaid, as the said assessors to the best of their knowledge and judgment believe to be possessed of real or personal property, goods or effects to their own use, to the value of one hundred pounds and not amounting to one hundred and fifty pounds.

3rd class.

IV. And that the third class do contain the names of such householders as aforesaid, as the said assessors to the best of their knowledge and judgment believe to be possessed of real or personal property, goods or effects to their own use, to the value of one hundred and fifty pounds, and not amounting to two hundred pounds.

4th class.

V. And that the fourth class do contain the names of such householders as aforesaid, as the said assessors, to the best of their knowledge and judgment, believe to be possessed of real or personal property, goods or effects to their own use, to the value of two hundred pounds, and not amounting to two hundred and fifty pounds.

5th class.

VI. And that the fifth class do contain the names of such householders as aforesaid, as the said assessors, to the best of their knowledge and judgment, believe to be possessed of real or personal property, goods or effects to their own use, to the value of two hundred and fifty pounds, and not amounting to three hundred pounds.

6th class.

VII. And that the sixth class do contain the names of such householders as aforesaid, as the said assessors, to the best of their knowledge and judgment, believe to be possessed of real or personal property, goods or effects to their own use, to the value of three hundred pounds, and not amounting to three hundred and fifty pounds.

7th class.

VIII. And that the seventh class do contain the names of such householders as aforesaid, as the said assessors, to the best of their knowledge and judgment, believe to be possessed of real or

personal property, goods or effects to their own use, to the value of three hundred and fifty pounds, and not amounting to four hundred pounds.

IX. That the eighth class do contain the names of such householders as aforesaid, as the said assessors, to the best of their knowledge and judgment, believe to be possessed of real or personal property, goods or effects to their own use, to the value of four hundred pounds, and upwards; and that such inhabitants as the said assessors, to the best of their knowledge and judgment, believe not to be possessed of real or personal property, goods or effects, to the value of fifty pounds, shall be included in a list to be called the excused list.

X. *And be it enacted by the authority aforesaid,* That the said assessors shall and they are hereby required within six weeks from the time of their appointment to make out a copy of such their returns of all the inhabitant householders within their respective parish, township, reputed township or place, so divided into classes as aforesaid, with the names of the said assessors thereunto subscribed, and to present the same to two justices of the peace living within or next to such parish, township, reputed township or place, for their consideration and allowance, which they are to signify by signing the said return, and such allowance of the said justices shall be a sufficient warrant for the collectors of the said parish, township, reputed township or place, to demand and receive from the said inhabitant householders the rates hereafter imposed by virtue of this act, and the said assessors shall cause the same to be fixed on the church door or some other place of public resort, in the said parish, township, reputed township or place for general inspection, and shall also transmit a copy of such return, signed by the said assessors, to the clerk of the peace of the respective districts.

XI. *And be it further enacted by the authority aforesaid,* That if any person shall be aggrieved by being included in any of the classes above mentioned, or shall have any material objection to any person being left out of any of the said classes in such return as aforesaid, he may upon giving reasonable notice to the assessors in his own case, and to the party in case of any such objection as aforesaid, appeal to the next general quarter sessions, and it shall and may be lawful for the said justices to enquire into the matters aforesaid, upon oath to be administered to the parties, if to the said justices it shall appear to be needful, (which oath the said justices are hereby empowered and authorized to administer) and having enquired, to determine the same either by confirming or amending such return, in such manner only as shall be necessary to give relief in the matters complained of, and such determination of the said justices shall be final in all matters aforesaid.

XII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the collector of each parish, township, reputed township or place, and he is hereby authorized, to demand and receive yearly and each year for the space of two years next ensuing the twenty-fifth day of March, which will be in the year of our Lord one thousand seven hundred and ninety four, of every inhabitant householder, whose name shall be included in the first class aforesaid, the sum of two shillings and six pence, as his rate or proportion of the district assessment to be levied for the uses and purposes aforesaid.

XIII. And also to demand and receive, for and during the time aforesaid, of every inhabitant householder, whose name shall be included in such second class as aforesaid, the sum of five shillings, as his rate or proportion of the district assessment to be levied for the uses and purposes aforesaid,

XIV. And also to demand and receive, for and during the time aforesaid, of every inhabitant householder, whose name shall be included in such third class as aforesaid, the sum of seven shillings and six pence, as his rate or proportion of the district assessment, to be levied for the uses and purposes aforesaid.

8th class.

A copy of the assessors returns, duly certified, to be the collector's warrant for levying rates.

The same to be published, and a copy transmitted to the clerk of the peace.

An appeal for grievances & for omissions in the classes, shall be to the next general quarter sessions.

Rate to be paid by each inhabitant householder of the 1st. class &c during what term.

Of the 2nd class.

Of the 3rd class.

Of the 4th  
class.

XV. And also to demand and receive, for and during the time aforesaid, of every inhabitant householder, whose name shall be included in such fourth class as aforesaid, the sum of ten shillings, as his rate or proportion of the district assessment, to be levied for the uses and purposes aforesaid.

Of the 5th  
class.

XVI. And also to demand and receive, for and during the time aforesaid, of every inhabitant householder, whose name shall be included in such fifth class as aforesaid, the sum of twelve shillings and six pence, as his rate or proportion of the district assessment, to be levied for the uses and purposes aforesaid.

Of the 6th  
class.

XVII. And also to demand and receive, for and during the time aforesaid, of every inhabitant householder, whose name shall be included in such sixth class as aforesaid, the sum of fifteen shillings, as his rate or proportion of the district assessment, to be levied for the uses and purposes aforesaid.

Of the 7th  
class.

XVIII. And also to demand and receive, for and during the time aforesaid, of every inhabitant householder, whose name shall be included in the seventh class as aforesaid, the sum of seventeen shillings and six pence, as his rate or proportion of the district assessment, to be levied for the uses and purposes aforesaid.

Of the 8th  
class.

XIX. And also to demand and receive, for and during the time aforesaid, of every inhabitant householder, whose name shall be included in such eighth class as aforesaid, the sum of twenty shillings, as his rate or proportion of the district assessment, to be levied for the uses and purposes aforesaid.

The collector  
to pay periodi-  
cally into the  
hands of the  
district treas-  
urer the monies  
so received,  
respectively, &  
to produce  
their books for  
inspection,  
and to receive  
3 per cent for  
collecting.

XX. *And be it further enacted by the authority aforesaid,* That the collector of each and every parish, township, reputed township or place, shall, and he is hereby required once in every three months to pay or cause to be paid to the treasurer of the district, all such monies as he shall have received under and by virtue of this act, and shall also produce the book or books of assessment for the examination of the said treasurer, and it shall and may be lawful for the said treasurer upon being satisfied that all the monies to be received by virtue of this act have been duly collected and paid or accounted for by the said collector, to pay into the hands of the said collector, the sum of three pounds for every hundred pounds so by him collected and paid as aforesaid, and at and after the same rate and proportion for any sum less than one hundred pounds by him collected and paid, and the said treasurer shall and is hereby required to give a receipt for the monies so collected and paid over to him, which receipt shall be a good and sufficient discharge to the said collector for the monies so collected and paid by him to the said treasurer.

Provision for  
the current  
year.

XXI. *Provided always, and be it enacted,* That for the purposes of the current year which will determine on the twenty-fifth day of March, one thousand seven hundred and ninety-four, it shall and may be lawful, for the said collectors, and they are hereby required, to demand and levy in manner herein after to be mentioned, from each and every inhabitant, according to the several classes in which they shall respectively be included, one half of the rate to be yearly assessed on each and every class according to the proportions herein before set forth, and that each and every person whose name shall be returned in the first class, shall pay for the purposes aforesaid, the sum of fifteen pence, that each and every person whose name shall be returned in the second class, shall pay for the purposes aforesaid, the sum of two shillings and six pence, that each and every person whose name shall be returned in the third class, shall pay for the purposes aforesaid, the sum of three shillings and nine pence, and that each and every person whose name shall be returned in the fourth class, shall pay for the purposes aforesaid, the sum of five shillings, and that each and every person whose name shall be returned in the fifth class, shall pay for the purposes aforesaid, the sum of six shillings and three pence, and that each and every person whose name shall be returned in the sixth class, shall pay for the purposes aforesaid, the sum of seven shillings and six pence, and that each and every person, whose



name shall be returned in the seventh class, shall pay for the purposes aforesaid, the sum of eight shillings and nine pence, and that each and every person, whose name shall be returned in the eighth class, shall pay for the purposes aforesaid, the sum of ten shillings.

XXII. *And be it further enacted by the authority aforesaid,* That the said collectors, shall make out a book of account containing the names of each inhabitant householder, within their parish, township, reputed township or place, who are liable to be charged with such assessment divided into their respective classes according to the returns made by such assessors as aforesaid, and that upon the payment of the rate so charged upon them in their several classes, the said inhabitant householders, and each of them may require the collector to write the word "paid," opposite to his or her name and likewise to write down in figures the sum so paid in a ruled column or margin in such book to be made, and that such entry shall be a full and sufficient discharge to such inhabitant householder for the payment of the said rate.

XXIII. *And be it further enacted by the authority aforesaid,* If any inhabitant householder, shall refuse or neglect to pay the sum or rate, for which he stands classed and rated in manner aforesaid, by the space of fourteen days after demand duly made of the same by the said collector, such collector shall and he is hereby required to levy the same by distress and sale of the goods and chattels of the person so neglecting or refusing to pay, having first obtained a warrant for that purpose, under the hand and seal of some justice of the peace, within the said district, and to render the overplus if any there shall be after deducting the amount of the rate assessed and the charges of the distress and sale to the owner thereof.

XXIV. *And be it further enacted by the authority aforesaid,* That no collector of any parish, township, reputed township or place, shall be authorized to demand payment of any assessment or rate to be imposed upon any inhabitant householder by virtue of this act until after he shall have entered into a bond with a sufficient surety to the church or town wardens of the said parish, township, reputed township or place, and their successors in the penal sum of one hundred pounds, that the said collector will duly and faithfully account and pay into the hands of the treasurer of the district, all and every sum or sums of money that he shall receive, on account of the said assessment and rates. Provided always, that the receipt of such treasurer shall be a sufficient discharge to all such collectors for the amount thereof, and shall be so far deemed and taken as evidence of the performance of the conditions in such bond or obligation to be contained.

XXV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said justices at their respective general quarter sessions or the greater part of them, then and there assembled, to nominate and appoint a proper person, being resident in the said district, to be treasurer of the said district, which treasurer shall give sufficient security in such sums as shall be approved of by the said justices at their respective general quarter sessions, or the greater part of them, then and there assembled, to be accountable for the several sums of money which shall be respectively paid to him in pursuance of this act, and to pay such sum or sums of money as shall be ordered to be paid by the justices in their general quarter sessions, and also for the due and faithful execution of the trust reposed in him, and all and every such sum or sums of money as shall be paid into his hands by virtue of and in pursuance of this act, shall be deemed and taken to be the public stock of the district, and the said treasurer shall and is hereby required to pay so much of the money in his hands to such person and persons as the said justices at their respective general quarter sessions or the greater part of them, then and there assembled, shall by their orders direct and appoint, for the uses and purposes herein before recited, and for any other uses and purposes to which the public stock of any district is or shall be applicable by law, reserving at all and every time or times to and for his own use, and as a reward for his labor and expence the sum of three pounds for every hundred that shall or may be paid into his hands by the said collectors for the purposes aforesaid.

The collectors to make out a book of account,

entry therein in discharge of rate when paid

the rate to be levied by distress, on neglect or refusal of payment, after due notice.

No collector to act without having entered into a bond with a sufficient surety.

A treasurer to be appointed by the justices in quarter sessions, for their respective districts, to whom he shall give sufficient security.

In what manner & to what uses the public stock of the district shall be applied.

Allowance of 3 per cent to the treasurer, on monies received.

Treasurer to keep books of entries, and at every quarter sessions to lay before the justices a statement of his receipts and disbursements.

XXVI. *And be it further enacted by the authority aforesaid,* That the said treasurer shall and is hereby required to keep books of entries of the several sums respectively received and paid by him in pursuance of this act, and also to deliver in true and exact accounts upon oath if required (which oath any one of the justices at their respective general quarter sessions is hereby authorized to administer) of all and every sum or sums of money respectively received and paid by him, distinguishing the particular uses to which such sum or sums of money have been applied, to the justices at every general quarter sessions to be holden for the district, and shall lay before the justices of such session the proper vouchers for the same, and the discharges of the said justices of the peace, or the greater part of them by their orders made at their general quarter sessions to such treasurer shall be taken and allowed as good and sufficient acquittances to the full amount thereof.

Treasurer to be continued or removed at pleasure by the justices in quarter sessions.

XXVII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said justices of the peace, at their general quarter sessions assembled, or the greater part of them, from time to time to continue such treasurer in his office so long as they shall see convenient, and to remove him at their pleasure and appoint any other person in his place.

Provision for the future assessments after the expiration of two years.

XXVIII. *And be it further enacted by the authority aforesaid,* That in order to make provision for the district assessment after the expiration of two years as aforesaid, it shall and may be lawful for the justices of the peace, in their general quarter sessions in the month of April assembled, or the greater part of them, to cause an estimate to be laid before them of the sum or sums of money that may be necessary to defray the charges and expences accruing to their respective districts, for the uses and purposes aforesaid, for the ensuing year, and having determined and resolved upon the same, to cause the amount of the sum to be raised, to be divided in an exact proportion to the rate with which each class is severally charged as herein before is provided, and to declare that the assessment required will be a half rate, a third, fourth, fifth, eighth, or any aliquot part of a rate by computing the proportion, which the sum proposed to be raised bears to the amount of the sum, which shall have been raised by the original rates of two shillings and six pence, five shillings, ten shillings, and twenty shillings, severally imposed on each respective class as aforesaid, and for that purpose to make a special order declaring the amount of the sum intended to be raised, and specifying the fractional part of the rate to be assessed and collected (in case it shall not be deemed necessary to impose an entire rate, according to the proportions aforesaid) on each and every inhabitant householder, according to their respective classes as aforesaid, which order being signed by the said justices in their general quarter sessions in the month of April assembled, or the greater part of them, shall be binding upon each and every inhabitant householder, in respect of the rate with which he stands charged throughout this province. And the high constable, shall at such times as the said justices by their order in sessions shall direct, cause such rates to be levied by a warrant under his hand directed to the assessors and collector of every parish, township, reputed township, or place within this province.

The fractional part of a rate to be assessed when it will suffice.

No new assessment to be made until 3-4ths of the preceding rate be expended.

XXIX. *And be it further enacted by the authority aforesaid,* That no new assessment shall be made until it shall appear to the justices at their respective general quarter sessions or the greater part of them, then and there assembled, by the accounts of their treasurer or otherwise, that three fourths of the money collected by virtue of the preceding rate shall have been expended for the uses and purposes mentioned in this act.

The members of the house of assembly to be allowed wages for their attendance thereat.

XXX. And whereas it was the ancient usage of that part of Great-Britain called England, for the several members representing the counties, cities and boroughs therein, to receive wages for their attendance in parliament; and whereas it seems expedient to adopt the same custom in this province; Be it therefore further enacted, that after every prorogation and dissolution of the assembly of this province, it shall and may be lawful for every member thereof having attended, to receive from the speaker of the house of assembly a warrant under his hand and seal, sig-

nifying the time that such member hath attended his duty in the said assembly, and every member possessed of such warrant, shall and may ask and demand of the justices of the peace for the district in which the county or riding represented by such member may be situate, in their general quarter sessions assembled, a sum not exceeding ten shillings per day for every day that the said member shall have been engaged in the attendance of his duty in the house of assembly, and have been necessarily absent from his place of abode, in going to or returning from his attendance, which sum it shall and may be lawful for the said justices to levy by assessment to be made on each and every inhabitant householder in the several parishes, townships, reputed townships or places, within the county or riding represented by such member, by virtue of and in pursuance of an order to be by the said justices made for that purpose to the high constable of the district, who shall and may thereupon issue his warrant to the assessors of the several parishes, townships, reputed townships or places as aforesaid, who shall assess the same by dividing the sum to be assessed according to the rates and proportions as affixed to the several classes, in the return made as herein before mentioned, which rates shall be levied by the collector in manner herein before directed, and paid over to the said member, and in case any person shall refuse or neglect to pay his due proportion or rate to be so assessed as aforesaid, by the space of fourteen days after the same shall have been demanded of him by the said collector, it shall and may be lawful for the said collector to levy the same by distress and sale of such persons goods and chattels, having first obtained a warrant for that purpose in manner herein before directed.

not exceeding 10s. per day,

the same to be raised within the respective counties or ridings represented by the members,

and by distress on neglect or refusal of payment, after due notice.

SCHEDULE.

High Constable's Warrant to levy the Rate.

To the Assessors and Collector of the Township of \_\_\_\_\_ in the said district.

WESTERN DISTRICT. } BY virtue of an order from his majesty's justices of the peace, in and for this district in their general quarter sessions assembled, you are hereby required to raise the sum of \_\_\_\_\_ within your township, in such manner as by a certain act of the legislature of this province, for the purpose, passed in the thirty-third year of his present majesty's reign, is directed, being the proportion of your township (or parish) for and towards the general district assessment for defraying the expences of building a gaol and court house and keeping the same in repair, for the payment of the gaolers salary. for the support and maintenance of prisoners, for building and repairing houses of correction, for the construction and repairing of bridges and other purposes in the said act mentioned, and hereof you are not to fail on the peril that shall ensue thereof.

Form of high constable's warrant to levy the rate.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_

A. H. High Constable.

Form of an Assessment.

EASTERN DISTRICT. } AN assessment for defraying the expences of building a gaol and court house and keeping the same in repair, for payment of the gaolers salary, for the support and maintenance of prisoners, for building and repairing houses of correction, for the construction and repair of bridges and other purposes mentioned in an act of the legislature of this province of the thirty-third year of his present majesty entitled an act to \_\_\_\_\_ for the township, or reputed township, called \_\_\_\_\_ in the county of \_\_\_\_\_ made and assessed the \_\_\_\_\_ day of \_\_\_\_\_

Form of an assessment.

Class I. Containing the name of such inhabitant householders living within the township aforesaid, as we to the best of our knowledge and judgment, do believe are possessed of real or personal property goods or effects, to the value of fifty pounds and not amounting to one hundred

pounds, and who are severally and each to pay the sum of two shillings and six pence, in respect of their rate and proportion of the said assessment.

G. H. }  
 I. K. } First class : rate two  
 L. M. } shillings and six pence.

Class II. Containing the names of such inhabitant householders, living within the township aforesaid, as we to the best of our knowledge and judgment, believe to be possessed of real or personal property goods or effects to their own use, to the value of one hundred pounds, and not amounting to one hundred and fifty pounds, and who are severally and each to pay the sum of five shillings, in respect to their rate and proportion of the said assessment.

N. O. }  
 P. Q. } Second class ; rate five shillings.  
 R. S. }

Class III. Containing &c. Class VIII. Containing &c.

Assessed by us { A. B. } Assessors.  
 { C. D. }

C H A P. IV.

An ACT to regulate the laying out, amending and keeping in repair, the Public Highways and Roads within this Province

Preamble.

**W**HEREAS the regulations hitherto in force in this province, for laying out the public high ways and roads, and amending and repairing the same, have been found insufficient, and much inconvenience and complaint have been occasioned thereby ; Be it enacted by the kings most excellent majesty, by and with the advice and consent of the legislative council, and assembly of the province of Upper-Canada, constituted and assembled, by virtue of and under the authority an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, " An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," and by the authority of the same, That from and after the passing of this act, a certain ordinance passed in the seventeenth year of the reign of his present majesty, entitled, " An ordinance for repairing and amending the public high ways and bridges, in the province of Quebec," shall be, and the same is hereby repealed.

Ordinance for repairing and amending high ways and bridges, repealed.

Justices within their respective divisions to be commissioners of high ways.

Appointment of twelve overseers thereof.

Roads already laid out to be regulated by the commissioners or altered on oath of a jury.

II. *And be it further enacted by the authority aforesaid,* That each and every justice of the peace, acting under and by virtue of his majesty's commission, shall be and they are hereby declared to be commissioners to lay out and regulate the high ways and roads, within the respective counties, divisions or limits in which they shall act, of the several districts within this province.

III. *And be it further enacted,* That the persons to be employed as overseers of the high ways and roads, in every parish, township, or place within this province, shall be nominated and appointed according to the provisions for that purpose made, in a certain act of the legislature of this province, entitled, " An act to provide for the nomination and appointment of parish, and town officers within this province."

IV. *And be it enacted by the authority aforesaid,* That the said commissioners or the major part of them, and they are hereby empowered and authorized to regulate the roads already laid out, and if any of them shall appear to be inconvenient, and that an alteration be necessary, and the same be certified on oath, by twelve principal freeholders of the district, to be summoned by the high sheriff, his deputy, or any constable of the division, by virtue of a warrant to be issued by

two justices of the peace for that purpose, the commissioners may alter the same, and also lay out such other public highways and roads, as they or the major part of them, shall think most convenient as well for travellers as for the inhabitants of each neighboring parish, township or place which highways and roads, so laid out, shall be common public highways.

V. *And be it further enacted by the authority aforesaid,* That the width of the roads hereafter to be laid out, shall be left to the discretion of the commissioners for the time being, of the parish, township, or place, through which such roads may pass, so that the same be not less than thirty feet, and do not exceed sixty feet: Provided always, That the front roads on the water, and between every concession, shall in no case be less than sixty feet.

Width of roads to be laid out.

VI. *And be it further enacted by the authority aforesaid,* That all bridges hereafter to be built upon any public highway or road, within this province, shall not be less than eighteen feet in width, and in order to provide materials for the same, it shall and may be lawful, for the said overseers, to direct the laborers performing such duty, as herein after is mentioned to cut down and make use of any trees standing upon open and unimproved lands, that may be most convenient and best adapted to the building or repairing such bridges.

Width of bridges, and provision for the materials thereof.

VII. *And be it further enacted by the authority aforesaid,* That wherever any public highway or road, is or shall be laid out by any deep water, or dangerous precipice, that the overseers, shall and are hereby required to cause good and sufficient fences to be erected thereon, for the security of his majesty's subjects, and others, who may travel on the said road. Provided also, and be it enacted, That where any road shall hereafter be laid out through inclosed or improved lands, it shall and may be lawful for the said commissioners or the major part of them, to view the same and to make an agreement with the owner or owners of such inclosed or improved land for the recompence to be made for such ground, and if the said commissioners cannot agree with the owner or owners or the said owner or owners, shall refuse to treat, or take such recompence or satisfaction as shall be offered, then the justices of the peace at any general quarter sessions, to be holden for the limit wherein such ground shall lie, upon certificate in writing, signed by the commissioners making such view aforesaid, of their proceedings on the premises, and upon giving fourteen days notice in writing, to the owner or other person interested in the said ground, or to his, her, or their agent, signifying an intention to apply to such quarter sessions for the purpose of taking such ground, shall empanel a jury of twelve disinterested men, out of the persons returned to serve as jury men, at such quarter sessions, and the said jury shall upon their oaths to the best of their judgment, assess the damages to be given, and recompence to be made to the owner or owners, or others interested as aforesaid. Provided always, That all roads already marked, or laid out, in the Eastern District of this province, under the authority of any commander in chief, or under the authority of any former ordinance of the province of Quebec, shall be and the same are hereby adopted and confirmed, and if any such roads are not yet opened, the same shall be laid open under and by virtue of this act, and that no compensation shall be made to any person or persons through whose land the same may run; Provided always, that the said roads be open in the same direction that was originally marked out.

Precaution in dangerous passages.

Manner of ascertaining the recompence to be made to the owners of inclosed or improved lands through which a road may be laid out.

Exception as to the Eastern district.

VIII. *And be it further enacted,* That in all cases where it shall be found necessary, by the said commissioners to alter the direction of any road or highway, so that the ground it formerly occupied shall become unnecessary for public purposes, that then and in such case it shall and may be lawful for the said commissioners, and they are hereby required to dispose of the said ground; and to that end, to cause a jury to be summoned by a warrant under their hands and seals, to estimate the value thereof, and the choice of first buying the same, according to such valuation, shall be given to the owner of the lands adjoining, on each side of the said road; but in case the lands shall belong to different owners, that then it shall be equally divided between them if they shall be disposed to purchase the same, and the monies arising from such sale, shall

Regulation in the disposal of ground left vacant by the alteration of the road into a new direction.

be applied towards indemnifying the owner or owners of the lands, as such road or highway may pass through by such new direction; and such sale so made shall be deemed valid and legal in all courts of law and equity within this province.

Division of townships, &c. to the overseers, who shall superintend the repairing of roads in their respective divisions.

IX. *And be it further enacted by the authority aforesaid,* That the said commissioners for the time being, shall and may as they shall judge proper and necessary, divide their respective parishes, or townships into divisions, which they shall allot to the overseers of the highway, and the said overseers, shall superintend, repair and keep in order, the highways, roads, streets and bridges in their several divisions, and the said commissioners or the major part of them, may from time to time, order any overseer to work upon any road or highway within his division, as they shall think necessary, and the said overseer shall within ten days after having received such order, summons such persons within his division, as are obliged to perform duty or labor, and set them to work on such part of the road or highway as they shall be directed to amend or lay out, and shall direct all persons performing labor on the said highways and roads, to destroy as much as may be in their power all burrs, thistles, and other weeds, that are hurtful to the purposes of husbandry, and in case of any wilful neglect, every person neglecting or refusing to obey such orders, shall be subject to the like penalty as if he had been a wilful defaulter for that day, or for such time as he shall have neglected or refused, and if any overseer shall refuse or neglect to summon such persons as aforesaid, and to set them to work on such road or highway, as he shall be directed to lay out or amend, he shall for every such neglect or refusal, forfeit the sum of twenty shillings to be recovered in manner herein after to be set forth.

Hurtful weeds to be destroyed

Penalty.

List to be kept by the overseers,

X. *And be it further enacted by the authority aforesaid,* That the overseers for every parish, or township, shall severally make out and keep a list, of every person who is owner of a car, cart or team, within their division, and likewise of all the inhabitants of such division, who are liable under the directions of this act, to work upon the highways, which list shall be subscribed by the said overseers respectively, and delivered in to the commissioners of the division to which they belong, within twenty days after they shall have been appointed overseers as aforesaid, and the said overseers for every parish, or township, and each of them, shall carefully and diligently collect the several compositions, forfeitures, penalties and sums of money directed and allowed to be received and taken within the same by virtue of this act, within the year for which he is appointed overseer, and shall also keep one or more book or books, containing an account of the duty or labor done, compounded for, or unperformed by every person liable to discharge the same, and also a just, true and fair account to be verified on oath if required (which oath the justices are hereby authorized to administer) of all such monies as shall have come to his hands in respect of such parish, or township, by virtue of and for the purposes of this act, and to whom and on what occasion he shall have paid and applied the same, and also of the sums of money, that shall remain due and owing, from any person or persons in respect of the payments, compositions, penalties, and forfeitures to be taken and received, and in respect of the said highways by virtue of this act, which book or books, shall be delivered in to the commissioners acting within their respective divisions, at some special sessions to be holden for that purpose in the month of March in every year, and if any overseer, shall neglect or refuse to deliver such account, or to make such oath if required, he shall forfeit and pay the sum of twenty pounds, to be recovered and applied in manner herein after mentioned

and delivered to the commissioners,

Overseers to collect compositions & fines, to keep an account of the duties performed by every person on the highways respectively, and account for the application of the monies so received.

Penalty.

mean for clearing, maintaining & repairing the highways.

implements.

XI. *And be it further enacted by the authority aforesaid,* That the roads and highways, in and through every parish, township or reputed township shall be cleared, repaired and maintained by the inhabitants thereof, and that every person being a householder or freeholder, shall either in person or by a sufficient man in his stead, be obliged to work on the roads, and shall have and bring with him, one spade, pike-axe, bar, or such other tool or instrument useful for the purposes aforesaid, as shall be directed, for and during any space of time not exceeding

twelve days in every year, allowing eight hours to each days work, and that every person within each parish, or township, keeping a cart, plough, wain, waggon, or team, of two horses, oxen, or beasts of draught, used to draw the same, shall send on every day to be appointed by the overseer, a cart, wain, waggon and team, and one able man to drive the same for any space of time not exceeding six several days in every year, to work on the highways, roads, streets or bridges allowing eight hours to each days work, which said days work shall be held and taken as equivalent to two days personal labor, and if any laborer or driver shall refuse to work and labor, or to carry proper and sufficient loads during the time above mentioned, it shall and may be lawful for the said overseer to discharge such laborer, or driver, team or cart, and to receive from the said laborer, or driver or from the owner of such team and cart the forfeiture which every such person or persons would have incurred by virtue of this act, in case such laborer had not attended, or such team, cart and driver had not been sent.

XII. *And be it further enacted by the authority aforesaid,* That each overseer shall from time to time give to every person, or leave, or cause to be left at the house or usual place of abode of every person within his division liable to perform the duty and labor by this act directed, three days notice at least of the day, hour, and place upon which each of the said day's duty shall be performed; and every person possessed of a wain, waggon, cart, carriage or team, having been duly summoned as aforesaid, and not having paid such composition as herein after is mentioned, who shall make default in sending such carriage and team with an able man to drive the same, or in performing the said duty, at the same time and place to be notified to him in manner aforesaid, shall for every such default forfeit and pay the sum of ten shillings; and that every householder or freeholder liable to such personal labor as aforesaid, having been duly summoned, and not having paid such composition as herein after is mentioned, who shall not appear or send a sufficient man in his stead with such tool or instrument, at such time and place as by the said notice shall be directed, shall forfeit and pay for every such default the sum of five shillings, all which forfeitures shall be applied to the use of the highways of the parish, or township respectively, in which such default shall have been made, and the said overseer shall fairly and equally demand and require such duty and labor from every person liable to perform the same, according to the directions of this act, without favor or partiality, to any person or persons whatsoever, except in the case of poor persons herein after mentioned, and every overseer shall and may and is hereby required with all convenient speed after default made as aforesaid, to proceed for the recovery of the penalties and forfeitures hereby inflicted, in manner herein after directed, so that the same may be recovered before he makes up his accounts in the manner directed by this act.

XIII. *Provided always, and it is hereby enacted,* That any person liable to perform the said duty, by sending a carriage, cart and team, with a driver to the same, in manner aforesaid, shall and may compound for such duty, if he or she shall think fit, by paying to the said overseer, at the time and in the manner herein after mentioned, the sum of six shillings for each carriage, team and driver for each day, and that every freeholder or householder, liable to perform such duty or labor as aforesaid, shall and may compound for the same, if he shall think fit, by paying to the overseer the sum of three shillings, for and in lieu of every such day's duty or labor, respectively, at the time and in the manner herein after directed. *Provided always,* that upon application to be signed by any two or more neighboring householders to any two of his majesty's justices made by any person having four children under the age of fourteen years, and not possessing more than two hundred acres of land, it shall and may be lawful for the said justices by an order under their hands and seals, to lessen the duty or labor of such persons, according to the discretion of the said justices.

XIV. *Provided always, and it is hereby further enacted,* That the overseers of every parish, town-

carriages.

space of time  
Penalty for in-  
sufficient dis-  
charge of duty

overseers to  
give notice of  
the time and  
place of per-  
forming such  
duty on the  
highways.

Penalty for  
neglecting or  
disobeying  
such notice.

The duty to be  
equally requi-  
red of all per-  
sons, certain  
of the poor ex-  
cepted.

Rates & man-  
ner of com-  
pounding for  
duty on the  
highways.

The duty of  
certain persons  
may be lessen-  
ed in the dis-  
cretion of two  
justices.

On the third Sunday in March or sooner, the overseers shall publish in writing, a notice to all persons desirous of compounding for their duties specifying the time & place of payment of such compositions.

Power vested in the justices to restrain, in certain cases, the privilege of compounding.

Means of erecting bridges & completing other particular works on the roads, of public benefit to the district, when the established duty and funds of the division are insufficient.

Penalty for altering, incumbering, or encroaching upon the highway.

ship or place, shall on or before the third Sunday in the month of March, cause public written notice to be given in the church or chapel of such parish, township or place, and if there be no church or chapel then at the most public place of meeting therein, of the time and place, when and where persons permitted under the authority of this act, and inclined to compound for the said duty, may signify such their intention to the said overseers, and all and every person signifying the same, who shall then, or within the space of one calendar month after the date of such notice, pay to the overseer of his division, the composition authorized and allowed by this act, shall be discharged from the performance of such duty, and the said composition money shall be employed by the commissioners for the use of the highways, but in case the said composition money be not paid within one month, the parties neglecting to pay the same, shall be considered defaulters, and shall be liable to the same forfeitures as they who shall make wilful default. Provided always and be it enacted, That if it shall appear to the justices at any special sessions, for the roads to be holden, that from the liberty herein before given for compounding for the performance of the statute duty, there will be a difficulty in procuring the necessary carriages and teams in any particular parish, township or place within their respective divisions, without paying high and extravagant prices for the same, it shall and may be lawful for such justices to order and direct the team duty hereby required or so much thereof as they shall think fit to be performed in kind, in such parish, township, or place except in respect of such teams as belong to persons not possessing more than two hundred acres of land within the same, and that it shall and may be lawful for such justices in those parishes, townships or places where the prices of daily labor exceeds the sum of three shillings, to order and direct the persons so exempted from performing the team duty to perform the labor upon the said highways in person, which order shall supersede the power or liberty of compounding for labor, any thing herein before mentioned to the contrary notwithstanding.

XV. And whereas the monies that may arise by fines and compositions may not be sufficient for purchasing materials and other necessaries for erecting and building bridges, and making such other improvements on the public roads as cannot be accomplished by the ordinary statute labor; Be it further enacted by the authority aforesaid, That where the major part of the commissioners of the highways, acting within any division, shall be of opinion that a further sum will be wanting to undertake any particular work of manifest general advantage, on the public highway, that they may certify the same by a writing subscribed with their names, to the justices of the peace, in general quarter sessions assembled, within their respective districts, and may report to them an estimate of the additional sum that may be required to complete such work, and if it shall appear to the major part of the justices then and there assembled, that such proposed improvement or work will be of public benefit to the district, and that it is expedient to undertake the same, they may come to a resolution to such effect, and declare that they will take the matter into consideration at the general quarter session next ensuing, advertising such resolution in the public papers, or giving such other notice thereof as they shall deem necessary, and in case it shall be deemed advisable by the greater number of the justices at such subsequent quarter session assembled, upon further consideration that such resolution should be confirmed, it shall and may be lawful for the said justices, to order and direct that the sum, provided the same do not exceed fifty pounds, be raised and collected either in the whole or by installments of and from the freeholders and inhabitants within the said district, to be paid out of the district assessment for the said district.

XVI. And be it further enacted by the authority aforesaid, That if any person or persons shall alter, stop up, or any wise incumber or encroach on any street, highway or road already laid out, or that shall be laid out by the commissioners aforesaid, by laying timber or wood, or wilfully leaving any cart, waggon, carriage, plough or any instrument of husbandry, or any rubbish,



ding or manure in any highway (excepting only with respect to such waggon, cart or carriage, during such reasonable time, as the same shall be loading or unloading, and standing as near the side of such highway as conveniently may be) so as to intercept or hinder the free passage of any other carriage of his majesty's subjects, or shall pull down or destroy any fences that shall be put up, by virtue of this act, he shall forfeit and pay for every such offence the sum of five shillings.

XVII. *And be it further enacted*, That after the passing of this act, it shall and may be lawful for any owner or occupier of lands adjoining to his majesty's highway or road, to girdle or cause to be girdled, any tree standing upon such lands within the distance of thirty yards, from the side of the said road, and that from and after the first day of September, that will be in the year one thousand seven hundred and ninety-four, if any girdled tree or dead tree shall be found standing within thirty yards of the said road, it shall and may be lawful for any person taking with him a credible witness to give a verbal or written notice to the owner or occupier of the said lands to cut down or remove such girdled or dead tree or trees, and in case any owner or occupier of the said lands shall neglect or refuse to cut down or remove any such tree by the space of thirty days after such notice as aforesaid, he shall forfeit and pay the sum of ten shillings, for every day that the said tree shall be suffered to remain uncut or unremoved after the expiration of such period as aforesaid, which penalty shall be levied and applied in manner and for the purposes herein after mentioned; and also that from and after the first day of September, if any tree shall be cut down or fall out of any inclosed land into or across any of the public highways, that the owner or occupier of such inclosure, shall within the space of twenty-four hours after the same shall be so fallen, remove the same, and if after such notice thereof given to such owner or occupier as aforesaid, he shall neglect to remove such tree out of the said road by the space of twenty-four hours, he shall forfeit and pay the sum of ten shillings, for every day that the said tree shall be unremoved after receiving such notice as aforesaid.

XVIII. *And be it further enacted by the authority aforesaid*, That the penalties severally inflicted by virtue of this act, and all other fines and forfeitures accruing by virtue thereof shall be levied and recovered by warrant under the hand and seal of some justice of the peace, acting within the division, where such refusal or neglect shall have been made or offence committed, which warrant such justice is hereby empowered and required to grant, upon conviction of the offender by confession, or upon oath of one credible witness, of any offence committed against any one of the enactments or provisions herein contained, and in default of payment of such fines and forfeitures, to levy the same by distress and sale of the goods and chattels of the person so offending; and that the produce of all compositions, penalties, fines and forfeitures, shall be applied towards the making or repairing of the public roads and bridges, within the parish, or township where the same shall arise, and if any person shall refuse to pay the sum or sums payable by virtue of this act, for neglecting or refusing to obey the notice or summons of the overseer, the same being duly served within ten days after demand thereof made, such sum shall and may be levied by the overseer, constable or any person authorized by warrant under the hand and seal of one justice of the peace acting within the said division, by distress and sale of the goods and chattels of the person so refusing or neglecting, rendering the over plus to the owner or owners thereof, the necessary charges of making such distress and sale being first deducted, and in default of such distress, it shall and may be lawful for any such justice to commit the person so refusing to the common gaol, for any time not exceeding one month, unless the penalty, forfeiture, costs and charges, shall respectively be sooner by him paid.

XIX. *And in order to prevent as much as possible any inconvenience to persons liable to work upon the roads*, Be it further enacted by the authority aforesaid, that it shall and may be lawful for the said justices in the said parishes, townships or places, respectively, to appoint two pe-

No tree standing within 30 yards of the road to be henceforth girdled; & to be cut down if so, after the 1st of Sept. 1794, on notice.

Penalty for non compliance.

Trees falling across the road to be removed within 24 hours

Penalty.

Process for recovering penalties,

the same in default of payment to be levied by distress application thereof.

Penalty for refusing the overseer summons

to be levied by distress, and in default thereof the party to be imprisoned.

Periods of the year within which the duty on the roads

may be suspended.

Methods of opening a passage through the roads when obstructed by a fall of snow,

and of making the roads by stakes or beacons, when requisite.

Penalty.

Two or more justices may hold any special sessions for the purposes of this act.

Actions founded on things done in pursuance of this act to be commenced within 3 months.

plaintiff to pay treble costs on non-suit or discontinuance

Persons seized of lands, & absent from the province to pay 20s. annually

riods or times in the year, within which no statute duty upon the roads shall be performed; namely, one month in the spring, commencing upon the twentieth day of April, and ending upon the twentieth day of May; and three months in the summer commencing upon the first day of July, and ending upon the first day of October in every year.

XX. *And be it further enacted by the authority aforesaid,* That after every fall of snow, by which any principal highway leading through this province, shall or may be obstructed and the passage through the same thereby interrupted or hindered, it shall and may be lawful for the overseers of the towns, townships or parishes, through which the said highway may run, and they are hereby required to order and direct such and so many as they shall deem necessary of the freeholders or householders next adjoining the same, being possessed of a sleigh, or sledge and team, to open a free passage through the said highway, by driving or causing their sleigh or sledge to be driven over and through the said highway.

XXI. *And whereas it often happens that after falls or drifts of snow, the highways through several parts of this province, are so covered over as to leave no visible tract or path to guide travellers, particularly where the said highways pass through extensive cleared fields, (for the sake of shortening the communication in the winter) over and along rivers or bodies of frozen water; Be it therefore enacted by the authority aforesaid,* That in such cases it shall and may be lawful for the overseers, and they are hereby required to warn and direct the householders and freeholders in such parishes, townships or places respectively, to erect or set up stakes or beacons on each side of the said highway, road or common path, so as to direct travellers, particularly at night and in bad weather; and any householder or freeholder neglecting or refusing to obey such summons, and to perform such duty or labor, shall be liable to the same penalties, fines and forfeitures as those neglecting to perform their proportion of duty or labor on the highway, as herein before mentioned, and to be recovered in like manner.

XXII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for any two or more justices of the peace within their respective divisions, and they are hereby empowered from time to time, whenever they shall judge proper to hold any special sessions besides that which is herein before directed in the month of March, for executing the purposes of this act, and to adjourn the same from time to time as they shall think fit, causing notice to be given of the time and place of holding such special sessions and of the adjournments thereof, to the several justices acting and residing within such limits, by the constable or other proper officer within the same.

XXIII. *Provided always and be it further enacted,* That if any action or suit, shall be commenced against any person or persons for any thing done or acted in pursuance of this act, then and in every such case, such action or suit shall be commenced or prosecuted within three calendar months after the fact committed and not afterwards, and the defendant or defendants in any such action or suit shall and may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of the present act, and if the same shall appear to have been so done or if any such action or suit shall be brought after the time limited for bringing the same, then the jury shall find for the defendant or defendants, or if the plaintiff or plaintiffs shall become non-suit or discontinue his, her or their action, after the defendant or defendants shall have appeared, the defendant or defendants shall and may recover treble costs and have the like remedy for the recovery thereof, as in any other cases by law.

XXIV. *And be it further enacted by the authority aforesaid,* That any person who shall be seized of two hundred acres of land or more within this province, and shall not reside in the said province, or have any tenants or tenant resident on his said lands; such person shall be liable to pay the sum of twenty shillings per annum, to be applied towards keeping in repair the king's

highway, and the said sum shall be chargeable on such lands as aforesaid, and they shall be liable for payment of the same, for so long as they shall remain unoccupied, or be the property of any person not residing within the province aforesaid. for their duty, chargeable on their lands.

C H A P. V.

An ACT to confirm and make valid certain Marriages heretofore contracted in the Country now comprized within the Province of Upper-Canada, and to provide for the future Solemnization of Marriage within the same.

**W**HEREAS many marriages have been contracted in this province, at a time when it was impossible to observe the forms prescribed by law for the solemnization thereof, by reason that there was no protestant parson or minister duly ordained residing in any part of the said province, nor any consecrated protestant church or chapel within the same, and whereas the parties having contracted such marriages, and their issue may therefore be subjected to various disabilities, in order to quiet the minds of such persons, and to provide for the future solemnization of marriage within this province, Be it enacted and declared by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act, passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," and by the authority of the same, That the marriage and marriages of all persons, not being under any canonical disqualification to contract matrimony, that have been publicly contracted before any magistrate or commanding officer of a post, or adjutant, or surgeon of a regiment, acting as chaplain, or any other person in any public office or employment, before the passing of this act, shall be confirmed and considered to all intents and purposes as good and valid in law, and that the parties who have contracted such marriage, and the issue thereof, may become severally entitled to all the rights and benefits, and subject to all the obligations arising from marriage and consanguinity in as full and ample a manner as if the said marriage had respectively been solemnized according to law.

Preamble.

Marriages heretofore contracted, before any person in public employment, declared valid,

and the issue thereof legitimate.

II. And be it further enacted by the authority aforesaid, That in order to enable those persons who may be desirous to preserve the testimony of such marriage and of the birth of their children, to effectuate the same, it shall and may be lawful at any time within three years from the passing of this act, for any magistrate of the district where any such parties may have contracted matrimony as aforesaid, shall reside, at the request of either of the said parties, to administer the following oath to the husband :

Method of preserving the testimony of such marriages

" I A. B. do solemnly swear in the presence of Almighty God, that I did publicly intermarry with C. D. at on the day of in the year of our Lord and that there is now living issue of the said marriage (as the case may be)  
 T. B. born on the day of  
 M. B. born on the day of

Oath of the husband.

And to administer the following Oath to the Wife :

" I C. D. do solemnly swear in the presence of Almighty God, that I did publicly intermarry with A. B. at on the day of in the year of our Lord and that there is now living issue of the said marriage (as the case may be)  
 T. B. born on the day of  
 M. B. born on the day of

Oath of the wife

manner of entering the same of record ;

Which form of attestation shall be subscribed by the parties, and certified under the hand and seal of the magistrate administering the said oath, who shall be entitled to demand and receive one shilling for such certificate, and that it shall and may be lawful for the clerk of the peace of the district to enter and record, and he is hereby required, upon the payment of the sum of two shillings to enter and record such attestation, duly certified as aforesaid, in a book or register to be by him kept for that purpose ; and that such register or an attested copy thereof, which copy the said clerk, is hereby required to make out, and on the payment of the sum of two shillings to deliver to any person requesting the same, shall be held and taken as sufficient evidence of such marriage, and the birth of such children in all his majesty's courts of law and equity.

the register of such record, or an attested copy thereof to be sufficient evidence.

Regulations for the future celebration of marriages.

III. *And be it further enacted by the authority aforesaid,* That until such time as there shall be five parsons or ministers of the church of England, severally incumbent or doing duty on and in their respective parishes or place of residence in any one district within this province, such parties as are not under any canonical disability and are desirous of intermarrying with each other, and neither of them living within the distance of eighteen miles of any parson or minister of the church of England, may apply to any neighboring justice of the peace within the district and declare the same, whereupon it shall and may be lawful for the said justice, to cause to be affixed in some public place within the township or parish wherein the parties reside, or if they should reside in different townships or parishes, then in the most public place within each of the said townships or parishes, a notice in the following form, for which he shall be entitled to receive the sum of one shilling, and no more :

circumstances under which it may be lawful for a justice to solemnize marriage.

Public notice.

“ Whereas A. B. of            and C. D. of            are desirous of intermarrying with each other,  
 “ and there being no parson or minister of the church of England living within eighteen miles  
 “ of them or either of them, all persons who know any just impediment why they should not  
 “ be joined in matrimony, are to give notice thereof to E. F. esquire, of            one of his ma-  
 “ jesty's justices of the peace for the            district.”

Form of the church of England to be followed.

And if no valid objection shall have been made to such intended marriage when three Sundays have intervened after the publication of the said notice, it shall and may be lawful for the said magistrate to proceed to solemnize the marriage, according to the form prescribed by the church of England, and to give to the parties a certificate thereof, in the following form, for which he shall be entitled to receive the sum of one shilling, and no more :

Certificate of marriage.

“ Whereas A. B. of            and C. D. of            were desirous of intermarrying with each other,  
 “ and there being no parson or minister of the church of England, living within eighteen miles  
 “ of them or either of them, they have applied to me for that purpose ; now these are to certify,  
 “ that in pursuance of the powers granted by an act of the legislature of this province, passed  
 “ in the thirty-third year of his majesty's reign, I A. B. one of his majesty's justices of the  
 “ peace, having caused the previous notice by the statute required to be given, have this day  
 “ married the said A. B. and C. D. together, and they are become legally contracted to each  
 “ other in marriage.”

The same to be signed by the parties and by two or more persons present.

and on application to be registered by the clerk of the peace.

Which certificate shall be signed by the parties, and also by any two or more persons present at the said marriage, and such marriage shall be good and valid in law to all intents and purposes whatever. And that upon application for that purpose made, the clerk of the peace for the said district shall and may, and he is hereby required to register the said certificate in a book for that purpose by him to be kept, and that it shall and may be lawful for him to demand and receive the sum of two shillings for registering the same, and that such register, or an attested copy thereof, which the said clerk is hereby required to make and deliver to any person requesting the same, and paying for it the sum of two shillings, shall be held and taken to be sufficient evidence of such marriage in all his majesty's courts of law and equity.

IV. *And be it further enacted by the authority aforesaid,* That if any person shall after the passing of this act, make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged or counterfeited, or act or assist in falsely making, altering, forging or counterfeiting, any such certificate of marriage as herein before is required to be given, or shall knowingly and wilfully insert or cause to be inserted in such register-book to be kept in each district any false entry of any matter or thing relating to any marriage, or act or assist in falsely making, altering, forging any such entry in such register; or utter or publish as true, any such false, forged, altered, or counterfeited certificate or register as aforesaid, or a copy thereof, knowing such certificate or register of marriage respectively to be false, altered, forged, or counterfeited, or shall wilfully destroy or cause or procure to be destroyed any register-book of marriages or any part of such register-book, with an intent to avoid any marriage, every person so offending, and being thereof lawfully convicted, shall for such offence suffer such fine and imprisonment as to the court shall seem meet, provided such imprisonment be in the common gaol of the district, for a term not less than twelve calendar months.

V. *Provided always,* That when and so soon as there shall be five parsons or ministers of the church of England, severally incumbent and doing duty, within their respective parishes or places, of residence in any one district within this province, that the authority herein before given to the justices of the peace, within such district for the purposes aforesaid, shall cease and determine, and to the end that it may become publicly known when such a number of parsons or ministers are incumbent within any district, it shall and may be lawful for the governor, lieutenant governor or person administering the government of this province, and he is hereby required to give notice thereof, by an instrument under his hand and seal to the first general quarter sessions to be holden for the said district, certifying that there are five parsons or ministers of the church of England, severally incumbent, and doing duty, within their respective parishes, or places of abode in the said district, and that therefore the provisions herein before made authorizing the justices of the peace to solemnize matrimony, have ceased and determined within the said district, which said instrument shall be publicly read before the justices in quarter sessions assembled, and kept and preserved by the clerk of the peace, among the records of the said district, and from and after the publication of such notice, it shall not be lawful for any justice of the peace within such district, to perform the marriage ceremony; and if any justice of the peace within the district where such notification shall have been made in manner aforesaid, shall after the publication thereof, knowingly and wilfully pretend to perform the marriage ceremony between any persons under or by virtue of the powers of this act, or under any pretence whatever, he shall for every such offence, forfeit and pay the sum of twenty pounds, one moiety thereof to his majesty, his heirs and successors for the public uses of the province, and the support of the government thereof, and the other moiety to any person who shall sue for the same by action of debt, plaint, bill or information, in any of his majesty's courts of record within this province, and such pretended marriage so performed, shall be null and void to all intents and purposes whatever.

VI. *And be it further enacted by the authority aforesaid,* That it shall be no valid objection to the legality of any marriage heretofore solemnized by any parson or minister either by licence, or after due publication of banns or hereafter to be solemnized in manner aforesaid, or by any justice of the peace, duly authorized under the provisions of this act, that the same was not solemnized in a church or chapel duly consecrated, nor shall any such marriage on account thereof, be held or taken to be illegal.

VII. *And be it further enacted by the authority aforesaid,* That this act shall be publicly read in the several districts of this province, at the opening of the general quarter sessions of the peace for each district, that shall be holden next after the passing thereof, and once in every year for two years following, at the quarter sessions to be holden in the month of January.

Persons counterfeiting, or procuring to be counterfeited the evidence of any marriage, to suffer, on conviction, fine and imprisonment.

Eventual determination & period of the powers vested in justices to solemnize marriage.

method of ascertaining such event.

penalty for solemnizing marriage after such event.

and the marriage to be void.

No valid objection to a marriage, &c. not being celebrated in a church or chapel.

Promulgation of this act.

C H A P. VI.

An ACT to fix the times and places of holding the Courts of General Quarter Sessions of the Peace within the several Districts of this Province.

**W**HEREAS it is necessary to fix the times and places for holding the courts of general sessions of the peace within the several districts in this province; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly, of the province of Upper-Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act, passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," and by the authority of the same, That from and after the passing of this act, the several courts of general sessions of the peace within this province, respectively, shall commence and be holden at the times and places hereinafter mentioned, yearly and in every year, that is to say—

That the courts of general quarter sessions of the peace for the Eastern district of this province shall commence and be holden in New Johnston, on the second Tuesday in the month of October, and on the second Tuesday in the month of April; and in the town of Cornwall, on the second Tuesday in the month of January, and on the second Tuesday in the month of July.

Time & place of holding the quarter sessions in the Eastern district.

In the Midland district.

II. *And be it enacted*, That the courts of general quarter sessions of the peace for the Midland district of this province, shall commence and be holden in Adolphus town on the second Tuesday in the month of July, and on the second Tuesday in the month of January; and in Kingston on the second Tuesday in the month of April, and on the second Tuesday in the month of October.

In the Home district.

III. *And be it enacted*, That the courts of general quarter sessions of the peace for the Home district of this province, shall commence and be holden in the town of Newark, on the second Tuesday in the month of July, on the second Tuesday in the month of October, on the second Tuesday in the month of January, and on the second Tuesday in the month of April.

In the Western district.

IV. *And be it enacted*, That the courts of general quarter sessions of the peace for the Western district of this province, shall commence and be holden in the town of Detroit, on the second Tuesday in the month of July, on the second Tuesday in the month of October, on the second Tuesday in the month of January, and on the second Tuesday in the month of April.

Special sessions at Michilimackinac.

V. *And be it further enacted*, That a court of special sessions of the peace shall commence and be holden, yearly and in every year, in the town of Machilimackinac, on the second Tuesday in the month of July.

C H A P. VII.

An ACT to prevent the further introduction of Slaves, and to limit the Term of contracts for Servitude within this Province.

Preamble.

**W**HEREAS it is unjust that a people who enjoy freedom by law should encourage the introduction of slaves, and whereas it is highly expedient to abolish slavery in this province, so far as the same may gradually be done without violating private property; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled, by virtue of and under the authority of an act, passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec,

in North America, and to make further provision for the government of the said province," and by the authority of the same, That from and after the passing of this act, so much of a certain act of the parliament of Great-Britain, passed in the thirtieth year of his present majesty, entitled, "An act for encouraging new settlers in his majesty's colonies and plantations in America," as may enable the governor, or lieutenant governor of this province, heretofore parcel of his majesty's province of Quebec, to grant a licence for importing into the same any Negroe or Negroes, shall be, and the same is hereby repealed; and that from and after the passing of this act, it shall not be lawful for the governor, lieutenant governor or person administering the government of this province, to grant a licence for the importation of any negroe, or other person to be subjected to the condition of a slave, or to a bounden involuntary service for life into any part of this province; nor shall any negroe, or other person who shall come or be brought into this province after the passing of this act, be subject to the condition of a slave, or to such service as aforesaid, within this province, nor shall any voluntary contract or indenture of service that may be entered into by any parties within this province, after the passing of this act, be binding on them, or either of them, for a longer time than a term of nine years from the day of the date of such contract.

II. *Provided always*, That nothing herein contained shall extend, or be construed to extend to liberate any negroe, or other person subjected to such service as aforesaid, or to discharge them or any of them from the possession of the owner thereof, his or her executors, administrators or assigns, who shall have come or been brought into this province, in conformity to the conditions prescribed by any authority for that purpose exercised, or by any ordinance or law of the province of Quebec, or by proclamation of any of his majesty's governors of the said province for the time being, or of any act of the parliament of Great-Britain, or shall have otherwise come into the possession of any person, by gift, bequest or *bona fide* purchase before the passing of this act, whose property therein is hereby confirmed, or to vacate or annul any contract for service that may heretofore have been lawfully made and entered into, or to prevent parents or guardians from binding out children until they shall have obtained the age of twenty-one years.

III. And in order to prevent the continuation of slavery within this province, *Be it enacted by the authority aforesaid*, That immediately from and after the passing of this act, every child that shall be born of a negro mother, or other woman subjected to such service as aforesaid, shall bide and remain with the master or mistress, in whose service the mother shall be living at the time of such child's birth (unless such mother and child shall leave such service, by and with the consent of such master or mistress) and such master or mistress shall, and is hereby required to give proper nourishment and cloathing to such child or children, and shall and may put such child or children to work, when he, she or they shall be able so to do, and shall and may retain him or her in their service until every such child shall have attained the age of twenty five years, at which time they and each of them shall be entitled to demand his or her discharge from, and shall be discharged by such master or mistress, from any further service. And to the end that the age of such child or children may be more easily ascertained, the master or mistress of the mother thereof, shall and is hereby required, to cause the day of the birth of every such child as shall be born of a negro or other mother subjected to the condition of a slave, in their service as aforesaid, to be registered within three months after its birth, by the clerk of the parish, township or place wherein such master or mistress reside, which clerk shall be authorized to demand and receive the sum of one shilling, for registering the same. And in case any master or mistress shall refuse or neglect to cause such register to be made, within the time aforesaid, and shall be convicted thereof, either on his or her confession, or by the oath of one or more credible witness, or witnesses, before any justice of the peace, he or she

Recital of act  
30 Geo. III.

the same in  
part repealed.

Provisions a-  
gainst the fur-  
ther introduc-  
tion of slaves,

term of servi-  
tude by con-  
tract limited.

The owners of  
slaves at pre-  
sent within the  
province, con-  
firmed in their  
property  
therein.

nothing herein  
to extend to  
contracts for  
service alrea-  
dy made, nor to  
parents or  
guardians.

The children  
that shall be  
born of female  
slaves, to re-  
main in the  
service of the  
owner of their  
mother until  
the age of 25  
years, when  
they shall be  
discharged.

birth of the  
children of  
slaves to be re-  
corded-

penalty for  
neglecting or  
refusing to re-  
cord the same.

shall, for every such offence, forfeit and pay the sum of five pounds, to the public stock of the district.

remedy against  
the undue de-  
tention of such  
children.

IV. *And be it further enacted by the authority aforesaid,* That in case any master or mistress shall detain any such child born in their service as aforesaid, after the passing of this act, under any pretence whatever, after such servant shall have attained the age of twenty-five years, except by virtue of a contract of service, or indentures, duly and voluntarily executed, after such discharge as aforesaid, it shall and may be lawful for such servant to apply for a discharge to any of his majesty's justices of the peace, who shall and is hereby required thereupon to issue a summons to such master or mistress, to appear before him to shew cause why such servant should not be discharged, and the proof that such servant is under the age of twenty-five years, shall rest upon and be adduced by the master or mistress of such servant; otherwise it shall and may be lawful for the said justice to discharge such servant from such service as aforesaid. Provided always, That in case any issue shall be born of such children, during their infant servitude, or after, such issue shall be entitled to all the rights and privileges of free born subjects.

provision for  
the issue of the  
children of  
slaves.

Security to be  
given on libe-  
rating a slave.

V. *And be it further enacted,* That whenever any master or mistress shall liberate or release any person subject to the condition of a slave from their service, they shall at the same time give good and sufficient security to the church or town wardens of the parish or township where they live, that the person so released by them shall not become chargeable to the same, or any other parish or township.

#### C H A P. VIII.

*An ACT to establish a Court of Probate in this Province, and also a Surrogate Court in every District thereof.*

Preamble.

**W**HEREAS it is expedient to establish a court for the purpose of granting probate of wills and committing letters of administration of the goods of persons dying intestate, having personal estate within this province, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council, and assembly of the province of Upper-Canada, constituted and assembled, by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act, passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec, in North-America, and to make further provision for the government of the said province," and by the authority of the same, That there be constituted and established, and there is hereby constituted and established, a court with full power and authority to issue process and hold cognizance of all matters relative to the granting of probates, and committing letters of administration, and to grant probates of wills, and commit letters of administration of the goods of persons dying intestate, having personal estate, rights and credits within this province, to be called and known by the name of the Court of Probate of the province of Upper-Canada, and that the governor, lieutenant-governor, or person administering the government thereof, shall preside in the said court, to hear, give order or decree, or pronounce judgment in all questions, causes or suits that may be brought before him, relative to the matters aforesaid, and that for such purpose he may from time to time, when he shall be so disposed, call such person or persons as he shall think proper to be assessor or assessors with him, and that it shall and may be lawful for the governor, lieutenant-governor, or person administering the government in this province, to nominate and appoint from time to time, an official principal of the court together with a register and such officers as may be necessary for the exercise of the jurisdiction to the said court belonging.

Constitution &  
jurisdiction of  
the court of  
probate.

II. *And whereas it will be convenient for the inhabitants of this province to be enabled to*



obtain probate of wills, and letters of administration within their several districts, Be it enacted by the authority aforesaid, That it shall and may be lawful for the governor, lieutenant governor or person administering the government in this province, to institute, and he is hereby authorized to institute by commission under the great seal of this province, in each district thereof, a court for the purpose of granting probate of wills, and letters of administration of the goods of persons dying intestate, having personal estate within the limits of each district respectively, which courts shall be severally called and known by the names of the surrogate court of the Eastern district, the surrogate court of the Midland district, the surrogate court of the Home district, and the surrogate court of the Western district, and also to appoint from time to time, a surrogate to preside as judge in each of the said courts, to hear, give order, or decree, or pronounce judgment in all questions, causes or suits, that may be brought before him, relative to the said matters, and also from time to time, to nominate and appoint a fit and proper person to be register, and also such officers as may be necessary for the exercise of the jurisdiction to the said courts belonging, and that each and every of the said courts shall have full power and authority to issue process and hold cognizance of all matters relative to the granting of the probate of wills and letters of administration, and to grant probate of wills, and to commit letters of administration of all and singular the goods and effects, rights and credits of persons dying intestate, within the limits of their respective districts, except in the cases herein after mentioned. Provided always, That in all cases where a testator or intestate shall die possessed of goods, chattels or credits to the amount of five pounds in any district, other than that in which he usually resided at the time of his decease, or when any testator or intestate shall die possessed of goods to the value of five pounds, in two or more several districts within this province, the probate of such will and letters of administration of the goods and effects of such person shall be granted by the court of probate only, and not by any surrogate court.

III. And in order to give due authenticity to the acts and proceedings of the said several courts, Be it enacted by the authority aforesaid, That each of the said courts be provided with a suitable seal; that on the seal of the court of probate be inscribed the name of the province, and on the several seals of the surrogate courts the name of the district, over which its jurisdiction extends, and that a particular description of such seals be respectively sent to the office of the secretary of the province to be kept among the records of the province. Provided always, That no person shall be entitled or qualified to enter upon or execute the office of surrogate in any of the courts so to be established, until after he shall have taken the following oath:

“ I A. B. do solemnly promise and swear, that I will honestly and impartially execute the office  
“ of according to the best of my knowledge and ability.

“ SO HELP ME GOD.”

And that no person shall be entitled to act as a register in any of the said courts until after he shall have taken the following oath:

“ I A. B. do promise and swear, that I will diligently and faithfully execute the office of  
“ that I will not knowingly permit or suffer any alteration, obliteration or destruction to be made or  
“ done by myself or others, on any wills or testamentary papers committed to my charge.

“ SO HELP ME GOD.”

IV. And be it enacted by the authority aforesaid, That every will or testamentary paper, which shall be duly proved, approved and insinuated in the court of probate, or in any surrogate court within this province, shall be kept and preserved among the records of the said court, and that a transcript thereof duly authenticated under the seal of the said court, shall be taken and received as the regular probate of such will or testamentary paper, so far as the same may regard

Institution of a surrogate court in each district.

when testator or intestate dies possessed of chattels or credits in different districts probate of the will and letters of administration shall be granted by the court of probate only.

Seal of each of the said courts

a description whereof to be sent to the secretary's office

Oath of the surrogate.

Oath of the register.

Every will or testamentary paper to be kept as record in court and the transcript thereof duly

duly sealed to be held a sufficient probate. Circumstances required to render nuncupative wills good.

the disposal of any personal estate or effects, in all and every of his majesty's courts within this province, or wherever it may be necessary to produce the same.

V. *And be it enacted by the authority aforesaid,* That from and after the passing of this act, no nuncupative will, shall be good where the estate thereby bequeathed shall exceed the value of thirty pounds, that is not proved by the oaths of three witnesses at the least, that were present at the making thereof, nor unless it be proved that the testator at the time of pronouncing the same, did bid the persons present or some of them bear witness that such was his will, or to that effect, nor unless such nuncupative will were made at the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he, or she hath been resident for the space of ten days or more, next before the making of such will, except when such person was surprized or taken sick being from his own home, and died before he returned to the place of his or her dwelling.

Period of time within which proof of nuncupative wills is admissible.

VI. *And be it further enacted by the authority aforesaid,* That after six months passed after the speaking of the pretended testamentary words, no testimony shall be received to prove any will nuncupative, except the said testimony or the substance thereof were committed to writing within six days after making the said will.

Preliminary measures to be taken previous to granting probate of nuncupative wills.

VII. *And be it further enacted by the authority aforesaid,* That no letters testamentary, or probate of any nuncupative will shall pass the seal of any court until fourteen days at the least after the decease of the testator be fully expired, nor shall any nuncupative will be at any time received to be proved, unless process have first issued to call in the widow or next of kindred of the deceased, to the end that they may contest the same, if they shall be so advised.

Proof to be aduced of the demise of an intestate.

VIII. *And be it enacted by the authority aforesaid,* That no letters of administration shall be granted by the court of probate, or by any surrogate court, of the goods, chattels or credits of any person represented as having died intestate, until due proof be made before the said judge or surrogate, to his satisfaction, that such person is dead, and died intestate.

Steps to be taken in granting administration to persons not next of kin.

IX. *And be it further enacted by the authority aforesaid,* That when application is made for letters of administration of the goods, chattels and credits of any person dying intestate, by any person or persons not entitled to the same as next of kin to the intestate, the judge of the court of probate, or the surrogate to whom such application shall be made, shall before the granting of the administration, issue a citation to the next of kin to the intestate, summoning him or her to appear, and shew cause, if any they have, why the administration should not be granted to the person or persons so applying, which citation shall be served upon the next of kin to the intestate, residing within this province, and if the next of kin, nor any person of the kindred of the intestate shall happen to reside within this province, then a copy of such citation shall be affixed up in some public place in the town where the intestate did reside at the time of his death, at least ten weeks before the return thereof, and in case such intestate did not reside within this province at the time of his death, then a copy of the citation shall be published in the Upper-Canada gazette, once in every month during the space of eight months before the return thereof. Provided always, That in case the person next of kin usually residing within this province, and regularly entitled to administer, should happen to be absent from the province, it shall and may be lawful for the judge of probate, or surrogate, within the limits of his district, to grant a temporary administration, to the next of kin who shall be in the province, of the intestate, during a limited time, or to be revoked upon the return and application of such nearest of kin as aforesaid, and for that purpose to take sufficient bonds from the party to whom such temporary administration shall have been granted, for the surrender of such letters of administration, and to account for the same, in manner herein after to be mentioned.

temporary administration.

Bonds to be taken of the persons

X. *And be it further enacted by the authority aforesaid,* That the judge of probate, and every surrogate in his several district, shall and may upon their respective granting and committing

letters of administration of the goods of persons dying intestate, take sufficient bonds of the respective person or persons to whom any administration is to be committed, with two or more able sureties, respect being had to the value of the estate, in the name of the governor, lieutenant-governor, or person administering the government of the said province, or with the condition in form and manner following, *mutatis mutandis*. "The condition of this obligation is such, that if the within bounden A. B. administrator of all and singular the goods, chattels and credits of C. D. deceased, do make or cause to be made, a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come into the hands, possession or knowledge of him, the said A. B. or into the hands and possession of any other person or persons for him, and the same so made, do exhibit or cause to be exhibited into the registry of            court, on or before the            day of            next ensuing, and the same goods, chattels and credits, and all other the goods, chattels and credits of the said deceased, at the time of his death, which at any time after shall come into the hands or possession of the said A. B. or into the hands and possession of any other person or persons for him, do well and truly administer according to law, and further do make or cause to be made, a true and just account of his said administration, at or before the            day of            and all the rest and residue of the said goods, chattels and credits, which shall be found remaining upon the said administrators account, the same being first examined and allowed by the judge of the court, for the time being, shall deliver and pay unto such person or persons respectively, as the said judge by his decree or sentence, conformably to the provisions in a certain act of parliament, entitled, "An act for the better settling intestate estates," and passed in the 22d and 23d year of the reign of Charles the 2d, and also in a certain act passed in the first year of king James the second, contained, shall limit and appoint, and if it shall hereafter appear, that any last will or testament was made by the deceased, and the executor or executors therein named do exhibit the same unto the said court, making request to have it allowed and approved accordingly, if the said A. B. within bounden, being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue:" which bonds are hereby declared and enacted to be good and binding to all intents and purposes, and pleadable in any courts of justice.

XI. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said judge of probate and surrogate respectively, and they are hereby enabled to call by citation under the seal of their several courts, such administrators to account, for and touching the goods of any person dying intestate within their several jurisdictions, and upon hearing, and due consideration thereof, to order and make just and equal distribution of what remaineth clear, after all debts, funeral and just expences of every sort, first allowed and deducted, according to the provisions in the said statutes herein before mentioned, contained. Provided always, to the end that a due regard be had to creditors, that no such distribution of the goods of any person dying intestate be made, until after one year be fully expired, after the intestate's death; and that such and every one, to whom any distribution and share shall be allotted, shall give bonds with sufficient sureties, in the said courts, that if any debt or debts truly owing by the intestate shall be afterwards sued for and recovered, or otherwise made to appear, that then and in every such case, he or she shall respectively refund and pay back to the administrator, his or her ratable part of such debt or debts, and of the costs of suit, and charges of the administrator by reason of such debt, out of the part and share so as aforesaid allotted to him or her, thereby to enable the said administrator to pay and satisfy the said debt and debts, so discovered after the distribution made as aforesaid.

XII. And in order to enforce, when it shall be necessary, due respect and obedience to the

sons to whom administration shall be granted.

form and conditions of such bonds.

such bonds pleadable.

Method of making distribution of the proceeds of an intestate's estate.

after the term of one year.

Security to be given the administrator against demands which may arise after distribution.

Process of the said courts, respectively, in cases of disobedience or contempt.

process, orders, sentence or decree of the said courts, in all matters within their cognizance, Be it enacted by the authority aforesaid, That it shall and may be lawful for the said judge of the court of probate, and his surrogates within their respective districts, and they are hereby authorized upon application made and supported by certificate from the register or proper officer, of any neglect of, or disobedience to the regular process, order or sentence of the court, or upon any complaint to be verified upon oath by any apparitor, officer, or other person, of any wilful contempt or resistance to the regular process, order or sentence of the said courts or any of them, or to the service thereof, to proceed against the parties, notwithstanding, disobeying or offending, by attachment, to be directed to the sheriff of the district, who is hereby authorized and required to execute the same; and in case the sheriff return that the party is not found in his district, that the said courts and each of them may issue a proclamation directed to the sheriff of the district which he is hereby authorized and required to make, that the said party do on his allegiance personally appear in the said court, on a day in the said proclamation to be named; and in case the sheriff return that the party is not found, and he do not appear at the time and place as commanded, that the said courts, and each of them may proceed to a sequestration of the personal effects, goods and chattels of the said party in contempt, to be directed to certain persons to detain and keep the same, until the said contempts be cleared or the court make order to the contrary.

Attachment.

Sequestration of the personal estate.

In administration granted with a will annexed, it shall be expressly conditioned that such will shall be performed.

XIII. And be it further enacted by the authority aforesaid, That in all cases where any administration shall be granted with a will annexed either by the judge of the court of probate in this province, or by any surrogate of any district of this province, such letters shall contain an express provision or condition that the will of the deceased in such testament expressed, shall be observed and performed, and for such purpose that bonds with two or more able and sufficient sureties, shall be taken of the respective person or persons to whom such administration shall be committed in such penalties as to the judge or surrogate shall appear reasonable, respect being had to the value of the estate of the said testator, which condition may be as follows:—  
 “The condition of this obligation is such, that if the above bounden \_\_\_\_\_, administrator (or administratrix as the case may be) of all and singular the goods, chattels and credits of the said \_\_\_\_\_, deceased, with the will of the said \_\_\_\_\_, annexed, and not administered by (as the case may be) do make or cause to be made a true and perfect inventory of all and singular the goods, chattels and credits of the said \_\_\_\_\_, deceased, which shall have come to the hands, possession or knowledge of the said \_\_\_\_\_, or into the hands and possession of any other person for the said \_\_\_\_\_, and the same so made do exhibit or cause to be exhibited (where such bond shall be taken by the judge of the court of probate) into the registry of the court of probate of this province, or into the office of the surrogate of the district of \_\_\_\_\_, at or before the expiration of six calendar months from the date of the above obligation, and the same goods, chattels and credits, and all other goods, chattels and credits of the said deceased, at the time of his or her death, which at any time after shall come into the hands and possession of the said \_\_\_\_\_, or into the hands and possession of any other person or persons for the said \_\_\_\_\_, do well and truly administer according to the directions and true intentions of the testator or testatrix (as the case may be) expressed in the will to the letters of administration granted to the said \_\_\_\_\_, annexed, as the law directs, and further when thereunto lawfully required, do make or cause to be made a true and just account of administration, then this obligation to be void and of none effect, or else to remain in full force and virtue.—Which bonds, shall be of the same force and effect and may be prosecuted upon the like occasions and for the purposes, and in the same manner as the bonds taken upon the granting of administrations of persons dying intestate, herein before set forth.

Form and condition of bond to be entered into in such case.

Force & effect of such bond.

XIV. And be it further enacted by the authority aforesaid, That it shall and may be lawful for all

persons who may be aggrieved by any order, sentence, judgment or decree, of any surrogate court within this province, to appeal from the same or any part thereof, to the judge of the court of probate, who shall have full power and authority, and hereby is authorized and required to examine, hear and finally determine all such appeals and all matters concerning the same, and to reverse, affirm or alter such order, sentence, judgment or decree, and to make such other order or decree therein, as justice and equity shall require, and thereupon to remit the same with his order, judgment or decree in the premises, and all things concerning the same, into the court so appealed from. Provided always, That all such appeals from the said surrogate court, shall be made within fifteen days next after making or giving the order, sentence, judgment or decree so appealed from, and upon security being given to the satisfaction of the said surrogate, for prosecuting such appeal, such order, sentence, judgment or decree, shall be suspended. Provided always, that no appeal shall be had or lie from any such order, judgment, sentence or decree, of any surrogate court, unless the value of the goods, chattels, rights or credits to be affected by such order, judgment, sentence or decree, shall be more than fifty pounds.

An appeal to lie from the surrogate courts of the court of probate.

if made within 15 days next after judgment below,

and that the value of the rights affected exceeds 50l.

XV. And in order that certain stated times be fixed for the hearing and determining all motions, petitions, pleadings, suits and causes respecting the matters aforesaid, that may be brought before the said court of probate, or the said surrogate courts: Be it enacted by the authority aforesaid, That four terms or times of session be appointed in each and every year for the purposes aforesaid, the first term to be holden from the first Monday in January to the Saturday of the same week inclusive; the second to be holden from the last Monday in March, to the Saturday of the same week inclusive; the third to be holden from the first Monday in June to the Saturday of the same week inclusive; and the fourth term to be holden from the last Monday in September to the Saturday of the same week.

Terms of sitting of the said courts.

XVI. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the members and officers of the said courts to demand and take the following fees:

Fees to be taken.

Official Principal and Surrogate.

	£.	s.	d.	REGISTER.	£.	s.	d.
For seal to the probate of a will, to letters of administration with the will annexed, and to letters of administration, where the property devolving is under 300l.	0	16	0	0	6	8	
From 300 to 1000l.	1	0	0	0	6	8	
When above 2000l.	2	0	0	0	6	8	
For seal of the court to any writing or instrument	0	13	4	0	3	4	
For receiving caveat	0	6	8	0	0	0	
For filing the same	0	0	0	0	3	4	
For receiving inventory	0	6	8	0	0	0	
For filing the same	0	0	0	0	3	4	
For citation	0	3	4	0	1	0	
For collating will	0	0	0	0	6	8	
For drawing bond and attesting execution	0	0	0	0	6	8	
For searching register each year	0	0	0	0	1	0	
For office copy each page 18 lines, 6 words in each	0	0	0	0	1	0	

by the Official Principal, Surrogate and Register.

Apparitor or Messenger.

For service of citation	0	2	0
For travelling, each mile	0	0	4

by the Apparitor or Messenger.

C H A P. IX.

An ACT to authorize the Lieutenant-Governor, to Nominate and Appoint certain Commissioners for the Purposes herein mentioned.

MAY IT PLEASE YOUR EXCELLENCY,

Preamble.

**W**E his majesty's most dutiful and loyal subjects the members of the house of Assembly of the province of Upper-Canada, having taken into our serious consideration the message communicated to us by your excellency, together with the resolution of the house of Assembly of his majesty's province of Lower-Canada, bearing date the sixth day of May, of the present year one thousand seven hundred and ninety-three, and being anxious to establish that generous intercourse which should always subsist between members of the same empire, do most earnestly request your excellency, that for the mutual convenience and benefit of his majesty's subjects within the provinces of Upper-Canada and Lower-Canada, and in order to promote and confirm a good correspondence between them, it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled "An act for making more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the said province," and by the authority of the same, That it shall and may be lawful for the governor, lieutenant-governor or person administering his majesty's government in this province, from time to time, by letters patent under the great seal of the province, to commission, authorize and empower three able and discreet persons, to treat, consult and agree with an equal number of persons to be duly authorized for that purpose, by a power to be granted by an act of the legislature of his majesty's province of Lower-Canada, of and concerning the establishing such regulations as may regard the collection of duties or payment of drawbacks to be imposed or allowed on goods passing from one province into the other, by the legislature of each province respectively, and of and concerning any proportion to be received and paid, of any equal duties already imposed or hereafter to be imposed by the said legislatures respectively, on any article or commodity passing from one province into the other, and of and concerning any regulations, provisions, matters and things which may regard the commerce, manufactures or produce of the said province.

Three fit persons to be commissioned to treat & agree in behalf of this province,

with a like number of persons in behalf of the province of Lower Canada of & concerning regulations of mutual expediency,

But their proceedings to have no force or effect until confirmed by the legislature.

Determination of this act.

II. *Provided always, and be it enacted and declared,* That no regulation, provision, matter or thing so proposed, treated, consulted or agreed, shall have any other force or effect, or be carried further into execution, until the same shall have been confirmed by the legislature of this province.

III. *And be it further enacted,* That this act shall continue in force until the first day of August, which will be in the year of our Lord, one thousand seven hundred and ninety-five, and no longer.

## C H A P. X.

An ACT to establish a Fund for Paying the Salaries of the Officers of the Legislative Council and Assembly, and for defraying the Contingent Expences thereof.

**W**HEREAS it is necessary to establish a fund for defraying the salaries of the different officers of the legislative council and assembly, together with the contingent expences thereof, we your majesty's most dutiful and loyal subjects, the representatives of the people of Upper Canada, in assembly met, do most humbly beseech your majesty, that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled, by virtue of and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the said province," That from and after the passing of this act there shall be raised, levied, collected and paid unto his majesty, his heirs and successors, over and above all other duties by any act of parliament of Great-Britain, now payable in this province, upon the respective wines herein after mentioned, which shall be imported or brought into any part of this province, the several rates and duties following, that is to say;—

For every gallon (wine measure) of wine of the growth or produce of the island of Madeira, which shall or may be legally imported from any port, place or country whatsoever, *four pence.*

For every gallon (wine measure) of other wine of the growth or produce of any other country whatever, which shall or may be legally imported from any port, place or country whatsoever, *two pence.*

II. *And it is hereby further enacted by the authority aforesaid,* That the said rates and duties imposed by this act, shall be deemed and are hereby declared to be current money of this province, payable at and after the rate of five shillings the Spanish dollar, or in other silver or gold coin, as nominally proportioned thereunto by the laws of this province enacted, or to be enacted, and the same duties shall be levied, collected, paid and recovered in the same manner and form, in the said courts, and by such rules, ways and means, and under such penalties and forfeitures, as any other duties payable to his majesty, upon any goods imported into this colony or province, under any act or acts of the parliament of Great-Britain hitherto enacted, and as fully and effectually as if the several clauses of the said act or acts of parliament were herein particularly repeated and enacted, and all the monies that shall arise by such duties, may be received by the collector of his majesty's customs of the province of Lower-Canada, and shall be paid by him into the hands of his majesty's receiver general of Upper-Canada, as treasurer of this province for the time being, according to such arrangements as shall be made and agreed upon, under and by virtue of the powers and provisions granted by a certain act, entitled, "An act to authorize the lieutenant-governor to nominate and appoint certain commissioners for the purposes herein mentioned."

III. *And it is hereby further enacted by the same authority,* That all such monies as shall be paid as aforesaid, to the receiver-general as treasurer of this province, shall be by him paid and applied for the purposes before set forth in this act, and in discharge of such warrant or warrants as shall for that purpose be from time to time issued by his excellency the governor or lieutenant governor, or person administering the government of this province for the time being, and not otherwise; and the duties aforesaid, together with all fines, forfeitures, penalties and confiscations that shall be incurred under this act, shall be accounted for to his majesty, through the commissioners of his majesty's treasury, for the time being, in such manner and form as his majesty shall direct.

Preamble.

Additional duties and rates to be levied on wines

On Madeira,

On all other wines

Specie in which such duties shall be payable,

means of levying the same & all penalties & forfeitures,

into whose hands the same shall be paid.

Application of the monies arising thereby

Determination of this act.

IV. *And be it further enacted by the authority aforesaid, That this act shall remain and be in force for the space of two years, from and after the passing thereof, and no longer.*

C H A P. XI.

*An ACT to encourage the destroying of Wolves and Bears in different parts of this Province.*

Preamble.

**W**HEREAS the inhabitants in many parts of this province, have suffered and continue to suffer great injury and damage from wolves and bears; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled, by virtue of and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," and by the authority of the same, That from and after the passing of this act, all and every person or persons, who shall kill or cause to be killed any wolf or wolves, bear or bears, and who shall take or cause to be taken the head or heads of such wolf or wolves, bear or bears, before any one of his majesty's justices of the peace, acting within the division where such town, township or parish, where the said wolf or wolves, bear or bears, shall have been killed, shall be, and make oath before the said justice, that the said wolf or wolves, bear or bears, was or were killed within the said town, township or parish, or within five miles of any inhabited place next adjoining the said town, township or place, which oath the said justice is hereby authorized and empowered to administer, the said justice having first destroyed the said head or heads, shall give to such person or persons a certificate of the fact or facts, having been proved to his satisfaction and such certificate being presented to the treasurer of the district, shall authorize the person or persons obtaining and presenting the same, to ask for, demand and receive of and from the said treasurer, the sum of twenty shillings for the head of every wolf so taken and presented, and for the head of every bear so taken and presented as aforesaid, the sum of ten shillings. Provided always, That nothing herein contained shall extend or be construed to extend the said reward to any Indian or Indians, who shall kill or cause to be killed, any wolf or bear, wolves or bears as aforesaid.

method of recovering the reward for killing a wolf or bear,

respective rewards for killing the same,

Exception as to Indians.

And as to the Western district.

II. *Provided always, and be it hereby enacted by the authority aforesaid, That this act, shall not extend nor be construed to extend to the Western district of this province, nor have any force or operation whatsoever therein.*

C H A P. XII.

*An ACT to provide for the Appointment of Returning Officers for the several Counties within this Province.*

Preamble.

**W**HEREAS the powers at present subsisting for the appointment of persons to execute the office of returning officer in each of the districts, counties or circles and towns or townships in this province, are limited to a certain period which will soon expire, and whereas it is necessary to make further provision for the appointment of such officers; Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled, by virtue of and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province,"



and by the authority of the same, That it shall and may be lawful for the governor, lieutenant governor or person administering the government for the time being, from time to time to nominate and appoint by an instrument under his hand and seal at arms, a proper person to execute the office of returning officer, for every county or riding, division or town within the province.

In what manner returning officers shall be, in future, appointed,

II. *Provided always, and it is hereby enacted,* That no person shall be obliged to execute the office of returning officer for any longer time than one year, unless he shall be disposed to continue to execute the same, by and with the consent and approbation of the said governor, lieutenant governor or person administering the government for the time being.

shall not be compelled to serve for any longer time than one year.

III. *Provided also, and be it hereby enacted by the authority aforesaid,* That this act shall continue in force for and during the space of seven years, and no longer.

Determination of this act.

C H A P. XIII.

An ACT to establish a further Fund for the Payment of the Salaries of the Officers of the Legislative Council and House of Assembly, and for defraying the Contingent Expences thereof.

**W**HEREAS by a certain act of the parliament of Great-Britain, passed in the fourteenth year of his majesty's reign, entitled, an act for establishing a fund towards further defraying the charges of the administration of justice and support of the civil government, within the province of Quebec, in North America, it was therein amongst other things enacted, "That from and after the fifth day of April, one thousand seven hundred and seventy five, there should be raised, collected and paid into his majesty's receiver general of the province, for the use of his majesty, his heirs and successors, a duty of one pound sixteen shillings, sterling money of Great-Britain, for every licence that should be granted by the governor, lieutenant governor or commander in chief of the said province, to any person or persons, for keeping a house or other place of public entertainment, or for retailing wine, brandy, rum, or other spirituous liquors, within the said province." And whereas it is necessary that the said revenue should be increased for the purposes of paying the salaries of the officers of the legislative council and house of assembly, and for defraying the contingent expences thereof :

Preamble

We your majesty's most dutiful and loyal subjects, representatives of the people of the province of Upper-Canada, in assembly met, do most humbly beseech your majesty, that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council, and assembly of the province of Upper-Canada, constituted and assembled, by virtue of and under the authority of an act, passed in the parliament of Great-Britain, entitled, an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," That in addition to the said sum of one pound sixteen shillings sterling as aforesaid, which shall still be and continue to be levied, collected and paid as it hitherto has been levied, collected and paid by virtue of the act aforesaid, there shall be raised and levied, collected and paid, under the same restrictions and penalties, in the said act contained, unto his majesty's receiver general to and for the use of his majesty, his heirs and successors, and to and for the use of this province, and towards the support of the civil government thereof, the further sum of twenty shillings currency, upon every licence that shall be granted by virtue of this act in manner following : that is to say, that from and after the fifth day of April, which will be in the year of our lord one thousand seven hundred and ninety four, it shall and may be lawful for the governor, lieutenant governor or person administering the government, by or through the secretary of the province, or other person empowered to issue licences for the vending of wine, brandy, rum or other spirituous liquors, to ask for, demand and receive over and above the sum of one pound

An additional duty of twenty shillings to be levied on all licences for the retail of wines or spirituous liquors, after the 5th day of April 1794

sixteen shillings sterling as aforesaid, the further sum of twenty shillings currency, for every licence that shall or may be granted to any person for keeping a house or any other place of public entertainment, or for the retailing of wine, brandy, rum or other spirituous liquors within this province.

Time & manner of giving public notice annually to the persons, liable to the provisions of this act to comply therewith.

II. *And be it further enacted by the authority aforesaid,* That in every district throughout the said province, one month at least before the fifth day of April in every year, being the day whereon the said sum of one pound sixteen shillings sterling, and twenty shillings currency, shall be due and payable as aforesaid, the secretary of the province or other person empowered to issue the said licence, shall and is hereby required to give public notice in the Upper-Canada Gazette, or otherwise, to every person selling wine, brandy, rum or other spirituous liquors as aforesaid, to pay the said sum of one pound sixteen shillings sterling, and twenty shillings currency, and to receive or take out a licence for the same, and by such public notice to warn every person who shall neglect, omit or refuse to take out a licence and still continue to retail any wine, brandy, rum, or other spirituous liquors in less quantities at any one time than three gallons, of the pains and penalties that they are thereby likely to incur and hereafter to be inflicted by this act.

Words to be written, painted or printed over the door of every house of public entertainment.

III. *And be it further enacted by the authority aforesaid,* That every person who shall keep a house or other place of public entertainment for retailing wine, brandy, rum or other spirituous liquors, shall cause to be written, painted, or printed over the door of such house of entertainment, in legible characters, the following words; "Licenced to sell wine and other spirituous liquors;" and every person neglecting to have the aforesaid words, written, painted or printed as aforesaid, and continue to keep such a house of entertainment, shall for every such offence forfeit and pay the sum of five shillings currency, to be recovered before any one of his majesty's justices of the peace, upon the oath of one credible witness; one half of which said sum shall be given to the person informing, and the other half paid into his majesty's receiver general, to and for the use of his majesty, his heirs and successors, and to and for the use of this province, and towards the support of the civil government thereof.

penalty for neglecting.

Persons licenced shall enter into bonds to keep a decent and orderly house.

IV. And whereas by a certain ordinance, passed in the twenty eighth year of his present majesty's reign, it was declared and enacted, that every person taking out a licence for the purpose of retailing wine, brandy, rum or other spirituous liquors, should be obliged to enter into a bond with sufficient sureties to keep an orderly and decent house; Be it therefore enacted by the authority aforesaid, That every person taking out a licence by virtue of this act, shall upon receiving such licence from the secretary of the province or his agent or other person for that purpose appointed, enter into a bond in the penal sum of ten pounds, to his majesty, his heirs and successors, well and truly to keep a decent and orderly house during the continuance of said licence to him granted as aforesaid.

Fees of the secretary, or his agents on licences.

V. *And be it further enacted by the authority aforesaid,* That the secretary of the province or his agent or other person appointed to grant such licence, shall receive from each person to whom a licence may be granted over and above the duty herein before specified, the further sum of two shillings and six pence for his trouble in making out and issuing the same, and no more; and the clerk of the peace or other person who shall draw out such bond as aforesaid, shall receive and take the sum of two shillings and sixpence for his trouble therein, and no more, any thing contained in any ordinance of the province of Quebec, to the contrary notwithstanding.

fee for drawing bond.

Retailers not keeping a house of entertainment, exempted from the additional duty after the expiration of two years.

VI. *And be it further enacted by the authority aforesaid,* That the additional duty imposed by this act, shall not extend nor be construed to extend to any person not keeping a house of public entertainment for a longer space of time than two years next after the fifth day of April, which will be in the year of our lord one thousand seven hundred and ninety-four, but that at and after the expiration of the said term of two years, no person other than such as shall keep a house of public entertainment, shall be obliged to pay for any licence to him granted a greater sum than one pound sixteen shillings sterling as imposed by the above recited act.

VII. *And be it further enacted by the authority aforesaid,* That the said receiver general do pay and apply the monies by him received under and by virtue of this act, in the manner and for the purposes as set forth in a certain act, entitled, "An act to establish a fund for paying the salaries of the officers of the legislative council and house of assembly, and for defraying the contingent expences thereof," and that it shall and may be lawful, for the receiver general of the province to deduct from and out of the several sums of money by him received, the sum of three pounds for every hundred pounds that may be raised, levied, collected and paid by virtue of this act.

Application of the monies arising by this act.

poundage of the receiver general.

# L A W S

OF HIS MAJESTY'S PROVINCE OF

U P P E R - C A N A D A :

PASSED IN THE THIRD SESSION OF THE PROVINCIAL PARLIAMENT OF UPPER-CANADA, MET AT NEWARK, ON THE SECOND DAY OF JUNE, IN THE THIRTY-FOURTH YEAR OF THE REIGN OF OUR SOVEREIGN LORD, GEORGE THE THIRD, AND PROROGUED ON THE NINTH DAY OF JULY FOLLOWING.

## C H A P. I.

### *An ACT for the Regulation of Juries.*

**F**OR the regulation of juries, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great-Britain, entitled, an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the said province," and by the authority of the same, That the clerk of the peace of each and every district in this province, shall yearly and every year make up from the returns of the several assessors of each parish, township reputed township or place, which shall have been transmitted to him, a true and complete list or transcript of the names of the several inhabitant householders, living in each of the said parishes, townships, reputed townships or places, classed and divided in such manner as by the said returns shall appear, which list or transcript, shall be transmitted or delivered by the clerk of the peace to the sheriff of each respective district, or his under sheriff, in order for his returning juries out of the said list from time to time as he shall be commanded, and that each and every person whose name shall be returned in either of the said lists, shall be held and taken as qualified to serve on juries, and that no sheriff or coroner shall return any person to serve on any jury, whose name shall not appear in the said list, and that every clerk of the peace neglecting his duty therein, shall forfeit the sum of five pounds to such person or persons as shall inform or prosecute for the same, until the party be thereof convicted, by indictment, before the justices

Preamble.

The clerks of the peace to deliver yearly to the sheriffs a list of jurors, duly classed.

persons included in such lists qualified alone to serve on juries.

penalty for neglect in the clerks of the peace.

of the peace, at any quarter sessions of the peace, to be holden for the district where such neglect shall have been committed.

No sheriff or other officer to return as a juror, on trials, any person who has already served, as such, within one year.

Penalty.

Sheriffs, or other officers, to keep registers of the jurors on all trials, and to grant certificates of service, if required.

No reward to be taken for excusing any person from serving on juries, & no juror summoned whose name is not specified in the sheriff's mandate.

Penalty.

Method of making the returns of writs of venire facias juratores

Number of jurors to be returned.

Manner of impanelling the jury for the trial of every cause.

II. And for preventing abuses by sheriffs, bailiffs, or other officers concerned in the summoning and returning of jurors, Be it enacted by the authority aforesaid, That no person or persons, shall be returned as a juror or jurors to serve on trials at any assizes or nisi prius, quarter sessions or district court who have served thereat within the space of one year before, and if any such sheriff, shall wilfully transgress herein, any judge or justice of assize or nisi prius, may and is hereby required on examination and proof of such offence in a summary way, to set a fine or fines, upon every such offender as he shall think meet, not exceeding the sum of ten pounds for any one offence.

III. And be it further enacted, That the sheriff, under sheriff or officer to whom the return of juries shall belong, shall from time to time enter or register in a book to be kept for that purpose, the names of such persons as shall be summoned and shall serve as jurors on trials at any assizes or nisi prius, quarter sessions, or district court, with the times of their services, and every person so summoned and attending or serving as aforesaid, shall upon application by him made to such sheriff, under sheriff, or officer, have a certificate testifying the same, which certificate the said sheriff, under sheriff, or officer is hereby required to make out without fee or reward.

IV. And be it further enacted by the authority aforesaid, That no sheriff, under sheriff, or officer or any person whatsoever, shall directly or indirectly take or receive any money or other reward to excuse any person from serving or being summoned to serve on juries, and that no bailiff or other officer, appointed by any sheriff or under sheriff to summon juries, shall summon any person to serve thereon, other than such whose name is specified in a mandate signed by such sheriff or under sheriff, and directed to such bailiff or other officer, and if any sheriff, under sheriff bailiff or other officer, shall wilfully transgress in any of the cases aforesaid, any judge or justice of assize or nisi prius, may and is hereby required on examination and proof of such offence in a summary way, to set a fine or fines upon any person so offending as he shall think meet, not exceeding three pounds.

V. And be it further enacted by the authority aforesaid, That every sheriff or other officer to whom the return of the venire facias juratores or other process for the trial of causes before justices of assize or nisi prius, who may be assigned to hold assizes in any district or place within this province, doth or shall belong, shall upon his return of every such writ of venire facias (unless in causes to be tried at bar or in cases where a special jury shall be struck by order or rule of court) annex a pannel to the said writ containing the christian and surnames, additions and places of abode, of a competent number of jurors, whose names shall have been returned in the said lists herein before directed to be made out, whose names shall be inserted in the pannel annexed to the venire facias for the trial of all issues at the same assizes in each respective district or place, which number of jurors shall not be less than thirty-six in any district or place, nor more than forty-eight, and the persons named in such pannels, shall be summoned to serve on juries at the then next assizes or sessions of nisi prius, for the respective districts or places to be named in such writs, and no other.

VI. And be it further enacted by the authority aforesaid, That the name of each and every person who shall be summoned and empannelled as aforesaid, with his addition and the place of his abode, shall be written on several and distinct pieces of parchment or paper, being all as near as may be of equal size, and shall be delivered to the marshall of such judge of assize or nisi prius who is to try the causes in each respective district, by the sheriff or under sheriff of the said district, or some agent of his, and shall be put together in a box or glass to be provided for that purpose, and when a cause shall be called on to be tried, the marshall or some indifferent person by direction of the court, may and shall in open court draw out twelve of the said parch-

ments or papers successively, and if any of the persons whose names shall be so drawn, shall not appear or be challenged and set a side, then such further number, until twelve persons be drawn, who shall appear; and after, all causes of challenge shall be allowed to be indifferent; and the said twelve persons, their names being marked in the pannel and they being sworn, shall be the jury to try the cause, and the names of the persons so drawn and sworn, shall be kept apart by themselves till such jury shall have given their verdict and the same is recorded, or until the jury shall by consent of the parties or leave of the court, be discharged; and then the said names shall be rolled up again and returned to the former box or glass, there to be kept with the other names remaining at the same time undrawn, and so toties quoties as long as any cause remains to be tried.

VII. *And be it further enacted by the authority aforesaid,* That every person or persons whose name or names shall have been drawn to serve on the trial of any issue, and who shall not appear after being openly called three times, shall forfeit and pay upon oath made by some credible person, that the party so making default had been lawfully summoned, such fine not exceeding the sum of three pounds, nor less than twenty shillings, as the judge who sits to try the cause shall think reasonable to inflict; unless some reasonable cause of his absence be assigned or proved to the satisfaction of such judge.

VIII. *Provided always, and be it enacted,* That no person aged sixty years, shall be obliged to attend upon any summons to be directed to him for the purposes aforesaid.

IX. *And be it further enacted by the authority aforesaid,* That every common jurymen who shall have been sworn to give his verdict in any issue brought before the court, shall be entitled to demand and receive the sum of one shilling from the plaintiff or his attorney, for every cause in which such jurymen shall be sworn, to be accounted for in costs by the party charged with the payment thereof.

X. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for his majesty's court of king's bench in this province, upon motion made on behalf of his majesty, his heirs and successors, or on the motion of any prosecutor or defendant, in any indictment or information depending or to be brought or prosecuted in the said court, or on the motion of any plaintiff or plaintiffs, defendant or defendants, in any action, cause, or suit whatsoever to be brought in the said court; and the said court is hereby authorized upon motion made as aforesaid, to order and appoint a special jury to be struck before the proper officer, for the trial of any issue joined, in any of the said cases, in such manner as special juries are usually struck upon trials at bar, in England; which jury so struck as aforesaid, shall be the jury returned for the trial of the said issue.

XI. *Provided always, and it is hereby enacted,* That no person shall be nominated by the sheriff, to serve on a special jury whose name shall not be included in either the fifth, sixth, seventh, eighth, ninth, or tenth classes, or in the upper list of inhabitant householders, as directed to be made out under and by virtue of a certain act of the legislature of this province, entitled, "An act to authorize and direct the laying and collecting of assessments and rates in every district of this province; and to provide for the payment of wages to the members of the house of assembly."

XII. *And be it further enacted by the authority aforesaid,* That no person who shall serve on any special jury to be appointed or returned under and by virtue of this act, shall be allowed to take for serving on any such jury more than a sum of money not exceeding the sum of five shillings, except in causes where a view hath been or shall be directed.

XIII. *And be it further enacted,* That the person or party who shall apply for such special jury, shall not only bear and pay the fees for striking such jury, but shall also pay and discharge all expences occasioned by the trial of the cause by such special jury, and shall not have any further or

Penalty for not appearing when duly summoned as a juror & drawn to serve on trial.

Persons aged 60 years exempted.

Fee of each juror sworn to give his verdict.

The court of king's bench, on motion, may order a special jury to be struck for the trial of any issue.

Persons competent to serve on special juries.

Fee to be taken by each special juror for serving as such.

Which party shall bear the increased costs occasioned by a special jury.

other allowance for the same upon taxation of costs than such person or party would be entitled unto in case the issue had been tried by a common jury, unless the judge before whom the cause is tried shall immediately after the trial certify in open court under his hand upon the back of the record that the same was a cause proper to be tried by a special jury.

Provision in cases where a view shall be allowed.

Method of appointing viewers,

allowance to each of them per day.

The want of a view or any informalities in having the same, shall not stay proceedings in trying the issue.

XIV. *Provided always, and be it further enacted*, That where a view shall be allowed in any case, that in such case six of the jurors named in such pannel, or more who shall be mutually consented to by the parties, or their agents on both sides, or if they cannot agree, shall be named by the officer of the court or by the judge before whom the said cause shall be tried, shall have the view and be first sworn or such of them as appear upon the jury to try the said cause before any drawing of jurors as aforesaid, and so many only shall be drawn to be added to the viewers as aforesaid, as shall make up the number of twelve to be sworn for the trial of such issue. Provided also, that every person attending such view as aforesaid, shall and may demand and receive a sum not exceeding ten shillings for every day on which he shall be so employed,

XIV. *Provided always, and be it further enacted*, That in case no view shall be had, or if a view shall be had by any of the said jurors, no valid objection shall be made on either side, either for want of a view, or that it was not had by any of the twelve jurors first named, or that it was not had by any particular number of jurors named in the said writ, but the trial of the issue shall proceed, any formal objection respecting the view, to the contrary notwithstanding.

C H A P. II.

*An ACT to establish a Superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeal.*

Preamble.

**F**OR the general and regular administration of justice throughout this province; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled, by virtue of and under the authority of an act passed in the parliament of Great-Britain, entitled, an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," and by the authority of the same, That there be constituted and established, and there is hereby constituted and established a court of law, to be called and known by the name and style of his majesty's court of King's Bench, for the province of Upper-Canada, which shall be a court of record of original jurisdiction, and shall possess all such powers and authorities as by the law of England are incident to a superior court of civil and criminal jurisdiction, and may and shall hold plea in all, and all manner of actions, causes or suits, as well criminal as civil, real, personal and mixed, arising, happening or being within the said province, and may and shall proceed in such actions, causes or suits by such process and course, as shall tend with justice and dispatch, to determine the same, and may, and shall hear and determine all issues of law, and shall also hear, and by and with an inquest of good and lawful men determine all issues of fact that may be joined in such action, cause or suit, as aforesaid, and judgment thereon give, and execution thereof award, in as full and ample a manner as can or may be done in his majesty's courts of king's bench, common bench, or in matters which regard the king's revenue by the court of exchequer in England. And that his majesty's chief justice of this province, together with two puisne justices shall preside in the said court, which court shall be holden in a place certain, that is in the city, town, or place where the governor or lieutenant-governor shall usually reside; and until such place be fixed, the said court shall be holden at the last place of meeting of the legislative council and assembly.

A court of King's bench established.

Jurisdiction and powers thereof.

Persons who shall preside therein, and place where the same shall be holden.

II. And in order that certain stated times be fixed for the fitting of the court, be it enacted by the authority aforesaid, That four periods of session or terms be appointed in each year, successively, to be known by the names of Hilary, Easter, Trinity and Michaelmas term. That the Hilary do commence on the third Monday in January, and end on the Saturday of the ensuing week. That Easter term do commence on Monday next after the sixteenth day of April, and end on the Saturday of the ensuing week. That the Trinity term do commence on the third Monday in July, and end on the Saturday of the ensuing week : and that the Michaelmas term do commence on the first Monday in October, and end on the Saturday next ensuing : and that the first and last days of every term, and every alternate day from the first, not including Sunday, be return days.

Terms of sitting.

At what periods the same shall commence respectively.

III. *Provided always, and be it hereby further enacted,* That when the court shall have good reason to believe there will not be sufficient business to require their daily attendance throughout the term, they may be at liberty to adjourn the court on any return day, to the next immediate return day.

The court may adjourn from one return day to the next immediate one.

IV. *And be it further enacted by the authority aforesaid,* That all writs to be sued out of the said court shall issue in the king's name and be tested by the chief justice or in his absence, by the senior judge of the court, and be returnable on some return day in term time, and that not less than fifteen days inclusive, shall always intervene between the teste and return of the first process that shall be directed to the sheriff of the Home district, or the district in which the court shall be holden, and that not less than forty days inclusive shall always intervene between the teste and return of the first process into every other district.

Manner of issuing and testing writs and when returnable.

V. *And be it further enacted by the authority aforesaid,* That the original and first process of the said court shall be by writ of *capias ad respondendum* ; and in order that the defendant or defendants may be immediately apprized of the cause of complaint against him or them, the said writ shall state the form of action, and refer to the declaration which shall always be annexed to, and served with the writ ; and for that purpose it is hereby further enacted, That no process shall issue at the suit of any plaintiff, where the defendant is not to be holden to special bail, until the declaration on which it may be founded shall be filed in the office.

Original process.

declaration to be annexed to the writ ; and filed in the office before process issues.

VI. *And be it further enacted by the authority aforesaid,* That no person shall be arrested or holden to special bail, upon any process issuing out of the said court in a civil suit, unless an affidavit be first made by the plaintiff, that the defendant is justly and truly indebted to him, in a sum certain, which, together with the account for which it became due, shall be specified, and also that the deponent verily believes the defendant is about to leave the province, with an intent to defraud his creditors, which affidavit may be made before any judge or commissioner of the court, authorized to take affidavits as herein after is provided, or else before the officer who shall issue such process, or his deputy, which oath the said officer or his deputy are hereby authorized to administer ; and for such affidavit one shilling shall be paid and no more ; and the sum or sums specified in such affidavit, shall be endorsed on the back of the writ, or process, for which sum or sums the sheriff or other officer to whom such writ or process shall be directed shall take bail, and for no more.

Circumstances necessary in order to arrest or hold to special bail, & forms in so doing.

Bail.

VII. And whereas by reason of the present want of a certain and ready communication throughout the province, it may be practicable for fraudulent persons to escape from their creditors, before process can be obtained from the said court to prevent them, be it further enacted by the authority aforesaid, That it shall and may be lawful for any plaintiff having made such affidavit as aforesaid, to sue out from the clerk of the peace, in each and every district, a writ of *capias ad respondendum*, with which the said clerk shall, from time to time be supplied, signed by the proper officer of the court, on which shall be endorsed the amount of the sum sworn to, and to which the said affidavit shall be annexed ; whereupon it shall and may be lawful for the she-

Writs for arresting, or holding to special bail to be procurable from the clerk of the peace in every district.

riff to arrest the said defendant and hold him to special bail, to the amount of the sum endorsed.

Ordinary  
course of pro-  
ceeding in ci-  
vil suits.

VIII. *And be it further enacted by the authority aforesaid,* That in all civil suits where the defendant shall not be holden to bail, by reason of such affidavit as aforesaid, the ordinary course of proceeding shall be by serving or causing the defendant or defendants personally to be served with a copy of the process and declaration, by some literate person; and if such defendant or defendants shall not appear at the return of the process, or within eight days after such return, in such case it shall and may be lawful for the plaintiff or plaintiffs upon affidavit being made and filed of the personal service of such process and declaration, which affidavit shall be filed gratis, to enter a common appearance for the defendant or defendants, and to proceed thereon, as if such defendant or defendants had entered his, her or their appearance.

Affidavit of  
personal ser-  
vice.

Notice.

IX. *And be it further enacted by the authority aforesaid,* That upon every copy of such process, to be served upon any defendant, shall be written a notice in the English tongue, to such defendant, of the intent and meaning of such service to the effect following:

In the English  
tongue.

“ A. B. You are served with this process, to the intent that you may, either in person or by your attorney, appear in his majesty’s court of king’s bench, at the return thereof, being the day of in order to your defence in this action.”

And when any party, defendant, is a Canadian subject by treaty, or the son or daughter of such Canadian subject, the like notice shall be written in the French language.

In the French  
tongue.

“ A. B. Il vous est enjoint et ordonné de comparoître personnellement ou par procureur à la cour du banc du roy a l’expiration de ce writ qui fera le jour pour répondre a cette action.”

Appearance.

X. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for each and every defendant personally to attend and enter his, her or their appearance at the office, on or before the day at which the process or writ shall be returnable, or to authorize any person to enter an appearance for him, her or them: and that in all actions or suits where the defendant or defendants have entered, or caused such appearance to be entered, the plaintiff or his attorney shall, by a demand in writing, call for a plea; and in all actions or suits where the defendant or defendants live within the Home district, or the district in which the court shall be holden, four days shall be allowed after such demand, as the ordinary time within which they shall be required to file their plea to the action; and in all actions or suits where the defendant or defendants reside without the limits of the Home district or district where the court shall be holden, eight days shall be allowed after such demand, as the ordinary time within which they shall be required to file their plea, and if after the expiration of such times respectively, no plea be filed, it shall and may be lawful for the plaintiff or plaintiffs or his attorney to sign judgment in the cause.

Demand of a  
plea.

Time allowed  
for filing the  
same.

Judgment for  
want of a plea.

Judgment for  
want of ap-  
pearance.

XI. *And be it further enacted by the authority aforesaid,* That in all actions or suits, where the defendant or defendants, having been served with a copy of process, with such written notice as aforesaid, shall neglect to enter their appearance at the return of the writ, it shall and may be lawful for the plaintiff or plaintiffs, having entered such appearance for the said defendant or defendants, as aforesaid, at the expiration of eight days after having entered such appearance, to sign judgment in the cause, without any demand of a plea.

First and last  
days to be in-  
clusive.

XII. *And be it further enacted by the authority aforesaid,* That the first and last day of all periods of time limited by this act, or hereafter to be limited by any rules or orders of court, for the regulation of practice, be inclusive.

Form of pro-  
ceeding to is-  
sue.

XIII. *And be it further enacted by the authority aforesaid,* That the form of proceeding in the said court shall be by a course of pleading, to issue in the most compendious manner; and that in actions founded on a common undertaking, the following form of declaration may be adopted.



A. B. complains of C. D. late of      For that whereas the said C. D. on the      day of  
 at      was indebted to the said A. B. in the sum of      (the consideration advanc-  
 ed) and being so indebted, he the said C. D. then and there undertook and faithfully promised  
 the said A. B. to pay him the said sum, when he the said C. D. should be requested, and  
 though since requested doth now refuse so to do to the said A. B. his damage of £.      who  
 therefore brings his suit.

Form of a de-  
 claration on a  
 common un-  
 dertaking.

XIV. *And be it further enacted by the authority aforesaid,* That each and every of the statutes of  
 jeofails, and each and every of the statutes of limitations, and each and every of the statutes for  
 the amendment of the law, excepting those of mere local expediency, which from time to time  
 have been provided and enacted, respecting the law of England, be adopted and declared to be  
 valid and effectual for the same purposes in this province.

The statutes of  
 jeofails, limit-  
 ations, & for  
 the amend-  
 ment of the  
 law, adopted  
 as in England.

XV. And in order to discourage vexatious suits, and to prevent additional charges upon any  
 defendant or defendants who may be willing to pay the sum which he or they admit to be just-  
 ly due, Be it enacted that in all cases where the sum demanded by any plaintiff or plaintiffs is  
 a sum certain, or is capable of being ascertained by computation of numbers, it shall and may  
 be lawful for any defendant or defendants, to move that he or they may be at liberty to pay in-  
 to court such sum as he or they shall propose to pay in full discharge of the said demand; where-  
 upon the court may order a rule to be drawn up to such effect, or in time of vacation, such or-  
 der may be made by a judge of the court, and in case the plaintiff shall be willing to accept, and  
 shall accept the same, together with all costs accruing to that time, to be taxed by the proper  
 officer, the same shall be in full satisfaction of such his demand, and all further proceedings in  
 the said action shall cease; and to the end that every plaintiff or his attorney may know of such  
 proceeding, the defendant or defendants shall, and are hereby required to serve a copy of the  
 rule authorizing such payment to be made, upon the plaintiff or his attorney, at the time of  
 filing his plea of the general issue, to such plaintiff's declaration.

A rule of court  
 to be obtained,  
 on motion, for  
 the payment of  
 money into the  
 same, in liqui-  
 dation of a debt  
 certain,

and a copy of  
 such rule serv-  
 ed on the plain-  
 tiff, or his at-  
 torney.

XVI. *Provided always,* That upon payment of money into court, it shall and may be lawful  
 for the officer receiving the same, to demand, and take a sum not exceeding twenty shillings,  
 for every hundred pounds so paid into court, and at, and after the same rate and proportion,  
 for every sum of money so paid, and also to demand and take the sum of one shilling for every  
 receipt by him given on account of money so paid in as aforesaid.

Poundage and  
 fees of the of-  
 ficer receiving  
 the same.

XVII. And for the more convenient administration of justice throughout the province, Be  
 it enacted, That it shall and may be lawful for the governor, lieutenant-governor or person ad-  
 ministering the government of this province, to issue yearly and every year, in the vacation  
 between the Trinity and Michaelmas terms, such commissions of assize and nisi prius, into  
 the several districts, as may be necessary for the purpose of trying all issues joined in the said  
 court, in any suit or action arising in the said districts respectively; and that when a suitable  
 communication by land shall be opened from the city, town or place, which shall be the seat of  
 government, into the respective districts, and the circumstances of the province may require it,  
 it shall and may be lawful for the governor, lieutenant-governor, or person administering the  
 government, likewise to issue yearly and every year in the vacation between the Hilary and  
 Easter terms, such commissions of assize and nisi prius into each of the several districts, as may  
 be necessary for the trial of all issues joined in manner aforesaid; and to that end it shall and  
 may be lawful for any person or persons upon reasonable notice given to the adverse party, or  
 their attorney, to take and sue forth such writs and records of nisi prius, as may be necessary  
 for the trial of all issues joined in the said court as may be triable in the respective districts of  
 this province, and thereupon sue out their jury process in such manner and form, and with  
 such awards as is practised in the courts of nisi prius in England.

Commissions of  
 assize and nisi  
 prius to issue,  
 yearly, into  
 the several dis-  
 tricts,

and oftener,  
 when circum-  
 stances will  
 permit.

Writs to be su-  
 ed forth, ac-  
 cordingly, by  
 the parties.

Special commissions, for the trial of offenders, to issue, notwithstanding, when expedient.

XVIII. *Provided always*, That nothing herein contained shall prevent or be construed to prevent the governor, lieutenant-governor or person administering the government of this province, from issuing a special commission or commissions for the trial of one or more offender or offenders upon extraordinary occasions when he shall deem it requisite or expedient that such commission should issue.

Period & manner of trying issues joined in the Home district.

XIX. *And be it further enacted by the authority aforesaid*, That upon all issues joined in the said court in any suit or action which shall arise or be triable within the Home district, or in the district where the court shall be holden, the chief justice, or in his absence, any other judge of the said court, shall, as justice of nisi prius for the said district, at their discretion, either in term time, or within ten days next after the end of every Easter and Trinity term, respectively, try all manner of issues joined in the said court, which ought to be tried by an inquest of the said district, and that commissions and writs of nisi prius shall be for that purpose from time to time awarded; and it shall and may be lawful for any person or persons, upon reasonable notice as herein after set forth, given to the adverse party or their attorney, to take and sue forth such writs and records of nisi prius as may be necessary for the trial of such issues as aforesaid.

Writs of nisi prius to be sued forth.

Sheriffs to make return of all writs of nisi prius, and to give their attendance upon the chief justice, or other judge of assize.

XX. *And be it further enacted by the authority aforesaid*, That the sheriffs of the several districts shall, and they are hereby required to make return of all writs of nisi prius which shall be delivered to them, or their sufficient deputy, before the said chief justice, and every other judge who shall be assigned to execute such commissions of assize and nisi prius, and shall give their attendance upon the said chief justice, and each other justice, as well for the returning of such tales de circumstantibus as shall be prayed for the trial of such issues, as for the maintenance of good order in the king's court, and for the doing and executing of all other things to the office of sheriff in such case belonging and appertaining.

Notice of trial in the Home district.

countermand thereof.

XXI. *And be it further enacted by the authority aforesaid*, That no indictment, information or cause whatsoever, shall be tried at nisi prius, before any judge or justice of assize or nisi prius, or at the sittings of the Home district, or district where the said court shall be holden, unless notice of trial, in writing, has been given at least eight days before such intended trial; and in case any party or parties shall have given such notice of trial as aforesaid, and shall not afterwards duly countermand the same, in writing, at least four days before such intended trial, every such party shall, upon neglect of bringing such issue to trial, be obliged to pay unto the party or parties to whom such notice of trial shall have been given, as aforesaid, the like costs and charges as if such trial had not been countermanded.

Notice of trial in the other districts.

countermand thereof.

XXII. *And be it further enacted by the authority aforesaid*, That no indictment, information or cause whatsoever, shall be tried at nisi prius before any judge or justice of assize or nisi prius, in any district, other than the Home district, or district where the court shall be holden, unless notice of trial has been given, at least twenty days before such intended trial; and in case any party or parties shall have given such notice of trial as aforesaid, and shall not afterwards countermand the same, in writing, at least fourteen days before such intended trial, every such party shall, upon neglect of bringing such issue to trial, be obliged to pay unto the party or parties to whom such notice of trial shall have been given as aforesaid, the like costs and charges as if such trial had not been countermanded.

Commissions for the examination of witnesses without the province; and of persons aged, infirm, or going to depart the province.

XXIII. And whereas it may in many cases be desirable for the furtherance of justice to obtain the depositions of witnesses in civil suits, which cannot be had by the ordinary process of subpoena, Be it enacted by the authority aforesaid, That where the cause of action arises without the jurisdiction of the court, it shall and may be lawful on special application for that purpose made, to issue a commission under the seal of the court, to take the examination of witnesses residing without the limits of the province, due notice being given to the adverse party, to the end that he, she or they, may cause such witnesses to be cross examined, and also that

when the testimony of any aged or infirm person, or of any person about to depart the province may be required, it shall and may be lawful for the said court to issue a commission, in like manner, for the examination of such aged or infirm person, or of any person about to depart the province, due notice being given to the adverse party for the purposes aforesaid.

XXIV. *Provided always, and be it further enacted,* That the examination of such aged or infirm person so taken, shall not be admitted or read at the trial of any issue, in case he or she be living at the time of the trial, and that the examination of such person about to depart the province, so taken, shall not be admitted or read at the trial of any issue, in case he or she shall be in the province at the time of such trial.

XXV. *And be it further enacted by the authority aforesaid,* That the allowance of costs to either party, plaintiff or defendant, in all civil suits and penal actions, be regulated by the statutes and usages which direct the payment of costs, by the laws of England.

XXVI. *And be it further enacted,* That the chief justice and other the justices of the said court of king's bench, for the time being, or any two of them, whereof the chief justice for the time being to be one, shall, and may by one or more commission or commissions, under the seal of the said court, from time to time, as need shall require, empower what, and as many persons as they shall think fit and necessary, in all the several districts within this province, to take and receive all and every such affidavit and affidavits as any person or persons shall be willing and desirous to make before any of the persons so empowered, in or concerning any cause, matter or thing depending, or hereafter to be depending, or in any wise concerning any of the proceedings to be in the said respective courts, and that it shall and may be lawful for any judge of assize, in his circuit, to take and receive any affidavit or affidavits as any person or persons shall be willing and desirous to make before him, in or concerning any cause, matter or thing depending or hereafter to be depending, or in any wise concerning any proceedings to be had in the said court of king's bench, which said affidavits, taken as aforesaid, shall be filed in the office of the said court, and there be read and made use of in the said court, to all intents and purposes as other affidavits, taken in the said courts ought to be, and that all and every affidavit and affidavits, taken as aforesaid, shall be of the same force as affidavits taken in the said court shall and may be: and all and every person or persons forswearing him, her, or themselves, in such affidavit or affidavits, shall incur and be liable unto the same pains and penalties as if such affidavit or affidavits had been made and taken in open court.

*Provided always,* That for the taking of every such affidavit, the person or persons so empowered and taking the same, shall, for so doing, receive only the sum or fee of twelve pence and no more.

XXVII. *And be it further enacted by the authority aforesaid,* That the chief justice for the time being, and other the justices of the said court of king's bench, or any two of them, whereof the said chief justice shall be one, shall, or may by one or more commission or commissions, under the seal of the said court, from time to time, as need shall require, empower such and so many persons as they shall think fit and necessary, in all and every the several districts of this province, to take and receive all and every recognizance or recognizances of bail or bails, as any person or persons shall be willing or desirous to acknowledge, or make before any of the persons so empowered, in any action or suit depending, or hereafter to be depending in the said court, in such manner and form, and by such recognizance or bail as the justices of the said court may hereafter take, or may think fit; which said recognizance or recognizances of bail, or bail-piece, so taken as aforesaid, shall be transmitted to any one of the justices of the said court, who upon affidavit made of the due taking of the recognizance of such bail, or bail-piece, by some credible person, present at the taking thereof, such justice shall receive the same; which recognizance of bail, or bail-piece, so taken and transmitted, shall be of the like effect as if the same were taken

Exceptions, in certain cases, to the evidence obtained by such examinations.

Costs of suit to be regulated by the statutes and usages of England.

Commissioners to be empowered to take affidavits.

Force & effect of such affidavits.

pains and penalties of perjury in making such affidavit.

Fee for taking affidavit.

Commissioners to be empowered to take recognizances of bails.

means of rendering such recognizances of bail effectual.

Fee for taking the same.

de bene esse, before any of the said justices; for the taking of which recognizance or recognizances of bail, or bail-piece, the person or persons so empowered, shall receive only the sum or fee of two shillings, and no more.

Rules to be made for justifying of bail, but by which the cognizors shall not be compellable to personal appearance in court.

XXVIII. *And be it further enacted*, That the justices, respectively, shall make such rules and orders for the justifying of such bails, and making of the same absolute, as to them shall seem meet, so as the cognizor or cognizors of such bail or bails be not compelled to appear in person in the said court, to justify him or themselves; but the same may, and is hereby directed to be determined by affidavit or affidavits, duly taken before the said commissioners, who are hereby empowered and required to take the same, and also to be examined by the justices upon oath, touching the value of their respective estates.

Recognizances of bail before a judge of assize to be valid.

XXIX. *And be it further enacted*, That any judge of assize, in his circuit, shall and may take and receive all and every such recognizance or recognizances of bail or bails, as any person shall be willing and desirous to make and acknowledge before him, which being transmitted in like manner as aforesaid, shall, without oath be received in manner as aforesaid.

Ordinances, constituting the former courts of common pleas, repealed.

XXX. *And be it further enacted*, That the several acts and ordinances of the governor and council, of the province of Quebec, whereby the several courts of common pleas in this province were constituted, and from time to time continued, be, and each and every of them are hereby repealed.

Provision for actions pending in the late courts of common pleas.

XXXI. *And be it further enacted*, That all proceedings upon actions, instituted and pending in any of the late courts of common pleas in this province, shall forthwith be transmitted into the court of king's bench, there to be continued to judgment and execution, as if the same had been commenced in the said court, for which purpose it shall and may be lawful for the governor, lieutenant-governor or person administering the government of this province, to issue a commission for the trial of all issues that may be joined in any of the said courts in their respective districts, and to direct that the records thereof be returned into the said court of king's bench.

The records of the late courts of common pleas to be deposited in the court of king's bench.

XXXII. *And be it further enacted*, That all and singular the records of the several courts of common pleas for the Eastern district, for the Midland district, for the Home district, and for the Western district of this province, respectively, shall be transmitted to, and deposited in the said court of king's bench, and make a part of the records of the said court, for all such purposes as to law and justice may appertain.

Court of appeals.

XXXIII. *And be it further enacted*, That the governor, lieutenant-governor or person administering the government of this province, or the chief justice of the province, together with any two or more members of the executive council of the province, shall compose a court of appeal, for hearing and determining all appeals from such judgments or sentences as may lawfully be brought before them.

The judges below, may assign their reasons, but not give their votes in appeal.

XXXIV. *Provided always, and be it further enacted*, That when any person having given the judgment or sentence appealed from, shall be a member of the court of appeal, it shall and may be lawful for him to assign to the said court his reasons for delivering such judgment, in case he shall be so disposed, but he shall not be at liberty to give his vote in the decision of the question, before the court.

Limitation of appeals.

XXXV. *And be it further enacted*, That an appeal shall lie to the court of the governor and executive council, from all judgments given in the said court of king's bench, in all cases where the matter in controversy shall exceed the sum of one hundred pounds, or shall relate to the taking of any annual or other rent, customary or other duty, fee, or any other such like demand, of a general and public nature, affecting future rights, of what value or amount soever the same may be, upon proper security being given by the appellant that he will effectually prosecute his appeal and answer the condemnation, and also pay such costs and damages as shall

Security to be given.

be awarded in case the judgment or sentence appealed from shall be affirmed, and that upon the perfecting such security, execution shall be stayed in the original cause.

XXXVI. *And be it further enacted by the authority aforesaid,* That the judgment of the said court of appeal shall be final, in all cases where the matter in controversy shall not exceed the sum or value of five hundred pounds sterling, but in cases exceeding that amount, as well as in all cases where the matter in question shall relate to the taking of any annual or other rent, customary or other duty, or fee, or any other such like demand of a general and public nature, affecting future rights, of what value or amount soever the same may be, an appeal may lie to his majesty, in his privy council, upon proper security being given by the appellant that he will effectually prosecute his appeal, and answer the condemnation, and also pay such costs and damages as shall be awarded by his majesty, in his privy council, in case the judgment of the said court of governor and executive council, or court of appeals shall be affirmed: and upon the perfecting of such security, execution of the said judgment shall be stayed, until the final determination of such appeal to the king in council.

Cases of appeal to his majesty in council

Security to be given.

*Provided always, and be it further enacted,* That in time of actual war, and when there may be reason to suspect an invasion of the province from the king's enemies, it shall and may be lawful for the governor, lieutenant-governor, or person administering the government, by and with the advice and consent of the executive council, to issue his proclamation to remove the place of holding the said court, and to appoint and make known such other place, within the limits of the province, as shall be deemed most safe and convenient for holding the same.

Provision for removing the court of king's bench to another place of holding the same.

XXXVII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the persons herein after mentioned, to demand and take the following fees, and no more, for the services respectively set forth.

Fees.

XXXVIII. *Provided always,* That it shall and may be lawful for his majesty's attorney-general to demand and receive his fees in the increased proportion of one third, to the following table, to wit:

Increased fees allowed to his majesty's attorney general

	£.	s.	d.		£.	s.	d.
Taking instructions to prosecute or defend, with warrant of attorney,	0	5	0	Notice of trial and all other notices,	0	2	6
For drawing declaration,	0	5	0	Every subpoena,	0	1	0
Copy of the same,	0	2	6	Every motion of course,	0	5	0
Entering common appearance with clerk,	0	1	0	Every special motion,	0	7	6
Pleading general issue,	0	3	0	Preparing brief of facts,	0	10	0
Special plea, replication, or other pleading,	0	10	0	Arguing demurer,	0	10	0
Copy of the same,	0	3	0	Fee with brief in matters under £30			
Drawing affidavit,	0	5	0	10s. above.			
				Every necessary attendance at the office, or on adverse party,	0	1	0
				Attending to strike special jury,	0	7	6
				Attending taxation of costs,	0	5	0

Fees to be taken by the Clerk of the King's Bench in civil causes.

For entering appearance,	0	1	0	Drawing every postea and judgment,	0	13	4
For sealing, entering and filing every writ or precipe,	0	2	0	Writ of execution,	0	5	0
Drawing every order or rule of court,	0	2	0	Exemplifications and copies of all records, for each sheet containing 72 words,	0	1	0
Filing every declaration, plea, demurer or any pleading or paper,	0	2	0	Searching records for any one year,	0	1	0

Attending and striking special jury, with copies to each party,	0 : 5 : 0	General search,	0 : 2 : 6
Every recognizance entered in court,	0 : 5 : 0	Entering satisfaction on record,	0 : 2 : 6
		Writ of execution, possession, or restitution,	0 : 5 : 0
<b>MARSHALL.</b>			
Entry of every cause,	0 : 2 : 6	Entry of verdict,	0 : 2 : 6
Drawing the jury,	0 : 2 : 6		
<b>CRIER.</b>			
Calling and swearing each jury,	0 : 2 : 0	Calling any party on recognizance,	0 : 1 : 0
Calling plaintiff on nonsuit,	0 : 1 : 0		
<b>SHERIFF.</b>			
Serving a writ,	0 : 2 : 6	Bringing up prisoner by habeas corpus, in civil cause,	0 : 12 : 0
Arrest,	0 : 5 : 0	Travelling per mile,	0 : 0 : 6
Bail bond,	0 : 5 : 0	Executing writ of enquiry, summoning jury, and return of inquisition,	0 : 10 : 0
Poundage on execution,	0 : 0 : 6	Attending view per diem,	0 : 15 : 0
When for a sum exceeding £100,	0 : 0 : 3		
Service of writ of possession, or restitution,	0 : 16 : 0		

## C H A P. III.

An ACT to establish a Court for the Cognizance of Small Causes in each and every District of this Province.

Preamble.

**F**OR the more convenient administration of justice in small causes, in each district of this province; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled, by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," and by the authority of the same, That there be constituted and established, and there is hereby constituted and established, in each and every district, a court which shall have cognizance in all actions of contract, for sums above forty shillings, not exceeding the sum of fifteen pounds, to be known by the name and style of the District Court, of each respective district, and shall be holden by one or more judge or judges, to be appointed by commission, under the great seal of the province.

Establishment and jurisdiction of the district courts.

Terms, or periods of sitting thereof.

II. And for the regular dispatch of business, Be it further enacted, That there be appointed four periods of sitting, or terms for the said court, in each and every year, which terms shall severally commence on the Monday in the week next but one proceeding the week in which the quarter sessions are respectively holden, in each district, and shall end on the Saturday in the same week, which courts shall be severally holden in the respective town, township or place wherein the court-house for the district is directed to be built, excepting in the Western district, where the said court shall be holden in the town of Detroit.

Course of proceeding therein

III. And be it further enacted by the authority aforesaid, That the course of proceeding in the said court shall be by summons, issuing in the king's name, returnable on some day in said term, and bearing teste in the name of the first judge of the court, which may be in the following form:

DISTRICT } GEORGE the third, by the grace of God, of Great-Britain, France and Ireland, king,  
to wit. } defender of the faith, and so forth.

To A. B. Greeting.

We command you, that you do either in person or by your attorney appear at our district court to be holden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ to answer the complaint of C. D. in a plea of contract, whereby you have promised to pay him the sum of £. \_\_\_\_\_ for (the consideration) and which you refuse to pay him as he says: witness E. F. judge of the said court, this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_

Form of summons.

IV. *And be it further enacted*, That the said process shall be served on the defendant or defendants by a literate person at least eight days before the return thereof, and in case the said defendant or defendants shall not appear in court either in person, or by attorney, on the return of the process, it shall and may be lawful for the said plaintiff or his attorney, on the day next after the return day, upon affidavit made of the service of such process, to enter appearance for such defendant or defendants, and on the day next after the entry of such appearance, in case the defendant shall not have appeared and discharged the costs of such entry either in person or by attorney, it shall and may be lawful for the plaintiff to sign judgment, and sue out a writ of enquiry of damages, directed to the sheriff of the district, to be executed on some given day, in the course of the week in which the quarter sessions are holden next ensuing, and returnable the first day of the following term.

Service of such process,

appearance by plaintiff in default of defendant

writ of enquiry

V. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for the defendant or defendants, his or their attorney, to appear on the return day of the writ, and file his plea, on or before the third day after such appearance, which, in case he means to defend the suit and plead the general issue, may be in the following form; "The said C. D. appears in person or by G. H. his attorney, and says he made no such promise;" and in default of a plea, upon the third day after such appearance, it shall and may be lawful for the plaintiff to sign judgment.

Appearance & plea of defendant.

judgment in default of a plea.

VI. *Provided always*, That where there are mutual debts between plaintiff and defendant, or if either sue or be sued, as executor or administrator, when there are mutual debts between testator and intestate and the other party, one debt may be set against the other, and such matter may be given in evidence on the general issue, so as at the time of pleading the general issue, when any debt is to be insisted on in evidence, notice be given of the particular sum or debt so intended to be insisted on, and on what account it became due.

A set off admissible, on due notice.

VII. *And be it further enacted by the authority aforesaid*, That in all cases where the defendant or defendants shall enter, or cause his or their appearance to be entered at the return of the writ, it shall and may be lawful for him or them, on motion made in court, to be supported by affidavit, to apply for further time to put in their plea, which motion the court shall be at liberty to grant, where sufficient cause shall be shewn, and also to impose such terms on the defendant as justice may require.

On motion, duly supported, the court may grant further time to plead.

VIII. *And be it further enacted*, That four days notice of trial shall be given to the defendant or defendants of every issue to be joined in the said court, which notice may be lawfully countermanded, provided such countermand be served on the defendant or his attorney two days before the expiration of the notice.

Notice of trial and countermand thereof.

IX. *Provided always, and be it further enacted*, That when the plaintiff having given notice of trial, and not having countermanded the same, within the time aforesaid, shall neglect to enter the cause and bring forward the said issue for trial, he shall pay to the defendant or defendants all reasonable costs and charges by him incurred on account of such notice; and in case the said plaintiff shall not give fresh notice of the trial of the said issue, on or before the third day of the term next ensuing, it shall and may be lawful for the defendant to move for, and the court to give the like judgment as in case of a non-suit.

Provision in case of not bringing the issue to trial, after having given notice, & no countermand.

Manner, time and place of summoning jurors to try the issues, and to execute writs of enquiry.

X. And to the end that the trial of all issues to be joined in the said court, as well as the execution of all writs of enquiry, to be sued out upon judgments obtained by default, as aforesaid, may be had at the most convenient time and place, it shall and may be lawful for the judge presiding in the said court to issue his precept to the sheriff of the district, at least seven days before the week in which the sessions are holden, requiring him to summon, and the said sheriff shall, and is hereby required upon receipt of such precept, to summon not less than thirty-six, nor more than forty-eight jurors, living within the said district, to be and appear in the town or place where the quarter sessions are usually holden, on the same day on which the said sessions do severally commence to be holden, from whom a jury shall be taken for the trial of each issue, in like manner as directed in all causes to be tried at nisi prius; and each person sworn for the trial of any issue joined, shall be entitled to receive six-pence and no more.

Fee for each juror.

Final judgment and execution.

XI. And be it enacted, That in all cases when the verdict of the jurors shall be for the plaintiff, it shall and may be lawful for the plaintiff or his attorney to sign judgment on the third day of the term next after the giving of the said verdict, and to proceed to sue out execution immediately.

Motion in arrest of judgment, or for a new trial.

XII. Provided always, That when the party defendant shall have any material or just cause to shew why judgment shall not be arrested or a new trial had, it shall and may be lawful for him, either in person or by attorney, on the first or second day of the term, next ensuing the said verdict, to move the court, on grounds to be supported by affidavit, for a rule to shew cause to the effect above mentioned; and in case the court shall see sufficient grounds for the granting of such rule, notice thereof shall be served on the party plaintiff or his attorney, and on hearing the parties, the said rule shall be made absolute or discharged in the course of the said term.

Fees

XIII. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the persons herein after named, to demand and receive the following fees and no more, for the services herein after set forth.

ATTORNEY.

Attorney's.

Instructions to sue or defend,	£. 0 : 5 : 0	Notice,	£. 0 : 1 : 0
Declaration,	0 : 4 : 0	Motion of course,	0 : 2 : 6
Plea,	0 : 2 : 6	Special motion,	0 : 5 : 0
Entering appearance by plaintiff,	0 : 2 : 6	Brief and fee thereon	0 : 10 : 0

SHERIFF.

Sheriff's.

For every jury sworn,	0 : 4 : 0	Poundage, 2 1-2 per cent.
Every execution,	0 : 5 : 0	Milage, four-pence per mile.

CLERK.

Clerk's.

For filing declaration,	0 : 2 : 0	Taking verdict,	0 : 2 : 6
For filing each paper,	0 : 1 : 0	Entering postea and judgment,	0 : 2 : 6

CRIER.

Crier's.

For swearing jury,	£. 0 : 1 : 0
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JUDGE.

Judge's.

On every declaration filed,	0 : 2 : 6	For signing judgment,	0 : 10 : 0
Rule of court on all special motions,	0 : 5 : 0		



## C H A P. IV.

An ACT to authorize the Governor or Lieutenant-Governor to licence Practitioners in the Law.

**W**HEREAS much inconvenience may ensue from the want of persons duly authorized to practise the profession of the law in this province; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled, by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec, in North-America, and to make further provision for the government of the said province," and by the authority of the same, That the operation and effect of the provisions contained in a certain act or ordinance of the late province of Quebec, passed in the twenty-fifth year of his majesty's reign, entitled, "An act, concerning advocates, attornies, solicitors and notaries, and for the more easy collection of his majesty's revenues," so far forth as the same regards the regulations, concerning advocates, attornies, solicitors and notaries be suspended, and the same is hereby suspended, for and during the term of two years from the passing of this act.

II. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the governor, lieutenant-governor, or person administering the government of this province, to authorize by licence, under his hand and seal, such and so many of his majesty's liege subjects, not exceeding sixteen in number, as he shall deem, from their probity, education, and condition in life, best qualified to act as advocates and attornies, in the conduct of all legal proceedings in this province; and that upon producing such licence to the proper officer, their names shall be inscribed on a roll for that purpose, to be provided, and to be kept among the records of the court of king's bench; and each and every person whose name shall be so inscribed, and no other shall be holden as duly authorized to receive fees for practising in any of his majesty's courts within this province.

III. *Provided always, and be it enacted,* That in case any person or persons so licenced and enrolled, shall be guilty of any malversation or corrupt practice, and the same shall be proved, by evidence, satisfactory to the court of king's bench, it shall and may be lawful for the said court to order his or their name or names to be struck off the roll.

IV. *Provided also, and be it further enacted,* That nothing hereint contained shall prevent, or be construed to prevent any person duly qualified according to the provisions in the said act or ordinance contained, from being admitted to the exercise of the practice of the law, conformably to the said act, and that at and after the expiration of the said two years, the said act or ordinance shall again be in force, until other or further provision be made for the like purposes.

V. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the secretary of the governor, lieutenant-governor or person administering the government of this province, to demand and take the sum of forty shillings on the delivery of each and every such licence, and for the clerk of the court of king's bench, to demand and take the sum of thirteen shillings and four-pence, for inscribing the name of each and every person so licenced upon the roll.

VI. *Provided always, and be it enacted,* That the clerk of the court shall, and is hereby required to inscribe on the said roll the name of each and every person duly qualified, according to the provisions in the said act or ordinance contained, without any gratuity or fee whatever.

Practisable.

Suspension, for 2 years of part of the ordinance of Quebec, respecting attorney's &c.

Persons, duly qualified, to be licenced, to a certain number, as advocates and attorney's.

enrolled,

and authorized to receive fees accordingly.

But may be struck off by the court, on satisfactory evidence of corrupt practices.

Persons admissible by the ordinance, not disqualified by this act.

Revival of the ordinance,

Fees for each licence and for enrollment.

The names of persons authorized according to the ordinance, to be enrolled gratis

C H A P. V.

*An ACT to Provide for the Accounting for all Fines, Forfeitures and Penalties hitherto reserved to his Majesty, to and for the Uses of this Province.*

Preamble.

**W**HEREAS his majesty, by his royal instructions, hath been graciously pleased to direct that all laws or ordinances of this province, for levying of monies, or imposing of fines, forfeitures and penalties should mention and declare the same to be granted or reserved to his majesty, his heirs and successors, for the public uses of the said province, and for the support of the government thereof, as by the said laws or ordinances may be directed; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled, by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec, in North-America, and to make further provision for the government of the said province," and by the authority of the same, That the due application of all monies heretofore granted or reserved, and arising or accruing to his majesty, for the purposes aforesaid, by any act or acts of the legislature of this province, heretofore made, shall be accounted for unto his said majesty, through the commissioners of his majesty's treasury for the time being, in such manner and form as his majesty shall direct; any thing in any former act or ordinance or clause in any act or ordinance to the contrary hereof in any wise notwithstanding.

The application of all monies levied for the uses of the province; and of fines, &c to be accounted for to his majesty.

C H A P. VI.

*An ACT to amend certain parts of an Act passed in the thirty-third year of the Reign of his Majesty, entitled, "An act to authorize and direct the laying and collecting of Assessments and Rates, in every District within this Province, and to provide for the Payment of Wages to the Members of the House of Assembly."*

Preamble.

**W**HEREAS the provisions contained in a certain act passed in the last sessions, entitled, "An act to authorize and direct the laying and collecting of assessments and rates in every district within this province, and to provide for the payment of wages to the members of the house of assembly," have been found to be not sufficiently comprehensive; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled, by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec, in North-America, and to make further provision for the government of the said province," and by the authority of the same, That in addition to the eight classes by the said act directed to be made out, it shall and may be lawful for the assessors of every parish, township, reputed township or place, to be nominated and appointed for the ensuing year, and they are hereby required to make out a ninth class containing the names of such inhabitant householders thereof, as the said assessors to the best of their knowledge and judgment, believe to be possessed of real or personal property, goods or effects, to the value of four hundred and fifty pounds, and not amounting to five hundred pounds.

A 9th class of inhabitant householders to be added to the former classes.

And also a 10th class,

and a further list to be called the Upper list.

II. And further to make out a tenth class, containing the names of such inhabitant householders as the said assessors, to the best of their knowledge and judgment, believe to be possessed of real or personal property, goods or effects to the value of five hundred pounds, and not amounting to five hundred and fifty pounds; and further to make out a list of all such inhabitant householders as aforesaid, as the said assessors to the best of their knowledge and judgment

believe to be possessed of real or personal property, goods or effects, above the value of five hundred pounds, specifying the particular amount of the value of the real or personal property, goods or effects, of the said persons according to the best of the knowledge and judgment of them the said assessors, which list shall be known and called by the name of the Upper list.

III. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the collector of each parish, township, reputed township or place, to be nominated and appointed for the ensuing year, and he is hereby authorized to demand and receive for the year ensuing, the twenty-fifth of March next, of every inhabitant householder, whose name shall be included in the said ninth class, the sum of one pound two shillings and six-pence, as his rate or proportion of the district assessment to be levied for the said year.

IV. *And also to demand and receive for and during the time aforesaid,* of every inhabitant householder whose name shall be included in such tenth class, the sum of one pound five shillings, as his rate or proportion of the district assessment to be levied for the said year.

V. *And also to demand and receive for and during the time aforesaid,* of every inhabitant householder, whose name shall be included in the said upper list, a sum to be calculated at and after the rate of five shillings for every hundred pounds at which he shall stand assessed in manner aforesaid.

VI. *And whereas every inhabitant householder within this province, possessed of a location or lot of land, by his majesty's bounty, or otherwise, may by his honest industry support himself, and at the same time contribute something to the public stock of the district ;* Be it enacted that the appellation of the excused list, by the said abovementioned act, directed to be given to the list containing the names of the persons herein specified, do cease and determine ; and that such list be continued to be made out, and be called the under list ; and that every inhabitant householder within the province whose name shall be included in the said under list, shall for the said ensuing year, contribute and pay, the sum of two shillings towards the public stock of the district, to be proportionably diminished in case it shall not hereafter be found necessary to impose an entire rate according to the provisions in the said act in that behalf contained.

VII. *And be it further enacted,* That the several rates herein directed to be paid shall be levied, collected, paid and recovered subject to such provisions, means and penalties as in and by the said act abovementioned are recited and contained.

Rate to be paid by each person classed in the 9th class.

Rate to be paid by each person classed in the 10th class.

Rate to be paid by each person included in the upper list.

The appellation of the excused list to cease & henceforth called the under list.

Rate to be paid by each person included therein.

Means of levying the rates, by this act directed to be paid.

## C H A P. VII.

### *An ACT for the further Regulation of the Militia of this Province.*

**F**OR the further regulation of the militia of this province ; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, " An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," and by the authority of the same, That in time of war, when and so often as occasion may require, it shall and may be lawful for the governor, lieutenant-governor or person administering the government of this province, to employ the militia of this province, either upon land, or upon the lakes, rivers and communications thereof, in such parties or detachments as by him shall be deemed expedient.

II. *And whereas by a certain act entitled " An act for the better regulation of the militia of this province,"* it is provided that it shall and may be lawful for the persons therein mentioned,

Preamble.

Power to employ the militia, in time of war, as well by land as by water.

Roster for regulating the turn of duty.

on certain occasions, to call out detachments of the militia; Be it therefore enacted by the authority aforesaid, That the persons to serve on such detachments shall be regularly taken from time to time as they shall be required, from a roster or list to regulate the turn of duty, to be first formed by ballot, of each and every person in each respective battallion, regiment or independant company, and that after the same has been formed, when any person shall be enrolled as a militia man in any battallion, regiment or independant company, the name of such man shall be inserted and follow the last person in the said roster, the initial of whose surname corresponds with the initial of the surname of the man so to be inserted; and when any detachment shall be called out for service, the adjutant or officer commanding each battallion, regiment or independant company, shall give notice to the persons upon the turn for duty, and every person receiving such notice shall obey the same, under the like penalties, and subject to the same exemptions, as in the said act abovementioned are set forth.

III. *And be it further enacted by the authority aforesaid,* That when any detachments are formed and called out for public service, it shall and may be lawful for the governor, lieutenant-governor or person administering the government of this province, to divide the same into smaller detachments or parties, and appoint them to serve on board vessels, boats or batteaux upon any of the lakes, rivers or communications by water of this province, with great guns or artillery, as well as with small arms, as occasion may require, and shall and may appoint them to be stationed in any of the creeks or harbors of the said lakes, or in any of the rivers of the province, and also to train and exercise the same to the use of great guns or artillery, as well by land as by water.

IV. And whereas it may be convenient when a sufficient number of horses can be provided to form one or more troop or troops of persons to serve as cavalry; Be it enacted by the authority aforesaid, That it shall and may be lawful for the governor, lieutenant-governor or person administering the government of this province, to form and embody such troop or troops, and to employ the same on such duties as the necessity of the service may require.

V. *And be it further enacted by the authority aforesaid,* That all detachments to be called out and employed as aforesaid, may and shall if need require, be detained on such service for and during the space of six months at one time and no longer, provided that every such detachment be relieved by the arrival of a fresh detachment sufficient for the indispensable occasions of the service at such period, for which purpose it shall and may be lawful for the proper officer, one week at least before the expiration of the said period of service, to call together the remaining parts of the said each battallion, regiment or independant company, or so many as may be necessary according to their several terms to be regulated by the roster as aforesaid, to relieve such detachment.

VI. *Provided always, and be it further enacted by the authority aforesaid,* That if such detachments cannot be replaced by an equal number of men of the remaining part of such battallion, regiment or independant company respectively, then and in such case every such detachment to be raised as aforesaid, shall ballot or draw lots for such a number of men as may be wanting to make the succeeding detachment, equal to the detachment relieved; and that the parties whose names shall be drawn, shall be liable to serve with the said detachment; but in case of a partial relief, they shall be the first to be relieved either wholly or by ballot, according to the number to be relieved.

VII. And whereas by the said act abovementioned, it is directed, that all persons from the age of sixteen years to fifty, shall be liable to the performance of the several duties therein mentioned and set forth; Be it enacted by the authority aforesaid, That the duties herein required to be performed, be severally and respectively extended to all persons from the age of sixteen years to sixty.

Manner of forming the same.

Notice to be given to the persons on the turn for duty.

Power to station the militia, in detachments by land or water, and to train them to the use of artillery.

And to form, embody, and employ troops of horse.

Period of service of detachments, provision.

Measures to be taken to relieve detachments.

When they can only be partially relieved the persons to remain on service shall be ascertained by ballot.

Duties required by this act shall extend from the age of 16 years to 60.



C H A P. IX.

An ACT to repeal certain parts of an act passed in the Second Session of the Legislature of this Province, entitled, "An act to regulate the laying out, amending and keeping in Repair the public High-ways and Roads within this Province," and to make further Provisions respecting the same.

Preamble.

Recital of act  
33 Geo. 3.

**W**HEREAS by an act passed in the thirty-third year of his majesty's reign, entitled, "An act to regulate the laying out, amending and keeping in repair the public High ways and roads within this province." It was provided that it should not be lawful for any owner or occupier of lands adjoining to his majesty's high ways or roads, to girdle or cause to be girdled, any tree standing upon such lands within the distance of thirty yards from the side of the said road; and that from and after the first day of September, that will be in the year of our lord one thousand seven hundred and ninety-four, if any girdled tree or dead tree shall be found standing within thirty yards of the said road, it shall and may be lawful for any person taking with him a credible witness to give a verbal or written notice to the owner or occupier of the said lands, to cut down or remove such girdled or dead tree or trees, and in case any owner or occupier of the said lands, shall neglect or refuse to cut down or remove any such tree by the space of thirty days, after such notice as aforesaid, he shall forfeit and pay the sum of ten shillings for every day that the said tree or trees shall be suffered to remain uncut or unremoved, after the expiration of such period as aforesaid; which penalty shall be levied and applied in manner and for the purposes therein after mentioned; and whereas such provision is found to be inexpedient; Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec, in North-America, and to make further provision for the government of the said province," and by the authority of the same, That such part of the said clause as herein before is mentioned and set forth, shall be, and the same is hereby repealed.

The same repealed in as far as recited.

But to revive progressively on presentment of juries and order of sessions thereupon.

II. *And be it further enacted*, That it shall and may be lawful for the magistrates, in quarter sessions assembled, or the greater part of them, upon presentment made by the grand jury then and there attending, that any tract of country along the road side, the limits whereof shall be particularly set forth, is in such a progressive state of cultivation, that the adopting of the provision of the said act herein before repealed will be no longer inexpedient, by an order in session to declare the same, and that the provision in the said act contained, shall be renewed and enforced throughout the said tract or portion of country comprehended and specified in the said presentment; and the said provisions shall by virtue of such order of sessions be renewed and enforced accordingly.

C H A P. X.

An ACT to amend certain parts of an act passed in the thirty-second Year of His Majesty's Reign, entitled, "An act for building a Gaol and Court House in every District throughout this Province, and for altering the names of the said Districts."

Preamble.

**W**HEREAS it is necessary for the ease of the inhabitants of the Eastern district that two gaols and court houses should be built therein; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making

more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the said province," and by the authority of the same, That in addition to the abovementioned act which authorizes and directs that a gaol and court house for the Eastern district shall be built in manner therein mentioned, in the town of New-Johnston in the township of Edwardsburgh, it shall and may be lawful for the inhabitants of the Eastern district to erect and build, or cause to be erected and built in the town of Cornwall, a gaol and court house, after the manner and under the rules, regulations and conditions appointed and prescribed, by the abovementioned act passed in the thirty-second year of his majesty's reign as aforesaid.

A gaol & court house to be erected in the town of Cornwall, in the Eastern district.

II. *Provided always*, That all and every the sum and sums of money that shall or may heretofore have been received and collected under and by virtue of an act passed in the thirty-third year of the reign of our lord the king, entitled, "An act to authorize and direct the laying and collecting of assessments and rates in every district within this province, and to provide for the payment of wages to the members of the house of assembly," and intended to be applied to and for the erecting and building of a gaol and court house in the town of New-Johnston, under and by virtue of the said act, passed in the thirty-second year of his majesty's reign as aforesaid, as well as all and every the sum and sums of money that shall and may, by virtue of the abovementioned act, hereafter to be received and collected (and to be applied as aforesaid) shall and may be equally divided and disposed of, as well for and towards the erecting and building of a new gaol and court house in the said town of Cornwall, as in the erecting and building of the said gaol and court house appointed to be erected and built in the said town of New-Johnston as aforesaid.

Funds for erecting the said gaol and court house & supporting the future expenditures thereof

III. *And be it further enacted by the authority aforesaid*, That his majesty's justices in their quarter sessions assembled, in and for the Eastern district, shall and may enquire as often as to them shall seem necessary, of and concerning all sums of money that shall and may heretofore have been received and collected, or shall and may hereafter be received and collected, under and by virtue of the aforesaid act, passed in the thirty-third year of his majesty's reign, and to be applied as aforesaid, an equal division and distribution of the same shall make towards the erecting and building of the said gaol and court house, in the respective places herein before appointed for the building of the same.

The application & distribution of such funds to be cognizable in quarter sessions.

IV. *And be it further enacted*, That the sheriff of the said district shall have the same power and authority to nominate and appoint such person as he shall judge most proper to the office of gaoler and keeper of the gaol and court house at Cornwall, as well as to do all other matters and things necessary to be done respecting the government of the said gaol and court house at Cornwall, as he had, by virtue of the said act to regulate the gaol and court house of New-Johnston.

The sheriff to nominate the gaoler, &c.

V. *And be it further enacted by the authority aforesaid*, That all and every the rules, regulations and conditions respecting the management and government of the gaols in each district as they are prescribed in the aforesaid act, passed in the thirty-second year of his majesty's reign, shall extend and be construed to extend to the management and government of the said gaol, as in and by this act is allowed to be erected and built in the said town of Cornwall in the Eastern district as aforesaid.

The gaol and court house to be under the established rules & regulations.

## C. H. A. P. XI.

*An ACT to lay and collect a Duty upon Stills.*

Preamble.

**W**HEREAS for the better support of the government of this province, it is expedient to encrease the revenues thereof; We your majesty's most dutiful and loyal subjects the representatives of the people of the province of Upper-Canada, in assembly met, do most humbly beseech your majesty that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the said province," and by the authority of the same, That from and after the fifth day of April next, there shall be raised, levied, collected and paid yearly, and every year, unto his majesty, his heirs and successors, to and for the uses of this province, and towards the support of the civil government thereof; of and from all persons having and using a still or stills, or hereafter to have and use a still or stills, for the purpose of distilling spirituous liquors for sale, a sum not exceeding one shilling and three pence lawful money of this province, for every gallon which the body of such still or stills shall or may be capable of containing, in manner herein after mentioned.

Duty to be paid for every gallon which a still, in use, is capable of containing.

Provision for the current year, to determine in April.

Method of ascertaining the contents of rateable stills.

II. And whereas it is expedient to make provision for the service of the current year, Be it enacted by the authority aforesaid, That the said duties shall begin and be payable for the seven months which will elapse between the fifth day of September, and the fifth day of April next ensuing the passing of this act, to be paid at and after the rate of seven pence half-penny lawful money as aforesaid, per gallon, in manner herein after mentioned.

III. And in order, that the size of the several stills to be employed for the purposes aforesaid, may be more truly ascertained, and the duties to be imposed thereon more easily collected; Be it enacted by the authority aforesaid, That from and after the fifth day of November next, it shall not be lawful for any person to make use of any still or stills, for distilling spirituous liquors for sale, until he shall have obtained a licence for that purpose; and every person desirous of obtaining such a licence, shall, in a written requisition for the same, to be made in manner hereafter mentioned, specify and set forth the number of gallons which the body of the still or stills he proposes to use, does or do contain, which specification shall be inserted in the licence to him to be granted: and in case any person shall make use of any still for the purpose of distilling spirits for sale without having obtained such licence, or shall make use of any still or stills for the purpose of distilling spirits, of larger dimensions than that or those specified in his licence or requisition, or shall have in his possession any still or stills erected or set up over a furnace or fire place, so as the same may be used for distilling, capable of containing singly or together a greater number of gallons in the body or bodies thereof, than the number of gallons specified and set forth in his licence or requisition, and be thereof lawfully convicted by confession, or on the oath of one credible witness before any of his majesty's justices of the peace, he shall forfeit and pay for every such offence the sum of ten pounds lawful money as aforesaid, to be levied by distress and sale of the offenders goods and chattels, one half of which said sum of ten pounds, shall be given to the person or persons informing, and the other half paid into the hands of his majesty's receiver general, to and for the public uses of this province; and that the still or stills so employed shall be forfeited to his majesty, and that the party having used the same shall be incapable of obtaining a licence for the purpose of distilling spirituous liquors for sale, for and during the term of three years.

Penalty for using or having in a situation to be used, stills of larger dimensions than specified in the licence.

IV. And be it further enacted by the authority aforesaid, That the secretary of the province for



the time being, shall and may by himself and agents for that purpose to be duly appointed in each and every district of this province, issue all licences for the purpose abovementioned upon such requisition as aforesaid, which may be in the following form.

Licences to be issued by the secretary.

" I H. B. do require a licence for using a still, the body of which is capable of containing  
 " ing                   gallons, and no more (and in case more than one still is intended to be used)  
 " ed) and also for another still, the body of which is capable of containing                   gal-  
 " lons and no more, for the year ensuing the fifth day of April next, as witness my  
 " hand H. B. this                   day of

Form of requisition for such licences.

" To the secretary of the province of Upper-Canada, }  
 " or his agent for the                   district."

V. *And be it further enacted*, That every such requisition, signed by the party as aforesaid, shall be carefully filed and preserved by the said secretary, or his respective agent duly appointed, (which appointment shall by the said secretary be publicly notified in the Upper-Canada Gazette) and the said secretary and each of his said agents, shall, upon application to any of them for that purpose made, grant to every person desiring the same, a true copy of any such requisition filed in his office, on payment of one shilling by the party applying for the same, which copy shall be signed by the said secretary or his agent, and shall be held and taken as lawful evidence of such requisition or licence, for all purposes whatever.

Such requisitions to be filed & copies thereof granted, when required.

VI. *And be it further enacted by the authority aforesaid*, That all persons desirous of obtaining such licence as aforesaid, shall make such application as herein before is set forth, so that they may be supplied with the same, on or before the fifth day of September next ensuing, and to the end that the public may be informed where to apply for such purpose; the secretary of the province shall and is hereby required to give notice in the Upper-Canada Gazette, or otherwise, at least six weeks next before the said fifth day of September, and hereafter yearly and every year at least one month before the fifth day of April, setting forth at what place and by whom such licences are to be issued in every district in this province; and also the penalties to be incurred by such persons as shall refuse or neglect to comply with the provisions herein contained, and the said secretary, and his agents in their respective district, shall upon such requisition as aforesaid, make out and deliver to every person applying for the same, upon payment of the sum of seven pence half-penny per gallon as herein before mentioned, a licence for the purpose of distilling spirituous liquors for a period of seven months, which shall expire on the fifth day of April next.

Time of applying for licences.  
 Public notice to be given by the secretary.

Duty for the current seven months.

VII. *And be it further enacted by the authority aforesaid*, That all licences to be granted for the purposes aforesaid, after the said fifth day of April next, shall be dated on the sixth day of April in the year in which they are issued, and shall expire on the fifth day of April next ensuing the date thereof, and that it shall and may be lawful for the said secretary or his agents to demand and receive from every person requiring such licence, the sum of one shilling and three pence for every gallon which the body of the still or stills so licenced shall be capable of containing according to the specification in the said licence contained.

Duty for every ensuing year.

VIII. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for the said secretary and each of his agents severally, to demand and take the sum of two shillings and six-pence and no more, as his fee upon the issuing of every such licence as aforesaid.

Fees.

IX. *And be it further enacted by the authority aforesaid*, That it shall not be lawful for the said secretary or any of his agents, to grant a licence for the working of any still unless the body thereof, be capable of containing at least ten gallons wine measure, and if any person shall use a still for the distilling of spirituous liquors for sale, the body of which is not capable of containing ten gallons and be thereof lawfully convicted, by confession or by the oath of one cre-

Still containing less than 10 gallons not to be licenced to distill spirits for sale.

Penalty.

dible witness before any one of his majesty's justices of the peace, he shall forfeit and pay for every such offence the sum of ten pounds, one half of which shall be paid to the informer, and the other half into the hands of his majesty's receiver general, to and for the public uses of this province, and the support of the government thereof.

Search warrant to be granted on affidavit.

X. And in order to prevent fraud in the matters aforesaid, Be it enacted by the authority aforesaid, That it shall and may be lawful for any of his majesty's justices of the peace, upon oath first to be made by any credible person, that such person has good reason to believe that the still or stills employed by any licenced person does or do contain a greater number of gallons in the body or bodies thereof, than what is specified in his requisition or licence, to grant a search warrant to a peace officer; taking with him the party making oath as aforesaid, and any other person for the purpose of examining the still house or other place where any still or stills may be set up, and of measuring or gauging the bodies thereof; Provided always, that no such warrant be executed before sun rise, or after sun set.

Distillers not to retail, nor to be licenced to retail.

XI. *And be it further enacted by the authority aforesaid,* That it shall not be lawful for any person working any licenced still or stills as aforesaid, to sell or barter any quantity of such distilled liquor less than three gallons, nor shall it be lawful for the secretary of the province or any of his agents, to grant a licence for the purpose of distilling spirituous liquors to any person or persons, licenced at the same time to retail spirituous liquors, or to grant a licence for retailing spirituous liquors, to any person or persons licenced at the same time to distill spirituous liquors.

Payment of the monies into the hands of the receiver general.

XII. *And be it further enacted by the authority aforesaid,* That all monies which shall be received by the secretary of the province or his agents, under and by virtue of this act, for licences, to commence on the fifth day of September next, shall be paid by the secretary into the hands of the receiver general of this province, on or before the twentieth day of May and that all monies hereafter to be received by virtue of this act, for licences, to commence on the sixth day of April, shall be paid in to the said receiver general on or before the twenty-first day of June next ensuing, and that all monies that may be received by virtue of this act after the said twenty-first day of June in each and every year successively, be paid in to the receiver general, on or before the fifth day of April next ensuing.

Foundage of the receiver general.

XIII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the receiver general, as treasurer of this province, to deduct from and out of the several sums of money to him paid by the secretary of the province, under and by virtue of this act, the sum of three pounds, for every hundred by him received as aforesaid.

Accounting of monies.

XIV. *And be it further enacted by the authority aforesaid,* That all the fines, forfeitures and penalties that shall be incurred under this act, shall be accounted for to his majesty, through the commissioners of his majesty's treasury for the time being, in such manner and form as his majesty shall direct.

## C H A P. XII.

*An ACT for regulating the manner of licencing Public Houses, and for the more easy convicting of Persons selling spirituous Liquors, without Licence.*

Preamble.

**W**HEREAS the provisions contained in a certain ordinance of the late province of Quebec, passed in the twenty-eighth year of his majesty's reign, entitled, "An act or ordinance for the better security of the revenue arising on the retail of wine, brandy, rum or spirituous liquors, have been found inconvenient; and whereas it is expedient to make other and more easy regulations respecting licences to houses of public entertainment; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the

Recital of an ordinance passed 23 Geo. 3.

legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the said province," and by the authority of the same, That the said act or ordinance shall be and the same is hereby repealed.

The same repealed.

II. *And be it further enacted by the authority aforesaid,* That from and after the twentieth day of March next, no licence shall be granted to any person to keep an inn or public house for the purpose of vending wine, brandy, rum or other spirituous liquors; unless he shall first have obtained a certificate of his being a proper person to keep an inn or public house from the magistrates of the division wherein he resides or is about to reside, to be granted to him as herein after specified; and all licences which shall be hereafter granted to the contrary hereof shall be null and void.

Certificates to be obtained by persons, previous to their being licenced.

III. *And be it further enacted by the authority aforesaid,* That for the said purpose, it shall and may be lawful for the magistrates acting in each and every division of the several districts of this province, to limit the number of inns and public houses in their several divisions, and to appoint a day of public meeting in each division in either of the two last weeks in the month of March in every year, at a convenient place within their several divisions, by a warrant under their hands and seals, or under the hands and seals of any two of them, at least ten days before such meeting, directed to the high constable or other peace officer, requiring him to give notice in the most public manner of such intended meeting, and then and there to hear and receive applications from all such persons as desire to take out licences for opening inns or public houses within their said several divisions, and the said magistrates shall upon hearing and receiving any application from any person praying to have a licence granted to him, enquire into the life, character and behaviour of the person so applying, and if it shall appear to the greater part of the justices then and there assembled, that it is expedient to encrease the number of inns or public houses and that the party applying is a sober, honest and diligent man, and a good subject of our lord the king, they shall then and there grant a certificate accordingly under the hands and seals of any two of them, which certificate shall enable the party holding the same, to apply for and take out a licence on or before the said fifth day of April then next ensuing the day of the said certificate, and such certificate shall be a proper and sufficient warrant for the secretary of the province or his agent, to grant to the said person holding the said certificate such licence on receiving payment of such duties as are already imposed, or may hereafter be imposed by law on the same.

The number of inns may be limited by the magistrates.

Meeting of magistrates, annually in March in order to determine upon applications for licences.

A certificate from the magistrates, so assembled, shall serve as a warrant to obtain a licence.

On payment of duties.

IV. *And be it further enacted by the authority aforesaid,* That no certificate to obtain such licence shall be granted to any person not licenced the year preceeding, unless such person shall produce to the justices at the said meeting, should they require it, a testimonial under the hands of the parson and church or town wardens, or of four reputable and substantial householders and inhabitants of the said division wherein the said inn or public house is intended to be kept; setting forth, that such person is of good fame, sober life and conversation and that he has taken the oath of allegiance to our sovereign lord the king.

Restrictions in granting licences to persons not licenced of the preceeding year.

V. *Provided nevertheless,* That if any licenced person shall die or remove from the inn or public house kept by him, it shall and may be lawful for the person succeeding to the occupation of such house, to keep on the said inn or public house during the residue of the term of such licence, on condition that such person shall obtain an assignment endorsed on the back of the licence granted to the person so deceased or removed; which assignment shall be executed in the presence of a magistrate, and shall within thirty days after the death or removal of such per-

Provision for the assignees of inholders dying or removing.

son obtain a testimonial as aforesaid, in order to its being produced at the next division meeting; and if such assignment be not executed as aforesaid, and such testimonial obtained and signed within the said thirty days, then and in such case immediately from and after the expiration thereof, such licence shall be null and void; and no licence so assigned shall entitle any person to keep an inn or public house in any other division than that in which it was originally kept by virtue of the said licence, such licence being with regard to all other places, and the fame is hereby declared to be null and void.

VI. *And be it further enacted by the authority aforesaid,* That every person obtaining such certificate as aforesaid, shall at the same time enter into such recognizance as by a certain act of the legislature of this province, entitled, "An act to establish a further fund for the payment of the salaries of the officers of the legislative council and house of assembly, and for defraying the contingent expences thereof," is directed, and that the clerk of every division meeting, or other person employed to draw out such recognizance shall at the execution thereof, demand and take from the person acknowledging the same, over and above the fee by law directed to be taken for such recognizance, the further sum of one shilling, to be paid to the clerk of the peace for filing the same, and the clerk of every division meeting, or other person drawing the said recognizance, shall and is hereby required to deliver or transmit the same to the clerk of the peace of the district, in order that the same may be filed, and that the clerk of the peace in each and every district shall file all recognizances that they may have taken, and shall be transmitted or delivered to them in manner aforesaid, to be kept among the records of the district; and the clerks of the peace within their several districts shall keep a register of all the recognizances that may have been transmitted or delivered to them, and shall deliver or cause to be delivered to the justices of the peace in their quarter sessions assembled, next ensuing the fifth day of April yearly, a list of the names of the persons whose recognizances shall respectively have been filed, and any justice of the peace in any district where such licence shall be granted upon complaint or information that such licenced person hath done or committed any act, offence or misdemeanor, whereby in the judgment of the said justice such recognizance may be forfeited, or the condition thereof broken, may by summons under his hand and seal, require such person so complained of or informed against, to appear at the next quarter sessions of the peace for the said district, then and there to answer the matter of such complaint or information; and also may bind the person or persons who shall make such complaint or information or any other person or persons concerned, in a recognizance to appear at such quarter sessions, and give evidence against the person so complained of, or informed against, and the justices of the peace in their quarter sessions assembled, shall and may have power to direct the jury which shall attend at such sessions, for the trial of traverses or some other jury of twelve honest and substantial men to be then and there impanelled by the sheriff without fee or reward, to enquire of the misdemeanor charged in the said complaint or information; and if such jury shall find that the person so complained of or informed against, hath done any act whereby the condition of his recognizance is broken; such act being specified in such complaint or information, it shall and may be lawful for the court at such quarter sessions, to adjudge such person guilty of the breach of such recognizance; which verdict and adjudication shall be final to all intents and purposes; and whereupon the said justices shall order the recognizance entered into by such offender to be estreated into his majesty's court of kings bench, to be levied to his majesty's use; and that the said offender shall, from and after such adjudication be utterly disabled to sell any wine, brandy, rum or spirituous liquors or strong waters for the space of three years; and any licence or licences granted or to be granted to such person during such time, shall be null and void.

VII. *And be it further enacted by the authority aforesaid,* That the secretary of the province or other person appointed to deliver licences to innkeepers or keepers of public houses, shall cause all monies that shall or may be by himself or his agents received for such licences as may

Recognizance to be entered into on obtaining a certificate.

Fees.

Recognizance to be transmitted to the clerks of the peace and filed

And registered

A list of persons under such recognizances to be laid before the ensuing quarter sessions.

Method of proceeding against persons who may have taken the conditions of this recognizance.

Recognizances to be estreated.

Disability of an offender for 3 years.

Monies to be paid into the treasurer's hands within six months.

have been issued in each and every district, to be paid into the hands of the treasurer of this province, for the time being, on or before the expiration of six months next succeeding the year when such licences were issued and distributed.

VIII. *And be it further enacted by the authority aforesaid,* That the secretary of the province shall and is hereby required yearly and every year, to cause the names of the several persons who shall have taken out a licence for keeping an inn or public house, to be published in the Upper-Canada Gazette, on or before the twenty-first day of June, and that the clerk of the peace in each and every district do cause the names of all such persons as shall have entered into such recognizance, to be affixed in two of the most public places in the district for public inspection.

### Form of a Warrant to a Constable to give Notice.

To the high Constable or other Peace Officer of this District.

HOME DISTRICT }  
Division } IN pursuance of the act in such case made and provided, you are hereby required to give notice in the most public manner to all licenced innkeepers or keepers of public houses, and also to all persons unlicenced who do intend to offer themselves to be licenced at the next general meeting of the said justices, for that purpose, within this division; that they do personally appear before the said justices at the            on the            at            hour of the forenoon of the same day, to take or renew their licences for the year ensuing; and also to give them notice that every person to be licenced, must personally enter into a recognizance of ten pounds before the clerk of the peace of the district, together with two sureties in five pounds each, that they will not use or suffer any unlawful games, and that they will keep good order and rule within their respective houses; and if he, she or they shall be hindered by sickness or other reasonable cause to be allowed by the said justices, that he, she or they must procure two sureties to be then and there bound in the like manner in ten pounds each. And unto such persons as have not been licenced for the year preceeding; you are further to give notice, that no licence will be granted to any of them unless every such person shall also at the same time and place, produce a testimonial, should the same be required by the justices, under the hands of the minister and church or town wardens, or otherwise of four respectable and substantial householders of the division; setting forth, that he is of good fame and sober life and conversation, and as they believe, a good subject of our lord the king, having taken the oath of allegiance: hereof fail not.

GIVEN under our hands this            day of            in the year of our lord

A. B. } Justices of the peace  
C. D. } for the said division.

Names of licenced persons to be advertised.

And of those under recognizances.

Form of warrant.

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L A W S  
OF HIS MAJESTY'S PROVINCE OF  
U P P E R - C A N A D A :

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PASSED IN THE FOURTH SESSION OF THE PROVINCIAL PARLIAMENT OF UPPER-CANADA, MET AT NEWARK, ON THE SIXTH DAY OF JULY, IN THE THIRTY-FIFTH YEAR OF THE REIGN OF OUR SOVEREIGN LORD, GEORGE THE THIRD, AND PROROGUED ON THE TENTH DAY OF AUGUST FOLLOWING.

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C H A P. I.

*An ACT to regulate the Practice of Physic and Surgery.*

Preamble.

**W**HEREAS many inconveniencies have arisen to his majesty's subjects in this province, from unskilful persons practising physic and surgery therein : Therefore, be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec, in North-America, and to make further provision for the government of the said province," and by the authority of the same, That no person who shall or may have come into this province since the passing of the abovementioned act, and before the passing of this act, nor any person who shall or may hereafter come into this province, shall be permitted to vend, sell or distribute medicines by retail, or prescribe for sick persons, or practise physic, surgery or midwifery within the province for profit, until such person or persons shall be duly examined and approved of, by a board of surgeons who shall be constituted and appointed (as herein after mentioned) with full powers to grant licences for the practice of physic, surgery and midwifery within the province, and has received a licence under the hands and seals of the president of the said board and such members thereof as may be present at his or their examination.

No person (become resident in this province only since 31 Geo. 3) to practise physic surgery &c. without being duly licenced.

Board for examining & licensing candidates for the practice of physic surgery &c.

II. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the governor, lieutenant governor, or person administering the government of this province, by licence under his hand and seal, to order and appoint the surgeon of his majesty's hospital for the time being, together with the surgeons of his majesty's regiments doing duty within the province, and all other surgeons and practitioners resident within the same, authorized to practise physic and surgery by some lawfully constituted power or board in his majesty's dominions, or any two of them (of which the surgeon of his majesty's hospital shall be one) from time to time, and as often as occasion may require, to hear and examine all persons that may apply for a licence to practise physic, surgery and midwifery, or either, within the said province ; who shall

when they have examined and approved of any person so applying as aforesaid, grant him such licence under their hands and seals, for which licence he shall pay the sum of two pounds law-  
ful money and no more. Fees.

III. *And be it further enacted by the authority aforesaid,* That if any person having come into this province since the passing of the said act in the thirty-first year of his majesty's reign, and before the passing of this act; or shall come into it after the passing of the same, shall vend, sell or distribute medicines by retail, or prescribe for sick persons, or practise physic or surgery as aforesaid, until such person shall be duly examined and licenced by two or more members of the said board, constituted and appointed as aforesaid; such person shall for every offence forfeit and pay the sum of ten pounds to be recovered in any of his majesty's courts of this province, by action of debt, bill, plaint or information, wherein no effoin, privilege, protection or wager of law shall be allowed, and only one imparlance; a moiety whereof shall be given to the informer, and the other moiety paid into the hands of the receiver general of this province to and for the use of his majesty, his heirs and successors, and to and for the use of this province and the support of the civil government thereof, to be accounted for to his majesty, through the commissioners of his treasury for the time being, in such manner and form as it shall please his majesty to direct.

Penalty for practising physic surgery &c. contrary to the provisions of this act.

Manner of recovering the same, and to what uses.

IV. *Provided always,* That nothing in this act shall extend, or be construed to extend to any person who shall have taken a degree in any university in his majesty's dominions, or to any person who shall have been or may hereafter be commissioned or warranted as surgeon or surgeon's mate in his majesty's army or navy, or to any person vending, selling or distributing drugs or compound medicines, for which a patent hath been obtained, or to any other who shall or may have been settled and shall or may have practised physic, surgery or midwifery within this province before the passing of the said act, in the thirty-first year of his majesty's reign as aforesaid; provided that such person last abovementioned, do not take an apprentice or person under pretence of tuition in any branch of physic or surgery, with an intent that such person shall present himself for examination and approval as aforesaid: hereby repealing all former acts or ordinances made for the regulation of the practise of physic or surgery within this province.

Exceptions as to the persons prohibited from practising physic surgery &c. by this act.

Restriction from taking apprentices, under certain circumstances

Repeal of former acts or ordinances in this behalf.

## C H A P. II.

*An ACT to ascertain the Eligibility of Persons to be returned to the House of Assembly.*

**W**HEREAS many natural born subjects of his majesty, who have sworn allegiance to other states and powers, and been resident in the dominions of the same, have been induced, or may hereafter be induced by the excellency and lenity of his majesty's government, to become inhabitants of this province; and whereas it is inexpedient that such persons should be immediately admitted to all the privileges of British subjects; Therefore be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," and by the authority of the same, That from and after the passing of this act, no person or persons of what condition soever, coming from any part place or country not being under his majesty's government at the time of the passing of this act, and not having been a bona fide subject of the king for and during the term of seven years next preceeding the passing thereof, shall be eligible to be proposed, chosen or elected as a representative, or representatives of any county, city,

Preamble

Disqualification from being eligible into the house of assembly.

riding, borough or other place, of any description now or hereafter sending a representative or representatives to the house of assembly, of this province, until such person or persons shall have resided for and during the space of seven years next ensuing the day of his coming into and settling as a subject in the said province.

And from being proposed as a candidate for election.

II. *And be it further enacted*, That no person or persons of what condition soever, that shall or may have come into this province before the passing of this act, from any part, place or country not being under his majesty's government, and not having been a bona fide subject of the king for and during the term of seven years next preceeding the passing hereof, shall be eligible to be proposed, chosen or elected as a representative or representatives of any county, city, riding, borough or other place of any description, now or hereafter sending a representative or representatives to the house of assembly of this province, until such person or persons, shall have resided in the said province, for and during the space of seven years next preceeding the passing of this act.

Penalty for proposing or offering to become a candidate under such disqualifications.

III. *And be it further enacted*, That if any person or persons of what condition soever, coming from any part, place or country, not being under his majesty's government at the time of the passing of this act, and not having been a bona fide subject of the king for and during the space of seven years preceeding the passing thereof, and who shall and may have come into this province before the passing of this act and settled as a subject therein, from any part, place or country, not being under his majesty's government at the time of the passing of this act, and not having been a bona fide subject of the king for seven years preceeding the day of his coming into this province, with an intention to become a subject of the king, and his settling as such within the same, shall propose or offer himself or themselves as a candidate or candidates to become a representative or representatives of any county, city, riding, borough or other place, now or hereafter sending a representative or representatives, until such person or persons shall have resided for and during the term of seven years next ensuing the day of his coming into and settling as a subject in the said province; and shall be thereof convicted, by the oath of any one credible witness, shall forfeit and pay the sum of one hundred pounds; to be recovered by any person who shall sue for the same, in his majesty's court of his bench in this province; by action of debt, bill, plaint or information, wherein no effoin, privilege, protection or wager of law shall be allowed; and only one imparlance, one half of which said sum shall be given unto the person suing for the same; and the other half paid into the hands of his majesty's receiver general to and for his majesty, his heirs and successors, for the public uses of the said province and support of the government thereof; to be accounted for to his majesty, through the commissioners of his treasury for the time being, in such manner and form as his majesty shall direct.

Penalty for obtruding into the house of assembly under such disqualification.

IV. *And be it further enacted*, That if any person or persons of the description aforesaid, coming hereafter to settle in this province, or being therein settled as aforesaid, before the passing of this act, shall be chosen or elected a representative or representatives (whether such person or persons shall have proposed or offered him or themselves as a candidate or candidates or not) of any county, city, riding, borough or other place of any description, now or hereafter sending a representative or representatives to the house of assembly, of this province, as aforesaid, and shall presume upon such choice or election to obtrude or present himself or themselves into the said house as a representative or representatives as aforesaid; he or they, shall forfeit and pay the sum of twenty pounds (over and besides the foregoing penalty, if such person or persons shall have incurred the same) for every day that he shall so obtrude or present himself or themselves, to be recovered by any person who shall sue for the same, in his majesty's court of his bench; by action of debt, bill, plaint or information, wherein no effoin, privilege, protection or wager of law shall be allowed and only one imparlance; one half of which said sum,



shall be given to the person suing for the same, and the other half paid into the hands of his majesty's receiver general; to and for his majesty, his heirs and successors for the public uses of the said province, and the support of the government thereof, to be accounted for to his majesty, through the commissioners of his treasury for the time being; in such manner and form as it shall please his majesty to direct.

## C H A P. III.

*An ACT to ratify, approve and confirm the provisional Agreement entered into by the Commissioners on behalf of this Province, with the Commissioners on behalf of the Province of Lower-Canada.*

MOST GRACIOUS SOVEREIGN !

**B**EING at all times desirous of conciliating the affection and friendship of our fellow subjects in Lower-Canada, and particularly by an approval of articles of provisional agreement that were made and entered into at Montreal, the eighteenth day of February, in the thirty-fifth year of your majesty's reign; by the commissioners nominated and appointed on behalf of the province of Upper-Canada, by an act of the legislature thereof, passed in the thirty-third year of your majesty's reign, entitled, "An act to authorize the lieutenant governor, to nominate and appoint certain commissioners for the purposes herein mentioned," and the commissioners nominated and appointed on behalf of the province of Lower-Canada, by an act of the legislature thereof, passed in the thirty-fourth year of your majesty's reign, entitled, "An act for appointing commissioners to treat with commissioners on behalf of the province of Upper-Canada, for the purposes therein mentioned," in form following:

Preamble.

Approval of the provisional agreement between the commissioners of the provinces of Upper & Lower-Canada.

**ART. I.** That the province of Lower-Canada, shall be and hereby is made accountable to the province of Upper-Canada, in full of all rights, claims and demands which the said province of Upper-Canada may have on the province of Lower-Canada; by reason of the duties levied upon wines, in the years one thousand seven hundred and ninety-three, and one thousand seven hundred and ninety-four, under an act of the legislature of Lower Canada, passed in the thirty-third year of his majesty's reign, entitled, "An act to establish a fund for paying the salaries of the officers of the legislative council and assembly, and for defraying the contingent expences thereof," in the sum of three hundred and thirty-three pounds four shillings and two-pence, currency; which said sum shall be paid into the hands of such person or persons as may be appointed on the part of Upper-Canada, to receive the same.

Recital of the articles of the said agreement.

**ART. II.** That the legislature of Upper-Canada, will not impose any duties whatsoever on any goods, wares or merchandize, imported into Lower-Canada, and passed into Upper-Canada; but will allow and admit the legislature of Lower-Canada, to impose and levy such reasonable duties on such goods, wares and merchandize aforesaid, as they may judge expedient for the purpose of raising a revenue within the province of Lower-Canada.

**ART. III.** That of such duties as the legislature of Lower-Canada hath already imposed, or may hereafter impose on goods, wares or merchandize, coming into the province of Lower-Canada; the province of Upper-Canada, shall be entitled to receive annually, and to dispose of one eighth of their net produce, for the use and benefit of the said province of Upper-Canada; the other seven eights remaining for the use of Lower-Canada.

**ART. IV.** That there shall annually in the month of December, or as soon afterwards as possible, be furnished to the lieutenant governor, or person administering the government of the province of Upper-Canada, for the time being; duplicates of the account of all duties that now are, or hereafter may be imposed by the legislature of Lower-Canada,

**ART. V.** That this agreement is to continue and be in force until the last day of December,

which will be in the year of our lord one thousand seven hundred and ninety-six ; and no longer.

THEREFORE, may it please your most excellent majesty, That it may be enacted, and it is hereby enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, " An act for making more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the said province," and by the authority of the same, That all and every the said articles of provisional agreement herein before particularly mentioned and inserted, and every clause, matter and thing in the said articles contained, shall be, and the said articles are hereby ratified, approved and confirmed.

Ratification thereof.

The provincial treasurer, of this province, to demand & receive, to & for the uses thereof, the monies arising by this act.

II. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the provincial treasurer of this province for the time being (when and as often, as the same may from time to time become due and payable) to ask for, demand and receive, to and for the uses of this province, of and from all and every the person or persons who now are, or at any time hereafter may be nominated and appointed, on the part and in the behalf of the province of Lower-Canada, for the payment thereof ; all and every sum and sums of money which now is, or are become due and payable, or hereafter may become due and payable, from the said province of Lower-Canada to this province, pursuant and by virtue of this act, and of the articles of provisional agreement herein before ratified, approved and confirmed ; which said provincial treasurer for the time being, is hereby authorized and empowered by himself or by any person or persons whom he may thereunto duly authorize, to grant sufficient receipts and discharges for the same, which receipts and discharges shall be taken, and held to be binding and obligatory on this province to all intents and purposes whatsoever ; and be a full and sufficient acquittal of, and for all, and every sum and sums of money, which in such receipts and discharges shall respectively, be contained.

#### C H A P. IV.

An ACT to explain and amend an Act passed in the Thirty fourth Year of His Majesty's Reign, entitled, " An Act to establish a Superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeal."

Preamble

WHEREAS doubts have arisen respecting the jurisdiction of his majesty's court of his bench in this province, as far as the same may concern the condemnation of contraband goods ; Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, " An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," and by the authority of the same, That from and after the passing of this act, all actions of debt, bill, plaint or information, that may be brought upon any seizure of contraband goods, by any ordinance or act in force, or to be in force in this province, for the prevention of smuggling or any clandestine or unlawful commerce or intercourse heretofore, now or hereafter carried on or to be carried on, by and between his majesty's subjects or people of any other state or country when and where the same may be prohibited, shall be heard and determined in his majesty's court of his bench ; and that it shall and may be lawful upon any action of debt, bill, plaint or information, brought or to be brought upon any

Jurisdiction granted to the court of king's bench in actions for goods seized as contraband & process to be had therein, as in similar cases in his majesty's court of ex-

Seizure before this act made, or to be hereafter made of any contraband or prohibited goods, now or hereafter made or to be made contraband; for the justices of his majesty's bench for the time being to proceed to the hearing and determining thereof, in as full and ample a manner, as is now done and practised in his majesty's court of exchequer in England, and to condemn the same, if it shall be lawful so to do, and to award such damages and costs, as may now or hereafter be given by any ordinance or law now in being or hereafter to be for the regulation of the commerce of this country, any ordinance or law to the contrary hereof in any wise notwithstanding.

chequer in England.

II. *And be it further enacted by the authority aforesaid,* That in all times to come the term of Michaelmas shall commence and be holden on the first Monday in the month of November, yearly and every year, any act or law to the contrary, notwithstanding.

Michaelmas term to commence henceforth in November.

III. *And be it further enacted by the authority aforesaid,* That the court of his majesty's bench shall continue to be had and holden in the town of Newark in the Home district, for and during the space of two years next ensuing the passing of this act, any act or law to the contrary, notwithstanding.

The court of K. B. to be holden for two years at Newark.

## C H A P. V.

*An ACT for the Public registering of Deeds, Conveyances, Wills and other Incumbrances which shall be made, or may affect any Lands, Tenements or Hereditaments within this Province.*

**W**HEREAS the lands now holden within this province, under the authority of the crown will be shortly confirmed by grant from his majesty under the seal of the said province; and whereas it seems to be a desirable measure to establish a register in each county and riding within the said province, that when the said lands shall be so confirmed, if any, or any part of the same shall be transferred or alienated by any deed of sale, conveyance, enfeoffment or exchange, or by gift, devise or mortgage, a memorial of such transfer or alienation shall be made for the better securing and more perfect knowledge of the same; Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled an act to repeal certain parts of an act passed in the fourteenth year of his majesty's reign, entitled, "An act for making more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the said province," and by the authority of the same, That from and after the passing of this act there shall be established in each and every county and riding of this province, wherein it may be deemed for the present necessary, and as often after as occasion may require within others, an office for the enregistering of memorials of all deeds and instruments by which, lands within the same shall or may be transferred, or disposed of, by bargain and sale, enfeoffment, gift devise, mortgage or exchange, and that it shall and may be lawful for the governor, lieutenant governor, or person administering the government of this province for the time being, to name the place where such register office shall be kept, and to nominate and appoint a person of sufficient integrity and ability to each and every office that shall or may for the present be established, and as often as occasion may require within the said province, under the conditions hereinafter mentioned, who shall faithfully cause to be enregistered a memorial of all deeds and other instruments by which lands may be transferred or alienated that shall or may be presented to him in manner herein after mentioned, and because the population of the county may not for the present admit of a separate register to be appointed to each and every office that may be for the present established; it shall and may be lawful for the governor, lieutenant governor, or person administering the government of this province for the time being, to nominate and appoint

Preamble.

Register offices to be established.

Appointment of registers.

A register may perform the duties of more than one office

A memorial of deeds, conveyances and wills affecting any lands, held by grant from the crown under the seal of the province, may be registered.

Subsequent deeds and conveyances of lands, tenements &c. comprized in such memorial so registered, to be held fraudulent & void.

Exception.

Notice to be given when the office of register becomes vacant, to the governor &c.

Term limited for filling up such vacancy.

The memorials to be put in writing and brought to the office.

Oaths to be administered & witnesses requisite in registering every memorial.

Particulars to be inserted in every memorial.

one sufficient person as aforesaid to hold and perform the duty or duties of one or more office or offices wherefoever they may be established, and to order and appoint the place or places where such person shall be constantly or occasionally resident.

II. *And be it further enacted by the authority aforesaid,* That from and after the confirmation of all or any lands to any person or persons by grant from the crown under the seal of the province, a memorial of all deeds and conveyances which shall be made and executed, and of all wills and devises in writing made, or to be made and published when the donor or testator shall die after making and publishing of the same, of or concerning and whereby any lands, tenements or hereditaments in any county or riding of this province may be any wise affected in law or equity, may at the election of the party or parties concerned be registered in such manner as is herein after directed; and that every deed and conveyance that shall at any time after any memorial is so registered be made and executed of the lands, tenements or hereditaments, or any part thereof, comprized or contained in any such memorial, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless such memorial be registered as by this act is directed, before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim, and that every devisee by will of the lands, tenements or hereditaments or any part thereof mentioned or contained in any memorial registered as aforesaid, that shall be made and published after the registering of such memorial shall be adjudged fraudulent and void against a subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such will be registered in such manner as herein after directed.

III. *And be it enacted by the authority aforesaid,* That when and as often as the said office shall become vacant by the death forfeiture or surrender of any such register or registers, the justices of the peace for the said county or counties, riding or ridings, if more than one be held by one person or the district wherein such county or counties, riding or ridings may be, assembled at the general quarter sessions of the peace, next after such vacancy shall happen, or the major part of them shall in open court draw up a memorial of such vacancy, and transmit the same without delay to the governor, lieutenant governor or person administering the government of this province for the time being, praying that a person of sufficient integrity and ability may be appointed to the said office or offices; and the said governor, lieutenant governor or person administering the government of this province for the time being; shall within one month after the said memorial shall be received appoint a person of sufficient integrity and ability to the said office or offices.

IV. *And be it further enacted by the authority aforesaid,* That all and every memorial or memorials so to be entered and registered shall be put into writing, and brought to the said office, and in case of deeds and conveyances, shall be under the hand and seal of some or one of the grantors or some or one of the grantees, his or their heirs, executors or administrators, guardians or trustees, attested by two witnesses, one whereof to be one of the witnesses to the execution of such deed or conveyance, which witness shall upon his oath before the said register or his deputy, prove the signing and sealing of such memorial, and the execution of the deed or conveyance mentioned in such memorial; and in case of wills, the memorial shall be under the hand and seal of some or one of the devisees, his or their heirs, executors or administrators, guardians or trustees, attested by two witnesses, one whereof shall upon his oath before the said register or his deputy prove the signing and sealing of such memorial, which respective oaths the said register or his deputy are hereby empowered to administer, and shall endorse a certificate thereof on every such memorial, and sign the same.

V. *And be it further enacted by the authority aforesaid,* That every memorial of any deed, conveyance, or will, shall contain the day of the month and the year when such deed, conveyance or will bears date, and the names and additions of all the parties to such deed, conveyance or

will, or the devisor or testatrix of such will, and of all the witnesses to such deed, will or conveyance, and the places of their abode, and shall express or mention the lands tenements or hereditaments contained in such deed, will or conveyance, and the names of all the townships or parishes within the said county or counties, riding or ridings, where any such lands, tenements or hereditaments are lying or being, that are given, granted, conveyed, devised or any way affected or charged by any such deed, will or conveyance in such manner as the same are expressed or mentioned in such deed, will, or conveyance, or to the same effect; and that every such deed, conveyance and will or probate of the same, of which such memorial is to be registered as aforesaid, shall be produced to the said register, or his deputy, at the time of entering such memorial, who shall endorse a certificate on every such deed, conveyance and will or probate thereof, and therein mention the certain day hour and time on which such memorial is entered and registered, expressing also in what book, page and number the same is entered, and that the said register, or his deputy shall sign the said certificate when so endorsed, which certificates shall be taken and allowed as evidence of such respective registries in all courts of record whatsoever, and that every page of such register book, and every memorial that shall be entered therein, shall be numbered, and the day of the month and the year and hour or time of the day when every memorial is registered shall be entered in the margins of the said register books and of the said memorial, and that every such register shall keep an alphabetical callendar of all townships and parishes within the said county or counties, riding or ridings, with reference to the number of every memorial that concerns the lands, tenements or hereditaments in every such township or parish respectively, and of the names of the parties mentioned in such memorial, and the said register shall enter or register the said memorials in the same order that they shall respectively come to his hand.

VI. *And be it further enacted by the authority aforesaid,* That every such register before he enter upon the execution of the said office shall be sworn before the justices of the peace for the county or counties, riding or ridings, to which such register shall be appointed, or district wherein such register shall reside, or any three or more of them (who are hereby empowered and required to administer such oath) in these words:—

“ You shall truly and faithfully perform and execute the office and duty that is directed and required by  
 “ an act of the legislature of this province, in registering memorials of deeds, conveyances and wills,  
 “ within the county or counties of \_\_\_\_\_ so long as you shall continue in the said office, and that you  
 “ have not given, or promised directly, or indirectly, nor authorized any person to give any money, gra-  
 “ tuity or reward whatsoever, for procuring or obtaining the said office for you, so help you God.”

And that when and as often as the said register shall appoint any deputy to execute the said office, such deputy shall before he enter upon the execution thereof, take the said oath appointed to be taken by the register, before two or more justices of the peace for the said county or counties riding or ridings, or of the district wherein they may be (who are hereby empowered and required to administer such oath) and that every register at the time of his being sworn into the said office shall also enter into a recognizance with two or more sufficient sureties, to be approved of by five or more justices of the peace of the said county or counties, riding or ridings, or of the said district by writing under their hands and seals to be registered at the next general quarter sessions of the peace for the said county or counties, riding or ridings, or district, of the penalty of one thousand pounds unto his majesty his heirs and successors, to be taken by the same justices of the peace that approved of his security, conditioned for his true and faithful performance of his duty in the execution of his said office in all things directed and required by this act; the same to be transmitted by the same justices of the peace within six months after the date thereof into the court of his majesty's bench of the said province, there to remain amongst the records of the said court.

The deed, conveyance or will shall be produced to the register or his deputy who shall endorse a circumstantial certificate thereon.

Such certificate shall be evidence of registry.

Books of entries to be kept by the registers.

Registers to be sworn.

Oath.

The same oath to be taken by the deputy registers.

Recognizance to be entered into by each register.

The same to be transmitted into the court of king's bench.

Limitation of actions upon such recognizances.

VII. *Provided nevertheless, and be it further enacted.* That when any register shall die, or surrender his office, and that within the space of one year from and after such death or surrender, no misbehaviour appear to have been committed by such register in the execution of his said office, then and in such case, at the end of the said one year after his death or surrender, the recognizance so entered into by him, shall become void and of no effect to all intents and purposes whatever.

Office hours for the dispatch of business in every register office.

VIII. *And be it further enacted by the authority aforesaid,* That every such register or his sufficient deputy shall give due attendance at his office every day in the year, (except Sundays and the first week in June and the last week in December, as also the week of the Holy passion yearly and every year) between the hours of nine in the forenoon and one in the afternoon, for the dispatch of all business belonging to the said office, and that every such register or his deputy as often as required shall make searches concerning all memorials that are registered as aforesaid, and give certificates concerning the same under his hand if required by any person.

Searches.

Fees.

IX. *And be it further enacted by the authority aforesaid,* That every such register shall be allowed for the entry of every such memorial as is by this act directed, the sum of two shillings and six pence and no more, in case the same doth not exceed one hundred words, but if such memorial shall exceed one hundred words, then after the rate and proportion of one shilling for every hundred words contained in such memorial over and above the first hundred words and the like fees for the like number of words contained in every certificate or copy given out of the said office, and no more, and for every search in the said office one shilling and six pence and no more.

Penalties for neglect of duty or fraudulent practices of registers or their deputies.

X. *And be it further enacted by the authority aforesaid,* That if any such register or his deputy shall neglect to perform his or their duty in the execution of the said office, according to the rules and directions in this act mentioned, or commit or suffer to be committed any undue or fraudulent practice in the execution of the said office and be thereof lawfully convicted, that then such register shall forfeit his said office and pay treble damages, with full costs of suit to every person or persons that shall be injured thereby; to be recovered by action of debt, bill, plaint, or information in any of his majesty's courts of record, wherein no essoin, protection, privilege, or wager of law shall be allowed, nor any more than one imparlance.

Provision relative to leases.

XI. *Provided also, and be it further enacted by the authority aforesaid,* That this act shall not extend to any leases at a rack rent, or to any lease, not exceeding twenty-one years, where the actual possession and occupation goeth along with the lease, any thing in this act contained to the contrary thereof in anywise notwithstanding.

Several writings, relating to one fact may be comprised in one memorial and registry.

XII. *Provided always, and be it further enacted by the authority aforesaid,* That where there are more writings than one for making and perfecting any conveyance or security which do name, mention or any wise affect or concern the same lands, tenements and hereditaments it shall be a sufficient memorial and register thereof if all the said lands tenements and hereditaments, and the parishes and townships where the same lie be only once named or mentioned in the memorial register and certificate of any one of the deeds or writings made for the perfecting of such conveyance or security; and that the dates of the rest of the said deeds or writings, relating to the said conveyance or security with the names and additions of the parties and witnesses and the places of their abodes be only set down in the memorials, registers and certificates of the same, with a reference to the deed or writing whereof the memorial is so registered that contains or expresses the parcels mentioned in all the deeds, and directions how to find the registering the same.

A memorial may be registered of deeds, conveyances and wills, executed out of the county wherein the

XIII. *And be it further enacted by the authority aforesaid,* That a memorial of any such deeds, conveyances and wills, as shall be made and executed or published in any other place within the said province, not being within the county or counties, riding or ridings, wherein such lands tenements or hereditaments lie, shall be entered or registered by the aforesaid register or his deputy, in case an affidavit sworn before one of the judges of the court of kings bench, or

Commissioner duly authorized to take affidavits be brought to the said register or his deputy, wherein one of the witnesses to the execution of such deeds, wills and conveyances shall swear he or she saw the same executed, the same shall be a sufficient authority to the said register or his deputy to give the party that brings such deed, conveyance or will and affidavit, a certificate of the registering the same, which certificate signed by the said register or his deputy shall be taken and allowed as evidence of the registry of the same in all courts of record in this province, any thing in this act to the contrary thereof contained in any wise notwithstanding.

lands &c. lie;  
on due proof.

XIV. *And be it further enacted by the authority aforesaid,* That if any person or persons shall at any time forge or counterfeit, any such memorial or certificate as are herein before mentioned and directed, and be thereof lawfully convicted, such person or persons shall incur and be liable to such pains and penalties as in and by an act of the parliament of Great-Britain, made in the fifth year of the reign of queen Elizabeth, entitled, "An act against forgers of false deeds and writings," are imposed upon persons for forging or publishing deeds, charters or writings sealed court rolls, or wills, whereby the freehold or inheritance of any person or persons of, in, or to, any lands, tenements or hereditaments, shall or may be molested, troubled or charged; and that if any person or persons shall at any time forswear himself before the said register or his deputy or before any judge or commissioner duly authorized in any of the cases aforesaid and be thereof lawfully convicted, such person or persons shall incur and be liable to the same penalties as if the same had been made in any of the courts of record.

Pains and penalties of forgery and perjury.

XV. *Provided always, and it is hereby enacted,* That all memorials of wills that shall be registered in manner as aforesaid, within the space of six months after the death of every respective devisor or testatrix dying within this province, shall be as valid and effectual against subsequent purchasers as if the same had been registered immediately after the death of such respective devisor or testatrix; any thing herein contained to the contrary in any wise notwithstanding. Provided always, that in case the devisee, or person or persons interested in the lands, tenements or hereditaments devised, by any such will as aforesaid, by reason of the contesting such will or other inevitable difficulty, without, his, her, or their willful neglect or default, shall be disabled to exhibit a memorial for the registry thereof within the respective times herein before limited, then and in such case the registry of the memorial within the space of six months next after his her or their attainment of such will or a probate thereof or removal of the impediment whereby, he, she, or they are disabled or hindered to exhibit such memorial shall be a sufficient registry within the meaning of this act; herein any thing contained to the contrary thereof in any wise notwithstanding.

Provision for the registry of memorials of wills

Provision in favor of devisees.

XVI. *And be it further enacted by the authority aforesaid,* That no member of the house of assembly hereafter to be chosen, during the time that he is such member, shall be capable of being appointed register, or of executing by himself, or any other person the said office, or have, take, or receive any fee or other profit whatsoever, for or in respect thereof, nor shall any register, or his deputy, for the time being be capable of being hereafter chosen a member to serve in the assembly of this province.

No members of the assembly to hold directly or indirectly the office of register.

XVII. *And be it further enacted by the authority aforesaid,* That this act shall be taken and allowed in all courts within this province as a public act; and all judges and justices are hereby required as such, to take notice thereof without special pleading the same.

This act to be held and taken as a public act.

### Schedule of a Bargain and Sale to be Enrolled.

Forms.

AN<sup>d</sup> Indenture dated \_\_\_\_\_ made between I. A. of \_\_\_\_\_ of the one part and D. P. of \_\_\_\_\_ of the other part, purporting a deed of bargain and sale to be enrolled of and concerning the same premises mentioned in a lease for a year, bearing date next before the day of the date of \_\_\_\_\_

Memorial of a bargain and sale.

the said indenture of bargain and sale, (or as the date is) and made between the said I. A. of the one part, and the said D. P. of the other part; a memorial whereof is registered at the same time herewith, (or as the time is) which indenture, or bargain and sale is witnessed by T. A. of and J. W. of and is hereby required to be registered by me the said I. A. the grantor in the said deed of bargain and sale mentioned, as witness my hand and seal this day of (Signed &c.) I. B.

### Of a Mortgage for Years.

Of a mortgage.

AN Indenture of mortgage dated the made between W. D. of of the one part and J. W. of of the other part, whereby the said W. D. for and in consideration of pounds demised unto the said J. W. all that situate and being in and called or known by the name of now in the tenure to hold unto the said J. W. for the term of years: subject nevertheless to a proviso that the same shall be void, on the payment of the sum of pounds and lawful interest for the same on the day of in the year of our Lord one thousand seven hundred and which said indenture of mortgage, is witnessed by and is hereby required to be registered pursuant to the said act of the legislature of this province by me the said W. D. the grantor in the said deed, as witness &c. (Signed &c.) W. D.

### Of an Indorsement.

Of an Indorsement.

AN Indorsement dated the day of made from J. E. of and W. N. of on the back of a mortgaged deed dated the and made between the said J. E. of the one part, and the said W. N. of the other part, of and concerning all that situate and being in now in the tenure or occupation of J. D. which said indorsement is witnessed by J. E. of and R. W. of and is hereby required to be registered by me the said J. E. the grantor, as witness &c. (Signed &c.) J. E.

### Of a Will.

Of a Will.

A WILL dated the made by J. F. of of and concerning all that messuage and tenement in late in the tenure and occupation of G. L. (or if the words of the will be general, then say) of and concerning all the lands tenements or hereditaments, which the said J. F. died possessed of in the county of which said will is witnessed by J. G. of and F. W. of and E. T. of this memorial is therefore desired to be registered pursuant to the above said act by me E. L. one of the devisees in the said will mentioned, as witness &c. (Signed &c.) E. L.

### A Certificate of Mortgage Money being Paid.

To the Register of the County of

Of a Redemption of a mortgage.

J. W. of do hereby certify that W. D. of hath paid and satisfied all such sum and sums of money as were due and owing upon a mortgage made by the said W. D. to me, bearing date the day of and registered at of the o'clock in the forenoon of the day of following, in full discharge of the same; and I do hereby require an entry of such payment and satisfaction to be made pursuant to the act of the legislature in that case made and provided, as witness my hand this day of (Signed)

Attested by W. M. of J. H. of J. W.

Of a Certificate of such redemption.

MEMORANDUM that upon the certificate of the within named J. W. dated the day of proved by the oaths of W. M. of and J. H. of that all monies due on the within mentioned mortgage is fully paid and satisfied in discharge of the same; this entry in discharge thereof is made pursuant to the said act of the legislature this day of by THOMAS JONES, Register.