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THE  
PROVINCIAL JUSTICE,  
OR  
**Magistrate's Manual,**  
BEING A COMPLETE DIGEST  
OF THE  
CRIMINAL LAW OF CANADA,  
AND  
A COMPENDIOUS AND GENERAL VIEW  
OF THE  
PROVINCIAL LAW OF UPPER CANADA;  
WITH PRACTICAL FORMS,  
FOR THE USE OF THE MAGISTRACY.

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By **W. C. Keele,**  
AN ATTORNEY AND SOLICITOR.

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SECOND EDITION.

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TORONTO:  
H. & W. ROWSELL, KING STREET.

1843.

W K620. K26 1843

DEDICATED

BY PERMISSION,

AND WITH THE

MOST PROFOUND RESPECT,

TO

THE HONOURABLE ROBERT S. JAMESON,

*Vice Chancellor,*

AND

SPEAKER OF THE HONOURABLE THE

LEGISLATIVE COUNCIL.

Since this work went to press, the province has to lament the death of his Excellency the Right Honourable Sir CHARLES BAGOT, G.C.B., &c., the late Governor, who has been succeeded in his high office by his Excellency—

The Right Honourable Sir CHARLES THEOPHILUS METCALFE, Knight Grand Cross of the most Honourable Order of the Bath, one of her Majesty's most Honourable Privy Council, and now the Governor General of British North America, &c.

## INTRODUCTION.

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WHEN this work first appeared in print, in 1835, the Magistracy of Upper Canada, for whose use it was originally designed, were unprovided with any work of reference, to guide them in the discharge of their duties, except the Provincial Statutes, and a few scattered volumes of Burns' Justice, and other Law works, excellent in their kind, but designed for the Parent Country, and therefore containing a vast deal of matter wholly inapplicable to this Province. To supply this vacuum in the Magisterial Office, the "PROVINCIAL JUSTICE" was framed, and the rapid sale of the work, and the high estimation in which it has been held, have afforded to the compiler a most gratifying proof of its general utility. Several years have now elapsed since its publication, and the important changes which have subsequently occurred in our political institutions and laws, have rendered a revision of the work desirable: with the view, therefore, of making it conformable to the law as it now stands, the compiler has yielded to the wishes of a numerous body of friends and patrons of the undertaking, and determined upon publishing a second edition. It has been prepared with the utmost care, and will be found to embrace all the important alterations in the law appertaining to the office and duty of a Justice of the Peace, up to the present period, and for usefulness and accuracy, will, he trusts, fall short in no respect of its predecessor.

The Criminal Law of both Provinces having been recently consolidated and rendered uniform, by certain Acts passed in the first Session of the United Legislature, the "PROVINCIAL JUSTICE" will, the compiler flatters himself, be found equally worthy of the support and patronage of the Magistracy of the Lower Province, to whom he can recommend it as a useful guide upon that particular branch of the law, which is now common to both sections of the Province. The local Statutes of Upper Canada have been retained, and will be found distinguishable in the body of the work by a \* placed at the head of each Statute, signifying that such Statute relates to Upper Canada only.—The local Statutes of Lower Canada have not been introduced, the compiler not being sufficiently familiar with the subject to warrant the undertaking.

The permanency of a Law is the best proof of its goodness, and it may be reasonably expected that our present system of Criminal Law, based as it is upon the soundest principles of wisdom and justice, and assimilated to the "British code," than which it is difficult to conceive any thing superior, will not require any material alteration for a length of time; a circumstance which if realised, cannot fail to enhance the value of this compilation, as a *standard* work of reference.

TORONTO, 1st March, 1843.

# CIVIL DEPARTMENT, CANADA.

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## GOVERNOR,

His Excellency the Right Honourable SIR CHARLES BAGOT, G.C.B., one of Her Majesty's Most Honourable Privy Council, Captain General and Governor-in-Chief of Her Majesty's Provinces of Canada, New Brunswick, and Nova Scotia, and of the Island of Prince-Edward; and Governor General of all Her Majesty's Provinces on the Continent of North America, and the Island of Prince Edward.

Capt. J. T. W. Jones, (Canadian Rifles,) Military Secretary and Principal A.D.C.

Capt. G. Talbot and Hon. T. G. Cholmondeley (43rd Regt.), Aides-de-Camp

Capt. H. Bagot, R. N., Private Secretary.

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James Hopkirk, Esq., Assistant Secretary.

T. D. Harrington, Esq., Chief Clerk, with Blue Book Department for the Province.

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William Kent, Esq., Chief Clerk.

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Bernard Turquand, Esq., Chief Clerk.



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P. Duraford, Esq., Chief Clerk.

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Thomas A. Begley, Esq., Secretary do.  
S. Keefer, Esq., Assistant Engineer do.

Col. R. Bullock, Adjutant General of Militia (Canada West).  
Col. W. O'Hara, Assistant do.  
Lieut. T. M. Steers, Clerk.

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J. B. Clench, Esq., Colborne, on Thames,  
Geo. Ironsides, Esq., Amherstburgh,  
Wm. Jones, Esq., Port Sarnia,  
George Vardon, Esq., Clerk. } Superintendents.

## CANADA EAST.

### CROWN OFFICERS.

Hon. L. H. Lafontaine, Attorney General.  
" T. C. Aylwin, Solicitor General.  
Andrè Remi Hamel, Advocate General.

### COURT OF KING'S BENCH.

#### QUEBEC.

Hon. Sir James Stuart, Chief Justice.  
" Edward Bowen,  
" Philippe Panet,  
" Elzéar Bedard, } Puisnè Judges.

Wm. S. Sewell, Sheriff; J. F. Perrault and E. Burroughs, Prothonotaries;  
T. W. Willan, Clerk of the Crown; B. A. Panet, Coroner.

TERMS.—*Criminal Court*, from 22nd to 31st March, and from 21st to 30th September.—*Superior Court*, from 1st to 20th January, April, June, and October.

## Civil Department.

### MONTREAL.

————— Chief Justice.

Hon. George Pyke,	}	Puisnè Judges.
" Jean R. Rolland,		
" Samuel Gale,		

John Boston, Sheriff; S. W. Monk, and R. L. Morrough, Prothonotaries; J. M. Mondelet, and Joseph Jones, Coroners; A. M. Delisle, Clerk of the Crown; A. M. Delisle, and W. H. Brehaut, Clerk of the Peace; R. Dillon, Fr. Translator and Interpreter; G. Stanley, Crier; P. Devins, Assistant Crier; Thomas M'Ginn, Gaoler; Benjamin Delisle, High Constable.

TERMS.—*Criminal Court*, from 1st to 10th March, and from 1st to 10th September.—*Superior Court*, from 1st to 20th February, April, June, and October.

By the Provincial Statute, 26th March, 1830, the last five days of February and August are added to the Criminal Term.

### THREE RIVERS.

Hon. J. R. Vallières De St. Réal, Resident Judge.

Isaac G. Ogden, Sheriff; W. C. H. Coffin, Prothonotary and Clerk of the Crown; Valère Guillet, Coroner; Philip Burns, High Constable.

TERMS.—*Criminal Court*, from 13th to 18th March, and from 13th to 18th September.—*Superior Court*, from 10th to 30th January, 18th to 31st March, and 18th to 30th September.

### SAINT FRANCIS.

Hon. John Fletcher, Provincial Judge.

Charles Witcher, Sheriff; W. Bell, Prothonotary; C. A. De Tonnancour, Coroner; J. H. Terrill, High Constable.

TERMS.—Court sits at Sherbrooke, from 26th February to 8th March, and from 25th August to 4th September.

## CANADA WEST.

### COURT OF QUEEN'S BENCH.

Hon. J. B. Robinson, Chief Justice.		
Hon. J. B. Macaulay,	}	Puisnè Judges.
" Jonas Jones,		
" Archibald McLean,		
" C. A. Hagerman,		
Charles C. Small, Esq., Clerk of the Crown and Pleas.		

### COURT OF CHANCERY.

Hon. R. S. Jameson, Vice Chancellor.  
 John G. Spragge, Esq., Master, and Acting Registrar.  
 William B. Jarvis, Esq., Sergeant at Arms.

# Civil Department.

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## COURT OF PROBATE.

William Hepburn, Esq., Official Principal.  
Charles Fitzgibbon, Esq., Registrar.

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Hon. J. E. Small, Solicitor General do.  
William H. Draper, Esq.  
Henry J. Boulton, Esq.  
Henry Sherwood, Esq.  
Sir A. N. Macnab, Knt. } Queen's Counsel.  
J. S. Cartwright, Esq.  
John Prince, Esq.  
G. M. Boswell, Esq.

## PRACTICE COURT.

William Heward, Esq., Clerk to Judge in Chambers.

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Robert Armour, Jr., Esq., Law Clerk, English Translator, and Clerk of Committees.

Robert Lemoine, Esq., French Translator.

Thomas Brooke, Door-keeper.

Michael Keating, Chief Messenger.

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Berthier	...	...	...	...	David M. Armstrong
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Carleton	...	...	...	...	James Johnston
Chambly	...	...	...	...	John Yule, Jr.
Champlain	...	...	...	...	Réné Joseph Kimber
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Dorchester	...	...	...	...	Antoine C. Taschereau
Drummond	...	...	...	...	Robert Nugent Watts
Dundas	...	...	...	...	John Cook
Durham	...	...	...	...	John T. Williams
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Gaspé	...	...	...	...	Robert Christie,
Glengarry	...	...	...	...	John S. McDonald
Grenville	...	...	...	...	Samuel Crane
Haldimand	...	...	...	...	David Thompson
Halton, (East Riding)	...	...	...	...	Caleb Hopkins
Do. (West do. )	...	...	...	...	James Durand
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Huntingdon	...	...	...	...	Austin Cuvillier
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Leeds	...	...	...	...	James Morris
Leinster	...	...	...	...	Jacob De Witt
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Portneuf ... ..	Thomas Cushing Aylwin
Prescott ... ..	Donald McDonald
Prince Edward ... ..	John P. Roblin
Quebec ... ..	John Neilson
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Richelieu ... ..	Denis Benjamin Viger
Rimouski ... ..	Hon. Robert Baldwin
Rouville ... ..	William Walker
Russell ... ..	William Henry Draper
Saguenay ... ..	Hon. A. N. Morin
Shefford ... ..	Stephen Sewel Foster
Sherbrooke (town) ... ..	Edward Hale
Sherbrooke ... ..	John Moore
Simcoe ... ..	Elmes Steele
Stanstead ... ..	Marcus Child
Stormont ... ..	Alexander McLean
St. Hyacinthe ... ..	Thomas Boutillier
St. Maurice ... ..	Joseph Ed. Turcotte
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Vercheres ... ..	L. M. Viger
Wentworth ... ..	Hermanus Smith
Yamaska ... ..	Joseph G. Barthe
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Do. (Third do. ) ... ..	James Edward Small
Do. (Fourth do. ) ... ..	Louis H. Lafontaine

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G. B. Faribault, Esq., Assistant do.

G. W. Wickstead, Esq., Law Clerk.

Dr. William Winder, Librarian.

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Henri Voyer, Esq., French Translator.

Felix Fortier, Esq., Clerk of the Crown in Chancery.

Hugh McLellan, Door-keeper.

Antoine Leroux dit Cardinal, Chief Messenger.

(CONTINUED IN THE APPENDIX.)

A TABLE  
OF  
THE GENERAL QUARTER SESSIONS.

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EASTERN DISTRICT.—At *Cornwall*, on the fourth Tuesday in January and April, and on the second Tuesday in July and October.

OTTAWA DISTRICT.—At *L'Original*, on the third Tuesday in January, April, June, and September.

BATHURST DISTRICT.—At *Perth*, on the third Tuesday in March, September and December, and on the second Tuesday in June.

JOHNSTOWN DISTRICT.—At *Brockville*, on the third Tuesday in February and May, and on the second Tuesday in August and November.

MIDLAND DISTRICT.—At *Kingston*, on the fourth Tuesday in January, the second Tuesday in July, the fourth Tuesday in April, and second Tuesday in October.

PRINCE EDWARD DISTRICT.—At *Picton*, on the first Tuesday in January, April, July, and October.

NEWCASTLE DISTRICT.—At *Amherst*, in the Township of Hamilton, on the second Tuesday in January, April, July, and October.

HOME DISTRICT.—At the *City of Toronto*, on the first Tuesday in January, April, July, and October.

GORE DISTRICT.—At *Hamilton*, on the second Tuesday in January, April, July, and October.

NIAGARA DISTRICT.—At *Niagara*, on the second Tuesday in January, April, July, and October.

LONDON DISTRICT.—At *London*, on the second Tuesday in January, April, July, and October.

WESTERN DISTRICT.—At *Sandwich*, on the second Tuesday in January, April, July, and October.

BROCK DISTRICT.—At *Woodstock*, on the fourth Tuesday in January and April, and the second Tuesday in July and October.

VICTORIA DISTRICT.—At *Belleville*, on the second Tuesday in January and April, and the fourth Tuesday in July and October.

TALBOT DISTRICT.—At *Simcoe*, on the second Tuesday in January, April, July, and October.

DALHOUSIE DISTRICT.—At *Bytown*, on the second Tuesday in January and April, and the third Tuesday in July and October.

HURON DISTRICT.—At *Goderich*, on the first Tuesday in January, April, July, and October.

WELLINGTON DISTRICT.—At *Guelph*, on the second Tuesday in January and April, and the fourth Tuesday in July and October.

SIMCOE DISTRICT.—At *Barrie*, on the fourth Tuesday in January and April, and the second Tuesday in July and October.

COLBORNE DISTRICT.—At *Peterborough*, on the second Tuesday in January and April, and the fourth Tuesday in July and October.

THE  
**Magistrate's Manual.**

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**ABDUCTION.**

By the 4 & 5 V. c. 27. § 19. where any woman shall have any interest, whether legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or shall be an heiress presumptive or next of kin to any one having such interest, if any person shall from motives of lucre take away or detain such woman against her will, with intent to marry or defile her, or to cause her to be married or defiled by any other person, every such offender and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and being convicted thereof shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

§ 20. If any person shall unlawfully take or cause to be taken any unmarried girl being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable to suffer such punishment by fine or imprisonment, or by both, as the Court shall award.

**ABORTION.**

By the 4 & 5 V. c. 27. § 13. administering poison or other noxious thing to any woman with intent to procure abortion, or unlawfully using any instrument or other means whatsoever with the like intent, is made felony, and the offender liable at the discretion of the Court to be imprisoned at hard labour in the Penitentiary for life, or any term not less than seven years, or in any other place of confinement not exceeding two years.

## ACCESSORY.

AN ACCESSORY is one guilty of Felony, not as a principal, but by participation, command, advice or concealment. In high treason there can be no accessories, as all concerned are considered principals: so in petit larceny, misdemeanor, or inferior crimes of the like nature, under the degree of felony, there can be no accessories. The mere concealment of a felony *intended* to be committed, does not render the concealer an accessory.—It is only misprision of felony. 2 *Haw.* c. 29. § 23.

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

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

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

But if others accompany the principal to commit a felony, and keep within hearing, or upon watch, all are in such case deemed principals. 2 *Haw.* c. 29. § 7. 8.

A wife cannot be accessory to her husband, either before or after the fact, unless she be any way guilty of procuring him to commit the felony. 2 *Haw.* 320.

Anciently, the accessory could not be tried unless the principal were attainted; 3 *Ed.* 1. c. 14; but the law in this respect has been altered by several statutes,\* and now, by the 4 & 5. V. c. 24. § 37. accessories before the fact to felony at common law, or by statute, shall be deemed guilty of felony, and may be indicted and convicted as accessory before the fact to the principal felony, either together with, or after the conviction of the principal felon, or may be indicted for and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, and may be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished, and such accessory may be tried and punished by any Court having jurisdiction to try the principal felon. § 38. Accessories, after the fact, may also be tried where the principal felony was committed, or where the party shall have become accessory: accessories not liable to be again indicted for the same offence. § 39. Accessories may be prosecuted, notwithstanding the principal felon shall die or be pardoned, or otherwise delivered before *attainder*. 53. In the

\* 1 Ann, c. 9. § 1. 2<sup>d</sup> G. II. c. 30.



case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this Act punishable, and every accessory, after the fact to any felony punishable by this Act, (except only a receiver of stolen property), shall, on conviction, be liable to be imprisoned for any term not exceeding two years; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanour punishable under this Act, shall be liable to be indicted and punished as a principal offender.

By the 4th and 5th V. c. 25. § 54. if any person shall aid, abet, counsel, or procure the commission of any offence which is by this Act punishable on summary conviction, either for every time of its commission, or for the first and second time only, or for the first time only, every such person shall, on conviction, before a Justice or Justices of the Peace, be liable for every first, second, and subsequent offence, of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence, as a principal offender is, by this Act, made liable.

The 4th and 5th V. c. 26. § 26. also contains a provision similar to the 4th and 5th V. c. 25. § 54. for the punishment of accessories to felonies, &c. under that Act.

And by the 4th and 5th V. c. 27. § 35. principals in the second degree and accessories before the fact to offences under this Act, shall be punishable as the principal in the first degree: and accessories after the fact shall be liable to imprisonment, not exceeding two years. See also post title, "*Receivers of Stolen Goods.*"

*Information of the party, to ground a Warrant for apprehending an Accessory before the fact.*

A. B. of the Township of — in the Home District, maketh oath and saith, that on — the — day of — last, his dwelling-house, situate — was about the hour of nine in the night of the same day, feloniously and burglariously broken and entered by some person or persons, and that (*describe the property stolen*) his property were then and there feloniously stolen, taken and carried away, and that he hath just cause to suspect, and doth suspect that C. D. late of — aforesaid, labourer, did commit the said felony and burglary, and that E. F. late of — aforesaid, labourer, did advise, aid and abet, the said C. D. in the said felony.

Sworn, &c.

A. B.

**Accessory.***Warrant thereon.*

To the Constable of — and all other Her Majesty's Peace Officers within the said District.

Home District, } Whereas A. B. of — gentleman, hath this day  
to wit. } made oath, before me W. S. Esq., one of Her  
Majesty's Justices of the Peace in and for the said District, that  
(*here state the facts as set forth in the information*). These are  
therefore in Her Majesty's name to charge and command you,  
forthwith to apprehend and bring before me, the said C. D. and  
E. F. to answer the said complaint, and to be further dealt with  
according to Law. Given under my hand and seal this — day  
of — 18—.

*Commitment.*

To the Keeper of the Common Gaol of — or his deputy.

Receive into your custody the bodies of C. D. and E. F. herewith sent you, brought before me W. S. Esq. one of Her Majesty's Justices of the Peace in and for the said District, by R. S. Constable of — charged upon the oath of A. B. with (*here state the offence*); and them safely keep in your custody until they shall be discharged by due course of Law. Given under my hand and seal at — this — day of — 18—.

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

To the Constable of — and all other Her Majesty's Peace Officers within the said District.

Home District, } Whereas C. D. of — stands charged before  
to wit. } me J. C. Esq. one of Her Majesty's Justices  
of the Peace in and for the said District, on the oath of A. B.  
with having (*state the offence*); and whereas P. Q. hath this day  
also made oath, before me, that T. T. of — aforesaid, yeoman,  
since the said felony and burglary was committed, hath received,  
harboured and maintained, him the said C. D. in the dwelling-  
house of him the said T. T. at — aforesaid, he the said T. T.  
well knowing the said C. D. to have committed the said felony  
and burglary. These are therefore to command you, forthwith  
to apprehend and bring before me, at this place, the body of the  
said T. T. to answer to the said charge, and to be further dealt  
with according to Law. Given under my hand and seal at —  
in the said District, this — day of — 18—.

## ACQUITTAL.

And see—AUTREFOIS ACQUIT.

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

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

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

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

## ACTION.

No action can be brought against a Justice of the Peace for any thing done by him by virtue of his office, until notice in writing of the intended writ or process shall have been delivered to him, or left at his usual place of abode, at least *one calendar month* before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action which the party suing claims to have against such Justice; and on the back of such notice shall be endorsed the name and place of abode of the plaintiff's attorney or agent. 24 *Geo. 2. c. 44.* § 1.

The party may give the notice in his own name, or in the name of his attorney; but the particular writ intended to be issued must be stated, and it must be served one full calendar month previous to such writ being issued, and the month begins with the day on which the notice is served. 3 *T. R.* 623.

It is necessary to be particular in describing the offence, as no evidence can be given by the plaintiff of any cause of action except such as is contained in the notice: a general notice of an action for an assault and false imprisonment is bad. 7 *T. R.* 631.

The action must be commenced within *six calendar months* after the act committed, and must be brought in the district where the grievance complained of arose.

No action shall be brought against any constable, or any officer acting by his order, for any thing done in obedience to any warrant of a Justice, until demand made, or left at his usual place of abode, by the party intending to bring such action, or by his attorney or agent, in writing, signed by the party demanding the same, of a perusal or a copy of the warrant, and that the same hath been refused or neglected for six days after such demand: and if after any demand and compliance, any action shall be brought, without making the Justice who signed the warrant defendant, on producing and proving such warrant on the trial, the jury shall give a verdict for the defendant, notwithstanding any defect of jurisdiction of the Justice; and if such action be brought jointly against the Justice and Constable, &c. on proof of such warrant, the jury shall find for the Constable; and if the verdict shall be given against the Justice, the plaintiff shall recover costs against him, including such costs as the plaintiff is likely to pay to the defendant for whom the verdict shall be found. And where the plaintiff in such action against a Justice shall obtain a verdict, and the Judge shall certify on the record that the injury was wilful and malicious, the plaintiff shall have double costs. 24 G. 2. c. 44. § 1. 6. 7. It is not necessary in the notice that the attorney's christian name should be written in full, but his residence must be specifically stated. 7 Taunt. 53. 2 Marsh. 367. 3 Bos. and Pull.

By the 4 & 5 V. c. 25. § 67. All actions against any person for any thing done under this Act shall be laid and tried in the District, County, or place where the fact was committed, and shall be commenced within *six calendar months*, and not otherwise: and notice in writing of such action, and of the cause thereof, shall be given to the defendant *one calendar month* before such action: the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial thereupon, and no plaintiff shall recover in such action if tender of sufficient amends shall have been made before such action, or if a sufficient sum shall have been paid into Court after such action brought by or on behalf of the defendant, and if a verdict shall pass for the defendant or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases: and if a verdict be given for

the plaintiff he shall not have costs against the defendant unless the Judge before whom the trial shall be had shall certify his approbation of the action and of the verdict.

The 4 & 5 V. c. 26. § 40. contains a similar provision in cases of actions under that Statute.

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

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

SIR,

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

Yours, &c.

E. F. Attorney for the said C. D.

*City of Toronto.*

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

To MR. C. D.

I do hereby, as attorney of and for A. B. of — &c. according to the form of the statute in such case made and provided, demand of you the perusal and copy of the warrant, by virtue or under colour whereof, you did, on or about the — day of — last, apprehend the said A. B. and carry and convey him in custody to and before S. P. Esq. one of her Majesty's justices of the peace in and for the — district. Dated, &c.

Yours, &c.

W. T. Attorney for the said A. B.

*Hamilton, District of Gore.*

## Acts of Parliament.

*The like on a Gaoler.*

To MR. A. B.

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

Yours, &c.

W. T. Attorney for the said E. F.

*Hamilton, District of Gore.*

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

## ACTS OF PARLIAMENT.

By the 14 G. 3. c. 11. it is enacted, that the Secretary of this Province shall endorse on every Act of the Legislature which should pass during the then present and every future session thereof, immediately after the title of such Act, the day, month and year, when the same shall have passed, and received the royal assent: and such endorsement shall be taken to be a part of such Act, and to be the date of its commencement, when no other commencement shall be therein provided.

\* By the 44 G. 3., c. 5. § 3. it is enacted, that the said clerk shall, as soon as possible after receiving the said Acts, send four copies to each member of the Legislative and Executive Councils; four copies to each of the Judges of the King's Bench, and the like number to the Attorney General, and twenty copies to each member of the present House of Assembly, to be by them distributed in such manner as will best tend to promulgate a general knowledge of the laws.

\* By the 4 G. 4. c. 14. § 2. the expense of printing the Statutes annually, shall be provided for in the contingent accounts.

\* By the 1 W. 4. c. 2. § 2. all Acts of the Provincial Parliament, public or private, shall be taken notice of judicially in all Courts of Law in this Province, without being specially pleaded; and a copy of such act printed by proper authority, shall be taken as sufficient evidence.

By the 4 & 5 V. c. 24. § 50. in cases of indictment or summary conviction, the singular number or masculine gender shall be understood to include several matters as well as several persons, and females as well as males, and bodies corporate as well

as individuals, unless otherwise provided or repugnant to the Act: and forfeitures shall be payable to a body corporate if the aggrieved party.

A penal statute is to be construed according to its spirit and the rules of natural justice, not according to its very letter.—*Rev. v. McIntosh*. Easter, \*2 W. 4. *Cameron's Digest*, p. 55.

## ADJOURNMENT.

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

## AFFIDAVIT.

AN AFFIDAVIT is an oath of some fact, testified in writing and sworn before some person who hath authority to administer such oath. The true place of habitation and true addition of the deponent must be inserted in the affidavit. 1 *Lill. Ab.* 44. 46.

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

And the matter sworn to must be *positively* set forth, with all material circumstances attending it, that the court may judge whether the deponent's conclusion be just or not. 1 *New. Abr.* 66.

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

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

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

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

Affidavits in aggravation of punishment are not receivable in cases of felony. *R. v. Ellis.* 6. *B. & C.* 148.

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

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

Home District, } A. B. of — in the said District, Surgeon,  
to wit. } maketh oath, and saith, that C. D. of —  
yeoman, is confined to his house by severe illness, and that this deponent saw the said C. D. yesterday, and verily believes he is incapable of travelling without manifest danger of his life.

Sworn, &c.

A. B.

## AFFRAY.

AN affray signifies the fighting of two or more persons in some public place, to the *terror of Her Majesty's subjects*. 3 Inst. 158. 4 Bl. Com. 144. 1 Burn. Just. Affray. 1.

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

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

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

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

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

*Affidavit to ground a Warrant to apprehend Affrayers.*

A. B. of —, hatter, maketh oath and saith, that on the — day of — in the year of our Lord 18—, C. D. of — labourer,



E. F. of — labourer, and G. H. of — yeoman, did in a tumultuous manner, and with force and arms, make an affray, to the terror of Her Majesty's subjects then and there being, wherein the said A. B. was assaulted, beaten and abused, by the said C. D. E. F. and G. H. without any just or reasonable cause.  
Sworn, &c. A. B.

*Warrant to apprehend Affrayers.*

To the Constable of —.

Home District, } Whereas complaint hath been made before me,  
to wit. } S. P. Esq., one of her Majesty's justices of  
the peace in and for the said district, upon the oath of A. B. of —  
in the said District, that (*here state the substance of the complaint,  
as set forth in the Affidavit.*) These are therefore, in her Majesty's  
name, to charge and command you, forthwith, to apprehend  
the said C. D. E. F. and G. H. and bring them before me, or  
some other of her Majesty's justices of the peace for the said  
district, to answer the premises, and to find sureties, as well to  
keep the peace towards the said A. B. as to appear at the next  
general quarter sessions of the peace, to be held at — in and  
for the said district, to answer such indictments as shall be  
preferred against them by the said A. B. for the said offence.

Given under my hand and seal, this — day of — 18—.

*Indictment for an Affray. (Archbold.)*

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

**AGRICULTURAL SOCIETIES.**

\* By the 7 W 4. c. 23. § 1. it is enacted, that when any agricultural society, for the purpose of importing valuable live stock, grain, grass seeds, useful implements of husbandry, or whatever else might conduce to the improvement of agriculture, shall be

## Agricultural Societies.

be constituted in any district in this Province, and shall make it appear, by certificate under the hand of the treasurer of such district society, that a sum not less than £25 has been actually subscribed and paid to the said treasurer by the several agricultural societies of said district; and the president of the said society shall make application, enclosing the said certificate, to the Governor, for and in support of said society; it shall and may be lawful for the Governor to issue his warrant to the Receiver General, in favour of the treasurer of the said society, for double the sum that is paid or subscribed in said district, as aforesaid provided: that the annual sum to be granted to each district shall not exceed £200. § 2. In the event of there being county, riding, or township agricultural societies established, there shall not be more than one society in each county or riding of any district, and a proportion of the district bounty shall be granted to each county, riding, or township agricultural society, and paid to them by the district society, in proportion to double the money that each county, riding, or township agricultural society shall have subscribed. Provided, that the whole sum granted to the district and county societies, together, shall not exceed £200 per annum. § 3. In case of more than £50 being subscribed by the several societies in any district, said grant of £200 shall be divided to each society in proportion to their subscriptions respectively. § 4. Each society may elect its own officers and make by-laws. § 5. The treasurer's account of the receipts and expenditure of the preceding year shall, after the first year, always accompany the application for grants in aid of said societies. § 6. When county, riding, or township societies shall have been established in any district, the treasurer of such county societies shall, on or before the first day of September in each year, pay over the amount of money subscribed by said societies into the hands of the treasurer of the district agricultural society, who shall then make an abstract of the sums subscribed in said district in the following form:

*Abstract of sums of Money subscribed by the several Agricultural Societies in the — district, for the year 18—.*

Agricultural Societies.	Amount Subscribed by each.		
	£	s.	d.
Total.....£			

These are to certify that the sum of — pounds, — shillings, have been paid into my hands, by the several agricultural societies in the — district, as above stated.

Given under my hand at —, the — day of — 18—.

Certified,

— *Treasurer.*

— *President.*

§ 7. Monies granted to be accounted for to His Majesty.—

§ 8. If the treasurer of any township society shall, on or before the first day of February in each and every year, pay into the hands of the treasurer of the district or county societies,\* he shall be entitled to receive the same again, so soon as the legislative grant shall have been received, with a proportion of the legislative grant equal to the amount so paid, or in proportion to what shall fall to their share upon an equal division being made, in proportion to the sums paid in by the several societies in the district or county. § 9. Act to be in force four years.— Continued by the 4 & 5 V. c. 23. § 3. until the 1st day of November, 1844, and to the end of the next session.

\* Some words seem to have been omitted in the Act.

## ALE-HOUSES.

\*By the 4 G. 4. c. 15. § 5. Any person opening an ale-house, &c. contrary to this Act, shall upon conviction before any two Justices, upon the oath of one or more witnesses, or upon confession, forfeit and pay not less than £2. nor more than £5. to be levied by distress and sale of the goods of the offender, by warrant from the magistrates before whom such conviction shall happen, with costs; and for want of sufficient distress be committed, by order of such magistrates, to the common gaol of the district, for not less than ten days, nor more than thirty days.

Sec. 5. One half of the penalties shall be paid to the receiver general, for the use of the province, and the other moiety to the informer.

Sec. 6. Any justice, on complaint or information that any person licensed as aforesaid, whereby in the judgment of such magistrate the recognizance shall be forfeited, may summon such person to appear at the next general quarter sessions, to answer to such complaint, and shall bind the complainant in recognizance to appear and give evidence, at which said session a jury shall be empannelled to enquire of the complaint preferred, and if such jury shall, upon hearing the evidence, determine that the defendant has done any act whereby the condition of his

recognizance is broken, such act being named by them, the justices before whom the matter shall be tried, shall order the recognizance of such defendant to be established in his Majesty's court of king's bench, and such person shall be disabled from obtaining a license for the sale of beer, &c. for the space of one year then next.

Sec. 7. During fairs, persons may sell ale, &c. but not spirituous liquors, without a license.

Sec. 9. Act to continue in force two years, and to the end of the next session,—continued by the \*7 G. 4. c. 11. and by the \*2 W. 4. c. 21. passed 28th January, 1832, for four years, and to the end of the next session.

\* By the 6 W. 4. c. 4. § 6. no brewer resident in Toronto or liberties, or within one mile thereof, or any district town, shall sell beer by retail in a less quantity than three gallons without an ale and beer-house license, and every brewer applying for such license shall pay such sum of money not exceeding £2 10s. as the Justices granting the same shall think fit, to be applied in same manner as the duties on ale and beer-house licenses; any brewer selling contrary to this Act shall be subject to the same pains and penalties as persons keeping ale and beer-houses without license, to be prosecuted and applied according to the \*4 G. 4. c. 15. § 7. Prosecutions under this or any former law for vending beer, ale, cider, or other liquors not spirituous without license, shall be heard, adjudged and determined by any two or more Justices where the parties complained of reside, or the offence committed. § 9. Act to be in force four years.

Made perpetual by the \*3 V. c. 21.

\* By Stat. 7. W. 4. c. 28. the \* 2 W. 4. c. 21. continued for four years and to the end of next Session.

\* By the 3 V. c. 20. § 2. the 1. 2. 3. and 8. clauses of the \*4 G. 4. c. 15. are repealed. § 14. All and every person or persons who shall open a house of public entertainment, or a house for the sale of ale, beer, cider, or other liquors not spirituous within this Province by retail, shall take out a license for so doing; which license shall be applied for and granted in the same manner and subject to the same regulations and restrictions as licenses are now granted to innkeepers.

Sec. 15. Inspectors authorised to demand and receive from the person applying for a license for vending beer, cider, or other liquors not spirituous, the like fees for issuing the same as are now by law authorised to be received for licenses issued to innkeepers.

Sec. 16. Justices, or Police Magistrates of any incorporated town, not to order or direct the Inspector to receive, or the

keeper of such alehouse or house of public entertainment to pay for any such license as aforesaid, a greater sum than £5, nor a smaller one than £1.

The last recited act does not impose any penalty for its infraction, and as the \*4 G. 4. c. 15. has expired, it therefore becomes a question whether any and what penalty can under the existing Law be enforced against any person selling "ale, beer, cider, or other liquors, not spirituous," without a license.

The forms of proceeding are however given, in case the Act should be amended making the penalties recoverable in the usual form.

*Information for selling Ale or Beer, &c. without a License.*

Home District, } Be it remembered, that on the — day of — in  
to wit. } the year of our Lord — at — in the said district, C. D. of — in the said district, constable, who as well for our Sovereign Lady the Queen as for himself doth prosecute in this behalf, personally cometh before us J. P. and T. L. two of Her Majesty's justices of the peace for the said District, and as well for our said Lady the Queen as for himself informeth us, that A. B. late of the township of — in the district aforesaid, labourer, within the space of six months now last past, to wit, on the — day of — in the year aforesaid, at the township aforesaid, in the district aforesaid, did sell a certain quantity, to wit, ten pints, of ale [beer or cider] by retail, to one E. F. without being licensed so to do, contrary to the form of the statute in such case made and provided, whereby and by force of the statute in such case made and provided, the said A. B. hath forfeited for his said offence, the sum of five pounds. Wherefore the said C. D. who sueth as aforesaid, prayeth the consideration of the said justices in the premises, and that the said A. B. may be summoned to appear before us, and answer the premises, and make his defence thereto.

Exhibited before us

C. D.

*The Summons.*

Home District, } To A. B. of —.  
to wit. } Whereas you have this day been charged before us J. P. and T. L. two of Her Majesty's justices of the peace for the said district, on the information and complaint of C. D. of — for that you within the space of six months, &c. (*here state the offence as laid in the information*). These are therefore to require you to appear before us at — in the said district, on — next, the — day of — at the hour of — in the —noon of the same

day, to answer to the said charge, and to be further dealt with according to law. Herein fail you not. Given under our hands and seals the — day of — in the year of our Lord, 18—.

*The Conviction*

May be in the form given by the \*2 W. 4. c. 4. [see Conviction] as the above acts do not contain any specific form of conviction.

*The Distress Warrant.*

A general form will be found under that title.

*The Commitment*

For want of sufficient distress, will also be found in a general form under the title "Commitment."

ALIENS.

AN ALIEN is one, generally speaking, who is born in a foreign country out of the allegiance of the king. 4 *Bl. Com.* 372.

But by 7 Ann. c. 5; 4 G. 2. c. 21; and 13 G. 3. c. 21; all children born out of the king's legiance, whose *fathers* or *grand-fathers* by the father's side were natural-born subjects, are deemed to be natural-born subjects themselves, to all intents and purposes; unless their said ancestors were attainted or banished beyond sea for high treason; or were, at the birth of such children, in the service of a prince at enmity with *Great Britain*.

The children of aliens born in the king's dominions, are natural-born subjects, unless the alien parents are acting in the realm as enemies; for it is not *cælum nec solum* which gives them the rights of *Englishmen*, but their being born within the allegiance and under the protection of the king. 7 *Co.* 18 *A.* 1 *Bl. Com.* 374.

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

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

\* By the 9 G. 4. c. 21. the preamble of which recites, that it is expedient to remove by law, doubts that may have arisen as to the civil rights and titles to real estate, to certain persons therein mentioned, and to provide by some general law for the naturalization of such persons, not being by law entitled to be regarded as natural-born subjects, as were actually domiciled in this province, it is therefore enacted, as follows:—"that all persons who have held any public office in the province, under the great seal or privy seal of the province, or under the sign manual of the Governor, and all persons who have taken the oath of allegiance, or made affirmation of allegiance to his Majesty or his predecessors, before any person duly authorised to administer such oath or affirmation; and all persons who had their settled place of abode in this province before the year 1828, and are still resident therein, shall be, and are thereby admitted and confirmed in all the privileges, of British birth and natural-born subjects: provided, that no one (except females) who has not taken the oath, or made the affirmation of allegiance, shall be entitled to the benefits of this act, unless he shall take the said oath or affirmation before some duly authorised person."

And by § 2. it is further enacted, "that all persons actually domiciled in this province on the 1st March, 1828, not being of the description before mentioned, who shall have resided, or shall continue to reside therein, or in some other part of his Majesty's dominions, for the space of seven years continually, without having been during that time stated resident in any foreign country, shall be deemed and taken to be natural-born subjects, as if they had been born in this province: provided, that no one of the persons described in this clause, (except females,) who, at the passing of this act, has been resident in his Majesty's dominions seven years continually, as aforesaid, shall be entitled to the benefits of this act, unless, within three years after the passing of this act, (if at the passing of the act he shall be sixteen years of age or upwards, or if not of that age, then within three years after he shall be of that age,) he shall take and subscribe the oath in the schedule to this act, marked A, or affirm to the same effect, before the register, or deputy register of some county in this province; and that no one of the persons described in this clause, who has not been resident, as aforesaid, seven years continually in his Majesty's dominions, shall be entitled to the benefits of this act, unless within three years after he shall have completed a stated residence of seven years continually, as aforesaid, in his Majesty's dominions, (if at the expiration of such residence he shall be of the age of sixteen years or upwards, or, if at that time not of that age, then

within three years after he shall have attained that age) he shall take and subscribe such oath or make such affirmation."

*Form of the Oath.*

A.

"I do swear, (or being one of the persons allowed by law to affirm in civil cases, do affirm,) that I have resided seven years in his Majesty's dominions, without having been during that time resident in any foreign country; and that I will be faithful and bear true allegiance to the Sovereign of the united kingdom of Great Britain and Ireland, and of this province, as dependent thereon."

\* By the 1 W. 4. c. 8. the period of three years mentioned in the last act for taking the oath, is extended to four years from the passing of this act, and thence to the end of the next session.

\* By the 2 V. c. 20. § 1. so much of the second clause of the \* 9 G. 4. c. 21. as limits the time for taking the oath therein prescribed, be revived and extended to two years from and after the passing of this act. [11th May, 1839.]

By the 4 & 5 V. c. 7. all aliens actually residing within this province on the 10th February, 1841, and who were so resident continually for seven years next before that day, or shall have been continually resident for seven years from the said day, or from their first residence in this province before that day, shall be deemed and taken to be natural-born subjects of her Majesty, to all intents and purposes whatsoever: provided that residence within Lower Canada or residence within Upper Canada shall be deemed residence within this province for the purposes of this act. § 2. Temporary absence from the province, without renewal of allegiance to any foreign state, or actual removal of domicile, shall not be held an interruption. § 3. Every person naturalised under this act shall, from the commencement of his residence, be deemed qualified to hold real estate in this province, or the late provinces. § 4. Provided that no such alien (excepting females) who, at the passing of this Act, has been resident within this province seven years continually, shall be entitled to the benefit of this act, unless, within twelve months after the passing thereof, he shall take the oath, and make the declaration in the schedule, or, being one of the persons allowed to affirm, shall make affirmation to the same effect before some person whom the Governor, Lieutenant Governor, or person administering the government, shall, by commission under the great seal, empower to administer the same; and no such alien, who having, at the passing of this act, been for seven years



continually resident within this province (except as before excepted) shall be entitled to the benefit of this act, unless, within twelve months after he shall have completed such seven years' residence, he shall take such oath or make such affirmation. § 5. Minors, having completed such stated residence, entitled to the benefit of the act, upon taking the oath or making such affirmation within twelve months after he shall have attained the age of sixteen years. § 6. False swearing, or false affirmation, to be deemed perjury; and the offender, in addition to any other punishment authorised by law, shall forfeit all the privileges under the act. But the rights of others, in respect to estates, not to be affected, unless such parties were cognizant of the perjury. § 7. Persons duly authorised may administer the oath or affirmation required to any person above sixteen, who shall desire to take the same, and shall make such declaration as will, if true, entitle him to the benefit of this act, and shall keep books of registry, containing the oath or affirmation and declaration, which shall be signed, or marked, by the party. § 8. Duplicate books to be kept, containing the actual signatures, or marks, of the persons subscribing, and on or before the 31st day of December, in each year, one of them shall be transmitted by the person in charge to the Registrar of the province and the other retained, and both shall be public records. § 9. If either shall be lost or destroyed, it shall be supplied by a copy on oath from the other. § 10. A copy or extract from any such book or registry of the whole entry, made in respect to any person whose name is recorded therein, certified by the person in charge, shall be sufficient evidence of naturalization of the person described. § 11. The books transmitted to be verified by the commissioner or his deputy. § 12. Under the penalty of £200, to be recovered by information in any superior court of record. § 13. Alphabetical lists to be kept by the commissioners and registrar, and open for inspection, on payment of one shilling, search. § 14. A fee of one shilling and three-pence to be charged for the oath or affirmation, and the like sum for the search and a certified copy. § 15. Any alien who, on the 10th February, 1841, was domiciled in this province, dying before the period limited by the act for taking the oath, shall be deemed to have been a natural-born subject, so far as regards holding and imparting real estate. § 16. This act not to repeal or affect the 54 G. 3. c. 9. or any proceedings under the same, or any law now in force for the naturalization of aliens. § 17. Aliens by birth, but naturalized in one part of the province, to be entitled to the same privileges throughout. § 18. Aliens, under sixteen years of age, resident in the province, on the 10th February, 1841, not to be disturbed

in the possession or precluded from recovering real estate. § 19. Titles derived through aliens, before the passing of this act, not to be disturbed. § 22. Claimants, next entitled to an alien heir, in possession and having made improvements, or who shall have actually sold or contracted to sell real estate, the provisions of this act not to invalidate any right or title to such estate.

## SCHEDULE.

## OATH.

I do swear (or solemnly affirm, as the case may be) that I was actually resident within the Province of Canada, on the tenth day of February in the year of Our Lord one thousand eight hundred and forty-one, at the place named in the declaration to which I have set my name in this Register; that I was continually resident in the said Province for a term of seven years, in which the said day was included; that all the other particulars in the said declaration are true to the best of my knowledge and belief, and that I do truly believe myself entitled to be admitted to all the privileges of British birth within the said Province, under the provisions of an Act of the Legislature thereof passed in the fifth year of the Reign of Her Majesty Queen Victoria, and intituled *An Act to secure to, and confer upon, certain inhabitants of this Province, the civil and political rights of natural born British Subjects*, and I do further swear (or solemnly affirm, as the case may be) that I will be faithful and bear true allegiance to the Sovereign of the United Kingdom of Great Britain and Ireland and of this Province as dependent thereon—So help me God.

## DECLARATION.

Name in full.	Residence on 10th February, 1841.	Present Residence.	Date of the expiration of the seven years residence.	Whether the party was or was not under 16 years of age at the date named in the next preceding column, and if he was, then the date at which he attained that age.	Signature.	Date of Registry.	No. of Registry.

A conveyance in fee to an alien is not void, but he holds for the benefit of the crown, and is entitled, as against all others, until the land is seized into the hands of the Queen on office found: and if a subject be a trustee for an alien, he has the

legal estate, and the Queen is entitled to the profits; and a person claiming through an alien may have a good title, although the alien himself would hold only for the benefit of the Crown, and semble, a person claiming lands under a Sheriff's deed, sold at the suit of an alien, is entitled to recover in ejectment, notwithstanding Stat. 5 G. 2. it being necessary to take the objection of alienage, if available at all, before execution executed. *Cameron's Digest*, p. 5.

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

## ALLEGIANCE.

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

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

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

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

### *Oath of Allegiance.*

I, A. B. do sincerely promise and swear, that I will be faithful and bear true allegiance to her Majesty Queen Victoria, and her will defend to the utmost of my power against all traitorous conspiracies and attempts whatsoever which shall be made against her person, crown and dignity; and I will do my utmost endeavour to disclose and make known to her Majesty, her heirs and successors, all treasons and traitorous conspiracies and

attempts which I shall know to be against her, or any of them; and all this I do swear, without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any power or persons whomsoever to the contrary. So help me God.

## AMENDMENT.

\* By the 1 W. 4. c. 2. it is enacted, that any judge of any court of oyer and terminer and general gaol delivery, if such court or judge shall think fit, may cause the record on which any trial may be pending before any such court, in any indictment or information for any misdemeanor, when any variance shall appear between any matter in writing or in print, produced in evidence, and the recital or setting forth thereof upon the record whereon the trial is pending, to be forthwith amended in such particular, by some officer of the court.

## APPEAL.

AN APPEAL lies against a conviction, only in cases where it is expressly given by statute. *R. v. Hanson.* 4 B. & A. 519.

The statute which allows of an appeal, usually directs that a reasonable notice of the party's intention to appeal shall be previously given, either to the justices or to the complainant, or to both; but, unless required by the statute, a notice of appeal is not absolutely necessary; see *R. v. J. J. of Essex*, 4 B. & A. 276; and even in cases where such notice is required, it need not be in writing, unless required to be so by the statute, *R. v. J. J. of Salop*, 4 B. & A. 626. It is also required in many cases, that the party appealing shall enter into a recognizance with sureties conditioned to try the appeal, and to abide the judgment of the court thereon.

The terms in which these notices and recognizances are directed to be given by the several statutes, respectively, by which they are required, vary in many trifling particulars; but it may be sufficient to give the following forms, which have been framed upon one of Mr. Peel's acts, and which may be altered in particular cases, so as to make them conformable with the statute requiring them. *Archbold on Conv.*

On an appeal to the quarter sessions, under the \*4 W. 4. c. 4. evidence may be received which was not offered to the convicting justices. *Cameron's D.* p. 71.

*Notice of Appeal. (Archbold.)*

Home District, } To — of — in the said —  
 to wit. } This is to give you [*and each and every of you*]  
 notice, that I, C. D. do intend, at the next general quarter sessions of the peace, to be holden in and for the said district, at — in the said district, to appeal against a certain conviction of me, the said C. D. by J. P. Esquire, one of her Majesty's justices of the peace for the said district, for having, as is therein and thereby alleged [on — &c. at — &c. — &c. stating the offence] and that the cause and matter of such appeal are [that I am not guilty of the said offence] and that [stating any other causes of appeal the party may have] of all which premises you [and each and every of you] are hereby desired to take notice.

Dated this — day of — &c.

Witness, E. H.

C. D.

*Recognizance. (Archbold.)*

Home District, } Be it remembered, that on the — day of — in  
 to wit. } the — year of the reign of our Sovereign  
 Lady Victoria, C. D. of — labourer, L. M. of — yeoman, and J. K. of — grocer, personally came before me J. P. one of her Majesty's justices of the peace for the said district, and acknowledged themselves to owe to our said Lady the Queen the sum of — pounds, each, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our said Lady the Queen, her heirs and successors, if default shall be made in the condition following:

Whereas, by a certain conviction, under the hand and seal of — one of her Majesty's justices of the peace for the district aforesaid, the said C. D. is convicted, for that he on, &c. [*stating the offence*]. And whereas the said C. D. hath given notice unto — [within — days after such conviction, and — clear days before the next general quarter sessions of the peace] of his intention to appeal against the said conviction, and of the cause and matter thereof. Now, the condition of this recognizance is such, that if [the above bounden C. D. shall personally appear at the next general quarter sessions of the peace to be holden at — in and for the said district, and shall then and there try such appeal, and abide the judgment of the said court of quarter sessions thereupon, and pay such costs as shall be by the said court awarded] then this recognizance to be void.

Taken and acknowledged before me.

J. P.

## APPEAL—COURT OF.

\* By the 34 G. 3. c. 2. which establishes the Court of King's Bench in this province, it is also provided by the 33 §, that the Governor, &c. or Chief Justice of this 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 be lawfully brought before them; and by § 35. an appeal shall lie to this court in all matters exceeding £100, upon proper security being given by the appellant to prosecute such appeal, and answer the condemnation and pay such costs as shall be awarded, in case the judgment or sentence appealed from shall be affirmed; and by § 36. the judgment of such court of appeal shall be final in all cases under £500, but in cases exceeding that sum, as well as in all cases relating to 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 sum may be, an appeal may lie to her Majesty in her privy council, upon proper security.

## APPRENTICES.

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

The 5 Eliz. c. 4. commonly called the statute of apprenticeship, provides and enacts, that all indentures for a less term than seven years shall be void.†

If this regulation be not complied with the indentures are voidable at the parties election. 1 *Anstr.* 256. 6 *Esp. R.* 8.

It has however been decided, that as between the parties themselves the indenture is not absolutely void, but *only voidable*, and that it must be avoided in a proper manner. *Rez. v. Evered.* *Caldecott's Rep.* 26. 1 *Botts.* 530. 1. 6 *Term Rep.* and when a party is bound as an apprentice for less than seven years, no third party can avail himself of this deviation from the statute, so as to protect him from liability to an action for enticing away

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† An Indenture of Apprenticeship, contrary to the provisions of 5 Eliz. c. 4. is not void but voidable, and semble, that statute is not in force in this province. *Fisk v. Doyle.* Hil. 1 W. 4. *Cameron's Digest,* p. 6. The case cited was one of a civil nature, upon an action brought for Breach of Contract. The question of criminal jurisdiction under the statute did not arise, and may therefore be presumed to be undecided. The statute has been held in England to relate to every description of apprentice, whether bound for seven years or a lesser period.—1 *Saund.* 316. n 3.—1 *Stra.* 663.—1 *Nolan.* 344. Ed.

such apprentice. 6 *Term. Rep.* 652. 7 *Term. Rep.* 310. 314. and it is settled in the case of *Rex. v. St. Nicholas*, that a binding for four years gives a settlement, and Aston, Justice, said, "supposing the indenture voidable, I cannot conceive that the apprentice's *running away* can avoid them; had he served regularly, and during such service declared his intention to depart, it might have been different; here he would make use of his offence in order to avoid the punishment that attended it, but it is too late to do it before a justice, when charged with a crime. And Willes and Ashhurst, justices, were of the same opinion. 1 *Bott.* p. 525. pl. 709.

Again, in the case of *St. Nicholas v. St. Peters*, (*Burr. Sett. cases*) the same question was fully argued, and Lord Hardwick, chief justice, in an elaborate argument, said, "I am of opinion that it does not make this Indenture void, but only voidable, if the parties themselves think fit to take advantage of it;" and three other judges concurred in opinion.

It being, therefore, clearly established as law, that an apprenticeship may be good for a less term than seven years, until avoided by the parties in a legal and proper manner; until this be done, such apprentices are clearly within the operation of the various statutes relating to apprentices generally.

It has been held not an indictable offence to entice away an apprentice from his master, on the ground that it is not an act of a public nature, but a mere private injury, and therefore the proper subject of an action. *Rex. v. Daniel.* 6 *Mod.* 182. 1 *Salk.* 389. *Rex. v. Collingwood.*

At common law, an apprentice stealing his master's goods is guilty of felony, if they were simply under his *charge*: but not so, if entrusted to him to *keep* for his master, this being a breach of trust only. 1 *H. P. C.* 505. This however was made felony by Statute 21 H. 8. c. 7. in apprentices [not under eighteen years of age] embezzling to the value of forty shillings. It is a misdemeanor to solicit him to steal his master's goods, though no act be done by him as to the stealing. *Rex. v. Higgins.* 2 *East.* 5. *Rex. v. Collingwood, contra.*

It is an indictable offence to refuse or neglect to supply necessaries to a child, servant, or apprentice, whom a person is bound by duty or contract to provide for, if such child be of tender years and unable to provide for itself. *R. v. Friend.* *Russ. & Ry.* 20.

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

*Differences between the Master and Apprentice.*

The master is allowed by law, with moderation, to chastise his apprentice. *Dalt. c. 58.*

But if the master and his apprentice cannot agree, they may proceed upon any one of the following statutes, applicable to the facts and circumstances of the case.

By 5 *Eliz. c. 4. § 35.* if any master shall misuse or evil entreat his apprentice, or the apprentice shall have any just cause to complain, or the apprentice do not his duty to his master, then the master or apprentice being grieved, and having cause to complain, shall repair unto *one* justice of the peace within the county, or to the mayor or other head officer of the city, town corporate, market town, or other place, where the said master dwelleth, who shall by his wisdom and discretion take such order and direction between the master and his apprentice as the equity of the case shall require.

And if for want of good conformity in the master, the justice of peace, or the mayor or head officer, cannot compound and agree the matter between him and his apprentice, then the justice, or the mayor, or other head officer, shall take bond of the master to appear at the next sessions then to be holden in the county, or within the city, town corporate, or market town, to be before the justices of the said county, or the mayor or head officer of the town corporate, or market town, if the master dwell within any such.

And upon his appearance and hearing of the matter before the justice, or the mayor or other head officer, if it be thought meet unto them to discharge the apprentice of his apprenticeship, then the justices, or four of them at least, whereof one to be of the *quorum*, or the mayor or head officer, with the consent of three other of his brethren, or men of best reputation within the city, town corporate, or market town, shall have power by authority hereof, in writing under their hands and seals, to pronounce and declare that they have discharged the apprentice of his apprenticeship, and the cause thereof; and the writing so being made and enrolled by the clerk of the peace, or town clerk, amongst the records that he keepeth, shall be a sufficient discharge for the said apprentice against his master, his executors and administrators; the indenture of apprenticeship or any law or custom to the contrary notwithstanding.

And if the default shall be found to be in the apprentice, then the justices, or the mayor or other head officer, with the assistance aforesaid, shall cause such due correction and punishment to be ministered unto him, as by their wisdom and discretions shall be thought meet.



By 5 Eliz. c. 4. § 47. if any servant or apprentice of husbandry, or of any art, science, or occupation aforesaid, unlawfully depart or flee into any other shire, it shall be lawful to the justices of the peace, and to the mayors, bailiffs, and other head officers of cities and towns corporate, for the time being justices of the peace there, to make and grant writs of *capias*, so many and such as shall be needful, to be directed to the sheriffs of the counties; or to other head officers of the places whither such servants or apprentices shall so depart or flee, to take their bodies, returnable before them at what time shall please them, so that if they come by such process that they be put in prison, till they shall find sufficient surety well and honestly to serve their masters, mistresses, or dames, from whom they so departed or fled, according to the order of the law.

By 20 G. 2. c. 19. § 3. it shall and may be lawful to and for any *two* or more justices of the peace of the county, riding, city, liberty, town corporate or place, where such master or mistress shall inhabit, upon any complaint or application by any apprentice, upon whose binding out no larger a sum than *five pounds* of lawful British money was paid, touching or concerning any misusage, refusal, or necessary provision, cruelty, or other ill-treatment, of or towards such apprentice, by his or her master or mistress, to summon such master or mistress to appear before such justices at a reasonable time, to be named in such summons; and such justices shall and may examine into the matters of such complaint; and upon proof thereof made upon oath to their satisfaction, (whether the master or mistress be present or not, if service of the summons be also upon oath proved) the said justices may discharge such apprentice by warrant or certificate under their hands and seals, for which warrant or certificate no fee shall be paid.

And by § 4. it shall be lawful to and for such justices, upon application or complaint made, upon oath, by any master or mistress, against any such apprentice, touching or concerning any misdemeanor, miscarriage, or illbehaviour, in such his or her service, (which oath such Justices are hereby empowered to administer) to hear, examine, and determine the same, and to punish the offender by commitment to the house of correction, there to remain and be corrected and held to hard labour for a reasonable time, not exceeding *one calendar month*, or otherwise by discharging such apprentice in manner and form before mentioned.

By § 5. provided, that if any person or persons shall think himself, herself or themselves, aggrieved by such determination, order or warrant, of such justice or justices as aforesaid, (save

and except any order or commitment) he, she or they, may appeal to the next general quarter sessions of the peace, to be held for the county, riding, liberty, city, town corporate or place, where such determination or order shall be made; which said next general quarter sessions is hereby empowered to hear and finally determine the same, and to give and award such costs to any of the respective persons, *appellant* or *respondent*, as the said sessions shall judge reasonable, not exceeding forty shillings, the same to be levied by distress and sale.

By § 6. and 7. it is also provided, that no *certiorari*, or other process shall issue or be issuable to remove any proceedings whatsoever had in pursuance of this act, into any of her Majesty's courts of record at *Westminster*.

By 6 G. 3. c. 25. if any apprentice (except such whose master shall have received with such apprentice the sum of *ten pounds*,) shall absent himself from his master's service, before the term of his apprenticeship shall be expired, every such apprentice shall, at any time or times thereafter, whenever he shall be found, be compelled to serve his said master for as long a time as he shall have so absented himself from such service, unless he shall make satisfaction for the loss he shall have sustained by his absence from his service, and so from time to time, as often as any such apprentice shall, without leave from his master, absent himself from his service before the term of his contract shall be fulfilled; and in case any such apprentice shall refuse to serve as hereby required, or to make such satisfaction to his master, such master may complain upon oath to any justice of the peace of the county or place where he shall reside, which oath such justice is hereby empowered to administer, and to issue a warrant under his hand and seal for apprehending any such apprentice; and such justice, upon hearing the complaint, may determine what satisfaction shall be made to such master by such apprentice; and in case such apprentice shall not give security to make such satisfaction, according to such determination, it shall and may be lawful for such justice to commit every such apprentice to the house of correction, for any term not exceeding *three months*.

By § 3. such application must be made within seven years after the end of the term of the apprenticeship.

And by § 5. any party aggrieved may appeal to the next general quarter sessions, giving six days' notice to the justice, and entering into a recognizance within three days after such notice, with sufficient surety to try such appeal, and abide the order of and pay such costs as should be awarded by the sessions.

Upon these acts Mr. Chitty, in his treatise on the law relative to apprentices observes, that a more extensive power is given to

the sessions than to justices in the first instance. That under the statute 5 Eliz. c. 4. *one justice* is only constituted a mediator, and has no power to proceed, unless the master agree to be bound by his determination, and if he do not, the only course is to resort to the *sessions*; but if the master agree, though the apprentice do not, the magistrate may, by order under hand and seal, direct him to be discharged: for no option is given by the statute to the apprentice, but only to the master.

The power given over indentures of apprenticeship to *two* magistrates, by the 20 G. 2. c. 19. is confined to *apprentices, where the præmium does not exceed five pounds.*

Besides the power of *discharging*, the sessions have, by the 35 § of 5 Eliz. c. 4. power to cause such due *correction and punishment* to be ministered unto the apprentice as they may think fit, and by virtue of this clause they may commit the apprentice; and Dr. Burn observes, that this being left indefinite, it seems most apposite that the justices commit the apprentice to the house of correction for a time, to be kept to hard labour, or otherwise corrected, as the nature of the offence may require; but that this clause in the act does not restrain but enlarges the power of magistrates over apprentices, beyond the power given them over masters, whom the justices cannot punish, and the magistrates may inflict corporal punishment, or discharge an apprentice at their discretion.

*Proceedings at Sessions under 5 Elizabeth.*

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

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

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

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

There is no power to discharge for sickness, as “where the apprentice was lame and in the surgeons’ opinion incurably afflicted,” for the master takes him for better or worse, and is to provide for him in sickness and in health. 1 *Str.* 89. 1 *Bott.* 574.

The order must be under the hands and seals of four justices, and enrolled as the act directs, or the superior courts will set it

aside. 1 *Saund.* 316. n. 5. 2 *Salk.* 470. 1 *Bott.* 572. 1 *Str.* 99.

The power of discharge is confined, in counties, to four justices at the least, and must be made at a general sessions, and not a private sessions, or the order may be set aside. 1 *Skin.* 89. 1 *Bott.* 572.

It has been decided and settled, that the justices have power to order restitution of the premium received with the apprentice, or such part of it as they may think fit, as an incident to their authority to discharge. 1 *Saund.* 313. n. 3. *cites* 1 *Salk.* 67. 68. 2 *Salk.* 491. *S. C.*—*Skin.* 108.—1 *Bott.* 571. 576. *acc.* 1 *Str.* 79. *contra*, and see the proceedings in 2 *Barnard, K. B.* 244. 296. and *Chitty on App. Laws*, 107.

#### *If against the Master.*

Although the 5 Eliz. requires the discharge to be made on the master's appearance, the court held that the act must have a reasonable construction, and the sessions might proceed in the master's absence, otherwise, if he ran away, the apprentice could not be discharged. 2 *Salk.* 491. 1 *Bott.* 572.

#### *Common form of an Indenture of Apprenticeship.*

This Indenture witnesseth, that A. B. of the age of — years, the son of B. C. of the township of — in the Home District, yeoman, by and with the consent of his said father, doth put himself apprentice to C. D. of the city of Toronto, shoemaker, to learn his art, and with him, after the manner of an apprentice, to serve, from the day of the date of these presents, unto the full end and term of — years from thence next following, to be fully complete and ended; during which term the said apprentice his master faithfully shall serve, his secrets keep, his lawful commands every where gladly do: he shall do no damage to his said master, nor see to be done of others, but to his power shall let or forthwith give warning to his said master of the same: he shall not waste the goods of his said master, nor lend them unlawfully to any: he shall not commit fornication nor contract matrimony within the said term: he shall not play at cards, dice tables, or any other unlawful games, whereby his said master may have any loss with his own goods or others, during the said term, without license of his said master: he shall neither buy nor sell: he shall not haunt taverns or play-houses, nor absent himself from his said master's service day or night, unlawfully, but in all things as a faithful apprentice he shall behave himself towards his said master and all his, during the said term. And the said C. D. in consideration of the faithful services of the

said apprentice, and of the sum of £— of lawful and current money of the province of Canada, to him in hand paid by the said B. C. at or immediately before the execution hereof, the receipt whereof is hereby acknowledged, his said apprentice in the art of a shoemaker which he useth, by the best means that he can, shall teach and instruct, or cause to be taught and instructed, finding and providing unto the said apprentice sufficient meat, drink, lodging and all other necessaries, during the said term, [and moreover, here add any special contract for wages, in case any are to be paid to the apprentice,] and for the true performance of all and every the said covenants and agreements, each of the said parties bindeth himself unto the other, and others of them firmly by these presents. In witness whereof, the parties above named to these indentures interchangeably have put their hands and seals, at the city of Toronto aforesaid, the — day of — in the year of our Lord 18—.

Signed, sealed, and delivered: }	A. B.	I. S.
in the presence of — }	B. C.	L. S.
E. K. Schoolmaster.	C. D.	L. S.

*Summons of the Master for misusing his Apprentice, on 5 Eliz. c. 4.*  
(Burn.)

To the Constable of the Township of —.

Home District. } Whereas complaint and information hath  
 } been made unto me — one of her Majesty's  
 justices of the peace in and for the said district, by A. B.  
 apprentice to C. D. of — in the said township, shoemaker, that  
 the said C. D. hath misused and evil entreated him the said A.  
 B. (*by cruel punishment, and beating him the said A. B. without just  
 cause, and by not allowing unto him sufficient meat, drink, apparel,  
 or as the case may be.*) These are, therefore, in her Majesty's  
 name, to command you to summon the said C. D. to appear  
 before me, at the house of — in the said township, on — the —  
 day of — at the hour of — in the afternoon of the same day, to  
 answer unto the said complaint, and to be further dealt with  
 according to law. Herein fail you not.

Given under my hand and seal, the — day of — &c.

*Summons of the Apprentice on complaint of the Master, on 5 Eliz.  
c. 4. (Burn.)*

To the Constable of —.

Home District. } Whereas complaint and<sup>d</sup> information hath  
 } been made unto me — one of her Majesty's  
 justices of the peace in and for the said district, by C. D. of —

in the said district, shoemaker, that A. B. now being an apprentice to him the said C. D. is negligent, stubborn, disorderly (*or as the case may be*) and doth not his duty to him his said master. These are, therefore, to command you to summon the said A. B. to appear before me at — in the said township, on the — day of — at the house of — in the afternoon of the same day, to answer the said complaint, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal, &c.

*Form of Recognizance to appear at the Sessions.*

See the usual form—Title Recognizance.

The condition of the above recognizance is such, that if the above bounden C. D. shall and do appear at the next general quarter sessions of the peace to be holden in and for the Home District, and then and there answer to a complaint to be preferred against him by A. B. his apprentice, and not depart the court without leave, then this recognizance to be void.

Taken and acknowledged, &c.

*Order of discharge by four Justices at the Sessions, on the 5 Eliz. c. 4. § 35. (Burn.)*

Home District. } At a general quarter sessions of the peace,  
 } holden at — in and for the said Home  
 District, the — day of — in the — year of the reign of our  
 Sovereign Lady Victoria, by the grace of God, of the united  
 kingdom of Great Britain and Ireland, Queen, defender of the  
 faith, and so forth, before — justices of our said Lady the Queen,  
 assigned to keep the peace in the said district, and also to hear  
 and determine divers felonies, trespasses and other misdemeanors,  
 in the said district committed, and of the quorum—it is ordered  
 as followeth:

Upon the petition of A. B. apprentice to C. D. of — in the said district, shoemaker, to be relieved, upon certain neglects of the said master in instructing him in his trade, and in misusing and evil entreating the said apprentice by cruel punishment, (*or as the case may be.*) And the said master having likewise appeared, upon his recognizance taken before J. P. Esquire, one of the said justices, to answer to the complaint of the said petition, and having proved nothing whereby to clear himself of the said complaint, but on the contrary, the said A. B. having given full proof of the truth of the said complaint, to the satisfaction of the said court, we therefore, whose hands and seals are here-

unto set, being four of the said justices, and of the quorum, do hereby order, pronounce and declare, that the said apprentice shall be, and is hereby discharged and freed from his said apprenticeship. And this is to be a final order betwixt the said master and apprentice, any thing in their indenture of apprenticeship, or otherwise, to the contrary notwithstanding. Given under our hands and seals, the day and year first above written.

*Complaint of an Apprentice to two Justices, against his Master, on 20 G. 2. c. 19. where the præmium paid is not over £5.*

Home District. } The information and complaint of A. P. apprentice to A. M. of — husbandman, exhibited before us, two of Her Majesty's justices of the peace in and for the Home District, the — day of — in the year, &c. who saith, that he the said A. P. is an apprentice, bound by indenture, to A. M. of — aforesaid, husbandman, and that he the said A. M. hath misused and ill treated him the said apprentice, and particularly, that on or about the — day of — (here state the facts.)

Before us,

A. P.

J. P.

K. P.

*Summons of the Master, by two Justices, on complaint of the Apprentice, on the 20 G. 2. c. 19. § 3.*

To the Constable of —.

Home District. } Whereas information and complaint hath been made unto us — two of Her Majesty's justices of the peace in and for the said district, by A. P. apprentice to A. M. of — in the said district, that he the said A. M. hath misused and ill treated him the said A. P. and particularly, (*here state the facts.*) These are, therefore, to require you to summon the said A. M. to appear before us at — in the said district, on — the — day of — to answer unto the said information and complaint. And be you then there, to certify what you shall have done in the execution thereof. Herein fail not. Given under our hands and seals, the — day of —.

*Discharge of an Apprentice, by two Justices, on the Master misusing him, by the 20 G. 2. c. 19. § 3.*

Home District. } Whereas complaint hath been made before us, — two of Her Majesty's justices of the peace in and for the said district, by A. P. apprentice to A. M. of — in the said district, tailor, that he the said A. M. hath misused

and evil treated him the said apprentice, and particularly, (*set forth the particulars.*) And whereas the said A. M. hath appeared before us, in pursuance of our summons for that purpose, but hath not cleared himself of and from the said accusation and complaint, but on the contrary, the said A. B. hath made full proof of the truth thereof, before us, upon oath. We therefore, by these presents, do discharge him the said A. P. of and from his apprenticeship to the said A. M. any thing in the indenture of apprenticeship made between them, or otherwise, howsoever, to the contrary, notwithstanding. Given under our hands and seals, the — day of — &c.

[Or—And whereas it hath been duly proved before us, as well upon the oath of A. G. constable of — aforesaid, as otherwise, that he the said A. C. did duly summon the said A. M. to appear before us at a reasonable time, in the said summons mentioned and specified; but notwithstanding the same, he, the said A. M. hath not appeared before us according to such summons. We therefore, having duly examined into the matter of the said complaint, and the truth thereof having been fully proved before us, upon oath, do discharge, &c.]

*Complaint to two Justices, of the Master against his Apprentice—on the 20 G. 2. c. 19. § 4.*

Home District. } The complaint and information of A. M. of  
 — in the Home District, husbandman, taken  
 and made on oath before us, — two of her Majesty's justices of  
 the peace in and for the said district, the — day of — who saith,  
 that A. P. by indenture to him the said A. M. hath, in the ser-  
 vice of his apprenticeship, been guilty of several misdemeanors,  
 miscarriages, and ill behaviours, towards him the said A. M. and  
 particularly (*as the case shall be.*)

Before us,

J. P.

K. P.

A. M.

*Warrant for a disorderly Apprentice, by two Justices, on the aforesaid complaint—by the 20 G. 2. c. 19. § 4.*

To the Constable of —.

Home District. } Whereas oath hath been made before us —  
 } two of her Majesty's justices of the peace  
 in and for the said district, by A. M. of — in the said district,  
 husbandman, that A. P. apprentice to the said A. M. hath com-  
 mitted divers misdemeanors against the said A. M. his master,



and particularly, (*as the case shall be.*) These are, therefore, to require you forthwith to apprehend the said A. P. and bring him before us, to answer unto the said complaint, and to be dealt with according to law; and you are to give notice to the said A. M. that he appear before us at the same time, to make good the said complaint. Given under our hands and seals the — day of — 18—.

*Commitment of an Apprentice to the House of Correction on complaint of his Master, by two Justices, on the 20 G. 2. c. 19. § 4.*

Home District. } To the constable of — in the said district,  
 } and to the keeper of the house of correction  
 at — in the said district.

Whereas complaint hath been made before us — two of her Majesty's justices of the peace in and for the said district, upon the oath of A. M. of — in the said district, husbandman, that A. P. apprentice of the said A. M. hath committed divers misdemeanors against him the said A. M. his master, and particularly (*as the case may be.*) And whereas, upon examination thereof, and upon hearing the allegations of both parties, having come before us for that purpose, and upon due consideration had thereof, it manifestly appears to us that he the said A. P. is guilty of the premises so charged against him, as aforesaid. We do therefore hereby command you the said constable, to take and convey the said A. P. to the said house of correction, and to deliver him to the said keeper thereof, together with this warrant: and we do hereby command you, the said keeper of the said house of correction, to receive the said A. P. into your custody in the said house of correction, there to remain and be corrected, and held to hard labour for the space of —. Given under our hands and seals, the — day of —.

*Discharge of an Apprentice by two Justices, on complaint of the Master, by 20 G. 2. c. 19. § 4.*

Home District. } Whereas complaint, &c. (*as in the last prece-*  
 } *dent.*) We do therefore, by these presents,  
 discharge the said A. P. from his apprenticeship to the said A. M. any thing in any indenture or indentures of apprenticeship betwixt them, or otherwise to the contrary notwithstanding.—  
 Given, &c.

*Assignment of an Apprentice.*

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

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

In witness, &c.

## APPROVERS.

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

On the other hand, if the appellee be acquitted, the approver shall receive judgment to be hanged, upon his own confession of the indictment; for the condition of his pardon has failed, viz., the convicting of some other person, and therefore his conviction remains absolute. 3 *Inst.* 129. 4 *Bl. Com.* 230. 2 *Hale* c. 4. 29. 2 *Haw.* c. 24.

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

And see *post*; *King's Evidence*.

## ARBITRATION.

By 9 & 10. W. 3. c. 15. § 1. all merchants and others, desiring to end any controversy (for which there is no remedy but by personal action or suit in equity) by arbitration, may agree that their submission of the suit to the award of any persons shall be made a rule of any of Her Majesty's courts of record, and may insert such their agreement in their submission, or the condition of the bond or promise; and upon producing an affidavit of such agreement, and upon reading and filing such affidavit in court, the same may be entered of record, and a rule shall be thereupon made, that the parties shall submit to, and finally be concluded by such arbitration; and in case of disobedience thereto, the party shall be subject to all the penalties of contemning a rule of court, and process shall issue accordingly; which shall not be stopped by any order, &c. of any other court, either of law or equity, unless it appear on oath that the arbitrators or umpire misbehaved themselves, and that such award was corruptly procured.

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

## Arbitration.

### *The Form of an Agreement.*

Articles of agreement entered into and concluded upon this — day of — 1843, between A. B. of — of the one part, and C. D. of — of the other part. Whereas (*here state the subject in dispute, and that an action is now pending in the Court of Q. B.*) And whereas the said A. B. and C. D. for the purpose of putting an end to all further controversy touching the several matters in question, have respectively agreed to refer all questions, differences and disputes whatsoever, now pending in the said matters, (*and if an action is pending, “also by whom, to whom, and in what manner, the costs of all the parties in such cause or suit shall be paid”*) to the consideration, judgment and arbitrament, and final award of — being a person indifferently named and chosen by the parties hereto, as an arbitrator in the premises; and further, that the said reference and submission shall and may, in pursuance of the statute in that behalf made and provided, be made an order of her Majesty’s said court of Queen’s Bench, if the said court shall think fit to order the same. Now these presents witness, that for the consideration and purposes aforesaid, it is hereby declared and agreed upon by and between the said parties to these presents, that they the said parties hereto, and each of them, their and each of their heirs, executors and administrators, on his and their respective parts, shall and will well and truly stand to, abide by, perform, fulfil and keep, the order, arbitrament, final determination, and award of the said — the arbitrator so as aforesaid, indifferently named and chosen by them the said parties hereto, to adjudge, arbitrate, determine, order and award between them, of and concerning all questions, titles, controversies, differences and disputes, now depending or subsisting between them in the premises, and also by whom and in what manner, and to whom the costs in the said suit are or ought to be paid, so as the said arbitrator shall make such his order, arbitrament, final determination and award, in writing under his hand and seal, ready to be delivered to the said parties, or such of them as shall require the same, on or before the — day of — next ensuing the date of these presents. And it is hereby agreed by and between the said parties hereto, that no action at law or suit in equity, shall be commenced or prosecuted by any or either of them against the said — for or on account of his award, to be made pursuant to this agreement.

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

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

## *The Award.*

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

Whereas (*here recite the subject matter in dispute, and the agreement to refer the same to arbitration, as in the above form.*) Now know ye, and these presents witness that I the said — having taken upon myself the said reference, and having heard the statement of the parties and their witnesses, and having examined the matters and proofs produced on both sides, and having investigated the transactions and accounts by and between the said parties, and maturely considered the same, do make my award in manner following, that is to say,—I do hereby award and determine that there is now justly due and owing to the said A. B. from the said C. D. the sum of £— upon a balance of account: and I do award, order and direct, that the said C. D. shall pay the said sum of £— to the said A. B. or his order, within — after the publication of this my award, and notice thereof in writing given to the said C. D.: and I do further order and direct, that each of the said parties shall pay his own costs, charges and expenses, of and concerning the said suit, and of all matters whatsoever attending the said reference:\* and I do further order and direct, that the costs and charges of and attending this my award, shall be paid equally between the said parties. In witness whereof, I have hereunto set my hand and seal, the — day of — 18 —.

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

## ARRAIGNMENT.

THE arraignment of a prisoner consists in calling him to the bar by his name, and commanding him to hold up his hand, in order to identify his person, reading over distinctly the indictment to him, that he may understand the charge, and demanding of him whether he is “guilty” or “not guilty.” The practice formerly was, to ask him, in addition, how he would be tried—to which the answer required was—“by God and my country.” But now, by the 4 & 5 V. c. 24. § 14. if any person whatsoever, being arraigned upon any indictment for treason, felony or piracy, shall plead thereto a plea of “not guilty,” such person

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\* The arbitrator may award otherwise, as he may think proper, and award either party to pay the whole.

shall, by such plea, without any further form, be deemed to have put himself or herself upon the country for trial, and the court shall, in the usual manner, order a jury for the trial of such person accordingly.

§ 15. If any person, being arraigned upon or charged with any indictment or information for treason, felony, piracy or misdemeanor, shall stand mute of malice, or will not answer directly to the indictment or information in every such case, it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of "not guilty" on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

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

## ARREST.

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

### *Arrest by Warrant.*

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

A justice may grant a warrant in all cases where he has a jurisdiction over the offence, in order to compel the person accused to appear before him. 12 *Co.* 130. 2 *Haw.* 84. *Bane v. Methuen.* 2 *Bing.* 63.

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

It may be issued also to apprehend a person accused of felony, though not indicted, or to apprehend a person suspected of felony, though the original suspicion be not in the justice issuing the warrant, but in the party that prays it, for the justice is the competent judge of the probability offered to him of such suspicion. 2 *Hale*, *P. C.* 108. and see 34 *Edw.* 3. c. 1.

But no warrant should in any case be granted without an examination upon oath of the party requiring it, as well to ascertain that there is a felony or other crime actually committed, as also to prove the cause and probability of suspecting the party against whom the warrant is prayed. 2 *Hale*, 110.

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

The warrant should be under the hand and seal of the justice; should set forth the time and place of making, and the cause for which it is made; and should be directed to the constable, or other peace officer, (or it may be to any private person, by name, *Salk.* 176.) requiring him to bring the party, either generally, before any justice of the peace for the county, (or district) or only before the justice who granted it: the warrant in the latter case being called a special warrant. 2 *Haw.* 85. 4 *Bl.* 290.

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

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

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

When a warrant properly penned is received by the officer, he is bound to execute it within the district for which the jurisdiction of the magistrate extends; and the officer will (by 24 *G. 2. c.* 44.) be in that case indemnified, even though the magistrate should not have strict authority to grant it. 4 *Bl.* 291.

The warrant of a justice of the peace in one district, must be backed, that is, signed by a justice of the peace in another, before it can be executed in the latter district. And see 23 *G. 2. c.* 26. and 24 *G. 2. c.* 55.

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

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

*Arrest without Warrant.*

A *justice of the peace* may apprehend, or cause to be apprehended, by word only, any person committing a felony, or breach of the peace, in his presence. 1 *Hale*, 86. And see 34 *Edw. 3. c. 1.*

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

So also the *constable* may arrest any one for a felony or breach of the peace, committed in his view, and carry him before a justice of the peace. And in case of a felony actually committed, or a dangerous wounding whereby felony is likely to ensue, he may also, upon a probable suspicion, arrest the party, notwithstanding the suspicion arise not in his own mind, but in that of some other person, who communicates it to the constable. But in this last case he ought to inquire scrupulously into the causes of the suspicion; for though he cannot do this upon oath, it may reasonably carry over the suspicion to his own mind. 2 *Hale*, 91.

And although it should afterwards appear that no felony has been committed, yet he may justify an arrest without a warrant on a charge of felony made by another person, on reasonable cause of suspicion.—*Samuel v. Payne*, 359. Or even if, without any charge, the constable himself has reasonable cause of suspicion. *Beckwith v. Shilby*. 6 *B. & C.* 635.

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

*Watchmen*, who are appointed by the statute of *Winchester*, (13 *Edw. 1.*) to keep watch and ward in all towns, from sun-setting to sun-rising, or such as are mere assistants to the constable, may arrest all offenders, and particularly *night-walkers*, and *disorderly persons*, and commit them to custody till the morning. 2 *Hale*, 98.

By the 4 & 5 *V. c. 25. § 55.* any person found committing any offence punishable by indictment, or upon summary conviction under this act, may be apprehended without a warrant by any peace officer, or the owner of the property. The 4 & 5 *V.*



c. 26. § 28. contains a similar provision for offences under that act.

*By private persons.*

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

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

A private person may arrest any suspicious night-walker, or a common cheat, in order to take them before a justice. *1 Jones, 249. Cro. Car. 274. 2 Rol. Ab. 546.*

*The manner of making an Arrest.*

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

But otherwise, if the officer and his business be known.—*Machally's case. 9 Co. 69. Pew's case. Cro. Car. 183.* And this will apply as well to a special bailiff as to a known officer. *2 Russ. 787.*

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

But if he acts out of his precinct, and is not sworn, or commonly known, he must then shew his warrant, if demanded.—*1 Hale, 459. Fost. 320.*

If the constable has no authority, a notification of his authority becomes more essential. In this case, it seems that the production of his *staff of office*, or any other known ensign of authority, will be sufficient. *1 Hale, 460. et. seq. Fost. 310. Kel. 66. 115. 1 Russ. 738.*

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

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

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

And as an officer may break open a man's own house, so may he break open the house of a stranger, in order to take him; but the parties must be there, if not, the officer will be a trespasser. 2 *Hale*, 117; unless acting under a magistrate's warrant.

Where one is *known* to have committed a treason or felony, or to have given another a dangerous wound—then, if pursued by an officer, or even a *private person*, with or without warrant, doors may be broken to apprehend him. 1 *Hale*, 459. 2 *Haw.* c. 14. § 7. *Fost.* 320.

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

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

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

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

So if there be a *disorderly* drinking or noise in a house, at an unreasonable time of night, especially in inns, taverns, or ale-houses, the constable, or his watch (demanding entrance and being refused) may break open the doors, to see and suppress the disorder. 2 *Hale*, 95.

So wherever a person *escapes* from a lawful arrest, and shelters himself in a house, the officer may break open doors to retake him, whatever the cause of arrest may have been. 2 *Haw.* 87. But if it be upon a fresh pursuit, the officer (it seems) should have a warrant. 1 *East. P. C.* 324.

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

*What is to be done after making an Arrest.*

When the arrest is by warrant, the officer who has made it should forthwith bring the party before a magistrate, according to the direction of the warrant. If the warrant be to bring the defendant before *any* justice of the district, then the officer may bring him before what justice he thinks fit; for the defendant himself has no election in the matter. 1 *Hale*, 582. 2 *Ib.* 112.

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

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

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

(For the form of warrant, see Warrant.)

## ARSON.

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

*By Statute.*

The Statutes relating to this offence are the 23 *H. 8. c. 1.* 25 *H. 8. c. 3.* 4 & 5 *Ph. M. c. 4.* 22 & 23 *C. 2. c. 7.* all of which are now obsolete.

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

And now, by stat. 4 & 5 *V. c. 26. § 2.* whosoever shall unlawfully and maliciously set fire to any dwelling-house, any person being resident therein, shall be guilty of felony, and being convicted thereof, shall suffer death. § 3. Whosoever shall unlawfully and maliciously set fire to any church, chapel, or meeting-house for religious worship, or any house, stable, coach-house, out-house, ware-house, office, shop, mill, malt-house, hop-oast, barn or granary, or to any building or erection used in carrying on any trade or manufacture or any branch thereof, whether the same or any of them shall then be in the possession

of the offender, or in the possession of any other person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.—  
 § 17. Whosoever shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, peat, coal, charcoal, or wood, or any steer of wood, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

*Information against a person for burning a Barn.*

Home District, } The information and complaint of A. B. of —  
 to wit. } in the said District, yeoman, taken on oath  
 this — day of — in the year of our Lord one thousand eight  
 hundred and thirty-four, before me, J. P. Esq. one of Her Ma-  
 jesty's justices of the peace in and for the said district. The  
 said informant saith, that about the hour of three o'clock this  
 morning he discovered that his barn adjoining to his dwelling-  
 house, situate in the said township, was on fire, and that from  
 the information he hath received he hath good cause to suspect,  
 and doth verily suspect that the same was wilfully and feloniously  
 set on fire by one C. D. of — labourer, with intent thereby to  
 injure this informant, wherefore he prayeth a warrant against  
 the said C. D. and that he may be dealt with according to law.  
 Sworn, &c.

*Warrant thereon.*

To the Constable of — in the Home District.

Home District, } Whereas A. B. of — hath this day made com-  
 to wit. } plaint on oath, before me J. P. Esq. one of  
 Her Majesty's justices of the peace for the said district, that &c.  
 (*here state the offence as laid in the information*). These are there-  
 fore to command you forthwith to apprehend and bring before  
 me, or some other of Her Majesty's justices of the peace for the  
 said district, the body of the said C. D. to answer unto the said  
 charge and to be further dealt with according to law. Herein  
 fail you not. Given under my hand and seal, the — day of —  
 in the year of our Lord 1843.

*For Commitment for further Examination—see post Justice of the Peace.*

*Warrant of Commitment for Trial. (Archbold.)*

Home District, } J. P. Esquire, one of Her Majesty's justices  
to wit. } of the peace for the said district, to the constable of — in the said district, and to the keeper of the common gaol at Toronto, in the said district.

These are to command you the said constable, in Her Majesty's name, to convey and deliver into the custody of the keeper of the said common gaol, the body of C. D. charged this day before me the said justice, on the oath of A. B. of — yeoman, for that he the said C. D. on or about the — day of — instant, unlawfully, maliciously and feloniously, did set fire to a certain barn, of him the said A. B. situate in the said township of — with intent thereby then and there to injure the said A. B. against the form of the statute in that case made and provided. And you the said keeper are hereby required to receive the said C. D. into your custody, in the same common gaol, and him there safely to keep, until he shall be thence delivered by due course of law. Herein fail you not. Given under my hand and seal, the — day of — in the year of our Lord —

## ARTICLES OF THE PEACE.

WHENEVER a person has just cause to fear that another will burn his house, or do him or his wife or children, a corporal hurt, or unlawfully imprison any of them, or that he will procure others to do so, he may exhibit *articles of the peace* against the person from whom he apprehends such mischief, either in the courts of chancery or queen's bench, or before a justice of the peace; and such court or justice is bound to require the party to find sureties to keep the peace towards the exhibitant, upon the latter making oath that he is actually under such fear from the other person, and that he has just cause to be so, and that he does not require such surety out of malice or vexation. 1 *Haw. c. 60. § 6. 7.*

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

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

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

When the articles are exhibited before a *justice of the peace*, the party, if present, may be immediately committed, unless he offer sureties; but if he be absent, the justice cannot commit

him for not finding security, until he has been required, and has refused to do so; and the warrant, in that case, must shew the cause for which it is granted, and at whose suit. 1 *Haw. c. 60. § 9. Rex. v. Wilks. Ibid. (5.)*

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

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

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

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

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

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

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

If the party accused be in prison for want of sureties, or the death of the party demanding the peace, he shall be released, or if he offers sufficient surety while in prison. *Dalt. c. 118.*

See also, title—SURETY FOR GOOD BEHAVIOUR.

*Information to require Surety of the Peace and good behaviour.*

(TOONE.)

Home District, } The information and complaint of A. B. of —  
to wit. } taken on oath before me, J. C. Esq. one of  
Her Majesty's justices of the peace in and for the said district,  
this — day of — 18—, who says, that C. D. of — yeoman, did  
on the — day of — threaten to beat (*kill, maim, &c. as the fact  
may happen to be*) this complainant, and that from the above and  
other threats used by the said C. D. towards this complainant,  
he, this complainant, is afraid that the said C. D. will do him  
some bodily harm, and therefore prays that the said C. D. may  
be required to find sufficient sureties to keep the peace and be  
of good behaviour towards him, this complainant. And the said  
A. B. also saith, that he doth not make this complaint against,  
nor require such sureties from the said C. D. from any malice  
or ill will, but merely for the preservation of his person from  
injury.

A. B.

Sworn before me.

## Articles of the Peace.

*Warrant thereon.*

To the Constable of — in the Home District.

Home District, } Forasmuch as A. B. of — yeoman, hath per-  
to wit. } sonally come before me, J. C. Esq. one of her  
Majesty's justices of the peace in and for the said District, and  
hath this day taken his corporal oath, that C. D. of — yeoman,  
did on the — day of — at — threaten to beat, &c. (*or as the  
case may be*) the said A. B. and that from the above and other  
threats used by the said C. D. towards the said A. B. he, the said  
A. B., is afraid that the said C. D. will do him some bodily harm,  
and hath therefore prayed of me, the said justice, security of the  
peace and good behaviour to be had or granted to him the said  
A. B. against the said C. D. These are, therefore, to require  
you, in the name of our said lady the Queen, immediately upon  
sight hereof, to bring the said C. D. before me, to find sufficient  
sureties for his personal appearance at the next general quarter  
session of the peace to be holden in and for the said district,  
then and there to answer to the premises, and in the meantime  
that he, the said C. D. do keep the peace and be of the good  
behaviour towards our said lady the Queen and all her liege  
people, and especially towards the said A. B. Given under my  
hand and seal, at — in the said district, the — day of —.

*Condition of the Recognizance to appear at the Sessions.*

The condition of this recognizance is such, that if the above  
bounden C. D. shall personally appear at the next general quar-  
ter sessions of the peace, to be holden in and for the Home Dis-  
trict, and then and there answer to articles of the peace to be  
then and there exhibited against him by A. B. of — and shall  
also do and receive what shall be then and there enjoined him  
by the court; and in the mean time shall keep the peace, and  
be of the good behaviour towards the Queen and all her liege  
people, and especially towards the said A. B. then the above  
recognizance to be void, or otherwise to remain in full force.

*Condition of the Recognizance to keep the Peace, &c. without appear-  
ance at the Sessions.*

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



*Commitment for want of Sureties.*

To the Constable of — and to the Keeper of the Gaol at Toronto,  
in the said Home District.

Home District, } Whereas C. D. of — in the said district, yeo-  
to wit. } man, is now brought before me J. C. Esquire,  
one of her Majesty's justices of the peace in and for the said  
district, and is by me required to find sufficient sureties to be  
bound with him in a recognizance for his personal appearance  
at the next general quarter sessions of the peace, to be holden  
in and for the said district, and in the mean time to keep the  
peace and be of the good behaviour towards the Queen and all  
her liege people, and especially towards C. D. of — in the said  
district, yeoman; and whereas he the said C. D. hath refused\*  
and doth now refuse before me to find such sureties. These are  
therefore in the name of our said lady the Queen, to command  
you the said constable forthwith to convey the said C. D. to the  
common gaol of our said lady the Queen at Toronto in the said  
district, and to deliver him to the keeper thereof there together  
with this precept, and I do in the name of our said lady the  
Queen, hereby command you the said keeper to receive the  
said C. D. into your custody in the said gaol, and him there  
safely to keep until he shall find such sureties as aforesaid or be  
otherwise discharged in due course of law. Given under my  
hand and seal the — day of — in the year of our Lord 18—.

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

J. C. Esquire, one of the justices of our lady the Queen,  
assigned to keep the peace within the Home District, to the  
sheriff of the said district, and to the constables and others, the  
faithful ministers and subjects of our said lady the Queen within  
the said district, and to every of them, greeting.

Home District, } Forasmuch as C. D. of — in the said district,  
to wit. } yeoman, hath personally come before me at  
— in the said district, and hath found sufficient surety, that is  
to say, E. F. of — yeoman, and E. H. of — yeoman, either of  
whom hath undertaken for the said C. D. under the pain of £20,  
and he, the said C. D. hath undertaken for himself, under the  
pain of £40, that he, the said C. D. shall personally appear at  
the next general quarter sessions of the peace, to be holden in  
and for the said district, then and there to answer to articles of

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

## Articles of the Peace.

the peace to be exhibited against him by A. B. of — yeoman, and to do and receive what shall be then and there enjoined him by the court, and, in the mean time, to keep the peace and be of the good behaviour towards the Queen and all her liege people, and especially towards the said A. B. Therefore, on behalf of our said lady the Queen, I do command you and every of you, that you utterly forbear and do cease to arrest, take, imprison, or otherwise by any means, for the said cause, to molest the said C. D. and if you have for the said occasion and for none other taken and imprisoned him the said C. D., that then him you deliver or cause to be delivered and set at liberty without further delay. Given under my hand and seal this — day of — &c.

### *Release of the Surety for the Peace, &c.*

Home District, } Be it remembered, that A. B. of — in the  
to wit. } said district, yeoman, on the — day of —  
in the — year of the reign of our sovereign lady Victoria, came before me J. C. Esq. one of the justices of our said lady the Queen assigned to keep the peace within the said district, and there remised and freely released to C. D. of — in the said district, yeoman, the surety of the peace and good behaviour by him the said A. B. before me prayed against the said C. D.

Given under my hand and seal, the — day of — in the year of our Lord 18—.

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

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

### *Discharge of one committed for want of Sureties.*

J. C. Esq. one of the justices of our lady the Queen assigned to keep the peace in the Home District, to the keeper of her Majesty's gaol at Toronto, in the said district, greeting.

Home District, } Forasmuch as C. D. in the prison of our said  
to wit. } lady the Queen, in your custody now being,  
at the suit of A. B. of — in the said district, yeoman, for the want of his finding sufficient sureties, &c. (*as in the former precedents of a supersedeas.*) Therefore, on the behalf of our said lady the Queen, I do command you, that if the said C. D. do remain in the said gaol for the said cause, and none other, then you forbear to grieve or detain him any longer, but that you

deliver him thence and suffer him to go at large, and that upon the pain which will fall thereon. Given under my hand and seal, this — day of — 18—. J. C.

### *Form of Articles of the Peace.*

Home District, } C. D. wife of E. D. of — in the said district,  
 to wit. } labourer, prays surety of the peace against  
 the said E. D. her said husband, for fear of death or bodily injury.

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

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

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

Articles of the peace should have the signature of counsel.

## ASSAULT AND BATTERY.

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

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

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

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

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

A common assault is punishable as a misdemeanor; and the punishment usually inflicted is fine, imprisonment, and the finding of sureties. 4 *Bl. Com.* 417.

### *Aggravated Assaults*

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

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

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

By the 4 & 5 *V. c.* 27. § 25. Where any person shall be charged with and convicted of any of the following offences as misdemeanors, that is to say, of any assault with intent to commit felony; of any assault upon any Peace officer or Revenue officer in the due execution of his duty, or upon any person acting in aid of such officer; of any assault upon any person with intent to resist the lawful apprehension or detainer of such party so assaulting, or of any other person for any offence for which he or they may be liable by law to be apprehended or detained; or of any assault committed in pursuance of any conspiracy to raise the rate of wages; in any such case the Court may sentence the offender to be imprisoned for any term not exceeding two years, and may also (if it shall so think fit) fine the offender, and require him to find sureties for keeping the peace.

§ 26. And if any person shall unlawfully and with force hinder any seaman from working at, or exercising his lawful trade, business, or occupation; or shall beat, wound, or use any other violence to him with intent to deter or hinder him from working at or exercising the same; or if any person shall beat, wound, or use any other violence to any person, with intent to deter or hinder him from selling or buying any wheat, or other grain, flour, meal, or malt, in any market or other place; or shall beat, wound, or use any other violence to any person having the care or charge of any wheat or other grain, flour, meal, or malt,

whilst on its way to or from any city, market, town, or other place, with intent to stop the conveyance of the same, every such offender may be convicted thereof before two justices of the peace, and imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding three calendar months: Provided always, that no person who shall be punished for any such offence, by virtue of this provision, shall be punished for the same offence by virtue of any other law whatsoever.

§ 36. And when any person shall be convicted of any offence punishable by this act, for which imprisonment may be awarded, the court may sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour in the common gaol or house of correction, and also direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet.

*Common Assault.*

By the 4 & 5 V. c. 27. § 27. where any person shall unlawfully assault or beat any other person, it shall be lawful for any justice of the peace, upon complaint of the party aggrieved praying him to proceed, summarily, under this act, to hear and determine such offence: and the offender, upon conviction thereof before him, shall forfeit and pay such fine as shall appear to him to be meet, not exceeding, together with costs, (if ordered) the sum of £5, which fine shall be paid to the treasurer of the municipal district or place in which the offence shall have been committed, and make part of the funds of such district; or if the conviction be had in any place not within any municipal district, then such fine shall be paid over to such officer and be applicable to such purposes as other fines and penalties by law are: and the evidence of any inhabitant of the municipal district shall be admitted in proof of the offence, notwithstanding such application of the fine: and if such fine and costs (if ordered) be not paid upon conviction, or within such period as the said justice shall appoint, it shall be lawful for him to commit the offender to the common gaol or house of correction, there to be imprisoned for any term not exceeding two calendar months, unless such fine and costs be sooner paid: but if the justice, upon the hearing of such case, shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accor-

dingly dismiss the complaint, he shall forthwith make out a certificate under his hand, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred: and if *such costs*† shall not be paid immediately upon dismissal, or within such period as such justice shall at the time of such dismissal appoint, it shall be lawful for him to issue his warrant to levy the amount of such costs within a certain time, to be in the said warrant expressed; and in default of sufficient distress, may commit the party by whom such costs shall be so ordered to be paid as aforesaid to the common gaol of the district, county, or division where such offence shall be alleged to have been committed, there to be imprisoned for any term not exceeding ten days, unless sooner paid. § 28. Such certificate, or in case of conviction the payment of the amount adjudged, or imprisonment awarded and suffered for nonpayment, shall release the party from all further proceedings, civil or criminal, for the same cause. § 29. When any person shall be summarily convicted before a justice of the peace of any offence against this act, it shall be lawful for such justice, if he shall so think fit, to discharge the offender from his conviction upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as shall be ascertained by the said justice. § 30. If the justice shall find the assault complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is, from any other circumstance, a fit subject for indictment, he shall deal with the case accordingly: justices not to determine any case of assault in which any question shall arise as to the title to lands, or any interest therein, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice. § 38. Any person aggrieved by any summary conviction or decision under this act, may appeal to the next court of general or quarter sessions which shall be holden, not less than twelve days after the day of such conviction, giving to the other party a notice in writing of such appeal, and of the cause and matter thereof, within three days after conviction or decision, and seven days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognizance with two sufficient sureties before a justice of the peace, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereupon, and pay such costs as shall be by the court awarded, and upon such notice being given and such recognizance entered into, the justice before whom the

same shall be entered into, shall liberate such person, if in custody, and the court, at such sessions, shall hear and determine the matter of the appeal; and shall make such order therein, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or the affirmation of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and, if necessary, issue process for enforcing such judgment.

§ 34. The court shall have power to empanel a jury to try the matter, and on the finding of the jury shall give judgment accordingly: Provided, that the court shall not in any case adjudge the payment of a fine exceeding £5, in addition to the costs, or order imprisonment for any period *not* exceeding one month: and all fines imposed and recovered by the judgment of the court shall be applied as other fines recovered under this act.

§ 40. And for the more effectual prosecution of offences punishable upon summary conviction by virtue of this act, be it enacted, that when any person shall be charged on the oath of a credible witness, before any justice of the peace, with any such offence, the justice may summon the person charged to appear at a time and place to be named in such summons; and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him) the justice may either proceed to hear and determine the case *ex parte*, or may issue his warrant for apprehending such person and bringing him before himself or some other justice of the peace; or the justice before whom the charge shall be made may (if he shall so think fit) issue such warrant in the first instance, without any previous summons.

§ 41. The prosecution for every offence punishable on summary conviction by virtue of this act, shall be commenced within three calendar months.

§ 42. Conviction to be drawn up in the form of words prescribed by the act, or to the same effect.

### *Affidavit to ground a Warrant for an Assault.*

Home District, ) A. B. of — yeoman, maketh oath and saith,  
to wit. ) that on the — day of — instant, at — in the  
township of — C. D. of — labourer, did violently assault and  
beat this opponent, by striking him with his fists several blows  
on the head, face, and other parts of his body, without any just  
or legal provocation.

Sworn, &c.

A. B.

## Assault and Battery.

*Summons for an Assault.*

See post title—Summons.

*Warrant for an Assault.*

Home District. To the Constable of —.

Whereas complaint hath been made before me, J. P. Esq. one of her Majesty's justices of the peace in and for the said district, upon the oath of A. I. of — in the said district, tailor, that A. O. of — aforesaid, butcher, did on the — day of — violently assault and beat him the said A. I. at — aforesaid, in the district aforesaid. These are therefore in her Majesty's name to command you forthwith to apprehend the said A. O. and to bring him before me, to answer unto the said complaint and to be further dealt with according to Law. Given under my hand and seal the — day of — 18—.

*Form of Conviction pursuant to the 4 & 5 V. c. 27. § 42.*

Home District, } Be it remembered, that on the — day of —  
to wit. } in the year of our Lord — at — in the  
County of — (or riding, division, district, city, &c. as the case  
may be,) A. O. is convicted before me, (naming the Justice,) one  
of Her Majesty's Justices of the Peace for the said County,  
(or riding, &c.) for that he the said A. O. did (specify the of-  
fence, and the time and place when and where the same was com-  
mitted, as the case may be;) and I the said Justice adjudge the  
said A. O. for his said offence, to be imprisoned in the — (or  
to be imprisoned in the — and there kept at hard labour) for  
the space of — (or I adjudge the said A. O. for his said of-  
fence, to forfeit and pay the sum of —) (here state the amount  
of the fine imposed,) and also to pay the sum of — for costs;  
and in default of immediate payment of the said sums, to be  
imprisoned in the — for the space of — unless the said sums  
shall be sooner paid; (or, and I order that the said sum shall  
be paid by the said A. O. on or before the — day of —) and  
I direct that the said sum of — (i. e. the amount of the fine,) shall  
be paid to — of — aforesaid, in which the said offence  
was committed, to be by him applied according to the direc-  
tions of the Statute in that case made and provided; (or as the  
case may be;) and I order that the said sum of — for costs  
shall be paid to C. D. (the party aggrieved.) Given under my  
hand, the day and year first above mentioned.



## *Certificate of Dismissal.*

Home District, } Whereas C. D. of the Township of — in the  
to wit. } said District, yeoman, having this day ap-  
peared before me J. K. Esq. one of Her Majesty's Justices of  
the Peace for the said District, pursuant to my summons (*or*  
*warrant, as the case may be*) to answer to the charge and complaint  
of A. B. of — for having &c. (*stating the offence as laid in the*  
*information;*) and which said charge the said complainant hath  
prayed might be proceeded with summarily, according to the  
Statute in such case made and provided: and I the said Justice  
having accordingly this day heard the said complaint, and duly  
considered the same, and the evidence of the witnesses as well  
on the part of the said complainant as of the said defendant,  
have adjudged and determined that [the said offence has not  
been proved (or) that the assault and battery complained of was  
fully justified, or, that the same has been proved, but is so trifling  
as not to merit any punishment,] and have accordingly dismissed  
the said complaint; and the said C. D. having required of me a  
certificate thereof, I the said Justice do hereby certify the same,  
pursuant to the Statute in such case made and provided.

Given under my hand, the — day of — 1843.

J. K., J. P. H. D.

For the form of Notice of Appeal see *post*, and forms annexed  
to title "Summary punishment."

## *Recognizance, (in the usual form.)*

The condition of this Recognizance is such, that if the above  
bounden A. O. shall and do appear at the next general quarter  
sessions of the peace to be holden in and for the said district,  
and then and there answer to a bill of indictment to be preferred  
against him, for an assault on one A. I. and shall not depart the  
court without leave, then this recognizance to be void.

Taken and acknowledged, &c.

## *Commitment for an Assault, for want of Sureties.*

To E. F. Constable of —, and to the keeper of the common  
Gaol in the said District.

Home District, } Whereas C. D. was this day brought before  
to wit. } me, S. P. Esq. one of her Majesty's justices  
of the peace in and for the said district, and charged on the oath  
of A. B. with assaulting and beating him the said A. B. And  
whereas the said C. D. hath refused, (or neglected) although by  
me required, and doth refuse (or neglect) to find good and suf-

ficient sureties, as well for his personal appearance at the next general quarter sessions of the peace to be held in and for the said district, to answer to an indictment to be then and there preferred against him for the said assault, as also in the meantime to keep the peace towards the said A. B. and all her Majesty's liege subjects. These are, therefore, in her Majesty's name, to command you, the said constable, safely to convey the said C. D. and deliver him to the keeper aforesaid, together with this warrant; and you the said keeper, are hereby required to receive into your custody in the said gaol the body of the said C. D. and him there safely keep until he shall find such sureties, or otherwise shall be discharged by due course of law. Given under my hand and seal, &c.

*Indictment for a Common Assault.*

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

*Indictment for an Aggravated Assault—(Archbold.)*

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

*For Assaulting a Constable in the execution of his Office.*

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

## ASSESSMENTS.

\* By statute 59 G. 3. c. 7. entitled, “An Act to repeal the several laws now in force relative to levying and collecting rates and assessments in this Province, and further to provide for the more equal and general assessment of lands and other rateable property throughout this Province, certain acts, viz.: the \*51 G. 3. c. 8. and the \*55 G. 3. c. 5. are repealed.”

By § 2. the following property is declared rateable, at the rate and valuation set forth after the first Monday in January, 1820:

	£	s.	d.
For every acre of arable pasture or meadow land,.....	1	0	0
“ every acre of uncultivated land, .....	0	4	0
“ every town lot situated in the towns of York, Kingston, Niagara and Queenston,.....	50	0	0
“ Cornwall, Sandwich, Johnstown and Belleville,...	25	0	0
“ every town lot on which a dwelling-house is erected in Brockville, being composed of the front half of lots Nos. 10, 11, 12 and 13, in the first concession of the Township of Elizabethtown, in the District of Johnstown, .....	30	0	0
“ every town lot on which a dwelling-house is erected in the town of Bath, being composed of the front or south half of lots 9, 10, 11, in the first concession of Ernestown, Midland District, .....	20	0	0
“ every house built with timber squared or hewed on two sides, of one story height, and not two stories, with not more than two fire-places, .....	20	0	0
“ every additional fire-place, .....	4	0	0
“ every dwelling-house built of squared or flatted timber on two sides, of two stories in height, with not more than two fire-places, .....	30	0	0

	£	s.	d.
For every additional fire-place, .....	8	0	0
“ every framed house under two stories in heighth, with not more than two fire-places,.....	35	0	0
“ every additional fire-place, .....	5	0	0
“ every brick or stone house of one story heighth, and not more than two fire-places, .....	40	0	0
“ every additional fire place, .....	10	0	0
“ every framed, brick or stone house, of two stories heighth, and not more than two fire-places,.....	60	0	0
“ every additional fire-place, .....	10	0	0
“ every Grist-mill wrought by water, with one pair of stones, .....	150	0	0
“ every additional pair, .....	50	0	0
“ every Saw-mill,.....	100	0	0
“ every Merchant’s shop,.....	200	0	0
“ every Store-house owned or occupied for the receiving and forwarding goods, wares, or merchandize, for hire or gain,.....	200	0	0
“ every Stone-horse kept for covering mares, for hire or gain, .....	199	0	0
“ every horse of three years of age and upwards,...	8	0	0
“ oxen of the age of four years and upwards, per head,	4	0	0
“ milch cows, per head, .....	3	0	0
“ horned cattle, from two to four years of age,.....	1	0	0
“ every close carriage kept for pleasure, with four wheels,.....	100	0	0
“ every phaeton, or other open carriage, with four wheels, kept for pleasure only,.....	25	0	0
“ every curricule, gig, or other carriage, with two wheels, kept for pleasure only,.....	20	0	0
“ every waggon kept for pleasure,.....	15	0	0
Every stove kept in a room where there is no fire-place shall be deemed a fire-place.			

§ 4. Lands in fee simple, or held by land-board certificate, order in council, or certificate of any governor, or by lease, shall be rateable property. § 5. Each lot of land in the before recited towns, other or less than a town lot, held by lease or otherwise, on which a dwelling-house shall be erected, shall be considered a town lot. § 7. The quarter sessions having ascertained the sum required to defray the public expenses of the district, shall divide and apportion the same according to the rateable property of each person, and direct the clerk of the peace to transmit a copy of the assessment roll to each collector

in the district, the sum levied not to exceed *one penny* in the pound, per annum. § 8. No new assessment shall be made till it shall appear to the sessions that one-half of the money collected by virtue of the preceding rate, and the whole collected under any act then or thereafter to be in force, shall be expended. § 12. Schedules of granted and leased lands shall be furnished annually by the Surveyor General, to the District Treasurer, on or before the first day of July. § 13. All lands described in the schedule as granted or leased, shall be liable to assessment, whether occupied or not, and the collector having a warrant for this purpose, may enter upon late unoccupied lands and take any distress found thereon, and sell the same, as if the rate had been due by the then occupier. § 14. The treasurer of each district shall keep separate accounts for each township, and leave the same open to inspection, between the hours of ten and three, on the first Monday in every month, and take one shilling and three pence for such inspection, and no more. § 15. If the rates upon any lot shall be in arrear three years, the rates so in arrear shall be increased *one-third*; if in arrear for five years, then *one-half*; and if for eight years, then *doubled*; and the said rates shall be thenceforward charged in double the amount. § 17. An aggregate account shall be transmitted by the Clerk of the Peace to the Lieutenant Governor. § 18. The Treasurer of the district (appointed by the general quarter sessions) shall furnish sufficient security, and may retain four per cent. upon the amount in his hands. § 19. The Treasurer's accounts shall be rendered upon oath, at the respective general quarter sessions, and a certified copy transmitted to the Governor. § 20. The Treasurer shall be removable by the sessions at their pleasure. § 21. The following fees and no more, may be taken under this act:—for warrant of distress, two shillings and six pence; milage, four pence; selling and making return, two shillings. § 22. The sum of twenty shillings to be paid to the Surveyor General for every schedule for each township, furnished by him, on or before the 1st day of July, 1820, and for every supplementary schedule afterwards, the sum of two shillings and six pence, to be paid by the Receiver General. § 23. 24. Limiting the continuance of this act, and giving the form of assessment roll, are both repealed by the next statute. All the other sections of this act are repealed by the \*5 W. 4. c. 8.

\* By Stat. 6 G. 4. c. 7. § 1. reciting that it was expedient to make perpetual the \*59 G. 3. except such parts thereof as are hereby repealed, and to render more certain the due collection of such rates and assessments, by providing for levying assessments in arrear, it is enacted, that the 23rd sec. of the

above act should be repealed. § 2. The grantee, owner, or occupier of any township block or parcel of land, or any parcel thereof, not surveyed by or under the authority of the Surveyor General, should, on or before the 1st day of July next, return to the treasurer of the district, a schedule of such lands, or so much as had been surveyed, designating same by numbers and concessions, or otherwise, according to any plan or map thereof, upon pain of forfeiting double the amount of assessment, yearly, until such return should be made. § 4. Such penalties to be recovered before three justices, and levied by warrant of two justices; one half to the informer, and the remainder to the treasurer of the district, to be applied in the same manner as the assessments. § 5. And whenever any such schedule shall be returned, the treasurer shall enter the same in his books, in like manner as if the same had been returned by the Surveyor General; and all the provisions of this act relative to the collection of rates and assessments, arrears and penalties, shall apply to lands so returned. § 6. The Treasurers of districts shall report to the general quarter sessions, all lands upon which the assessments shall be eight years in arrear, after the first of July, 1828. (This clause has been repealed by the \*9 G. 4. c. 3. § 9.) § 7. Upon such accounts being so made, the clerk of the peace shall issue a writ for levying the assessments in arrear, directed to the Sheriff, by sale of a portion of the lands upon which the assessments are chargeable, if no distress be found thereon. § 8. Such writs shall be returnable at the third quarter sessions after issuing the same. § 9. The lands liable to sale shall be advertised by the treasurer, in the Upper Canada Gazette, and in some newspaper within the district, within one month after rendering his account. § 10. Within one month after receipt of the writ, the sheriff shall advertise the lands in the Upper Canada Gazette, and in all the newspapers in his district, and the time and place of sale. § 11. No sale shall be made in less than six months from the delivery of the writ to the sheriff, nor out of the township, unless thinly inhabited, and then in the township to which it may be annexed. § 12. The lands shall be sold by public auction, as follows:—The assessment in arrear shall be declared with the expenses of the writ; and the person who shall offer to pay the same for the least quantity or portion of the lands, shall be considered the purchaser thereof. § 13. The sheriff shall begin the sale at the front angle on that side from whence the lots are numbered, and measure backward, taking a proportion of the width corresponding in quantity with the proportion of such lot in regard to its length and breadth, according to the quantity required to make the sum demanded;

and at every subsequent sale of a portion of the same lot, shall take a tract of equal width as the former, measuring backward from the limit of the lot last sold. § 14. In every case where, from the position of the tract, the mode last mentioned cannot be pursued, then the sheriff may sell such portions of land as shall appear to him most for the interest of the proprietor. § 15. No greater interest in the crown or clergy reserves shall be sold than is possessed by the lessees. § 16. The sheriff may adjourn the sales at his discretion, and re-sell the lands not paid for. § 17. Purchasers may be let into possession on payment of assessment dues, but owners may resume their lands within twelve months after sale, upon repayment of taxes, costs, and 20 per cent. in addition to the purchaser. § 18. And if land not redeemed within the twelve months, the sheriff may execute a conveyance in fee simple to the purchaser, according to the form marked B. in the schedule. § 19. Before conveyance executed, the sheriff shall register a certificate of such sale, in lieu of any memorial. § 20. Conveyances may be registered, on payment of 2s. 6d. and no more. § 21. Treasurers neglecting to make returns for two sessions, shall, on conviction at the assizes, forfeit their office, and justices may appoint another forthwith; and upon neglect of the justices, the Governor may appoint one during pleasure. § 22. Sales not to be avoided for any neglect in form, but the party grieved shall have his remedy by action. § 23. Monies received by the sheriff shall be paid to the treasurers. § 24. A compensation of £5 shall be allowed to the treasurer for every account furnished under this act.— § 25. 10s. to the clerk of the peace for each writ. § 26. The sheriff may charge and levy a fee of 7s. 6d. upon every sale, and retain three per cent. on the sales. § 27. The treasurers shall give receipts for taxes paid.

\* By Stat. 9 G. 4. c. 3. § 1. any person holding lands not returned upon the assessment roll of the township where he resides, may pay to the treasurer of the district in which he resides the rates due on such lands, with a compensation of £5 per cent. to the treasurer. § 2. Accounts shall be kept by the treasurers, and copies verified by oath, shall be transmitted annually, on the first of July, to the treasurers of the districts in which the lands lie, who shall at the same time transmit the amount received. § 3. The treasurer receiving such assessments shall credit the respective lots, and transmit receipts to the treasurer transmitting the amount. § 4. No greater accumulation than fifty per cent. shall be charged upon any lands on which assessments shall be paid on or before the 1st July, 1829; and in all cases hereafter, fifty per cent. and no more shall be

charged in addition, where the assessments shall remain in arrear longer than four years. § 5. Arrears of assessments paid by the first day of July, 1829, shall be liable only to an increase of fifty per cent. on the amount due for the first five years. § 6. Treasurers shall not, after the 1st July, 1829, receive taxes on lands in other districts, if they have been suffered to run in arrear for more than six years; in such case the assessments must be paid in the districts in which the lands lie. § 7. No partial payment shall be received, when more than eight years assessments are due. § 8. imposes a penalty of £50 upon the neglect or omission of any treasurer in his duty, to be recovered before the sessions, on the oath of one or more witnesses; one-half to the informer, the other to the public accounts; and the justices in session shall examine the accounts required to be kept under this act, and ascertain whether the same have been transmitted, together with the monies, to the several district treasurers.— § 9. repeals the 6 § of the \* 6 G. 4. c. 7. and enacts, that the duties therein prescribed and required to be done by the several treasurers, shall be performed by them at or before the general quarter sessions next after the 1st day of July, annually, and the clerk of the peace shall proceed thereon in manner pointed out by the seventh clause of said act. § 10. In case of the erroneous description of any lot, the owner may make oath before any one justice that the sum paid was for such lot and concession, specifying the same, to enable the treasurer to credit the same. § 11. And when, from death or other causes, such affidavit cannot be made, justices in sessions are empowered to hear and determine upon such evidence as may be adduced, and if in favour of the plaintiff, to order the treasurer to credit the lot accordingly.

\* By the 7 W. 4. c. 19. § 1. notwithstanding any former law to the contrary, all sales of land for the payment of assessments, in whatsoever township of any district the same may be situated, shall take place in the town in which the general quarter sessions for the district shall be held, on the second day of the sitting of the court, and every sale shall be advertised accordingly. § 2. At every such sale the land shall be put up at the upset price of 2s. 6d. per acre, and only so much of the land shall be exposed to sale as will, at such a price, produce the amount to be levied, leaving the quantity of land to be reduced by bidding, in the manner now provided by law, according as bidders may appear, who will, for a less quantity of land, pay the amount required; and in case no bidder shall be found, who will accept the quantity exposed to sale at its valuation, then the sheriff shall, without any new writ, expose so much of the



land for sale, under the provisions of the law now in force, as if this act had not been passed, as may be necessary for making the amount he is directed to levy, together with lawful interest thereon from the time the same became due at the next general quarter sessions which shall occur after the expiration of the six months' notice required by law. § 3. No treasurer, sheriff, or clerk of the peace, nor any deputy of any such officer, shall directly or indirectly purchase any of the lands hereafter to be sold within the district in which he is serving for payment of assessments in arrear, upon pain of forfeiture of office, upon conviction by indictment at the assizes, and every such purchase shall be void. § 4. Sheriff shall, within one month after each sale of land by him for assessments, make out a general return of the lots or parcels of land by him sold, the time of sale, the amount for which the same was sold, and the name of the purchaser thereof, and transmit the same to the registrar of the province for inspection by any person applying. § 5. In all future sales, the sheriff may put up and adjudge to the purchaser of any part of a lot, liable to be sold for such arrears, such part of the said lot as he may in his discretion think best for the interest of the proprietor.

\* By the 3 V. c. 19. § 10. every distillery shall be subject to a tax or rate of 5s., to be levied in the same manner as the taxes on other rateable property: and each assessor is required to return in his assessment roll, in a separate column, the number of distilleries, or stills, with the names of the owners thereof, within his township.

\* By Stat. 1 V. c. 20. no lands shall be sold for taxes during the year 1838: provided, that after the expiration of the said year, same proceedings shall be taken as by law provided, before any lands shall be sold.

Where lands have been sold for the non-payment of taxes, a stranger may redeem under \* 6 G. 4. c. 7. for the benefit of the owner, without his knowledge or consent, before the year expires, and, in computing the year, the day of the sale is to be excluded, and if a certificate of redemption be improperly granted, the treasurer of the district should be made the defendant, and the purchaser should not sue the sheriff for refusing to execute a conveyance. *Boulton vs. Ruttan. Hil. 2. W. 4. Cameron's D. p. 80.*

In ejectment by the purchaser of lands sold for taxes at sheriff's sale, under \* 6 G. 4. c. 7. it is necessary for him to prove that the writ to sell was grounded on the treasurer's return, shewing arrears of taxes for eight years, and that there was no sufficient distress to levy the amount. *Doe Bell v. Reaumer.—4 W. 4. Cameron's D. p. 80.*

Land which has not been described by the surveyor general is not liable to be sold for taxes; and a party claiming, under a sheriff's deed, land which has been sold for taxes, must shew that there was no sufficient distress on the land, although he need not shew that all the necessary formalities have been attended to, such as advertising, &c. and the deed may be made by the sheriff to the assignee of the highest bidder. *Ib.*

*Form of Writ to Sell.* \* 6 G. 4. c. 7.

A.

District of — }  
 — } To the Sheriff of the District of —

Whereas, by the account rendered by the treasurer of the said district of — to the justices of the peace for the said district, in general quarter sessions assembled, according to the act of parliament of this province, passed in the fourth year of the reign of his Majesty King George the Fourth, entitled, (here insert the title to this act,) it appears that the assessments, or some part thereof, which are imposed upon lands by the several statutes of this province, have been suffered to remain in arrear beyond the space of eight years, upon the lots or parcels of land hereinafter mentioned, and that the said lots or parcels of land stand respectively charged with the sums herein set forth, that is to say, (here state the lots or parcels of land, with the sum charged against the same in the treasurer's accounts, so remaining in arrear, up to the expiration of the last year before such account was rendered.) These are therefore, in his Majesty's name, to command you to levy the several sums of money herein mentioned, by sale of such portion of the lands, on which the said assessments are respectively charged, as may be sufficient for that purpose, together with the fees allowed by the said act, passed in the fourth year of the reign of King George the Fourth, to be levied on this writ, duly observing the directions of the said last mentioned act, in respect of such sale, provided there be no distress upon the said lands respectively, from which the said several sums of money, or either of them, may be made. And if there be such distress, then that you levy the same by such distress, together with such fees as aforesaid, rendering the overplus, if any there be, to the owner thereof. And whatever monies you shall levy by virtue of this writ, have before the court of general quarter sessions of the peace, in and for the said — district, which shall begin and be holden on the — day of — next, together with this writ.

# Assessments.

No. of Acres of Land.		No. of Males resident in the Family.	No. of Females resident in the Family.	Total number of persons resident in each family.	No. of Lot or other designation (if a part, describe which it is).		AMOUNT OF ASSESSMENT.		
					No. of Concession or other description.		£	s.	d.
					Uncultivated.				
					Cultivated.				
					Town lots in Kingston, Toronto, Niagara, and Queenston, £50 each.				
					Do. in Cornwall, Sandwich, Johnstown, and Belleville, £25 each.				
					Do. in Brockville, at £30 each.				
Houses.					Squared or hewed timber on two sides, one story.				
					Additional three-places.				
					Framed, under two stories.				
					Additional three-places.				
					Squared timber, two stories.				
					Additional three-places.				
					Framed, brick or stone, of one story, with not more than two fire-places.				
					Additional three-places.				
					Framed, brick or stone, of two stories, with not more than two fire-places.				
Mills.					Additional fire-places.				
					Wrought by water, with one pair of stones.				
					Additional pair of stones.				
					Saw-mills.				
					Merchant shops.				
					Store houses.				
					Stone Horses for covering mares, for hire or gain.				
					Horses of three years old and upwards.				
					(Oxen four years old and upwards.				
					Milch Cows.				
					Horned Cattle from two to four years old.				
					(Close Carriages with four wheels, kept for pleasure.				
					Phetons or other open carriages, kept for pleasure only, four wheels.				
					Carriages, gigs or other carriages with two wheels, kept for pleasure.				
					Waggons kept for pleasure.				
					Rate per pound.				
					TOTAL.....£				

*Form of Sheriff's Deed.* \* 6 G. 4. c. 7.

## B.

These are to witness that in consideration of the sum of — paid to me by A. B. of — being the purchaser at public auction of the parcel or tract of land hereinafter mentioned, sold to pay assessments, under a writ to me directed, according to the law in that behalf, I, C. D. sheriff of the district of — do, by these presents, grant, bargain, and sell, unto the said A. B. his heirs and assigns, (describe the parcel of land sold,) to have and to hold the premises hereby bargained and sold, and all benefit and advantage thereto belonging, unto and to the use of the said A. B. his heirs and assigns for ever. In witness whereof, I have hereto set my hand and seal of office, this — day of — in the year of our Lord —.

## ASSESSORS.

\* By the 1 V. c. 25. § 5. the inhabitant freeholders and householders, at the annual township meeting, shall appoint *one* assessor for the township. § 14. Who shall demand from every rateable inhabitant in the township a list of all the rateable personal property in his or her possession, and of all the lands, tenements or real estate in his, her or their possession in the township, specifying the number of the lots, concessions, and where situate, also the number of acres cultivated or uncultivated in each lot, which list shall be taken between the first Monday in January and the next general quarter sessions after the first day of March in each year; and shall make a return within the time aforesaid, duly attested upon oath or affirmation before the clerk of the peace, of all the rateable inhabitants and their rateable property, inserting his own rateable property therein; and shall extend on said roll the amount of the tax opposite to their respective names, at the foot of which he shall subscribe his name, and deliver such return to the clerk of the peace, on or before the sitting of the quarter sessions next after the first day of March aforesaid, to be laid before the court; and shall also put up a correct copy thereof in some conspicuous place in the township, and shall report to a magistrate of the division the names of all such persons as he conceives to have given in a false list, or refused to give any, in order that they may be dealt with according to law, at least fourteen days previous to his returning such roll to the clerk of the peace. § 16. Assessors entitled to

receive from the treasurer of the district, on the certificate of the clerk of the peace that the assessment roll has been duly delivered according to law, the following *per centage*:

	£	s.	d.
If the assessment of the rate of one penny in the pound for the year does not amount to £ 50 .....	7	0	0
If above £ 50 and under..... 100 .....	6	10	0
If above 100 and under..... 150 .....	6	0	0
If above 150 and under..... 200 .....	5	5	0
If above 200 and under..... 250 .....	4	15	0
If above 250 and under..... 300 .....	4	5	0
If above 300 and under..... 350 .....	4	0	0
If above 350 .....	3	10	0

See also on this subject "Township Officers."

## ASSIZES.

By the \* 2 G. 4. c. 1. § 27. it is enacted, that it shall be lawful for the Lieutenant Governor, &c. to issue yearly, in the vacation between the Michaelmas and Trinity 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 several districts of this province; 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 be lawful for the Lieutenant Governor, likewise, to issue yearly, in the vacation between the Hilary and Easter terms, such commissions of assize and nisi prius, into each of the several districts, for the trial of all issues joined as aforesaid.

§ 28. And nothing in this act contained shall be construed to prevent the issuing a special commission or commissions for the trial of offenders upon extraordinary occasions.

§ 31. The Sheriffs of the several districts are required to make return of all writs of nisi prius, which shall be delivered to them or their sufficient deputy, before the chief justice, and every other judge assigned to execute such commissions, and shall give their attendance upon such judges, 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 Queen's court, and for the doing and executing all other things to the office of sheriff appertaining.

## ATTAINDER.

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

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

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

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

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

By an attainder for *high treason*, a man forfeits to the Queen all his lands, &c. 26 *H. 8. c.* 13. 33 *H. 8. c.* 20.; and see 4 *Bl. Com.*

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

By 7 *Ann. c.* 21. it was enacted, that after the death of the then pretender, no attainder for *high treason* should extend to the disinheriting of any heir, nor to the prejudice of any person other than the traitor himself: by which, says *Blackstone*, the law of forfeitures for high treason would by this time have been at an end, had not a subsequent statute (17 *G. 2. c.* 39.) intervened to give them a longer duration. By this statute, the operation of the statute of *Ann* was still farther suspended, till the death of the sons of the pretender. 4 *Bl. Com.* 384.

In a certain kind of treason, however, namely—that relating to the coin, it is provided by the 5 *Eliz. c.* 11. and 18 *Eliz. c.* 1. that it shall work no forfeiture of lands, save only for the life of the offender, and that it should not deprive the wife of her dower. See 8 & 9 *W. 3. c.* 26. and 15 & 16 *G. 2. c.* 28.

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

The forfeiture relates back to the time of the offence committed, so as to avoid all intermediate acts. 4 *Bl. Com.* 385. 2 *Haw. c.* 49. § 17.

Lands are only forfeited upon *attainder*, but goods and chattels upon *conviction*. The forfeiture of goods has no relation backwards; those only which a man has at the time of his conviction, are actually forfeited. Therefore, a traitor or felon may, *bona fide*, sell any of his chattels, real or personal, for the sustenance of himself and family, previous to *conviction*: but not if they be collusively, and not *bona fide* parted with, and the object of the transfer be merely to defraud the crown. 13 *Eliz. c.* 5. 3 *Inst.* 232. 2 *Haw. c.* 49. § 33. 4 *Bl. Com.* 388.

\*By 3 W. 4. c. 5. entitled "an act to take away corruption of blood in certain cases," it is enacted, that no attainder for felony, after the passing of this Act, except in case of high treason, or of abetting, procuring, or counselling the same, shall extend to the disinheriting of any heir, nor to the prejudice of the right or title of any person other than the offender, during his or her life only; and it shall be lawful for any person to whom the right in any lands or tenements, after the death of such offender, would have appertained if no such attainder had been, to enter into the same.

By Stat. 4 & 5 V. c. 24. § 17. No plea setting forth any attainder shall be pleaded in bar of any Indictment, unless the attainder be for the same offence as that charged in the Indictment.

§ 21. Where any offender convicted of felony not punishable with death and shall endure the punishment adjudged for the same, the punishment so endured shall have the like effects and consequences as a pardon under the great seal, as to the felony whereof the offender was so convicted: but shall not mitigate any punishment on a subsequent conviction for any other felony.

## AUCTIONS.

\*By 58 G. 3. c. 6. every auctioneer shall take out a license; and by § 2. pay for the same, annually, £5. By § 4. any person neglecting to take out such license on or before the 5th January in every year, and continuing to exercise the trade of an auctioneer, or who shall neglect to exhibit in a conspicuous manner

at his auction room his name and trade as such auctioneer, shall, upon the oath of one or more witnesses, other than the informer, for each and every offence forfeit and pay £20, to be recovered before any *three* justices, to be levied by distress and sale, with reasonable costs; and in default, commitment to the common gaol of the district, for any time not exceeding six months. § 9. One moiety shall go to the province, and the other to the informer. § 12. Actions must be commenced within six months. § 13. This act continued in force four years, and to the end of the next session, and was continued by \*4 G. 4. c. 17. and further continued for four years by \*9 G. 4. c. 10. and re-continued for four years by the \*4 W. 4. c. 41.

\*By the 3 V. c. 23. § 1. the \*58 G. 3. c. 6. is re-enacted, revived and made perpetual. And by the 4 & 5 V. c. 21. § 12. the duty payable on sales by auction under the \*58 G. 3. c. 6. or any other act shall be *one per cent.* and no more.

For the forms of proceeding to recover penalties under this act, see "information," "summons," and "conviction."

## AUTREFOIS ACQUIT.

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

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

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

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

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

But then the insufficiency of the indictment should appear in the record of the judgment of acquittal. 2 *Hale*, 395.



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

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

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

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

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

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

But if A. commit a *burglary*, and at the same time steal *goods* out of the house, and he be indicted for the *larceny only*, and acquitted, he may still be indicted for the *burglary*. 2 *Hale*, 245.

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

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

If A. commit a *robbery* in the county of B. and carry the goods into the county of C. and be there indicted for *larceny* only, an acquittal upon such an indictment is no bar to an indictment for the *robbery* in the county of B. 2 *Hale*, 245. 246.

For the same reason, if an indictment for *murder* is brought in an *improper county*, an acquittal upon such indictment cannot

be pleaded to a subsequent indictment in the proper county.—  
2 *Haw. c. 35. § 3. Contra. Staundf.* 105.

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

1 *Haw. c. 35. § 4.*

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

Where there is a variance between the record of the former acquittal, and the indictment to which it is pleaded, yet, if the nature of the crime be in substance the same, the variance may generally be helped by proper averments in the plea. 2 *Haw. c. 35. § 3.*

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

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

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

The plea of *autrefois acquit*, in the *R. v. Coogan*, was taken *ore tenus*, and the court rejected the record of the acquittal as insufficient proof of the plea. But if the plea had been in writing, and there had been an averment that the instrument set out in the first indictment, and that set out in the second, were in fact the same, it seems to be reconcilable with what is said in 2 *Haw. c. 35. § 3. 4.* that such a plea would have been available. *Deacon's C. L.* 96.

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

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

*Practice.*

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

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

If the indictment be for *felony* or treason, the defendant, besides the plea of *autrefois acquit*, should also plead over to the felony or treason. *Hale, Sum.* 249. *R. v. Vandercomb*, 2 *Leach*, 708.

The court upon issue joined as to the identity of the person or the offence, award a *venire returnable instanter*; and upon the sheriff making his return, the jury are immediately sworn to try the issue of *autrefois acquit*, the counsel for the prisoner having leave to address the jury in support of the affirmative of the issue. *R. v. Sheen*. 1 *Carr. & P.* 638. 1 *Leach*, 476.

*Record of Acquittal.—(Cr. Cir. Com.)*

Home District, } Be it remembered, that at the general quarter  
to wit. } sessions of the peace of our Sovereign Lady  
the Queen, holden at the city of Toronto, in and for the said  
Home District, on — the — day of — in the year, &c. before  
W. M., K. R., R. R., and Z. Z., Esquires, justices of our said  
lady the Queen, assigned to keep the peace of our said lady the  
Queen, in and for the said Home District, and also to hear and  
determine divers felonies, trespasses and other misdeeds, com-  
mitted in the said district, by the oath, &c. (*the grand jury stating  
all their names*) good and lawful men of the district aforesaid,  
then and there sworn and charged to inquire for our said lady  
the Queen, for the body of the said district, it is presented in  
manner and form as followeth, that is to say,—Home District,  
to wit. The jurors, &c. (*recite the whole indictment.*) Where-  
upon the sheriff of the said Home District is commanded that  
he cause the said A. B. to come to answer, &c. and afterwards,

to wit, at the same session of the peace, holden at the city of Toronto, aforesaid, in and for the said Home District, by adjournment, on *Wednesday*, the — day of the same month of — in the year aforesaid, before the justices of our said lady the Queen, above named, and others their fellows aforesaid, cometh the said A. B. in his own proper person, and having heard the said indictment read, the said A. B. saith that he is not guilty thereof, and concerning thereof he putteth himself upon the country; and — Esquire, clerk of the peace for the said Home District, who prosecutes for our said lady the Queen, in this behalf doth the like; therefore let a jury thereupon come before the justices of our said lady the Queen, at the next general quarter sessions of the peace of our said lady the Queen, to be holden at the city of Toronto, aforesaid, in and for the said Home District, by whom the truth of the matter may be better known, and who have no affinity to the said A. B. to recognize upon their oath, if the said A. B. be guilty of the premises aforesaid or not; because as well the said — who prosecutes for our said lady the Queen in this behalf, as the said A. B. have put themselves on that jury, the same day is given as well to the said — who prosecutes for our said lady the Queen in this behalf, as to the said A. B. at which said next general quarter sessions of the peace of our said lady the Queen, holden at the said city of Toronto, in and for the Home District aforesaid, on *Monday*, the — day of — in the said — year of the reign of our said lady the Queen, before W. M., G. H., F. P., and S. T., Esquires, and others their fellows, justices of our said lady the Queen, assigned to keep the peace of our said lady the Queen, in and for the Home District aforesaid, and also to hear and determine divers felonies, trespasses and other misdeeds, committed in the same district, cometh as well the said — who prosecutes for our said lady the Queen in this behalf, as the said A. B. in his own proper person; and the jurors of that jury, by — Esquire, sheriff of the said Home District, to this matter empannelled and returned, to wit, (*the names of the petit jury*) being called, come, who being chosen, tried and sworn, to speak the truth of and upon the premises in the indictment aforesaid, above specified, do say, upon their oath, that the said A. B. is not guilty of the trespass and offence aforesaid, in the indictment aforesaid, above specified, in manner and form as the said A. B. for himself above by his plea hath alleged; whereupon it is considered by the court here, that the said A. B. of the trespass (*or felony*) and offence aforesaid, in the indictment aforesaid, above specified, be discharged and go thereof without day.

## AUTREFOIS ATTAINT.

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

But as this rule is one rather of expediency than otherwise, it does not follow that after an *attainder* the party attainted may commit other felonies of a higher description, such as murder, rape, and the like, with impunity. A plea of *autrefois attaint* will therefore in such cases, or for other capital offences, be of no avail; and the party may be indicted and convicted, in order that he may undergo the higher degree of punishment—*forfeiture of goods* being only of secondary consideration in such cases.

## AUTREFOIS CONVICT.

THIS plea (like that of *autrefois acquit*) can in general only be pleaded for the same identical felony;—it is (like that also) founded on the principle, that a man is not again to be placed in jeopardy for the same offence; and still less so, if he has already (as in this case) suffered the penalty due for it. 2 *Haw. c.* 36. § 10. 4 *Bl. Com.* 336.

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

*Record of Conviction*—See AUTREFOIS ACQUIT.

—do say upon their oath, that the said A. B. is guilty of the trespass and offence aforesaid in the indictment aforesaid, above specified in manner and form, as by the said indictment above against him is alleged; whereupon it is considered by the court here that the said A. B. for the trespass and offence aforesaid, in the indictment aforesaid, above specified, be taken, &c. which said A. B. being present here is fined for the said trespass and offence three shillings and four pence, which he paid to the sheriff of the said Home District, in court, to the use of our said lady the Queen; and the said A. B. is committed to the common gaol, at the city of Toronto aforesaid, in the said Home District, there to remain and be kept to hard labour for the space of six calendar months.

## BAIL.

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

If a person be brought before a justice, and it appear that no felony has been committed, he may discharge him; but if it appear that a felony has been committed, though it appear not that the party accused is guilty, yet the justice cannot discharge him, but must bail or commit him. *Ibid*, 98.

At the common law bail was allowed in all cases but homicide; until the statute 3 *Ed.* 1. c. 15. which directs what offenders shall be bailed, and what not. *Hale's P. C.* 97.: and by statute 1 & 2 *P.* and *M.* c. 13. any person arrested for manslaughter or felony, or suspicion thereof, beingailable by law, shall not be bailed by any justices, but in open session, except it be by *two* justices at the least, and the same to be present together at the time of the bailment.

By the 4 & 5 *V.* c. 24. Reciting that it was expedient to define under what circumstances persons may be admitted to bail in cases of felony; and to make better provision for taking examinations, informations, bailments and recognizances, &c. It is enacted, that where any person shall be taken on a charge of felony, or suspicion of felony, before one or more Justice or Justices of the Peace, and the charge shall be supported by positive and credible evidence of the fact, or by such evidence as if not explained or contradicted, shall, in the opinion of the Justice or Justices raise a strong presumption of the guilt of the person charged, such person shall be committed to prison by such Justice or Justices in the manner hereinafter mentioned; but if there shall be only one Justice present, and the whole evidence given before him shall be such as neither to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, such Justice shall order the person charged to be detained in custody, and such person shall be taken before two Justices at the least; and where any person so taken, or any person in the first instance taken before two Justices of the Peace, shall be charged with felony, or on suspicion of felony, and the evidence given in support of the charge, shall, in the opinion of such Justices, not be such as to raise a strong presumption of the guilt of the person charged, and to require the committal of such person, or such evidence shall be adduced on behalf of the person charged as shall, in the opinion of such Justices, weaken the presumption of guilt, but there shall, notwithstanding,

appear to such justices, in either of such cases, to be sufficient ground for judicial inquiry into the guilt of the person charged, such person shall be admitted to bail by such two Justices in the manner hereinafter mentioned: Provided always, that nothing herein contained shall be construed to require any such Justice or Justices to hear evidence on behalf of any person so charged as aforesaid, unless it shall appear to such Justice or Justices, to be meet and conducive to the ends of justice to hear the same.

§ 2. That two Justices of the Peace, before they shall admit to bail, and one or more Justice or Justices, before he or they shall commit to prison, any person arrested for felony, or on suspicion of felony, shall take the examination of such person, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, in the presence of the party accused, if he be in custody, who shall have full opportunity afforded him of cross-examining such witnesses, if he shall think proper so to do, and the two Justices admitting to bail shall certify the bailment in writing; and every such Justice shall have authority to summon any person within his jurisdiction, whom he shall have reason to consider capable of giving material evidence concerning any such felony, or suspicion of felony, and to examine such person on oath, touching the same, and to bind by recognizance all such persons as know or declare any thing material touching any such felony, or suspicion of felony, to appear at the next Court of Oyer and Terminer, or Gaol Delivery, or other Court at which the trial of such offence is intended to be had, then and there to prosecute and give evidence against the party accused; and such Justices and Justice, respectively, shall subscribe all such examinations, informations, bailments, and recognizances, and deliver, or cause to be delivered the same to the proper officer of the Court in which the trial is to be, before, or at the opening of the Court; and in case any person so summoned shall refuse to submit to such examination or to enter into such recognizance, it shall be lawful for the Justice or Justices to commit such person to the common Gaol of the District, County, City or Town, until such person shall submit to such examination, or shall enter into such recognizance, or be discharged by due course of law: Provided that no such examination shall subject the party examined to any prosecution or penalty, or be given in evidence against such party, save on any indictment for having committed wilful and corrupt perjury in such examination.

§ 3. That every Justice of the Peace, before whom any person shall be taken on a charge of misdemeanor, or suspicion thereof, shall take the examination

of the person charged, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, before he shall commit to prison or require bail from the person so charged; and in every case of bailment, shall certify the bailment in writing, and shall have authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused in like manner as in cases of felony; and shall subscribe all examinations, informations, bailments, and recognizances, and deliver or cause to be delivered the same to the proper Officer of the Court in which the trial is to be, before, or at the opening of the Court, in like manner as in cases of felony, and that no traverse or other postponement of any trial thereupon had, shall be allowed except upon special cause shewn to the satisfaction of the said Court or by consent of the prosecutor. § 4. That every Coroner, upon any inquisition taken before him, whereby any person shall be indicted for manslaughter or murder, or as an accessory to murder before the fact, shall, in presence of the party accused, if he can be apprehended, put in writing the evidence given to the jury before him, or as much thereof as shall be material, giving the party accused full opportunity of cross-examination; and shall have authority to bind by recognizance all such persons as know or declare any thing material touching the said manslaughter or murder, or the said offence of being accessory to murder, to appear at the next Court of Oyer and Terminer, or Gaol Delivery, or other Court at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such Coroner shall certify and subscribe the same evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper Officer of the Court in which the trial is to be, before, or at the opening of the Court. § 5. That when and so often as any person shall be committed for trial by any Justice or Justices, or Coroner as aforesaid, it shall and may be lawful for such Prisoner, his Counsel, Attorney or Agent, to notify the said committing Justice or Justices, or Coroner, that he will so soon as Counsel can be heard, move Her Majesty's Court of Superior Jurisdiction for that part of the Province in which such person stands committed, or one of the Judges thereof, for an order to the Justices of the Peace, or Coroner for the District where such Prisoner shall be confined, to admit such Prisoner to bail, whereupon it shall be the duty of such committing Justice or Justices, or Coroner, with all convenient expedition to transmit to the office of the Clerk of the Crown, close under the hand and seal of one of



them, a certified copy of all informations, examinations, and other evidences, touching the offence wherewith such Prisoner shall be charged, together with a copy of the warrant of commitment and inquest, if any such there be, and that the packet containing the same shall be handed to the person applying therefor, in order to such transmission, and it shall be certified on the outside thereof to contain the information touching the case in question. § 6. That upon any application to Her Majesty's Court of Superior Criminal Jurisdiction, for that part of the Province within which such person stands committed, or to any Judge thereof, the same order touching the Prisoner being bailed or continued in custody, shall be made as if the party were brought up upon a Habeas Corpus. § 7. That if any Justice or Coroner shall neglect or offend in any thing contrary to the true intent and meaning of any of the provisions of this Act, it shall be lawful for the Court to whose Officer any such examination, information, evidence, bailment, recognizance, or inquisition ought to have been delivered, and such Court is hereby authorised and required, upon examination and proof of the offence, in a summary manner, to set such fine upon every such Justice or Coroner as the Court shall think meet. § 8. That the provisions of this Act relating to Justices and Coroners, shall apply to the Justices and Coroners, not only of Districts and Counties at large, but also of all other jurisdictions. § 51. All former Acts inconsistent with this repealed.

By the declaration of rights, 1 W. Sess. 2. c. 2. excessive bail ought not to be required. To refuse bail where the party ought to be bailed, (the party offering the same) is a misdemeanor, punishable not only by the suit of the party but also by indictment. 2 *Haw.* 90. *H. P.* 97. And to admit bail where it ought not to be admitted; is punishable by the judges of assize, by fine, or punishable as a negligent escape at common law—*H. P.* 97.—and so if a justice take insufficient bail. *Ib.* A justice of the peace cannot take bail for murder. 2 *Inst.* 186. And if a person be dangerously wounded, the justice ought to be very cautious how he takes bail, till the year and day be passed, for if the party die, and the offender appear not, the justice is in danger of being severely fined. 1 *Haw.* 138. The court of king's bench, however, may admit a person to bail who has been committed for murder, if they think the circumstances of the case will justify their doing so. *Ld. Molton's case*, 1 *Salk.* 104. *R. v. Magrath*, *Str.* 1242. If the bail taken be insufficient, the justice may require better sureties, and commit the party on refusal. 2 *Haw.* 89.

*Acknowledging Bail in another Man's name.*

By Stat. 21 I. c. 26. if any person shall acknowledge, or procure to be acknowledged, any bail in the name of any other, not privy to the same, he shall be guilty of felony without benefit of clergy. Bail taken before a judge, is not within this statute till it is filed of record. 1 H. II. 696. But it is within the following statute of 4 W. c. 4. which enacts, "that any person who shall personate another, before those who have authority to bail, so as to make him liable to the payment of any sum of money in that suit or action, shall be guilty of felony." If bail cannot otherwise be obtained, the law hath also provided a remedy by the *habeas corpus* act. 31. C. 2. See post, "*Habeas Corpus*."

## BANISHMENT.

\* By statute 3 W. 4. c. 4. § 5. all other felonies (except capital) may be punished by banishment; (*see post title, "punishment."*) And by statute \*40 G. 3. c. 1. § 5. the offender shall remove himself within a space of time to be fixed by the court, being not less than two days nor more than eight, including the day on which sentence was passed.

## BANKERS.

\* By the 7 W. 4. c. 13. § 1. It shall not be lawful (except in the cases hereinafter mentioned,) for any person or number of persons associated without Legislative authority, or incorporated for any other purpose than banking, to make or issue any bill, note, or undertaking of any description, or in any form in the nature of a Bank bill or note, and intended to pass as money: and if any bill, note, or undertaking shall be issued or put in circulation contrary to this Act, such bill, note, or undertaking shall be void: and any mortgage or other deed, bond, note, bill, or other security which may be taken for securing any loan or advance made in such bills, notes, or undertakings, shall be void. § 2. If any person shall act as President, Director, Cashier, or other officer of any association of persons, acting in violation of this Act, such person shall, on conviction thereof before any Court of Oyer and Terminer or General Gaol Delivery, be deemed guilty of a misdemeanor. § 3. If any person shall knowingly utter or tender in payment or in exchange, any bill or note in the nature of a Bank note, which shall not have been issued by some person or association of persons or body corporate, legally authorised to issue such bill or note within this

Province, or within the county in which such note or bill shall have first issued, such person shall be guilty of a misdemeanor. § 4. This Act not to apply to "The Bank of British North America,"—the Farmers' Joint Stock Banking Company,—the Agricultural Bank,—or to the Bank of the People, or to the Niagara Suspension Bridge Bank.

### BANK NOTES.

By the 4 & 5 V. c. 29. § 1. Banking companies are required to deliver a statement in writing on the 15th May and the 15th November annually, to the Receiver General, of the amount of notes or bills issued and in circulation at the end of each calendar month, certified by the Cashier and President; and the person or persons so certifying shall make and sign a declaration in writing before a Justice of the Peace, that he or they had the means of knowing that such statement was correct, and that it is so to the best of his or their knowledge and belief. § 2. Any wilful false allegation in any such statement, shall be a misdemeanor punishable as for perjury. § 3. A duty of one per cent. per annum, imposed on the average amount of notes and bills in circulation pro. tem. § 4. The Bank or party neglecting or refusing to deliver such statement, shall forfeit to Her Majesty £1000 for the uses of the Province, to be recovered with costs, as any other debt of the Crown.

By the 4 & 5 V. c. 93. § 13. Counterfeiting Bank notes is made a misdemeanour. See further on this subject title "Coin."

### BANKS OF RIVERS.

By the 4 & 5 V. c. 26. § 12. It is enacted, that if any person shall unlawfully and maliciously break down, or cut down any sea-bank or sea-wall on the bank or wall of any river, canal, or marsh, whereby any land shall be overflowed or damaged, or shall be in danger of being so, or shall unlawfully or maliciously throw down, level, or otherwise destroy any lock, sluice, flood-gate or other work, on any navigable river or canal, every such offender shall be guilty of felony, and being convicted thereof shall be imprisoned for any term not exceeding four years: and if any person shall unlawfully and maliciously cut off, draw up, or remove any piles, chalk, or other materials fixed in the ground, and used for securing any sea-bank or sea-wall, or the bank or wall of any river, canal, or marsh, or shall unlawfully or maliciously open or draw any flood-gate, or do any other injury or mischief to any navigable river or canal, with intent and so as

thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof, every such offender shall be guilty of felony, and being convicted thereof shall be imprisoned for any term not exceeding two years.

## BARRATRY.

A BARRATOR, in legal acceptation, signifies a common mover, exciter, or maintainer of suits or quarrels, either in courts or in the country. 1 *Inst.* 368. 1 *Haw.* 243. *In courts*, means either courts of record, or not of record. *In the country*, in three manners: 1. In disturbance of the peace. 2. In taking or keeping possession of lands in controversy. 3. By false inventions and sowing of calumnious rumours and reports, whereby discord and disquiet may arise between neighbours. 1 *Inst.* 368. No one can be a barrator in respect to one act only. 1 *Haw.* 243. Neither is an attorney guilty of an act of barratry in respect of his maintaining another in a groundless action, to the commencing whereof he was no way privy. 1 *Haw.* 243. Nor shall a man be adjudged a barrator in respect of any number of false actions brought by him in his own right; for in such case he is liable to double costs. 1 *Haw.* 243.

By statute 34 Edw. 3. c. 1. justices of the peace shall have power to restrain all barrators, and to pursue, arrest, take and chastise them, according to their trespass or offence.

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

## BASTARD.

\* By statute 2 W. 4. c. 1. after reciting that doubts had been entertained respecting the true meaning of 21 James 1st, entitled, "an act to prevent the destroying and murdering of bastard children," and the same had been found difficult and inconvenient to be put in practice, it is enacted, that the said act should not be in force in this province. § 2. That after the passing of this act the trial of any woman charged with murder of any issue of her body, male or female, which, being born alive, would by law be bastard, shall proceed and be governed by the like rules of evidence and presumption as in other trials for murder.

See *post* title, "Concealing Birth."

## BAWDY-HOUSE.

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

A married woman may be indicted for this offence, the same as if she were a *feme sole*; and may also be convicted of it together with her husband. *Rex. v. Williams*, 1 *Salk.* 383. And a man may be bound to his good behaviour for haunting bawdy-houses with women of bad fame, or for keeping bad women in his own house. 1 *Haw. c.* 74. And a constable is authorised by the common law to arrest persons that resort to bawdy-houses. 1 *Haw. c.* 10. § 34.

*Information and Complaint against a person for keeping a Bawdy-house.*

Home District, } The information and complaint of A. B. of the  
to wit. } township of — in the said district, gentleman, taken upon oath, this — day of — 18 — before me C. D. Esq. one of her Majesty's justices of the peace, &c. The said informant upon his oath saith, that E. F. of — and A. M. his wife, are the keepers of a common bawdy-house, at — in the said township, and that men and women of ill-fame are in the constant habit of resorting to the said house, at all hours of the night, and that the said house hath become and still remains a common nuisance.

Sworn, &c.

*Warrant to apprehend the Keeper of a Bawdy-house.*

To the Constable of —.

Home District, } Whereas information and complaint hath this  
to wit. } day been made upon oath, by A. B. of — before me C. D. Esquire, one of her Majesty's justices of the peace for the said district, that E. F. of — and G. H. his wife, keep and maintain a house of ill-fame and a common bawdy-house, at — and that lewd women frequently resort thither, with men of dissolute lives, to the great scandal of the neighbourhood, the encouragement of vice and debauchery, and against the Queen's peace. These are therefore in her Majesty's name, to command you to bring the said E. F. and G. H. before me, at

— on — the — day of — at — o'clock in the — noon, to answer to the complaint of the said A. B. and to be further dealt with according to law. Given under my hand and seal, &c.

*Condition of a Recognizance to appear and prosecute.*

The condition of this recognizance is such, that if the above bounden A. B. shall and do personally appear at the next general quarter sessions of the peace, to be holden at the city of Toronto, in and for the said Home District, and then and there prefer and give evidence upon a bill of indictment, before the grand jury, against E. F. of — and G. H. his wife, for keeping a common bawdy-house, and in case the said bill shall be found a true bill, then if the said A. B. shall prosecute the same with effect, and not depart the court without leave, this recognizance to be void, otherwise in full force.

*Condition of a Recognizance to appear and answer.*

The condition of this recognizance is such, that if the above bounden E. F. and G. H. his wife, shall personally appear at the next general quarter sessions of the peace, to be holden at the city of Toronto, in and for the said Home District, and then and there answer to a bill of indictment to be preferred against them for a nuisance, then this recognizance to be void, otherwise in full force.

*Commitment for want of Sureties.*

To the Constable of — and to the Keeper of her Majesty's gaol in and for the Home District.

Home District, } Whereas information, &c. (as in the warrant,  
to wit. } and the said E. F. and G. H. not being able  
to give sufficient security for their appearance at the next  
general quarter sessions of the peace, to be holden in and for  
the said district, to answer to a bill of indictment, to be then  
preferred against them for the said offence: These are there-  
fore in her Majesty's name to require and authorise you the  
said constable, to convey the said E. F. and G. H. to the said  
gaol, and to deliver them to the keeper thereof: and you, the  
said keeper, are hereby required to receive the said E. F. and  
G. H. into your custody, and them safely keep in your gaol,  
until they shall give such security as aforesaid, or be otherwise  
discharged in due course of law. Given under my hand and  
seal, &c.

## *Indictment for keeping a Bawdy-house. (Archbold.)*

Home District, } The jurors, &c. That I. S. late of, &c. labourer,  
to wit. } and A. his wife, on the — day of — in the  
— year of the reign of our Sovereign lady Victoria, and on  
divers other days and times, between that day and the day of  
the taking of this inquisition, with force and arms, at the town-  
ship aforesaid, in the county and district aforesaid, unlawfully  
did keep and maintain a certain common, ill-governed and dis-  
orderly house, and in the said house, for the lucre and gain of  
him the said I. S. certain persons, as well men as women, of evil  
name and fame, and of dishonest conversation, then and on the  
said other days and times, there unlawfully and willingly did  
cause and procure to frequent and come together, and the said  
men and women, in the said house of him the said I. S. at un-  
lawful times, as well in the night as in the day, then and on the  
said other days and times, there to be and remain drinking, tip-  
pling, whoring and misbehaving themselves, unlawfully and wil-  
fully did permit, and yet do permit, to the great damage and  
common nuisance of all the liege subjects of our said lady the  
Queen, there inhabiting, being, residing and passing, to the evil  
example of all others in the like case offending, and against the  
peace of our lady the Queen, her crown and dignity.

## BEEF AND PORK.

By the 4 & 5 V. c. 88. (reserved Act) reciting that it was expedient that the regulations in force in Lower Canada and Upper Canada, with regard to the curing, packing, and inspection of Beef and Pork, should be consolidated,—that one uniform Law should be enacted for the whole Province of Canada, and that the inspection of the articles aforesaid intended for exportation should *cease to be compulsory*, but should be *optional* to the parties interested. Enacted § 1. That the L. C. Act 44 G. 3. c. 9. ord. 2 V. c. 15. U. C. Act \*45 G. 3. c. 8. and \*3 V. c. 25. shall be repealed. § 2. After the passing of this Act the Board of Trade in Quebec, Montreal, Toronto, and Kingston, and municipal authorities in other places where Inspectors may be required, may appoint a Board of Examiners, to consist in Quebec and Montreal of *five*, and in other places of *three* fit and proper persons, residents, who before acting shall take and subscribe the following oath before any Justice of the District:  
“ I, A. B., do swear that I will not, directly or indirectly,  
“ personally, or by means of any person or persons in my behalf,

“ receive any fee, reward, or gratuity whatever, by reason of any  
 “ function of my office of Examiner, and that I will therein well  
 “ and truly in all things act without partiality, favour, or affec-  
 “ tion, and to the best of my knowledge and understanding. So  
 “ help me God.”

§ 3. The Mayor of Quebec, Montreal, Toronto, and Kingston, and the Warden or chief Municipal Officer of other places, to appoint by an instrument under his hand and Seal of the Corporation, an Inspector of Beef and Pork for such places, such Inspector to be previously examined by the Board of Examiners and recommended by the majority, and before acting to furnish two good and sufficient sureties in £500 if appointed for Quebec or Montreal, and £250 for other places, to be approved by the Mayor, Warden, or chief Municipal authority, by bond to her Majesty, and no Inspector shall allow any person to act for him except his sworn assistants. § 4. Bond to be kept at the office of the Clerk of the Corporation. § 5. Board of Examiners before examination of any such Inspector to require the attendance of two or more persons of the greatest experience and practice in the packing, curing, and inspection of Beef and Pork, who may question the party touching his knowledge of the matter. § 6. Inspector to take the following oath before the Mayor, Warden, or chief Municipal Officer of the place :

I, A. B., do solemnly swear, that I will faithfully, truly and impartially, to the best of my judgment, skill and understanding, do and perform the office of an Inspector of Beef and Pork, according to the true intent and meaning of an Act of the Legislature of this Province, intituled “ *An Act to regulate the Inspection of Beef and Pork;*” and that I will not, directly or indirectly, by myself or by any other person or persons whomsoever, trade or deal in Beef or Pork of any description, otherwise than for the use and consumption of my own family, during the time I shall continue such Inspector; and that I will not, directly or indirectly, brand or suffer to be branded any cask or half cask of Beef or Pork but such as shall be sound and good and of the quality designated by such brand, and with regard to which all the other requirements of the said Act shall have been complied with, to the best of my knowledge. So help me God.

§ 7. The present Inspectors to be re-appointed without examination. § 8. The Inspector for Quebec and Montreal to appoint one or more assistants when required by the Board of Trade, subject to the approval of the Board of Examiners, for whose acts the Inspector shall be responsible; each assistant to



furnish two sureties in £250, and take and subscribe the following oath:

I, A. B., do swear, that I will diligently, faithfully and impartially execute the office of Assistant to the Inspector of Beef and Pork for — according to the true intent and meaning of an Act of the Legislature of this Province, intituled “*An Act to regulate the Inspection of Beef and Pork* ;” and that I will not, directly or indirectly, personally or by means of any person or persons in my behalf, receive any fee, reward or gratuity whatever, by reason of my office of Assistant to the said Inspector (except my salary from the said Inspector), and that I will not, directly nor indirectly, trade in the articles of Beef or Pork, or be, in any manner, concerned in the purchase or sale of Beef and Pork, except so far as may be necessary for myself and family. So help me God.

§ 9. To be paid and hold office at the pleasure of the Inspector. § 10. Inspectors and assistants are required to cut up, salt, pack, cure, or if already packed, to unpack and examine throughout, adding salt if necessary, and coopering up the same according to this act, each and every barrel or half barrel, tierce or half tierce, of Beef and Pork submitted to their inspection, such inspection to be made at the store, shop, or warehouse of such Inspector (to be kept in a convenient situation), or at some store within the limits of the city &c. for which he may be appointed, at the option of the proprietor. § 11. Inspectors and assistants to have iron or metal brands, and immediately after inspection to brand on each barrel, tierce or half tierce, the words “Quebec” “Montreal” “Toronto” or “Kingston”, or the name of the place as the case may be, and the initial of the christian name and the surname at full length of the Inspector, with the quality thereof, and if found to be soft or still fed shall be branded with the word “Soft”, and if unsound and unmerchantable with the word “Rejected”, and the month and year in which it was inspected, with the net weight and quality so packed and examined, and to receive for such inspection *one shilling* for each barrel,  $7\frac{1}{2}d.$  for a half barrel, *one shilling and six-pence* for each tierce, and *eleven-pence* for a half tierce, exclusive of cooperage and repairs not exceeding *six-pence* per barrel or half barrel, tierce or half tierce, delivered in good shipping order: such fee or allowance to be paid by the owner or consignee before removal: after inspection a certificate or bill of inspection shall be furnished by the Inspector or Assistant, without charge, specifying the quantity and the owner's marks, and the quantities and qualities ascertained by inspection, and the charges thereof:

any Inspector or Assistant giving an untrue certificate, or without a personal examination, shall incur a penalty of £20 Currency, and be dismissed from office: Beef or Pork re-inspected to bear the brand of the year and month originally affixed: such brand-marks to be branded on one head of the barrel or tierce &c. Where Beef or Pork shall be sold subject to inspection, the cost shall fall on the vendor (if not the applicant), unless agreement to the contrary at the time of sale. *Provided also*, that any such agreement shall imply a warranty that this Act has been complied with, as well with regard to the provisions, as to the vessels containing the same, and the marks thereon. § 12. All brands to be large and legible, within a space not exceeding *fourteen inches* long by *eight inches* broad, under a penalty of £20 Currency for each barrel, &c. § 13. Inspector not to charge storage unless left in store more than three days after notice of inspection. § 14. Any Inspector suffering Beef or Pork left in his charge to be exposed, after inspection, to the heat of the sun, or inclemency of the weather, longer than *six* days, shall be liable to the penalty of £10 Currency for every offence; and for not providing a suitable store in a convenient situation, *twenty shillings* a day. § 15. Barrels and salt &c. to be furnished by the Inspector, or owner, at the option of such owner or consignee. § 16. In case of dispute between the Inspector and owner, with regard to the quality and condition, either party may apply to a Justice, who shall summon *three* persons of skill and integrity, one to be named by the Inspector and one by the proprietor, and the third by the Justice, who shall examine and report their opinion under oath (to be administered by such Justice), and the decision of the majority to be final, and the Inspector brand accordingly, and if the opinion of the Inspector be confirmed the costs shall be paid by the proprietor, *otherwise* by the Inspector. § 17. Any Inspector or assistant neglecting or refusing when called upon by any proprietor between *sunrise* and *sunset* (not being previously engaged), within *two hours* to proceed to such inspection, shall forfeit to the person applying, on conviction before any one Justice, the sum of £5 Currency over and above all other damages. § 18. On the head of any barrel &c. containing any thin, rusty, measley, tainted, sour, or unmerchantable Pork, or unmerchantable or spoiled Beef branded "*Rejected*", the true character both as to quality and condition of such pork or beef shall be marked with black paint, and the Inspector shall certify when required the quality, state and condition thereof, and the package containing the same, specifying the extent of damage and apparent cause thereof, with the brands or other marks upon the casks or packages, and the name of the

owner. § 19. Barrels &c. to be made of good seasoned white oak staves; and heads not less than  $\frac{3}{4}$  inch thick: each stave on the edge at the bilge not less than  $\frac{1}{2}$  an inch thick for barrels, nor less than  $\frac{3}{4}$  for tierces, and half barrels or tierces in the same proportion to their size, and in both cases free from defect: each barrel &c. to be hooped and covered  $\frac{2}{3}$  of the length with good oak, ash, or hickory hoops, leaving  $\frac{1}{3}$  in the centre uncovered: and each barrel &c. shall be bored in the centre of the bilge with a bit of not less in diameter than *one inch*, for the reception of pickle, each barrel to be not less than 27 inches nor more than  $28\frac{1}{2}$  inches long: and the contents of each beef barrel shall not be less than 28 gallons nor more than 29 gallons wine measure, and of each pork barrel not less than 30 gallons nor exceeding 31 gallons wine measure: each tierce not less than 30 inches nor more than 31 inches long: contents (for beef) not less than 44 gallons nor more than 45 gallons wine measure, (for pork) not less than 45 gallons nor more than 46 gallons wine measure: half barrels or tierces to contain half the quantity, and no more. Inspectors to ascertain the sufficiency of each barrel &c. before branding, and to brand none without.

§ 20. The salt to be used shall be clean, *St. Ubes, Isle of May, Turk's Island*, or other coarse ground salt of equal quality, and every barrel of fresh beef or pork shall be well salted with 75 pounds and every tierce with 112 pounds of good salt as aforesaid, exclusive of a sufficient quantity of pickle as strong as salt will make it, and to each barrel of beef and pork shall be added four ounces, and to each tierce six ounces of saltpetre, and each half barrel of fresh beef and pork shall be salted with half the quantity of salt and saltpetre above mentioned, with a sufficiency of pickle, and in all cases of packing and re-packing beef and pork to be inspected and branded under the authority of this Act, the Inspector is hereby authorised to use salt, saltpetre, and pickle, in his discretion.

§ 21. All beef which an Inspector shall find on examination to have been killed at a proper age and to be fat and merchantable, shall be cut into pieces as nearly square as may be, not more than eight nor less than four pounds weight; and shall be sorted and divided for packing and re-packing in barrels and half barrels, tierces and half tierces, into four different sorts, to be denominated respectively Mess,—Prime Mess,—Prime, and Cargo Beef.

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

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

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

*Cargo Beef* shall consist of the meat of fat cattle, of all descriptions, of three years old and upwards, with not more than half a neck and three shanks, (with the houghs cut off above the first joint,) and the meat otherwise merchantable, and barrels and half barrels, and tierces and half tierces, containing such beef, shall be branded on one of the heads *Cargo Beef*: and each barrel, in which beef of either of the foregoing descriptions shall be packed or repacked, shall contain two hundred pounds of beef, and each half barrel, one hundred pounds; each tierce, three hundred pounds, and each half tierce, one hundred and fifty pounds. § 22. All pork which an Inspector shall find to be fat and merchantable, shall be cut in pieces as nearly square as may be, and not exceeding six nor less than four pounds weight, and shall be sorted and divided into four sorts, to be denominated respectively "Mess," "Prime Mess," "Prime," and "Cargo Pork."

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

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

*Prime Pork* shall consist of the pieces of good fat hogs, not weighing less than one hundred and fifty pounds each, the barrel to contain the coarse pieces of one hog and a half only, that is to say, three half heads, (not exceeding together twenty-four

pounds in weight) three hams and three shoulders, and the remaining pieces of a hog and a half hog; the tierce to contain the relative proportions of heads, shoulders and hams, and the remaining pieces of two hogs and a quarter of a hog; and each barrel or half barrel, tierce or half tierce, containing pork of this description, shall be branded on one of the heads *Prime Pork*.

*Cargo Pork* shall consist of the pieces of fat hogs, weighing not less than one hundred pounds each, the barrel to contain the coarse pieces of not more than two hogs, that is to say, four half heads, (not exceeding together in weight thirty pounds,) four shoulders and four hams, and the remaining pieces of two hogs, and shall be otherwise merchantable pork; the tierce to contain the relative proportion of heads, shoulders and hams, and the remaining pieces of three hogs; and the barrels and half barrels, tierces and half tierces, containing pork of this description, shall be branded on one of the heads *Cargo Pork*: but, in all cases, the following parts shall be cut off and not packed, viz., the ears close to the head, the snout above the tusks, the legs above the knee joint, the tail shall be cut off, and the brains, tongue, and bloody grizzle taken out: and each barrel, in which pork of any of the foregoing descriptions may be packed or repacked, shall contain two hundred pounds, and each tierce three hundred pounds; and each half barrel, or half tierce, one-half those quantities respectively, of the several kinds and qualities of pork as aforesaid, and shall be branded accordingly. § 23. No Inspector or Assistant Inspector of beef and pork shall directly or indirectly trade or deal in beef or pork, or be concerned in such trade, whether by buying, bartering, or exchanging any live or dead cattle or hogs, with a view to pack the same or get them packed, or by buying, bartering or exchanging beef or pork when packed; nor shall he purchase beef or pork of any description, otherwise than for the use and consumption of his family, under a penalty of £50 currency for each offence, and on pain of being removed from office. § 24. If any packer or any other person shall, with a fraudulent intent, efface or obliterate any of the Inspector's brand marks, or shall counterfeit any such marks or brand the same on any barrel or half barrel, tierce or half tierce, or shall empty or partially empty any barrel or half barrel, tierce or half tierce, branded after inspection, in order to put into the same other beef or pork, or shall use, for the purpose of packing any beef or pork, old barrels or half barrels, tierces or half tierces, without destroying the old brand marks, before offering the same for sale or exportation, or not being an Inspector or Assistant Inspector, shall brand any pork or beef

with the Inspector's brand-marks, such person, so offending, shall for every such offence incur a penalty of £50 currency, and every Inspector or Assistant Inspector, who shall inspect or brand any beef or pork out of the limits for which he shall be appointed, or shall hire out his brands to any person whomsoever, or shall connive at or be privy to any fraudulent evasion of inspection of beef and pork by others, shall for every such offence incur a penalty of £50 currency. § 25. Nothing herein contained shall be construed to prevent any person from packing for exportation, or from exporting, any beef or pork, without inspection, provided such beef or pork be packed in tierces or half tierces, barrels or half barrels, of the dimensions hereinbefore prescribed for such vessels respectively, and be marked with black paint, or branded on one end thereof, with the name and address of the packer, the date and place of packing, the weight, and the quality of the provisions contained in each package; nor shall any thing herein contained prevent any person from packing for exportation, or from exporting, without inspection, any rounds of beef, rounds and briskets of beef, the meat of young pigs, called pig pork, the tongues of neat cattle, the tongues of pigs, hams of pigs, or pigs' cheeks, or any smoked or dried meat of any description, contained in tubs, casks or barrels, or other packages of any kind, provided each package be marked in the manner above mentioned; but every person who shall export any meat of the kind last mentioned, not so marked as aforesaid, or beef or pork of any other kind, not so marked, or not packed in barrels or half barrels, tierces or half tierces, of the dimensions hereinbefore prescribed, shall thereby incur a penalty of *twenty shillings* currency for every barrel or half barrel, tierce or half tierce, tub, cask or other package, with regard to which the provisions of this section shall be contravened, and such penalty shall be recovered and applied in the manner provided, in regard to the other penalties imposed by this act. § 26. All fines, penalties and forfeitures, imposed by this act, not exceeding £10 *sterling*, shall be recoverable with costs in a summary way, before any two justices of the peace of the district, and may, in default of payment, be levied by warrant of distress, to be issued by such justices, against the goods and chattels of the offender; and when the same shall exceed the sum of £10 *sterling*, they shall be sued for and recovered by civil action, before any court of competent jurisdiction, and levied by execution, as in the case of debt, and one moiety of such fines and forfeitures (except such as hereinbefore directed to be otherwise applied) shall be immediately paid into the hands of the treasurer of the city of Toronto, or place wherein

the suit shall have been brought, and shall remain at the disposal of the corporation for the public uses thereof, and the other moiety shall belong to the prosecutor, unless the action be brought by any officer of such corporation, in which case the whole shall belong to the corporation for the uses aforesaid.

§ 27. Actions to be commenced within six calendar months.

§ 28. Act to be in force from the 1st January, 1842. § 29. And to continue in force till the 1st January, 1848, and the end of the next session.

## BENCH WARRANT.

\* By the 55 G. 3. c. 2. § 3. the process upon every indictment to bring the person indicted into court, shall be a *capias*, in the usual form, issued from the court before whom the said indictment shall be found, directed to the sheriff of the district wherein the said court shall be then sitting, commanding him to take the person so indicted and bring him before the said court; and if the person cannot be taken during the sitting of the said court, that then so soon after as he shall be taken, he do bring or cause him to be brought before some justice of the peace of the said district, to be dealt with according to law; which said *capias* shall be made returnable in the court of king's bench on the first day of the term next after the sitting of the said court before which the said indictment shall have been found. And if upon the return of the said writ the sheriff of the said district shall return that the person therein named is not to be found in his district, then an *alias* writ of *capias* shall issue from the court of king's bench, under the seal of the said court, tested of the first day of term, if in term time, or on the last day of the preceding term, if in vacation, returnable before the said court of king's bench on the first day of the term next ensuing. § 4. And if to the said writ of *alias capias* the sheriff shall return *non est inventus*, then upon motion in court, or before a judge in vacation, a writ of *exigent* shall issue. For further proceedings see title "Outlawry."

The above act was allowed to expire, but was revived and continued by the \*3 W. 4. c. 6. (passed in February 1833) for six years, and to the end of the next session. And by the \*2 V. c. 7. was made perpetual.

After an indictment found, any private person, without a warrant, may arrest the offender. *Dalt. c. 170. § 5.*

Upon the party being taken, (if the charge be *misdemeanor* only) he may give recognizance to appear, to any magistrate,

who thereupon will grant a *supersedeas* of the warrant. But if the charge be *felony*, magistrates should be exceedingly cautious in taking bail after an indictment found by the grand jury; and the better course would perhaps be, to leave the prisoner to apply to a judge, who will bail him or not, according to his discretion.

*Form of a Bench Warrant.*

To the Sheriff of the Home District—Greeting :

Home District, } These are to will and require, and in her Ma-  
to wit. } jesty's name to command you, upon sight  
hereof, to bring before us J. C. and S. P. Esquires, two of her  
Majesty's justices of the peace for the Home District, at the  
general quarter sessions of the peace, now being holden at the  
city of Toronto, in and for the said Home District, or such other  
two or more of her Majesty's justices of the peace for the said  
Home District as shall be then and there sitting, the body of  
A. B. who stands indicted before us at this same sessions for an  
assault, (*or for larceny*) if the court shall be then and there  
sitting; and if he cannot be taken during the present sessions,  
that then so soon after as he shall be taken you bring or cause  
him to be brought before some justice of the peace of the said  
district, to be dealt with according to law; and what you shall  
have done herein make appear to her Majesty's justices of the  
court of queen's bench at Toronto, on the first day of — term  
now next ensuing, and have you there this warrant. Dated in  
open sessions, at the city of Toronto aforesaid, this — day of —  
in the year of our Lord 18—.

J. C.  
S. P.

*Form of Commitment if for Felony.*

To the keeper of the common gaol at Toronto, in the Home  
District.

Home District, } Receive into your custody the body of A. B.  
to wit. } herewith sent you, brought before me, G. H.  
Esquire, one of her Majesty's justices of the peace in and for  
the said district, by G. B. constable of the said district, by virtue  
of a bench warrant issued at the general quarter sessions of the  
peace holden at Toronto aforesaid, in and for the said district,  
on the — day of — last, against the said A. B. upon a bill of  
indictment then and there found against the said A. B. for  
larceny, and him safely keep in your custody until he shall be  
discharged in due course of law. Given under my hand and  
seal, this — day of — in the year of our Lord 18—.



## BENEFIT OF CLERGY.

BENEFIT of Clergy was a privilege allowed by the law to clerks in orders, and afterwards to those among the laity who could read, by virtue of which, a criminal, though duly convicted, was discharged from the sentence of the law in the king's courts, and delivered over to the ordinary, to be dealt with according to the ecclesiastical canons. *4 Bl. Com.* 368. Owing to the ancient severity of the British law, which subjected all persons convicted of felony, of any description, to the penalty of death, the benefit of clergy appears to have been a remedy invented by the church in her day of power to rescue offenders convicted of felony from the punishment consequent thereon; subsequently, the legislature, to distinguish such crimes as were by statute to be punished with death, usually enacted, that the offender, upon conviction, should be deemed guilty of felony without benefit of clergy, thus leaving the criminal to rely only upon the royal prerogative for a mitigation of his punishment. The real distinction therefore, in cases of felony, appears to have been this: Felonies at the common law or by statute, within the benefit of clergy, were no longer deemed capital; but such as were not within this privilege, partook of all the ancient rigour of the law, and were deemed capital or punishable with death. Benefit of clergy is now very properly abolished, and a milder criminal code substituted; this important change was effected in England by statute 7 & 8 G. 4. c. 28. and in Upper Canada by statute \*3 W. 4. c. 4.

And by the 4 & 5 V. c. 24. § 19. benefit of clergy is abolished throughout the United Provinces.

## BIGAMY.

BIGAMY signifies, in criminal law, the offence of having two wives or two husbands at the same time. *4 Bl. Com.* 163.

By the 4 & 5 V. c. 27. § 22. if any person, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in this province or elsewhere, every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony; and being convicted thereof, shall be liable to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years; and any such offence may be dealt with,

enquired of, tried, determined, and punished in the district or county where the offender shall be apprehended or be in custody, as if the offence had been actually committed in that district or county: Provided always, that nothing herein contained shall extend to any second marriage contracted out of this province by any other than a subject of her Majesty, resident in this province, and leaving the same with intent to commit the offence, or to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time; or shall extend to any person, who, at the time of such second marriage, shall have been divorced from the bond of the first marriage; or to any person, whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.

*Warrant of Commitment for Bigamy. (Toone.)*

To the Gaoler or Keeper of the gaol of the Home District.

Home District, } Receive into your custody in the said gaol,  
to wit. } and there safely keep, until he shall be discharged by due course of law, the body of A. B. herewith sent you, and charged before me J. C. Esquire, one of her Majesty's justices of the peace in and for the said district, on the oaths of C. D. and E. F. and others, for that he the said A. B. on the — day of — in the year of our lord 18 — at — did marry one G. H. spinster, and her the said G. H. then and there had for his wife; and that the said A. B. afterwards, to wit, on the — day of — in the year aforesaid, at — feloniously did marry and take to wife one L. S. spinster, the said G. H. his former wife being then living, against the form of the statute in such case made and provided, (the said C. D. having also made oath before me the said justice, that the said A. B. was apprehended and taken for the said felony, at — in the said district.) Given under my hand and seal this — day of — in the year of our Lord 18—.

## BILLIARD TABLES.

By Stat. \*50 G. 3. c. 6. a duty of £40 is imposed upon every person keeping any billiard table for hire or gain. § 2. And no person shall have in his possession any billiard table for hire or gain without a license from the inspector, under the penalty of £100, to be recovered by action of debt, bill plaint, or information in his Majesty's court of King's Bench.

\* By the 3 V. c. 20. § 10. every keeper of an inn, ale-house, ordinary or recess, and all other persons who shall keep a house of entertainment, resort or boarding, who shall have and keep a billiard table in such house, out-house, or room, or building connected with or attached thereto, shall be subject as by the \*50 G. 3. c. 6. is directed.

### BLASPHEMY AND PROFANENESS.

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

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

### BOARD OF WORKS.

By the 4 & 5 V. c. 38. § 3. a Board of Works established for the superintendence, management and controul of public works, to consist of not exceeding five persons, to be appointed by the Governor. § 4. Members and secretary to hold their offices during pleasure. § 5. Chairman and secretary to be allowed a yearly salary; other members their disbursements only.— § 6. Board to be a body corporate, with the usual powers.— § 7. Office and meeting of the board to be held where the Governor shall direct. § 8. Chairman to be the legal organ of the corporation, and all writings and documents signed by him and sealed with the seal of the corporation, and no others, to be valid. § 9. Board to examine and report upon all matters referred to it by the Governor, and to obtain evidence, information, plans, estimates, drawings or specifications, and cause surveys and examinations to be made. § 10. Board may suggest improvements to public works, but shall not incur any expence without the Governor's approval. § 11. Applications for any

grant of public money, for public works, shall be referred to the board for report. § 12. Board may make regulations with regard to public works. § 13. No sum of public money, now or hereafter to be appropriated for any public work, over which the board may have controul, and the expenditure of which is not by law directed to be made under the controul of any person or persons, officer or body corporate, shall be expended, except under the controul of the board. § 14. Such monies not to be expended until after the board shall have reported on the mode of expenditure, and such report shall be approved by the Governor. § 15. No public work to be commenced unless it can be completed for the sum appropriated for it. § 16. The board, with the approval of the Governor, may employ and pay engineers, surveyors, &c. § 17. All public works, not specially vested in other persons, shall be vested in the board. § 18. The board, or their engineers, &c. may enter upon property and survey and take levels, and set out and ascertain such parts of any such lands as the said board shall deem necessary or proper, making compensation for damages, to be ascertained by arbitration, in case of difference with the owner. § 19. Board may hold real estate necessary for public works, and may contract therefor, with owners. § 20. In case of disagreement, it shall be lawful for the board to make a legal tender of the probable and reasonable value of such property, with a notification that the Board will submit the settlement to arbitration, and upon such tender and notification being made, the board may take possession: Provided that the board, within three days after taking possession, name an arbitrator, and the owner shall, within three days from such nomination, also name an arbitrator, and the two arbitrators shall name a third; said arbitrators shall inquire of, and they, or any two of them, award and adjudge upon the value of such property, and signify their award to the parties interested within ten days after the appointment of the third arbitrator, and the board shall, upon signification of any such award, forthwith tender to the owner the sum adjudged, and if exceeding the sum originally tendered, the board shall pay the costs of arbitration, but if not, the costs to be paid by the person refusing the tender. § 21. Awards made in Canada West may be set aside on application to the Court of Queen's Bench, as in ordinary cases, to be made within one year.— § 22. If the board neglect to appoint an arbitrator, or if no award made within the time prescribed, the owner may maintain an action against the board for compensation: Provided that the time for making the award may be extended by agreement. § 23. Arbitrators may examine witnesses upon oath, touching

the value of the property or the amount of compensation, and they or any one of them may administer the oath; and the arbitrators shall be sworn to the due performance of their duties before some judge or justice of the peace, before acting.—

§ 24. Duties of the secretary defined. § 25. The board shall have power to send for and examine persons, touching any matter referred to the board, and to cause such persons to bring with them such papers, documents and things as may be necessary, and to pay such persons a reasonable compensation for their time and disbursements: and such persons shall be bound to attend at the summons of the board, after due notice, under penalty of such damages as may be awarded in action to be brought by the board. § 26. Board may require accounts to be attested on oath, to be administered, as well as the oath of witnesses, by the secretary or any member of the board; and any false statements shall be perjury. § 27. Warrants for money appropriated for public works, under the board, not to issue, except on chairman's certificate. § 28. Board may grant certificate in favour of their secretary to meet disbursements; the amount in hand not exceeding £500 at any one time.—

§ 29. Accounts to be rendered as provided. § 30. Chairman to report annually upon the state of the public works, for the information of the legislature. § 31. Salaries of chairman and secretary regulated. § 32. Any member of the assembly, becoming chairman or secretary, shall thereby vacate his seat. § 33. Application of monies to be accounted for to her Majesty. § 34. This act to be a public act.

## BOUNDARY LINES.

\* By 38 G. 3. c. 1. monuments may be placed at the corners of every township and concession, and the lines from the monuments so erected, shall be the permanent boundary lines of such townships and concessions. § 4. Any person knowingly and wilfully pulling down, defacing, altering or removing any such monument, shall be guilty of felony. § 6. Upon application made to the sessions by thirty freeholders of any township, to have monuments erected, such justices shall form an estimate of the expense, and lay an equal assessment upon every acre of laud within such township, to be raised and collected by a warrant under the hands and seals of any two of them, directed to the collectors of such townships, in such manner and by such means as in other cases, and to pay the same, when collected, to the treasurer of the district, to answer the charges incurred by

erecting such monuments. § 7. Provision made for collecting same on unoccupied lands, by notice in the Gazette, and sale of part thereof to pay such assessments.

\* By the 59 G. 3. c. 14. § 2. all boundary lines of townships, all concession lines, governing points, and all boundaries, posts, or monuments, which have been placed or planted at the front angles of any lots or parcels of land, in the first survey, intended to determine the width of such lots or parcels of land, provided such survey has been performed under the authority of the executive government of the late province of Quebec, or under the authority of the executive government of this province, shall be, and the same are hereby declared to be, the true and unalterable boundaries of all and every of such townships, concessions, and lots, respectively; and that every lot or parcel of land respectively, whether it shall upon admeasurement be found to contain the exact width, or more or less than what may be expressed in any letters patent, grant, or other instrument, in respect of such boundaries or lines mentioned and expressed, shall embrace the whole width contained between the front posts, monuments, or boundaries, planted or placed at the front angles of any such lot or parcel of land as aforesaid, in such original survey as aforesaid, and no more nor less, and every half or quarter of such lot or parcel, its proportion, any thing in such patent or instrument to the contrary thereof in any wise notwithstanding.

§ 3. The boundary line of each and every township, on that side from which the lots are numbered, shall be, and the same is hereby declared to be, the course or courses of the respective division or side lines throughout the several townships and concessions of this province respectively, and all surveyors shall, and are hereby required to, run all division or side lines, which they may be called upon by the owner or owners of any lands to survey, to correspond with and be parallel to the respective town lines, from whence the lots are numbered as aforesaid.

§ 4. Every licensed surveyor, when and as often as he is employed to run any side line or limit, between lots or lines required to go the same course of the side lines or limits between lots in the concession in which the land to be surveyed lies, shall, if it has not been done before, or if it has been done, but the course cannot at such time be truly ascertained, determine by a true meridian line, or some other infallible method, the true course of a straight line between the front and rear angles of such concession, on that boundary of the township from which the lots are numbered, and run such line or lines, as aforesaid, truly parallel to such course, which is hereby declared, and shall at all times be deemed and taken to be the true course of such

lines, in the several townships of this province. § 9. The front of each concession, lot, or parcel of land, shall be considered to be, and the same is hereby declared to be, that end or boundary of such concession, lot, or parcel of land, which is nearest to the boundary of the respective townships from which the several concessions thereof are numbered. § 10. In all cases when any letters patent of grant, or other instrument, has issued for several lots or parcels of land, in concessions adjoining each other, the side lines or limits between lots or parcels of land therein mentioned and expressed, shall commence at the front angles of every such lot or parcel of land respectively, and run agreeably to the courses of the respective townships, as hereinbefore enacted, and shall not continue on in a direct line through several concessions, unless such line or lines, when run truly parallel to such governing boundaries of such townships, as aforesaid, shall intersect the corresponding post or monument at front of such concession next in rear. § 11. In all cases when any licensed surveyor shall be employed to run any side line, or limit between lots, and the original post or monument from which such line should commence cannot be found, every such surveyor shall, in every such case, obtain the best evidence that the nature of the case will admit of, respecting such limit; but if such limit cannot in such manner be nearly ascertained, then such surveyor shall proceed to measure the true distance between the nearest undisputed posts, limits, or monuments, into such number of lots as the same contained in the original survey of such township, having due respect to any allowance for road or roads, common or commons, as were contained in such original survey, and such limit, so found, shall be taken to be, and the same is hereby declared to be, the true limit in every such case, if accurately obtained, any law or usage to the contrary thereof in any wise notwithstanding. § 12. If any action of ejectment shall be brought against any person or persons, who after these lines have been established by virtue of this act, shall be found, in consequence of unskilful surveyors, to have improved on land not his, her, or their own, it shall and may be lawful for the judge of assize, before whom such action is tried, to direct the jury to assess such damages for the defendant or defendants for any loss he, she, or they may sustain in consequence of any improvement made before such action is commenced, and also assess the value of the land to be recovered, and if a verdict shall be found for the plaintiff or plaintiffs, no writ of possession shall issue, until such plaintiff or plaintiffs have tendered or paid the amount of such damages, as aforesaid, or shall release the said land to the defendant, provided the said defendant shall pay or

tender to the plaintiff the value of the land so assessed, before the fourth day of the ensuing term.

\* By the 2 V. c. 17. § 1. after reciting the \*59 G. 3. c. 14. it is enacted, that in all cases in which the jury, before whom any action of ejectment shall be tried, shall assess damages for the defendant, as is provided for in the twelfth clause of the aforesaid act, for improvements made upon land not his own, in consequence of unskilful surveys; and when it shall be satisfactorily made to appear that the defendant does not contest the plaintiff's action for any other purpose than to obtain the value of the improvements made upon the land, previous to the alteration and establishing of the lines in the manner pointed out in the aforesaid act, it shall be lawful for the judge, before whom such action shall be tried, to certify such fact upon the record, and thereupon the defendant shall be entitled to the costs of the defence, in the same manner as if the plaintiff had been nonsuited or a verdict rendered for the defendant. § 2. It shall be incumbent on the defendant, at the time of entering into the consent rule, to give notice in writing to the lessor of the plaintiff, or his attorney, of the amount claimed for such improvements, on payment of which sum the defendant, or person in possession, will surrender the possession to such lessor, and that the said defendant does not intend to contest the title of the lessor; and without such notice shall, on the trial, be found to have been given as aforesaid, or if the jury shall assess for the defendant a less sum than that claimed in the notice, or shall find that the defendant has refused to surrender possession of the land claimed, after tender shall have been made of such amount claimed, then the judge shall not certify, and the defendant shall not be entitled to the costs of defence, but shall pay costs to the plaintiff. § 3. Upon the trial of any such cause, no evidence shall be required to be produced in proof of the title of the lessor of the plaintiff.

\* The 1 V. c. 19. commonly known as the "Boundary Line Commissioners' Act," has expired.

## BREAD.

\* By the 6 G. 4. c. 6. entitled, "An Act for the better regulating the assize and fixing the price of bread, in the several police towns throughout this province," it shall be lawful for such of her Majesty's justices of the peace, residing within the limits of any town in this province where a police is established, or residing within the limits of the division constituted for the time being for holding a court of requests in said town or towns,



to assemble on the first and third Saturday in each month, at the court-house in each town; and two of the said justices, then present, may assize and fix the price of bread; and if more than two present, the majority shall fix the same for each ensuing intermediate period; or if no justices shall be present, or no change be found necessary, then the last assize made shall continue in force until varied or changed by a new assize.—

§ 2. The clerk of the market is required to keep a just and fair statement in a book, of the daily price or prices of flour in the market, and exhibit the same to any two justices, and make oath of the correctness, if required. § 3. The aforesaid statement of the average price of flour for the fourteen days previous, shall be the guide for the said justices, to assize and fix the price of bread for the ensuing fourteen days, with due regard to the existing price of flour, fuel and labour. § 4. Within twenty-four hours after such assize made, the clerk of the market shall affix a notice thereof in some conspicuous place on the market-house. § 5. Penalty of ten shillings upon every baker who shall not conform to such assize, to be recovered before any two justices, upon the oath of one or more witnesses, to be levied by distress and sale. § 6. Fines to be applied for police purposes.

## BRIBERY.

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

§ 2. 4 *Bl. Com.* 139.

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

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

By a Statute of 2 Hen. 4. all judges, officers, and ministers of the King, convicted of bribery, shall forfeit treble the bribe, be punished at the King's will, and be discharged from the King's service for ever. 3 *Inst.* 146.

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

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

## BRIDGES.

By the 4 & 5 V. c. 26. § 13. if any person shall unlawfully and maliciously pull down or in any wise destroy any public bridge, or do any injury with intent and so as thereby to render such bridge or any part thereof dangerous or impassable, every such offender shall be guilty of felony, and being convicted thereof shall be imprisoned for any term not exceeding four years.

## BUGGERY.

BUGGERY is a detestable and abominable sin, not to be named, committed by carnal knowledge against the ordinance of the Creator and order of nature, by mankind with mankind, or with brute beast, or by womankind with brute beast. *3 Inst. 58.* And by stat. 25 H. 8. c. 6. buggery committed with mankind or beast, is made felony; which said statute making it felony generally, there may be accessories before and after, but those that are present, aiding and abetting, are all principals; and although none of the principals are admitted to their clergy, yet accessories before and after are not excluded from clergy. *1 H. H. 670.*

If the party buggered be within the age of discretion, (fourteen years) it is no felony in him, but in the agent only; but if buggery be committed upon a man of the age of discretion, it is felony in both of them. *3 Inst. 59. 1 H. H. 670.*

By the 4 & 5 V. c. 27. § 15. every person convicted of the abominable crime of buggery, either with mankind or with any animal, shall suffer death as a felon. § 18. The offence deemed completed by proof of penetration only.

By the 6 V. c. 5. § 5. where any person shall be convicted of any assault with intent to commit the above offence, the Court may sentence the offender to be imprisoned at hard labour in the Penitentiary for any term not exceeding *three* years, or to be imprisoned in any other prison or place not exceeding *two* years.

## BUILDINGS.

By Stat. 4 & 5 V. c. 25. § 36. if any person shall steal or rip, cut or break with intent to steal, any glass or wood work belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture whether made of metal or other material, respectively fixed in or to any building whatsoever, or any thing made of metal fixed in any land being private property, or for a fence to any dwelling-house, garden, or area, or in any square, street, or other place dedicated to public use or ornament, every such offender shall be guilty of felony, and being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny: and if fixed in any square, street, or other like place, it shall not be necessary to allege the same to be the property of any person.

## BURGLARY.

BURGLARY is a felony at common law, in breaking and entering the mansion-house of another in the *night*, with intent to commit some felony within the same, whether the felonious intent be executed or not.

By Stat. 12 Ann c. 7. if any person shall enter into the mansion-house of another by day or by night, without breaking the same, with an intent to commit felony, or being in such house shall commit any felony, and shall in the *night time* break the said house to get out, he shall be guilty of burglary.

And by the 4 & 5 V. c. 25. § 14. whosoever shall burglariously break and enter into any dwelling-house, and shall assault with *intent to murder* any person being therein, or shall stab, cut, wound, beat or strike any such person, shall be guilty of felony, and being convicted thereof shall suffer *death*. § 16. And if any person shall enter the dwelling-house of another with intent to commit felony, or being in such dwelling-house, shall commit any felony, and shall in either case break out of the said dwelling-house in the night time, he shall be deemed guilty of burglary.

Every entrance is not a breaking;—as, if the door stand open, and the thief enter—this is no breaking. So if the window be open, and the thief draw out some of the goods—this is not burglary, because there is no actual breaking. But if the thief break the glass of the window, and draw out the goods—this is burglary. 3 *Inst.* 64. And Lord Hale says, these acts amount to an actual breaking:—opening the casement, or breaking the

glass window; picking open the lock of the door, or putting back the lock; or the leaf of a window; or unlatching the door that is only latched. 1 *H. H.* 552. And so does the pushing open of folded doors. *Rex. v. Brown.* 2 *East. P. C.* 487. 2 *Russ.* 902. Pulling down the upper sash of a window. *Rex. v. Haines. Russ. & Ry.* 451. *S. C. nom. Rex. v. Harrison.* 1 *Chetw. Brom.* 497. Creeping down a chimney. *Crompt.* 32. *Dalt.* 253. 1 *Harc. c.* 38. § 6.

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

*Constructive breaking,* is where, in consequence of violence commenced or threatened, the owner of the house, (through fear, or in order to repel the violence) opens the door, and the thief then enters,—this amounts to burglary; for the opening of the door in this case, is as much imputable to the thief as if it had been done by his own hands. *Crompt.* 32 (a.) 1 *Hale.* 553. 2 *East. P. C.* 486. And so, if in consequence of any fraud or deceit, the owner is induced to open his door to the thieves—this will amount to breaking.—As where thieves came with a pretended hue and cry, and required a constable to go with them to apprehend the owner and search his house; and the owner, at the command of the constable, open the door, when the thieves bound the constable and robbed the house;—this was held to be burglary. 1 *Hale* 553. 3 *Inst.* 64. *Crompt.* 32 (b.) 4 *Bl. Com.* 226. And the like if a man go to a house under pretence of being authorised to make a distress, and by this means obtain admittance. *Guscoigne's case,* 1 *Leach,* 284. For in all these cases, the law will not endure to have its justice defrauded by such evasions. 1 *Harc. c.* 37. § 5. 4 *Bl. Com.* 227.

#### *What is an Entering.*

It is deemed an entry when the thief breaketh the house, and his body, or any part thereof—as his foot, or arm, is within any part of the house; or when he putteth a gun into a window which

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

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

*What is a Mansion or Dwelling-house.*

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

But where the owner of a dwelling-house lets off the shop to a tenant, who occupies it by means of a *different entrance* from that belonging to the dwelling-house, and carries on his business in it, but never sleeps there, it then becomes so severed from the rest of the house, as no longer to be a place where burglary can be committed; for it ceases to form parcel of the dwelling-house of the owner, being thus severed by lease as well as by the distinct mode of ingress and egress to it; and it does not become the dwelling-house of the tenant, when neither he nor any of his family sleep there. 1 *Hale*, 557. *Kel.* 83. 4 *Bl. Com.* 225. 2 *East. P. C.* 507. But if the tenant, or his servant, should usually, or often, sleep in the shop at night, it would then become the dwelling-house of the tenant. 1 *Hale*, 558.

There is no severance, however, where there is *any internal communication*, though there may be a separate entrance from without to the part let off; as where the communication was formed by means of a trap-door and a ladder, which were seldom used, but the trap-door was never fastened. Lord Ellenborough

said it could make no difference whether the communication was through a trap-door, or by a common stair-case. *Rex. v. Stockton*, 2 *Tawnton*, 339. 2 *Leach*, 1015. And when the owner of the house continues to sleep in it, no part of it then can be so severed, by being let off to a tenant or a lodger, as to become a separate mansion-house. *Rex. v. Rogers*, 1 *Leach*, 89. 2 *East. P. C.* 507. Unless, indeed, that which was one house originally comes to be divided completely into two separate tenements, and there is a distinct outer door to each, without any internal communication; in which case, they will then become separate houses. *Per Ld. M. Cowp.* 8. And now, by the 4 & 5 V. c. 25. § 18. no building, although within the same curtilage with the dwelling-house and occupied therewith, shall be deemed to be part of such dwelling-house for the purpose of burglary, or for any of the purposes in said act, unless there shall be a communication between such building and dwelling-house, either immediate or by means of a covered and inclosed passage leading from the one to the other. § 19. If any person shall break and enter any building and steal therein any chattel, money or valuable security, such building being within the curtilage of a dwelling-house and occupied therewith, but not being part thereof, every such offender, being convicted thereof, shall be liable to be imprisoned at hard labour in the provincial penitentiary for any term not exceeding fourteen years nor less than seven years, or be imprisoned in any other prison or place of confinement not exceeding two years. § 20. If any person shall break and enter any shop, warehouse or counting-house, and steal therein any chattel, money or valuable security, every such offender being convicted thereof, shall be liable to any of the punishments which the court may award as hereinbefore last mentioned. But if the owner of a house neither *inhabits* it himself, nor any of his family, it will not then become *his* dwelling-house, as applicable to the offence of burglary. Therefore, when a man purchases or rents a house with intention to reside in it, and moves some of his furniture into it, but neither he nor any of his family ever sleep there, and it is broken open in the night, the judges have determined that a breaking into a house of this description does not amount to burglary. *R. v. Lyons*, 1 *Leach*, 185. 2 *East. P. C.* 496. *R. v. Hallard*, 2 *East.* 498. 2 *Leach*, 701. (*note a.*) *R. v. Thompson*, 2 *Leach*, 771. 2 *East.* 498. *Contra* 1 *Haw. c.* 38. § 18. 1 *Kel.* 46. And this, even though the owner of the house has used it for his meals, and for all the purposes of his business. *Rex. v. Martin, Russ. & Ry.* 108. Or, though a person actually sleep in the house for the purpose of protecting it, if such person forms no part of the

domestic family of the owner,—as where the owner puts in a workman or other person, who is in no situation of servitude to him, for the purpose of taking care of his goods. *Rex. v. Fuller*, 2 *East. P. C.* 498. 1 *Leach*, 186. (*note b.*) *Rex. v. Harris*, 2 *Leach*, 701. 2 *East. P. C.* 498.

So if a servant is put into a warehouse to watch goods, this does not make it a dwelling-house. *Rex. v. Smith*, 2 *East. P. C.* 497.

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

#### *Of the time of committing the Offence.*

It must be *in the night*, and, by the 4 & 5 V. c. 25. § 16. in cases of burglary, the night shall be considered to commence at *nine* in the evening and to conclude at *six* the next morning.—It being moonlight will make no difference, for then many midnight burglaries would go unpunished; and the malignity of the offence, as Blackstone observes, does not indeed so properly arise from its being done in the dark, as at the dead of night, when all the creation, except beasts of prey, are at rest; when sleep has disarmed the owner, and rendered his castle defenceless. 4 *Bl. Com.* 224.

The breaking and entering need not be the *same night*; for if thieves break a hole in the house one night, with the intent to enter another night and commit a felony, and they accordingly do so, through the hole they made the night before—this seems to be burglary. 1 *Hale*, 551. 4 *Bl. Com.* 226.

#### *Of the Intent.*

The *intent* of the breaking and entering must be to commit a *felony*. Therefore, if the intention was only to commit a *trespass*, the offence will not be a burglary. Thus, an intention to *beat* a man in the house, will not be sufficient; for though killing or murder may be the consequence of beating, yet if the primary intention were not to kill, a breaking and entering, for the pur-

pose of beating, will not amount to burglary. 1 *Hale*, 561.—  
2 *East. P. C.* 509. And where a man broke into a house with  
intent to commit a rape—this was held to be burglary. *Rex. v.*  
*Gray*, 1 *Str.* 481.

By stat. 23 G. 3. c. 88. it is enacted, that if any person shall  
be apprehended having upon him any picklock, key, crow, jack-  
bit, or other implement, with an intent feloniously to break and  
enter into any dwelling-house, out-house, &c.; or shall have  
upon him any pistol, hanger, cutlass, bludgeon, or other offen-  
sive weapon, with intent feloniously to assault any person; or  
shall be found in or upon any dwelling-house, ware-house,  
coach-house, stable or out-house, or in any inclosed yard or  
garden, or area, belonging to any house, with an intent to steal,  
he shall be deemed a rogue and vagabond within the intent and  
meaning of the 17 G. 2. c. 5.

*Punishment.*

By the 4 & 5 V. c. 25. § 15. whosoever shall be convicted of  
the crime of burglary, shall be liable, at the discretion of the  
court, to be imprisoned at hard labour in the provincial peniten-  
tiary for the term of his natural life, or for any term not less  
than seven years, or to be imprisoned in any other prison or  
place of confinement for any term not exceeding two years.

*Warrant.*

Home District. } To the Constable of — in the said Home  
District.

Forasmuch as A. J. of — yeoman, hath this day made infor-  
mation and complaint upon oath, before me, J. P. Esquire, one  
of her Majesty's justices of the peace for the said district, that  
yesterday, in the night, the dwelling-house of him the said A.  
J. at — aforesaid, was feloniously and burglariously broken open,  
and one silver tankard, of the value of five pounds, of the goods  
and chattels of him the said A. J. feloniously and burglariously  
stolen, taken, and carried away from thence; and that he hath  
good cause to suspect that A. O. late of — in the township of  
— in the said district, labourer, the said felony and burglary did  
commit: These are, therefore, in her said Majesty's name to  
command you, that immediately upon sight hereof you do  
apprehend the said A. O. and bring him before me, to answer  
the premises, and to be further dealt with according to law.—  
Herein fail you not. Given under my hand and seal, the —  
day of —.



## BUTCHERS.

No person using the trade of a butcher, shall sell, offer or expose to sale, by himself or any other, any fat oxen, steers, runts, kine, heifers, calves, sheep, or lambs, alive, on pain of forfeiting double value; half to the king and half to him that will sue. 15. C. 2. c. 8.

If any butchers shall conspire not to sell their victuals but at certain prices, every such person shall forfeit for the first offence £10 to the king, and if not paid in six days, he shall suffer twenty days imprisonment, and shall only have bread and water for his sustenance; for the second offence £20 in like manner, or the pillory; and for the third offence £40 or pillory, and the loss of an ear, and to be taken as a man infamous and not to be credited in any matter of judgment, and the sessions or leet may determine the same. 2 & 3 Edw. 6. c. 15. The punishment of pillory is abolished by the 4 & 5 V. c. 24. § 31.

A butcher that selleth swine's flesh meazled, or flesh dead of the murrain, shall for the first time be grievously amerced; the second time suffer judgment of the pillory; the third time be imprisoned and make fine, and the fourth time forswear the town. Odinance for butchers. *Hav. stat. V. 1. p. 181.*

If any butcher shall kill or sell any victual on the Lord's day, he shall forfeit six shillings and eight-pence, one-third to the informer and two-thirds to the poor, on conviction before one justice, on his own view or confession, or oath of two witnesses, to be levied by the constable or churchwarden. 3 C. c. 1. No butcher shall put to sale any hide putrified or rotten, on pain of three shillings and four-pence for each offence. 1 J. c. 22. § 2. No butcher shall be a tanner or currier, on pain of six shillings and eight-pence a-day. 1 J. c. 22. §. 2. 25. If any raw-hide shall wilfully or negligently be gashed in the flaying thereof, or being gashed, be offered to sale by any butcher or other, the offender shall forfeit two shillings and six-pence for such hide, and one shilling for a calf skin; half to the poor and half to the informer. 9 An. c. 11. § 11.

## CALENDAR. OF PRISONERS.

By 3 Hen. 7. c. 3. The sheriff shall certify a list of the prisoners in his custody to the justices of gaol delivery, for the purpose of being calendared.

## CAPITAL PUNISHMENT.

\* By statute 3 W. 4. c. 4. the preamble of which recites "that it is fit that it should be plainly declared in the statutes of this province, for what crimes offenders shall be liable to be punished with *death*, and that it does not seem to be indispensable for the security and well being of society, that the punishment of death should be inflicted in any other cases than those hereinafter mentioned, it is therefore enacted that persons convicted of the following offences shall suffer death as felons, viz.—1. high treason; 2. murder; 3. petit treason; 4. rescuing persons convicted of murder or committed for murder; 5. rape; 6. carnal knowledge of a girl under the age of ten years; 7. sodomy; 8. robbery of the person; 9. robbing the mail; 10. burglary; 11. arson; 12. accessories before the fact to any capital offence; 13. rioters to the number of 12 or more remaining after proclamation to disperse pursuant to the 1 G. 1. c., or committing other offences mentioned in that act; 14. burning the king's naval stores in any dock-yard."

By the 4 & 5 V. c. 24. § 20. No person convicted of felony shall suffer death unless it be for some felony which was excluded from the benefit of Clergy, by the law in force in that part of this province in which the trial shall be before the commencement of this act, or which shall be made punishable with death by some act passed after that day. § 32. It shall not be necessary to make any report to the Governor of any convict under the sentence of death. § 33. If the Court upon the trial of any capital offence, shall be of opinion that under the particular circumstances of the case such offender is a proper subject for the Royal mercy, the Court may, instead of passing the sentence of death, order the same to be recorded—§ 34. which shall have the same effect as if sentence pronounced in open Court. § 35. When the Court shall be of opinion that the judgment of the law ought to be carried into effect, the Court shall order and direct execution to be done on such offender in the same manner as the Court was empowered to direct execution by the law as it stood before the passing of this act. § 36. This act not to affect the Royal prerogative.

And by the 4 & 5 V. c. 25. the following offences are made punishable with death, viz: § 6. Robbery with cutting, stabbing, or wounding. § 14. Burglary and assault with intent to murder, or stabbing, cutting, wounding, beating, or striking.

And by the 4 & 5 V. c. 26. § 7. setting fire to any ship or vessel with intent to murder, or endanger the life of any person. § 8. Exhibiting false lights with intent to bring any ship or ves-

sel into danger, or maliciously doing any thing to the immediate loss or destruction of any ship or vessel.

And by the 4 & 5 V. c. 27. § 9. administering poison or other destructive thing; stabbing, cutting, or wounding any person, or causing by any means whatsoever any bodily injury dangerous to life, with intent to commit murder. § 15. Buggery—§ 16. Rape—§ 17. Carnal knowledge of a girl under the age of ten years—are made capital offences punishable with *death*.

\* By the 7 W. 4. c. 6. § 3. The Governor may commute the sentence of death (except in cases of high treason or murder, and then only by express authority from the Crown,) for transportation for life or for term of years, to such place in his Majesty's dominions as may be assigned for the reception of convicts; or for banishment from this province for life or any term of years; or for solitary confinement or confinement with or without hard labour in any Penitentiary or House of Correction that may be appointed for such purpose, either during life or for any term of years. § 4. Imprisonment after sentence to be reckoned in the term of transportation.

## CARRIERS.

No Carrier with any horse or horses, nor waggonman, carman, or wainman, with their respective carriages, shall by themselves, or any other, travel on the Lord's day, on pain of twenty shillings, on conviction, in six months, before one justice or mayor, on view or confession, or oath of two witnesses, to be levied by the constable or churchwardens, by distress, to the use of the poor, and one shilling and three pence to the informer, at discretion of the justices. 3. C. c. 1. (See *post Lord's day*.)

It has been held, that a carrier embezzling goods which he has received to carry to a certain place, is not guilty of felony, because there was not a felonious taking, but is liable only to a civil action. 1 *Haw.* 89. 90. But if a carrier open a pack and take out part of the goods, with intent to steal it, he may be guilty of felony, in which case it may be said, not only that such possession of a part distinct from the whole, was gained by wrong, and not delivered by the owner, but also that it was obtained basely, fraudulently and clandestinely, in hopes to prevent its being discovered at all, or fixed upon any one when discovered. 1 *Haw.* 90. So if a carrier, after he has brought the goods to the place appointed, take them away again secretly, with intent to steal them, he is guilty of felony, because the possession which he received from the owner being determined, his second taking is in all respects the same as if he were a mere stranger.

1 *Haw.* 90. And if goods be delivered to a carrier, to be carried to a certain place, and he carries them to another place, and disposeth of them to his own use, this is felony, because this declareth that his intention originally was not to take the goods upon the agreement and contract of the party, but only with a design of stealing them. *Kelynge*, 82. Where goods are delivered to a carrier, and he is robbed of them, he shall be charged and answer for them, by reason of the hire; and generally, if a man delivers goods to a common carrier, to carry to a certain place, if he loses or damages them, an action *upon the case*, lies against him, for by the custom of the realm he ought to carry them safely. 1 *Bac. Ab.* 343. Where goods are stolen from a carrier, he may prefer an indictment against the felon, as for his own goods. *Kelynge*, 39.

## CATTLE.

By the 4 & 5 V. c. 25. § 29. If any person shall steal any horse, mare, gelding, colt or filly, or any bull, cow, ox, heifer, or calf, or any ram, ewe, sheep or lamb, or shall wilfully kill any of such cattle with intent to steal the carcase or skin, or any part of the cattle so killed, every such offender shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

By Stat. 4 & 5 V. c. 26. § 16. If any person shall unlawfully and maliciously kill, maim, or wound any cattle, every such offender shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

## CATTLE RUNNING AT LARGE.

\* THE 34 G. 3. c. 8.—\*43 G. 3. c. 10.—and the \*44 G. 3. c. 4. are repealed by the \*5 W. 4. c. 8. which contained amongst other things provisions for restraining cattle running at large. The latter Statute has been since repealed by the \*1 V. c. 21. which also contains provisions on this head as follows: §12. Township meetings to determine what description of horned cattle, horses, sheep, and other animals, shall be allowed to run at large;

or be restrained from so doing within their respective Townships for the year: and the fine or forfeiture upon the owner of any animals running at large contrary to such regulations.

See also *post* title "Pound-keepers."

\* By 2 G. 4. c. 11. § 1. so much of the \*43 G. 3. as relates to the towns of York, Niagara, Sandwich, Amherstburgh and Kingston, shall be repealed. § 2. Magistrates in quarter sessions for any district wherein a police in any town therein is established, may make and publish such prudential rules and regulations as they may deem expedient, for restraining swine running at large in any such town.

## CENSUS.

By Stat. 4 & 5 V. c. 42. § 1. so much of the 19. 20. and 21. sections of the \*5 W. 4. c. 8. and of any other act or law now in force as may be inconsistent with or repugnant to this act is repealed. § 2. A census of the whole province to be taken in the year 1842. § 3. The secretary of the province to cause printed copies of this act, with blank returns according to the schedule, to be transmitted to the warden of each municipal district, on or before the second Monday of January 1842, and on or before same day and month in every fifth year thereafter, equal to three times the number of the townships and parishes in each district wherein there shall be separate assessors, and to the mayor or chief magistrate of each city or town corporate three times as many of the said returns and copies as there shall be wards having separate assessors. § 4. The same to be distributed by the warden and the mayor or chief magistrate on or before the first day of February in each year in which a census shall be taken amongst the assessors. § 5. Assessors to demand and receive at every dwelling-house, or from the head of every family residing therein, or from any member of such family more than 21 years of age, an enumeration of the persons comprising such family, according to the schedule. Any such person refusing to give the assessor the information so demanded, or giving false information, shall forfeit and pay 50s. currency, to be sued for and recovered with costs in any court of competent jurisdiction by the clerk of the District Council for the benefit of the District fund, or by the city or town clerk, for the benefit of the funds of the Corporation. § 6. Assessor shall enter in two of the printed forms of returns received by them the particulars of the enumeration so made, in the form specified in the schedule, and return same sworn to before one justice of the peace for the district, city, or town corporate in which such census shall be taken:

one of the returns to be transmitted to the Governor by the warden, mayor, or chief magistrate, and the other retained among the public records of the District or Corporation. § 7. Certified copies thereof to be laid before both houses of Parliament at the next Session. § 8. Any assessor convicted upon indictment of neglecting to make such return, or making a false return, shall be subject to a penalty not exceeding £25, and liable to imprisonment in the common gaol or prison of the district, city, or town corporate in which such census ought to be taken, for a space not exceeding three calendar months: and for making such false return upon oath as aforesaid, shall be liable to the pains and penalties of perjury. § 9. Assessors to be paid for taking such census out of the district or corporate funds a sum equal to one-fourth of the sum which such assessors shall be entitled to receive for making the assessment for the same year. § 10. The words "parishes" and "townships" to include reported parishes and townships, and unions of parishes and townships, for which assessors may have been appointed. § 11. If more than one assessor for the same place, the warden, mayor, or chief magistrate to assign the locality for each assessor.

For Schedules, see the Act.

## CERTIORARI.

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

A certiorari lies in all judicial proceedings, in which a writ of error does not lie, and it is a consequence of all inferior jurisdictions erected by act of parliament, to have their proceedings returnable in the king's bench. *L. Raym.* 469, 580. And therefore a certiorari lies to justices of the peace even in such cases which they are empowered by statute, finally to hear and determine; and the superintendency of the court of king's bench is not taken away without express words. 2 *Haw.* 286. But it seems agreed that a certiorari should never be granted to remove an indictment after a conviction, unless for some special cause; as when the judge below is doubtful what judgment to

give. 2 *Haw.* 288. Also it seems a good objection against the granting a certiorari, that issue is joined in the court below and a *venire* awarded for the trial of it. 2 *Haw.* 288.

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

*How to be granted and allowed.*

1. On indictment or presentment: by statute 5 W. c. 11. and 8. & 9. W. c. 33. it is enacted "that in term time no writ of certiorari at the prosecution of any party indicted, shall be granted out of the king's bench to remove any indictment or presentment of trespass or misdemeanor before trial had from before the justices in sessions, unless such certiorari shall be awarded upon motion of counsel, and by rule of court made for the granting thereof. But in the vacation writs of certiorari may be granted by any justice of the king's bench whose name shall be endorsed on the writ, and also the name of the person at whose instance it is granted, and all the parties prosecuting such certiorari, shall before the allowance thereof, find two sufficient manucaptors who shall enter into a recognizance before a justice of the king's bench, (who shall indorse the same on the writ), or before a justice of the peace of the county or place, in the sum of £20, with condition at the return of the writ to appear and plead to the said indictment or presentment in the said court of king's bench, and at their own cost and charges to cause and procure the issue that shall be filed thereon, or any plea relating thereto, to be tried at the next assizes for the county wherein the indictment or presentment was found, after such certiorari shall be returned, or the next term, if in London, Westminster or Middlesex, unless the court shall appoint another time, and if so, then at such other time; and to give due notice of such trial to the prosecutor or his clerk in court, and also that the party prosecuting such writ of certiorari shall appear from day to day in the said court of king's bench, and not depart until he shall be discharged by the court,

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

*On a Conviction or Order.*

By the 13 G. 2. c. 18. no certiorari shall be granted to remove any conviction, judgment, order or other proceedings, before any justice of the peace, or quarter sessions, unless it be applied for *six calendar months* after such proceedings had or made, and unless it be duly proved upon oath, that the party suing for the same hath given six days notice thereof in writing, to the justice or justices, or two of them, (if so many there be) before whom such proceedings have been, to the end that such justices may shew cause, if they so think fit, against the issuing of the certiorari: and by 5 G. 2. c. 19. no such certiorari shall be allowed to remove any such judgment or order, unless the party prosecuting the certiorari, before the allowance thereof, enter into a recognizance with sufficient sureties, before a justice of the county or place, or before the justices at sessions, where such judgment or order shall have been given or made, or before a justice of the king's bench, in £50, with condition to prosecute the same at his own costs and charges, with effect, without wilful delay, and to pay the party in whose favor the judgment or order was made, within a month after the same shall be confirmed, his full costs, to be taxed according to the course of the court where such confirmation shall be; and if he shall not enter into such recognizance, or shall not perform the conditions, the justices may proceed and make such further order, for the benefit of the party for whom the judgment shall be given in such manner, as if no certiorari had been granted: the said recognizance to be certified, into the king's bench, and then filed with the certiorari, and order or judgment removed



thereby; and if the order or judgment shall be confirmed by the court, the person entitled to the costs for the recovery thereof, within ten days after demand made upon oath, of such demand and refusal of payment, shall have an attachment granted for the contempt, and the recognizance shall not be discharged till the costs are paid, and the order complied with.

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

*The effect of it.*

After a certiorari is allowed by the inferior courts, it makes all the subsequent proceedings on the record, that is removed by it, erroneous. 2 *Haw.* 293. But if a certiorari for the removal of an indictment before justices of the peace be not delivered before the jury be sworn for the trial of it, the justices may proceed. 2 *Haw.* 294. And the justices may set a fine, to complete their judgment, after a certiorari delivered. 4 *Ray.* 1515. A certiorari removes all things done between the *teste* and *return.* 4 *Ray.* 835. 1305.

*The return of it.*

Every return of a *certiorari* ought to be under seal. 2 *Haw.* 294. And although the *custos rotulorum* keep the records, yet must the justices to whom it is directed return the certiorari; and therefore, if it is directed to the justices of the peace, and the clerk of the peace, only, return it, nothing is thereby removed. 2 *Haw.* 294. The certiorari may be sometimes to remove and send up the record itself, and sometimes but only the tenor of the record (as the words therein be) and it must be obeyed accordingly. *Dalt. c.* 195. 2 *Haw.* 295.

If the person to whom a certiorari is directed, do make a false return, yet the court will not stay filing it on affidavit of its being false, except in public cases, as in commissioners of sewers, or for not repairing highways, or for some such special causes, because the remedy for a false return is either an action on the

case, at the suit of the party grieved, or an information, at the suit of the king. *Dalt. c. 195.* If the person to whom the certiorari is directed, do not make a return, then an *alias*, that is, a second writ; then a *pluries*, that is, a third writ, or *causam nobis significes* shall be awarded; and then an attachment.—*Crom. 116.*

The return of a certiorari may be thus:—

On the back of the writ indorse these words, or the like—  
“The execution of this writ appears in a schedule to the same writ annexed.” And that schedule may be thus, on a piece of parchment, by itself, and filed to the writ:

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

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

*Recognizance on Certiorari.*—(TOONE.)

Home District, } Be it remembered, that on the — day of — in  
to wit. } the year of the reign, &c. A. B. of —; C.  
D. of —; and E. F. of —, came before me, J. C. Esquire, one of the keepers of the peace, and justices of our lady the Queen in and for the Home District, and acknowledged to owe to our sovereign lady the Queen, the sum of £50, of lawful money of Canada, to be levied upon their goods and chattels, lands and tenements, to her Majesty’s use, upon condition, that if — shall prosecute with effect, without any wilful or affected delay, at his own proper costs and charges, a writ of certiorari, issued out of the court of our said lady the Queen, before the Queen herself, at Toronto, to remove into the said court all and singular the records of conviction, of whatever trespasses and contempts, against the form of the statute made and passed in the — year of her Majesty’s reign, entitled, “An Act,” &c. whereof the said — is convicted before me, J. C. Esquire, one of the keepers

of the peace and justices of our said lady the Queen, in and for the — district, and shall pay to the prosecutor, within one month next after the said record of conviction shall be confirmed in the said court, all his said full costs and charges, to be taxed according to the course of the said court; then this recognizance to be void, or else to remain in full force. Taken and acknowledged, the day and year first above said. J. C.

## CHAINS.

By Stat. 25 G. 2. c. 37. § 5. any judge may appoint the body of a criminal convicted of murder, to be hung in chains.

## CHALLENGE TO FIGHT.

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

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

*Indictment for sending a Challenge.* (ARCHBOLD.)

Home District, } The jurors for our lady the Queen, upon their  
to wit. } oath present, that J. S. late of the township  
of — in the county of — in the Home District, gentleman,  
being a person of a turbulent and quarrelsome temper and dis-

position, and contriving and intending not only to vex, injure and disquiet one J. N. and to do the said J. N. some grievous bodily harm, but also to provoke, instigate and excite the said J. N. to break the peace, and to fight a duel with and against him the said J. S. on the — day of — in the — year of the reign of our sovereign lady Victoria, at the township aforesaid, in the county and district aforesaid, wickedly, wilfully and maliciously did write, send and deliver, and cause and procure to be written, sent and delivered, unto him the said J. N. a certain letter, and paper writing, containing a challenge to fight a duel with and against him the said J. S. and which said letter and paper writing is as follows: (*here set out the letter, with such inuendoes as may be necessary,*) to the great damage, scandal and disgrace of the said J. N. in contempt of our lady the Queen and her laws, and against the peace of our lady the Queen, her crown and dignity.

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

## CHAMPERTY.

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

## CHANCE MEDLEY.

CHANCE MEDLEY is where homicide is committed by a man upon a sudden affray, in his own defence. 4 *Bl. Com.* 184.—The true criterion between *chance medley* and *manslaughter*, seems to be this,—where both parties are actually combatting at the

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

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

And now, by Stat. 4 & 5 V. c. 27. § 8. no punishment shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony.

## CHEATS.

*By the Common Law.*

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

On an indictment against the defendant, a miller, for changing corn delivered to him to be ground, and giving bad corn instead of it, it was moved to quash the same, because it was only a pri-

vate cheat, and not of a public nature. It was answered, that being a cheat in the way of trade, it concerned the public, and therefore was indictable, and the court unanimously agreed not to quash it. *T. 16. C. 2. K. and Wood. Sess. C. V. 1. 217.*

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

Where a person who was committed to gaol under an attachment for a contempt in a civil action, counterfeited a pretended discharge (as from his creditor) to the sheriff and gaoler, under which he obtained his release from gaol, it was held that this was a cheat and misdemeanor at common law, in thus effecting an interruption to public justice. *R. v. Fawcett, 2 East. P. C. 862. 952.* Public officers are also indictable for frauds committed in their public capacities; thus, where two persons enabled others to pass their accounts with the pay office, in such a way as to defraud the government, they were held to be indictable for the fraud. *R. v. Bambridge, Cit. 6 East. 136.* A surveyor of the highways may be indicted for converting to his own use gravel which had been dug at the expense of the inhabitants of the parish, and for employing, for his own private gain and emolument, the labourers and teams of the parishioners, which he ought to have employed in repairing the highways. *3 Clit. C. I. 666.* So also, any fraud which is practised on the public by means of *false weights*, or *measures*, or any *false token*, having the semblance of public authority, and purposely calculated for deceit, and by which the public may be imposed upon, without any imputation of folly or negligence, is indictable at common law. *2 East. P. C. 820.* As, where a person sells corn in a bushel, short of the statute measure, or puts something into the bushel to help to fill it up. *R. v. Pinckney, 2 East. P. C. 820.* There appears, however, to be this distinction—where a man sells by *false weights* or *measures*, it is an indictable offence, but if *without false weights* or *measures*, he sells merely a less quantity than he pretends to sell, he is not then indictable, but liable only in an action for the deceit. *R. v. Young, 3 T. R. 104. per Buller, J. R. v. Nicholson, Cit. 2 Burr. 1130. R. v. Driffield, say. 146.*

#### *By Statute.*

By Stat. 4 & 5 V. c. 25. § 45. if any person shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the dis-

cretion of the Court to be imprisoned at hard labour in the Provincial Penitentiary, for any term not exceeding fourteen years nor less than seven years, or imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the Court shall award: Provided always, that if upon the trial of any person indicted for such misdemeanor it shall be proved that he obtained the property in question in any such manner so as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanor, and no such indictment shall be removable by certiorari, and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

*Warrant to apprehend an Offender.* (BURN.)

Home District, } To the Constable of — in the said district.  
 to wit. } Whereas complaint hath been made unto us,  
 whose names and seals are hereunto set, two of her Majesty's  
 justices of the peace for the said district, upon the oaths of A.  
 I. of — yeoman, and B. I. of — yeoman, that on the — day of  
 — A. O. of — yeoman, did by a false privy token, [or counter-  
 feit letter] that is to say, by [here particularize the offence]  
 falsely and deceitfully obtain and get into his hands and possession  
 [here mention the things] from C. I. of — contrary to the  
 statute in that case made. These are therefore to command  
 you, upon sight hereof, forthwith to bring the said A. O. before  
 us at — to answer to the said complaint, and further to be dealt  
 with according to law. Given under our hands and seals the  
 — day of —.

CHILDREN.

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

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

*O. B.* 1784. *p.* 971. On the attainment of 14 years of age, the criminal actions of infants are subject to the same mode of construction as those of the rest of society; for the law presumes that the human mind has acquired at this period a complete sense of right and wrong. *Doct. & St. c.* 26. *Co. Lit.* 79. 171. 247. *Dalt.* 476. 505. 1 *Haw. c.* 1. (*note* 1.)

See post ORPHAN CHILDREN.

## CHILD STEALING.

By Stat. 4 & 5 V. c. 27. § 21. if any person shall maliciously, either by force or fraud, lead or take away, or decoy or entice away, or detain any child under the age of ten years, with intent to deprive the parent or parents, or any other person having the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong; or if any person shall, with any such intent as aforesaid, receive or harbour any such child, knowing the same to have been by force or fraud led, taken, decoyed, enticed away, or detained, as hereinbefore mentioned, every such offender, and every person counselling, aiding or abetting such offender, shall be guilty of felony, and being convicted thereof shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years: Provided that no person claiming to be the father of an illegitimate child, or to have any right to the possession of such child, shall be liable to be prosecuted by virtue hereof on account of his getting possession of such child, or taking such child out of the possession of the mother, or any other person having the lawful charge thereof.

## CHURCHWARDENS.

By Stat. \*33 G. 3. c. 2. § 7. it is enacted, that 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 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 churchwarden; and that such churchwardens, and their successors, duly appointed, shall be as a cor-



poration to represent the inhabitants of the township or parish, and as such may have a property of goods or chattels of the parish, and may sue or defend in all presentments, indictments or actions, for the inhabitants of said parish. § 7. A list of the persons so nominated shall, forthwith, be communicated to a magistrate of the division, who may swear the same into office.

*Form of the Oath.*

You, A. B. do promise and swear, that you will faithfully, diligently and justly, serve and perform the office and duties of churchwarden, for the parish (or township) of — according to the best of your abilities.—So help you God.

And every person having taken such oath shall be held to be lawfully appointed.

§ 9. A penalty of 40s. is imposed upon any person neglecting or refusing to signify his consent to enter upon such office, and to take the oath, within 7 days after such nomination; and any two justices may hold a special session for the purpose of naming others to serve the office, whose neglect or refusal to serve will be liable to the same penalty.

## CHURCH OF ENGLAND.

By the Imp. Stat. 31 G. 3. c. 31. § 36. His Majesty was empowered to make an allotment and appropriation of lands for the support of a Protestant Clergy, equal to *one-seventh* of the lands comprised in any grant or patent. § 38. 39. Also to authorize the Lieutenant Governor with the advice of the Executive Council, to erect parsonages and endow them; and the Lieutenant Governor was authorized to present incumbents, who are to enjoy the same in like manner as incumbents in England. § 40. Every such presentation shall be subject to the spiritual and ecclesiastical jurisdiction of the Bishop of *Nova Scotia*. § 41. 42. The provisions respecting the allotment of lands for the support of a Protestant Clergy, to be subject to be varied or repealed by any express provisions for that purpose contained in any act or acts of the provincial Legislature and assented to by his Majesty, and laid before the British Parliament previous to receiving his Majesty's assent. Since the passing of this act several Rectories have been established and endowed in various parts of Upper Canada, over which the Hon. and Rt. Reverend Doctor John Strachan, Lord Bishop of Toronto, now presides as the Diocesan.

By the 4 & 5 V. c. 74. § 1. enacted that the soil and freehold of all churches now or hereafter to be erected, and of the churchyards and burying-grounds attached thereto, shall be in the parson or incumbent for the time being, and that the possession thereof shall be in the incumbent and churchwardens. § 2. Pew-holders and holders of sittings to form a vestry. § 3. Vestry meeting to be holden on *Monday* in *Easter* week yearly, after due notice thereof given during divine service on *Easter Sunday*, for the purpose of appointing churchwardens for the ensuing year: one to be appointed by the incumbent, and the other by the vestry. In case the incumbent shall neglect to nominate one, then both to be elected in the manner aforesaid: and in case the vestry shall neglect to elect a churchwarden, then both shall be nominated by the incumbent. Provided, that if from any cause a vestry meeting shall not take place at the time aforesaid, churchwardens may be appointed at any subsequent vestry meeting: in case of death, change of residence to twenty miles or more from the church of either of the churchwardens, a vestry meeting shall be called for the election of another. § 4. None to be eligible except members of the Church of England of full age, and members of the vestry. § 5. To hold office for the current year, and until the appointment of successors. § 6. Churchwardens to be a corporation to represent the interest of such Church and of the members thereof, and may sue and be sued, &c and prosecute indictments, presentments, and other criminal proceedings in respect of such churches, churchyards, and things appertaining thereto, and may, in conjunction with the rector or incumbent, execute faculties or conveyances, or other proper assurances in the law to pew-holders by purchase or lease, and grant certificates for sittings at the expence of the applicants, and to sell, lease, and rent pews and sittings upon such terms as may be settled at vestry meetings to be holden for that purpose. § 7. In case of absolute purchase, pews to be construed as freehold of inheritance not subject to forfeiture by change of residence or by discontinuing to frequent the same, and may be sold and assigned to any purchaser being a member of the Church. § 8. Pew-holders to have the right of action against any person injuring or disturbing. § 9. Churchwardens within fourteen days after the appointment of successors to deliver an account to them in writing, in a book or books to be kept for that purpose and signed by them, of all monies received by them and sums due, and also of all goods, chattels, and other property of such church or parish in their hands, and of all monies paid, and of all other things concerning their said office: and shall pay over and deliver all such remaining in their hands

unto their successors, which account shall be verified by oath before one or more Justices: and said books shall be carefully kept by the churchwardens, and may be inspected by any member of such vestry on payment of *one shilling*: and in case churchwardens shall make default in yielding such account, or in delivering over such money or goods, their successors may proceed against them at law or in *equity*: and in case of the re-appointment of churchwardens, such account shall be made and rendered at an adjourned vestry meeting *fourteen* days after such re-appointment. § 10. Incumbent or churchwardens may call a vestry meeting at any time, upon application in writing of six members of such vestry: and in case of refusal, then *one week* after such demand any *six members* of such vestry may call same by notice to be affixed on the outer church door (or doors) at least one week previous. § 11. The Rector or Incumbent to be chairman at all vestry meetings if present, and if absent such person as the majority shall name: Vestry clerk to be Secretary: proceedings to be entered in a book and kept by the churchwardens. § 12. Pew rents to be regulated at vestry meetings. § 13. The organist, vestry clerk, sexton, and other subordinate servants of the Church to be appointed by the churchwardens. § 14. Fees on marriages, baptisms, and other services, and burials, to be regulated by the ordinary, or in case of no ordinary, by the Bishop. § 15. Vestries to make by-laws for regulating their proceedings and management of the church property. § 16. Grants of property for the use of the Church to be valid, notwithstanding the statutes of *mortmain*. § 17. Church endowments may be made upon the Bishop's license, and the founder to have the right of presentation in perpetuity. § 18. No spiritual jurisdiction to be conferred by this act.

## CLERGY.

By Stat. 4 & 5 V. c. 27. § 23. And be it enacted that if any person shall arrest any Clergyman or minister of the Gospel upon any civil process while he shall be performing divine service, or shall, with the knowledge of such person, be going to perform the same, or returning from the performance thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall suffer such punishment by fine or imprisonment, or by both, as the Court shall award.

See also title "Punishment," § 36.

## CLERK OF THE PEACE.

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

The clerk of the peace is appointed by the Lieutenant Governor by commission under the great seal of the province, and holds his office *quamdiu se bene gesserit*. He may also execute his office by deputy. *37 H. S. c. 1.*

By Stat. 1 W. & M. c. 21. § 6. if he shall misdemean himself in office, and a complaint in writing be exhibited against him to the justices in sessions, the justices may, on examination and due proof thereof, suspend him from his office; and before entering upon the execution of his office, must take the following oath, besides the oaths of allegiance, supremacy and abjuration. § 8.

I A. B. do swear, that I have not, nor will pay any sum or sums of money, or other reward whatsoever, nor give any bond or other assurance, to pay any money, fee or profit, directly or indirectly, to any persons whomsoever, for such nomination and appointment. So help me God.

*Duties of his Office.* (DICKENSON.)

The Clerk of the peace, by himself, or his sufficient deputy, must be in constant attendance on the court of quarter sessions. He gives notice of its being holden or adjourned; issues its processes; records its proceedings, and does all the ministerial acts necessary to give effect to its decisions. It is his duty when prosecutors do not choose to seek professional assistance, to draw bills of indictment. In the actual course of the sessions it is his duty to read the acts directed to be read in sessions; to call the jurors and make known their defaults and excuses to the courts; to call the parties under recognizance, whether to prosecute, plead or give evidence; to present the bills to, and receive them from the grand jury; to arraign prisoners; to receive and record verdicts; to administer all oaths, and make true entries of all proceedings. By an ancient statute, he is bound to certify to the court of king's bench, the names of such as shall be out-

lawed, attainted, or convicted of felony; and if he shall discharge or conceal any fine or forfeiture, unless by rule of court, he is liable to forfeit treble value, half to the king and half to him that shall sue, to lose his office, and be incapacitated ever to hold any office connected with the revenue. 22. 23. Car. 2. c. 22. § 9. Neither he, nor his deputy, may act as solicitor, attorney or agent, or sue out any process at any general quarter sessions, where he shall execute the office of clerk of the peace, or deputy, on pain of £50. 22 G. 2. c. 46. § 4.

*His duties also by Provincial Statutes.*

To register recognizances of inn-keepers, and to make a return to the quarter sessions yearly. \*34 G. 3. c. 12. § 6.; and to cause the names of persons under recognizance to be affixed in two public places in the district. *Ib.* To transmit quarterly to the inspector general, a statement of the rate of duties for licenses, under the order of sessions. \*59 G. 3. c. 2. § 7. To return to the lieutenant governor's office, certified copies of returns of population, as given in by the town clerks. \*60 G. 3. c. 2. § 3. \*4 G. 4. c. 8. § 7. To receive the assessment lists from the assessors, and lay the same before the quarter sessions. \*59 G. 3. c. 7. § 7. To transmit to the Lieutenant Governor, before the end of January in each year, an aggregate account of all property assessed. *Ib.* § 17. To make out writs to the sheriff for levying the arrears of assessments, by the sale of a portion of the lands on which rates are charged, if no distress can be found thereon. \*6 G. 4. c. 7. § 7.; such writs to be returnable at the third quarter sessions ensuing the issuing thereof. § 8. To give notice, within eight days, to persons chosen parish and town officers by quarter sessions, when no town meetings held, to take the oath of office within eight days. \*46 G. 3. c. 5. § 3. The constable being bound to serve such notice, when required to do so by the clerk of the peace. § 4. To grant certificates *gratis* from the records of any conviction or pardon granted. \*40 G. 3. c. 1. § 6. To deliver to the sheriff annually, a list of jurors duly classed. \*34 G. 3. c. 1. § 1. To read the \*45 G. 3. c. 2. (heir and devisee act) at every quarter sessions. § 14. To certify claims of heirs and devisees. § 8. To make out a list of land claims every three months, and affix it publicly in the court-house. \*48 G. 3. c. 10. § 6. To transmit to the sheriff, annually, before the 15th July, a list of persons assessed for £200 and upwards. \*48 G. 3. c. 13. § 3. To record roads that have passed at quarter sessions. \*50 G. 3. c. 1. § 1. To transmit to the inspector general, on or before the 1st May and 20th Feb-

ruary, annually, lists of all licenses issued. \* 56 G. 3. c. 3. § 5. To make an annual abstract from the assessment rolls of the number of distilleries, for the inspector of the district. \* 3 V. c. 19. §. 10.

The clerk of the peace should also make a return to the crown officers, of all forfeited recognizances, in order that the parties in default may be prosecuted thereon. He is *virtually* also the *custos rotulorum*, or keeper of the records of the district.

*Sessions Fees due to the Clerk of the Peace, and to be paid out of the District Funds.* \* 47 G. 3. c. 11.

	£	s.	d.
Drawing the precept, and attending commissioners to sign the same, and transmitting it to the sheriff...	1	0	0
Attending each quarter sessions.....	1	10	0
Making up the records of each sessions.....	2	10	0
Notice of every appointment.....	0	1	0
List of jurors, every 100 names.....	0	2	6
Making up estreats of each session, and transmitting same to the inspector general.....	0	5	0

*To be paid by the parties.*

Every recognizance for the peace or good behaviour	0	5	0
For discharging the same.....	0	2	6
Subpœna .....	0	2	6
Bench warrant.....	0	5	0
Drawing indictment.....	0	10	0
Allowance of certiorari.....	0	5	0

§ 2. This act not to deprive the clerk of the peace of such other fees as are allowed by act of parliament, for other services.

*Other Fees to be taken by the Clerk of the Peace.*

	£	s.	d.
On each assessment, *59 G. 3. c. 7. § 7.....	1	10	0
For aggregate account of assessments, transmitted to Lieutenant Governor, *59 G. 3. c. 7. § 17.....	1	10	0
For each writ for levying rates in arrear, by sale of lands, *6 G. 4. c. 7. § 25.....	0	10	0
For each certificate of Dower, *37 G. 3. c. 7. § 2. *50 G. 3. c. 10. § 2.....	0	5	0

	£	s.	d.
For each certificate of alienation of real estate, by femmes covert, *2 G. 4. c. 14. § 2.....	0	5	0
For certificates to ministers of Church of Scotland, to authorise their marrying, *38 G. 3. c. 4. § 2.....	0	5	0
For certifying notices under the heir and devisee act, *45 G. 3. c. 2. ....	0	2	6
For transmitting lists of licenses to inspector general, on the 1st May and 20th February, annually, *56 G. 3. c. 3. § 5. for each list.....	1	10	0

*Form of appointment of a Deputy.*

I, G. G. clerk of the peace in and for the Home District, do hereby make, substitute and appoint A. G. of — in the said district, gentleman, my true and lawful deputy, in the office of clerk of the peace for the said district, so long as I shall hold the same, and during the continuance of my will and pleasure. Witness my hand and seal, this — day of — 18 —.

## COIN.

By the 4 & 5 V. c. 17. § 1. no copper or brass coin, or token of any description, except the lawful copper coin of the United Kingdom of Great Britain and Ireland, shall be imported into this province; nor shall any be manufactured therein, except under the authority of the governor to some person or persons, body politic or corporate, to import or manufacture the same.— § 2. No such permission to be granted, unless such coin or tokens be stamped with the nominal value thereof and with the name of the issuers, and such coins shall be payable or redeemable on demand, by such issuers, at the nominal value thereof, in lawful current coin. § 3. Coins or tokens imported or manufactured contrary to this act shall be forfeited to her Majesty, and the manufacturer or importer incur a penalty not exceeding £5 currency for every pound troy weight thereof; and it shall be lawful for any two or more justices of the peace, on the oath of any credible person, that any such coin or tokens have been so unlawfully manufactured or imported as aforesaid, to cause the same to be seized and detained, and to summon the party in possession of the same to appear before *him*, and if it shall appear to *his* satisfaction, on the oath of any credible witness, other than the informer, that such coin or tokens have been manufac-

tured or imported in contravention of this act, such justices shall declare the same forfeited, and shall place the same in safe keeping, to await the disposal of the Governor, for the use of the province, and if it shall appear to the satisfaction of such justices, that the possessor of such coin or tokens knew the same to have been so illegally manufactured or imported, *he* may condemn such person or persons to pay the penalty aforesaid, with costs, and may commit him, her, or them, or any of them, to the common gaol of the district, for a period not exceeding two months, until paid. § 4. If it shall appear to the satisfaction of such justices, that the possessors were not aware of the same having been illegally manufactured or imported, such penalty may be recovered by any person from the owners, who shall sue for the same in any court of competent jurisdiction, on the oath of one credible witness, other than the person so suing.— § 5. Officers of her Majesty's customs may seize any coin or tokens imported, or attempted to be imported contrary to this act, and to detain the same as forfeited, to await the disposal of the Governor, for the use of the province. § 7. After the expiration of thirty days from this act, no person shall utter, tender, or offer in payment, any copper or brass coin, other than the lawful coin of the United Kingdom aforesaid, or the tokens of the chartered banks, or the *banque du peuple*, at the city of Montreal, heretofore imported or manufactured under the authority of the executive, or by virtue of the ordinances of Lower Canada, or American cents, or such coin or tokens as may have been lawfully imported into or manufactured in this province, according to the provisions of this act, under a penalty of the forfeiture of double the nominal value thereof, to be recovered with costs in a summary manner, on the oath of any one credible witness, other than the informer, before any justice, who may, if penalty and costs be not forthwith paid, commit the offender to the common gaol of the district, for a time not exceeding eight days, or until paid. § 8. One moiety of the penalties imposed by this act (but not the coins or tokens) shall go to the informer, and the other moiety to her Majesty, for the use of the province. § 11. Certain ordinances in Lower Canada repealed, as soon as this act shall come into force.

By the 4 & 5 V. c. 93. § 1. the \*36 G. 3. c. 2. the \*49 G. 3. c. 8. the \*7 G. 4. c. 4. the \*11 G. 4. c. 6. the \*6 W. 4. c. 27. the \*3 V. c. —. and all other acts relating to the currency, or to the amount thereof as a legal tender, are repealed. § 2. The sterling to be equal to £1 4s. 4d. currency. § 3. This act not to affect any former contract or agreement.



By the subsequent clauses the following value is fixed on foreign coin as a legal tender, viz.:—

	Currency.		
	£	s.	d.
§ 4. The United States eagle, coined before the 1st July, 1834, and weighing 11 dwts. 6. g. troy...	2	13	4
§ 4. The United States eagle, coined since and before 1841 .....	2	10	0
<p>§ 5. The gold coins of Great Britain and Ireland, or of the United States, coined before the 1st July, 1834, being multiples or divisions of those before mentioned, and of proportionate weight, shall for proportionate sums pass current, and be a legal tender to any amount by tale, so long as such coins shall not want more than two grains of the weight assigned, deducting one halfpenny currency for each quarter of a grain any such coin shall want of such weight: Provided, that in any one payment above £50, the payer may pay, or the receiver may insist on receiving, said British gold coins, or gold coins of the United States coined before the 1st July, 1834, by weight, at the rate of £4 14s. 10d. currency per ounce troy, and in like manner any sums tendered or to be received in the gold coin of the United States, coined since said day, may be weighed in bulk, and be a legal tender at the rate of £4 13s. currency per ounce troy, when offered in sums of not less than £50 currency.</p>			
§ 6. Forty franc piece (French gold coin) coined before the passing of this act, weighed in bulk, in sums of not less than £50 currency, per ounce troy .....	4	13	1
The old doubloon of Spain, or quadruple pistole, and the Mexican and Chilian doubloon, coined before this act, weighed in bulk, in sums of not less than £50 currency, per ounce troy .....	4	9	7
Gold coins of La Plata and of Columbia, coined before this act, weighed in bulk, in sums of not less than £50 currency, per ounce troy.....	4	9	5
Gold coins of Portugal and of Brazil, coined before this act, weighed in bulk, in sums of not less than £50 currency, per ounce troy .....	4	14	6
§ 7. The milled dollar of Spain, the United States dollar, and of the States of Peru, Chili, Central America, and South America, and of Mexico,			

Currency.

£ s. d.

coined before 1841, and not weighing less than 17 dwts. 4 gr. troy, each .....	0	5	1
The half dollar of same, and of the proportionate weight, each .....	0	2	6½
The quarter dollar.....	0	1	3
The eighth.....	0	0	7½
The sixteenth.....	0	0	3½
§ 8. The five franc silver piece of France, coined before the passing of this act, weighing not less than 16 dwts. each.....	0	4	8

*British Coins.*

British crown.....	0	6	1
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§ 10. All other divisions of the silver coin of the United Kingdom of Great Britain and Ireland, lawfully current therein, of proportionate weight, shall for proportionate sums pass current, and be a legal tender to the amount of £2 10s. currency, and no more. The holder of bank notes and other securities, exceeding £5, not liable to receive more than that sum (in small coin) if presented at one time. § 11. Copper pennies of the United Kingdom to pass for one penny currency, and the halves and quarters in proportion, such copper coin to be a legal tender for *one shilling* currency and no more. § 12. If any person shall colour, gild, or case over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin of coarse gold or of coarse silver, or of base metal resembling any coin made or declared to be current by this act, or if any person or persons shall bring and import, or cause to be brought and imported into this province, any forged, false or counterfeit gold, silver or copper coin, like to any of the gold, silver or copper coin made or declared to be lawfully current in this act, knowing the same to be false, forged or counterfeit, or any coin of coarse gold, or of coarse silver, or of base metal, coloured, gilded or cased over with gold or silver, or with any wash or materials producing the colour of gold or silver, and resembling any such coin, or any piece of gilded silver, resembling any such coin, knowing the same; or if any person shall utter or tender in payment to any person or persons (as being any of the gold, silver or copper coins hereby made and declared to be current money) any false or counterfeit, counterfeited to any of the gold, silver or copper coins made and declared to be current

by this act, as hereinbefore specified, or to any of the higher or lower denominations thereof, knowing the same to be false or counterfeit, such person shall be guilty of a misdemeanor, and on conviction, shall be liable to be imprisoned and kept at hard labour in the penitentiary, in the township of Kingston, for not more than four years; and for a second offence, shall be deemed guilty of felony, and punished accordingly. § 13. If any person shall form, make, cut, sink, stamp, engrave, repair or mend, or shall assist therein, or shall have in his or her possession (except for some lawful purpose) any die, plate, press, tool or instrument, paper, metal or material of any kind, and constructed, devised, adapted or designed for counterfeiting or imitating any coin lawfully current in this province under the authority of this act, or any bank note, bill, or note or writing purporting to be a bank note (whether of any chartered bank or otherwise, and whether the bank, whose note shall be intended to be counterfeited or imitated, be or be not established within this province) in circulation in this province, or in any one of the United States of America, adjoining this province, such person shall be guilty of a misdemeanor, and punished accordingly; and the proof that such implements were made or were in the possession of such person for some lawful purpose shall lie upon the defendant. § 14. One justice, on complaint made before him, upon oath of one credible person, that there is just cause to suspect that any person has been concerned in making, counterfeiting or imitating any such coin, bank note, bill, note or writing as aforesaid, may, by warrant under his hand, cause the dwelling-house, room, work-shop, out-house or other buildings, yard, garden, ground or other place belonging to such suspected person, to be searched for any such counterfeit coin, bank notes, bills, notes or writings, and if any such, or any such die, plate, press, tool or instrument, paper, metal or material as aforesaid, shall be found in the possession or custody of any person or persons whomsoever, not having the same for some lawful purpose, any person or persons discovering the same may seize and forthwith carry the same before a justice having jurisdiction within the locality in which the same shall be seized, who shall cause the same to be secured and produced in evidence against any person who shall or may be prosecuted for any such offence as aforesaid, in any court of competent jurisdiction, and the same, after being so produced in evidence, shall, by order of the court, be defaced or destroyed, or disposed of as the court shall direct. § 15. Any person to whom any pretended gold, silver, or copper coin, shall be tendered in payment, of a suspicious appearance, may cut or break such coin, and if counterfeit the

person who tendered it shall bear the loss, otherwise the person who shall have cut or broken it shall receive it for a sum proportionate to its weight; and if any question shall arise whether such coin be counterfeit, one justice may determine; and if he entertain any doubt, may summon three skilful persons, the decision of a majority of whom shall be final. § 16. Counterfeit coin produced in court, the court shall order the same to be cut in pieces in open court, or in the presence of a justice, and then delivered to the lawful owner.

*Commitment for uttering Counterfeit Coin. (TOONE.)*

J. C. Esq. one of the Justices of our lady the Queen assigned to keep the peace within the *Home* district, to the constable of — in the said district, and to the keeper of the common gaol at — in the said district.

Home District, } These are to command you, the said constable,  
to wit. } in her Majesty's name, forthwith to convey  
and deliver into the custody of the said keeper of the said common gaol, the body of E. F. charged this day upon the oath of A. B. before me the said justice with having on the — day of — at — in the said district, unlawfully and deceitfully uttered and paid to him the said A. B. one piece of false money, made and counterfeited to the likeness and similitude of a British crown, of the lawful and current money of this province; the said E. F. then and there knowing the said piece of money to have been false and counterfeit; and you, the said keeper, are hereby required to receive the said E. F. into your custody, in the said common gaol, and him there safely keep until he shall be from thence discharged by due course of law. Given under my hand and seal, &c. J. C.

## COLLECTOR OF RATES.

By the \*1 V. c. 21. § 5. one collector for each township shall be chosen at the annual township meeting; § 17. who shall apply to the clerk of the peace for a certified copy of the assessment roll, having first executed and delivered to the treasurer of the district the bond (with securities) required by the act; the same to be executed, and assessment roll taken up, on or before the quarter sessions next after the first day of July in each year. § 18. To pay over the amount and settle his accounts with the treasurer on or before the third Tuesday in December

in each year, and may retain the following *per centage* for his services on the amount *collected* :

	£	s.
If the assessment of the township does not amount to £ 50...	8	0
If above £ 50 and under.....	100	7 10
If above 100 and under.....	150	7 5
If above 150 and under.....	200	7 0
If above 200 and under.....	250	6 10
And for all sums over.....	250	5 0

§ 19. Rates to be recovered from the owner of any property in case of the tenant leaving, provided the same be demanded 14 days before the second Monday in December, otherwise the collector shall be liable. § 46. In case of neglect to pay rates 14 days after demand, the collector upon oath before one magistrate of such demand and refusal, shall be entitled to demand an execution of the amount of such rates: and upon receipt thereof may levy the same by distress and sale, rendering the overplus after deducting the rates and charges of distress and sale.

See further on this subject title "Township Officers."

*Information of the Collector to ground a Warrant of Distress for levying a Rate.*

Home District. The information and complaint of A. B. of the township of — in the home district, collector, taken on oath, this — day of — 18—, before me D. F. Esq. one of her Majesty's justices of the peace for the said district. The said informant saith, that A. O. of the township of — in the said district, yeoman, is duly rated in the assessment roll of the said township, for the year — (a certified copy whereof is now produced) at the sum of — and that he, this informant, did on the — day of — last, duly demand of the said A. O. the payment of the said rate, but that the said A. O. did not then pay the same, nor hath he at any time since paid the said rate, or any part thereof, to this informant, but that the same remains wholly in arrear and unpaid, and therefore this informant prayeth a warrant to levy the same, pursuant to the statute in such case made and provided.

Sworn before me.

*Warrant of Distress.*

Home District, } To A. B. collector of the township of — in the  
to wit. } Home District.

Whereas complaint in writing, hath this day been made and exhibited to me D. F. Esq. one of her Majesty's justices of the peace for the said district, by and upon the oath of A. B. col-

lector of the said township, that A. O. of the said township, yeoman, having been duly rated, at the sum of £— in the assessment roll of the said township, for the year — a certified copy whereof hath been exhibited and shewn to me the said justice, hath for the space of fourteen days and upwards, after demand thereof made by the said collector, neglected and refused to pay the said rate, and that the same is now wholly in arrear and unpaid. These are therefore to authorise and command you, forthwith to make distress of the goods and chattels of the said A. O. and if within the space of — (*not less than four nor more than eight days*; see 27 G. 2. c. 20.) days after the making of such distress, the said sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do retain the sum of £—, in satisfaction of the said rate, together with the reasonable charges of distress and sale, rendering the overplus, on demand, unto the said A. O. Given under my hand and seal the — day of — in the — year of the reign of our sovereign lady Victoria, and in the year of our Lord 184—.

## COMMITMENT.

THERE is no doubt but that persons apprehended for offences which are notailable, and also, all persons who neglect to offer bail for offences which areailable, must be committed. 2 *Haw.* 116. And wheresoever a justice is impowered by any statute to bind a person over, or to cause him to do a certain thing, and such person, being in his presence, shall refuse to be bound, or to do such thing, the justice may commit him to the gaol, there to remain, till he shall comply. 2 *Haw.* 116. If a prisoner be brought before a justice, expressly charged with felony upon oath, the justice cannot discharge him, but must bail or commit him. 2 *H. H.* 121. But if he be charged with suspicion of felony only, yet if there be no felony at all proved to be committed, or if the fact charged as felony be in truth no felony in point of law, the justice may discharge him; but if a man be killed by another, though it may be misadventure, or self defence (which is not properly felony), or in making an assault upon a minister of justice in execution of his office (which is not at all felony), yet the justice ought not to discharge him, for he must undergo his trial for it, and therefore he must be committed. 2 *H. H.* 121.

*See also further on this subject, title "Bail." (Ante)*

A married woman may be committed, who is a material witness upon any charge of felony, if she refuses to find sureties for her appearance at the sessions. *Bennett v. Watson.* 3 M. & S. 1. And so with regard to witnesses generally; if they refuse to be bound over to appear on the prosecution, they may be committed, and minors or infants under 21 years of age, as well as married women, are liable to find sureties. A justice of the peace in England may commit a person to prison in England, for an offence committed in Ireland, in order that the offender may be sent over and tried there. *R. v. Kimberley.* Str. 848. and so upon the same principle a justice of the peace in Canada may commit to gaol in this province, any person charged with felony committed in England, Scotland, or Ireland.

Where contemptuous and libellous words are spoken of a justice of the peace in the execution of his office, and in his presence, it seems that he may commit the party for a contempt. *R. v. Ravel.* 2. Salk. 240. *Mayhew v. Locke.* 7. Tawnton. 63.

By stat. 5 H. 4. c. 10. all felons shall be committed to the common gaol, and not elsewhere. But by stat. 6 G. c. 19, vagrants and other criminals, offenders, and persons charged with small offences, may for such offences, or for want of sureties, be committed either to the common gaol, or house of correction, as the justices may think proper.

If a man commit felony in one county, and be arrested for the same in another county, he may be committed to gaol in that county where he is taken. *Dalt. c. 170.* and if he escape and is taken on fresh suit in another county, he may be carried back to the county where he was first taken. *Dalt. c. 170.* also by stat. 24 G. 2. c. 55, if a person is apprehended upon a warrant, indorsed in another county for an offence notailable, or if he shall not there find bail, he shall be carried back into the first county, and be committed (or ifailable, bailed) by the justices in such first county.

#### *Form of the Commitment.*

It must be in writing either in the name of the king, and only tested by the person who makes it, or it may be by such person in his own name, expressing his office, or authority, and must be directed to the gaoler or keeper of the prison. 2 *Haw.* 19. It should contain the name and surname of the party committed, if known, if not known, then it may be sufficient to describe the person by his age, stature, complexion, colour of his hair, and the like, and to add that he refuseth to tell his name. 1 *H. H.* 577. It should set forth that the party is

charged upon oath. 2 *Haw.* 120. It ought to contain the cause as for treason, or felony, or suspicion thereof; otherwise the prisoner would not only be entitled to his discharge, under the *habeas corpus* act, but if no cause be expressed, and the prisoner escape, neither himself nor the gaoler would be punishable for the escape; whereas if the commitment contained the cause of imprisonment, the escape itself will then be an offence of the same degree as that for which the party was committed. 2 *Inst.* 52. 591. The cause also should be stated with *sufficient certainty*, in order that the party may know for what he is committed, and that it may appear to the court or judge, upon a *habeas corpus*, whether the cause assigned for the commitment was a legal one or not. Therefore if the commitment be for felony, the warrant ought not to state generally *for felony*, but it should state the special nature of the felony; as felony *for the death of J. S.* or burglary *in breaking* the house of J. S.; otherwise the court could not determine whether the offence amounted to felony or not. 2 *Hale.* 122. 2. *Inst.* 592. 1. *Ld. Ray.* 213.

Although the form of a commitment for trial may be defective, yet the committing magistrate may issue a warrant of *detainer*, remedying the defect, and this, even after the issuing of a *habeas corpus*. *R. v. Gordon*, 1 *B. & A.* 572. But where the commitment is final and by way of *punishment*, it is essentially necessary that the offence (for which the commitment is made) be described with certainty: a commitment therefore of a person, as an apprentice or servant, for disobeying his indentures or articles, was held bad for uncertainty. *R. v. Everett*. *Cald.* 26. And if a man be committed for non-payment of two sums, one of which is not due, the warrant of commitment is bad for the whole. *Exp. Addis*, 1 *B. & C.* 90.

A commitment in *execution*, must alledge the party to have been convicted of the offence, and it is bad if it merely state that he was charged with it. *R. v. Rhode*, 4 *T. R.* 220. *R. v. Cooper*, 6 *T. R.* 509. 12 *East.* 78. *Note* (a). It must be distinctly expressed in the warrant, whether the commitment be for a time *certain*, or only till the payment of a fine, for the defendant ought to know for what he is in custody, and how he may regain his liberty; therefore, if he be committed for a fine, it ought to be till he pay the fine; if the intent be to punish him by fine and imprisonment, it ought to order imprisonment for such a time, and from thence till he pay his fine.

By stat. 17 G. 2. c. 5. § 32. where any offender is committed by any justice, out of sessions, to the house of correction, by virtue of any law in force, which does not expressly limit the time and manner of punishment, the justice shall commit the



offender, to be kept to hard labour until the next general or quarter sessions, or until discharged by due course of law; but two justices (of whom the committing justice must be one) may discharge the offender before the sessions if they see cause; or the sessions may do so, or continue him in custody not exceeding three months: it must be under seal, and without this the commitment is unlawful: the gaoler is liable to false imprisonment; and the wilful escape by the gaoler, or breach of prison by the felon, makes no felony. 1 *H. H.* 383. But this must not be intended of a commitment by the sessions, or other court of record, for then the record itself, or the memorial thereof, which may at any time be entered of record, is a sufficient warrant, without any warrant under seal. 1 *H. H.* 584. It should also have set forth the place at which it was made. 2 *Haw.* 119. and it must have a certain date of the year and day. 2 *H. H.* 123.

*Charges of the Commitment.*

As to the immediate charges of the commitment, and the conveyance of the offender to the gaol, it is provided by statute 3 Jac. 1. c. 10. § 1. that every person who shall be committed to gaol by any justice of the peace, for any offence, if he has means or ability thereto, shall bear his own reasonable charges of his conveyance to gaol, and the charges of such as shall be appointed to guard him thither, and in default of payment, the same may be levied by distress on his goods and chattels, if he shall have any in the county: and by statute 27 G. 2. c. 3. if the offender has not sufficient effects to bear these charges, then a magistrate shall, upon examination on oath, make an order on the treasurer of the county to pay the same. *Note.*—By the habeas corpus act 31 Car. 2. c. 21. § 2. the charge of conveying an offender is limited to twelve pence a mile; and as security is required before a man is removed, under that act, that he shall not escape by the way, this of course, renders guards in that case, not so necessary.

*Gaoler shall receive the prisoner.*

If the gaoler shall refuse to receive a felon, or take any thing for receiving him, he shall be punished for the same, by the justices of gaol delivery. 4 Ed. 3. c. 10. *Dalt.* c. 170. But if a man be committed for felony, and the gaoler will not receive him, the constable must bring him back to the town where he was taken, and that town shall be charged with the keeping of him, until the next gaol delivery; or the person that arrested

him, may, in such case, keep the prisoner in his own house. *Dalt. c. 170.* But in other cases, it seems that no one can justify the detention of a prisoner in custody, out of the common gaol, unless there be some particular reason for so doing; as, if the party be so dangerously sick, that it would apparently hazard his life to send him to the gaol, or there be evident danger of a *rescue*, or the like. *2 Haw. 118.*

By stat. 3 H. 7. c. 3. the sheriff or gaoler shall certify the commitments to the next gaol-delivery.

*Commitment,—how it may be discharged.*

It seems that a person legally committed for a crime certain, cannot (unless under the habeas corpus act) be lawfully discharged by any one but the king, till he be acquitted on his trial, or have an *ignoramus* found by the grand jury, or none to prosecute him on a proclamation for that purpose, by the justices of gaol delivery: but if a person be committed on a bare suspicion, without an indictment for a supposed crime, when afterwards it appears that there was none; as for the murder of a person thought to be dead, who afterwards is found to be alive; it hath been holden that he may be safely dismissed without any further proceeding. *2 Haw. 121.* This position, however, will not always hold good; for though a person supposed to be murdered, may have recovered from the injuries he received, yet the offender may still be indicted for an *attempt to murder*, or do the party some bodily harm, in which case it would be highly improper that any gaoler should take upon himself to discharge the prisoner, without an order from a magistrate.

A commitment after a conviction, for a time certain, is a commitment in execution, and does not admit of bail. *Anon. 11. Mod. 45.* But, on a commitment to the sessions, under the vagrant act, 17 G. 2. c. 5. § 32. two magistrates (of whom the committing magistrate was one) might discharge the prisoner before the sessions. *R. v. Rhodes, 4. T. R. 220.* When the commitment is till payment of a fine certain, it follows, of course, that the party is entitled to be set at liberty upon payment of it. *Dalt. c. 170. § 12.*

*Warrant of Commitment.—(For Felony.)*

Home District, } J. P. esquire, one of her Majesty's justices of  
to wit. } the peace for the said district, to the constable  
of — in the said district, and to the keeper of the (common  
gaol) at the city of Toronto, in the said district. These are to  
command you the said constable in her Majesty's name, forth-  
with to convey and deliver into the custody of the said keeper,

of the said (common gaol) the body of A. B. charged this day before me the said justice, on the oath of C. D. of — yeoman, and others, for that he the said A. B. (on the — day of — in the year of our Lord — at — in the said district, two pieces of gold coin called sovereigns; one woollen cloth coat, and one linen shirt, of the monies, goods and chattels, of the said C. D. feloniously did steal, take and carry away) and you the said keeper are hereby required to receive the said C. D. into your custody in the same (common gaol) and him there safely to keep, until he shall be thence delivered by due course of law. Herein fail you not. Given under my hand and seal, at the city of Toronto, in the said district, the — day of — in the year of our Lord —. J. P.

*Commitment upon a Conviction where the punishment is by imprisonment, &c. (ARCHBOLD.)*

Home District. } To the Constable of — in the said district,  
 and to the keeper of the gaol (or house of  
 correction) at — in the said district. Whereas C. D. late of —  
 in the said district, labourer, was on this day duly convicted  
 before me J. P. esq. one of her Majesty's justices of the peace  
 for the said district, for that he the said C. D. [stating the  
 offence, as in the conviction] against the form of the statute in  
 that case made and provided; and I, the said J. P. thereupon  
 adjudged the said C. D. for his said offence, to be imprisoned  
 in the house of correction (or gaol), at — in the said district,  
 and there kept to hard labour) for the space of — calendar  
 months. These are therefore to command you, the said constable  
 of — aforesaid, to take the said C. D. and him safely to  
 convey to the house of correction (or gaol), at — aforesaid, and  
 there to deliver him to the said keeper thereof, together with  
 this precept: and I do hereby command you the said keeper of  
 the said house of correction (or gaol), to receive the said C. D.  
 into the said house of correction (or gaol), there to imprison him  
 (and keep him to hard labour) for the space of — calendar  
 months; and for your so doing this shall be your sufficient war-  
 rant. Given under my hand and seal, &c.

*Commitment in default of immediate payment of a Penalty.*

(Unless the Act requires the immediate payment of a Penalty  
 under the 27 G. 2. c. 20. it cannot be levied until four days  
 after the conviction.)

Home District. } To the Constable of — in the said district,  
 and to the Keeper of the house of correction  
 (or gaol), at — in the said district. Whereas C. D. late of —

in the said district, labourer, was on this day duly convicted before me J. P. esq. one of her Majesty's justices &c. for that he the said C. D. (&c. stating the offence as in the conviction) against the form of the statute in that case made and provided; and I the said J. P. thereupon adjudged the said C. D. for his said offence to (&c. as in the conviction, to the words calendar months), unless the said sum shall be sooner paid: and whereas the said C. D. being so convicted as aforesaid, and being now required to pay the said sums, hath not paid the same, or any part thereof, but herein hath made default; these are, therefore, to command you the said constable of — aforesaid, to take the said C. D. and him safely to convey to the house of correction, at — aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said house of correction (or gaol) to receive the said C. D. into the said house of correction, there to imprison him (and keep him to hard labour) [if authorised by the statute] for the space of — calendar months, unless the said sum shall be sooner paid; and for your so doing this shall be your sufficient warrant. Given under my hand, &c.

*Commitment in default of payment of a Penalty, within a limited time.*

Home District. } To the Constable of — in the said district,  
 and to the keeper of the house of correction,  
 (or gaol) at — in the said district. Whereas C. D. late of —  
 in the said district, labourer, was on the — day of — last past,  
 duly convicted before me J. P. one of her Majesty's justices &c.  
 for that he the said C. D. (&c. stating the offence as in the con-  
 viction) against the form of the statute in that case made and  
 provided; and (I) the said J. P. thereupon adjudged the said  
 C. D. for his said offence, to pay (&c. as in the conviction, to  
 the end of the adjudication) and (I) the said J. P. then and  
 there ordered that the said sums should be paid by the said C. D.  
 on or before the — day of — then next: and whereas the said  
 C. D. hath not on or before the said — day of — paid the said  
 several sums or any part thereof, nor hath he yet paid the said  
 several sums, or any part thereof, but therein hath made default.  
 These are therefore to command you the said constable of —  
 aforesaid, to take the said C. D. and him safely to convey to the  
 house of correction (or gaol) at — and there to deliver him to  
 the said keeper thereof, together with this precept: and I do  
 hereby command you the said keeper of the said house of cor-  
 rection (or gaol), to receive the said C. D. into the said house

of correction, there to imprison him (and keep him to hard labour) for the space of — calendar months, unless the said sums shall be sooner paid; and for your so doing this shall be your sufficient warrant. Given under my hand and seal at — in the said district, this — day of — in the year of our Lord 18—.

## COMMON SCHOOLS.

By the 4 & 5 V. c. 18. the \*56 G. 3. c. 36—\*60 G. 3. c. 37. \*4 G. 4. c. 8. and all other acts repugnant to this act are repealed.

§ 2. A permanent fund established for the support of common schools in every township and parish in this province, to arise from monies accruing from selling or leasing of any lands hereafter to be granted by the legislature for that purpose, and other monies hereinafter mentioned, to be invested in safe and profitable securities in this province, and the interest annually applied to the support of common schools. § 3. £50,000 to be granted annually and distributed among the several districts, as hereinafter provided, to be composed and made up of the income derived from the said permanent fund, and of such further sum as may be required out of the public monies; and said annual grant shall be called *the Common School fund*.

§ 4. A superintendent to be appointed by the Governor, with an annual salary not exceeding £750. His duties to be—First. To apportion, on or before the third Monday in May, the money annually granted as aforesaid among the several districts, in the ratio of the number of children over five and under sixteen that shall appear by the last census to be resident within the district. Second. To furnish the Receiver-General with a certified statement or list of the apportionment of the money among the several districts. Third. To certify the apportionment to the treasurer of every district, who shall lay the same before the district council for the purpose of raising and levying in the district a sum equal to the amount appropriated from the provincial treasury. Fourth. To visit annually each district and ascertain the state of the schools. Fifth. To prepare suitable forms for reports and proceedings under this act, and maintain uniformity in the conduct of common schools: to submit annually to the Governor, on or before the 31st December, a report on the state and condition of the schools, showing the monies expended, with plans for improvement, and such other matters as the superintendent may deem expedient. § 5. The district council to be a board of education in each district, and their duties to be—First. To divide the several townships and parishes within their district into school districts (no school district having less than

fifteen children between the ages of five and sixteen), and to furnish a full report of such division to the superintendent, and also to the school commissioners. Second. To apportion and distribute to each district its share of the school funds, in proportion to the number of children. Third. To assess the inhabitants a sum not exceeding £50 for a school-house, in each of the districts where none exists. Fourth. To apportion to each township or parish a sum not exceeding £10 for books, recommended by the school commissioners. Fifth. To make an annual report of their proceedings to the superintendent, on or before the first Monday in December. § 6. The district council of any district refusing or neglecting to comply with the act, such district shall not be entitled to receive any money out of the common school fund until such requirements shall be complied with, or a good cause for non-compliance shewn to the superintendent. § 7. At the annual township or parish meetings to be held in January, 1842, and at each succeeding annual election of township and parish officers, five commissioners shall be elected for each township or parish entitled to elect one district councillor, and seven commissioners for every township entitled to elect two district councillors to be called *Common School Commissioners*, and their duties shall be—First. To choose and acquire a site for a school-house where none exists, and to make an estimate of the cost of such site, and building a school house and keeping the same in repair, and the cost of furnishing the same with fuel and appendages, and to transmit such estimates to the clerk of the district council, in order that the inhabitants may be assessed accordingly. Second. To appoint one or more of their number to superintend the building and repairing of the school-house &c. and generally to manage the concerns of the school, and report to the school commissioners once in three months, viz. on or before the first Monday in March, June, September, and December, the state of such schools, the amount of monies received for it, the manner of expenditure, the number of children above five and under sixteen taught in it, and the number of days each child has attended. Third. To appoint and remove teachers for just cause: Provided that none be appointed but British subjects of good moral character, and shall have been examined before the commissioners as to learning and ability. Fourth. To regulate the course of study in each school and the books to be used, and to establish rules for the conduct of the schools, to be communicated in writing to the teachers. Fifth. To hear and determine all disputes arising out of the proceedings of the managing or visiting commissioners, or other matters of dispute in respect to common

schools within their township or parish. Sixth. To appoint two or more of their number to visit such common schools in the township or parish once at least in each month, and to report the state of such schools, whether the rules and regulations are duly observed, the number and proficiency of the scholars, the character and ability of the teachers, the conduct of the managing commissioners, and all other matters connected with the well being of the schools. Seventh. To grant warrants from time to time upon the district treasurer, for monies required for paying the teachers and expenses of the schools: such warrants to be signed by a majority of the commissioners, the chairman being one: the monies to be paid under the same not to exceed the amount appropriated by law. Eighth. To exonerate poor persons in such district, not exceeding ten, from payment of wages to the teacher. Ninth. To record their proceedings in a book, the proceedings of each meeting, with the names of the commissioners present, being authenticated by the signature of the chairman: such book to be delivered over by the commissioners to their successors in office: town clerks to attend such meetings and make such record. Tenth. To report their proceedings to the district council annually, on or before the third Monday of November, in the form furnished by the superintendent. Eleventh. After the expiration of their periods of service, to deliver books and papers to their successors. § 8. Commissioners to remain in office until the next annual township or parish meeting, and others elected; and in case of death, refusal to serve, or removal, the other commissioners to appoint to the vacancy. § 9. The school-houses and ground whereon they are built to be vested in the respective commissioners. § 10. The collector of the township or parish to collect school rates, and one shilling and three pence monthly as additional wages for the teacher for each child attending any school (except those children whose parents shall from indigence have been exempted): and the same, if not paid, may be recovered by the collector or his successor in any court of competent civil jurisdiction, and paid over to the district treasurer with a copy of the assessment roll showing the amount collected; and the treasurer shall keep separate accounts of school monies. § 11. If any number of inhabitants professing religious faith different from that of the majority shall dissent from the arrangements or proceedings of the school commissioners, they may collectively signify such dissent in writing to the clerk of the district council, and name trustees, and through such trustees establish one or more common schools, and receive from the district treasurer their due proportion, according to number, of the school monies and as-

assessments to be paid by the district treasurer upon the warrant of such trustees. § 13. Unapplied monies to form part of the permanent fund. § 14. Commissioners or other persons making a false certificate or report, by means whereof monies shall be fraudulently obtained, shall restore the same and be liable to a penalty not exceeding £10, for the benefit of the fund, to be recovered at the suit of the district clerk, or city clerk, on the oath of one witness, before any two justices; and if not paid, to be levied, with costs of distress and sale, by warrant of such justices or either of them. § 15. In cities and towns corporate the duties of school commissioners to be performed by the corporation. § 16. The Governor to appoint in each city and town corporate a board of examiners, of not less than six nor more than fourteen persons (one half to be Roman Catholics and the other Protestants). The mayor to be chairman, but without a casting vote. The board to be divided into two departments, one of which shall consist of Roman Catholics and the other of Protestants, and shall appoint their chairman: and when children of both religions attend the same school, the duties to be exercised by the whole board of examiners; and the duties of the respective boards and departments shall be to examine teachers and reject them if unqualified, and to regulate the course of study for each school and establish rules for the conduct of the schools, and communicate them in writing to the teachers. Board of examiners in any city or town corporate to be also visitors of common schools therein, and appoint two or more of their number to visit such schools at least once in three months, and report to the corporation, as fully as common school commissioners and visitors appointed by them are bound to report. § 17. The powers and duties assigned to the school commissioners by the first, third, and eighth division of the seventh section, shall in each of the cities and towns corporate, with respect to common schools, vest in and be performed by the corporations thereof respectively, who, in addition thereto, may appoint persons to discharge the duties of school commissioners, and provide by-laws for the conduct and guidance of such person. § 18. Cities and towns corporate shall be entitled to apportionment out of the school fund on the same terms as district councils, and the monies so apportioned shall be paid to the city or town treasurer, and be paid over by him, subject to such regulations as provided in such cities or towns corporate.— § 19. Corporations, on the first Monday in December, annually, shall report to the superintendent all matters relating to common schools within cities and towns corporate, connected with the well-being of such schools, in the same manner, and as



fully, as the district board of education, and common school commissioners are by this act bound to report. § 20. Any person appointed to any office under this act, refusing to serve, shall forfeit twenty-five shillings currency—and every person not having refused to accept, but neglecting to perform his duties, shall forfeit twenty-five shillings. § 21. Monies granted by this act or apportioned under it to be paid on warrant of the Governor, to the treasurer of the district. § 22. Acts performed by a majority of the members of the board of education, commissioners, or examiners, and no special provision to the contrary to be valid. § 23. False affirmation or statement, to be perjury. § 25. Act to come into operation 1st January 1842.

## COMMON SCOLD.

A COMMON SCOLD, *communis rixatrix*, (for our law latin, says *Blackstone*, confines it to the feminine gender) is a troublesome, angry woman, who, by her brawling and wrangling amongst her neighbours, breaks the public peace; increases discord; and becomes a public nuisance to the neighbourhood: she is, therefore, liable to be indicted as a nuisance, and, on conviction, to undergo the punishment of the tre-bucket, or ducking-stool.—4 *Bl. Com.* 168.

## COMPOUNDING FELONY,

IS A MISDEMEANOR at common law called THEFTBOTE—which is, where the party robbed not only knows the felon, but also takes his goods again, or other amends, upon agreement not to prosecute. This is frequently called *compounding of felony*, and formerly was held to make a man an accessory, but is now punished only with fine and imprisonment. *Bl. Com. p.* 133. 16 *Ed.* 1 *Haw. c.* 59. § 5.

By the 4 & 5 V. c. 25. § 50. every person who shall corruptly take any money or reward, directly or indirectly, under pretence of helping any person to any stolen property whatsoever, shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of felony, and, upon conviction, be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for not less than seven years, or to be imprisoned in any other place of confinement for any term not exceeding two years. § 51. If any person shall publicly advertise a reward for the return of any property, stolen

or lost, and shall in such advertisement use any words purporting that no question will be asked; or shall make use of any words, in any public advertisement, purporting that a reward will be given or paid for any property stolen or lost, without seizing or making any inquiry after the person producing the same, or shall promise or offer, in any such public advertisement, to return to any pawn-broker or other person, who may have bought or advanced money by way of loan upon any property stolen or lost, the money so paid or advanced, or any other sum of money or reward for the return of such property; or if any person shall print or publish any such advertisement in any of the above cases, every such person shall forfeit the sum of £20 for every offence, to any person who will sue for the same by action of debt, to be recovered with full costs of suit.

*Indictment for compounding a Felony.*—(ARCHBOLD.)

Home District, } The jurors for our lady the Queen, upon their  
to wit. } oath present, that heretofore, to wit, on the  
— day of — in the — year of the reign of our sovereign lady  
Victoria, at the township of — in the county of — in the Home  
District, one A. the wife of J. N. feloniously stole, took, and  
carried away, one silver spoon, of the value of twenty shillings,  
of the goods and chattels of one J. S. against the peace of our  
lady the Queen, her crown and dignity. And that the said J. S.  
late of the township aforesaid, in the county and district aforesaid,  
labourer, well knowing the said felony to have been by the  
said A. so as aforesaid done and committed; but contriving and  
intending unlawfully and unjustly to prevent the due course of  
law and justice in that behalf, and to cause and procure the said  
A. for the felony aforesaid, to escape with impunity afterwards,  
to wit, on the day and year aforesaid, at the township aforesaid,  
in the county and district aforesaid, unlawfully, and for wicked  
gain's sake, did compound the said felony with the said J. N.  
the husband of the said A. and then and there did exact, take,  
receive and have of the said J. N. the sum of twenty-six shillings,  
for and as a reward for compounding the said felony, and desisting  
from all further prosecution against the said A. for the  
felony aforesaid; and that the said J. S. on the day and year  
aforesaid, at the township aforesaid, in the county and district  
aforesaid, did thereupon desist, and from that time hitherto hath  
desisted, from all further prosecution of the said A. for the felony  
aforesaid, to the great hindrance of justice, in contempt of our  
lady the Queen and her laws, and against the peace of our lady  
the Queen, her crown and dignity.

## COMPOUNDING OTHER OFFENCES.

THE compounding of *informations on penal statutes*, is a misdemeanor against public justice, by contributing to make the laws odious to the people. 4 *Bl. Com.* 136. Therefore, in order to discourage malicious informers, and to provide that offences, when once discovered, shall be duly prosecuted, it is enacted by the statute 18 Eliz. c. 5. § 4. that if any informer, by colour or pretence of process, or without process, upon colour or pretence of any manner of offence against any penal law, make any composition, or take any money, reward, or promise of reward, without the order or consent of the court, he shall stand two hours in the pillory; be for ever disabled to sue on any popular or penal statute, and shall forfeit £10. This severe statute extends even to penal actions, where the whole penalty is given to the prosecutor. 4 *Bl. Com.* 136. *Note (a.)* But it does not apply to penalties which are only recoverable by information before justices; and an indictment for making a composition in such a case, was holden bad, in arrest of judgment. *Rex. v. Crisp and others*, 1 *B. & A.* 282.

It has been decided that a party is liable to the punishment prescribed by the 18 Eliz. c. 5. for taking the penalty imposed by a penal statute, though there was no action or proceeding for the penalty. *Rex. c. Gotley, East. T.* 1805. *Russ. & Ry.* 84.

## CONCEALING BIRTH.

By the 4 & 5 V. c. 27. § 14. if any woman shall be delivered of a child, and shall, by secret burying or otherwise disposing of the dead body of the said child, endeavour to conceal the birth thereof, every such offender shall be guilty of a *misdemeanor*, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding two years; and it shall not be necessary to prove whether the child died before or at its birth. Provided always, that if any woman, tried for the murder of her child, shall be acquitted thereof, it shall be lawful for the jury, by whose verdict she shall be acquitted, to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth.

See also title "*Punishment*," § 36.

## CONFESSION.

If a party, on examination before a justice, confess a crime, it may be given in evidence against him, but not against others. 2 *Haw. c.* 46. § 3. And it is sufficient, though there is no other proof of his having committed the offence, or of the offence having been committed, if such confession was in consequence of a charge against him. *Rex. v. Eldridge, Russ. and Ry. c. c. R.* 440. But it must be voluntary, and not have been obtained by any promise, favour, menace or terror. The admissibility of a confession must depend upon circumstances. *Phil. Ev.* 104. And the identity of the examination must be proved before it can be read in evidence. *Sum.* 263. It must be in writing, and not orally; and must be taken altogether, and not by parcels.— 2 *Haw. c.* 46. § 5. *Leach*, 286. And such examination should not be on oath. *Bull, N. P.* 242. Persons confessing themselves, and on that confession adjudged guilty of felony, cannot be admitted to bail, as the only reason for admitting to bail in felony, is where the crime is doubtful. 2 *Haw. c.* 15. § 40.— The confession must be in the very words used by the party, and not in the language of another, from recollection. *Rex. v. Sexton, 1 Burn*, 692. Prisoner may be convicted on the uncorroborated evidence of his own confession. *Leach*, 287.

See post “*Examination.*”

## CONSPIRACY

Is a combination of *two* or more persons to injure a third person. 1 *Haw. c.* 72. § 2. or to injure or prejudice the community. 8 *Mod.* 11. 320. 3 *M. & S.* 67. Thus, where the defendants were charged with conspiracy in causing a man to be convicted and executed for a robbery, which they knew he was innocent of, with intent to obtain the reward then given by act of parliament. *R. v. Macdaniel, 1 Leach*, 45. *Fost.* 130.— So, where the defendants were indicted for conspiring to accuse another of taking hair out of a bag, without alleging that it was done feloniously, *Lord Mansfield* held, that the gist of the offence was, the unlawfully conspiring to do an injury to another by a false charge; and that whether the conspiracy be to charge a man with criminal acts, or such only as affect his reputation, it is sufficient. *R. v. Rispal, 1 Bl. Rep.* 368. 3 *Burr*, 1320. So, where the prosecution is for the sole purpose of extorting money. *R. v. Hollingbury, 4 B. & C.* 329. So also, a conspiracy to prevent a prosecution for a felony, is as much an offence as a con-

spiracy to institute a false prosecution. 14 *Ves.* 65. And, a conspiracy of two magistrates to prevent the course of justice, on an indictment for not repairing a highway, by signing a false certificate of the highway being in repair, in order to prevent the court from imposing a fine on the defendants, has been also held to be an indictable offence. *R. v. Mawley*, 6 *T. R.* 619. Among various other subjects of conspiracy may be mentioned a conspiracy to obtain, by procuring in return, the appointment to a public office. *R. v. Pollman*, 2 *Camp.* 229. Of several defendants to injure a man in his trade. *R. v. Eccles*, 1 *Leach*, 274. To sell unwholesome wine or provisions. *R. v. Macarty*, and *Fordenbough*, 2 *Ld. R.* 1179. Journeymen combining not to work unless for certain wages. *R. v. Journeymen Tailors of Cambridge*, 8 *Mod.* 10. To suppress a will. *Breerton's case*, *Noy*, 103. Or to cause an illiterate person to execute a deed to his prejudice, by reading it over falsely to him. *R. v. Skirret*, 1 *Sid.* 312. 431.

If all the defendants who are indicted for a conspiracy be acquitted but one, the acquittal of the rest is the acquittal of that one also, as there must be *two* concerned in the conspiracy.—*Cro. Cir. Com.* 159. 2 *Ld. Ray.* 1167. 2 *Burr.* 993. But an indictment against one person and others unknown, is maintainable. 3 *Chit. c.* 4. 1141.

The offence of conspiracy may be tried by justices of the peace in their quarter sessions. *R. v. Rispal*, 3 *Burr.* 1320.—And the act of one party, in pursuance of the common object, is evidence in law against all the parties. *Pl. on Ev.* 76. If one only, of two persons indicted, appear, he may be tried in the absence of the other defendant. *R. v. Kinnerley*, 1 *Str.* 193.

The punishment for a conspiracy is by pillory, fine and imprisonment, and sureties for the good behaviour. 2 *Burr.* 1027.

NOTE.—Pillory is now abolished by the 4 & 5 V. c. 24. § 31.

See further post, "*Workmen.*"

### *Indictment for Conspiracy.* (CHITTY.)

Home District, } The jurors for our lady the Queen, upon their  
to wit. } oath, present that A. B. late of — in the  
home district, yeoman, C. D. late of — in the said district,  
yeoman, and E. F. late of — in the same district, labourer,  
being persons of evil minds and dispositions, on the — day of  
— in the — year of the reign of our sovereign lady Victoria,  
with force of arms, at the township aforesaid, in the county and  
district aforesaid, unlawfully and wickedly (*or if the conspiracy  
be malicious, say "falsely and maliciously"*) did conspire, com-

bine, confederate and agree together, to (*here state the object of the conspiracy*) and the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. &c. in pursuance of, and according to the said conspiracy, combination, confederacy, and agreement, between them the said A. B. &c. a; aforesaid, had did on &c. at &c. (*the place where the overt act took place*) *here set out the overt acts of conspiracy*) to the great damage of, &c. (*the party immediately injured*) to the evil example of all others, and against the peace of our said lady the Queen, her crown and dignity (*add a second count, stopping at the statement of the conspiracy, omitting the overt acts, and concluding as above.*)

## CONSTABLE.

*Who are liable to serve the Office.*

No person can be appointed a constable who is not an *inhabitant* of the place where he is to serve. 1 *Burn*, 703. *R. v. Adbard*, 4 *B. & C.* 772. And if a very poor and ignorant person be chosen, he may by law be discharged, and an abler person appointed in his room. *Ibid.* *Dalt. c.* 28.

Barristers at law, attornies, and other officers of the court of king's bench, are exempt from serving the office. 2 *Keb.* 508. *Cro. Car.* 389. 2 *Haw. c.* 10. § 39. And by the ancient custom of the realm, surgeons have been allowed the like privilege.

An *officer in the King's service*, or a *gentleman of quality*, may perhaps be relieved from serving such office, upon application to the court of king's bench, provided there are other persons sufficient to execute the office. 2 *Haw. c.* 10, § 41.

It hath been holden, that the King may exempt any person, if the exemption be not extended so far as to prevent the *existence* of the office in any particular place. *Rex. v. Clarke.* 1 *T. R.* 682. By the 10 & 11 *W. 3. c.* 23. § 2. 3. the prosecutor of a felon to conviction is discharged from liability to serve as constable. A *foreigner*, though naturalized, is not liable to serve. *Rex. v. De Mierre, Burr.* 278. No man that *keeps a public house* ought to be made a constable, if there are other persons in the parish proper to serve. *Per Holt, C. J.* 6 *Mod.* 42.

*How appointed, and how punishable for refusal to serve.*

\*By the 33 *G. 3. c.* 2. § 10. it is enacted, that it shall be lawful for justices of the peace, within the respective limits of their commissions, at their general quarter sessions in April, or

☞ The whole of the \*33 *G. 3. c.* 2. excepting the 10th clause, has been repealed by the \*5 *W. 4. c.* 8.

the greater part of them, to nominate and appoint, yearly, a sufficient, 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 into their office, shall severally take the following oath, to be administered by any justice of the peace:

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.

And after such service, such persons shall be exempt from any of the offices mentioned in this act, for three years.

By 13 & 14 *Car. 2. c. 12. § 15.* if a constable die, or go out of the parish, any two justices may make and swear a new one, till the next quarter sessions, which shall either approve or appoint another.

If a constable, being duly appointed, refuse to take the oath, he may be indicted at the assizes or sessions, when, if found guilty, he may be fined, and in default of payment, he may be committed. *Rex. v. Lane, 2 Str. 920.* But if he has once been allowed to appoint a deputy, who is approved of, he is altogether discharged. 3 *Esp. Rep.* But such deputy must be duly sworn. *Wood's Inst. 61. c. 7.*

#### *Power and duties of the Office.*

The *high constable* has the superintendence and direction of all *petty constables* within his district, and he is, in a manner, responsible for their conduct, since he is bound to notice and present their defaults, for the neglect of which duty he is, in fact, presentable himself.

Every high and petty constable is, by the common law, a conservator of the peace. 2 *Haw. c. 8. § 6.* Therefore, he is authorised, without any warrant, to arrest all traitors, felons, and suspicious persons, and all those whom he shall see upon the point of committing treason or felony, or doing any act which would manifestly endanger life. 2 *Haw. c. 12. § 19.* 1 *Bac. Ab. 441.* In case of any breach of the peace committed, or one about to be committed, in the presence of a constable—as where violent threats or attempts are used by any person to beat or hurt another—the constable may arrest the party and carry him before a magistrate, or detain him till he can conveniently do so. *Dalt. c. 1. 116. § 3.* A constable has no power to execute a

warrant out of the jurisdiction of the justice who grants it,—*Milton v. Green*, 5 *East*. 233.—unless backed by a magistrate of the district in which the offender is found. 24 *G. 2. c. 55*. It is said, however, that a constable is not obliged to execute a warrant out of his district. — *v. Norman*, 1 *Ld. R.* 736. A constable cannot imprison a person arrested by him for any longer time than till he can conveniently bring him before a magistrate. *Sav.* 98. *H.* 92. 4 *Com. Dig. Leet.* (*M. 9.*) A constable (after giving notice that he is one) may break open the doors of a house to arrest a felon, if he be concealed therein, and peaceable entrance is denied. 2 *H. P. C.* 90. 82. And if the felon resists or flies, it is not murder if the constable kill him.\* He may commit affrayers to the stocks on his own view—but not if absent. *Dalt. c. 1.* *Cro. Eliz.* 375. 376. He may imprison to prevent a felony. *Moore*, 284. And if one be menaced, he may compel the menacer to find surety, or commit him to prison till he does. 4 *Inst.* 265. *Cro. Eliz.* 375. 6. He may break open a house, when entrance is denied, to abate an affray, or to suppress disorderly drinking, or noise, at an unreasonable hour of the night. *Hale, P. C.* 95. He may imprison one who insults or assaults himself, or opposes him, though verbally, in the execution of his office, and may beat another in his own defence. *Crompt. J. P.* 131. If a warrant be directed generally, “to bring before me, or some other justice,” he may carry the prisoner before what justice he chooses, in the district—but not if specially directed. 5 *Rep.* 596. He has no right to handcuff a prisoner, except he has attempted to escape, or that it is necessary in order to prevent an escape. 3 *Ma. Ca.* 299. He should seize the goods of felons who fly the country, for the King’s use. *Crompt. J. P.* 201. He is to aid and assist in the appraisement and sale of goods distrained for rent, and may swear the appraisers. 2 *W. & M. sess. 1. c. 5.* He is also to aid landlords in seizing, as a distress for rent, goods fraudulently removed to avoid such distress, and may break open a house wherein they are deposited—(oath being first made before a justice, of reasonable suspicion of their being there.) 11 *G. 2. c. 19.* Constables may seize a stranger guilty of profane cursing and swearing, and carry him before a justice; but if known, he must lay an information. 19 *G. 2. c. 21. § 3.* When on a warrant indorsed he apprehends an offender, he is to carry him before the justice who endorsed it; and if the offender find bail, he is to receive the recognizances, examination, &c. and deliver them to the clerk of assize, or clerk of the peace of the

\* *QUÆRE.*—Whether it must not be a case of extreme necessity to justify this.



district where such offender is required to appear; and if the offender is not bailed, he is to carry him before a justice of the county where the offence was committed. 24 G. 2. c. 55. Constable making a distress under a justice's warrant, shall, on demand, shew the same to the party, and permit a copy to be taken. 27 G. 2. c. 20. But if a constable be duly sworn, and commonly known to be an officer, and act within his own precinct, he need not show the party his warrant, though he should demand it; but he ought to acquaint the party with the substance of it. 2 Haw. c. 13. 1 East. P. C. 319. He is not discharged from his office until his successor is sworn. 12 Mod. 256.

As the office of a constable is wholly ministerial, he may appoint a deputy to execute a warrant directed to him, when by reason of sickness, absence, or otherwise, he cannot do it himself. 2 Haw. c. 10. § 36. And such a deputy may be appointed by parol, and need not be sworn. *Medhurst v. Wate*, 3 Burr. 1259. But unless the deputy is duly allowed and sworn, the constable is answerable for him in case of any misconduct. *Wood's Inst. b. 1. c. 7*;—though, if duly sworn, the liability of the principal is at an end. *Underhill v. Witts*, 3 Exp. 56.

#### *Indemnity and Protection.*

An action against a constable for any act done in the execution of his office, must be brought in the district where the offence was committed, to which action he may plead the general issue, and give the special matter in evidence; and if he recover he shall have double costs. 21 Jac. 1. c. 12. This extends also to his deputy. *Crompt. J. P.* 201. And every man aiding a constable in the execution of his office, has by law, the same protection as the constable. 2 Hale, P. C. 97. A justice's warrant is a good justification of a constable, in any matter within the jurisdiction of such justice, but not otherwise. *Str.* 711.

By stat. 24 G. 2. c. 44. the constable is not answerable for the execution of a warrant, in case the magistrate who made it has no jurisdiction, if he complies with the requisitions of that statute: and by § 6. no action shall be brought against him or any person acting by his order and in his aid, for any thing done in obedience to a warrant under the hand or seal of a justice, until demand in writing hath been made or left at his usual place of abode, of the perusal and copy of the warrant, and the same hath been refused or neglected for six days after such demand; and if, after compliance therewith, any action shall be

brought without making the justice a defendant, the jury shall, on production of the warrant, give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. If the action be brought jointly against the justice and constable, the jury shall, on proof of the warrant, find for the constable, notwithstanding such defect of jurisdiction. By § 8. no action shall be brought against any constable acting in the execution of his office, unless commenced within six calendar months after the act committed.

If a constable acting under a distress warrant, seize the goods of A. mistaking them for the goods of B. he is entitled to the protection of the statute. *Carton v. Williams*, 3 B. A. 330. A constable who arrests a person given him in charge, is not liable to an action of false imprisonment, though the charge be ill founded, unless he make himself a party in oppressing the person so arrested, knowing the charge to be false. *White v. Taylor*, 4 Esp. 80.

#### *Of his Punishment.*

He may be fined or imprisoned, or both, for refusing to serve the office when appointed. *Arch. C. P.* 384. He is indictable for neglecting his duty, either at common law or by statute.—1 *Salk.* 381. And may be fined for not endeavouring to pacify an affray in his presence. *Cromp. J. P.* 130. If he will not return his warrant, or what he has done under it (for he ought to keep the warrant for his own justification) the sessions may fine him. 6 *Mod.* 83. He is guilty of felony if he lets a felon out of the stocks. 1 *Hale, P. C.* 596. He may be removed for just cause by the authority which appointed him. *Bulst.* 174.

#### *Of his Expenses.*

\* By 46 G. 3 c. 5. justices in sessions may award such compensation as they may think proper to constables, for serving notices of the appointment of town officers, under that act.—With the above exception, the provincial statutes do not appear to have made any express provision for the payment of a constable's general expenses, but in practice it has been usual for the constable to present his account to the justices in session, who, after due examination and allowance, make an order upon the district treasurer for payment.

The above statute, \*46 G. 3. c. 5. has been repealed by the \*5 W. 4. c. 8.

*Form of appointment of a Deputy Constable.*

I, C. D. Constable of — in the — district, do hereby make, substitute and appoint G. H. of — yeoman, my true and lawful deputy, in the office of constable, so long as I shall hold the same, (or during the continuance of my will and pleasure).— Witness my hand, the — day of — in the year of our Lord 18—.

*Oath to be administered by Constable to Appraisers, on Goods being Distrained for Rent.*

You shall swear that you will faithfully appraise and value the goods now taken in distress, and mentioned in the inventory to you shewn, as between buyer and seller, according to the best of your skill and knowledge. So help you God.

*Memorandum to be endorsed by the Constable on the Inventory.*

Memorandum, that on the — day of — in the year of our Lord 18—, A. B. of — and C. D. of — two sworn appraisers, were sworn upon the holy evangelists, by me E. F. constable, well and truly to appraise the goods and chattels mentioned in this inventory, according to the best of their skill and knowledge; as witness my hand. E. F. Constable.

Present at the time of swearing the said A. B.  
and C. D. as above, and witness thereto.

J. K.  
L. M.

*Proclamation by Constable for Rioters to disperse.*

Our sovereign lady the Queen charges and commands all persons here assembled, immediately to disperse themselves, and peaceably depart to their several habitations, on pain of imprisonment.

*Summons by a Constable in pursuance of a Justice's precept. (TOONE.)*

(Archbold, in his work on Convictions, recommends the service of a copy of the Summons on the Defendant, p. 97. But as both forms are in practice, either will do.)

To A. B. of—.

Home District, } In pursuance of a precept to me directed, by  
to wit. } J. C. Esq. one of her Majesty's justices of  
the peace in and for the said Home District, I do hereby summon and warn you personally to be and appear before the said

justice, (*or if general*) or such other of her Majesty's justices of the peace for the said district, as shall be present at — in the township of — in the said district, on — the — day of — at the hour of — in the — noon of the same day, then and there to answer the complaint and information of — [*state the offence as in the justice's precept*]. Herein fail not at your peril. Given under my hand and seal, the — day of — in the year of our Lord 18—.

*Constable's Return on the back of the Precept.*

The within — was duly summoned to appear and answer as he is within required, on the — day of — 18—.

J. E. Constable.

*Warrant for an Assault on a Constable.*

To A. B. constable of the township of — in the Home District, and to all others, her Majesty's constables and peace officers within the said district.

Home District, } Whereas C. D. hath this day made complaint  
to wit. } on oath, before me C. J. Esquire, one of her  
Majesty's justices of the peace in and for the said district, that  
E. F. of — in the said district, labourer, on the — day of —  
last, at — aforesaid, in the district aforesaid, in and upon him  
the said C. D. did make a violent assault, and then and there  
did beat, wound and ill-treat him, the said C. D. then being one  
of the constables of the said township, and then and there also  
being in the due execution of his office as constable aforesaid;  
these are therefore to command you, the said constable, in her  
Majesty's name, forthwith to apprehend the said E. F. and bring  
him before me at — to answer the said complaint, and to be  
further dealt with according to law. Given, &c. J. C.

*Commitment of a Constable for a wilful escape.*

To the keeper of the gaol at Toronto, in the Home District:  
Home District, } Receive into your custody, in the said gaol,  
to .t. } and there safely keep until the next general  
quarter sessions of the peace, to be holden in and for the said  
district, or until thence otherwise delivered by due course of  
law, the body of A. B. one of the constables of — in the said  
district, herewith sent you, and charged before me J. C. Esquire,  
one of her Majesty's justices of the peace in and for the said  
district, on the oath of C. D. with having this day wilfully and  
designedly suffered and permitted one G. H. to escape out of  
his custody, and go at large at — aforesaid, in the district afore-

said, the said G. H. having been committed to the custody of him the said A. B. as such constable as aforesaid, by virtue of a warrant under my hand and seal, for felony, to be conveyed by him to the gaol at Toronto aforesaid. Given under my hand and seal, &c.

*Indictment for refusing to serve the office of High Constable.*

(ARCHBOLD.)

Home District, } The jurors for our lady the Queen, upon their  
to wit: } oath present, that at the general quarter  
sessions of the peace, holden at the city of Toronto, in and for  
the Home District, on — the — day of — in the — year of the  
reign of our sovereign lady Victoria, to wit, at the city aforesaid,  
in the district aforesaid, before A. B. and C. D. Esquires, and  
others their associates, justices of our said lady the Queen,  
assigned to keep the peace of our said lady the Queen in the  
said district; and also to hear and determine divers felonies,  
trespasses and other misdemeanors, in the said district committed,  
one J. S. late of the township of — in the county of — in the  
said district, yeoman, then, and long before, being an inhabitant  
and residing in the township last aforesaid, in the county and  
district aforesaid, and a fit and able person to execute the office  
of high constable within the said district, at the said sessions, by  
the justices aforesaid in due manner, was then and there elected  
to be high constable of the said Home District, in the room and  
stead of one J. N.; whereof the said J. S. afterwards, to wit, on  
the day and year aforesaid, at the township aforesaid, in the  
county and district aforesaid, had notice: nevertheless the said  
J. S. not regarding his duty in that behalf, but contriving and  
intending the due execution of justice to hinder and prevent,  
afterwards, to wit, on the day and year aforesaid, at the town-  
ship aforesaid, in the county and district aforesaid, unlawfully,  
wilfully, obstinately and contemptuously, did refuse, and from  
thence continually until the day of the taking of this inquisition,  
unlawfully, wilfully, obstinately and contemptuously, hath re-  
fused, and still doth refuse, to take upon himself and execute  
the said office of high constable within and for the district afore-  
said, to wit, at the township aforesaid, in the county and district  
aforesaid, contrary to his duty in that behalf; in manifest con-  
tempt and delay of justice; against the form of the statute in  
such case made and provided; and against the peace of our lady  
the Queen, her crown and dignity.

(The above form, with a slight variation, will answer for petty constables also).

**CONSTITUTIONAL ACTS.**

By the Imperial statute 14 G. 3. c. 88. entitled, "An Act for making more effectual provision for the government of the province of Quebec, in North America," it is enacted, that the inhabitants of the said province of Quebec may have, hold and enjoy, the free exercise of the religion of the church of Rome, subject to the king's supremacy declared and established by the 1 Q. Eliz. over all the dominions and countries which then did, or thereafter should, belong to the imperial crown of this realm; and that the clergy of the said church may hold, receive and enjoy their accustomed dues and rights, with respect to such persons only as shall profess the said religion. § 5. And that it shall be lawful for his Majesty, his heirs or successors, to make such provision out of the rest of the said accustomed dues and rights, for the encouragement of the Protestant religion, and for the maintenance and support of a Protestant clergy within the said province, as he or they shall from time to time think necessary and expedient. § 6. Provided that no person professing the religion of the church of Rome, and residing in the said province, shall be obliged to take the oath required by the said statute 1 Q. Eliz. or any other oaths substituted by any other act in the place thereof; but that every such person who by the said statute is required to take the oath therein mentioned, shall be obliged to take and subscribe the following oath, before the governor, or such other person in such court of record as her Majesty shall appoint:

*Form of the Oath.*

I, A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his Majesty King George, and him will defend to the utmost of my power, against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown and dignity; and I will do my utmost endeavour to disclose and make known to his Majesty, his heirs and successors, all treasons and traitorous conspiracies and attempts, which I shall know to be against him or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any power and person whomsoever to the contrary. So help me God.

And every such person who shall neglect or refuse to take the said oath, shall incur the penalties of the 1 Q. Eliz.

§ 8. That in all matters of controversy relative to property and civil rights, resort shall be had to the laws of Canada, as the rule for the decision of the same.

§ 17. And that nothing herein contained shall extend, or be construed to extend, to prevent his Majesty, his heirs and successors, from erecting, constituting and appointing such courts of criminal, civil and ecclesiastical jurisdiction, as he or they shall think necessary and proper for the circumstances of the province.

By the Imperial statute 31 G. 3. c. 31. entitled, "An Act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign, entitled, 'An Act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province,'" after noticing that his Majesty had been pleased to signify, by his message to both houses of parliament, his royal intention to divide his province of Quebec into two separate provinces, to be called the province of Upper Canada and the province of Lower Canada, certain provisions were thereby made for the division of the said province, and for providing a separate legislature for each province. But as the two provinces have been recently re-united by an act of the imperial legislature, and now again constitute but one province, it will be sufficient here to give the provisions of the act by which the re-union has been effected.

By the 4 & 5 V. c. 35, entitled "An Act to re-unite the provinces of Upper and Lower Canada, and for the government of Canada:" after reciting that it was necessary that provision be made for the good government of the Provinces of *Upper Canada* and *Lower Canada*, in such manner as might secure the rights and liberties and promote the interests of all classes of her Majesty's subjects within the same, and that to this end it was expedient that the said provinces be re-united and form one province for the purposes of executive government and legislation: It is enacted that it should be lawful for her Majesty, with the advice of her privy council, to declare or authorise the Governor General of the said two provinces to declare by proclamation that the said provinces, upon from and after a certain day in such proclamation to be appointed, which day should be within fifteen calendar months next after the passing of this act, should form and be one province, under the name of the province of Canada, and thenceforth the said provinces should constitute and be one province, under the name aforesaid, upon from and after the day so appointed. § 2. Provides that so much of the 31 G. 3. c. 31. as provides for constituting and composing

a legislative council and assembly within each of the said provinces respectively, and for the making of laws; and the whole of the Lower Canada acts 1 & 2 V. c. 9. the 2 & 3 V. c. 53. 1 & 2 W. 4. c. 23. should continue in force until the union by proclamation, and should be repealed from that day, but not revive any former enactment by such repeal. § 3. After the re-union there shall be within the province of Canada one legislative council and one assembly, to be called the legislative council and assembly of Canada, with power to her Majesty, by and with the advice and consent of such council and assembly, to make laws for the peace, welfare and good government of the province of Canada; such laws not being repugnant to this act, &c. § 4. It shall be lawful for her Majesty, by an instrument under the sign manual, to authorize the Governor in her Majesty's name, by an instrument under the great seal of the province, to summon to the legislative council such persons, being not fewer than *twenty*, as her Majesty shall think fit, and from time to time in like manner to summon to the said council such other person or persons as her Majesty shall think fit, and every person so summoned shall thereby become a member of the legislative council; but no person shall be so summoned who shall not be of the full age of 21 years, and a natural born subject, or naturalized by act of Parliament of Great Britain, or by the legislature of Upper or Lower Canada, or the province of Canada. § 5. Members to hold their seats for life, subject to the provisions hereinafter contained. § 6. Authorises such members to resign their seats. § 7. And if any legislative councillor shall be absent two successive sessions without permission of the Governor, or shall take the oath of allegiance to any foreign power, or do any act whereby he may become a subject or citizen of any foreign power, or become entitled to the rights or immunities of such, or shall become bankrupt, or insolvent, or a public defaulter, or be attainted of treason, or convicted of felony or of any infamous crime, his seat shall thereby become vacant. § 8. Legislative council to determine questions of vacancy, subject to an appeal to her Majesty. § 9. The Governor to appoint and remove the speaker. § 10. Ten members, including the speaker, to constitute a *quorum*; and all questions to be decided by the majority, and the speaker to have a casting vote. § 11. Authorises the Governor, from time to time, in her Majesty's name, to summon and call together a legislative assembly. § 12. Upper and Lower Canada to be represented by an equal number of representatives. § 13. *County of Halton*, in Upper Canada, to be divided into two ridings, east and west, and each to be represented by one member. § 14. County of



Northumberland, in Upper Canada, to be divided into two ridings, north and south, and each to be represented by one member. § 15. County of Lincoln, in Upper Canada, to be divided into two ridings, north and south, each to be represented by one member. § 16. Every other county and riding in Upper Canada to be represented by one member. § 17. City of Toronto to be represented by two members. The towns of Kingston, Brockville, Hamilton, Cornwall, Niagara, London, and Bytown, to be each represented by one member. § 18. Every county in Lower Canada which before the 1 & 2 V. c. 9. was entitled to be represented (except the counties of *Montmorency*, *Orleans*, *L'Assomption*, *La Chesnaye*, *L'Acadia*, *Laprairie*, *Dorchester* and *Blance*, to be represented by one member. § 19. The counties of *Montmorency* and *Orleans* to be united and called the county of *Montmorency*. The counties of *L'Assomption* and *La Chesnaye* to be united and called the county of *Leinster*; and the counties of *L'Acadie* and *Laprairie* to be united and called the county of *Huntingdon*; and the counties of *Dorchester* and *Blance* to be united and called the county of *Dorchester*; and each of said counties to be represented by one member, § 20. Cities of *Quebec* and *Montreal* to be each represented by two members; and the towns of *Three Rivers* and *Sherbrooke* to be each represented by one member. § 21. Boundaries of cities and towns to be settled by the Governor: the parts adjoining and not included within such boundaries to be taken as part of the adjoining county or riding. § 22. Returning officers to be appointed by the Governor. § 23. No person obliged to execute such office for any longer term than one year, or oftener than once, unless otherwise provided by the legislature. § 24. Writs of election to be issued by the Governor within 14 days after the sealing of the instrument, from calling together the assembly: directed to the returning officers, returnable within 50 days unless otherwise provided by the legislature: and writs in like manner to be issued in the case of any vacancy, returnable as above; and in case such vacancy shall happen by death of the member, or his being summoned to the council, the writ shall be issued within *six* days after notice thereof left at the office of the proper officer for issuing same. § 25. The Governor to fix the time and place of holding elections, giving not less than eight days notice thereof. § 26. The legislature authorised to alter the divisions and extent of the several counties, ridings, cities, and towns, and to establish new divisions: and to alter the apportionment of representatives, and alter and regulate the apportionment of returning officers, and make provision for issuing and return of writs of election: Provided that no bill be

presented for her Majesty's assent by which the representation in the assembly shall be altered, unless the second and third reading thereof in the *council* and *assembly* shall have passed with the concurrence of *two thirds* of the members for the time being of both houses; and unless *addresses* from both houses be presented to the Governor stating that such bill has been so passed.

§ 27. Until otherwise provided by the legislature, the laws of Upper Canada in force at the time of passing this act, and the laws of Lower Canada in force at the time of passing the 1 & 2 V. c. 9. relating to the qualification and disqualification of members (except the property qualification hereinafter provided) and relating to the qualification and disqualification of electors, and to the oaths by them, and the powers and duties of returning officers, and the proceedings at such elections, and the period of continuance thereof, and relating to the trials of controverted elections, and vacating seats of members, shall be applied to elections of members for the province of Canada.

§ 28. No person shall be capable of being elected a member who shall not be legally or equitably seized as of freehold, for his own use, of lands or tenements held in free and common soccage; or seized or possessed, for his own use, of lands or tenements held in *fief* or *en roture*, within the province of Canada, of the value of £500 sterling over and above all incumbrances: and every candidate, before he shall be capable of being elected, shall, if required by any other candidate, or by any elector, or by the returning officer, make the following declaration:—

I, A. B. do declare and testify, that I am duly seized at law or in equity as of freehold, for my own use and benefit, of lands or tenements held in free and common soccage [or duly seized and possessed, for my own use and benefit, of lands or tenements held in *fief* or *in roture* (as the case may be) ] in the province of Canada, of the value of five hundred pounds of sterling money of Great Britain, over and above all rents, mortgages, charges, and incumbrances charged upon or due and payable out of or affecting the same; and that I have not collusively or colourably obtained a title to or become possessed of the said lands and tenements, or any part thereof, for the purpose of qualifying or enabling me to be returned a member of the legislative assembly of the province of Canada.

§ 29. False declaration to be deemed a misdemeanor, and punished as wilful and corrupt perjury. § 30. It shall be lawful for the Governor for the time being to fix such place or places, within any part of the province of Canada, and such times for holding the first and every other session of parliament, as he

may think fit; to be afterwards changed or varied, as the Governor may judge desirable and most consistent with general convenience and the public welfare, giving sufficient notice thereof; and also to prorogue the parliament and dissolve the same by proclamation, or otherwise, whenever he shall deem it expedient. § 31. A session to be held once at the least every year, so that twelve calendar months shall not intervene between the last sitting in one session and the first sitting of the next: and every assembly shall continue for *four* years from the day of the return of the writs; subject, nevertheless, to be sooner prorogued or dissolved by the Governor. § 32. The parliament to be convened for the first time within six calendar months after the re-union. § 33. The assembly, at the first meeting after every general election, to elect one of their number to be speaker; and in case of his death, resignation, or removal, forthwith to elect another. § 34. Twenty members at the least, including the speaker, to constitute a *quorum*. All questions to be decided by the majority present, and the speaker to have a casting vote. § 35. No member of the council or assembly to sit or vote until he shall have taken and subscribed the following oath before the Governor, or some person or persons by him authorised:—

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

§ 36. Affirmation may be made where authorised by law. § 37. The Governor may, in her Majesty's name, assent to or reserve bills for her Majesty's pleasure. § 38. Bills assented to may be disallowed within two years. § 39. No reserved bill to be in force until the Governor, by speech or message to both houses, or by proclamation, shall signify her Majesty's assent. § 40. Provision made for the appointment of a Lieutenant-

Governor by her Majesty, and a deputy or deputies by the Governor, with adequate powers. § 41. After the re-union, all legislative records to be in the English language. § 42. All bills affecting ecclesiastical and crown rights to be reserved and laid before the imperial parliament, and not assented to until 30 days after the same shall have been laid before both houses, nor in case either house shall present an address against such bills. § 43. Provision for the regulation of colonial commerce. § 44. And respecting the courts of appeal, probate, Queen's bench, and chancery, in Upper Canada; and court of appeal in Lower Canada. § 45. Powers, authorities, and functions of the government to be vested in and exercised by the Governor of the province of Canada, with the advice, or with the advice and consent of, or in conjunction with the executive council or any member thereof, as may be appointed by her Majesty for the affairs of the province; or by the said Governor *individually* and alone, in cases where the advice, consent, or concurrence of the executive council is not required. § 46. All existing laws in both provinces to remain in force, except in so far as repealed by this or any subsequent act of the legislature. § 47. The courts of civil and criminal jurisdiction within both provinces to remain until otherwise provided. § 48. Provides for temporary enactments. § 49. Repeals the provisions contained in the 3 G. 4. c. 119. respecting the revenue claims of the two provinces. § 50. The revenue in future to form one consolidated fund. § 51. Charged with the costs of collection. § 52. £45,000 payable thereout to her Majesty, her heirs and successors, for defraying the expense of the several services in schedule A.; and during the life of her Majesty, and for five years afterwards, a further sum of £30,000 payable to her Majesty, her heirs and successors, for defraying the expenses in schedule B. § 53. The salaries of the Governor and of the judges to be as stated in schedule A. until altered by the legislature: but it shall be lawful for the Governor to abolish any of the offices named in schedule B., or to vary the sums appropriated therein, and any saving accruing from any such alteration in either of the schedules shall be appropriated as her Majesty may think fit: accounts in detail of the expenditure of the said sums of £45,000 and £30,000 shall be laid before both houses of the legislature within 30 days next after the beginning of the session after such expenditure made: *Provided*, that not more than £2,000 shall be payable at the same time, for pensions to the judges, out of the said sum of £45,000; and not more than £5,000 payable at the same time for pensions out of the said sum of £30,000: and a list of all such pensions shall be laid yearly before the legis-

lature. § 54. During the time aforesaid, said sums of £45,000 and £30,000 shall be accepted by her Majesty by way of *civil list*, instead of territorial and other revenues now at the disposal of the crown, and *three fifths* of the nett produce of said territorial and other revenues shall be paid over to the consolidated revenue fund; and during the life of her Majesty, and for five years afterwards, the remaining *two fifths* shall also be paid over to the said consolidated fund. § 55. Consolidation of the revenues not to affect the payment out of the consolidated fund of any sum or sums heretofore charged upon the rates and duties of either of the said provinces, for such time as shall have been appointed by the respective legislatures. § 56. Provides for the charges on the consolidated fund, in the following order:— First. The expenses of collection. Second. The annual interest of the *public debt* of the provinces of Upper Canada and Lower Canada at the time of the re-union. Third. Payments to the clergy of the united church of *England and Ireland*, and to the clergy of the church of Scotland, and to ministers of other denominations, pursuant to any law or usage. Fourth. The said sum of £45,000. Fifth. The said sum of £30,000. Sixth. The other charges upon the rates and duties levied within the said province of Canada. § 57. Subject to the above charges, the consolidated revenue fund to be appropriated by the legislature: *Provided*, that all bills for appropriating such *surplus*, or for imposing any new tax or import, shall originate in the legislative assembly; to be *first* recommended by a message by the Governor. § 58. Authorises the Governor to constitute new townships, under the great seal. 59. The powers given to the Governor shall be exercised in conformity with her Majesty's instructions and orders. § 60. The Magdalens may be annexed to the island of Prince Edward, at her Majesty's pleasure. § 61. Interpretation clause. § 62. This act to be amended or repealed during the present session.

SCHEDULE A.

Governor .....	£7,000
Lieutenant-Governor .....	1,000

*Upper Canada.*

1 Chief Justice .....	1,500
4 Puisne Judges, at £900 each.....	3,600
1 Vice Chancellor .....	1,125

*Lower Canada.*

1 Chief Justice, Quebec.....	£1,500
3 Puisne Judges, Quebec, at £900 each .....	2,700
1 Chief Justice, Montreal .....	1,100
3 Puisne Judges, Montreal, at £900 each .....	2,700
1 Resident Judge at Three Rivers .....	900
1 Judge of the Inferior District of St. Francis.....	500
1 Judge of the Inferior District of Gaspé.....	500
Pensions to the Judges, Salaries of the Attornies and Solicitors General, and Contingent and Miscellaneous Expenses of Administration of Justice throughout the Province of Canada.....	20,875
	<hr/>
	£45,000

## SCHEDULE B.

Civil Secretaries and their Offices.....	£8,000
Provincial Secretaries and their Offices .....	3,000
Receiver General and his Office .....	3,000
Inspector General and his Office .....	2,000
Executive Council .....	3,000
Board of Works .....	2,000
Emigrant Agent.....	700
Pensions .....	5,000
Contingent Expenses of Public Offices .....	3,300
	<hr/>
	£30,000

## CONTEMPT.

A CONTEMPT is, in legal meaning, either an open resistance or insult to the power of a court of record, committed by any person in the face of the court; or a disobedience to its rules, orders or process, by a party who is not present in court. 4 *Bl. Com.* 283. So, where abusive words are spoken to a *justice of the peace*, in the execution of his office, whilst sitting as a magistrate, he may commit for the contempt; but if the words are spoken of him behind his back, the party can then only be indicted. *R. v. Revel*, 1 *Str.* 420. A commitment by the sessions, or other court of record, need not be under seal, as the memorial thereof, which may at any time be entered of record, is sufficient without any warrant. 1 *Hale*, 583, 584. But a justice cannot commit for a contempt, except by warrant in writing. *Mayhew v. Locke*, 7 *Taunton*, 63. And, unless the words be spoken under circumstances which render it probable

they may prevent the due administration of justice, it will be safer for the magistrate to abstain from summary punishment and proceed by indictment, which will certainly lie for words addressed to him while in the discharge of his duty. *Dickenson* Q. S. 43. If, however, the party be imprisoned *instanter*, the commitment must be for a time certain; and a commitment, *until the defendant is discharged by due course of law*, is bad. *Rez. v. James*, 5 B. & A. 894. It has been held, that a commitment which charged the party, generally, with having insulted justices of the peace in the execution of their office, without specifying what he said or did, is sufficient. 2 *Barnard*, 155. It is, however, in general advisable to describe the offence concisely, but in substance as in an indictment. *Clitty*, C. L. p. 112. A justice of the peace may commit for contempt while in the execution of his office out of sessions, but the commitment must be by warrant in writing, and for a specified period. *Jones v. Glarford*, Michs. 2 V. *Cameron's Digest*, 544.

*Commitment for Contempt.*

To the keeper of—

Home District, } Receive into your custody the body of C. D.  
 to wit. } herewith sent you by me A. W. Esquire,  
 one of her Majesty's justices of the peace in and for the said  
 district, and (convicted or charged, as the case may be) by me,  
 the said justice, upon the view, of me the said justice, with  
 contempt and indecent behaviour in my presence, by insulting  
 and obstructing me, the said justice, in the due execution of my  
 office, as such justice as aforesaid, (*and for saying, &c. in the  
 presence and hearing of me, the said justice, here set forth the particu-  
 lars, if the justice shall think it necessary,*) and him the said C. D.  
 detain in your custody, in the gaol aforesaid, for the space of—  
 hours, to be computed from the hour of — o'clock, in the fore-  
 noon of this present — day of — instant, for his contempt afore-  
 said, (or until he find two sufficient sureties for his appearance  
 at the next general quarter sessions of the peace for the said  
 Home District, to answer to the charge aforesaid, or be other-  
 wise discharged by due course of law.) Given under my hand  
 and seal, at Toronto, in the said district, the — day of —.

CONVICTION.

A CONVICTION ought to be in words and figures at length.— It is not usual or necessary for the convicting justices to draw up a formal conviction, in the first instance, in every case in which a penalty is inflicted, but to make minutes of the pro-

ceedings (without attending to the precise form) at the time of pronouncing the judgment, from which they may afterwards, if occasion require, make out a regular conviction; nor is it necessary that it should be drawn up in due form, before the penalty is levied. *Paley on Con.* 316. Even after an action brought, it seems that justices may draw up a conviction, and give it in evidence, by way of defence, provided the date is warranted in fact by the time when the conviction actually took place.—*Massey v. Johnson*, 12 *East.* 82.

When the statute prescribes a particular form of conviction, it must be exactly followed; but when it is merely directory, “that the justice be authorised or empowered to draw up the conviction in the form or to the effect following,” then the justice is not bound to any precise form of words, although it will be prudent for him to adhere to the form given, as nearly as possible, and pursue the words of the statute. *Pal. on Con.*

\* By statute 2 W. 4. c. 4. it is enacted, that in all cases wherein a conviction shall take place, and no particular form for the record thereof hath been directed, the justice or justices duly authorised to proceed summarily therein, and before whom the offender or offenders shall have been convicted, shall and may cause the record of such conviction to be drawn up in the manner and form following, or in any words to the same effect, *mutatis mutandis*, that is to say,—

#### *Form of Conviction.*

— District, } Be it remembered, that on the — day of — in the  
to wit. } year of our Lord — at — in the district of —  
A. B. of — in the district of — labourer, (or as the case may  
be) personally came before me (or before us) C. D. one (or  
more, as the case may be) of her Majesty’s justices of the peace  
for the said district of — and informed me (or us, as the case  
may be) that E. F. of — in the district of — labourer, (or as  
the case may be) on the — day of — in the year of our Lord  
— at — in the said district of — did [here set forth the fact for  
which the information is laid] contrary to the form of the statute  
in such case made and provided, whereupon the said E. F. after  
being duly summoned to answer the said charge, appeared before  
me (or us, as the case may be) on the — day of — in the year  
of our Lord — at — in the said district of — and having heard  
the charge contained in the said information, declared that he  
was not guilty of the said offence, (or as the case may happen  
to be) did not appear before me, (or us) pursuant to the said  
summons, or did neglect and refuse to make any defence against



the said charge, whereupon I, or we, (as the case may be) or nevertheless I, or we, (as the case may be) the said justice or justices, did proceed to examine into the truth of the charge contained in the said information, and on the — day of — aforesaid, at — in the district of — aforesaid, one credible witness, to wit, A. W. of — in the district of — labourer, (or as the case may be) upon his oath deposeth and saith, [if E. F. be present, say in the presence of the said E. F.] that on the — day of — in the year of our Lord — the said E. F. at — in the said district of — [here state the evidence, and as nearly as possible in the words used by the witness; and if more than one witness be examined, state the evidence given by each; or if the defendant confess, then, instead of stating the evidence say, and the said E. E. acknowledged and voluntarily confessed the same to be true,] therefore it manifestly appearing to me (or us, as the case may be) that he the said E. F. is guilty of the offence charged upon him in the said information, I, or we (as the case may be) do hereby convict him of the offence aforesaid, and do declare and adjudge, that he the said E. F. hath forfeited the sum of — of lawful money of this province, for the offence aforesaid, to be distributed or paid (as the case may be) according to the form of the statute in that case made and provided. Given under my hand, or our hands (as the case may be) and seal, (or seals) the — day of — in the year of our Lord —.

§ 2. In all cases where two or more justices are authorised to hear and determine any complaint, one justice shall be competent to receive the original information or complaint, and issue the summons or warrant requiring the party to appear before two justices, as the case may require, and after adjudication thereon, by two or more such justices, all subsequent proceedings to enforce obedience thereto, whether respecting the fine, imprisonment, costs or other matter, may be enforced by either of the said justices, or by any other justice of the district, having before him a record of such conviction, certified by the justice or justices who adjudged the case. § 3. No conviction shall be set aside in consequence of any defect of form. § 4. And in cases where convictions shall be quashed, no more damages than one shilling, and the amount levied by virtue thereof, shall be recoverable against any justice, unless the act complained of shall be charged in the declaration to have been done maliciously. § 5. And no damages or costs, when the plaintiff shall be proved to have been guilty.

A defendant is entitled to a *copy* of the conviction, and the justice is bound to give it to him, if requested. *R. v. Midlum*,

*Burr.* 1720. But the justice is not thereby precluded from drawing up and returning a conviction in a more formal shape; for this last is to be taken as the only authentic record of the proceedings. *R. v. Barber*, 1 *East.* 82. *R. v. Allan*, 15 *East.* 332.

A justice should, in all cases, return a conviction to the sessions, whether the party appeal or not, or whether an appeal is or is not given, in order that the crown may not be deprived of its share of forfeitures. *R. v. Eaton*, 2 *T. R.* 285.

By the 4 & 5 V. c. 12. § 1. Every justice of the peace before whom any trial or hearing shall be had, under any law now or hereafter to be in force, imposing any fines, forfeitures, penalties or damages upon the defendant or defendants in case of convictions, shall make a due return thereof in writing, under his hand, to the next general quarter sessions for the district in which such conviction shall take place, and of the receipt and application by him of the monies received from any such defendant or defendants; and in case such convictions shall have taken place before two or more justices, each justice joining in such conviction to make an immediate return thereof, as nearly as possible in the form set forth in the annexed schedule; and the justices to whom any such monies shall be afterwards paid shall make a return of the receipts and application thereof to the next general quarter sessions, to be filed by the clerk of the peace with the records of his office. § 2. In case any such justice shall neglect or refuse, or shall make a false, partial, or incorrect return, or shall wilfully receive a larger amount of fees than by law is authorised, then he shall forfeit and pay £20, with full costs of suit, to be recovered by any person in any court of record in Canada West; one moiety to be paid to the party suing, and the other to the Receiver General, for the use of the province. § 3. Penalties to be sued for within six months after cause of action, and tried in the district where such penalties accrued; and in case of verdict for the defendant, or non-suit, or discontinuance, the defendant shall recover full costs. § 4. Clerk of the peace, within seven days after the general quarter sessions shall have first adjourned, to publish said returns in one public newspaper in the district, and fix up a schedule of such returns in the court house and a conspicuous place in his office, and the same to continue fixed up until the end of the next general quarter sessions; and for every schedule so made and exhibited he shall be entitled to the fee of one pound, besides the expense of publication, in his accounts with the district. § 5. Clerk of the peace, within twenty days after the end of each quarter sessions, to transmit to the Inspector

General a true copy of all such returns within his district. § 6. Justices of the peace not exonerated from duly returning convictions to the general quarter sessions, as by law required. § 7. Act not to prevent any person aggrieved from prosecuting by indictment. § 8. Sheriff required to transmit quarterly, to the Inspector General, an account of fines, or be liable to the same penalty as justices. § 9. Act limited to Upper Canada.

SCHEDULE TO WHICH THIS ACT REFERS.

*Return of Convictions made by me (or us, as the case may be) in the months of —, 18—.*

Name of the Prosecutor.	Name of Defendant.	Nature of the Charge.	Date of Conviction.	Name of Convicting Justice.	Amount of penalty, fine, or damage.	Time when paid or to be paid to said Justice.	To whom paid over by said Justice.	If not paid, why not, and general observations if any.
								<i>A. B. Convicting Justice. C. or D. Convicting Justices (as the case may be).</i>

## CORONER.

THE Governor has the appointment of all coroners in this province, who are appointed by commission under the seal of the province, as coroners of the district.

The office and power of a coroner are, like those of a sheriff, either judicial or ministerial; but principally judicial. This is in great measure ascertained by statute 4 Edw. 1. *de officio coronatoris*; and consists, first, in inquiring, when any person is slain, or dies suddenly, or in prison, concerning the manner of his death; and this must be *super visum corporis*; for, if the body be not found, the coroner cannot sit. *Bl. Com. b. 4. p. 348.* The ministerial office of the coroner is only as the sheriff's substitute; for when just exception can be taken to the sheriff, for suspicion of partiality (as that he is interested in the suit, or of kindred to either plaintiff or defendant), the process must then be awarded to the coroner, instead of the sheriff, for execution of the King's writ. *Ib. 349.*

See further on this subject, title "*Jury.*"

By stat. 3 H. 7. c. 1. the coroner is entitled to a fee of 13s. 4d. upon every inquisition taken in *murder*, out of the goods and

chattels of the slayer; and by statute 25 G. 2. c. 29. for every inquisition (not taken upon view of a body dying in gaol) 20s.; and also 9d. for every mile he shall be compelled to travel to take such inquisition; and for every inquisition taken on a body dying in prison, so much—not exceeding 20s.—as the justices in sessions shall allow. The above fees to be paid out of the county rates (in England); and in this province, are usually ordered by the sessions, to be paid out of the district funds.

### COSTS.

By stat. 18 G. 3. c. 19. Where any complaint shall be made before any justices, and any warrant shall issue, it shall be lawful for any justice who shall have heard and determined the complaint, to award costs to be paid by either of the parties, as to him shall seem fit, to the party injured; and in case any person ordered by the justice to pay such money, shall not forthwith pay down or give security for the same to the satisfaction of the justice, it shall be lawful for the said justice, by warrant, to levy the said sum by distress and sale of goods; and where goods cannot be found, to commit such person to the house of correction, to be kept to hard labour, for, not exceeding, one month, nor less than ten days, or until such money, together with the expenses attending the commitment, be first paid. § 1.

Upon the conviction of any person upon any penal statute, where the penalty shall amount to or exceed five pounds, the costs shall be deducted by the justice, according to his discretion, out of the penalty, so that the deduction shall not exceed one fifth of the penalty; and the remainder of the penalty shall be paid to the person entitled to the whole in case this act had not been made. § 2.

The forms to this act annexed shall be used. § 3.

#### *Form of awarding Costs.*

County or Borough, } I — one [or, we — being two] of her  
 &c. to wit. } Majesty's justices of the peace in and  
 for the — aforesaid, in pursuance of an act, made in the eighteenth year of his Majesty King *George* the third, "entituled, an act for the payment of costs to parties, on complaints determined before justices of the peace out of sessions; for the payment of the charges of constables in certain cases; and for the more effectual payment of charges to witnesses and prosecutors of any larceny, or other felony; on the complaint of — [here state the names of the parties, and the offence generally, and the

date], against — for — which said complaint was heard and determined by — on the — day of — do award the following costs to be paid by — viz. [here state the costs.] Given under — hand and seal [or hands and seals] this — day of — in the year of our Lord —.”

*Form of Warrant of Distress and Sale.*

——— } To the constable of — and to all other her Majesty's  
to wit. } constables in and for — in — aforesaid.

Whereas — of her Majesty's justices of the peace in and for the — aforesaid, in pursuance of an act, made in the eighteenth year of his Majesty King *George* the third, “entituled, an act for the payment of costs to parties, on complaints determined before justices of the peace out of sessions; for the payment of the charges of constables in certain cases; and for the more effectual payment of charges to witnesses and prosecutors of any larceny, or other felony; have awarded; on the — of — now last past, on the complaint of — against — for — the following costs to be paid by — viz. [here state the sum]: and whereas the said — being ordered by — the said justice [or justices] to pay such sum [or sums] as aforesaid, hath not paid down or given security for the same, to the satisfaction of — the said justice [or justices]: these are therefore to command you, and each and every of you, to levy the said sum of — by distress and sale of the goods and chattels of the said — and — do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within — days, unless the said sum of — for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid; and you are hereby also commanded to certify unto — what you shall have done by virtue of this — warrant, Given under — hand and seal [or hands and seals] at — the — day of — in the year of our Lord —.”

*Constable's Return thereon, for want of Distress.*

To wit. } I — constable of — do hereby certify to — justice  
(or justices) of the peace of — that I have made diligent search for, but do not know, nor can find any goods and chattels of — by distress and sale whereof I may levy the sum — pursuant to — warrant for that purpose, dated the — day of — Given under my hand, this — day of — in —.

*Commitment thereupon to the House of Correction.*

To wit. } To the constable of — and also to the keeper of the  
house of correction at —.

Whereas in pursuance of an act made in the eighteenth year of his Majesty King *George* the third, entituled, “An Act for the payment of costs to parties, on complaints determined before justices of the peace out of sessions; for the payment of the charges of constables in certain cases; and for the more effectual payment of charges to witnesses and prosecutors of any larceny, or other felony,” — of her Majesty’s justices of the peace, in and for the said — did issue — warrant of distress and sale, directed to — of — constable of the said — of — ordering the said constable to levy the said sum of — of the goods and chattels of the said — in manner and form as therein is mentioned: and whereas it appears to — by the return of — constable of — dated the — day of — that he hath made diligent search, but doth not know of, nor can find any goods and chattels of the said — by distress and sale whereof the said sum of — may be levied, pursuant to the said warrant: these are therefore to command you, the said constable of — to apprehend the said — and convey the said — to the said house of correction at — and to deliver the said — there to the said keeper of the said house of correction; and these are also to command you, the said keeper of the said house of correction, to receive the said — into the said house of correction, and there to keep to hard labour for the space of — from the date hereof, or until such sum of — together with the expenses attending the commitment of the said — to the said house of correction, be first paid, or until the said — be discharged by due course of law. Given under my hand and seal, at — the — day of — in the year of our Lord 18—.

## COUNTY COURTS.

See title “*Outlawry*,” and stat. \*55 G. 3. c. 2. \*3 W. 4. c. 6.  
\*2 V. c. 7.

## COURTS OF REQUEST.

The statutes relative to these courts have been repealed, and other courts called “*Division Courts*” constituted by the 4. & 5 V. c. 3. See title “*Division Courts*.”

**CRIMINAL LAW.**

By statute 14 G. 3. c. 83. § 11. It was enacted, that the criminal laws of England should continue to be administered and observed as law in the province of Quebec (of which the province of Upper Canada then formed a part) as well in the description and quality of the offence, as in the method of prosecution and trial, and the punishments and forfeitures thereby inflicted, to the exclusion of every other rule of criminal law, or mode of proceeding, which prevailed in the said province before the year 1764; subject to such alterations as the provincial legislature might thereafter make therein.

After the division of the said province into the present provinces of Upper Canada and Lower Canada, by stat. \*40 G. 3. c. 1. (of this province) entitled "An Act for the further introduction of the criminal law of England into this province," it is enacted, that the criminal law of England as it stood on the 17th day of September, 1792, shall be and the same is thereby declared to be the criminal law of Upper Canada.

Subsequently, many alterations and improvements were made in the criminal law of Upper Canada, which are referred to in different parts of this work; and since the re-union of the said provinces, now constituting the province of Canada, the following important acts have been passed relating to the whole of the united province, viz.

The 4 & 5 V. c. 24. Intituled an act for improving the administration of criminal justice in this province.

The 4 & 5 V. c. 25. Intituled an act for consolidating and amending the laws in this province relative to larceny and other offences connected therewith.

The 4 & 5 V. c. 26. Intituled an act for consolidating and amending the laws in this province relative to malicious injuries to property.

The 4 & 5 V. c. 27. Intituled an act for consolidating and amending the statutes in this province relative to offences against the person.

The provisions contained in these acts will be found under their respective titles: each of the said acts contains a clause repealing all former acts or provisions of law inconsistent or contradictory to said acts.

## CURRENCY.

\*By statute 2 G. 4. c. 13. entitled "An Act to establish an uniform currency throughout this province," it is enacted, that no interest shall be recovered on any bond, note, or other instrument, made after that date (1st July, 1822), in which the penalty or sum payable shall be expressed in New York currency, nor any costs allowed in actions brought thereon: and after the 1st July, 1822, no rendering of an account shall be considered a demand, nor shall any admission be given in evidence as an acknowledgment of debt, unless such account shall have been rendered in provincial currency; and no shop-books shall be given in evidence unless made in provincial currency.

## CUSTOMS.

\* By the 4 G. 4. c. 11. § 2. the Governor is authorised to appoint collectors at the ports of entry and clearance, now or hereafter to be established. § 3. Who shall give security, himself in £1000, and two sureties in £500 each. § 4. Collectors may appoint deputies, and make seizures as well without as within their respective districts. § 5. Hours of attendance, every day, except Sundays, *Christmas day* and *Good Friday*, between 9 and 12, A.M., and 3 and 6 P.M., from the 1st May to the 1st October, and from 10 till 3 the rest of the year.— § 6. Collectors to make a report to the inspector general four times in the year of all entries at their ports, and comprising a faithful statement of all duties paid or secured, and the proceeds of all seizures and penalties received within the periods following, viz.: between the first day of January and the last day of March, the first day of April and the last day of June, the first day of July and the last day of September, and the first day of October and last day of December, to be transmitted to the inspector general within forty days next after the expiration of every quarter, and shall also report all seizures by him or any of his deputies within twenty days after making the same; and within forty days after such return pay over the amount to the receiver general. § 7. Under the penalty of forfeiting the *per centage* for the period in default. § 8. Collectors may retain fifty per cent. on the duties collected, until the same amounts to £100 per annum, and no more. § 9. The master of any vessel, boat, raft, or carriage, having goods, wares, or merchandize



on board, arriving at or coming into any port of entry, to make a report to the collector in the following form:

Name of Owner of Vessel, Boat, Raft, or Carriage.	Lading.	Whence Shipped.	Whither Destined.

(Signed) A. B., master, [or person having charge or command.]

To be furnished by the collector, if required, for 1s. 3d.; and in case of neglect or refusal to make such report, such master shall forfeit £5, and the collector may seize and detain the vessel until penalty paid or security given for the same: and in case a false report be made, the vessel and the tackle, apparel, cattle, horses and harness, thereunto belonging, shall be forfeited and liable to seizure by such collector,—*exemptions*—carriages arriving from any part of this province, and any boat owned and managed by any inhabitant and exclusively laden with articles of the growth, produce, or manufacture thereof. § 10. No goods, wares or merchandise liable to duties, to be imported at any other place than a port of entry, nor unladen until the duties paid or secured, and the master obtain a permit. All goods so imported from the United States, not entered according to this act, shall be forfeited, together with the vessel, &c., in which the same shall be found, or shall have been imported, and the tackle, &c., belonging thereto. § 11. When the duties amount to £20, the collector or his deputy may take bond from the owner for payment, one half in two months and the other half in four months, with one or more sureties, at the discretion of the collector. § 12. Collector may give permit for removal of goods imported to any other port, giving a description thereof, and certifying that the duties have been paid or secured; such permit to be for a limited time only. § 13. Goods imported from the United States not to be unladen except in open day, between sunrise and sunset, without permit, under the penalty of double the value thereof, on the master and persons aiding and assisting. § 14. Collector may, on suspicion of fraud, open any package in the presence of two or more witnesses; and if found to agree with the entries, shall cause the same to be re-packed; but if found to differ, the goods in such package shall be forfeited, unless it be made to appear to the satisfaction of

the collector or the court that such difference arose from mistake or accident, and not from any intent to defraud the revenue. § 15. Any person harbouring, keeping, concealing, purchasing, selling or exchanging goods illegally imported, shall forfeit double the value thereof. § 16. Collector to mark with a brand all kegs of tobacco entered at his office, with the number of the keg and name of the port. § 17. Collector, or his deputy, or other person specially appointed by either of them, may enter any suspected vessel and seize and secure goods not reported, or into any dwelling house, upon making oath before a justice of the peace of the facts founding the grounds of suspicion, and obtaining a warrant to enter therein (in the day time only), and if any found, to seize and secure the same. § 18. Three commissioners to be appointed by the Governor in each district (two being a quorum), to hear and determine all informations exhibited before them for the condemnation of goods seized as forfeited, when the value thereof, with the vessel, shall not exceed £40; and also to hear and determine all informations for penalties under this act. But if the defendant shall be desirous of having the same tried in the court of king's bench, and shall, before judgment, enter into a bond with sureties in £50, for the payment of costs, the said commissioners shall not determine the case, but report the proceedings to the inspector-general, for prosecution in the king's bench. § 19. Commissioners may appoint a clerk. § 20. In all cases of seizure the commissioners shall, as well before as after seizure, have full power to examine into the circumstances, and take affidavits and report thereon, for the information of the Governor; and in case the Governor shall deem it expedient, he may order the seizure to be restored upon such terms as he may think proper. § 21. Collector or person making the seizure shall, within 48 hours, cause the goods to be appraised by the oath of two indifferent persons, to be administered by any justice of the peace; and such appraisal shall be annexed to and filed with the information required to be exhibited before the commissioners within eight days after such seizure. § 22. As soon as information laid, a notice thereof shall be put into the office of said clerk, and also in the office of the collector or deputy residing nearest to the place where such seizure was made: and if the owner or person in charge shall claim the same, or any part thereof, the said commissioners may, after notice put up fifteen days, proceed to hear and determine any claim, or to the condemnation thereof if no claim made. § 23. And may administer oaths. § 24. No claim to be entertained by the commissioners until security given by bond, with sureties in £20 for costs. § 25. In case of goods restored, costs

to be paid out of the provincial funds, arising from duties imposed on goods from the United States. § 26. Commissioners to meet on the last Saturday of every month, at the court-house, in case any information shall have been filed. § 27. If any collector or deputy, or other person aiding or assisting, shall be sued or prosecuted for any thing done under this act, he may plead the general issue, and give this act and the special matter in evidence: and if the plaintiff shall be non-suited, or judgment given against him, the defendant shall recover *double costs*; and in case any information shall be commenced for any seizure as forfeited by this act, wherein a judgment shall be given for the claimant, and it shall appear to the court that there was a *probable cause* for seizing the same, the court shall certify on the record that there was a probable cause, and the defendant shall not be entitled to costs, nor shall the person who seized be liable to any action on account of such seizure: and in case any action shall be brought to trial against any person on account of any such seizure, when no information shall be filed or exhibited, or brought to trial, to condemn the same, if the court shall certify in like manner, as aforesaid, that there was a probable cause of seizure, then the plaintiffs (besides the vessel and goods, &c., where the same shall not have been restored) shall not be entitled to above *one shilling* damages, nor to any costs. § 28. Goods forfeited and condemned under this act shall be advertised for sale at the port where seized, eight days previous to such sale, and not less than 15 days after condemnation, and shall be sold by the collector or deputy by public auction to the highest bidder. § 29. Persons leaving the province may be arrested and detained by warrant under the hand and seal of a commissioner, until security given for the penalty in case of conviction: and such penalties, when security not required, may be recovered by distress and sale of the goods of the offender, and in default thereof commissioner may commit the offender to the common gaol, for a period not longer than six months. § 30. Proof of the duty having been paid on goods lawfully imported to lie on the owner. § 31. If the importer shall refuse to pay the duties, the collector or his deputy shall take and secure and sell the goods within twenty days after such refusal, at such times and places as such officer shall appoint, giving *four* days notice; and the proceeds applied to the payment of the duties and charges of sale, and the overplus (if any) to the owner. § 32. All penalties and forfeitures (except as hereinbefore provided) shall be recovered in the king's bench, in like manner as in the exchequer in England; and after deducting the charges of prosecution, the remainder shall be

divided, one half to Her Majesty and the other to the *person seizing*; and all penalties recovered before the commissioners, after deducting costs of prosecution, shall be paid one half to the receiver general, and the other to the informer. § 33. Monies to be accounted for through the commissioners of Her Majesty's treasury. § 34. Commissioners' clerks to make quarterly reports to the inspector general of proceedings before the commissioners. § 35. In case of the seizure of any cattle or horses, or *perishable* articles, the collector or his deputy, or person seizing the same, after legal appraisement thereof, may sell the same as if condemned, and keep the proceeds in hand till the said cattle, &c., condemned, or ordered to be restored; and in case of judgment for the claimant, the court shall order the proceeds of such sale to be paid over to claimant in lieu of awarding restitution. § 36. Goods seized to be given up to the owner on depositing with the collector the amount at which such seizure was appraised, or upon giving security, to the satisfaction of the collector, for payment within three months after condemnation. § 37. Collectors and deputies to affix in their offices a table of fees to be taken and received by them, as follows:—

	s.	d.
For any permit to unload any vessel, boat, or batteau, under five tons burthen .....	1	3
For any permit to unload any vessel, boat, or batteau, of five tons and upwards, and not exceeding fifty tons .....	2	6
For any permit to unload any vessel exceeding fifty tons .....	10	0
For any permit to unload any raft .....	1	3
For any permit to unload any cart, sleigh, waggon, or other carriage .....	1	3
For every certificate of goods having paid duty, with a permit to remove the same .....	2	6
For every clearance when required .....	5	0
For every bond for payment of duties .....	5	0

§ 38. No other or greater fees to be received.—

§ 39. Clerks fees to be as follows:

For every paper filed .....	0	6
For every judgment recorded .....	5	0
For every copy of any paper, per folio of 72 words .....	0	6
For every information by him drawn .....	5	0

§ 40. This act not to affect any existing commission.—

§ 41. Collectors not to retain any per centage on goods imported from the United States by or for such collectors.

By the \*2 W. 4. c. 3. commissioners of customs to be deemed a court of record, and to have jurisdiction in cases of forfeitures

and penalties, not exceeding the amount aforesaid (£40) under any imperial act.

By provincial statute 4 & 5 V. c. 14. § 3. entitled, "An Act to repeal certain acts therein mentioned, and to consolidate the laws relating to the provincial duties to be levied on goods, wares, and merchandize imported into this province," the duties mentioned in the table annexed are imposed in lieu of all other duties, except the duties levied by virtue of any imperial act.

4. imposes an *ad valorem* duty of five per cent. on the first sterling cost of all goods, wares, and merchandize of what nature or kind soever imported into this province, (except as hereinafter excepted, and except those specified in said table).—

§ 5. Importers of goods, subject to *ad valorem* duty, to produce the original invoice to the collector, and subscribe the following declaration:

I, A. B. of — in the county of — do declare that the account or accounts, invoice or invoices, now by me produced, are just and true, and that it contains (or they contain) the exact quantity of all the articles mentioned in the entry now tendered, and which are made subject to a duty of five pounds on each hundred pounds worth thereof, and so in proportion for any greater or less quantity, by an act passed by the legislature of this province, in the fifth year of her Majesty's reign, and entitled, "An Act to repeal certain acts therein mentioned and to consolidate the laws relating to the provincial duties to be levied on goods, wares and merchandise imported into this province," and I do further declare, that the prices annexed to each article are just and true, and agreeable to the first or sterling cost thereof, and that I am the owner thereof, or the consignee, who has the principal care, disposal or management of the same, or the principal clerk or agent of such owner or consignee, as the case may be.

§ 6. If no invoice received, goods may be landed on a bill of sight, the importer making a declaration accordingly. § 7. When the goods, &c. cannot be examined (without injury or loss) so that the true value may be ascertained, the same may be warehoused at the risk of the importer; and if such invoice be not produced within three months, said goods shall be sold, at such time and place as the collector shall appoint, for the payment of duties and expenses, the overplus to be rendered to the importer. § 8. If the invoice produced shall not state the true value, the officer of the customs may detain such goods for the benefit of the crown within fifteen days after landing, and the collector shall pay the importer or proprietor, on demand, the *declared*

*value*, with the costs and charges of importation and an addition of *ten per cent.*, and the custom duties which shall have been paid for the same. § 9. Public stores exempted from duty.— § 10. Barley, beans, beef, salted or fresh, cattle, fish, salted or fresh, flour, grain of all kinds, hogs, indian corn, live stock, oil, (fish), peas, pork, salted or fresh, potatoes, seeds, wheat, and packages in which dutiable articles are contained, shall be exempt from duty, provided the importer or consignee shall make a special entry, and state the amount of the invoice, in the manner prescribed for other things. § 11. Household goods and necessaries of persons coming into the province for actual settlement exempt from duty, except goods imported for trade. § 12. 13. Certain allowances to be made for tare of packages. § 14. Duties paid upon goods lost before landing to be repaid to the owner. § 15. And a proportionate part of the duty to be returned in case goods are damaged, the amount of damage to be ascertained by three merchants chosen by the collector.— § 16. Duties to be paid or secured before unloading goods, viz.: If the duties shall not exceed £50, the same shall be immediately paid in money; and where the amount shall exceed £50, the same may, at the option of the owner or his agent, be either immediately paid in money or secured by bond to her Majesty, payable to the collector; the officers who shall gauge, weigh, measure, or tell any such goods, shall, if required, give to the owner a certificate thereof, and the duties shall be calculated accordingly, the allowances for tare being first deducted; and the amount of duties shall be indorsed by the collector on the bond, and the overplus of such bond shall be cancelled and made void; and if the duties have been paid in money, such certificate shall entitle the owner to repayment of the excess; further credit not to be allowed until former bond satisfied. § 17. Duties and penalties to be in sterling money of Great Britain; and duties to be paid according to British weights and measures in use on the 6th July, 1825. § 18. Duties to be paid over to the receiver general, and form part of the consolidated revenue.— § 19. Accounts of duties received to be made up by collectors quarterly. § 20. Former acts of Lower Canada and Upper Canada, relating to officers of customs, or the mode of collecting such customs, or the places where they may be paid, or in any way affecting the same and not hereby repealed, or contrary to the provisions of this act, shall be extended to the duties hereby imposed and to the officers employed in collecting the same.— § 20. Importer of goods by sea shall, within fourteen days after the arrival of the ship, make due entry inwards of such goods and land the same, and in default thereof, the officer of customs

may convey such goods, and at any time, all small packages to the Queen's warehouse; and if the duties are not paid in six months after the expiration of said fourteen days, together with the charges of removal and warehouse rent, the same shall be sold under written order, signed by the collector, at such time and place as the collector shall appoint, on four days' notice, and the monies arising therefrom shall be applied, first, to the payment of freight and charges; secondly, of duties; and the overplus to the owner. § 22. Any person making an untrue declaration under this act shall incur a penalty of £25 currency, over and above other penalties. § 23. Penalties may be recovered in any of her Majesty's courts of record mentioned in the act. § 23. Any person taking a false oath, or making a false declaration, liable to the pains and penalties of perjury. § 25. Actions for penalties to be commenced within three years. § 26. In case of seizure of goods under this act, the onus of proof to lie on the owner.

SCHEDULE.

*Table of Duties of Customs Inwards.*

	s.	d.
Madeira wine, for every gallon, wine measure.....	1	0
All other wines .....	0	6

*Spirits or Strong Waters of all sorts.*

For every gallon of such spirits, or strong waters of any strength not exceeding the strength of proof by Sykes' hydrometer, and so in proportion for any greater strength than the strength of proof, or for any greater or less quantity than a gallon, viz.

Not being spirits or strong waters, the produce of the United Kingdom, or of any British possession in America, or of any British possession within the limits of the East India Company's charter, and not being sweetened spirits, or spirits mixed with any article so that the degree of strength thereof cannot be exactly ascertained by such hydrometer.....	0	6
Spirits or strong waters, the produce of any British possession in America, not being sweetened spirits or spirits so mixed as aforesaid .....	0	9
Spirits or strong waters, the produce of any British possession within the limits of the East India Company's charter, not being sweetened spirits or spirits so mixed as aforesaid .....	1	0

Spirits or strong waters, the produce of the United Kingdom, not being sweetened spirits or spirits so mixed as aforesaid .....	0	3
Spirits, cordials or strong waters, respectively, not being the produce of the United Kingdom or of any British possession in America, sweetened or mixed with any article, so that the degree of strength cannot be exactly ascertained by such hydrometer.....	1	7
Spirits, cordials or strong waters, respectively, being the produce of the United Kingdom, sweetened or mixed as aforesaid .....	1	1½
Spirits, cordials or strong waters, respectively, being the produce of any British possession in America, or within the limits of the East India Company's charter, sweetened or mixed, as aforesaid.....	0	9

And further for the excess over hydrometer proof upon all spirits not sweetened as aforesaid, for every gallon wine measure of such excess, where the spirits reduced to such hydrometer proof,—an equal additional duty per gallon to the duty imposed upon the said spirits by any act or acts of the imperial parliament, and payable in this province.

For every pound of refined sugar .....	0	2
For every pound of raw sugar.....	0	1
For every pound of green coffee .....	0	2
For every pound of ground coffee.....	0	4
For every pound of tea .....	0	3
For every hundred weight of molasses or syrups .....	1	6
For every barrel of salt containing two hundred and eighty pounds, and so in proportion for any greater or less quantity, imported otherwise than from sea .....	2	6
For every ton of salt imported by sea .....	1	0
For every pound of tobacco unmanufactured.....	0	1
For every pound of tobacco manufactured.....	0	2

By the imperial statute 5 & 6 V. c. 49. Intituled an act to amend the laws for the regulation of the trade of the British possessions abroad, said act shall come into operation, so far as relates to the British possessions in North America, from and after the 5th day of July, 1843.

§ 4. The several sorts of goods enumerated in the following table are prohibited to be imported or brought, either by sea, or by inland carriage or navigation, into the British possessions in America, or shall be so imported only under the restrictions mentioned in such table.



A TABLE OF PROHIBITIONS AND RESTRICTIONS.

Gunpowder,  
Ammunitions, Arms, or Utensils of War,  
prohibited to be imported, except from the United Kingdom  
or from some other British possession.

Coffee,  
Sugar, not being refined, in bond in the United Kingdom,  
Molasses,  
Rum,

being the produce or manufacture of any British possession  
within the limits of the East India Company's charter, except  
and subject as hereinafter is provided, or being of foreign  
produce or manufacture, prohibited to be imported into any  
of the British possessions on the continent of South America  
or in the West Indies (the Bahama and Bermuda Islands not  
included), or into the Mauritius, except to be warehoused for  
exportation only, and may also be prohibited to be imported  
into the Bahama or Bermuda Islands by her Majesty's order  
in Council.

Base or counterfeit coin,  
Books, such as are prohibited to be imported into the United  
Kingdom, prohibited to be imported.

And if any goods shall be imported contrary thereto, the same  
shall be forfeited, with the ship or vessel, if of less burden than  
seventy tons.

§ 7. The several duties of customs as set forth in the table of  
duties hereinafter contained, to be levied upon all goods, wares,  
and merchandise *not* being the growth, production, or manufac-  
ture of the United Kingdom, or of any of the *British* possessions  
within the limits of the East India Company's charter, or the  
produce of any of the *British* fisheries, imported or brought into  
any of the *British* possessions in America by sea or inland car-  
riage or navigation.

TABLE OF DUTIES.

	s.	d.
Wheat Flour, the barrel of 196 lbs. ....	2	0
Fish of foreign taking or } dried or salted, the cwt.....	2	0
curing } pickled..... the barrel ...	4	0
Meat, salted or cured ..... the cwt.....	3	0
Butter .....	8	0
Cheese .....	5	0

Coffee .....	the cwt.....	5	0
Cocoa .....	" .....	1	0
Molasses .....	" .....	3	0
Sugar, unrefined .....	" .....	5	0
Refined Sugar, the produce of and re- fined in foreign countries	} 20 per centum ad valorem.		
Tea, unless imported direct from China, or unless imported from the United Kingdom, or from any of the British possessions	} per pound ...	0	1

Spirits :

Rum .....	per gallon ...	0	6
Other spirits and cordials .....	" .....	1	0
Glass manufactures .....	} 15 per centum ad valorem.		
Silk manufactures .....			
Spermaceti .....			
Wine, whether bottled or not .....	} 7 per centum ad valorem.		
Cotton manufactures .....			
Linen ditto .....			
Woollen ditto .....			
Leather ditto .....			
Paper ditto .....			
Hardware .....			
Clocks and watches .....			
Manufactured tobacco.....			
Soap .....			
Candles, other than Spermaceti .....			
Corks, Cordage, and Oakum .....			
Oil, blubber, fins and skins, the produce of fish and creatures living in the sea, of foreign fishing	} 15 per centum ad valorem.		
Articles not enumerated, except such as are comprised or referred to in the subjoined table of exemptions	} 4 per centum ad valorem.		
And if any of the goods hereinbefore proposed to be charged with duty, ex- cept sugar and tea, shall be imported through the United Kingdom (having been warehoused therein, and being exported from the warehouse), or the duties thereon, if there paid, having been drawn back	} Such goods shall only be charged with three fourths of the duties hereinbefore proposed.		

## TABLE OF EXEMPTIONS.

Coin, bullion, and diamonds.  
 Horses, mules, asses, neat cattle, and all other living stock.  
 Hay and straw.  
 Tallow and raw hides.  
 Salt.  
 Rice.  
 Corn and grain unground.  
 Biscuit or bread.  
 Meal or flour, except wheat flour.  
 Fresh Meat.  
 Fresh Fish.  
 Fruit and vegetables, fresh.  
 Carriages of Travellers.  
 Wood and Lumber.  
 Cotton Wool.  
 Hemp, flax, and tow.  
 Drugs.  
 Gums and Resins.  
 Tortoise-shell.  
 Manures of all kinds.  
 Herrings, taken and cured by the inhabitants of the Isle of Man, and imported from thence.  
 Provisions and stores of every description, imported or supplied for the use of Her Majesty's land and sea forces.  
 All goods imported from the United Kingdom, after having there paid the duties of consumption, and imported from thence without drawback.

§ 8. Articles enumerated in the *table of exemptions* may be imported without payment of duty, and also such of the following articles, viz.:

*Salted or cured meat, flour, butter, cheese, molasses, corkwood, cordage, oakum, pitch, tar, turpentine, leather and leatherware, fishermen's clothing and hosiery, fishing craft, utensils, instruments and bait, as shall be imported for the use of the British fisheries.*

§ 10. If any duty be charged by any colonial law upon any articles of British origin, beyond the duty (if any) chargeable by such colonial law upon similar *foreign* articles, the imperial duty hereby imposed upon such foreign articles shall be increased by such excess or amount, so chargeable by colonial law, upon British articles; and if in any of the British possessions in *America* any duty be chargeable by colonial law upon tea impor-

ted direct from *China* or from the United Kingdom, or any of the British possessions, beyond the duty (if any) chargeable by such colonial law upon tea not so imported, the imperial duty hereby imposed upon tea, not so imported, shall be increased by such excess or amount so chargeable by colonial law upon tea imported from *China*, or from the United Kingdom, or British possessions. § 11. Her Majesty may, by order in council, exempt from duty any article chargeable under this act as an unenumerated article with a duty of four per cent. § 12. Duties imposed by this act to be levied and recovered under the regulations and by the means and powers of the *Possessions Act*, (3 & 4 W. 4. c. 59.) except such of the said regulations as are repealed or altered by this act. § 13. Duties, penalties, and forfeitures, declared to be *sterling* money.

#### DEBTORS.—(DETENTION OF)

\* THE 10 G. 4. c. 2. authorising the arrest and detention of debtors by a justice's warrant, until the defendant could be served with a proper process of a superior court, has been suffered to expire; consequently an arrest under this statute would now be unlawful.

#### DEER.

\* By statute 2 G. 4. c. 17. no person shall kill any deer in this province, *feræ naturæ*, after the tenth January until the 1st July in every year, under the penalty of 40s. to be recovered before any two justices; one moiety to the province and the other to the informer. This act not to extend to Indians.

N.B.—This act does not contain any power of distress or sale for the penalty.

#### DESERTERS.

By the \*3 V. c. 3. the \*44 G. 3. c. 2. which related to desertion, is repealed. § 2. If any person, other than enlisted soldiers in her Majesty's service, or sailors engaged in the naval service of her Majesty, shall, by words or with money, or by any ways, methods, or means whatsoever, directly or indirectly, prevail upon, procure, persuade or encourage any such soldier or sailor to desert or leave her Majesty's naval or military service as aforesaid, and shall be thereof lawfully convicted before any court of oyer and terminer and general gaol delivery in this

province, such person, so offending, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be liable to be punished by imprisonment in the common gaol of the district in which such conviction shall happen, or by imprisonment in the provincial penitentiary in this province, for such period as the court before which such trial shall take place shall, in their discretion, adjudge, and shall be further liable to the payment of such fine as the said court shall impose upon such offender. § 3. If any person, other than an enlisted soldier or sailor, shall harbour, conceal, receive, or assist any deserter from her Majesty's naval or military service, knowing him to be a deserter, such person, so offending, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be liable to the penalties and punishments above mentioned.

DETAINING WARRANT—see "*Debtors.*"

## DISTILLERS.

\* By statute 34 G. 3. c. 12. § 11. distillers are not to sell or barter any quantity of distilled liquor, less than three gallons, nor shall the secretary of the province, or any of his agents, grant to a distiller a license to retail spirituous liquors.

## DISTRESS.

To justify taking a distress, the party must have a regular warrant for so doing, and must take care that the things taken are distrainable, and that the distress is made in due time and place. *Co. Lit.* 47. All distresses must be made in the day time, unless in the case of cattle distrained *damage feasant*.—*1 Inst.* 142. *Bull, N. P.* 61. Persons making a lawful distress, may sell the same upon the premises, in like manner as may be done off the same. *2 W. & M. Sess.* 1. c. 5.

### *Of Distress by Warrant of Justices of the Peace.*

By statute 27 G. 2. c. 20. it is enacted as follows:—In all cases where any justice of the peace is, or shall be required or impowered by any act of parliament to issue a warrant of distress, for the levying of any penalty inflicted, or any sum of money directed to be paid by such act, it shall be lawful for the justice granting such warrant, therein to order and direct the goods and chattels, so to be distrained, to be sold and disposed of within a certain time, to be limited in such warrant, so as such

time be not less than four days, nor more than eight days, unless the penalty or sum of money for which such distress shall be made, together with the reasonable charges for taking and keeping such distress, be sooner paid: and the officer making such distress shall and may deduct the reasonable charges of taking, keeping and selling, such distress, out of the money arising by such sale, and the overplus (if any) after such charges, and also the said penalty or sum of money shall be satisfied and paid, shall be returned, on demand, to the owner of the goods so distrained; and the officer executing such warrant, if required, shall shew the same to the person whose goods are distrained, and shall suffer a copy thereof to be taken.

When an act of parliament orders a distress and sale of goods, it is in the nature of an execution, and replevin will not lie.—*Bac. Abr.* title “Replevin.”

If, in seizing for the whole sum due, the first distress is found insufficient, from mistaking the value of the goods seized, a second distress may be made. *Burr.* 589.

*Distress Warrant, where part of the penalty goes to the informer, and part to the poor, i.e. to the district.* See \*11 G. 4. c. 1.

To the Constable of — and to all other Constables in and for the Home District.

Home District, } Whereas A. B. of — labourer, is duly con-  
to wit. } victed before J. C. Esquire, one of her  
Majesty's justices assigned to keep the peace, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said district committed, for that he the said A. B. on the — day of — in the — year of the reign of our sovereign lady Victoria, did [*describe the offence as in the statute*] contrary to the form of the statute in such case made and provided, whereby he hath forfeited the sum of £— of lawful money of Canada.— These are therefore to command you, forthwith to levy the said sum of £— by distraining the goods and chattels of him the said A. B. and if within the space of — days (*not less than four nor more than eight days, by 27 Geo. 2. unless otherwise directed by particular statute*) next after such distress by you taken, the said sum shall not be paid, together with the reasonable costs and charges of taking and keeping the same, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the sum of £— part of the said sum of £— to C. D. of — yeoman, who informed me of the said offence; and the sum of £— the remainder of the said sum of £— so forfeited; that you do pay to the treasurer.

of the said district, to be appropriated by him to the purposes of the said district, returning to him the said A. B. the overplus, on demand, the reasonable charges of taking, keeping and selling the said distress being first deducted; and you are to certify to me, with the return of this precept, what you shall have done in the execution hereof. Herein fail not. Given under my hand and seal at — in the said district, the — day of — A. D. 18—.

*The like, where part of the penalty goes to the Queen.*

As in the last precedent, till the words “arising by such sale,” after which add:—that you do pay the sum of £— being one moiety (if the act so direct) of the said sum of £— so forfeited, to me the said justice, for the use of her said Majesty, her heirs and successors; and £— being the other moiety (or the remainder) of the said sum of £— so forfeited as aforesaid, that you pay to — [as the act directs, if in several shares or appropriations, specify each].

*Warrant of Distress for Penalty and Costs, where the penalty has been mitigated.*

To the Constable of — in the Home District.

Home District, } Whereas by a certain conviction under our  
to wit. } hands and seals, bearing date the — day of  
— 18—, one A. B. of — was duly convicted before us, J. C.  
and S. P. Esquires, two of her Majesty’s justices of the peace  
in and for the Home District, upon the information of C. D. of  
— and on the oath of E. F. a credible witness in that behalf, of  
a certain offence committed by the said A. B. for that [state the  
offence as in the conviction, to the words “contrary to the statute,”  
&c.] whereby, and by force of the statute in that case made and  
provided, the said A. B. was, for his said offence, adjudged to  
forfeit the sum of £— [as in the conviction]. And whereas we,  
the said justices, seeing cause to mitigate and lessen the said  
penalty, do, at the request of the said A. B. according to the  
statute, mitigate and lessen the said penalty to the sum of £—  
over and above the reasonable costs and charges of the said  
informer, by him laid out and expended in and about the said  
information and conviction, to be distributed and applied, one  
moiety thereof to the use of our lady the Queen, and the other  
moiety thereof to the said C. D. the informer, and which said  
costs and charges of the said C. D. the informer, we the said  
justices do allow, assess and adjudge to him, with his assent, at

the sum of £— of like lawful money, according to the statute in that case made and provided. These are therefore to command you, to levy the said sum of £— and also the said sum of £— the costs and charges aforesaid, of the said C. D. the informer, making together the sum of £— by distress and sale of the goods of the said A. B. and we do hereby order and direct, that the said goods and chattels which shall be so distrained, be sold and disposed of within six days from the time of making the said distress, unless the said sum of £— for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid: and you are hereby commanded to certify to us, the said justices, what you shall do by virtue of this our warrant. Given under our hands and seals, this — day of — in the year of our Lord 18—.

*Constable's Return of Warrant of Distress, to be indorsed on the Warrant.*

W. S. constable of — within mentioned, maketh oath, this — day of — 18—, that he hath made diligent search for, but doth not know of, nor can he find sufficient goods and chattels of the within mentioned A. B. whereon to levy the within mentioned sum of £— as therein he is commanded.

Sworn, &c.

## DISTRICT COUNCILS.

By the 4 & 5 V. c. 10. § 1. it is enacted, that the inhabitants of each of the districts of Upper Canada, and of each and every district which may be hereafter established in that portion of the province in the manner by law provided, shall, from and after the first Monday in January, A.D. 1842, be a body corporate, and have perpetual succession and a common seal, and be capable of holding lands, situate within the district, for the use of the inhabitants, and making contracts, and the powers shall be exercised through and in the name of the council of such district. § 2. To exercise such corporate powers only as are herein mentioned or shall be expressly conferred by the legislature, or shall be necessary for the execution of the powers herein granted. § 3. District council to consist of a warden and councillors, to be elected as hereinafter provided. § 4. The warden to be appointed by the Governor under the great seal of the province, and hold office during pleasure. § 5. District councillors to be elected at the annual township meetings, according to the provisions hereinafter contained. § 6. A certified list to



be furnished by the collector, six days before the time appointed for such election, of all the inhabitant freeholders and householders upon the last assessment roll, and those persons only shall vote, and shall take the following oath, if required by the town clerk, who shall administer the same:

I do swear (or solemnly affirm) that I am A. B. whose name is entered on the assessment roll for the township of — (or as the case may be) and that I have not already voted at this election.

§ 7. Inhabitant freeholders and householders, at every such meeting, shall first proceed to the election of a councillor or councillors, and the poll, if demanded by any candidate, or three electors then present, shall be kept open to an hour not later than three in the afternoon, and shall then close; poll lists to be kept by the town clerk, in the form in the schedule; and after the close of the poll, the person duly elected to be declared, and the number of votes; in case of an equal number of votes, the person presiding to have a casting vote and determine the election; and the poll lists shall be delivered by the person so presiding to the clerk of the peace of the district. § 8. Presiding officer at such election, before polling, to take the following oath before some justice of the district, who shall certify and return such affidavit to the warden of the district, to be kept among the records of the council:

I, C. D. do swear (or solemnly affirm) that I have not, directly or indirectly, by myself or any other person, received any fee, gift, gratuity or reward, either in money or otherwise, or the promise of any, as a consideration for my returning or affecting the return of any person as a member of the district council, for the district of — (as the case may be); that I will, to the best of my skill and ability, fairly, honestly and faithfully, conduct the present election for the choice of a member (*or members, as the case may be*) of the said council, and truly return the candidate (or candidates, if two members are to be chosen) who, at the final close, shall appear to have the majority of votes, and that I will use my best endeavours to preserve peace and order at such election, and to give all persons, entitled to vote, free and unmolested access to and from the poll.”

§ 9. Presiding officer, during the election, to act as a conservator of the peace; and he, or any justice present at such election, may arrest and try, or bind over for trial, or summarily punish, by fine or imprisonment, or both, any riotous or disorderly persons, or any person who may assault, beat, molest, or threaten any elector at, coming to, or returning from such

election; constables also to aid and assist, under pain of being deemed guilty of a misdemeanor; and all justices residing in the township shall, upon being notified by presiding officer, attend at such election to keep the peace, and such justices, or presiding officer, may swear in special constables, not exceeding twenty-five. § 10. Every township, or reputed township, entitled to elect township officers, shall be also entitled to elect one councillor, and if more than three hundred inhabitant freeholders and householders in the assessment list, such place shall be entitled to elect two councillors; no township entitled to elect more than two. *Provided always*, that the unions of townships and of reputed townships, under the \*1 V. c. 21. shall be considered as townships, for the purposes of this act. § 11. District councillor to be resident within the township, and seized and possessed of lands to his own use, within the district, or some one or other of the next adjoining districts, of the real value of £300 currency, above all incumbrances. § 12. No person, being in holy orders, or being a minister, or teacher of any religious sect or congregation, nor any judge of any court of civil jurisdiction, nor any military, naval or marine officer, on full pay, nor any person accountable for the district revenues, nor any person receiving any pecuniary allowance from the district for services, nor any person having, directly or indirectly, any share or interest in any contract with the district, shall be qualified to be elected a councillor. § 13. Nor any person attainted for treason or felony, in any part of her Majesty's dominions. § 14. Persons duly qualified shall, upon election, serve, or be liable to pay to the treasurer of the district a fine not exceeding £10, or such other fine as may hereafter be provided by a by-law of such council, and in default of payment, to be levied, with reasonable costs, by distress and sale, upon the warrant of any justice of the district, and the fine so recovered shall be accounted for by the treasurer as part of the district funds. *Provided also*, that no person shall be liable to such fine who shall, prior to conviction, make oath, before the justice that he has not the qualification in property required; and no person disabled by permanent infirmity, nor any person above sixty-five, nor any person who, within five years from the day of election, shall have served in the office of councillor or paid the fine. § 15. Councillors not to act until they shall have taken and subscribed, before the warden of the district, or any of the justices who shall have authorised the election, the oath of allegiance, and also the following oath:

I, A. B. having been elected a councillor in the district council of — do hereby sincerely and solemnly swear (or affirm)

that I will faithfully fulfil the duties of the said office, according to the best of my judgment and ability; and that I am seized and possessed, to my own use, of lands held in fee, viz., (*describing the lands*) and that the said lands are within the district of — and are of the real value of three hundred pounds, currency, over and above all charges and incumbrances due and payable upon or out of the same; and that I have not fraudulently or collusively obtained the same for the purpose of qualifying me to be elected as aforesaid. So help me God.

§ 16. Such oaths to be taken within ten days after notice of election; and in default, such person neglecting shall be deemed to have refused to accept the office, and shall be liable to be fined, and the office shall be deemed vacant and filled by another election. § 17. In case of exemption, or refusal to accept the office, or to take the oaths, it shall be lawful for the justices who signed the warrant for the township meeting, or either of them, to issue his or their warrants to the township clerk, authorising him on a given day (of which not less than five days notice shall be given, as by law required for annual township meetings), to proceed to another election: and the councillor so elected shall hold office until the time, the person in whose place he may be elected would, according to this act, have gone out of office, but shall be capable of re-election, unless otherwise disqualified. § 18. In case of vacancies from death, or other cause, before the annual period of election, the warden shall issue, in her Majesty's name, a warrant under his hand and seal, directed to the clerk of the township, requiring him, after five days' notice, to cause an election of a councillor or councillors to supply such vacancy or vacancies: and every councillor so elected shall vacate his seat at the time the person in whose stead he shall have been chosen would according to this act have vacated his seat, but shall be capable of re-election if not otherwise disqualified: no such warrant to be issued after the third quarterly meeting in any year. § 19. On the first Monday in January, in the year next following the first election, and on the same day annually, *one third* part of the entire number of councillors shall go out of office; and at the last quarterly meeting of the district council, in the year in which such first election shall be had, it shall be determined by lot which shall go out of office for that year, and for the next succeeding year; but thenceforward, in all future years, councillors for the longest time, without re-election, shall vacate their seats: *Provided*, That when the number of councillors shall not be divisible into three equal parts, such district council may, by a by-law, fix and determine the number to go out at the end of the first and second years,

which number shall be as near one third of the whole as may be: and the number to go out of office shall be so regulated by such by-laws, that at the end of three years none of the councillors elected at the first election shall remain in office: *Provided*, That every councillor, if not otherwise disqualified, may be re-elected. § 20. In order to determine what councillors are to vacate their seats in the first and second years after the first election under this act, the clerk of the council or other officer to be appointed for that purpose by the council, shall, at the last quarterly meeting of such council, to be held in the year in which such first election shall be had, write the name of each of the councillors on a piece of paper, and place the same folded up in a glass or box, from which the names shall be drawn by some person appointed by the council for that purpose; and the third of the said councillors (or the number of councillors to go out in pursuance of the by-law to be made in that behalf as aforesaid), who shall vacate their seat in the year then next following, shall be those whose names shall be first drawn: and the third of the said councillors, or the number to go out of office in pursuance of such by-law, who shall vacate their seats in the next succeeding year, shall be those whose names shall be next drawn. § 21. At all meetings of every such council, the warden of the district shall preside; and, in case of his absence, death, or incapacity to act, or of any accidental vacancy in the office of warden, the members shall choose, from the councillors present, one of their number to be temporary chairman in the place of such warden, during his absence, or during such accidental vacancy in the office of warden. § 22. There shall be in each year, four quarterly meetings of every district council constituted under this act, to commence on the second Tuesday in the months of February, May, August and November, respectively; and the said meetings shall not at any time be held for a longer period than six successive days (Sundays excepted), and at no meeting of any such council, shall any matter be deliberated or determined on except such matters as fall within the scope of the powers and jurisdiction of such council. § 23. Provided always, That extraordinary meetings of any such councils may be held under the authority of the Governor of this province, signified in writing to the warden of the district, who shall give due notice thereof to the councillors of the district; and no such extraordinary meeting shall continue beyond the period of six days; and no matter shall be deliberated or determined on, at any such extraordinary meeting, except those for which the same shall have been specially convened. § 24. Meetings of the council of each district, res-

pectively, shall be open to the public, and shall be held at the place at which the sittings of the district court are appointed to be held; and may be held in the court-house of the district, unless some other building shall be provided for the purpose.

§ 25. All acts authorised or required to be done by the council, and all questions of adjournment or other questions, that may come before any meeting of such council, shall be done and decided by the majority of votes of the members present at such meeting, other than the warden; and the warden, or in the absence of the warden, the temporary chairman shall, in all cases of equality of votes, have a casting vote; but the warden shall not vote except in such case of equality, and the temporary chairman shall vote first as a member of the council, and shall then, if there be such equality, have a casting vote; and in order to constitute a quorum, there shall be present at every such meeting, a majority of the entire number of councillors by which such district is entitled to be represented in such council: *Provided always*, that no district council shall be incompetent to proceed to business, if a quorum be present, although all the councillors by which the district is entitled to be represented may not then have been elected, or have taken the oaths requisite to enable them to sit.

§ 26. Minutes of the proceedings of all the meetings of the said councils shall be entered in a book to be kept for that purpose by the clerks of the said councils, respectively; and such minutes shall be signed by the warden or temporary chairman, and shall be open to inspection by any elector of the district, at all seasonable times, on payment of a fee of one shilling.

§ 27. Council may appoint from and out of the councillors elected to serve, such and so many committees, consisting of such number of persons as they may think fit; such committees not to sit or meet on any days except those appointed for the meetings of the council, and to be subject in all things to the authority, controul and approval, of the council.

§ 28. Out of a list of three fit and proper persons, to be submitted by the council to the Governor, said Governor to select one to be district clerk; and every such clerk shall be appointed by an instrument to be issued under the great seal of this province, and shall hold his office during pleasure: *Provided always*, that if at the first meeting under this act, or at the next quarterly meeting after any vacancy shall have occurred in the office of district clerk, or at any extraordinary meeting to be called for the purpose of filling up such vacancy, any such council shall fail to agree upon the three names to be submitted as aforesaid to the said Governor, then it shall be lawful for the said Governor to appoint some fit and

## District Councils.

proper person to be such clerk: and *Provided also*, that it shall be lawful for the warden to appoint a person to act as clerk until such time as a clerk shall be appointed in the manner hereinbefore provided. § 29. Upon, from and after the said first day of January, 1842, the power vested in justices to appoint the district treasurer shall cease, and the office of each and every district treasurer so appointed before the said day, shall be vacated upon, from and after the same; and it shall be lawful for the Governor to appoint, in each of the said districts, one fit and proper person to be the district treasurer, and to hold his office during pleasure; and such appointment shall be made by an instrument under the great seal of this province, after the person named by the said Governor shall have first given good and sufficient security, to be ascertained and determined by the said Governor, for the due execution of the office of treasurer, and for the faithful accounting for all the monies which may come into his hands by virtue of the said office. § 30. The treasurer to receive all monies which shall be raised under any by-law to be made as hereinafter provided, by the council of the district, and also all monies which under any act of competent legislative authority within this province, have been or shall be directed to be paid to or received by any district treasurer, and to apply and account for the same in such manner as may be prescribed by any by-law of such council, or by any act of such competent legislative authority as aforesaid. § 31. Each district treasurer appointed under the authority of this act, shall upon, from and after the day last aforesaid, be to all intents and purposes substituted to and for the district treasurer appointed for the same district in the manner now authorised by law, and shall have the same rights and powers with regard to such former district treasurer, his sureties, and all other parties concerned, as if he had succeeded to such former district treasurer by virtue of an appointment made in the manner now provided by law, on the removal from office of such former district treasurer; saving only that he shall be under the controul of and accountable to the district council, and the auditors hereinafter mentioned, touching all matters and things within the scope of the powers and jurisdiction of the district council, and shall not, with regard to such matters and things, be under the controul of and accountable to the justices of the peace for the district; and upon, from and after the said day, each district treasurer appointed under this act, shall have all the rights, powers and authority, and shall be subject to all the duties, obligations and liabilities, which the district treasurer, appointed for the same district by the justices of the peace,

would have had, or would have been subject to, if this act had not been passed; saving always, that he shall not be under the controul of, or accountable to the justices of the peace for the district, but shall be under the controul of, and accountable to the district council, and the auditors hereinafter mentioned, touching all matters and things within the scope of the powers and jurisdiction of the district council, but shall with regard to all other matters and things be and remain under the controul of, and accountable to the justices of the peace for the district, and to other authorities and parties, as the district treasurer appointed for the same district by the said justices would have been, if this act had not been passed. § 32. District treasurer shall, in books to be kept for that purpose, enter true accounts of all sums of money by him received and paid, and for which he may be accountable to the district council, or to the auditors hereinafter mentioned, and of the several matters for which the same shall have been received and paid; and the books so kept shall at all seasonable times be open to the inspection of every member of the council; and all such accounts, together with all vouchers and papers relating thereto, shall, four times in every year, that is to say, within one month after every quarterly meeting, be submitted, together with an abstract of such accounts for the last year, by the treasurer to the district auditors (to be appointed as hereinafter provided), for the purpose of being by them examined and audited; and if the said accounts shall be found to be correct, the same shall be approved and allowed by the said auditors; and after the said accounts shall have been so examined and audited, the said auditors shall make their report thereon to the council at its next quarterly meeting; and every such abstract and report shall be open at all seasonable times to the inspection of any inhabitant of the district, who shall also be entitled to copies thereof, on payment of such reasonable fee for the same as the council shall establish. § 33. *Provided always*, that no district treasurer appointed under this act, shall be entitled to any salary, per centage, or remuneration whatever, for any service performed under the direction or controul of the district council, on any monies for which he shall be accountable to the district auditors, unless and until his accounts shall have been duly audited, approved and allowed by such district auditors; and in every bond and other security given by any such treasurer for the due execution of his office, it shall be expressly conditioned that he shall render true accounts to such auditors, within the time and times prescribed by this act, or within the time and times which shall be prescribed by any other laws which shall be in force in that behalf;

and so much of any act or law now in force as may be inconsistent with the provisions of this section, shall be and is hereby repealed. § 34. At the first quarterly meeting in each year, for each district, two persons shall be appointed, to be called "district auditors," one of whom shall be appointed by the warden of the district, and the other elected by the council: *Provided always*, that no person shall be appointed or elected auditor, who shall be a member of the council, or the clerk, or treasurer, or surveyor of the district, nor any person who shall have directly or indirectly, by himself or in conjunction with any other person, any share or interest in any contract or employment with, by or on behalf of such council: and *Provided also*, that no person appointed or elected an auditor for the district, shall be capable of acting as such, unless he shall have previously made and subscribed before any two of the councillors for such district, an oath in the words, or to the effect following, that is to say:

I, A. B., having been appointed (or elected, as the case may be) to the office of auditor, for the district of — do hereby promise and swear, that I will faithfully perform the duties thereof, according to the best of my judgment and ability; and I do hereby solemnly declare and swear, that I have not, directly or indirectly, any share or interest whatever, in any contract or employment with, by, or on behalf of the council of this district. So help me God.

§ 35. Every person authorised by law to make an affirmation instead of taking an oath, shall make such affirmation in every case in which by this act an oath is required to be taken; and if any person shall wilfully swear or affirm falsely, such person shall be deemed guilty of wilful and corrupt perjury, and be liable accordingly. § 36. It shall be the duty of the auditors to examine, settle and allow, or report upon, all accounts which may be chargeable upon or may concern their districts, respectively, and which may relate to any matter or thing under the controul of, or within the jurisdiction of the district council, and may then remain unsettled, whether such accounts relate to debts or liabilities of or to the district, contracted before or after the said first day of January, 1842; and also to examine and audit the accounts of the township officer or officers of reputed townships, appointed or hereafter to be appointed in pursuance of the aforesaid act of the parliament of Upper Canada, and the accounts of all other persons, against their respective townships; and the said auditors shall, for the purpose last aforesaid, be substituted for the town wardens appointed under the authority



of the said act. § 37. The warden of the district, with the approbation of the Governor, to appoint in and for his district, some fit and proper person to be "the district surveyor," whose duty it shall be to superintend the execution of all works undertaken in pursuance of any by-law of the council of such district, and to take care of all fixed property belonging to such district, and to examine and report upon all estimates of proposed works, and to enforce the observance of all contracts for the execution of works undertaken for or on behalf of the said district, and to report annually, or oftener if need be, to the said warden, upon the state of the works in progress, and of the fixed property belonging to such district: and all such annual or other reports shall be laid by the warden before the district council, at the quarterly meeting next after any such report shall have been received, together with an estimate of the probable expense of carrying on such works, and managing such fixed property, during the then current or next ensuing year: *Provided always*, that no person shall be appointed to be such surveyor, unless and until he shall have been examined and declared qualified for the office by the board of works for this province, or by some other competent person or persons to be named for that purpose by the Governor. § 38. It shall not be lawful for any person to hold at the same time more than one of the district offices hereby created; nor shall it be lawful for the partner of any such district officer to hold any district office in the same district wherein such officer shall be employed: nor shall it be lawful for any such officer to have, directly or indirectly, any share or interest whatsoever, either by himself or his partner, in any contract for executing any work to be undertaken by, for, or on behalf of, the council of such district. § 39. Councils may make by-laws for all or any of the following purposes, that is to say:

- For the making, maintaining, or improving, of any new or existing road, street, or other convenient communication and means of transit within the limits of the district, or for the stopping up, altering, or diverting of any road, street or communication, within the limits aforesaid;
- For the erection, preservation and repair of new or existing bridges and public buildings;
- For the purchase of such real property, situate within the limits of each such district, respectively, as may be required for the use of the inhabitants thereof;
- For the sale of such part or parts of the real property belonging to such districts, respectively, as may have ceased to be useful to the said inhabitants;

- For the superintendence and management of all property belonging to the said districts, respectively ;
- For providing means for defraying such expenses of or connected with the administration of justice within the said districts, respectively, as are or may be hereinafter by law directed to be defrayed by the district, or out of the district funds ;
- For providing for the establishment of and a reasonable allowance for the support of schools ;
- For raising, assessing, levying and appropriating, such monies as may be required for the purpose of carrying into effect all or any of the objects for which the said district councils, respectively, are hereby empowered to make by-laws ; which monies shall be raised either by means of tolls, to be paid in respect of any public work or works, within the limits of the said districts, respectively, or by means of rates or assessments to be assessed and levied on real or personal property, or both, within the limits of such districts, or in respect of such property, upon the owners and occupiers thereof ;
- For the collection of, and accounting for all tolls, rates and assessments, imposed or raised under the authority of any such council, and of the revenues belonging to such districts, respectively ;
- For imposing and determining reasonable penalties to be recovered from such persons as having been elected to offices, as hereinbefore provided, shall refuse to serve the same, or refuse or neglect to take and subscribe the oaths of office, as hereinbefore prescribed, for such officers, respectively ;
- For determining the amount and manner and time of payment of all salaries or other remuneration of district officers, to be appointed under the authority of this act :
- For determining the amount of salary, fees or emoluments, which shall be received by the several township officers within the limits of such districts, respectively, to be appointed or elected in pursuance of any act or other law now in force, or which may hereafter be in force in that part of this province to which this act applies ;
- For establishing a rate of commutation to be paid in money by each person bound to perform statute labour on any road within the district, in lieu of such labour, and for directing how such commutation money shall be collected, levied and applied ; and
- For providing for any other purpose, matter or thing, which shall be specially subjected to the direction and controul of the said district councils, respectively, by any act of the

legislature of this province: but no such by-law shall impose any punishment of imprisonment, or any penalty exceeding five pounds.

§ 40. District council not to impose, lay or levy, any rate or assessment whatever on any lands or tenements, goods or chattels, real or personal estates, belonging to her Majesty, her heirs and successors. § 41. In assessing any rate or tax under this act, such property only shall be assessed as is now liable by law to be assessed for rates in any district, and in making such assessment, all such property shall be valued at the rates, at which it is by law directed to be valued, in making assessments of such rates as aforesaid for any district: *Provided always*, that the assessment shall not in any case exceed the sum of two pence in the pound on the assessed value: *Provided also*, that the sum to be raised under any by-law shall be limited by such by-law, and shall afterwards be apportioned and assessed equally upon all property, except land liable to assessment within the locality in which such sum is to be raised according to the value assigned to such property by the assessment laws aforesaid; but it shall be lawful for any district council, by any such by-law as aforesaid, to direct that all the lands within the district shall be rated and assessed for such parts of the sum to be raised under such by-law, as to the said council shall seem expedient, provided the total amount of rates or taxes levied for district purposes, in any one year, on the land within any district, shall not exceed one penny half-penny currency per acre. § 42. All existing rates now lawfully imposed in any district, for any purpose within the scope of the powers of the district council, and in force on the said first day of January, 1842, shall continue in force and shall be paid over to the treasurer, to be appointed under this act for such district, and shall be collected by the collectors of the several townships and places within the district, until otherwise provided by a by-law of the district council. § 43. All lawful debts and liabilities of any district, or of the justices or treasurer for the same, in respect of such district, shall be assumed and paid by the district council thereof, upon, from and after the said first day of January, 1842, on the same terms and conditions as they would have been payable by or might have been enforced against such district treasurer or justices; and all debts, obligations, and liabilities of any kind whatever, due to or contracted in favour of such district, or of such treasurer or justices in respect thereof, and all property belonging to the district, shall at the same time become vested in and due to, and may be enforced by the district council, on the same terms and conditions as they would have been due to

and might have been enforced by such district, or the justices of the peace or treasurer for the same, if this act had not been passed: *Provided always*, that it shall not be lawful for any district council to issue or authorize the issue of any bill or note, or in any way to act as bankers, or to authorise any person or party to act as such. § 44. All allowances or per centage, granted to any collector or treasurer by the laws now in force, on monies collected or received by him which will, after the said first day of January, 1842, be subject to the disposal and controul of the district council, shall, from and after the said day, continue to be allowed to such collector or treasurer until otherwise ordered by a by-law of the council; subject always to the provision hereinbefore mentioned as to the auditing of the accounts relative to such monies; and all salaries, wages and allowances of any kind now granted to any township officer or to the clerk of the peace, for any services performed with regard to matters hereby placed under the controul of the district council, shall continue to be allowed and paid until otherwise ordered by such council. § 45. All rules, orders and regulations, of any kind, made before the day last aforesaid, by the justices of the peace, for any district, relative to any rate, assessment, road, public work, matter or thing, hereby placed under the controul of the district council, shall remain in force and effect until otherwise ordered by a by-law of the district council. § 46. *Provided always*, that it shall not be lawful for any such council to pass any by-law for performing any public work, not commenced or ordered to be commenced by the justices of the peace for the district, before the day last aforesaid, without having first received an estimate of such work, prepared or examined, and reported upon by the district surveyor; and if the cost of such work will, in the opinion of the said surveyor, exceed the sum of £300 currency, such estimate shall also be examined and reported upon by the board of works for this province, or by some other competent body or person for that purpose, to be appointed by the Governor: and *Provided also*, that every such work to be executed in pursuance of any such by-law, shall be executed under a contract in writing, in conformity with and subject to such general regulations as shall from time to time be made touching the terms and the mode of execution of any such contracts by the board of works. § 47. An authentic copy of every by-law passed by any district council shall forthwith, after the passing thereof, be transmitted by the warden of the district, or the chairman of the district council who may have supplied his place, to the secretary of the province, who shall, on receipt of the same, note on the copy so

received the time of its receipt, and shall lay the same before the governor; and no such by-law shall be of any force until the expiration of thirty days after an authentic copy thereof shall have been received as aforesaid; and it shall be lawful for the governor, by and with the advice of her Majesty's executive council, at any time within the said period of thirty days, by his order in council, to declare his disallowance of any such by-law, and such disallowance, together with a certificate under the hand of such secretary of the province, certifying the day on which such by-law was received as aforesaid, shall, with all convenient speed, be signified to the warden of the district wherein such by-law shall have been passed; and such by-law, so disallowed, shall be void and of no effect: And *provided also*, that any by-law repugnant to the law of the land, or to any of the provisions of this Act, shall be void and of no effect. § 48. Said district councils, at their quarterly meetings aforesaid, shall have power to authorize and direct the raising of such sums of money, by the several townships, or reputed townships, or by any locality within such districts, respectively, as may be requisite for the payment of all salaries and accounts due to township officers and other persons, by such townships, or reputed townships, respectively, or to defray the cost of any work which the council may direct to be performed at the expense of such township, or townships, or locality. § 49. The warden of each of the said districts shall, at the end of each year, transmit to the governor a statement of the accounts of the district, exhibiting an abstract of the receipts and expenditure during the preceding year; and all such accounts so transmitted shall, by the said governor, be laid before the two houses of the legislature, at the session of the provincial parliament next following the transmission of the said accounts. § 50. No councillor shall, in any case, receive or be entitled to any wages, profit or emolument whatever, for his services as such councillor, or by reason of his being such councillor. § 51. All and every the power and authority which by any act or acts in force within that part of this province which formerly constituted the province of Upper Canada, are now vested in the justices of the peace for the several districts, with regard to highways and bridges or work connected therewith, and to the appointment of surveyors of roads and other road officers, or to the making of any rates or assessments for any purpose connected with any of the subjects concerning which power, is hereby given to the district council to make by-laws, or to the making of any order, rules or regulations, touching any such subject, shall, from and after the said first day of January, 1842, become and be vested in and may be exer-

cised by the district council for such districts respectively, within the limits thereof: *Provided always*, that it shall not be necessary for the exercise of the said powers, whether in relation to any old road, bridge, or other work connected with any highway, or the laying out, erection or performance of any new road, bridge or work, or to any other such subject as aforesaid, that any report of any surveyor or surveyors of roads should be made to, or directed to be made by the district council, or that any other formality of any kind, now requisite, should be observed, nor shall the intervention of any court or other authority whatsoever be required previous to the passing of any by-law to be made by the district council in any such matter as aforesaid; but such district council may, upon such information and after such inquiry as they may deem sufficient, order and require, by a by-law, that any thing be done in any such behalf as aforesaid, which the justices of the peace could have ordered to be done in the same behalf, after the formalities and evidence, now by law required in like cases, had been observed and adduced: any law or statute to the contrary notwithstanding: *Provided always*, that no such by-law as aforesaid shall be contrary to the laws in force in the said portion of this province, except in so far only as such laws are hereby expressly derogated from or may be inconsistent with the provisions of this act. § 52. Surveyors of roads, to be appointed by the district councils, shall have the same powers as are by law vested in the surveyors of roads now appointed by the justices of the peace for the district, except where such powers may be inconsistent with the provisions of this act, or the powers hereby conferred on the said district councils; and that nothing in this act contained shall be construed to affect or abridge the power of any justice or justices of the peace, or of any court with regard to the enforcement of any penalty imposed for any offence against any law relating to roads, not inconsistent with this Act. § 53. Nothing in this act contained shall extend to any turnpike road placed by law under the controul of the commissioners of any district turnpike trust, so long as such road shall continue lawfully under such controul; nor to any turnpike road or toll-bridge belonging to any company, (whether incorporated or otherwise) or to any individual or number of individuals, nor to any public work vested in the board of works, or placed by law under its exclusive controul; or to any provincial work or works belonging to or under the controul of her Majesty's home Government, or the military authorities.— § 54. Justices of the peace for each district, and the surveyors of roads therein, shall, within two months after the said first day of January, 1842, deliver over to the council of the district, or to

their clerk, or such persons or officers as such council shall appoint to receive the same, all and every the records, books, judgments, reports, orders, plans, documents, instruments and writings, in their custody, possession or power, appertaining or relating to the roads, highways and bridges, within the district, or to any matters whatever hereby placed under the controul of such district council, or of the officers to be appointed by them; and in case of neglect or refusal, such person or officer shall be held guilty of a misdemeanor, and shall besides be liable to make satisfaction to the district coucil, or to any party aggrieved or injured, for any loss or injury sustained by the district, or by such party, by reason of such neglect or refusal. § 55. All fines and penalties imposed by any by-law made by any district council, and with regard to which no special provision is hereby made, may be recovered with costs, on the oath of one credible witness other than the prosecutor, by summary proceeding before any two justices of the peace for the district in which such fine or penalty shall have been imposed, and may, if not forthwith paid, be levied by distress and sale of the goods and chattels of the offender, under warrant of the justices or one of them; and one moiety of such penalty shall belong to the informer or prosecutor, and the other moiety to the district, unless the informer or prosecutor shall renounce his portion of such fine or penalty, in which case he shall become a competent witness, and the whole fine or penalty shall belong to the district, and shall (as shall the moiety in the case first mentioned) be paid over to the treasurer of the district, and make part of the funds thereof in his hands. § 56. No person shall be deemed incompetent to be a witness in any prosecution or suit for the recovery of any such fine or penalty, or in any suit for the recovery of any sum of money payable to the treasurer of the district, by reason of such person being an inhabitant of the district, or a member or officer of the district council, or in their employ, provided such person have no other and more immediate interest in the event of such suit or prosecution. § 57. All rates imposed by any district council, under the authority of this act, shall be collected, paid, recovered, secured and levied, in the same manner and by the same officers, and under the same provisions, as other rates now lawfully imposed, except in so far only as such provisions may be inconsistent with the enactments of this act; and all tolls imposed by any district council shall be collected, secured, recovered and levied, in the manner to be provided, with regard to the same, by the by-law by which they shall be imposed, and may be recovered, with costs, in any court of competent civil jurisdiction. § 58. All sums of money

now payable out of the funds of any district, for any public purpose whatsoever, not within the scope of the powers of the district council, shall continue to be payable out of the funds of such district, by the treasurer thereof, as before the passing of this act, until it be otherwise directed by any act of the provincial legislature. § 59. Expenses of levying and collecting and managing the rates and taxes imposed or to be imposed in any district, shall form the first charge on the district funds; all sums of money which now are or may hereafter be made payable out of the funds of any district to the sheriff, coroner, gaoler, surgeon of the district gaol, or to any other officer or person, for the support, care or safe keeping of the prisoners in the district gaol, or for the repairing and maintaining of the court-house or gaol, or for any other purpose whatever connected with the administration of justice, shall form the second charge upon the district funds, and shall be paid out of the same by the treasurer before and in preference to all other charges whatsoever, except the expenses forming the first charge; all debts and liabilities of the district, created before the said first day of January, 1842, and assumed by any district council under the provisions of this act, shall, at the time and on the condition on which they shall become due and payable, be the third charge upon the district funds; all sums of money now payable out of the funds of any district, for any public purposes whatsoever, other than those before mentioned in this section, and not within the scope of the powers of the district council, shall form the fourth charge on the district funds; and sums and expenses directed by any by-law of the district council to be paid out of the district funds shall, in the order in which they shall be directed to be so paid, form the fifth charge on the said funds. § 60. Nothing in this act shall be construed to repeal or affect any enactment or provision of any law in force within that part of this province to which this act applies, or any power, right, authority, duty, obligation or liability, thereby conferred or imposed upon any officers, party or person, or the election or appointment of any district, parish or township officers, unless, and so far only as such enactment or provision shall be inconsistent with or repugnant to the express enactments or provisions of this act, or the attainment of the objects and purposes thereof, according to its true intent and meaning. § 61. It shall be lawful for the Governor of this province for the time being, by proclamation to be issued by and with the advice and consent of the executive council of the province, when and as often as circumstances shall, in his and their opinion, warrant such a measure, to dissolve all or any of the aforesaid councils;



and in every case of a dissolution of such council or councils, the warden of the district wherein such dissolution shall have taken place, shall, within ten days after such dissolution, issue his warrant in the name of her Majesty, her heirs or successors, under his hand and seal, directed to the clerk of each of the several townships comprised within the said district, requiring such clerk to proceed, after due notice in this behalf to the electors qualified as aforesaid, to cause elections to be made in each of the townships of the said district, of a councillor or councillors, according as such township may, by the provisions hereinbefore contained, be entitled to elect one or two councillors; and such new elections shall be governed by the same rules and provisions as are hereinbefore provided for the election of councillors; and in all cases where such new election of councillors, after a dissolution shall take place as aforesaid, the period at, from, and after which, councillors shall vacate their seats, in certain proportions as hereinbefore provided, shall commence upon and be accounted from the first Monday in January next following such elections; and the retirement of councillors in the first and second years after such elections, shall in all respects be regulated by the provisions hereinbefore contained with respect to the retirement of councillors to be elected at the first election to be held under and by virtue of this act, in the first and second years after that in which such election shall be had. § 62. Nothing in this act contained shall affect any exclusive rights, powers, privileges or jurisdiction, of the corporation or municipal authorities of any incorporated city or town, or of any town or village within which any board of police or other municipal or local authorities may be established: *Provided always*, that all powers and authority vested, at the time of the passing of this act, in the justices of the peace for any district, and being of the nature of those hereby transferred from such justices to the district councils, may be exercised by such district council within any such city, town or village, as they might have been exercised by such justices if this act had not been passed; and all property of what kind soever now belonging to the district and lying within any such city, town or village, shall be vested in and shall be under the control of such district council, in the same manner as other property belonging to the district; and all district rates or taxes which are now lawfully imposed or laid by the justices of the peace for the district, on any person or on any property within such city, town or village, or any money payable to the district in lieu of rates, shall continue to be payable to the treasurer, and shall form part of the district funds, until it be otherwise ordered by a by-law

of the district council; and all such rates and taxes as might be now lawfully laid or imposed by such justices, may be imposed or laid by the district council, as they might have been by the said justices, if this act had not been passed. § 63. The words "Governor of this Province," wheresoever they occur in the foregoing enactments, shall be understood as comprehending the Governor, Lieutenant Governor, or person authorised to execute the office or functions of Governor of this Province.

## SCHEDULE.

NAMES Of Inhabitant Freeholders and Householders on the last Assess- ment Roll, for the — of —.	NAMES OF CANDIDATES.			
	A. B.	C. D.	E. F.	G. H.
John Bull, .....	1	—	—	—
Patrick O'Neill, .....	—	—	1	—
David Lloyd, .....	—	—	1	—
Dugald Scott, .....	—	—	—	1
Peter Jones, .....	—	—	1	—
Amos Squiggs, .....	—	1	—	—
&c. &c.				

## DISTRICT COURT.

\*By statute 2 G. 4 c. 2. a district court is established in every district, and authorised to hold plea in all matters of record, from 40s. to £15; and when the amount is liquidated or ascertained, either by the act of the parties or the nature of the transaction, then to the amount of £40; and also, in all matters of tort respecting personal chattels, when the damages to be recovered shall not exceed £15, and the title to the lands shall not be brought into question. The periods of sitting, or terms, for the said court in each and every year shall severally commence on the Monday in the week next but one preceding the week, and at the place in which the quarter sessions are held, and shall end on the Saturday in the same week.

By the 4 & 5 V. c. 8. this act has been in part altered and amended: and by it a fee fund established, from which the judges and officers are to be paid stipulated salaries, and the judge of the district court is to preside as chairman of the quarter sessions.

## DISTRICT FUNDS.

\* By statute 8 G. 4. c. 4. justices of the peace at their general quarter sessions next after the passing of this act, and yearly afterwards, are required to cause a true and correct statement, in detail, of all monies raised, levied and collected, for the year preceding, upon any rate or assessment, for the public use of the district, with a detail of the expenditures, together with the account for which the same is paid, to be published in some newspaper of the district, and a copy to be affixed in some conspicuous place on the court-house; and that the expense of such publication shall be paid out of the district treasury, by order of sessions.

Justices of the peace cannot apply the district funds to building a new gaol and court-house, without an act of parliament especially authorising them to do so. *Rex. v. Justices of Newcastle District. Tr. G. 4. Cameron's Digest, p. 44.*

## DISTRICT SCHOOLS.

\* By statute 47. G. 3. c. 6. For the establishment of public schools, the sum of £800 shall be annually paid as hereinafter mentioned. § 2. One school shall be kept in each district, and out of said £800 the sum of £100 shall be paid to every teacher. § 3. The public school for the western district shall be kept in the town of Sandwich; for the district of London, at Vittoria, (see \*48 G. 3. c. 16. § 1); for the district of Niagara, in the town of Niagara; for the Home district, in the town of York, (now city of Toronto); for the district of Newcastle, in the township of Hamilton, at such place as the trustees shall appoint; for the Midland district, in the town of Kingston; for the district of Johnstown, at Brockville, (see \*59 G. 3. c. 4); and for the Eastern district, in the town of Cornwall. § 4. The Lieutenant Governor shall appoint the trustees, and the trustees shall nominate a fit person as teacher, and report such nomination to the Lieutenant Governor, who may affirm or reject such nomination: the trustees may also remove any teacher, and nominate another, and report as aforesaid. § 5. Trustees authorised to

make rules and regulations for the government of such schools. § 6. Salaries of the teachers shall be paid half yearly, for which the Lieutenant Governor may issue his warrant to the receiver general; such teachers producing a certificate of good conduct, signed by the trustees, or the majority of them.

\* By statute 59 G. 3 c. 4. Provision made for establishing a public school in the district of Gore. § 2. And £100 per annum to pay the teacher. § 4. Annual public examinations shall be held in every district school previous to the annual vacation.— § 5. Annual reports to be made by the trustees of district schools, after the public examination, to the Lieutenant Governor, to be laid before the legislature. § 6. Trustees empowered to send ten poor children to be taught gratis. § 7. To be drawn for by lot, viz:—the trustees for the common schools shall return the names of one or more, not exceeding four, from each common school to the trustees of the district schools where they shall reside, and the number shall be drawn by ballot, at a special meeting to be openly held for the purpose. § 8. Vacancies shall be filled up by a fresh ballot. § 11. No more than £50 shall be paid to the teachers, unless they have more than ten scholars. § 12. The form of the certificate required by the twelfth clause of the \*47 G. 3. shall be as follows:—“At a public meeting of the trustees of the district school, upon due notice given for that purpose, a majority of the trustees being present, we certify,” &c.

By statute \*4 G. 4. c. 27. the like provision is made for a public school in the Bathurst district; and by statute \*4 G. 4. c. 28. a public school in the district of Ottawa. § 3. To be kept at Longueil, under the same regulations as other public schools; and by statute \*1 W. 4. c. 7. § 9. a public school in the district of Prince Edward, so soon as the county of Prince Edward shall be erected into a separate district, to be kept in the township of Hallowell, under the like regulations as other district schools.

By the 4 & 5 V. c. 19. the several district schools in Upper Canada declared to be grammar schools, as contemplated by his late Majesty George the third, at the time of the reservation of school lands. § 2. Monies arising from the sale of school lands, now in the hands of the receiver general, or which may come to his hands, applicable to the purposes of this act, shall be invested in Upper Canada debentures at six per cent. interest, and the annual interest or rents distributed among such of the districts in Upper Canada as may require assistance, owing to the state of the school-house or other circumstances. § 3. The bursar of King's College, within three months after the passing of this act, to transfer to the receiver general all unredeemed debentures.

tures, and arrears of interest on account of the sale of school lands to be invested in debentures; and the interest and rents appropriated as before mentioned. § 4. A sum not exceeding £100 per annum may be advanced to each of the boards of trustees for said grammar schools, from monies arising from the sale of school lands, for providing an additional master and additional means of instruction for the grammar schools in Upper Canada. § 5. Board of trustees, in any district in Upper Canada, entitled to a sum not exceeding £200, to aid in the erection of a suitable school-house, provided an equal amount be raised by subscription among the inhabitants, and they will guarantee the permanent insurance of the building. § 6. Governor authorised to advance £100 per annum out of said monies for each of two other schools than the one in the town where the court-house is situated, in any town, &c. in which the inhabitants shall provide a suitable school-house, at which not less than fifty scholars shall be educated, such additional schools not to be within six miles of the district town; and the Governor may also extend the aid to four grammar schools (besides the district town school) if he shall deem it expedient. § 7. Accounts of monies received and expended under this act to be rendered annually to the Governor, to be laid before parliament.— § 8. The \*2 V. c. 10. repealed; but the management and sale of school lands to be conducted by the council of King's College, until further provision made.

## DIVISION COURTS.

By the 4 & 5 V. c. 3. § 1. the \*3 W. 4. c. 1. and the \*7 W. 4. c. 12. are repealed. And all the powers given by said Acts or any other Acts to any Courts of Requests and to the commissioners shall cease. § 2. Justices of the peace for Canada West at the first General Quarter Sessions after the passing of this act to declare and appoint the limits and extent of six divisions within their respective districts, and from time to time in like manner to alter the limits and extent of such divisions; a court to be holden once in two months in and for every such division; the judge of the said court to fix and appoint the times and places within such divisions for holding said courts, with power to alter the same. § 3. The divisions and times and places of holding such courts, and all alterations therein, to be entered and recorded by the clerk of the peace, who shall transmit to the Governor a copy of every such entry and record as soon as the same shall have been made. § 4. The

justices assembled as aforesaid required to number the divisions, beginning at No. 1, and the court in each division shall be known by the name and style of *the* (first or other as the case may be) *division court for the district of* —. § 5. Judges of the district courts shall preside over the division courts within their districts, and during the continuance of the appointment be incapable of being elected as a member of the legislative assembly. § 6. In case of illness or unavoidable absence may appoint a deputy. § 7. Every division court to have a clerk and one or more bailiffs, to be appointed by and removed at the pleasure of the judge. § 8. The clerk may also appoint a deputy (to be approved by the judge,) in case of illness or other unavoidable accident. § 9. Treasurer of the district to be the receiver general of fees of the division courts in his district, and be paid a per centage of 3 per cent. of the gross produce. Judge and clerk to be paid a certain salary. The salary of a judge in no case to exceed £200 or be less than £100, and the salary of the clerk not more than £100 nor less than £20. The bailiffs of the court to be paid by the fees allowed by the act. The Governor in council to fix the remuneration to the judges and clerks. § 10. Clerk of the division court to issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments, and keep an account of all summonses, executions, and other process, and of all fees and fines payable or paid into court, and of all suitors money paid into and out of court, and shall enter the same in a book, which shall be open to all persons for inspection on payment of one shilling for each search, and from time to time as directed by the Governor, submit his accounts to be audited or settled by the district treasurer: bailiffs of the court to serve all summonses, and execute all such orders, warrants, precepts and writs. § 11. Fees to be paid as per schedule, the same to be hung up in some conspicuous place in the offices of the several clerks. The fees on every proceeding to be paid in the first instance by the plaintiff on or before such proceeding. The bailiff's fees upon executions to be paid to the clerk of the court at the time of the issue of the warrant of execution, and be paid over by the clerk to the bailiff upon the return of the process, and not before. Bailiff neglecting to make return within the time required by law to forfeit his fees on such process, and the fees so forfeited to be accounted for by the clerk of the court to the district treasurer, and form part of the general fee fund. § 12. Clerk of the division when required, and once at least in 3 months, to deliver to district treasurer an account of fees received and of all fines levied, (deducting reasonable expences &c.) and a like account of monies paid into

and received out of court by the defendants and plaintiffs in said court under any order or decree of the court, or under process, and of the balance remaining in court; and the fees so received by such clerk shall be paid over from time to time (once in 3 months at the least) to the district treasurer, and shall form part of the general fee fund. § 13. District treasurer on or before the 30th June and the 31st December in every year, to render to the inspector general a true account of all monies disbursed by him on account of the division courts during the period comprised in such account, in such form and with such particulars as the inspector general shall require, and within *ten* days after rendering such account pay over the amount in hand to the receiver general. § 14. In case the amount of fees received shall not be sufficient to defray disbursements, the Governor may issue his warrant on the receiver general for the deficiency. § 15. District treasurer's accounts to be deemed, and audited, as other public accounts. § 16. Any treasurer or clerk upon resignation, neglecting after 21 days notice to account for and pay to the district treasurer all monies remaining in his hands, such district treasurer may sue for and recover the same with double costs of suit, in any court of record. § 17. In case of the death, resignation, or removal of the district treasurer or clerk of any division court, the treasurer for the time being may sue for and recover from the executors or administrators of such deceased person all arrears remaining in his hands by an action of debt in any court of record in this province having competent jurisdiction. § 18. Proof of acting as treasurer shall be sufficient evidence in actions under this act, unless the contrary be shewn in evidence by the defendant. § 19. The treasurer, clerk, and bailiff respectively, to give such security and in such form as the Governor shall direct, for the due performance of their several offices. § 20. The judge of every division court shall have power, jurisdiction and authority to hold plea of all debts and contracts not exceeding the sum of *ten pounds*, and to hear and determine in a summary way; and to make such orders, judgments and decrees thereupon, as shall appear to him just and agreeable to equity and good conscience; and upon any contract for payment of a sum certain in labour, or in goods or commodities, or in any manner otherwise than in money, it shall be lawful for the judge, after the day is passed on which the goods or commodities should have been delivered, or labour or other things performed, to give judgment for the amount in money. Provided that no action shall be brought or tried in any such division court for any gambling debt, nor for any spirituous or malt liquors drunk in a tavern or ale-house, nor for any cause

involving the right or title to real estate. Provided also, that nothing contained in this act shall constitute division courts courts of record. § 21. The plaintiff shall enter a copy of his account or demand in writing, which shall be numbered in the order entered, and thereupon a summons shall be issued, according to the form in the schedule and the nature of the demand; and a copy of such summons, and a copy of such account or demand shall be served on the defendant *eight* days at least before the day on which the division court shall be holden; and delivery thereof to the defendant, or his wife, or servant, or any grown person, being an inmate of his dwelling-house or usual place of abode, trading or dealing, shall be deemed a good service. Provided, that personal service on the debtor shall be necessary in all cases where the amount shall exceed forty shillings. § 22. No such summons shall be issued unless the plaintiff shall, at the time, deposit with the clerk for every claim not exceeding twenty shillings the sum of *one shilling*, and for every claim exceeding twenty shillings *one-twentieth* part thereof; and if, upon the return of the summons, the plaintiff shall not appear, or appearing, shall not prove his demand, the judge may, if he shall think fit, award to the defendant a part or the whole of such deposit by way of costs and for his trouble and attendance, with such further sum as he shall think fit, and to order and compel the plaintiff to pay same by such ways and means as any debt ordered to be paid; but so much of the deposit not awarded to the defendant shall be returned, on demand, to the plaintiff. § 23. All suits brought under this act shall be tried at the court holden for the division wherein the defendant resides, and in case of more than one defendant, then where any of the defendants shall dwell or carry on his business at the time of entering the account, or at the court for the division within which the debt was contracted. § 24. Any plaintiff having a cause of action exceeding £10, may abandon the excess and recover an amount not exceeding £10, the judgment in such case to be in full of all demands. § 25. Minors under twenty-one years of age may sue for any sum not exceeding £10 for wages.— § 26. No privilege allowed to any person to exempt him from the jurisdiction of division courts. § 27. Debts due by partners or persons jointly answerable, but residing in different divisions, may be recovered from one of them, and execution issue against such person. § 28. Judge of the district court, or his deputy, shall be the sole judge in all actions in said division courts, except where the amount claimed shall exceed £2 10s., and either party shall require a jury. § 29. In actions exceeding £2 10s., plaintiff or defendant may require a jury to be sum-



moned to try the action; if required by the plaintiff, he shall give notice in writing to the clerk of the court at the time of entering his account, and if required by the defendant, he shall give the like notice within five days after the service of the summons, and the clerk shall cause a copy of such notice to be communicated to the opposite party, either by post or by causing same to be delivered at his usual place of abode or business.—

§ 30. The party requiring such jury shall, at the time of giving notice, pay to the clerk the sum stated in the schedule of fees, towards the expenses of such Jury. § 31. Causes to be set down for hearing in separate lists, to be called “the judge’s list” and “the jury list”, and in the order entered. The jury list to be first disposed of. § 32. Clerk of the peace in every district to deliver to the clerk of the division courts within his district (at the same times and in like manner as clerks of the peace are now required by law to deliver lists of jurors to the sheriffs,) a true and complete list of the jurors residing within such division, and the clerk of the division court shall summon in rotation not less than 15 of such jurors to attend the court. § 33. Each jurymen to receive from the clerk 6d. for every cause tried, from monies deposited with him for that purpose. § 34. Five jurors to constitute the jury. Verdict of the majority to be decisive; any jurymen after being summoned neglecting to attend the court, liable to a fine not exceeding 10s. to be set by the judge and levied and collected as other fines, and to form part of the general fee fund. § 35. On the day named in the summons the plaintiff and defendant respectively shall appear in person, or by some one on their behalf, and on answer made the judge shall proceed to try the cause and give judgment. § 36. No cause of action to be proved except that stated in the demand or account entered. § 37. Defendants allowed to set off any debt not exceeding £10 due from the plaintiff, and may claim the benefit of the statute of limitations, or of any other relief or discharge by law: if the defendant’s demand as proved exceed the plaintiff’s, the court may give judgment in favour of the defendant for the balance, with costs: but no such defence to be admitted unless 3 days notice shall have been given to the plaintiff. § 38. The judge of the district court authorised to make general rules of practice and forms for division courts, but not to alter any of the forms in the schedule: such rules to be submitted to and approved by the judges of the queen’s bench, or any two of them, before brought into use. § 39. If on the day named in the summons the defendant shall not appear, or sufficiently excuse his or her absence, or neglect to answer, the judge, on proof of due service of the summons, may proceed to the hear-

ing or trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be final. Provided always, that the judge may make any order for granting time to the plaintiff or defendant for the prosecution or defence of the suit. § 40. Defendant may at any time before the trial pay into court such sum as he shall think a full satisfaction of the plaintiff's demand with the costs incurred, and notice of such payment shall be forthwith communicated by the clerk to the plaintiff, and such money shall be paid to the plaintiff and all proceedings stayed, unless the plaintiff shall within three days after such notice signify to the clerk his intention of proceeding for the remainder. And if the plaintiff shall recover no further sum than the sum paid into court, he shall pay the defendant's costs incurred after such payment. § 41. On the trial of any suit the parties thereto, being credible persons, may be examined upon oath or affirmation; but judgment shall in no case be given for either party in any action for any sum on the oath or affirmation of the plaintiff or defendant, without other sufficient evidence. § 42. Any person giving false evidence to be liable to the penalties of perjury. § 43. Either of the parties may obtain from the clerk summons for witnesses; and every person served, either personally or at his or her usual place of abode, and to whom, at the same time, a tender of expences shall have been made, who shall refuse or neglect, without sufficient cause, to appear or produce any books, papers or writings, required by such summons, and every person in court called upon to give evidence, who shall refuse, shall forfeit such fine, not exceeding *ten shillings*, as the judge shall set; and the whole or any part of the fine, in the discretion of the judge, (after deducting costs) shall be applicable towards indemnifying the party injured by such neglect, and the remainder shall form part of the general fee fund. Provided, that no person shall be compelled to attend as a witness who shall dwell more than forty miles from the court. § 44. Any fine under this act may be levied by the same process as any debt. § 45. No action, order, verdict, judgment or proceeding, in any division court, shall be removed into any superior court, but shall be final and conclusive between the parties. § 46. Clerk to cause a note of all summonses, orders, judgments, executions, and returns thereto, to be entered in a book kept at his office, and shall sign his name on every page of such book; and such entries, or a certified copy thereof, shall be evidence in all courts and places without any further proof. § 47. Judge may make orders concerning the time or times, and the proportions in which any sum and costs recovered shall be paid, and at the request of the party entitled, may order such

sums to be paid into court; issuing of execution not to be postponed, without consent of the party entitled, more than fifty days from the service of the summons. § 48. In case of cross judgments, execution only shall be taken out upon the larger sum, and for the balance only after deducting the smaller sum; if both equal, satisfaction to be entered upon both judgments.

§ 49. No suit to be brought in any court for any sum awarded by any other court. § 50. Whenever the judge of any division court shall have made an order for payment of money, said judge may immediately, or in case of default or failure of payment at the times and in the manner directed, award execution against the goods and chattels of the party; and the clerk, at the request of the party prosecuting such order, shall issue a precept or writ of *fieri facias* to one of the bailiffs, who shall levy by distress and sale of the goods and chattels of such party the sum and costs ordered, and pay same over to the clerk. § 51. In case the bailiff shall not find sufficient goods or chattels of the defendant within the district in which such division court is holden, he may apply to any justice of the peace, of any other district in this province, in which the goods and chattels of such defendant shall be, and such justice is authorised and required, upon such bailiff producing the precept and making oath (which such justice is empowered to administer) that the same has been duly issued out of said division court, and that the goods and chattels of the defendant are not to be found within the district in which such division court is held, but are believed by such officer to be within the district where such justice acts, to sign his name on the back of such precept, and thereupon such bailiff shall have power to take the goods and chattels of such defendant wheresoever the same shall be found within such district, and deal therewith in like manner as if the same had been taken within the jurisdiction of the said division court; and all constables and other peace officers are required to aid in the execution of the precept so indorsed. § 52. No sale of goods taken in execution shall be had until after the end of eight days at least next following the day on which such goods shall have been so taken, unless upon the request in writing under the hand of the party whose goods shall have been taken; and public notice in writing shall be given, at some convenient place within the town or township where such goods were taken, of the time and place of sale, at least eight days before the same shall take place. § 53. Every seizure and sale shall be taken to be within the \*1 V. c. 16. intituled, "An act to regulate the costs of levying distresses for small rents and penalties." § 54. Upon every precept of execution the clerk shall endorse the sum of money

and costs adjudged; and if the party against whom such execution shall be awarded shall, before actual sale, pay or tender unto the clerk or bailiff of such court such sum of money as aforesaid, or such part thereof as the plaintiff shall agree to accept in full of his debt together with the fees, the execution shall be superseded and the goods restored. § 55. If any person shall wilfully insult the judge or any officer of any division court during his sitting or attendance in court, or shall wilfully interrupt the proceedings of such court, any bailiff or officer of the court, with or without assistance of any other person, may, by order of the judge, take such offender into custody, and the judge may impose upon such offender a fine not exceeding *two pounds*, and in default of payment, by warrant under his hand and seal, to cause such fine to be levied by distress and sale of the offender's goods, with the reasonable charges of such distress and sale, and in default of distress, commit the offender to the common gaol of the district for any period not exceeding one calendar month. § 56. If any bailiff or officer shall be guilty of extortion or misconduct, or not duly paying or accounting for money levied or received by him under this act, it shall be lawful for the judge, at any sitting of the court, upon complaint of the party aggrieved, to inquire into the matter in a summary way, and to summon all necessary parties, and to make such order for the repayment of any money extorted, or for the payment of money levied or received, and for the payment of damages and costs to the parties aggrieved, as the judge shall think just, and, in default of payment within the time specified, by warrant under his hand and seal to cause such sum to be levied by distress and sale of the offender's goods, with the reasonable charges of distress and sale, and in default of distress, to commit the offender to the common gaol of the district for any period not exceeding three calendar months. § 57. Any clerk, bailiff or other officer, exacting, taking or accepting any fee or reward whatsoever, except such as allowed, shall, upon proof before the court, be for ever incapable of serving or being employed under this act in any office of profit or emolument, and shall also be liable in damages to the parties aggrieved. § 58. If any action, which might be brought in a division court, shall be brought in any superior court of record, and the verdict shall be found for the plaintiff, for a sum not exceeding ten pounds, he shall have judgment for such sum only and no costs, and shall have execution against the goods only, and shall not be allowed to maintain any action on such judgment in any court; and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs, as between attorney and client, unless

the judge shall certify on the back of the record that the plaintiff had a *probable* cause of action, *exceeding* ten pounds.—  
 § 59. When any levy or distress shall be made, the distress shall not be deemed unlawful, nor the party making the same a trespasser, on account of any defect in the proceedings; nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity which shall afterwards be committed by the party distraining, but the party aggrieved shall and may recover full satisfaction for the special damage.—  
 § 60. No order, verdict, judgment or other proceeding, shall be quashed or vacated for any matter of form. § 61. Actions against any person, for any thing done in pursuance of this act, shall be laid and tried in the district where the fact was committed, and shall be commenced within six calendar months after the fact committed; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before action brought, or if after action brought a sufficient sum of money shall have been paid into court, with costs, on behalf of the defendant. § 62. Interpretation clause.  
 § 63. Act to be in force four years, and to the end of the then next ensuing session.

SCHEDULE OF FEES.

	Not exceeding 40s.		Not exceeding £5.		Exceeding £5.	
	s.	d.	s.	d.	s.	d.
Entering account and issuing summons.....	0	9	1	3	2	0
Summons to witness to attend .....	0	6	1	0	1	6
Every hearing of a cause .....	1	0	1	6	2	0
Every order for payment .....	0	6	1	0	1	6
Every execution .....	0	6	1	0	1	6
Every notice for a trial by jury.....	0	0	0	0	1	6
Deposit to pay jurors and bailiffs' fees thereon ...	0	0	0	0	3	6

## TO THE BAILIFF.

	s.	d.
For the service of every summons, order, or other proceeding, on each person .....	0	6
For taking goods in execution.....	2	0
For every mile travelled more than two from the clerk's office to serve summons or execute warrant .....	0	4
For every mile travelled in taking any person committed for contempt to gaol .....	0	6
For every jury sworn.....	1	0

To be paid by the clerk out of the deposit made.

## DOGS.

THE stealing of dogs is not a *felony*, either at common law or by statute. 4 *Bl. Com.* 236.—but is punishable by the following statute:

By Stat. 4 & 5 V. c. 25. § 30. If any person shall steal any dog, or shall steal any beast or bird ordinarily kept in a state of confinement not being the subject of larceny at common law, every such offender being convicted thereof before a justice of the peace, shall for every such offence forfeit and pay over and above the value of the dog, beast, or bird, such sum of money not exceeding £5, as to the justice shall seem meet.

For proceedings under this statute see title "Summary Conviction."

A mastiff going at large unmuzzled, from the ferocity of his nature being dangerous, seems to be a common nuisance, and the owner may be indicted. 1 *Burn.* 918.

## DOWER.

THE wife is entitled by law to be endowed of one-third part of all such lands and tenements of which her husband was seized in fee-simple or fee-tail, at any time during the coverture or marriage: to hold the same during the term of her natural life. *Co. Litt.* 31. But that she might be entitled thereto, she must be the wife of the party at the time of his decease; for if she be divorced *a vinculo matrimonii*—that is, from the band of matrimony, she shall not be endowed. By statute 13 *Edw. 1. c. 34.* if a woman elope from her husband and live with an adulterer, she shall lose her dower, unless her husband be voluntarily reconciled to her. And the widows of traitors, or persons attainted of treason, are barred of dower; but not the widows of felons. 2 *Black,* 131. An alien cannot be endowed, unless she be queen

consort; for no alien is capable of holding lands. *Co. Litt.* 31. The wife's dower may also be excluded by the husband taking a conveyance to himself and a trustee. *Co. Litt.* 31. And a wife cannot be entitled to dower out of an estate which at the time of her marriage was subject to a mortgage in fee. *Co. Litt.* 208. *Note 1. 13 Edit.* But upon the mortgage being paid off, and the estate reverting to her husband, the wife then will become dowable.

*The mode of Barring Dower.*

\* The statute 3 W. 4. c. 10. prescribes the form and manner in which dower may be barred before any two justices, but now by the \*2 V. c. 6. § 3. whenever any married woman shall join with her husband in any deed of conveyance whatever (wherein a release of dower is contained), it shall not be necessary to acknowledge the same before any court, judge, or justice of the peace, but such execution shall be deemed a valid and effectual bar of dower of and in the premises described in such deed or conveyance.

## ELECTIONS.

By the imperial statute of the 31 G. 3. c. 31. commonly called the "*act of constitution*," certain provisions were made for composing and constituting a legislative council and assembly in each of the provinces of Upper and Lower Canada. By the imperial statute 3 & 4 V. c. 35. intituled, "An act to re-unite the provinces of Upper and Lower Canada, and for the government of Canada," so much of the 31 G. 3. c. 31. as provides for the constituting and composing of such legislative council and assembly, is repealed, and other provisions are made for composing one legislative council and one assembly within the province of Canada; the last mentioned statute however enacts, that until otherwise provided by the legislature of the said province of Canada, the laws in force at the time of passing this act in Upper Canada, relating to the qualification and disqualification of members of assembly and voters at election (except as provided by the act respecting the *property* qualification of members) and to the oaths to be taken by any such voters, and to the powers and duties of returning officers and the proceedings at elections, &c. shall continue in force with regard to the election of members of assembly for that portion of the province.—

The provisions of the 31 G. 3. c. 31. *not repealed* by the union act, as relative to elections, are as follows:

§ 20. The members for the several districts, or counties, or circles, shall be chosen by the majority of votes of such persons as shall be possessed, for their own use, of freehold lands or tenements within such district or county, or circle, of the yearly value of 40s. sterling, or upwards, over and above all rents and charges; and the members for the towns or townships shall be chosen by the majority of votes of such persons as shall be possessed, for their own use, of a freehold dwelling-house and lot of ground, in such town or township, of the yearly value of £5 sterling, or upwards; or as having been resident within such town or township for the space of twelve calendar months next before the date of the writ of summons for the election, shall, bona fide, have paid one year's rent for the dwelling-house in which they shall have so resided, at the rate of £10 sterling per annum, or upwards. § 21. No person shall be eligible to sit or vote in such assembly, who shall be a member of the legislative council, or a minister of the Church of England, or a minister, priest, ecclesiastic, or teacher, either according to the rites of the Church of Rome, or under any other form or profession.— § 22. No person shall be capable of voting at any election, or of being elected, who shall not be of the full age of twenty-one years, and a natural born subject; or naturalized by the British parliament; or a subject by the conquest of Canada; nor any person attainted for treason or felony; or who shall be within any description disqualified by the provincial legislature.— § 24. Every voter, before he is admitted to vote, shall, if required by any of the candidates, or by the returning officer, take the following oath:

I, A. B. do declare and testify, in the presence of Almighty God, that I am, to the best of my knowledge and belief, of the full age of twenty-one years, and that I have not before voted at this election.

And every person shall also, if required, make oath previous to his being admitted to vote, that he is, to the best of his knowledge and belief, duly possessed of such lands and tenements, or of such a dwelling-house, as entitles him to vote at such election. § 29. No member shall sit till he has subscribed the following oath, before the governor, lieutenant governor, or person administering the government, or before some person or persons authorised by the said governor, &c. to administer such oath:

I, A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his Majesty King George, as



lawful sovereign of the kingdom of Great Britain, and of these provinces, dependent on and belonging to the said kingdom; and that I will defend him to the utmost of my power, against all traitorous conspiracies and attempts whatever, which shall be made against his person, crown and dignity; and that I will do my utmost endeavours to disclose and make known to his Majesty, his heirs or successors, all treasons and traitorous conspiracies and attempts, which I shall know to be against him or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or power whatever to the contrary. So help me God.

By statute \*39 G. 3. c. 14. any member accepting the office of registrar, shall thereby vacate his seat.

By statute \*48 G. 3. c. 1. § 26. members shall be exempted from serving in the militia, unless in time of actual service.

By statute \*4 G. 4. c. 3. persons having resided in a foreign country, or taken the oath of allegiance to a foreign state, are declared ineligible as members, unless they shall have resided in this province seven years next before the election at which they shall be chosen: and by § 4 & 5. any person so offering themselves shall incur the penalty of £200, and a further sum of £40 if they shall presume to sit. § 6. Persons who have abjured allegiance to his Majesty, or held certain offices in the United States, or been convicted of offences in a foreign country, shall be disqualified from being members. § 8. If any candidate shall have resided in the United States, he shall, if required, also take the following oath:—

I, A. B. do sincerely and solemnly swear, that during my residence in the United States of America, I have not taken or subscribed any oath of abjuration of allegiance to the Crown of Great Britain; and further, that during my said residence, I have not held the office or appointment of senator, or member of the house of representatives of the said United States, or of either of the said United States, respectively, or held or enjoyed any office in any of the executive departments of state in the said United States, or State, respectively. So help me God.

§ 19. The oaths required by this act, shall be administered by the sheriff, mayor, bailiff, or other officer or officers, who shall have to take the poll or make the return at such election, who shall certify the same into the court of king's bench, within three months afterwards, under the penalty of £200, and the election of any candidate refusing to take the oaths shall be

void. § 12. relates to residence in a foreign country, and is repealed by 4 \*W. 4. c. 14. § 13. No person shall vote in respect of any estate sufficient to qualify him by law, not having come to him from the crown, descent, devise, or marriage, unless the deed of conveyance shall have been registered three calendar months before the election, or unless he shall have been twelve calendar months in possession and receipt of the rents and profits, next before such election.

\* The 4 W. 4. c. 14. repeals the 12. & 15. § \*4 G. 4. c. 3. and by § 3. enacts, that before any elector shall vote at any election, he shall, (if required) in addition to the oath required by the 31 G. 3. c. 31. take the following oath:—

I, A. B. do swear, that the estate in right of which I vote at this election, is [*here describe the estate, as the case may be*] which I hold by grant from the crown, (*descent, devise, marriage, or conveyance, as the case may be*) and (*in case such estate shall have been devised otherwise than by grant from the crown, descent, marriage or devise*) that I have been in actual possession, or in the receipt of the rents and profits thereof, to my own use, by virtue of such conveyance, above twelve calendar months; or, (*as the case may be*) that the conveyance to me of the same has been registered three calendar months.

By the imperial statute 3 & 4 V. c. 35. §. 28. no person shall be capable of being elected a member of the legislative assembly of *Canada* who shall not be legally or equitably seised as of freehold, for his own use and benefit, of lands or tenements, held in free and common soccage, or seised or possessed, for his own use and benefit, of lands or tenements, held in fief or en roture, within the said province of *Canada*, of the value of £500 sterling, over and above all incumbrances; and every candidate, before he shall be capable of being elected, shall, if required by any other candidate, or by any elector, or by the returning officer, make the following declaration:

I, A. B. do declare and testify, that I am duly seised at law or in equity as of freehold, for my own use and benefit, of lands or tenements held in free and common soccage [*or duly seised or possessed, for my own use and benefit, of lands or tenements held in fief or in roture (as the case may be),*] in the Province of *Canada*, of the value of five hundred pounds of sterling money of *Great Britain*, over and above all rents, mortgages, charges, and incumbrances charged upon or due and payable out of or affecting the same; and that I have not collusively or colourably obtained a title to or become possessed of the said lands and

tenements, or any part thereof, for the purpose of qualifying or enabling me to be returned a member of the Legislative Assembly of the Province of *Canada*.

§ 29. Making a false declaration shall be deemed a misdemeanor, and punishable as wilful and corrupt perjury.

*Members of Parliament for U. C.*

By the 4 & 5 V. c. 4. any member of the House of Assembly from U. C. legally elected for any city, county, riding, town, or borough, may vacate his seat in the manner provided. § 2. Such member in his place in the Legislative Assembly may give notice of his intention of resigning his seat, and after such notice shall have been entered by the clerk, the Speaker to issue his warrant in the usual form for the election of a member in the room of the member resigned: the member tendering his resignation remaining to all intents and purposes the representative for the place for which he was elected until return made of such new member. § 3. If any member shall wish to resign in the interval between two sessions of the Provincial Parliament, he may do so, by addressing to the Speaker, a declaration to that effect made under his hand and seal, before two witnesses, an entry of which shall be made in the journal of the proceedings on the first day of the session next ensuing: the Speaker may, upon receiving such declaration, forthwith issue his warrant for the election of a new member. § 4. No member shall ask leave to vacate his seat in the first session of any parliament before the expiration of fifteen days; and no member, whose election is contested, shall vacate until such contest be decided.

By the 4 & 5 V. c. 52. § 1. each candidate at any election, before he shall be capable of being elected, shall, if required by any other candidate, or by any elector, or by the returning officer, make and subscribe, under oath or affirmation, (to be administered by the returning officer), a declaration, specifying the lands and tenements of which he is duly seised at law or in equity, as of freehold, for his own use and benefit, and held in free or common soccage, or of which he is duly seised and possessed for his own use and benefit, and held in *feif* or *rôture*, and upon which he claims to be qualified, according to law, to be elected as aforesaid. § 2. Making a false declaration to be deemed a misdemeanor, and any such person, being thereof legally convicted, shall suffer the pains and penalties of perjury. § 3. After premising it may happen that a candidate may, from illness or other unavoidable cause, be prevented from attending at the election, provides, that if any candidate shall, on the day

appointed for the election, deliver or cause to be delivered to the returning officer a declaration, in the form prescribed by the twenty-eighth section of the imperial act of "*Union*," signed by such candidate, and made before a justice of the peace in this province, who shall receive and attest the same, and also a declaration in the form prescribed by this act, signed by such candidate, and make an oath or affirmation before any justice of the peace in this province, who shall receive and attest the same, such candidate shall be held to have complied with the requirements of the said act, and of this act, as to the declaration of qualification required of him; and any false statement wilfully made in any such declaration as aforesaid, shall be a misdemeanor, for which the person guilty shall be liable to the punishment for perjury.

By the 6 V. c. 1. § 1. so much of the \*4 G. 4. c. 3. or of any other act or law in force as may be inconsistent with or repugnant to this act, or as makes any provision in any matter provided for by this act, other than such as is hereby made in such matter, shall be repealed. § 2. At every election a separate poll shall be opened and held for every parish township and ward. § 3. Until any city, town, or borough shall be divided into wards, the returning officer shall by an instrument under his hand and seal, divide the same into two or more wards, having respect to the number and convenience of the voters. § 4. One poll only to be opened where two townships have been united for township meetings. § 5. defines the meaning of the words "parish" and "township". § 6. The election for every township shall be held where the last town meeting was held: and the poll for every ward in every city &c. at the place which the returning officer shall appoint. § 7. Electors to poll at the wards where their property lies, under the penalty of £10. § 8. Every elector before polling, shall, if required by the deputy returning officer, or by any elector or candidate, or by the counsel or agent of such candidate, in addition to the oaths or affirmation by law required, make oath before such returning officer "that he has not before voted at such election, either at the polling place where he shall tender such vote, or at any other polling place within such county, riding, city, town, or borough, as the case may be." § 9. Every returning officer shall by proclamation under his hand, issued at least 8 days before the election, appoint the day of election at the most convenient place in such county, riding, city, town, or borough, and attend there between 12 at noon and 2 in the afternoon, and proceed to such election. § 10. In the event of a poll being demanded, the returning officer shall grant the same, and forthwith appoint

some day not less than *four* nor more than *eight* days thereafter, for taking such poll: and shall forthwith by public proclamation give notice of the time and place at which the polls shall be taken in the several parishes, townships, or wards, and shall adjourn the further proceedings in such election to some day within four days after the day fixed for taking such polls. § 11. Polling to commence in all the parishes, townships, and wards at 9 o'clock A. M., and shall continue for *two* days in all such counties, ridings, cities, towns, and boroughs, as shall not have any register of voters for members of the provincial parliament, and for one day in all such as shall have such register, such two days to be consecutive except where Sunday, Christmas day, or Good Friday, or any two of them shall intervene, in which case the second day of polling shall be the day following, and the polls shall be kept open for each day of polling, and no poll shall be kept open later than 5 o'clock P. M. of the second day. § 12. Returning officer shall appoint a deputy, and poll clerk, for every parish or township or ward, and shall by precept under his hand and seal require such deputies to take the poll according to law, and to return same to him under his hand and seal by the day to which such election stands adjourned: on which day the returning officer shall sum up and ascertain the state of the general poll, and declare the same; and declare elected and return the person or persons who shall have the majority of votes polled. § 13. No person but a freeholder of 12 months' standing and residence shall be appointed returning officer or deputy. § 14. In case of returns not being made on the return day, the returning officer may further adjourn the proceedings in such election to the following day; and so from day to day, until all the returns made: Provided that in proclaiming such adjournment he shall publicly declare the reason thereof: and not continue such adjournment to so late a day as shall interfere with the return of the writ. § 15. All powers and authorities now vested in returning officers, and necessary for the orderly and proper taking of the polls at elections, shall be vested in deputy returning officers also. § 16. No deputy returning officer or poll clerk shall proceed on their duties until in a public manner they shall have taken and subscribed in the poll-book the following oath or affirmation, to be administered by any justice of the district in which such township &c. shall lie:

I, A. B. do solemnly swear (*or affirm, as the case may be*); that I have not, directly or indirectly, received any sum or sums of money, office, place or emolument, gratuity, profit or reward, or any bond, bill, note, or other written instrument or verbal

agreement, whereby such is promised or secured, either by myself or any other person, for or to my use, benefit or advantage, for making any false or incorrect statement or entry in the poll book, to be taken at this election or return of the same, or for shewing any favor or partiality at this election, and that I will faithfully and impartially perform my duty at this election, to the best of my ability. So help me God.

§ 17. No scrutiny of votes shall be entered upon except prior to the vote being recorded. § 18. Every voter before polling shall, if required by the deputy returning officer, candidate, or any two electors of the riding, &c. take the following oath or affirmation, to be administered by the deputy returning officer:

I, A. B. do swear (*or solemnly affirm, as the case may be*) that I have not received or had, by myself or any person, for my use or benefit, any sum or sums of money, place or employment, gift or reward, or any promise or expectation of any money, office, gift, place, employment or reward, in order to give my vote at this election.

§ 19. The poll clerk, before the deputy returning officer shall make his return, shall take and subscribe in the poll book the following oath or affirmation, to be administered by any justice of the township, &c.:

I, A. B. poll clerk for the parish (*township or ward, as the case may be*) of — in the county (*riding, city, town or borough, as the case may be*) of — do hereby solemnly swear (*or affirm, as the case may be*) that this poll book was, under the direction of the deputy returning officer for the said parish, (*township or ward, as the case may be*) truly and correctly taken by me, to the best of my skill and judgment, and that, to the best of my knowledge and belief, the same contains a true and correct statement of the votes taken at the poll for the said parish, (*township or ward, as the case may be*) as such votes were received and allowed by the said deputy returning officer at the poll for the said parish, (*township or ward, as the case may be*) held in pursuance of the precept of the returning officer for the said county, (*riding, city, town or borough, as the case may be*) to the said deputy returning officer directed, and tested the — day of — in the year of our Lord 18—.

§ 20. Every deputy returning officer shall, after the close of the poll for the township, &c. and before making his return, take

and subscribe in the poll-book the following oath or affirmation, to be administered as above :

I, A. B. deputy returning officer for the parish (township or ward, *as the case may be*) of — in the county, (city, riding, town or borough, *as the case may be*) of — do solemnly swear, (*or affirm, as the case may be*) that, to the best of my knowledge and belief, this poll book was truly and correctly taken under my direction, and contains a true and correct statement of the votes taken at the poll for the said parish (township or ward, *as the case may be*) held in pursuance of the precept of the returning officer for the said county, (riding, city, town or borough, *as the case may be*) to me directed, and tested the — day of — in the year of our Lord 18—.

§ 21. Deputy returning officer authorised to administer the oath or affirmation of allegiance to any person desirous of taking the same. § 22. Returning officer to keep copies of all the poll-books returned to him by his deputies, and to transmit the original poll-books, with the writ of election and return, to the clerk of the crown in chancery, within ten days after the election closed; such original poll-books, with the affidavits of the due taking of the same, shall upon the trial of controverted elections, be taken as *primâ facie* evidence. § 23. In case returning officer shall die, or become incapacitated by accident or sickness, his poll clerk to act in his stead, with authority to appoint a poll clerk and finish the election, and make the return. *Provided* that before entering upon their duties they take and subscribe the oaths prescribed for returning officers, deputy returning officers, and poll clerks. § 24. Returning officer entitled to the following fees :

	£	s.	d.
For attendance on the day of opening the election ...	1	5	0
For attendance on the day of closing the election where polls have been taken .....	1	5	0
For an election clerk on the former day .....	1	0	0
For do. do. on the latter day .....	1	0	0
For two constables on the day of opening the election and the same on the day of closing it, where a poll has been taken.....	0	10	0
For two constables at each poll, <i>per diem</i> each .....	0	10	0
For messenger to each returning officer, per mile for each mile travelled .....	0	0	6
For each deputy <i>per diem</i> while taking the poll.....	1	0	0
For each poll clerk while taking the poll .....	1	0	0

§ 25. Returning officer, deputy returning officer, or poll clerk, after taking and subscribing the oath, to be conservators of the peace until the close of the election, with the same powers for apprehension and committal or holding to bail, or trying and convicting violators of the law and good order, as are vested in justices of the peace. Returning officer or deputy to have power to *command* the assistance of all district constables and other persons at such elections to aid and assist him in doing so: also to swear in as many *special constables* as he may deem necessary: and to commit any person for a breach of the peace, or violation of good order, to the custody of any constable or constables, person or persons, on view, for such time as he shall in his discretion deem expedient, or by a writing under his hand commit to prison for any period not exceeding the close of the election or poll.

§ 26. Upon the written application of any candidate, or of the counsel or agent of any candidate, or of any two or more electors, any returning officer or deputy shall swear in such special constables. § 27. Returning officer or deputy may, during the election or polling, demand and receive from any person any offensive weapon, such as fire-arms, swords, staves, bludgeons, or the like, in the hands or personal possession of any such person, who, upon refusal to deliver the same, shall be deemed guilty of a *misdemeanor*, punishable by fine not exceeding £25, and imprisonment not exceeding *three* calendar months, or by both, in the discretion of the court; such weapons to be returned after the election. § 28. Every person convicted of *battery* committed during the election or polling, within two miles of the place where such election or poll shall be held, shall be punishable by fine not exceeding £25, and imprisonment for not more than three calendar months, or either, in the discretion of the court. § 29. It shall not be lawful for any candidate, at any election, directly or indirectly, to employ any means of corruption, or to threaten any elector of losing any office, salary, income, or advantage, either by himself or his authorised agent, with the intent to corrupt or bribe any elector to vote for such candidate, or to keep back any elector from voting for any other candidate, nor to open and support, or cause to be opened and supported, at his costs, any house of public entertainment, for the accommodation of the electors; and if proved, his election shall be void, and such candidate incapable of being returned during that parliament. § 30. Any person guilty of bribery, or any voter accepting same, shall forfeit not less than £5, nor more than £100, in the discretion of the court and jury, with costs of suit, to be recovered by action in any court of record. § 31. Bribed votes to be struck off the poll books, at the trial of any contested election.—



§ 32. Any person employed as counsel, agent, attorney, poll or check clerk, or in any other capacity, at or for the purpose of such election, accepting or taking any money, retaining fee, office, place or employment, or any promise or security for the same, within three calendar months before or during such election, or within fourteen days after, shall be incapable of voting at such election, and his vote, if given, shall be void. § 33. It shall not be lawful for any candidate, with intent to promote his election, or for any person, with intent to promote the election of any such candidate, to provide entertainment, at his expense, to any meeting of electors assembled for the purpose of promoting such election, previous to or during such election, or to pay for, procure or engage to pay for, any such entertainment, or to furnish any money or other property to any person or persons for the purpose of procuring the attendance of voters at the polls, or to engage to pay or compensate any person for procuring the attendance of voters at the polls, or to contribute money for any other purpose intended to promote the election of any particular person or persons, except only for defraying the expenses of printing and circulation of votes, handbills and other papers, previous to or during such election. Provided, that nothing herein contained shall extend to any entertainment furnished to any such meeting of electors at the expense of any person at his, her or their usual place of residence. § 34. Except for the returning officer, or his deputy, or the poll clerk, or one of the constables, or special constables, appointed by such returning officer or his deputy, for the orderly conduct of such election or poll and the preservation of the peace thereat, it shall not be lawful for any person, not having a stated residence in such parish, township or ward, for, at least six months before the election, to come during the poll into such parish, &c. armed with offensive weapons of any kind; as fire-arms, swords, staves, bludgeons or the like; or for any such person, being in such parish, &c. to arm himself during any part of such days with any such offensive weapons, and thus armed to approach within *two miles* of the poll. § 35. It shall not be lawful for any candidate, or for any other person, to furnish or supply any ensign, standard or set of colours, or any other flag, to or for any person or persons, with intent that the same should be carried or used on the day of election, or within one fortnight before or after such day, by such person or any other party as a party-flag, to distinguish the bearer and those who might follow as the supporters of such candidate, or of the political or other opinions entertained or supposed to be entertained by such candidate, or for any reason to carry or use any such ensign, standard, set of

colours or other flag as a party flag, within such county, riding, &c. on the day of such election, or within one fortnight before or after such day. § 36. It shall not be lawful for any candidate, or for any other person, to furnish or supply any ribbon, label or the like favor, to or for any person whomsoever, with intent that the same should be worn or used within such county, riding, &c. on the day of election, or within one fortnight before or after, by such person or any other party as a party-badge, to distinguish the wearer as the supporter of such candidate, or of the political or other opinions entertained or supposed to be entertained by such candidate, or for any person to use or wear any such ribbon, label or other favor, as such badge, within such county, riding, &c. on the day of such election, or within one fortnight before or after such day. § 37. Every person offending against any of the provisions of the next four preceding sections of this act shall be deemed guilty of a misdemeanor, punishable by fine not exceeding £50, and imprisonment not exceeding six calendar months, or by both, in the discretion of the court.— § 38. One copy of this act to be transmitted with the writ of election to every returning officer and each of their deputies throughout the province.

By the 6 V. c. 2. any member of the legislative assembly accepting any office of profit from the crown, whereby he shall become accountable for any public money, his election shall be void and seat *vacant*, and a writ shall forthwith issue for a new election. Provided, that such person shall be capable of being re-elected. § 2. This act not to extend to officers in the navy or army or militia receiving any new commission, excepting only the *staff* of the militia receiving permanent salaries.

## EMBEZZLEMENT.

By Stat. 4 & 5 V. c. 25. § 39. if any clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, shall by virtue of such employment receive or take into his possession any chattel, money, or valuable security for or in the name or on the account of his master, and shall fraudulently embezzle the same or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money or security was not received into the possession of such master otherwise than by the actual possession of his clerk, servant, or other person so employed; and every offender, upon conviction, shall be liable at the discretion of the court, to any of the punishments which the

court may award, as in said act mentioned. § 40. Any number of distinct acts of embezzlement not exceeding three, committed within *six* calendar months, may be charged in the indictment; and except in the case of chattels, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security. § 41. If any money or security for the payment of money shall be intrusted to any banker, merchant, broker, attorney or other agent, with any direction in writing to apply the same, or the proceeds of such security, for any purpose specified in such direction, and he shall in violation of good faith, contrary to the purpose so specified, in any wise convert the same or any part thereof to his own use or benefit, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award. And if any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of this Province, or of the United Kingdom of *Great Britain and Ireland*, or of *Great Britain* or of *Ireland*, or of any British colony or foreign state or colony, or in any fund of any body corporate, company, or society, shall be intrusted to any banker, merchant, broker, attorney or other agent, for *safe custody* or for any *special purpose*, without any authority to sell, negotiate, transfer, or pledge, and he shall in violation of good faith, and contrary to the object or purpose for which the same shall have been entrusted to him, sell, negotiate, transfer, pledge, or in any manner convert the same or the proceeds thereof to his own use, every such offender shall be guilty of a misdemeanor, and upon conviction shall be liable at the discretion of the court to any of the punishments which the court may award, as therein before mentioned. § 42. This act not to affect any trustee in or under any instrument whatever, or any mortgagee of real or personal property; nor restrain any banker, merchant, broker, or attorney or other agent, from receiving any money due and payable by virtue of any valuable security, according to the tenor and effect thereof; nor from selling, transferring, or otherwise disposing of any securities or effects in his possession, upon which he shall have any lien or claim, entitling him to do so: unless such sale or transfer shall extend to more than what shall be requisite for satisfying such lien, claim or demand. § 43. If any factor or agent intrusted with any goods or merchandise for

sale, or with any bill of lading, warehouse keeper's or wharfinger's certificate, or warrant or order for delivery of goods or merchandise, shall for his own benefit and in violation of good faith, deposit or pledge the same or any of them as a security for any money or negotiable instrument, borrowed or received by such factor or agent, at or before the time of making such deposit or pledge, or intended to be thereafter borrowed or received, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award; but no such factor or agent shall be liable to any prosecution for depositing or pledging any such goods or merchandise, or any of the said documents, in case the same shall not be made a security for or subject to the payment of a greater sum than the amount justly due and owing to such factor or agent from his principal, together with the amount of any bill of exchange drawn by or on account of such principal, and accepted by such factor or agent. § 44. This act not to deprive the party aggrieved of any remedy at law or in equity; nor shall the conviction of any offender be evidence against him: nor shall any accused party be convicted upon any evidence disclosed by him in any court of law or equity, or before commissioners of bankrupt.

## EMBRACERY,

Is an attempt to influence a jury corruptly to one side by promises, persuasions, entreaties, money, entertainments, and the like. The punishment for the person embracing is by fine and imprisonment; and for the juror so embraced, if it be by taking money the punishment is (by divers statutes of the reign of Edw. 3.) perpetual infamy, imprisonment for a year, and forfeiture of the tenfold value. *Bl. Com. p. 140. 15 Ed.*

## EMIGRANTS.

By the 4 & 5 V. c. 12. intituled, "An act to create a fund for defraying the expenses of enabling indigent emigrants to proceed to their place of destination, and of supporting them until they can procure employment," it is enacted by § 1. that a rate or duty of 5s. currency, for every passenger or emigrant,

be payable by the master of every vessel arriving at Quebec or Montreal from any port of the United Kingdom, or in any other part of Europe, with passengers or emigrants therefrom.—

§ 2. Two children, each under fourteen, or three children, each under seven, shall be reckoned as one passenger; children under twelve months not to be reckoned. § 3. Master not to allow any passenger to leave the ship until he has delivered a list to the collector and a receipt given for the duties payable, under the penalty of £25 for every passenger leaving the ship contrary to the act: passengers permitted to leave the ship before arrival in the harbour of Quebec under certain conditions. § 4. Passenger may remain on board the ship after arrival forty-eight hours with his baggage, and any master compelling a passenger to leave before that time shall incur a penalty not exceeding £5 for every passenger compelled to leave; nor shall any master, before the expiration of said forty-eight hours, remove any passenger's berthing or accommodation, under the like penalty. § 7. The moneys raised under this act shall be applied, under such rules and regulations as the Governor shall appoint, in defraying the expense of medical attendance and examination of destitute emigrants on their arrival, and of enabling them to proceed to their places of destination and in providing for their support until they procure employment. § 8. Penalties under this act may be recovered on oath of one credible witness, other than the prosecutor, in a summary way before any two justices, in the city of Quebec or Montreal, and such justices may commit the offender to the common gaol of the district until such penalty and costs are paid; and one moiety shall belong to her Majesty for the purposes of this act, and the other moiety to the prosecutor.

By the 4 & 5 V. c. 14. the household goods and necessaries of all kinds, of any person or persons coming into this province, or any part thereof, for the purpose of actually settling, are exempt from provincial duties enforced by said act; but such exemption not to extend to any goods, wares or merchandize brought or imported by such person or persons for trade or call.

## ESCAPE.

WHERE a person hath another in lawful custody, upon an arrest, whether made by himself or another, if he suffer him to go at large, before he is delivered by lawful authority, it is an escape, for which he is punishable; but the arrest must be for a real and not a supposed crime. 2 *Haw. c.* 19. § 2. And the imprisonment must be for a criminal offence. *Ib.* § 3. And a

gaoler is guilty of the offence, if he give a prisoner more liberty than the law allows; or, if he suffer the prisoner to go out for a time, though he afterwards return. *Ib.* § 5. and *Dalt. c.* 159. Where a person is found guilty on an indictment of a negligent escape, he is punishable by fine and imprisonment, according to the quality of the offence. 2 *Haw. c.* 19. 1 *Hale*, 600. 604.— And if a voluntary escape, he is punishable in the same degree as the offence of which the party is guilty; but no one shall be deemed guilty but the actual offender. 2 *Haw. c.* 19. § 23.

By statute 16 G. 2. c. 31. to assist a prisoner convicted of treason or felony to attempt an escape, is felony, and subjects the offender to transportation for seven years; and if the party be committed for petit larceny, or on a civil process for debt, amounting to £100, he shall be guilty of a misdemeanor, and liable to fine and imprisonment; and for conveying any disguise, or instrument, or arms, to facilitate the escape of prisoners convicted of or committed for treason or felony, the offender shall be transported for seven years; or if for petit larceny, or civil process for a debt, &c. amounting to £100, he shall be deemed guilty of a misdemeanor, and be liable to fine and imprisonment. § 2 and 3. And assisting a felon to escape from a constable, is by this statute also made felony, and subjects the offender to transportation for seven years. *Ib.*

This statute does not extend to cases where an *actual escape* is made, but only to cases where an *attempt* is made, without effecting the escape. *R. v. Tilley and others*, O. B. Sess. 1795.

*Warrant to apprehend a person for Escaping from the House of Correction.*

To the Constable of — in the Home District.

Home District, } Forasmuch as A. B. keeper of the house of  
to wit. } correction at — in — hath this day made  
information and complaint, upon oath, before me, J. C. Esquire,  
one of her Majesty's justices of the peace, acting in and for the  
Home District, that C. D. hath unlawfully and wilfully escaped  
from the house of correction at — aforesaid, and from and out  
of the custody of him the said A. B. the keeper thereof, before  
the expiration of a certain term, for which he the said C. D. was  
ordered to be imprisoned and kept to hard labour therein: These  
are therefore to command you, the said constable, forthwith to  
apprehend and bring before me, or some other of her Majesty's  
justices of the peace for the said district, the body of the said  
C. D. to answer unto the said complaint, and to be further dealt  
with according to law.

Given under my hand and seal, &c.

## ESTREAT.

AN ESTREAT (from *extractum*) is a true copy or extract of some original writing or record, containing an entry of fines or americiaments imposed by a court of record, or other competent authority; but when applied to a recognizance itself, is *extracted* or taken out from among the other records, and sent up to the exchequer. 4 *Bl. Com.* 253.

\* By the 7 W. 4. c. 10. § 3. all fines, issues, americiaments, and forfeited recognizances, (except such as shall by any act be directed to be otherwise levied,) which shall be set, imposed, lost, or forfeited, by or before any general quarter sessions of the peace, shall within 21 days after the adjournment of the court be entered on a roll by the clerk of the peace, which roll shall be made out in duplicate and signed by the clerk of the peace. § 4. One of said rolls to remain deposited in the office of clerk of the peace, and the other shall, so soon as prepared, be sent by the clerk of the peace, with a writ of fieri facias and capias according to the form in the schedule marked B, to the sheriff of the district, which writ shall be authority to such sheriff for levying same, or for taking into custody the bodies of such persons, in case sufficient goods cannot be found; and every person so taken shall be lodged in the common gaol of the district until satisfaction made, or until the general quarter sessions shall upon cause shewn by the party as hereinafter mentioned, make an order in the case, and such order be fully complied with. § 5. In every case of default whereby a recognizance may be forfeited, if the cause of absence be made known to the court, the court may on consideration of such cause, and also considering whether by the non-appearance of such person the ends of justice have been defeated or delayed, forbear to order the recognizance to be estreated: and with respect to all recognizances estreated in court, and fines imposed for the non-attendance of any juror or constable, or of any public officer bound to attend at such court, it shall be in the power of the chairman of the sessions, and any two justices who presided at such court, to make an order directing that the sum forfeited upon such recognizance or fine imposed be not levied, provided it shall appear satisfactorily that the absence of such party was justifiable; and for such purpose it shall be necessary for the clerk of the peace, before sending to the sheriff any roll with a writ as directed by this act, to submit the same to the chairman for his revision, who, taking to his assistance two of the presiding justices, shall make a minute on the roll of such recognizances and fines as they may think fit to direct not to be levied, and the

sheriff shall forbear to levy the same. § 6. The sheriff upon taking lands or tenements in execution, shall advertise the same in like manner as lands in execution in other cases, and no sale shall take place in less than twelve calendar months from the time the writ shall come into the sheriff's hands. § 7. The clerk of the peace shall at the foot of each roll make and take the following affidavit:—"I, A. B. (describing his office) make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, recognizances and forfeitures, which were set, lost, imposed or forfeited, at or by the court therein mentioned, and which in right and due course of law ought to be levied and paid, are to the best of my knowledge and understanding inserted in the said roll, and that in the said roll are contained and expressed all such fines as have been paid to or raised by me, either in court or otherwise, without any wilful discharge, omission, misnomer, or defect whatsoever: So help me God": which oath any justice of the peace for such district may administer. § 8. The justice before whom any recognizance shall be entered into, shall give at the time of entering into such recognizance to the person or persons entering into the same, and to each of his sureties, a written or printed paper or notice, in the form in the schedule marked C, and every such justice shall in such recognizance state and specify particularly the profession, art, or trade of every person so entering into such recognizance, together with the christian name and surname, and also the place of his or her residence. § 9. Persons on whom levies made for forfeited recognizances, may give security to the sheriff or other officer for his appearance in court at the return day of the writ, to abide the decision of the court, and to pay such forfeited recognizance or money to be paid in lieu or satisfaction thereof, together with such lawful expences as shall be ordered by the court, and thereupon the sheriff may discharge such person out of custody; provided that in case such party shall not appear, it shall be lawful for the court forthwith to issue a writ of fieri facias and capias against the sureties. § 10. The court of general quarter sessions into which any writ of fieri facias or capias shall be returnable, may inquire into the circumstances of the case, and in its discretion order the discharge of the recognizance, or money paid or to be paid in lieu thereof, and make such order thereon as to them may appear just. § 11. The sheriff shall return the writ on the day the same is returnable, and state on the back of the roll attached to such roll what shall have been done in the execution thereof, which return shall be filed in the court, and a copy thereof certified by the clerk of the peace shall be forthwith transmitted to



the receiver general, with a minute thereon of any sums remitted by order of the court, in the whole, or in part, or directed to be forborne. § 12. The sheriff shall without delay pay over all monies by him collected to the receiver general.

**SCHEDULE A.**

*William the Fourth, by the Grace of God, &c.*

To the Sheriff of —. Greeting:

You are hereby commanded to levy of the goods and chattels, lands and tenements, of all and singular, the persons in the roll or extract to this writ annexed mentioned, all and singular the debts and sums of money upon them severally imposed and charged, as therein is specified, and if any of the said several debts cannot be levied, by reason of no goods or chattels, lands or tenements, being to be found, belonging to the said parties respectively, then and in all cases, that you take the bodies of the parties respectively, and keep them safely in the gaol of your district, there to abide the judgment of our Court of King's Bench, upon any matter to be shewn by them, or otherwise to remain in your custody, as aforesaid, until such debt shall be satisfied, unless any such person shall give sufficient security for his or her appearance at the said court, on the return day hereof, for which you will be held answerable; and what you shall do in the premises, make appear before us, in our Court of King's Bench, at Toronto, on the — day of — term next, and have then and there this writ. Witness, &c. A. B. clerk of assize, at the last assizes, for the district of — this — day of — 18—.

**SCHEDULE B.**

*William the Fourth, by the Grace of God, &c.*

To the Sheriff of —. Greeting:

You are hereby commanded to levy of the goods and chattels, lands and tenements, of all singular, the persons in the roll or extract to this writ annexed mentioned, all and singular, the debts and sums of money upon them respectively imposed and charged, as therein is specified, and if any of the said several debts cannot be levied, by reason of no goods or chattels, lands or tenements, being to be found, belonging to the parties respectively, then and in all cases, that you take the bodies of the parties respectively, and keep them safely in the gaol of your district, there to abide the judgment of the Court of General Quarter Sessions, for the said district, upon any matter to be

shewn by them, or otherwise to remain in your custody, as aforesaid, until such debt shall be satisfied, unless any such person shall give sufficient security for his or her appearance at the said court, on the return day hereof, for which you will be held answerable; and what you shall do in the premises, make appear at the next Court of General Quarter Sessions of the Peace, for the said district, on the first day of the said court, and have then there this writ. Witness, C. D. clerk of the peace for the district of — this — day of — 18—.

#### SCHEDULE C.

— District, } Take notice, that you — are bound in the sum of  
to wit. } — pounds, and your sureties — in the sum of  
— pounds each, to appear at — to be holden at — and unless  
you personally make your appearance accordingly, the recogni-  
zance entered into by yourself and your sureties, will be forth-  
with levied on you and your bail. Dated this — day of —  
18—. A. B. justice of the peace for the — district.

By the 4 & 5 V. c. 24. § 49. reciting that the indiscriminate estreat of recognizances had been in many instances productive of hardship, it is enacted that the officer of the court is required to prepare a list in writing of forfeited recognizances, specifying the names of the defaulters, the nature of the offences, with the residence, trade, profession or calling of the parties, distinguishing the principals from the sureties, stating the cause if known why the parties have not appeared, and whether the ends of justice have been defeated thereby, and such officer before estreating such recognizances, shall lay such list, if at a court of oyer and terminer or gaol delivery, before one of the justices thereof, or if at a session of the peace before two justices, who shall have attended such court, and who are required to examine such list, and to make such order touching the estreating of any such recognizance as shall appear to them just; and the officer of the court shall not estreat any such recognizance without the written order of the said justice or justices.

#### EVIDENCE.

EVIDENCE, in its general sense, is the testimony of witnesses, given upon an issue joined between parties in a civil or criminal suit. 1 *Inst.* 283. In general, a person is a competent witness unless interested in the event of the suit, either directly or indirectly. 7 *T. R.* 62. and by the common law, informers who participate in any penalty are not competent witnesses; but

they are sometimes rendered so, by act of parliament in particular cases. 1 *Ph. Ev.* 117. The confession of a defendant taken on an examination before justices, is allowed to be evidence against the party confessing, but not against third persons. 2 *Haw. c.* 46. § 3. The distinction between a *credible* and a *competent* witness, is, that the former is not disabled from being produced and sworn, but the *credit* of his testimony depends upon his moral character; the latter may be disabled by interest, and other causes, from giving evidence, and on that account is *incompetent*. 2 *H. H.* 276, 277.

If a person be convicted of treason, felony, forgery, perjury, subornation of perjury, attaind of false verdict, and other offences of the same description, which involve the charge of falsehood, and affect the administration of justice, he is incompetent to give evidence. So, if convicted of bribing a witness to absent himself and not give evidence; barratry or conspiracy to accuse another of a capital offence. *Russell on Cr.* 592, 593. The incompetency must be proved by the production of the record of conviction and judgment. *Gill.* 128, 129. The admission of the witness himself that he had been convicted of grand larceny, and was then under sentence, was held insufficient. 8 *East.* 78. And an admission by a witness that he has been guilty of perjury, affords no objection to his competency, whatever effect it may have upon his credit. *R. v. Teal.* 11 *East.* 309: and by stat. 9 Ann. c. 14, 15. a person convicted of winning by fraud or ill practice in certain games is rendered incompetent. The incompetency arising from infamy may be removed—First. By endurance of punishment. Second. By pardon. Third. By reversal of the punishment. \*By statute 31 G. 3. c. 35. No person shall be incompetent by reason of a conviction for petit larceny.

By the 4 & 5 V. c. 24. § 22. offenders convicted of misdemeanors affecting their competency as witnesses, and having endured the punishment adjudged for the same, shall not afterwards be deemed incompetent witnesses (convictions for perjury or subornation of perjury excepted).

A witness cannot be asked any question, the answer to which would criminate himself; but he may be asked whether he has not been in the pillory for perjury. 4 *T. R.* 440. An infant 14 years of age, and even under, if of competent discretion, may be sworn to give evidence. 2 *H. H.* 278. The deposition of a witness taken *extra judicially* before a magistrate is not evidence. *Leach,* 397. Husband and wife are not admitted as evidence either for or against each other, except in treason; but in polygamy (for the second marriage being void) the second

wife may be admitted as a witness. A wife may also be permitted to swear the peace against her husband, and *vice versa*. *Buller, N. P.* 286. A woman living with a man as his wife, though not actually so, cannot be examined as a witness on his behalf. *Campbell, v. Twemlow.* 1 *Price*, 81. 1 *Phil. Ev.* 82. Quakers, Menonists and Tunkers, &c. are admissible as witnesses upon their simple affirmation. \*10 *G. 4. c. 1.*

## EXAMINATION.

By statute 4 & 5 *V. c. 24. § 2.* justices of the peace, before they shall admit any person to bail, in cases of felony, shall take the examination of such person in writing.—*See further on this subject, title "Bail."* See also title "*Justice of the Peace*"—*post.*

## EXECUTION.

EXECUTION is the last stage of criminal proceedings. This must, in all cases, be performed by the sheriff, or his deputy, whose warrant for so doing was anciently by precept, under the hand and seal of the judge. For a long time past, however, it has been the established practice for the judge to command execution to be done without any writ. The usage is for the judge to sign the calendar or list of all the prisoners, with their separate judgments in the margin, which is left with the sheriff. Thus, for a capital felony, it is written opposite to the prisoner's name—"Let him be hanged by the neck;"—formerly, in the days of latin and abbreviation—*sus. per. coll.* for *suspendatur per collum*. This is the only warrant which the sheriff has for so material an act as taking away the life of another. 4 *Bl. Com.* 403. Upon receipt of this warrant, the sheriff is to do execution within a convenient time, which in the *country*, except in cases of murder, is left at large. In all cases of murder, it is enacted by the 25 *G. 2. c. 37.* that the judge shall, in his sentence, direct execution to be performed on the next day but one after sentence passed, unless the day be Sunday; but otherwise, the time and place of execution are by law no part of the judgment. The place, however, ought to be somewhere in the county where the criminal was tried and convicted—unless the record of attainder be removed into the king's bench: which court may award execution in the county where it sits. 3 *Inst.* 31. 211. 217. 4 *Bl. Com.* 404. If upon judgment to be hanged by the neck till dead, the criminal be not thoroughly killed, but revives, the sheriff must hang him again, for the former hanging was no execution of the sentence; and

if a false tenderness were to be indulged in such cases, a multitude of collusions might ensue. 2 *Hale*, 412. 2 *Haw.* 463. 4 *Bl. Com.* 406. The body of a traitor or felon is, in strictness of law, forfeited to the king, by the execution, and he may dispose of it as he pleases; but it is usual in all cases, except *murder*, to give up the body for interment. Execution may be avoided by a *reprieve*, or a *pardon*;—the former is only temporary, but the latter is permanent. Every judge who hath power to order execution, hath also power to grant a reprieve. 2 *Hale*, 412. When a woman *quick with child* is condemned, although this is no cause to stay the judgment, yet it is good cause to respite the execution until she be delivered. Upon this plea being made, the judge must direct a jury of twelve matrons, or discreet women, to inquire the fact; and if they bring in their verdict *quick with child*—for *barely with child*, unless it be alive in the womb, is not sufficient—execution shall be stayed generally till the next assizes, until she is either delivered, or proves, by the course of nature, not to have been with child at all. 4 *Bl. Com.* 395. If a prisoner become *non compos mentis* between the judgment and award of execution, the judge ought in this case also to reprieve him, for *furiosus solo furiose punitur*; and the law knows not but he might have offered some reason, if in his senses, to have stayed the execution. *Ibid.* Execution may be also avoided by a plea of diversity of persons, viz.—that he is not the same that was attainted, and the like. In this case, a jury shall be impannelled to try the facts. In all such collateral issues, the trial must be *instanter*, and no time allowed the prisoner to make his defence, or produce his witnesses, unless he will make oath he is not the person attainted. *Fost.* 42.

\* By statute 3 W. 4. c. 4. § 19. instead of the former punishment for *treason*, viz. disembowelling the traitor, and dividing his body into four quarters, it is enacted that the sentence to be pronounced shall be, “that such person be drawn upon a hurdle to the place of execution, and be there hanged by the neck till such person be dead, and that afterwards the body of such person shall be dissected and anatomized”; and when any person shall be convicted of *murder*, his body shall be delivered by the sheriff to a surgeon, for dissection. § 20. After sentence pronounced as aforesaid, the judge may, if he see probable cause, order a respite.

By the 4 & 5 V. c. 27. § 5. every person convicted of murder shall after judgment be confined in some safe place within the prison, apart from all other prisoners, and shall be fed with bread and water only, and with no other food or liquor except in case of receiving the sacrament, or in case of any sickness or wound,

in which case the surgeon of the prison may order other necessaries to be administered: and no person but the gaoler and his servants, and the chaplain and surgeon of the prison, shall have access to any such convict without the permission in writing of the court or judge before whom such convict shall have been tried, or of the sheriff or his deputy.

## EXTORTION.

EXTORTION is an abuse of public justice, consisting in the unlawful taking by an officer, by *colour of his office*, of any money or thing of value, where either none at all is due to him, or not so much is due, or before any is due. *Co. Lit.* 368. *10 Rep.* 102. This offence, it has been justly observed, may be, in some cases, considered more odious than robbery; because it carries with it an appearance of truth, and is often accompanied with perjury, by the breach of an oath of office. The punishment for this offence, at common law, is by fine and imprisonment, and also by a removal from the office, in the execution of which it was committed. And there is a further additional punishment by the statute of Westminster 1. (*3 Ed. 1. c. 26.*) by which any sheriff, or other king's officer, who shall take any reward to do his office, shall yield twice as much, and shall be punished at the king's pleasure; under which statute an action lies also to recover this double value. *3 Com. Dig.* 323. But justices of the peace, whose office was instituted after the act, are bound by their oath of office to take nothing for the execution of their office but of the king, and fees accustomed, and costs limited by statute. And generally no public officer can take any other fees or rewards than those given him by statute, or such as have been anciently and accustomably taken, without being guilty of extortion. *Dalt. c. 41.*

It is extortion in a gaoler to obtain money from his prisoner, by colour of his office. *R. v. Broughton, Trem. P. C.* 111. in a coroner to refuse taking an inquest till his fees are paid, *3 Inst.* 149.; or in an *under sheriff* to obtain his fees by refusing to execute process till they are paid, or to take a bond for his fee, before execution is sued out. *1 Salk.* 330. It is also extortion in a miller or ferryman to take more toll than is due by custom. *R. v. Burdett, 1 Ld. Ray.* 149. It is also an indictable offence to persuade another to extort money from a person, whereby money was actually extorted from him. *R. v. Tracy, 3 Salk.* 192.

*Indictment against a Constable for Extortion.*

Home District, } The jurors for our lady the Queen upon their  
to wit. } oath present, that J. S. late of the township  
of — in the county of — in the home district, yeoman, on the  
— day of — in the — year of the reign of our sovereign lady  
Victoria, then being one of the constables of the said township,  
at the township aforesaid, in the county aforesaid, did take and  
arrest one J. N. by colour of a certain warrant, commonly called  
a bench warrant, which he the said J. S. then and there alleged  
to be in his possession, and that he the said J. S. afterwards, and  
whilst the said J. N. so remained in his custody as aforesaid, to  
wit, on the day and year aforesaid, at the township aforesaid, in  
the county and district aforesaid, unlawfully, corruptly, deceit-  
fully, extorsively, and by colour of his said office, did extort,  
receive and take, of and from the said J. N. the sum of — as  
and for a fee due to him the said J. S. as such constable as afore-  
said, for the obtaining and discharging of the said warrant, as  
he the said J. S. then and there alleged. Whereas, in truth  
and in fact, no fee whatever was then due from the said J. N.  
to the said J. S. as such constable as aforesaid, in that behalf;  
in contempt of our said lady the Queen, and her laws, to the  
evil and pernicious example of all others in the like case offend-  
ing, and against the peace of our lady the Queen, her crown  
and dignity.

**FAIRS AND MARKETS.**

By stat. 2 Edw. 3. c. 15. it shall be commanded to all sheriffs,  
where need shall require, to publish within liberties and with-  
out, that all lords which have fairs shall hold the same for the  
time that they ought, and no longer. And that every lord, at  
the beginning of his fair, shall publish how long the fair shall  
endure, that merchants shall not be at the same fairs over the  
time so published, upon pain to be grievously punished towards  
the king; nor the lords shall not hold them over the due time,  
upon pain to seize the fairs into the king's hands till they have  
made fine; after it be found that the lords held the fairs longer  
than they ought, or that the merchants have sitten above the  
time published.

By stat. 5 Edw. 3. c. 5. the merchants, after the time pub-  
lished, shall close their booths and stalls, without putting any  
merchandize to sell there; and if it be found that any merchant  
sell merchandize at the said fairs after the time, such merchant  
shall forfeit to the king the double value of that which is sold;

and every man that will sue for the king shall be received, and have the fourth part of that which is lost at his suit.

By stat. 27 Hen. 6. c. 5. all fairs and markets on the principal feasts and *Sunday*, and *Good Friday*, shall cease from shewing of goods (necessary victuals except) upon pain of forfeiture of the goods to the lords of the franchise, the four *Sundays* in harvest only except.

Provided that this ordinance shall endure to the next parliament, and so forth, except in the said parliament a reasonable cause be shewed, for the which it shall seem not expedient that the aforesaid ordinance shall endure. § 2.

By stat. 17 Edw. 4. c. 2.—made perpetual by 1 Ric. 3. c. 6.—no steward, bailiff, nor other minister of courts of pie-powder, shall hold plea upon any action, unless the plaintiff or his attorney, in the presence of the defendant, swear that the contract or other feat contained in the declaration was made or committed within the fair, and within the time of the fair, and within the jurisdiction of the same; and the defendant shall not be concluded, but shall plead to the action, or in abatement, that the contract, trespass or other feat contained in such declaration, was not committed nor done within the time of the fair and jurisdiction of the same, but out of the time of the fair, or at other places. And if it be so tried, or the plaintiffs or their attorneys refuse to make the oaths aforesaid, the defendants shall be dismissed, the plaintiff to take his advantage at common law. And every steward, or other minister holding any of the said courts, that doth the contrary, shall forfeit 100s. the one-half to the king, and the other half to him that will pursue his action upon this statute in his own name.

*Form of a petition for a charter to hold a fair.*

TO HIS EXCELLENCY the Right Honourable SIR CHARLES THEOPHILUS METCALFE, Bart., G. C. B., one of Her Majesty's Most Honourable Privy Council, Captain General and Governor-in-Chief of Her Majesty's Provinces of Canada, &c.

The petition of the undersigned inhabitants and freeholders of the district of —,

HUMBLY SHEWETH:

That from the increase in population, and in the cultivation and improvement of lands in this district, your petitioners conceive that the establishment of a public fair for the sale of goods, wares and merchandize, live stock and agricultural produce, would be productive of great advantage to the inhabitants of this district; and from its central situation, your petitioners



humbly submit that the village of — in the township of — in the said district, would be the most desirable place for its establishment. Your petitioners, therefore, most humbly pray, that your Excellency will be pleased, in her Majesty's name; to bestow upon the inhabitants of the said district a charter for holding two fairs in each year, for the sale of such goods, wares and merchandizes, live stock and agricultural produce, as aforesaid, at the said village of — on the first Wednesday in the months of — and — and to continue until the Saturday following, inclusive, under and subject to the payment and observance of such rates, tolls and regulations as her Majesty's justices of the peace, in general quarter sessions assembled, shall from time to time think proper to impose, make and require; and your petitioners, as in duty bound, will ever pray, &c.

FALSE PRETENCES—See "*Cheats.*"

## FELLING TREES.

\* By stat. 2 V. c. 16. reciting, whereas much injury has arisen from the felling of trees into the Grand River, Smith's Creek, or River Nith, Orb's Creek, or River Speed, in the district of Gore; Otter Creek, in the district of London; the River Credit, in the Home district; the River Otanabee, from Sturgeon Lake to Rice Lake, the River Scugog and River Trent, from Rice Lake to the Bay of Quinté, and Crow River, in the Newcastle and Midland districts; Rivers Gananoque, Rideau, and Petit Nation, in the Johnstown district; and the Rivers Tay, Mississippi, Bonchere, Madawaska, and Goodwood, in the Bathurst district, in this province, by endangering the mill-dams and bridges, and impeding the navigation thereof; it is therefore, by § 1. enacted, that every person or persons, or their employers, cutting and felling any trees into the said rivers, or upon such parts of the banks thereof as are usually overflowed in the autumn or spring, by means of the rising of the waters of the said rivers, who shall not lop off the branches of such trees, and cut up the trunks thereof into lengths of not more than eighteen feet, before they are or shall be allowed to be floated or cast into the said rivers, or any of them, shall, for every such offence, forfeit and pay the sum of fifty shillings, or such less sum as is hereinafter provided. § 2. Any person who shall cut down or fell any trees as aforesaid, contrary to this act, shall, upon conviction before any two justices of the district, upon the oath of one or more witnesses, pay such fine as to the justices the case may seem to require, not exceeding fifty shillings, to be levied by distress, by execution under the hand and seal of either of

said justices; and in default of such distress or payment of the fine within three days after conviction, said justices may confine the offender in the common gaol of the district for the space of ten days, unless the said fine and costs be sooner paid.— § 3. All fines levied under this act shall be paid to the treasurer of the district, and be applied to the improvement of the roads within the same. § 4. This act not to apply to any round or squared timber or trees, masts, staves, deals, boards, or other sawed or manufactured lumber or saw-logs, prepared for transportation to a market.

## FELONY.

FELONY, in its general sense, comprises every species of crime which occasioned, at common law, the forfeiture of lands or goods, 4 *Bl. Com.* p. 94; and by the common law is against the life of a man—as murder, manslaughter, *felo de se*, &c.; against a man's goods—as larceny and robbery; against his habitation—as burglary, arson; and against public justice—as breach of prison. 3 *Inst.* 31. And by statute—as forgery, &c.

Before the reign of H. 1. felonies were punished with pecuniary fines; for he was the first who, about the year 1108, ordered felons to be hanged. Since his reign, the judgment for felony continued the same by the common law, unless the offender was allowed to pray the benefit of clergy. 4 *Inst.* 124.— But this custom has been recently abolished by statute \*3 W. 4. c. 4.—by which statute the particular crimes which, for their enormity, ought to be punished with death, are expressly mentioned; and all other felonies shall be punished by banishment or transportation, or by imprisonment with hard labour.

See further on this subject, title "*Punishment.*"

In all felonies, the offender forfeits to the King all his goods and chattels, absolutely, and the profits of all his freehold estates, for life, and for a year and a day after his death. 1 *Inst.* 391.

But now, by the 4 & 5 V. c. 24. § 21. after punishment endured, the same shall have the like effects as a pardon.— § 23. Costs of prosecution, in all cases, to be paid out of the public funds, and no such fees shall in any case be demanded of or payable by the accused.

## FENCES.

\* By the 1 V. c. 21. § 12. inhabitant freeholders and householders, at their annual township meeting, to determine and order the height and description of lawful fences.

By the 4 & 5 V. c. 25. § 32. if any person shall steal or shall cut, break or throw down, with intent to steal, any part of any live or dead fence, or any wooden post, pale or rail, set up or used as a fence, or any stile or gate, or any part thereof respectively, every such offender being convicted thereof before a justice of the peace, shall, for every such offence, forfeit and pay over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding £5, as to the justice shall seem meet.

By the 4 & 5 V. c. 26. § 23. if any person shall unlawfully and maliciously cut, break, throw down, or in any wise destroy any fence, of any description whatsoever, or any walk, stile or gate, or any part thereof respectively, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay over and above the amount of the injury done, such sum of money not exceeding £1, as to the justice shall seem meet.

## FERRIES.

\* By statute 37 G. 3. c. 10. justices in sessions are empowered to make such rules and regulations as shall appear necessary at ferries, and to establish rates and fees to be taken thereat, a list or table of which rules and regulations, rates and fees, shall be set up in some conspicuous place at such ferries, and any person having charge of a ferry, convicted before any one justice, of demanding or receiving any higher or greater rate or fee, or of any breach of the rules or regulations, shall forfeit 20s. to be recovered before any one justice, and levied by distress and sale, one-half to the informer, and the other to the district.

See general form of "*Conviction,*" &c.

## FINES.

\* By statute 11 G. 4. c. 1. it is enacted, that in all cases in which, by the criminal law of England, the whole or any part of any fine or penalty, imposed for the punishment of any offence, is in any manner appropriated for the support of the poor, or to any parochial or other purpose, inapplicable to the existing state of the province, such fine or penalty, or such part thereof, as shall be so appropriated, shall be paid, when received, to the treasurer of the district, for the use of the district, and to be accounted for in the same manner as assessments.

## FIRE.

\* By statute 32 G. 3. c. 5. justices in quarter sessions are empowered to make such orders and regulations for the prevention of accidental fires, as to them shall seem meet and necessary, and to appoint firemen or other officers, for the purpose of extinguishing the same, and to make such orders and regulations as to them shall seem fit or necessary, in any town or place where there may be forty storehouses, within half a mile square.

By the 4 & 5 V. c. 43. § 1. the \*7 G. 4. c. 8. is repealed. § 2. enacts that whenever any company or companies shall have been regularly enrolled in any city, town, or place in which the formation of companies of firemen is by law authorised and regulated, it shall be lawful for the corporate authorities or board of police in such city or town, or if no such authorities, for the justices of the peace of the district in general quarter sessions assembled, or the majority of them, being satisfied of the efficiency of such persons and accepting their enrolment, to direct the clerk of the peace for the district to grant to each member of such company a certificate that he is enrolled in the same, which certificate shall exempt the party during his enrolment and continuance in actual duty as such fireman, from militia duty in time of peace; from serving as a jurymen or a constable, and from all parish and town offices. § 3. authorises corporate authorities or board of police in any city or town, or if no such authorities, then the justices of the peace for the district, or the majority of them at any general or adjourned session, upon complaint to them made of neglect of duty by any individual of such fire company, to examine into the same; and for any such cause, or in case any individual of such company shall be convicted of a breach of any of the rules legally made for the regulation of the same, to strike off the name of such individual from the list of the company, and thenceforward the certificate granted to such individual shall have no effect in exempting him from any duty or service before mentioned. Provided always, that it shall be in the discretion of the corporate authorities or boards of police, or of the justices of the peace for the district, as aforesaid, respectively to consent to the formation as aforesaid of any fire company in any such city, town, or place as aforesaid, or to defer the same, as may be deemed expedient: also in their discretion to discontinue or renew any such company.

## FIREWORKS.

By statute 9 & 10 W. c. 7. § 1. making or selling, or throwing fireworks from any house into any public street or road, shall be adjudged a common nuisance; and by § 2. any person selling fireworks, or implements for making the same, shall, upon conviction before one justice, on oath of two witnesses, forfeit £5, half to the poor, and half to the prosecutor, to be levied by distress; and any person permitting same to be cast or thrown from his house into any public street or road, shall forfeit 20s. § 2. And any person who shall cast, or fire, or aid in casting or firing any, shall forfeit 20s.; and if not immediately paid, shall be committed to the house of correction, to be kept to hard labour, not exceeding one month. § 3.

### *Information for selling Fireworks.*

Home District, } Be it remembered, that on the — day of —  
 to wit. } in the year of our Lord 18— at — in the  
 home district, A. B. of — &c. gentleman, cometh before me  
 J. C. Esq. one of her Majesty's justices of the peace, and giveth  
 me, the said justice, to understand and be informed, that C. D.  
 of — shopkeeper, at his shop in — on the — day of — last,  
 unlawfully, and against the form of the statute in that case made  
 and provided, did utter and sell to one E. F. certain squibs,  
 crackers, rockets and other fireworks, to wit, [*here state the par-*  
*ticular fireworks*] whereby the said C. D. by virtue of the said  
 statute, hath for his said offence forfeited the sum of £5, there-  
 fore the said A. B. prayeth the judgment of me, the said justice,  
 in the premises, and that he may have one-half of the said for-  
 feiture.

Exhibited before me.

### *The like for throwing Fireworks.*

Home District, } That C. D. late of — in the — district, la-  
 to wit. } bourer, at the town of — in the said district,  
 in the public street and highway, there did unlawfully throw,  
 cast and fire, certain fireworks, to wit, (squibs, &c.) against the  
 form of the statute in that case made and provided, whereby and  
 by force of the statute in that case made and provided, the said  
 C. D. hath for his said offence forfeited the sum of 20s. where-  
 fore he prayeth &c. [as before].

[The above informations should not be upon oath, but at the hearing the facts must be proved on oath by two witnesses at least.] See general form of "Conviction," &c.

**FISH.**

\* By statute 3 W. 4. c. 30. entitled, 'An Act to protect the white fish fisheries, in the straits or rivers Niagara, Detroit, and Saint Clair, in this province,' a penalty of £125 is imposed upon any person using any seine or net for the taking of white fish, in any of the above waters, of a greater length than 50 fathoms. § 2. Also a penalty of £50 on persons fishing on Sunday. § 3. And a penalty of £125 for attempting to divert the natural progress or running of the white fish, by shingling or other device; or imprisonment, not exceeding three months. § 4. Fishing in front of lands of another individual, (except in the channel) subject to a penalty of £50. § 6. The above penalties to be recovered by action of debt, with costs of suit, before any court of competent jurisdiction; one moiety to the informer, and the other to the province.

By Stat. \*3 V. c. 24. § 1. The Governor to appoint one or more inspectors of fish. § 2. Inspectors before entering upon the duties of their office to take the following oath or affirmation:

I do solemnly swear, or affirm (as the case may be) that I will faithfully, truly and impartially, according to the best of my judgment, skill and understanding, execute, do and perform the duty and office of an inspector of fish, according to the true intent and meaning of the act, entitled, "An act to regulate the inspection of fish, and to prevent non-residents in this province from fishing within the waters of the same."

§ 3. Inspectors to make annual returns to the clerk of the peace, in the month of January, of the quantity of fish inspected by him during the year preceding the 1st January, specifying the quantity of each quality inspected. § 4. It shall be the duty of the inspector, on application being made for that purpose, to proceed to inspect all fish, by opening one of the heads of each barrel or half barrel, and if the same is found to contain sound and merchantable fish, with a sufficient quantity of salt to preserve the same, he shall then brand the same as hereinafter provided on the head of such barrel or half barrel, and if the fish are found unsound or not merchantable, the same shall be destroyed by the inspector; and if the barrel or half barrel is not full, or not salted with a sufficient quantity of salt, in that case the said inspector shall fill the same with sound or merchantable fish, or add such quantity of salt as he may deem requisite. Each barrel to contain *two hundred pounds*, and each *half barrel one hundred pounds*. § 5. Each barrel or half barrel shall be filled with fish of one and the same kind, and the inspectors

shall brand in plain legible letters on the head of each barrel or half barrel of fish inspected by them respectively No. 1 or No. 2, representing the quality of the fish packed or re-packed, and they shall also brand on the head of each barrel or half barrel the species of the fish, the initials of the christian name and the whole of the surname of the inspector, the name of the district in which such fish was inspected, and the words "Upper Canada." § 6. If any person shall intermix, take out, or shift any fish of any barrel or half barrel inspected and branded as by this act required, or put into any barrel or half barrel inspected and branded any other fish for sale or exportation, or alter the face of or change the brand or mark of any inspector contrary to this act, the offender shall forfeit and pay £5 on conviction before any two justices, upon the oath of one or more witnesses: such penalty if not paid in three days after conviction to be levied of the goods and chattels of the offender, as hereinafter provided. § 7. All pickled fish duly inspected in any district in this province, shall not be liable to re-inspection in any other district, and may be shipped and exported to any foreign port. § 8. All barrels or half barrels used for packing and re-packing pickled fish shall be manufactured in this province, and shall be made of sound well seasoned white, red, or black oak, white ash, or white pine timber. The barrels and half barrels shall be well hooped with at least ten good hoops each, and shall be made in a workmanlike manner. The fees for inspecting and branding shall be, for each barrel 6d. currency, and for each half barrel 4d. currency; and for overhauling, re-packing, inspecting, and branding, for each barrel 1s. and for each half barrel 7½d. exclusive of cooperage; and for every bushel of salt or part thereof so consumed as aforesaid, the value of such salt, according to the market price thereof at the time and place of such inspection; the fees and charges to be paid by the person employing the inspector. § 9. If any inspector shall be guilty of any fraud or neglect in inspecting fish, or of offering any fee or reward to owners of fish or their agents, or to any other person, in order to obtain the profits of inspecting or re-packing the same, or shall brand any barrel or half barrel containing fish contrary to this act, or which has not been actually inspected, or shall permit any other person to use his brand in violation or evasion of the provisions of this act, he shall on conviction before any two justices of the district, upon the oath of one or more witnesses, forfeit and pay £10, and in default of payment within six days after conviction, such justices, or any one of them, may issue an execution against such inspector's goods and chattels, as by any law of this province is authorised in judgments awarded in the

court of requests. § 10. No person not residing in this province shall fish within the waters of Upper Canada, or be directly or indirectly engaged in the same, either as owner or agent, or part owner of a seine, or as a partner, or have any seine, net, or line upon any part of the beach of the waters of this province: and every person so offending shall be liable to be imprisoned for a period not less than thirty days nor exceeding ninety days, upon the oath of one or more credible witnesses. § 11. If it shall appear to the inspector that a part of the fish in any barrel or half barrel inspected by him is sound and part unsound, it shall be lawful for said inspector to separate the sound from the unsound, and re-pack the sound fish, and add such salt or pickle as he may judge necessary, and brand the same as aforesaid, and such fish as the inspector shall judge not capable of preservation he shall condemn as bad. § 12. This act not to apply to any fish packed out of the province and imported.

## FLOUR.

By the 4 & 5 V. c. 89. reciting, that it was expedient that the regulations now in force in the different sections of the province, with regard to the packing and inspection of flour and Indian meal, should be repealed, and one uniform law enacted for the whole province, and that the inspection of the articles aforesaid, intended for exportation, should *cease to be compulsory*, and be left *optional* with the parties interested. It is enacted, § 1. that the ordinance 25 G. 3. and the Lower Canada acts of the 46 G. 3. c. — and the 58 G. 3. c. — and the 2 G. 4. c. — and the ordinance of the 2 V. c. — and the Upper Canada acts of the \*41 G. 3. c. — \*60 G. 3. c. — and all other acts or laws in force within this province, relating to the packing, branding, inspecting or exportation of flour and Indian meal, should be repealed. § 2. Authorises the board of trade in Quebec, Montreal, Toronto and Kingston, and the municipal authorities in other places, where inspectors may be required, to appoint a board of examiners, with power to remove them and appoint others; such board, in Quebec and Montreal, to consist of *five*, and in other places *three* fit, proper and skilful persons, residents of the place, who, before acting, shall take and subscribe the following oath, before any justice of the district:

I, A. B. do swear, that I will not, directly or indirectly, personally or by means of any person or persons on my behalf, receive any fee, reward or gratuity whatever, by reason of any function of my office, as examiner, and that I will therein well



and truly in all things act, without partiality, favour or affection, and to the best of my knowledge and understanding. So help me God.

§ 3. The mayor of Quebec, Montreal and Toronto, and Kingston, and the warden or chief municipal officer of any other place, shall, by an instrument under his hand and corporation seal, nominate and appoint one inspector of flour and meal for each of such places, and remove and appoint another in his stead; such inspector to be previously examined before the board of examiners, as to fitness, character and capacity; no person to be appointed unless recommended by such board or a majority of them; nor in any place where there is a board of trade, except on the requisition of such board; such inspector, before acting, to furnish *two* sureties in £500, jointly and severally, if for Quebec and Montreal, and in £250 for Toronto, Kingston and other places, to be approved of by the mayor or chief municipal officer appointing such inspector, who shall not allow any person to act for him except his sworn assistants. § 4. Inspector's bond to be kept at the office of the clerk of the corporation, and open for inspection on payment of 1s. 3d. § 5. Board of examiners may, before examination of such inspector, require the attendance of two or more persons of experience in the manufacture of flour and meal, or of the qualities thereof; such examination to be open to the public, who may attend and propose questions. § 6. Inspector, before acting, shall take and subscribe the following oath, before any justice of the district:

I, A. B. do solemnly swear, that I will faithfully, truly and impartially, to the best of my judgment, skill and understanding, do and perform the office and duty of an inspector of flour and meal, and that I will not, directly or indirectly, by myself or by any other person or persons whomsoever, trade or deal in flour or meal, or be connected in any such trade, nor purchase any flour or meal of any description, otherwise than for the use and consumption of my family, during the time I shall continue such inspector. So help me God.

§ 7. Inspectors now in office to be re-appointed, but to be removable and give security as other inspectors. § 8. Inspector for Quebec and Montreal to appoint as many assistants as may be required by the board of trade, for whose acts he shall be responsible; such assistants to be approved by the board of examiners, and to furnish *two* sureties in £250, and take and subscribe the following oath before the mayor:

I, A. B. do swear, that I will diligently, faithfully and impartially, perform the duties of the office of assistant to the inspector

of flour and meal for the city of — according to the true intent and meaning of the act of the legislature of this province, intituled, “*An act to regulate the inspection of flour and meal,*” and that I will not, directly or indirectly, personally or by means of any person or persons in my behalf, receive any fee, reward or gratuity whatever, by reason of my office of assistant to the said inspector, (except my salary from the said inspector), and that I will not, directly or indirectly, trade in the articles of flour or meal, or be in any manner concerned in the purchase or sale of flour or meal, except so far as may be necessary for the use of myself and family. So help me God.

§ 9. Assistants to hold their office at the pleasure of the inspector. § 10. Inspectors and assistants required to examine and inspect every barrel, and half barrel, of flour and meal, on application by the proprietor, and to ascertain the qualities and conditions thereof by boring the heads, and probing the contents, to the whole depth of the cask, by an instrument not exceeding five-eighths of an inch diameter, within the gauge or bore of such instrument, and after inspecting shall plug the hole bored; such inspection may be made at the storehouse of the inspector, to be kept in a convenient place, or at some store within the limits of the place, at the option of the proprietor. § 11. Inspector, if required, to deliver to the owner the flour or meal taken from the barrel on inspection, under the penalty of £5. § 12. Inspector to provide brands, and, immediately after inspection, brand on every barrel or half barrel the words *Quebec, Montreal, Toronto, Kingston, Hamilton,* or any other place, as the case may be, and the initial of the christian name and surname at full length of the inspector, with the quality thereof; and on every barrel or half barrel found sour, without any other damage, shall brand the word *sour*, in letters as large as the rest of the brand; and if unsound or unmerchantable, the word *rejected*, in addition to the brand designating the quality; and in all cases, where the quality shall prove inferior to the brand of the manufacturer, the inspector shall erase and correct the same; and the inspector shall also brand the month and year the same was inspected, with the quality; and for such inspection and branding, the inspector shall be entitled to receive from the person applying, for every barrel and half barrel of flour or meal, *two-pence* currency, exclusive of cooperage, to be paid before removal; and as soon as inspected, a certificate or bill of inspection shall be furnished by the inspector, without fee or reward, specifying the quantity and quality, and the charges, and the owner's or manufacturer's marks thereon; and if any inspector shall give an untrue certificate, or give any certificate without a personal

examination, he shall forfeit £20 currency for each offence, and his office. Flour or meal re-inspected shall bear the brand or mark of the year and month originally affixed; and all the brands and marks shall be on one head of the barrel or half barrel; inspector in no case to brand or mark any barrel, unless the name of the manufacturer or packer, the place of packing and quality of the flour and meal, the tare and net weight, are branded or marked thereon; in all cases, where any flour or meal shall be sold, subject to inspection, the person applying to the inspector shall be entitled to the costs from the vendor, unless an agreement made to the contrary; and such agreement for inspection shall imply a warranty of the quality, and that this act has been complied with. § 13. Inspector, at the request of the buyer or seller, shall ascertain the weight of the casks, and if deficient, shall cause the same to be filled up by the proprietor or person requiring such inspection; inspector, refusing to weigh, shall forfeit £20 currency. § 14. Brand marks to be neat and legible, and inspector to govern himself by one uniform standard of quality; brand marks not to exceed fourteen inches long by eight inches broad, under a penalty of £5. § 15. In case of any dispute respecting the quality or condition, one justice may issue a summons to three persons, one to be named by the inspector, another by the proprietor, and the third by the justice, requiring them to examine and report their opinion thereof under oath, and the determination of the majority shall be final, and the inspector shall conform thereto and brand accordingly; costs to be paid by the party in error. § 16. Any inspector neglecting on application, within two hours thereafter, to proceed to such inspection, shall forfeit, on conviction before any one justice, on the oath of one witness, £5 currency over and above other damages. § 17. Flour or meal adulterated may be seized and detained by the inspector, and the offender liable to a penalty not exceeding £20; and if convicted within *one month*, the same shall be forfeited to the corporation of the place. § 18. Every manufacturer or packer who shall undermark the tare of any barrel, or put in a less quantity than is branded, shall incur a penalty of 20s. currency for every barrel or half barrel. § 19. And any person offering for sale any barrel or half barrel deficient in weight, shall forfeit 20s. currency.— § 20. Inspectors not to trade in flour or meal, under the penalty of £20 currency for each offence. § 21. Brands to be as follows: superior quality, *extra fine*; second quality, *superfine*; third quality, *fine*; fourth quality, *fine middling*; fifth quality, *middling*; sixth quality, *ship stuff* or *pollards*; and farine entière, by the letters E. N. T.; and when kiln-dried, by the letters *kiln-D.*;

and all packages of Indian meal shall be branded *Indian meal*; and each barrel of Indian meal shall contain 168 pounds weight of meal; each cask of rye flour shall be branded *rye flour*, and the particular quality branded. § 22. It shall not be lawful to pack flour in barrels for sale except the following weight, viz., half barrels containing 98 pounds net, barrels 196 pounds net, under the penalty of two shillings for every barrel. § 23. Every manufacturer and packer to be provided with iron or metal brands, by which he shall brand, paint or mark the initials of his christian name and his surname at full length, and the place of packing, quality and weight of the flour or meal, and the tare of the cask, on one end of each and every barrel or half barrel, under the penalty of *two shillings* for each and every barrel or half barrel packed in this province and so delivered or offered for sale, inspection or exportation, *\*with* such brands or marks. § 24. Flour barrels to be made of seasoned oak or ash lumber, as nearly straight as may be, and the staves 27 inches from croe to croe; half barrels 22 inches from croe to croe, with heads of the same; diameter of the heads of barrels from 16½ to 17 inches; half barrels from 13½ to 14 inches; both to be well seasoned and bound with at least ten wooden hoops, three at each end with a lining-hoop within the chimes, the whole well secured by nails, under the penalty of two shillings for every cask offered for sale or exported of a contrary description. § 25. If any manufacturer or packer, or any other person, shall, with a fraudulent intent, efface or obliterate from any barrel or half barrel, having undergone inspection, any of the inspector's marks, or shall counterfeit such mark, or shall empty or partially empty any barrel or half barrel, marked after inspection, in order to put in other flour or meal, or shall use any old barrel or half barrel, without destroying the old marks or (not being the inspector or his assistant) shall brand with the inspector's marks; and if any person, in the employ of any manufacturer or packer, shall hire or loan out the marks of his employer, the offender shall forfeit £50 currency; and any inspector or assistant inspecting or branding or marking out of his limits, or hiring out his marks to any person, or conniving at any fraudulent evasion of inspection by others, shall for each offence forfeit £50 currency.— § 26. All fines not exceeding £10 currency shall, except otherwise provided, be recovered by the inspector, or by any person suing, in a summary way, before any *two* justices for the district, in their ordinary or other sessions, and may, in default of payment, be levied by distress; and where exceeding £10 currency, may be recovered in any court of competent jurisdiction; and

\* *Qy.* without.

the moiety of such fines (except otherwise provided) shall be paid to the treasurer of the city, town or place, for public uses, and the other moiety to the prosecutor. Provided, if any officer of such corporation be the prosecutor, the whole penalty shall belong to the corporation. § 27. Actions to be commenced within six months. § 28. Act to commence on the 1st January, 1842. § 29. And remain in force till the 1st January, 1848, and the end of the next session.

### FORCIBLE ENTRY AND DETAINER.

#### *What is a Forcible Entry.*

A FORCIBLE ENTRY is committed by violently taking possession of lands and tenements, with menaces, force and arms, and without the authority of the law. 4 *Bl. Com.* 148. And even if a man have a good right to the land, and enter forcibly, he may be indicted. *Dalt. (Ed. 1727) c.* 129. A single person may commit a forcible entry as well as a number of persons. 1 *Haw. c.* 64. § 8. 22. 29. A forcible entry is made with a strong hand, with unusual weapons; an unusual number of servants or attendants; or with menace of life or limb: or, by breaking open the doors of a house, whether any person be in it at the time or not; and though a man enter peaceably, yet if he turn the party out of possession by threats, or violence—this also amounts to a forcible entry. 1 *Haw. c.* 64. § 25. But merely drawing a latch, and entering a house; or opening the window or door with a key; or entering by an open window—do not constitute a forcible entry. *Ibid.*

#### *What is a Forcible Detainer.*

A forcible detainer, is where a person who enters peaceably, though unlawfully, detains possession by force; and the same circumstances of violence or terror which makes an entry forcible, will also constitute a forcible detainer. Therefore, whoever, after an unlawful entry, keeps in the house an unusual number of persons, or weapons, or threatens to do some bodily hurt to the former possessor, is guilty of a forcible detainer. So, if a man shuts the door against a justice of the peace, coming to view the force, and obstinately refuses to let him come in; so, a lessee, who, after the end of his term, keeps arms in his house to oppose the entry of the lessor, is guilty of a forcible detainer; and the same with regard to a lessee at will, after the will is determined; or of a mortgagor, after the mortgage is forfeited. 1 *Haw. c.* 64. § 30. 4 *Com. Dig.* 201. But the mere

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refusal to go out of a house, and continuing therein in despite of another, does not amount to a forcible detainer. 1 *Haw. c.* 64. § 30. Therefore, if a lessee at will, (after the determination of his tenancy) merely denies possession to the lessor, or even shuts the door against the lessor when he would enter—this is not a forcible detainer. *Cro. Cur.* 486. And a man who breaks open the doors of his own dwelling-house, forcibly detained by one who has the bare custody of it, is not guilty of a forcible entry or detainer. 1 *Haw. c.* 64. § 32.

### *Of the Remedy.*

At common law, a man disseised of any lands or tenements, if he could not prevail by fair means, might lawfully regain the possession thereof by force. 1 *Haw.* 140. But this indulgence of the common law having been found, by experience, to be very prejudicial to the public peace, it was thought necessary, by many severe laws, to restrain all persons from the use of such violent methods of doing themselves justice. *Ib.* 141. Accordingly, by 5 R. 2. statute 1. c. 8. None shall make entry into lands but where entry is given by law, and in such case not with strong hand, nor with multitude of people, but only in lawful and easy manner. And if any do the contrary, and thereof be convicted, he shall be punished by imprisonment and ransomed at the king's will.

By 15 R. 2. c. 2. At all times that forcible entries be made, and complaint thereof cometh to justices of peace, or any of them, the same justices or justice shall take sufficient power of the county, and go to the place where such force is made; and if they find any that hold such place forcibly, they shall be taken and put in the next gaol, there to abide convict by the record of the justices or justice, till they have made fine and ransom to the king. And all they of the county, as well the sheriff as others, shall attend upon the justices, to assist them to arrest such offenders, upon pain of imprisonment, and to make fine to the king.

By 8 H. 6. c. 9. Where any doth make forcible entry into lands, tenements, or other possessions, or them hold forcibly, after complaint made to the justices of peace, or one of them, by the party grieved, the justices or justice, within a convenable time, shall cause the statute duly to be executed at the costs of the parties grieved. § 2.

Though such persons making such entries be present, or voided before the coming of the justices; nevertheless, the justices, in some town next the tenement, or in other convenient

place, shall have power to enquire by the people of the county, as well of them that make such forcible entries into lands and tenements, as of them which the same hold with force. And if it be found before them, that any doth contrary to this statute, the justices shall cause the tenements so entered or holden to be re-seised, and put the party so put out in full possession. § 3.

When the justices make such inquiries, they shall cause their precepts to be directed to the sheriff, commanding him to cause to come before them sufficient and indifferent persons dwelling next about the lands so entered, to inquire of such entries, whereof every man impannelled shall have lands of the yearly value of 40s. And the sheriff shall return issues upon them at the day of the first precept returnable 20s.; and at the second day 40s.; at the third time 100s.; and every day after, the double. And if any sheriff or bailiff make not execution duly of the said precepts, he shall forfeit to the king £20, and moreover make fine and ransom. § 4.

An inquisition for a forcible entry taken before magistrates under 8 H. 6. c. 9. must shew what estate the party expelled had in the premises, and if it do not, the inquisition will be quashed, and the court will award restitution. The inquisition will also be bad if it appear to the court that the defendant had no notice, or that any of the jury had not lands or tenements of the value of 40s., or that the party complaining was sworn as a witness.—*Rex. v. McHeavrey et al.* and *Mitchell v. Thompson*. *Michs. 1 Vic. Cameron's Digest*, p. 38.

By 31 Eliz. c. 11. No restitution upon any indictment of forcible entry, or holding with force, shall be made, if the persons indicted had the occupation, or been in quiet possession, three years next before the day of such indictment found, and their estate therein not ended, which the party indicted may allege for stay of restitution; and if the other traverse the same, and the allegation be found against the party indicted, he shall pay costs. § 3.

By 21 Jac. 1. c. 15. a justice of the peace may also give like restitution of possession to tenants, for term of years. If the offenders, being in the house, make no resistance, then the justice can neither arrest or remove them on his view, and the party cannot be arrested unless the *force* be found by the inquiry of a jury, and if such forcible entry and detainer be found, then the justice shall cause the lands to be restored. *Dalt.* 1. 44. Although one justice alone may proceed in such cases, yet it may be advisable for him, if the time for viewing the force will suffer it, to take to his assistance one or two more justices.—*Burn's J.* 179.

A conviction by a justice for a forcible entry, on view, must set a fine upon the defendant, otherwise the court of king's bench will discharge him from a commitment on such conviction, by *habeas corpus*. *R. v. Elwell, Str.* 794. *Ld. R.* 1514. If a fine be set, the conviction cannot be quashed on motion, but the defendant must bring his writ of error; but if no fine be set, it may then be quashed on motion. *R. v. Layton, 2 Salk.* 450.

### *Restitution*

Must be awarded by the same justices before whom the inquest was found. If a restitution shall appear to have been illegally awarded or executed, the court of king's bench will set it aside, and grant a re-restitution to the defendant. 1 *Haw. c.* 64. § 63, 64, 65.

The sheriff in executing the writ of restitution may raise the power of the county to assist, but the justices may, if they think proper, make restitution in person. A justice, or the sheriff may break open a house to make restitution; and if the possession be avoided by a fresh force, the party may have a second writ of restitution without a new requisition, if applied for within a reasonable time. 1 *Haw. c.* 64. § 49, 52. 4 *Com. Dig.* 204.

### *How punishable by Indictment.*

A forcible entry or detainer, is also at common law, punishable by indictment; and if three or more be concerned, it is also a riot, and may be proceeded against accordingly. *Dalt. c.* 44.

### *Record of a Forcible Detainer upon view, before three Justices.*

(BURN.)

[Or it may be before one Justice only.]

Home District, } Be it remembered, that on the — day of —  
to wit. } in the — year of the reign of our sovereign  
Lady Victoria, at — in the district aforesaid, — complained to  
us — and — esquires, three of the justices of our said lady the  
queen, assigned to keep the peace in the said district, and also  
to hear and determine divers felonies, trespasses, and other mis-  
demeanors, in the said district committed, that — and — late of  
— in the said district, yeomen, into the messuage of her the said  
— situate within the township of — in the district aforesaid, did  
enter, and her the said — of the messuage aforesaid, whereof  
the said — at the time of the entry aforesaid, was seised, as of  
the freehold of her the said — for the term of her life, unlaw-



fully ejected, expelled and removed, and the said message from her the said — unlawfully, with strong hand and armed power, do yet hold and from her detain, against the form of the statute in such case made and provided; whereupon the said — then to wit, on the said — day of — in the year aforesaid, at the city of Toronto, in the district aforesaid, prayeth of us so as aforesaid, being justices, to her in this behalf, that a due remedy be provided, according to the form of the statute aforesaid; which complaint and prayer by us the aforesaid justices being heard, we the aforesaid — justices, aforesaid, to the messages aforesaid, personally have come, and do then and there find and see the aforesaid — the aforesaid message, with force and arms unlawfully, with strong hand and armed power detaining, against the form of the statute in such case made and provided, according as she the said — hath so as aforesaid unto us complained; therefore it is considered by us, the aforesaid justices, that the aforesaid — of the detaining aforesaid, with strong hand, by our own proper view, then and there as is aforesaid had, are convicted, and every of them is convicted, according to the form of the statute aforesaid, whereupon we, the justices aforesaid, upon every of the aforesaid — do set and impose severally, a fine of — of good and lawful money of this province, to be paid by them and every of them, severally, to our said sovereign lady the queen, for the said offences, and do cause them and every of them then and there to be arrested, and the said — and — being convicted, and every of them being convicted, upon our own proper view of the detaining aforesaid with strong hand, as is aforesaid by us, the aforesaid justices are committed, and every of them is committed to the common gaol of our said lady the queen, at Toronto aforesaid, in the district aforesaid, being the next gaol to the message aforesaid, there to abide respectively, until they shall have paid their several fines respectively, to our said lady the queen, for their respective offences aforesaid, concerning which, the premises aforesaid, we do make this our record. In witness whereof, we the said — the justices aforesaid, to this record our hands and seals do set, at — aforesaid, in the district aforesaid, on the — day of — in the — year of the reign of our said sovereign lady the queen.

*Mittimus for a Forcible Detainer, upon view, by one Justice.* (BURN.)

J. C. Esq. one of the justices of our sovereign lady the Queen, assigned to keep the peace of our said sovereign lady the Queen, in and for the Home district, and also to hear and determine divers felonies, trespasses and other misdemea-

nors, in the said district committed; to the keeper of her Majesty's gaol at Toronto, in the said district, and to her deputy there, or to either of them,—*greeting*.

Home District, } Whereas upon complaint this day made unto  
to wit. } me J. C. Esq. one of her Majesty's justices  
of the peace for the — district, by A. B. of — in the said district, yeoman; I, the said justice, did immediately go to the dwelling-house of the said A. B. at — aforesaid, and there found upon mine own view, C. D. late of — labourer, E. F. late of the same place, labourer, and G. H. late of — carpenter, forcibly with strong hand and armed power holding the said house, against the peace of our said lady the Queen, and against the form of the statute in such case made and provided; therefore I send you, by the bringers hereof, the bodies of the said C. D. E. F. and G. H. convicted of the said forcibly holding, by mine own view, testimony and record; commanding you, in her Majesty's name, to receive them into your said gaol, and there safely to keep them and every of them, respectively, until they shall have respectively paid the several sums of £10 of good and lawful money of this province, to our said sovereign lady the Queen, which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses, respectively. Herein fail you not, on the pain that will ensue thereon. Given at — aforesaid, in the Home district aforesaid, under my hand and seal, the — day of — in the — year of the reign of our said sovereign lady the Queen, and in the year of our Lord 18—. J. C.

*Justice's precept to Summon a Jury.* (BURN.)

Home District, } J. C. esquire, one of the justices of our lady  
to wit. } the Queen assigned to keep the peace in the  
said district, and also to hear and determine divers felonies, trespasses and other misdemeanors, in the said district committed: To the sheriff of the said district—*greeting*: On behalf of our said lady the queen I command you that you cause to come before me, at — in the said district, on the — day of — next ensuing, twenty-four sufficient and indifferent men of the neighbourhood of — aforesaid, in the district aforesaid, every one of whom shall have lands and tenements of 40s. yearly, at the least above reprises, to inquire upon their oath for our said lady the queen of a certain entry made with a strong hand, as it is said, into one messuage of one A. B. at — aforesaid, in the district aforesaid, against the form of the statute in that case

made and provided; and you are to return upon every of the jurors by you in this behalf to be empannelled 20s. of issues at the aforesaid day, and have you then there this precept, and this you shall in no wise omit upon the peril that thereon shall ensue. Witness the said J. C. at — in the said district, the — day of — in the — year of the reign of our sovereign lady Victoria.

### *Jurors' Oath.*

You shall true inquiry and presentment make of all such things as shall come before you concerning a forcible entry [or detainer] said to have been lately committed in the dwelling house of A. B. at —; you shall spare no one for favor or affection, nor grieve any one for hatred or ill will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you. So help you God.

### *To the other Jurors.*

The oath that A. B. your foreman, hath taken on his part, you and every of you shall truly observe and keep on your parts. So help you God.

### *The Inquisition or finding of the Jury. (BURN.)*

Home District, } An inquisition for our sovereign lady the  
to wit. } Queen, indented and taken at — in the  
Home District, the — day of — in the — year of the reign of  
our sovereign lady Victoria, by the oath of — good and lawful  
men of the said district, before J. C. Esquire, one of the justices  
of our said lady the Queen, assigned to keep the peace for the  
said district, and also to hear and determine divers felonies,  
trespasses and other misdeeds, in the said district committed,  
who say upon their oath, aforesaid, that A. B. of — long since  
lawfully and peaceably was seised in his demesne as of fee [*if  
not freehold, say 'possessed,'*] of and in one messuage with the  
appurtenances, in — aforesaid, in the district aforesaid, and his  
said possession (*or seisin*) so continued, until C. D. late of —  
&c. E. F. of, &c. and G. H. of, &c. and other malefactors un-  
known, the — day of — now last past, with strong hand and  
armed power, into the messuage aforesaid, with the appurtenan-  
ces aforesaid, did enter, and him the said A. B. thereof disseised,  
and with strong hand expelled, and him the said A. B. so dis-  
seised and expelled from the said messuage, with the appurten-  
ances aforesaid, from the — day of — until the day of the

taking this inquisition, with like strong hand and armed power did keep out, and do yet keep out, to the great disturbance of the peace of our said lady the Queen, and against the form of the statute in that case made and provided. We, whose names are hereunto set, being the jurors aforesaid, do upon the evidence now produced before us, find the inquisition aforesaid true.

A. B. &c.

*Warrant to the Sheriff for Restitution.* (BURN.)

Home District, } J. C. Esquire, one of the justices of our sove-  
to wit. } reign lady the Queen, assigned to keep the  
peace in the Home District, and also to hear and determine  
divers felonies, trespasses and other misdemeanors, in the said  
district committed; to the Sheriff of the said Home District—  
*greeting :*

Whereas, by an inquisition taken before me, the justice aforesaid, at — in the district aforesaid, on this present — day of — in the — year of the reign of — upon the oaths of — and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found that C. D. &c. into a certain messuage, &c. [*as in the inquisition*] as by the inquisition aforesaid more fully appeareth of record; therefore, on the behalf of our said sovereign lady the Queen, I charge and command you, that, taking with you the power of the district, (if it be needful) you go to the said messuage, and other the premises, and the same with the appurtenances you cause to be re-seised, and that you cause the said A. B. to be restored and put into his full possession thereof, according as he before the entry aforesaid was seised, according to the form of the said statutes; and this you shall in no wise omit, on the penalty thereon incumbent.— Given under my hand and seal, at — in the said district, the — day of — in the — year of the reign of —.

*Indictment for a Forcible Entry and Detainer at Common Law.*

Home District, } The jurors for our lady the Queen, upon their  
to wit. } oath present, that J. S. late of the township  
of — in the county of — in the Home District, gentleman,  
K. T. of the same township, carpenter, and L. W. of the same  
township, labourer, together with divers other evil disposed  
persons, to the number of six or more, to the jurors aforesaid  
unknown, on the — day of — in the — year of the reign of our  
sovereign lady Victoria, with force and arms, to wit, with pistols,  
swords, sticks, staves and other offensive weapons, at the town-

ship aforesaid, in the county and district aforesaid, into a certain barn and a certain orchard, there situate and being, and then and there in the possession of one J. N. unlawfully, violently, forcibly, injuriously and with a strong hand did enter, and the said J. S. K. T. and L. W. together with the said other evil disposed persons, to the jurors aforesaid unknown as aforesaid, then and there, with force and arms, to wit, with pistols, swords, sticks, staves and other offensive weapons, unlawfully, violently, forcibly, injuriously and with a strong hand, the said J. N. from the possession of the said barn and orchard did expel, remove and put out, and the said J. N. so as aforesaid expelled, removed and put out, from the possession of the said barn and orchard, then and there, with force and arms, to wit, with pistols, swords, sticks, staves and other offensive weapons, unlawfully, violently, forcibly, injuriously and with a strong hand did keep out, and still do keep out, and other wrongs to the said J. N. then and there did, to the great damage of the said J. N. and against the peace of our lady the Queen, her crown and dignity.

## FOREIGN AGGRESSION.

\* By the 3 V. c. 12. § 1. reciting that it was necessary to amend the provisions of the \*1 V. c. 3. said act is therefore repealed. § 2. If any person being a citizen or subject of any foreign state or country at peace with the United Kingdom of Great Britain and Ireland, shall after the passing of this act, be or continue in arms against her Majesty, her heirs or successors within this province, or shall commit any act of hostility therein, or shall enter this province with design or intent to levy war against her said Majesty, her heirs or successors, or to commit any felony within the same, for which any person convicted of such felony would by the laws of this province be liable to suffer death, then it shall be lawful for the Governor to order the assembling of a militia general court martial for the trial of such person, agreeably to the militia laws of this province, and upon being found guilty by such court martial of offending against this act, such person shall be sentenced by such court martial to suffer death, or such other punishment as shall be awarded by the court. § 3. If any subject of her Majesty, her heirs or successors, shall within this province levy war against her Majesty, her heirs or successors, in company with any of the subjects or citizens of any foreign state or country then at peace with said United Kingdom, or shall enter this province in company with any such subjects or citizens of a foreign state or country at peace with said United Kingdom, with intent to levy war on her

Majesty, or to commit any such felony as aforesaid within the same, with the design or intent to aid and assist such last mentioned person or persons to levy war or to commit any such act of felony as aforesaid, then such subject of her Majesty shall be liable to be tried and punished by a militia court martial, in like manner as any citizen or subject of a foreign state or country at peace with her Majesty. § 4. Any citizen or subject of any foreign state or country offending against this act, shall be deemed guilty of felony, and may, notwithstanding the above provisions, be prosecuted and tried before any court of oyer and terminer and general gaol delivery, in and for any district of this province, in the same manner as if the offence had been committed in such district, and upon conviction shall suffer death, as in cases of felony.

### FOREIGN SERVICE.

ANY engagement with a foreign state is a contempt against the prerogative, and a high misdemeanor at common law. 4 *Bl. Com.* 122.

### FORESTALLING.

AT the common law every practice or device to enhance the price of victuals, or other necessaries of life, is held to be a misdemeanor. 3 *Inst.* 196; and forestalling, in its legal signification, anciently comprehended all offences of this description, including those of *ingrossing* and *regrating*. *Ingrossing* is the purchase of the whole of any commodity for the sake of selling it again at a high price. *Regrating* signifies, properly, the scraping or dressing of cloth, or other goods, in order to sell the same again. The offences of forestalling, *ingrossing* and *regrating*, have been also especially provided against by various statutes, from the 3 & 4 Ed. 6. c. 21. downwards to the 12 G. 3. c. 71.; by which latter statute all the preceding statutes were repealed, leaving the offence only to be dealt with as it stood at common law, under which it still continues an indictable offence, punishable by fine and imprisonment. *Cr. C. C.* 232.

### FORGERY.

FORGERY is the fraudulent making or alteration of a writing, to the prejudice of another man's right. It is a *misdemeanor* at common law, punishable by fine, imprisonment and pillory. 4 *Bl. Com.* 247: but is made *felony* by a variety of statutes; and

forgery is complete although no person be actually prejudiced by it. *Ward's case. Ld. R.* 1461. The following instances come under the denomination of forgery:—making a fraudulent insertion, alteration or erasure, in any material part of a true instrument: converting a bond for £500 into one for £5000, by adding an 0, to the number. 1 *Haw. c.* 70. § 2. Altering a banker's note or bill of exchange, from £10 to £50. *R. v. Teague, 2 East. P. C.* 979. Altering the date of a bill, whereby payment is accelerated. 2 *East. P. C.* 853. So, if a man who is ordered to draw a will for a sick person, insert legacies in it of his own head. 3 *Inst.* 170. So, a man may be guilty of forgery in signing any instrument in his own name, if he represent himself to be some *other person* of the same name. *Mead v. Young, 4 T. R.* 28.

*As to Forgery by Statute Law.*

By 5 Eliz. c. 14. § 2. forging any false deed, charter, or writing sealed; court roll; or the will of any person; or publishing any such as true, shall subject the party to double costs and damages; be set in the pillory, &c.; and by stat. 2 G. 2. c. 25. revived and made perpetual by 9 G. 2. c. 18.—any person forging any deed; will; bond; writing obligatory; bill of exchange; promissory note; indorsement or assignment thereof; or uttering same as true, shall be guilty of felony. By 24 G. 3. st. 2. c. 37. forging the superscription of a letter, to avoid the payment of postage, is made felony.

\* By 35 G. 3. c. 5. § 14. any person forging any memorial, &c. under the registry act, shall be subject to the pains and penalties of the 5 Eliz. \* By 50 G. 3. c. 4. forging any foreign bill of exchange; promissory note; undertaking or order for payment of money; or uttering the same as true, is punishable by fine, or imprisonment, not exceeding two years; or other corporal punishment, not extending to life or member; and also by banishment; or by one or more of said punishments, at the discretion of the court. § 1. And any person engraving, cutting, etching, &c. upon any plate, any foreign bill of exchange, promissory note, undertaking or order, or any part thereof, without authority; or printing any such foreign bill of exchange, &c.; or having any such plate or device in his possession, without lawful excuse; or any impression taken from the same, shall be guilty of a misdemeanor; and for the first offence, be imprisoned for any time not exceeding six months; or fined; or publicly or privately whipped; or suffer any one or more of these punishments; and for the second offence, be punished by fine, or imprisonment, not exceeding two years. § 5. And it shall be

lawful for any one justice, on complaint upon oath that there is just cause to suspect that any person or persons have been concerned in the forging or engraving of such foreign bills, &c.; or have in his, her, or their custody, any such plate or device, or any impression taken therefrom, by warrant, to cause the premises of such suspected person to be searched, and to seize any tools, plates, implements or devices, found thereon; and the person seizing shall carry the same forthwith to a justice, who shall cause the same to be secured, and produced in evidence against the party. § 6. Actions must be brought within three months.

See also 4 & 5 V. c. 93. title "*Coin*," ante. p. 141.

## FRUIT TREES.

See post, title "*Trees*."

## FUGITIVE FELONS.

\* By statute 37 G. 3. c. 15. if any person, against whom a warrant shall be issued by the chief justice, or any other magistrate in any of his Majesty's provinces in North America, for any felony or crime of a higher nature, shall escape, and come into any part of this province, any justice of the peace, where such felon shall be, may (upon due proof of the hand-writing of the magistrate issuing the warrant) endorse the same, which shall be a sufficient authority for the execution thereof, where such warrant shall be so endorsed. § 2. The person having such warrant, first entering into recognizance with sufficient sureties, in not less than £50, to indemnify the province against any expenses arising from the apprehension of such offender, and the magistrate to whom such application is made may take such recognizance.

\* By statute 3 W. 4. c. 7. entitled, "An act to provide for the apprehending of fugitive offenders from foreign countries, and delivering them up to justice," it is enacted, that the governor shall have power, and he is hereby authorised at his discretion, and by and with the advice of the executive council, on requisition being made by the government of any country, or its ministers or officers authorised to make the same, within the jurisdiction of which country the crimes hereinafter mentioned shall be charged to have been committed, to deliver up to justice any person who may have fled to this province, or who shall seek refuge therein, being charged with murder, forgery, larceny



or other crime, committed without the jurisdiction of this province, which crimes, if committed within this province, would, by the laws thereof, be punishable by death, corporal punishment, by pillory or whipping, or by confinement at hard labour, to the end that such person may be transported out of this province, to the place where such crime shall have been charged to have been committed; provided always, that this shall only be done upon such evidence of criminalty as, according to the laws of this province, would, in the opinion of the governor and of the executive council, warrant the apprehension and commitment for trial of such fugitive from justice, or person so charged, if the offence had been committed within this province. § 2. And for preventing the escape of any person so charged, before any order for his apprehension can be obtained from the governor, it shall be lawful for any judge, or for any justice of the peace, within his jurisdiction, to issue his warrant for the apprehension and for the commitment of the accused, until application can be made to the governor, and an order made thereupon; which warrant shall, nevertheless, only be granted upon such evidence, on oath, as shall satisfy such judge or justice, that the person accused stands charged with some crime of the description hereinbefore specified, or that there is good ground to suspect him to have been guilty thereof.

*Warrant to apprehend a Fugitive Felon.*

To the Constable of — in the Home District.

Home District, } Whereas A. B. of — in the state of New York,  
to wit. } constable, hath this day made information  
and complaint upon oath, before me, J. C. Esquire, one of her  
Majesty's justices of the peace for the said district, that C. D.  
late of Buffalo, in the said state of New York, labourer, now  
stands charged upon oath, in the said state of New York, to wit,  
at Buffalo, with having feloniously stolen, taken and carried  
away, at Buffalo aforesaid, fifty dollars in bank notes, of the  
bank of the United States, the property of one E. F. and that a  
warrant hath been issued at Buffalo aforesaid, for the arrest of  
the said C. D. for the felony aforesaid, but that the said C. D.  
hath, on account of the said felony, fled to and come into this  
province, and is now residing at — in the said Home District.  
These are therefore to command you, in her Majesty's name,  
forthwith to apprehend and bring before me, or some other  
justice of the peace for the said district, the body of the said  
C. D. to be dealt with according to law. Herein fail not.—  
Given under my hand and seal, &c.

*Mittimus of a Fugitive Felon.*

J. C. Esquire, one of her Majesty's justices of the peace in and for the Home District, to the Constable of — and to the Keeper of her Majesty's gaol at Toronto.

Home District, } These are to command you, the said constable,  
to wit. } in her Majesty's name, forthwith to convey  
and deliver into the custody of the keeper of the said gaol the  
body of C. D. late of — who is charged on the oath of A. B. &c.  
[here state the particulars] and you the said keeper are hereby  
required to receive the said C. D. into your custody, in the said  
gaol, and him safely keep, to be dealt with, and until he shall  
be delivered from your custody according to law. Given under  
my hand and seal, &c.

## GAME.

\* By statute 2 V. c. 12. § 1. no person shall, within this province, after the first day of February in every year, kill in any manner whatever any deer *feræ naturæ*, until the first day of August. § 2. If any person shall hunt, shoot, kill or destroy any deer or fawn between the first day of February and the first day of August, or any wild turkey, prairie hen or grouse, or any grouse commonly called pheasant or partridge, or any quail or woodcock, between the first day of March and the first day of September, in every year; or shall hunt or shoot, or go out with a gun in quest or pursuit of any deer or other wild animal or wild fowl on the Lord's day, (commonly called Sunday), within this province, any such person, being convicted thereof before a justice of the peace, upon the oath or affirmation of one or more credible witnesses, or upon view had of the offence by the said justice himself, shall pay a fine or penalty not exceeding £5, nor less than £1, current money of this province, together with the costs of conviction. § 3. When any person shall be charged in writing before any justice with any offence against this act, said justice shall summon the person so charged to appear before him, and if such person shall fail to appear, then (upon proof of due service of the summons, by delivering or leaving a copy at his house or usual place of abode, or by reading same over to him personally) said justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person and bringing him before himself or some other justice of the district, who shall proceed to hear and determine the case. ... § 4. The conviction

to be drawn up in the following form, or in any other form of words to the same effect, as the case shall require, viz.:

Be it remembered, that on the — day of — in the year of our Lord — at — in the county of — (or district, riding or division, as the case may be) A. B. of — is convicted before me C. D. one of her Majesty's justices of the peace for the said county, (or district, or riding, or division, as the case may be,) for that he said A. B. did (specify the offence, and the time and place when and where the same was committed, as the case may be); and I, the said C. D. adjudged the said A. B. for his offence to pay immediately, or on or before the — day of — the sum of — and also the sum of — for costs; and in default of payment of the said sums respectively, to be imprisoned in the county gaol of the said county, (or district, or riding, or division, as the case may be,) for the space of — unless the said sums shall be sooner paid; and I direct that the said sum of — pounds (the penalty) shall be paid to the township clerk of the township wherein the fine may be imposed, to be by him applied according to the provisions of this act. Given under my hand and seal, the day and year first above mentioned. C. D.

[L. S.]

§ 5. No conviction to be quashed for want of form; no warrant of commitment void by reason of any defect therein, provided it be alleged therein that the party had been convicted, and there be a good and valid conviction to sustain the same.—

§ 6. In default of payment of any fine imposed under this act, together with the costs, within the period specified at the time of conviction, it shall be lawful for the convicting justice (if he deem it expedient to do so) to issue his warrant to any constable to levy the fine and costs within a certain time, to be expressed in the warrant, and, in default of distress, to commit the offender to the common gaol of the district, for any term not exceeding one calendar month, unless the fine and costs sooner paid.—

§ 7. Prosecutions under this act to be commenced within one calendar month; and the evidence of any inhabitant of the county, district, riding or division, shall be admissible.—

§ 8. Any person aggrieved by any conviction under this act, may appeal to the next general quarter sessions which shall be holden, not less than twelve days after such conviction, and if holden in less than twelve days, then to the next ensuing general quarter sessions: provided, that such person give the other party a notice in writing of such appeal, and of the cause and matter thereof, within three days after conviction, and seven days at least before the sessions, and shall also either remain in

custody until the sessions, or enter into recognizance with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as should be by the court awarded; and the court, at such sessions, shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet, and in case of the dismissal of the appeal, or the affirmation of the conviction, shall order and assign the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.—

§ 9. Every justice, before whom any person shall be convicted, shall transmit the conviction to the next court of general quarter sessions. § 10. Actions against any persons, for any thing done in pursuance of this act, shall be tried in the district where the fact was committed, and shall be commenced within six calendar months, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the action; and in any such action, the defendant may plead the general issue, and give this act and special matter in evidence at the trial; and no plaintiff shall recover in such action if tender of sufficient amends shall have been made before such action brought, or a sufficient sum paid into court; and if a verdict shall pass for the defendant, or the plaintiff shall become non-suit, or discontinue any such action after issue joined, or if upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover his full costs, as between attorney and client; and if a verdict shall be given for the plaintiff, he shall not have his costs, unless the judge before whom the trial shall be had shall certify his approbation of the action and of the verdict.—

§ 11. Penalties under this act shall be paid to the township clerk of the place wherein the offence was committed, and shall be paid by him to the path master or street surveyor of the division in which the offence shall have been committed, or the fine levied, in aid of any commutation money or statute labour within such division. § 12. Act not to extend to Indians.—

§ 13. To be in force four years, and to the end of the next session.

## GAMING.

By stat. 33 Hen. 8. c. 9. no person shall keep any common house, alley, or place of bowling, coying, closh cayls, half-bowl, tennis, dicing table, carding, or any unlawful game, then, or

thereafter to be invented, on pain of 40s. a day. § 11: and persons frequenting such house shall forfeit 6s. 8d. each time. § 12.

Justices may enter suspected houses, and arrest and imprison the keepers and persons resorting thereto, until the keeper give security no longer to keep the said house. § 14. 15. No apprentice, journeyman artificer, serving-man, &c. shall play at unlawful games, except at Christmas, and at their master's houses &c. or in his presence, under penalty of 6s. 8d. each time. § 16.

By 2 G. 2. c. 28. If proved on the oath of two witnesses before any justice, or upon his own view, that any person hath used any unlawful game, contrary to 33 H. 8. c. 9. such justice may commit the offender, unless he give security not to play in future. § 9.

By 16 Car. 2. c. 7. § 2. If any person by any *fraud*, unlawful device, or ill practice, in playing at or with cards, dice tables, tennis, bowls, kittles, shovel-boards, or in or by cock-fighting, horse-races, dog-matches, foot-races, or *other* pastimes, or by betting thereon, shall win any money, &c. the offender shall forfeit treble the value, with treble costs, one moiety to the king and the other to the party grieved, if he shall sue within six months: and by § 3. if any person shall play at any of the said games, or any other pastime or game whatsoever (other than with and for ready money) or shall bet on such as play, and lose above £100 at any one time, upon ticket or credit, or otherwise, the securities shall be void, and the winner shall forfeit treble the value, with treble costs, if sued within a year; one moiety to the king and the other to the informer.

By 9 Ann. c. 14. any person who shall at any time or sitting, by playing at cards, &c. or by betting, lose and pay £10, the loser may, within three months, recover the same by action; and if he shall not sue within three months, then any other person may recover the same, with treble value and costs; half to the prosecutor and half to the poor. § 2. And if any person shall *fraudulently* win, at cards, &c. or acquire by betting, &c. any sum of money or other valuable thing, above £10, and being convicted on indictment and information, he shall forfeit five times the value, to be recovered by the person who shall sue. § 5. Any two justices on just cause of suspicion, may cause any person to be apprehended who has no visible means of living except by gaming, and may require security for his good behaviour for twelve months, or commit him until such security be given. § 6. And any person assaulting or challenging another, for money won by gaming, shall forfeit to the king all his goods and personal estate, and be imprisoned two years.

Upon these statutes it has been held, that a wager above £10 on a horse race is illegal. 2 *Str.* 1159. 2 *Wils.* 309.: and a wager to any amount, on a horse race, where the race is for less than £50, cannot be recovered; for all such races are illegal by the 13 G. 3. c. 19. § 3.; and if two persons play at cards from Monday evening to Tuesday evening, without any interruption, except for an hour or two at dinner, and one of them win a balance of 17 guineas, this is won at one sitting, within the 9 Ann, c. 14. 2 *Bl. Rep.* 1226. A foot race is also an illegal game. 2 *Wils.* 36.— and so is cricket, so far as to invalidate a bet of more than £10 upon the players. 1 *Wils.* 220.

By 10 & 11 W. 3. c. 17. § 1. all lotteries are declared to be public nuisances; and by § 2. No person shall expose to be played, drawn or thrown at, either publicly or privately, or shall draw &c. at any lottery, either by dice, lots, cards, balls, numbers or figures, or any other way, under the penalty of £500; one-third to the king, one-third to the poor, and one-third with double costs to the informer; and the offenders may also be prosecuted as common rogues: and every person who shall play, throw or draw, at any such lottery, shall forfeit £200, to be recovered in like manner.

By 10 Ann, c. 26. § 109. insurances on marriages, births, christenings or service, are prohibited under the penalty of £500.

By 8 G. 1. c. 2. § 36. every person who shall keep any office for the sale of houses, lands, &c. by lottery, for the improvement of small sums of money, shall forfeit £500; and every person who shall be an adventurer therein shall forfeit double the sum paid. § 37.

By 9 G. 1. c. 19. § 4. foreign lotteries are prohibited under the penalty of £200. By 6 G. 2. c. 35. § 29. if any person shall sell or deliver any ticket belonging to such foreign lottery, he shall forfeit £200.

By 12 G. 2. c. 28. § 1. if any person shall keep any office for the sale of houses, lands, goods, or other things, by lottery, numbers, figures, cards or dice, he shall forfeit £200 on conviction by one justice, on the oath of one witness, or on view of such justice, to be levied by distress and sale; one-third to the informer, and two-thirds to the poor. The games of ace of hearts, pharaoh, basset and hazard, are declared games and lotteries prohibited by this statute. § 2. Adventurers in such games, shall forfeit £50 to be sued for and recovered as aforesaid. § 3.

By 13 G. 2. c. 19. the game of passage, and all games with dice (backgammon excepted) are declared illegal, and within the 12 G. 2. c. 28.

By 18 G. 2. c. 34. § 1. no person shall keep any house, &c. for the game of roulet, otherwise *roly poly*, or any other game with cards or dice, prohibited by law, under the penalties of 12 G. 2. c. 28. By § 4. witnesses may be summoned under this act, or under the 12 G. 2. c. 28. to give evidence, under the penalty of £50, or imprisonment for six months, in case of default.

*Warrant to apprehend a Gambler, under 9 Ann, c. 14.*

To the constable of —.

Home District, } Whereas complaint hath been duly made be-  
to wit. } fore us, J. C. and S. P. Esquires, two of her  
Majesty's justices of the peace for the said district, that A. B. late of — in the said district, doth frequently use to play at — in the said district, and that he hath no visible estate, nor follows any employment to maintain himself, but lives chiefly by gaming and sharpening upon other people: These are, therefore, in her Majesty's name, to require and authorise you to apprehend the said A. B. and bring him before us, or some other of her Majesty's justices of the peace for this district, to answer what shall be objected against him in that behalf, and to be dealt with according to law.

Given under our hands and seals, &c.

*Commitment for want of Sureties.*

To the constable of — and to the keeper of her Majesty's gaol in and for the Home District.

Home District, } Whereas it hath been duly proved before us,  
to wit. } J. C. and S. P. Esquires, two of her Majesty's justices of the peace for the home district, that A. B. of — on the — day of — did play at — at the house of — at — aforesaid, not having any visible estate or employment for his support and maintenance; and he not being able to give sufficient security for his good behaviour for the space of twelve months, as the statute directs: These are therefore, in her Majesty's name, to require and authorise you, the said constable, to convey the said A. B. to the said gaol, and to deliver him to the keeper thereof: and you, the said keeper, are hereby required to receive the said A. B. into your custody, and him safely keep in your said gaol, until he shall give security as aforesaid.

Given under our hands and seals, this — day of —.

## GAOLS.

THE gaol is the king's, but the keeping thereof is incident to the office of sheriff. 2 *Burns, J.* 430.

By the 3 H. 7. c. 3. those that have the custody of gaols must certify the names of all prisoners to the justices of gaol delivery, in order to their trial or discharge, on pain of £5.

By stat. 31 C. 2. c. 2. if any person shall be committed to any prison, for any criminal or supposed criminal offence, he shall not be removed thence, unless it be by *habeas corpus*, or some other legal writ; or where he is removed from one prison or place to another within the same county, in order to his trial or discharge; or in case of sudden fire, or infection, or other necessity, on pain that the person signing any warrant for such removal, and the person executing the same, shall forfeit for the first offence £100, and for the second £200 to the party grieved.

§ 9. But on emergent occasions, as in the case of infectious diseases, the sheriff or gaoler, with the advice and consent of three or more justices, may if they shall find it needful, provide other safe places (with the owner's consent) for the removal of sick or other persons out of the usual gaols. 19 C. 2. c. 4. § 2. The gaoler shall not put, keep or lodge, prisoners for debt, and felons, together in one room or chamber, on pain of forfeiting his office, and treble damages to the party grieved. 22 & 23 C. 2. c. 20. § 13.

\* By statute 32 G. 3. c. 8. § 1. it is enacted that a gaol and court house shall be erected in every district throughout the province. § 16. Justices in Q. S. may frame such rules and regulations for the gaols as they may think proper, which having been approved and signed by one of the judges shall be binding on the gaoler and prisoners. By the \*50 G. 3. c. 5. until houses of correction shall be erected the common gaols shall be constituted houses of correction.

\* By 11 G. 4. c. 3. justices in sessions, at their first sessions after the passing of this act, shall assign limits to the gaols, not exceeding 16 acres, for the debtors.

\* By the 1 V. c. 5. § 1. the Lieutenant Governor is authorised to appoint three commissioners, who, together with the chief justice, vice chancellor, the judges of the king's bench, and the sheriffs of the several districts, shall compose a board of commissioners, for the purposes of this act. § 2. After the passing of this act every gaol shall be erected according to a plan approved of by the commissioners, or a majority of them; and no gaol built otherwise, or that shall not, after its completion, receive their sanction, shall be deemed to be in law the gaol of



such district. § 3. Contracts not completed shall be submitted, with plans and specifications, to the consideration of the board, who shall determine whether it may be expedient to proceed therewith or abandon same, or erect such gaol wholly or in part upon a different plan; if existing contract abandoned, the damages sustained by the contractor shall be ascertained by arbitration; the board shall appoint two arbitrators, and the contractors two, which four persons shall choose a fifth, and the award of such five, or the majority, shall be final; proceedings of such arbitrators shall be governed by the same rules, &c. and the award subject to be set aside by the court of king's bench, as in other cases.

§ 4. The sum awarded shall be paid out of the funds of the district, by order of the justices. § 5. The board of commis-

sioners, before deciding in any case upon the plan of a gaol most proper to be adopted, shall take into their consideration the nature and extent of the ground on which the gaol is to be built; its relative situation to streets and buildings, and to any river or other water; its comparative elevation and capability of being drained; the materials of which it is to be composed; the necessity of guarding against cold and damp, and of providing properly for ventilation; the proper classification of prisoners, having respect to their age, sex, and the cause of their confinement; the best means of ensuring their safe custody, without the necessity of resorting to severe treatment; the due accommodation of the keeper of the gaol, so that he may have ready access to the prisoners, and may conveniently oversee them; the exclusion of any intercourse with persons without the walls of the building; the prevention of unwholesome nuisances from whatever cause; the combining provision for the reformation of convicts, so far as may be practicable, and for their employment, in order that the common gaols may really serve for places of correction, according to the intention of the law; the admission of prisoners to air and exercise without the walls of the building, when that may be proper; and the enclosure of the yards and premises with a secure wall; and that regard shall also be had to the ability of the district to meet the expense of any proposed building, and to the expediency of adopting such a plan as may most conveniently and properly admit of the erection of additional cells and apartments, when the same may be required.—

§ 6. The commissioners shall, as soon as may be convenient, frame a set of rules and regulations for the government of common gaols in this province, extending to the maintenance of the prisoners in regard to diet, clothing, bedding, and other necessaries, medical attendance, religious instruction, the conduct of the prisoners, and the restraint and punishment to which they

may be subjected, and also to the treatment and custody of the prisoners generally, and to the whole internal economy and management of the gaol, and all such matters connected therewith as shall be thought by them expedient; which rules and regulations shall be transmitted to the Lieutenant-Governor of this province, to be laid before each house of the legislature at their next session, and shall not take effect until after the termination of such session. § 7. First meeting of the commissioners shall be on the first Monday in May next, at which meeting arrangements shall be made for subsequent meetings; and a majority present at any meeting shall be competent to transact business. § 8. Commissioners shall make a yearly report to both branches of the legislature.

\* By the 3 V. c. 14. § 1. if any person shall convey or supply to any prisoner confined in any common gaol or house of correction, in any district in this province, any rum, brandy, whiskey or other spirituous liquors, contrary to such rules and regulations as have been or shall be hereafter established by law, every such offender, being duly convicted thereof before two justices, shall be liable to a fine not exceeding £5.— § 2. Any person charged on the oath of one or more witnesses, before any one justice, with any offence against this act, such justice may summon such person to appear at a time and place to be named in such summons, and if he shall not appear, then (upon proof of the due service of the summons upon such person personally) any *two* justices of the district may hear and determine the case *ex-parte*, or issue their warrant for apprehending such person, or any one justice may, if he shall think fit, without any previous summons, issue such warrant. § 3. No conviction under this act shall be quashed for want of form, and no warrant of committal held void by reason of any defect therein: provided it be alleged that the party has been convicted, and there is a good and valid conviction to sustain the same. § 4. Such justices shall have power to summon witnesses in support of the prosecution, or for the defendant; such witnesses, neglecting to attend, without some reasonable excuse, may be fined by the justices assembled to try the offence, in any sum not exceeding £5. § 5. In default of payment of any fine imposed under this act, together with the costs, within the time specified at the time of the conviction by the justices, such justices may issue their warrant to any constable to levy the same within a certain time, expressed in the warrant; and in default of sufficient distress, to commit the offender to the common gaol or house of correction, for any time not exceeding one calendar month, unless the fine and costs be sooner paid.

## GAOLER.

\* By the 32 G. 3. c. 8. § 14. the sheriff shall have the power to appoint, remove and discharge the gaoler. § 15. Any gaoler knowingly permitting any spirituous liquors or strong waters to be used in the gaol, or brought into the same, except by the order of a physician, shall forfeit £20. § 17. And the justices shall fix a yearly salary to be paid to the gaoler in lieu of all fees. And if the gaoler keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler by the common law; and this is the cause, that if a prisoner die in gaol the coroner ought to hold an inquest. 3 *Inst.* 91.

For the treatment of prisoners after sentence, see title "*Execution.*"

## GARDENS.

By stat. 4 & 5 V. c. 26. § 21. if any person shall unlawfully and maliciously destroy, or damage with intent to destroy, any plant, root, fruit, or vegetable production growing in any garden, orchard, nursery ground, hot house, green house, or conservatory, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay over and above the amount of the injury done, such sum of money not exceeding *two pounds*, as to the justice shall seem meet. § 22. And if any person shall unlawfully and maliciously destroy, or damage with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land open or enclosed, not being a garden, orchard, or nursery ground, every such offender being convicted thereof before a justice of the peace, shall forfeit and pay over and above the amount of injury done, such sum of money not exceeding *twenty shillings*, as to the justice shall seem meet.

## GRAND JURY.

It has been laid down in general terms, by some of the greatest lawyers, that the grand jury ought only to hear the evidence for the King—that is to say, on the side of the prosecution. 2 *Hale*, 157. But others have received this position with some qualifications. (4 *Bl. Com.* 303.) as indeed it ought to be; for the inquest are sworn to present the truth, and nothing but the truth; and it may so happen that they may not be able to elicit

truth from the witnesses on the part of the prosecution only; and they may actually be convinced of that circumstance. The true intention seems to be this, viz.—*prima facie* the grand jury have no concern with any testimony but that which is regularly offered to them with the bill of indictment, on the back of which the names of the witnesses are written; their duty being merely to inquire whether there be sufficient ground for putting the accused party on his trial before another jury of a different description. If nothing ambiguous or equivocal appear on this testimony, they certainly ought not to seek any further; but if their minds be not satisfied of the truth, so far as is necessary for their preliminary inquiry, they are not prohibited from requiring other evidence in explanation of mere facts; but they can proceed no further; for that would be to *try*, although their duty is confined merely to the question “whether there be sufficient pretence for trial.” 3 *Inst.* 25. *Dickenson*, Q. S. 96.

The grand jury are sworn to inquire *pro corpore comitatis*, and therefore, by common law, they cannot regularly indict or present any offence which does not arise within the county or precinct for which they are returned. But it seems by the common law, if a fact done in one county prove a nuisance to another, it may be indicted in either. Also by the common law, if one guilty of larceny in one county, carry the goods stolen into another, he may be indicted in either. *Haw. B.* 2. c. 25.

The grand jury being sworn, proceed, in a private room, to consider the bills brought before them. Although sworn to secrecy, they may, in cases of difficulty, allow the prosecutor, or his attorney, to assist them, by marshalling the evidence, and examining the witnesses. If any doubts occur on points of law, they should return into court and obtain the opinion of the chairman. A majority of twelve, at the least, is necessary to find the bill; if they be equally divided, or the majority be less than twelve, it is thrown out.

A grand jury must find a *true bill*, or *no bill*, for the whole; which is now usually done by indorsing on it the words “a true bill,” or “no true bill,” as their decision is; and if they take upon them to find it specially or conditionally, or to be true for one part only, and not for the rest, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew.

But this rule relates only to cases where the grand jury take upon themselves to find part of *the same count* to be true, and part false, and do not either affirm or deny the fact submitted to their inquiry. But where there are two distinct counts, viz. one for riot, and the other for an assault—the grand jury may find a true bill as to the assault, and indorse *ignoramus* as to the riot.

The grand jury may present any offence within their own knowledge, without a bill being sent before them, at the instance of an individual prosecutor, if the offence be one of which they can legally take cognizance. *Haw. B. 2. c. 2. § 51.* This presentment is delivered into court, and the clerk of the peace then puts it into the form of an indictment, on which process may issue as in ordinary cases.

## GRAND LARCENY.

The crime of larceny was formerly distinguished by two degrees: 1. grand larceny, which by *Ord. Qu. 29 G. 3. c. 3.* included the stealing of goods and chattels above *twenty shillings* sterling, and *petit larceny*, property under twenty shillings. But now by the 4 & 5 V. c. 25. § 2. the distinction between grand larceny and petty (or petit) larceny is abolished, and every larceny, whatever be the value of the property stolen, deemed to be of the same nature, and subject to the same incidents, as grand larceny.

See further on this subject post title "*Larceny.*"

## GUARDIANS.

\* By the 8 G. 4. c. 6. the judge of the provincial court of probate, and the judges of the surrogate court in their respective districts, upon the written application of an infant (or minor) residing within the jurisdiction of such judge, and not having a father living, nor a legal guardian, after 20 days' public notice of such application, and proof of 20 days' notice to the mother of such infant, or proof to the satisfaction of such judge, that such infant has no mother living in this province, may appoint some suitable and discreet person or persons to be guardian or guardians of such infant, and to require from such guardians a bond in the name of such infant, in such sum as the judge shall direct, conditioned for the faithful performance of the trust, and that such guardians will, when their ward shall become of age, or whenever such guardianship shall be determined, if thereto required, render to such ward a true and just account of the property of such ward which shall have come into their hands, and, without delay, deliver and pay over to said ward the property or balance in hand, deducting a reasonable sum for expenses, which bond shall be recorded by the registrar of said court. § 2. The guardians during their office shall have full authority to act on behalf of their ward, and prosecute or defend

in his name, and shall have the charge and management of the real and personal estate of such ward, and, with the approbation of two justices, may bind such ward apprentice. § 3. The judge, or his successor, shall have power to remove such guardians upon reasonable complaint, and appoint others. § 4. And when the property shall be situated in one district, the right of appointment shall belong to the surrogate court; and if in two districts, then to the court of probate; which court shall also be a court of appeal. § 5. Appeal shall lie from the court of probate to the governor in council. § 6. And the following fees may be demanded and taken by the respective officers:

*Official Principal, or Surrogate Judge.*

	£	s.	d.
For the appointment of a guardian, with seals thereto	0	15	0
For auditing a guardian's account, when required so to do .....	0	10	0
For an order for removing a guardian from his guardianship .....	0	3	4

*Registrar.*

For entering the appointment of a guardian.....	0	2	6
For entering an order of the judge .....	0	2	6
For drawing and recording a bond of guardianship...	0	6	8
For copies given out of his office—the same as in cases of probate.			

**HAWKERS AND PEDLERS.**

\* By the 58 G. 3. c. 5. § 2. (continued by the \*4 G. 4. c. 18.—\*9 G. 4. c. 8. and by the \*2 V. c. 23. made perpetual) every hawker, pedler, petty chapman, and any trading person or persons, such person or persons having taken the oath of allegiance to his Majesty, going from town to town, or to other men's houses, or who have not become householders, by permanent residence in any town or place within this province, by or for the space of one year, previous to the passing of this act, or travelling either on foot or with a horse or horses, mule or mules, or other beast, bearing or drawing burthen, boat or boats, decked vessels or other craft, or otherwise, within this province, carrying to sell or exposing to sale any goods, wares or merchandize, shall, from and after the 5th April, in this and every ensuing year, take out a license, for which license there shall be paid the following sums: For every man traveller on foot,

£5; for every horse, ass, or mule, or other beast, bearing or drawing burthen, an additional £5; for every man sailing with a decked vessel, trading and exposing for sale, goods, wares and merchandizes, on board, or from the same, £20; for every man trading with a boat or other craft, and exposing for sale goods, wares and merchandize, for each boat or craft, £20. By § 3. any justice of the peace, collector, deputy collector, constable or peace officer, may seize and detain any such hawker, &c. who shall be found trading without a license, or being found trading, shall neglect or refuse to produce a license according to this act, after being required so to do, in order to his being carried before three or more justices, nearest to the place where such offence shall be committed, who are thereby required, either upon the confession of the party offending, or due proof by witness or witnesses, other than the informer, upon oath, that the person so brought before them had so traded as aforesaid, without a license; and in case no such license shall be produced, before such justices, the said justices, by warrant under their hands and seals, directed to a constable or other peace officer, shall cause a sum not exceeding £20, nor less than £5, with reasonable costs, to be forthwith levied, by distress and sale of the goods, wares and merchandize of such offender, or of the goods with which such offender shall be found trading, and for want of sufficient distress, the offender shall be committed to the nearest gaol of the district, for a time not exceeding six months, nor less than one month. § 5. One moiety of all penalties under this act to go to the King for the use of the province, and be paid to the receiver general, and the other moiety to the informer.

\* By an antecedent statute, 56 G. 3. c. 34. § 3. British born subjects, or subjects by naturalization, or by conquest, selling leather, hollow ware, farming utensils, or any printed papers published by authority, they being the growth, produce, or manufacture of this province; and persons who are the real makers of any goods, wares or merchandize, of the manufacture of this province, or his, her, or their children, apprentices, agents or servants; as also tinkers, coopers, glaziers, harness menders, or any other person usually trading in mending kettles, tubs, household goods or harness; and hucksters, or persons having stalls or stands in the markets, and exposing to sale fish, fruit, victuals, or goods, wares and merchandize, in such stall or stands, being British subjects, and complying with the rules and regulations respecting such stalls—are all exempt from the hawker's license duty.

By § 4. such licenses shall be granted by the lieutenant governor of the province; and for every such license, there shall

be paid by the person applying for the same, 3s. 9d. to the collector for issuing the same. § 5. The collector, before he enter upon his office, shall take and subscribe the following oath, before any two justices in the district where such collector shall reside, to be filed with the clerk of the peace :

I, A. B. do swear that I will well and truly execute, do and perform, the duty of collector of his Majesty's revenue arising on licenses to hawkers, pedlers, and petty chapmen, and other trading persons, as described by an act passed in the fifty-sixth year of his Majesty's reign, entitled, "an act for granting to his Majesty duties on licenses to hawkers, pedlers, and petty chapmen, and other trading persons therein mentioned," and will duly and impartially superintend the collection thereof, according to the best of my skill and knowledge; and in all cases of fraud, or suspicion of fraud, that shall come to my knowledge, I will shew no person favor or affection, nor will I aggrieve any person from hatred or ill will; and that I will in all cases faithfully do, execute and perform, to the best of my skill and knowledge, all and every the duties imposed upon me by the before mentioned act. So help me God.

§ 6. Every collector shall give security for the due performance of his office, himself in £400, and two sureties in £200 each. § 10. Suits for penalties must be commenced within twelve months. § 11. And if any person summoned as a witness shall neglect or refuse to appear, without reasonable excuse, he shall forfeit £10, with costs, to be recovered as hereinbefore directed, and for want of distress be committed for any time not exceeding two months, nor less than one month. § 12. One moiety of all penalties to go to the king for the use of the province, and to be paid to the receiver general, and the other moiety to the informer. § 13. Actions against any persons under this act to be commenced within six months. § 14. This act not to authorise any person licensed as aforesaid to sell any goods which shall not be the bona fide property of the person so licensed. § 15. No license necessary for the sale of wheat, flour, pease, beans, oats, barley, indian corn and meal, rye, staves and heading, oak, pine and fir timber, and other lumber, pot and pearl ashes, furs and skins, (not dressed) beef, (fresh) sheep, swine, and live cattle, cheese, butter, and all other articles of provision.

*Information.* (ARCHBOLD.)

Home District, } Be it remembered, that on the — day of — in  
to wit. } the year of our Lord — at — in the said district, A. B. of — in the district aforesaid, yeoman, who as well



for our sovereign lady the queen as for himself doth prosecute in this behalf, personally cometh before J. P. Esq. R. S. Esq. and T. U. Esq., three of her Majesty's justices of the peace for the said district, and residing nearest to the place where the offence hereinafter mentioned was committed, and as well for our said lady the queen as for himself informeth us, that C. D. late of — in the district aforesaid, labourer, on the — day of — in the year aforesaid, being then a hawker, [hawker, pedler, petty chapman, or any other trading person,] going from town to town, [or to other men's houses,] and travelling on foot &c. [or as the case may be,] in that part of the province of Canada heretofore constituting the province of Upper Canada, carrying to sale, and exposing to sale, divers goods, wares and merchandizes, did at — in the said home district, as a hawker, as aforesaid, expose to sale, [or carry to sale] divers goods, wares and merchandizes, to wit, [five pieces of linen, three pieces of muslin, one hundred yards of lace, &c.] without such license as in that behalf is required by the statute in that case made and provided, contrary to the form of the statute in such case made and provided; whereby, and by force of the statute in such case made and provided, the said C. D. hath forfeited for his said offence the sum of twenty pounds, wherefore the said A. B. who sueth as aforesaid prayeth the consideration of us, the said justices, in the premises, and that the said C. D. may be convicted of the offence aforesaid, and that one moiety of the said forfeiture may be adjudged to our said lady the queen, and the other moiety thereof to the said A. B. according to the form of the statute in that case made and provided; and that the said C. D. may be summoned to appear before us and answer the premises, and make his defence thereto. Exhibited before us, &c.

The above information need not be upon oath; the complainant should merely subscribe his name thereto.

#### *Conviction.*

As the act does not provide any particular form of conviction, it will be proper to use the form given in the \*2 W. 4. c. 4.

See title "*Conviction*," p. 178.

#### *Warrant of Distress.* (ARCHBOLD.)

Home District, } To the constable of — in the said district, and  
to wit, } to all other constables in and for the said district.

Whereas C. D. late of — in the said district, hawker, was on this day (or on the — day of — instant) duly convicted before us — three of her Majesty's justices of the peace for the said

district, for that he the said C. D. [*&c. stating the offence as in the conviction*] against the form of the statute in that case made and provided; and we the said — thereupon adjudged the said C. D. for his said offence, to [*&c. setting out the adjudication as in the conviction*]; and whereas the said C. D. being so convicted as aforesaid, and being required to pay the said sums, hath not paid the same, or any part thereof, but therein hath made default. These are therefore to command you forthwith, to make distress of the goods and chattels of the said C. D. or of the goods with which the said C. D. shall be found trading, and if within the space of — (not less than four nor more than eight days; see 27 G. 2. c. 20. § 1.) days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one moiety of the said sum of — so forfeited as aforesaid, together with the said sum of — for costs, unto A. B. who hath informed us of the said offence; and the said other moiety of the said sum of — so forfeited as aforesaid, unto the use of her Majesty, rendering the overplus, on demand, unto the said C. D. the reasonable charges of taking, keeping and selling the said distress, being first demanded; and if no such distress can be found, that then you certify the same unto us, to the end that such further proceedings may be had therein, as to the law doth appertain. Given under our hands and seals, &c.

*Constable's return thereto.*

Home District, } I, W. T. constable of — in the district afore-  
to wit. } said, do hereby certify — esquires, three of  
her Majesty's justices of the peace for the said district, that by  
virtue of this warrant I have made diligent search for the goods  
and chattels of the within mentioned C. D. and the goods and  
chattels with which the said C. D. was found trading, and that  
I can find no sufficient goods or chattels of the said C. D. or  
sufficient goods and chattels with which he was found trading  
as aforesaid, whereon to levy the sums within mentioned. Wit-  
ness my hand the — day of —.

*Commitment for want of Distress.*

Home District, } To the constable of — in the said district, and  
to wit. } to the keeper of the gaol at Toronto in the  
said district. Whereas C. D. late of — [*&c. as in the warrant  
of distress, setting forth the offence as laid in the information, together*

with the conviction and adjudication;] and whereas, afterwards, on the — day of — in the year aforesaid, we the said — issued a warrant to the constable of — commanding him to levy the said sums by distress and sale of the goods and chattels of the said C. D. and the goods and chattels with which the said C. D. was found trading; and whereas it appears to us, as well by the return of the said constable to the said warrant of distress, as otherwise, that the said constable hath made diligent search for the goods and chattels of the said C. D. and for the goods and chattels with which the said C. D. was so found trading as aforesaid, but that no sufficient distress can be found whereon to levy the same. These are therefore to command you the said constable of — aforesaid, to take the said C. D. and him safely to convey to the gaol at — aforesaid, and there to deliver him to the keeper of the said gaol, together with this precept: and we do hereby command you the said keeper of the said gaol, to receive the said C. D. into the said gaol, there to imprison him for the space of — calendar months, and for your so doing this shall be your sufficient warrant. Given under our hands and seals, at — in the district aforesaid, this — day of — &c.

N. B. The proceedings subsequent to the conviction, may be under the hand and seal of *one* of the justices only, for which special provision is made in the \*2 W. 4. c. 4.

See title "*Conviction.*"

## HEIRS AND DEVISEES.

\* By the 45 G. 3. c. 2. (revived and continued by \*48 G. 3. c. 10.—\*52 G. 2. c. 9.—\*56 G. 3. c. 21. and made perpetual by the \*59 G. 3. c. 18.) the Lieutenant Governor is authorised to appoint certain commissioners, (including one of the judges) which commissioners are to ascertain who are the heirs or devisees of the nominees of the crown. § 2. Claimants, either personally or by agent, are to produce before the commissioners documentary proofs of their claims, to be verified upon oath, administered by such commissioners, who are also authorised to summon witnesses to attend, under a penalty of £20. § 3. The commissioners shall, after examination, reject or allow the claim, and report thereon accordingly; which report shall be final, and be addressed to the Lieutenant Governor, who shall thereupon be empowered to direct letters patent to issue for the lot specified in such report, to or in trust for such claimants; but such letters patent are not to affect prior incumbrances. § 4. Where any such nominee, in his lifetime, shall have executed any instru-

ment charging the land; it shall be lawful for the person holding the same to register it in the office of the registrar for the county where the lot lies; and such instrument shall have the same effect as if the nominee had, at the time of its execution, been in possession of the crown patent. § 5. The commissioners are also authorised to determine the claims of heirs or devisees of persons allowed lands under former commissioners, and report upon the same accordingly; and letters patent shall thereupon issue to such heirs or devisees. § 6. If during the sitting of the commissioners, or within thirty days after their report, and before the letters patent shall have issued, it shall appear that such claims shall have been allowed by surprise, or have been erroneously made, the commissioners are authorised to re-hear such claim, and report thereon accordingly, and award such costs against the first claimants as they may think proper. § 8. No claim shall be examined unless notice specifying such claim, and the names of the claimants; the numbers of the lots; concessions; names of the townships—be put up in some conspicuous part of the office of the clerk of the peace for the district in which such lots are situated, and until a certificate shall be produced to the commissioners, signed by the clerk of the peace, that such notice had been so put up, at least thirty days before the claim heard by the commissioners. § 9. In all cases of adverse claims, the commissioners may defer the hearing, and enlarge the time for the production of evidence. § 10. And the commissioners, or any three of them, including one of the judges, may issue commissions for the examination of witnesses.— § 12. And may order the payment of the expenses of such witnesses by the party producing such evidence. § 13. The commissioners may appoint a clerk. § 14. This act to be read by the clerk of the peace at the opening of every general quarter sessions.

By the \*48 G. 3. c. 10. the assignee or assignees of any nominee deceased or left this province, without obtaining letters patent, may bring their claims before the commissioners, who shall report thereupon to the governor, as by the \*45 G. 3. c. 2. and patents may be issued to such assignees. § 3. The governor may appoint a person in each district to be a commissioner for taking testimony on oath, relative to claims before the commissioners. § 4. False swearing before such commissioners to be perjury. § 5. The governor authorised to issue commissions under the great seal to the members of the executive council; the chief justice, the justices of the court of king's bench, and such other persons as the governor may think fit, which said commissioners, or any three of them, (the chief justice being

one) shall have power to carry into effect the \*45 G. 3. c. 2.; and said commissioners shall hold their sittings at the place and time specified by the \*45 G. 3. c. 2. § 6. Clerk of the peace shall, once in three months, make a list of the claims set up in his office, specifying the names of the claimants, number of the lots, and the concessions and townships in which the lands claimed lie, and affix same in some conspicuous part of the court house, or place where the general quarter sessions are held. § 7. Act to continue in force *four* years.

\* By the 52 G. 3 c. 9. § 2. the sittings of the commissioners shall be holden at York, once in the year, during fifteen days, to commence on the first Monday in July.

\* By the 59 G. 3. c. 18. assignees of nominees who are dead, or who have left the province, may bring their claims in the same manner as assignees under the second clause of the \*48 G. 3. § 2. The following fees to be taken by the clerk of the commission:—

	£	s.	d.
For filing each petition .....	0	5	0
On hearing the claim .....	0	5	0
For each certificate of allowance thereof.....	0	5	0

\* By 4 G. 4. c. 7. persons claiming under any heir, devisee, or assignee of the original nominee, may claim such lands in the same manner as any heir, devisee, or assignee of the original nominee, upon giving due notice, to be put up in the court-house of the district at least three months before the sitting of the commissioners; and the same to be proclaimed by the crier, immediately after the charge to the grand jury. § 2. After referring to the second clause of the \*48 G. 3. which only authorised the hearing of claims preferred by the assignees of original nominees who were dead, or had left the province previous to the passing of that act, the provisions of that act are to extend to claims where the original nominees have since died, or left the province, or may hereafter die or leave the province, without obtaining a patent. § 3. And when any claim shall be allowed, the lieutenant governor is authorised to issue letters patent to, or in trust for, the persons to whom such claims have been allowed; and that all the provisions of the \*45 G. 3. in anywise touching or relating to the claims of the heirs or devisees, or assignees of the nominees of the crown, mentioned in said acts, shall be extended to claimants under this act. § 4. Commissioners appointed in any district to take affidavits under the said acts of the \*45 and \*48 G. 3. may take affidavits under this act; and any person forswearing, shall be guilty of perjury. And by the \*10 G. 4. c. 4. commissioners for taking affidavits in the

king's bench may take affidavits relative to claims under the heir and devisee acts; and false swearing to be perjury.

By 4 & 5 V. c. 1. so much of \*48 G. 3. as relates to the issue of any commission or commissions under said act, and to the commissioners, and so much of the \*52 G. 3. c. 9. or of the \*48 G. 3. as regards the sittings of such commissioners, to be holden at any particular place, are repealed. § 2. authorises the governor, at any time during the continuance of this act, to issue commissions, under the great seal of the province, to the members of the executive council, the chief justice, and justices of the queen's bench, Upper Canada, and to the vice chancellor of Upper Canada, and to such other persons as the governor shall think fit, which said commissioners or any three of them, of whom the chief justice, vice chancellor, or one of the said justices shall be one, shall have all the powers and authorities contained in any of the statutes of Upper Canada, relating to such commissioners and their acts; and directs that the said commissioners shall hold their sittings at the seat of government in the province of Canada, and at the time and for the period now authorised by law. § 3. This act to be in force two years, and to extend only to Upper Canada. § 4. May be amended during the present session: continued for *one year* longer by the 6 V. c. 11. § 10.

*Notice,*

From the heir, devisee, or assignee of the original nominee, to be put up in the office of the clerk of the peace, thirty days before the sitting of the commissioners.—See \*45 G. 3. c. 2.; \*59 G. 3. c. 18.

Notice is hereby given, that A. B. of the city of Toronto, in the home district, yeoman, will claim before the commissioners appointed to ascertain the heirs and devisees of original nominees of the crown to lands not under patent, at their sittings at Toronto, in the month of July next, lot number — in the — concession of the township of — in the — district, [*here describe any other lot also under claim*] as eldest son and heir-at-law, (or as assignee or devisee under the will) of C. D. late of — the original nominee.

*Certificate thereon.*

Office of the clerk of the peace, } I do hereby certify, that the  
for the home district. } within written notice was put  
up in a conspicuous place in this office, on the — day of — last  
past, and has remained so put up until this day.

Dated at Toronto, the — day of — 18—.

G. G. Clerk of the peace, H. D.

## Notice,

From other persons claiming under any heir, devisee, or assignee, and to be put up in the court-house three months before the sitting of the commissioners.—See \*4 G. 4. c. 7. § 2.

The same form as the above, concluding thus:—(as the eldest son and heir-at-law of A. B. who was the eldest son and heir-at-law of C. D. &c. (or as assignee, or devisee) of D. E. who was the assignee of C. D. &c. the original nominee.)

## Certificate thereon.

Office of the clerk of the peace, } I do hereby certify, that the  
 for the home district. } within written notice was put  
 up in the court-house at the city of Toronto, in the district  
 aforesaid, on the — day of — last, and has remained so put up  
 until this day: And further, that the said notice was proclaimed  
 in open court at the general quarter sessions of the peace for  
 the said district, held in the month of — last, at Toronto afore-  
 said, immediately after the charge to the grand jury, pursuant  
 to the statute in such case made and provided.

Dated at Toronto aforesaid, the — day of — 18—.

G. G. Clerk of the peace, H. D.

## HIGHWAYS.

A HIGHWAY is a public passage for all the king's liege subjects, for which it is denominated in legal proceedings, the king's highway. *Deacon's C. L.* 567. A way may also become a public highway by a dedication of it by the owner of the soil to the public use; and eight years, without any impediment, has been held sufficient dedication. 11 *East.* 375.

All injuries to a highway—as by digging a ditch, or making a hedge across it, or laying logs of timber in it, or by doing any other act which renders it less commodious, are public nuisances at common law, and indictable. 1 *Haw. c.* 76. § 144. On an indictment for obstruction to a highway the judgment of the court is usually a fine, as well as an order on the defendant to abate the nuisance; in order to warrant a judgment for *abating* a nuisance it must be alleged in the indictment to be continuing. *R. v. Stead.* 8 *T. R.* 142.

By statute \*50 G. 3. c. 1. § 12. all allowances for roads, by king's surveyors, and all roads under any act of parliament, or any roads whereon the public money has been expended, or statute labour done, or any roads passing through Indian lands,

shall be deemed common and public highways, unless any have been altered according to law.

\* By 59 G. 3. c. 8. § 2. every person included in the assessor's roll shall work on the highways in proportion to such assessment, viz:

If his property be not rated at more than £25.....	2	days.
If at more than £ 25, and not more than £ 50 .....	3	“
If at more than 50, and not more than 75 .....	4	“
If at more than 75, and not more than 100 .....	5	“
If at more than 100, and not more than 150 .....	6	“
If at more than 150, and not more than 200 .....	7	“
If at more than 200, and not more than 250 .....	8	“
If at more than 250, and not more than 300 .....	9	“
If at more than 300, and not more than 350 .....	10	“
If at more than 350, and not more than 400 .....	11	“
If at more than 400, and not more than 450 .....	12	“
And for every £100 above £ 500, till it amounts to £1000	1	“
And for every 200 above 1000, till it amounts to 2000	1	“
And for every 300 above 2000, till it amounts to 3500	1	“
And for every 500 above 3500 .....	1	“

Provided, that every person possessed of a wagon, cart, or team of horses, oxen, or beasts of burthen or draft, used to draw the same, shall be liable to work on the highways not less than three days. § 3. Lands subject to assessment, but not included in the assessment, shall be rated at one-eighth of a penny per acre, annually, for amending the roads, to be levied and collected as other rates and assessments. § 4. The treasurer may receive such rates, and the collector may proceed to distress and sale. § 5. Such rates to accumulate one-third if in arrear three years; one-half for five years; and double, if eight years; and thenceforward in double the amount. The remaining sections of this act have been repealed by the \*5 W. 4. c. 8.

\* By 4 G. 4. c. 9. § 1. the 59 G. 3. is made perpetual.— § 2. Any person liable to perform statute labour (except such as being resident in any town, shall be liable to perform more than six days' labour) may compound for such duty, at 2s. 6d. per day. § 3. And any person resident in any town, and liable to more than six days' labour in any one year, shall, in lieu of labour, pay to the surveyor of streets, on or before the first of May in each year, 2s. 6d. for each day's duty.

\* By 4 G. 4. c. 10. § 2. no road shall be more than 66, nor less than 40 feet wide; but not to affect roads now established. § 3. If any road shall be altered, the new one shall not be less in width than the old.



\* By the 6 W. 4. c. 2. § 4. male inhabitants, between 21 and 50; not rated on the assessment list, residing in any town, township or place within this province, shall be liable to work on the highways two days in every year, in the town, township or place in which he shall have been a resident for twelve days, under the same penalty as imposed by any act on persons refusing or neglecting to perform statute labour, rated on the assessment list; any person, after having performed such statute labour, removing to another place, entitled to a certificate from the overseer of highways, which shall exonerate him for the year therein mentioned.

*Overseers.*—\* By the 1 V. c. 21. § 5. a sufficient number of persons to be chosen at the annual township meetings, as overseers of highways.

*Repairs.*—§ 20. Overseers shall superintend, make and keep in repair the highways, roads, streets and bridges that may be allotted to them, and ordered by the magistrates acting for the division at a special session,† &c.; and every overseer shall, after having received such order, notify all persons within his division, liable to perform statute labour, and order them (after three days' notice of the day, hour and place, to be delivered in writing or verbally, at the place of residence of such persons) to work within the time stated in such order, on such part of the roads, bridges or highways as they are directed to mend or repair, and shall direct all persons performing such labour to destroy such weeds as may be in his opinion hurtful to good husbandry; and shall give every person, who may have done his statute labour for the year, requiring the same, a certificate under his hand of having performed his share of statute labour in that township for the year, to prevent his being called out again in any other township. § 21. The township clerk shall obtain a list of persons in his township liable to perform statute labour, shewing the number of days each person is liable to work; from which list the overseers of highways for the township shall have authority to take a copy or extract.

*Fences.*—§ 22. When any road or highway passes any deep water, precipice or other dangerous place, the overseer of the division shall, by statute labour, cause good and sufficient guards, rails or fences to be erected, in order to make such place safe; and shall also erect finger-posts at all such places within his division, necessary for the direction of travellers.

*Compounding statute labour.*—§ 23. Persons liable to statute labour may compound on or before the first Monday in May, by

† See District Council, 4 & 5 V. c. 10. § 51. *Ante.* p. 215.

paying the overseer of the division 2s. 6d. for every day he may be required to work; to be expended by the overseer as to him shall seem best for the improvement of the roads and bridges of his division, and accounted for as provided by this act; nothing in this act shall affect any provision for macadamising certain roads in this province.

*Materials for repairs.*—§ 24. In order to provide materials for making or erecting bridges or causeways, or making or repairing any road, with the money or labour of any township, it shall be lawful for any overseer of highways, in the actual discharge of his duty, to direct the persons performing the work to cut down or make use of any trees or underwood standing upon any uninclosed or unimproved lands, and also to break up and make use of any stone upon such land that the overseer may think necessary, doing no unnecessary damage to the premises.

*Statute labour.*—§ 25. The roads and highways in and through every township, and also a just share of any road actually required and necessary, running between the same and any other township, shall be cleared, repaired and maintained by the inhabitants thereof; and every person liable to perform statute labour, if not compounded for as aforesaid, shall, either in person or by a sufficient and able-bodied man in his stead, be obliged, under the direction of an overseer acting for the division, to work faithfully and diligently on the said road, and shall bring with him such tools or implements, useful for the purpose, as he may be owner of, and be directed by the overseer to bring, for and during the time he may be liable to work on the said road, allowing *eight* hours to each day's work, exclusive of the time of going and coming to and from the place of work; and every person keeping a cart, wagon or team of one or more horses, or yoke of oxen, shall send, on every day to be appointed by the overseer, a cart or wagon, or other implement, and team, and one able-bodied man to drive the same, for such space of time as he shall be liable to work on said roads according to law, allowing *eight* hours for such day's work, which day's work, with a team and driver, shall be equivalent to two day's personal labour for one man; and if any labourer or driver shall refuse or neglect to work faithfully, or to carry sufficient loads, during the time above mentioned, the overseer may discharge such labourer, and the person furnishing such team shall be liable to the forfeiture he would have incurred in case such labourer had not attended, or such team and driver had not been sent, and shall not be allowed for the part of the day he may have laboured.

*Where to be performed.*—§ 26. Overseers shall cause all statute labour under their direction to be performed, and mowies coming

into their hands, in lieu of statute labour, to be expended between the 10th day of May and the 24th day of July in each year, and in default thereof shall be liable to the same forfeiture as imposed for refusing to make and sign the declaration of office.

*Penalty for non-performance.*—§ 27. Every person liable to perform statute labour, and not having compounded for same, who shall neglect or refuse, after having been duly notified to attend or send a sufficient able-bodied man in his stead, with such carriage, team, implement or instrument required, at the time and place appointed, shall forfeit *five shillings* each day, to be recovered, on complaint of the overseer, by warrant under the hand and seal of a magistrate, by distress and sale of goods, rendering the overplus (if any) to the party, after deducting the penalty and legal charges; and such fine shall not release such person from performing any duty required by this act, but he shall be liable to perform the same at any time within the current year, as though no penalty had been imposed.

*Nuisances.*—§ 28. If any person shall wilfully stop up any road, or shall pull down any fence, railing or guard erected along any water, bridge or precipice, for the safety of travellers, or any guide or finger post, the offender shall forfeit and pay on conviction, for every such offence, a sum not less than *five shillings*, nor more than *five pounds*, to be recovered in the manner provided by the preceding clause; or in case any tree shall be cut down in or fall out of any enclosed land or other lands occupied by a resident settler, so as to obstruct any public road or highway, or any other thing which may be represented as a nuisance, the owner or occupier shall remove the same within twenty-four hours, under the penalty of *ten shillings* for every day the obstruction shall continue, to be recovered as aforesaid.

*Exemptions from statute labour.*—§ 29. Any person not assessed more than £25, and who, by reason of age, sickness, numerous family or misfortune, may be poor and indigent, may apply to the town warden, who, on such application, having first notified the overseer of the division to appear on the part of the public, shall enquire into the case, and exempt such person from the whole or part of his statute labour, and give him a certificate to that effect.

*Omissions.*—§ 30. If through inadvertency the name of any person shall be omitted in the assessment roll, such person shall be liable to work on the highways, as if no such omission had taken place, and the overseer shall insert the same in his road-list.

*Overseers' accounts.*—§ 31. The overseers of every township shall make out a true list of all persons within their divisions

liable to work on the highways, and of the labour done or unperformed by any person liable to perform or compound for the same; and also of all monies that may come into their hands by virtue of their office, and of the expenditure or payment of the same; which list and account shall be subscribed by such overseer and delivered, verified upon oath, which oath any magistrate of the district may administer, to the township clerk, on or before the 1st day of September, in each year, and the said account shall be examined by the said clerk, for the purpose of being placed with the records of the township; and the township clerk shall, on or before the first day of December, in each year, furnish the magistrates of the division with the names of the overseers who shall not have so rendered their accounts for the current year, in order that the said overseers may be called upon for their accounts; and every overseer neglecting to render his account as aforesaid, shall be liable to the same penalty, to be recovered in the same manner as provided by this act for persons refusing to take the oath or declaration of office.

*Rates in arrear.*—§ 38. District treasurers to prepare and place before the quarter sessions next after the 1st day of January, a list of collectors of rates in arrear: and such magistrates shall issue their warrant, and distrain the goods and chattels of such collectors, and cause the same to be sold, after giving 20 days notice, to the amount of the rates due to the district, with the costs thereon: and may proceed also in like manner against the sureties.

*Township wardens.*—§ 39. Township commissioners appointed at the township meeting on the 1st January 1838, to perform the duties of township wardens.

*Lands not assessed.*—§ 41. Assessors to make out a schedule of all lands within the township not included in their assessment rolls, and sign and deliver the same to the clerks of the peace, along with the assessment rolls, for the information of the treasurer, in the following form:

SCHEDULE OF LAND,

*In the Township of —, in the District of —, not inserted in the Assessment roll of said Township for the year —.*

Lots or parts of Lots.	Concession.	Number of Acres.
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*Compounding for five years.*—§ 42. Town wardens may compound with any person or persons in the township for making,

in a permanent manner, any part of any public road in their township, in lieu of statute labour, for any number of years not exceeding five, such agreement to be in writing, and signed by the parties, and upon the due performance thereof, such person or persons shall be exempt from statute labour for the term agreed.

*Penalty for non-performance.*—§ 43. Any person or persons having subscribed to any such agreement and neglecting to perform same, shall be liable to the like penalty as persons refusing or neglecting to perform statute labour.

*Disputes submitted to arbitration.*—§ 44. If any person or persons shall enter into such agreement, and make a part or the whole of the road, upon which a dispute shall arise touching the fulfilment of the agreement, the same shall be submitted to three overseers of highways of the township for the year, to be drawn by a public and impartial ballot from the whole list of overseers of the township, such ballot to be made by the township clerk, who shall give the contending parties due notice of the time and place of ballot, and he shall appoint a time and place for the meeting of such overseers so balloted, giving them eight days' notice; and thereupon such overseers shall meet and examine the premises, and make such award as shall appear just and right, which award shall be binding and final.

*Levying rates.*—§ 46. If any person named upon the assessment roll shall neglect or refuse to pay the sum rated for the space of 14 days after demand by the collector or his agent, said collector upon oath before one magistrate of such demand and refusal, may demand an execution for the amount from such magistrate, and on receipt thereof the collector shall levy the same by distress and sale of the party's goods and chattels, giving eight days notice of sale in three public places in the township, and rendering the overplus to the owner, after deducting the rates and charges.

*Constable's fees.*—§ 47. Constables to whom any warrant, execution, or summons may be directed, shall be entitled to the following fees, and no more:

	£	s.	d.
For executing such warrant, execution, or summons, per mile .....	0	0	4
For levying, advertising, suing, and making returns,	0	2	6
For every summons served,.....	0	0	8

*Sudden breaches.*—§ 50. In case it shall be necessary to repair any sudden breach in any public highway, by reason of any bridge or causeway giving way, or any other casualty, or to remove any obstruction on account of snow, or to fix up beacons

or stakes as a guide for travellers over any frozen waters, marsh, plain, or other place, the overseer or overseers of the division shall repair, remove, or establish as aforesaid, or cause the same to be done, by applying any money in their hands applicable to the roads; or direct the application (for that purpose) of any statute labour subject to their control; and in case there shall be no money in hand, such overseer may direct any person in his division liable to perform statute labour, to repair such breach, remove such obstruction, or erect such guides; and such overseer shall keep an account of the number of days any person may work for the purposes aforesaid, to be transmitted to the clerk of the township, to be laid before the town wardens; who after examining such account, if just and expedient, may exempt any such person from statute labour for the next year, and give such person a writing to that effect, which shall be taken by the overseer and credited to such person, for so much of his statute labour; and any person neglecting or refusing to perform such labour, shall be liable to the same penalties, and recovered in the same manner, as provided by this act for neglecting to perform statute labour, or disobeying the overseers of the highways, except on reasonable excuse appearing: and the overseer shall apportion such labour among the several persons within his division liable to statute labour, as nearly equal as circumstances will permit.

\* By the 3 V. c. 10. § 1. after reciting that doubts had arisen as to the liability of persons not assessed, who were over twenty-one years of age, to perform statute labour, it is enacted that it shall be lawful for the justices of the peace throughout the province, to order the path-master of their several divisions, to demand from every male inhabitant within his division, of the age of twenty-one years and upwards, not assessed, the performance of two days statute labour, or commute for the same at the rate allowed by law. § 2. Such persons refusing so to do, after being notified as required by law, shall be dealt with in the same manner as those who are assessed, and are liable to perform statute labour; and in case of no sufficient distress to satisfy the amount shall be found, it shall be lawful for the justices before whom complaint shall be made, to commit the offender to the common gaol of the district, for any time not exceeding six days, unless the fine and costs shall be sooner paid.

By the 4 & 5 V. c. 10. § 51. all and every the power and authority, which by any act or acts in force within that part of this province which formerly constituted Upper Canada, are now vested in the justices of the peace for the several districts, with regard to highways and bridges, or work connected therewith,

and to the appointment of surveyors of roads and other road officers, or to the making of any rates or assessments for any purpose connected with any of the subjects, concerning which power is hereby given to the district council to make bye-laws, or to the making of any order, rules or regulations touching any such subject, shall, from and after the said first day of January 1842, become and be vested in, and may be exercised by, the district council for such districts respectively, within the limits thereof.

By the 4 & 5 V. c. 63. § 1. it is enacted that no person living within half a mile of either side of any road under the care and management of commissioners, shall be liable to statute labour, and pay the amount in money, until the commissioners shall have macadamised or otherwise improved that part of the road. § 2. The several road trusts in the home district separated, and powers of the separate trusts defined. § 3. Where lands have been previously taken by the commissioners, or damage done, and no compensation paid or tendered, it shall be lawful for the commissioners of the district turnpike trust to assess and tender such compensation, as provided.

Where in the original plan of a township a piece of ground was laid out as a highway, which was subsequently granted by the crown in fee to several individuals, and was occupied by them and others claiming from them, for upwards of thirty years, held, that an indictment for a nuisance for stopping up that piece of ground, claiming it as a highway, could not be sustained.—*Rex. v. Allan.* Tr. 1 & 2 W. 4. *Cameron's Digest*, p. 40.

An indictment for obstructing a highway laid out under \*50 G. 3. c. 1. cannot be supported, when the highway has not been established in the manner marked out by the statute, as when the report to the magistrates in quarter sessions by the surveyor of roads does not express the exact width of the road, nor the precise line in which it is to run; and semble, in such a case all the steps necessary to be taken, before a highway can be legally established under that act, should be proved by the prosecutor to have been taken, before the defendant can be found guilty.—*Rex. v. Sanderson.* Easter, 3 W. 4. *Cameron's Digest*, p. 40.

A piece of land marked out in the original plan of a township as an allowance for road, does not lose that character because it has never been used as a road for a period of forty years; and a copy of the original plan of the township is admissible in evidence to prove such allowance, although it does not appear by whom, nor from what materials, the plan was compiled.—*Badgley v. Bender.* Tr. 3 & 4 W. 4. *Cameron's Digest*, p. 41.

*Conveyance, by the Surveyor, of the old Road.* \*50 G. 3. c. 1. § 9.

Know all men by these presents, that I, A. B. of the township of — in the district of — surveyor of the said township, for and in consideration of the sum of — of good and lawful money of Upper Canada, to me in hand paid by G. M. of — in the said district, yeoman, the receipt whereof I do hereby acknowledge, have granted, bargained, sold and conveyed, and by these presents do, as such surveyor as aforesaid, grant, bargain, sell and convey, unto the said G. M. his heirs and assigns, all that parcel of land, late being the public highway or road leading from — to — commencing at, &c. and ending at, &c. containing by admeasurement — acres, or thereabouts, [*an accurate description, with abuttals, should be inserted*] To have and to hold the said parcel of land and premises, hereby granted and conveyed, with all their appurtenances, unto and to the only proper use and behoof of the said G. M. his heirs and assigns for ever. In witness whereof, I have hereunto set my hand and seal, the — day of — 18—.

*Information against a Defaulter, for not doing Statute Labour, pursuant to the* \*1 V. c. 21. § 27. (*Penalty, 5s.*)

— District, } The information and complaint of A. B. of the  
to wit. } township of — in the said district, yeoman, one  
of the overseers of the highways in the said township, taken on  
oath, this — day of — before me C. D. Esq. one of her Majesty's  
justices of the peace for the said district; the said informant  
saith, that G. G. late of the township aforesaid, yeoman, being  
a person liable to perform certain duty and labour upon the  
public highways, in the said township of — pursuant to the  
statute in such case made and provided; and having been duly  
notified and summoned to attend and perform such his duty and  
labour aforesaid, upon the highways within the division allotted  
to this informant, in the said township, to wit, [*here describe the  
particular part of the road*] in the township and division aforesaid,  
on Tuesday, the — day of — last, he the said G. G. did not,  
either by himself personally, or by any other person in his stead,  
attend and perform such, his duty and labour, at the time and  
place aforesaid, nor hath he the said G. G. paid to this informant,  
any sum of money whatever, by way of composition, in lieu  
thereof, but the said G. G. in the premises hath wholly made  
default, contrary to the form of the statute in such case made  
and provided: wherefore the said A. B. prayeth, that the said  
G. G. may be convicted in the sum of five shillings, pursuant



to the statute in such case made and provided, and that the said G. G. may be summoned to answer the premises, and make his defence thereto. Sworn before me, &c.

*Summons thereon.*

— District, } To the Constable of the township of —  
to wit. } Whereas information and complaint upon oath, hath been made before me C. D. Esq. one of her Majesty's justices of the peace for the said district, that [*here set out the matter charged in the information, to the conclusion.*] These are therefore to command you, forthwith to summon the said G. G. to appear before me, at — in the town of — in the said district, at the hour of — in the forenoon of the same day, to answer the premises, and further to do and receive what to the law shall appertain. Herein fail not. Given under my hand and seal, &c.

*The Conviction,*

Should be framed according to the general form given by the \*2 W. 4. c. 4. see ante title "*Conviction.*" It is not however necessary, that it should be actually made out *instanter*; it will be sufficient to make a minute of the conviction, and at any subsequent period it may be drawn up in due form.

*Distress Warrant.*

— District, } To the Constable of — in the said district.  
to wit. } Whereas G. G. late of — in the said district, yeoman, was on this day duly convicted before me C. D. Esq. one of her Majesty's justices of the peace for the said district, for that he the said G. G. &c. [*stating the offence as in the conviction*] contrary to the form of the statute in such case made and provided; and I the said C. D. thereupon adjudged the said G. G. for his said offence, to forfeit and pay the sum of five shillings, to be paid and distributed according to the form of the statute in such case made and provided; and whereas, the said G. G. being so convicted as aforesaid, and being required to pay the said sum of five shillings, hath not paid the same or any part thereof, but therein hath made default. These are therefore to command you, forthwith to make distress of the goods and chattels of the said G. G. and if within the space of — (*not less than four days, nor more than eight days; see 27 G. 2. c. 20. § 1.*) days next after the making such distress, the said sum, together with the reasonable and necessary charges of such distress and sale, shall not be paid, that then you do sell the said

goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the said sum of five shillings to A. B. one of the overseers of the said township, to be by him applied to the use of the highways in the said township, according to the statute in such case made and provided, rendering the overplus, if any, on demand, to the said G. G. after deducting the necessary charges of such distress and sale; and if no such distress can be made, that then you certify the same unto us, to the end that such further proceedings may be had therein, as to the law doth appertain. Given under my hand and seal &c.

*Information against the owner of a cart, wagon or team, for not performing Statute Labour.—\*1 V. c. 21. § 27. (penalty 5s.)*

— District, } The information and complaint of A. B. &c.  
to wit. } [as before.] the said informant saith that K. L. late of the township aforesaid, yeoman, being the owner and possessed of a certain cart, [wagon or team of two horses, or oxen, used to draw the same.] and liable to send on the day hereinafter mentioned the said cart, [wagon or team, &c.] and one able man to drive the same, to work on the highways within the division allotted to this informant in the said township, pursuant to the statute in such case made and provided, and having been duly notified and required, did make default by not sending such cart, [wagon or team.] with an able man to drive the same, to work on the said highways in the said division, to wit, on Tuesday the — day of — last, he the said K. L. not having paid any composition to this informant for the duty and labour aforesaid, contrary to the statute in such case made and provided; wherefore the said A. B. prayeth, &c. [as in the first information.]

*Information for stopping and incumbering a Public Highway, under the \*1 V. c. 29. § 28. (penalty from 5s. to £5.)*

— District, } The information and complaint of A. B. &c.  
to wit. } [as before.] the said informant saith that O. P. late of the township of — in the said district, on the — day of — last, did, as this informant hath been informed and believes, wilfully cause a certain public highway, in the said township, leading from [here describe the road] to be stopped up [or incumbered] by lodging and depositing in and upon the said public highway a quantity of lumber, [or by whatever other means the thoroughfare was impeded,] contrary to the statute in such case made and provided, [add also, if such be the case, and this infor-

formant further saith, that the obstruction aforesaid still remains,] wherefore the said A. B. prayeth, &c. [as before.] Sworn before us, &c.

*Information against a party for not removing a fallen tree from the Road.*—\*1 V. c. 21. § 28. (penalty 10s.)

— District, } The information and complaint of A. B. &c.  
to wit. } [as before.] The said A. B. saith that a certain tree having been cut down (or fallen) out of certain enclosed land belonging to [or in the occupation of] C. D. of the said township, yeoman, across a certain public road and highway in the said township, near unto and next adjoining the said enclosed land of the said C. D. he, this informant, did, on the — day of — instant, personally notify the same to him the said C. D. and at the same time require him the said C. D. to remove the same; and this informant further saith, that the said C. D. hath neglected to remove the said tree out of the said public road and highway, within the space of twenty-four hours after having been so notified and required to do so as aforesaid, and that the said tree is still remaining upon and across the said public road and highway, there incumbering the same, contrary to the statute in such case made and provided: Wherefore this informant prayeth, &c. [as before.]

Sworn, &c.

*Information against an Inhabitant of a Town, for the non-payment of composition for Statute Labour, for the space of ten days after demand.*—See \*4 G. 4. c. 9. § 12. (Penalty double the amount.)

— District, } The information and complaint of A. B. of the  
to wit. } town of — in the district of — surveyor of streets for the said town, taken on oath this — day of — before us C. D. Esq. and G. H. Esq. two of her Majesty's justices of the peace for the said district: The said A. B. saith that E. F. of the said town of — being a person liable to pay money in lieu of statute labour, to wit, the sum of — unto him the said A. B. as such street surveyor as aforesaid, under and by virtue of a certain act of parliament, made and passed in the fourth year of the reign of his late Majesty King George the fourth, entitled, "an act to amend and make perpetual an act passed in the fifty-ninth year of his late Majesty's reign, entitled, 'an act to repeal part of, and amend the laws now in force for laying out and amending, and keeping in repair, the public highways and roads in this province;' and also to amend an act passed in the fiftieth year of his late Majesty's reign, entitled, 'an act to

“provide for the laying out, amending, and keeping in repair, “the public highways and roads in this province, and to repeal “the laws now in force for that purpose?”—he, this informant, did, after the said sum of — had so become due to him the said A. B. as such street surveyor as aforesaid, to wit, on the — day of — demand payment thereof, of and from him the said E. F.; but the said E. F. refused to pay the same, and still doth refuse and neglect to pay the same, contrary to the statute in such case made and provided: Wherefore the said A. B. prayeth that the said E. F. may be convicted in double the amount of the said composition, to wit, the sum of — pursuant to the statute, &c. [*as before.*]

Sworn, &c.

*Oath of the Overseer, verifying his account. \*1 V. c. 21. § 31.*

A. B. of the township of — in the — district, yeoman, one of the overseers of the highways in the said township, maketh oath and saith, that the annexed is a true list of all persons within this deponent's division liable to work on the highways, and of the labour done or unperformed by the persons liable to perform or compound for the same, and that the account now exhibited and subscribed by this deponent, contains a just, true, and fair account of all such money as hath come into the hands of this deponent as such overseer, in respect to his division in the said township during the present year; and to whom, and on what occasion, the same has been paid and applied.

Sworn before me, —

*Indictment for digging a hole in a Street, being the the Queen's Highway. C. C. C.*

Home District, ) The jurors, &c. That A. F. late of, &c. yeo-  
to wit. ) man, on the, &c. with force and arms, at the  
township aforesaid, in the county and district aforesaid, in a  
certain street, being the Queen's common highway there, called  
Yonge-street, used for all the Queen's subjects, with their horses,  
coaches, carts and carriages, to go, return, ride, pass, re-pass,  
and labour, at their free will and pleasure, unlawfully and inju-  
riously did dig, and cause to be dug, a certain pit, containing in  
circumference fifteen feet, and in depth thirteen feet; and the  
same pit so as aforesaid dug and caused to be dug in the street  
and highway aforesaid, from the — day of — in the year afore-  
said, until the — day of the same month, in the year aforesaid,  
at the township aforesaid, in the county and district aforesaid,  
unlawfully and injuriously did continue; by reason whereof the

Queen's subjects, during the time aforesaid, could not go, return, pass, re-pass, ride and labour, with their horses, coaches, carts and other carriages, in, by, and through the same street and highway, as they were wont, and ought to do, without great peril and danger of their lives, to the great damage and common nuisance of all the liege subjects of our said lady the Queen, in, by, and through the same street and highway, returning, passing, re-passing, riding and labouring, and against the peace, &c.

*Indictment for stopping up a Watercourse, whereby the Highway is overflowed.*

Home District, } The jurors for our lady the Queen upon their  
to wit. } oath present, that A. O. late of the township  
of — in the district aforesaid, on the — day of — in the — year  
of the reign — with force and arms, at the township aforesaid,  
in the district aforesaid, a certain ancient watercourse adjoining  
to the Queen's common highway, within the same township,  
leading from — to — with gravel and other materials unlawfully  
and injuriously did obstruct and stop up, and the said watercourse  
so as aforesaid obstructed and stopped up from the said — day  
of — in the year aforesaid, until the day of the taking of this  
inquisition, at the township aforesaid, in the district aforesaid,  
unlawfully and injuriously hath continued, and still doth continue,  
by reason whereof the rain and waters that were accustomed,  
and ought to flow and pass through the said watercourse, on the  
same day and year, and divers other days and times afterwards  
between that day and the day of the taking of this inquisition,  
did overflow and remain in the Queen's common highway afore-  
said, and thereby the same was, and yet is, greatly hurt and  
spoiled, so that the liege subjects of our said lady the Queen,  
through the same way with their horses, wagons, carts and  
carriages, then and on the said other days and times could not,  
nor yet can, go, return, pass, ride and labour, as they ought and  
were accustomed to do, to the great damage and common  
nuisance, &c.

## HABEAS CORPUS.

IF bail cannot otherwise be obtained, the law hath provided a remedy in most cases, by the *habeas corpus* act, 31 G. 2. the substance of which is briefly this:—If the commitment is for treason or felony, plainly and specially expressed in the warrant of commitment; also, if any person is committed, and charged

as accessory before the fact to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment; in such cases the person shall not be bailed on a writ of habeas corpus; otherwise he may be bailed. Also, if a person is committed for treason or felony, specially expressed, yet, if he shall in open court, the first week of the term, or first day of assize, petition to be tried, and shall not be indicted some time in the next term or assize after the commitment, he shall upon motion, the last day of the term or assize, be bailed, unless it shall appear to the judge, upon oath, that the King's witnesses could not be produced within that time, and then, if he is not tried in the second term or assize, he shall be discharged. Previous to the aforesaid bailment, the prisoner, or some person on his behalf, shall demand of the officer or keeper a true copy of the warrant of commitment, which he shall deliver in *six hours*, on pain of £100, to the party grieved, for the first offence; and £200 and forfeiture of his office for the second: then application is to be made in writing by the prisoner, or any person for him, attested and subscribed by two witnesses, who were present at the delivery thereof to the court of chancery, king's bench, common pleas, or exchequer; or if out of term time, to the lord chancellor or one of the judges; and a copy of the warrant of commitment shall be produced before them, on oath made that such copy was denied; but if any person hath wilfully neglected by the space of two terms to apply for his enlargement, he shall not have a *habeas corpus* granted in the vacation. This being done, the lord chancellor or judges, respectively, shall award an *habeas corpus*, under the seal of the court, on pain of £500, to be marked in this manner, *per statutum tricesimo primo Caroli secundi regis*, and signed by the person that awards the same, and shall be directed to the officer or keeper, returnable *immediately*; and the charges of bringing the prisoner shall be ascertained by the judge or court that awarded the writ, and indorsed thereon, not exceeding twelve pence a mile: then the writ shall be served on the keeper, or left at the gaol with any of the under officers, and the charges, so indorsed, shall be paid or tendered to him, and the prisoner shall give bond to pay the charges of carrying him back, if he shall be remanded, and that he will not make any escape by the way. This done, the officer shall, within three days after service, (if it is within twenty miles) return the writ, and bring the body, and shall then certify the true cause of the imprisonment; if above twenty miles and less than one hundred, then within ten days; if above one hundred, then

within twenty days; on like pains as before. But, after the assizes are proclaimed for the county where the prisoner is detained, he shall not be removed: then if it shall appear to the lord chancellor or judges, that the prisoner is detained on a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by warrant of a judge or justice of the peace, for matters for the which by the law he is not bailable, in such case the prisoner shall not be discharged: if he shall be discharged, he shall thereupon enter into recognizance to appear on his trial, and the writ and return thereon, and recognizance, shall be certified into court where the trial must be; but persons charged in debt, or other action, or with process in any civil cause, after their discharge for a criminal offence, shall be kept in custody for such other suit; and persons so set at large, shall not be recommitted for the same offence, unless by order of court, on pain of £500 to the party grieved.

## HOMICIDE.

HOMICIDE in law signifies the killing of a man by a man. 1 *Haw.* 66. And may be classed according to the following degrees:

1. Justifiable homicide.
2. Homicide by misadventure.
3. Homicide by self-defence.
4. Manslaughter.
5. Murder.
6. Self-murder.

### 1. *Justifiable Homicide.*

To make homicide justifiable, it must be owing to some unavoidable necessity, to which the person who kills another must be reduced, without any manner of fault in himself. 1 *Haw.* 69. If any evil disposed person shall attempt feloniously to rob or murder any person in any dwelling-house or highway, or feloniously attempt to break any dwelling-house in the night time, and shall happen in such felonious intent to be slain; the slayer shall be discharged. 24 *H.* 8. c. 5. So, if rioters, or forcible enterers or detainers, stand in opposition to the justices' lawful warrant and any of them be slain, it is no felony. *Hale's Pl.* 37. And if a man come to burn my house and I shoot out of my house, or issue out of my house and kill him; it is no felony. *Hale's Pl.* 39. So, if a woman kill him that assaulteth to ravish her, it is no felony. *Ib.* 39. If a person having actually com-

mitted a felony, will not suffer himself to be arrested; but stands on his own defence, or flies, so that he cannot possibly be apprehended alive by those who pursue him, whether private persons or public officers, with or without a warrant, he may be lawfully slain by them. 1 *Haw.* 70. So, if a felony hath actually been committed, and an officer having lawful warrant, arrest an innocent person, and such person assault the officer, the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwise avoid it, but, in striving, kill him; it is no felony. 3 *Inst.* 56. Also, if a person arrested for felony break away from his conductors to gaol, they may kill him if they cannot otherwise take him. But in this case likewise there must have been a felony actually committed. *Hale's Pl.* 36. 37. Also, if a criminal endeavouring to break the gaol assault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71. In *civil cases*, although the sheriff cannot kill a man who flies the execution of a civil process, yet if he resist the arrest, the sheriff or his officers need not give back, but may kill the assailant. *Hale's Pl.* 37. So, if in the arrest and striving together, the officer kill him, it is no felony. *Id.* 37. In all these cases (a) the party upon arraignment having pleaded not guilty, the special matter must be found; whereupon the party shall be dismissed without any forfeiture or pardon purchased. *Id.* 38.

## 2. Homicide by Misadventure.

Homicide by misadventure is where a man is doing a lawful act without intent of hurt to another, and death *casually* ensues. *Hale's Pl.* 31. As where a labourer being at work with a hatchet the head flies off, and kills one who stands by. 1 *Haw.* 73. Or where a third person whips a horse, on which a man is riding, whereupon he springs out and runs over a child, and kills him, in this case the rider is guilty of homicide by misadventure, and he who gave the blow, of manslaughter. 1 *Haw.* 73. But if a person riding in the street whip his horse to put him into speed, and run over a child and kill him, it is homicide, and not by misadventure; and if he ride so, in a press of people with intent to do hurt, and the horse killeth another, it is murder in the rider. 1 *H. II.* 476. If a person drive his cart carelessly, and it run over a child in the street, if he have seen the child and yet drive on upon him, it is murder; but if he saw not the child, yet it is manslaughter; but if the child had run the cross way, and the cart run over him before it were possible for the carter

(a) Although such may be the law as laid down by ancient writers, common humanity will prompt officers to act with the greatest possible forbearance; and it must be a *very extreme case of necessity* that would justify homicide.



to make a stop, it is by misadventure. 1 *H. H.* 476. So, where workmen throw stones, rubbish, or other things from a house, in the ordinary course of their business, by which a person underneath happens to be killed, if they look out and give timely warning to those below, it will be homicide by misadventure; if without such caution it will amount to manslaughter, at least, if it was a lawful act, but done in an improper manner. *Fost.* 262. 263. If the act be unlawful it is murder; and if a person meaning to *steal* a deer, in another man's park, shoot at the deer and by the glance of the arrow killeth a boy that is hidden in a bush, this is murder; for that the act was unlawful, although he had no intent to hurt the boy, nor knew of him. But if the owner of the park had shot at his own deer, and without any ill intent had killed the boy by the glance of his arrow, this had been homicide by misadventure, and no felony. 3 *Iust.* 56. And it is a general rule in case of all felonies, that wherever a man intending to commit one felony happens to commit another, he is as much guilty as if he had intended the felony which he actually commits. 1 *Haw.* 74.

Homicide by misadventure, though not felony, yet a person guilty thereof is not bailable by justices of the peace, but must be committed to the assizes. 1 *Haw.* 75. But if he is taken only on a slight suspicion, the justices of the peace may bail him. 2 *Haw.* 305.

### 3. Homicide by Self-Defence.

Homicide in a man's own defence is, where one who hath no other possible means of preserving his life from one who combats with him, on a sudden quarrel, kills the person by whom he is reduced to such an inevitable necessity. 2. And not only he, who upon assault, retreats to a wall or some such strait, beyond which he can go no farther, before he kills the other, is judged by law to act upon unavoidable necessity; but also he, who being assaulted in such a manner and in such a place, that he cannot go back without manifestly endangering his life, kills the other without retreating at all. 3. And notwithstanding, a person who retreats from an assault to the wall, give the other wounds in his retreat, yet, if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *se defendendo* only. 1 *Haw.* 74. 4. But if the mortal wound was first given, then it is manslaughter. *Hale's Pl.* 42. 5. And an officer who kills one that resists him in the execution of his office (*a*); and even a private person that kills one who feloniously assaults

(a) See note on the other side.

him in the highway, may justify the fact, without ever giving back at all. 1 *Haw.* 75. 6. But if a person upon malice *pre-pense* strike another, and then fly to the wall, and there in his own defence kills the other, this is murder. *Hale's Pl.* 42. A person guilty of this offence cannot be bailed by justices of the peace. 1 *Haw.* 76. But otherwise, if taken only on a slight suspicion. 2 *Haw.* 105.

#### 4. *Manslaughter.*

By manslaughter is to be understood—1. Such killing of a man as happens either on a sudden quarrel, or in the commission of an unlawful act, without any deliberate intention of doing any mischief at all. 1 *Haw.* 76. 2. The difference between murder and manslaughter is, that murder is committed upon *malice aforethought*, and manslaughter *without malice aforethought*, upon a sudden occasion only: as, if two meet together, and striving for the wall the one kill the other, this is manslaughter and felony; and so it is if they had upon a sudden occasion gone into a field and fought, and the one had killed the other, this had been but manslaughter, and no murder; because all that followed was but a continuance of the first sudden occasion, and the blood was never cooled till the blow was given. 3 *Inst.* 55. There can be no accessories to this offence, before the fact, because it must be done without premeditation. 1 *Haw.* 76. But there may be accessories after the fact. 3 *Inst.* 55.

The punishment for this offence, formerly, was burning in the hand and forfeiture of goods and chattels, for which punishment, that of imprisonment for a year and the imposition of a fine was afterwards substituted by the 19 G. 3. c. 74.

But now, by the 4 & 5 V. c. 27. § 7. it is punishable at the discretion of the court with imprisonment at hard labour in the provincial penitentiary for life, or for any term not less than seven years; or imprisonment in any other prison or place of confinement for any term not exceeding two years, or to pay such fine as the court shall award.

\* By the 3 W. 4. c. 3. the offence is bailable by *two* justices.

#### 5. *Murder.*

Murder, is when a man of sound memory and of the age of discretion unlawfully killeth another under the king's peace, with malice aforethought, either expressed by the party or implied by law, so as the party wounded or hurt die of the wound or hurt within a year and a day. 3 *Inst.* 47.

By *malice expressed* is meant, a deliberate intention of doing any bodily harm to another, whereunto by law a person is not

authorised. 1 *H. H.* 451. the evidences of which are—1. Lying in wait. 2. Menacings antecedent. 3. Former grudges. 4. Deliberate compassings and the like. 1 *H. H.* 451.

*Malice implied* is in several cases, as where one voluntarily kills another without any provocation; for in this case the law presumes it to be malicious, and that he is a public enemy of mankind. 2. Poisoning also implies malice, because it is an act of deliberation. 3. Also, when an officer is killed in the execution of his duty, it is murder, and the law implies malice. 1 *H. H.* 455. 456. 457. 4. Also where a prisoner dieth by duress of the gaoler, the law implies malice, by reason of the cruelty. 3 *Inst.* 52. 5. And in general, any formed design of doing mischief may be called malice; and therefore not such killing only as proceeds from premeditated hatred or revenge, but also, such as is accompanied with those circumstances that shew the heart to be perversely wicked, is adjudged to be of *malice prepense*, and consequently murder. 2 *Haw.* 80. *Strange* 766. No breach of a man's word or promise, no trespass either to lands or goods, no affront by bare words or gestures, however false or malicious and aggravating, will excuse him from being guilty of murder, who is so far transported thereby, as immediately to attack the person who offends him, in such a manner as manifestly endangers his life, without giving him time to put himself upon his guard, if he kills him in pursuance of such an assault, whether the person slain did at all fight in his defence or not. 1 *Haw.* 82.

If two fall out upon a sudden occasion, and agree to fight in such a field, and each of them go and fetch his weapon, and the one killeth the other—this is no *malice prepense*; for the fetching of the weapon and going out into the field, is but a continuance of the sudden falling out, and the blood was never cooled; but if there were deliberation—as, where they meet the *next* day,—nay, though it were the same day, if there were such a competent distance of time, that in common presumption, they had time to deliberate—then it is murder. 3 *Inst.* 51. 1 *H. H.* 453. And the law so far abhors all duelling in cold blood, that not only the principal, who actually kills the other, but also his seconds, are guilty of murder, whether they fought or not; and the seconds of the party slain are likewise guilty, as accessories. 1 *Haw.* 82.

If a physician or surgeon give a person medicine with intent to cure or prevent a disease, and contrary to his expectation it kill the person—this is no homicide. 1 *H. H.* 429. But if a woman be with child, and any one give her a potion to destroy the child within her, and it work, and so strongly that it kills

the woman—this is murder. 1 *H. H.* 430. But if a woman, quick with child, by a potion or otherwise killeth it in her womb; or if a man beat her, whereby the child dieth in her body, and she is delivered of a dead child—this is not murder, but a great misprision. If the child be born alive, and then die of the potion, battery, or other cause—this is murder. 3 *Inst.* 50.—Lord Hale says, that in this case it cannot be legally known whether the child were killed or not; and that if the child die after it is born and baptised, of the stroke given to the mother, yet it is not homicide. 1 *H. H.* 433. And Mr. Dalton says, whether it die within her body, or shortly after her delivery, it maketh no difference. *Dalt.* 330. But Mr. Hawkins says, that (in the latter case) it seems clearly to be murder, notwithstanding some opinions to the contrary. 1 *Haw.* 80. And if a person counsel or advise a woman to kill her child when it shall be born, and she afterwards kill it, in pursuance of such advice, he is an accessory to the murder. 1 *Haw.* 80. And by \*3 *W.* 4. c. —. § 12. accessories before the fact to any capital offence shall suffer death.

They that are present when any man is slain, and do not their best endeavour to apprehend the murderer or manslayer, shall be fined and imprisoned. 3 *Inst.* 53.

By the 4 & 5 *V. c.* 27. § 4. sentence of death may be pronounced after conviction for murder in the same manner, and the court before which the conviction may be had shall have the same power in all respects, as after convictions for other capital offences. § 6. And where any person, being feloniously stricken, poisoned or otherwise hurt, upon the sea, or at any place out of this province, shall die thereof in this province, or being feloniously stricken, &c. in this province, shall die thereof out of this province, every such offence, whether murder or manslaughter, or being accessory before or after the fact, may be tried and punished in the district, county or place in this province in which such death, stroke, poisoning or hurt shall happen.

See also title "*Exccution.*"

#### 6. *Self-murder.*

A *felo-de-se*, or felon of himself, is a person who, being of sound mind, and of the age of discretion, voluntarily killeth himself. 3 *Inst.* 54. 1 *H. H.* 411. The offender herein incurs a forfeiture of goods and chattels, but not of lands; for no man can forfeit his land without an attainder by course of law.—3 *Inst.* 54. He shall also be buried ignominiously in the highway, with a stake driven through his body. 4 *Bl.* 190.

*Commitment for Murder.* (ARCHBOLD.)

Home District,  
to wit. } J. P. esquire, one of her Majesty's justices of  
the peace for the said district, to the constable of — in the said district, and to the keeper of the common gaol at Toronto, in the said district.

These are to command you, the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the body of A. B. charged this day before me, the said justice, on the oath of C. D. of — and others, for that he the said A. B. on the — day of — in the year of our lord — at — in the said district, feloniously, wilfully, and of his malice aforethought, did kill and murder one C. D. by stabbing him the said C. D. with a knife, in and upon the left side of the belly, and on other parts of the body of him the said C. D. thereby giving him divers mortal wounds, of which said mortal wounds the said C. D. instantly died: And you the said keeper are hereby required to receive the said A. B. into your custody in the same common gaol, and him there safely to keep, until he shall be thence delivered by due course of law.

Given under my hand and seal, the — day of — 18—.

J. P.

*Of a Woman, for the Murder of her Bastard Child.*

[*Commencement as before.*] on the — day of — in the year of our lord — at the township of — in the said district, feloniously, wilfully, and of her malice aforethought, did kill and murder a certain male bastard child, which she had then lately before brought forth, by choking and strangling the same; of which said choking and strangling, he the said male bastard child, instantly died: And you the keeper, &c. [*as before.*]

## HORSES.

THE stealing of a horse is felony at common law, and by the 4 & 5 V. c. 25. § 29. is punishable at the discretion of the court by imprisonment at hard labour in the provincial penitentiary for any term not exceeding fourteen years nor less than (a) seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

By the 2 & 3 P. & M. c. 7. and 31 E. c. 12. the keeper of every fair and market shall yearly appoint a certain special and

(a) Reduced to three years by the 6 V. c. 5. § 2.

open place where horses shall be sold in any fair or market overt.

§ 2. And shall appoint one or more persons to take toll there, and to keep the same place from ten in the forenoon till sunset.

§ 3. And the sale or exchange, in any fair or market overt, of any stolen horse shall not alter the property, unless the same shall be in the time of the said fair or market openly ridden, led, walked, driven, or kept standing, for one hour together at least, between ten of the clock and sunset, in the open place of the fair or market wherein horses are commonly used to be sold, and not within any house, backside, or other privy or secret place.

§ 4. Nor unless all the parties to the bargain shall come together, and bring the horse to the open place appointed for the toll-taker, or for the book-keeper, where no toll is due.

§ 5. Nor unless such toll-taker, or (where no toll is paid) the book-keeper, or chief officer of the fair or market, shall take upon him perfect knowledge of the seller, and of his true christian name and surname and place of abode, and shall enter all the same down in a book to be kept for that purpose, or else that the seller shall bring to the toll-taker, or other officer aforesaid, one credible person that shall testify that he knoweth the seller, and his true name, surname, mystery and dwelling place, and there enter the same; and also the name, surname, mystery and dwelling place, of him that so avoucheth his knowledge.

§ 6. Nor unless he also cause to be entered the true price.

§ 7. And also the colour, and one special mark at least.

§ 8. And the buyer shall pay the toll, if any is due, if not, then 1d. for the entry.

§ 9. Which done, the person entering the same shall give to the buyer, requiring, and paying 2d. for the same, a note in writing of all the contents of such entry, subscribed with his hand.

§ 10. Every person offending in any of the premises shall forfeit £5; half to the king and half to him that shall sue before the justices in sessions, or in any ordinary court of record; and the sale shall be void; and the owner may seize and take his horse again, or have an action.

And if any horse shall be stolen, and shall afterwards be sold in open market, and the sale shall be in conformity with the above provisions, yet, nevertheless, such sale, in six months after the felony done, shall not take away the owner's property, so as claim be made in six months, where the horse shall be found, before the mayor, if in a town corporate, or else before a justice near the place where found, and so that proof be made before such magistrate in forty days next ensuing, by two witnesses, that the property in such horse was in the party claiming, and was stolen from him within six months next before such claim; but the party from whom the same was stolen may

at all times after, notwithstanding such sale, take again the said horse, on payment, or readiness to offer, to the party who hath possession, so much as he shall swear, before such magistrate, that he paid for the same.

Where a horse was stolen from the plaintiff and bought by the defendant at public auction, but not in *market overt*, and the plaintiff afterwards seeing the horse took possession of it, and the defendant immediately retook it; held that the plaintiff had a right to retake it.—*Bowman vs. Yielding*. Michs. 3 V. *Cameron's Digest*, p. 82.

*Warrant to apprehend a Horse Stealer.*

To — Constable of —

— District, } Forasmuch as A. B. of — in the said district,  
to wit. } yeoman, hath this day made information and  
complaint upon oath before me, J. C. esquire, one of her Ma-  
jesty's justices, &c. that yesterday, in the night, a bay mare, the  
property of him the said A. B. was feloniously stolen, taken,  
and carried away, from and out of the grounds of him the said  
A. B. at — aforesaid, and that he hath just cause to suspect,  
and doth suspect, that C. D. late of — labourer, did feloniously  
steal, take, and carry away, the said mare: these are therefore  
to command you forthwith to apprehend him the said C. D. and  
bring him before me, to answer to the said information and  
complaint, and to be further dealt with according to law. Herein  
fail you not.

Given under my hand and seal, this — day of —.

## HOUSE OF CORRECTION.

\* By the 50 G. 3. c. 5. it is enacted, that until houses of correction shall be erected, the common gaol in each of the districts shall be a house of correction; and that all idle and disorderly persons, rogues, vagabonds, and incorrigible rogues, or any persons by law subject to be committed to a house of correction, shall be committed to the said common gaols; any law or usage to the contrary notwithstanding.

## HOUSES OF INDUSTRY.

\* By stat. 7 W. 4. c. 24. § 1. it is enacted that the court of general quarter sessions in each district, after the presentment of three successive grand juries recommending the same, it shall be the duty of the justices of the said district to procure plans

and estimates for the execution of suitable buildings for the reception and employment of the poor and indigent, and of the idle and dissolute, and to procure or purchase a suitable site whereon to erect the same, and to contract for the erection thereof, provided the expense shall not exceed £1000; and also to appoint five inspectors, who shall have the inspection and government of the said house, with full power to appoint a master, mistress, and needful assistance for the immediate care and oversight of the persons received into or employed in that house; which inspectors once every month, and at such other times as occasions may require, shall meet for the purpose of determining the best method of discharging the duties of their office, and at such meetings shall have power to make orders and regulations for the government of said house, and to alter the same from time to time as expedient, and all such by-laws for the ordering and regulating the said house, and the affairs thereof, as may be necessary, the same not being repugnant to the laws of the land.

§ 2. The monies requisite for the above purposes shall be paid by the several districts, and rateable property in the district taxed in the same way as for the erecting of gaols and court-houses: justices of the peace in general quarter sessions may declare the amount of such assessment or tax to be levied, and the same shall be collected in the same manner as all other district rates and assessments are now by law collected: Provided always, that it shall be the duty of such justices to publish in one or more newspapers of the district, if one is published in the district, and if not, then by affixing a copy on the door of the court-house, the amount of such rate or assessment.

§ 3. Any two justices, or inspectors, may commit to such house by writing under their hands and seals, to be employed and governed according to the rules, regulations, and orders of said house, any person or persons residing in the district, declared liable by this act to be sent thither.

§ 4. The persons so liable shall be poor and indigent persons, incapable of supporting themselves; all persons able of body to work and without any means of maintaining themselves, who refuse or neglect so to do; all persons living a lewd, dissolute, vagrant life, or exercising no ordinary calling or lawful business, sufficient to gain or procure an honest living; all such as spend their time and property in public houses, to the neglect of their lawful calling.

§ 5. Inspectors to keep an account of the charges of erecting, keeping, upholding and maintaining such house, together with an account of all materials found and furnished, and the names of the persons received into such house, as well as of those discharged therefrom, and of the earnings, one copy of which shall be presented



to the justices of the peace of each district once in every year, or oftener when required by such justices in general quarter sessions assembled, and one copy to each branch of the legislature. § 6. All persons so committed, if fit and able, shall be kept diligently employed in labour during his or her continuance there; and in case the person so committed shall be idle, and not perform such reasonable task or labour as shall be assigned, or shall be stubborn, disobedient or disorderly, he, she, or they shall be punished according to the rules and regulations made for governing and punishing persons there committed.

## HUE AND CRY.

HUE AND CRY is the old common law process after felons, and such as have dangerously wounded any person. 2 *H. H.* 98. If the person against whom the hue and cry is raised be not found in the constablewick, then the constable shall give notice to the next constable; and he to the next; until the offender be found, or till they come to the sea side. 3 *Inst.* 116. And the officer of the town where the felony was done, as also every officer to whom the hue and cry shall come, ought to send to every other town round about him, and not to one next town only. *Dalt.* c. 54. By statute 3 Ed. 1. c. 9. all shall be ready and apparelled at the commandment and summons of sheriffs; (or constables. 2 *Inst.* 171.) and at the cry of the country to sue and arrest felons, on pain of a grievous fine; and they which levy not hue and cry, or pursue not hue and cry, may be indicted, fined and imprisoned. 3 *Inst.* 117.

### *Warrant to levy Hue and Cry. (BURN.)*

— District, } To all constables, and other officers, as well in  
the said district as elsewhere, to whom the  
execution hereof doth belong.

Whereas A. J. of — in the said district, hath this day made information upon oath, before me, J. P. Esquire, one of her Majesty's justices of the peace in and for the said district, that on this present — day of — in the — year of the reign of our sovereign lady Victoria, betwixt the hours of — and — in the afternoon of the same day, at a place called — in the said district, in the king's highway there, two malefactors and felons, to him the said A. J. unknown, in and upon him the said A. J. then and there being, in the peace of God and of our lady the Queen, feloniously did make an assault, and him the said A. J. then and there feloniously did put in great fear and danger of

his life; and the sum of — of lawful money of Canada, of the monies and property of him the said A. J. from the person, and against the will of him the said A. J. then and there violently and feloniously did steal, take, and carry away; and that one of the malefactors and felons aforesaid [is a tall, strong man, and seemeth to be about the age of — years; is pitted in the face with the small-pox; and hath the scar of a wound under his left eye; and had then on a dark brown riding coat, &c. and did ride upon a bay gelding, with a star on his forehead; and the other, &c.] and that after the said felony and robbery committed, they the said malefactors and felons, to him the said A. J. unknown, did fly, and withdraw themselves to places unknown, and are not yet apprehended: These are therefore to command you, forthwith to raise the power of the towns within your several precincts, and to make diligent search therein for the persons above described, and to make fresh pursuit, and hue and cry, after them, from town to town, and from county to county, as well by horsemen as by footmen, and to give due notice thereof in writing, describing in such notice the persons and the offence aforesaid, unto every next constable on every side, until they shall come to the sea shore, or until the said malefactors and felons shall be apprehended; and all persons whom you, or any of you, shall, as well upon such search and pursuit as otherwise, apprehend, or cause to be apprehended, as justly suspected for having committed the said robbery and felony, that you do carry forthwith before some one of her said Majesty's justices of the peace in and for the district where he or they shall be so apprehended, to be by such justice examined, and dealt withal according to law; and hereof fail you not, respectively, upon the peril that shall ensue thereon.

Given under my hand and seal, at — in the said district, the — day of — in the year aforesaid.

## ILLEGITIMATE CHILDREN.

\* By the 7 W. 4. c. 8. § 9. any person who shall furnish food, clothing, lodging or other necessaries, to any child who shall be born after the passing of this act not in lawful wedlock, shall be entitled to maintain an action for the value thereof against the father of such illegitimate child; provided such illegitimate child shall have been a minor at the time of such necessaries found, and shall not have been then residing with his or her reputed father, and maintained by him as a member of his family: and provided also, that where the person suing for the value of such necessaries shall be the mother of such child, or any person

to whom the mother has become accountable for such necessaries, then the fact of the defendant being the father of such child must be proved by other testimony than that of the mother: and provided also, that no action shall be sustained under this act unless it shall be shown, upon the trial thereof, that while the mother of such child was pregnant, or within six months after the birth of her child, she did voluntarily make an affidavit in writing, before some one of his Majesty's justices of the peace for the district in which she shall be residing, declaring that the person who may be afterwards charged in such action is really the father of such child, and unless she has deposited such affidavit within the time aforesaid, in the office of the clerk of the peace, there to remain filed.

## INDECENCY.

ALL open and gross indecency, is a *misdemeanor* at common law, and is indictable, not only as a nuisance to the rest of the community, but as being injurious to public morals. 2 *Str.* 790. 4 *Bl. Com.* 65. It is an indictable offence for a man to undress himself on the beach and bathe himself near inhabited houses. *R. v. Crumden*, 2 *Cump.* 89. This offence is punishable by fine or imprisonment, or both.

*Indictment against a Man, for publicly exposing his naked person.*  
(ARCHBOLD.)

Home District, } The jurors for our lady the Queen upon their  
to wit. } oath present, that J. S. late of the township  
of — in the county of — in the home district, labourer, being  
a scandalous and evil disposed person, and devising, contriving,  
and intending, the morals of divers liege subjects of our lady  
the Queen, to debauch and corrupt, on the — day of — in the  
— year of the reign of our sovereign lady Victoria, at the  
township aforesaid, in the county and district aforesaid, on a  
certain public and common highway there situate, in the pre-  
sence of divers liege subjects of our said lady the Queen, and  
then and there being, and within sight and view of divers other  
liege subjects, through and on the said highway then and there  
passing and re-passing, unlawfully, wickedly and scandalously,  
did expose to the view of the said persons so present and so  
passing and re-passing as aforesaid, the body and person of him  
the said J. S. naked and uncovered, for a long space of time, to  
wit, for the space of one hour, to the great scandal of the said  
liege subjects of our said lady the Queen; to the manifest cor-

ruption of their morals; in contempt of our said lady the Queen, and her laws; to the evil example of all others in the like case offending; and against the peace of our lady the Queen, her crown and dignity.

## INDIANS.

By an ordinance of the late province of Quebec, passed in the 17 G. 3. c. 7, entitled, "an ordinance to prevent the selling of strong liquors to the Indians in the province of Quebec, as also to deter persons from buying their arms or clothing, and for other purposes relative to the trade and commerce with the said Indians," it is enacted, that no person shall purchase, or receive in pledge, or in exchange, any clothes, blankets, fire arms or ammunition, belonging to any Indian or Indians, under the penalty of £5, and imprisonment not exceeding one month, for the first offence; and of £10, and imprisonment, not exceeding two months, for every subsequent offence; to be recovered by information before one or more commissioners of the peace of the district where the offence shall be committed, upon the oath of one witness (other than the informer), and to be levied with costs, by warrant to seize and sell the goods and lands of the offenders, provided that such information shall be brought within six calendar months from the time of the offence.

By imperial statute 43 G. 3. c. 133, all offences committed within any of the Indian territories, not within the limits of this province, or of the United States, shall be tried in the same manner, and subject to the same punishment, as if the same had been committed within this province.

\*By 41 G. 3. c. 8. any person selling or bartering any rum, brandy, whiskey, or other spirituous liquors, within the tract occupied by the Moravian Indians, in the township of Oxford, on the river Thames, in the western district, shall be convicted in the same manner, and subject to the like penalties, as persons selling spirituous liquors without license.

\*By 4 G. 4. c. 20. if any person shall buy, or receive from any Indian, or employ any Indian, to catch any salmon, during certain prohibited periods (viz. between the 10th November and the 1st January), he shall, upon conviction before any two justices, upon the oath of one witness, be subject to the penalties of the \*2 G. 4. c. 10.

\*By the 4 G. 4. c. 8, entitled, "an act to make permanent, and extend the provisions of the laws now in force for the establishment of common schools," &c. the provisions of this act, and of the \*56 G. 3. c. 36, shall extend to the Indians. § 5.

\*By the 3 V. c. 13. § 1. It shall not be lawful for any persons to sell, barter, exchange or give, to any Indian man, woman, or child, within this province, any kind of spirituous liquors, in any manner or way, or to cause or procure the same to be done for any purpose whatever. § 2. Under a penalty not exceeding £20, to be recovered before any one justice, upon the testimony of one or more credible witnesses, one moiety to be paid to the informer and the other moiety to be collected in the same manner as fines and penalties collected under the act for the summary punishment of petty trespasses, and to be applied for the improvement of the roads through the section of the country where the offence is committed. No penalty to be incurred by the furnishing to any Indian any spirituous liquor by or under the direction of a medical man, in case of sickness.

## INDIAN LANDS.

By the \*2 V. c. 15. reciting whereas the lands appropriated for the residence of certain Indian Tribes in this province, as well as the unsurveyed lands, and lands of the crown ungranted and not under location, or sold or held by virtue of any lease or license of occupation, have from time to time been taken possession of by persons having no lawful right or authority so to do: and whereas the said lands have also been from time to time unlawfully entered upon, and the timber, trees, stone and soil removed therefrom, and other injuries committed thereon: and whereas it is necessary to provide by law for the summary removal of persons unlawfully occupying the said lands, as also to protect the same from future trespass and injury, *Be it therefore enacted*, That it shall be lawful for the Lieutenant Governor, from time to time, to appoint two or more commissioners under the great seal of the province, to receive information and inquire into any complaint that may be made to them against any person illegally possessing himself of any of the aforesaid lands, for the cession of which to Her Majesty no agreement hath been made with the tribes occupying the same, and who may claim title thereto; and also to inquire into any complaint against any person for having unlawfully cut down or removed any timber, trees, stone, or soil on such lands, or for having done any other wilful and unlawful injury thereon. § 2. If commissioners find upon investigation any person is unlawfully in possession, it shall be lawful for them to give notice to such person to remove from the occupation of such lands within 30 days; and in case of neglect the commissioners, or any one of them, may issue a warrant directed to the sheriff, commanding

him to eject the person named in such warrant. § 3. And if any person, after removal, shall return and unlawfully resume the occupation thereof, the commissioners, or any one of them, upon complaint and proof, may order such person to be committed to the common gaol for a term not exceeding 30 days, and pay a fine to Her Majesty not exceeding £20. § 4. Any person unlawfully cutting down or removing any timber or trees, or quarrying or removing stone or other materials from the lands aforesaid, shall be liable to pay a fine not exceeding £20, and in default be committed for a period not exceeding three months. § 5. Commissioners may order timber cut down or stone quarried, but not removed, to be seized and sold according to instructions from the Lieutenant Governor. § 6. May summon witnesses. § 7. Monies and fines collected under this act to be paid to the receiver-general for the benefit of the Indians. § 8. The accused party to be first summoned. § 9. Sheriffs and gaolers bound to execute commissioners' warrants. § 10. Commissioners entitled to the same protection as justices of the peace. § 11. Appeal to the vice-chancellor.

## INDICTMENT.

THE venue must appear in the margin, and be laid in the district where the offence was committed. The exceptions to this rule are provided for by the 4 & 5 V. c. 24. § 40. which enacts that where any felony or misdemeanor shall be committed on the boundary or boundaries of two or more districts or counties, or within the distance of 500 yards of any such boundary or boundaries, or shall be begun in one district or county and completed in another, the same may be tried in any of the said districts or counties, as if wholly committed therein. § 41. Offences committed on any person, or in respect of any property in or upon any coach, waggon, cart, or other carriage employed in any journey, or on board any vessel employed in any voyage or journey upon any navigable river, canal, or inland navigation, may be prosecuted in any district or county which shall have been passed in the course of such journey or voyage: and where the side, centre, or other part of any such river, canal, or navigation, shall constitute the boundary of any two districts or counties, such prosecution may be had in either such district or county.

Every indictment must have a precise and sufficient certainty, otherwise, the defendant may demur, move in arrest of judgment, or bring a writ of error. *R. v. Mason*, 2 T. R. 581. It should state the facts, circumstances, and intent with which the act is

committed, with the time and place, without any repugnancy or uncertainty, and in terms direct and positive. No part of the indictment must contain any abbreviation, or express any number or date in figures. 2 *Hale*, 170. 4 *G. 2. c. 26.* 6 *G. 2. c. 6.* The only exception is, in cases of forgery, libel, and sending a threatening letter; in either of these cases a fac-simile of the instrument must be set out, with all the figures and abbreviations, as in the original instrument. *R. v. Mason*, 1 *East*. 180. The christian and surname of the defendant must be stated, with his addition, state and degree, and the place where he is known. If it be doubtful which of two names is his real surname, he may be described with an *alias dictus*, as *George Jackson*, otherwise called *George Johnson*. Where the prisoner's name is not known, and he refuses to discover it, he may then be described as a person whose name is to the jurors unknown, but who is personally brought before the jurors by the keeper of the prisoner. *Russ. & Ry.* 489. The addition should be given after the first name, and not after the *alias dictus*. 2 *Inst.* 699.: though this defect is cured by the defendant pleading to the indictment. 1 *Leach*, 420.

In indictments for felony, if the property be stolen out of the possession of a *bailee*, it may be described as the property either of the bailor or bailee. 2 *Hale*, 181.: therefore, goods entrusted to a carrier, a tailor, or a laundress, may be laid as the property of the person to whom they are so entrusted, or of the real owner, at the option of the prosecutor. 2 *Hale*, 181. 1 *Leach*, 356.

Clothes or other necessaries furnished by a father to his child, may be laid to be the property of the father, if the child be of tender age. 2 *East. P. C.* 654. But where the child is old enough to acquire property, they must then be laid to be the property of the child. Where the goods are stolen from a married woman, they must be laid to be the property of her husband. The goods of a deceased person must be laid as the property of his executor or administrator. Of a corporation, as the property of the corporation, in their corporate use. 2 *East. P. C.* 1059.

And by the 4 & 5 V. c. 24. § 42. in indictments it shall be sufficient to state partnership property to belong to one or more of the partners. § 43. And with respect to any church or place of religious worship, bridge, or other public building, canal, &c. or any subdivision thereof, it shall not be necessary to state the same as the property of any person. § 44. Property under turnpike trusts may be laid as the property of the trustees or commissioners, without naming them.

By the 4 & 5 V. c. 25. § 68. offenders may be indicted where

the property shall be found, although stolen elsewhere: and so with regard to receivers.

Where the party injured is unknown, or does not come forward, he may be described as "a certain person to the jurors unknown." 2 *Hale*, 181.: but if it appear in evidence that his name is known, the defendant will be acquitted. 2 *East. P. C.* 651. 781.

The time stated should be a day certain, that is, the day of the month and year upon which the act is alleged to have been committed: the year of the king's reign is usually stated, but the year of our Lord is equally good. A mistake in the day and year will not in general vitiate the indictment. 1 *Salk.* 287. But upon some occasions the time is material; as, in the case of murder, when the indictment must lay the time of the death within a year and a day after the mortal stroke. *Fost.* 249. *Bl. Com.* 306. So, in an indictment for bigamy, it is necessary to state, with correctness, the time of the second marriage, and to aver that the first wife was alive at the time: the dates of all written instruments must likewise be truly stated: the place at which the alleged offence was committed must also be stated: but though the place should be laid with certainty in statement, it is not necessary to be laid according to the truth; and a variance in this respect will not be material, provided the place proved be within the district, except where the place stated is matter of local description, as in describing the situation of a house in the case of *burglary* or *arson*.

An indictment for stopping up the king's highway, must shew what particular part was stopped up. *Show.* 389. In larceny of written instruments, it is sufficient to describe them in a general manner, as, "one bank note for the payment of £5. and of the value of £5." 2 *East. P. C.* 602. 777. And in an indictment for embezzling *several* bank notes, it is sufficient to describe them as "nine bank notes, for the payment of divers sums of money, amounting in the whole to £9." without specifying the amount of each particular note. *R. v. Johnson*, 3 *M. & S.* 589.

With respect to personal chattels, they must be described with certainty, and by the names usually appropriated to them, and the number and value of each species or kind of goods, as, "one watch of the value of 20s. or, one sheep of the price of 20s.": if "*twenty wethers and ewes*" were stated, the indictment would be bad for uncertainty, as it should specify how many of each. 2 *Hale*, 182. 183. Where any *live* animal is mentioned in an indictment, and it turns out to have been *dead* when stolen, the defendant must be acquitted. *R. v. Holloway*, 1 *C. & P.* 128. *R. v. Edwards, R. & R.* 497. Money is described as so many



pieces of the current gold or silver coin; of the value called sovereigns or shillings, as the case may be. A variance in the number of articles, or in their value, is immaterial, if the value proved be sufficient to constitute the offence in law: so, if there be ten different species of goods enumerated, and the prosecutor prove a larceny of any one or more of a sufficient value, it will support the indictment, though he fail in his proof of the rest.

The indictment is bad for uncertainty, if it charge the defendant in the disjunctive with one or the other of two offences—as that he murdered; *or* caused to be murdered; that he forged, *or* caused to be forged. 2 *Haw. c.* 25. § 58. Or if it charge him in the disjunctive—as that, being the servant or deputy of A. B. he embezzled certain property. 2 *Rd. Rep.* 263.

The indictment must not in any one *count* charge the defendant with having committed two or more offences. But it seems that a defendant may be indicted for the battery of two or more persons in the same count, if committed at the same time. 2 *Burr.* 994. The court will in general, upon application, quash an indictment for duplicity; but it seems doubtful whether it can be taken advantage of in arrest of judgment, or by writ of error.

Where one part of the indictment is repugnant to another, the whole is void—as when the indictment charges the prisoner with forging a bond, by which J. S. was *bound*, for this fact would be impossible, if the instrument were *forged*. 2 *Haw. c.* 25. § 62.

But in all cases where any fact or circumstance is stated in an indictment, which is not a necessary ingredient in the offence, it may be rejected as surplusage, and need not be proved; and if there be any defect in the mode of stating such matter, it will not vitiate the indictment. 4 *Co.* 41. *a.* 5 *Co.* 121. 6. *R. v. Howarth.* 3 *Str.* 26.

All indictments for offences at common law must conclude, “against the peace of our said lady the queen,” [or the late king;] as the case may be; and an indictment for an offence at common law concluding, against the *form of the statute*, would be bad.

Where a statute creates an offence, or makes an offence at common law one of a higher nature—as where a misdemeanor is made felony—the indictment must conclude “against the form of the statute.”

Where several persons actually join in the commission of the same felony, they may be indicted either *jointly* or *separately*. 2 *Hale*, 173. But where the offence is in its nature several and distinct, each defendant must then be indicted separately.

The consequence of a misjoinder of several defendants is, that application may be made to the court to quash the indictment. *R. v. Kingston.* 8 *East.* 41.

The same defendant, also, ought not to be charged with different felonies, in different counts of an indictment—as a *murder* in one count, and a *simple larceny* in another; or a burglary in the house of A. in one count, and a burglary in the house of B. in another. In the first case, the objection is fatal on arrest of judgment, or in error, because the judgment is different for the two offences. In the last case, if the objection is made before the defendant has pleaded, or the jury are charged, the judge may, in his discretion, quash the indictment; and though it be not made till after the jury are charged, the prosecutor may still be put to his election for which offence he will proceed. But this last misjoinder is no ground to arrest the judgment, the offence being of the same species, and for which the judgment is precisely the same.

The *same* felony, however, may be charged in different ways in several counts, in order to meet the facts of the case as they may come out in evidence—thus: if it be doubtful whether the house in which a burglary is committed belongs to A. or B. it may be stated in one count to be the house of A. and in another count the house of B.; and the like in an indictment for a larceny of goods, where it is doubtful whose property they are. 2 B. & P. 508.

In misdemeanors, it is no objection to an indictment, that it contains several charges, provided the judgment is the same. 3 T. R. 98. 106. 8 East. 46. 2 Burr. 984. R. v. Jones, 2 Camp. 131.

And by the 4 & 5 V. c. 24. § 42. no indictment shall abate by reason of any dilatory plea, but may be amended instanter. § 46. Indictments not to be vitiated after verdict, or otherwise, for omission of the words “as appears by the record,” or of the words “with force and arms,” “against the peace,” nor for the insertion of the words “against the form of the statute” instead of “statutes,” or vice versa: nor for the wrong designation of any party mentioned in the indictment; nor for omitting to state the time when offence committed, in any case where the time is not of the essence of the offence, nor for stating the time imperfectly; nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, nor for defect in venue. § 47. Nor for any defect in the anterior proceedings.

#### *Of the Finding by the Grand Jury.*

The names of all the witnesses who are to be examined before the grand jury, should be indorsed on the bill of indictment; and the witnesses must be previously sworn by the officer of the

court. The evidence is gone through by the grand jury in the order in which the names of the witnesses appear on the back of the bill; and if a majority of the grand jury, consisting of twelve at the least, agree in thinking there is sufficient evidence to put the defendant on his trial, they endorse on the bill of indictment a "*true bill*"; but if the majority think there is not sufficient evidence, or if the majority (if a number less than twelve) should even think there is, then the words "*no bill*" are endorsed. The bill of indictment is then returned publicly into court, by the foreman of the grand jury; and if the indictment is found, (for it is previously in law only termed a bill) the prisoner is arraigned in due course and put upon his trial.

The grand jury may insist upon the same strictness of proof as is required on the trial, though it is not usual to do so, nor to weigh the evidence with that degree of scrutiny with which it is afterwards sifted by the judge and jury. They are to hear evidence only on behalf of the prosecution; for the finding of an indictment is merely in the nature of an inquiry or accusation, which is afterwards to be tried and determined: and their duty in this respect, is solely to inquire upon their oaths, whether there be sufficient cause to call upon the party to answer it; they are therefore not to try the prisoner, but merely to determine whether the evidence *against* him is of such a nature as to render necessary a more formal investigation into the fact of his innocence or his guilt; but they ought, nevertheless, to be thoroughly persuaded of the truth of the indictment, as far as their evidence goes, and not to rest satisfied merely with remote probabilities, a doctrine, that *Blackstone* rightly observes, might be applied to very oppressive purposes. 4 *Bl. Com.* 303.

Where there is only one count in the indictment, the grand jury cannot find "*a true bill*" as to part, and "*not a true bill*" as to other part; for they ought to find the whole or nothing. 1 *Haw. c.* 64. § 40. 2 *Id. c.* 25. § 2. But where the indictment contains two counts, as one for a riot, and one for an assault, they may then return a "*true bill*" as to one count, and *ignoramus* as to the other. *R. v. Fieldhouse, Cowp.* 335. But where the evidence bears upon all the counts, and the offence is only stated in a *different form*, it is better to find the whole bill, than to elect one count, and ignore the others, since it is possible, that the prosecution upon trial might fail upon the one so elected, and might have succeeded upon one of those ignored. When a bill is thrown out by the grand jury, it cannot again be preferred to the same jury during the same assizes or sessions; but it may be preferred at the next assizes or sessions, if the prosecutor is not prevented by any lapse of time limited for the prosecution.

It is improper to prefer two bills at the same time, for the same offence, before the grand jury, that is to say, one bill treating the offence as a felony, and the other as a misdemeanor: but after a bill for felony has been returned "*no bill*" by the grand jury, it would not be improper, if the facts warranted such a course, to prefer another bill before the same grand jury, for a misdemeanor, as for instance, if a bill of indictment be preferred for rape, and *ignored*, another may very properly, and perhaps successfully, be preferred for the misdemeanor, viz., an assault with intent to commit a rape.

*Of granting a copy of the Indictment.*

In cases of high treason, the prisoner is, by virtue of the 7 Ann c. 21. entitled to a copy of the indictment, with a list of the witnesses and jurors, ten days before the trial.

In cases of *felony*, a copy of the indictment is never granted without the permission of the court. *Order of the Judges, 16 Car. 2.*

In prosecutions for *misdemeanor* the defendant is entitled to a copy of the record, as a matter of right, without any previous application to the court. 1 *Bl.* 385. *Schw. N. P.* 952. So in the case of a conviction by a magistrate.

## INDIGENT DEBTORS.

\* By the 11 G. 4. c. 4. it is enacted, that it shall not be lawful for the sheriff, or other officer, to seize in execution the necessary wearing apparel of the debtor or debtors, or his, her, or their family; nor the bed or bedding in actual use by the family.

## INFANT.

AN infant (or minor) in law, is any one who is under the age of 21 years. But with respect to criminal offences, the law considers the age of 14 years the age of discretion, and that any one above that age has a sufficient knowledge of right and wrong to be criminally answerable for his actions. An infant under 14, is presumed by law to be incapable of committing a rape. 1 *Hale*, 630. With respect to the competency of an infant to be a witness, the old rule was, that none could be admitted under 9 years of age; but a more reasonable rule has since been adopted; and it is now settled, that their admissibility depends on the understanding of the child, and the notion it has of the danger and impiety of falsehood, and that this must

be collected from the child's answers to questions propounded by the court. 1 *East. P. C.* 442. 1 *Hale*, 302.

## INFORMATION.

AN INFORMATION, in its confined sense, is a complaint exhibited before one or more justices of the peace, upon oath or otherwise, which the defendant is summoned to answer, or upon which a warrant issues to apprehend him: in its more enlarged and comprehensive sense, it is an accusation or complaint exhibited against a person for some criminal offence, either against the king, or against a private person, which, from its enormity, the public good requires to be immediately restrained; and it differs only from an indictment in this particular, viz., that the latter is an accusation founded on the oath of twelve men, whereas, an information is only an allegation of the officer who exhibits it.

Informations at the suit of the king are filed by the attorney general, *ex-officio*, and without any previous application to the court for a rule to file the same, and these are properly the king's own suits. But in those at the relation of private persons, the king is only the nominal prosecutor, and none such can be filed without a rule on the person complained of, to shew cause to the contrary; which rule is never granted but upon motion made in open court, and an affidavit of the facts in relation to the charge of complaint.

Compounding informations, on penal statutes, is an offence punishable by 18 *Eliz. c. 5.* which enacts, that any person informing under pretence of any penal law, who shall make any composition without leave of the court, or take any money or promise from the defendant to excuse him, shall forfeit £10, and shall stand two hours in the pillory, and be disabled in future to sue on any popular or penal statute. 2 *Haw. P. C. c.* 26.

Whenever a statute requires that an information taken by a magistrate should be in writing, such direction must be complied with, but otherwise it is not absolutely necessary, nor is it required to be on oath, unless the statute enjoins it; but in general it is advisable that the information be taken in writing, and upon oath. As the information is the foundation of all subsequent proceedings, it must set forth the day and year on which it was taken, and place where; the name and style of the justice or justices before whom taken; and finally the charge distinctly, and the time when the offence was committed, if it can be ascertained. If there are several offenders each must be named. 8 *T. R.* 508. *Toone* 493.

If the information forms a complete foundation for the subsequent judgment, no evidence can be received to extend or supply a defective charge, as the defendant can only be convicted of the charge in the information. *Doug.* 232; therefore the want of regular allegations in an information cannot be supplied by evidence.

In information before justices, on any penal statute, the defendant need not appear in person, but may entrust his defence to another. 1 *Str.* 15.

An information must contain the charge direct, as specified in the act of parliament, and not merely facts amounting only to a presumption of guilt. 10 *Mod.* 155. But an information taken before magistrates need not be more particular than an information filed in the court of king's bench. *T. R.* 356.

When justices of the peace act uprightly, though they mistake the law, the court will not grant an information against them. 1 *T. R.* 653. But the party will be left to the ordinary remedy by indictment or action; nor for an improper conviction, unless the party complaining make an exculpatory affidavit, denying the charge. 3 *T. R.* 338.

Information will be granted against a justice, as well for granting as for refusing an ale license, improperly. 1 *T. R.* 692. And for convicting a person without a previous summons. *Str.* 677.

A criminal information may be moved for against magistrates, for misconduct in their office, in the second term after offence committed, there being no assize intervening. 13 *E. R.* 270; but the application must be made sufficiently early in the second term to give the defendants an opportunity of shewing cause against it the same term. 13 *E.* 322. And the court will grant a rule *nisi* for a criminal information against a justice, for malpractices *during the term*; but not for misconduct before the term. 7 *T. R.* 80.

The following is the form of an information, at the suit of an informer, where he is entitled to a portion of the penalty, only; or, as it is usually termed, an

*Information QUI TAM.* (ARCHBOLD)

— District, } Be it remembered, that on the — day of — in  
to wit. } the year of our Lord — at — in the said district, C. D. of — in the district aforesaid, constable of the said township, who, as well for our sovereign lady the Queen as for himself, doth prosecute on this behalf, personally cometh before me, [*or us*] — of her Majesty's justices of the peace for the said

district, and as well for our said lady the Queen as for himself, informeth me, [*or us*] that A. B. late of — in the district aforesaid, labourer, within the space of [*one year ; or whatever time is limited by statute*] now last past, to wit, on the — day of — in the year aforesaid, at — aforesaid, in the district aforesaid, [*here state the facts and circumstances constituting the offence, as defined by the statute creating it*] contrary to the form of the statute in such case made and provided; whereby, and by force of the statute in such case made and provided, the said A. B. hath forfeited, for his said offence, the sum of —. Wherefore, the said C. D. who sueth as aforesaid, prayeth the consideration of me [*or us*] the said justice, in the premises, and that the said A. B. may be convicted of the offence aforesaid; and that one moiety of the said forfeiture may be adjudged to our said lady the Queen, and the other moiety thereof to the said C. D. according to the form of the statute in that case made and provided; and that the said A. B. may be summoned to appear before me, [*or us*] and answer the premises, and make his defence thereto.

Exhibited before —.

C. D.

NOTE.—It should be observed, as a general rule, that in all informations for penalties, wherein the offender is *interested*, by reason of his being entitled to a part of the penalty, upon conviction, he cannot be a witness. The information, therefore, should not be upon oath; it should be merely subscribed by the informer; and the facts must be proved by other testimony.

## INNS AND INN-KEEPERS.

EVERY inn is not an ale-house, nor every ale-house an inn; but if an inn uses common selling of ale, it is then also an ale-house; and if an ale-house lodges and entertains travellers, it is also an inn. 1 *Burn*, p. 22. It was resolved by all the judges, that any person might erect an inn to lodge travellers, without any license or allowance for such erection. *Dalt. c. 56. Blackerby*, 170. But if an inn use the trade of an ale-house, as almost all inn-keepers do, it shall be within the statutes made about ale-houses. *Dalt. 133.*

Any inn-keeper suffering any inhabitant in any city or town, &c. to continue drinking, tipping therein, (except such as be invited by a traveller; and except labourers and handicraftsmen, upon working days, for one hour, at dinner time; and except labourers lodging at such inn; and except for urgent occasions; to be allowed by two justices) shall forfeit 10s. to the poor, upon conviction before one justice, on the oath of one witness. 1 *J. c. 9. § 2.* 1 *C. c. 4.* 21 *J. c. 7*; to be levied by

the constable or churchwardens; and for default of satisfaction in six days, the distress to be appraised and sold; and for want of distress, the offender to be committed to gaol, until the penalty be paid. 1 *J. c.* 9. § 3; and shall be disabled, for the space of three years, to keep any such ale-house. 21 *J. c.* 7. § 4. And if any person (except as above, 1 *J. c.* 9.) shall continue drinking or tipping in any inn or ale-house, &c. he shall, on conviction before the mayor, or a justice of the peace, on view, confession, or oath of one witness, forfeit for every offence 3s. 4d. to be paid within one week next after such conviction, to the churchwardens, for the use of the poor; and if he shall neglect, it shall be levied by distress; and in default of distress, the court may order the offender to be set in the stocks for the space of four hours. 4 *J. c.* 5. § 4. c. 9. 21 *J. c.* 7. 1 *C. c.* 4. And if any ale-house keeper shall be convicted of tipping, he shall moreover, for the space of three years, be disabled to keep any such ale-house. 7 *J. c.* 10. 21 *J. c.* 7. § 4.

Every person who shall be drunk, and be convicted thereof before one justice, on view, confession, or oath of one witness, shall forfeit for the first offence 5s. to be paid within one week after conviction to the churchwardens, for the use of the poor, or levied by distress; and in default, he shall be committed to the stocks for six hours. 4 *J. c.* 2. § 2. 21 *J. c.* 7. § 1, 3; and after a second conviction, the offender shall be bound, with two sureties, in a £10 recognizance, with condition to be from thenceforth of good behaviour. 4 *J. c.* 5. § 6. 21 *J. c.* 7. § 3. If any ale-house keeper shall be convicted of being drunk, he shall, besides the penalties, be utterly disabled to keep any such ale-house for the space of three years. 7 *J. c.* 10.

#### *Detaining Goods for the Reckoning.*

It is said an inn-keeper may detain the person of the guest who eats, or the horse which eats, till payment. *Bac. abr. Inns. sed quære* as to the person. But a horse committed to an inn-keeper, may be detained only for his own meat, and not for the meat of the guest, or of any other horse. *Ib.* 1 *Bulst.* 207. An inn-keeper that detains a horse for his meat, cannot use him. *Bac. abr. Inns.*

#### *Goods of a Guest Stolen out of an Inn.*

An inn-keeper is answerable for those things which are stolen within the inn, though not delivered to him to keep, and though he was not acquainted that the guests brought the goods to the



inn; for it shall be intended to be through his negligence, or occasioned by the fault of him or his servants. 8 *Co. Caley's case*. So, if he puts a horse to pasture without the direction of his guest, and the horse is stolen, he must make satisfaction; but otherwise, if with his direction. *Ib.* In like manner, if an inn-keeper bids his guest take the key of his chamber and lock the door, and tells him that he will not take charge of the goods, yet if they are stolen, he shall be answerable; because he is charged by law for all things which come to his inn; and he cannot discharge himself by such or the like words. *Dalt. c. 56.* A person is a guest who merely leaves his horse at an inn, as much as if he had staid himself, because the horse must be fed, by which the inn-keeper has gain; otherwise, if he had left a trunk, or a dead thing. 1 *Salk.* 388.

By an ordinance of the province of Quebec, 28 G. 3. every person taking out a license for the purpose of retailing wine, &c. shall enter into a bond, with sufficient sureties, to keep an orderly and decent house.

#### *Granting of Licences.*

\* By the 33 G. 3. c. 13. § 3. the words "*licensed to sell wine and other spirituous liquors,*" shall be written, painted or printed, over the door of such house of entertainment, under the penalty of 5s. § 4. And persons taking out a license, shall enter into a £10 bond to the King, well and truly to keep a decent and orderly house. § 5. And pay 2s. 6d. for the license and 2s. 6d. for the bond.

\* By the 34 G. 3. c. 12. § 2. no license shall be granted for an inn or public house, unless the person applying shall first have a certificate of his being a proper person, from the magistrates of the division where he resides, or is about to reside. All licenses otherwise granted, shall be void. § 3. (*Repealed by* \*59 G. 3. c. 2.) § 4. No certificate to obtain such license shall be granted to any person not previously licensed, without a testimonial of good character, under the hands of the parson and church or town wardens, or of four reputable and substantial householders, and inhabitants of the division where the said inn or public house is to be kept; and that he has taken the oath of allegiance. § 5. (*Repealed by the* \*3 V. c. 20. § 2.) § 6. Every person obtaining such certificate, shall enter into the recognizance required by the \*33 G. 3. c. 13. to be transmitted to the clerk of the peace of the district, to be filed; and a list of persons under such recognizances, shall be laid before the quarter sessions next ensuing the 5th April, yearly; and upon complaint

made of such recognizance being forfeited, by an act of misdemeanor, any one justice may summon the party to appear at the next quarter sessions, and bind over the party making the complaint, and the misdemeanor charged shall be tried by a jury, and if a verdict of guilty be given, the justices shall estreat such recognizance into his Majesty's court of king's bench, and the offender shall be disabled from holding a license for three years.

*Form of the Warrant to a Constable, to give Notice, pursuant to the*  
\*34 G. 3. c. 12.

To the high constable, or other peace officer of this district.  
Home District, } In pursuance of the act in such case made and  
— Division. } provided, you are hereby required to give notice, in the most public manner, to all licensed inn-keepers or keepers of public houses, and also to all persons unlicensed, who do intend to offer themselves to be licensed 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 — on the — at — hour of the forenoon of the same day, to take or renew their licenses for the year ensuing; and also to give them notice, that every person to be licensed 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 licensed for the year preceding, you are further to give notice, that no license 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 reputable 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 lady the Queen, 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 for  
C. D. } the said division.

\* By the 59 G. 3. c. 2. § 2. it shall be lawful for the justices in general quarter sessions assembled in each and every district

at their meeting next before the 5th January in each year, to adjourn the sessions to the last Monday in December; at which adjourned sessions they shall have power to limit the number of inns and public houses, and hear and receive applications for others; and the said justices shall, upon receiving any such application, inquire into the character of the applicant, and if satisfactory, the *presiding magistrate* shall grant him a certificate under his hand and seal, which certificate shall enable the party to take out a license on or before the 5th January next ensuing, on payment of the duties imposed by this act. § 4. Upon granting such certificate the justices shall direct the inspector to take such sum as the justices, or a majority of them, shall adjudge just and proper, according to the situation of such inn, not exceeding £12 10s. nor less than £2 16s. § 5. Persons desirous of keeping an inn may apply for such certificate at any time during the year, to the justices in general quarter sessions assembled, who shall inquire into the character of the party, and if expedient to increase the number of inns, the presiding magistrate shall grant a certificate. § 6. At the time of granting such certificate, the justices shall frame rules and regulations for innkeepers, which they shall be bound in recognizance to abide by, and a copy of such rules and regulations, for the information of travellers, shall be fixed in some conspicuous place in every house so licensed. § 7. The clerk of the peace shall transmit *quarterly* to the inspector general, a detailed statement of all orders of sessions relative to duties to be taken for licenses. This act was passed for *two* years, and was continued by the \*2 G. 4. c. 18. and the \*4 G. 4. c. 19. and was revived for *two* years longer by the \*11 G. 4. c. 9. with the exception of that part of the second clause which relates to the adjournment of the sessions, and so much of the fourth clause as relates to the license duty.

\* By the 11 G. 4. c. 9. § 2. every person keeping a shop and tavern, and taking a license for that purpose, shall pay a shopkeeper's license. § 3. Sessions may be adjourned to the 5th January, for receiving applications and granting approvals for licenses. § 4. Innkeepers to pay for their license not more than £10, nor less than: £2 16s.

\* By 2 G. 4. c. 8. innkeepers may sell wines &c. by retail, to be consumed out of their houses.

\* By the 3 W. 4. c. 14. the \*11 G. 4. c. 9. is revived and continued for four years, and by the \*2 V. c. 25. is continued for four years, and to the end of the next session.

\* By the 6 W. 4. c. 4. § 4. no certificate shall be granted for a license to keep an inn or public house in the city of Toronto,

or liberties thereof, or any district town or village containing 20 dwelling houses, within a distance of one mile within any district, to any person or persons, until proof given that such person or persons is or are possessed of a dwelling house, held from year to year, or for a term of years, containing at least three rooms beyond those requisite for the family, and that the party or parties applying have, at the time of application, at least three good beds in such house, over and above those required for the family; and are also possessed of a good stable, capable of stabling at least two pair of horses. § 5. Not less than £7 10s. to be paid for licenses for sale of wine, brandy, rum, or other spirituous liquors by retail, or for keeping an inn or public house in Toronto, and other district towns and villages. § 9. This act to continue in force *four* years.

\*By the 3 V. c. 20. § 3. The magistrates in general quarter sessions assembled in each and every district, at their meeting next preceding the 20th day of December, shall have power to adjourn the general sessions to the 20th day of December in every year; or if the same shall be on a Sunday, then to the Monday following; for the purposes of receiving applications and granting certificates to innkeepers, and for other purposes relating thereto, and they shall have power to adjourn the court from day to day, until such applications shall have been gone through with. § 4. Whenever any application for a license shall have been refused by the majority of the justices present, such application shall not be re-considered at any subsequent session in that year, unless a greater number of justices shall be present than were on the bench when the same was refused. § 5. Any person obtaining a certificate according to this act, shall take out such license on or before the 5th January, or the certificate shall be null and void. § 6. In case any licensed person shall die before the expiration of his license, or shall remove from such licensed house, it shall be lawful for the justices in general quarter sessions to allow such person, his executors, administrators or assigns, to transfer such license to any other person to continue open such house under such license, until the expiration thereof, provided such person shall produce a certificate signed in the manner *hereinbefore* (a) mentioned, and shall enter personally into such recognizance with such sureties, as directed by the \*34 G. 3. c. 12. and if such transfer and recognizance be not executed, as aforesaid, within thirty days after the death or removal of such person, then after the expiration thereof such license shall be null and void: and in order to give due oppor-

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(a) So in the Act: the word *hereinafter* is probably meant.

tunity for such applications to transfer licenses, it shall not be lawful for the justices to adjourn the quarter sessions for a longer period than thirty days at any one time. § 18. No justice of the peace, being a common brewer, distiller or retailer of any spirituous liquors, or a partner with any such, shall act or be present at any general annual licensing meeting, or at an adjournment thereof, or at any sessions for transferring licenses, or shall take part in the discussion or adjudication upon any application for a license, or appeal therefrom; nor, in case he shall be the owner of any house licensed or about to be licensed.

\* By the 3 V. c. 21. § 1. the third and fifth clauses of the \*11 G. 4. c. 9. are repealed. § 2. In granting the certificate required by law, it shall be lawful for the justices to direct the inspectors of the several districts to receive from the person taking out any license for keeping a public house or inn, such sum as they, or the majority of them assembled, shall adjudge just and proper, according to the situation of the inn; but no greater sum to be imposed than is authorised by the 4th § of the \*11 G. 4. c. 9. § 3, the 1st, 5th, 6th and 7th clauses of the \*59 G. 3. c. 2. are continued and made perpetual. § 4. All monies arising from licenses to innkeepers, and all fines and penalties levied for keeping a house or place of public entertainment for retailing wine, &c. without a license, shall be appropriated to the general uses of this province and the support of the civil government.

#### *Keeping an Inn without License.*

\* By the 36 G. 3. c. 3. any person keeping an inn or public house for the purpose of vending wine, brandy, rum or other spirituous liquors without a license, shall forfeit £20, upon being convicted on the oath of one witness, in the manner and form mentioned in the \*34 G. 3. c. 12.; one-half to the informer and the other to the receiver general for the use of the province.

The \*6 W. 4. c. 4. § 1. after reciting that the laws in force inflicting penalties upon persons selling spirituous liquors without a license were ineffectual, the fine in many cases being unreasonably heavy, and the justices having no discretion in the premises, *repeals* the \*36 G. 3. c. 3. so far as relates to penalties for selling without license. § 2. If any person or persons shall keep an inn or public house for the purpose of vending wine, rum, brandy or other spirituous liquors, or shall vend any wine, rum, brandy or other spirituous liquors, unless he, she or they shall have previously obtained a license, shall forfeit and pay a sum of money, in the discretion of the justices, not exceeding £20 nor less than £5, to be levied as by the \*36 G. 3. c. 3. on the

oath of one witness in addition to the informer. Provided that no part of the fines levied under this act shall be paid to any informer, but all fines collected shall be paid over to the *commissioners* of roads, for repairing the highways. § 3. In default of goods and chattels to satisfy the fine and costs of conviction, the offender to be committed to the common gaol of the district in which the conviction is had and the offender a resident, for not more than three months nor less than one week, until fine and costs be paid. § 7. Prosecutions under this or any former law for vending wine, rum, brandy or spirituous liquors without license, shall be heard and determined by any *two* or more justices where the parties complained of reside or the offence is committed.

\* By the 3 V. c. 20. § 11. so much of the \*6 W. 4. c. 4. as directs that no part of the fines levied under that act shall be paid to any informer, but should be expended on the highways, is repealed; and one moiety shall be paid to the informer and the remainder only expended on the highways.

By the \*3 V. c. 21. the \*6 W. 4. c. 4. is, in other respects, made perpetual.

NOTE.—The \*3 V. c. 20. § 11. directs that one moiety of the fines collected for selling without license shall be paid to the informer and the other moiety shall be expended on the highways, but the \*3 V. c. 21. § 4. directs that the whole of such penalties shall be appropriated to the uses of the province for the support of the civil government. These clauses being contradictory, a doubt may arise as to the application of such penalties: in the distribution of such penalties it would, therefore, be advisable for the justices to be guided by the opinion of the law officers of the crown.

#### *Notice to Inn-Keepers.*—General Licensing Day.

Notice is hereby given that an adjourned session of the peace will be held at the office of the clerk of the peace, in the city of Toronto, on — the twentieth day of December instant, at the hour of — o'clock in the forenoon, for the purpose of granting and renewing innkeepers' licenses, throughout the Home district, for the year ensuing.

G. G.

*Clerk of the Peace for the H. D.*

Toronto, — Dec. 18—.

#### *Petition for a License.*

To the worshipful the justices of the Home District, in quarter sessions assembled.

The humble petition of the undersigned A. B. sheweth:

That your petitioner is possessed of a very commodious house, situate at — in the said district, and is residing therein, and the

same is well adapted for the accommodation of travellers, and in a neighbourhood where an inn is much wanted: That your petitioner is desirous of obtaining a license to keep an inn there, and has made every preparation for the comfort and accommodation of travellers, and having obtained the requisite certificate of good character, which is hereunto annexed, your petitioner humbly prays, that your worships will be pleased to grant him a license to keep an inn at the aforesaid premises, upon the usual terms—And your petitioner will ever pray. A. B.

### *Certificate of Good Character.*

We do hereby certify that A. B. is a person of sober habits, good fame and conversation, and also a good and loyal subject of her Majesty, and that he is a proper person to be entrusted with a license to keep an inn, which we further certify is much required in the neighbourhood of the house for which he desires to obtain a license; and we also declare that, to our knowledge, he has the accommodation for travellers required by law. We, therefore, recommend him to the justices as a proper person to keep an inn.

### *Certificate for License.*

We do hereby certify that A. B. C. has conducted the house for which he obtained a license last year, to the satisfaction of the public, and that he has maintained his good character for loyalty and sobriety, and we recommend that his license should be renewed for the coming year.

A. B. C., *J. P.*  
D. E. F., *J. P.*  
G. H.

### *Form of Recognizance to be entered into.*

Home District,	}	A. B.....	£10.
to wit.		C. D.....	5.
		E. F.....	5.

We, A. B. of the township of — innkeeper, C. D. of the same township, yeoman, and E. F. of the same township, yeoman, do severally acknowledge to owe to our sovereign lady the queen, that is to say, the said A. B. the sum of ten pounds, and the said C. D. and E. F. the sum of five pound<sup>s</sup> each, of sterling money of Great Britain, to be levied of our respective goods and chattels, lands and tenements, to the use of our said lady

the queen, her heirs and successors, if the said A. B. shall make default in the recognizance hereunder written.

The condition of this recognizance is such, that if the above bounden A. B. having received a license to keep a common inn and ale-house, and to sell wines and spirituous liquors, for one year from the fifth day of January, one thousand eight hundred and forty — in the house wherein he now dwelleth, in the township of — do keep good order and rule within his said house, and in any out-house, yard or garden, or other place thereunto belonging; and further, do abide by such rules and regulations as the justices of the peace for the said district may frame, for the observance of the several innkeepers within the said district, pursuant to the authority in them vested, in and by the several acts of the provincial legislature now in force, for granting licenses to innkeepers during the said term, then this recognizance to be void.

Taken and acknowledged before me, }  
 this — day of — 18—. }

G. G.

*Clerk of the peace.*

Office of the Clerk of the Peace,  
 Toronto, — 18—.

I hereby certify, that — has entered into recognizance before me, to keep good order in his house, as an innkeeper in the town — of — for the ensuing year.

G. G.

*Clerk of the Peace, H. D.*

To —

Inspector of licenses, H. D.

*Form of an Inn-Keeper's License.*

— District.

Province of } Sir Charles Metcalfe, K. C. H. Governor-General  
 Canada. } of the province of Canada, &c. &c.

To all whom these presents may concern:

This license is granted to — of the town — of — in the county of — and in the — district, innkeeper, to keep the house known by the sign of — within the said town — as an inn, or other house of public entertainment, and to sell therein by retail, wine, brandy, rum, or other spirituous liquors: this license to be in force until the fifth day of January, one thousand eight hundred and forty — and no longer, and provided that the said — shall, during the continuance of the said license, maintain and keep good order in the said inn or house, and duly observe



all such rules, regulations, matters and things, respecting inns or other houses of public entertainment, as by any act or acts made, or to be made, by the parliament of this province, are, or shall be enacted and declared. Given under my hand, at Kingston, in the county of Frontenac, this — day of — one thousand eight hundred and forty — in the — year of her Majesty's reign.

*By his Excellency's command.*

A. B.

*Inspector General.*

Received from the said — the sum of — lawful money of the province, being the duties payable on the same.

*Assignment of an Inn-Keeper's License by Indorsement.*

I, the within named — do hereby assign all my interest in the within license, and all benefit and advantage accruing or to accrue, under or by virtue thereof, unto — his executors, administrators and assigns, for all the remainder now to come of my term and interest, therein subject, nevertheless, to such terms and conditions as are mentioned and expressed in the said license. Witness my hand, at — the — day of — 18—.

*Information for Forfeiture of Recognizance.*

Home District, } The information and complaint of A. B. of the  
to wit. } township of — in the said district, yeoman,  
taken on oath this — day of — 184—, before J. P. Esq. one of  
her Majesty's justices of the peace for the said district: the said  
informant saith, that for some time past there have been frequent  
disturbances at the tavern kept by — situate — in the said dis-  
trict, and in particular on the — day of — last, when two per-  
sons of the names of — commenced a fight, in the presence of  
the said —, and several other persons, in the bar-room of the  
said tavern, about twelve o'clock, at noon, the same day, and that  
the said — permitted the said fight to go on in the said bar-room  
for a long time without forbidding the same, or taking measures  
to suppress the same; and again on the — day of — at the hour  
of —, at night, another fight, &c. [as the case may be] and this  
informant further saith, that from the above circumstances, and  
other matters which he hath been informed of, and believes, he  
hath good reason to suspect, and doth verily suspect, that the  
said tavern is not kept by the said — in a decent and orderly  
manner, but otherwise, to the great annoyance and disturbance  
of many of her Majesty's subjects; and therefore he prayeth  
that the said — may be summoned according to law.

*Recognizance to Prosecute.*

A. B. of the township of — in the Home district, yeoman, acknowledges, &c. [*in the usual form, the amount being at the discretion of the justice.*] Whereas the said A. B. hath this day made oath before me, J. P. Esq. one of her Majesty's justices of the peace for the said district, that, &c. [*here recite the particulars charged in the information.*] Now the condition of this recognizance is such, that if the said A. B. shall and do personally appear at the next general sessions of the peace to be holden at the city of Toronto, in and for the said district, and then and there prosecute and give evidence, before the court and jury sworn to inquire upon a charge, to be then and there preferred by him the said A. B. against the said C. D. for not keeping a decent and orderly house, at the tavern and premises aforesaid, and shall not depart the court without leave, then this recognizance to be void, otherwise, in full force.— Taken, &c.

*Condition of the Recognizance by a Witness.*

The condition of the above recognizance is such, that if the above bounden G. H. shall and do personally appear, &c. [*as before*] and then and there give evidence upon a charge to be then and there preferred by A. B. of — against C. D. of — innkeeper, for not keeping a decent and orderly house, at the tavern and premises kept by him, situate in the said township, and not depart the court without leave, then this recognizance to be void, otherwise, in full force.

*Summons to the Innkeeper.*

Home District, } To the Constable of — in the said district.  
 to wit. } Whereas C. D. of — in the said district, inn-  
 keeper, hath this day been charged before me, J. P. Esq. one  
 of her Majesty's justices of the peace for the district aforesaid,  
 on the oath of a credible witness, with not keeping a decent and  
 orderly house, at the tavern and premises kept by him the said  
 C. D. at — in the district aforesaid. These are therefore to  
 require you, the said constable, forthwith to summon the said  
 C. D. to appear at the next general quarter sessions of the  
 peace, to be held at the city of Toronto, in and for the Home  
 district, and then and there answer to the aforesaid charge, to  
 be then and there preferred against him, and tried by a jury,  
 according to the statute in such case made and provided, and to

be further dealt with according to law; and be you then there to certify the court what you shall have done in the premises. Herein fail you not. Given under my hand and seal, &c.

(A copy of the above should be served upon the defendant.)

*Information for Drunkenness, on the 4 J. c. 5. and 21 J. c. 7.*

Home District, } The information of A. J. of — in the said  
 } district, yeoman, taken on oath before me,  
 J. P. Esq. one of her Majesty's justices of the peace for the said  
 district, the — day of — in the year —. The said informant  
 saith, that A. O. of — in the district aforesaid, labourer, on the  
 — day of — in the year aforesaid, at — in the district aforesaid,  
 was drunk, contrary to the statutes in such case made and pro-  
 vided; and thereupon he the said A. J. prayeth, that he the  
 said A. O. may be convicted in the sum of five shillings,  
 according to the said statutes.

Sworn, &c.

*Summons thereupon.*

Home District, } To the constable of —  
 } Forasmuch as information upon oath hath  
 been made before me, J. P. esquire, one of her Majesty's jus-  
 tices of the peace for the said district, that A. O. of — in the  
 district aforesaid, labourer, on the — day of — in the year —  
 at the township of — in the district aforesaid, was drunk, con-  
 trary to the statutes in such case made and provided: These are  
 therefore to require you to summon the said A. O. to appear  
 before me, at — in the said district, on — the — day of — to  
 answer unto the said information, and to shew cause why the  
 penalty of five shillings should not be levied on the goods of him  
 the said A. O. for the said offence; and be you then there to  
 certify what you shall have done in the premises. Given under  
 my hand and seal, the — day of — in the year —.

NOTE.—The justice may convict upon his own view, without any information or summons.

*Warrant to the Church-Wardens, to receive the penalty, (if they are not present at the Conviction, or the offender makes default by not appearing.) (BURN.)*

Home District, } To the Church-Wardens of —  
 } For as much as A. O. of — in the said dis-  
 trict, labourer, is convicted before me, J. P. esq. one of her  
 Majesty's justices of the peace for the said district, for that he

the said A. O. on the — day of — in the year — at the township of — in the district aforesaid, was drunk, contrary to the statutes in such case made and provided, whereby he hath forfeited the sum of five shillings, to be disposed of according to law: These are therefore to require you to demand and receive of and from him the said A. O. the said sum of five shillings, to be by you accounted for, in manner aforesaid; and if he shall refuse or neglect to pay the same, by the space of one week after such demand made, that then you certify to me such refusal and neglect, to the end that such proceedings may be had thereupon as to justice doth appertain. Given under my hand and seal, the — day of — in the year —.

*Warrant to levy the penalty on Non-payment. 4 J. c. 5. and 21 J. c. 7. (BURN.)*

Home District, } To the Constable of — in the said district.  
 } Whereas A. O. of — in the district aforesaid, was on the — day of — convicted before me — one of her Majesty's justices of the peace for the said district, for that he the said A. O. was on the — day of — drunk, at — aforesaid, in the district aforesaid, by which he hath forfeited the sum of 5s. And whereas, I, the said — did issue my warrant, on the — day of — to the church-wardens of the — of — aforesaid, to demand and receive the said sum of 5s. of and from the said A. O.: and whereas, it duly appears to me, as well on the oath of C. W. church-warden of the — aforesaid, as otherwise, that they the said church-wardens did, on the — day of — demand the said sum of 5s. of and from him the said A. O. but that he the said A. O. hath neglected to pay the same, as aforesaid, and that the same is not yet paid: These are therefore to command you, forthwith to levy the said sum, by distraining the goods of him the said A. O. and if within the space of (six) days, next after such distress by you taken, the said sum, together with reasonable charges for taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained, as aforesaid, and out of the money arising from such sale, that you do pay the said sum of 5s. to the church-wardens of the said — to be disposed of according to law, rendering to him the said A. O. the overplus, upon demand, the necessary charges of taking, keeping, and selling the said distress, being first deducted; and if the said A. O. be not able to pay the said sum of 5s. and sufficient distress cannot be found whereof to levy the said sum, that you certify the same to me, with the return to this warrant. Given under my hand and seal, this — day of —.

*Constable's Return of "Nulla Bona." (BURN.)*

Home District, } A. C. Constable of — in the said district, ma-  
 } keth oath, this — day of — in the year —  
 before me, the justice within mentioned, that he hath made dili-  
 gent search for, but doth not know of, nor can find any goods of  
 the within mentioned A. O. whereof to levy the within sum of  
 five shillings. A. C.

Before me, J. P.

*Commitment to the Stocks, for default of Distress, on 4 J. c. 5. and  
 21 J. c. 7. (BURN.)*

Home District.—To the constable of — in the said district.

Whereas A. O. of — in the said district, labourer, was on the  
 — day of — convicted before me — one of her Majesty's jus-  
 tices of the peace for the said district, for that he the said A. O.  
 was on the — day of — drunk at — aforesaid, whereby he hath  
 forfeited the sum of 5s.: And whereas it duly appears to me  
 that the said A. O. is not able to pay the said sum of 5s.: These  
 are therefore to require you, in her Majesty's name, to set him  
 the said A. O. in the stocks, there to remain for the space of six  
 hours.

Given under my hand and seal, the — day of —.

## INSANE PERSONS.

\* By the 2 V. c. 11. § 1. it is enacted, that an asylum for the  
 reception of insane and lunatic persons shall be erected on such  
 plot of ground as shall be appropriated by the governor or pur-  
 chased by commissioners under the authority of this act.—  
 § 2. The governor authorised to appoint commissioners, of whom  
 one shall be an experienced medical practitioner, for superin-  
 tending the erection of said building, with power to employ a  
 skilful architect to procure plans, and to adopt such plan as may  
 seem best suited for the purpose. § 3. As soon as the building  
 is completed and furnished for the reception of patients, the  
 governor to appoint a board of directors, to consist of not less  
 than twelve persons, resident within the province; said board,  
 or any two members thereof, at least once in each month, to  
 visit the institution, to inspect the same, and annually, on the  
 first Tuesday in November, to make a report of the state thereof,  
 and of the patients therein, and the times of their admission or  
 discharge, to the governor, for the information of the legislature.  
 § 4. Board of directors authorised to make rules and regulations

for the internal management of the institution, and appoint a superintendent, who shall always reside at the asylum, and act as physician to the establishment; said board to have the appointment of all other officers and servants to the institution, and fix the amount of salaries, subject to the approbation of the governor. Salary of the superintendent not to exceed £300 per annum. § 5. The board to meet at least once in each month, and oftener if they shall see occasion, at the institution, and minutes of their proceedings to be recorded in a book to be kept at the meeting-room; a plurality of votes at any such meeting to be binding; three directors to constitute a quorum; the chairman to have a casting vote in case of equality of votes. § 6. Any insane or lunatic person, being a subject of her Majesty and a resident of this province, may be received into the asylum upon proof to the satisfaction of the board, or any one member thereof, in case the board shall not be then sitting, of such person being a subject and resident as aforesaid, and upon the production of a certificate, signed by at least three resident practising physicians, that such person has been examined by them collectively, and that he is insane or a lunatic; and in case the superintendent, or any officer or servant of the asylum, shall admit any person into the institution charged with insanity or lunacy, without first requiring or receiving such certificate, together with an order from the board, signed by at least one member thereof, he shall forfeit and pay £100 for each offence, to be recovered by action of debt in any of her Majesty's courts of record in this province by any person who shall sue, one moiety of the penalty recovered to go to the institution, the other to the informer. § 7. The board to establish the sum per diem to be paid by the person or persons so admitted towards the maintenance, attendance and support of such person or persons, to be paid quarterly in advance, and security given by bond to the treasurer of the institution for future payments.— § 8. Destitute insane or lunatic persons may be admitted upon proof to the satisfaction of the board, or if not then sitting, of any one member, of such person being an inhabitant and a subject and without means. § 9. The expence of removing destitute lunatics to be borne by the district in which they were last resident, as also the expence of his return upon recovery.— § 10. In case any lunatic shall become possessed of any property after his admission, and shall have no relatives or guardians willing to give the necessary security to the institution for the payments required, the court of queen's bench, upon the application of the next of kin, may, in term time, appoint a committee of the person and property of such lunatic, who shall have power

to manage his estate. § 11. The accounts of the institution to be made up by the superintendent quarterly, on the first Tuesday in January, April, July, and October, in each year, and audited by the board, and a copy transmitted to the governor. § 12. Vacancies in the board by death, resignation, or departure from the province, to be supplied by the governor.—

§ 13. Justices of the peace in each district authorised, at their general quarter sessions next holden after the passing of this act, to levy by assessment on each and every inhabitant householder in their districts, in the same manner as by law any assessment may now or hereafter be levied for any public purpose within the same, an additional rate or assessment of one-eighth of a penny in the pound, which, after deducting the expences of levying and collecting, shall be paid by the district treasurer to the receiver general for the purposes of this act.—

§ 11. The assessment to be levied and collected annually, at such times and in the same manner as other rates.

\* By the 4 & 5 V. c. 23. § 2. the \*11 G. 4. c. —. and \*3 W. 4. c. —. are continued until the 1st day of November, 1844, and to the end of the next session.

## INSOLVENT DEBTORS.

\* By the 45 G. 3. c. 7. any prisoner in execution for debt, may apply to the court whence such execution issued, and make oath that he is not worth £5, and the court shall order the plaintiff, by rule, to be served on the plaintiff or the attorney, to pay such defendant in execution 5s. weekly maintenance, so long as he shall be detained in prison, at the suit of such plaintiff, to be paid in advance, to the prisoner or gaoler, on Monday in every week, on failure of which the defendant shall be released: such payment not to be made if the plaintiff can prove to the court that defendant has secreted or conveyed away his effects, to defraud his creditors.

\* By 2 G. 4. c. 8. plaintiffs may tender interrogatories to debtors in execution, claiming weekly allowance, touching their insolvency, and their answer may be sworn before commissioners for taking affidavits. § 2. Debtor shall receive no benefit from any order for a weekly allowance, until he has answered the interrogatories.

\* By 8 G. 4. c. 8. the court, in term time, or a judge in vacation, may order prisoners to be discharged, on non-payment of their weekly allowance, such discharge not to operate as a release of the debt.

By stat. 5 W. 4. c. 3. no person shall be held to bail for any debt under £10 by the king's bench, or district court, after the 1st of June next. § 2. No person shall be taken in execution for costs only, nor upon any judgment where the debt shall not amount to £10 or upwards, exclusive of costs. § 3. Any person in execution upon any judgment, for any debt or damages, not exceeding £20, exclusive of costs, and who shall have lain in prison three calendar months, or been upon the gaol limits for twelve calendar months, may, upon application to the court in term time, obtain his discharge, his property still remaining liable to the debt. § 4. Any person in execution upon any judgment, for any debt or damages, exceeding £20, exclusive of costs, and who shall have lain in prison thereupon for six calendar months before the application for his discharge, when the debt shall not exceed £100, or twelve calendar months, when the debt shall exceed £100, may, upon giving thirty days notice, in writing, to the opposite party, or his attorney, of his intention to make such application, apply for his discharge in term time, to the court from whence execution issued. § 5. The court may examine into the matter, and may in its discretion discharge the debtor. § 8. Any person who shall assign, remove, conceal, or dispose of any of his property, with intent to defraud his creditors, and any person who shall receive such property with such intent, shall, upon conviction, be deemed guilty of a misdemeanor, and such offence may be tried before any court of oyer and terminer, or general gaol delivery, and may be punished by fine or imprisonment, not exceeding £100, or six months' imprisonment. § 9. Act to continue in force for four years.— And made perpetual by the \*3 V. c. 7.

## INSPECTORS OF DISTRICTS.

\* By the 43 G. 3. c. 9. the Lieutenant Governor is authorised to appoint (during pleasure) an inspector in every district, who shall superintend, collect and account for, (as hereinafter provided) his Majesty's revenue arising from licenses to sell by retail, wine and spirituous liquors, or to use and employ stills for the distillation of spirituous liquors. § 3. In all cases, not otherwise provided for by this act, persons desirous of obtaining a license shall apply to the inspector. § 4. And it shall be the duty of the inspector to ascertain persons selling wine or spirits, or using stills without license, or larger stills than those licensed, and proceed against the offenders. § 7. The inspector, before



entering upon his office, shall take and subscribe the following oath, before any two justices of the district, who are directed to transmit a certificate thereof to the Lieutenant Governor :

“I, A. B. do swear on the holy evangelists of Almighty God, that I will well and truly execute, do and perform, the duty of inspector of his Majesty’s revenue, arising from shop, tavern, and still licenses, and will duly and impartially superintend the collection thereof, according to the best of my skill and knowledge; and in all cases of fraud, or suspicion of fraud, that shall come to my knowledge, I will spare no person from favour or affection, nor will I aggrieve any person from hatred or ill-will, and that I will in all cases faithfully do, execute and perform, to the best of my skill and knowledge, all and every the duties imposed upon me by an act passed in the provincial parliament, in the forty-third year of his Majesty’s reign, intituled, ‘an act for the better securing to his Majesty, his heirs and successors, the due collection and receipt of certain duties therein mentioned.’ ”

And no inspector shall enter upon his office until he shall have given security by two sureties in £250 each, and himself in £500 to the king, for the due performance of his office. § 8. The following fees are authorised to be taken by the district inspector:

	<i>s.</i>	<i>d.</i>
For filing every requisition for a still license,.....	1	3
For issuing the license,.....	2	6
For filing the certificate of the magistrates and clerk of the peace, to the person requiring tavern license,	1	3
For issuing the license,.....	2	6
For issuing shop licenses,.....	2	6

The above act is made perpetual by the \*48 G. 3. c. 8.

By the \*44 G. 3. c. 7. the executor, &c. devisee or purchaser of any person licensed to work a still, may, within twenty days, give notice to the inspector, and make a requisition for a license for the remainder of the term, the purchaser producing his receipt for the purchase money. § 3. After such notice the inspector may endorse the notice, as follows:

A. B. is hereby licensed to work the within mentioned still or stills, for the remainder of the term by this license first granted.

C. D. *Inspector for the district of* —.

\* By 50 G. 3. c. 6. the inspector is authorised to grant licenses for billiard tables, (see title “*Billiard Tables*”) such licenses to be

dated on the 29th September, and to expire on the 28th September following; the person requiring such license paying 5s. upon application, and 5s. upon issuing such license. § 5. All monies received by the inspector, under this act, (except what he shall be entitled to receive for his own benefit) shall be paid to the receiver general, on or before the 31st December.

\* By the 56 G. 3. c. 3. inspectors of districts are required to render, within one month after the 5th of January in each year, (during this act) to the inspector general, an account upon oath, of all monies which he shall have received, under any act of parliament, and shall pay the amount to such receiver general, within two months afterwards. § 3. And shall also transmit quarterly accounts to inspector general, upon oath, of all monies by him received, and within one month afterwards pay the amount to the receiver general. § 4. He is also required to furnish quarterly, on the first day of the general quarter sessions, to the clerk of the peace, an accurate list of all still, shop and tavern licenses, issued the preceding quarter. § 6. And every inspector neglecting to transmit such account, or pay over the monies to the receiver general, as required by this act, shall, for every neglect, forfeit £100, to be recovered by any one that will sue in the king's bench, by action of debt, &c., one moiety of which shall be paid to the informer, and the other to the use of the province.

\* By the 59 G. 3. c. 2. inspectors are required, upon the production of a certificate, signed by the chairman of the general quarter sessions, to grant the party a tavern license, on receiving payment of the duty on such license.

\* By the 59 G. 3. c. 6. § 5. inspectors are not to charge any additional fee for issuing any license under the provisions of that act, nor retain more than five per cent. upon the duties thereby directed to be paid: and by the \*4 G. 4. c. 13. § 10. inspectors of districts are not to receive more than £100 per annum, as per centage, under that or any other act.

\* By the 6 W. 4. c. 4. § 8. inspectors are required to furnish to the respective clerks of the peace for his district, and to the chamberlain of the city of Toronto, on or before the 1st February in every year, a list in writing of all persons who have taken out licenses in their respective districts, and in Toronto, either as inn or tavern-keepers, or as wholesale store-keepers, to be published by the chamberlain of the said city, and by the clerks of the peace, in at least two newspapers in each district. § 9. Act to be in force four years. Made perpetual by the \*3 V. c. 21.

\* By 3 V. c. 19. § 15. every inspector shall be authorised to retain £12 10s. per cent. of duties he shall collect, until such duties shall amount to £1000, and £5 per cent. over and above £1000. § 16. Such per centage not to exceed £300 per annum.

\* By the 3 V. c. 20. § 12. whenever any prosecution shall be instituted by any inspector against any person for the sale of spirituous liquors without a license, in case such prosecution shall fail for want of evidence, the justices, before whom the party shall have been tried, shall tax the necessary costs of such prosecution, and the said inspector shall pay the same out of any monies in his hands, arising from duties imposed upon the sale of spirituous liquors, and charge the same in his accounts.— Provided the justices, or a majority of them, shall certify that it did appear to them that there was sufficient cause for commencing such prosecution. § 3. Inspectors are required, either in person or by deputy, to visit every part of the district for which he shall act, at least twice in each year, to inspect all licensed houses, distilleries and shops where spirituous liquors are sold, and to ascertain whether the duties by law imposed upon the sale and distillation of spirituous liquors are evaded, and whether the licensed inns have the necessary accommodation for travellers required by law, and to make a report of the state of the different inns and ale-houses in his district to the justices of the peace, previous to the general licensing day; and for the performance of such duty, and defraying the expenses attending the same, such inspector shall be entitled to fifteen shillings per day during the period he is actually engaged therein, and may deduct the amount from any monies coming to his hands as inspector; such account to be previously audited by the court of general quarter sessions.

## INSPECTOR GENERAL.

\* By the 56 G. 3. c. 3. § 2. every inspector in the province is required, within one month after the 5th of January in every year, during this act, to render a just account of monies received, and pay such monies to the receiver general within two months afterwards. § 5. And the clerk of the peace in each district, on the 1st May and 20th of February in each year, shall transmit to the inspector general a certified copy of all still, shop, and tavern licences issued.

\* By 59 G. 3. c. 2. § 7. the clerk of the peace shall transmit to the inspector general, quarterly, accounts of all duties on licences ordered by the sessions.

## JURISDICTION.

\* By 59 G. 3. c. 10. it is enacted, that all crimes and offences committed in any tract of country, or parts of this province, not being within the limits of any described county or township, may be inquired of, and tried within any district of this province, and may and shall be laid and charged to have been committed within the jurisdiction of the court which shall try the same; and such court may proceed to trial, judgment and execution, or other punishment, as if such crime had been committed within the district. § 2. When such parts of the province shall be formed into counties or townships, such offences then shall be tried in the district in which such county or township shall be comprehended.

See also title "*Indictment.*"

## JURY.

By stat. 14 G. 3. c. 83. § 11. which was passed in 1774) and while Upper Canada formed a part of the province of Quebec, it was enacted, that the criminal law of England should continue to be administered and observed as law in the province of Quebec, both in regard to the offence as well as the method of prosecution and trial; and subsequently, by a statute of the province of Upper Canada, the \*40 G. 3. c. 1. the criminal law of England, as it stood on the 17th September, 1792, was also declared to be the criminal law of this province, but without affecting the provisions of the above statute of the 14 G. 3. c. 83. By the \*32 G. 3. c. 2. the trial by jury is also directed to be used in all civil causes.

Sir W. Blackstone says, the trial by jury, or the country *per patriam* is also that trial by the peers of every Englishman, which, as the grand bulwark of his liberties, is secured to him by the great charter. *Bl. Com. vol. 4. p. 349.* And again, that the founders of the English law have, with excellent forecast, contrived that no man should be called to answer to the king for any capital crime, unless upon the preparatory accusation of twelve or more of his fellow-subjects, the *grand jury*, and that the truth of every accusation, whether preferred in the shape of indictment, information or appeal, should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbours, indifferently chosen and superior to all suspicion. *Id.*

*Acts for the Regulation of Juries.*

\* By the 34 G. 3. c. 1. it is enacted, that the clerk of the peace of each district shall, yearly, (under the penalty of £5) make up, from the assessors' returns, a list of inhabitant householders, to be transmitted or delivered to the sheriff; and every person returned in such list shall be qualified to serve on juries: and no sheriff or coroner shall return any other person, or any juror whose name shall not appear in such list. § 2. Sheriff's bailiffs shall not summon any person to serve on juries at the sessions or assizes who shall have served within *one year* before, under the penalty of £10. § 3. The sheriff shall keep a register of jurors on all trials, and grant certificates of service, if required, without fee or reward. § 4. No reward shall be taken for excusing any persons from serving on juries, and no juror shall be summoned whose name is not specified in the sheriff's mandate, and if any sheriff or bailiff shall transgress herein, he shall be fined in the discretion of the court or assize. § 5. The sheriff shall upon his return of every writ of *venire facias*, annex a panel of not less than 36 jurors, nor more than 48. § 6. The name of every juror shall be written on distinct pieces of parchment or paper, and shall be delivered to the marshal, and when a cause shall be called on, he shall in open court, draw out the juror's names successively until twelve shall be drawn and allowed, and being sworn, the same shall be the jury to try the cause, and shall be kept apart till they have given their verdict: their names shall be again returned to the glass, to be re-drawn, until all the causes are disposed of. § 7. Any juror not appearing after having been three times called, shall pay a fine not exceeding £3 nor less than 20s. unless reasonable cause be shewn. § 8. Persons 60 years of age shall be exempt from serving on juries.

\* By the 36 G. 3. c. 2. the sheriffs of the Eastern, Midland, and Western Districts, before the first day of the term next preceding the assizes, shall return a pannel of not less than 36, nor more than 48 jurors, into the court of king's bench, without a *venire facias* for that purpose. § 2. The sheriff of the Home District shall make the like return, on or before the first day of every term.

*Special Juries.*

\* By the 48 G. 3. c. 13. a special jury may be obtained for the trial of any indictment, information, action, suit or cause, without any motion in court. § 3. The clerk of the peace shall, annually, on or before the 15th of July, deliver to the sheriff a list of persons assessed £200 and upwards, and shall be entitled to a fee of 5s. by an order in sessions on the district treasurer.

§ 4. Four days notice shall be given by the prosecutor of any indictment, &c. or the defendant, to the opposite party, to appear at the sheriff's office. § 5. When 40 names of the persons so assessed shall be drawn by the sheriff or his deputy, or an indifferent person, and each party may strike out the names of twelve, and the remaining sixteen shall be summoned as special jurors on the trial. § 6. Upon the neglect of either party to attend, the sheriff or his deputy, in behalf of such party, may strike out twelve names. § 7. Special jurors shall be entitled to receive 5s. each. § 8. And the person applying for a special jury shall pay the fees for striking such jury, and all expenses occasioned by the trial, and upon taxation, shall only be allowed the costs of a common jury, unless the judge shall certify that the same was a proper cause for a special jury.

\* By the 2 G. 4. c. 1. § 30. every common juror shall be allowed 1s. 3d. in every cause in which he shall be sworn, to be paid by the plaintiff or his attorney.

*The mode of summoning Juries at the Sessions.*

By a clause in the commission of the peace, the sheriff is commanded, that at certain days and places, which the justices, or any two or more of them, shall make known, that he cause to come before them such and so many good and lawful men of his district, by whom the truth of the matter in the premises shall be the better known and inquired into.—(See post for the form of precept of two justices, for summoning the jury at the sessions.) The general precept, that issues before a session, is to return twenty-four; and commonly, the sheriff returns upon that precept forty-eight. 2 H. H. 263. Upon the grand jury, there may be, and usually are, more than twelve; but if there be twelve assenting, though others dissent, it is not necessary for the rest to agree. 2 H. H. 161. But upon a trial by a petit jury, it can be by no more, nor less, than twelve, and all assenting to the verdict. 2 H. H. 161. Every summons of jurors shall be made by the sheriff, his officer, or lawful deputy, six days before, at the least, shewing to every person so summoned, the warrant, under the seal of the office wherein they are appointed to serve; and if such juror be absent from the place of his habitation, notice of the summons shall be given, by leaving a note in writing, under the hand of such officer, containing the contents thereof, at the dwelling-house of such juror, with some person there inhabiting the same. 7 & 8 W. c. 32. § 5. And if the sheriff, his deputy or bailiff, neglect their duty herein, or excuse any person, for favour or reward, he shall forfeit £20, to him who shall

sue. 7 & 8 *W. c.* 32. § 6.; or he may be fined £10, or under, by the judge of assize. 3 *G. 2. c.* 25. § 6. And no bailiff, or other officer, shall summon any person other than such whose name is specified in a mandate signed by the sheriff, or under-sheriff, and to him directed, on pain of £10. 3 *G. 2. c.* 25. § 6.

### *Of Challenges.*

Challenges are of two kinds, viz.—either to the *array*, which must be in writing; or to the *polls*, which may be verbal, and may be made either on the part of the King, (i. e. the prosecutor) or of the prisoner. 4 *Bl. Com.* 352. A challenge to the array, is an exception to the whole panel in which the jury are arrayed. There are two descriptions of causes of challenge to the array, viz: *principal causes* of challenge, and causes of challenge to *favour*. The following are principal causes of challenge to the array, viz:—If the sheriff, or other officer, be of kindred to the plaintiff or defendant; if any one or more of the jury be returned at the nomination of either party; if the plaintiff or defendant have an action of battery against the sheriff, or the sheriff against either party; so, if either party have an action of debt against the sheriff; but otherwise, if the sheriff have an action of debt against either party; or if the sheriff have parcel of the land depending upon the same title; or if the sheriff, or his bailiff which returned the jury, be under the distress of either party; or if he be counsel, attorney, officer or servant, of either party; gossip, or arbitrator in the same matter, and treated thereof. 1 *Inst.* 156. A challenge to the *array* for favour, arises from matter fit to be left to the conscience and discretion of the triers, under the particular circumstances of each individual case. Thus, it is said, that if one of the jurors returned be a tenant to the sheriff; or if there be a family connection between one of the jurors and the sheriff, this may be ground of challenge to the array for favor: that is, matter to be left to the triers to decide whether it indicates such partiality as should avoid the array. 3 *Bl. Com.* 359.

Challenges to the *polls* are challenges of individual jurymen, and are either peremptory or for cause; peremptory challenges are at the mere will of the party, without any reason given. *Co. Lit.* 156. In cases of treason or felony, the prisoner by the common law might peremptorily challenge 35, but by stat. 22. *H. 8. c.* 14. § 6. the number was reduced to 20, in petit treason, murder and felony; and in case of high treason and misprision of treason, it was taken away by stat. 33 *H. 8. c.* 23. but revived by stat. 1 & 2 *P. & M. c.* 10.

\* By the 3 W. 4. c. 4. and 4 & 5 V. c. 24. § 16. every peremptory challenge by any person indicted for treason or felony, beyond the number by law allowed shall be void, and the trial may proceed as if no such challenge had been made. In cases of *misdemeanor* there is no right to peremptory challenge, but it is usual for the officer to abstain from calling any reasonable number of names objected to by either party, taking care to leave enough to form a jury. *Dickenson Q. S. p. 344.*

A challenge to the *polls*, or of individual jurymen, is like a challenge to the array, a principal challenge, or a challenge to the favor. The grounds of principal challenge are—1. The rank of the party, as being a peer of the realm. 2. For some personal incapacity, as if a jurymen be an alien or a minor. 3. On account of some palpable ground of bias, as if the juror be of the blood or kindred of either party; or under his power or influence; as tenant or servant; or of counsel with him; 4 *Bl. Com. 361.* Or if he has declared his opinion beforehand; *Haw. b. 2. c. 43. § 29.* Or has indicted the party for the same cause; *Lamb. 554.* Or been upon a former jury upon the same matter, though between other persons; or arbitrator unless indifferently chosen by either party; or action pending between the juror and either of the parties; or bribing a juror. 1 *Inst. 157.* 4. On account of some crime or misdemeanor affecting the jurors' character, as a conviction of treason, felony or perjury; or if he be outlawed; or hath been attainted of false verdict; *præmunire*; or forgery: but it seems that none of the above cited challenges are principal ones, but only to the favor, unless the record of the outlawry, judgment or conviction, be produced, if it be a record of another court; or the term be shown, if it be a record of the same court. 3 *Bl. Com. 363.*

As to challenges for suspicion of favor, although a juror has not given apparent marks of partiality, yet there may be sufficient reason to suspect he may be more favorable to one side than the other, and this is his reason for a challenge to the favor. The causes of favor are infinite, and in these inducements to suspicion of favor, the question is, "whether the jurymen be indifferent as he stands unsworn," for a jurymen ought to be perfectly impartial to either side. *Co. Lit. 157. (b).*

As the challenge to the *array* must be before any of the jury are sworn; so challenge to the *polls*, must be before the particular jurors are sworn. *Bull. N. P. 307.* After a challenge to the array, the party may challenge the polls; but after a challenge to the polls there can be no challenge to the array; and he who has more than one cause of challenge against a juror, must take



them all at once: but if he challenge a juror, and the cause be found insufficient, he may, nevertheless, afterwards challenge him peremptorily, for perhaps the very challenge may create a prejudice in the mind of the juror so challenged. 3 *Bl. Com.* 363.

A principal cause of challenge being grounded on a manifest presumption of partiality, if it be found true, it unquestionably sets aside the array without any other trial than its being made out to the satisfaction of the court before which the name is returned. But a challenge to the favor, when the partiality is not apparent, must be left to the discretion of the triers. *Co. Lit.* 158. (a). If the array be challenged, it lies in the discretion of the court to determine *how* it shall be tried;—sometimes it is done by two attorneys; sometimes by two coroners; and sometimes by two of the jury; with this difference—that if the challenge be for kindred in the sheriff, it is most fit to be tried by two of the jurors returned: if the challenge be on account of partiality—then by any other two assigned thereunto by the court. 2 *Hale*, 275. When a challenge is made to the array, for favor, the prosecutor may either confess it or plead to it:—if he plead, the judges assign triers to try the array, who seldom exceed two; who being chosen and sworn, the clerk of the peace declares to them the challenge, and concludes to them thus—“and so your charge is, to inquire whether it be an impartial array or a favourable one”; and if they affirm it, the clerk enters underneath the challenge, “*affirmatur*”; but if the triers find it favourable, then thus—“*calumnia vera*,” or words to that effect.

As to challenges to the polls,—if a juror be charged before any juror be sworn, two triers are appointed by the court; and if he be found indifferent, and sworn, he and the two triers shall try the next challenge; and if he be tried, and found indifferent, then the two first triers shall be discharged; and the two jurors tried, and found indifferent, shall try the rest. But if the prosecutor challenge ten, and the prisoner one, and the twelfth be sworn, then he that remains shall have added to him one chosen by the prosecutor, and another by the prisoner, and they three shall try the challenge; and if six be sworn, and the rest challenged, the court may assign any two of the six sworn, to try the challenges. 2 *Hale*, 275. The truth of the matter alleged, as cause of challenge, must be made out by witnesses to the satisfaction of the triers; also, the juror challenged, may, on a *voir dire*, be asked such questions as do not tend to his disgrace; but a juror may not be asked any questions as tend to discover matters of infamy or shame. *Salk.* 183. Nor may a juror be asked whether he has expressed an opinion hostile to the party challenging. *R. v. Edmonds*, 4 *B. & A.* 471.

## JUSTICES OF THE PEACE.

THE Queen's Majesty is, by her office and dignity, royal, the principal conservator of the peace within all her dominions; and may give authority to any other to see the peace kept, and to punish such as break it; hence it is usually called the Queen's peace. Justices of the peace are appointed by the Queen's special commission under the great seal, which appoints them all jointly and separately to keep the peace, and any two or more of them to inquire of and determine felonies and other misdemeanors.

*Qualification.*

By the 6 V. c. 3. § 1. it is enacted, that all justices of the peace to be appointed in the several districts of this province shall be the most sufficient persons dwelling in the said districts. § 2. No attorney, solicitor, or proctor, shall be a justice of the peace while so practising. § 3. After the 1st January, 1843, no person shall be a justice, or act as such, who shall not have in his actual possession, to his own use, a real estate, either in free and common soccage, or *en fief*, or *en rôtur*, or *en franc aleu*, in absolute property or for life, or by *emphyteuse* or lease for one or more lives, or originally created for a term not less than twenty-one years, or by usufructuary possession for his life in lands, tenements, or other immoveable property, lying and being in this province, of or above the value of £300 currency, over and above all incumbrances, or who shall not, before the 1st day of January, 1843, or before he takes upon himself to act as a justice of the peace, take and subscribe the following oath, before some one justice of the peace for the district where he intends to act:

I, A. B. do swear, that I truly and *bonâ fide*, have to and for my own proper use and benefit, such an estate (*specifying the nature of such estate, whether land, and if land, designating the same by its local description, rents, or any thing else,*) as doth qualify me to act as justice of the peace for the district of — according to the true intent and meaning of an act of the provincial parliament, made in the sixth year of the reign of her Majesty, queen Victoria, and intituled, *An Act for the qualification of Justices of the Peace*; and that the same is lying and being (or issuing out of lands, tenements or hereditaments, situate) within the township, parish or seigniority of —, (or in the several townships, parishes, or seigniories of —,) (*or as the case may be.*) So help me God.

A certificate of which oath having been so taken shall be forthwith deposited by the said justice, who shall have taken the same, at the office of the clerk of the peace, to be filed among the records of the sessions. § 4. Clerk shall, upon demand, deliver copies of such oath to any person on payment of *one shilling*, which copy shall be evidence at law. § 5. Any justice acting without taking and subscribing said oath, or without being qualified according to the act, shall for every offence forfeit £25, one moiety to her Majesty, and the other to the informer; to be recovered, with full costs, in any court of competent jurisdiction in the district, and in such action the proof of qualification shall be upon the *defendant*. § 6. If any defendant shall intend to insist upon any lands, tenements or real estate, not mentioned in the oath, as constituting the whole or any part of his qualification to act as a justice at the time of the alleged offence, he shall, at or before the time of pleading, deliver to the plaintiff, or his attorney, notice in writing, specifying such lands, tenements or real estate, and the township or place, and the county or counties where situate, and the plaintiff may thereupon, with leave of the court, discontinue such action, on payment of the defendant's costs. § 7. Provided that, upon trial, no other lands or real estate, than such as are mentioned in such oath or notice, shall be insisted upon by the defendant. § 8. When the property mentioned in the oath or notice shall be liable to incumbrances, together with other lands, the property mentioned in the oath or notice shall be deemed liable only so far as the other lands are not sufficient to pay the same. § 9. When the qualification consists of *rent*, it shall be sufficient to specify so much of the property, out of which such rent is issuing, as shall be sufficient to secure such rent. § 10. In case the plaintiff shall discontinue such action, other than as aforesaid, or judgment be given against him, the defendant shall recover *treble costs*. § 11. After action brought and due notice given, the court may stay proceedings in any subsequent action for any *prior* offence: provided such first action be prosecuted with effect. § 12. The court may require the plaintiff to declare upon oath that such action has been brought by him without fraud, and not for the purpose of protecting the defendant from any other action; and if not made to the satisfaction of the court, the action shall be dismissed with costs. § 13. False statements in any oath under this act to be treated as wilful and corrupt perjury. § 14. Actions to be commenced within *six calendar months* after the fact. § 15. Exemptions from the act: The members of her Majesty's legislative council, executive council, judges of the King's bench or Queen's bench, vice

chancellor, provincial judges of the inferior districts of St. Francis, Gaspé, or any district judge, her Majesty's attorney general, solicitor general, advocate general, and any Queen's counsel. § 16. Sheriffs and coroners disqualified from acting as justices *pro tem.* § 17. Fines and penalties, payable to her Majesty under this act, to remain at the disposal of the *provincial parliament*, for the use of the province.

*Form of the Commission of the Peace.*

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, &c.

To — [*the names of the justices being here inserted,*] esquires, greeting: Know YE, that we have assigned you, jointly and severally, and every one of you, our justices to keep the peace in our Home district, and to keep, and cause to be kept, all ordinances and statutes for the good of the peace, and for the preservation of the same, and for the quiet rule and government of our people, made in all and singular their articles in our said home district, according to the force, form, and effect of the same; and to chastise and punish all persons that offend against the form of those ordinances and statutes; and to cause to come before you, or any one of you, all those who to any one or more of our people concerning their bodies, or the firing of their houses, have used threats, to find security for the peace or their good behaviour towards us and our people; and if they shall refuse to find such security, then them in our prisons, until they shall find such security, to cause to be safely kept. We have also assigned you, and every two or more of you, our justices, to inquire more fully the truth, by the oaths of good and lawful men of the district aforesaid, by whom the truth of the matter may be the better known, of all and all manner of felonies, poisonings, trespasses, forestallings, regratings, engrossings and extortions whatsoever; and of all and singular the crimes and offences of which the justices of the peace may and ought lawfully to inquire, by whomsoever, and after what manner soever, in the said district, had done or perpetrated, or which hereafter shall there happen to be done or attempted. And also, of all those who, in the aforesaid district, in companies, against our peace in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride. And also, of all those who shall there have lain in wait, or hereafter shall presume to lie in wait, to maim, or cut, or kill our people. And also, of all victuallers, and all and singular other persons who, in the abuse of weights and measures, or in selling victuals, against

the form of the ordinances and statutes, or any one of them, therefor made for the common benefit of our province of Canada, and our people thereof, have offended or attempted, or hereafter shall presume, in our said district, to offend or attempt. And also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who, in the execution of their offices about the premises, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been, or hereafter shall happen to be, careless, remiss, or negligent, in our said district; and of all and singular articles and circumstances, and all other things whatsoever that concern the premises, or any of them, by whomsoever, and after what manner soever, in our aforesaid district, done or perpetrated, or which shall hereafter happen to be done or attempted in what manner soever. And to inspect all indictments whatsoever before you or any of you taken or to be taken, or before others, late our justices of the peace in our aforesaid district made or taken and not yet determined; and to make and continue process thereupon against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted, until they can be taken, surrender themselves, or be outlawed. And to hear and determine all and singular the felonies, poisonings, trespasses, forestallings, regratings, engrossings, extortions, unlawful assemblies and indictments, aforesaid; and all and singular other the premises according to the laws and statutes of our said province of Canada, or form of the ordinances and statutes aforesaid, it has been accustomed or ought to be done to chastise and punish. *Provided always*, that if a case of difficulty upon a determination of any of the premises before you, or any two or more of you, should happen to arise, then let judgment in nowise be given before you or any two or more of you, unless in the presence of one of our justices of our court of our bench, or one of our justices appointed to hold the assizes in the said district; and therefore we command you, and every of you, that to keeping the peace, ordinances, and statutes, and all and singular other the premises, you diligently apply yourselves, and that at certain days and places which you, or any such two or more of you as is aforesaid, shall appoint for the purposes, into the premises you make inquiries, and all and singular the premises you hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains according to the law and custom of Canada; saving to us our amerçiements and other things to us thereupon belonging. And we command, by the tenor of these presents, our sheriff of our said district that at certain days and places,

which you, or any such two or more of you, shall make known unto him, he cause to come before you, or any such two or more of you as is aforesaid, such and so many good and lawful men of his district, by whom the truth of the matter in the premises shall be the better known and inquired into.

In testimony, &c.

The commission is determinable, First—By the demise of the crown, that is (by the 1 Ann, c. 8.) in six months afterwards. Secondly—By express writ under the great seal. *Lamb* 67. Thirdly—By writ of *supersedeas*, but this does not totally destroy it, as it may be revived again by another writ, called a *procedendo*. Fourthly—By a new commission, which virtually, though silently, discharges all the former justices that are not included in it, for two commissions cannot subsist at once: and lastly, (by 1 *Mar. Sess. 2. c. 8.*) by accession to the office of sheriff; and according to some opinions, also, by succeeding to the office of coroner. *Dalt. c. 3. Bl. Com. 16. Ed. 353.*

#### *Oath of Office.* (BURN.)

Ye shall swear, that as justices of the peace, in the home district, in all articles in the Queen's commission to you directed, you shall do equal right to the poor and to the rich, after your cunning, wit, and power, and after the laws and customs of the province of Canada, and statutes thereof made; and ye shall not be of counsel of any quarrel hanging before you; and that ye hold your sessions after the form of the statutes thereof made; and the issues, fines, and americiaments, that shall happen to be made, and all forfeitures which shall fall before you, ye shall cause to be entered without any concealment, (or embezzling) and truly send them to the Queen's exchequer; ye shall not let, for gift or other cause, but well and truly ye shall do your office of justice of the peace in that behalf; and that you take nothing for your office of justice of the peace to be done, but of the Queen, and fees accustomed, and costs limited by statute; and ye shall not direct, nor cause to be directed, any warrant (by you to be made) to the parties, but ye shall direct them to the bailiffs of the said district, or other the Queen's officers or ministers, or other indifferent persons, to do execution thereof.—So help you God.

#### *Of their Power, Duty, and Office.*

First—The commission empowers them to conserve the peace. Second—It empowers any two, or more, to hear and determine

all felonies and other offences mentioned in the commission. His jurisdiction is confined to the district for which he is commissioned. It seems, however, that recognizances and informations, voluntarily taken before him, in any place, are good. 2 *Haw. c. 8. § 28*. But a justice has no jurisdiction, either over the offence or the offender, when the one is committed, and the other abiding, in another district. There are cases, however, where the presence of an offender within the district gives the justice authority, arising out of the necessity of preserving the peace, to proceed against the party offending. Thus, if a man commit a felony in the home district, and goes into an outer district, a justice of such outer district may take his examination, and the information against him, in that district; and may commit him, and bind over the witnesses to give evidence at the trial; and in short, proceed in all respects as if the offence had been committed within his jurisdiction. 2 *Hale, 51*.

By 24 G. 2. c. 55. If any person (against whom a warrant is issued) shall escape into any other county (or district), any justice of that district, upon proof, on oath, of the handwriting of the justice granting the warrant, may indorse his name thereon, which shall be a sufficient authority to the person to whom the warrant is directed, to execute it in such district, and carry the offender before the justice who indorsed the warrant, or some other justice of the district, in case the offender be *bailable*; but if not, then before a justice of the district where the offence was committed.

By statute 1 & 2 P. & M. c. 13. In cases of *manslaughter*, and *felony*, justices of the peace are directed to take the *examination* merely, of the prisoner, and certify the same at the next gaol delivery; since which enactment, it has been usual for the justices, in all cases of *great moment*, to commit the prisoner for trial at the next assizes, or gaol delivery; and only in smaller matters—as in cases of *petit larceny*, and offences *not capital*, to bind over to the quarter sessions. 2 *Hale, 46*. But now by the \*7 W. 4. c. 4. § 2. The courts of *general quarter sessions* are empowered to try every case of *simple larceny* and *accessories* to larceny; except the chairman be not a barrister, in which case the larceny to be tried must not exceed in value £20. By a subsequent statute, the 4 & 5 V. c. 8. § 18. The judge of the district, being also a justice of the peace for such district, shall preside as chairman at the quarter sessions. The commission also admonishes them, in all cases of difficulty, to let judgment in nowise be given thereon, unless in the presence of *one of the judges* appointed to hold the assizes for the district. It may be further observed, that the offences of *murder* and *manslaughter*,

are not mentioned in the commission; from which circumstance it may be inferred, that justices of the peace could never claim jurisdiction over these offences. *Fitz. & Straund.* 9 H. 4. 24. *Coron.* 457. Where a matter of right or title to property comes in question, the justices of the peace have then no jurisdiction. *R. v. Burnaby*, 3 Salk. 217. 2 Ld. R. 900. A justice ought not to act in any case in which he himself is interested, but should cause the party to be convened, or carried before some other justice, or desire the aid of some other justice who is present. *Dalt.* 173. And in all cases where a justice is empowered to hear and determine a matter out of sessions, he should make a *record* in writing, under his hand, of all the matters and proofs; and all convictions shall be returned by him to the sessions. *Dalt. c.* 115. 2 T. R. 285.

By the \*3 V. c. 20. § 18. No justice of the peace being a brewer, distiller, or retailer of any spirituous liquors, or concerned in partnership with any common brewer, distiller, or retailer of spirituous liquors, shall act or be present at any general annual licensing meeting, or at an adjournment thereof, or at any sessions for transferring licenses under this act; or shall take part in the discussion or adjudication of the justices upon any application for a license, or upon any appeal therefrom; and no justice shall act upon any of the aforesaid occasions in the case of any house licensed, or about to be licensed, under this act, of which such justice shall be owner.

By the 4 & 5 V. c. 12. § 1. Justices of the peace are required to make a return of convictions for fines and penalties to the next general quarter sessions, and of the receipt and application of the monies. § 2. Under the penalty of £20.

The following summary of the practical duties of a justice of the peace, is taken from *Archbold* :

### *The Official Duties of a Justice of the Peace.*

When complaint is made before a justice of the peace, of any indictable offence having been committed within the district to which his commission extends, it is his duty to have the offender brought before him; and if the offender be not already in custody, the justice may issue a warrant for his apprehension. And a justice of the peace may, in all cases, issue his warrant in the first instance, whether the offence imputed to the party be treason, felony, or misdemeanor. *Butt. v. Conant*, 1 Brod. & Bing. 543. It is not, however, very usual, in cases of misdemeanor, to issue a warrant in the first instance, unless in aggravated cases, or where there is a likelihood of the party's ab-



scending, if he be apprised of the complaint being made against him. In ordinary cases, it is usually deemed sufficient to issue a summons in the first instance; and if that be disobeyed, then to issue a warrant.

Before a justice of the peace grants a warrant for the apprehension of an offender, it is prudent, in all cases, especially in cases of felony, to examine the person requiring the warrant, or his witnesses, upon oath; and if upon such examination it appears either that the party has actually committed the offence imputed to him, or that there are reasonable grounds to suspect him of having committed it, the justice should grant the warrant.

This examination or information may be taken in the following form:—

Home District, } The information and complaint of A. B. of the  
 to wit. } township of — in the home district, yeoman,  
 taken upon oath, this — day of — in the year of our Lord  
 1843, before C. D. esquire, one of her Majesty's justices of the  
 peace for the said district. The said informant, upon his oath  
 saith, that—*[stating the facts, as nearly as possible, in the words of*  
*the party.]* (Signed) A. B.  
 Taken and sworn at Toronto aforesaid, }  
 the — day of — 184

Before C. D. J. P.

### *Form of the Summons.*

Home District, } To the Constable of the township of — in the  
 to wit. } said district.

Whereas A. B. of — in the district aforesaid, labourer, hath this day been charged before me, C. D. esq. one of her Majesty's justices of the peace for the district aforesaid, on the oath of a credible witness, for that he the said A. B. on the — day of — in the year of our lord 1834, at the township of — in the district aforesaid, did *[here state the offence]*. These are therefore to require you, forthwith to summon the said A. B. to appear before me, at my dwelling-house, in the township of — in the said district, on — next, the — day of — instant, at the hour of — in the forenoon of the same day, to answer the said charge, and to be further dealt with according to law. And be you then there, to certify what you shall have done in the premises. Herein fail you not.

Given under my hand and seal, at Toronto, in the district aforesaid, the — day of — in the year of our Lord 1843.

C. D. J. P.

## Justices of the Peace.

This summons should be served upon the party personally, if possible; but if, after due diligence used to effect a personal service, it be found impracticable, from the party's concealing himself, or causing himself to be denied, or the like, the summons may, in such case, be left for him at his usual place of abode; and if he do not afterwards attend at the time and place specified in such summons, the justice, upon being satisfied of these facts, will grant his warrant.

### *Form of the Warrant.*

Home District, } To the Constable of the township of — and  
to wit. } all other peace officers in the said district.

Forasmuch as A. B. of — in the district aforesaid, labourer, hath this day been charged before me, C. D. esquire, one of her Majesty's justices of the peace for the district aforesaid, on the oath of a credible witness, for that he the said A. B. on the — day of — in the year of our Lord 1843, at the township of — in the said district, did, &c. [*here state the offence*]. These are therefore to command you, in her Majesty's name, forthwith to apprehend and bring before me, or some other of her Majesty's justices of the peace in and for the said district, the body of the said A. B. to answer unto the said charge, and to be further dealt with according to law. Herein fail you not.

Given under my hand and seal, at Toronto, in the district aforesaid, the — day of — in the year of our Lord 1843.

C. D. J. P.

The warrant may be directed to any person; but it is usually directed to the constable of the district in which it is to be executed; for he alone can be punished for neglecting or refusing to execute it. It is not returnable at any particular time, but remains in force until it is executed. *Mayhew v. Parker*, 8 T. R. 110.

### *Form of the Indorsement.*

District of Gore, } Forasmuch as proof, upon oath, hath been  
to wit. } made before me, E. F. one of her Majesty's  
justices of the peace for the said district, that the name C. D. to the within warrant subscribed, is of the handwriting of the justice of the peace within mentioned: I do therefore hereby authorise — who bringeth to me this warrant, and all other persons to whom the said warrant was originally directed, to execute the same within the said district of Gore.

Given under my hand and seal, at Hamilton, in the said district of Gore, the — day of — in the year of our Lord —.

E. F. J. P.

As soon as the party accused is brought before the justice, the latter calls upon the witnesses for the prosecution, to give their evidence, and administers to each the following oath:—

### *Oath.*

You shall true answer make to all such questions as shall be demanded of you. So help you God.

The justice then proceeds to examine the witness, and takes down his deposition in writing. The following is the form of the—

### *Deposition of a Witness.*

Home District, } The examination of C. D. of the township of  
to wit. } — labourer, taken on oath this — day of —  
in the year of our Lord 1843, before me, J. P. one of her  
Majesty's justices of the peace for the district aforesaid, in the  
presence and hearing of A. B. charged this day before me, the  
said justice, for that he the said A. B. on — at — [&c. describ-  
ing the nature of the charge, as in the summons or warrant.]  
This deponent saith, that &c. [here insert the statement of the  
witness, as nearly as possible, in his own words; then read the  
same over to him; ask him if it is correctly taken down; and  
get him to subscribe his name.]

Taken before me, the day and } C. D.  
year above mentioned. } J. P.

If from the absence of witnesses, or from any other reasonable cause, it become necessary or advisable to defer the examination for a time, the justice may do so. If the accused be in the custody of the constable, under the warrant, and it be intended to resume the examination on the next day, or within some other short period, a mere verbal order to the constable, to bring the prisoner before the justice at the time appointed, will be sufficient; and the prisoner remains in custody under the warrant, in the mean time. 2 *Hale*, H. 120. But if it be necessary to remand him for any considerable period, it may be prudent to commit him to prison in the mean time, under the following—

*Commitment for Re-examination.*

Home District, } C. D. esquire, one of her Majesty's justices  
to wit. } of the peace for the said district, to the  
constable of the township of — in the said  
district; and to the keeper of the common  
gaol at Toronto, in the said district.

These are to command you, the said constable, in her said Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the body of A. B. charged this day before me, the said justice, on the oath of A. O. on suspicion that he the said A. B. [*on — at — &c. describing the offence*]; but inasmuch as E. F. a material and necessary witness against the said A. B. resides at — a distance of — miles from the said dwelling-house of the said A. O. [*or as the case may be*] and he the said A. O. hath not been able to procure the attendance of the said E. F. but will use his best endeavour to do so on the — day of — instant; you, the said keeper, are hereby required to receive the said A. B. into your custody, in the said common gaol, until — the — day of — instant, when you are hereby required to bring the said A. B. before me at — in the said district, or before such others of her Majesty's justices of the peace for the said district as shall be then and there present, to be re-examined, and further dealt with according to law. Herein fail you not.

Given under my hand and seal, the — day of — in the year of our Lord 1843. C. D. J. P.

Upon the day appointed by the commitment, the keeper of the prison will cause the accused to be brought before the committing magistrate, who will then proceed in the examination of the witnesses, in the manner already mentioned.

If, upon the prisoner being remanded, or indeed at any time before the examination is finally closed, the justice be apprised that any person who can give material evidence against the prisoner will not attend voluntarily before him, he may grant the following—

*Summons of a Witness.*

Home District. } To the Constable of the township of — in  
the said district.

Whereas information hath been made before me, C. D. esquire, one of her Majesty's justices of the peace for the said district, that A. B. late of — in the said district, labourer, [*on the — day of — in the year of our Lord 1843, at, &c. describing the nature of the charge, as in a warrant or commitment*]; and that E. F. of —

in the said district, yeoman, is a material and necessary witness to be examined concerning the same: These are therefore to require you to summon the said E. F. to appear before me at — in the said district, on the — day of — instant, at the hour of — o'clock in the — noon of the same day, to testify his knowledge concerning the premises. Herein fail you not. Given under my hand and seal, the — day of — in the year of our Lord 1843. C. D. J. P.

A copy of this summons should, in strictness, be served personally on the witness, and the original at the same time shewn to him. If the witness refuse to attend, upon being summoned, a warrant may be then issued to compel him.

### *Warrant for a Witness.*

To the Constable of — in the Home district.

Home District, } Whereas it hath been made appear to me,  
to wit, } J. C. esquire, one of her Majesty's justices  
of the peace in and for the Home district, upon the oath of  
A. O. that he the said A. O. was feloniously robbed of [*state the facts*] and that he has cause to believe that C. D. of — is a material witness to prove by whom the said robbery was committed: and whereas it hath been duly proved on the oath of K. L. constable of — that the said C. D. was duly summoned to appear before me, this day, at the hour of — in the forenoon, to be examined touching the said robbery, but the said C. D. hath neglected and refused, and doth neglect and refuse to appear before me, in pursuance of the said summons: These are therefore to require you to cause the said C. D. forthwith to come before me, and give such evidence and information as he knoweth concerning the said offence, that such further proceedings may be had therein as the law doth direct.

Given under my hand and seal, &c.

The examination of the witnesses being closed, if it appear that a case, even of suspicion, be made out against the accused, the justice then asks him if he would wish to say any thing in his own behalf;—if he decline doing so, he should not in any manner be pressed, or interrogated further on the subject, and he should upon no account be induced to say any thing upon a promise or hope, or even the slightest intimation being held out to him that it will be *better* or *worse* for him; because, his *confession*, under such circumstances, would be afterwards inadmissible in evidence against him: but if he say any thing *voluntarily*, the justice must take it down in writing; indeed,

whether he says or declines to say any thing in his own behalf, the justice, in prudence, should take down in writing what passes upon the occasion, in order that the judge, at the trial, may see that the justice has done his duty in this respect; and this seems now to be imperative on the justices, by statute 4 & 5 V. c. 24. s. 2. by which statute the examination must be taken before *two* justices, if the prisoner is to be bailed; but if intended that he should be committed to prison, then it may be taken before *one* justice only. The examination must not be upon oath, and may be in the following form.

*The Examination of the Accused before two Justices.*

Home District. { The examination of A. B. of — labourer,  
 taken this — day of — in the year of our  
 Lord 184— before us, C. D. and E. F. esquires, two of her  
 Majesty's justices of the peace for the district aforesaid. The  
 said A. B. being charged before us, the said justices, on oath of  
 — of — yeoman, for that he the said A. B. on — at — &c.  
 [*describing the offence as in the warrant or commitment*] upon his  
 examination now taken before us, saith (I am not guilty of the  
 offence with which I am charged. I bought the goods in  
 question for five shillings, from a man whom I met on the road  
 leading to — on the day before I was taken: I do not know the  
 man's name, or where he lives, &c. [*stating what the accused says,  
 as nearly as possible in the words he uses*] or if the accused declines  
 saying any thing in his behalf, the examination, after stating  
 the offence with which the party is charged as above, may pro-  
 ceed thus:—And the witnesses against the said A. B. being  
 examined in his presence, the said A. B. is now asked by me, if  
 he wish to say any thing in his own behalf, whereupon the said  
 A. B. saith (I shall not say any thing at present, but shall  
 reserve what I have to say for the day of my trial, [*stating  
 whatever the prisoner may say, as nearly as possible in the words he  
 uses.*]

Taken before us the day and }  
 year above mentioned. }

A. B.

The accused should be asked to sign his examination, but if he refuse to do so, still this will not prevent what he has said upon his examination from being given in evidence against him, if necessary, at the trial. *R. v. Lamb. 2 Leach, 625.*

If, upon considering the evidence which has been given on the part of the prosecution, together with the examination of the accused, there appear to be *no case* made out against him, the justice should discharge him. But if the evidence against

the accused be such, that the justice thinks it should be submitted to a jury to consider and decide upon it, it will then be his duty to bind the prosecutor or party grieved in a recognizance to prosecute and give evidence, and each of the witnesses in a recognizance to give evidence. This is done by stating to the prosecutor or witness, the substance of the recognizance and condition, stating it however in the second person, '*you acknowledge yourself to owe to our sovereign lady the queen, &c.*' It is only the recognizance of the prosecutor or witness merely that can be required: the magistrate cannot compel either to find sureties. The only seeming exception to this is the case of a married woman, and a minor or infant under the age of twenty-one years, neither of whom can legally enter into a recognizance, but must procure some other person to become bound for him or her. If the prosecutor or witness refuse to enter into the recognizance; or in the case of a married woman or a minor, if either of them should neglect to procure a surety to enter into recognizance for them, the magistrate may commit them until the sessions &c. or until such recognizance be given. *Bennet v. Watson*, 3 M. & S. 1.—a power, however, which should not be exercised without the greatest caution.

It is further justice to consider whether the case be a proper one for the sessions or the *assizes*, and bind the prosecutor and witnesses accordingly. The following are the forms of the recognizances.

### *Recognizance to Prosecute and give Evidence.*

Home District. { Be it remembered, that on the — day of —  
in the — year of the reign of Queen Victoria, C. D. of — in the said district, yeoman, personally came before me, J. P. one of her Majesty's justices of the peace for the said district, and acknowledged himself to owe to our sovereign lady the queen, the sum of — of good and lawful money of Canada, to be made and levied of his goods and chattels, lands and tenements, to the use of our said lady the queen, her heirs and successors, if he the said C. D. shall fail in the condition hereunder written.

Whereas one A. B. late of — was this day brought before the justice above mentioned, by the above bounden C. D. and was by him charged, for that the said A. B. (on — at — &c. [*describing the offence as in the warrant*]). Now therefore, the condition of the above written recognizance is such, that if he the said C. D. shall and do appear at the next (*general quarter sessions of the peace, or general gaol delivery*) to be holden in and

for the said district, and then and there prefer one bill of indictment for the said felony, against the said A. B. and shall then also give evidence there concerning the same, as well to the grand jurors that shall then enquire of the said felony, as also to them that shall pass upon the trial of the said A. B. that then the said recognizance to be void, or else to stand in full force and virtue.

Taken and acknowledged before —

J. P.

*Recognizance to give Evidence.*

Home District. { Be it remembered, &c. [*the same form as before*]. The condition of the above written recognizance is such, that if the above bounden E. F. shall personally appear at the next (*general quarter sessions of the peace, or general gaol delivery*) to be holden at — in and for the said district, and then and there give such evidence as he knoweth, upon a bill of indictment, to be exhibited by C. D. of — yeoman, to the grand jury, against A. B. late of — labourer, for (*feloniously stealing — the property of the said C. D. [or stating shortly the offence]*) and in case the said bill be found a true bill, then if the said E. F. shall then and there give evidence to the jurors that shall pass upon the trial of the said A. B. upon the said bill of indictment, and not depart thence without leave of the court, then this recognizance to be void, or else to remain in its full force.

If, in the opinion of the justice, the felony is clearly made out against the prisoner, he should upon no account be admitted to bail: but if the justice entertain a reasonable doubt of his guilt, then under the 4 & 5. V. c. 24. s. 2. the prisoner, even in cases of felony, (excepting murder) may be admitted to bail; but in such case, the act expressly requires, that if there be but one magistrate present, he shall be detained until he be taken before *two* justices who are by the said act empowered to admit the prisoner to bail. It would therefore be wrong for any *one* justice, in a case of felony, to admit to bail under any circumstances; but by § 3 of the same act, one justice is competent to bail in cases of misdemeanour: under this act the prisoner is entitled to cross examine the witnesses against him, but the justice or justices are not obliged to hear any evidence on his behalf, unless it shall appear to them to be meet, and conducive to the ends of justice, to hear the same.

If the two justices should determine that the case is a proper one in which to receive bail for the prisoner's appearance, the amount of such bail, will, of course, be left to the discretion of



the justices, who will take care that a sufficient amount is required, from good and sufficient sureties, to insure the appearance of the accused: and if the prisoner be unable to procure such bail, he should then be committed by *two* justices to gaol, until he find such bail, or be otherwise delivered by due course of law. On the other hand, if the case be clearly made out against the prisoner, and the justice or justices entertain no reasonable degree of doubt as to the prisoner's guilt, the prisoner should then be committed, and not admitted to bail. The 4 & 5 V. c. 24. also requires that the justice or justices shall subscribe all such examinations, informations, bailments, and recognizances, and deliver or cause to be delivered the same to the proper officer of the court in which the trial is to be, before or at the opening of the court.

*Warrant of Commitment.*

Home District. } J. P. esquire, and C. D. esquire, two of her  
 } Majesty's justices of the peace for the said  
 district, to the constable of — in the said district, and to the  
 keeper of the common gaol at Toronto, in the said district:  
 These are to command you the said constable in her Majesty's  
 name, forthwith to convey and deliver into the custody of the  
 said keeper of the said common gaol, the body of A. B. charged  
 this day before us, the said justices, on the oath of C. D. of —  
 farmer, and others, for that the said A. B. [on the — day of —  
 in the year of our Lord — at — in the said district, ten pieces  
 of the current gold coin of this province called sovereigns; one  
 woollen cloth coat; and one linen shirt; of the monies, goods,  
 and chattels of the said C. D. feloniously did steal, take, and  
 carry away]; and you the said keeper are hereby required to  
 receive the said A. B. into your custody, in the same common  
 gaol, and him there safely to keep until he shall be thence deliv-  
 ered by due course of law, [*or*, if it be determined to admit  
 him to bail, then say, 'until he shall enter into recognizance,  
 with two sufficient sureties, himself in — pounds, and each of  
 the said sureties in — pounds each, to be taken before us, or  
 any *two* of her Majesty's justices of the peace for the said dis-  
 trict, for his appearance before the justices at the next general  
 quarter sessions of the peace, or general gaol delivery, to be  
 holden in and for the said district, then and there to answer to  
 our said sovereign lady the queen, for and concerning the  
 felony aforesaid, (or until he shall be thence delivered by due  
 course of law.) Herein fail you not.

Given under our hands and seals, the — day of — in the  
 year of our Lord 184—.

## Justices of the Peace.

### *The Recognizance of Bail.*

Home District, } Be it remembered, that on the — day of —  
 to wit. } in the — year of the reign of Queen Vic-  
 toria, A. B. of — yeoman, G. H. of — yeoman, and J. K. of —  
 yeoman, came before us, J. P. and R. L. esquires, two of her  
 Majesty's justices of the peace for the said district, and sever-  
 ally acknowledged themselves to owe to our said lady the  
 queen, that is to say, the said A. B. the sum of — pounds, and  
 the said G. H. and J. K. the sum of — pounds each, to be re-  
 spectively levied of their lands and tenements, goods and  
 chattels, if the said A. B. shall make default in the performance  
 of the condition endorsed hereon (or hereunder written).

The condition of this recognizance is such, that if the within  
 (or above) bounden A. B. shall personally appear (at the next  
 general quarter sessions of the peace, or general gaol delivery)  
 to be holden in and for the said district, then and there to  
 answer to our said sovereign lady the queen, for and concerning  
 the (felonious taking and stealing of — the property of A. M.  
 of — yeoman, [*describing the offence shortly*] with the suspicion  
 whereof the said A. B. stands charged before us the said jus-  
 tices, and to do and receive what shall by the court be then and  
 there enjoined him, and shall not depart the court without  
 leave, then the within (or above) written recognizance shall be  
 void.

Upon the recognizance being taken, if the defendant have  
 appeared voluntarily, or if he be in custody of the constable,  
 the justice discharges him as of course; but if he be in prison,  
 the justices, upon application, issue the following

### *Warrant of Deliverance.*

Home District, } J. P. esquire, and R. L. esquire, two of her  
 to wit. } Majesty's justices of the peace for the said  
 district, to the keeper of her Majesty's gaol at Toronto, in the  
 said district. Forasmuch as A. B. late of — in the said district,  
 labourer, hath before us found sufficient sureties for his appear-  
 ance, before the justices at the next general quarter sessions of  
 the peace (or before her Majesty's justices at the next general  
 gaol delivery,) to be holden in and for the said district, to  
 answer to our sovereign lady the queen, for and concerning the  
 [*describing the offence shortly, as in the recognizance*] for the sus-  
 picion whereof he was taken and committed to your custody, at  
 the said gaol: We therefore hereby command you, on behalf of  
 our sovereign lady the queen, that if the said A. B. do remain

in your custody for the said cause, and for no other, you shall forbear to detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the pain that will thereon ensue. Given under our hands and seals at — in the district aforesaid, the — day of — 184—.

It is in the discretion of a magistrate, when he takes the examination of a prisoner, whether he will allow the presence of an attorney or other legal adviser, either for the prisoner or prosecutor: it cannot in either case be claimed as a matter of *right*, as information might thereby be obtained and conveyed which would defeat the course of justice. In the case, however, of a trial or summary conviction, before a magistrate, there is a difference; in the latter case, it is reasonable, that a party upon his trial should have professional assistance. *Cox v. Coleridge*, 1 *B. & C.* 37. *R. v. Barron*, 3 *B. & A.* 432. *R. v. Js. of Staffordshire*, 1 *Chit. Rep.* 217.

It seems that a magistrate may commit a party for a contempt, who makes use of scandalous and insulting language to him, whilst in the execution of his office; but as such a commitment is by way of punishment, it must be made by warrant, in writing. *Mayhew v. Loche*. 7. *Taunt.* 63. 2 *Marsh.* 377. *R. v. Revel*, 1 *Str.* 420.; and must not be a *general* one “till the party is discharged by due course of law,” but must be for a time certain. *R. v. James*, 5 *B. & A.* 894. The better course for a magistrate to adopt in such cases is, first, to require the offender to find sureties for his good behaviour, and in default of his doing so, then to commit him until the next quarter sessions, unless he sooner find such sureties, and enter also into his own recognizance for his *good behaviour*. *R. v. Langley*, 2 *Ld. R.* 10; 30 *per Holt. C. J.*

See also title “*Contempt*,” p. 176.

A justice of the peace is empowered, in all matters properly brought before him in his judicial character, or by particular statutes, to administer an oath; but it is very questionable how far he is justifiable in taking a voluntary affidavit, in any *extra judicial* matter, as is now too frequent a practice upon every petty occasion; for it is more than possible, that by such idle oaths, a man may frequently in *foro conscientiæ* incur the guilt, and at the same time evade the penalties of perjury. 4 *Bl. Com.* 137. Lord *Cooke*, indeed, says, that it is a high contempt, to administer an oath not warranted by law, and that the offence is punishable by fine and imprisonment. 3 *Inst.* 165.: and in a case, Lord *Kenyon* said, that “he did not know but a magistrate subjected himself to a criminal information, for taking a voluntary extra-judicial affidavit.” *Wm. Prec.* 14. 3 *Burns’s J.* 588.

*Of their Liability, Indemnity and Protection.*

First—As every person ought to be heard in his own defence, before he is convicted, if a justice therefore, in the case of a summary conviction, proceed against a party without previously summoning him to appear, it is such a misdemeanor as will render him liable to a criminal information. 1 *Salk.* 181. If a justice also will not, on complaint to him made, execute the duties of his office as a magistrate, or is guilty of any wilful misconduct, the party grieved may not only move for an information, but may also apply to put him out of the commission. *Cromp.* 7. 2 *Atk.* 2. 1 *T. R.* 692. 7 *T. R.* 374. Where a justice, however, refuses to proceed in any matter which he is authorised or required to do by act of parliament, and his refusal does not arise from any corrupt or improper motive, the proper course for the party complaining, is to move for a *mandamus* to compel him to proceed. *R. v. Todd.* 1 *Str.* 530. Where a criminal information is applied for against a magistrate, the question for the court is not whether the act done be found, on investigation, to be strictly right or not, but whether it proceeded from any unjust, oppressive, or corrupt motive, or from mistake or error only: in the latter case, the court will not grant an information, but leave the party complaining to his remedy by action or indictment, for it must be a case of clear and apparent partiality, or wilful misbehaviour, to induce the court to proceed by information against a magistrate. *R. v. Barron,* 3 *B. & A.* 432. 1 *Burr.* 556. 2 *Burr.* 1162. The party complaining, also, must make a prompt application to the court, otherwise this proceeding will not be entertained: thus, where the facts complained of against a magistrate, took place twelve months before hand, an information was refused. *R. v. Bishop,* 5 *B. & A.* 612. Neither is a justice liable to be punished both ways, that is, criminally and civilly; for before the court will grant an information, they will require the party to relinquish his *civil* action, if any such is commenced. *R. v. Fielding,* 2 *Burr.* 719.; and so in the case of an indictment, the attorney general, on application, will grant a *noli prosequi*, if it appear to him a prosecutor is determined to carry on a *civil* action at the same time. *Ib.*

When a justice is convicted on an information, he must appear in person, to receive judgment. *R. v. Harwood,* 2 *Str.* 1088. 3 *Burr.* 1716. 1786. A justice of the peace, however, is, upon all occasions, strongly protected by the law, in the just execution of his office; for though the judgment be wrong, yet, if his intention is pure, the court of king's bench will never interfere by way of punishment. *R. v. Young,* 1 *Burr.* 556. *R. v.*

*Cox. 2 Burr.* 785. Nor will the court even grant a *mandamus* against him, to command him to do what *may* render him liable to an action. *R. v. Dayrell*, 1 *B. & C.* 485. Where a magistrate, however in committing a party for further examination, commits him for an *unreasonable* length of time, this has been lately determined to be altogether a void commitment, and to render him liable to an action of trespass. *Davis v. Capper*, *K. B. Mich. T.* 1829.

Calling a justice of the peace "a rascal, a villain, and a liar," when spoken of him as a justice, are *actionable*, as well as *indictable*. 2 *Str.* 617. 1168. 2 *Ld. R.* 1396. *R. v. Revel*, 1 *Str.* 420. With respect to actions against justices of the peace, the law affords them ample protection against the claims of a vindictive or litigious party; thus by 24 *G. 2. c.* 44. no writ can be issued against a magistrate, for any thing done by him in the execution of his office, until notice in writing of the intended process shall be delivered to him, or left at his usual place of abode, by the attorney or agent for the party who intends to sue, at least one calendar month before the suing out or serving the same, in which notice, must be clearly expressed, the cause of action, and on the back, the name of the attorney or agent indorsed, with the place of his abode.

See further on this subject, title "*Action.*" p. 5.

\* By 2 *W. c.* 4. entitled, "an act to facilitate summary proceedings before justices of the peace, and to afford to such justices reasonable protection in the discharge of their duty;" it is enacted by § 2. That in *all* cases in which *two* or more justices are required to hear and determine any complaint, *one* justice shall be competent to receive the information and issue the summons, to appear before *two* or more justices, and after the adjudication by any *two* justices, all subsequent proceedings respecting the penalty, fine, imprisonment, costs or other matter or thing may be enforced by *either* of the said justices, or by *any other* justice for the same district, having before him a record of such conviction, certified by the justice or justices who adjudicated. § 3. Convictions appealed from and affirmed, or not appealed from, shall not be set aside for want of form. § 4. and whereas in cases of summary convictions, or the proceedings thereon, it may sometimes happen that justices of the peace may by some irregularity or defect in the form of their proceedings, render themselves liable to actions of trespass, where there was no disposition on their part to oppress the party, and where the guilt of the offender may have been manifest; and it is reasonable to protect justices wherever it shall appear that their

proceedings have been grounded upon good causes, and where they have acted without malice, it is enacted, that in all actions against justices on account of any conviction, or for or by reason of any act, matter or thing, done or commanded to be done by such justice or justices for the levying of any penalty, apprehending of any party, or otherwise carrying such conviction into effect, in case such conviction shall be quashed, the plaintiff in such action, besides the penalty levied, if any, shall not be entitled to more than *one shilling* damages, nor any costs of suit, unless it shall be especially alleged in the declaration, that such acts were done maliciously and without any reasonable or probable cause. § 5. and such plaintiff shall not recover any penalty levied, nor any damages or costs, in case such justice shall prove at the trial, that such plaintiff was guilty of the offence whereof he was convicted, or on account of which he was apprehended, or had suffered, and has undergone, no greater punishment than assigned by law.

\*By the 4 W. 4. c. 17. the following fees and no more are authorised to be taken by justices of the peace, or by their clerks:

For an information and warrant for apprehension for an assault or other misdemeanor .....	£0	3	9
For discharge of the defendant.....	0	1	3
For information and warrant for surety of the peace	0	3	0
For discharge of the defendant.....	0	1	3
For every recognizance.....	0	2	6
For every information, besides that of the complainant	0	1	3
For warrant of commitment .....	0	2	6

And for costs in cases of conviction under penal statutes, when the fees are not expressly prescribed by any statute.

For information and warrant or summons.....	£0	3	9
For every subpoena to a witness .....	0	0	6
For every conviction under a penal statute.....	0	7	6
For warrant to levy a penalty .....	0	2	6
For making up every record of conviction, when the same is required to be returned to the sessions or on certiorari .....	0	10	0
For every certificate of dismissal of any charge under the act providing for the summary punishment of petty trespasses and other offences .....	0	2	6
And in cases before a single justice, where the pen- alty is no higher than £5, for the conviction .....	0	2	6
And for the warrant to levy .....	0	2	6

NOTE.—No fees are to be taken in cases of felony.

*Commitment for insulting a Justice of Peace in the execution of his office.*

To the Constable of — and to the keeper of the common gaol at —.

— } Whereas A. B. being personally present this day at —  
to wit. } before me J. C. esq. one of her Majesty's justices of  
the peace in and for the — district, to answer and make his  
defence to a certain information before me exhibited against  
him [*state the offence*] and being so personally present before me  
hath this day been guilty of divers gross insults and contemp-  
tuous behaviour to me, the said justice, then being in the actual  
execution of my office as such justice of the peace as aforesaid,  
by accusing me of partiality and injustice in the execution of  
my office [*or as the case may be*]. And whereas the said A. B.  
in consequence of such his insolent and contemptuous beha-  
viour, is now here, by me, the said justice, required to find  
sureties for his good behaviour, that is to say, two sufficient  
sureties to become bound with him in a recognizance in the  
sum of — each, conditioned for the personal appearance of the  
said A. B. at the next general quarter sessions of the peace to  
be holden in and for the said district, and that in the mean time  
he should be of good behaviour; but the said A. B. hath re-  
fused to find sureties and to become bound in such recogni-  
zance as aforesaid: these are therefore to command you, the  
constable of —, to convey and deliver the said A. B. into the  
custody of the keeper of the common gaol at — in the said  
district, together with this my warrant; and I hereby com-  
mand you, the said keeper, to receive the said A. B. into your  
custody in the said common gaol, and him there safely to keep  
until he find such sureties and enter into such recognizance, or  
be from thence otherwise delivered in due course of law.  
Given under my hand and seal this — day of — in the year of  
our Lord 18—.

*Notice of Motion for leave to file a Criminal Information against a Justice.*

To C. A. Esquire, one of her Majesty's justices of the peace,  
in and for the — district.

Take notice, that I shall move her Majesty's court of queen's  
bench, at Toronto, on the — day of next term, or so soon after  
as counsel can be heard, for leave to file a criminal information  
against you, in the crown office, for misconduct in your office of  
justice of the peace, in illegally and without any reasonable or  
probable cause whatsoever, causing me to be apprehended, on

the — day of — last, and to be committed to the common gaol at — in the said district, and there to be detained for a long space of time, to wit, for the space of — days, on a supposed charge of —. Dated, &c.

Yours, &c.

A. B.

## KIDNAPPING.

Is the forcible abduction or stealing away of a man, woman or child, from their own country, and sending them into another. *Bl. Com. p. 218. 15 Ed.*; and is punishable at common law with fine, imprisonment and pillory. *Ib.*: and also by statute 11 & 12 W. 3. c. 7. though principally intended against pirates, it is enacted, that if any captain of a merchant vessel, shall (during his being abroad) force any person on shore, or wilfully leave him behind, or refuse to bring home all such men as he carried out, if able and desirous to return, he shall suffer three months imprisonment. Upon this subject the learned commentator on *Blackstone (Christian)* has this note: Where a child is stolen for the sake of its clothes, it is the same species of felony as if the clothes were stolen without the child; but, without referring it to that class of offences, stealing a child from its parents is an act so shocking and horrid, that it would be considered the highest misdemeanor, punishable by fine, imprisonment and pillory, upon the same principle on which it was decided to be a misdemeanor to steal a dead body from a grave. A special provision, however, is now made against this offence, by the 4 & 5 V. c. 27. s. 21. for which see title "*Child Stealing.*"

## KING'S BENCH, OR QUEEN'S BENCH.

THE jurisdiction of this court is very high and transcendent. It keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined there, or prohibit their progress in the court below. It superintends all civil corporations; it commands magistrates and others to do what their duty requires, in every case where there is no specific remedy; it protects the liberty of the subject by speedy and summary interposition, and is empowered to find redress in every matter of inquiry. 2 *Haw. c. 3. § 3.* It takes cognizance both of criminal and civil causes. On the crown side, its jurisdiction extends to all manner of offences, from high treason down to the most trivial misdemeanor, or breach of the peace, and it may award process into any part of the province. Into this court, also, indictments from all inferior



courts may be removed, by writ of certiorari, and tried either at bar, or by writ of *nisi prius*, at the assizes, for the district out of which the indictment is brought.

In most cases of misdemeanor, it is in the discretion of the court of king's bench, to inflict such fine and imprisonment, and even infamous punishment, (not prohibited by statute) on offenders, as the nature of the crime requires; and the court may commit to any prison in the district. 2 *Haw* c. 5. § 5.

The court of king's bench, in this province, was created and established by statute 34 G. 3. c. 2. and the style of the court to the "Queen's Bench," was effected by the \*2 V. c. 1.

### KING'S EVIDENCE.

Is obtained by the admission of an accomplice against his fellows upon an implied confidence, which the judges of gaol delivery have usually countenanced and adopted, that if such accomplice makes a full and complete discovery of that and of all other felonies, to which he is examined by the magistrate, and afterwards gives his evidence without prevarication or fraud, he shall not himself be prosecuted. 4 *Bl. Com.* 331. The discretionary power, however, thus exercised by justices of the peace, is founded in practice only, and cannot control the authority of the court of gaol delivery, and exempt the accomplice, at all events, from being prosecuted; for a motion must be made to a judge for leave to admit an accomplice to be a witness, though the judge, unless he should see some particular reason for the contrary, will prefer the one to whom this encouragement has been held out by the justice of peace. *Ibid.* Such admission to be a witness, does not entitle the accomplice to a pardon of right, but amounts, merely to a promise of a recommendation to mercy, upon condition, that the accomplice makes a full and fair disclosure of all the circumstances of the crime for which the other prisoners are tried, and in which he has been concerned in concert with them: upon failure, on his part, of this condition, he forfeits all claims to protection. *R. v. Rudd.. Cowp.* 331. 1 *Leach*, 115. Thus, where upon a trial before *Guller*, J. at York, (England) the accomplice (who was admitted a witness) denied in his evidence, all that he had before confessed, upon which the prisoner was acquitted—the judge ordered an indictment to be preferred against the accomplice for the same crime; and upon his previous confession, and other circumstances, he was convicted and executed. *Bl.* 331. *Note.* 6. And the claim of an accomplice does not extend beyond those offences in which he has been connected with the

prisoner, and concerning which he has previously undergone an examination. *R. v. Duce. 1 Chetw. Burn. 212.*

Until the trial, the accomplice so to be admitted as king's evidence, will, of course, be kept in custody, as well as the principal.

See also further on this subject, title "*Approvers,*" ante p. 36.

## KING'S STORES.

By 33 El. c. 4. 22 C. 2. c. 5. If any person having the charge or custody of any of the king's armour, ordnance, ammunition, shot, powder, or habiliments of war, or of any victuals provided for victualling the army, shall for lucre or gain embezzle, purloin, or convey away the same, to the value of 20s. or shall feloniously steal or embezzle, any of her Majesty's sails, cordage, or any other of her Majesty's naval stores, to the value of 20s. he shall (on prosecution within a year) be adjudged guilty of felony.

By 9 & 10 W. c. 41. 17 G. 2. c. 40. § 10. 11. No person, other than persons authorised, by contracting with her Majesty's officers, shall make any stores of war or naval stores, with the Queen's mark, that is cordage of three inches and upwards, with a white thread laid the contrary way; or any canvas with a blue streak in the middle; or any other stores with the broad arrow, on pain of forfeiting the same, and £100, with costs, (on conviction at the assizes or sessions) half to the Queen and half to the informer.

By 9 & 10 W. c. 41. Any such person, in whose custody such goods or stores, so marked, (or any timber, thick stuff, or plank, marked with the broad arrow, 9, G. 31. c. 8. § 3.) shall be found, shall forfeit the same, and £200, with costs, in like manner, and be imprisoned till paid, unless he shall upon trial produce a certificate from the principal officers of the navy, expressing the quantity and on what occasion he came by them.

By 9 G. c. 8. § 4. The court may mitigate the penalty, and as they see cause, commit the offender to gaol till payment, or may punish him corporally by public whipping, or hard labour for six months, or a less time.

By 12 G. 3. c. 24. § 1. If any person within this realm, or in any of the islands, countries, forts or places thereunto belonging, shall wilfully and maliciously set on fire, burn or destroy, (or aid therein) any of her Majesty's ships of war, whether on float, or building in any dock-yard, rope-yard, victualling office or buildings, belonging thereto, or any military or naval stores therein deposited, he shall be adjudged guilty of felony.

The provisions of this act are by the \*3 W. 4. c. 4. confirmed, in relation to this province.

## LANDLORD AND TENANT.

### *Distress for Rent in Arrear.*

First—Distress for rent, must be for rent in arrear; therefore it may not be made on the same day on which the rent becomes due; for if the rent is paid in any part of that day whilst a man can see to count money the payment is good. Second—It must not be after tender of payment. 2 *Inst.* 107. Third—Persons having rent in arrear upon any lease determined, may distrain for such arrears after the determination of the lease, in the same manner as if it had not been determined; provided that such distress be made in six calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrear became due. 8 An. c. 14. § 6; 7. Before the statute of the 17 C. 2. c. 7. In case a distress was too little, where sufficient distress was to be had, a man could not distrain again be the demand never so great. *Mo. 7. Com.* 546. But now, by said statute, in all cases where the value of the cattle distrained shall not be found to be of the amount distrained for, the party to whom such arrears were due, his executors or administrators, may distrain again for the residue. § 4. So, in like manner, where the distress is made by virtue of the warrant of a justice of the peace, in nature of an execution: and the distinction appears to be this,—where a person hath an entire duty, he shall not split the entire sum, and distrain for part of it at one time, and for part of it at another time; and so *toties quoties* for several times, for that is great oppression: but if a man seizeth for the *whole* sum that is due to him, and only *mistakes* the value of the goods seized, there is no reason why he should complete his execution, by making a further seizure.—*Burrow, Mansfield*, 589. If any distress and sale shall be made for rent in arrear and due, when none is in truth due, the owner shall recover double value, with full costs. 2 W. sess. 1. c. 5. § 5.

### *What Goods may be Distrained, and what not.*

Distress for rent must be of a thing whereof a valuable property is in some body; and therefore dogs, bucks, does, conies, and the like, that are *feræ naturæ*, cannot be distrained. 1 *Inst.* 47. Although it be of valuable property, as a horse, yet, if when a man or woman is riding on him, or an axe in a man's hand,

cutting of wood, and the like, they are for that time privileged, and cannot be distrained. 1 *Inst.* 47. And it hath been held, that the horses joined to a cart, with a man upon it, cannot be distrained for rent, (although they may for damage feasant) but both cart and horses may, if the man be not upon the cart. 1 *Vent.* 36. Valuable things shall not be distrained for rent for benefit and maintenance of trades, which by consequence are for the commonwealth, and are there by the authority of law; as the horse in a smith's shop; nor a horse in a hostry; nor the materials in a weaver's shop for making cloth; nor cloth or garments in a tailor's shop; nor sacks of corn or meal in a mill; nor any thing distrained for damage feasant; for it is in the custody of the law and the like. 1 *Inst.* 47. Beasts belonging to the plough shall not be distrained, (which is the ancient common law of England, for no man shall be distrained by the utensils or instruments of his trade or profession, as the axe of the carpenter, or the book of a scholar,) while goods or other beasts may be distrained. 1 *Inst.* 47. But this rule holds only in distresses for rent in arrear, and the like; but doth not extend to cases where a distress is given in the nature of an execution, by any particular statute, as for poor rates, and the like. 3 *Salk.* 136. Furnaces, cauldrons, or other things, fixed to the freehold, or the doors or windows of a house, or the like, cannot be distrained. 1 *Inst.* 47. Things for which a replevin will not lie, so as to be known again, as money out of a bag, cannot be distrained. 2 *Bac. Abr.* 109. But money in a bag, sealed, may be distrained, for that the bag sealed may be known again. By the 2 W. Sess. 1. c. 5. Persons having rent, in arrear, on any demise lease or contract, may seize and secure any sheaves or cocks of corn, or corn loose, or in the straw, or hay being in any barn or granary, or upon any hovel, stack, or rick, or otherwise, upon any part of the land charged with rent, and may lock up or detain the same, in the place where found, in the nature of a distress, so as the same be not removed, to the damage of the owner, out of the place where found and seized, but be kept there (as impounded) till replevied or sold. § 3. Also, by the 11 G. 2. c. 19. The landlord may take and seize corn, grass, hops, roots, fruits, pulse or other product growing, as a distress; and the same may cut, gather, make, cure, carry, and lay up, when ripe, in the barns or other proper place, on the premises; and if there shall be no barn or proper place on the premises, then in any other barn or proper place which he shall procure, so near as may be to the premises; the appraisement whereof shall be taken when cut, gathered, cured, and made, and not before. § 8. And notice of the place where the

goods so distrained shall be lodged, shall in one week after the lodging thereof, be given to the tenant or left at the last place of his abode. § 9. And generally, whatever goods and chattels the landlord finds upon the premises, whether they in fact belong to the tenant or a stranger, are distrainable by him for rent, with the exceptions however above specified; for otherwise, a door would be opened to infinite frauds upon the landlord; and the stranger hath his remedy over by action on the case against the tenant, if by the tenant's default the goods are distrained. 3 *Blackstone*, 8. So where a stranger's beasts escape into the land, they may be distrained for rent, though they have not been *levant* and *couchant*, provided they are trespassers; but if the tenant of the land is in default in not repairing his fences, whereby the beasts came into the land, the landlord cannot destrain such beasts, though they have been *levant* and *couchant*, unless he have caused notice to be given to the owner, and the owner suffers them to remain there afterwards. *Lutw.* 364.

A rent may not be distrained for in the night, but in the day time. 1 *Inst.* 142. for before sunrising or after sunset, no man may distrain but for damage feasant. *Mirroure*, c. 2. § 26.

*Distress how to be Demeaned.*

By 11 G. 2. c. 19. any person distraining may impound or otherwise secure the distress of what kind soever it be, in such place or in such part of the premises as shall be most convenient; and may appraise and sell the same as any person before might have done off the premises. § 10.

Cattle distrained may not be worked or used, unless for the owners benefit, as a cow milked or the like. *Cro. Jac.* 148. and if the distress be lost by the act of God, as if the distress dies in the pound, without any default in the distrainer, in such case he may distrain again. 1 *Salk.* 248.

By stat. 2 W. Sess. 1. c. 5. Where any goods shall be distrained for rent, and the tenant or owner shall not, within *five* days after such distress, and notice thereof left at the premises, replevy the same, the person distraining, with the sheriff, under sheriff, or *constable* of the peace, shall cause the goods distrained, to be appraised, by two sworn appraisers, (whom such sheriff or constable shall swear) to appraise the same truly, and after such appraisement, the same shall be sold for the best price that can be got, for satisfaction for the rent and charges of the distress, appraisement and sale; leaving the overplus (if any) with the sheriff or constable, for the owners use.

*Fraudulent removal of Goods, &c.*

By the 11 G. 2. c. 19. § 1. If any tenant for life, years, at will, sufferance, or otherwise, shall fraudulently, or clandestinely, convey off the premises his goods or chattels, to prevent the landlord from distraining, such landlord, or any person by him lawfully empowered, may, in thirty days next after such conveying away, seize the same, wherever they shall be found, and dispose of them in such manner as if they had been distrained on the premises. § 2. But no landlord shall distrain any goods sold bona fide, and for a valuable consideration, before such seizure made, to any person not privy to such fraud. § 3. And if any tenant shall so fraudulently remove and convey away his goods or chattels, or if any person or persons shall wilfully and knowingly aid or assist him in such fraudulent conveying away or carrying off of any part of his goods or chattels, or in concealing the same, any person so offending shall forfeit to the landlord *double the value* of such goods, to be recovered in any court of record. § 4. But if the goods and chattels so fraudulently carried off or concealed shall not exceed the value of £50, the landlord, or his agent, may exhibit a complaint, in writing, before *two* justices of the peace of the same county or division, residing near the place where such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed; who may summon the parties concerned, examine the fact, and all proper witnesses, upon oath, (or if a Quaker, upon affirmation) and in a summary way determine whether such person or persons be guilty of the offence with which he or they are charged; and to inquire in like manner of the value of such goods and chattels, and upon full proof of the offence, by order under their hands and seals, the said justices shall adjudge the offender or offenders to pay *double the value* of the said goods and chattels to such landlord, his bailiff, servant, or agent, at such time as the said justices shall appoint; and if the offender or offenders, having notice of such order, shall refuse or neglect so to do, they shall, by their warrant, levy the same by distress; and for want of such distress, may commit the offender or offenders to the house of correction, there to be kept to hard labour, without bail or mainprize, for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied. § 5. Persons aggrieved by order of such justices, may appeal to the next general or quarter sessions, who may give costs to either party. § 6. And where

the party appealing shall enter into recognizance, with one or two sureties, in double the sum so ordered to be paid, with condition to appear at such sessions, the order of the justices shall not be executed against him in the mean time. §. 7. Where any goods or chattels, fraudulently or clandestinely conveyed or carried away, shall be put, placed, or kept in any house, barn, stable, out-house, yard, close, or place locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall be lawful for the landlord, or his steward, bailiff, receiver, or other person or persons empowered, to take and seize, as a distress for rent, such goods and chattels (first calling to his assistance the constable, headborough, or other peace officer of the district, &c.); and in case of a dwelling-house, (oath being first made before a justice of the peace, of a reasonable ground to suspect that such goods or chattels are therein) in the day time, to break open and enter into such house, barn, stable, out-house, yard, close, or place, and to take and seize such goods and chattels for the said arrears of rent, as he might have done if they had been in any open place.

*Case of Tenant holding over.*

By the 4 G. 2. c. 28. If any tenant for life, or years, or other person who shall come into possession by, from, or under him, shall wilfully hold over any lands after the determination of such term, and after demand made, and notice in writing given for delivering the possession thereof, he shall, for the time he shall so hold over, pay double the yearly value, to be recovered by action of *debt* in any court of record. § 1.

By 11 G. 2. c. 19. § 18. If any tenant shall give notice of his intention to quit the premises at a time mentioned in such notice, and shall not accordingly deliver up the possession at the time in such notice contained, he, his executors or administrators, shall from thenceforward pay *double rent*, to be recovered in like manner as the single rent.

\*By 4 W. 4. c. 1. It shall be lawful for any landlord, whose tenant shall, after the expiration of any tenancy (by parole or writing) wrongfully refuse, upon demand made in writing, to go out of possession, to apply to the court of king's bench in term, or to a judge in vacation, upon affidavit, who shall order a writ to issue for summoning a jury of twelve men, before the commissioner named to determine the matter; and if in favor of the landlord, a writ of possession shall be issued.

*Deserting the Premises.*

§ 16. If any tenant at rack-rent, or where the rent reserved shall be full *three-fourths* of the yearly value of the demised premises, who shall be in arrear for *one year's rent*, shall desert the premises and leave the same uncultivated or unoccupied, so as no sufficient distress can be had, two justices, (having no interest in the premises) may at the request of the landlord go upon and view the same, and affix on the most notorious part of the premises, notice in writing what day (at the distance of *fourteen* days at the least) they will return to take a second view, and if on such *second view*, the tenant shall not appear and pay the rent, or there shall not be sufficient distress on the premises, then the justices may put the landlord into possession, and the lease as to such demise shall from thence be void. § 17. But the tenant may appeal to the next justice or justices of assize, who may award costs to either party.

*Rent how far recoverable by Executors.*

By the 32 H. 8. c. 37. It is enacted that the executors and administrators of any person to whom any such rent shall be due and not paid at the time of his death, may distrain upon the premises, so long as they continue in the possession of such tenant, or of any other person claiming under him.

*Costs.*

\*By the 1 V. c. 16. s. 1. No person whatsoever making any distress either for rent or for any penalty imposed by the laws of this province, when the sum demanded shall not exceed the sum of £20, for and in respect of such rent or penalty, nor any person whatsoever employed in any manner in making such distress, or doing any act whatsoever in the course of such distress, or for carrying the same into effect, shall have, take or receive, out of the produce of the goods or chattels distrained upon and sold, or from the tenant or other person distrained, or from the landlord, or from any other person whatsoever, any other or more costs and charges for and in respect of such distress, or any matter or thing done therein, than such as are fixed and set forth in the schedule annexed; and no person shall make any charge for any thing mentioned in the schedule not really done. § 2. Any person offending herein may be summoned by any one justice upon the complaint of the party aggrieved; and if it shall appear to such justice that the person or persons complained of shall have levied, taken or received, or had other and greater costs and charges than mentioned in the schedule, or made any charge for any thing mentioned in



the schedule not really done, such justice shall order and adjudge *treble the amount* of the monies so unlawfully taken to be paid, by the person or persons so having acted, to the complainant, together with full costs; and in case of non-payment such justice shall issue his warrant to levy the same by distress and sale of the goods and chattels of the offender, and in case of insufficient distress such justice shall by warrant under his hand commit the party to the common gaol, there to remain until such order or judgment be satisfied. § 3. Such justice may summon and examine witnesses on oath touching such complaint, or the defence against it; and in case of non-attendance, without lawful excuse, or refusal to be examined, such person shall forfeit a sum not exceeding 40s., to be enforced by distress or commitment in like manner as aforesaid, except as regards the form of the order, as hereinafter provided. § 4. Any party preferring an unfounded complaint shall be adjudged to pay costs not exceeding 20s. to the defendant, to be enforced in manner aforesaid: *Provided always*, that no order or judgment be made against the landlord, unless such landlord shall have personally levied such distress; and *provided further*, that no person aggrieved by any such distress, or any proceedings had in the course thereof, or by any costs or charges levied in respect of the same, shall be barred from any legal remedy, excepting so far as any complaint to be preferred by this act shall have been determined, and such order and judgment may be given in evidence under the plea of the *general issue*. § 5. Such orders and judgments on such complaints shall be made in the form in the schedule annexed, and may be proved before any court by proof of the signature of the justice, and such orders as regards witnesses, shall be made in such form as to such justice shall seem fit and convenient. § 6. Every broker, constable, bailiff, or other person who shall make and levy any distress, shall give a copy of his charges and of all the costs and charges of any distress whatsoever signed by him to the person or persons on whose goods and chattels any distress shall be levied, although the rent or penalty demanded shall exceed £20.

## SCHEDULE.

*Form of the Order and Judgment of the Justice before whom complaint is preferred when the Order and Judgment is for the complaint.*

In the matter of complaint of A. B. against C. D. for the breach of the provisions of an act passed in the — year of the reign of her Majesty Queen Victoria, entitled, “an act

[insert the title of this act,] I, E. F. a justice of the peace for the —, do order and adjudge, that the said C. D. shall pay to A. B. the sum of —, as a compensation and satisfaction for unlawful charges and costs levied and taken from the said A. B. under a distress for [as the case may be,] and the further sum of — for costs in this complaint.

(Signed) E. F.

*Form of the Order and Judgment of the Justice when he dismisses the complaint as unfounded, with or without costs, as the case may be.*

In the matter of complaint of A. B. against C. D. for the breach of the provisions of an act passed in the — year of the reign of her Majesty Queen Victoria, entitled, “an act [insert the title of this act,] I, E. F. a justice of the peace in and for the —, do order and adjudge, that the complaint of the said A. B. is unfounded; [if costs are given] and I do further order and adjudge, that the said A. B. shall pay unto the said C. D. the sum of —.

(Signed) E. F.

*Schedule of Costs and Charges on Distresses for small Rents and Penalties.*

Levying distresses under ten pounds: five shillings.

Man keeping possession, per diem: three shillings and nine-pence.

Appraisal, whether by one appraiser or more: four-pence in the pound on the value of the goods.

If any printed advertisement: not to exceed in all five shillings.

Catalogues, sale and commission, and delivery of goods: one shilling in the pound on the net produce of the sale.

By the 4 & 5 V. c. 25. § 37. the stealing of any chattel or fixture by the tenant is made felony, for which see title “*Larceny*.”

*Distress by Warrant of Justices of the Peace.*

See *ante* title “*Distress*,” p. 199.

*Notice to quit.*

SIR,

I hereby (as agent for Mr. Nokes, your landlord, and on his behalf), give you notice to quit, and deliver up possession of the [house, lands and premises, with the appurtenances] situate at — in the — district, which you hold of [him] as tenant

thereof, on the — day of — next, or at the expiration of the current year of your tenancy, which shall expire next after the end of one half year, from the date of this notice. Dated the — day of — 183—.

JAMES NOKES.

To MR. JOSEPH STILES.

*Warrant to Distrain.*

To Mr. A. B., my bailiff, greeting: Distrain the goods and chattels of Joseph Stiles, [in the house he now dwells in, or “upon the farm he now occupies,” &c., as the case may be,] situate at — in the — district, for 22*l.* 10*s.* 6*d.*, being the amount of [one year’s] rent due to me for the same, on the --- day of --- last; and for your so doing, this shall be your sufficient warrant and authority. Dated this — day of — 183—.

JOHN NOKES.

*Inventory of Goods distrained.*

An inventory of the several goods and chattels distrained by me whose name is here-under written, the — day of --- in — the year — in the houses, out-houses, and lands, of A. T. in — by the authority, and on the behalf of A. L. of — for — pounds arrears of rent due to him the said A. L.

*In the Dwelling-House.*

One Table,  
Six Chairs, &c.

*In the Cow-House.*

Six Cows,  
Two Calves, &c.

*Notice of Distress.*

Mr. A. T.

Take notice, that by the authority, and on the behalf of your landlord, A. L. I have this — day of — in the year of our lord — distrained the several goods and chattels specified in the schedule hereunto annexed, in your houses, out-houses and grounds, at — for — pounds, arrears of rent due to him the said A. L.; and if you shall not pay the said rent so due and in arrear as aforesaid, or replevy the said goods and chattels, I shall, after the expiration of five days from the date hereof,

cause the said goods and chattels to be appraised and sold, according to the statute in that case made and provided.

Given under my hand, the day and year first above written.  
A. D.

Witness, that a copy hereof was this day delivered to the said A. T. (or left at the dwelling-house of the said A. T.)  
A. W.

*Appraisers' Oath.*

You, and each of you, shall well and truly appraise the goods and chattels mentioned in this inventory, according to the best of your understanding. So help you God.

*Form of the Appraisement.*

The appraisement may be in the form of the inventory, specifying the particulars, and their respective valuations; and then add at the end,

Appraised by us, this — day of — in the year —.

A. P. }  
B. P. } Sworn Appraisers.

*Complaint to be exhibited in writing, before two Justices, in the case of Goods clandestinely removed, on the 11 G. 2. c. 19. (BURN.)*

Home District, } Be it remembered, that this — day of —  
to wit. } A. J. of — complaineth that A. O. hath fraudulently and clandestinely removed and conveyed away, certain goods and chattels of — not exceeding the value of £50, from — at — to prevent — from distraining the said goods and chattels, for arrears of rent due to the said — for the said —; and that B. O. of — yeoman, and C. O. of — yeoman, wilfully and knowingly aided and assisted the said A. O. in so fraudulently and clandestinely removing and conveying away the said goods and chattels, and in concealing the same.

A. J.

Exhibited at — the — day  
of — before us — justices  
of the peace residing near —  
not being interested in —.

*Summons thereupon. (BURN.)*

Home District. To the Constable of —.

Whereas complaint in writing hath been this — day of — exhibited at — before us — justices of the peace for the said

district, residing near — not being interested in — by A. J. of — gentleman, setting forth that A. O. of — yeoman, hath fraudulently and clandestinely removed and conveyed away certain goods and chattels of — not exceeding the value of £50 from — to prevent — from distraining the said goods and chattels, for arrears of rent due to the said — for the said — and that B. O. of — yeoman, and C. O. of — yeoman, wilfully and knowingly aided and assisted the said — in so fraudulently and clandestinely removing and conveying away the said goods and chattels, and in concealing the same: These are therefore to command you, and each and every of you, forthwith, to summon the said A. O., B. O. and C. O. to appear before us at — on the — day of — at the hour of — in the forenoon of the same day, to answer the matter of the said complaint. Given under our hands and seals, at — the — day of —.

*The Conviction,*

Should be in the form required by the \*2 W. 4. c. 4. See *ante* title “*Conviction,*” p. 178.

*Warrant of Distress, in case the offenders, having notice, refuse or neglect to pay, pursuant to the preceding order.* 11 G. 2. c. 19. 27 G. 2. c. 20. (BURN.)

Home District. To the constable of —.

Whereas A. O. of — yeoman, B. O. of — yeoman, and C. O. of — yeoman, were, by an order dated the — day of — under the hands and seals of us — and — justices of the peace of — residing near — not being interested in — ordered to pay the sum of — to — or to his bailiff, servant or agent, on or before the — day of — being double the value of certain goods and chattels of the said — which the said A. O. was before us duly convicted of having fraudulently and clandestinely removed and conveyed away from — to prevent the said — from distraining the said goods and chattels, for arrears of rent due to the said — for the said — and which the said B. O. and C. O. were also duly convicted before us of having wilfully and knowingly aided and assisted the said A. O. in so fraudulently and clandestinely removing and conveying away, and in concealing the same: And whereas the said A. O., B. O. and C. O., having notice of our said order, have refused or neglected to pay, and have not paid the said sum of — pursuant thereunto; and the same hath been fully proved before us: These are therefore to command you, and each and every of you, to levy the said sum of — by distress and sale of the goods and chattels of the said A. O.,

B. O. and C. O.; and we do hereby order and direct the goods and chattels so to be distrained, to be sold and disposed of within — days, unless the said sum of — for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid: And you are also hereby commanded to certify to us what you shall do by virtue of this our warrant. Given under our hands and seals, at — the — day of —.

*The Constable's Return thereupon, of the want of Distress.* (BURN.)

Home District, } I, A. C. constable of —, do hereby certify to  
to wit. } — and — justices of the peace for the said  
district, that I have made diligent search for, but do not know  
of, nor can find any goods and chattels of — and — and — or  
any of them, by distress and sale whereof I may levy the sum  
of —.

Given under my hand, this — day of —.

*Commitment thereupon to the House of Correction.* (BURN.)

Home District, } To the Constable of — and also to the keeper  
to wit. } of the house of correction at —

Whereas — and — and — were, by an order dated the — day of — under the hands and seals of us — justices of the peace of the said district, residing near — not being interested in — ordered to pay the sum of — to — or to his bailiff, servant or agent, on or before the — day of — being double the value of certain goods and chattels of the said — which the said — was before us duly convicted, of having fraudulently and clandestinely removed and conveyed away from to prevent the said — from distraining the said goods and chattels, for arrears of rent due to the said — for the said — and which the said — and were also duly convicted before us, of having wilfully and knowingly aided and assisted the said — in so fraudulently and clandestinely removing and conveying away, and concealing the same; and whereas the said — and — and — having notice of our said order, have refused or neglected to pay, and have not yet paid the said sum of — pursuant thereunto, and the same hath been duly proved before us; and whereas it appears to us, by the return of — constable of — dated the — day of — that he hath made diligent search for, but doth not know of, nor can find any goods and chattels of the said — and — and — or any of them, by distress and sale whereof the said sum of — may be levied pursuant to our warrant duly made and issued for levying

the said sum of — by distress and sale of the goods and chattels of the said — and —: These are therefore to command you, the said constable of — &c. and each and every of you, to apprehend the said — and —, and convey them to the said house of correction at — aforesaid, and deliver them to the said keeper of the said house of correction; and these are also to command you, the said keeper of the said house of correction, to receive them the said — and — and — into the said house of correction, and there keep them to hard labour, without bail or mainprize, for the space of six months, unless the said sum of —, so ordered to be paid as aforesaid, shall be sooner satisfied. Given under our hands and seals, at — the — day of —.

*Form of a complaint upon oath to be made before a Justice in case of a dwelling house where goods and chattels are fraudulently and clandestinely removed, and conveyed away and secured, so as to prevent them from being taken and seized as a distress for rent. (BURN.)*

Home District, } Be it remembered that this — day of — A. J.  
 to wit. } of —, yeoman, complaineth and maketh oath that certain goods and chattels of A. O. of — yeoman, have been fraudulently and clandestinely conveyed and carried away from — by the said A. O. his servant or servants, agent or agents, or other person or persons, aiding or assisting them to prevent — from distraining the said goods and chattels for arrears of rent due to the said — for the said —, and that the said goods and chattels are put, placed or kept, in the house, barn, stable, out-house, yard, close, or other place, of — at — locked up, fastened, or otherwise secured, so as to prevent the said goods and chattels from being taken and seized as a distress for arrears of rent; and that the said A. J. hath a reasonable ground to suspect, and doth suspect, that the said goods and chattels are in the dwelling-house of the said — at —.

Taken and sworn at — the — day of — before —. A. J.

*Warrant upon the preceding Complaint and Oath. (BURN.)*

Home District. } To the Constable —.  
 } Whereas A. J. of — yeoman, hath this — day of — exhibited his complaint, and made oath before — justices of the peace for the said district, that certain goods and chattels of A. O. of — yeoman, have been fraudulently and clandestinely conveyed and carried away from — by the said A. O. his servant or servants, agent or agents, or other person or per-

sons, aiding or assisting therein, to prevent — from distraining the said goods and chattels for arrears of rent due to the said — for the said —; and that the said goods and chattels are put, placed, or kept, in the house, barn, stable, out-house, yard, close, or other place of — at — locked up, fastened, or otherwise secured, so as to prevent the said goods and chattels from being taken and seized as a distress for arrears of rent; and that the said A. J. hath a reasonable ground to suspect, and doth suspect, that the said goods and chattels are in the dwelling house of — at —. These are therefore to command you, and each and every of you, to aid and assist —, his steward, bailiff, receiver, or other persons empowered to take and seize, as a distress for rent the said goods and chattels, in the day time to break open and enter into the said dwelling-house, barn, stable, out-house, yard, close, or other place of the said — at — and to take and seize the said goods and chattels, for the said arrears of rent, according to law. Given under my hand and seal, at — the — day of —.

*Recognizance on appeal against the preceding Conviction, for fraudulently assisting to convey Goods off the premises, to avoid a Distress, under the 11 G. 2. c. 19. § 5 & 6.*

Home District, } Be it remembered, that on the — day of —  
to wit. } in the --- year of the reign of our sovereign  
Lady Victoria, by the grace of God, of the united kingdom of  
Great Britain and Ireland, Queen, defender of the faith, A. B.  
of --- in the said district, yeoman; C. D. of --- in the same district,  
yeoman; and E. F. of -- in the same district, yeoman,  
personally came before us, J. C. and S. P. esquires, two of her  
Majesty's justices of the peace in and for the said district, and  
acknowledged themselves to owe to our said lady the queen,  
the sum of --- [*the amount must be double the sum ordered to be paid  
by the conviction. 11 G. 2. c. 19.*] to be levied of their goods and  
chattels, lands and tenements, to the use of our said lady the  
queen, her heirs and successors, if the said A. B. shall make default  
in the condition following:

The condition of this recognizance is such, that whereas the said A. B. is this day duly convicted before us, the above named justices of the peace, of having wilfully and knowingly aided and assisted B. O. of --- within the township of --- in the district aforesaid, in the night of --- the — day of — last, in fraudulently and clandestinely removing and conveying away part of the goods and chattels of the said B. O. from [*describe the*



*place, house, tenement, &c. and where situate, &c.*] not exceeding the value of *fifty pounds*, and in concealing the same so as to prevent E. F. of — in the said district, esquire, from taking and seizing the same for arrears of rent due to the said E. F. from the said B. O. for a certain tenement, [*or as the case may be*] situate at — aforesaid; for which offence the said A. B. has been adjudged to forfeit to the said E. F. the sum of — being double the value of the said goods by the said A. B. so carried off and concealed: Now if the said A. B. shall personally appear at the next general quarter sessions of the peace to be held at — in and for the said district, and commence and prosecute an appeal against the said conviction, and pay such costs as shall be then and there awarded by the said court, then this recognizance to be void.

*Information and Complaint, under the 11 Geo. 2. c. 19. of Tenant having deserted the Premises.*

Home District, } The information and complaint of A. B. of —  
to wit. } in the said district, taken this — day of —  
18—, who saith, that he the said A. B. did, in and by a certain indenture bearing date the — day of — in the year of our Lord 18—, (or by written or verbal agreement, *as the case may be*) demise unto C. D. of — in the district aforesaid, — a certain messuage, [*or other premises, as the case may be*] situate and being at — in the district aforesaid, at a rack-rent (*or three-fourths of the yearly value*)—that is to say, at the yearly rent of — payable quarterly, (*if so*) on the — day of — &c.; and the said A. B. further complaineth, that on the — day of — now last past, there was in arrear and due unto him the said A. B. from the said C. D. the tenant of the said demised premises, one whole year's rent thereof, and that he the said C. D. hath deserted the said demised premises, and left the same uncultivated and unoccupied, so as no sufficient distress can be had to countervail the said arrears of rent, and that the said arrears of rent have been duly demanded, according to law; wherefore the said A. B. doth request J. C. and S. R., esquires, two of her Majesty's justices of the peace for the said district, to go and view the said demised premises, and affix on the most notorious part thereof, a notice, in writing, what day they will return and take a second view thereof, and that a remedy may be given to the said A. B. according to the form of the statute in that case made and provided. Taken before us, the said justices, the — day of — 18—.

*Notice to be affixed on the premises being deserted.* (BURN.)

Mr. Abraham Sutcliffe,

Take notice that upon the complaint of E. A., of — yeoman, made unto us — esquires, two of her Majesty's justices of the peace for the home district, that you the said A. S., have deserted the messuage and tenement, situate, lying and being at — unto you demised, at rack rent, by him the said E. A., and that there is in arrear and due from you the said A. S. unto him the said E. A., one whole year's rent for the said demised premises, and that you have left the said premises uncultivated and unoccupied, so that no sufficient distress can be had to countervail the said arrears of rent; we, the said justices (having no interest nor either of us having any interest in the said demised premises,) on the said complaint as aforesaid, and at the request of him the said E. A. have this day come upon and viewed the said demised premises, and do find the said complaint to be true; and on the — day of this present month of — we will return to take a second view thereof, and if upon such second view, you or some person on your behalf, shall not appear and pay the said rent in arrear, or there shall not be sufficient distress on the said premises, then we, the said justices, will put him the said E. A. into the possession of the said demised premises, according to the form of the statute in such case made and provided. In witness whereof we have hereunto set our hands and seals, and have caused this notice to be affixed on the out door of the dwelling-house, the same being the most notorious part of the said premises, this — day of — in the year of our Lord —.

*Record of putting the Landlord into Possession.*

Home District, } Be it remembered, that on the — day of —  
to wit. } in the — year of the reign of our sovereign  
lady Victoria, at — in the said district, E. A. of — complaineth  
unto us — esquires, two of her Majesty's justices of our said  
lady the queen, assigned to keep the peace within the said district, and also to hear and determine divers felonies, trespasses and other misdemeanors, in the said district committed. That he the said E. A. did demise, at rack rent, unto A. S. of — yeoman, the messuage and tenement, lying and being at — aforesaid; and that on the said — day of — in the year aforesaid, there was in arrear and due unto him the said E. A. from him the said A. S. tenant of the said demised premises, one whole year's rent thereof, and that he the said A. S. had deserted the

said premises, and left the same uncultivated and unoccupied, so as no sufficient distress could be had to countervail the said arrears of rent, whereupon the said E. A. then and there, to wit, on the said — day of — in the year aforesaid, at — aforesaid, in the district aforesaid, requested of us, so as aforesaid being justices, that a due remedy should be provided to him in this behalf, according to the form of the statute in that case made, which complaint and request by us the aforesaid justices being heard, we the said — justices aforesaid, (having no interest in the said demised premises) on the said — day of — in the year aforesaid, at — aforesaid, did personally go and view the said demised premises, and then and there upon our own proper view, did find the said complaint to be true, and did then and there affix on the most notorious part of the said premises, to wit, upon the out door of the dwelling-house aforesaid, a notice in writing, under our hands and seals, that we, the said justices, on the — day of the same — month of — in the year aforesaid, would return to take a second view thereof, upon which said — day of — in the year aforesaid, we, the said justices, do now return and take a second view of the premises aforesaid, and there upon our own proper view, do find, that he the said A. S. doth not appear, nor any person on his behalf doth appear, and pay the said rent in arrear, and that there is no sufficient distress upon the premises aforesaid, nor upon any part thereof, to countervail the said arrears of rent; therefore we, the said justices, at — aforesaid, on the — day of — in the year aforesaid, do put the said E. A. into the possession of the said demised premises, according to the form of the statute aforesaid. In witness whereof, we the said justices, unto this record do set our seals, at — aforesaid, in the district aforesaid, on the said — day of — in the year of our Lord 18—.

## LARCENY.

LARCENY is the felonious and fraudulent taking and carrying away by any person, of the mere personal goods and chattels of another. 1 *Haw.* 89.

Until lately there were two degrees of larceny—1. *Grand larceny*—which signified the stealing of any goods or chattels above the value of *twenty shillings*, sterling. *Ordinance of Quebec*, 29 G. 3. c. 3.; and 2. *Petit larceny*—which included those cases where the property stolen was under the value of 20s. *Ib.* But now, by the 4 & 5 V. c. 25, s. 2., the distinction between grand larceny and petit larceny is abolished; and every larceny, whatever may be the value of the property stolen, shall be deemed

to be of the same nature, and shall be subject to the same incidents in all respects as grand larceny was before the commencement of this act. § 2. And every person convicted of simple larceny, or of any felony punishable by this act like simple larceny, shall (except in cases hereinafter otherwise provided for,) be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. See also *post* title "*Punishment*," and 6 V. c. 5.

### *Of Larceny in general.*

*Trespass*.—As every larceny includes a trespass, a party who is not guilty of a trespass in taking the goods, cannot be guilty of felony, at *common law*, in carrying them away. 1 *Harc. c.* 33. § 1. Thus, where goods are delivered by the owner to another, upon a trust, or on account of the owner, the possessor cannot be guilty of felony in converting them to his own use, unless by some distinct act of taking; as, by severing part of the goods from the rest, with intent to convert them to his own use; he thereby determines the privity of the bailment, and the special property thereby conferred upon him. *Ibid.* 1 *Hale*, 504. But a bare charge of goods, such as that which a servant has over the goods of his master; or a mere liberty to make use of a thing for a particular purpose (such as a traveller at an inn has with respect to the furniture) does not prevent the party from being guilty of felony, if he take or convert the goods to his own use; in both cases the law presumes the property to be still in the possession of its owner. 1 *Hale*, 506.

*Felonious taking*.—There must be a felonious taking, as well as a *severance*, to complete the felony; but the least removal of the thing from its place is sufficient, as where a guest at an inn took off the sheets from his bed, with an intent to steal them, but was apprehended in the hall, the larceny was held to be complete; and so, where a man had taken a horse in a field, and while leading him away was apprehended: and again, where a man took plate out of a chest, with intent to steal it, and after laying it on the floor, was detected before he could move it further, the felony in either case was held to be complete. 3 *Inst.* 109. *R. v. Simpson*, *Kel.* 31.

*Severance*.—But where some goods in a shop were tied to a string, fastened by one end to the counter, and a thief took up the goods and carried them towards the door, as far as the string would permit, and was then stopped, this was held to be *no felony*, as there was no actual *severance* of the property.

Where the felony is once completed, the offence is not purged by returning the goods, as where a robber, on finding little in a purse, restores it to the owner. 3 *Inst.* 69.

*Felonious Intent.*—There must also be a felonious intent; and the usual and most direct evidence of this, is where the party takes the goods *clandestinely*, or shortly after the taking, such goods are found *concealed* in his possession, or where he *falsely denies* either the taking or the possession; but where a man takes a plough from a field, and after ploughing his own land, returns it to the place whence he took it, telling the owner that he had used the same, it would be wrong to impute a felonious intent.

*Recent possession.*—With respect to the recent possession of the property, it may be laid down as a general rule, that where the stolen goods are found in the possession of another man, *shortly after* the theft or robbery, it is incumbent on him to prove how he came by them, otherwise, the presumption is that he obtained them feloniously; and this presumption is strengthened by proving, that the prisoner was seen near the spot from which the goods were taken, about the time of the felony; his conduct and demeanor at the time the goods are found in his possession. 2 *East. P. C.* 656.

*Identity.*—The identity of the goods should in general be satisfactorily proved, by marks or otherwise; but where a man is seen coming out of a barn, upon whom corn is found, of the same kind with that missed from the barn, this is strong presumptive evidence of guilt.—*Ib.* 657.

*Claim of right.*—Where the taking of the goods is under a claim of right, this negatives the *animus furandi*, or felonious intent. *Ib.* 659.

*Finding.*—If a party, finding property, know the owner of it, and instead of restoring it, converts it to his own use, this will be felony. *Per Lawrence, J.* 2. *Russ.* 102. So where a gentleman left a trunk in a hackney coach which had been taken from his *own door*, and the coachman kept it, and embezzled the contents, this was held to be felony, as he must have known where he took up the gentleman, and ought to have returned the trunk. *R. v. Lamb*, 2 *East, P. C.* 664. So, where the purchaser of a bureau found 700 guineas deposited in a secret drawer therein, which he embezzled, this was said by Lord *Eldon*, (after consulting some of the judges) to be felony; and that if a pocket-book containing bank notes, were left in the pocket of a coat sent to be mended, and the tailor took the notes, such a taking was clearly felonious. *Cartwright v. Green*, 8 *Ves.* 405. But, in all cases of finding, where it appears that

the party *bona fide* endeavoured to discover the owner, a felonious intent cannot be presumed.

*Fraud.*—Where fraud is used to obtain the possession of property, the party therein is as much guilty of felony, as if he had taken it from the owner: thus, where A. having a design to steal B.'s horse, which was impounded on a distress, enters a plaint of replevin, and (thereby getting it delivered to him) runs away with it, this is felony. 1. *Hale*, 504. 507. But, when the owner of property is induced, by fraudulent pretences, to give the prisoner *credit* for the goods, this is held not to be larceny, but a *cheat*, for which the law has provided an especial remedy; (see *ante* title '*Cheat*,') and so, where a party obtained the delivery of a horse, which was exhibited in a fair for sale, by contracting to buy it, and to pay for it immediately, but when it was delivered to him he rode off and never returned, it was held that this was no felony, but a complete sale and delivery upon *credit*, in which the owner had parted with the property as well as the possession. *R. v. Harvey*, 1 *Leach*, 467. But where a man came to Smithfield market to sell a horse, and a jockey coming there to buy a horse, the owner delivered his horse to the jockey to try his paces, in the market-place, and the jockey rode off with the horse, this was adjudged to be felony, inasmuch as the possession only, and not the *property* of the owner in the horse, had been parted with. *Kel* 82.

*Pretence of exchange.*—Where a prisoner offered to accommodate the prosecutor with gold for bank notes, upon which the prosecutor put down a number of notes, which the prisoner took up, and went away, promising to return immediately with the gold, but never came back; this was held to be larceny, if the jury believed that the prisoner intended to run away with the notes, and not to return with the gold. *R. v. Oliver*, *Cit.* 4. *Taunt.* 247.

*Delivery by a servant.*—Where a prisoner ordered a pair of candlesticks from a silversmith, to be sent to his lodgings whether they were sent, with a bill, by a servant, who was directed to *bring back the money*, but who was sent back by the prisoner under some pretence, when the latter ran away with the candlesticks; this was held to be felony, *no credit* having been given by the owner, and the servant having no legal power to part with the goods till paid for them.

*Bailment.*—Where the possession of the goods is acquired, under a bailment of them from the owner, for a special purpose, and the bailee tortiously converts them to his own use, before the bailment is determined, the offence will not amount to larceny; as, where a tailor has cloth delivered to him, to make

clothes of; or, where plate is delivered to a goldsmith, to work or to weigh; or a friend is entrusted with property to keep for the owner's use. 2 *East. P. C.* 693. When the possession of goods, however, is *fraudulently* obtained in the first instance, or where the contract of bailment is subsequently determined, or broken by some wrongful act of the bailee, then a wrongful conversion of the goods will amount to larceny.

*And first,—Respecting Possession obtained fraudulently by the Bailee.*

The prisoner hired a horse of the prosecutor, on pretence of taking a ride into the country, and returning in the evening, but in truth with intent to steal it, and evidencing such felonious intent by immediately selling the horse after possession of it was delivered to him; this was held to be felony. *R. v. Pear.* 2 *Leach*, 212. 2 *East. P. C.* 689. So, where a prisoner hired a chaise, at 5s. a day, saying he should want it for three weeks or a month, as he was going a tour round the north, and no tidings were obtained of him till twelve months afterwards, but no account was ever given of the chaise up to that moment, the presumption being against the prisoner, the jury found him guilty. *R. v. Semple.* 1 *Leach*, 420. 2 *East. P. C.* 691. In all these cases, the question of the *real intention* of the prisoner at the time of the hiring, is for the consideration of the jury; and if they find that the original taking of the thing hired was with a felonious intent to steal it, the offence will be *larceny*, although the contract of hiring may not be for any precise and definite time.

But where a prisoner hired a horse for a particular purpose, without any *felonious intention* at the time, and he wrongfully sold the horse after that purpose was executed, it was held that this tortious conversion did *not* constitute a *new taking* in law, so as to make him guilty of larceny. *R. v. Banks. Russ. and Ry.* 441. All such cases of *hiring*, therefore, will now depend upon the question, whether the hiring was *bona fide*, or whether it was only a pretence to get possession of the horse, in order that the party might have a better opportunity of stealing it. So, where the prosecutor's house being on fire, the prisoner in his presence and under his observation, removed some of his goods (as the jury expressly found) without any evil intention, though the very next morning, upon the prosecutor applying to her, she denied that she had any of the things belonging to him. The prosecutor, however, upon obtaining a search warrant, not only found his property in her house, but most of the articles were artfully concealed in various ways; yet, upon this special finding of the jury, that the intention to steal the goods came upon

the prisoner *after* she had taken them, the judges were of opinion, that the transaction was not a *felony*, but merely a *breach of trust*. *R. v. Leigh*, 2 *East*, P. C. 694. 1 *Leach*, 411. Note (a.)

*Larceny by servants*.—Where servants are entrusted with goods by their masters, no legal *possession* is transferred to the servant, who has but a bare charge; the possession of the servant being the possession of the master; the servant may therefore commit larceny by a fraudulent conversion of the goods to his own use. *R. v. Bass*. 1 *Leach*, 251. 523. 524.

*Banker's Clerks*.—So, if a banker's clerk be sent to the money drawer, for a special purpose; or if he be sent to bring money generally out of the drawer, and at the same time he take the opportunity of purloining money for his own use, this is felony. *R. v. Murray*, 1 *Haw. c.* 33. § 7. 2 *East*. P. C. 683. 1 *Leach*, 344.

*By Carriers*.—But although in cases of bailment, no larceny can, in general, be committed of the goods before the regular completion of the contract of bailment; yet there are some tortious acts which determine the privity of it, and amount, in law, to a new taking from the possession of the owner. This principle furnishes the well known distinction, in the *carrier's* case, which, as has been justly observed, stands more upon positive law than upon sound reasoning; 2 *East*. P. C. 659: for it certainly does seem a strange departure from good sense and reason, to hold, that if a man delivers goods to a carrier, to carry to a certain place, and he steal the *whole* of them, it is no felony; but that if he open a bale or trunk, and only steal *some* of the goods, it then becomes a felony. 13 *Edw.* 4. 9. 6. A position, involving so great a contradiction, and one which has excited the surprise of so many learned persons, may well be startling to a common understanding: it is thus noticed by Lord Chief Justice *Kelyng*, who was certainly no mean authority in criminal law. 'I marvel at the case put, 13 *Edw.* 4. 9. b. that if a carrier have a tun of wine delivered to him, to carry to such a place, and he never carry it, but sell it, all this is no felony; but if he draw part of it out, this is felony. I do not see why the disposal of the whole should not be felony also.' *Kel.* 83.

The arguments in support of the above distinction, appear to be these: There can be no larceny without a trespass; the carrier (having lawful possession of the goods entrusted him to carry, cannot therefore commit a trespass in taking them, until that lawful possession is determined; this lawful possession can only be determined either by the natural termination of the contract of bailment, or by some tortious act of the carrier, which rescinds it; and the only tortious acts to determine this



possession are, the breaking open a package, or a severance of part of the commodity from the rest.]

*By Millers.*—So, if a miller steal *part* of the meal produced by the corn delivered to him to grind, this being taken out from the rest, is felony. 2 *East. P. C.* 698.

*Fraudulent wagers.*—A man is frequently swindled out of his money by fraudulent bets and wagers, upon a preconcerted plan to defraud him, when it becomes a material question, (as in all other cases of delivery) whether the *property*, or only the *possession* of the money, or other thing, is parted with; in the first case, the offence is held not to amount to larceny, as there is no felonious taking, but in the last it is otherwise, if the possession be gained *animo furandi*. Thus, where several sharpers inveigled the prosecutor to bet with them, at *hiding under the hat*, and after suffering him to win at first, contrived to strip him of a large sum of money on the event of a bet, it was held, that though this was found by the jury, to be a preconcerted scheme to get his money, yet it was no felonious taking, as he parted with his property under the idea that it had been fairly won. *R. v. Nicholson*, 2 *Leach*, 610. 2 *East. P. C.* 699.

*Card playing.*—But where the prisoners decoyed the prosecutor into a public-house, and there introduced the game of cutting cards, and the prosecutor having pulled out some money, but not playing on his own account, one of the sharpers prevailed upon him to cut the cards for him, and then, under pretence that the prosecutor had cut the cards for himself, and had lost, another of them swept his money off the table and went away with it; this was decided to be one of those cases that should be left to a jury to determine, *quo animo*, the money was obtained, and which would be *felony* if they found that the money was obtained upon a preconcerted plan to steal it. *R. v. Homer*, 1 *Leach*, 270. *Cald.* 295.

*Ring dropping.*—So, where the delivery is by way of pledge or security, the *property* remains in the owner, and *larceny* may be committed of it, if the delivery were obtained fraudulently, and with intent to steal; as, where the prisoner and some accomplices being in company with the prosecutor, one of them stooped down and pretended to find a valuable ring, upon which they promised the prosecutor that he should have his share of the value of it, and by that means prevailed on him to deposit his money and watch and to take the ring; until his share of the value should be paid, when the accomplices made off with the money and watch, and the ring proved to be of little or no value; this was held to be *larceny*, as the possession was obtained by fraud, and the property not altered. *R. v. Patch*, 2 *East.*

*P. C.* 678. 1 *Leach*, 238. In like manner where several act in concert, all will be guilty of the felony. Thus, where three sharpers pretended that the prosecutor could not bet £100, when being provoked by the challenge, he produced that sum, in notes, which one of them took to count, and then handed to another, who, with the third, pretended to gamble for them; when the first mentioned thief beckoned the prosecutor out of the room, and the other two decamped with the money, and all three afterwards shared it; this was held larceny in all three. *R. v. Stanley, Russ. & Ry.* 305.

*Of what things Larceny may be committed.*

Every description of personal property, (with the exceptions hereinafter noticed) may be the subject of larceny; such as money; goods; wearing apparel; cattle, and the like. If the personal goods savour any thing of the realty (or freehold) it cannot be larceny; therefore it is no larceny, but a bare trespass, to steal corn or grass growing, or apples on a tree; but it is larceny to take them being severed from the freehold, as wood cut; grass in cocks; stones dug out of the quarry; and this, whether they are severed by the owner or even by the thief himself, if he sever them at one time, and then come again at another, and take them. 1 *Haw.* 93. 1 *H. H.* 510.

Also, the goods ought to have some worth in themselves, and not to derive their whole value from the relation they bear to some other thing, which cannot be stolen, as paper or parchment, on which are written assurances concerning lands; or obligations; or covenants; or other securities for a debt or chose in action. 1 *Haw.* 93. The goods ought also not to be things of a base nature, as dogs, cats, bears, foxes, monkeys, ferrets, and the like; which, howsoever they may be valued by the owner, shall never be so highly regarded by law, that for their sakes a man shall die. 1 *Haw.* 93.

*Property unknown.*—There may be felony in taking goods, the owner whereof is unknown; in which case, the king shall have the goods, and the offender shall be indicted for taking the goods of a person unknown. 1 *Haw.* 94.

*Stealing securities.*—By the 4 & 5 V. c. 25. § 5. If any person shall steal any tally, order or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of this province or of the United Kingdom of Great Britain and Ireland, or of any British colony, or of any foreign state or colony, or in any fund of any body corporate, company or society, or to any deposit in any savings bank, or shall steal any debenture,

deed, bond, bill, note, warrant, order or other security whatsoever for money or for payment of monies, whether of this province or of Great Britain,\* or of any British colony, or of any foreign state or colony, or shall steal any warrant or order for the delivery or transfer of any goods or valuable thing, every such offender shall be deemed guilty of felony in the same degree and punishable in the same manner as if he had stolen any chattel of like value.

*Stealing from vessels.*—§21. If any person shall steal any goods or merchandize in any vessel, barge or boat in any port of entry, or discharge upon any navigable river or canal, or in any creek belonging to or communicating therewith, or shall steal any goods or merchandize from any dock, wharf or quay adjacent thereto, being convicted thereof, he shall be liable to any of the punishments which the court may award, as in said act is mentioned.

*Stealing records.*—§25. If any person shall steal, or shall for any fraudulent purpose take from its place of deposit, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure or destroy any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order or warrant of attorney, or any original document whatsoever of or belonging to any court of justice, or relating to any matter, civil or criminal, begun, depending or terminated in any such court, or any bill, answer, interrogatory, deposition, affidavit, order or decree, or any original document whatsoever of or belonging to any court, or relating to any cause or matter begun, depending or terminated in any such court, or any notarial minute, or the original of any other authentic act, every such offender shall be guilty of a misdemeanour, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour, in the Provincial Penitentiary, for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison or place of confinement, for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or both, as the court shall award; and it shall not be necessary to allege in the indictment that the article stolen was the property of any person, or of any value.

*Stealing wills.*—§26. If any person shall either, during the life of the testator or testatrix, or after his or her death, steal, or for any fraudulent purpose destroy or conceal, any will, codicil, or other testamentary instrument, whether relating to real or

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\* Ireland omitted.

personal estate, or both, such offender shall be guilty of a misdemeanour, and being convicted thereof, shall be liable to any of the punishments which the court may award, as before mentioned; and it shall not be necessary to allege in the indictment that the same was the property of any person, or of any value.

*Stealing title deeds.*—§ 27. If any person shall steal any original paper or parchment, written or printed, or partly written and partly printed, being evidence of the title to any real estate, such offender shall be deemed guilty of a misdemeanour, and being convicted thereof, shall be liable to any of the punishments which the court may award, as before mentioned; and in the indictment it shall be sufficient to allege the thing stolen to be evidence of title, or of part of the title, of the person or persons having a present interest, legal or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof; and it shall not be necessary to allege value.

§ 28. Nothing in this act contained shall prevent, lessen or impeach any remedy at law or in equity which any party aggrieved might or would have if this act had not been passed; but the conviction of such offender shall not be evidence in any action at law or suit in equity against him, nor shall such offender be convicted by any disclosure made by him on oath upon compulsory process in any action or suit at law or in equity, or before commissioners of bankrupt.

*Stealing glass, lead, &c.*—§ 36. If any person shall steal or rip out or break with intent to steal any glass or wood work belonging to any building whatsoever, or any lead, iron, copper, brass or other metal, or any utensil or fixture, whether made of metals or other materials, respectively fixed in or to any building whatsoever, or any thing made of metal fixed in any land, being private property, or for a fence to any dwelling-house, garden or area, or in any square, street or other place dedicated to public use or ornament, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and in case of any such thing fixed in any square, street, or other like place, it shall not be necessary to allege the same to be the property of any person.

*Stealing by clerks or servants.*—§ 38. If any clerk or servant shall steal any chattel, money or valuable security belonging to or in the possession or power of his master, every such offender, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary, for any term not exceeding fourteen years, nor less

than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

*Stealing by tenants.*—By the 4 & 5 V. c. 25. § 37. If any person shall steal any chattel or fixture let to be used by him or her in or with any house, or with any house or lodging, whether the contract shall have been entered into by him or her, or by her husband, or by any person on behalf of him or her or her husband, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and in every case of stealing any chattel, the indictment may be preferred in the common form as for larceny; and in every such case of stealing any fixture, the indictment may be preferred, as if the offender were not a tenant or lodger, and the property laid in the name of the owner or person letting to hire.

*Restitution.*—§ 49. If any person guilty of such felony or misdemeanour, as aforesaid, in stealing, taking, obtaining or converting, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for any offence by or on the behalf of the owner of the property, or his heir, curator, executor or administrator, and convicted thereof, in such case the property shall be *restored* to the owner or his representative, and the court before whom any such person shall be so convicted, shall have power to award, from time to time, writs of restitution for the same property, or to order the restitution thereof in a summary manner: *Provided always*, that if it shall appear before any award or order made that any valuable security shall have been *bona fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bona fide* taken or received by transfer or delivery by some person or body corporate, for a just and valuable consideration, without any notice, or without any reasonable cause to suspect that the same had by any felony or misdemeanour been stolen, taken, obtained or converted, as aforesaid, in such case the court shall not award or order the restitution of such security.

*Apprehension without warrant.*—§ 55. Any person found committing any offence punishable either upon indictment or upon summary conviction, by virtue of this act, may be immediately apprehended, without a warrant by any peace officer, or by the owner of the property on or with respect to which the offence shall be committed, or by the servant of any person authorised by such owner, and forthwith taken before some neighbouring justice, to be dealt with according to law. See also title "*Search warrant.*"

*Trial.*—§ 68. If any person having stolen or otherwise taken away any chattel, money, valuable security or other property whatsoever, the stealing or unlawfully taking whereof is made punishable by indictment by any of the provisions of this act, in any part of her Majesty's dominions, shall afterwards have the same property in his possession in any part of this province, he may be dealt with, indicted, tried and punished for such offence under this act, in that part of the province where he shall so have such property, in the same manner as if he had actually stolen it or unlawfully taken it in that part; and if any person in any part of this province, shall receive or have any chattel, money, valuable security or other property whatsoever which shall have been stolen or otherwise unlawfully taken in any other part of her Majesty's dominions, such person knowing the said property to have been stolen or otherwise unlawfully taken, he may be dealt with, indicted, tried and punished for such offence in that part of this province where he shall so receive or have the stolen property, in the same manner as if it had been originally stolen or unlawfully taken in that part of this province as aforesaid.

*Of Larceny from the person.*

If the goods are taken from a man's person, the offence then receives a further degree of guilt; and if it be attended with putting him in *fear*, it is called robbery.

See title "*Robbery*," post.

*Form of the Warrant for Larceny.*

Home District, } To the constable of — and all other peace  
to wit. } officers whom it may concern.

Forasmuch as A. B. of — labourer, hath this day been charged before me, J. P. one of her Majesty's justices of the peace for the said home district, on the oath of a credible witness, for that he, the said A. B., on the — day of — in the year of our Lord 184—, at — in the said district, did feloniously steal, take, and carry away, twenty pieces of gold coin, called sovereigns, the property of one B. C.: These are therefore to command you, in her Majesty's name, forthwith to apprehend and bring before me, or some other of her Majesty's justices of the peace in and for the said district, the body of the said A. B. to answer unto the said charge, and to be further dealt with according to law. Herein fail you not.

Given under my hand and seal, the — day of — in the year of our Lord 184—. J. P. L. S.

For the forms of Commitment, see title "Commitment," "Justices of the Peace," &c.

LAW.

\*By the 32 G. 3. c. 1. § 3. It is enacted, that in all matters of controversy relative to property and civil rights, resort shall be had to the laws of England, as the rule for the decision of the same. § 6. But that nothing in this act shall introduce any of the laws of England respecting the maintenance of the poor, or respecting bankrupts.

LIBEL.

A LIBEL has been usually defined to be any scandal *written* or *printed*, or otherwise expressed by symbols. *Lamb.* 64; and taken in its largest sense, signifies any *writing*, or *printed* paper, picture, or the like, of an immoral or illegal tendency; and in a more limited sense, a malicious defamation of any person, either living or dead, made public either by printing, writing, signs or pictures, in order to provoke to wrath, or expose him to public hatred, contempt and ridicule. *4 Bl. Com.* 105. But words *spoken*, however malicious and untrue, and actionable at law, will not amount to libel.

1. *Of Libels which affect the Public in general.*

All publications blaspheming the Almighty, or turning the Christian religion into ridicule; all publications tending to vitiate and corrupt the minds and morals of the people; any attempt made to degrade and vilify the constitution, and tending to circulate discontent among the members of the community, and stir up insurrection; any writing or printed matter, tending to vilify or disgrace the king; to lessen him in the esteem of his subjects; weaken the government; or raise jealousies between him and his people, are, more or less, of a libellous tendency. So, any publication reflecting in an improper manner upon either house of parliament, is a libel at common law. To hold up the king's government to contempt and hatred, is also punishable as a libel. *R. v. Tutchin, Holt's Rep.* 424. And any publication tending to degrade and defame the sovereign or ruler of a foreign state, upon terms of amity with this country, is a libel at common law.

2. *Of Libels on Private Individuals.*

Not only charges of a flagrant nature are libellous, but also those which place an individual in an ignominious light, and

bring him into hatred, contempt or ridicule, on the ground that all such libels have a direct tendency to a breach of the peace. 4 *Bl. Com.* 150. General imputations, also, on a body of men, though no individuals are pointed out, are indictable. 2 *Barnard*, 138, 166. And a malicious defamation of a *deceased* person, if published with intent to vilify his memory and injure his posterity, is indictable as a libel. *R. v. Topham*. 4 *T. R.* 126. Any scandal likewise expressed by indirect means, is a libel, as well as that which is expressed in direct terms: thus, to fix up a gallows against a person's door, conveys a meaning as obvious to common sense, as that which is expressed by writing or printing. 1 *Haw. c. 73.* § 2. 3. So a defamatory writing expressed by the *Initials* only of a persons name, is as complete a libel, as if the whole name had been expressed. 1 *Haw. c. 73.* § 5.

### 3. Of the Justification of a Libel.

In a criminal prosecution the truth of a libel cannot be pleaded in justification, although it may be in a civil action; the ground of the criminal proceeding being the tendency of a libel to a breach of the peace. 1 *Haw. c. 73.* § 6. Neither is it any justification that the libel was copied from some other publication; nor although the name of the author be given up; for the printer and publisher of a libel are equally chargeable with the offence, as the original author. *Deacon's Cr. Law.* To the above general rules, there are some exceptions in law, in which a written or printed document is held to be no libel. 1. Where it is a statement made in the regular and proper course of a parliamentary, judicial or other lawful proceeding. 2. Where the writing is a confidential communication. 3. Where it is a fair criticism, or any literary production. 4. So, no matters exhibited in a regular course of justice, will amount to a libel; neither is a presentment of a *grand jury* to be considered as a libel. 1 *Haw. c. 73.* § 8.

### 4. Of the Publication.

No one is punishable for a libel unless he actually publish it to the world. Reading a libel in the presence of another, without any previous knowledge of its libellous qualities, does not amount to publication; but if a man, *knowingly*, lends or shows it to another, or repeats it in the presence of others, this is a publication. 1 *Haw. c. 73.*: and not only he who publishes the libel himself, but also he who procures another to publish it is guilty of the publication. 1 *Haw. c. 73.* § 10. So, the sale of a book in a bookseller's shop by his shopman, is *prima facie* evidence of publication by the master. 1 *Barnard*, 306. And



the proprietor of a newspaper is, in like manner, *criminally* answerable for the acts of his servants in the publication of a libel, although the publication may have been without the knowledge of the proprietor.. *R. v. Walker*, 3 *Esp.* 21.

5. *Of the Punishment.*

The punishment for libel is fine or imprisonment, or both.— In matters of libel, justices of the peace have an original jurisdiction: and a party charged with the publication of a libel, may be held to bail by a justice of the peace, to appear at the sessions or assizes. *Butt. v. Conant*, 1. *Brod. & B.* 548.

*Information against a Party for a Libel.*

Home District, } The information and complaint of A. B. of —  
to wit. } in the home district, — taken on oath, this  
— day of — 18 —, before J. P. esq. one of her Majesty's justices of the peace for the said district. The said informant saith, that in a certain printed book (or newspaper) printed and published at — in the said district, by one G. M. and called [*here set out the name or title of the book or paper*] the following libellous allegation is contained, of and concerning this informant, [*here insert the libellous passage literatim*] and the said informant saith, that he hath been informed, and verily believes the said book, &c., containing the aforesaid libellous matter, was printed and published by the said G. M. with a view to injure, vilify and defame, this informant, and to bring him into public hatred, ridicule and contempt; wherefore he prayeth a warrant against the said G. M. and that he may be further dealt with according to law.

Sworn before me.

*Recognizance to appear at the Sessions.*

*To be taken in the usual form.*] The condition of this recognizance is such, that if the said G. M. shall and do personally appear at the next general quarter sessions of the peace, [or assizes and general gaol delivery] to be holden in and for the said district, and then and there answer to a bill of indictment, to be preferred against him the said G. M. for a libel on one A. B. of — in the said district —, and not depart the court without leave, then this recognizance to be void.

Acknowledged before, &c.

*Indictment for a Libel.* (ARCHBOLD.)

Home District, } The jurors of our lady the queen upon their  
to wit. } oath present, that J. S. late of the township  
of — in the county of — in the home district, schoolmaster,

contriving, and unlawfully, wickedly, and maliciously, intending to hurt, injure, vilify and prejudice, one J. N. and to deprive him of his good name, fame, credit and reputation, and to bring him into great contempt, scandal, infamy and disgrace, on the — day of — in the — year of the reign of our sovereign lady Victoria, with force and arms, at the township aforesaid, in the district and province aforesaid, unlawfully, wickedly and maliciously, did write and publish, and cause and procure to be written and published, a certain false, scandalous, and malicious libel, in the form of a letter, directed to the said J. N. [*or if the publication were in any other manner, omit the words 'in the form,' &c.*] containing divers false, scandalous, and malicious matters and things, of and concerning the said J. N. and of and concerning &c. [*here insert such of the subjects of the libel as it may be necessary to refer to by the inuendos, in setting out the libel*] according to the tenor and effect following, that is to say, [*here set out the libel, together with such inuendos as may be necessary to render it intelligible*] to the great damage, scandal and disgrace, of the said J. N. to the evil example of all others in the like case offending, and against the peace of our lady the queen, her crown and dignity.

## LINE FENCES AND WATER COURSES.

\* By the 4 W. 4 c. 12. it is enacted as follows: § 1. It shall and may be lawful for the inhabitant householders, at their annual town meeting for the election of township officers, to choose from among the inhabitants of the said township, in the same manner as by law other township officers are chosen, not less than three or more than eighteen fit and discreet persons to serve the office of fence viewers, who shall perform the duties hereinafter prescribed to fence viewers, and who shall take the same oath of office, and in the same manner which persons chosen to other township offices are or may be by law required to do, and be liable to the same penalties for neglect or refusal to take said oath of office, to which persons chosen to other township offices and neglecting or refusing to take the oath of office are or may be by law liable.

§ 2. That each of the parties occupying adjoining tracts of land shall keep up, make and repair, a fair and just proportion of the division or line fence between their several tracts of land; and that where there shall be a dispute between the parties, as to the commencement or extent of the part of the said division or line fence which either party may claim or refuse to make or repair, it shall be lawful for either party to submit the same to

the determination and award of three fence viewers, which fence viewers are hereby authorised and required, upon being duly notified by either party in such case, to attend at the time and place stated in such notice, and after being satisfied that the other party or parties in the case have been duly notified to appear at the time and place, to proceed to examine the premises; and such fence viewers, or any two of them, shall determine every dispute in the matter aforesaid, between the said parties; and the award and determination of such fence viewers or any two of them, on the matters aforesaid, shall be binding on the parties as far as concerns the making or repairing of such division or line fence, and from thenceforth the occupier or occupiers of the said tracts or parcels of land shall respectively make and repair, and keep in repair, that part of such division or line fence which shall have been assigned in such award or determination to the occupier or occupiers of such tract or parcel of land, which determination and award shall be made in writing, and signed by such fence viewers, or a majority of them, and filed in the town clerk's office, and a copy of the same made out and given to each of the parties: *Provided always, nevertheless,* that when by reason of any material change of circumstances in respect to the improvement and occupation of adjacent lots or parcels of land, an award which has been made under this act shall cease in the opinion of either of the parties to be equitable between them, it shall be in the power of either to obtain another award of fence viewers, by the same mode of proceeding as is hereinbefore directed; and that if the fence viewers who shall have been called upon to make such subsequent award, shall find no reason for making an alteration, the whole cost of such reference shall be borne by the party at whose instance it shall have been made.

§ 3. That if any person or persons who may be in the occupation of any tract or parcel of land shall neglect or refuse to make or repair (as the case may be) an equal or just proportion of the division or line fence between such tract or parcel of land and the adjoining tract or parcel of land, for a period of thirty days after being required, by a demand in writing, by the person or persons occupying such adjoining tract or parcel of land, or after the award of the fence viewers as aforesaid, to make or repair such equal or just proportion of the division or line fence; or if the party making such demand shall for such period neglect or refuse to make or repair an equal or just proportion of the division or line fence, it shall be lawful for either of the said parties, after first completing his own proportion of such fence, to make or repair in a substantial manner, and of good sound

materials, the whole or any part of the said division or line fence which ought to have been by the other party made or repaired, and to recover in the manner hereinafter mentioned, of the person or persons who may have neglected or refused in manner aforesaid, to make or repair such proportion of the division or line fence, the just and full value of such proportion, not exceeding the sum of two shillings and six pence per rod, to be ascertained and determined in the manner hereinafter provided: *Provided always*, that any fence coming within the meaning and intent of the resolution, resolving what shall be considered to be a lawful fence for that year, entered into by the inhabitant householders at their annual township meeting, shall be considered by all fence viewers to be a lawful fence; and when the householders as aforesaid shall neglect or refuse to decide by such resolution what shall be a lawful fence, then and in that case it shall be lawful for such fence viewers, when called upon, to exercise their own judgment, and decide what they consider to be a lawful fence.

§ 4. That it shall and may be lawful for any commissioner\* of the court of requests for the division in which such fence may be situated, and he is hereby required, upon the demand of any person or persons, to issue a summons under his hand and seal, directed to three fence viewers (by their proper names) of the township in which such fence is situated, requiring them to attend on the day and at the hour therein mentioned, and at a place therein mentioned, to view such fence, and to appraise the same; also, to issue his summons to the person or persons so having neglected or refused to make or repair such proportion of the division or line fence, who shall thenceforth be considered as the defendant or defendants in the case, requiring him or them to appear at the same time and place, to shew cause why the person or persons claiming payment as aforesaid, who shall thenceforth be considered as the plaintiff or plaintiffs in the case, should not recover the same.

§ 5. That such fence viewers, upon being personally served at least eight days previously with such summons, at the time and place therein mentioned, and after having duly examined the fence and received evidence, which, if required by either party, or if the said fence viewers shall think it expedient, shall be given under oath, they, or any two of them, shall determine whether the said plaintiff is entitled to recover any, and if any, what sum, from the said defendant or defendants under the provisions of this act; and in all cases where the commencement

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\* There being now no such officer, this clause has become nugatory.

or extent of the part of such division or line fence which each party should make or repair, has not been determined by the award of fence viewers as aforesaid, the said fence viewers, or any two of them, shall determine the same, which determination shall be final and binding on the occupiers of the said tracts or parcels of land, and have the same effect as if it had been made by three fence viewers in the manner aforesaid, and shall report their determination upon the matters aforesaid in writing, under their hands, to the said commissioner of the court of requests by whom the said summons shall have been issued, and shall also, in all cases where they determine that the said plaintiff is entitled to recover any thing from the said defendant or defendants, state what distance of fence they have determined that the said defendant or defendants should have made or repaired.

§ 6. That the said fence viewers, if they shall be required by either party, before they shall have made a report as aforesaid of their determination to the said commissioner of the court of request, shall give to such party requiring the same, a true copy of their said determination.

§ 7. That if either of the said parties shall desire to procure the attendance of any person to give evidence before such fence viewers, it shall and may be lawful for the commissioner of the court of requests, by whom any summons shall have been issued as aforesaid to such fence viewers, to issue, upon the application of either of the said parties, a summons to any person, to attend as a witness before the said fence viewers, at the time and place mentioned in the said summons to the fence viewers, and that the said fence viewers, when met as aforesaid, at the time and place mentioned in the summons, shall be and are hereby authorised, whenever it shall be desired by either party, or they shall think it proper, to administer an oath to any person, except the parties or persons interested, whose evidence they shall wish to take, which oath shall be in the following form: "You do solemnly swear, that you will true answer make to such questions as may be asked of you by either of the fence viewers now here assembled, touching the matters which they are now to examine and determine. So help you God." And if any person giving evidence as aforesaid under oath, shall be guilty of false swearing, he shall be deemed guilty of perjury, and upon conviction thereof, shall be liable to the same punishment and disabilities that persons convicted of perjury in other cases are now by law liable.

8. That the commissioner of the court of requests, to whom the determination of the fence viewers shall be returned as

aforesaid, shall cause the same to be copied into a book kept for that purpose by the court of requests for the division to which he belongs, and thereupon the said court of requests shall issue an execution against the goods and chattels of the said defendant or defendants, in the same manner as if the party to whom it is due had received a judgment in the court of requests for the sum which the said fence viewers shall have determined as aforesaid he was entitled to receive, and also (if the said sum amounts to more than two pounds, but not otherwise) for the costs he may have necessarily incurred in the recovery thereof, and when such sum shall not amount as aforesaid to more than two pounds, then the other party shall be entitled to an execution from the said court of requests against the goods and chattels of the plaintiff or plaintiffs, for the costs he may necessarily have been put to in opposing the plaintiff's claim, the amount of the said costs in either case to be determined by the said court of requests: *Provided*, that when the said sum shall amount to more than two shillings and six pence per rod for the length of the fence which such fence viewers shall have determined such defendant or defendants ought to have made or repaired, the said plaintiff shall be entitled to recover and have execution for only the sum of two shillings and six pence per rod, as aforesaid, and his costs: *Provided also*, that no such writ of execution shall be issued until after the expiration of forty days from the time of such determination.

§ 9. That all and every of such fence viewers shall be entitled to receive the sum of five shillings for every day they are necessarily engaged in discharging the duties imposed upon them by this act, and so in proportion for any time less than one day, and no more; and that every witness who shall be summoned, and attend as aforesaid before such fence viewers, shall be entitled to receive two shillings and sixpence per day; and every commissioner of the court of requests, and bailiff, shall be entitled to receive, for any service performed under this act, the same fees which they are respectively entitled to receive for similar services in the court of requests.

§ 10. That any fence viewers, legally holding the office of fence viewers, who shall neglect or refuse to perform the duties of his office shall forfeit, for every neglect, to any person who may sue for the same, a sum not exceeding forty shillings, with costs of suit, to be recovered upon information and complaint before any one of the justices of the peace for the district in which such fence viewer was chosen, and to be levied by distress under a warrant issued by such justice.

§ 11. That when any party shall cease to improve his land,

or shall lay his enclosure before under improvement in common, he shall not have a right to take away any part of the partition fence that to him belongs, adjoining to the next enclosure that is improved or occupied: *Provided*, the party occupying the lands adjoining the same will allow and pay therefor so much as the fence viewers, or a majority of them, shall, in writing, determine to be the reasonable value thereof; and whenever any lands which have laid unimproved and in common shall be afterwards enclosed or improved, the occupier or occupiers thereof shall pay for their fair or just proportion of the division or line fence standing upon the divisional line between the same land and the land of the enclosure of any other occupant of proprietor; the value thereof to be ascertained and set forth in writing by three fence viewers, in case the parties shall not agree among themselves, and the amount of said value to be recovered according to the proportions so estimated, in the same manner and form as hereinbefore provided respecting the making and keeping in repair division or line fences.

§ 12. That in no case shall any person be authorised to take away any part of the partition fence that to him belongs, adjoining to the next enclosure that is improved or occupied, unless the party occupying the land adjoining the same refuse to pay for the same as aforesaid, nor without first giving due notice to such party for at least twelve months previously to the removal of the same.

§ 13. That when a water fence, or fence running into the water, is necessary to be made, the same shall be done in equal parts, unless by the parties otherwise agreed; and in case either party shall refuse or neglect to make or maintain the share to such party belonging, similar proceedings shall or may be had as in other cases of the like kind respecting fences out of the water, in this act mentioned.

§ 14. That when lands belonging to or occupied by different persons, and subject to be fenced and bounded upon, or divided from each other by any brook, pond or creek, which of itself is not a sufficient fence, in such case, if the parties disagree, the same may be submitted to three fence viewers, as heretofore provided in cases of disagreement; and if, in the opinion of such fence viewers, such brook, river, pond or creek, is not of itself a sufficient fence, and that it is impracticable to fence, at the true boundary, line, they shall judge and determine how or on which side thereof the fence shall be set up and maintained, or whether partly on one side and partly on the other side, as to them shall appear just, reduce such their determination to writing, as heretofore provided in other cases; and if either of the par-

ties shall refuse or neglect to make up and maintain the part of the fence to such party belonging, according to the fence viewers' determination in writing as aforesaid, the same may be done and performed as is in this act before provided in other cases, and the delinquent party shall be subject to the same costs and charges, and to be recovered in like manner.

§ 15. That in all cases where any party shall desire to have a lane between his land and any adjoining tract or parcel of land, and shall make the fence on one side of the said lane on his own land, he shall not be obliged to make or repair, or pay for making or repairing any part of the fence on the other side of such lane, any thing herein contained to the contrary in any wise notwithstanding.

§ 16. *And whereas* it is expedient to provide for the opening of water courses in this province: *Be it therefore, &c.* that in all cases when it shall be the joint interest of parties, resident within this province, to open a ditch or water course for the purpose of letting off surplus water from swamps or sunken miry lands, in order to enable the owners or occupiers of such swampy or sunken land to cultivate or improve the same, it shall be the duty of such several parties to open a just and fair share of such ditch or water course, in proportion to the several interests that such parties may have in the same; and in cases where a dispute shall or may arise as to the part, width, depth or extent, that any party so interested ought to open or make, the same may be referred to three fence viewers, in the same way and manner as is heretofore by this act provided in cases of disputes between parties relative to line or division fences; and it shall be the duty of such fence viewers, to whom such matters shall be referred, to divide or apportion such ditch or water course among the several parties, as in the opinion of such fence viewers, shall be a just and equitable proportion, having due regard to the interest each of the parties shall have in the opening of such ditch or water course; and the fence viewers shall at the same time decide what length of time shall be allowed to each of the parties to open his or her share of such ditch, and the determination or award of such fence viewers shall be made in the same form, and signed and executed in the same manner, and have the same effect in regard to ditches or water courses, as is provided by this act in regard to line or division fences.

17. § That when it shall appear to such fence viewers that the owner or occupier of any tract or parcel of land is not sufficiently interested in the opening of such ditch to make him a party, and at the same time that it is necessary that such ditch should be continued across his land by the other party or



parties, at their own expense, they may award the same in manner and form aforesaid, and upon such award, such party or parties may lawfully, and without molestation, open such ditch or water course across such land as aforesaid, at their own expense.

§ 18. That if any party shall neglect or refuse to open, or make and keep open his share or proportion allotted or awarded to him by such fence viewers as aforesaid, within the time allowed by such fence viewers as aforesaid, either of the other parties may, after first completing his own share or proportion allotted to him in manner aforesaid, open the share or proportion allotted to such party neglecting or refusing to open the same, and such party so opening such other parties' share shall be entitled to recover the value thereof from the party so neglecting or refusing to open his share or proportion, in the same way and manner and form as is in this act provided, relative to line and division fences.

§ 19. That all fines levied under the provisions of this act shall be, by the justices of the peace by whom the same may be imposed and collected, paid over to the overseer or overseers of highways, in the division wherein such fine or fines shall have been levied; and such overseer or overseers are hereby authorised and required to expend the same in the same manner as other monies coming to their hands to be expended on the highways, and shall render an account thereof within three months after expenditure thereof, to the justices in quarter sessions assembled.

§ 20. That this act shall be and continue in force for four years, and from thence to the end of the next ensuing session of parliament, and no longer.

The above act was made perpetual by the \*2 V. c. 18.; but in consequence of the repeal of the acts constituting courts of requests its measures have become materially impaired, and the act requires to be amended before such of its provisions as relate to the commissioners can be enforced.

## LORD'S DAY.

By 1 El. c. 2. § 14. 24. All persons, not having reasonable excuse, shall resort to their parish church or chapel [or to some congregation of religious worship allowed by the toleration act,] on every Sunday; on pain of 1s. to the poor for every offence. 3 J. c. 4. § 27. 28. to be levied by the churchwardens by distress, by warrant of one justice.

By the 1 J. c. 22. No shoemaker shall shew for sale any

shoes, boots, &c. on the Sunday, on pain of 3s. 4d. a pair, and the value thereof; to be recovered at the assizes or sessions, one third to the king, one third to the informer, and one third to the town. § 28. 46. 50. And by the 3 C. 1. No carrier with any horse or horses; nor waggonman with any waggon or waggons; nor carman with any cart or carts; nor wainman with any wain or wains; nor *drovers* with any cattle, shall, by themselves or any other, travel on the Lord's day, on pain of 20s. Or if any butcher by himself, or any other for him, with his privity and consent, shall kill or sell any victual on the Lord's day, he shall forfeit 6s. 8d.; conviction to be within six months, before one justice; on view, confession, or oath of two witnesses; to be levied by the constable or churchwarden by distress; or recovered in any court of record in any city or town corporate, before the justices in sessions; to be applied to the use of the poor, except that the justice may reward the informer with part of the forfeiture, not exceeding one third. And by the 29 C. 2. c. 7. It is further enacted, that no drover, horse courser, waggoner, butcher, higgler, or any of their servants, shall travel, or come to his inn or lodging on the Lord's day, on pain of 20s. and in general, that no tradesman, artificer, workman, labourer, or other person, shall do or exercise any worldly labour, business or work, of their ordinary callings on the Lord's day (except works of necessity and charity), and except dressing of meat in families, and dressing and selling of meat in inns or cooks' shops, or victualling houses, for such as cannot otherwise be provided, on pain of 5s.; and also, that no person shall publicly cry, shew forth, or expose to sale, any wares, merchandizes, fruit, herbs, goods or chattels, whatsoever, on the Lord's day (except crying and selling of milk, before nine in the morning and after four in the afternoon) on pain of forfeiting the same: and also, that no person shall use, employ, or travel, on the Lord's day, with any boat, wherry, lighter or barge (unless allowed by a justice of the peace on extraordinary occasions), on pain of 5s. Conviction to be within ten days, before one justice, on view, confession, or oath of one witness; and the justice is empowered to give warrant to the constables or church-wardens, to seize the goods cried, shewed forth, or put to sale, and to sell the same, and to levy the other forfeitures by distress; to the use of the poor, and one-third to the informer; and for want of distress, the offender to be set publicly in the stocks for two hours.

By the 2 G. 3. c. 15. Fish carriages shall be allowed to pass on Sundays, whether laden or returning empty.

By the 29 C. 2. c. 7. § 6. The service of any writ, process,

warrant, order, judgment or decree, on the Lord's day (except in cases of treason, felony, or breach of the peace) shall be void.

*Information for travelling on the Lord's Day;—Penalty 20s.*

29 C. 2. c. 7. § 2. (ARCHBOLD.)

Home District, } Be it remembered, that on the — day of —  
to wit. } in the year of our Lord — at — in the said  
district, A. B. of — in the said district, cometh before me, J. P.,  
esquire, one of her Majesty's justices of the peace for the said  
district, and informeth me, that C. D. of — in the said district,  
on the Lord's day, and within ten days now last past, to wit, on  
the — day of — now last past, at — in the said district, being  
then and there a drover, (*drover, horse courser, waggoner, butcher,  
higgler, or any of their servants*) did, on the Lord's day aforesaid,  
(travel as such drover, or come into his inn or lodging there)  
contrary to the form of the statute in such case made and pro-  
vided, whereby &c. (as in the form *ante*, p. 334. title "*Inform-  
ation.*")

*Information for exercising a Trade on the Lord's Day.* (ARCHBOLD.)

*Commencement the same as in the last form*] that C. D. of — in  
the said district, on the Lord's day, and within ten days now  
last past, to wit, on the — day of — now last past, at the town-  
ship of — in the said district, being then and there of the age  
of fourteen years and upwards, and being then and there a  
tradesman, to wit, a grocer, (*tradesman, artificer, workman, la-  
bourer, or other person, whatsoever,*) did, on the Lord's day, afore-  
said, do and exercise certain worldly labour, business and work,  
of his ordinary calling, as such grocer, as aforesaid, not being a  
work of necessity or charity, that is to say, that he the said C. D.  
did then and there (sell certain goods of him the said C. D. as  
such grocer, as aforesaid, to one E. F. [*or stating some other act  
of the tradesman, in the way of his trade, &c.*]) contrary to the form  
of the statute in such case made and provided, whereby &c.  
(conclude as above).

*Summons and Conviction.*

See the forms given under these titles.

*Warrant on the 3 C. 1. and 29 C. 2. c. 7. to levy 20s. on a Carrier  
for travelling on the Lord's Day; which same will do mutatis  
mutandis, for the other Penalties under this Title.* (Dr. BURN.)

Home District, } To the Constable of —  
to wit. } Forasmuch as A. O. of — in the said dis-  
trict, carrier, is duly convicted before me, J. P. esquire, one of  
her Majesty's justices, assigned to keep the peace in the said

district, and also to hear and determine divers felonies, trespasses, and other misdemeanours, in the said district committed, for that he the said A. O. on the — day of — in the — year of the reign of — being the Lord's day, commonly called Sunday, with his horses, to wit, two horses, into and through the said township of — did travel, contrary to the statutes in that case made and provided, whereby he hath forfeited the sum of 20s. of lawful money of England: These are therefore to command you, forthwith to levy the said sum of 20s. by distraining the goods and chattels of him the said A. O. and if within the space of five days next after such distress by you taken, the said sum shall not be paid, together with the reasonable charges of taking and keeping the same, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the sum of 6s. 8d. part of the said sum of 20s. to A. J. of — yeoman, who informed me of the said offence, and that you see the remaining sum of 13s. 4d. employed according to law, returning to him the said A. O. the overplus, upon demand, the reasonable charges of taking, keeping and selling the said distress, being first deducted; and you are to certify to me, with the return of this precept, what you shall have done in the execution thereof. Herein fail you not.— Given under my hand and seal, at — the — day of — 183—.

### MACADAMISED ROADS.

\* By the 2 V. c. 17. § 1. Commissioners of Macadamised roads to make returns of monies expended to the lieutenant-governor. § 2. Until such returns made, further advances to be withheld. § 3. The lieutenant-governor may dismiss commissioners and appoint others in his discretion.

\* By the 3 V. c. 53. §. 1. After reciting that the laws now in force for the regulation of macadamised roads required amendment, and that it was of great importance, one uniform system should be adhered to the several statutes named, and any act that may be contrary to or inconsistent with this act are repealed.

The provisions of this act being very lengthy, and not altogether within the range of this work, although, as matters of public interest, of considerable importance, the author has not deemed it necessary to insert the same, but refers the reader to the act itself.

### MACHINERY.

\* By the 1 V. c. 18. § 1. Enacted that the owners of all steam boats, steam cars, and steam carriages, mills, and other

buildings where machinery is, or may hereafter be used, shall erect, or cause to be erected good and substantial guards round the machinery of such steam boats, &c. so as to prevent passengers and other persons from coming in contact with such machinery. § 2. Enacted that, it shall be the duty of the collector of customs of any port, to enter steam boats, &c. to examine the guards of the machinery, and if not properly erected so as to secure the safety of persons when the machinery is in operation, the said collector or his deputy shall notify the same to the master or person in charge, and direct him to make the necessary and substantial guards. § 3. It shall be the duty of every justice of the peace, within the district in which he shall reside and usually act as a justice, to enter into or upon all buildings wherein machinery is used, or shall hereafter be erected, and examine the same; and if, upon such examination, the guards about such machinery shall be found insufficient, such justice shall notify the same to the owner or occupier of such building, and direct the necessary guards to be erected. § 4. In case the master or person in charge of any steam boat, &c. or the owner or occupier of any building wherein machinery is or shall be erected, shall neglect or refuse to comply with the directions of such collector, or justice, and being thereof convicted before one or more justice, he shall forfeit and pay for every such offence any sum not exceeding *one pound*, and in default of payment, with the reasonable costs of conviction, such offender shall be sent\* to the common gaol of the district within which such offence shall have been committed for any period not exceeding thirty days. § 5. If, upon inspection by the collector or justice of any steam boat, or building, &c. the guards are found safe and substantial. such collector or justice shall deliver to the person in charge, and to the proprietor of such building, a certificate to that effect, which shall be a good protection for six calendar months, *provided* such safeguards shall be kept in good repair.

By the 4 & 5 V. c. 26. § 5. If any person shall unlawfully and maliciously cut, break, destroy, or damage with intent to destroy or to render useless, any thrashing machine, or any machine or engine, whether fixed or moveable, prepared for or employed in any manufacture whatever (except the manufacture of silk, woollen, linen, or cotton goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any frame work, knitted piece, stocking, hose, or lace), every such offender shall be guilty of felony, and

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\* Qy.—By whom?

being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or in any other prison or place of confinement for any term not exceeding two years.

## MAINTENANCE.

MAINTENANCE is an unlawful taking in hand or upholding of quarrels or suits, to the disturbance or hindrance of common right; and is not only *malum prohibitum* both by the common law and by statute, but is also accounted *malum in se*, as having a manifest tendency to oppression, by encouraging and assisting persons to persist in harrassing their neighbours with suits, which perhaps they would not venture to prosecute of their own accord. It is punishable at common law, by *fine* and *imprisonment*; and by the 32 H. 8. c. 9. with a forfeiture of £10. A court of record, also, may commit a man for an act of maintenance done in the face of the court, as for a contempt. 2 Inst. 212. 1 Haw. c. 83. § 36. There are some acts of maintenance which, under certain circumstances, are justifiable. A father; a son; or an heir apparent to a party; or the husband of an heiress apparent, may lawfully lay out money for the party to prosecute his suit. Few prosecutions are, however, now instituted for maintenance; for more persons than one are generally implicated in this offence, and then the common practice is, to indict them for *conspiracy*.

## MALICIOUS INJURY.

### *Malicious Injury to the Person.*

*Poisoning or wounding.*—By the 4 & 5 V. c. 27. § 6. Whosoever shall administer or cause to be taken by any person any poison or other destructive thing, or shall stab, cut, or wound any person, or shall by any means whatsoever cause to any person any wilful injury dangerous to life, with intent, in any of the cases aforesaid, to commit murder, shall be guilty of felony, and being convicted thereof shall suffer death.

*Attempt to murder.*—§ 10. Whosoever shall attempt to administer to any person any poison or other destructive thing, or shall shoot at any person, or shall by drawing a trigger or in any other manner attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent in any of the cases aforesaid to commit the crime of murder, shall, although no bodily injury shall be

effected, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

*Attempt to maim.*—§ 11. Whosoever shall unlawfully and maliciously shoot at any person, or shall draw a trigger or in any other manner attempt to discharge any kind of loaded arms at any person, or shall stab, cut, or wound any person with intent, in any of the cases aforesaid, to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

*Explosive or corrosive matter.*—Whosoever shall unlawfully and maliciously send or deliver, or cause to be taken or received by any person, any explosive substance, or any other dangerous or noxious thing, or shall cast or throw upon or otherwise apply to any person any corrosive fluid or other destructive matter, with intent, in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, and whereby, in any of the cases aforesaid, any person shall be burnt, maimed, disfigured, or disabled, or receive some other grievous bodily harm, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or in any other prison or place of confinement for any term not exceeding two years.

*Miscarriage.*—§ 13. Whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

## Mandamus.

### *Malicious injury to Property.*

By the 4 & 5 V. c. 26. § 15. If any person shall unlawfully and maliciously break down or otherwise destroy the dam of any fish pond, or of any water which shall be private property, or in which there shall be any private right of fishery with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully or maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish therein, or shall unlawfully and maliciously break down or otherwise destroy the dam of any mill pond, every such offender shall be guilty of a misdemeanour, and being convicted thereof, shall be punished accordingly.

§ 17. Unlawfully and maliciously setting fire to agricultural produce is made felony. (See title "*Arson.*") § 18. If any person shall unlawfully or maliciously cut or otherwise destroy any hop binds growing on poles in any plantation of hops, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding two years.

By the 4 & 5 V. c. 26. § 24. If any person shall wilfully or maliciously commit any damage or injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no remedy or punishment is hereinbefore provided, every such person, being convicted thereof before a justice of the peace, shall forfeit and pay such sum of money as shall appear to the justice to be a reasonable compensation for the damage, injury or spoil so committed, not exceeding the sum of five pounds, which sum of money shall, in case of private property, be paid to the party aggrieved, except where such party shall have been examined in proof of the offence, and in such, and in the case of property of a public nature, or wherein any public right is concerned, the money shall be applied in such manner as every penalty imposed by a justice of the peace under this act is hereinafter directed to be applied: *Provided always*, that nothing herein contained shall extend to any case where the party trespassing acted under the fair and reasonable supposition that he had a right to do the act complained of.

See also *post* title "*Summary Conviction.*"

## MANDAMUS.

A WRIT of *mandamus*, is a command issuing in the king's name from the court of king's bench, and directed to any person, cor-



poration, or inferior court of judicature, within the king's dominions requiring them to do some *particular* thing, therein specified, which appertains to their office or duty. This writ is principally used to enforce a civil or municipal right, but it issues also to the judges of any inferior court, commanding them to do justice according to the power of their office, whenever the same is delayed. It is grounded on a suggestion (by the oath of the party injured) of his own right, and of the denial of justice in the court below; whereupon, in order more fully to satisfy the court that there is a probable ground for such interposition, a rule is made, (except in some general cases, where the probable ground is manifest) directing the party complained of to shew cause why a writ of *mandamus* should not issue; and if he shews no sufficient cause, the writ itself is issued at first in the alternative,—either to do thus, or signify some reason to the contrary: to which a return or answer must be made at a certain day; and if the inferior judge, or other person to whom the writ is directed, returns or signifies an insufficient reason, then there issues, in the second place, a *peremptory mandamus*, to do the thing absolutely, to which no other return will be admitted, but a certain perfect obedience and due execution of the writ. If the inferior judge, or other person, makes no return, or fails in his respect and obedience, he is punishable for his contempt, by attachment. But if at the first he returns a sufficient cause, although it should be false in fact, the court of king's bench will not try the truth of the facts upon affidavits, but will, for the present, believe him, and proceed no further on the *mandamus*. But then, the party injured may have an action against him for his false return, and (if found to be false by the jury) shall recover damages equivalent to the injury sustained, together with a *preremptory mandamus* to the defendant, to do his duty. 3 *Bl. Com.* 111.

A *mandamus* to the quarter sessions will be granted, to compel them to hear and decide an appeal which they refuse to hear, on the ground of a mistaken notion of law, or an unreasonable rule as to their own practice. *R. v. Wiltshire*, 10 *East*. 404.

Where a person had been convicted before justices of the peace and fined, and on an appeal to the quarter sessions the justices there admitted more evidence than had been heard on the conviction, and the accused party was acquitted; but, on receiving the opinion of the attorney-general that the additional evidence should not have been admitted, the justices in sessions confirmed the conviction, and ordered it to be recorded, but took no notice of the acquittal. The court made absolute a

rule for a mandamus commanding them to enter the acquittal. *Rex v. Justices of Bathurst*. Mich. 6 W. 4. *Cameron's D.* p. 49.

A mandamus never issues except to admit or restore some person to an ascertained right. *Barnhart v. Justices, H. D.* Easter 7 W. 4. *Ib.*

Upon a mandamus *nisi* to justices in sessions they should return the recorded proceedings had before them, and not collateral matters not embraced in the entries of the court. *Ib.* p. 71.

### MANSLAUGHTER.

By the 4 & 5 V. c. 27. § 7. Every person convicted of manslaughter shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for life, or for any term not less than seven years, or be imprisoned in any other prison or place of confinement, for any term not exceeding two years, or to pay such fine as the court shall award.

See also *ante* title "*Homicide*," p. 324.

### MANUFACTURES.

By the 4 & 5 V. c. 26. § 4. If any person shall unlawfully and maliciously cut, break or destroy, or damage with intent to destroy, or to render useless, any goods or articles of silk, woollen, linen or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any frame work-knitted piece, stocking, hose or lace, being in the loom or frame, or on any machine or engine, or on the racks or tenters, or in any stage, process or progress of manufacture, or shall unlawfully and maliciously cut, break or destroy, or damage with intent to destroy, or to render useless any warp or shute of silk, woollen, linen or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any loom, frame, machine, engine, rack, tackle or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles, or shall by force enter into any house, shop, building or place, with intent to commit any of the offences aforesaid, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned, at hard labour, in the Provincial Penitentiary, for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

## MARRIAGES.

\* By the 33 G. 3. c. 5. certain marriages previously contracted, are declared to be valid. § 3. And until there shall be five ministers or parsons of the church of England, doing duty in their parishes or places of residence in any one district, parties desirous of intermarrying, and neither living within eighteen miles of any parson or minister, may apply to a neighbouring justice, who may cause to be affixed, in some public place within each of the townships or parishes wherein the parties reside, the following notice, (fee *one shilling*) :—

“Whereas A. B. of — and C. D. of — are desirous of inter-  
 “marrying 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 matri-  
 “mony, are to give notice thereof to E. F. esquire, of — one of  
 “her Majesty’s justices of the peace for the — district.”

And if no valid objection shall have been made for three inter-  
 vening Sundays, the magistrate may solemnize the marriage,  
 according to the form of the church of England, and give the  
 parties the following certificate (fee 1s.) :

“Whereas A. B. of — and C. D. of — were desirous of in-  
 “termarrying 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 pro-  
 “vince, passed in the thirty-third year of his Majesty’s reign,  
 “I, E. F. one of her 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. toge-  
 “ther, and they are become legally contracted to each other in  
 “marriage.”

Which certificate shall be signed by the parties, and two or  
 more persons present at the marriage. The clerk of the peace,  
 upon application, is required to register the said certificate (fee  
 2s.); and such register, or an attested copy (fee 2s.), shall be  
 sufficient evidence in courts of law. § 5. The power of justices  
 to solemnize marriages shall determine so soon as there shall be  
 five parsons or ministers resident in any one district; and any  
 justice of the peace pretending to perform the ceremony after-  
 wards, shall forfeit £20, one moiety to the province, and the  
 other to the informer.

\*By the 2 G. 4. c. 11. If any person, minister or clergyman, legally authorised to solemnize marriage, shall knowingly or wilfully solemnize marriage without publication of banns, unless license of marriage be first had and obtained from some person duly authorised to grant the same; or if any justice of the peace shall knowingly solemnize marriage contrary to law; or if any person not having authority by law to solemnize marriage shall marry any person within the same, such offender shall be guilty of a misdemeanor. Such offence not to be cognizable at the quarter sessions; and no prosecution to be commenced after two years. § 2. In all prosecutions under this act, the proof of *legal authority* shall lie upon the defendant.

\*By 1 W. 4 c. 1. entitled "an act to make valid certain marriages heretofore contracted, and to provide for the future solemnization of marriage in this province," it is enacted, that it shall be lawful for any clergyman or minister of any church, society, congregation, or religious community of persons, professing to be members of the church of Scotland, Lutherans, Presbyterians, Congregationalists, Baptists, Independents, Methodists, Menonists, Tunkers or Moravians, who shall be authorised in manner hereinafter mentioned, to solemnize the ceremony of marriage within this province between any two persons, neither of whom is under any legal disqualification to contract matrimony. § 2. No person shall be deemed a clergyman or minister of such church, society, congregation, or religious community, who shall not have been regularly ordained, constituted or appointed, according to the rites and forms of such church, society, congregation or religious community; and unless he shall be a subject of her Majesty, and shall appear before the justices, in sessions of the district, and produce proof of his ordination, constitution or appointment, and shall then and there take the oath of allegiance; and thereupon, if it shall appear to the majority of the justices then present that he has been regularly ordained, &c. they are hereby authorised and required to grant him a certificate, in the form following:—

"Be it remembered, that at the general quarter sessions of the peace holden at — in and for the district of — on the — day of — in the year of our Lord — before A. B. and others, esquires, justices of our sovereign lady the queen assigned to keep the peace in the said district, came C. D. of — who professes to be a minister or clergyman of the church, society, congregation, or religious community, (as the case may be) it appeared to a majority of the justices, that he the said C. D. was duly ordained, constituted, or appointed (as the

“ case may be) a minister or clergyman of the said church, society, congregation, or religious community.

“ G. H. *Clerk of the Peace.*

“ E. F. *Chairman.*

For which certificate, the clerk of the peace shall be entitled to 5s. § 5. No such minister shall at any time celebrate marriage unless banns of marriage be published with an audible voice in the church or chapel or place of worship, three several Sundays, in some intermediate part of the service, or before it began, or immediately after it ended, together with the number of times of publication; or unless a marriage license shall have been obtained from the Governor. § 6. Every minister or clergyman, or justice of the peace, authorised by this act to celebrate marriage, shall, if required, give to the party a certificate; and also, once in every twelve months, return a certified list of all marriages by him solemnized, to the clerk of the peace, within that period, or since his last return, specifying the names of the parties married; the witnesses; and whether solemnized by license or banns; and shall pay to the clerk of the peace the sum of 2s. 6d. to record the same, who shall record the same in the register or book required by law to be kept by him, of marriages; and such register, or a certified copy, shall be considered, in case of death, or absence of the witnesses, a sufficient evidence thereof; and any minister, clergyman, or justice of the peace, neglecting to make such return, shall forfeit £40, to be recovered by action of debt in the court of king's bench, one moiety to the informer and the other to the province.

### *Marriage License.*

Sir John Colborne, K. C. B., Lieutenant-Governor of the province of Upper Canada, &c. &c. &c.

Whereas her Majesty has been graciously pleased, by letters patent, under the great seal of Great Britain, to authorise me to grant licenses for the solemnization of marriages: And whereas — are determined to enter into the holy banns of matrimony, and are desirous of having their marriage publicly solemnized; in order that such their honest desires may the more speedily have their due effect, and that they may be able to procure the same to be lawfully solemnized, without publication of banns, I do hereby, for good causes, give and grant this license of faculty, as well to them the said parties contracting, as to all or every parson or minister, duly ordained, and lawfully exercising his ministry within the said province of Upper Canada, to solemnize and perform the same: *Provided always*, that by reason of any affinity, consanguinity, pre-contract, or any other lawful cause,

## Married Women.

there be no legal impediment in this behalf, otherwise, if any fraud shall appear to have been committed, at the time of granting this license, either by false suggestions or concealment of the truth, that then this license shall be null and void, to all intents and purposes whatsoever.

Given under my hand and office seal, at — this — day of — in the year of our Lord, one thousand eight hundred and thirty — and of her Majesty's reign, the —

*By his Excellency's command.*

*Form of a certified list of Marriages, to be returned to the Clerk of the Peace, pursuant to the \*1 W. 4 c. 1.*

*A list of all Marriages solemnized by me A. B. one of her Majesty's Justices of the Peace for the Home District, [or a Minister, &c. stating the particular denomination, at —] commencing the — day of —, and ending the — day of —*

Names of the parties, and their residence.	Township in which the ceremony is performed.	Date of Ceremony.	By Banns, License, or usual notice.	Names of Witnesses present.
John Thomas, of Hamilton, in this District of Gore, Gentleman.—and, Mary Griffiths, of the City of Toronto, in the Home District.	At the City of Toronto, in the Township of York.	12th Aug. 1834.	By License.	Charles Edwards, of Hamilton, Gore District, Merchant,—and Richard Hughes, of the City of Toronto, Merchant.

## MARRIED WOMEN.

\* By the 59 G. 3 c. 3. Married women above the age of 21 years, with the knowledge and consent of, and by any deed or deeds jointly with their husbands, may alien and convey their real estate to such uses as to her and her husband shall seem meet. § 2. *Provided*, that such married woman, if resident in Upper Canada, shall appear before a judge, or other person mentioned and described in the \*43 G. 3. c. 5. (repealed by \*1 W. 4 c. 2.) or unless such married woman, being a resident of Great Britain or Ireland, or any colony belonging to the crown of Great Britain, shall appear before the mayor, or chief magistrate, of any city, borough or town corporate, in Great Britain or Ireland, or the chief justice, or any of the judges of the supreme court in any such colony, and be examined by such officer touching her consent, and shall freely and voluntarily consent. § 3. Such mayor, or chief magistrate, &c. may thereupon cause a certificate to be endorsed on the deed, stating the day on

which such examination was made, and signed by such mayor, &c. And by § 4. All such examinations and certificate, &c. must be made within 12 months after the execution of the deed. § 5. And the seal of the city, borough or town corporate, must be affixed.

\* By the 2 G. 4 c. 14. It shall be lawful for any married woman, having such real estate, to appear before the quarter sessions in the district in which she may be resident, or in cases where the party resides out of the province, then before the G. Q. sessions of any district, within 12 months after the execution of the deed, to make such acknowledgment; and the chairman may certify in like manner as by the court of king's bench, or any judge thereof.

\* By the 1 W. 4 c. 3. Reciting that the laws now in force were insufficient, and unnecessarily exposed purchasers to risk, from the chance of married women dying, or retracting consent after execution of the deed; it is enacted, that it shall be lawful for any such married woman, above 21 years of age, to alien and convey her real estate jointly with her husband; provided that the deed be executed in the presence of one of the judges of the king's bench, or a judge of the district court, or of a judge of the surrogate court of the district where such married woman shall reside; or of two justices for such district, who shall examine such married woman apart from her husband respecting her free and voluntary consent; and shall on the day of the execution of such deed endorse the following certificate on the deed, or the like effect:

“That on the day mentioned in the certificate, such married woman did appear before him, or them, [*as the case may be*] at the place to be named in the said certificate, and being examined by him, or them, [*as the case may be*] apart from her husband, did appear to give her consent to depart with her estate in the deed mentioned freely and voluntarily, and without any coercion, on the part of her husband, or of any other person or persons whatsoever.”

§ 2. And when any married woman shall reside out of the province, the deed may be executed by her in the presence of a judge of the king's bench; or of the district or surrogate court; or of two justices in any district, whose certificates shall be effectual; and it shall not be necessary for any such judge or justices to attest the deed. § 3. And where married women have heretofore conveyed their estates, but no certificate has been obtained, such certificate may nevertheless be obtained notwithstanding the twelve months have expired. § 5. The sum of five shillings to be paid for such certificate.

\*By the 2 V. c. 6. § 1. After reciting that in some cases certificates may not have been signed on the day of the date of the deed, and it was expedient to render valid such deeds, and to provide that in future such certificates shall state that the deed was executed as required on the day in which the certificate shall be signed; and also that the said certificate shall in all cases be *prima facie* evidence of the facts certified therein; It is enacted, that when any certificate upon the back of any deed executed by any married woman, pursuant to said act (1 W. 4. c. 3.), shall have been heretofore given on any day subsequent to the execution of the said deed, such certificate shall be deemed and taken to have been given on the day on which the said deed was executed; and such deed shall be as good and valid in law, as if such certificate had been in fact signed on the day of the execution of the deed. § 2. That the certificate to be endorsed upon any deed, pursuant to the said act, shall be to the following effect:

“ I — do hereby certify, that on this — day of — at — the within deed was duly executed in the presence of — by — wife of — one of the grantors therein named; and that the said — at the said time and place, being examined by — apart from her husband, did appear to give her consent to depart with her estate in the lands mentioned in the said deed, freely and voluntarily, and without coercion or fear of coercion on the part of her husband, or of any other person or persons whatsoever.” And that such certificate shall be deemed and taken to be *prima facie* evidence of the facts contained therein.

§ 3. After reciting that it was expedient to provide greater facilities for barring dower, it is enacted, that from and after the passing of this act, whenever any married woman shall join with her husband in any deed or conveyance whatever (wherein a release of dower is contained), it shall not be necessary to acknowledge the same before any court judge or justice of the peace; but such execution shall be deemed a valid and effectual bar of dower of and in the premises described in such conveyance, any law to the contrary notwithstanding.

And see title “*Dower.*”

## MILITIA.

By the \*2 V. c. 9. § 1. All former acts are repealed. § 2. It shall be lawful for the lieutenant-governor, from time to time, to divide the militia of this province into such number of regiments or battalions as he may deem most conducive to the efficiency of the militia; and under his hand and seal to appoint



a sufficient number of lieutenant-colonels, majors, captains, and other officers, to train, discipline, and command the said militia, according to such rules, orders, and directions as shall from time to time be issued for that purpose; which officers shall rank with officers of her Majesty's forces, serving in this province as junior officers; *Provided*, that if any colonel or officer in command remove from the district, his authority shall cease.

§3. Militia men to be not less than eighteen nor more than sixty years of age. §4. Commanding officers to require captains or officers commanding companies to call upon the inhabitants liable to serve, within the limits of his company or division, to enrol their names once a year, viz. on the *fourth* of June, or following day if Sunday, at a place to be appointed by the commanding officer: subjects of her Majesty only to be enrolled, or a person who has taken the oath of allegiance.

§5. Every person liable to serve shall appear at the place appointed and enrol his name; and if a question arise as to age, the proof shall be incumbent on the party. §6. Militia to be called out and embodied in time of war, rebellion, or invasion, or for any purpose connected with the public peace, by ballot or otherwise, for a period not exceeding six months at any one time: any person refusing or absconding, or neglecting to repair to the place ordered, shall be tried by a court martial; and if a commissioned officer, shall forfeit £50, and be held unfit to serve as an officer in any military capacity; and if a non-commissioned officer or private, shall forfeit a sum not exceeding £20, in the discretion of the court; and in default of payment shall be committed to the common gaol of the district, for any time not more than six months, in the discretion of the court, except such person shall satisfy the officer in command that such refusal or neglect arose from sickness, or that he was absent upon leave. Penalties to be levied and collected in the same manner as penalties for disobedience of orders: *Provided*, that when a *part* only of the militia shall be called out for actual service, any person called upon to serve may provide an able-bodied substitute. §7. Militia may be marched for service to Lower Canada, in case of invasion or insurrection, or to any place within the province where invasion threatened; or for the destruction of any vessel, fort, or magazine, from whence invasion apprehended. §8. Officers in command may assemble the militia two days in the year, and oftener if required, for the purpose of drill and inspection, on four days' notice. §9. Officers to hold their commissions during pleasure. §10. Annual returns of the strength of the regiment and vacancies, to be made by the commanding officer, on or before the 14th of June.

§ 11. Lieutenant-governor may appoint officers of his staff to militia rank. § 12. And prescribe uniform to be worn. § 13. Any officer not provided with uniform within one year, or who shall appear at muster without uniform, or shall not be provided with such books of instructions required by any militia general order, shall be superseded. § 14. Lieutenant-governor may constitute regiments or battalions of dragoons, artillery, or light infantry, distinct from other regiments or battalions, to be selected from the different regiments or battalions, as the lieutenant-governor may direct. § 15. Regiments or battalions so constituted to be subject to such orders and regulations as may be issued by the lieutenant-governor, apart from the militia. § 16. Any officer of militia, in time of peace, guilty of wilful neglect or disobedience, or insubordination, shall on conviction be liable to pay a fine not less than five nor more than £20, besides costs, or, to be dismissed, at the discretion of the court. § 17. Lieutenant-governor authorised to form rifle companies, to be independent or attached, as the lieutenant-governor may direct. § 18. Any non-commissioned officer or private, in time of peace, neglecting to enrol himself, or guilty of disobedience of orders, or of any act of insubordination or misconduct while on parade or duty, shall on conviction pay a fine of not less than 5s. nor more than £5, over and above costs, and in default of payment be liable to imprisonment in the common gaol, for not less than three days nor more than one month. § 19. Commanding officer authorised in time of peace to assemble court martial of not less than three officers, one at least of the rank of captain, for the investigation of charges contrary to the provisions of this act, and to give judgment according to their discretion in accordance with this act. § 20. Commanding officer to give notice of the time and place where such court shall be held. § 21. Four days' notice in writing to be served on any party complained against, to appear and answer; such notice to be in the form prescribed in the act. § 22. No judgment to be given without proof of service of notice. § 23. Court may command attendance of witness, and commit for non-attendance. § 24. Officers composing the court to receive 5s. each day engaged; judge advocate 20s. a day, and witnesses 2s. 6d. a day. § 25. Persons serving notices to receive *four pence* per mile for travelling to effect such service, and for levying, the same fees as for the like services to any constable. *Provided*, that the court may appoint such person as they think proper to execute the warrants or process issued by them. § 26. Judgments of the court, upon being approved by the commanding officer, shall be carried into effect, and fines imposed, levied by a warrant signed by

the president of the court, in the same manner as judgments of justices of the peace under the provisions of the \*4 W. 4. c. 4. § 27. Officers composing the court to take the oath prescribed by the act, before trial. § 28. Lieutenant-governor authorised, upon complaint made against any officer of the militia, to assemble a militia general court martial, to appoint a court of inquiry, of at least three officers of the militia, to examine into and report upon such complaint. § 29. Fines levied to be paid to the commanding officer, to be paid by him to the receiver-general for the use of the province; and all expenses attending any court martial to be paid out of the monies of the province. § 30. Commanding officers to make returns twice a year, on the 1st of March and 1st of September, of persons complained against the judgments of the court, and fines levied. § 31. In time of peace, upon any charge made against any officer for disobedience of orders, insubordination, or misconduct as an officer, the lieutenant-governor may in his discretion assemble a court martial, (the president being a field officer) to be composed of seven or more officers of regiments within the district, to investigate the charges, and to examine witnesses on oath, and award such sentence as in their opinion may be just and reasonable, and not inconsistent with this act. *Provided*, that in the appointment of a judge advocate, the administration of oaths, and forms of proceedings, the same rules to be observed as hereinafter contained for the regulation of courts martial during the period of actual service, and sentence before being carried into effect to be approved by the lieutenant-governor. § 37. In case of any fine being imposed on any officer of militia, the same to be levied in the same manner as fines awarded against non-commissioned officers and privates. § 38. Militia, when embodied for actual service, to be liable to the provisions of the mutiny act. *Provided*, that no capital punishment be inflicted except for desertion to the enemy, traitorous correspondence, or for traitorously delivering up to the enemy any garrison, fortress, port, or guard, or armed vessel. *Provided also*, that the punishment of being flogged or sent to the penitentiary be not inflicted. § 34. When the militia called out on actual service, in all cases when a general court martial shall be required, the lieutenant-governor, upon the application of the commanding officer of the regiment to which the accused may belong, shall issue his order for a general court martial, to consist of a president (being a field officer) and not less than eight other commissioned officers of militia. The lieutenant-governor to appoint the judge advocate, and every member of the court martial to take the oath prescribed by the act before the judge

advocate, and so soon as the members are sworn the president to administer to the judge advocate the oath stated in the act, and the judge advocate shall administer the oath to the witnesses as prescribed by the act. *Provided always*, that *two-thirds* of the members of every such court must concur in the finding and judgment, and the same be approved by the lieutenant-governor before carried into effect. § 35. Commanding officer of a district, garrison, port, regiment, or battalion, may direct a district, garrison, or regimental court martial to try any non-commissioned officer or private, on actual service, charged with drunkenness, neglect of duty, or disobedience of orders, and on proof thereof, may imprison him in the common gaol of the district, or in any other place of confinement (except the penitentiary) for a period not exceeding two weeks, and reduce any non-commissioned officer to the ranks. The court to consist of a president (being a captain) and not less than three commissioned officers of the militia, who, before trial, shall take the oath prescribed by the 27th section. *Provided*, that nothing herein contained shall interfere with or alter the provision of the 33rd section, except so far as in this clause contained. § 36. In cases of emergency, of invasion, insurrection, or otherwise, when not practicable to consult the lieutenant-governor, the senior officer of militia, of any county or riding, not upon a retired list or in a reserved battalion, may call out and embody any number of the militia for actual service, reporting the same forthwith to the governor. § 37. Lieutenant-governor authorised to issue orders and make regulations for the impressment and employment of horses and teams for conveyance of troops and stores, or any other service, and for billeting troops of the line and militia, not being repugnant to the \*49 G. 3. c. —. § 38. This act not to affect commissions now held, or alter or change the organization of regiments of militia, until otherwise ordered by the lieutenant-governor. § 39. The following fees to be hereafter paid on commissions: lieutenant-colonel's, £1. 10s.; major's, 20s.; captain's, 20s.; ensign's, 20s.; paymaster's, 15s.; surgeon's, 15s.; assistant surgeon's, 10s.; quarter master's, 10s.; and adjutant, according to his rank. § 40. Commissions to be transmitted to the commanding officer, and fees paid to him, as well as exemption monies from Quakers, Menonists, Tunkers, and aliens, and by him paid to the receiver-general. § 41. To be accounted for half-yearly. § 42. Commissions to be void, unless taken up and prepaid within six months after transmission to the commanding officer. § 43. Commanding officer may call on his officers and non-commissioned officers once a month for drill. § 44. This act to apply to the militia now embodied.

§ 45. Every person who shall sell, barter, or pledge any part of the arms or equipments, or shall tender them in pledge which may be delivered to him out of her Majesty's stores, or who shall destroy the same, and every person who shall buy or barter, obtain or receive in pledge, such arms or equipments, shall forfeit and pay the sum of £5. for every offence, on conviction by the oath of any one credible witness, before *two* justices of the peace residing withing the county where offence committed: and in default of payment, the said justices may, by warrant under their hands and seals, commit such person to the gaol of the county or district for any time not exceeding three months, unless amount sooner paid. § 46. False swearing under this act to be deemed perjury. § 47. Lieutenant-governor may appoint a *commodore*, to rank with colonels of militia, and captains and lieutenants of a provincial navy, ranking with majors and captains of the militia, to be drilled to the exercise of heavy guns, and the management of gun boats. § 48. A second or retired batalion to be attached to every regiment of militia, to which officers incapable of service from old age, infirmity, or otherwise may be transferred, including non-commissioned officers and privates, from the age of fifty to sixty years. §. 49. Volunteer marine companies may be formed and stationed along the coast, each company to consist of a captain, lieutenant, ensign, and not less than fifty or more than one hundred men. § 50. Any person wilfully interrupting the militia while on duty, may be confined by the commanding officer for any time not exceeding three days. § 51. Exemption from service are the judges, vice-chancellor, and clergy; members of the legislative and executive councils, and their officers; members of assembly, and their officers; attorney and solicitor general; secretary of the province, and all civil officers, magistrates, coroners, sheriffs, and half-pay and retired officers; militia officers having served elsewhere; surveyor-general and his deputies, duly appointed and actually engaged in public service; deputy post masters and mail carriers; sea faring men actually employed; physicians; surgeons; masters of public or common schools; ferrymen; and one miller to each run of stones in every grist mill; keepers of toll-gates; lock-masters, and labourers employed in attending locks or bridges on the Rideau, Welland, and other public canals. § 22. Also Quakers, Menonists and Tunkers, and their sons under 21, on producing a certificate signed by the clerk of the meeting of such society, or three or more of the society: *Provided*, that such last named parties shall, on or before the 4th day of

June in every year, give in their names and places of residence the commanding officer, and pay the sum of 20s. currency, and in time of invasion, &c., £10; and in default thereof the parties shall be tried as other offenders. § 53. Aliens not having taken the oath of allegiance, and resident one year, required, on or before the 4th day of June every year, to give in their names and residence to the commanding officer, and pay 10s.; and in default liable to be tried by court martial, and pay 10s. besides costs and charges of conviction, to be levied as provided by the 19th sec. § 54. When part only of militia required for actual service, they may be selected by ballot. § 55. After ballot has taken place, the commanding officer shall appoint a meeting, within *three* weeks, and the adjutant shall direct three days' notice to be given to every man so chosen to appear at such meeting. § 56. Actions under this act to be brought within *three* calendar months, and defendant may plead the general issue. § 57. Adjutant-general to be appointed by the lieutenant-governor, with rank of colonel. § 58. Serjeants discharged from H. M. service not to serve in any inferior rank in the militia. § 59. Officers and non-commissioned officers exempt from serving the office of constable. § 60. Any person dismissed from the army, disqualified from holding a commission in the militia.

*Information for selling Arms, &c. Penalty £5. § 45.*

Home District, } Be it remembered, that on the — day of —  
to wit. } in the year of our Lord — at — in the said  
district, A. B. of — in the said district — personally cometh  
before us J. P. esq. and Q. R. esq., two of her Majesty's justices  
of the peace for the said district, and informs thus: that  
G. H. late of — in the said district, yeoman, on the — day of  
— at the township of — in the said district, he the said G. H.  
then being a private in the — regiment militia, commonly  
known as the — [*here insert the name of the regiment or battalion*]  
did unlawfully sell and deliver to one O. P. of — one musket  
of the value of — the property of her Majesty, the said musket  
being part of the arms and equipments then lately before delivered  
to him the said G. H., as such private as aforesaid, out of  
her Majesty's stores, contrary to the form of the statute in such  
case made and provided; whereby and by force of the said  
statute the said G. H. has forfeited for his said offence the sum  
of £5; wherefore the said A. B. prayeth the consideration of us  
the said justices in the premises, and that the said G. H. may  
be convicted of the offence aforesaid, and that he may be sum-

moned to appear before us and answer the premises and make his defence tuereto.

Exhibited before us,

A. B.

N. B. This information may be laid by any indifferent person, and should not be upon oath : at the hearing, the facts must be proved by ONE or more credible witnesses upon oath.

*Against a Party for buying the same. Penalty £5. § 45.*

*Commencement as before.*] That S. R. late of — on the — day of — at the township of — in the said district, labourer, did unlawfully buy and receive of and from one G. H. (he the said G. H. then being a private in the — regiment of —) [*adding the particular name of the regiment*] or did unlawfully obtain and receive of and from one G. H. (he the said G. H. then being, &c. [*as before*]) in pledge for the payment by him the said G. H. to him the said S. R. of a certain sum of money, to wit, the sum of —) one musket of the value of — the property of her Majesty, the same being part of the arms and equipments then lately before delivered to him the said G. H. as such private as aforesaid, out of her Majesty's stores, contrary, &c. [*Conclude as before.*]

*Summons on the preceding Information.*

Home District, } To G. H. of — in the said district, yeoman :  
to wit. } Whereas you have this day been charged before us, C. D. esq. and E. F. esq. two of her Majesty's justices of the peace for the said district; for that you, &c. [*here set forth the particulars stated in the information*] these are therefore to require you to appear before us at — in the said district, on — next, the — day of — at the hour of — in the forenoon of the same day, to answer to the said charge, and to be further dealt with according to law. Herein fail you not.

Given under our hands and seals, the — day of — in the year of our Lord 184—.

*The Conviction,*

Should be made out according to the form required by the \*2 W. 4. c. 4. See *ante* title "Conviction," p. 178.

*Commitment, on refusal to pay the Penalty of £5, under § 45.*

Home District, } To the constable of — in the said district, and  
to wit. } to the keeper of the common gaol at Toronto, in the said district. Whereas S. R. late of the township of — in the said district, labourer, was on this day duly convicted

before us, C. D. esq. and E. F. esq. two of her Majesty's justices of the peace for the said district, for that he the said S. R. on the — day of — &c. [*here state the particulars relative to the purchase of arms, &c., as laid in the information*] against the form of the statute in that case made and provided; and we the said C. D. and E. F. thereupon adjudged the said G. H. for his said offence, to pay the sum of *five pounds*, according to the statute in that behalf: and whereas, the said C. D. being so convicted, as aforesaid, and being now required to pay the said sum of *five pounds*, hath not paid the same, or any part thereof, but herein hath made default: These are therefore to command you the said constable, to take the said S. R. and him safely to convey to the common gaol at Toronto, aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and we do hereby command you the said keeper of the said common gaol, to receive the said G. H. into the said gaol, there to imprison him for the space of, &c. (*not exceeding three months*) days, unless the said sum shall be sooner paid; and for your so doing this shall be your sufficient warrant.

Given under our hands and seals, &c.

*Warrant to impress Baggage-Waggons.*

Home District, } To the Constable of —  
to wit. }

By virtue of an order from —, colonel and commanding officer of the — regiment of — militia, this day brought and shewn unto me, J. P. one of her Majesty's justices of the peace for the said district, by — lieutenant, in captain — company of the said regiment of militia, you are hereby required to provide — sufficient carriages and teams, with able men to drive the same, within your constablewick, whereby to remove the arms, clothes and accoutrements, of the said company, on their march from — to — in the said district; and with them you are to appear at — aforesaid, to-morrow, precisely at — o'clock in the morning. Herein fail you not, as you will answer the contrary at your peril.

Given under my hand and seal, at — in the said district, the — day of — in the year of our Lord —.

MILL-DAMS.

\*By the 9 G. 4. c. 4. Every owner or occupier of any mill-dam legally erected, or where lumber is usually brought down the stream on which such mill-dam is erected, or where salmon or pickerel abound therein, in this province, who shall neglect to



construct and erect a good and sufficient apron to his or their dam, as hereinafter set forth, shall, for such offence, yearly, and every year, forfeit and pay £25; one moiety of which shall go to the queen, for the use of the province, and the other to the party who shall sue in any court of record.

§ 2. Every such apron shall be erected and constructed in the following manner, viz.: such apron shall not be less than 18 feet wide, by an inclined plane of 24 feet 8 inches, to a perpendicular of 6 feet, and so, in proportion to the height, where the width of the stream will admit; and where such stream or dam is less than 15 feet wide, the whole dam shall be aproned in like manner, and with the same inclined plane.

By the 4 & 5 V. c. 26. § 15. If any person shall unlawfully and maliciously break down or otherwise destroy the dam of any mill-pond, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be punished accordingly.

See title "*Punishment.*"

## MILLERS.

\*By 23 G. 3. c. 7. No miller shall demand, take or receive, more than a twelfth share or part for grinding and bolting of grain, under the penalty of £10. Quebec currency; one moiety to the queen, and the other to the person that shall sue for the same in any court of record. § 3. No miller shall be answerable for the loss of any bag of grain or flour, unless the initials of the christian and surname of the owner be marked thereon, and such mark of distinction previously communicated and made known to the said owner or occupier, or his servant attending the mill. See also, title "*Flour,*" p. 266.

## MISDEMEANOR.

THE word misdemeanor, in its usual acceptation, is applied to all those crimes and offences for which the law has not provided a particular name; and they may be punished according to the degree of offence, by fine or imprisonment, or both. 3 *Burns' Jus. tit. Misdemeanor.* \**Russell, on Cr. and Misd.* 43. A misdemeanor is, in truth any crime less than a felony; misdemeanor comprehending all indictable offences which do not amount to felony. 4 *Bl. Com.* 5. *Note 2.* All disturbances of the peace, oppression, misbehaviour by public officers, and all other misdemeanors whatsoever, of a public evil example, against the common law, may be indicted. 2 *Haw. P. C.* 25 § 4. And whatever openly outrages decency, and is injurious to public

morals, is a misdemeanor at common law. 4 *Bl. Com.* 65. (n) *Ed.* And wherever a statute *forbids* the doing of a thing, the doing it wilfully, although without any corrupt motive, is indictable as a misdemeanor *R. v. Sainsbury.* 4 *T. R.* 457. So, if a statute *enjoin* an act to be done, without pointing out any mode of punishment, an indictment will lie for disobeying the injunction of the legislature. *R. v. Davis, Say.* 133. Where a statute making a new offence, only inflicts a forfeiture, and specifies the remedy, an indictment will not lie. *R. v. Wright,* 1 *Burr.* 543. The true rule is stated to be this: Where the offence was punishable by a common law proceeding before the passing of a statute which prescribes a particular remedy, by a summary proceeding, then, either method may be pursued, as the particular remedy is *cumulative*, and does not exclude the common law punishment; but where the statute creates a new offence, by prohibiting and making unlawful, any thing which was lawful before, and appoints a particular remedy against such new offence by a particular method of proceeding, such must be pursued, and no other. *Russ. Cr. Misd.* 49.

Every attempt to commit a felony is a misdemeanor, and, in general, an attempt to commit a misdemeanor, is an offence of the same nature. *R. v. Scofield, Cald.* 397. So also, an indictment or solicitation to commit a crime, is a misdemeanor; as in the case of one Higgins, who was indicted for having incited and solicited a servant to steal his masters's property. The servant was honest, and informed his master, and no theft was committed: Higgins was found guilty, and sentenced by the court to two years' imprisonment, and to stand once in the pillory: Lord *Kenyon* observing, that the bare solicitation to commit a crime was a misdemeanor, though the crime was not committed. *R. v. Hingins,* 2 *East.* 5.

## MISPRISION OF FELONY.

MISPRISION of felony, is the concealing of a felony which a man knows, but never consented to, for if he consented, he is either a principal or accessory in the felony, and consequently guilty of misprision of felony, and more. 1 *H. H.* 374. The punishment of misprision of felony in a common person, is fine and imprisonment; in an officer, as sheriff or bailiff of liberties, imprisonment for a year, and ransom at the Queen's pleasure, by the stat. 3 *Edw.* 1. c. 9. If any person will save himself from the crime of misprision of felony, he must discover the offence to a magistrate, with all the speed he can. *Inst.* 140.

MONEY. See title "*Coin.*"

## MURDER.

By the 4 & 5 V. c. 27. § 3. Every person convicted of murder, or of being accessory before the fact to murder, shall suffer death as a felon: and every accessory after the fact to murder, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. § 4. Sentence of death may be pronounced after convictions for murder in the same manner, and the court before which the conviction may be had shall have the same power in all respects as after conviction for other capital offences. § 5. Every person convicted of murder shall, after judgment, be confined in some safe place within the prison, apart from all other prisoners, and shall be fed with bread and water only, and with no other food or liquor, except in case of receiving the sacrament, or in case of any sickness or wound, in which case the surgeon of the prison may order other necessaries to be administered; and no person but the gaoler and his servants, and the chaplain and surgeon of the prison, shall have access to any such convict, without the permission in writing of the court or judge before whom such convict shall have been tried, or of the sheriff or his deputy. § 6. Persons charged with murder or manslaughter may be tried in the district, county, or place in which the party slain shall die, or in which the assault was inflicted.

See also titles "*Homicide*," "*Punishment*."

## MUTE.

By the 4 & 5 V. c. 25. § 15. If any person being arraigned upon any indictment for treason or felony shall stand mute of malice, or will not answer directly to the indictment, it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of "not guilty," on behalf of such person, which shall have the same effect as if such person had pleaded the same.

## NEW-YORK CURRENCY.

\*By the 2 G. 4. c. 13. It is enacted, that from the 1st of July, 1822, no interest or costs shall be recovered on any sums expressed in New-York currency, nor any books of account given in evidence, unless expressed in provincial currency.

## NUISANCE.

NUISANCES are of two kinds—*public* and *private*. A public, or common nuisance, is an offence against the public, either by doing a thing which leads to the annoyance of all the queen's subjects, or by neglecting to do a thing which the common good requires. 1 *Haw. c. 75. § 1*; and is an indictable offence.

A private nuisance, is any thing done to the hurt or annoyance of the lands, tenements or hereditaments of another, as by building a house so near to a neighbour's as to stop his lights, or shoot the rain-water upon his house. 3 *Bl. Com. 216*. This is not an indictable offence, but only the subject of a civil action, in which the party may recover damages for the injury.

At the same time, if a private individual sustain a special grievance, arising out of the common injury, he has a right of action for the particular damage occasioned to him, notwithstanding the nuisance may affect all the Queen's subjects. 3 *Bl. Com. 219*.

*What is a Public Nuisance..*

The offending qualities of a nuisance are, in general, smell, noise, danger or obstruction; and the existence of it as a *public* nuisance, depends upon the number of persons annoyed by it. 1 *Burr. 337*. All trades and manufactures which are set up in a town, and occasion inconvenience to the whole neighbourhood, or which are carried on so near to a *public highway* as to cause the same inconvenience or danger to persons lawfully passing along it, may be indicted as public nuisances. But where a person sets up a noxious trade remote from human habitations and public roads, and new houses are afterwards built, and new roads constructed near it, the party, in such case, is not guilty of nuisance; for the public cannot, by their own act of *coming* to settle in the neighbourhood, make that a nuisance which was not so before, on the principle of "*volenti non fit injuria*." *R. v. Cross, 2 C. & P. 483*. Yet, if the trade afterwards become more noxious, he may be indicted for the additional nuisance. *R. v. Watts, M. & M. 281*. To constitute a nuisance proceeding from a noxious trade, it is not necessary, as Lord Mansfield has observed, that the smell should be *unwholesome*; it was enough if it rendered the enjoyment of life and property *uncomfortable*. *R. v. White, 1 Burr. 333*. To make *candles* in a town, by boiling *stinking stuff* which annoys the whole neighbourhood with stench, is also a common nuisance. *Matthews v. Carey, 3 Mod. 137. 1 Haw. c. 75. § 10*. So, if a *brew-house*, or a *glass-house*, cannot be carried on without greatly annoying the neighbour-

hood, it may be indicted as a nuisance. 2 *Haw. c. 75. § 10.* The keeping of hogs in a town, is not only a nuisance by statute (2 *W. & M. sess. 2. c. 3. § 20.*), but also at common law. *R. v. Wigg, 2 Ld. R. 1163.* So also, to steep stinking skins in water near a highway, and also near several dwelling-houses, by which the air is corrupted, is the subject of an indictment. *R. v. Vappineau, 1 Str. 686.* Making great noises in the night with a *speaking-trumpet*, to the disturbance of the neighbourhood, has been also decided to be a nuisance. *R. v. Smith, 1 Str. 764.* So, to keep dogs, which make noises in the night, seems to be an indictable offence. 2 *Chit. Crim. L. 647.* This, however, must be understood only where a whole neighbourhood is disturbed by them, otherwise it will only be a *private* nuisance; for where the noise made by a *tinman*, in carrying on his trade, only effects the inhabitants of three houses, and it appeared that by shutting the windows, the noise was in a great measure prevented, it was held that the indictment could not be supported, as the annoyance was, if any thing, a *private* nuisance. *Rex. v. Lloyd, 4 Esp. 200.* All disorderly inns or ale-houses, bawdy-houses, and gaming-houses, are also public nuisances. 1 *Haw. c. 75. § 4. 4 Bl. Com. 167.* So, whatever outrages *decency*, and is injurious to public morals, is a common nuisance, and indictable as a misdemeanor. 1 *Haw. c. 5. § 4. 4 Bl. Com. 65. n.* Any thing, also, which is productive of imminent danger, or which causes *reasonable terror* to the inhabitants of a neighbourhood, may be considered as a public nuisance. Thus, to erect *gunpowder mills*, or magazines, in or near to a town, or to put on board of a ship a quantity of gunpowder, without giving notice, is indictable as a nuisance. *R. v. Williams, 4 Burn. 758.*

By 10 *W. 3. c. 7.* Making, selling, or exposing to sale, any *fireworks*, or throwing or firing them into any public street or highway, is declared to be a common nuisance. So, to let a fierce *mastiff* or *bull-dog*, that is used to bite people, go about unmuzzled, to the danger and terror of the neighbourhood, is also a common nuisance; and the owner may be indicted for suffering him to go at large. 4 *Burn's J. 578.* So, for a person affected with an infectious disorder to go or be carried about in the highways and other public places, is an indictable offence. Accordingly, where the defendant was in the habit of carrying her child, while infected with the *small-pox*, along a highway, and near to houses, this was held to be a common nuisance, and indictable as such. *R. v. Vantandillo, 4 M. & S. 73.* So, where a surgeon and apothecary was indicted for *inoculating* children with the small-pox, and while they were sick of it, unlawfully and injuriously causing them to be carried along the public

street, it was objected that the defendant in this case was, by profession, a person qualified to inoculate with this disease, and that the causing the children to be carried along the street was no more than his directing his patients to attend him for advice, instead of visiting them, or prescribing what he might deem essential to their recovery.—air and exercise: it was held that though *inoculation* may be practiced lawfully and innocently, yet it must be done under such safeguards as not to endanger the public health; and that the defendant, in this case, was clearly guilty of an indictable offence. *R. v. Burnett*, 4 M. & S. 272. It is also a public nuisance for any common dealer in provisions to sell *unwholesome* food, or to mix noxious ingredients in any thing made and supplied for the food of man. With respect to nuisances by the obstruction in highways and rivers, see *ante* title "*Highways*," p. 309.

*Of the Remedy, by Abatement and Indictment.*

Any one may pull down, or otherwise destroy, a common nuisance; as, a new gate or fence erected across a highway. 1 *Haw. c. 75. § 12*. But, if there is no pressing necessity for the exercise of this immediate remedy in abating the nuisance, the better way, in order to prevent a breach of the peace, is to proceed against the party, by indictment or presentment. No length of time will legalize a public nuisance. *Ver L. Ell. 7. East. 199*. The punishment imposed by the law upon a person, convicted of a nuisance, is *fine* and *imprisonment*; but as the removal of the nuisance is of course the object of the indictment, the court will adapt the judgment to the circumstances of the case. If the nuisance, therefore, be continued, the judgment of the court may be, that the defendant shall remove it at his own costs. 1 *Haw. c. 75. § 14*; or the court may suspend their judgment, upon the defendant entering into recognizance to appear at an adjourned or subsequent sessions, when, if it shall appear to the court satisfactory that the nuisance has been abated, the court may impose a nominal fine only; but, if the contrary should appear to be the case, the court may then pronounce its judgment, of fine and imprisonment, or either, according to the circumstances of the case.

By the 5 W. & M. c. 11. § 3. If an indictment for a nuisance be removed into the king's bench, and the defendant be convicted, the court may give reasonable costs to the prosecutor.

*Indictment for carrying on an offensive Trade.* (ARCHBOLD).

Home District, } The jurors for our lady the queen, upon their  
 £0 wit. } oath present that J. S. late of the township

of — in the county of — in the home district, (labourer) on the — day of — in the — year of the reign of our sovereign lady Victoria, with force and arms, at the township aforesaid, in the county and district aforesaid, near unto divers public streets, being the queen's common highway, and also near unto the dwelling-houses of divers liege subjects of our said lady the queen, there situate and being, unlawfully and injuriously did (make, erect and set up, and did cause and procure to be made, erected and set up, a certain furnace and boiler, for the purpose of boiling tripe, and other entrails and offals of beasts; and that the said J. S. on the day and year aforesaid, and on divers other days and times, (\*) between that day and the day of the taking of this inquisition, at the township aforesaid, in the county and district aforesaid, unlawfully and injuriously did boil, and cause and procure to be boiled in the said boiler, divers large quantities of tripe, and other entrails and offals of beasts), by reason of which said premises, divers noisome, offensive, and unwholesome smokes, smells and stenches, during the time aforesaid, were from thence emitted and issued, so that the air then and there was, and yet is, greatly filled and impregnated with the said smokes, smells, and stenches, and was and is rendered and become, and was and is corrupted, offensive, uncomfortable and unwholesome, to the great damage and common nuisance of all the liege subjects of our said lady the queen there inhabiting, being and residing, and going, returning, and passing through the said streets and highways, and against the peace of our lady the queen her crown and dignity.

*Second Count for continuing the Nuisance,*

And the jurors aforesaid upon their oath aforesaid, do further present, that the said J. S. on the said — day of — in the year aforesaid, and from that day until the day of the taking of this inquisition, with force of arms, at the township aforesaid, in the county and district aforesaid, (a certain other furnace and boiler, for the purpose of boiling tripe and other entrails, and offals of beasts, before that time, made, erected, and set up, by certain persons, to the jurors aforesaid unknown, unlawfully and injuriously did continue, and yet doth continue; and that the said J. S. on the said — day of — in the year last aforesaid, and on divers other days and times) &c. as in the first count from the (\*) to the end.

## OATH.

*An Oath taken on the Common Prayer Book, containing the Epistles and Gospels, is good. 2 Keb. 314.*

THE stat. 15 G. 3. c. 39. Gives authority to justices to administer oaths where penalties are to be levied, or distresses made in pursuance of acts of parliament.

A Jew should be sworn on the Old Testament. 2 *Keb.* 314. and they are allowed to put on their hats when sworn. 2 *Str.* 821. A Mahomedan on the Koran. 2 *Str.* 1104.; and a Gentoo, according to the custom of his religion. 1 *Atk.* 21. It is immaterial what the particular opinions of persons are, professing Christianity, as far as regards the taking of an oath; it is only necessary that they believe the sanction of an oath, the existence of a Deity, and a future state of rewards and punishments. *Peake, R.* 11. But a person having no idea of a God, or a future state of retribution, cannot be admitted to take an oath. *Leach.* 482.

## OATHS OF OFFICE.

By stat. 13 C. 2. stat. 2. c. 1. and 5 G. c. 6. § 1. 2. Every person elected or chosen mayor; alderman; recorder; bailiff; town clerk; common councilman; or other office of magistracy, place, or trust, or other employment relating to the government of cities, corporations, boroughs, &c. shall take the oath of allegiance and supremacy, at the same time that the oath of office is taken, which shall be administered by those, who by charter or usage administer the oath of office, and in default thereof by two justices of the corporation, if there be any such, or otherwise, by two justices of the county; and in default thereof, every such election shall be void; which said justices shall cause memorandums to be made of such oaths taken before them, and delivered once a year to the town clerk, who shall enter the same in their books.

And every person who shall be admitted into any office, civil or military, or shall receive any pay, by reason of any patent or grant from the king; or shall have any command or place of trust in *England*, or in the navy; or shall have any service or employment in the king's household; all ecclesiastical persons, heads and members of colleges being on the foundation, or having any exhibition, of eighteen years of age; and all persons teaching pupils, schoolmasters, and ushers; preachers and teachers of separate congregations; high constables, and *practisers of the law*, shall within six calendar months after such ad-



mission, take and subscribe the oaths of allegiance, &c. in one of the courts at *Westminster*, or at the general or quarter sessions of the peace, where he shall reside, between the hours of nine and twelve in the forenoon, and no other; and during the time of the taking thereof, all proceedings in the said court shall cease. 1 G. st. 2. c. 13. § 2.; 2 G. 2. c. 31. § 3. 4.; 9 G. 2. c. 26. § 3.; 25 C. 2. c. 2. § 2. Every person making default herein, shall be incapable to hold his office; and if he shall execute any official duty after the times are expired, he shall, upon conviction, be disabled to sue in any action, &c. and forfeit £500 to him who shall sue for the same. 25 C. 2. c. 2. § 4. 5. 1 G. st. 2. c. 13. § 8.

\* By 3 W. 4. c. 13. An act to dispense with the necessity of taking certain oaths, and making certain declarations in the cases therein mentioned, and to render it unnecessary to receive the sacrament of the Lord's Supper as a qualification for offices, or for other temporal purposes: it is enacted that it shall not be necessary for any person appointed, or to be appointed, to any office in this province, civil or military, mayor or other officer, or member of any corporation, or for any person admitted as a barrister or attorney, to make any declaration or subscription, or to take or subscribe any other oath than the following:

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

§ 3. Which oath, together with the oath of office, shall be taken within the same period, and under the same disabilities and penalties for the omission thereof, as is now by law provided. § 4. No person shall be required to take the sacrament according to the rites of the Church of England, nor shall the omission to do so subject the party to any penalty or disability.

## OFFICER.

If a *public officer* neglects a duty incumbent on him, either by common law, or by statute, he is indictable for his offence; being considered as amenable to the law for every part of his conduct, and liable to punishment for not faithfully discharging it. *R. v. Wyatt*, 1. *Salk.* 380. *Anon* 6 *Mod.* 66. *R. v. Cambridge*, 1 *Haw. c.* 66. § 1. *Note.*

## ORDERS OF MAGISTRATES.

WHERE a justice of the peace has power to make an order, and direct it to an inferior ministerial officer, if such officer disobey it, and there is no particular remedy prescribed to punish his disobedience, it is an *indictable* offence. *R. v. Davis*, *Say.* 163. 1 *Bott.* 388.: and *a fortiori* the disobedience of an order of sessions, or of an order made by two justices, is indictable; and this too, whether there be another remedy or not; for the prosecutor has his option either to adopt that remedy, or proceed by indictment at common law. *R. v. Robinson*, 2 *Burr.* 799. If the order is made upon several persons, they must be all personally served with it, before they can be indicted for disobeying it. It is no defence to a party, for a total disobedience of an order, that when the order was served upon him, he was not able to perform its requisition with so much facility as if he had been sooner ordered to perform what was required of him, for he is bound to obey an order as much as lies in his power, and is not justified in utterly disregarding it. *Deacon's C. L.*

## ORPHAN CHILDREN.

\* By the 39 G. 3. c. 3. It is enacted, that when the father or mother of any infant shall die, or shall abandon their infant child or children, the town-wardens of any township, where such child or children shall be, with the approbation and consent of two justices, may bind such child or children as apprentices, until the age of twenty-one years in case of males, and eighteen years in case of females; and the indenture under their hands and seals, and countersigned by two justices, shall be valid in law. § 2. The like power is given to the mother, when the father abandons his children. § 3. But when the relations of any such orphan or abandoned children, are able and willing to support and bring them up, the town-wardens are not to apprentice them: and by § 4. A further exception is made, where the child has attained the age of fourteen years.

in such case he shall not be apprenticed without his consent thereto.

For the form of an indenture, see title "*Apprentices,*" ante p. 30.

## OUTLAWRY.

\* By the 55 G. 3. c. 2. § 2. The several courts of quarter sessions in the several districts in this province, are declared to be in the place and stead of the sheriffs' county courts in England, so far as respects any outlawry. § 3. The process upon every indictment shall be a *capias* from the court where the indictment is found, to bring the person indicted into court; and if not taken during the sitting of the court, then to bring him before some justice, to be dealt with according to law, which said *capias* shall be made returnable in the court of king's bench, on the first day of term, next after the sitting of the said court, before which such indictment shall have been found, and if the sheriff shall return *non est inventus*, then an *alias* shall issue from the king's bench, tested the first day of term, if in term time, or on the last day of the preceding term, if in vacation, returnable before the court of king's bench, on the first day of the next term. § 4. And if to the said writ the sheriff shall return *non est inventus*, then upon motion in court, or before a judge, in vacation, a writ of *exigent* shall issue, tested on the first day of term, or on the last day of the preceding term, if in vacation, directed to the same sheriff, returnable on the first day of the fifth term from that in which the same was awarded, and in the form required, (*vide act*). § 5. The sheriff shall, at three successive general quarter sessions, before the return of the said writ, in open court, immediately after the commission of the peace shall be read, make proclamation of the persons named in the *exigent*, requiring them to render to the indictment. § 6. And if the persons so demanded do not appear, the sheriff shall endorse upon the said writ of *exigent* the following return :

### *Form of Return.*

"By virtue of the within writ, to me directed, at the court of general quarter sessions of the peace, held at — in and for the district of — on — the — day of — in the year within written, the within named A. B. was a first time demanded, and did not appear: and at the court of general quarter sessions of the peace, held at — aforesaid, for the district aforesaid, on — the — day of — in the year aforesaid, (or as it may be) the said A. B. was a second time demanded, and did not appear: and at the court

## Outlawry.

of general quarter sessions of the peace, held at — aforesaid, for the district aforesaid, on — the day of — in the year aforesaid, (or as it may be) the said A. B. was a third time demanded, and did not appear, therefore the said A. B. according to the law of this province, is outlawed.

The answer of —

C. D. Sheriff.

§ 7. In all cases wherein any writ of exigent shall be awarded against any person described in the indictment, as being lately conversant in any other district, a writ of proclamation shall be awarded with the same teste and return as the writ of exigent, directed to the sheriff of such district, in the form prescribed, (vide act) and the sheriff of such district shall, at three successive courts of general quarter sessions, before the return of the said writ, in open court, the first day of the court, make proclamation according to the said writ, and shall return the same in the following form:—

George the third, &c. &c. &c.

To the sheriff of the — district, *greeting,*

Whereas, by a writ, we lately commanded our sheriff of the district of — that he should cause A. B. late — to be demanded from general quarter sessions, to general quarter sessions until, according to the law of this province, he should be outlawed, if he did not appear, and if he did appear, then, that he should take him and cause him to be safely kept, so that he might have his body before us, on the — day of — term then next, wheresoever we should then be in Upper Canada, to answer to a certain bill of indictment found against him, for — therefore we command you, that in pursuance of the act of the parliament of this province, passed in the — year of our reign, you cause the said A. B. to be proclaimed upon three several days, according to the form of the said statute, that he render himself to our sheriff of — so that he may have his body before us at the time aforesaid, wheresoever we shall then be in Upper Canada, to answer to the said indictment, and have there then this writ.

Witness, the honorable — at Toronto, this — day of — in the — year of our reign.

§ 9. After the return of the exigent and proclamation, the person or persons against whom the same shall have issued, shall, in default of appearance, incur the same disabilities, and the like process shall be thereupon had, as in cases of outlawry by the criminal law of England, as it stood on the 17th day of September, 1792. §. 11. The continuance of this act limited to two years. The above act was, however, revived by the \*55 G. 3. c. 2. and continued by several subsequent acts; and lastly,

by the \*3 W. 4. c. 6. by which it is continued in force for six years, and to the end of the following session. And is now made perpetual by the \*2 V. c. 7.

\*By the 3 W. 4. c. 4. any person, accessories as well as principals, indicted for any capital offence, shall be liable to the same punishment, whether convicted by verdict or confession, or shall be outlawed upon indictment.

## OVERSEERS OF HIGHWAYS.

ARE appointed at the annual township meetings.  
For the duties of the office, see *ante*, title "*Highways*," p. 307.

## PARDON.

A PARDON is a work of mercy extended towards a criminal, whereby the queen, either before his attainder, conviction or sentence, or afterwards, forgives him for the crime which he has committed, and remits any punishment, pain or penalty, which he has thereby incurred. 2 *Inst.* 233.

By the 27 H. 8. c. 24. It is enacted, that the king shall have the whole and sole power and authority thereof, united and knit to the imperial crown of this realm, as of good right and equity it appertaineth. The power of pardoning offences is thus inseparably incident to, and inherent in the crown; and is entrusted to the sovereign, upon a special confidence that he will spare those only whose case (could it have been foreseen) the law itself would have excepted out of its general rules, which the wisdom of man cannot make so perfect as to suit every particular case. 1 *Shaw.* 284. 2 *Haw. c.* 37. § 8. But besides a special pardon granted by the king's charter, there may be a *general* pardon, or act of grace, passed by the legislature; but in this instance also, proceeding from the king, for the pardon of certain crimes, committed before a certain period named in the act. Such was the act of grace of 20 G. 2. c. 52. But these acts of general pardon have now, for a long time, been discontinued; the special pardon, therefore proceeding from the king's peculiar grace and favor, is that with which we have now alone to deal. The king may pardon all offences against the crown, or the subject, with some few exceptions. These are—  
First. *The sending any subject of the realm a prisoner into any parts beyond the seas*; which, in order to preserve the liberty of the subject, is, by the *habeas corpus* act, (the 31 *Car.* 2. c. 2. § 12.) made a *præmunire*, and unpardonable, even by the king. And see *ante*, title "*Kidnapping*." Neither can the king pardon

a *common nuisance*, while it remains unredressed, or so as to prevent its abatement. Nevertheless, where a man is convicted, and fined for a *nuisance*, the king may, after judgment, remit the fine. 2 *Haw. c. 37. § 33.* Upon the same principle, the king cannot pardon an offence against a *penal statute* after the information brought; for the informer has then acquired a private property in his share of the penalty. 3. *Inst. 338.* 4 *Bl. Com. 398.* There is also another restriction of a peculiar nature, that affects the prerogative of pardoning; and that is in the case of parliamentary impeachments, wherein the king's pardon cannot be *pleaded* to any such impeachment, so as to impede inquiry, and stop the prosecution of great and notorious offenders. 12 & 13 *W. 3. c. 2.* This statute, however, does not restrain the king from pardoning the offender after *conviction* on impeachment. 4 *Bl. Com. 399.* A pardon is not effectual unless it is under the great seal; for a warrant under the privy seal, or sign manual, though sufficient to admit the party to bail, is not of itself a complete irrevocable pardon. 6 *St. Tr. 166.* It is also a general rule, that wherever it may be reasonably presumed that the king has been deceived, the pardon is void. Therefore, any suppression of truth, or suggestion of falsehood, in a charter of pardon, will vitiate the whole, for the king was misinformed. 3 *Inst. 238.* 2. *Haw. c. 37. § 8.* And this is in conformity with the statute of 27 *Ed. 3. c. 2.* which directs that in every charter of the pardon of felony, the suggestion, and the name of him that maketh the suggestion, shall be comprised; and if it be found untrue, the charter shall be disallowed. *General words* have a very imperfect effect in pardons; thus, a pardon of all "*felonies*" will not pardon a *conviction* or attainder of felony; but the conviction or attainder must be particularly mentioned; and if the party is convicted by verdict, the pardon must recite the indictment and conviction. 2 *Haw. c. 37. § 8.*

The statute *Ric. 2. st. 2. c. 1.* Enacts, that no pardon for *treason, murder, or rape*, shall be allowed, unless the offence be particularly specified therein; and particularly in *murder*, that it shall be expressed whether it was committed by lying in wait, assault, or *malice prepense*; upon which Sir Edward Coke observes, that it was not the intention of the parliament that the king should ever pardon murder under these circumstances, and therefore they prudently laid the pardon under this restriction, because they did not conceive it possible that the king would ever excuse an offence by name, which was attended with such high aggravations. 3. *Inst. 236.* And it is remarkable enough, says Sir W. Blackstone, that there is no precedent of a pardon in the register, for any other homicide than that which happens

*se defendendo*, or *per infortunium*; to which two species the king's pardon was expressly confined by the statute of 2 *Ed. 3. c. 2* and 14 *Ed. 3. c. 15.* which declare that no pardon of homicide shall be granted, but only where the king may do it by the *oath of his crown*; that is to say, where a man slayeth another in his own defence, or by misfortune. But the above statute, (*Richard 2.*) enlarges, by implication, the royal power, provided the king is not deceived in the intended object of his mercy; and therefore, pardons of murder were always granted with a *non obstante* of the statute of *Richard 2.* till the time of the revolution, when, the doctrine of *non obstante* ceasing, it was doubted whether murder could be pardoned generally; but it was determined by the court of king's bench, that the king may pardon on indictment of murder, as well as a subject might have discharged an appeal for that offence. *Salk. 499.*

A pardon may also be *conditional*; that is, the king may extend his mercy on what terms he pleases, and consequently, may annex to his pardon any condition that he thinks fit, whether precedent or subsequent, on the performance whereof the validity of the pardon will depend. 2 *Haw. c. 37. § 45.* This prerogative is occasionally exercised in this province, in the pardon of felons, on condition of banishment for life. A general pardon by act of parliament, containing no exceptions, is more beneficial in one respect, than by the king's charter, inasmuch as a man is not bound to plead it; but the court must *ex-officio* take notice of it; neither can he lose the benefit of it by his own *laches* or negligence, as he may of the king's pardon. *Fost. 43. 2 Haw. c. 37. § 61.* But if any person are excepted out of an act of general pardon, no one can then take benefit of it without specially pleading it; and he must shew in his plea, that he is not one of the persons excepted. *Id. § 60.* But the king's pardon must, in all cases, be specially pleaded, and produced in court *under seal*; and this too at a proper time; for if a man is indicted, and has a pardon in his pocket, and he does not plead it when arraigned, but puts himself upon his trial by pleading the general issue, he thereby waives the benefit of the pardon, and cannot afterwards resort to it. 2 *Haw. c. 37. § 59. 67.*

By 5 & 6 *W. & M. c. 13.* When a pardon is pleaded by any criminal, the judges have a discretionary power to bind him to his good behaviour, with two sureties, for any term not exceeding seven years.

The effect of a free pardon by the king, is to make the offender in all respects a new man; to acquit him of all corporal penalties and forfeitures annexed to that offence for which he obtains his pardon; and not so much to restore his former, as to

give him a new credit and capacity. But nothing can restore or purify the blood when once corrupted; which is the consequence of the attainder of *treason* or *murder*, if the pardon be not allowed till after the attainder, but the high and transcendent power of parliament; yet, if a person so attainted, receives the king's pardon, and afterwards has a son, that son may be heir to his father; because the father being made a new man may transmit new inheritable blood; though had the son been born before the pardon, he could never have inherited at all, nor can he inherit if he has an elder brother living, born before the attainder; for in that case the land will escheat *pro defectu hæredis*. 1 *Hale*, 358. 4 *Bl. Com.* 402. By stat. \*3 W. 4. c. 5. corruption of blood is taken away, except in cases of high treason; and it shall be lawful for every person or persons, to whom the right or interest, to, or in any lands after the death of any such offender, should or might have appertained, if no such attainder had been, to enter into the same.

By the 4 & 5 V. c. 24. § 48. A pardon under the royal sign manual, or by warrant under the hand and seal at arms of any governor, &c., shall have the effect of a free or conditional pardon (as the case may be), under the great seal; but shall not mitigate the punishment for any subsequent offence.

## PATENT RIGHTS.

\*By the 7 G. 4. c. 5. When any subject of his Majesty, being an inhabitant of this province, shall allege that he has invented any new and useful art, machine, manufacture or composition of matter not known, or used before the application, and shall petition the governor, signifying a desire of obtaining an exclusive property in the same, and praying a patent; it shall be lawful for the governor, &c. to grant letters patent under the great seal of the province, and passed in the usual form, to the said petitioner, his executors, &c. for a term not exceeding fourteen years; and every inventor, before he can receive such patent, shall swear (or being a Quaker, &c. affirm,) that he is the true inventor or discoveror of the art, machine, or improvement, for which he solicits a patent, (which oath or affirmation may be made before any justice) and shall deliver a written description of his invention or improvement, and of the manner or process of compounding the same, in such full, clear, and exact terms, as to distinguish the same from all other things before known; and to make any person skilled in the art or science, of which it is a branch, or with which it is most clearly connected, to make, compound and use the same; and in the case of any machine,



he shall fully explain the principle, and the several modes in which he has contemplated the application of that principle or character, by which it may be distinguished from other inventions; and he shall accompany the whole with drawings and written references, where the nature of the case admits of drawings, or with specimens of the ingredients, or of the composition of matters, sufficient in quantity for the purpose of experiment; which description, signed by himself, and attested by two witnesses, shall be filed in the office of the secretary of the province, and certified copies thereof shall be competent evidence in all courts, where the patent right shall come in question, and the inventor moreover shall deliver a model of the machine by him invented, if the secretary shall deem such model necessary.

For fees payable on obtaining such patent and other collateral matters, see the act.

*Petition for a Patent.*

To his Excellency the Right Hon. Sir Charles Theophilus Metcalfe, Bart., G.C.B., &c. &c. (as in p. 258.)

The humble petition of A. B. of — in the home district, engineer—  
Sheweth:

That your petitioner is a natural born subject of her Majesty, [or a subject of her Majesty,] and that he has invented a new and useful machine, &c. (*describing the article in general terms,*) not known before this application, a specification, whereof, accompanied with the necessary drawings and references, and duly attested, has been filed by your petitioner in the office of the secretary of this province, pursuant to the statute in such case made and provided.

Your petitioner therefore, humbly prays, that your excellency will be pleased to direct, that her Majesty's letters patent may be granted to your petitioner for the said invention, and for the term allowed by law, and your petitioner as in duty bound, will ever pray, &c.

A. B.

Toronto, 1st Jany. 1843.

*Oath of the Invention.*

Home District, } A. B. of — in the said district, engineer,  
to wit. } maketh oath and saith that he verily believes, he is the sole and true inventor and discoveror of the machine mentioned, and referred to in the specification and drawings hereunto annexed.

A. B.

Sworn the — day of — 184—.

Before — J. P.

*The Specification.*

No general form can be given of this, it will of course depend upon the construction of each particular invention: the act however expressly defines what it shall contain, and requires also, that it shall be signed by the petitioner and be attested by two witnesses.

PENALTIES.—See *ante* title “*Fines*,” p. 261.

## PENITENTIARY.

\*By the 3 W. 4. c. 44. The sum of £12,500 was granted by the provincial parliament for the erection of a penitentiary in this province, to be vested in her Majesty.

\*By the 4 W. 4. c. 37. It is enacted, that the penitentiary shall be under the direction of five inspectors, to be appointed by the lieutenant-governor during pleasure, and that the said board of inspectors shall choose one of their number to be their president, and shall have full power to make all necessary rules and regulations respecting the discipline and police of the said penitentiary. § 2. It shall be the duty of the inspectors to examine into all matters connected with the government, discipline and police of the penitentiary; the punishment and employment of the prisoners therein confined; the financial concerns and contracts for work; and the purchases and sales of the articles provided for such penitentiary, or sold on account thereof; and they may from time to time require reports from the warden or other officers of the penitentiary, in relation to any of the said matters. § 3. Also to inquire into any improper conduct alleged against the officers, and for this purpose they shall be empowered to issue subpoenas to compel the attendance of witnesses, and the production of papers and writings before them. § 4. And any witness forswearing, shall, on conviction, suffer the pains and penalty of perjury. § 5. It shall be the duty of the warden and other officers, to admit the inspectors into every part of said penitentiary, and exhibit all books and papers, &c. § 6. The board shall keep minutes of its proceedings, signed by the members, and shall meet once in two months at the penitentiary, and then inspect the same, and shall annually, on or before the 1st of November, make a report to the legislature, of the state and condition thereof; of the prisoners confined therein; of monies expended and received; and generally, of all proceedings during the past year: *Provided always*, that no inspector shall be *warden*, or be concerned in the business of such warden, or hold any appointment connected with

the penitentiary. § 7. The officers of the penitentiary shall be as follows: First. One warden or principal superintendent, who shall reside at or near the penitentiary. Second. One clerk. Third. One chaplain. Fourth. One physician and surgeon. Fifth. One deputy warden, who shall also reside at or near the penitentiary. Sixth. And not exceeding twenty keepers: such clerk and keepers to be appointed by the board of inspectors, and to hold office during pleasure; and the warden, chaplain, physician, and deputy warden, to be appointed by the lieutenant-governor, to hold their office during pleasure. § 8. The lieutenant-governor is authorised to procure a guard, who shall, while on duty, be subject to the orders of the warden or his deputy. § 9. The warden, before entering on the duties of his office, shall give a bond to her Majesty, with sufficient sureties, to be approved by the inspectors, in the penal sum of £2,000, for the faithful performance of his duties, according to the form annexed, and shall be filed with the secretary of the province; and the warden, clerk, deputy warden, and keepers, shall, before they enter upon their respective offices, severally take and subscribe before the chairman of the quarter sessions of the Midland district, the following oath, to be filed with the clerk of the peace:

“ I, A. B. do promise and swear, that I will faithfully, diligently and justly, serve and perform the office and duties of — of the provincial penitentiary of Upper Canada, according to the best of my abilities. So help me God.”

§ 10. It shall be the duty of the warden or his deputy, to attend constantly at the penitentiary, except when performing some other necessary duty; to exercise a general supervision over the government, discipline and police, of the said penitentiary; to give the necessary directions to the keeper, and to examine daily into the state of the penitentiary, and the health, conduct and safe-keeping of the prisoners; to use every proper means to furnish such prisoners with employment, the most beneficial to the public, and the best suited to their various capacities, and to superintend all the manufacturing and mechanical business carried on within the penitentiary; to receive the articles so manufactured, and to sell and dispose of the same, for the benefit of the province, when the labour of the convicts is not let out by contract. § 11. All transactions and dealings on account of the penitentiary, shall be in the name of the warden, by his name of office, of “ Warden of the Provincial Penitentiary in Upper Canada,” and by that name he shall sue and be sued. § 12. Disputed claims shall be referred to arbitration. § 13. Whenever the inspectors of the penitentiary shall so direct, it shall be the

duty of the warden to make contracts from time to time, for the labour of the convicts, with such persons and upon such terms as the warden may deem most beneficial. § 14. The prisoners shall be supplied with provisions by contract, unless the inspectors shall otherwise direct; such contract to be made annually or semi-annually, under the direction of the inspectors, at a fixed price per day, for each prisoner; such contracts being previously advertised for, in two of the district newspapers, and in such other newspapers, and for such time as the inspectors shall direct; and the contractors shall give satisfactory security for the performance of their contracts. § 15. The necessary medicines and hospital stores shall be purchased by the warden from time to time, as may be requisite, with the advice of a physician, and under the direction of the inspectors. § 16. The warden is also authorised to purchase raw materials, taking bills, whenever any supplies or necessaries shall be purchased. § 17. No inspector, warden, or officer, or person employed at the penitentiary, shall be directly or indirectly interested in any contract, purchase or sale, on account of the penitentiary, under the penalty of £100., to be recovered by action of debt, in any of her Majesty's courts in this province: to be applied, when recovered, to the use of the province. § 18. The warden shall keep a regular and correct account of all monies received and paid, and deliver to the inspectors a monthly return thereof, upon oath, and stating the balance in hand. § 19. The warden shall close his accounts annually, on or before the 1st day of October, and render to the governor a full account, to be laid before the legislature; also, an inventory of the goods, raw materials, and other property of the province, on hand, exhibiting a complete detail of the transactions of the penitentiary, for the year, with an affidavit annexed of the warden and clerk, stating that the same are correct and true, in every respect, to the best of their knowledge and belief. § 20. The warden shall, on or before the 15th October in every year, transmit to the inspectors a complete and comprehensive view of the transactions of the penitentiary during the preceding year; of the number of convicts confined therein; the various branches of business in which they are employed; the number employed in each branch; and the profits to the province, if any, arising therefrom. § 21. No perquisites or emoluments shall be taken by the officers of the establishment, except that the warden or deputy shall be provided with dwellings at or near the penitentiary, and shall be furnished with fuel and candles, and servants from among the convicts. § 22. The warden shall make an annual report to the governor, on or before the 1st day of Oc-

tober, of the convicts discharged in the preceding year, and the particulars. § 23. In case of vacancy, the deputy warden shall fulfil the duties of warden, until such vacancy be filled. § 24. The physician of the penitentiary shall keep a register of the sick and deceased convicts, stating their names, ages, and cause of death. § 25. All books and papers relating to the penitentiary, shall there remain. § 26. The salary of the warden shall be £200 per annum, and of the deputy warden £150, and the other officers shall receive such remuneration as the inspectors, with the approbation of the governor, shall deem just. § 27. The convicts, other than such as shall be confined in solitude, shall be kept to hard labour, except in case of sickness, and at night, singly in a cell, and also during the day time, when unemployed. § 28. Their clothing and bedding shall be of coarse materials, manufactured, when it can be done, in the penitentiary; they shall be supplied with a sufficient quantity of inferior and wholesome food, and each of them with a bible, at the expense of the province. § 29. In case of any violent conduct by the convicts, the officers may use all suitable means to defend themselves and prevent escape. § 30. The warden shall take charge of any property which any convict shall have, upon entering the penitentiary, and shall preserve the same for his benefit, and pay the amount thereof to such convict when released, or to his legal representative; and in case of death, if no legal representative shall appear within a year, the property shall be applied to the use of the province. § 31. Upon the discharge of any convict, by pardon or otherwise, the warden shall furnish him with necessary clothing, not exceeding £3, and a sum of money not exceeding £1. § 32. Any person conveying letters to or from any convict without the consent of the warden, shall be guilty of a misdemeanor. § 33. The following persons shall be authorised to visit the penitentiary at pleasure, viz.:—the lieutenant-governor, the members of the legislature, the judges of the king's bench, and the attorney and solicitor generals, but no others, except by permission of the warden, or under such regulations as the inspectors shall provide. § 34. The officer in charge of any convict, shall deliver to the warden a certified copy of the sentence, and shall take a certificate of delivery, and in case of escape, the warden shall take all proper measures for his apprehension, and he may offer a reward, not exceeding £50, for the apprehension and delivery of such convict. § 35. No inquest shall be held on the body of a deceased convict, unless requested by the warden or one of the inspectors; but the warden shall in all cases of death, from any other cause than ordinary sickness, call the coroner; and upon

## Penitentiary.

the death of any convict, unless the body shall be removed by relatives within twenty-four hours for interment, the warden shall deliver the same, on demand, to the agent of the medical society of the district. § 36. In case of any pestilence or contagious disease breaking out among the convicts or in the vicinity, the inspectors may cause the convicts to be removed to some suitable place of security. § 37. Contains a similar provision in case of fire. § 38. It shall be the duty of the warden to receive and keep any convict until discharged by the course of law, the province supporting such convict, and paying the expenses attendant upon the execution of such sentence, except that the district in which conviction shall take place shall defray the expense of conveying such convict to the penitentiary. § 39. In case any prisoner shall escape, or attempt to escape, he shall be liable to the like punishment as upon a committal under the authority of a court of justice, and the officer shall be liable to the like penalties for any neglect or violation of duty in respect to such prisoner, as if such prisoner had been committed under the like authority. § 40. The warden and other persons employed in the penitentiary shall be exempt from serving on juries, or in the militia, or from town or parish offices. § 41. Spirituous or fermented liquors prohibited, without a written permit signed by the physician of the penitentiary. § 42. The salaries of the officers shall be paid by the receiver general, in discharge of such warrants as may be issued by the governor.

\* By the 3 V. c. 59. § 4. The guards of the said penitentiary now appointed, or hereafter to be appointed, shall severally take and subscribe before the president of the board of inspectors the following oath:

“I, A. B., do promise and swear, that I will faithfully, diligently, and justly serve and perform the office and duties of “guard of the Provincial Penitentiary in Upper Canada, according to the best of my abilities. So help me God.”

§ 5. The president of the board of inspectors authorised to administer the oaths required to be taken by the warden and other officers of the said penitentiary.

\* By the 4 & 5 V. c. 69. §. 1. The penitentiary erected near Kingston, shall hereafter be called the “Provincial Penitentiary of Canada,” and convicts in Lower Canada may be conveyed to and imprisoned therein, until discharged in due course of law. § 3. Provides that all the enactments contained in the \*4 W. 4. c. 37. with regard to convicts imprisoned therein, shall apply to convicts imprisoned under the authority of this act. §. 4. The name of the warden to be “The Warden of the Provincial Penitentiary of Canada,” by which name he shall sue and be

sued, in all matters concerning the said penitentiary. § 5. So much of the last above recited act as authorises the appointment of a deputy warden is repealed; and the inspectors, or a majority of them, to appoint and remove an assistant warden of the said penitentiary, who shall act under the censure and superintendence of the warden, and in case of vacancy, or absence of the warden, shall have all the powers which by the said act were in like cases vested in the deputy warden.

## PERJURY.

PERJURY, (from the Latin, *perjurium*) is the crime of *wilful false swearing* to any matter of fact *material* to the issue or point in question, when a *lawful* oath is administered to the party, in some *judicial* proceeding. 3 *Inst.* 174.; 1 *Haw.* c. 69. § 1.; 1 *T. R.* 69. And it is an offence at common law.

*Subornation* of perjury, is the offence of procuring another to take such a false oath, as constitutes perjury in the principal, and is an offence under various statutes.

It has been settled that *justices of the peace* have no jurisdiction over perjury at *common law*. 2 *Haw.* c. 8. §. 38. *Salk.* 406. 2 *Stra.* 1088. But under the statute of *Elizabeth*, they have; this statute, however, only relates to the crime of *subornation*, and from the difficulty of attending prosecutions under it, is now seldom resorted to.

### 1. Of Perjury at Common Law.

The perjury must be wilful, that is, the false oath must be taken deliberately and advisedly; for, if it originated more from the weakness than the perverseness of the party; as, if it be occasioned by surprise or inadvertency, or a mistake of the true meaning of the question; it will not then amount to voluntary and corrupt perjury. 1 *Haw.* 69. § 2. It has been said, that no oath shall amount to perjury, unless the fact deposed to be sworn *absolutely* and *directly*; but this doctrine is now exploded, and the crime of perjury, it is agreed, may be committed by a man who swears that he *believes* that to be true which he *must know* to be false. *R. v. Pedley*, 1 *Leach*, 237. *Miller's case*, 3 *Wils.* 427. 2 *Bl.* 811. The oath must be *false*; upon which head it has been observed, that it is not material whether the fact which is sworn be in itself true or false; for, however the thing sworn may happen to prove agreeable to truth, yet if it were not *known to be so*, at the time by him who swears to it, his offence is altogether as great as if it had been false. This position cannot be denied, as constituting

perjury, viz.—when a witness wilfully swears that he knows a thing to be true, which at the same time he knows nothing of; and thus impudently endeavours to induce those before whom he swears to proceed upon the credit of a deposition, which any stranger might make as well as he. 1 *Haw. c. 69. § 5. per Lawrence, J. 6. T. R. 637; R. v. Edwards, 2 Russ. 518. note (e)*. All false oaths taken before those who are in any ways intrusted with the administration of justice, in relation to any matter legally pending before them, are properly perjuries. Therefore all persons are indictable who wilfully forswear themselves in any *judicial proceeding*, depending before a court of law or equity, or any other court, whether the proceedings therein be recorded or not; where an affidavit is made of any matters *material* in a cause, the party making it is indictable for perjury, although the affidavit is never used to found any subsequent proceeding upon. *R. v. White, 1 M. 271.; R. v. Hailey, Ry. & M. 94; 1 C. & P. 258.*; and so in a false oath before a justice of the peace, in any proceeding within the jurisdiction of the justice, in which he is authorised by law to administer an oath. 1 *Haw. c. 69. § 3.* or before a commissioner of the court of K. B., duly authorised; but in all private transactions between man and man, no oath whatsoever, however false it may be, is punishable as perjury in a criminal prosecution; such as a false oath taken by one upon making a bargain, that the thing sold is his own. Neither is the breach of a *promissory oath* within the legal definition of perjury. Therefore, no public officer who neglects to perform the duties of his office, which he has previously sworn faithfully to discharge (however punishable he may be for a misdemeanor, and aggravated as his offence may be by the violation of his oath) is indictable for perjury. 2 *Haw. c. 69. § 3.* Neither can a juror, who gives a verdict contrary to evidence, be prosecuted for perjury. 1 *Haw. c. 69. § 5.* The oath must be taken before some court or person *legally authorised* to administer an oath; for no oath whatsoever, which is taken before persons not legally authorised, or competent to administer an oath, can amount to *perjury* in the eye of the law. 1 *Haw. c. 69. § 4.* The thing sworn must be *material* to the point in question; for if it be wholly foreign from the purpose, or altogether immaterial, not tending to aggravate or extenuate the damages, nor likely to induce the jury to give a readier credit to the substantial part of the evidence, it cannot then amount to perjury; because it is, in such case, merely idle and insignificant; as, if upon a trial, in which the question was whether A. was *compos* or not, a witness unnecessarily and impertinently describes a journey which he took



to see the party, and happens to swear falsely in relation to some of the circumstances of the journey. 1 *Haw. c. 69. §. 8.* But if the false oath has any tendency to prove or disprove the matter in issue, however circumstantially; as, if the party wilfully mistake the colour of a man's coat, or speak falsely to the credit of another witness, it will in like manner amount to perjury. *Rex v. Griebe, 12 Mod. 142. R. v. Muscot, 10 Mod. 195.* With respect to *subornation* of perjury, if the person incited to take a false oath do not actually take it, the person by whom he was so incited is not guilty of *subornation of perjury*; but he is, nevertheless, liable to be punished as for a gross misdemeanor, in attempting to pervert the course of justice. 1 *Haw. c. 69. § 10.*

## 2. Of the offence by Statute.

By 5 Eliz. c. 9. (made perpetual by 29 Eliz. c. 5. § 2. and 21 Jac. 1. c. 28. § 8.) it is enacted by § 3. that every person who shall unlawfully and corruptly procure any witness to commit any wilful and corrupt perjury, in any matter or cause depending in suit and variance, shall forfeit £40; or (by § 4.) if he has not goods to that amount, shall suffer imprisonment for half a year, and stand upon the *pillory* for one hour, in some market town next adjoining to the place where the offence was committed. By § 5. no person so convicted can afterwards be received as a witness in any court of record, until the judgment be reversed. By § 6. any person either by subornation, unlawful procurement, sinister persuasion, or by means of any others, or by his own act, consent or agreement, committing wilful and corrupt perjury, shall, upon conviction, forfeit £20, and be imprisoned six months, and his oath not afterwards received in any court, until judgment reversed; or if the offender has not goods, shall be set in the *pillory*, and have both his ears nailed, and be discredited and disabled for ever to be sworn in any court of record, until judgment shall be reversed. By § 9. the judges of any court, where the perjury is committed, and the justices of assize and gaol delivery, and the justices of the peace, at their quarter sessions, may inquire of, hear and determine, all offences against the act. And (by § 13.) the act is not to restrain the authority of any other judge having absolute power to punish perjury before the making of the statute, so that he set not upon the offender less punishment than is contained in the act.

The above statute of Elizabeth did not alter the nature of the offence at *common law*, but merely enlarged the punishment. It is, however, seldom resorted to in the present day, on account of the difficulty of convicting under it; for, in the first place it

has been held not to apply to any case unless it can be shewn that there is a *party grieved* by the perjury, and that the perjury, also, was committed in a matter relating to the proof of what was in issue. *Salk.* 270. Nor can a witness who gives false evidence for the crown be indicted under it; for which a reason is given in the report, that does not appear to be a very sound one, namely, because an indictment being *the suit of the king*, he cannot punish his own witness, who swears for him. *Price's case, Cro. Jac.* 120.

The statute also extends to no other perjury than that of a witness; therefore, perjury committed in an answer to a bill in chancery, or in swearing the peace against another, cannot be prosecuted under the statute. 1 *Haw. c.* 69. § 20.

A false *affidavit* has been also held to be not within the statute. 1 *Roll.* 79. 2 *Roll. ab.* 77. 3 *Keb.* 345. 3 *Salk* 269. But this appears to be too general a proposition; for if the affidavit be of such a nature that either of the parties in variance be grieved, hindered or molested, in respect of their cause, by reason of the perjury, the offence then seems to be within the meaning, as well as within the letter of the statute. 1 *Haw. c.* 69. § 21.

### 3. Of other Statutes relating to the Offence.

By the 23 G. 2. c. 11. Which professes to be passed for the laudable purpose of facilitating prosecution for perjury, it is enacted by § 3 that any judge of assize or *nisi prius*, or general gaol delivery, while the court is sitting, or within 24 hours afterwards, may direct any person (examined as a witness upon any trial before him) to be prosecuted for the said offence of perjury, in case there should appear to him reasonable cause for so doing, and to assign the prosecutor counsel, without fee or reward; and such prosecution shall not be subjected to any fee of court, &c.

By 7 & 8 W. 3. c. 34; 8 G. 1. c. 6; and 22 G. 2. c. 46. The false *affirmation* or *declaration* of any of the people called Quakers, is declared to incur the penalties of perjury; and so, by several provincial statutes: \*49 G. 3. c. 6; \*10 G. 4. c. 1. &c.

By 12 G. 1. c. 29. § 4. If any person convicted of perjury, forgery, or common barratry, shall practise as an attorney, solicitor or agent, the judges of the court shall examine the matter in a summary way, in open court, and may sentence the offender to be transported for seven years.

### 4. Of the Indictment.

An indictment for perjury at *common law*, cannot be preferred at the quarter sessions; for, by the common law, the sessions have no jurisdiction of perjury; though it seems they have

jurisdiction over it under the 5 Elizabeth c. 9. 2 *Haw. c. 8.* § 38. But as prosecutions under the statute are much more difficult than those at *common law*, and are seldom adopted, even in the courts above, they are of course still less in use at the sessions.

Besides the proceeding by indictment, the court before which any glaring offence of perjury is committed, has also the power to punish the offender in a summary way, as for a contempt.

*Of the Punishment.*

Perjury is punishable at common law with fine, imprisonment, and pillory,\* at the discretion of the court; and by statute 2 G. 2. c. 25. § 2. (made perpetual by 9 G. 2. c. 18.) the judge may order the party to be transported, or to be imprisoned and kept to hard labour in the house of correction, for a term not exceeding seven years. The false affirmation of a Quaker is punishable in the same manner. 22 G. 2. c. 46. § 36; and of other sectarians, such as Menonists, Tunkers, &c. by the \*49 G. 3. c. 6; \*10 G. 4. c. 1.

Subornation of perjury is punishable by £40 fine, six months' imprisonment, and the pillory. 5 *Eliz. c. 9.*

PHYSIC AND SURGERY.

\*By 8 G. 4. c. 3. It is enacted, that the practice of physic, surgery, or midwifery, for hire, gain or hope of reward, by any person not duly licensed, or not being actually employed as a physician or surgeon in his Majesty's naval or military service, shall be a *misdemeanor*; and that upon the trial of any person charged with such misdemeanor, the proof of license, or the right to practise, shall lie upon the defendant. But no prosecution shall be commenced after one year from the offence committed; and no person convicted shall be imprisoned for more than six months, or fined above £25.

*Indictment for practising without being duly qualified.*

Home District, } The jurors for our lady the queen, upon their  
to wit. } oath present, that A. A. late of the township  
of — in the home district, gentleman, being a person of a wicked  
mind and disposition, unlawfully, wickedly, and injuriously  
minding and intending to impose upon and deceive divers liege  
subjects of our lady the queen, under the false colour and pre-  
tence that he the said A. A. was well skilled in the art, calling,  
profession and practice of physic, surgery and midwifery, and  
that he was of sufficient knowledge and ability to undertake and

\* Pillory abolished by 4 & 5 V. c. 24. § 31.

practise the said profession or calling, and to execute and perform the duties of such art, profession, and calling; and also unlawfully, wickedly, and injuriously, going about, and causing and procuring himself, the said A. A., to be engaged, retained and employed, by divers liege subjects of oursaid lady the queen, in attempting to heal them of divers maladies, sores, and diseases, wherewith the said liege subjects were affected, and in the delivery of pregnant women, for large sums of money to be paid to him the said A. A. for such his pretended skill in the said art, practice, profession, or calling of a physician, surgeon, and midwife, on the first day of May, in the — year of the reign of our sovereign lady Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland, queen, defender of the faith, with force and arms, at the township of — aforesaid, in the home district aforesaid, unlawfully, wickedly and injuriously, did set up and practise the said art, profession and calling of a physician, surgeon, and midwife, and from thence hithertohath practised physic, surgery, and midwifery, at the township aforesaid, in the district aforesaid, for gain, hire, and hope of reward, he the said A. A. then and there not being a member of the medical board in this province, and not being licensed by any governor, lieutenant-governor, or person administering the government of this province, to practise physic, surgery, or midwifery, in this province, and not being actually employed as a physician or surgeon in her Majesty's naval or military service, contrary to the form of the statute in such case made and provided, to the evil example of all others in the like case offending, and against the peace of our said lady the queen, her crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. A. afterwards, to wit, on the first day of July, in the — year of the reign aforesaid, with force and arms, at the township aforesaid, in the district aforesaid, unlawfully, wickedly and injuriously, did set up and practise the art profession and calling, of a physician and surgeon, and from the said first day of July, in the year aforesaid, to the first day of March, in the — year of the reign aforesaid, did practise physic and surgery, for hire, gain, and hope of reward, he the said A. A. then and there not being a member of the medical board of this province, and not being licensed to practise physic or surgery in this province, and not being actually employed as a physician or surgeon in her Majesty's military or naval service, contrary to the form of the statute in such case provided, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lady the queen, her crown and dignity.

## PILLORY.

By the 4 & 5 V. c. 24. § 31. The punishment of the pillory is abolished.

## PIRACY.

*What acts amount to Piracy.*

WHERE the subjects of the same state commit robbery upon each other upon the high seas, such acts of violence and depredation amount to piracy. And the same, if the subjects of different states, connected by ties of amity and friendship, commit robbery upon one another. 4 *Inst.* 154. But where states are at open war with each other, the plundering of an enemy is then not an act of piracy, but a mere act of hostility and lawful capture. So, if persons making a capture at sea do so by authority of any foreign prince or state, this also cannot be considered piracy. Thus, even a capture by authority of the marauding states of Algiers, Tunis, or Tripoli, cannot be treated as piracy. *Grot.* 2. c. 18. § 2. *Sir L. Jenk.* 790. Formerly indeed, no subjects of the British empire were deemed pirates, if they acted under the commission of any foreign power; but by the 11 & 12 W. 3. c. 7. (which was levelled against commissions granted by *James 2.*, after his abdication), it is enacted, that if any natural-born subjects or denizens of this kingdom shall commit any piracy or robbery, or any act of hostility against others of his majesty's subjects, or states, on pretence of authority from any person whatsoever, the offenders shall be deemed to be *pirates*, felons, and robbers; and being convicted under that act, or the 28 H. 8. c. 15. shall suffer capital punishment. In addition to this statute, the 18 G. 2. c. 30. enacts, that all natural-born subjects or denizens, who during any war shall commit any hostility upon the sea, or in any haven, river, creek, or place, where the admiral has jurisdiction, against his majesty's subjects, by virtue or under colour of any commission from any of the king's enemies, or shall be otherwise adherent or giving aid or comfort to his majesty's enemies upon the sea, or where the admiralty has jurisdiction, may be tried as *pirates*, felons, and robbers, in the court of admiralty, on shipboard, or on land; and being convicted, shall *suffer death*, &c. as under the last statute.

By § 9 of the above statute of 11 & 12 W. 3. c. 7. If any commander or master of any ship, or any seaman or mariner, shall, in any place where the admiral has jurisdiction, betray his trust, and turn pirate, enemy, or rebel, and piratically and

feloniously run away with his or their ship, or any barge, boat, ordnance, ammunition, goods, or merchandize; or yield them up voluntarily to any pirate; or shall bring any seducing message from any pirate, enemy, or rebel; or consult, combine, or confederate with, or attempt or endeavour to corrupt any commander, master, officer, or mariner, to yield up or run away with any ship, goods, or merchandize, or to turn pirate; or if any person shall lay violent hands on his commander, whereby to hinder him from fighting in defence of his ship and goods; or shall confine his master; or make, or endeavour to make, a revolt in the ship, he shall be adjudged, deemed, and taken to be a *pirate*, felon, and robber, and being convicted, shall suffer accordingly.

By 8 G. 1. c. 24. § 1. (made perpetual by 2 G. 2. c. 28. § 7.) If any commander or master of any ship, or any other person, shall anywise trade with any pirate, by truck, barter, exchange, or in any other manner; or shall furnish any pirate with any supplies of any kind; or shall *fit out* any vessel to trade with or supply or correspond with any pirate; or if any person shall correspond with any pirate, every such offender shall be deemed and adjudged guilty of piracy, and shall suffer death.

#### *Of Accessories.*

Piracy being no felony by the common law, nor made so generally by any statute, the accessories to the offence were only triable by civil law, if their offence was committed on the sea; but if on the land, they were not triable at all till the 11 and 12 W. 3. c. 7. By § 10. of this statute, it is enacted, that every person who shall knowingly or willingly set forth any pirate, or aid and assist in any piracy, he shall be deemed an accessory. And after any piracy shall be committed, every person who shall receive, entertain, or conceal any such pirate, shall likewise be deemed an accessory. And all such accessories shall be tried after the course of the common law, according to the statute 28 H. 8. as principals, and not otherwise, and shall *suffer death*, and loss of land, according as such principals. But by 3 G. 1. c. 24. all persons who by statute 11 & 12 W. 3. are only deemed accessories, are by this statute declared to be *principals*, and shall and may be dealt with accordingly.

#### *Of the Indictment, Trial, and Judgment.*

The indictment must allege the fact to have been committed on the *high seas*, within the jurisdiction of the *admiralty*, and lay it to be done *feloniously* and *piratically*. If it turn out that the goods were taken any where within the body of a county, the

admiralty can have no jurisdiction to inquire into the offence. So, on the other hand, if goods were taken at sea and afterwards brought on shore, the offender cannot be indicted as for larceny in that county into which they were carried, because the original felony was no taking whereof the common law takes cognizance. 3 *Inst.* 113. 1 *Haw. c.* 37. § 10.

By 28 H. 8. c. 15. § 1. All treasons, felonies, robberies, murders, and confederacies, committed in or upon the sea, or in any haven, river, creek or place, where the admiral has, or pretends to have power, authority, or jurisdiction, shall be tried by commissioners of *oyer and terminer*, in such shires and places as shall be limited by the king's commission, in the same manner as if such offences had been committed on the land; and by § 3. the offender is excluded from the benefit of clergy. But notwithstanding this statute, the admiralty can claim no jurisdiction where the haven, river, or creek, is within the body of a county; for in that case, the offence was always cognizable at common law; and all rivers are within the jurisdiction of the common law, until they flow past the furthest point of land next the sea.

In order to spare the expense and delay of bringing offenders from remote places abroad to be tried in England, the 11 & 12 W. 3. c. 7. § 1. provided that the courts of admiralty abroad might be authorised to try piracies, felonies and robberies, upon the sea; but as this act did not include treason, misdemeanors, and other offences, the 46 G. 3. c. 54. enacts, that all treasons, piracies, felonies, robberies, murders, conspiracies, and other offences, of what nature or kind soever, committed upon the sea, or in any place where the admiral has jurisdiction, may be tried (according to the course of the common law of this realm, used for offences committed upon the land) in any of his majesty's colonies, under the great seal. And all persons convicted of such offence, shall be liable to the same punishment as persons would be if tried within this realm under the 28 H. 8.

## POSSE COMITATUS.

THE *Posse Comitatus*, or power of the county, includes the aid and attendance of every person above fifteen years of age, under the degree of peer, except ecclesiastical persons and such as labour under any infirmity. It may be raised by the sheriff, or by justices of the peace, where a riot is committed, where a forcible entry is made, or where there is any force or rescue contrary to the commands of the king's writ; or in opposition to the execution of justice. Persons refusing to assist in this ser-

vice, when legally required, may be fined and imprisoned. The statutes relating to the *posse comitatus* are the 17 R. 2. c. 8; 13 H. 4. c. 7. and the 2 H. 5. c. 8; and see 2 *Inst.* 198; 3 *Inst.* 161.

## POST OFFICE.

By the 4 G. 3. c. 24. § 8. If any person shall counterfeit the hand-writing of any person in the superscription, in order to avoid the payment of postage, he shall be guilty of felony, and be transported for seven years.

By 5 G. 3. c. 25. § 19. If any person intrusted to take in letters, shall embezzle, or apply to his own use, any money by him received for postage, or shall destroy any letter so by him taken in, or shall not duly account for the money received by him for advanced postage, he shall be deemed guilty of felony.

By 5 G. 3. c. 25. § 17. If any person employed in the business of the post office shall secrete, embezzle, or destroy any letter or packet containing any bank note, bank post bill, bill of exchange, exchequer bill, &c., goldsmith's note for the payment of money or other bond, or warrant, bill, or promissory note for payment of money, or American provincial bill of credit; or shall steal or take the same out of any letter or packet, he shall be guilty of felony.

§ 18. If any person shall rob any mail, although the same shall not be a taking from the person, or in the highway, or in a dwelling-house, or out-house, and although no person was put in fear, he shall be guilty of felony.

By 7 G. 3. c. 50. § 1. If any deputy clerk, agent, letter carrier, post boy, or rider, or any other officer or person whatsoever employed, or to be hereafter employed, in receiving, stamping, sorting, changing, carrying, conveying, or delivering letters or packets, or in any other business relating to the post office, shall secrete, embezzle, or destroy any letter or letters, packet or packets, bag, or mail of letters which he, she, or they shall or may be respectively intrusted with, or which shall have come to his, her, or their hands or possession, containing any bank note, bank post bill, bill of exchange, exchequer bill, South Sea or East India bond, &c. &c., bank receipt for payment of any loan, American provincial bill of credit, goldsmith's or banker's letter of credit or note, for or relating to the payment of money, or other bond, or warrant, draft, bill, or promissory note, whatsoever, for the payment of money; or shall steal and take out of any letter or packet that shall come to his, her, or their hands or possession, any such bank note, &c., every such offender shall be deemed guilty of felony.



§ 2. If any person or persons shall rob any mail or mails, in which letters are sent or conveyed by the post, of any letter, packet, bag, or mail of letters, or shall steal or take from or out of any such mail or bag, sent or conveyed by post, or from or out of any post office, or house, or place for the receipt or delivery of letters, any letter or packet, although such robbery, stealing, or taking, shall not appear to be a taking from the person, or upon the king's highway, or to be a robbery committed in any dwelling-house, or out-house; and although it should not appear that any person or persons were put in fear by such such robbery, stealing, or taking, yet such offender, upon conviction, shall be deemed guilty of felony.

§ 3. If any person employed in the business of the post office shall receive the postage of any letter, and burn or destroy such letter, or shall advance the postage of any letter, and not duly account, he shall be guilty of felony.

By the \*3 W. 4. c. 4. which determines the number of cases in which capital punishment shall be inflicted, it is enacted, that if any person shall rob any person carrying or conveying, or having charge of his Majesty's mail in any part of this province, of any letter or letters, packet or packets, bag or mail of letters, every such offender being convicted thereof, shall suffer death, as a felon.

§ 12. And accessories before the fact, shall also suffer death.

POT AND PEARL ASHES. See title "*Flour.*"

## POUND BREACH.

POUND BREACH is the forcibly breaking the pound, in which cattle or goods have been put after being lawfully distrained, for the purpose of rescuing them. It has been doubted whether this is an indictable offence, when unaccompanied by a breach of the peace. 4 *Leon.* 12. 3 *Burr.* 1791, 1731. But as pound breach is considered a greater offence, at common law, than even a rescue of the goods distrained, and is no doubt an injury and insult to public justice, it seems to be equally indictable as such at common law. *Mirror*, c. 2. § 26. 2 *Chit. c.* 4. 204. *Note (b)*. It is well observed, however, that the civil remedy given by the statute of 2 W. & M. c. 5 § 4. will, in most cases of a pound breach, or a rescue of goods distrained for rent, be found the most desirable mode of proceeding, where the offenders are responsible persons. 1 *Russ.* 363. For under the provisions of that statute, the party grieved may, in a special action on the case, recover treble damages and costs against the offenders, or

against the owner of the goods, if they come to his use. See *Bradley on Distresses*, 282. 6 *Bac. Ab. Rescue* (c).

The punishment, upon a conviction by indictment for pound breach, is fine or imprisonment, or both.

*Indictment for Breaking Pound.* (CHITTY.)

— District, } The jurors, &c., that on, &c., at &c., one J. C.  
to wit. } took and distrained one mare and two colts,  
of the cattle of one J. S. late of the township aforesaid, yeoman,  
of the price of twenty pounds, in and upon a certain close or  
parcel of land, of him the said J. C., situate and being at &c.  
aforesaid, wrongfully feeding and depasturing upon the grass  
growing in and upon the said close and parcel of land, and doing  
damage to him, the said J. C. there, as a distress for the damage  
then and there done and doing by the said cattle, and the said  
mare and colts so taken and distrained, as aforesaid, he, the said  
J. C., on the same day and year aforesaid, at &c. aforesaid, in  
the common pound of the said township of — in the district  
aforesaid, impounded and kept, and detained the same in the  
said common pound, there as a distress, for the cause aforesaid,  
and the jurors, &c. do further present, that the said mare and  
colts, being so impounded, and remaining in the said common  
pound there, as a distress, for the cause aforesaid, the said J. S.  
on &c. aforesaid, with force and arms, at &c. aforesaid, the said  
common pound, broke and entered, and the said mare and colts  
from and out of the same, without the license, and against the  
will of the said J. C. and without any satisfaction having been  
made to the said J. C. for the said damage done by the said  
mare and colts, as aforesaid, unlawfully did rescue, take, lead,  
and drive away, in contempt of our lady the queen and her  
laws, to the evil and pernicious example of all others in the like  
case offending, and against the peace of our said lady the queen,  
her crown and dignity.

## POUND KEEPERS.

THE statutes relating to this office, viz., \*33 G. 3. c. 2. \*34 G. 3. c. 8. \*43 G. 3. c. 10. \*11 G. 4. c. 7. were repealed by the \*5 W. 4. c. 8. which last statute was also repealed by the \*1 V. c. 21. The last mentioned statute enacts that the inhabitant freeholders and householders, at the annual township meetings, shall choose a sufficient number of persons to serve as "pound keepers." § 5. And township meetings may determine in what manner, and at what periods, and what description of horned cattle, horses, sheep, and other animals, shall be allowed

to run at large, or be restrained from so doing, within their respective townships for the year; and what shall be the fine or forfeiture in such cases. § 12.

§ 32. Pound keepers appointed under this act to provide themselves with sufficient yards or enclosures for the safe keeping of animals impounded; and pound keepers are required to impound all animals unlawfully running at large, trespassing and doing damage, that may be delivered to him by any person resident within his division; and shall furnish the same with necessary food and drink: and if after 48 hours such animals shall not be claimed and redeemed by the owner paying the pound keeper his lawful demand and charges, and the amount of damages awarded as hereinafter provided, he shall cause a notice in writing to be affixed in three public places in the township, for at least 15 days, giving a description of the animals and stating the time and place of sale: and if the owner does not redeem the same within the time, by paying the pound keeper's fees, to be regulated from time to time by the town wardens, who shall furnish a copy or schedule to the township clerk for the information of the pound keepers, and the charges and damages awarded to the person impounding the same, said pound keepers shall sell the same to the highest bidder, and shall, after deducting his own legal charges and damages awarded to the impounder, return the overplus to the owner: *Provided*, that if no person claim such animals within three months after public notice and sale as aforesaid, such overplus shall be paid to the township clerk, to be expended in the improvement of the roads and bridges of the township.

§ 33. If any ox, horse, or cow, shall be impounded and not claimed within 15 days, and the owner not known to the pound keeper, he shall not sell the same at the time stated in such notice, but shall postpone the sale for 40 days, when the pound keeper shall sell the same and dispose of the proceeds as before mentioned: *Provided*, that the owner may at any time before such sale redeem the same by paying demands as aforesaid.

§ 34. Person impounding cattle shall within 24 hours state in writing to the pound keeper his demands against the owner for damages; and if the owner shall tender to the pound keeper the full sum awarded as damages, with the costs then incurred, he shall not be liable to any costs afterwards, but the same shall be borne by the party claiming excessive damages.

§ 35. In case the owner shall object to the amount of damages claimed, the pound keeper shall, within 48 hours after impounding, notify three disinterested resident freeholders or householders, farmers in the township, to appraise the damages, and

## Pound Keepers.

also to judge of the sufficiency of the fence enclosing the ground where such animals were found doing damage; and such freeholders or householders, or any two of them, shall, within 24 hours after notice, view such fence and determine whether the same is a lawful fence, and if so, appraise the damage done, and deliver their award in writing, signed with their names, to the pound keeper, within 24 hours after being so notified. Any person neglecting or refusing to attend to examine such damage after being notified, shall be liable to a penalty of 5s. to be recovered and applied as other fines imposed by this act for refusing to perform statute labour: *Provided*, that the owner of any animals *not* permitted to run at large shall be liable for any damage done, notwithstanding the fence was not of the height required.

### *Notice by the Pound Keeper.*

Notice is hereby given, that I the undersigned A. B., pound keeper of the township of — in the — district, have this day, at the request of C. D. of — impounded in the common pound of the said township of — situate at — in the said township, [one bay horse, &c. *describing also any particular marks he may have*, and one brown and white cow, &c. *describing also the animal, more particularly if need be*] which were this day found trespassing upon the lands of the said C. D., in the said township, and unless the owner or owners thereof shall, within fifteen days from the date hereof, redeem the same at the aforesaid pound, by paying the damages sustained by the said C. D., by reason of the said cattle so trespassing on his lands as aforesaid, and the charges of the pound keeper; I shall proceed to sell the same by public auction, on the — day of — next, in the market place of the said town of — (*or wherever else it may be expedient to effect such sale*) pursuant to the statute, in such case made and provided.

Witness my hand at — in the said district, the — day of — 183—.

*A. B., pound keeper.*

### *Pound Keeper's Notice to view and appraise damages.*

To A. B., C. D., and E. F., of the township of — in the — district, yeomen.

Pursuant to the statute in such case made and provided, I do hereby give you notice and require you and each and every of you to attend at the premises of G. H., situate and being on lot number — in the — concession of the township of — in the

said district, on — next, the — day of — instant, at — o'clock in the forenoon, then and there to appraise the damages done to the said premises by reason of the trespassing of certain cattle therein, to wit [*here describe the cattle trespassing*] belonging to J. K., of the aforesaid township, yeoman, and which have been in consequence impounded at the common pound, situate at — in the said township; and also then and there to judge of the sufficiency of the fence enclosing the ground where the said animals were found doing damage, and to determine whether the same be a lawful fence.

Given under my hand, at the township of — aforesaid, the — day of — 184.

*E. H., pound keeper of the said township.*

*Form of the Award.*

— District, } We, the undersigned A. B., C. D., E. F., resident  
to wit } freeholders of the township of — in the — district, having viewed the premises of G. H., situate and being on lot — in the — concession of the said township, and the fence enclosing the ground where certain cattle of J. K., to wit, [*describing the animals*] were lately found trespassing and are now impounded, and also the damage done thereat by the same, do hereby adjudge the said fence to be a good, lawful, and sufficient fence; and we do hereby appraise the damages done to the said premises by reason of the trespassing of the said cattle, at the sum of — pounds.

Witness our hands the — day of — 184—.

A. B.  
C. D.  
E. F.

*Information against a Person notified, and not attending.*  
*Penalty 5s. 1 V. c. 21. § 35.*

— District, } The information and complaint of E. H., of the  
to wit. } township of — in the county of — in the — district, yeoman, one of the pound keepers of the said township, taken on oath this — day of — before me — esq., one of her Majesty's justices of the peace for the said district: the said informant saith that he did on — the — day of — now last past, duly notify A. B. of the said township, yeoman, to attend at the premises of G. H., situate and being [*as in the notice to the end, concluding with the words lawful fence*] by delivering to the said A. B. a true copy of the notice in writing hereunto annexed; and this informant further saith that the said A. B. did not attend at the time and place mentioned in the said notice, but made default, whereby the said A. B. hath for-

feited the sum of five shillings, pursuant to the statute in such case made and provided; and the said informant prayeth that the said A. B. may be summoned to answer the premises and make his defence thereto.

Sworn before me, &c.

For the form of summons and conviction, see titles "*Highways*," p. 315, "*Conviction*," p. 178.

### PRÆMUNIRE.

THE offence of *præmunire* was so called from the words of the writ issued preparatory to the prosecution thereof, "*præmunire facias A. B. quod tunc sit coram nobis*," &c. the word being barbarous corruption in the law Latin of the word *præmoneri*. This writ commanded that the defendant should be forewarned to appear to answer the contempt, with which he stood charged. It took its origin from the exorbitant power claimed, and exercised in England by the Pope, which, even in the former days of bigotry and blind zeal, was too heavy for our ancestors to bear. The words *præmunire facias* being thus used to command a citation of the party have denominated, in common speech, not only the writ, but the offence itself, of maintaining the papal power, by the name of *præmunire*: and this was originally ranked as an offence, immediately against the king, because it consisted in introducing a foreign power into the land, and creating an *imperium in imperio*, by paying that obedience to papal process which constitutionally belonged to the king alone. 4. *Bl. Com.* 103.

By the statute 16 Ric. 2. c. 5. which is usually called the statute of *præmunire*, and is generally referred to by all subsequent statutes—it is enacted, that whoever procures at Rome, or elsewhere, any translations, processes, excommunications, bulls, instruments or other things, which touch the king, against him, his crown and realm, and all persons aiding therein, shall be put out of the king's protection, their lands and goods be forfeited to the king's use, and they shall be attached by their bodies to answer to the king and his crown; a process of *præmunire facias* shall be made out against them, as in other cases of provisors.

By these, says Sir W. Blackstone, the usurped civil power of the bishop of Rome was pretty well broken down, as his usurped religious power was, in about a century afterwards, the spirit of the nation being so much raised against foreigners, that in the reign of H. 5. the alien priories, or abbies for foreign monks, were suppressed, and their lands given to the crown,

and no further attempts were afterwards made in support of these foreign jurisdictions. 4 *Bl. Com.* 112.

After the reformation, the penalties of *præmunire* were extended to mere papal abuses. Thus, by 24 H. 8. c. 12. and 25 H. 8. c. 19. 21., to appeal to Rome from any of the king's courts; to sue to Rome for any license or dispensation; or to obey any process from thence, are made liable to the pains of *præmunire*.

By 5 Eliz. c. 1. To refuse the oath of supremacy, incurs the pains of *præmunire*; and to defend the pope's jurisdiction in this realm, is also a *præmunire* for the first offence, and high treason for the second.

Thus far the penalties of *præmunire* seem to have kept within the proper bounds of their original institution, namely, the depressing the power of the pope; but being pains of no inconsiderable consequence, it has been thought fit to apply them to other heinous offences, some of which bear more, and some less relation to this original offence, and some no relation at all. 4 *Bl. Com.* 116. By the 13 *Car.* 2. c. 1., it is also declared a *præmunire* to assert maliciously and advisedly, by speaking or writing, that both or either of the houses of parliament have a legislative authority without the king. By the habeas corpus act 31 *Car.* 2. c. 2. it is made a *præmunire* and incapable of the king's pardon, to send any subject of this realm to parts beyond the seas. By 7 and 8 W. 3. c. 24. Serjeants, counsellors, proctors, attornies, and all officers of courts, practising without having taken the oath of allegiance and supremacy, and without having subscribed the declaration against popery, are guilty of a *præmunire*, whether the oaths be tendered or not. But these provisions are now modified by the \*3 W. 4. c. 13.

See *ante* title "Oaths of Office," p. 466.

By the 6 Ann, c. 7.. To assert that any person, other than according to the acts of settlement and union, hath any right to the throne of these kingdoms; or that the king and parliament cannot make laws to limit the descent of the crown, is likewise declared a *præmunire*.

Numerous as the statutes are on this subject, prosecutions for this offence have been seldom instituted.

## PRESENTMENT.

A PRESENTMENT *generally* taken is a very comprehensive term; including not only *presentments*, properly so called, but also all inquisitions of office, and indictments by a grand jury. But a presentment, as commonly understood, is the notice taken by a grand jury of any offence from their own knowledge or

observation, without any bill of indictment laid before them at the suit of the king; as the presentment of a nuisance, a libel, and the like; upon which the officer of the court must afterwards frame an indictment, before the party presented can be put to answer for it. 2 *Inst.* 739. See further on this subject, *ante* title "*Grand Jury.*" p. 293.

## PRISON BREAKING.

PRISON BREAKING is the offence of a party, who is in legal custody upon any charge, effecting his own escape by force. This, by the common law, was anciently accounted *felony*, for whatever cause, criminal or civil, the party was lawfully imprisoned. But by 1 *Edw.* 2. stat. 2. it is declared that none that should from thenceforth break prison should have judgment of life or member for breaking of prison only; except the cause for which he was taken and imprisoned required such a judgment if he had been convicted thereupon, according to the law and custom of the realm. Therefore, although, to break prison and escape, when lawfully committed, for any *treason* or *felony*, still remains felony as at common law, the breaking of prison when lawfully confined upon any inferior charge, is punishable only as a high misdemeanor, by fine and imprisonment. 4 *Bl. Com.* 130.

In whatever place a person is restrained of his liberty under a lawful arrest for a supposed crime, whether it be in the stocks or the street, or in the common gaol, or the house of a constable, or private person, such place is properly a prison within the meaning of the statute. 2 *Inst.* 589. *Haw. c.* 18. § 4.

But if no felony whatever has been committed, and the party is merely in custody on a *mittimus*, without being indicted, then he is not guilty within the statute, by breaking the prison, his imprisonment being, in this instance, unjustifiable.

There must be an actual, and not merely a constructive breaking, to make the offence felony; therefore, if through the negligence of the gaoler, the prison doors are left open, and the party escapes without using any kind of force or violence, he is only guilty of a misdemeanor. 2 *Inst.* 590. 1 *Hale*, 611. The breaking must be by the prisoner himself, or by his procurement; for if other persons, without his privity or consent, break the prison, and he escape through the breach so made, he cannot be indicted for the breaking, but only for the escape. 2 *Haw. c.* 18. § 10. But no breach of prison will amount to felony, unless the prisoner actually escape. 2 *Haw. c.* 18. § 12. 2 *Inst.* 590. 1 *Hale*, 611.



## PRISONER.

If the gaoler keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler, by the common law; and this is the cause, that if a prisoner die in gaol, the coroner ought to hold an inquest. 3 *Inst.* 91.

Money found upon a prisoner when he is apprehended, will, in general, be directed to be restored to him before trial, if it appear by the depositions that it is in no way material to the charge on which he is tried. *R. v. Barnett.* 3 *C. & P.* 600.

By the 4 & 5 V. c. 24. § 9. All prisoners tried for felonies shall be admitted after the close of the case for the prosecution to make full answer and defence thereto by counsel, or by attorney, in the courts where attornies practise as counsel.

§. 11. When the attendance of any person confined in any gaol or prison in this province, or upon the limits thereof, shall be required in any court of assize and *nisi prius*, or oyer and terminer or general gaol delivery, or other court, it shall be lawful for the court before whom such prisoner shall be required to attend, in its discretion, to make order upon the sheriff, gaoler, or other person having the custody of such prisoner, to deliver such prisoner to the person named in such order to receive him, which person shall thereupon instantly convey such prisoner to the place where the court issuing such order shall be sitting, there to receive and obey such further order as to the said court shall seem meet: *Provided always*, that no prisoner confined for any debt or damages in any civil suit shall be thereby removed out of the district where he shall be confined.

§ 12. All persons held to bail, or committed to prison for any offence against the law, shall be entitled to require and have on demand (from the person who shall have the lawful custody thereof and who is hereby required to deliver the same,) copies of the examinations of the witnesses, respectively, upon whose depositions they have been so held to bail, or committed to prison, on payment of a reasonable sum for the same, not exceeding three pence for each folio of one hundred words: *Provided always*, that if such demand shall not be made before the day appointed for the commencement of the assize or sessions at which the trial is to take place, such person shall not be entitled to have any copy of such examination of witnesses, unless the judge, or other person to preside at such trial, shall be of opinion that such copy may be made and delivered without delay or inconvenience to such trial; but it shall, nevertheless, be competent for such judge or other person so to preside at such trial, if he shall think fit, to postpone such trial on account

of such copy of the examination of witnesses not having been previously had by the party charged.

§. 13. All persons under trial shall be entitled, at the time of their trial, to inspect without fee or reward all depositions (or copies thereof) which have been taken against them, and returned into the court before which such trial shall be had.

## PRIZE FIGHTING.

ALL persons present at, and countenancing a prize fight, are guilty in law of a misdemeanor. And when such a fight is expected to take place, a magistrate ought to cause the intended combatants to be brought before him, and compel them to find sureties to keep the peace till the assizes or sessions; and if they refuse to do so, he should then commit them till they comply with such requisition. *R. v. Billingham.* 2 C. & P. 234.

## PROBATE.

### *Of the office and duty of Executors.*

An executor, before the will be proved, may seize and take into his hands any of the goods of the testator. He may pay debts, receive debts, make acquittances and releases of debts due to the testator, and take releases and acquittances of debts owing by the testator. Also, an executor may, before probate, sell or give away any of the goods or chattels of the testator: and in general, an executor is a complete executor before probate, to all purposes but bringing of actions. 1 *Salk.* 301. *Went. off. Ex.* 34. 35. *Lovell on Wills,* 258. 259.

The executor may, in convenient time after the testator's death, enter into the house descended to the heir, for the removing and taking away of goods, so as the door be open, or at least the key be in the door: but he cannot justify the breaking open the door of any chamber to take goods there; but only may take those in the rooms which be open. *Lovell on Wills.* 260.

### *Of the office and duties of an Administrator.*

An administrator cannot act before letters of administration are granted to him. *Lovell on Wills.* By stat. 31 Edw. 3. c. 11 & 21 H. 8. c. 5. § 3. In case any person shall die intestate, or the executors refuse to prove the testament, administration shall be granted to the widow or next of kin, or to both, taking surety for true administration.

By 22 & 28 Car. 2. c. 10. made perpetual by 1 Jac. 2. c. 17.

It is enacted, that the surplusage of an intestate's estate shall be distributed:—one third to the wife of the intestate, the residue amongst his children and such as legally represent them, if any be dead, other than such children (not heirs at law) who shall have any estate by settlement of the intestate in his life time, equal to the other shares. Children, other than heirs at law, advanced by settlements, or portions, not equal to other shares, shall have so much of the surplusage as shall make the estate of all to be equal. But the heir at law shall have an equal part in the distribution with the other children, without any consideration of the value of the land which he hath by descent or otherwise from the intestate. § 4.

If there be no children, nor legal representatives of them, one moiety shall be allotted to the wife, the residue equally to the next of kindred to the intestate, in equal degree, and those who represent them. § 5.

No representation shall be admitted among collaterals, after brothers' and sisters' children; and if there be no wife, all shall be distributed among the children; and if no child, to the next of kin to the intestate in equal degree, and their representatives. § 6.

No such distribution shall be made till one year after the intestate's death, and every one to whom any shares shall be allotted, shall give bond with sureties in the said courts, that if debts afterwards appear, he shall refund his rateable part thereof, and of the administrator's charges. § 7.

A brother or sister of the half blood shall have an equal share with those of the whole blood. *Com. Dig. Adm. (H.)*

If none of the kindred will take out administration, a creditor may, by custom, do it. *Lovelass on Wills, p. 7.*

### *Of the Will.*

No witnesses are absolutely necessary to render valid a will of merely personal property: but with respect to a will of real or *landed property*, until lately, *three* witnesses were necessary; and now by the \*4 W. 4. c. 1. § 51. *two* witnesses are sufficient.

### *Probate of the Will, how granted, &c.*

\*By stat. 33 G. 3. c. 8. A court is constituted and established for the granting of probates of wills, and committing letters of administration of the goods of persons dying intestate, to be called the court of probate of the province of Upper Canada; the governor to preside therein and pronounce judgment in all suits that may be brought before him, with power to call in an assessor or assessors to act with him, and from time to time to

appoint an official principal, registrar, and other necessary officers. By § 2. The governor is authorised to institute, by commission, under the great seal, in every district, a court for granting probates of wills and letters of administration of persons having personal estate within such district, to be called the surrogate court of the Eastern district; the surrogate court of the Midland district; 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, and a registrar, and such other officers as may be necessary; and each of the said courts shall have full power to issue process and hold cognizance of all matters relative to the granting of probate of wills and letters of administration, and to grant same within their respective districts, except as hereinafter mentioned. § 3. In cases where the deceased shall have goods, chattels or credits, to the amount of £5, in any other district than the one in which he died; or when any person shall die, possessed of goods to the value of £5, in two or more districts, the probate or letters of administration shall be granted by the court of probate only. By § 6. Every will duly proved, shall be kept among the records of said court; and a transcript thereof duly authenticated under seal of the court, shall be taken and received as the regular probate of such will, in all her Majesty's courts within this province. By § 7. No nuncupative will shall be good where the estate thereby bequeathed, shall exceed £30, that is not proved by three witnesses, at the least, present at the making thereof; nor unless the testator bid the persons present bear witness; nor unless made at the last sickness of the deceased, and in his dwelling-house, or where he had been resident ten days before making such will, except when such person was taken sick being from home, and died before he returned. § 8. After six months from the speaking of such testamentary words, no nuncupative will shall be good, except the substance thereof were committed to writing, within six days after the making such will. § 9. No probate shall be granted till fourteen days after the death of the testator; nor shall any nuncupative will be at any time received, unless the widow or next of kin have been cited. § 10. Nor until due proof be made before the said judge or surrogate, that such person is dead, and died intestate. § 15. In cases where administration shall be granted with the will annexed, such letters shall express that such will shall be observed and performed, and for such purpose the administrator shall enter into bond with two or more sufficient sureties. § 17. The court of probate and court of surrogate respectively, shall hold four sittings or terms for hearing

and determining actions, suits and causes, &c., viz.: The first term from the first Monday in *January* to the Saturday following, inclusive; the second term, from the last Monday in *March* to the Saturday following, inclusive; the third term, from the first Monday in *June* to the Saturday following, inclusive; and the fourth term, from the last Monday in *September* to the Saturday following, inclusive. § 18. The following fees may be taken:

*Fees to be taken by the Official Principal and Surrogate.*

	OFFICIAL PRINCIPAL AND SURROGATE.	REGISTER.
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 £300.....	£0 16 0	0 6 8
From £300 to £1,000 .....	1 0 0	0 6 8
When above £2,000.....	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

APPARATOR OR MESSENGER.

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

*Letters of Administration, how granted, &c.*

\*By same stat. 33 G. 3. c. 8. § 11. when application is made for letters of administration by any person, not entitled as next of kin to the intestate, the court, before granting the same, shall issue a citation to the next of kin, summoning him or her to appear and shew cause against the same, and in case the next of kin should happen to be absent from the province, the court may then grant administration *pro tem.* to the next of kin in the province. § 12. The judge or surrogate, upon granting letters of administration, shall take sufficient bonds from the party, with two sureties, in the name of the governor, according to the form prescribed.

*Form of the condition of the Bond.*

“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 or her 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 administrator’s 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, intituled, “an act for the better settling intestate estates,” and passed in the twenty-second and twenty-third years of the reign of Charles 2, and also in a certain act passed in the first year of king James 2, 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.”

§ 13. It shall be lawful for the said judge of probate and surrogate courts respectively to call by citation such administrators to account, and to order and make just and equal distribution of what remains clear, after all debts, funeral and just expenses of every sort first allowed, according to the provisions of the said statutes (22. 23. C. 2. & 1 J. 2.) But no such distribution shall be made until one year after the intestate’s death, and every

one participating in such distribution shall give bond to refund in case any debts shall afterwards appear. § 16. An appeal shall be *from* the surrogate court *to* the court of probate, if made within *fifteen* days after the judgment appealed from, and security given for prosecuting such appeal.

*Of the payment of Debts, &c.*

In payment of debts, the executor or administrator must observe the rules of priority; otherwise on deficiency of assets, if he pays those of lower degree first, he must answer those of a higher out of his own estate. 2. *Bl. Com.* 511. *First*, The executor, &c. may pay all funeral charges and the expense of taking letters of administration. *Ibid.* *Secondly*, Debts due to the king, on record or specialty. *Thirdly*, Debts of record are to be paid, as judgments, (docketed according to the stat. W. & M. c. 20.) and of two judgments, he who first sues execution must be preferred; but before, it is at the election of the executor or administrator to pay which he pleases first. 2 *Bl. Com.* 465. 511. *Treat. of Eq.* 112. *Fourthly*, Debts by specialty or special contract, such as are due by deed or special instrument under seal, covenant, deed of sale, lease reserving rent, or by bond or obligation; 2 *Bl. Com.* 465. 511. and rent in arrear is equal to a debt by specialty. 3 *Bl. Com.* 341. 347. *Lastly*, Debts by simple contract, such as notes of hand, and debts of an ordinary description, not under seal, and these the executor is bound to pay as far as he hath assets, and if no suit be commenced against him, he may pay one creditor in equal degree his whole debt, though he has nothing left for the rest. *Bl. Com.* 512. As to debts of record, the executor is bound to take notice of these at his peril; but as to debts due by bond or other specialties, an executor may pay a debt on simple contract before a specialty, if he hath no *notice* of such specialty; for otherwise, it might be in the power of the obligee to ruin the executor by keeping the bond in his pocket, until the executor shall have paid away all the assets in discharging simple contract debts. 2 *New. Abr.* 435. In payment of bonds and other obligations after due notice, it seems that the executor may (in like manner as respecting debts of record) pay which creditors he thinks fit first, although the other creditors are without remedy if there be no assets; unless the day of payment in one obligation is expired, and the day of payment in the other is yet to come, in which case, the former is to be first satisfied; or unless there be suit commenced. But an executor may confess judgment on one obligation, and plead that to an action brought on another; and if there be two actions brought

on two several obligations, he that obtains judgment first must be first satisfied. *Lovell on Wills*, 73, 74, 75. An executor or administrator, if a creditor also, may pay himself the whole of his demand, to the exclusion of all other creditors of the same degree; but he cannot retain his own debt in prejudice to those of a higher degree; neither shall one executor be allowed to retain his own debt in prejudice to that of his co-executor, in equal degree; but both shall be discharged in proportion. 3 *Bl. Com.* 18.

### PROVISIONS.

SELLING unwholesome provisions, is an indictable offence at common law, and so is the forestalling, engrossing or regrating of provisions, whereby the price is enhanced. See further on this subject, title "*Forestalling*," p. 280.

### PUBLIC HEALTH.

By the \*5 W. 4. c. 10. intituled an act to promote the public health, and to guard against infectious diseases in this province, the lieutenant-governor, by and with the advice of the executive council, may appoint three or more persons in each town, to act as health officers. § 2. Any two of them may, in the day time, enter upon the premises of persons resident within the limits of the town, &c., and examine the same, and order the proprietor or occupant to cleanse the same, and remove whatsoever shall be found there dangerous to public health; and in case of refusal or neglect, said health officers may, with the assistance of the constables and peace officers, and such other persons as they may think fit, enter on the premises and remove the same. § 3. The lieutenant-governor and executive council, may also make rules and regulations, concerning the entry and departure of boats and vessels, at the different ports or other places, and the cargoes and passengers. § 4. Any person disobeying or resisting any lawful order of the health officers, or any two of them, or wilfully violating any rule or regulation, or obstructing the officers in the execution of their duty, on conviction before two justices, where such offender shall reside, shall forfeit and pay not less than 20s. nor more than £20, to be levied by seizure and sale of the offender's goods by warrant of the convicting justices, to be paid by the receiver-general, to the use of the province. § 5. This act to remain in force one year, and to the end of the next session. § 6. In all cases in which diseases of a malignant and fatal character shall be discovered to exist in any dwelling-house, &c., situate in an unhealthy situa-



tion, or be in a neglected and filthy state, or inhabited by too many persons, the board of health, or a majority, may, at the expense of the board, compel the inhabitants to remove therefrom, and place them in sheds or tents, or other good shelter, in some more salubrious situation, until the cleansing and purification of such dwelling-house, &c., has been effected. This act to relate to all houses and out-houses situate within one mile of any city, town, or village. This statute was made perpetual by the \*2 V. c. 21.

## PUBLIC LANDS.

By the 4 & 5 V. c. 100. § 1. the \*2 V. c. — is repealed. § 2. Except as hereinafter provided, no free grant of public land shall be made to any person. § 3. All claims shall be determined by the governor in council. § 4. Claims allowed shall be commuted for by land scrip, to be issued by the commissioner of crown lands, and received as money upon all sales of crown lands not set apart for any specific purpose. § 5. To be issued at the rate of four shillings per acre, in amounts not less than £5 currency, assignable by delivery. § 6. Relates to militia scrip for Lower Canada. § 7. Receipts to be taken by the commissioner for scrip issued. § 8. May be received for instalments due upon former sales. § 9. Claims to land assigned shall be exchanged for scrip. § 10. Assignments made by married women conjointly with the husband not to be void. § 11. Unlocated claims to be considered as personal estate. § 12. This act not to alter the law in this respect with regard to lands located. § 13. No new claims to be allowed unless made before the 1st day of January, 1843, except the parties claiming shall be under 21 years of age. § 14. The price of public lands to be fixed by the governor in council. § 15. The governor in council to appoint in each district a resident agent for the sale of public lands, at fixed prices. § 16. District agent to keep regular accounts, and make the sales appear in the maps in his office. § 17. But not to purchase any, directly or indirectly, upon pain of forfeiting his office. § 18. Purchase money or scrip to be paid to district agent, who shall transmit to the commissioner of crown lands when the amount in hand shall exceed £50, deducting his per centage, and in default shall be charged 15 per cent. per annum: and upon the receipt of any money or scrip, shall give a receipt, specifying the lot; such receipt to be dated the day of signing, and authorise the purchaser to take immediate possession and to maintain actions against trespassers. § 19. Letters patent to be issued as soon as purchase money

paid, to be transmitted by the commissioner of crown lands to the district agent, within 30 days. § 20. Commissioner of crown lands and district agents to give security. § 21. District agents to receive such per centage as the governor in council shall appoint. § 22. Commissioner to pay over amount in hand to the receiver general once in three months, retaining £500 for contingent expenses. § 23. Commissioner's accounts to be rendered to the government half yearly, and copies, with list of sales, to be laid before both houses of the legislature within ten days after the commencement of the session. § 24. The commissioner, thirty days before any sale under this act, shall cause printed lists of lands open for sale to be exhibited in the office of crown lands and district offices, specifying the prices and terms of payment; copies to be published in the Gazette and one public newspaper where the lands are situate; such lists to be revised annually. § 25. The governor may authorise sales to any lessee, or occupant, or other interested parties. § 26. Free grants may be made to actual settlers, not exceeding 50 acres; provided they have not before received any grant. § 27. Lands may be appropriated for public purposes, not exceeding ten acres. § 28. Compensation to be made for erroneous grants, if claimed within five years. § 29. The court of chancery in Upper Canada and king's bench in Lower Canada, authorised to repeal patents issued through fraud, or in error, or mistake. § 30. Commissioner of crown lands to keep a book for entry at the option of the parties of any assignment, such assignment being first produced to the commissioner, with an affidavit of the due execution thereof, sworn before any justice of the peace, expressing the time of the execution; and every such assignment so registered shall be valid against any one of a previous date not registered, except in cases of express notice: the death of the subscribing witness to be proved by affidavit. § 31. False swearing to be perjury.

## PUBLIC OFFICERS.

By the 4 & 5. V. c. 91. Reciting that it was highly expedient that provision should be made for preventing any negligence, omission, or irregularity in giving due securities by all persons employed in situations of public trust, and concerned in the distribution or expenditure of public money, who are required to give security for public monies coming to their hands, and for ascertaining the death of any surety or sureties of any such person. Enacted, § 1. Persons hereafter appointed to offices of public trust to give such security in such sum, and

with such sureties as the governor or principal officers of the department in question shall approve. § 2. Persons now in office also required to give security. § 3. Bonds to be registered with the registrar of the province. § 4. Who shall keep separate entries. § 5. Officers neglecting to give such security to forfeit their offices. § 6. In case of the death, bankruptcy, or insolvency, or residence out of the province of any surety, the principal to give notice to the chief secretary of the province, or to the principal officer of the department, upon pain of forfeiting one fourth part of the sum; and neglecting to give other security shall forfeit his appointment. § 7. Where the neglect has not been wilful, the governor may extend the time for giving such new security. § 8. Period limited for registering bonds to be estimated from the time of the execution by the last party. § 9. Irregularity in bonds not to vacate the same. § 10. Bonds to be registered notwithstanding the period elapsed. § 11. Act to apply to existing bonds. § 12. The 16th and 19th clauses of the \*3 W. 4. c. 9. relating to sheriffs, repealed. § 13. Uniform practice established throughout the province. § 14. Duplicate bonds entered into by officers in Lower Canada to be deposited as soon as certain ordinances take effect. § 15. Statement of bonds to be laid before the legislature within fifteen days after the opening of every session. § 16. This act not to extend to municipal offices. § 17. Interpretation clause.

## PUBLIC WORSHIP.

By the 4 & 5 V. c. 27. § 31. If any person shall wilfully disturb, interrupt or disquiet any assemblage of people, met for religious worship, by profane discourse, by rude and indecent behaviour, or by making a noise, either within the place of worship, or so near it as to disturb the order and solemnity of the meeting, such person shall, upon conviction, before any justice of the peace, on the oath of one or more credible witnesses, forfeit and pay any sum not exceeding £5, as such justice shall think fit. § 32. To be levied with the costs within the period specified for payment thereof, at the time of conviction by the justice before whom such conviction may have taken place, and in default thereof, the offender shall be committed for any term, not exceeding one month, unless the costs and fine shall be sooner paid. § 38. Appeal lies to the sessions; for this, see title "*Common assault*," p. 56, and for the form of conviction, see p. 58.

## PUNISHMENT.

*Under the 4 & 5 V. c. 24.*

*Felony.*—§ 24. Every person convicted of any felony, not punishable with death, shall be punished in the manner prescribed by the statute or statutes specially relating to such felony; and that any person convicted of any felony for which no punishment hath been or hereafter may be specially provided, shall be deemed to be punishable under this act, and shall be liable at the discretion of the court to be imprisoned at hard labour in the Provincial Penitentiary, for any term not less than *seven*\* years, or to be imprisoned in any other prison or place of confinement, for any term not exceeding two years.

*Transportation.*—§ 25. If any person sentenced or ordered, or hereafter to be sentenced or ordered to be transported, or who shall have agreed, or shall agree, to transport or banish himself, or herself, on certain conditions, either for life or for any number of years, shall be afterwards at large, within any part of this province, contrary to such sentence, order, or agreement, without some lawful cause, before the expiration of his or her term of transportation or banishment, every such offender shall be guilty of felony, and shall be transported beyond the seas for his or her natural life, and previously to transportation shall be imprisoned for any term not exceeding four years; and every such offender may be tried either in the district, county, or place where such offender shall be found at large, or at the district, county, or place in or at which sentence or order of transportation or banishment was passed or made. § 26. In any indictment or information against any offender for being at large in this province, contrary to the provisions of this act, or of any other act hereafter to be in force in this province, it shall be sufficient to allege the sentence or order of transportation or banishment of such offender, without alleging any indictment, information, trial, conviction, judgment, or other proceeding, or any pardon or intention of mercy, or signification thereof, of or against, or in any manner relating to such offender. § 27. The clerk of the court or other officer having the custody of the records of the court, where any such sentence or order of transportation or banishment shall have been passed or made, or his deputy, shall, at the request of any person, on behalf of her Majesty, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of any indictment, information and conviction, of such offender, and of the sentence or order for his or her trans-

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\* See *post*, p. 513.

portation or banishment (not taking for the same more than the sum of five shillings); which certificate shall be sufficient evidence of the conviction and sentence, or order for the transportation or banishment of such offender; and every such certificate shall be received in evidence upon proof of the signature of the person signing the same.

*Imprisonment.*—§ 28. Where any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of the term of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet. § 29. Whenever sentence shall be passed for felony on a person already imprisoned under sentence for another crime, it shall be lawful for the court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment, to which such person shall have been previously sentenced, although the aggregate term of imprisonment may exceed the term for which such punishment could be otherwise awarded.

*Second conviction.*—§ 30. If any person shall be convicted of any felony not punishable with death, committed after a previous conviction for felony, such person shall, on such subsequent conviction, be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years; and in any indictment for any such felony, committed after a previous conviction for felony, it shall be sufficient to state that the offender was at a certain time and place convicted of felony without otherwise describing the previous felony, and a certificate, containing the substance and effect only (omitting the formal part) of the indictment and conviction of the previous felony, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk or officer, for which certificate a fee of five shillings and no more shall be demanded or taken, shall upon proof of the identity of the person of the offender be sufficient evidence of the first conviction without proof of the signature or official character of the person appearing to have signed the same, and

if any such clerk, officer or deputy shall utter any false certificate of any indictment and conviction for a previous felony, or of any sentence or order of transportation or banishment, or if any person other than such clerk, officer or deputy, shall sign any such certificate as such clerk, officer or deputy, or shall utter any such certificate with a false or counterfeit signature thereto, every such offender shall be guilty of felony, and being lawfully convicted thereof shall be liable at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

*Pillory abolished.*—§ 31. That from and after the commencement of this act, judgment shall not be given and awarded against any person or persons convicted of any offence that such person or persons do stand in or upon the pillory, any law, statute, or usage to the contrary notwithstanding, provided that nothing herein contained shall extend, or be construed to extend, in any manner to change, alter, or affect any punishment whatever which may now be by law inflicted in respect of any offence, excepting only the punishment of the pillory.

*Commencement of imprisonment.*—That the period of imprisonment in the Provincial Penitentiary in pursuance of any sentence passed under this act, or under another act relating to the punishment of offences by confinement and imprisonment in the Provincial Penitentiary, shall be held to commence from the period of passing such sentence, whether the convict upon whom such sentence shall be passed shall be removed to the said Provincial Penitentiary forthwith or be detained in custody in any other prison or place of confinement previously to such removal.

*Under the 4 & 5 V. c. 25.*

*Simple Larceny.*—§ 3.—Any person convicted of simple larceny, or felony punishable as simple larceny, shall (except as otherwise provided) be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

*Felony or Misdemeanor.*—§ 4. Any person convicted of felony or misdemeanor punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour in the common gaol or house of correction,

and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court shall seem meet.

*Under the 4 & 5 V. c. 26.*

*Felony or Misdemeanor.*—§ 27. Being a similar provision to the last.

*Under the 4 & 5. V. c. 27.*

*Administering Poison.*—§ 9. Whosoever shall administer or cause to be taken by any person, any poison or other destructive thing, or shall stab, cut or wound any person, or shall by any means whatsoever cause to any person any bodily injury, dangerous to life, with intent to commit murder, shall be guilty of felony, and being convicted thereof shall suffer death.

*Attempt to murder.*—§ 10. Whosoever shall attempt to administer to any person any poison or other destructive thing, or shall shoot at any person, or shall by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent to commit the crime of murder, shall although no bodily injury shall be effected, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

*Cutting and maiming.*—§ 11. Whosoever unlawfully and maliciously shall shoot at any person, or shall by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall stab, cut or wound any person, with intent in any of the cases aforesaid to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

*Using Explosive or Corrosive Matter.*—§ 12. Whosoever shall unlawfully and maliciously send or deliver to or cause to be taken, or received by any person, any explosive substance, or

any other dangerous or noxious thing, or shall cast or throw upon or otherwise apply to any person, any corrosive fluid, or other destructive matter, with intent to burn, maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, and whereby any person shall be burnt, maimed, disfigured or disabled, or receive some other grievous bodily harm, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

*Abortion.*—§ 13. Whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

*Homicide.*—§ 27. No punishment shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony.

*Accessories.*—§ 35. Every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act, shall, on conviction, be liable to be imprisoned for any term not exceeding two years.

*Imprisonment.*—§ 36. When any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet.

*Assault.*—§ 37. On the trial of any person for any of the offences hereinbefore mentioned, for any felony whatever, where the crime charged shall include an assault against the person, it



shall be lawful for the jury to acquit of the felony, and to find a verdict of guilty of assault, against the person indicted, if the evidence shall warrant such finding; and when such verdict shall be found, the court shall have power to imprison the person so found guilty of an assault, for any term not exceeding three years.

*Military.*—§ 38. Provided always, and be it enacted, that nothing herein contained shall alter or affect any of the laws relating to the government of her Majesty's land or naval forces.

*Pardon.*—§ 39. It shall be lawful for the Queen's Majesty, and for the governor, lieutenant-governor, or person administering the government of the province, to extend the royal mercy to any person imprisoned by virtue of this act, although he shall be imprisoned for non-payment of money to some party, other than the crown.

By the 6 V. c. 5. § 1. After reciting that it was expedient to enable the courts before whom offenders might be convicted in certain cases better to proportion the punishment to the guilt of the offence, it is enacted, that so much of the 4 & 5 V. c. 24. 25. 26. & 27. or of any other law inconsistent with this, shall be repealed. § 2. That for every offence for which by any of the above mentioned acts the offender is liable to imprisonment in the Provincial Penitentiary, but may instead thereof be imprisoned in any other prison for any term not exceeding two years, the offender may, if convicted, be punished, in the discretion of the court, by imprisonment in the Provincial Penitentiary for any term not less than three years, and not exceeding the longest term for which such offender might have been so imprisoned, if this act had not been passed, or by imprisonment in any other prison or place of confinement for any term not exceeding two years, in the manner prescribed by such act. *Provided*, that this act shall not prevent such offender from being punished by imprisonment in the Provincial Penitentiary for life, if he might have been so punished if this act had not been passed. § 3. That for every offence for which by any of the said acts the offender might be punished by imprisonment for such term as the court should award, or for any term exceeding two years, such imprisonment, if awarded for a longer term than two years, shall be in the Provincial Penitentiary. § 4. That for every offence for which by any of the said acts or by any other act or law the offender might, if this act had not been passed, have been punished by transportation beyond seas, such offender may, if convicted after the passing of this act, be punished by imprisonment in the Provincial Penitentiary for

any term for which he might have been transported if this act had not been passed, or by imprisonment for life, if without this act he might have been punished by transportation for life.

## QUAKERS.

\*By 49 G. 3. c. 6. It is enacted, that every Menonist or Tunker, in any case in which an oath is required by law, or upon any lawful occasion wherein the affirmation or declaration of a Quaker, will by law be admitted, shall be and is hereby permitted to make his or her affirmation or declaration in the same manner and form as a Quaker by the laws now in force is required to do, having first made the following affirmation or declaration :

“I, A. B. do solemnly, sincerely, and truly affirm and declare, that I am one of the Society of Tunkers or Menonists,” [*as the case may be,*] which affirmation or declaration shall be of the same force and effect in all courts of justice, and other places where by law an oath is required, as if such Menonist or Tunker had taken an oath in the usual form; and all persons authorised to administer an oath, may administer such affirmation or declaration. § 2. Any person making a false affirmation or declaration, shall incur the pains and penalties of perjury. § 3. No Menonist or Quaker shall by virtue of this act, be qualified to serve on juries in criminal cases, or hold or enjoy any office under government. By \*10. G. 4. c. 1. Quakers, Menonists, Tunkers, and Moravians are admitted to give evidence in criminal cases, upon making an affirmation in the following form in lieu of any oath :

“I, A. B., do solemnly, sincerely, and truly declare, that I am one of the society called Quakers, Menonists, Tunkers, or Unitas Fratrum, or Moravians,” [*as the case may be*] and any person convicted of a false affirmation, shall incur the pains and penalties of perjury; but such persons shall not be permitted to serve on juries in criminal cases.

## RAPE.

### 1. *Of Rape in general.*

RAPE, signifies the carnal knowledge of a woman, forcibly and against her will, and above the age of ten years, and was felony at common law. 2 *Inst.* 180. But by statute 3 *Edw.* 1. c. 13, it was made only a misdemeanor; afterwards by *stat.* 13 *Edw.* 1. c. 34. it was made felony again; and by statute 18 *Eliz.* c. 7. § 1. was made capital.

By § 4. of the latter statute, it is also enacted, that if any person shall unlawfully and carnally know and abuse any woman child, under the age of *ten* years, every such unlawful and carnal knowledge shall be felony. In which case, the consent, or non-consent is immaterial; as by reason of her tender years, she is incapable of judgment and discretion. 4 *Bl.* 212.

The offence of rape is no way mitigated by shewing that the woman at last yielded to the violence, if such her consent was forced, by fear of death or of duress. 1 *Haw.* 108. Nor is it any excuse that the woman is a common prostitute; for she is still under the protection of the law, and may not be enforced, 1 *Haw.* 108; nor that she consent after the fact. *Ibid.* It is said by Mr. Dalton, that if a woman, at the time of the supposed rape, do conceive with child, by the ravisher, this is no rape; for (he says) a woman cannot conceive, except she doth consent; but Hawkins observes, that this opinion seems very questionable; not only because the previous violence is no way extenuated by such a subsequent consent, but also, because if it were necessary to shew that the woman did not conceive, the offender could not be tried till such time as it might appear whether she did or not; and likewise, because the philosophy of the notion may be very well doubted of. 1 *Haw.* 108.: and L. Hale says, this opinion in Dalton seems to be no law. 1 *H. H.* 731.

#### *Evidence on Rape.*

Lord Coke, defining carnal knowledge, says, there must be *penetratio*, that is, *rem in re*; but the least penetration maketh it carnal (knowledge. 3 *Inst.* 59, 50. *East. P. C.* 437. There must also be an *emissio seminis*; therefore in *Hill's case*, where the jury found the prisoner guilty, but said they did not find the emission, [for, from interruption, it appeared probable that that was not effected,] a great majority of the judges held that both penetration and emission were necessary, but thought that the fact should be left to the jury. *Hill's case East. P. C.* 439. From *Hill's case* it appears that the fact of penetration is *prima facie* evidence of emission: so, where the prisoner remained on the body of the woman as long as he pleased, without interruption, this was held sufficient evidence to be left to a jury, of an actual rape. *Harmwood's case, E. P. C.* 640. *S. P. Kelly's case, Bodmin, 1815, coram* Chambre. Where the woman was dead, the evidence of other persons and her own depositions, (which contained no mention of emission,) were held sufficient to convict the prisoners; and that the jury might collect the fact of emission from other evidence. *Fleming and Windham's case, 2 Leach.* 855.

The party ravished, may give evidence on oath, and is in law a competent witness; but the credibility of her testimony, and how far forth she is to be believed, must be left to the jury, and is more or less credible, according to the circumstances of fact that occur in the testimony. 1 *H. H.* 632. For instance, if the witness be of good fame; if she *presently* discovered the offence and made pursuit after the offender; shewed circumstances and signs of the injury; if the place where the offence was committed was *remote* from habitation; if the offender *fled* for it; these, and the like, are concurring evidences to give greater probability to her testimony, when proved by others as well as herself. 1 *H. H.* 633. On the other hand, if she concealed her injury, for any length of time, after she had the opportunity to complain; if the place where the offence was alleged to have been committed were *near* to inhabitants, or a thoroughfare for passengers, and she made no outcry when the offence was perpetrated, so that she might have been heard by others; or if a man prove himself to be in another place; or in other company at the time she charges him with the fact; or if she is wrong in the description of the place, or swears the fact to have been done in a place where it was impossible the man could have access to her at that time, as if the room was locked up, and the key in the custody of another person; these, and the like circumstances, carry a strong presumption, that the testimony is false or feigned. 1 *H. H.* 633.

Upon the whole, rape, it is true, is a most detestable crime, and therefore ought severely and impartially to be punished with death; but it must be remembered, that it is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, though never so innocent: therefore, a wise jury will be cautious upon offences of this nature, that they be not so much transported with indignation at the heinousness of the offence, as to be over-hastily carried to the conviction of the person accused thereof, by the confident testimony, sometimes of malicious and false witnesses. 1 *H. H.* 635, 636.

A male infant, under the age of fourteen years, is presumed, by law, to be incapable to commit a rape, and therefore, it seems, cannot be found guilty of it. 4 *Bl.* 212. 1 *Hal. P. C.* 631.

#### *Punishment for Rape.*

By the 4 & 5 V. c. 27. § 16. Every person convicted of the crime of rape shall suffer death as a felon. § 17. If any person shall unlawfully and carnally know and abuse any girl under the age of ten years, every such offender shall be guilty of

felony, and being convicted thereof shall suffer death as a felon; and if any person shall unlawfully and carnally know and abuse any girl, being above the age of ten years and under the age of twelve years, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned for such term as the court shall award. § 18. In cases of rape, carnal knowledge shall be deemed complete upon proof of penetration only.

By the 6 V. c. 5. § 5. Where any person shall be convicted of any assault with intent to commit rape, the court may sentence the offender to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding three years, or imprisoned in any other prison for any term not exceeding *two* years.

(See also title "*Punishment.*")

#### *Information.*

[The common form of the commencement of an information will be found, *ante* p. 379.] It should state when, where, and by whom the offence was perpetrated; that the complainant resisted the force and violence, and called aloud for assistance; and that she immediately acquainted her neighbours and friends with the occurrence [*as the case may be*]. The depositions of other witnesses should also be taken, to confirm the testimony of the complainant.

#### *Warrant to Apprehend the Party.*

Home District, } To the constable of the township of — and  
to wit. } all other peace officers in the said district:  
Forasmuch as A. B. of — in the district aforesaid, labourer, hath this day been charged before me, J. P. esq., one of her Majesty's justices of the peace for the said district, on the oath of C. D. of the township of — in the said district, single woman (*or otherwise, as the case may be*), for that he, the said A. B., on the — day of — violently and feloniously did assault her, the said C. D., and her, the said C. D., then and there violently and against her will, feloniously did ravish and carnally know: These are therefore to command you, in her Majesty's name, forthwith to apprehend and bring before me, or some other of her Majesty's justices of the peace, in and for the said district, the body of the said A. B. to answer unto the said charge, and to be further dealt with according to law. Herein fail you not.

Given under my hand and seal, at — in the district aforesaid, the — day of — in the year of our Lord 184—.

*Commitment for a Rape.*

Home District, } J. P. esquire, one of her Majesty's justices of  
to wit. } the peace, for the said district: to the constable of the township of — in the said district, and to the keeper of the common gaol at Toronto, in the said district: these are to command you, the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the body of A. B. charged this day before me, the said justice, on the oath of C. D. of — for that he, the said A. B., on the — day of — in the year of our Lord one thousand eight hundred and — at — in the said district, violently and feloniously did assault her, the said C. D., and her, the said C. D., then and there violently and feloniously and against her will, feloniously did ravish and carnally know; against the form of the statute in that case made and provided; and you, the said keeper, are hereby required to receive the said A. B. into your custody, in the same common gaol, and him there safely to keep, until he shall be thence delivered by due course of law. Herein fail not.

Given under my hand and seal, the — day of —.

*Commitment for carnally knowing a girl under 10 years.*

*Commencement as before.*] on the — day of — in the year of our Lord one thousand eight hundred and — at — in the said district, feloniously did assault one C. D., a girl under the age of ten years, to wit, of the age of nine years, and her, the said C. D. then and there feloniously did unlawfully and carnally know and abuse; against the form of the statute in that case made and provided; and you, the said keeper, &c. [*as before, to the end.*]

## RECEIVERS OF STOLEN GOODS.

*Felony.*—By the 4 & 5 V. c. 25. § 46. If any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing or taking whereof shall amount to felony either at common law or by virtue of this act, such person knowing the same to have been feloniously stolen or taken, every such receiver shall be guilty of felony, and may be indicted and convicted either as an accessory after the fact, or for a substantive felony; and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and every such receiver, howsoever convicted, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or imprisoned in any other

prison or place of confinement for any term not exceeding two years;\* provided always that no person, howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence.

*Misdemeanor.*—§ 47. If any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, or converting whereof is made an indictable misdemeanor by this act, such person knowing the same to have been unlawfully stolen, taken, obtained, or converted, every such receiver shall be guilty of a misdemeanor, or may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been convicted thereof, or shall or shall not be amenable to justice; and every such receiver shall on conviction be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any other term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.\*

*Trial.*—§ 48. If any person shall receive any chattel, money, valuable security, or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained or converted, every such person, whether charged as an accessory after the fact to the felony, or with a substantive felony, or with a misdemeanor only, may be dealt with, tried, and punished, in any district, county, or place in which he shall have, or shall have had, any such property in his possession, or in any district, county, or place in which the party guilty of the principal felony or misdemeanor may by law be tried in the same manner as such receiver may be dealt with, indicted, tried, and punished in the district, county, or place, where he actually received such property.

*Taking Rewards.*—§ 50. Every person who shall corruptly take any money or reward, directly or indirectly under pretence or on account of helping any person to any chattel, money, valuable security, or other property whatsoever, which shall by any felony or misdemeanor have been stolen, taken, obtained, or converted as aforesaid, shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.\*

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\* See 6 V. c. 5. p. 515.

## Receivers of Stolen Goods.

*Advertising Rewards.*—§ 51. If any person shall publicly advertise a reward for the return of any property whatsoever which shall have been stolen or lost, and shall in such advertisement use any words purporting that no question will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property, or shall promise to offer in any such public advertisement to return to any pawnbroker or other person who may have bought, or advanced money by way of a loan upon any property stolen or lost, the money so paid or advanced, or any other sum of money or reward for the return of such property; or if any person shall print or publish any such advertisement, in any of the above cases, every such person shall forfeit the sum of twenty pounds for every such offence to any person who will sue for the same by action of debt, to be recovered with full costs of suit.

*Second Offence.*—§ 52. Where the stealing or taking of any property whatsoever is by this act punishable on summary conviction, either for every offence or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall on conviction thereof before a justice of the peace be liable for every first, second, or subsequent offence of receiving, to the same forfeiture or punishment to which a person guilty of a first, second, or subsequent offence, of stealing or taking such property, is by this act made liable.

*Warrant to apprehend an Accessory after the fact, for receiving stolen goods.*

To the constable of — and all other her Majesty's peace officers within the said district.

Home District, } Whereas A. B. hath this day made oath, be-  
to wit. } fore me, S. P. esq., one of her Majesty's  
justices of the peace in and for the said district [*here state the facts set forth in the information*]; and also, that the said A. B. hath cause to suspect, and doth suspect, that I. I. of — labourer, hath feloniously bought and received the said [*the property stolen*] knowing the same to have been feloniously stolen. These are therefore to command you, forthwith to apprehend and bring before me, at this place, the body of the said T. T., to answer to the said charge, and to be further dealt with according to law.

Given under my hand and seal at — in the said district, this — day of — 18—.



*Commitment of an Accessory for receiving stolen goods, knowing the same to have been stolen.*

To the keeper of her Majesty's gaol at —.

Home District, } Receive into your custody, and there safely  
to wit. } keep until delivered by due course of law,  
the body of A. B. herewith sent you, and charged before me,  
one of her Majesty's justices of the peace acting in and for the  
said district, on the oath of C. D. of — with having feloniously  
received [*describe the stolen articles*] lately stolen from the dwelling-house of the said C. D. at — aforesaid, by some person or persons at present unknown, the said A. B. well knowing the said [*describe the articles*] to have been feloniously stolen.

Given under my hand and seal at — this — day of — 18—.

*Commitment of a Receiver of Stolen Goods with the Principal Felon.* (ARCHBOLD.)

Home District, } J. P. esquire, one of her Majesty's justices of  
to wit. } the peace for the said district; to the constable of — in the said district, and to the keeper of the common gaol at Toronto in the said district: these are to command you, the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the bodies of A. B. and L. M., charged before me, this — upon the oath of C. D. and others, for that the said A. B. on the — day of — in the year of our Lord, — at — in the said district [*here state the larceny, &c., as in ordinary cases*]; and that he the said L. M. afterwards at — aforesaid, [*six brass candlesticks and four pewter dishes, being parcel of*] the goods and chattels above mentioned, so as aforesaid, feloniously (*and burglariously*) stolen, taken and carried away feloniously did receive, he the said L. M. then well knowing the said goods and chattels (last mentioned) to have been feloniously (*and burglariously*) stolen, taken and carried away as aforesaid, against the form of the statute, in that case made and provided, and you, the said keeper, are hereby required to receive the said A. B. and L. M. into your custody in the same common gaol, and them there safely to keep until they shall be thence delivered by due course of law. Herein fail not.

Given under my hand and seal, the — day of — in the year of our lord —.

*Against the Receiver only for the Felony.* (ARCHBOLD.)

*Commencement as before*] on the — day of — in the year of our Lord — at — in the said district, one silver tankard, of the

goods and chattels of C. D., by a certain ill-disposed person, then lately before, feloniously stolen, taken and carried away, of the same evil disposed person feloniously did receive, he the said A. B. well knowing the said goods and chattels to have been feloniously stolen, taken and carried away; against the form of the statute in that case made and provided, and you the said keeper, &c. as *ante. to the end.*

## RECOGNIZANCE.

A RECOGNIZANCE is an obligation of record entered into before some magistrate or magistrates, duly authorised, with condition to appear at the sessions or assizes, or to keep the peace, &c. If a person refuse to give recognizance, he may be committed. *Dalt. c. 168.* A recognizance must be made to the king; it must contain the names, places of residence, and additions of the principals and sureties, and the penalty in which they are bound: the parties need not sign it; it becomes a matter of record as soon as taken and acknowledged, although not made up by the justice, and only entered in his book. *Dalt. c. 168.* Recognizance, taken for the peace, must be certified to the next sessions, that the party may be called, and if they do not appear they will be estreated: and by stat. \*3 W. 4. c. 3. recognizances taken in felony or misdemeanour, must be delivered to the public prosecutor before, or at the opening of the court. § 2. Or such justices may be fined. § 5. When a charge is made before a magistrate, he may bind over the party making the charge to prosecute and give evidence, and also all who can give material evidence; and, on their refusal, may commit them. A married woman is incapable of entering into a recognizance; but if she altogether refuse to appear at the sessions and to find sureties for such appearance, when such appearance is essential to the conviction of an offender, she may be committed. The proper course, where a married woman is a material witness, is to bind over her husband or other competent person, as surety for her appearance. *Dickenson, Q. S. 74:* also infants (that is, persons under 21 years of age), who cannot legally bind themselves, must procure others to be bound for them, and in default thereof, may be committed. *Chitty's C. L. p. 91.* The usual manner of taking a recognizance, is by calling the parties by name, thus:

You, A. B., acknowledge to owe to our sovereign lady the queen, the sum of £20, [*and in case of sureties*] (*and you, C. D. and E. F. acknowledge to owe to our sovereign lady the queen, the sum of £10 each*) to be levied upon your respective goods and

chattels, lands and tenements, for the use of our said lady the queen, her heirs and successors, if default shall be made in the condition following :

The justice should demand of each party "*if he is content ;*" and upon their answering that he is so, the recognizance is complete, and the defendant is at liberty to depart.

If the condition of the recognizance is not complied with, it is estreated by the court; but during the sitting of the court, upon the party exhibiting a satisfactory affidavit of any sufficient reason for non-compliance with the terms; it has been the invariable practice for the court, on motion being made for that purpose, to take off the estreat, upon such terms as the court may require, such as entering into new recognizance, &c. *Dickenson, Q. S. p. 668.*

See also title "*Estreat,*" ante p. 249.

### *Condition of a Recognizance to Prosecute.* (ARCHBOLD.)

The condition of this recognizance is such, that if the above-bounden A. B. shall personally appear at the next general quarter sessions of the peace, (*or at the next general gaol delivery, if intended for the assizes,*) to be holden in and for the said Home district, at the city of Toronto, in the said district, and then and there prefer a bill of indictment against C. D. late of — labourer, for feloniously stealing, taking, and carrying away (*here mention the property stolen*) the property of A. O., and shall then also give evidence there, concerning the same, as well to the jurors that shall then inquire of the said felony, as also to them that shall pass upon the trial of the said C. D., that then the said recognizance to be void, or else to stand in full force and virtue.

### *Condition of Recognizance, with sureties to appear and answer in Felony.* (DICKENSON.)

The condition of this recognizance is such, that if the above-bounden A. B. do and shall personally appear before the justices of our said sovereign lady the queen, assigned to keep the peace in and for the Home district, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said district committed, at the next general quarter sessions of the peace, to be holden in and for the said district, at the city of Toronto, in the said district, then and there to answer our sovereign lady the queen, for and concerning the felonious taking and stealing a certain (*mentioning the article,*) the property of X. Y., wherewith the said A. B. stands charged on

suspicion before (the justices, naming them,) and do and receive what by the court then and there shall be enjoined him, and shall not depart the court without leave or license: then the above written recognizance shall be void, and of none effect, otherwise to remain in full force.

*Condition of a Recognizance, by a witness, to give evidence.*

The condition of the above-written recognizance is such, that if the above-bounden E. F. shall personally appear at the next general quarter sessions of the peace, (or gaol delivery,) to be holden at the city of Toronto, in and for the said Home district, and then and there give such evidence as he knoweth, upon a bill of indictment to be exhibited by C. D. of — yeoman to the grand jury, against A. B. late of — labourer, (*for feloniously stealing the property of the said C. D.*) and in case the said bill be found a true bill, then if the said E. F. shall then and there give evidence to the jurors that shall pass upon the trial of the said A. B., upon the said bill of indictment, and not depart thence without leave of the court; then this recognizance to be void, or else to remain in full force.

## REGISTER OFFICE.

\*By the 35 G. 3. c. 5. There shall be established in each and every county and riding of this province, wherein it may be deemed at present necessary, and as often after as occasion may require within others, an office for the enregistering of memorials of deeds and instruments by which lands within the same shall be transferred or disposed of by bargain and sale, enfeoffment, gift, devise, mortgage, or exchange; and it shall be lawful for the lieutenant-governor to name the place where such register office shall be kept, and to appoint a person of sufficient integrity and ability, to each and every office, under the conditions hereinafter mentioned, who shall faithfully cause a memorial to be enregistered of all deeds and other instruments, by which lands may be transferred or alienated, that shall be presented to him in manner hereinafter mentioned. § 2. That after the grant from the crown to any person or persons, a memorial of all deeds and conveyances, which shall be made and executed; and of all wills and devises in writing whereby any lands may be affected, may, at the election of the party or parties concerned, be registered; and that every deed and conveyance made after any memorial is so registered, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee, for valuable consideration, unless a memorial be

registered before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim; and that every devise, by will, of lands mentioned in any memorial registered as aforesaid, 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.

By § 3. And when such office shall become vacant by the death, forfeiture, or surrender of any such register, the justices of the peace for the county or riding, assembled at the next general quarter sessions, shall, in open court, draw up a memorial of such vacancy, and transmit the same, without delay, to the lieutenant-governor, praying that a person of sufficient integrity and ability may be appointed to the office; and the lieutenant-governor shall, within one month after the said memorial shall be received, appoint a successor.

§ 4. Every memorial so to be entered, shall be put into writing and brought to the said office, and in case of deeds, shall be under the hand and seal of some, or one of the grantors or 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 oath before the 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 registrar or his deputy, prove the signing and sealing of such memorial; which oaths, the said registrar or his deputy are empowered to administer, and shall endorse a certificate thereof, on every such memorial, and sign the same.

§ 5. And every memorial 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, will, or conveyance, and the places of their abode, and shall express 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 riding where such lands are lying, that are given, granted, conveyed, devised, or any way affected or changed by any such deed, will, or conveyance, in such manner as the same are expressed in such deed, &c., or to the same effect; and every such deed, conveyance,

will, or probate, of which such memorial is to be registered, shall be produced to such register, or his deputy, at the time of entering such memorial, who shall endorse a certificate thereon, and therein mention the certain day, hour, and time on which such memorial is entered; and that the said register or his deputy shall sign the said certificate, which shall be allowed as evidence of such registry in all courts of record; and every page of such register book, and every memorial entered therein shall be numbered, and the day of the month and the year, and hour of 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 shall keep an alphabetical calendar of the names of the townships, &c. and parties to such memorial. § 8. Every register or his deputy shall attend at his office every day in the year (except Sundays, and the first week in June, and the last week in December, and Passion Week,) between the hours of nine in the forenoon, and one in the afternoon, for the despatch of business, and shall, when required, make searches concerning all memorials that are registered, and give certificates concerning the same under his hand. § 9. Every such register shall be allowed for the entry of such memorial, 2s. 6d. if not exceeding 100 words, and 1s. for every 100 words above the first 100, and the like fees for the like number of words in every certificate or copy given out of the said office, and for every search, 1s. 6d. and no more. § 13. A memorial may be registered of deeds, conveyances and wills, executed out of the county wherein the lands lie, upon affidavit sworn before one of the judges or a commissioner duly authorised to take affidavits being brought to the register, of the due execution of such deed, &c. such affidavit to be sworn by one of the witnesses to the execution of such deed. § 15. All memorials of wills registered within six months after the death of the testator, shall be valid, and in case such will is contested, then within six months after probate shall be obtained, or the impediment removed. By the \*45 G. 3. c. 2. The assignee of any nominee of the crown, before any patent shall be granted, may register the instrument so executed to him, and such instrument so registered shall have the same effect as if such nominee had at the time been in possession of such patent. By the \*58 G. 3. c. 8. Whenever any person residing in Great Britain or Ireland, or in any British colony, shall execute any conveyance or will, affecting lands in this province, a memorial thereof may be registered in the manner directed by the \*35 G. 3. c. 5. 2. § Such memorial shall be registered in case an affidavit thereof shall be sworn before the mayor or chief magis-

trate of any city, borough or town corporate, in Great Britain or Ireland, or before the chief justice or judge of the supreme court of any British colony, shall be brought to the registrar, wherein one of the witnesses to the execution of such deed or conveyance shall have sworn, or shall swear that he or she saw the same, as also the memorial executed; and in case of wills, one of the witnesses to the memorial thereof, shall prove the execution of such memorial. § 3. And where the witnesses to any deed shall be dead, the grantee, his heirs, &c., may prove the execution before the justices in sessions, and the chairman's certificate witnessed by the clerk of the peace, shall be a sufficient authority to register the memorial of such deed. § 4. Such justices may receive evidence upon oath, and any person guilty of forswearing, shall incur the pains and penalties of perjury. § 5. No certificate of any mayor or chief magistrate, &c., aforesaid, shall have any effect unless the seal of such city, &c. shall be affixed thereto. By the \*9 G. 4. c. 21. entitled "an act to secure to and confer upon certain inhabitants of this province the civil and political rights of natural born subjects," such persons are required to take the oath of allegiance before the registrar. See *ante* p. 17.

## RELIGION.

THE christian religion, according to high authority, is part and parcel of the law of England. To reproach or blaspheme it, therefore, is to speak in subversion of the law: and to say that religion is a cheat, manifests plainly a wish and endeavour to dissolve all those obligations whereby civil society is preserved, and is held to be an indictable offence at common law. *R. v. Taylor, vintr.* 293. 3 *Keb.* 607. By the 1 Edw. 6. c. 1. and 1 Eliz. c. 1. It is enacted, that whosoever shall revile the sacrament of the Lord's supper, shall be punished by fine and imprisonment. And by 1 Eliz. c. 2. § 4. If any minister shall speak any thing in derogation of the book of common prayer, he shall be liable to heavy penalties. Also by § 9 of the last stat. If any person shall, in plays, songs, or other open words, speak any thing in derogation, depraving or despising of said book; or shall forcibly prevent the reading of it by any clergyman, or compel or cause him to read any other service in its stead, the offender shall forfeit for the first offence, 100 marks; for the second, 400; and for the third, all his goods and chattels, and moreover be liable to imprisonment for life. And by the 3 *Jac.* 1 c. 21. If any person shall use the name of the holy trinity profanely or jestingly in any stage plays, interlude, or

show, he shall be liable to a *qui tam* penalty of £10. By the 9 & 10 W. 3. c. 32. It is enacted, that if any person educated in, or having made profession of the Christian religion, shall by writing, printing, teaching or advised speaking, deny the Christian religion to be true, or the holy scriptures to be of divine authority, he shall for the first offence, be rendered incapable to hold any office or place of trust; and for the second, be rendered incapable of bringing any action; being guardian, executor, legatee, or purchaser of lands; and shall suffer three years' imprisonment without bail. But if within four months after the first conviction, the offender appear in open court and publicly renounce his error, he shall be discharged that once from all disabilities. The provisions of this statute have been held to be cumulative, and therefore do not prevent the offender from being indicted at common law. *R. v. Carlisle*, 3 B. & A. 171. By the 14 of G. 3. c. 83. § 5. It is enacted, that his majesty's subjects professing the religion of the church of Rome of and in the province of Quebec, may enjoy the free exercise of their said religion, subject to the king's supremacy, declared and established by the 1 Eliz. over all the dominions and countries belonging to the imperial crown of this realm: and that the clergy of the said church may hold, receive, and enjoy, their accustomed dues and rights, with respect to such persons only as should profess the said religion. And by § 7. the following oath shall be taken by persons professing the said religion in place of the oath required by the stat. of Eliz. or any other oaths substituted by any other act in place thereof.

“ I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to his majesty King George, and him will defend to the utmost of my power against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown, and dignity, and I will do my utmost endeavour to disclose and make known to his majesty, his heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against him or any of them; and all this do I swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any power or person whomsoever to the contrary, so help me God.”

And every such person refusing to take the said oath, shall incur the pains and penalties, forfeitures, disabilities, and incapacities of the 1st of Eliz. \* By the 31 G. 3. c. 31. §. 36. It is enacted, that in all future grants of land from the crown, there shall be a specification of lands of the like quality in value



to 1-7 for the support of a protestant clergy. And by the \*1 W. 4. c. 28. after noticing that doubts had been suggested that the tythe of the produce of land might still be legally demanded by the incumbent; it is enacted, that no tythes shall be claimed, demanded, or received by any ecclesiastical parson, rector, or vicar, of the protestant church within this province.

## RELIGIOUS SOCIETIES.

\*By the 9 G. 4. c. 2. § 1. After reciting whereas various religious societies of various denominations of Christians find difficulty in securing the title of land requisite for the site of a church, meeting house, or chapel, or burying ground, for want of a corporate capacity to take and hold the same in perpetual succession; and whereas it is expedient to provide some safe and adequate relief in such cases, it is enacted, that whenever any religious congregation or society of Presbyterians, Lutherans, Calvinists, Methodists, Congregationalists, Independents, Anabaptists, Quakers, Menonists, Tunkers, or Moravians, shall have an occasion to take a conveyance of land for any of the uses aforesaid, it shall and may be lawful for them to appoint trustees, to whom and their successors, to be appointed in such manner as shall be specified in the deed, the land requisite for all or any of the purposes aforesaid may be conveyed; and such trustees and their successors, in perpetual succession, by the name expressed in such deed, shall be capable of taking, holding, and possessing such land, and of commencing and maintaining any action or actions in law or equity for the protection thereof, and of their right thereto. § 2. The land to be so held not to exceed five acres for any one congregation. § 3. And such trustees shall within twelve months after the execution of such deed cause the same to be registered in the office of the register of the county in which the land lies. § 4. And all conveyances made before the passing of this act, for any of the purposes aforesaid, shall be valid; provided such conveyance shall have been already registered, or shall be registered within twelve months after the passing of this act. By the 4 & 5 V. c. 73. Reciting whereas it is expedient to allow the several Christian denominations recognised by the statutes of this province, to hold lands for the support of public worship and the propagation of Christian knowledge; it is enacted, that so much of the \*9 G. 4. c. 2. as limits the powers of the several denominations mentioned in the said act, to the quantity of five acres, and to the purposes for which lands shall be held, shall be repealed. § 2. The several religious societies

mentioned in said recited act shall and are hereby authorised to hold lands in the manner specified in said act, for the support of public worship and the propagation of Christian knowledge, as well as for the purposes mentioned in said act, any thing in the statutes of *Mortmain* to the contrary notwithstanding. § 3. The rights and privileges aforesaid to extend also to the Roman Catholic church.

## REPLEVIN.

\*By stat. 4 W. 4. c. 7. entitled "an act to facilitate the remedy by replevin," it is enacted by § 1. that any person complaining of a wrongful distress in any case in which by the law of England, replevin will lie, may on filing a præcipe, obtain from the office of the clerk of the crown and pleas, or from any of his deputies, a writ of replevin, in the form marked A. § 2. Before the sheriff shall proceed to replevy upon any such writ, he shall take pledges from the plaintiff according to the law of England, and the bond may be given in the form marked B., and the assignment thereof according to the form in the schedule. § 3. Upon the sheriff making return of the goods distrained, having been eloigned, as would warrant the issuing of *a capias in withernam* by the law of England, such writ shall issue upon filing such return from the clerk of the crown and pleas, or his deputies; which writ may be in the form marked C., and before executing such writ the sheriff shall take pledges according to the law of England. § 4. The sheriff may make his warrant to any bailiff or bailiffs, jointly or severally. § 5. After appearance by the defendant, the plaintiff may declare in replevin according to the law of England. § 6. If the defendant shall not appear within eight days after the return of the writ, the plaintiff shall cause a notice to be affixed to the door of the court house of the district in which such writ shall have issued, according to the form marked D.; and if the defendant shall not appear at the expiration of twenty-one days, the plaintiff, upon filing an affidavit of the due publication of such notice, may enter an appearance for the defendant, and proceed as if the defendant had appeared. § 7. When the value of the goods distrained shall not exceed £15, and the title to lands shall not be in question, the writ of replevin may issue from the district court, and such proceedings may be had thereon agreeable to the practice of K. B. § 8. The court of K. B. may from time to time regulate the mode of practice in replevin, and modify or alter any of the forms in the act. § 9. In the absence of any provision in this act, or in any rule of the court of K. B. to the

contrary, the practice in England in cases of replevin shall be pursued so far as practicable.

(For the forms and schedule, see the act.)

## RESCUE.

Is defined by *Bl. 4. Com. c. 10* to be the forcibly and knowingly freeing another from arrest and imprisonment; and it is generally the same offence in a stranger so rescuing as it would have been in a gaoler voluntarily suffering an escape; but here as upon voluntary escapes, the principal must be first attainted or receive judgment before the rescuer can be punished; for by possibility there may have been no offence committed. 1 *Hale's P. C.* 607.; nevertheless as the rescue is in contempt of some legal process, the offender may be committed and punished for a misdemeanor, according to the degree of his offence. To hinder a person who has committed felony from being arrested is a misdemeanor only; but if rescued after arrest, and the arrest was for felony, the rescuer is a felon; if for treason, a traitor: and if for a trespass, finable. *Hale. Pl.* 116; 3 *Haw. c. 21. Russ. & Ry. C. C. R.* 458; but it seems necessary that the rescuer should have knowledge of the criminal offence, if the party be in custody of a private person, but not necessary if in custody of an officer. 2 *Hale* 606.

### *Commitment for a Rescue.*

Home District, } To the constable —, and to the keeper of the  
to wit. } common gaol at —, in the said district.  
Whereas, A. B. of —, yeoman, and C. D. of —, labourer, are  
this day brought before me, J. C., Esq. one of her Majesty's  
justices of the peace in and for the Home district, and charged  
on the oaths of E. F. and G. H., constables of —, with having  
this day at —, in the district aforesaid, unlawfully, riotously and  
against the queen's peace, rescued and set at large one J. K.,  
committed to the custody of them the said constables, to be con-  
veyed to the common gaol of —, for a felony, by virtue of a  
warrant under the hand and seal of me, the said justice, bearing  
date the — day of —, instant. These are therefore to command  
you the said constable, forthwith to convey and deliver into the  
custody of the keeper of the said gaol, the bodies of them the  
said A. B. and C. D., together with this my warrant. And also  
to command you the said keeper to receive the said A. B. and  
C. D. into your custody in the said gaol, and them there safely  
to keep, until they shall be discharged therefrom by due course  
of law. Given under my hand and seal, &c.

## RESTITUTION OF STOLEN GOODS.

By the common law there was no *restitution of stolen goods*. But it being considered that the party prosecuting the offender by indictment, deserved to have his goods restored; it was enacted by the stat. 21 H. 8. c. 11. that if any felon do rob or take away any man's money or goods, and thereof be indicted and arraigned and found guilty, or otherwise attainted by reason of evidence given by the party robbed or owner of the money or goods, or by any other, by their procurement; then the party robbed, or owner of the goods, shall be restored to such his money or goods; and the justices may award a writ of restitution.

The writ of restitution has fallen into disuse; but, upon production of the goods at the trial, the court will order them to be restored to the owner; and if not restored, he may maintain an action of trover for them, after conviction, notwithstanding they have been sold to the person claiming in *market overt*. 1 Hale 543. 6 Kel 48. 2 Inst. 714. Although this may seem hard upon the buyer, yet the rule of law is that "*spoliatus debet ante omnia restituti*," especially when he has used all diligence in his power to convict the felon. And as the case is reduced to this hard necessity, that either the owner or the buyer must suffer, the law prefers the right of the owner who has done a meritorious act by pursuing a felon to condign punishment, to the right of the buyer, whose merit is only negative, that he has been guilty of no unfair transaction. 4 Bl. Com. 363. However, by the 31 Eliz. c. 12. where a horse is stolen, and sold in open market, according to the provisions of the act, the owner can only be entitled to it again upon payment of the buyer's costs. See further on this subject, title "*Horses*," *ante*. p. 328.

If the thief sell the goods and be taken with the money which he sold them for, and the goods cannot be heard of, it has been questioned whether the prosecutor shall have the money. *W. Jones* 148. 2 East. P. C. 789. But the better opinion seems to be where it is clearly ascertained that the money is the produce of the goods stolen, that the prosecutor would be then entitled to it, within the equity of the above statute. *Hamberrie's case Cro. Eliz.* 661. *Harris' case, Noy*, 128. 1 Hale 542. 2 East. P. C. 789.

Restitution, however, can only be had from the person in possession of the goods at the time of, or after the felon's attainder. Therefore, if a party purchase them bona fide, in *market overt*, and sell them again before conviction, no action will in this case lie against him for the value, though notice were even given him not to sell. *Horwood v. Smith*, 2. R. 753. But the

necessity of prosecuting and convicting or attainting the felon, in order to have restitution, is only when the property is changed by some intermediate act, as when they have been sold in *market overt*. For otherwise the owner may, at common law, peaceably retake his goods wherever he finds them, without any writ of restitution. *Kel.* 48. 2 *Haw. c.* 25. And now by the 4 & 5 V. c. 25. § 49. Restitution shall be made, except in certain cases,) for which see title "*Larceny*." p. 423.

## RIOT, ROUT, &c.

A RIOT is the forcibly doing an unlawful thing by three or more persons assembled together for that purpose. By the common law, peace officers may suppress a riot, and may command all other persons to assist them. 1 *Haw. c.* 65. § 11. A *rout* is where three or more meet together to do some unlawful act upon a common quarrel, as forcibly breaking down fences upon a right claimed of common or way, and make some advances towards it, but without actually executing it. *Ibid.* An unlawful assembly is where three or more assemble themselves together, with intent to do an unlawful act, as to pull down enclosures, &c. but part without doing it, or making any motion towards it. *Ibid.* A riot at *common law*, is a misdemeanor only, punishable by fine and imprisonment. 1 *Haw. c.* 65. § 12. But under particular circumstances, which will be seen hereafter, it is in some cases, by statute, made felony.

### *Riot at Common Law, (Misdemeanor.)*

If the riotous assembly meet for a public purpose.—as to redress a general grievance; to pull down *all* enclosures; or to reform religion; or with a determination to resist the king's forces, if legally called in to keep the peace;—their proceedings then may amount to overt acts of high treason, by levying war against the King. 4 *Bl. Com.* 147.

To constitute a riot, there must be some circumstances of actual force or violence, or at least of an apparent tendency thereto, which are calculated to strike terror among the people, such as the show of offensive weapons, threatening speeches, or turbulent gestures. But it is not necessary that personal violence should have been actually committed. 1 *Haw. c.* 65. § 5. *Clifford & Brandon*, 2 *Camp.* 369. Nor will it amount to a riot if the object is to do a lawful act, as to remove a nuisance. 1 *Haw. c.* 65. § 8. *R. v. Soley*. 11 *Mod.* 117. 5 *Burn's J. Riot*, § 1. Where a person on seeing others actually engaged in a

riot joins himself to them and assists them, he is as much a rioter as if he had at first assembled with them for the same purpose. 1 *Haw. c.* 65. § 3. And whoever encourages, or promotes, or takes part in a riot, whether by words, signs or gestures, or by wearing the badge, or ensign of the rioters, is himself to be considered a rioter; for in this case, all are principals. 2 *Camp.* 370. 4 *Burr.* 2073. 1 *Hale*, 463.

To incite persons to assemble in a riotous manner, appears to be an indictable offence. *Cro. Cir. Comp.* 420. 8 *Ed.* 2 *Chit. C. L.* 506. Women are punishable as rioters; but *infants*, under the age of discretion, are not. 1 *Haw. c.* 5. 65. § 14. Where an infant is indictable, he may appear by attorney. *R. v. Turner*, 2 *Ld. R.* 1284.

Thus much for a riot at *Common Law*.

#### *Riot by Statute, (Felony.)*

The statute 1 *G. 1. st.* 2. c. 5. § 1. commonly called the *riot act*, enacts that if any persons to the number of twelve or more, being unlawfully, riotously and tumultuously assembled together, to the disturbance of the public peace; and being required or commanded by any justice of the peace, or the sheriff of the county, or his under-sheriff, or by the mayor, bailiff, or other head officer, or justice of the peace of any city or town corporate, where such assembly shall be, by proclamation made in the queen's name, (in the form directed by the second section of the act) to disperse themselves, and peaceably to depart to their habitations or to their lawful business, shall, to the number of twelve or more, (notwithstanding such proclamation made) unlawfully, riotously, and tumultuously, remain or continue together by the space of one hour after such command or request made by proclamation, the parties so remaining shall be guilty of felony, and suffer death. By § 2. The justice (or person authorised as above, shall, among the said rioters, or as near to them as he can lawfully come, with a loud voice command, or cause to be commanded, silence to be, while proclamation is making; and after that, shall openly and with a loud voice make, or cause to be made, proclamation, in these words, or like in effect:—

“Our sovereign lord the king\* chargeth and commandeth all persons being assembled to disperse themselves, and peaceably to depart to their habitations or to their lawful

\* Lady the Queen.

“ business, upon the pains contained in the act made in the first year of the reign of King George, for preventing tumults and riotous assemblies. God save the king.”\*

By § 3. Those assembled, and not dispersing within an hour, may be seized; and if they make resistance, the persons killing them shall be indemnified. § 4. And if any persons unlawfully, riotously, and tumultuously assembled, shall unlawfully and with force, demolish or pull down, or *begin* to demolish or pull down, any church, chapel, or any building for religious worship, certified and registered according to the statute of the 1 W. & M., or any dwelling-house, barn, stable, or other out-house, they shall suffer death, without benefit of clergy. § 5. And if any person shall, with force and arms, wilfully oppose, hinder, or hurt any person that shall begin or go to make the proclamation, whereby the same shall not be made, he shall be guilty of felony; and also every person so unlawfully, riotously, and tumultuously assembled, to the number of *twelve* or more, to whom proclamation should or ought to have been made, if the same had not been hindered, shall likewise, in case they, or any of them, to the number of twelve or more, shall continue together, and not disperse themselves within one hour after such let or hinderance so made, shall be guilty of felony. § 8. Prosecutions under this act must be commenced within twelve months.

By 13 H. 4. c. 7. Any two justices,† with the sheriff or under-sheriff, may come with the *posse comitatus*, if necessary, and suppress a riot, and record the circumstances: which record shall be a sufficient conviction of the offenders. If the rioters are departed, the justices shall make inquiry within a month afterwards, and hear and determine the same. Rioters convicted on the view of two justices and the sheriff, may be fined; and the statute requires that the sheriff shall join in assessing the fine. *Raym.* 386. When riots are committed, the sheriff, on precept directed to him, shall return twenty-four persons within the district, to inquire thereof. 19 H. 7. c. 13. And the riot being found by inquisition, the justices shall make a record thereof in writing, which is to remain with one of the justices. *Dalt. c.* 82.

\* By 3 W. 4. c. 4. The riot act, 1 G. 1., is confirmed in its relation to this province; and it is enacted, that the provisions in the fourth clause of the same act shall apply and extend to all churches and chapels or places for religious worship in this

\* Queen.

† This ancient statute is now obsolete, and it is usual to proceed by indictment only.

province, notwithstanding the same, or any of them, shall not be *certified or registered* as provided in the said act.

By the 4 & 5 V. c. 26. § 6. If any persons riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish, pull down, or destroy, or begin to demolish, pull down, or destroy, any church, chapel, or meeting house, for the exercise of any mode or form of religious worship, or any house, stable, coach house, out house, warehouse, office, shop, mill, malt house, hop oast, barn, or granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any machinery whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement, for any term not exceeding two years.

*Record of a Riot on view.* (BURN.)

— District, } Be it remembered, that on — day of —, in the  
to wit, } — year of the reign, &c. we, J. C. and S. P.,  
esquires, two of the justices of our said lady the queen, assigned  
to keep the peace in the — district, and J. P. esq., sheriff of the  
said district, on the complaint and at the request of A. B. of —  
in the said district aforesaid, esq. in our proper persons, have  
come to the mansion house of him the said A. B., at — afore-  
said, and then and there do find C. D. of — yeoman, E. F. of  
— yeoman, G. H. of — yeoman, and other malefactors and  
disturbers of the peace of our said lady the queen, to us un-  
known, in a war-like manner arrayed; to wit, with clubs,  
swords, and guns, unlawfully, riotously, and routously assem-  
bled and the same house besetting, many evils against him the  
said A. B., threatening, to the great disturbance of the peace of  
our said lady the queen, and terror to her people, and against  
the form of the statute in that case made and provided; and  
therefore we, the aforesaid J. C. and S. P., the aforesaid C. D.  
E. F. and G. H. do then and there cause to be arrested, and to  
the next gaol of our said lady the queen in the district aforesaid  
to be conveyed, by our view and record of the unlawful assem-  
bly, riot, and rout aforesaid convicted; there to remain every  
and each of them respectively, until they shall severally and  
respectively have paid to our said lady the queen the several  
sums of £10 each, which we do impose upon them and every of  
them separately, for their said offence. In testimony whereof



to this our present record, we do put our seals. Dated at — aforesaid, the day and year aforesaid.

*Commitment of Rioters on view.* (BURN.)

— District, } J. C. and S. P., Esqrs. two of the justices of  
to wit. } our sovereign lady the queen, assigned to keep  
the peace within the — district, and J. P., Esq., sheriff of the  
said district. To the keeper of the gaol of our said lady the  
queen, at —, in the said district, and to his deputy and deputies  
there, and to every of them greeting: Whereas upon complaint  
made unto us by A. B. of —, Esq., we did this present — day  
of —, go to the house of the said A. B. at — aforesaid, and there  
did see C. D. of —, yeoman, E. F. of —, yeoman, and G. H.  
of —, yeoman, and other malefactors to us unknown, assembled  
together in an unlawful, riotous and routous manner, to the  
terror of the people and against the peace of our said lady the  
queen; and against the form of the statute in such case made  
and provided: we do therefore send you by the bringers hereof,  
the bodies of the said C. D., E. F. and G. H., convicted of the  
said riot, rout and unlawful assembly, by our own view, testi-  
mony and record; commanding you in the name of our said  
lady the queen, to receive them into the said gaol and them and  
every of them respectively, there safely to keep until they and  
every of them shall respectively pay to our said lady the queen,  
the several sums of — each, which we have set and imposed upon  
them and each and every of them separately, for the said offence.

Given under our hands and seals at —, &c.

*Precept to Summon a Jury.* 19 H. 7. c. 13. (BURN.)

— District, } J. C. and S. P., Esqrs., two of the justices of our  
to wit. } lady the queen, assigned to keep the peace in  
the — district, and also to hear and determine divers felonies,  
trespasses and other misdeeds, in the said district committed.  
To the sheriff of the said district, greeting: On the behalf of  
our said lady the queen, we command you, that you cause to  
come before us, J. C. and S. P. at —, in the district aforesaid,  
on the — day of — next ensuing, twenty-four honest and lawful  
men of the district aforesaid, every one of which to have lands  
and tenements within the said district, of the yearly value of  
20s. of charter land, or of freehold, over and above all charges;  
to inquire for our said lady the queen, and for our indemnity in  
this behalf, upon their oath of certain riots, routs and unlawful  
assemblies at —, in the district aforesaid, lately committed, as it  
is said, and that you return upon every person so by you to be

impannelled, 20s. of issues at the aforesaid day, to be by them respectively forfeited if they shall not appear and be sworn to inquire of the premises at the same time and place; and this you shall in nowise omit, on pain of £20.

Given under our hands and seals, at — aforesaid, the — day of —, in the — year of the reign of Queen Victoria.

*Foreman of the Jurors' Oath.*

You shall true inquiry and presentment make of all such things as shall come before you, concerning a riot, rout and unlawful assembly, said to have been lately committed at — in this district; you shall spare no one for favor or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you. So help you God.

*Juror's Oath.*

The oath which your foreman hath taken on his part you and every of you shall well and truly observe and keep on your parts. So help you God.

*The Inquisition, Indictment or Presentment of a Jury. (BURN.)*

— District, } An inquisition for our lady the queen, indented  
to wit. } and taken at — in the — district, the — day of  
— in the — year of the reign of her present Majesty Queen  
Victoria, by the oath of — honest and lawful men of the district  
aforesaid, before J. C. and S. P., Esqrs. justices of our said lady  
the queen, assigned to keep the peace in the said district, and  
also to hear and determine divers felonies, trespasses and other  
misdemeanors in the said district committed, who say upon their  
oath aforesaid, that C. D. of —, yeoman, E. F. of —, yeo-  
man, and G. H. of — yeoman, together with other malefactors  
and disturbers of the peace of our said lady the queen, to the  
jurors aforesaid as yet unknown, on the — day of —, now last  
past, at — aforesaid, in the district aforesaid, with force and  
arms, to wit, with clubs, swords and guns, unlawfully, routously  
and riotously did assemble to disturb the peace of our said lady  
the queen, and so being then and there assembled and gathered  
together, the mansion house of A. B., Esq. at — aforesaid, un-  
lawfully, routously and riotously did enter, and in and upon him  
the said A. B., then and there unlawfully, routously and riotously  
did make an assault. and him the said A. B. then and there  
routously and riotously did beat, wound and ill treat in distur-  
bance of the peace of our said lady the queen, and to the terror  
of her people, and against the form of the statute in such case  
made and provided. We whose names are hereto set, the above

jurors, do find this inquisition true. J. K.; L. M.; N. O.; P. Q.; R. S.; T. U.; &c.

We, the justices abovesaid, do herēby impose the fines hereunder written on the aforesaid offenders,

C. D. £20,

E. F. £20,

G. H. £20,

*Indictment for a Riot and Assault.* (ARCHBOLD.)

Home District, } The jurors for our lady the queen, upon  
to wit. } their oath present that J. S., late of the town-  
ship of — in the Home district, labourer, J. R., late of the same,  
carpenter, E. W., late of the same, yeoman, together with  
divers other evil disposed persons, to the number of —, and  
now to the jurors aforesaid unknown, on the — day of — in the  
— year of the reign of our sovereign lady Victoria, with force  
and arms, at the township aforesaid, in the district aforesaid,  
unlawfully, riotously and routously did assemble and gather to-  
gether, to disturb the peace of our said lady the queen, and  
being so then and there assembled and gathered together, in  
and upon one A. the wife of J. N., in the peace of God and of  
our lady the queen, then and there being, unlawfully, riotously  
and routously did make an assault, and her the said A. then and  
there unlawfully, riotously and routously did beat, wound and  
ill-treat, so that her life was greatly despaired of, and other  
wrongs to the said A. then and there unlawfully, riotously and  
routously did: in contempt of our said lady the queen and her  
laws, to the evil example of all others in the like case offending,  
and against the peace of our lady the queen, her crown and dig-  
nity.—(*Add also another count for a common assault.*)

*Indictment for a Riot and Tumult.* (ARCHBOLD)

*Commencement as in the last form,*] &c. with force and arms, to  
wit, with sticks, staves, and other offensive weapons, at the  
township aforesaid, in the district aforesaid, unlawfully, riot-  
ously, and routously did assemble and gather together, to dis-  
turb the peace of our said lady the queen; and being so as-  
sembled and gathered together, armed as last aforesaid, did then  
and there unlawfully, riotously, and routously make a great  
noise, riot and disturbance, and did then and there remain and  
continue armed as last aforesaid, making such noise, riot and  
disturbance for the space of an hour and more, then next fol-  
lowing, to the great disturbance and terror, not only of the  
liege subjects of our lady the queen, there being and residing,

but of all other the liege subjects of our said lady the queen then passing and repassing in and along the queen's common highway, there, in contempt of our said lady the queen and her laws, to the evil example of all others in the like case offending, and against the peace of our lady the queen, her crown and dignity.

*Commitment for a Riot and feloniously beginning to demolish a House.*

To the keeper of

— to wit. Receive into your custody the body of E. F. herewith sent you, brought before me J. C. esq. one of her Majesty's justices of the peace for the — district, and charged by A. B. before me the said justice, upon oath, with unlawfully, riotously, tumultuously, and feloniously assembling, with divers other persons, to the disturbance of the public peace, at — in the said district, on — the — day of — 18—, and with force and arms beginning to demolish and pull down a certain dwelling-house there situate, belonging to A. B. esquire, contrary to the statute, &c.

*The like for rioters remaining an hour together after the Riot Act has been read. (ARCHBOLD.)*

*Commencement as before,*] on the — day of — in the year of our Lord 18—, at —, in the said district, together with divers other evil disposed persons, unlawfully, riotously and routously did assemble and gather together; and notwithstanding proclamation made in that behalf by one of her Majesty's justices of the peace for the said district, commanding them and requiring them to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, the said A. B., C. D. and E. F., together with other persons, to the number of *twelve* and more, feloniously, riotously, and tumultuously did remain and continue together by the space of one hour after such command so made by the said proclamation as aforesaid. And you the said keeper, &c.

## RIVERS AND NAVIGATION.

A NAVIGABLE river is, with respect to the right of the public to pass along it for the conveyance of themselves or their goods and merchandizes, in the nature of a public highway, 1 *Harc. c. 76. § 1.* 3 *Com. Dig. 23.* A nuisance occasioned to a pub-

lic river, by obstruction, is indictable on the same principle as a similar nuisance to a highway. Thus, the *laying of timber* in a public river, whereby the passage of vessels is obstructed, is as much a nuisance as laying logs in a highway. 5 *Bac. Ab. nuisance. (A.)*

See also "*Banks of Rivers,*" p. 85.

## ROBBERY.

ROBBERY signifies a larceny from the person, committed openly and violently; and may be defined to be, the felonious and forcible taking of goods or money of any value from the person of another, or in his presence, against his will, by violence, or putting him in fear. 4 *Bl. Com.* 243. 2 *East P. C.* 797.

### *Of the Felonious taking.*

The gist of the offence being the force and terror used by the offender, the value of the property stolen is quite immaterial; for a penny as well as a pound, forcibly taken or extorted, constitutes in law a robbery. 3 *Inst.* 69. 1 *Hale.* 532. 1 *Haw. c.* 34. § 16. 4 *Bl. Com.* 243. The taking also must be such, as to give the robber a *possession* of the property stolen. Therefore, if a man having his purse fastened to his girdle be assaulted by a thief, and the thief, in order the more readily to take the purse, cut the girdle and the purse thereby fall to the ground, this is no taking so as to amount to robbery, for the thief never had the purse in his possession: but, if he had taken it up from the ground, though but for one moment, and afterwards let it fall in the struggle, this would then have been a sufficient taking, the purse having been once in his possession. 3 *Inst.* 69. And when once the offence of robbery is completed it cannot be purged by a re-delivery.—There may be a taking in law, however, as well as a taking in fact, which will amount to robbery. Thus, if upon A. assaulting B. and bidding him deliver his purse, B. refuse to do so; and then A. pray B. to give or lend him money, and B. does so accordingly, under the influence of fear, the taking will be complete. 1 *Hale* 533. So, when thieves finding no property on a man, force him by menace of death to fetch them money, which he delivers to them while the fear of the menace continues upon him, and they receive it, this is a sufficient taking in law. *Id.* 3. *Inst.* 68. The taking however, need not be immediately from the person—it is enough, if it be *in his presence*. Thus, if A. upon being attacked by a robber, throws his purse or his cloak into a bush,

or lets his hat fall while he is endeavouring to escape, and the thief takes either of these things up and carries it away, such a taking being done in the presence of A., will amount to robbery. 3 *Inst.* 68. 1 *Hale* 533. 1 *Haw.* 34. § 6. But no stealing will amount to robbery, unless done in the presence of the owner. *R. v. Grey*, 2 *East P. C.* 708.

*What Violence or Fear is necessary.*

The principle of robbery being violence, some degree of force is therefore necessary to constitute the offence. But there may be a constructive, as well as an actual force, for where such *terror* is impressed on the mind as not to leave the party a free agent, and in order to get rid of that terror he delivers his money, this is a sufficient force in law. And where actual violence is used, there need not be actual fear, for the law will presume it. *Donally's case*. 2 *East P. C.* 727. With respect to the degree of violence, where there is no putting in fear, the amount of force used in such cases must be something more than a sudden taking or snatching, for unless some greater force is used by the thief to overpower or prevent resistance, or there is some resistance, or actual struggle on the part of the owner to retain his property, this will not amount to a robbery, being divested of both the main ingredients of the crime, *corporal violence and terror*. *R. v. Macauley*, 1 *Leach* 287. *R. v. Baker*, *Id.* 290. *R. v. Robins*, *Id.* 290. note (a.) *R. v. Steward*, 2 *East P. C.* 702. But if any injury be done to the person, or there is any struggle of the owner to retain his property, then it is robbery. As where a lady's ear-ring was pulled so violently from her ear, that the ear was torn through and made to bleed, and she was otherwise much hurt. *R. v. Lapiet*, 1 *Leach*. 320. And so where the prisoner pulled the prosecutor's watch from his fob, which being fastened by a steel chain round his neck, the thief with two jerks broke the steel chain in order to get the watch, for the prisoner in this case had to overcome the resistance made by the steel chain, and used actual force for that purpose. *R. v. Mason*, *R. & Ry.* 419. The violence used also will not the less amount to robbery, because it is accompanied by some specious pretence of law or justice; thus where the prosecutor was carrying his cheeses along the highway, and was stopped by the prisoner, who insisted on seizing them for want of a permit—which was found to be a mere pretence, no permit being necessary—and on some altercation, they agreed to go before a magistrate to determine the matter, when other persons who were riotously assembled, and in confederacy with the prisoner, carried away the goods in the ab-

sence of the prosecutor, this was held to be robbery: and the first seizure of the cart and goods by the prisoner was sufficient to constitute the offence. *Merriman v. Hundred of Chippenham*, 2 East P. C. 709. With respect to a constructive violence by *putting in fear*, it matters not whether the fear excited, is of injury to the *person*, the *property* or the *character* of the party robbed. As if a person with a drawn sword or other circumstances of terror, indicating a felonious intent, beg alms of another, who gives it to him through mistrust and misapprehension, this pretence of asking charity will not prevent the offence from being considered as robbery. 4 Bl. Com. 244. 2 East P. C. 711. The *degree* of fear need not be the extremest state of alarm and terror, but only such a reasonable apprehension of danger, as may induce a man, for his own safety, to part with his property. So where a man is compelled through fear to part with his money, in order to prevent his *house* or *property* from being burnt or destroyed, this will be a sufficient putting in fear, to make the offence of those who take his money amount to the crime of robbery. So where a person is induced to part with his money through fear, upon the threat of another to accuse him of an unnatural offence, or any other crime, whereby his character or reputation may be injured; extorting money under a threat of this description, will amount to the crime of robbery; whether the party threatened has been guilty of the crime or not. *R. v. Gardiner*, 1 C. & P. 79.

By the 4 & 5 V. c. 25. § 6. Whosoever shall rob any person, and at the time of, or immediately before or immediately after such robbery, shall stab, cut, or wound any person, shall be guilty of felony, and being convicted thereof shall suffer death. § 9. Whosoever shall rob any person, or shall steal any chattel, money, or valuable security, from the person of another, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

*Of Principals and Accessories.* (And see *ante* “*Accessories.*”)

With respect to persons aiding and abetting in a robbery, the same rules are applicable as in every case of principal and accessory. Thus, where several persons come to rob a man, and they are all *present*, whilst one of them takes his money, they are all guilty of robbery. So if three persons come to commit a robbery, and one stand sentinel at the corner of a field or watch if any one should approach, while the others commit the

robbery, this will be a robbery in the third also, though he stood at a distance from them, and not within view. 1 *Hale* 534. 537. But though several come out with a common design to rob in the highway, yet if one of the party (before any robbery takes place) entirely leaves them, and goes another way, rendering them no manner of assistance, either at the time or after the commission of a robbery by the others, he cannot then be said to be guilty, either as principal or accessory. *R. v. Hyde*, 1 *Hale*, 537.

*Of Assaults with intent to Rob.*

By the 4 & 5 V. c. 25. § 7. Whosoever shall, being armed with any offensive weapon, or instrument, rob, or assault with intent to rob, any person, or shall rob any person, and at the time, or immediately before or immediately after such robbery, shall beat, strike, or use any other personal violence to any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or be imprisoned in any other prison or place of confinement for any term not exceeding two years. § 10. Whosoever shall assault any person with intent to rob, shall be guilty of felony, and being convicted (save and except in cases where a greater punishment is provided by this act) be liable to be imprisoned for three years.

*Commitment for a Robbery.* (ARCHBOLD.)

*Commencement as ante*, p. 148.) — on the — day of —, in the year of our Lord, one thousand eight hundred and — at — in the said district, in and upon the said C. D., feloniously did make an assault, and him the said C. D. in bodily fear and danger of his life feloniously did put, and ten pieces of the current gold coin of this province, called sovereigns, and one gold watch, of the monies, goods and chattels of the said C. D. from the person and against the will of said C. D. feloniously and violently did steal, take, and carry away. And you the said keeper, &c. (*as ante* p. 148.)

*Commitment for an Assault with intent to rob.* (ARCHBOLD.)

*Commencement as ante*, p. 148.) — on the — day of —, in the year of our Lord one thousand eight hundred and — at — in the said district, in and upon the said C. D. feloniously did make an assault, with intent then and there the monies, goods, and chattels of the said C. D. from the person and against the



will of the said C. D. feloniously and violently to steal, take, and carry away, against the form of the statute in that case made and provided. And you the said keeper, &c. (*as ante*, p. 148.)

SABBATH.—(See “*Lord’s Day*,” *ante*, p. 435.)

## SACRILEGE.

SACRILEGE (*sacrilegium*) is at common law, the robbery of a church, or a felonious taking out of a holy place, things consecrated to pious purposes; as the vessels, goods, or ornaments of the church. 3 *Cro.* 153. But to steal any thing belonging to private persons in a church, is *larceny*, and not sacrilege. Sacrilege was originally punished with greater severity than other robberies, by our law; for it denied the benefit of clergy to a person convicted of this offence, which was formerly granted to all other felons. 2 *Inst.* 250. 23 *H. 8.* c. 1. § 3. 1 *Ed. 6.* c. 10.

But now, by the 4 & 5 *V. c.* 25. § 13. if any person shall break and enter any church or chapel, and steal therein any chattel, or having stolen any chattel, money, or valuable security, in any church or chapel, shall break out of the same, such offender being convicted shall be liable to be imprisoned at hard labour at the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.\*

## SALMON.

\*By 2 *G. 4.* c. 10. § 2. No salmon or salmon fry shall be taken or killed, from the 25th day of October to the 1st of January (*repealed* by the \*4 *G. 4.* c. 20.) § 3. No person shall fish by torch-light, within one hundred yards of any mill or dam. § 4. No salmon or salmon fry shall be taken in the Home district, district of Newcastle, and district of Gore, nearer the mouth of any river or creek along the shore of Lake Ontario, than two hundred yards, or within five hundred yards up the mouth of any such river or creek, except the Credit, in the Home district, and there not within two hundred yards up the mouth of the said river. § 5. None to be taken by nets or wears in any of the creeks and rivers in said districts. § 6. Any person convicted of any offence under this act, before two or more justices, by oath of one or more witnesses, other than the informer, shall forfeit and pay not less than 5s. nor more than £5. for every offence, with reasonable costs, and in default of

\* See 6. *V. c.* 5. p. 515.

## Search Warrant.

payment, be committed to the common gaol for not less than two days, nor more than thirty days, unless the same shall be paid. § 6. One moiety of the fines shall be paid to the informer and the other to the province, § 8. This act shall not extend to any other part of the Gore district, than is comprised within the township of Trafalgar, and that part of the township of Nelson which lies north of the beach, between Burlington bay and lake Ontario: and shall not prevent Indians fishing as heretofore, except within one hundred yards of a mill or mill dam, by fire or torch-light. \*By 4 G. 4. c. 20., the 2nd § of the \*2 G. 4. c. 10. is repealed, and it is enacted, that it shall not be lawful to take any salmon or salmon fry, from the 10th of November till the 1st of January. § 2. Extends the provisions of \*2 G. 4. to the whole of the river Trent. § 4. Prohibits the buying of salmon from the Indians, within the periods prohibited, under the same penalty as any person shall be subject to for infringing the provisions of said act 2 G. 4. § 5. One half of any fines under this act shall be paid to the informer and the other half to the use of the province.

The forms necessary in proceedings to recover any of the penalties under these acts, will be found under their general titles of "Information," "Summons." "Conviction" "Distress Warrant" and "Commitment."

### SALT.

\*By the 3 V. c. 18. a duty of sixpence per bushel is imposed upon every *fifty six pounds* weight of salt, imported at any port of entry in this province, from the United States of America.

### SEARCH WARRANT.

It seems that formerly it was not unusual for justices to grant general warrants to search all suspected places for stolen goods; yet such practice is generally condemned by the best authorities; and Lord Hale, in his pleas of the crown, says, a general warrant to search for felons, or stolen goods, is not good. *H. Pl.* 93. Likewise, upon a *bare surmise* a justice cannot legally grant a warrant to break any man's house to search for a felon or stolen goods. *4 Inst.* 177. But in case of a complaint, and oath made, of goods stolen, and that the complainant suspects the goods are in a certain house or place, and shews the ground of his suspicion, the justice may grant a warrant to search in those suspected places mentioned in his warrant, and to attach the goods and the party in whose custody they are

found, and bring them before him, or some other justice, to give an account how he came by them; and further, to abide such order as to law doth appertain. 2 *H. H.* 113. 150. But in cases not merely of probable suspicion, but of positive proof, it is right to execute the warrant in the *night time*, lest the offenders and goods also be gone before morning. *Barl. search W.* Such warrant must be directed to the *constable*, or a peace officer, and not to any private person; though the complainant may aid and assist, because he knows the goods. 2 *H. H.* 150. Whether the stolen goods are in a suspected house or not, the officer, and his assistants, in the day time, may enter, the doors being open, to make search, and it is justifiable by this warrant. 2 *H. H.* 151. If the door be shut, and upon demand, it be refused to be opened by them within, if the stolen goods be in the house, the officer may break open the door. *H. H.* 151. If the goods be not in the house, yet it seems the officer is excused that breaks open the door to search, because he searched by warrant, and could not know whether the goods were there, till search made; but it seems the party that made the suggestion is punishable in such case; for, as to him, the breaking of the door is, *in eventus*, lawful, or unlawful, to wit, lawful, if the goods are there; unlawful, if not there. 2 *H. H.* 151. On the return of the warrant, if it appear the goods were not stolen, they are to be restored to the possessor; if it appear they were stolen, they are not to be delivered to the proprietor, but deposited in the hands of the constable; to the end that the party robbed may proceed, by indicting and convicting the offender, to have restitution. 2 *H. H.* 151. As touching the *party* that had the custody of the goods, if they were not stolen, then he is to be discharged; if stolen, but not by him, but by another that sold or delivered them to him, if it appear that he was ignorant that they were stolen, he may be discharged as an offender, and bound over to give evidence as a witness against him that stole them; if it appear that he knew they were stolen, he must be committed or bound over to answer the felony. 2 *H. H.* 152.

By the 4 & 5 V. c. 25. § 55. If any credible witness shall prove upon oath, before a justice of the peace, that there is reasonable cause to suspect that any property whatsoever on or with respect to which any *such*\* offence shall have been committed, is in any dwelling house, out house, garden, yard, croft, or other place, or places, the justice may grant a warrant to search such dwelling-house for such property, as in the case of stolen goods; and any person to whom any property shall be

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\* See title Larceny.

## Search Warrant.

offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect, that any such offence has been committed, on or with respect to such property, is hereby authorised, and if in his power is required, to apprehend, and forthwith to convey before a justice of the peace, the party offering the same, together with such property, to be dealt with according to law.

### *Information to obtain a Search Warrant for Goods*

— to wit; Be it remembered that this —day of —, in the year of our Lord 18 —, A. B. of — in his proper person, cometh before me, J. C. esq. one of her Majesty's justices, &c. and upon oath maketh complaint, that on the — day of —, (or within — days, as the fact is,) divers goods and chattels of him, the said A. B. of the value of — to wit: (*describe the goods stolen,*) were feloniously stolen, taken and carried away, from and out of the dwelling-house of him, the said A. B., situate at — aforesaid, in the district aforesaid, by some person or persons unknown; and that he hath just cause to suspect, and doth suspect that the said goods and chattels, or some part thereof, are concealed in the dwelling-house of E. F. of — in the said district, labourer, for he, the said A. B. upon his oath, doth depose and say that, (*State the grounds of suspicion, which must be reasonable,*) and thereupon the said A. B. prayeth that justice may be done in the premises, and a search warrant granted. A. B.

Taken before me, J. C.

### *Form of a Search Warrant.*

Upper Canada, } To the constable of —  
 Home District, } Whereas it appears to me, R. S. esquire, one of the justices of our lady the queen, assigned to keep the peace in the said district, by the information of — of —, in the district, yeoman, that certain goods and chattels, to wit: [here name them] have within — days last past, by some person or persons unknown, been feloniously stolen, taken, and carried away out of the house of the said —, at — aforesaid, in the district aforesaid; and that the said — hath probable cause to suspect, and doth suspect that the said goods and chattels, or some part of the same, are now concealed in the dwelling-house of —, of —, in the said district aforesaid, yeoman: These are therefore, in the name of our lady the queen, to authorise and require you, with necessary and proper assistants, to enter in the day time into the dwelling-house of the said —, at — aforesaid, in the district aforesaid, and there diligently to search for the said goods and chattels; and if the same, or any parts thereof, shall be found upon such search, then that you bring

the goods and chattels so found, and also the body of the said — before me, or some other of the justices of our said lady the queen, assigned to keep the peace in the said district, to be disposed of and dealt with according to law. Given under my hand and seal at — aforesaid, in the said home district, the — day of —, in the year of our Lord 18—.

### SEDITION.

SEDITION is understood to comprise within its meaning, all offences against the queen and the government, which are not capital, and do not amount to the crime of high treason. It includes all offences of like tendency with treason, but without any such direct intent or overt act of the party formed or executed as to bring it within the more serious offence. All contempts against the queen and her government, and riotous assemblies for political purposes, may be ranked under the head of sedition; though it has been held, that when the object of the riot is to redress a general grievance, as to pull down *all* enclosures, or to reform religion, or the like, it may then amount to an overt act of high treason; being in the nature of a levying of war against the queen: and see ante "*Riot*," p. 535: and in general, it may suffice to remark, that all contemptuous, indecent or malicious observations, upon the person of the queen or her government, whether by writing or speaking, or by tokens calculated to lessen her in the esteem of her subjects, to weaken her government or raise jealousies of her amongst the people, will fall under the notice of sedition; as well as all direct or indirect acts or threats, tending to overcome her measures, or disturb the course of her government, not amounting to overt acts of treason. All these attempts are highly criminal at common law, and are punishable with fine and imprisonment. 4 *Bl. Com.* 147. 1 *Haw. c.* 65. § 6. 1 *E. P. C.* 76.

### SERVANTS.

By 32 G. 3. c. 56. Any person falsely personating any master or mistress, or giving a false character, or any servant offering a false character, shall forfeit £20, to be recovered before two justices upon oath of one witness. A servant may be discharged at a moment's warning for immorality, or gross misconduct. *R. v. Brampton, Cald.* Or for wilful disobedience of orders. *Spain v. Amott*, 2 *Star. Rep.* 256. And if a servant of his own accord go away before his time expires, he runs the risk of losing all his wages. *Dalt. c.* 58. p. 141. And when discharged for misconduct, will be entitled only to wages due

at the time of his discharge. 3 *Esp.* 235. If a servant, however, not having been guilty of any misconduct, be discharged without warning, he is entitled in such case, if hired by the month, to a month's wages above those that may be due. 2 *Sel. N. P.* 1032. By the 20 G. 2. c. 19. All complaints, differences, and disputes, between masters and mistresses, and servants in *husbandry*, hired for a year (or for less time by 31 G. 2. c. 11) or between masters and mistresses and artificers, handicrafts-men, miners, colliers, keel-men, pit-men, glass-men, potters, and *other labourers*, employed for any certain time, or in any other manner, shall be determined by *one* justice, where the master or mistress shall inhabit; which justice shall examine on oath, any such servant, or other the said persons, or any other witness, touching such complaint, and make such order for payment of wages as to him shall seem just and reasonable, not exceeding £10, with regard to any servant, nor £5, with regard to any other persons; and in case of non-payment for 21 days, such justice may issue his warrant of distress, and by the same statute, such justice, on application or complaint on oath, by any master or mistress, or employer against any such servant, &c., or *labourer*, concerning any misdemeanor, miscarriage or ill behaviour, in such his service or employment, may hear and determine the same, and punish the offender by commitment to the house of correction, there to remain and be corrected, and held to hard labour, not exceeding one calendar month; or otherwise by abating some part of his wages, or by discharging such servant, or other said persons from their service or employment, with power of appeal to the next sessions, who may award costs to either party, not exceeding 40s. and no certiorari shall be allowed. § 6. By the 6 G. 3. c. 25. If any artificer, calico-printer, handicrafts-man, miner, keel-man, pit-man, glass-man, potter, *labourer* or other person, shall contract with any person for any time or term, and shall absent himself from his service, before the term of his contract shall be completed, or be guilty of any other misdemeanor, it shall be lawful for one justice of the county or place where the offender shall be found, on complaint upon oath to him made by such master, or by his steward or agent, to issue his warrant to apprehend such person complained of, and to examine into the nature of the complaint, and if it shall appear to such justice, that the person complained of, hath not fulfilled his contract, or hath been guilty of any misdemeanor, the said justice shall commit him to the house of correction for the county or place where such justice shall reside, for any time not exceeding three months, nor less than one month; and any person aggrieved by such

determination, order or warrant of the justice, (except any order of commitment) may appeal to the next sessions, giving six days' notice to the justice and to the parties, and entering into recognizance within three days after notice before a justice, with sufficient surety to try the appeal at and abide the order of sessions.

*Complaint of a Master against a Servant for misbehaviour, on the 20 G. 2. c. 10. and 6 G. 3. c. 25. (BURN.)*

Home District, } Be it remembered, that this — day of — in  
to wit. } the — year of the reign of our sovereign  
Lady Victoria, A. M. of the township of — in the county of  
— in the home district, husbandman, complaineth and maketh  
oath before me, J. P. esq., one of her Majesty's justices of the  
peace in and for the said district, that A. S. late of — aforesaid,  
in the county and district aforesaid, servant in husbandry (*or  
labourer*) to him the said A. M. hath in his said service (*or em-  
ployment*) been guilty of divers misdemeanors, miscarriages,  
and ill behaviour, towards him the said A. M. and particularly  
[*relating the facts, as the case may be*] and thereupon the said  
A. M. prayeth that justice may be done.

Before me,

J. P.

A. M.

*Warrant for the Servant or Labourer thereupon. (BURN.)*

Home District, } To the Constable of —  
to wit. } Whereas information and complaint hath been  
made unto me — one of her Majesty's justices of the peace in  
and for the said district, upon the oath of A. M. of — husband-  
man, that A. S. late of — servant in husbandry (*or labourer*)  
to him the said A. M. hath in his said service (*or employment*)  
been guilty of divers misdemeanors, miscarriages and ill beha-  
viour, towards him the said A. M. and particularly &c. (*as the  
case may be*): These are therefore to command you, forthwith  
to bring the said A. S. before me, to answer unto the said com-  
plaint, and to be further dealt with according to law. Given  
under my hand and seal the — day of — year of the reign of —

The conviction may be in the general form found under the  
title of "*Conviction.*"

*Commitment of the Servant to the House of Correction thereupon.  
(BURN.)*

Home District, } To the Constable of — in the said district,  
to wit. } and to the keeper of the house of correction,  
at — in the said district. Whereas information and complaint

hath been made &c. [*reciting the facts set forth in the information*] and whereas, in pursuance of the statute in that case made and provided, I have duly examined the proofs and allegations of both the said parties touching the matter of the said complaint, and upon due consideration had thereof, have adjudged and determined that he the said A. O. hath in the service of the said A. M. as aforesaid, been guilty of divers misdemeanors, mis-carriages, and ill behaviour, towards him the said A. M. and particularly [*here set forth the special offence or offences*] These are therefore to command you the said constable forthwith to convey the said A. S. to the said house of correction, at — aforesaid, and to deliver him to the keeper thereof, together with this warrant; and I do hereby command you, the said keeper, to receive the said A. S. into your custody, in the said house of correction, there to remain and be corrected, and held to hard labour for the space of one calendar month (*or for a lesser time if under the 20 G. 2. c. 19.; or for three months or a lesser time. but not less than one month, if under the 6 G. c. 25.*) from the date hereof and for your so doing this shall be your sufficient warrant. Given under my hand and seal, the — day of — in the — year of the reign—.

*Or otherwise, under the 20 G. 2. c. 19. he may be punished by abatement of Wages, as follows. (BURN.)*

*The same as above to the end of the adjudication*] I do therefore hereby order as a punishment for the said offence (*or offences*) that the said A. S. shall abate from his wages, to be paid to him by the said A. M. the sum of —, and do hereby discharge the said A. M. from the payment of the sum of — as part of the wages of him the said A. S. Given under my hand and seal, this — day of —.

## SESSIONS.

THE sessions of the peace is a court of record, holden before two or more justices, for the execution of their general authority, given them by the commission of the peace, as well as by certain statutes. *Lamb. 349. Dalt. 456.* There must also be two justices (at the least) present in order to adjourn the sessions legally; and two justices also to hold an adjournment. *R. v. Westington. 2 Bolt. 733. 1 Bl. Com. 354. n.* When the sessions is adjourned, the style of the court ought to run thus:— “At such a session held by adjournment: but the original meeting of the sessions should be first set forth, and then it should be stated that the sessions were “continued from thence



to such further time by adjournment." 2 *Str.* 832. 865. *R. v. Walker, Sess. Cas.* 21.

Any two justices may direct their precept under their *teste* to the sheriff, for the summons of the sessions, 2 *Haw.* 41; and such precept should bear date fifteen days before the return, and ought forthwith to be delivered to the sheriff, to the end he may have sufficient time to proclaim the sessions, to summon and return the juries, and to warn all officers and others that have business there to attend. *Nels. Introduct.* 35. *Burns' Justice,* 97. *Ed.* 10.

Those who are bound to appear at the sessions, besides the justices of the peace, are—1. The *Custos Rotulorum*, or his sufficient deputy, who is the clerk of the peace, for the *Custos Rotulorum* has the custody of the rolls or records of the county. 2. The sheriff, either by himself or his deputy; it being his duty to return jurors, receive fines, and execute process. 3. All coroners, whose duty is to summon jurors, and execute process upon the default or neglect of the sheriff, or in case of his absence, or having an interest in the matter before the court. 4. The constables of the several townships within the district, and all other officers to whom any warrant has been directed, in order to make a return thereof. 5. The keeper of the gaol, who is bound to bring up the prisoners, and to receive such as may be committed. All persons returned as jurors by the sheriff, by virtue of the above mentioned precept. 7. All persons bound by recognizance to appear, to answer, or to prosecute and give evidence. *Dalt. c.* 185. *Burn* 98. 99. *Ed.* 10.

By 22 G. 2. c. 46. § 12. No person shall act as *solicitor, attorney, or agent* at the sessions, unless he is admitted and enrolled, according to law, under the penalty of £50. And by § 14. *Clerks of the peace, under-sheriffs* and their respective *deputies*, are prohibited under the like penalty, from practising at the sessions.

#### *Of the Jurisdiction of the Sessions.*

1. The jurisdiction of the sessions, by the 34 Edw. 3. c. 1. extended to the trying and determining all *felonies* and *trespasses* whatsoever. But now they ought not to try any greater offence than that of *simple larceny*, their commission providing, that if any case of difficulty arises, they shall not proceed to judgment, but in the presence of one of the justices of the court of queen's bench, or one of the judges of assize. Consequently, *murders, burglaries*, and other capital *felonies*; are reserved for a more solemn investigation at the assizes. The sessions have no commission of *gaol delivery*; neither have they any jurisdiction over

*forgery or perjury* at common law; *R. v. Gibbs*, 1 *East* 473. *R. v. Yarrington*, 1 *Salk.* 406. *R. v. Bainton*, 2. *Str.* 1088. 2 *Haw. c. 8.* § 38. Nor over any *new created* offence, as usury; unless express jurisdiction is given to them by the statute creating the offence. *R. v. Smith*, 2 *Ld. R.* 1144. 1 *Bl. Rep.* 369. 2 *Salk.* 680. The general words in the commission of the peace including *all trespasses*, this comprehends not only direct breaches of the peace, but also all such offences as have a tendency thereto; and on this ground, *conspiracies* and *libels*, or any *illegal solicitations, attempts, or endeavours* to commit crimes, have been holden to be cognizable by the sessions. *R. v. Higgins*, 2 *East R.* 23. *R. v. Summers*, 3 *Salk.* 194. *R. v. Rispal*, 3 *Burr.* 1320. 1 *Bl.* 369. The sessions have, like every other court, the power to fine for a contempt committed in the face of the court. *R. v. Davison*, 4 *B. & A.* 334. But they cannot award an attachment for a contempt in disobeying any of their orders, the ordinary and proper method being by *indictment*. *R. v. Bartlett*, 2 *Sess. Cas.* 176. *R. v. Robinson*, 2 *Burr.* 800. *R. v. Kingdon*, 8 *East.* 41. 4 *Burns' J.* 214. The sessions have also power to fine jurors for non-attendance at the court, upon proof of their having been duly summoned; also to commit to gaol any person guilty of contemptuous or disrespectful conduct in the presence of the court. But the sessions have no power to amerce any justice for his non-attendance at the sessions, as the judges of assize may for the absence of any such justice at the gaol delivery. 2 *Haw.* 41. 42. Nor are justices punishable for what they do in sessions. *Stam.* 173. Unless there be some manifest act of oppression, or wilful abuse of power. 2 *Barnardist.* 249. 250.

Justices in quarter sessions may also make rules and regulations for the gaols, which, when approved of by a judge of the court of king's bench, shall be in force, \*32 G. 3. c. 8. § 16; and fix the salary of the gaoler, which shall be in lieu of all fees; *Ib.* § 17.; appoint the high constable and other constables, in the April sessions, \*33 G. 3. c. 3. § 10; regulate pound keepers' fees, \*34 G. 3. c. 8. § 3; and their charges for feeding animals impounded, \*43 G. 3. c. 10. § 1; grant certificates authorising the clergy of different congregations to solemnize matrimony, \*1 W. 4. c. 1: nominate parish and town officers, in cases where no town meeting is held, and also where any officers appointed at the town meeting shall die or remove from the township, and may fine persons for neglecting or refusing to act, after notice of their appointment, \*46 G. 3. c. 5; may appoint surveyors† of

† The jurisdiction of the justices over the highways has been transferred to the District Council by the 4 & 5 V. c. 10. § 51. See title "*Highways*," p. 312.

the highways in the April sessions; confirm the report of any alteration in, or new road to be made, and direct the employment of a surveyor of lands, if needful, and order him a remuneration not exceeding 10s. per diem from the district funds, and order the treasurer to pay surveyors of highway 7s. 6d. per diem, for services, \*50 G. 3. c. 1, except in cases where a road applied for is not confirmed by the sessions, \*32 G. 3. c. 10; and under particular circumstances may direct the payment of monies from the district funds, towards any public work on the highways, when deemed expedient, not exceeding £50, at any one time, \*55 G. 3. c. 2; \*3 W. 4. c. 2. In case of invasion, may hold the sessions at the most convenient place, \*55 G. 3. c. 9; may grant certificates in case of the death of witnesses to deeds, &c. of the due execution thereof, in order to their registry, \*58 G. 3. c. 8. § 3; cannot take cognizance of illegal marriages, \*2 G. 4. c. 11; may appoint inspector of weights and measures, \*4 G. 4. c. 16; may assign limits to the several gaols of the province, \*3 V. c. 20. § 3; may adjourn to the 20th December, (or if Sunday) to the *Monday* following, to receive applications and grant certificates for tavern licenses, and may adjourn from day to day till applications gone through. § 5; not to adjourn over thirty days, *ib.* § 6; may grant certificates for tavern licenses at any other general quarter sessions in the year, \*59 G. 3. c. 2, § 5; and make and frame rules and regulations for the conduct of tavern keepers, \*59 G. 3. c. 2. § 6; may appoint the district treasurer,† \*59 G. 3. c. 8. § 18; who shall be removeable at the pleasure of such justices, § 20.

\*By 47 G. 3. c. 12. § 2. When any person shall be convicted of any assault or misdemeanor before the sessions, he shall pay the costs of prosecution and conviction to be allowed and taxed by the court; and when the defendant shall be acquitted, the prosecutor, unless it shall appear there were reasonable grounds for prosecution, to be certified by the chairman, shall pay the defendant's taxed costs. The defendant's costs upon a presentment, if the defendant be acquitted, shall be paid out of the district treasury.

\*By the 7 W. 4. c. 4. § 2. The courts of general quarter sessions of the peace in the several districts of this province, shall have power to try every case of simple larceny, and also to try all accessories to such larceny. *Provided always*, that unless the justice presiding in any such court shall be a barrister duly admitted to practise at the bar in this province, then it shall not be lawful for such court to try any case of larceny when the goods charged to have been stolen shall exceed in value the

† Appointment now vested in the governor under the 4 & 5 V. c. 10. § 29.

sum of £20. § 3. No court whose jurisdiction in cases of larceny is extended by this act, shall have power to sentence a person convicted of larceny to be transported for any period, or to be banished for a longer period than seven years, or to be imprisoned in a common gaol for a longer period than eight months, or to be imprisoned and kept to hard labour in any penitentiary or house of correction for a longer period than two years. § 4. It shall be lawful for any court having jurisdiction in cases of larceny, if they shall think fit, to sentence any person convicted thereof to be banished from the province for any number of years not exceeding seven, to commence from the expiration of the term for which the same person may upon the same conviction be sentenced to be imprisoned in the common gaol, or imprisoned and kept to hard labour in a penitentiary or house of correction. § 5. The court may in its discretion leave cases of simple larceny to be tried at the next court of oyer and terminer, and general gaol delivery, if by reason of the difficulty or importance of the case it shall appear to them proper so to do. § 6. If upon the trial of any case of larceny in which the value of the goods stolen shall be stated in the indictment at a sum not exceeding £20, it shall appear in evidence that the value of such goods was in reality greater than £20, such trial may nevertheless proceed, and no legal exception to the jurisdiction of the court shall lie on that account, but the provision of this act restraining such court to cases where the value of the goods shall not exceed £20, shall be deemed and taken merely to be a direction to such court, but shall not be construed to affect their legal jurisdiction.

\*By the 7 W. 4. c. 6. § 2. No court of general quarter sessions of the peace, or court having the like jurisdiction, shall have the power to sentence any person convicted before them to be imprisoned in a penitentiary for a longer period than two years.

#### *Quarter Sessions.*

By the 4 & 5 V. c. 8. § 18. Judge of the district being also a justice of the peace for such district shall preside as chairman at the general quarter sessions.

#### *The proceedings at a General Quarter Sessions.*

The court having assembled, the session is then usually proclaimed by a bailiff, in the following terms:

“Oyez! Oyez! Oyez! the queen’s justices do strictly charge all manner of persons to keep silence, while the queen’s commission of the peace for this district is openly read, upon pain of imprisonment.”

The commission is then read by the clerk of the peace; then the heir and devisee act, as required by the \*45 G. 3. c. 2. § 14.

The clerk of the peace then calls upon the sheriff, thus: "Sheriff of the district, return the precept to you delivered;" which the sheriff does accordingly.

Then the grand jury are called in order, every one by his name. The foreman, by himself, lays his hand on the book, and the clerk of the peace administers to him the following oath:

"Sir,—You, as foreman of this grand inquest, for the body of this district, shall diligently inquire and true presentment make, of all such matters and things as shall be given you in charge. The queen's counsel, your fellows', and your own, you shall keep secret: you shall present no one for envy, hatred, or malice; neither shall you leave any one unpresented for fear, favour, or affection, or hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding. So help you God.

The rest of the grand jury, by "three" at a time, in order, are sworn in the following manner:

"The same oath which your foreman hath taken on his part, you and every of you shall well and truly observe and keep on your part. So help you God."

The clerk of the peace then calls over their names thus: "Gentlemen of the grand jury, answer to your names, and say sworn, if you are sworn."

The chairman then delivers his charge to the grand jury.

The bailiff is then sworn to attend the grand jury, thus:

"You shall swear that you will diligently attend the grand inquest during the present sessions, and carefully deliver to them all such bills of indictment or other things, as shall be sent to them by the court, without alteration. So help you God."

\*By the 4 G. 4. c. 7. The claims of persons claiming under the "heir and devisee act," shall be proclaimed by the crier, at the sessions next after the notice given.

The prosecutors and bail are then called in the following manner (if need be) by the crier:

"A. B. come forth and prosecute, and give evidence against C. D. or you will forfeit your recognizance."

*Calling persons out upon Bail.*

"A. B. of the township of —, come forth, save you and your bail, or you will forfeit your recognizance."

*Calling Bail to bring forth Principals.*

“ C. D. and E. F. (*with their additions*) bring forth the body  
 “ of A. B. whom you have undertaken to appear here this day,  
 “ or you will forfeit your recognizance.”

*Oath of Witness on Indictment before the Grand Jury.*

“ The evidence you shall give to the grand inquest upon  
 “ this bill of indictment against A. B. for larceny, shall be the  
 “ truth, the whole truth, and nothing but the truth. So help  
 “ you God.”

If the witness be a Quaker, his evidence is admissible under the \*10 G. 4. c. 1., upon making the following affirmation, in lieu of any oath: “ I. A. B. do solemnly, sincerely, and truly  
 “ declare, that I am one of the society called Quakers, [Me-  
 “ nonists, Tunkers, *Unitas Fratrum*, or Moravians,” *as the case may be.*]

Upon the return of the grand jury into court with any bills of indictment, the clerk of the peace calls them severally by their names, and says, “ Gentlemen, have you agreed upon any bills.”

Upon the foreman presenting the same, the clerk of the peace addresses the grand jury as follows:

“ You are content the court shall amend matter of form, al-  
 “ tering no matter of substance without your privity, in those  
 “ bills you have found.”

The grand jury signify their assent, and return to their business again, viz: to examine other bills.

Then the court proceeds to arraign such prisoners as are indicted, in the manner following:

The clerk of the peace says, “ A. B. hold up your hand: you stand indicted by the name of A. B. late of —, for that you,” so reads the indictment through, and then asks the prisoner “are  
 “ you guilty or not guilty.” If he says “not guilty,” then the clerk of the peace inquires, if he be ready for his trial.

The clerk of the peace then proceeds to call the petit jury thus:

“ You good men that are impannelled to try the issue joined  
 “ between our sovereign lady the queen, and the prisoners at  
 “ the bar, answer to your names, upon pain and peril that shall  
 “ fall thereon.”

When the jurors have appeared, then the clerk of the peace calls to the bar the prisoners that are to be tried by the jury, and says thus:

“ These good men that you shall now hear called, are those that are to pass between our sovereign lady the queen, and you; if, therefore, you [or any of you] will challenge them, or any of them, you must challenge them as they come to the book to be sworn, before they are sworn, and you shall be heard.”

Then the clerk of the peace calls the jury to be sworn, in cases of felony, one by one, thus:

“ You shall well and truly try, and true deliverance make between our sovereign lady the queen, and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to the evidence. So help you God.”

But, in cases of misdemeanor, the jury may be sworn “ three” at one time, thus:

“ You shall well and truly try the issue joined between our sovereign lady the queen, and the defendant, and a true verdict give according to the evidence. So help you God.”

The clerk of the peace then calls over the jury, and says, “ Gentlemen, answer to your names and say ‘ sworn,’ if you are sworn.”

The prisoner being at the bar, the clerk of the peace then proceeds to read the indictment, thus:

“ A. B. stands indicted by the name of A. B.” &c. reading the whole of the indictment as he did upon the arraignment, and then says, “ upon this indictment the defendant [or the prisoner at the bar, as the case may be] hath been arraigned, and upon his arraignment hath pleaded not guilty: your duty therefore, is to inquire whether he be guilty or not guilty, and to hearken to the evidence.” And then the court proceeds to examine the witnesses upon oath, as well for the queen, as for the prisoner.

#### *Oath of Witnesses.*

“ The evidence you shall give to the court and jury sworn, between our sovereign lady the queen, and the defendant [or the prisoner at the bar, as the case may be] shall be the truth, the whole truth, and nothing but the truth.—So help you God.”

Upon the evidence being closed for the prosecution, the prisoner’s counsel in cases of *felony* as well as *misdemeanor* may address the jury, and call witnesses. If the prisoner have no counsel, he should be asked by the chairman if he have any thing to say in his defence, or any questions to ask. Upon the case being closed, the chairman sums up the evidence to the jury, commenting upon it as he proceeds, shewing the consistency or

inconsistency of any part of it, and the bearing it has upon the "guilt" or "innocence" of the prisoner. The chairman then desires the jury to retire and consider their verdict. Upon the jury retiring to consider their verdict, the following oath is administered to the bailiff:

"You shall swear you will keep every person of this jury together in some private and convenient place, without meat, drink, lodging or fire (candle excepted)—you shall not suffer any person to speak to them or any of them, neither shall you speak to them yourself, unless it be to ask them, whether they are agreed upon their verdict, without leave of the court.—So help you God."

When the jury return, their names are called over by the clerk of the peace, who says, "gentlemen, are you agreed on your verdict; how say you, is the defendant [or prisoner, as the case may be] guilty or not guilty?"

The verdict is then endorsed by the clerk of the peace, on the indictment, and signed by the chairman, which being done, the former addressing the jury, says "gentleman, hearken to the verdict as the court records it—you find the defendant [or prisoner] guilty [or not guilty]" according to the verdict.

Should the defendant, however, upon being arraigned, be permitted to traverse to the next sessions, he may be admitted to bail, as follows:

"A. B. [principal] you acknowledge to owe to our sovereign lady the queen, the sum of (£—, whatever sum the court may approve) and you, C. D. and E. F. (sureties) severally acknowledge to owe to our said lady the queen, the respective sums of (£—) and (£—) to be respectively levied of your goods and chattels, lands and tenements, to her Majesty's use, by way of recognizance, upon condition, that you (A. B.) shall appear at the next general quarter sessions of the peace, to be holden for this district, to try your traverse upon this indictment, to which you have now pleaded not guilty, and not depart the court without leave of the court.—How say you, A. B., C. D., and E. F., are you content?"

If a juror be taken ill during a trial, another juror may (with the consent of the prisoner) be sworn and added to the other eleven, and the evidence re-delivered to the jury. *Joyce's case Cor. Lord Keeper, Leach, 621. n.* But even without the consent of the prisoner, the court may, under such circumstances, discharge the jury and charge a fresh jury, with the prisoner. But the prisoner must be again allowed his challenge to each of the eleven former jurymen. *R. v. Edwards, 4 Taunt. 309.*



*Trial of a Traverse.*

The proceedings upon a traverse, are the same as in an original trial, except that the defendant is not arraigned nor called upon to plead, this having been already done at the former sessions.

The jury are to be sworn and indictment read as before directed.

*Oath of Jury on a Traverse.*

“ You shall well and truly try the issue of this traverse between our sovereign lady the queen and the defendant, and a true verdict give, according to the evidence. So help you God.”

*Oath of Witnesses on a Traverse.*

“ The evidence you shall give to the court and jury sworn, touching the issue of this traverse, shall be the truth, the whole truth, and nothing but the truth: so help you God.”

*Oath of Jury on Road Matters.†*

“ You shall well and truly try, and a true verdict give in the matter of a new highway or road, in the township of —, reported by Mr. —, one of the surveyors of highways for the township of —. So help you God.”

*Oath of Witnesses on Road Matters.*

“ The evidence you shall give to the court and jury sworn, touching the matter, &c. (same as above) shall be the truth, the whole truth, and nothing but the truth. So help you God.”

In discharging the defendant's recognizance for default of the prosecutor appearing, (which ought not to be done till the close of the session,) proclamation is made thus: “ Oyez! Oyez! Oyez! If any can say ought, why (defendant, naming him) should any longer be bound, let them come forth and they shall be heard; otherwise the court does discharge him, paying his fees.”

The court cannot commit for nonpayment of fees; for if there is right, there is a remedy; and *indebitatus assumpsit*, will lie if the fee is certain, if uncertain, quantum-meruit. *L. Ray*, 703.

When there are no more bills to be laid before the grand jury, and they have finished all other business before them, it is usual for the court to inform them that there is no other business to come before them, and that they are therefore discharged.

† *Quere.*— Whether the justices have now any jurisdiction in road matters. See 4 & 5 V. c. 10.

The court having disposed of the business, then adjourn. The clerk of the peace, during the sitting of the court, enters a minute of all proceedings, commencing with the day of the sessions, and before whom the same is held, inserting the names of the grand jurors and petit jurors, and every other minute particular attending the proceedings throughout.

*Precept to Summon the Sessions.* (BURN)

Home District, } J. P. and K. P. esquires, justices of our  
to wit. } sovereign lady the queen, assigned to keep  
the peace in the home district aforesaid, and also to hear and  
determine divers felonies, trespasses, and other misdemeanors  
committed in the said district; to the sheriff of the Home Dis-  
trict, greeting: On the part of our sovereign lady the queen,  
we command you, that you omit not by reason of any liberty  
within your district, but that you cause to come before us and  
other our fellow justices, assigned to keep the peace in the  
said district, and also, to hear and determine divers felonies,  
trespasses and other misdemeanors, in the said district commit-  
ted, on — the — day of —, now next ensuing, at the hour of  
ten, in the forenoon of the same day, at — in the said district,  
twenty-four good and lawful men, of the body of your district,  
then and there to inquire, present, do and perform, all and sing-  
ular, such things, which on the behalf of our sovereign lady  
the queen, shall be enjoined them; also that you make known  
to all coroners, keepers of gaols and houses of correction, high  
constables, and bailiffs of liberties within the district aforesaid,  
that they be then and there, to do and fulfil such things, which  
by reason of their offices, shall be to be done: moreover, that  
you cause to be proclaimed through the said district, in proper  
places, the aforesaid sessions of the peace, to be holden at the  
day and place aforesaid; and do you be then there, to do and  
execute those things which belong to your office; and have  
you then there, as well the names of jurors, coroners, keepers  
of gaols and of houses of correction, high constables and high  
bailiffs aforesaid, as also this precept.

Given under our hands and seals, at — in the district aforesaid, the — day of — in the — year of the reign of —, &c.

*The Style of the Sessions.* (BURN.)

Home District. } The general quarter sessions of the peace,  
} holden at —, in and for the said district, on  
the — day —, in the — year of the reign of our sovereign lady  
Victoria, of Great Britain and Ireland, queen, defender of

the faith, and so forth, before J. P. and K. P. esquires, and others, justices of our said sovereign lady the queen, assigned to keep the peace in the said district, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said district committed, and so forth.

*Subpœna to give Evidence.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, queen, defender of the faith; to A. B., C. D. &c. greeting; We command you and every of you, that all business being laid aside, and all excuses ceasing, you do in your proper persons appear before our justices assigned to keep our peace in the — district, and also to hear and determine divers felonies, trespasses, and other misdemeanors in our said district committed, at the general quarter sessions of the peace, to be holden at —, in and for the said district, on — the — day of — now next ensuing, at the hour of — o'clock in the forenoon of the same day, to testify the truth, and give evidence before the grand inquest as well as the court, touching a bill of indictment to be preferred against A. O. in a case of larceny, [trespass and assault, or any other cognizable offence,] and this you, and every of you, are in no wise to omit, under the penalty of — pounds for you and every of you. Witness, J. P. esquire, the — day of —.

*A Subpœna Ticket for a Witness.*

Mr. A. W. By virtue of a writ of subpœna to you and others directed and herewith shewn unto you, you are required personally to be and appear at the next general quarter sessions of the peace, to be holden at —, in and for the — district, to testify the truth, and give evidence before the grand inquest as well as the court, touching a bill of indictment to be preferred against A. O. in a case of larceny, [*trespass and assault, &c. as the case may be,*] and herein you are not to fail, upon pain of — pounds. Dated the — day of —, in the year of our Lord —.

SHERIFF.

THE sheriff is an officer of very great antiquity, his name being derived from the Saxon word *scirgerefa*, signifying the reeve bailiff, or officer of the shire. He is called in latin, *vice-comes*, as being the deputy of the *earl* or *comes*, to whom the custody of the shires in England is said to have been committed at the first division of the kingdom into counties: but, though the sheriff be still called *vice-comes*, yet he is entirely indepen-

dent of the earl; the king, by his letters patent, committing *custodiam comitatus* to the sheriff, and to him alone. 1 *Bl. Com.* 339. 5 *Burn.* 230.

In this province, the sheriff is appointed by letters patent under the great seal, and holds his office during pleasure.

As a *conservator of the peace*, he may apprehend and commit to prison all persons who break the peace, or attempt to break it, and may bind any one in a recognizance to keep the peace: he is bound, *ex-officio*, to pursue and take all traitors and murderers, felons, and other misdoers, and commit them to gaol for safe custody: he is also bound to defend his county against any of the king's enemies, when they come into the land; and for this purpose, as well as for keeping the peace and pursuing felons, he may command all the people of his county to attend him, which is called the *posse comitatus*, or power of the county; and this summons, every person above the age of fifteen years and under the degree of a *peer*, is bound to attend, upon warning, under pain of fine and imprisonment.

In his ministerial capacity, the sheriff is bound to execute all process issuing from the king's court of justice. In the commencement of civil causes he is to serve the writ, to arrest, and to take bail: when the cause comes on to trial, he must summon and return the jury; when it is determined, he must see the judgment of the court carried into execution. In criminal matters he also arrests and imprisons; he returns the jury; he has the custody of the delinquent, and he is bound to execute the sentence of the court, though it extend to death itself; and it is no excuse to the sheriff to return, that he could not execute any process because of resistance, for he may take with him, in every case of need, the power of the county, to enforce obedience to the king's writs or other process of the law. 13 *Ed.* 1. *stat.* 1. *c.* 39. He is also compelled to execute the warrant of a justice of the peace, if upon any extraordinary occasion it should be directed to him, though magistrates' warrants are, in practice, usually directed to constables and other inferior officers; but he need not go in person to execute it, but may authorise another to do so. 2 *Haw. c.* 13. § 29. He is also bound to attend the sessions of the peace, there to return his precepts; to take charge of the prisoners; to receive fines for the king, and the like. 2 *Haw. c.* 8. § 45. And for any default in executing the writs or precepts of the sessions, he is punishable by the justices in sessions, as for a contempt. *Id. c.* 22. § 2.

The sheriff has also the keeping of the gaols, and is answerable for all escapes suffered by the gaolers, to the king, if it be a criminal matter; or in a civil cause, to the party injured: and

by provincial statute, \*32 G. 3. c. 8. he has the appointment and removal of the gaoler.

As the *King's bailiff*, it is the business of the sheriff to preserve the rights of the king, within his bailiwick. *Fortescue*, c. 24. He must seize to the king's use, all lands devolved to the crown by *attainder* or *escheat*. 1 *Bl. Com.* 344

By 3 G. 1. c. 15. § 17. A sheriff guilty of extortion forfeits, to the party grieved, treble damages, and double the sum extorted, and also £200. And by provincial statute, 2 G. 4. c. 9. a sheriff lying in gaol for debt three months forfeits his office.

When a new sheriff is appointed and sworn, his predecessor (or in case of his decease, his under sheriff,) sets over by indenture, all the prisoners in the gaol severally by their names, together with all the writs, wherein must be comprehended all the actions which the old sheriff hath against every prisoner; and till the delivery of the prisoners to the new sheriff they remain in custody of the old sheriff. *Wood's Inst.* 6. 1. c. 7.

\*By the 3. W. 4. c. 9. entitled "an act to make certain regulations relating to the office of sheriff in this province, and to require the several sheriffs of this province, to give security for the due fulfilment of the duties of their office," it is enacted by § 1. that the sheriff of each district shall enter into a bond to his Majesty, in the penal sum of £1,000, together with two sureties to be approved by the inspector general of public accounts, in £500 each, for the payment of all monies due to the crown; which bond shall be in the form given in schedule A. or in words to the like effect. § 2. The sheriff of every district shall also provide two or four sufficient sureties who, with himself, shall enter into a covenant under seal, joint and several, according to the form in schedule B. or in words to the same effect; which covenant shall be available to, and may be sued upon by any person suffering damages by the default of any such sheriff. § 3. Such sureties shall be approved of by the justices in session, and a certificate thereof given by the chairman. § 4. The bond to his Majesty shall be deposited with the inspector general, and the covenant shall be made in duplicate, one of which shall be deposited with the secretary of the province, and the other filed with the clerk of the peace. § 5. Any person may examine such covenant, and have a copy on payment of 1s. 3d. for the examination, and 5s. for the copy, to the clerk of the peace. § 6. That such bond and covenant shall be renewed every four years, either with the same or other sufficient sureties, to be certified as aforesaid. § 7. Whenever the office of sheriff shall become vacant, his successor shall not

be appointed until he has first filed the requisite covenant and bond, with sureties. § 8. And no person shall be appointed sheriff who shall not be possessed of real estate in this province, of the actual value of £750 above incumbrances; and shall, before he receives his commission, file an affidavit of the fact, in the office of the secretary, to be sworn before the chairman of the quarter sessions. § 9 In case of death, absence from the province, or insolvency of any surety, new securities shall be given. § 10. The sureties apprehensive of the insolvency of their principal, may notify the same to the lieutenant governor by affidavit to this effect, sworn before a commissioner of the K. B. and thereupon the sheriff shall be notified by the secretary, to furnish new security, or on affidavit deny that he is insolvent, or worth less than £750 over and above all incumbrances; and if such requisition be not complied with, within one month after the sitting of the then ensuing quarter sessions of the district, he shall be removed from office. § 11. When any new sureties shall be given, the former sureties shall not be discharged from any defaults previous thereto. § 12. Actions brought on the sheriff's covenant, shall not bar other actions on the same covenant for other causes. § 13. Any surety having paid the full amount for which he became liable, shall be thereby discharged; and the sheriff shall, within four months, give new securities. § 14. If the damages recovered and paid by any surety is not equal to the amount for which he is bound, judgment may be obtained against him for any residue. § 15. Upon proof by affidavit or otherwise, to the general quarter sessions, that any security has been discharged, or is insolvent, it shall be lawful for the sessions to notify the sheriff thereof, and such sheriff shall renew the covenant within four months after such notice. § 16. Executions against the sheriff and his sureties shall be first levied upon the sheriff. § 17. The sheriff shall be liable to pay the costs of all rules upon him, unless the court shall order otherwise; but in vexatious applications, the court may award costs to the sheriff. § 18. The sheriff shall not be entitled to any fees on any writ, placed in his hands fifteen days before the return day, if he does not return the same to the attorney within four days after such return, or enclose the same by post, within that time, to such attorney. § 19. Any sheriff neglecting to give the required security shall be removed from office. § 20. The covenants to be entered into by the sheriffs of the several districts, shall specify the following sums, as the extent thereof, viz.: sheriffs of the Home district, district of Niagara, district of Gore, district of London, district of Newcastle, Midland district, district

of Johnstown, Eastern district, in the sum of £1000. each and two sureties in £500. each, or four sureties in £250. each; and the sheriffs of the Western district, district of Bathurst, district of Ottawa, in the sum of £500. each, and two sureties in £250. each, or four sureties in £125. each; and that the sheriff of any new district hereafter to be formed, shall give security, himself in £1000, and two sureties in £500. each, or four sureties in £250. each. § 21. The sureties entering into any such covenant shall be held liable for any omission or default of the sheriff, in not paying over monies received by him, and for damages sustained by the parties to any legal proceeding, in consequence of wilful or negligent misconduct in office, and that the sheriff shall be joined in any action against the sureties. § 22. Notwithstanding any forfeiture of office, the sheriff shall be continued in office until the appointment of his successor, subject to his prior liabilities. § 23. Upon the death of any sheriff the deputy sheriff shall continue to execute the office in his name, until the appointment of a successor, and such deputy sheriff shall be held responsible, as the sheriff deceased would have been, and the deceased sheriff's sureties shall also stand as a security for such under sheriff.

NOTE.—The 6th and 19th clauses of this act have been repealed by the 4 & 5 V. c. 19.

See also "*Public Officers.*" *ante.* p. 508.

SCHEDULE A.—*Form of Bond to the Queen*

Know all men by these presents, that we, A. B. sheriff of the district of —, C. D. of —, in the district of —, esquire, and E. F. of —, in the district of —, are held and firmly bound to our sovereign lady the queen, her heirs and successors, in the several sums following, that is to say: the said A. B. in the sum of one thousand pounds; the said C. D. in the sum of five hundred pounds; and the said E. F. in the sum of five hundred pounds: to be paid to our sovereign lady the queen, her heirs and successors, for which payments to be well and truly made, we bind ourselves severally and respectively, and each of us, our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this — day of —, in the year of our Lord—.

The condition of this obligation is such, that if the above bounden A. B. his executors or administrators, shall well and faithfully account for, and pay over to her Majesty's receiver-general of this province, or to such person as may be authorised to receive the same, all such sum and sums of money as he shall receive as such sheriff as aforesaid, for our said lady the

queen, her heirs or successors, from the date of this obligation until the — day of — in the year of our Lord — (four years), then this obligation to be void, otherwise to remain in full force and virtue.

[L. S.]

[L. S.]

[L. S.]

Signed and delivered in presence of —.

### SCHEDULE B.—*Form of Covenant.*

Know all men by these presents, that we, A. B. sheriff of the district of — C. D. of — in the district of — and E. F. of — in the district of — (when four sureties are given, the names of the other two to be inserted in like manner) do hereby jointly and severally, for ourselves, and for each of our heirs, executors and administrators, covenant and promise, that A. B. as sheriff of the said district, shall well and duly pay over to the person or persons entitled to the same, all such monies as he shall receive by virtue of his said office of sheriff, from the date of this covenant to the expiration of four years thence next ensuing, and that neither he nor his deputy shall, within that period, wilfully misconduct himself in his said office, to the damage of any person being a party in any legal proceeding: nevertheless, it is hereby declared, that no greater sum shall be recovered under this covenant, against the several parties thereto, than as follows, that is to say:

Against the said A. B. in the whole —.

Against the said C. D. —.

Against the said E. F. —.

(If other sureties, add them in like manner.)

In witness whereof, we have to these presents set our hands and seals, this — day of — in the year of our Lord —.

[L. S.]

[L. S.]

[L. S.]

[L. S.]

Signed, sealed and delivered, in the presence of —.

### SHIPS.

By the 4 & 5 V. c. 26. § 7. Whosoever shall unlawfully and maliciously set fire to, cast away, or in any wise destroy any ship or vessel, either with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of felony, and being convicted thereof shall suffer death. § 8. Whosoever shall unlawfully exhibit any false light or signal, with intent to bring any ship or vessel into danger, or shall un-



lawfully and maliciously do any thing to the immediate loss or destruction of any ship or vessel in distress, shall be guilty of felony, and being convicted thereof shall suffer death. § 9. Who-soever shall unlawfully and maliciously set fire to, or in any wise destroy any ship or vessel, whether the same be completed or in an unfinished state; or shall unlawfully and maliciously set fire to, cast away, or in any wise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or on any goods on board the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any other term not less than seven years, or to be imprisoned in any other prison or place of confinement for any time not exceeding two years.

See also title "*Wreck.*"

## SHOP-KEEPERS.

\*By the 37 G. 3. c. 11. Every shop keeper, or other person selling any wine, brandy, rum, or other spirituous liquors, in less quantity than three gallons at any one time, shall take out a license, (from the inspector of the district, by the \*43 G. 3. c. 6.) upon payment of the like rates, duties and fees, as were then paid by any person licensed to keep a house of public entertainment; and any person selling any wine, rum, brandy, or other spirituous liquor, in less than three gallons, without such license, shall incur the penalty of £20, one moiety thereof to be paid to the informer, and the other to the receiver general. for the use of the province, to be recovered in the manner and form set forth in the \*34 G. 3. c. 12.

\*By the 40 G. 3. c. 4. § 3. No licensed shop-keeper shall sell less than one quart, under the penalty of £20, to be recovered before three justices, and levied, with costs of suit, by distress, and sale—one half of the penalty to the informer, and the other to the use of the province; and in default, the offender shall be committed for a time not exceeding three calendar months. § 4. Prosecution to be commenced within six months.

\*By 2 W. 4. c. 20. After reciting that the \*54 G. 3. entitled, "an act to grant an additional duty on shop and tavern licenses," had expired, and that it was expedient to continue the same, and to require persons selling wines or spirituous liquors on

board of steam-boats to pay an additional duty—it is enacted that, in addition to the sum of £1 16s. sterling, and 20s. currency, required by law for a shop-keeper's license, there shall be paid the further sum of £2 currency. § 2. And every person selling wine, brandy, or spirituous liquors, on board of any steam vessel, shall be entitled to a license, without entering into bonds or recognizances to keep an inn, upon payment of £2, in addition to £1 16s. sterling, and 20s. currency, now required to be paid by law. § 3. Any person selling wines or spirituous liquors on board of any steam-boat without having obtained such license, shall be subject to all the penalties imposed by law for selling without a license. § 6. Act to be in force four years, and to the end of the next session.

\* By the 4 W. 4. c. 50. the above act of the \*2 W. 4. c. 20. is continued and made permanent.

\* By the 4 W. 4. c. 18. Entitled, "an act to prevent the consumption of spirituous liquors in shops," it is enacted by § 1. that no licensed shopkeeper shall allow any wine, brandy, rum, or other spirituous liquors sold by him, to be consumed within his shop, or within the building of which such shop is part. By § 2. Under the penalty of £5, to be recovered before three justices of the peace, upon the oath of one witness, (not the informer) with costs, and to be applied in the same manner as the penalty for selling by retail without license. § 3. And any purchaser consuming the same in such shop or building, shall be liable to the same penalty, recoverable in the same manner. § 4. Exempts such persons as to the justices shall appear not to have been *intentionally* guilty of the offence. § 5. Prosecution to be within six calendar months. § 6. This act to continue in force four years, and to the end of the next session, and is made permanent by the \*2 V. c. 26.

By the \*3 V. c. 22. § 2. The duty on shopkeepers' licences is increased to £7. 10s. and to the like sum for steam-boat licenses by \*3 V. c. 20. § 7. A shopkeeper in this province may recover for spirituous liquors sold in less quantities than to the value of 20s. at a time. *Leith v. Willis*, *East*. 6. 10. 4. *Cameron D.* p. 79.

*Information for selling less than one quart.—Penalty £20.*

*See* \*40 G. 3. c. 4.

Home District, } Be it remembered, that on the — day of —,  
to wit. } in the year of our Lord, — at — in the said  
district, C. D. of —, in the district aforesaid, labourer, who as  
well for our sovereign lady the queen as for himself, doth pro-  
secute in this behalf, personally cometh before us, three of her

Majesty's justices of the peace for the said district, and informeth us, that A. B. late of — in the said district, merchant, being a shop-keeper duly licensed to sell wine, brandy, rum, and other spirituous liquors by retail, within the space of six calendar months, now last past, to wit: on the — day of —, in the year aforesaid, at the township aforesaid, in the district aforesaid, did sell and vend unto one E. F. a certain quantity of [wine, brandy, or rum, &c.] in less quantity than one quart, to wit: one pint of [wine, &c.] contrary to the form of the statute, &c. (*concluding as in the form given in p. 345.*)

See also title "Summons."

#### Conviction.

In the general form, given by the \*2 W. 4. c. 4. p. 178.

N. B.—The information should not be upon oath.

*Information against a Shop-keeper for allowing Spirituous Liquors to be consumed within his premises. Penalty, £5. \*4 W. 4. c. 18.*

*Commencement as before*] that A. B. late of — in the said district, being a shop-keeper, duly licensed to sell wine, brandy, rum, and other spirituous liquors, within the space of six months now last past, to wit: on the — day of —, in the year aforesaid, knowingly, willingly, and intentionally, did allow a certain quantity, to wit: one pint of [wine, brandy, &c.] parcel of one quart of [wine, brandy, &c.] which he the said A. B. had then immediately before, to wit: on the day and year last aforesaid, at the township aforesaid, in the district aforesaid, sold and delivered to one G. H. to be drunk and consumed within the shop of him, the said A. B. situate at the township aforesaid, in the district aforesaid, by him the said G. H. the purchaser thereof, contrary to the statute, &c. [*conclude as in the last form.*]

*Information against a Purchaser, under the same statute. Penalty, £5.*

*Commencement as before*] that G. H. late of — in the said district, having on the — day of — in the year aforesaid, purchased of and from one A. B. late of the same place, being a shop-keeper, duly licensed to sell wine, brandy, rum and other spirituous liquor, a certain quantity, to wit: one quart of wine, afterwards and within the space of six calendar months, now last past, to wit: on the day and year last aforesaid, at the township aforesaid, in the district aforesaid, did consume one

pint of wine, parcel of the said wine, so purchased by him as aforesaid in the shop of him, the said A. B. there situate without the permission of him the said A. B. contrary to the form of the statute, &c. (*as before.*)

## SOLDIERS.

By stat. 2 & 3 Anne, entitled, “an act for punishing mutiny, desertion, and false musters, and for better payment of the army, and their quarters, &c.” it is enacted, that if any officer or soldier, in her Majesty’s army, shall either upon land, out of England, or upon sea, hold correspondence with any rebel, or enemy of her Majesty, or give them advice or intelligence, either by letters, messages, signs, or tokens, or any manner of way whatsoever, or shall treat with such rebels, or enemies, or enter into any condition with them, without her Majesty’s license, or license of the general, lieutenant-general, or chief commander, then every such person, so offending, shall be deemed and adjudged to be guilty of high treason, and suffer such pains and penalties as in case of high treason.

\* By the 3 W. 4. c. 4. Entitled, “an act to reduce the number of cases in which capital punishment may be inflicted, &c.,” it is enacted by § 14. That nothing in this act shall affect any of the provisions of the 2 & 3 Anne.

See also title “*Desertion.*”

## STANDARD MEASURE.

\*By 5 W. 4. c. 7. It is enacted, that after the passing of this act, the following rates shall be the standard weight, which in all cases shall be allowed to be equal to the Winchester bushel, viz:—

Wheat,.....	sixty pounds,
Indian corn, .....	fifty-six pounds,
Rye, .....	fifty six-pounds,
Peas, .....	sixty pounds,
Barley, .....	forty-eight pounds,
Oats, .....	thirty-four pounds,
Beans, .....	fifty pounds,
Timothy and clover seeds,...	sixty pounds.

*Provided always,* That the effect of any contract, made before the passing of this act, shall not be varied by any thing herein contained. § 2. Every sale or delivery of any description of grain or pulse, in this act mentioned, which shall be hereafter made, and in every contract for the sale and delivery of any such grain

or pulse, in the bushel shall be taken and intended to mean the *weight* of a bushel, as regulated by this act, and not a bushel in measure, or according to any greater or less weight, unless the contrary shall be expressed.

## STILLS.

\*By the 3 V. c. 19. § 1. after reciting that the law authorising the levying a duty upon wooden stills had expired, and it was expedient that a duty should be continued on the same, the 6th clause of the \*43 G. 3. c. 9. and the 10th clause of the \*58 G. 3. c. 9. and the 10th clause of the \*59 G. 3. c. 6. so far as relates to any per centage, that the inspectors of districts are authorised to retain for their own use, or to any limitation thereof, are repealed. § 2. From and after the 1st of March, 1840, a duty not exceeding 1s. 6d. per gallon imposed on stills used for distilling spirituous liquors for sale. § 3. Persons desirous of obtaining licenses, to apply to the district inspector within the period of one month from the 1st of March in the present year (1840), and the 6th day of January in every succeeding year. § 4. Every person requiring a license to work or use a still or stills, shall furnish a requisition according to the following form :

“ I, A. B., do hereby require a license for a distillery, situate on lot No. — in the — concession (or as the case may be) of the township of —, in the — district; and I hereby declare that the entire capacity of every beer still, faint still, double or other vessel containing or intended to contain the beer or wash for running the low wines, or in any way acting as a still in the said distillery, without any deduction on account of allowance for steam, or any other cause whatever, is — gallons; and that no other vessel than is mentioned in this requisition is used, or intended to be used as a still, or in any way to answer the purpose of a still in the said distillery. As witness my hand this — day of —, one thousand eight hundred and —. Signed, A. B. owner and proprietor of the said distillery. To C. D. inspector of the — district,

§ 5. The district inspector, or any person acting under him, may at any time between sunrise and sunset enter into any distillery, still-house, or other place where a still is kept, or supposed to be kept, whether licensed or unlicensed, and make every necessary search therein, and admeasure or guage the same, and make every necessary inquiry and examination upon the premises for the purpose of ascertaining the correctness of the requisition sent in to the district inspector, for ascertain-

ing whether any still be in operation without the required license. § 6. Any person refusing to permit or obstructing the district inspector, or any person acting under him in such search or entry, shall forfeit and pay not exceeding £10, to be recovered before one or more justice or justices, or to be imprisoned in default of payment for a period not exceeding three months, as set forth in the 4th section of the \*44 G. 3. c. 7. §. 7. So much of the 2nd section of the \*6 W. 4. c. 4. as provides that no fines levied under the authority of that or any former act shall be paid to any informer, is repealed. § 8. The duty of 1s. 6d. per gallon to be calculated on the entire capacity of every beer still, faint still, double or other vessel of any kind or description whatever, in which beer or wash is brewed or prepared, or which may in any wise act or be used as attached to or connected with pipes, or otherwise assistant or auxiliary to the beer still, and every vessel of any kind or name whatever, into which the beer or wash is put, or into which steam is put or forced, or any vessel by the use of which the process of distillation is carried on with greater facility or productiveness than would be effected by one beer still only. No allowance to be made in calculating the duty for the practice or working of the steam, or for any other cause or reason; and every tub or vessel placed on the top, or in any way attached to any still or vessel containing beer or wash, for the purpose of a cap or receiver of steam, shall be liable according to its capacity to the duty. § 9. The district inspector, and those acting under him, may measure and guage any still in his jurisdiction, for the purpose of testing the accuracy of the requisition furnished by the owner thereof, whether the same be specified to have been measured or guaged or not. § 10. Every distillery to be subject to an annual tax or rate of 5s. to be levied in the same manner as the taxes on other rateable property, and each assessor is required to return in his assessment roll, in a separate column, the number of distilleries or stills, with the names of the owners thereof, within his township, district, or division; and the clerk of the peace is required to make an annual abstract from the assessment rolls of the number of such distilleries or stills, to be delivered when required to the district inspector. § 11. Any person who shall use or work a wooden still or stills without a licence, or who shall use any other or larger wooden still or stills than specified in the requisition, or who shall have or use any tub or vessel as a cap, or otherwise attached to any such wooden still or stills, for the purpose of receiving the steam, or who shall have or use any wooden still or stills on which there shall be any false head or heads, by

which such still may be separated into different divisions, or who shall use any beer still, faint still, double or other vessel, in which the beer or wash may be heated or prepared, in which the low wines are run, and who shall not state and specify the same in his or her or their requisition at the time of applying for and taking out such licence, and shall be convicted thereof before any *two* or more justices, in and for the district, shall forfeit and pay a fine not exceeding £10. to be levied by distress, and sale of the goods and chattels of the offender, and be incapacitated from receiving a licence to work any still for the space of two years next following. § 12. District inspector, or those under him, desirous of gauging or measuring any wooden still or vessel, on which duty is chargeable, may bore one or more holes in the same, not exceeding two inches in diameter. § 13. Any person neglecting to appear before any justice or justices to give evidence when summoned in any complaint made by the district inspector, or those acting under him, for any breach or evasion of the laws relating to the granting of licenses, shall (upon proof of the service of such summons, and no reasonable excuse offered) forfeit and pay a sum not exceeding £10. to be recovered by distress and sale of the offender's goods, and to be paid into the hands of the local officers now entitled to receive fines and penalties imposed by law for petty trespasses, and in default be committed to the common gaol of the district for a period not exceeding six months. § 14. One moiety of the penalties recovered under this act to be paid to the receiver general for the use of the province. § 15. Inspector to retain £12. 10. per cent. of duties collected, until such duties shall amount to £1,000. § 16. Such per centage not to exceed £300 per annum.

*Information against a party for refusing admittance to an Inspector, to measure a Still. Penalty £10. \*3 V. c. 19. § 6.*

Home District, } Be it remembered that on the — day of —  
to wit. } in the year of our Lord — at — in the said  
district, A. B. of — inspector of the said district, who as well  
for our sovereign lady the queen, as for himself, doth prosecute  
in this behalf, personally cometh before me, — J. P. esq. one of  
her Majesty's justices of the peace, for the said district, and as  
well for our said lady the queen, as for himself, informeth me  
that C. D. late of the township of — in the said district distiller,  
having in his possession a certain wooden still, for distilling  
spirituous liquors on the — day of — in the year aforesaid, in  
a certain still-house, in the possession of him the said C. D. at  
the township aforesaid, in the district aforesaid, did on the day and

year aforesaid at the township aforesaid, between the hours of sun rise and sun set: to wit between the hour of — o'clock in the morning, and — o'clock in the evening; to wit the hour of — o'clock in the afternoon of the same day, refuse to permit the said A. B. as such inspector as aforesaid, to enter the said still house, and measure the said still, so being therein as aforesaid, and did then and there unlawfully hinder, and prevent, the said A. B. as such inspector aforesaid, from entering the said still-house, and measuring the said still therein (He the said A. B. as such inspector as aforesaid, there and then demanding and requiring of him the said C. D. such entry for the purpose aforesaid,) contrary to the form of the statute &c. [conclude as in the form given p. 345.]

N. B. Conviction for this offence may be before *one* justice.

*Form of an Information against a Party for using a Still without being duly licensed. Penalty £10. \*3 V. c. 19. § 11.*

N. B. Prosecution before *two* justices.

*Commencement as before.*] That C. D. late of the township of — in the said district, distiller, on the — day of — in the year aforesaid, at the township aforesaid, in the district aforesaid, did use and work, and cause and procure to be used and worked, a certain wooden still for the purpose of distilling spirits for sale, without having been first duly licensed, contrary to the form of the statute in such case made and provided, whereby, &c. [*as in the last form.*]

*For using a Still of larger dimensions than expressed in the License. Penalty £10 \*3 V. c. 19. § 11.*

N. B. before *two* justices.

[*Commencement as before*] That C. D. late of the township of — in the said district distiller, being a person duly licensed to use a certain wooden still, to wit, a still of the capacity of — gallons, for the distillation of spirituous liquors, from the fifth day of January now last past, for the space of one year then next ensuing, in the district aforesaid, and while such license was in force, to wit, on the — day of — in the year aforesaid, at the township aforesaid, in the district aforesaid, did use, and cause and procure to be used, a certain wooden still for the purpose of distilling spirits, of larger dimensions than the still specified in his license as aforesaid,) or had in his possession a certain still, erected and setup over a furnace (or fire-place) so that the same might be used for distilling, and capable of con-



taining a greater number of gallons in the body thereof, than the number of gallons specified in his license aforesaid,) to wit, of the dimension of — gallons, contrary to the form of the statute, &c. [as in the last form.]

The “Summons,” “Conviction,” and other forms, will be found under their respective titles.

SUBPCENA.—See the form of one under title “Sessions,” *ante* p. 565.

## SUMMARY CONVICTION.

By the 4 & 5 V. c. 24. § 10. In all cases of summary conviction, persons accused shall be admitted to make their full answer and defence, and to have all witnesses examined and cross examined by counsel or attorney.

### *Under the 4 & 5 V. c. 25.*

By this statute, § 23. Having unlawful possession of wrecked property. § 24. Or offering same for sale. § 30. Stealing any dog, beast, or bird, not being the subject of larceny at common law. § 31. Stealing, cutting, breaking, rooting up, or otherwise destroying or damaging with intent to steal, any tree, sapling, or shrub, or any underwood. § 32. Or any live or dead fence, or any post, pale, or rail set up as a fence, or any stile or gate. § 34. Stealing, damaging, or destroying with intent to steal, any tree, sapling, shrub, bush, plant, root, fruit or vegetable production, in any garden, orchard, nursery ground, hot-house, green-house, or conservatory, renders the offender or offenders liable to certain penalties, to be enforced by summary prosecution, for the particulars of which in detail the reader is referred to their respective titles in the index. § 55. Any person found committing any offence punishable by indictment, or summary conviction under this act, may be immediately apprehended, *without a warrant*, by any peace officer, or by the *owner of the property* on or with respect to which the offence shall be committed, or by the *servant* of any person authorised by such owner, and forthwith taken before some neighbouring justice, to be dealt with according to law. § 56. The prosecution of every offence punishable on summary conviction under this act shall be commenced *within three calendar months* after the commission of the offence, and not otherwise; and the evidence of the party aggrieved shall be admitted in proof of the offence. § 37. Offenders under this act, being charged on oath of a credible witness, to be summoned by any justice; and on default

of appearance (upon proof of due service of summons by delivering same to him personally, or by leaving same at his usual place of abode) such justice may determine the case *ex parte*, or issue his warrant for apprehending such person, and bringing him before himself or some other justice or justices; or the justice may, if he think fit, issue such warrant without any previous summons (unless otherwise specially directed,) and the justice or justices before whom the party shall appear, or be brought, shall hear and determine the case § 58. Forfeitures to be paid to the owners of property stolen or injured (the value to be assessed by the convicting justices,) except where the party aggrieved shall have been examined as a witness, and in that case, or where the aggrieved party is unknown, such sum to be applied as a *penalty*. *Provided*, that when several offenders are each adjudged to pay the amount, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders, and the residue shall be applied in the same manner as any penalty imposed by a justice of the peace is hereinbefore directed to be applied. § 59. If the amount with costs shall not be paid upon conviction, or within such period as shall be appointed, it shall be lawful for the convicting justice or justices (unless where otherwise specially directed,) to commit the offender to the common gaol or house of correction, to be imprisoned *only*, or imprisoned and *kept to hard labour*, according to the discretion of the justice or justices, for any term not exceeding *two* calendar months, where the amount with costs shall not exceed £5. and for any term not exceeding *six* calendar months, where the amount with costs shall exceed £5, and not exceed £10,\* unless sooner paid. § 60. In case of a *first* conviction, the justice may discharge the offender, upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by such justice or justices. § 61. The governor empowered to pardon any person imprisoned under this act. § 62. Conviction and punishment under this act to be a bar to any other proceedings. § 63. Form of conviction to be as follows:—

“ Be it remembered, that on the — day of — in the year of our Lord — at — in the district of — (*as the case may be*) A. O. is convicted before me, J. P. one of her Majesty’s justices [or before us J. P. and S. L. justices] of the peace for the said district, for that he, the said A. O. did (*specify the offence and the time and place when and where the same was committed, as the case*

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\* The act makes no provision for sums exceeding £10.

may be, and on a second conviction, state the first conviction) and I, the said J. P. [or, we the said J. P. and S. L.] adjudge the said A. O. for his said offence to be imprisoned in the — [or to be imprisoned in the — and there kept to hard labour] for the space of — [or, forfeit and pay — *here state the penalty actually imposed, or state the penalty and also the value of the articles stolen, embezzled or taken, or the amount of the injury done, as the case may be*] and (*in any case where costs shall be awarded*) also pay the sum of — for costs, and in default of immediate payment of the said sum [or sums] to be imprisoned in the — or to be imprisoned in the — and there kept to hard labour, for the space of — unless the said sum or sums shall be sooner paid, [or, and I or we] also that the said sum [or sums] shall be paid by the said A. O. on or before the — day of — that the said sum of — (*i. e. the penalty only*) shall be paid to me (*or us, the convicting justice or justices,*) and that the sum of — (*i. e. the value of the articles stolen, or the amount of the injury done*) shall be paid to C. D. (*the party aggrieved, unless he is unknown, or has been examined in proof of the offence, in which case state the fact, and dispose of the whole like the penalty as before*) and (*if the justice or justices shall think proper to award the complainant his costs*) I [or we] order that the sum of — for costs shall be paid to C. D. (*the complainant*). Given under my hand and seal, [or, our hands and seals) the day and year first above mentioned.”

§ 64. One justice may receive original information, and issue the summons or warrant to appear before two or more justices; and after examination upon oath, and adjudication by any such two justices, the subsequent proceedings respecting the penalty, fine, imprisonment, costs, or other matter relating to the offence, may be enforced by either of said justices, or by any other justice for the same district, county, city, town, or place; and when the original complaint or information shall be made to any justice different from the convicting justice or justices, the form of conviction shall be made conformable. § 65. When the conviction shall exceed £5, or the imprisonment *one* calendar month, or the conviction shall take place before one justice only, the defendant may appeal to the next general quarter sessions, which shall be holden not less than twelve days after the day of conviction: upon giving to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within *three* days after conviction, and *seven* clear days before the sessions, and shall either remain in custody until the sessions, or enter into recognizance with two sufficient sureties, before a justice of the peace, conditioned to appear at the sessions, and try such appeal, and abide the judgment of the court there-

upon, and pay such costs as shall be awarded by the court; and on such being given, and recognizance entered into, the justices shall liberate such person if in custody; and the sessions shall hear and determine such appeal, and make such order, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or affirmance of the conviction, the court shall adjudge the offender to be punished according to the conviction, and pay such costs, if any, as shall be awarded, and shall, if necessary, issue process to enforce such judgment. § 66. Every justice before whom conviction shall be had under this act, shall transmit such conviction to the next general quarter sessions, to be kept among the records; and upon any prosecution for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove such former conviction. Prosecutions against any person acting under this act to be commenced within six calendar months, and notice in writing of such action, and of the cause thereof, to be given to the defendant one calendar month before commencement; defendant may plead the general issue, and give this act and special matter in evidence. Usual provisions as to costs. § 69. All fines, &c. imposed by this act to be current money of this province. § 70. All former acts repugnant to this act repealed.

*Under the stat. 4 & 5 V. c 26.*

By this statute, § 20. Maliciously destroying, or damaging any tree, sapling, or shrub, or any underwood wheresoever the same may be respectively growing, to the value of *one shilling*. § 21. Or maliciously destroying, or damaging, with intent to destroy, any plant, root, fruit, or vegetable in any garden, &c. § 22. Or any cultivated root, or plant, used for the food of man, or beast, or for medicine, or for distilling, or dyeing, &c. § 23. Or maliciously throwing down, or destroying, &c. any fence, or any wall, stile, or gate. § 24. Or wilfully, or maliciously, committing any damage, or injury, or spoil, to or upon any real, or personal, property whatsoever for which no previous remedy is provided, also subjects the offender to the particular penalties mentioned, and for which the reader is referred to the index. § 25. Every punishment and forfeiture, by this act imposed on any person maliciously committing any offence, whether punishable by indictment, or upon summary conviction, shall equally apply and be enforced whether the offence be committed from malice conceived against the owner of the property, or otherwise. § 28. Any person found committing any offence punishable by

indictment, or summary conviction, may be immediately apprehended *without a warrant* by any peace officer, or by the *owner of the property* injured, or his *servant*, or any person authorised by him, and forthwith taken before some neighbouring justice to be dealt with according to law. § 29. Prosecutions by summary conviction, under this act, to be commenced within *three calendar* months after offence committed, and not otherwise; and the evidence of the party aggrieved shall be admitted in proof of the offence. § 30. Offenders, charged on the oath of a credible witness, to be summoned by any justice; and in default of appearance (upon proof of due service of summons, by personal delivery, or by leaving same at offender's usual place of abode), such justice may determine the case *ex parte*, or issue his warrant for the apprehending such person and bringing him before himself or some other justice: or the justice may, if he think proper, issue such warrant without any previous summons (unless otherwise specially directed), and the justice before whom the party shall appear or be brought shall hear and determine the case. § 31. Any person who shall aid, abet, counsel, or procure the commission of any offence punishable by summary conviction under this act, shall, on conviction before a justice of the peace, be liable for every such offence of aiding, &c. to the same forfeiture and punishment as the principal offender. § 32. Forfeiture for the amount of any injury done (to be assessed by the convicting justice) to be paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence; and in that case, or where the party aggrieved is unknown, the same to be applied as a penalty; and every sum imposed as a penalty, whether in addition to such amount or otherwise, shall be paid to the convicting justice: *Provided*, that where several offenders are each adjudged to pay the amount, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders, and the residue shall be applied in the same manner as any penalty is by law directed to be applied. § 33. If the amount with costs shall not be paid upon conviction, or within such period as shall be appointed, it shall be lawful for the convicting justice (unless where otherwise specially directed) to commit the offender to the common gaol or house of correction, to be imprisoned *only*, or imprisoned and *kept to hard labour*, according to the discretion of the justice; for any term not exceeding *two* calendar months, where the amount, with costs, shall not exceed 5*l.*; and for any term not exceeding *four* calendar months, where the amount, with costs, shall exceed 5*l.* and not exceed 10*l.*; and for any term not exceeding

## Summary Conviction.

six calendar months, where the amount, with costs, shall exceed 10*l.*, unless sooner paid. § 34. In case of a *first* conviction, the justice may discharge the offender upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by such justice. § 35. The governor empowered to pardon any person imprisoned under this act. § 36. Conviction and punishment under this act to be a bar to any other proceedings. § 37. Form of conviction to be as follows:

“ Be it remembered that on the — day of — in the year of our Lord — at — in the district [or city, &c. — as the case may be] A. O. is convicted before me, J. P. one of her Majesty’s justices of the peace for the said district [or city, &c.] for that he the said A. O. did (*specify the offence, and the time and place when and where the same was committed, as the case may be*) and I, the said J. P. adjudge the said A. O. for his said offence to be imprisoned in the — (or to be imprisoned in the — and there kept to hard labour) for the space of — (*or*) I adjudge the said A. O. for his said offence to forfeit and pay — (*here state the penalty actually imposed, or state the penalty and also the amount of the injury done as the case may be*) and also to pay the sum of — for costs, and in default of immediate payment of the said sums, to be imprisoned in the — (*or, to be imprisoned in the — and there kept to hard labour*) for the space of — unless the said sums shall be sooner paid; } (*or, and I order that the said sums shall be paid by the said A. O. on or before the — day of —*) and I direct that the said sum of — [*i. e. the penalty only*] shall be paid to me the convicting justice, and that the said sum of — [*i. e. the sum for the amount of the injury done*] shall be paid to C. D. (*the party aggrieved, unless he is unknown, or has been examined in proof of the offence, in which case state that fact and dispose of the whole like the penalty as before*); and I order that the said sum of — for costs, shall be paid to — (*the complainant*).

“ Given under my hand and seal the day and year first above mentioned.”

§. 38. Where the conviction shall exceed £5, or the imprisonment one calendar month, or the conviction shall take place before *one* justice only, the defendant may appeal to the next general quarter sessions which shall be holden not less than *twelve* days after the day of conviction, upon giving to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within *three* days after such conviction, and seven clear days at the least before the sessions, and shall either remain in custody until the sessions, or enter into a recogni-

zance, with two sufficient sureties, before a justice, conditioned personally to appear at the sessions and try such appeal, and abide the judgment of the court thereupon, and pay such costs as shall be awarded by the court; and on such being given, and recognizance entered into, the justice shall liberate such person if in custody: and the sessions shall hear and determine such appeal, and make such order, with or without costs to either party, as to the court shall seem meet; and in case of dismissal of the appeal, or affirmance of the conviction, the court shall adjudge the offender to be punished according to the conviction, and pay such costs as shall be awarded; and shall, if necessary, issue process to enforce such judgment. § 39. Every justice, before whom any conviction shall be had under this act, shall transmit such conviction to the next general quarter sessions, to be kept among the records; and upon any prosecution for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove such former conviction. § 40. prosecutions against any person acting under this act, to be commenced within six calendar months, and notice in writing of such action, and of the cause thereof, to be given to the defendant one calendar month before commencement. Defendant may plead the general issue, and give this act and special matter in evidence. Usual provision as to costs. § 41. All fines, &c. imposed by this act to be current money of this province.

For summary conviction for assault, see p. 55, and for form of conviction, see p. 58.

The common forms of "*Information*," "*Summons*," and other proceedings, which will be found under their respective titles, may be easily adapted for any proceeding under this act. The forms of conviction, &c., embodied in the act must, however, be used.

*Notice of Appeal, to be given within three days after conviction and seven clear days before the Sessions.*

Mr. A. B.

Take notice, that I, C. D. intend at the next general quarter sessions of the peace, to be holden in and for the — district, at — in the said district, to appeal against a certain conviction of me, the said C. D. by J. P. esquire, one of her Majesty's justices of the peace for the said district, for having, as is therein and thereby alleged, [on — &c. at — &c. stating the offence] and that the cause and matter of such appeal are, [that I am not guilty of the said offence] and that [stating any other

causes of appeal the party may have] of all which premises you [and each and every of you] are hereby desired to take notice. Dated this — day of — &c. Witness E. F. C. D.

*Recognizance thereon,*

May be in the form given in p. 23. *ante.*

## SUMMONS.

A SUMMONS is the usual process issued by justices to procure the attendance of a person accused, where the offence is between party and party, and not of an aggravated nature; but where the offence is of a higher nature, as felony, breach of the peace, &c. and in cases where the king is a party, it may be proper to issue a warrant in the first instance. In petty assaults, though justices are authorised to issue a warrant on complaint on oath of the party, yet a summons is more advisable, as in many cases it is found that there is little or no pretence for the accusation. *Paley*, 18. A summons may be either directed to the party, or to a constable, requiring him to summon the party. *Paley*, 18. Where the summons is directed to the constable, or a third person, a *copy* of it, plainly and legibly written on paper, should be served personally upon the party accused; if directed to the party himself, the *original* should be personally served upon him, and a copy of it kept by the party serving it. It should be personally served upon the party accused, unless where personal service is expressly dispensed with by statute. *Arch. Com.* 97. The justice should fix the time of day when the party should attend; for though the accused is bound (if the summons is to attend a petty sessions) to wait until the magistrate can attend to the complaint, yet it is reasonable to appoint a time *when* the complaint can probably be heard. *Toone*, 858. In general, a summons may be granted without the oath of the complaining party; but in some cases the oath is indispensable, as in complaints between masters and servants, &c., and in all cases where so directed by statute; and if the complaint is on oath, it should be so stated in the summons. *Toone*, 858. But an information for a penalty need not be upon oath, unless the statute requires it. 8 *T. R.* 508. Where a particular form of notice or summons is required by a statute, that must be strictly pursued. *Paley*, 18. Where the defendant, after being duly served with the summons, neglects to appear before the magistrate, he may be, in that case, convicted in his absence. *R. v. Simpson*, 1 *Str.* 44. 10 *Mod.* 248, 341, 370. But proof should previously be given of the service of the summons. *Paley*, 21. And see



5 G. 2. c. 25. § 7; 6 G. 2. c. 9. § 22. In a case where a defendant was convicted without a previous summons, the court of king's bench granted a criminal information against the justice. *R. v. Venables*, 2 *Ld. R.* 1407. The defendant should be allowed a reasonable time for his appearance, for a summons to appear *immediately*, or upon the *same day*, would be bad, unless cured by the defendant's appearance. *R. v. Mallison*, 2 *Burr.* 681. *R. v. Johnson*, 1 *Str.* 261.

*Summons, when directed to the Constable.* (ARCHBOLD.)

Home District, } To the constable of —  
 to wit. } Whereas, A. B. of — in the district aforesaid, labourer, hath this day been charged before me, J. P. one of her Majesty's justices of the peace for the district aforesaid, on the oath of a credible witness, for that he, the said A. B. on the — day of — in the year of our Lord 1843, at — in the said district, did [*here state the offence*]. These are, therefore, to require you forthwith to summon the said A. B. to appear before me, at — in the said district, on — next, the — day of — instant, at the hour of — in the forenoon of the same day, to answer the said charge, and to be further dealt with according to law; and be you then there to certify what you shall have done in the premises. Herein fail you not.

Given under my hand and seal, the — day of — in the year of our Lord 1843.

*Oath of the service of such Summons.*

Home District, } The within named — constable of — maketh  
 to wit. } oath and saith, that he did, on — the — day of — personally serve the within named A. B. with a true copy of the within written summons. Sworn, &c.

*Summons, when directed to the Party.* (ARCHBOLD.)

Home District, } To A. B. of — in the said district, yeoman.  
 to wit. } Whereas you have this day been charged before me, J. P. esq. one of her Majesty's justices of the peace for the district aforesaid, on the oath of one credible witness, for that you, on the — day of — last, at — in the district aforesaid, did &c. (*here state the offence as in the information.*) These are, therefore, to require you to appear before me, at — in the said district, on — next, the — day of —, instant, at the hour of — o'clock in the —noon of the same day, to answer the said charge, and to be further dealt with according to law. Herein

fail you not. Given under my hand and seal, the — day of — in the year of our Lord —.

*Oath of the service of such Summons.*

Home District, } C. D. of —, constable of the said township,  
to wit. } maketh oath and saith, that he did on — the  
— day of —, instant, personally serve A. B. of —, yeoman,  
with the original summons, under the hand and seal of J. P.  
esquire, one of her Majesty's justices of the peace for the said  
district, of which the within is a true copy.

*Summons of a Witness to be examined.*

Home District, } To the constable of —.  
to wit. } Whereas, information hath been made before  
J. C. esq. one of her Majesty's justices of the peace in and for  
the said district, that [*here state the offence committed, and by  
whom*] and that A. B. of — is a material witness to be examined  
concerning the same. These are, therefore, to require you to  
summon the said A. B. to appear before me, at — in the said  
district, on the — day of —, at the hour of — in the —noon of  
the same day, to testify to the truth, according to the best of  
his knowledge concerning the premises. Given under my hand  
and seal, the — day of —, 184—.

## SURETY FOR GOOD BEHAVIOUR.

A MAN may be compelled to find sureties of the peace, both for the good behaviour and for the peace; and yet the good behaviour includeth the peace, and he that is bound to the good behaviour, is therein also bound to the peace. *Dalt. c. 122.* The authority under which a justice of the peace may require surety for the good behaviour, is founded upon the statute, 34 Ed. 3. c. 1; and the commission of the peace. No one ought to be bound to the good behaviour for any rash, quarrelsome, or unmannerly words, unless they either tend to a breach of the peace, or to scandalise the government, by abusing those who are intrusted by it with the administration of justice, or to deter an officer from doing his duty; and therefore, it seems that he who barely calls another "rogue," or "rascal," "liar," or "drunkard," ought not for such cause to be bound to the good behaviour. However, says Mr. Hawkins, I cannot find any certain or precise rules for the direction of the magistrate in this respect, and therefore am inclined to think that he has a discretionary power to take such surety of all those whom he shall have just cause to suspect to be dangerous, quarrelsome,

or scandalous; as of those who sleep in the day and go abroad in the night; and of such as keep suspicious company; and of such as are generally suspected to be robbers, and the like; and of eaves-droppers; and of common drunkards; and all other persons whose misbehaviour may reasonably be intended to bring them within the meaning of the statute; as persons of evil fame, who being described by an expression of so great a latitude, seem in a great measure to be left to the judgment of the magistrate. But if he commit one for want of sureties, he must shew the cause with sufficient certainty. 1 *Haw.* 132.

Mr. Dalton, (who wrote towards the latter end of king James the first,) in order to determine the same with some kind of certainty, has inserted the following, as instances in which sureties of the good behaviour may be granted, viz:

Against, 1. Rioters. 2. Barrators. 3. Common quarrellers and common breakers of the peace. 4. Such as lie in wait to rob; or shall be suspected to lie in wait to rob; or shall assault or attempt to rob another; or shall put passengers in fear or peril; or shall be generally suspected to be robbers on the highway. 5. Such as are like to commit murder, homicide, or other grievance to any of the king's subjects in their bodies. 6. Such as shall practise to poison another; one instance of which may be the poisoning of their food: thus Mr. Dalton granted a warrant for the good behaviour against one who had bought ratsbane, and mingled it with corn, and then cast it amongst his neighbours fowls, whereby most of them died. 7. Such as in the presence of the justice shall misbehave himself in some outrageous manner of force or fraud. 8. Such as are greatly defamed for resorting to houses suspected to maintain adultery, or incontinency. 9. Maintainers of houses suspected to be houses of common bawdry. 10. Common whoremongers and common whores. 11. Night walkers, that shall eaves-drop men's houses; or shall cast men's gates, carts, or the like, into ponds; or commit other outrages or misdemeanors in the night; or shall be suspected to be pilferers, or otherwise like to disturb the peace; or that be persons of ill behaviour, or of evil fame or report generally; or that shall keep company with such, or with any other suspicious persons in the night. 12. Suspected persons who live idly, and yet fare well, or are well appavelled, having nothing whereon to live, unless, upon examination, they shall give a good account of such their living. 13. Common gamesters. 14. Such as raise hue and-cry without cause. 15. Libellers. 16. Putative father of a bastard child.\* 17. Such as persuade or pro-

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\* There being no poor-laws in this province, an offender of this sort would not, probably, be liable,

cure the putative father of a bastard child to run away. 18. Such as abuse a justice's warrant, or shall abuse him, or the constable in executing their office. Nay, it seemeth, he says, that he who shall use words of contempt, or contrary to good manners, against a justice of the peace, though it be not at such a time as he is executing his office, yet he shall be bound to his good behaviour. 19. Such as charge another before a justice with felony, riot, or forcible entry, and yet will not prosecute or give evidence. 20. In general, whatsoever act or thing is in itself a misbehaviour, is cause sufficient to bind such an offender to the good behaviour. *Dalt. c. 124.*

To which may be added—21. Forcible entry. 1 *Haw.* 124. 22. The author of any writing full of obscene ribaldry. 1 *Haw.* 195. 23. For striking a person in the presence of the justices. *Crom.* 124. 24. For threatening so as to deter witnesses from attending a court of justice. *Ib.* 125.

*For what it shall be forfeited.*

Mr. Hawkins says, it has been laid down as a general rule that whatever will be a good cause to bind a man to his good behaviour, will forfeit a recognizance for it; but this has since been denied, and indeed seems to be by no means maintainable; because the statute, in ordering persons of *evil fame* to be bound in this manner, seems in many places chiefly to regard the prevention of that mischief, which they may justly be suspected to be likely to do; and in that respect requires them to secure the public from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them or not; and it would be extremely hard in such cases to make persons forfeit their recognizance who may yet justly be compelled to give one, as those who keep suspicious company; or those who spend much money idly, without having any visible means of getting it honestly; or those who lie under a general suspicion of being rogues and the like. 1 *Haw.* 132, 133. However, it seems that such a recognizance shall not only be forfeited for such actual breaches of the peace, for which a recognizance for the peace may be forfeited, but also for some others for which such a recognizance cannot be forfeited; as for going round with great numbers to the terror of the people, or speaking words tending to sedition; and also, for all such actual misbehaviours which are intended to be prevented by such a recognizance, but not for barely giving cause of suspicion of what may perhaps never happen. 1 *Haw.* 133.

For the forms requisite under this title, see "Articles of the

Peace," the forms in which may be easily adapted to any case that may arise under this head, observing throughout to confine the subject matter to "surety of the good behaviour," omitting the words "surety for the peace."

## SURVEYORS.

\*By 59 G. 3. c. 14. § 5. No person shall act as a surveyor of lands in this province, until he shall have been duly examined by the surveyor general, or deputy surveyor general, thereof, as to his fitness and capacity, and shall have obtained a license from and be appointed to act as such by the governor, lieutenant governor, or person administering the government of this province, for the time being, and shall have entered into a bond with two sufficient sureties in the sum of five hundred pounds, to his majesty his heirs and successors, for the due performance of his office, and shall have taken the oath of allegiance, and the following oath before the surveyor general, or deputy surveyor general of this province.

"I, A. B., do solemnly swear, that I will well and truly discharge the duties of a surveyor of lands, agreeable to the law, without favour, affection, or partiality, when and as often as I may be required thereto, by any persons or person or by the rule or order of any court of justice, and which I will faithfully and without unnecessary delay, submit to the party requiring the same, or the court directing my duty; also a plan of survey if required. So help me God."

§ 6. The surveyor general, or deputy surveyor general, may examine applicants, and, if found competent, grant certificates to that effect, and administer the foregoing oaths. § 7. Surveyors' licences to be granted by the governor, on production of satisfactory certificates from the surveyor general or deputy surveyor general. § 8. Every chain bearer shall take an oath to act as such justly and exactly, according to the best of his judgment and abilities, and to render a true account thereof to the surveyor by whom he may have been appointed to such duty, which oath the surveyor employing such chain bearer is hereby authorised and required to administer.

By the 4 & 5 V. c. 9. § 1. Licensed surveyors are authorised and required to administer an oath to every person who may be called to prove any boundary post or monument, or skew any original land mark, or corner of any township, concession, lot, or tract of land, which such surveyor may be called upon to survey in Upper Canada. § 2 False swearing to be deemed perjury. Any person who shall interrupt, molest, or hinder

any licensed surveyor, while in the discharge of his duty, as a surveyor of lands, or under the authority of any boundary line commissioners, shall be deemed guilty of a misdemeanor, and being convicted in any court of competent jurisdiction, may be punished with fine or imprisonment, in the discretion of the court. § 4. All evidence taken by any surveyor as aforesaid, shall be reduced into writing, and shall be read over and signed\* by the person giving the same, and filed in the registry office of the county, subject to be produced as evidence.

## SWEARING.

By Stat. 19 G. 2. c. 21. It is enacted, that if any person shall profanely curse or swear, and be thereof convicted on confession, or oath of one witness before one justice, he shall forfeit as follows: Every-day labourer, common soldier, or common seaman, *one shilling*; every other person under the degree of a gentleman, *two shillings*; and every person of or above the degree of a gentleman, *five shillings*; and for a second offence, after conviction, *double*; and for every offence after conviction, *treble*; which said penalties shall go to the poor of the parish. If such person shall curse or swear in the presence and hearing of a justice, he shall convict him without any other proof. § 2. If in the presence and hearing of a constable, if he is *unknown* to such constable, the said constable shall seize and carry him forthwith before the *next* justice, who shall convict him upon the oath of such constable. If he is *known* to such constable, he shall speedily make information before some justice, in order that he may be convicted. § 3. So that the constable, if it is in his hearing, is required to prosecute; but any other person also may prosecute if he pleases. § 4. And such justice shall immediately, on such information on the oath of any constable, or of any other person, cause the offender to appear before him, and on proof of such information convict him; and if he shall not immediately pay down the penalty, or give security to the satisfaction of such justice, he may commit him to the house of correction, to be kept to hard labour for ten days. § 10. Also, the charges of the information, and conviction shall be paid by the offender, if able, over and above the penalties, which charges shall be ascertained by such justice. § 14. But for the information, summons and conviction, no more shall be paid to the justice's clerk than 1s. § 10. And if he shall not immediately pay such charges, or give security to the satisfaction of such justice, he

may commit him to the house of correction, to be kept to hard labour for 6 days, over and above such time for which he may be committed for the penalties. § 5. But if such soldier or seaman shall not pay or secure the penalty, and also the costs, he shall, instead of being committed, be ordered to be publicly set in the stocks for one hour for every single offence, and for any number of offences whereof he shall be convicted at one and the same time, two hours. § 8. The conviction shall be in the words and form following :

“ Be it remembered, that on the — day of —, in the — year of her majesty’s reign, A. B. was convicted before me, one of her Majesty’s justices of the peace for the country, riding, division or liberty aforesaid, (or before me, —, mayor of the city or town of —, within the county of —,) of swearing one or more profane oath or oaths, or of cursing one or more profane curse or curses. Given under my hand and seal, the day and year aforesaid.” § 8.

Which conviction shall not be removed by certiorari.— And the justice shall cause the conviction to be fairly wrote upon parchment, and returned to the next general or quarter sessions, to be filed by the clerk of the peace, and kept among records. § 7. Constable omitting his duty, shall, on conviction on oath of one witness before one justice, forfeit 40s. to be levied by distress, half to the informer, and half to the poor ; and in default, commitment to the house of correction, with hard labour for one month. § 13. And this act shall be publicly read four times in the year, in all churches and chapels, by the minister immediately after morning and evening prayer, on the Sundays next after 25th March, 24th June, 29th September, and 25th December, on pain of £5 for every offence, to be levied by distress. §. 12. Prosecutions under this act, to be within 8 days after the offence committed.

#### *Information (BURN.)*

Home District, } The information of A. I. of — in the district  
 } aforesaid, yeoman, made on oath, this —  
 day of —, in the — year of the reign of — before J. P. esquire,  
 one of her Majesty’s justices of the peace for the said district,  
 who saith, that on — the — day of —, now last past, at — in  
 the said district, he heard A. O. of — in the said district, yeo-  
 man, swear one profane oath, [or curse one profane curse,] in  
 these words, that is to say, &c. [here insert the precise words  
 used by the defendant.]

## Swearing.

*Summons.* (BURN)

Home District, } To the constable of — in the said district,  
 } Whereas, information hath this day been  
 made before me, J. P. esquire, one of her Majesty's justices of  
 the peace for the said district, upon the oath of A. I. of —,  
 yeoman, that on the — day of this present month of —, he  
 heard A. O. of — in the said district, at — in the said district,  
 swear one profane oath, [or curse one profane curse.] These  
 are, therefore, to command you to cause the said A. O. forth-  
 with to appear before me, to answer the premises, and to be  
 further dealt with according to law. Given under my hand  
 and seal, at — in the said district, on the — day of —, in the  
 — year of —.

*Conviction.* (See the form in the Act, p. 593.)

*Commitment.* (BURN.)

Home District. } To the constable of — in the said district,  
 } and to the keeper of the house of correc-  
 tion at the city of Toronto, in the said district. Whereas, A.  
 O. of — in the said district, day labourer, is, and stands con-  
 victed this day before me, J. P. esquire, one of her Majesty's  
 justices of the peace for the said district, of swearing one pro-  
 fane oath on the — day of this present month of —, at — in  
 the said district: whereby he hath forfeited the sum of one  
 shilling, to be applied in the manner by law directed; and  
 whereas, the said A. O. hath refused, and doth refuse to pay  
 down the said sum of one shilling, to be applied as aforesaid,  
 and also hath refused and doth refuse to give satisfactory  
 security to pay the same. These are, therefore, to require you,  
 the said constable, to convey the said A. O. to the house of cor-  
 rection at the city of Toronto, in the said district, and to deliver  
 him to the keeper thereof, together with this warrant. And I  
 do hereby command you, the said keeper, to receive him, the  
 said A. O. into your custody in the said house of correction,  
 and there to detain and keep him to hard labour, for the space  
 of ten days. And for so doing, this shall be your sufficient  
 warrant. Given under my hand and seal, at — in the said dis-  
 trict, — the — day of —, in the — year of the reign of —.

If he also refuse to give the security, these words may be  
 added,—“satisfactory to pay the same: and whereas, the said  
 A. O. hath likewise refused, and doth refuse to pay the sum of  
 one shilling, which I have settled and ascertained as and for the  
 charges of the proceedings against him, touching the premises,



and hath refused, and doth refuse to give satisfactory security to pay the same. These are, therefore, to require you, &c. — for the space of sixteen days —.”

TAVERN LICENSES. See title *Inns and Inn-keepers*,” ante p. 347.

### THEFTBOTE.

THEFTBOTE (from the Saxon *theft* and *bote*, boot or amends) is, where one not only knows of a felony, but takes his goods again, or other amends not to prosecute. 1 *Haw.* 125. See title “*Compounding Felony*,” ante p. 155.

### THREATS.

If one man threaten another, to deter him from doing some lawful act, or to compel him to do some unlawful one, or with intent to extort money from him, or obtain any other benefit (whether real or imaginary,) to the person who makes use of the threat; this has always been considered a misdemeanor at common law. Thus, to threaten a plaintiff for suing a defendant, or a counsellor or attorney for being employed against any party in a suit; a juror for his verdict; or a gaoler, or other ministerial officer, for keeping a prisoner in custody, and properly executing his duty, are offences, for which the party may be indicted and punished by fine or imprisonment. 2 *Inst.* 141. 2 *Bl. Com.* 126. 2. *Chit. C. L.* 149.

With respect to *threats* of personal violence, or any other threats by which a man is put in fear, and by means of which money or other property is or attempted to be extorted from him, the 4 & 5 V. c. 25. contains the following enactments. Whosoever shall accuse, or threaten to accuse, any person of the abominable crime of buggery, committed either with mankind or with beasts, or any assault with intent to commit the said abominable crime, or of any attempt or endeavour to commit the said abominable crime, or of making or offering any solicitation, persuasion, promise, or threat, to any person whereby to move or induce such person to commit, or permit, the said abominable crime, with a view to extort, and shall by intimidating such person by such accusation, or threat, extort or gain, from such person any property, shall be guilty of felony, and being convicted shall be liable at the discretion of the court to be imprisoned at hard labour in the Provincial Penitentiary for life, or any term not less than seven years, or to be imprisoned in any other prison, or place of confinement, for any term not exceeding two years.

§ 11. Whosoever shall with menaces, or by force, demand any chattel, money, or valuable security, of any person with intent to steal the same, shall be guilty of felony, and being convicted shall be liable to be imprisoned for any term, not exceeding three years.

§ 12. If any person shall knowingly send, or deliver, any letter, or writing, demanding of any person with menaces, and without any reasonable or probable cause, any chattel, money, or valuable security; or if any person shall accuse, or threaten to accuse, or shall knowingly send, or deliver, any letter, or writing, accusing, or threatening to accuse, any person of any crime punishable by law with death, or transportation, or of any assault with intent to commit any rape, or of any attempt, or endeavour, to commit rape, with a view to extort from such person any chattel, money, or valuable security; every such offender shall be guilty of felony, and being convicted, shall be liable at the discretion of the court to be imprisoned at hard labour at the Provincial Penitentiary, for any term not less than seven years, or to be imprisoned in any other prison, or place of confinement, for any term not exceeding two years, § 17. Whosoever shall steal any chattel, money, or valuable security, in any dwelling house, and shall by any menace, or threat, put any one being therein in bodily fear, shall be guilty of felony, and being convicted, shall be liable to be imprisoned at hard labour, in the Provincial Penitentiary, for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison, or place of confinement, for any term not exceeding two years.

*Commitment for threatening to accuse a man of a crime, with intent to extort Money.*

*Commencement as ante, p. 148.] on the — day of —, in the year of our Lord —, at — in the said district, did threaten [the said] C. D. to accuse [accuse or threaten to accuse] him, the said C. D. of having [attempted and endeavoured to commit a rape upon Ann, the wife of the said A. B.] with a view to extort and gain money [chattels, money, or valuable security] from the said C. D. against the form of the statute in that case made and provided. And you, the said keeper, &c. as ante p. 148, to the end.*

TOWN CLERK.—See post “Township Meeting.”

## TOWNSHIP MEETING.

*Repeal of former Acts.*—\*By the 1 V. c. 21. Reciting whereas it is expedient that the several laws now in force relative to the appointment and duties of township officers, and the mode of notifying and holding township meetings, except the \*4 W. 4. c. 12. should be repealed, and reduced into one act of parliament. It is enacted, that the \*5 W. 4. c. 8. and the \*6 W. 4. c. 2. and the \*7 W. 4. c. 20. [*the repealing words omitted.*] Provided, that any prior act or enactment repealed by any of the acts recited shall be and remain repealed.

*Township Meeting.*—§ 1. After the passing of this act, any two justices of the division in which any township, reputed township, or place may be, may issue their warrant, giving not less than ten days' previous notice to the township clerk, authorising him, on the first Monday in January in each year, to assemble the inhabitant freeholders and householders paying or liable to any public assessment of such township, &c. at such place as may be appointed by the magistrates in their warrant, for the purpose of choosing or nominating township officers, to serve for one year from the time of their nomination; at which meeting the town clerk shall preside until a chairman be chosen: such meeting to be held in the township hall, if there be any, out of the limits of any incorporate town.

*Without Notice.*—§ 3. In case the township clerk shall neglect to assemble the said inhabitants at the time and place appointed in the warrant, the inhabitants may nevertheless lawfully meet, and choose a chairman, and transact business; and after the township officers have been chosen at said meeting, the township clerk then and there chosen shall proceed upon his duties.

*Form of Justice's Warrant to assemble the Inhabitants.*

“To the township clerk of the township of — in the said district. By virtue of the power for such purposes granted by an act of the legislature, made and passed in the —, to us A. B. and C. D. esquires, two of her majesty's justices of the peace in and for the said district: these are to authorise and require you, giving at least ten days previous notice, by affixing the same in at least three public places within the said parish, township or place, to assemble the inhabitant freeholders and householders living within you. parish or township, to meet at — on the first Monday in January next, being the — of January next, at the hour of twelve o'clock noon, for the purpose of choosing and nominating certain fit and proper persons to serve

## Township Meeting.

as township officers for the ensuing year, according to the directions in the said act contained.

Given under our hands and seals, at ---, on the -- day of --- 18--

### *Township Clerk's Notice to assemble the Inhabitants.*

Whereas by virtue of a warrant from --- and ---, esquires, two of her majesty's justices of the peace, to assemble the Inhabitants of the township of --- on Monday, the --- day of January next, at ---, for the purpose of choosing and nominating township officers for the ensuing year. Notice is hereby given, that the annual township meeting, of the township of ---, will be holden at ---, on Monday, the --- day of January ---, at the hour of twelve o'clock noon, accordingly.

*Dated ---*

--- ---, *Township Clerk.*

*Qualification.*—None but freeholders or householders, twenty-one years of age, to vote at such meeting; and all matters shall be decided by the majority: any disqualified person voting, liable to a penalty of not less than 5s. nor more than 20s. to be recovered with costs on complaint of two witnesses, by a warrant of one magistrate; said fine to be paid to the town clerk, and expended on the roads in such township: complaint to be made within three months, unless it shall appear to the court that the person so offending shall not have had his vote objected to at the time of his voting, and that the offence was committed through his ignorance of the law.

*Township Officers.*—§ 5. Inhabitant freeholders and householders, at such township meetings, to choose one clerk of said township, one collector, a sufficient number of persons to serve as pound keepers, overseers of highways, and also three town wardens for the said township. Should the inhabitant freeholders and householders neglect to assemble and appoint any particular officer or officers for the year, in such case the officers of the preceding year, or such of them as shall not be relieved by the appointment of other officers, shall continue in office for the succeeding year; and no magistrate shall be liable without his consent to serve in any township office. No person compelled to serve, unless resident in the township, except where two townships are joined in one meeting, nor oftener than once in three years. *Provided* also, that no such annual township meeting be held in any town incorporated, or having police regulations, but the same shall be held in such convenient place out of the town as the magistrates in their warrant shall appoint.

*New Townships.*---Inhabitant freeholders and householders in any new township may hold township meetings so soon as the

same shall contain thirty inhabitant freeholders or householders. *Provided*, that where the township does not contain that number, the inhabitants shall be reputed as inhabitants of such adjacent township as the magistrates granting the warrant may deem most convenient for the new township.

*Records.*---§ 7. Township clerk to record all matters transacted at such meetings, and all other matters it shall be his duty to record; which record, together with other records, papers, monies unexpended, and property belonging to the township which may come into his hands, shall be faithfully kept by such clerk, and by him delivered over to his successor.

*Copies.*---§ 8. Township clerk to make true copies from his record of the proceedings of the meeting at which he was appointed, within twenty days after his appointment: one copy to be posted up by him, in a conspicuous manner, at the place of meeting, and the other to be delivered with a copy of the account current of the township for the preceding year to the clerk of the peace, to be filed of record in his office, and open to inspection on payment of 1s. 3d.; any township clerk who shall have accepted the office, and shall not deliver such documents within the period of twenty days, shall forfeit and pay the same sum as persons refusing to subscribe the declaration on the clerk's books, as hereinafter provided, to be expended upon the township roads, and levied by warrant of any justice in the district, upon complaint of the clerk of the peace or any other person; and any two magistrates shall then nominate and appoint a township clerk. The township clerk who shall have duly performed the duties assigned him by this act, at the termination of each year shall receive £4. for his trouble, to be paid by the district treasurer on the certificate of the clerk of the peace that he hath lodged in his office the papers required.

*Declaration.*---§ 9. Township clerk to provide, and keep a book, wherein shall be entered declarations, in the form hereafter contained, which declarations, shall be signed by the township clerks, and by other officers of the township: and upon the adjournment of the annual meeting, the township clerk shall put up at some conspicuous place, where the meeting was held, a list of all persons chosen to office, in such township, to be subscribed by every such officer, within 20 days from his appointment, under the penalty hereinafter mentioned: at the expiration of twenty days, township clerk to transmit to a justice of the peace of his division, a list of all such township officers, chosen for the current year, who have not subscribed such declaration; and the said justice shall proceed against such defaulter, and recover the sum forfeited under this act: and any two justices acting

within the division, may then appoint other officers in lieu of such defaulters.

*Declaration.*

I — do sincerely promise and declare that I will faithfully and diligently perform the duties of — for the township of — for the current year.

*Fines.*---§ 10. Justices of the peace, to pay to the township clerk all fines, and commutation money, in lieu of militia service in said township, and directed by law to be expended upon the high roads, the same to be expended by the overseers of highways, in such division of the roads as the magistrates\* may order, and all monies arising from the wild land assessment and other sources, except specially provided for by law.

*Township Accounts.*---§ 11. Township clerk to make out a statement of all monies received, and expended by him, by virtue of this act during the current year, to be signed and certified by said clerk, a copy of which shall be put up at the place where the next town meeting shall be ordered to be held, on or before ten o'clock, or the day of meeting: his accounts of receipts, and disbursements, for the current year, shall be laid before the meeting, and examined and approved by the town wardens, before any other business be transacted, and every such township clerk shall give bond for the due performance of his duty, which bond may be in the following form.

“ *Bond* ”—“ *Township Clerk* ”

Know all men by these presents, that we K. L., township clerk for the township of —, in the district of —, and D. K. of —, and T. H. of —, are held and firmly bound to F. B., Treasurer of the district of —, in the sum of —, to be well and truly paid to F. B., Treasurer, or his successors in office, for which payment well and truly to be made to the said F. B., we bind ourselves, jointly and severally, our heirs, executors and administrators, firmly by these presents, sealed with our seals, dated, &c. The condition of the above bond is such, that if the above bounden K. L. shall well and truly pay over, according to law, for the use of the township, all monies coming into his hands by virtue of his office, and applicable to the general uses of the township, and deliver the remainder, (if any there be,) together with all books, records and papers, belonging to the township, into the hands of his successor in office as

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\* See District Council Act.

the law directs, then this obligation is null and void, or otherwise to remain in full force.

(Signed) A. B., *Township Clerk.*

*Bye laws for Cattle &c.*---§ 12. The inhabitants, and householders at such township meetings, may determine, and order, at what periods, and what description of horned cattle, horses, sheep, and other animals, shall be allowed to run at large, or to be restrained from so doing, within their respective townships for the year; and the fine upon the owner of any animals running at large, contrary thereto: and also make such rules and regulations as the majority may deem necessary, relative to pits, precipices, and deep waters, or other places dangerous to travellers, or the destroying the growth of weeds detrimental to good husbandry; the height and description of lawful fences, and such other matters concerned with the peace and welfare of the township.

*Insane Persons.*---§ 13. Town wardens to report to the magistrate of the district, any insane persons going out at large to the danger of the inhabitants: and to audit and examine the township clerk's accounts, and approve same if correct, and such examination to be the first duty performed at the township meeting.

*Assessor's duties.*---§ 14. The assessor required to demand, and receive from every rateable inhabitant in the township a list of all the rateable personal property, in his, her or their possession, in the province, and of all the lands, tenements, or real estate, in his her or their possession in the township, specifying the number of the lot or lots or parts thereof; the number of concession or concessions, where situated, or otherwise, particularly describing the same; and also the number of acres cultivated, or uncultivated, in each lot or parcel of land, which list shall be taken between the first Monday in January, and the sitting of the court of general quarter sessions of the district, after the first day of March, in every year; and shall make a return within the time aforesaid, duly attested on oath, (or affirmation) by the clerk of the peace, of all the rateable inhabitants, with a true list of their rateable property, specifying the particulars, including his own rateable property, and shall also extend on said roll, the amounts on which he she or they shall be liable to pay tax opposite to their respective names at the foot of which he shall subscribe his name, and shall cause said return to be directed to the clerk of the peace, on or before the sitting of said court of quarter sessions, next after the first day of March aforesaid, to be by the clerk of the peace laid before the court, and

also shall within the time aforesaid, put up a correct copy thereof in some conspicuous place within the township for the inspection of the inhabitants; and the assessor shall report to a magistrate of the division, the names of such persons as he conceives to have given in a false list, or refused or neglected to give any list, as the law directs, of their rateable property, in order that such offenders may be dealt with according to law at least fourteen days previous to his returning such roll to the clerk of the peace.

*Census.*—§ 15 Every assessor shall demand and receive from every inhabitant householder, or head of a family in his township, a true list of the number of persons composing such family, male and female, and their respective ages, also all deaf and dumb and insane persons, including therein all persons employed by or resident with such householder or head of a family, which list shall specify the different denomination of christians to which they severally belong, and may be in the following form, to which he shall add the necessary number of columns to define their different religious denominations for such return.

## FORM.

Names of heads of Families.	Number in each Family.				Deaf & Dumb.	Insane.
	Males.		Females.			
	Under 16.	Over 16.	Under 16.	Over 16.		

And if such householder or head of a family shall refuse or neglect to give a true list to the assessor he shall be liable to pay the same penalty as persons are liable to pay who neglect or refuse to give in a true list of their rateable property, to be levied in the same way: blank books or forms for taking the assessment shall be furnished to the assessors, on their application to the clerk of the peace, at the expence of the district; and the clerk of the peace shall report to the quarter sessions next after the first day of March aforesaid, the names of all assessors belonging to his district who have not completed and



delivered in their assessment rolls, for which neglect such assessors shall forfeit and pay the same sum as is imposed on officers neglecting to make the declaration of office, to be expended on the roads in said township; and the magistrates shall appoint other assessors for that year who shall have the same powers, and be liable to the same responsibilities as they would have been if appointed at the township meeting: which new assessors so appointed shall be notified by the clerk of the peace of their appointment, and shall procure to take such assessment and make their returns to the clerk of the peace, as hereinbefore provided, in one month after being so notified, and shall sign the declaration in the clerk's book; and the collectors shall lodge their bond as required by this act before the sitting of the court of general quarter session next after the first day of July in each year.

*Assessor's Fees.*—§ 14. Assessor to receive from the treasurer of the district, on the certificate of the clerk of the peace, that the assessment roll has been duly delivered according to law the following fees *per cent.* :—

If the assessment of the rate of one penny in the pound for the year does not amount to 50 <i>l.</i> ...	£7	0	0
If above 50 <i>l.</i> and under 100 <i>l.</i> .....	6	10	0
If above 100 <i>l.</i> and under 150 <i>l.</i> .....	6	0	0
If above 150 <i>l.</i> and under 200 <i>l.</i> .....	5	5	0
If above 200 <i>l.</i> and under 250 <i>l.</i> .....	4	15	0
If above 250 <i>l.</i> and under 300 <i>l.</i> .....	4	5	0
If above 300 <i>l.</i> and under 350 <i>l.</i> .....	4	0	0
If above 350 <i>l.</i> .....	3	10	0

*Collector.*—§ 17. The collector is to make application to the clerk of the peace (first having lodged with the treasurer of the district the bond hereinafter mentioned, the securities to which bond shall be freeholders, and as such certified by the town clerk to be good and sufficient) for a certified copy of the assessment roll for the year in which he is appointed, which copy, examined and certified by the clerk of the peace, shall be to each collector sufficient authority for collection: said bond duly executed to be delivered to the treasurer, and the assessment roll taken up on or before the quarter sessions next after the first day of July in each year.

*Collector's Bond.*

Know all men by these presents, that we A. B., collector of the rates, for the township or townships, of —, in the district of —, and C. D. of —, and E. F. of —, are held and firmly bound to J. O. treasurer of the district of —, in the sum of —,

## Township Meeting.

currency, to be well and truly paid to the said J. O., treasurer, as aforesaid, or his successor in office, for which payment well and truly to be made to the said J. O., we bind ourselves, jointly and severally, our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this — day of —, in the year of our Lord —.

The condition of the above bond is such, that if the above-bounden—, shall collect all rates and assessments of the town, township or townships of —, for the year eighteen hundred and —, for which he has been appointed, and shall pay all monies which he may so collect (except his own per centage) to the treasurer of the district, on or before the third Monday in December, in the said year eighteen hundred —, then this obligation shall be null and void, or otherwise to remain in full force and virtue.

*His accounts.*—§ 18. The collector shall collect all rates (which can be collected) on the assessment roll, and pay over the amount and settle his account on or before the third Tuesday in December each year; and in default thereof shall be ineligible to any township office at the next meeting, and shall be proceeded against for the amount due. Collector shall be entitled to receive for himself the following per centage, on the amount actually collected, for his services.

If the assessment does not amount to 50l. . . . .	£8	0	0
If above 50l. and under 100l. . . . .	7	10	0
If above 100l. and under 150l. . . . .	7	5	0
If above 150l. and under 200l. . . . .	7	0	0
If above 200l. and under 250l. . . . .	6	10	0
And for all sums over 250l. . . . .	5	0	0

*Recovery of Rates.*—§ 19. If any person shall leave the place before the rates have been paid, the collector may recover the said rates, (except such part thereof as shall have been charged on moveable property,) from the owner of the house, farm, or tenement. *Provided* the same shall be demanded fourteen days before the second Monday in December, in each year, but should the year expire before the said rates are demanded, the collector shall be liable for the amount; nevertheless, the said collector shall be entitled to proceed by warrant of distress against any such tenant, although he may have left the township. The collector may in like manner proceed to recover from all other persons residing in his township, the assessed rates which shall not have been paid by the first Monday in November, in each year; the same having been demanded fourteen days from the date of the magistrate's warrant of distress.

*Pound-keepers.*—§ 32. 33. 34. 35. See title "*Pound-keepers.*" p. 492.

*Refusal of Office.*—If any person legally appointed to any township office shall neglect or refuse to make the declaration of office, and sign his name thereto in the township clerk's books, within 20 days after being appointed, or after making such declaration, shall neglect or refuse to perform the duties of his office, or if any person shall neglect or refuse to deliver to the assessor a true list of his or her rateable, or personal property, or shall wilfully mistake the same, such person shall forfeit and pay a sum not less than *one pound*, nor more than *five pounds*, with costs, to be levied by distress and sale of the offender's goods and chattels, eight days' previous notice of sale being given, and the overplus rendered to the owner. § 37. Records of the township may be examined by any person on payment of 1s. 3d. to the clerk. § 48. Four wardens to be a corporate body with power to sue and defend on behalf of the township. § 49. Any person false swearing under this act, to be guilty of perjury.

NOTE—The other clauses of this act relate to the highways, and will be found under that title.

*Information against an Inhabitant Householder for neglecting to serve or make the Declaration of Office within twenty days—Penalty 20s. to £5.\* (It should not be upon Oath.)*

Home District. } Be it remembered that on the — day of —  
to wit. } in the year of our Lord —, at the township  
of — in the said district, A. B. of the said township, constable  
of the same, personally cometh before — and informeth — that  
C. D. late of the same township, yeoman, was, at a township  
meeting held at —, in and for the said township, on Monday the  
— day of January now last past, (or instant,) duly nominated to  
the office of — of the said township, he the said C. D. then  
being an inhabitant householder in the said township, and liable  
to serve the said office; and that the said C. D. afterwards, to  
wit,—within the space of twenty days next after such nomina-  
tion as aforesaid, neglected and refused and hath from hence-  
forth hitherto neglected and refused to make the declaration of  
office, and to sign his name thereto in the township clerk's book

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\* N.B.—The \*1. V. c. 21. §. 36 does not say whether the penalties under this act are to be recovered before one, or more, or any justice or justices of the peace, and their power to act may therefore be doubted, nor is the application of the penalties provided for, and almost every penal clause in this act is more or less deficient in regard to the specific mode of enforcing the penalties.—ED.

according to law, contrary to the form of the statute in such case made and provided, whereby the said C. D. hath forfeited the sum of £5. for his said offence; wherefore the said A. B. prayeth that the said C. D. may be convicted of the offence aforesaid, and that he may be summoned to make his defence thereto. Exhibited before —, C. D.

TOWNSHIP OFFICERS.—See *ante*. “*Township Meeting*.”

## UNLAWFUL TRAINING.

\*By the 1 V. c. 11. § 1 Enacted that all meetings and assemblies of persons for the purpose of training or drilling themselves, or of being trained, or drilled, to the use of arms, or for the purpose of practising military exercises, movements or evolutions, without any lawful authority for so doing, shall be and the same are hereby prohibited, as dangerous to the peace: and every person present or attending any such meeting for the purpose of training and drilling any other person or persons to the use of arms, or the practice of military exercise, movement or evolution, or who shall train or drill any other person or persons, to the use of arms, or to the practice of military exercise, movements, or evolution, or who shall aid or assist therein being legally convicted thereof shall be liable to be confined in the public Penitentiary of this province, for any term not exceeding two years, or to be punished by fine and imprisonment in any of the common gaols in this province for a period not exceeding two years, at the discretion of the court; and every person who shall attend or be present at any such meeting, or assembly, for the purpose of being, or who shall at any such meeting or assembly be trained, or drilled to the use of arms or the practice of military exercise, movements or evolutions, being legally convicted thereof shall be liable to be punished by fine and imprisonment, not exceeding two years, at the discretion of the court. § 2. It shall be lawful for any justice of the peace, constable or peace officer, or for any person acting in their aid or assistance, to disperse any such unlawful meeting or assembly, and to arrest and detain any person present at or aiding, assisting or abetting any such assembly or meeting as aforesaid; and it shall be lawful for the justice of the peace, who shall arrest any such person or before whom any person so arrested shall be brought, to commit such person for trial, unless such person shall give bail for his appearance at the next assizes, to answer to any indictment which may be preferred against him for any offence against this act. § 3. This act not to prevent any prosecution by indict-

ment or otherwise, for any thing that shall be an offence within the meaning of this act, and which might have been so prosecuted if this act had not been made, unless the offender shall have been convicted or acquitted under this act. § 4. 5. 6. expired. § 7. Justices in any district shall have concurrent jurisdiction as justices of the peace with the justices of any other district in all cases as to the carrying into execution the provisions of this act, and to all matters relating to the preservation of the public peace. § 8. Actions against justices &c., for any thing done under this act, to be commenced within six months. § 9. The governor may declare by proclamation this act to be no longer in force in any particular district therein specified. § 10. Prosecutions under this act to be commenced within six calendar months.

## TRANSPORTATION.

\*By 40 G. 3 c. 1. § 5. It is enacted, that when any person shall be convicted of any crime, for which he shall be liable by law to be transported, the court, instead of the sentence of transportation, shall order and adjudge that such person be banished from this province, for and during the same number of years or term for which he or she would be liable by law to be transported, and do remove himself or herself therefrom, within a space of time to be fixed by the court, being no less than two days, nor more than eight, including the day of sentence. And any person found at large in any part of the province without some lawful excuse, after the time for banishment and before the expiration of the term, shall suffer death, as in cases of felony.

The punishment of *death* for this offence was abolished by the \*3 W. 4. c. 4. and the offence was punishable as any other felony not of a *capital* nature.

\*By the 7 W. 4. c. 7. § 1. It is enacted, that it shall be lawful after the passing of this act to sentence offenders to transportation not only in such cases where by any law now in force or hereafter to be passed it is expressly provided that such offenders may be transported, but also in every case in which by the provisions of the act passed in the \*40 G. 3. c. 1. the person convicted would be liable to be banished from this province. *Provided*, that no such offender shall, under the authority of this act, be sentenced to be transported except by such court, and in such cases, and for such term of time as the same offender might, according to the said act, be banished from this province: and nothing in this act shall be construed to take away or affect the

power of sentencing offenders to be banished, according to the act hereinbefore recited, when it shall appear proper to pass such sentence. § 2. All the provisions now in force which are contained in the said act \*40 G. 3. c. 1. respecting persons returning to this province before the expiration of the period for which they have been banished, or have consented to be banished according to the terms of any conditional pardon, shall equally extend to any person returning from transportation. § 3. That the sentence in cases of transportation shall be that the offender shall be transported for a time to be mentioned in such sentence, or for life, where that may be lawful and shall in the opinion of the court appear proper, to such place as the governor, or person administering the government of this province, by and with the advice of the executive council thereof, shall appoint. § 6. The governor, with the advice of the executive council, is to determine, upon reference to his majesty's government in England, to what foreign possession convicts shall be transported from this province. § 5. Convict to be removed to the sea-port or place for transportation by judge's warrant, and if any person shall rescue or assist any convict to escape, such offence shall be punishable in the same manner as if such convict had, at the time it was committed, been confined in a gaol or prison in the custody of the sheriff or gaoler after sentence. § 6. Imprisonment after sentence to be reckoned as part of the term of transportation. § 8. If, by reason of any difficulty occurring which may prevent the transportation of any convict, such convict may be detained in prison for the remainder of his sentence, unless pardoned, in which case banishment may be made a condition for the residue of the time.

By the 4 & 5 V. c. 24. § 25. Any person returning from banishment shall be *transported* for life, and imprisoned previous thereto.

*Commitment for returning from Banishment.*

*Commencement as ante. p. 149.*] having been banished from this province for the term of [seven years] in pursuance of a certain judgment against him for felony, feloniously and unlawfully, and without any lawful cause or excuse, was on the — day of — in the year of our Lord, — and before the expiration of the said term of [seven years] at large, at — in the district aforesaid, against the form of the statute in that case made and provided. And you, the said keeper, &c. as *ante. p. 149.*

TRAVELLERS.

\* By 52 G. 3. c. 4. Entitled “an act to prevent damage to travellers on the highways in this province;” it is enacted, that it shall be the duty of every person travelling the highways with sleds or other carriages, when they meet each other, for each person to turn out to the right hand with their sleds or other carriages, and give one equal half of the road, highway or beaten track, for the more easy passing each other without doing damage to either party’s team, sled or carriage. § 2. Any person refusing, shall forfeit and pay 10s. with reasonable costs, to be recovered before one justice, on confession or oath of one witness, to be levied by distress and sale, and in default commitment to the common gaol for any time not exceeding three days, unless such fine and costs bepaid. § 3. Every person travelling with sleighs on any road, highway, or beaten track, shall have two or more bells fixed to the harness, under the penalty of 10s. to be recovered as aforesaid. § 5. Complaints to be made within 10 days. § 6. Act to be in force for four years.

\* By the 56 G. 3 c. 11. § 3. One moiety of all fines under the above act, shall be paid to the informer, and the other moiety to the receiver general, for the use of the province. These acts were made permanent by the \*59 G. 3. c. 17.

*Information against a person for neglecting to give one half of the Road. Penalty, 10s.*

Home District, } Be it remembered, that on the — day of —  
 to wit. } in the year of our Lord, one thousand eight  
 hundred and —, at the township of — in the district aforesaid,  
 C. D. of — in the said district, yeoman, who as well for our  
 sovereign lady the queen as for himself, doth prosecute in this  
 behalf, personally cometh before me, J. P. esquire, one of her  
 Majesty’s justices of the peace, for the said district, and as well  
 for our said lady the queen as for himself, informeth me, that  
 he, this informant, within the space of ten days, now last past,  
 to wit: on the — day of —, in the year aforesaid, at the town-  
 ship aforesaid, in the district aforesaid, was travelling with a  
 waggon, drawn by two horses, upon a certain road and highway  
 in the said township, leading from — in the district aforesaid,  
 to — in the same district, and that while so travelling upon the  
 said road and highway as aforesaid, he, this informant met in  
 and upon the said road and highway, one C. D. late of the  
 township aforesaid, in the district aforesaid, yeoman, who was

also travelling upon the said road and highway, in an opposite direction to this informant, with a certain other waggon, drawn by two horses; and this informant further said, that the said C. D. upon the occasion aforesaid, neglected and refused to turn out to the right hand with his said waggon, and give to this informant one equal half of the width of the said road and highway there, for the more easy passing of each other, and that instead of so doing, he, the said C. D. on the occasion aforesaid, and while so passing this informant upon the said road and highway as aforesaid, [continued to travel on in the centre of the said road with his said waggon and horses, or the same side of the road upon which this informant was then and there lawfully travelling as aforesaid, to wit: the right hand side of the said road and highway leading from the said — to —] contrary to the form of the statute in such case made and provided, whereby the said C. D. hath forfeited for his said offence the sum of ten shillings, wherefore the said C. D. who prosecuteth as aforesaid, prayeth the consideration of me, the said justice in the premises, and that the said A. B. may be convicted of the offence aforesaid, and that one moiety of the said forfeiture may be adjudged to our said lady the queen, and the other moiety thereof to the said C. D. according to the form of the statute in that case made and provided, that the said A. B. may be summoned to appear before me and answer the premises, and make his defence thereto.

Exhibited before me, J. P.

C. D.

N.B.—This information should not be upon oath. The offence must be proved by other testimony than that of the informer.

*Summons on the preceding Information.*

Home District, } To A. B. of — in the said district, yeoman.  
to wit. } Whereas, you have this day been charged  
before me, J. P. Esq. one of her Majesty's justices of the peace  
for the said district, in and by a certain information in writing,  
exhibited before me, the said justice, the — day of — in the  
year of our Lord, — by one C. D. of — in the said district,  
yeoman, who therein informeth me, the said justice, that he, the  
said informant, within the space of ten days now last past, to  
wit: on the — day of in the year aforesaid, at, &c. [*here set forth  
the offence as charged in the information to the concluding word  
thereto.*] These are, therefore, to require you to appear before  
me at — in the said district, on — next the — day of — in-  
stant, at the hour of — in the forenoon of the same day, to an-  
swer to the said charge, and to be further dealt with according



to law. Herein fail you not. Given under my hand and seal, the — day of — in the year of our Lord, —.

*The Conviction.*

Must be in the form required by the \*2 W. 4. c. 4. See *ante*. p. 178. See also titles, “*Distress*,” *ante*. p. 199 200. and “*Commitment*,” *ante*. p. 500.

*Information against a person Travelling in a Sleigh without Bells affixed to the Harness. Penalty, 10s.*

Commencement the same as in the last form] that A. B. late of the township of — in the district aforesaid, within the space of ten days, now last past, to wit: on the — day of — in the year aforesaid, at the township aforesaid, in the district aforesaid, did travel upon a certain road and highway leading from — to — in the said district, in a certain sleigh, drawn by one horse, and without having any bell or bells affixed to the harness of the said horse, or otherwise, contrary &c. [*as in the last precedent.*]

The other forms referred to in the last may be easily adapted in this case. But it should be remarked, that the clause imposing the penalty for travelling without sleigh bells does not specifically give the costs of prosecution. It will therefore be proper to proceed for the costs, under the stat. \*18 G. 3. 19. See *ante* title “*Costs*,” p. 182.

## TRAVERSE.

\*By the 3 W. 4. c. 4. §111. No traverse, or other postponement of any trial, shall be allowed, except upon special cause shewn to the satisfaction of the court, or by consent of his Majesty’s attorney or solicitor general prosecuting same.

## TREASON.

TREASON, according to *Lord Coke*, is derived from *trahir*, to betray; and *trahison*, by contraction treason, is the betraying itself. 3 *Inst.* 4. Treason generally spoken, is intended not of petit treason, but of high treason only. 1 *H. H.* 316.

*Of High Treason.*

By the statute of the 25 Ed. 3. st. 5. c. 2. which lord *Hale* calls a sacred act; and lord *Coke*, an excellent act; and the king who made it, a *blessed king*; and the parliament, a *blessed parliament*; all treasons which had been uncertain before, were

settled; which act, by the 1 Mar. sess. 1. c. 1. is reinforced, and again made the only standard of treason; and all statutes, between the said statutes of the 25 Ed. 3. and 1 Mar. which made any offences high or petit treason, or misprision of treason, are abrogated, so that no offence is at this day to be esteemed high treason, unless it be either declared to be such by the said statute of the 25 Ed. 3. or made such by some statute since the 1 Mar.

The 25 Ed. 3. is as follows: "Whereas divers opinions have been before this time, in what case treason shall be laid, and in what not, the king, at the request of the lords and commons, hath made a declaration in the manner as hereinafter followeth, that is to say: when a man doth compass or imagine the death of our lord the king, or of our lady his queen, or of their eldest son and heir; or if a man do violate the king's companion, (that is, his wife. 3 *Inst.* 9) or the king's eldest daughter, unmarried; or the wife of the king's eldest son and heir; or if a man do levy war against our lord the king in his realm; or be adherent to the king's enemies in his realm, giving them aid and comfort in the realm or elsewhere, and thereof be probably (proveablement, proveably) attainted of open deed by the people of their condition; and if a man counterfeit the king's great or privy seal, or his money; and if a man bring false money into the realm, counterfeit to the money of England, knowing the same to be false; and if a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize; and all other justices assigned to hear and determine, being in their places doing their offices."

And by the statute 1 *Mar. sess.* 1. c. 1. (which Lord *Hale* calls another excellent law) "no act, deed, or offence, being by act of parliament made treason, by words, writing, ciphering, deeds, or otherwise, whatsoever, shall be adjudged to be treason, but only such as be declared by the said statute of the 25 Ed. 3." And this, he says, at one blow laid flat all the numerous treasons at any time enacted since the 25 Ed. 3. 1 *H. H.* 308.

Lord *Coke* (3 *Inst.* 14. 140.) seems to be of opinion, upon the said act of the 25 Ed. 3. that *bare words* are not a sufficient *overt act* or *open deed*, whereby to convict a person of treason; but they are misprision of treason only. So also Lord *Hale* seems to think that words, unless put into writing, are not regularly an overt act. 1 *H. H.* 111. 118. But Mr. *Hawkins* argues the contrary; and amongst other reasons for his opinion, he observes that to charge a man with speaking treason is unquestionably actionable, which could not be if no words could amount to treason. Also, that as in the case of felony, he who by command or persuasion induceth another to commit felony,

is an accessory in felony, so he who does the same in treason is a principal traitor, (there being no accessories in treason, but all being principals): and yet such person doth not act but by words. 1 *Haw.* 39. And it has been the constant practice ever since the revolution at least, (1688) where a person, by treasonable discourses, hath manifested a design to murder or depose the king, to convict him upon such evidence; and in Lowick's case, *Holt, C. J.* declared that *express words* were not necessary to convict a man of high treason; but if, from the tenor of his discourse the jury is satisfied he was engaged in a design against the king's life, this is sufficient to convict the prisoner. *Read. Treat.* 147.

Offences in relation to the coin, in England, are made treason by many statutes, but are scarcely applicable to this province.

The different treasons relating to the papists, or persons exercising the Roman catholic religion, namely, that created by the 5 *Eliz.* c. 1. of defending the pope's jurisdiction in this realm; that created by the 27 *Eliz.* c. 2. of a popish priest tarrying three days in England without taking the oaths; that created by the 3 *Jac.* 1. c. 4. of any natural-born subject being reconciled to the See of Rome—have long become obsolete, and seem indeed to be now virtually repealed by the 31 *G. 3.* c. 32.

But there is one kind of treason declared by the 23 *Eliz.* c. 1. that is distinct from any treason of the last description, although the statute was made ostensibly against maintaining the authority of the See of Rome. By § 2. it is enacted, that all persons who shall pretend to have power, or shall by any means put in practice to absolve, persuade, or withdraw any subject from his natural obedience to her Majesty, or to promise any obedience to the See of Rome, or of any other prince, state, or potentate; or shall do any overt act to that intent or purpose, shall be guilty of high treason. So by the 3 *Jac.* 1. c. 4. § 22. If any person shall, either upon the seas or beyond the seas, or in any other place within the dominions of his majesty, his heirs and successors, put in practice to absolve, persuade, or withdraw, any of the subjects of the king, or of his heirs or successors of the realm of England, from their natural obedience to his Majesty, his heirs or successors, or to move them, or any of them, to promise obedience to any prince, state or potentate—every such person shall suffer as in cases of high treason. And by § 3. the like penalty attaches to any one being willingly so absolved or withdrawn from his allegiance, or who shall promise obedience to any such prince, state, or potentate.

In high treason there are no accessories, but all are princi-

pals, and therefore whatever act or consent will make a man accessory to a felony before the act done, the same will make him a principal in case of high treason. 3 *Inst.* 9. 21.

By the 7 W. -. c. 21. No person shall be prosecuted for high treason but within three years after the offence committed, except in the case of designing to assassinate the king's person. And by the 31 C. 2. c. 2. persons committed for high treason shall be indicted the next term, or next assize, otherwise they shall not be let to bail, unless it appear to the court, upon oath, that the witnesses for the king could not be produced in that time; and in such case, they shall be indicted the second term or assize, or else discharged.

By 7 An. c. 21 § 11. Persons indicted for high treason, or misprision of treason, shall have a copy of the indictment, and lists of the jurors and witnesses, delivered to them ten days before the trial; and shall have two such counsel as they shall desire assigned to them by the court, who shall have access to them at reasonable times. 7 W. c. 3.

The judgment for high treason (not relating to the coin) formerly was, that the offender should be carried back to the place from whence he came, and from thence to be drawn to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out and burnt before his face, and his head cut off, and his body divided into four quarters, and his head and quarters disposed of at the king's pleasure. 2 *Haw.* 443; but now, by the \*3 W. 4. c. 4. the sentence is, that "such person shall be drawn on a hurdle to the place of execution, and be there hanged by the neck until such person be dead, and that afterwards, the body of such person shall be dissected and anatomized."

In the said judgment is implied forfeiture of lands and goods to the king; loss of dower; and corruption of blood. 3 *Inst.* 211. But after the death of the pretender, (and of his issue) no attainder for treason shall disinherit or prejudice any heir or other person, other than the offender, during his life. 7. An. c. 21. § 10. 17. G. 2. c. 39. § 3.

By the 4 & 5 V. c. 24. § 18. The jury impanelled to try any person for treason, or felony, shall not be charged to inquire concerning his lands, tenements or goods, nor whether he fled for such treason or felony.

#### *Petit Treason.*

Is where a servant slayeth his master, or a wife her husband, and is distinguishable from high treason in this way; high treason can only be committed against the king's subjects.

By the\* 3 W. 4. c. 4. The punishment for petit treason is the same as in cases of murder. See also 4 & 5 V. c. 27. §2.

*Misprision of Treason.*

Misprision cometh of the french word *mespris*, which properly signifieth neglect or contempt, and misprision of treason, in legal understanding, signifieth when one knoweth of any treason, though no party or consentor to it, yet conceals it, and doth not reveal it in convenient time. 3 *Inst.* 36. 1 *H. H.* 371. The judgment of misprision of treason is, to be imprisoned during life, to forfeit all his goods for ever, and the profits of his lands during life. *Inst.* 36. Every man, therefore, that knoweth a treason, ought with all speed reveal it to the king, his privy council, or other magistrate. *H. Pl.* 127. But it seemeth that misprision of petit treason is not subject to the judgment of misprision of high treason, but only is punishable by fine and imprisonment, as in the case of misprision of felony. 1 *H. H.* 375.

*Commitment for High Treason.* (ARCHBOLD.)

*Commencement as ante. p.* 148.] on the — day of — in the year of our Lord, — at — in the said district, together with divers other false traitors unknown, armed and arrayed in a war-like manner, and unlawfully, maliciously and traitorously assembled and gathered together, most wickedly, maliciously and traitorously did levy and make war against our sovereign lady Queen Victoria — within this province, against the form of the statute in that case made and provided. And you, the said keeper, &c. *as ante. p.* 148. *to the end.*

*Another Form.* (ARCHBOLD.)

On the — day of — &c., and on divers other days, as well before as after, during an open and public war between our sovereign lady Queen Victoria — and — contriving and intending to aid and assist the said — in the prosecution of the said war against our said lady the queen, maliciously and traitorously was adhering to, and aiding and comforting the said — so being then an enemy of our said lady the queen. And you, the said keeper, &c.

TREASURER OF THE DISTRICT.

By the \*59 G 3. c. 7. §8. The justices in general quarter sessions were authorised to appoint the district treasurer, but now by the district council act 4 & 5 V. c. 10. §29, such power is

committed to the Governor: appointment to be made under the great seal after the person named shall have first given good and sufficient security, to be determined by the governor, for the due execution of the office, and for the faithful accounting for all monies which may come into his hands by virtue thereof, and for which by § 30 he is to be accountable by any bye law of the district council or other competent legislative authority. § 31. Saving always with regard to matters and things, not under the controul of the district council, he shall be and remain under the controul of and accountable to the justices and to other authorities and parties, as the district treasurer, appointed by the justices would have been if this act had not been passed. His duties and liabilities as prescribed by the above act being fully stated under the title "*District Councils*," p. 208, 209. It will be unnecessary here to repeat the same. The above act also empowers the district council to determine the amount and manner and time of payment of all salaries or other remuneration of district officers to be appointed under the authority of this act. § 39.

\* By the 6 G. 4. c. 6. § 6. the treasurer of the district is required to report to the sessions all lands upon which the assessments shall be eight years in arrear, after the 1st July, 1828, (extended by the \* 9 G. 4. c. 4. § 9. to the quarter sessions next after the 1st of July, 1829,) and such reports to be made annually. By § 9. Lands liable for sale for arrears, are to be advertised by the treasurer in the *Upper Canada Gazette*, and in some newspaper of the district within one month after rendering his account: and by § 19. the owner may, within twelve calendar months, resume the land sold, upon re-payment to the treasurer of the amount levied by sale and the expence, with 20 per cent. in addition. § 21. Treasurer neglecting to make returns required by this act, shall, on conviction at the assizes, forfeit his office; and the justices shall appoint another according to law; and upon the neglect of the justices the governor may appoint one during pleasure. § 24. The treasurer shall be entitled to receive, in account with the district, £5 for every account furnished under this act. § 27. The treasurer is bound to give to any person paying his assessment, a detailed receipt for the same; and by \*9 G. 4. c. 3. for assessments paid on lands in another district, upon payment of five per cent. on the rate, as a compensation, for which he shall keep a separate account, to be verified upon oath and transmitted to the treasurer of the district where the lands lie, annually, on the first day of July: and the treasurer receiving assessments from treasurers of other districts, is to credit the respective lots, and

transmit receipts to the treasurers forwarding the money. By § 6. After the 1st of July, 1829, treasurers are not to receive taxes upon lands in other districts, if they have been in arrear more than six years; in such case, the assessments must be paid in the district where the lands lie: and by § 7, no partial payment shall be received, when more than eight years' assessments are due. § 8. Imposes a penalty of £50 upon the treasurer for neglect of duty under this act, to be recovered before the general quarter sessions, upon the oath of one or more witnesses; one moiety to be paid to the informer and the other to the funds of the district; and justices in general quarter sessions next after the 1st of July, annually, are required to examine the accounts required by this act, and to ascertain whether the same have been transmitted, together with the monies, to the treasurer of the district interested therein.

† \*By 8 G. 4. c. 4. § 1. Justices of the peace are required to publish an annual account of the receipts and expenditures of the district funds: and by § 2. no treasurer shall be chairman of the quarter sessions.

## TREES.

By stat. 4 & 5 V. c. 25. §. 31. If any person shall steal, or shall cut, break, root up, or otherwise destroy or damage *with intent to steal*, the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be respectively growing, the stealing of such article or articles, or the injury done being to the amount of a shilling at the least, every such offender, being convicted before a justice of the peace, shall for every such offence forfeit and pay over and above the value of the article or articles stolen, or the amount of the injury done, such a sum of money, not exceeding £5, as to the justice shall seem meet.

By stat. 4 & 5 V. c. 26. § 19. If any person shall unlawfully and *maliciously* cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood respectively growing in any such park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, every such offender shall be guilty of a *misdemeanor*, and being convicted thereof shall be punished accordingly; and if any person shall unlawfully and maliciously cut, break, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood respectively growing elsewhere than in any of the situations hereinbefore mentioned, every such offender (in case the

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† Qy.—Whether now necessary under the District Council Act.

amount of the injury done shall exceed one pound) shall be guilty of a misdemeanor, and being convicted thereof shall be punished accordingly. § 20. If any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be respectively growing, the injury done being to the amount of *one shilling* at the least, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay over and above the amount of the injury done, such sum of money, not exceeding £1, as to the justices shall seem meet.

For the form of proceeding as to the penalties, see title "*Summary Conviction.*"

## TURNPIKES.

By the 4 & 5 V. c. 26. § 14. If any person shall unlawfully and maliciously throw down, level, or otherwise destroy, in whole or in part, any turnpike gate, or any wall, chain, rail, post, bar, or other fence, belonging to any turnpike gate, or set up or erected to prevent passengers passing by, without paying any toll directed to be paid by any act or acts, ordinance or ordinances relating thereto, in force in this province; or any house, building, or weighing engine, erected for the better collection, ascertainment, or security of any such toll, every such offender shall be guilty of a *misdemeanour*, and being convicted thereof shall be punished accordingly.

## USURY.

USURY is the offence of extorting an unreasonable rate of interest for the loan of money, beyond what is allowed by law, and from what is said in the books, it appears that usury was originally considered an offence at common law. 2 *Roll* 800. 3 *Inst.* 151. 152. 6 *Com. Dig.* *Usury (A.) Anon. Hardr.* 410. The rate of legal interest in this province, is 6 per cent. by the \*51 G. c. 9. § 6. Which also enacts, that all bonds, contracts, and assurances whatsoever, whereby a greater rate of interest shall be reserved and taken, shall be utterly void; and every person who shall either directly or indirectly take, accept, and receive, a higher interest, shall forfeit and lose for every such offence, treble of the value of the monies, wares, merchandizes and other things lent or bargained for, to be recovered by action of debt, in the court of King's Bench in this province; a moiety of such forfeiture to the use of the province, and the other moiety to the informer.



**VAGRANTS.****1. *Idle and Disorderly Persons.***

By the 7 J. c. 4. Idle and disorderly persons shall be sent to the house of correction; and by the 17 G. 2. c. 5. idle and disorderly persons are thus described:—1. All persons who threaten to run away, and leave their wives or children to the parish. 2. All persons who shall unlawfully return to the parish or place from whence they have been legally removed, by order of two justices, without bringing a certificate from the parish or place whereunto they belong. 3. All persons, who not having wherewith to maintain themselves, live idle without employment, and refuse to work for the usual and common wages given to other labourers in the like work in the parishes or places where they are. 4. All persons going about from door to door, or placing themselves in streets, highways, or passages, to beg or gather alms in the parishes or places where they dwell, all these shall be deemed idle and disorderly persons. And it shall be lawful for one justice to commit such offenders (being convicted thereof before him, by his own view, or confession, or oath of one witness) to the house of correction, to be kept to hard labour, not exceeding one month. And any person may apprehend, and carry before a justice, any such persons going about from door to door, or placing themselves in streets, highways, or passages, to beg alms in the parishes or place where they dwell, and if they shall resist or escape from the person apprehending them, they shall be punished as rogues and vagabonds.

**2. *Rogues and Vagabonds.***

By 17 G. 2. c. 5. The following persons shall be deemed rogues and vagabonds:—1. All persons going about as patent gatherers, or gatherers of alms, under pretences of loss by fire, or other casualty. 2. Persons going about as collectors for prisons, gaols or hospitals. 3. Fencers. 4. Bearwards. 5. Common players, not authorised by law. 6. Minstrels. 7. Jugglers. 8. Gypsies. 9. Or pretending to have skill in physiognomy, palmistry, or like crafty science, or tell fortunes. 10. Or using any subtle craft to deceive and impose on any of his Majesty's subjects. 11. Or playing or betting at any unlawful games or plays. 12. All persons who run away and leave their wives or children chargeable to any parish or place. 13. All petty chapmen and pedlars wandering abroad, not being duly licensed, or otherwise authorised by law. 14. All persons wandering abroad,

and lodging in ale-houses, barns, out-houses, or in the open air, not giving a good account of themselves. 15. All persons wandering abroad and begging, pretending to be soldiers, mariners, or seafaring men. 16. Or pretending to go to work in harvest. 17. And all other persons wandering abroad and begging, shall be deemed rogues and vagabonds.

### 3. *Incorrigible Rogues are thus described.*

1 All end-gatherers offending against the statute of the 13 G. being convicted of such offence. 2. All persons apprehended as rogues and vagabonds, and escaping from the persons who apprehend them. 3. All rogues or vagabonds who shall break or escape out of any house of correction, before the expiration of the term for which they were committed or ordered to be confined by this act. 4. All persons who, after having been punished as rogues and vagabonds, and discharged, shall again commit any of the said offences: all these shall be deemed incorrigible rogues. § 4.

### 4. *Apprehending Rogues.*

If any person shall be found offending against this act, the constable shall apprehend him, and convey, or cause him to be conveyed, to a justice of the peace. 17 G. 2. c. 5. § 5. under the penalty of 10s. for such refusal. *Ib.* And any other person may apprehend and carry him to the constable, or to a justice.

### 5. *Punishment.*

And such justice shall order such person so apprehended to be publicly whipped by the constable, or shall order him to be sent to the house of correction, (or common gaol; 27 G. 3. c. 11.) till the next sessions, or for any less time, as such justice shall think proper. 17. G. 2. c. 5. § 7. And if committed till the sessions, and the justices at such sessions shall, on examination of the case, adjudge such person to be a rogue or vagabond, or an incorrigible rogue, they may order such rogue or vagabond to be detained in the house of correction for any further time, not exceeding six months; and such incorrigible rogue, for any further time not exceeding two years, nor less than six months, and during his confinement to be whipped in such a manner, and at such times and places, as they shall think fit. And if such incorrigible rogue, so ordered by the sessions to be detained in the house of correction, shall break out, or make his escape, or shall offend again in like manner, he shall be guilty of felony, and be transported for seven years. 17 G. 2. c. 5. §

7. 8. 9. And by the 13 & 14 C. 2. c. 12. the justices in sessions may transport such rogues, vagabonds, and sturdy beggars, as shall be duly convicted and adjudged to be incorrigible. §23.

## 6. *Penalty on lodging Vagrants.*

If any person shall knowingly permit any rogue, vagabond, or incorrigible rogue, to lodge or take shelter in his house, barn, or other out-house or building, and shall not apprehend and carry him before a justice, or give notice to the constable to do so, he shall forfeit not exceeding 40s. nor less than 10s., upon conviction before one justice, half to the informer, and half to the poor, by distress and sale. 17. G. 2. c. 5. § 23.

## 7. *General penalty for hindering the execution of the Vagrant Act.*

If any constable, or other officer, or governor of any house of correction, shall be defective in his duty; or if any person shall hinder the execution of this act, or shall rescue any person apprehended, or aid therein, he shall, on conviction before one justice, forfeit not exceeding £5, nor less than 10s., and in default, be committed to the house of correction, with hard labour, not exceeding two months. 17 G. 2. c. 5. § 22.

# VEGETABLES.

By the 4 & 5 V. c. 25. § 34. If any person shall steal, or shall destroy, or damage with intent to steal, any tree, sapling, shrub, bush, plant, root, fruit, or vegetable production, growing in any garden, orchard, nursery-ground, hot-house, greenhouse, or conservatory, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money, not exceeding £5, as to the justice shall seem meet; and if any person so convicted shall afterwards commit any of the said offences, such offender shall be deemed guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny. § 35. If any person shall steal, or shall destroy or damage with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, or for dyeing, or for or in the course of any manufacture, and growing in any land open or enclosed, not being a garden, or nursery ground, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay over and above the value of the article or articles stolen, or the amount of the injury done, such

sum of money not exceeding 20s. as to the justice shall seem meet, and in default of payment thereof, together with the costs if ordered, shall be committed to the house of correction for any term not exceeding one calendar month, unless payment be sooner made.

For form of proceeding see title "*Summary Punishment.*"

## VESSELS.

\*By the 7 W. 4. c. 22. § 1. Enacted, that all steam-boats, schooners, vessels, and rafts, that shall be navigated upon the lakes and rivers of this province, and the British channel of the St. Lawrence river, between the port of Kingston and the eastern boundary of the province, shall have affixed, and the person or persons commanding or having charge of the same are required to affix, one or more light or lights on the bow, or some conspicuous place of such steam-boat, schooner, or other vessel, during every night that such vessel shall be navigating the said lakes, rivers, and channel, or either of them. § 2. For the purposes of this act, the night shall be construed to extend from one hour after sunset to one hour before sunrise, at all seasons of the year. § 3. Every steam-boat, or vessel, carrying passengers, shall be provided with a good and sufficient *gang board*, or gang boards, with substantial hand rails; and the master thereof shall, on stopping at any wharf or landing place, cause the same to be firmly secured to the vessel and wharf or landing place, for the safe and convenient transit of passengers; and shall cause to be affixed to the gangways (in the night time) good and sufficient lights; and the owners or occupiers of every such wharf or landing place, shall also (in the night time) cause to be shewn conspicuously on such wharf or landing place, and at every angle or turn thereof, a good and sufficient light. § 4. All vessels navigating as aforesaid shall be bound to take the *starboard* or right hand side of every channel, in proceeding up or down the said lakes, rivers, or channel, so as to enable vessels meeting each other to pass in safety; and when any two vessels are trying to windward, and there may be a doubt which vessel should pass to windward, the vessel on the starboard tack shall keep her wind, and the vessel on the larboard tack shall bear up or go to leeward. § 5. Whenever any steam-boat, schooner, or other vessel, or any raft shall be going in the same direction with another steam-boat, schooner, or other vessel, or with any raft or rafts a-head of it, it shall not be lawful to navigate the first mentioned boat, schooner, vessel or raft, so as to approach or pass the other, so being a-head, within the distance of twenty

yards; nor to navigate the boat, &c., so being a-head as unnecessarily to bring it within twenty yards of the steamboat, schooner, vessel or raft following it. § 6. The master having charge of any steamboat, schooner, vessel or raft, at anchor in the night time, shall cause a good and sufficient light to be shewn in some part of the rigging or other conspicuous place of the said boat, &c. § 7. Any person commanding or having charge of any steamboat, schooner, or vessel navigating the said lakes, rivers or channel, or any or either of them, offending against the provisions of this act, shall be liable to a penalty of £5, to be recovered upon conviction of such offence upon the oath of one credible witness, before any *two* of his majesty's justices of the peace; and in default of payment of such penalty, with the costs and charges of and incident to conviction, it shall be lawful for the said justice\* or justices to commit such person or persons to the gaol of the county or district wherein such conviction shall be made for any period not exceeding 30 days, as the said justices in their discretion shall direct. § 8. The owner or owners of all steamboats, schooners, and other vessels, the persons commanding or in charge of which shall neglect to comply with the provisions of this act, shall be liable for all damages to be sustained by any person or persons from any accident arising from non compliance, such damages to be recoverable by trial at law in the King's Bench.

*Form of Information against the Captain of a Steamboat under the*  
 \*7 W. 4. c. 22. § 1 & 7. Penalty £5.

Home District, } Be it remembered that on the — day of  
 to wit. } — in the year of our Lord — at — in the  
 said district, C. D. of —, in the district aforesaid —, who as  
 well for our said lady the queen as for himself doth prosecute  
 in this behalf, personally cometh before us, two of her  
 Majesty's justices of the peace for the said district, and informeth  
 us that A. B., late of the township of —, being at the time  
 of the offence being committed as hereinafter mentioned the  
 person commanding and having charge of a certain steamboat  
 monly called or known by the name of — navigating Lake  
 Ontario, did on the night of —, the day — of —, to wit at —  
 o'clock of the said night, and while the said steamboat was being  
 navigated on and over the said lake, to wit, between the ports  
 of —, in the — district, and the port of Toronto, in the said  
 Home district, neglect to affix, and did then and there navigate  
 and cause the said steamboat to be navigated upon and over the

\* So in the act.

said lake, between the said ports, without a light or lights on the bow or some conspicuous place of such steamboat, contrary to the form of the schedule in such case made and provided, whereby, &c. [*conclude as in the form given ante p. 178.*]

For the forms of "*Summons*" and "*Conviction*" see ante p. 178—587.

## WARRANT.

A WARRANT is a precept under the hand and seal of a magistrate or other public functionary, directed to some officer, either to arrest an offender or to seize or distrain upon his goods, to be dealt with respectively in either case, according to law. A warrant can only be executed by some one or more of the persons to whom it is directed, unless, indeed, it be directed to the sheriff, who may either by parol or by precept in writing, authorise an officer, sworn and known, to execute it, but the sheriff cannot empower any other person without a precept in writing. 1 *Haw. c. 60. § 11.* If the warrant direct the officer to cause the party complained of to come before some justice of the peace, to find surety for keeping the peace, the officer, before he makes any arrest, ought first to require the party to go with him, and find sureties according to the purport of the warrant, and if he refuses, the officer may carry him by force before the magistrate, or confine him in some gaol till he can be conveniently brought before the magistrate. *Ibid.* If the warrant specially direct that the party shall be brought before the justice who issued it, the officer ought not to carry him before any other; but if the warrant be general, to bring him before any justice, the officer has then the election to bring him before what justice he pleases, and may carry him to prison for refusing to obey the warrant. *Ibid.*

In what cases, and in what form a warrant may be granted for the apprehension of a party, see ante "*Arrest*," p. 40; "*Justices of the Peace*," p. 378.

For what cause, and in what form a warrant of commitment may be issued, see "*Commitment*," p. 145.

And see further, "*Distress*," "*Search Warrant*," and "*Habeas Corpus*."

## WEIGHTS AND MEASURES.

\* By 4 G. 4. c. 17. The secretary shall furnish each district with a true standard. § 4. Magistrates in quarter sessions shall appoint one inspector to take charge of all such weights and measures, whose duty shall be, at all proper times when appli-

cation is made to him, carefully to examine and compare all weights and measures presented to him with the standard in his charge, and when found true, to stamp the same (if a measure) as near the two ends or top and bottom, as may be, G. W. R. for which he shall receive for every piece so marked, 4d. and no more. § 5. Inspectors may be removed and others appointed by the magistrates, as often as they shall think proper; and every inspector before entering upon his office shall take the following oath.

“I, A. B. do sincerely promise and swear that I will carefully preserve all such weights and measures as shall be given me in charge as a standard for the district of — and that I will honestly and faithfully discharge the duties of inspector of weights and measures for the said district — according to the true intent and meaning of an act of parliament of this Province, passed in the fourth year of the reign of King George the fourth, according to the best of my abilities and knowledge, and deliver them over to my successor in office, duly appointed for that purpose, when required so to do. So help me God.”

§ 6. And all store-keepers, shop-keepers, millers, distillers, butchers, bakers, hucksters, and other trading persons, who shall have in his possession any weights or measures, whereby he sells or buys any articles, other than such as have been examined and stamped as aforesaid, shall, upon being convicted before any one justice, on the oath of one witness, forfeit £2. for every offence, to be levied, with reasonable costs, by distress and sale, and in default the offender shall be committed to the common gaol for a term not exceeding one month. § 7. One moiety of the penalty shall be paid to the informer and the other to the province.

\*By the 3 V. c. 17. § 1. Inspector of weights and measures are required to publish in one or more newspapers in the district from time to time, the different places and times in their districts, where and when they shall attend with the stamps and copies of the standard weights and measures in their custody, to examine, compare and stamp correct, all weights and measures made use of in buying or selling. § 2. So much of the 7th sec. of the \*4 G. 4. c.—as enacts that one half of the penalty shall be paid to the informer is repealed. § 3 Information of the inspector upon oath to be *prima facie* evidence for a conviction.

*Information for having Weights &c. contrary to the Statute.*

— to wit. The information and complaint of A. B. of — being a person duly appointed and sworn to examine the weights and

measures within the district of — preferred at a petty sessions held for the said district, at — in the said district, before us J. C. and S. P. esquires, (or before one justice) justices of the peace for the said district, whose names are hereunder written, this — day of — in the year of our Lord 18— who saith, that on the — day of — one C. D. of — grocer and shop-keeper, (he the said C. D. being a person who sells by retail and weight, goods, wares and merchandizes,) at the dwelling-house and shop of him the said C. D. situate at — in the said district, then and there had in his possession, in his said dwelling-house and shop, certain weights and measures, to wit, [*here describe them*] whereby he the said C. D. sold and bought, and which were not duly marked and stamped, as by law is required, contrary to the form of the statute in that case made and provided, whereby he the said C. D. hath incurred the forfeiture of £2. imposed by the said act of parliament, for the said offence, and therefore he prayeth that he may be summoned according to law.

Exhibited before us, the —  
day of — 18—.

N.B.—The above information should not be upon oath. The party informing being interested in the penalty is not therefore a competent witness; but in support of the conviction one other credible witness, not interested, should be called and sworn. Proof of either buying or selling will be sufficient.

*Summons thereon.*

To C. D. of —

— to wit. Whereas A. B. of — in the said district, being a person duly appointed and sworn to examine the weights and measures within the district of — hath this day preferred an information against you, for having on the — day of — at your dwelling-house and shop, situate at — in the said district, in your possession certain weights and measures, to wit, [*here describe them*] whereby you sold and bought, and which were not duly marked and stamped as by law is required, contrary to the form of the statute in that case made and provided, whereby you the said C. D. have incurred the forfeiture of £2. imposed by the said act for the said offence; these are therefore to require you personally to appear before us, or such other of her Majesty's justices of the peace for the — district, as shall be present at the petty sessions to be holden at — in the said district, on — the day of — at — o'clock in the forenoon of the same day, then and there to answer the premises. Herein fail you not. Given under our hands and seals this — day of —.



## Conviction.

The conviction must be in the general form required by the 2\* W. 4. c. 4. see title "*Conviction*," see the form *ante* p. 178.

See also titles "*Distress Warrant*," *ante* p. 200, and "*Commitment*," *ante* p. 149.

## WIFE.

THE wife of a man (in legal language a *feme covert*) is so much favored in law on account of the matrimonial subjection due from her to her husband, that if she commit theft, or even a burglary, by his coercion, or merely in his company, when the law presumes a coercion, she is held to be exempt from punishment; being considered as acting in either of these instances by compulsion, and not of her own free will. This doctrine, Sir Wm. Blackstone observes, is at least a thousand years old, being to be found among the laws of king Ina, the West Saxon. 4 *Bl. Com.* 28. The presumption of coercion, however, does not amount to more than a *prima facie* presumption of law, and therefore if it appear in evidence that the wife was not drawn to the offence by the husband, but that she was in fact the principal instigator of it, or was acting herself as a free and independent agent, she is in this case guilty as well as the husband. If the wife also procure her husband to commit the offence, she is then an accessory before the fact, in the same manner as if she had been sole. 1 *Hale.* 516. 2. *Haw. c.* 29. § 34.

There are also some exceptions as to the impunity of the wife in committing crimes, even though acting under the coercion of her husband, by reason of the heinousness of the offence committed. Thus, in treason, no plea of *coverture* shall excuse the wife. 4 *Bl. Com.* 29. In murder also, and offences of the like description which are prohibited by the law of nature, and are *mala in se*, the wife is held a responsible agent notwithstanding the coercion of her husband.

In inferior misdemeanor, there is also another exception as to the irresponsibility of the wife, for she may be indicted and punished *with* her husband for keeping a *brothel*; this being considered to be an offence touching the domestic economy of the *house*, in which the wife has necessarily a principal share, and of that description, moreover, which the law presumes to be generally conducted by the intrigues of the female sex. 1 *Haw. c.* 1. § 12. But a prosecution for a *conspiracy* is not maintainable against husband and wife only, because they are esteemed but

one person in law; and in order to support an indictment for conspiracy there must be a conspiring between *two* persons at the least. 1 *Haw. c. 72. § 8.* In all cases, however, where the wife offends *alone*, without the company or coercion of her husband, she is then as much responsible for her offence as any *feme sole.* 4 *Bl. Com. 29.* And whenever she commits an offence in the absence of her husband, it will be no excuse that she committed it by his order. *R. v. Morris, R. & R. 270.* If a woman receives stolen goods into her house, knowing them to be so, or lock them up in her chest or chamber, without the knowledge of her husband, she alone may be indicted. But if the ignorance of the husband is not satisfactorily proved, as by his continued absence from home, or by other circumstances, the law will, in most cases, impute the receiving to him, and not to the wife. *Dalt. c. 357 p. 353.* Although the husband may be indicted as an accessory for receiving the wife, knowing her to have committed a felony, yet the wife shall not be deemed an accessory for receiving her husband. Neither is the wife affected by receiving jointly with her husband a *third person*, who has committed felony; except in case of treason. But if she alone, in the absence of her husband, and without his knowledge, knowingly receive a felon, she may then be indicted as an accessory, and not the husband. 1 *Hale, 47. 621.* 1 *Haw. c. 1. § 10.* A wife cannot be convicted of felony in stealing her husband's goods. But if the wife take the goods of her husband and deliver them to B. who elopes with her and the goods, as her *adulterer*, this will then be felony in B. *Dalt. c. 10. Pl. 268. R. v. Tolfree, Ry. & M. 243.* Husband and wife being but one person in law, and their interest absolutely the same, they cannot give evidence for the benefit of each other. *Gill Ev. 119;* not even by the consent of the other party, *Cas. Temp. Hard. 264.;* neither can they be witnesses against each other, 1 *Phil. 84.;* except in cases of personal injury to the wife, when she is, on the principle of humanity and justice as well as necessity, admitted as a witness against her husband; as where the husband is indicted for shooting at her, or attempting to poison her, or for assaulting and beating her. 1 *Str. 633. B. N. P. 287. R. v. Whitehouse 2. Russ. 606. R. v. Jagger, Ib.* But in these cases, the wife ought only to be admitted to prove facts, which cannot be proved by any other witness. *Per Holroyd. J. 2 Russ. 606.* So her dying declarations are admissible against him, in the case of murder. *R. v. Woodcock. 1 Leach. 500. R. v. John, Ib. 504. n. (a.)* So the wife is always permitted to swear the peace against her husband. *Ib.* Finally, it seems to be allowed that in all cases where a wife is a competent

witness *against* her husband, she is also an admissible witness for him. *R. v. Perry, cit. in R. v. Serjeant.* 1 *Ry. & M.* 354. And the same rules of necessity which admit the wife to give evidence against her husband, will also permit the husband to be a witness against the wife, in cases of personal injury,—such as murder, assault, and surety of the peace where any violence is threatened by the wife against the husband. There is a foolish notion prevalent with the lower orders in England, that if a man sell his wife with a halter round her neck in *market overt*, this operates as a divorce, “*a vinculo matrimonii*,” and that both buyer and seller may lawfully make such a bargain. Such a brutal act is, however, grossly illegal, and indictable at common law, as a misdemeanor.

WILLS.—See “*Register Office*.”

## WINES, &c.

By \*40 G. 3. c. 4. Entitled “an act for the summary conviction of persons selling spirituous liquors by retail, without licence,” it is enacted that if any person shall directly or indirectly sell any wine, brandy, rum, or other spirituous liquor by retail, without a licence, such person having been summoned to appear before any three or more justices, and lawfully convicted by the oath of one or more witnesses, shall forfeit £20, to be levied with costs of suit, by distress and sale, one half to the informer and the other to the province; and in default of distress, committed to the gaol of the district for three calendar months. § 2. Upon information upon oath, any one justice may issue his warrant against any offender *not usually resident in the place*, and compel him to enter into recognizance with one or more sureties to appear at the hearing; and in default of bail, commit him to gaol until complaint disposed of. § 3. No shop-keeper, duly licensed, shall sell less than one quart, under the penalty of £20, to be levied as aforesaid. § 4. Information to be laid within six calendar months.

By the \*3 V. c. 20. § 7. Inspector of the district may grant a licence to the owner or person in charge of any steamboat or vessel in this province, to sell or vend wine, brandy, or other spirituous liquors, on board thereof, upon payment of £7 10s. currency; but none to be sold on board the same during the time such steamboat or vessel shall be laid up during the winter, under the same penalty as now imposed for selling spirituous liquors without license. § 8. Every owner, or person in charge of a steamboat or vessel, who shall vend or sell, or allow to be

sold or vended, any wines or spirituous liquors on board the same, without such license from the inspector of the district within which such steamboat or vessel shall be laid up during the winter season, or from the inspector of the district in which the port or steamboat landing next adjacent to the wintering place of such steamboat or vessel shall happen to be situated; such owner or person in charge shall be subject to all the penalties now imposed by the laws of this province upon persons selling spirituous liquors without license: which penalties shall be recovered before any two or more justices of the peace, and be levied by distress and sale of the tackling or furniture of such steamboat or vessel, by warrant under the hands and seals of the justices before whom such offender shall be convicted.

A conviction under the \*40 G. 3. c. 4. for selling spirituous liquors without licence, was quashed because the information stated that "the defendant was in the habit of selling spirituous liquors without licence," without charging any specific offence, and not shewing time nor place, nor that the liquors were sold by retail; and also because the conviction directed the defendant to pay the costs of the prosecution, without specifying the amount. *Rex v. Ferguson. Trin. 3 & 4 W. 4. Cameron's Digest, p. 20.*

*Information for selling Wine, &c. without a License. (ARCHBOLD.)*  
Penalty, £20. \*40 G. 3. c. 4.

*Commencement as in the form ante, p. 344.]* informeth us, that C. D. late of the township of —, in the district aforesaid, yeoman, within the space of six calendar months now last past, to wit, on the — day of —, in the year aforesaid, at the township aforesaid, in the district aforesaid, did sell wine, [*brandy, rum, or other spirituous liquor,*] to wit, one quart of wine, by retail, without being duly licensed so to do, contrary to the form," &c. [*as ante, p. 344 to the end.*]

*Summons.*

Same as the form *ante*, p. 587.

*Warrant against the Defendant, if not usually resident in the place.*

Home District, } To the constable of —, in the said district:  
to wit. } Whereas C. D. of —, hath this day been  
charged before me, J. P. one of her Majesty's justices of the  
peace for the district aforesaid; for that he, the said C. D. on  
the — day of —, &c. [*here state the matter as laid in the informa-  
tion.*] These are therefore to command you, in her Majesty's

name, forthwith to apprehend and bring before me, or some other of her Majesty's justices of the peace for the said district, the body of the said A. B. to be dealt with according to law. Herein fail you not. Given under my hand and seal, the — day of —, in the year of our Lord —. J. P.

N.B.—The act requires, in case a warrant is issued, that an information upon oath should be previously taken. The justice should therefore, before granting the warrant, require the informer to produce his witness, whose deposition should be taken in writing and sworn to. This deposition should also state that the defendant is not usually resident in the district.

*Recognizance on the above Information.*

The form of the recognizance will be the same as *ante*, p. 524.

The condition of this recognizance is such, that if the above bounden C. D. shall and do personally appear at the hearing of the said complaint, on —, the — day of — next, at the township of —, in the said district, at the hour of — in the forenoon of the same day, before such of her Majesty's justices of the peace as shall be then and there assembled in petty sessions, and then and there answer to the complaint charged against him in the said information, and not depart without leave, then this recognizance to be void, or else to remain in full force.

*Commitment for want of Sureties.*

Home District, } To the constable of — in the said district, and  
to wit. } to the keeper of the common gaol at Toronto, in the said district: Whereas C. D. late of — stands charged by an information in writing, upon the oath of a credible witness, exhibited and sworn before me, J. P. esq. one of her Majesty's justices of the peace for the said district, for that he, the said C. D. on the — day of —, &c. [*reciting the matter charged in the information.*] And whereas, the said C. D. not being usually a resident within this district, but commonly residing out of the same, is now required by me, the said justice, to enter into a recognizance with sufficient sureties, that is to say, himself in — pounds, and each of his sureties in the sum of — pounds for his appearance at the hearing of the said information, on the — day of —, at — aforesaid, in the district aforesaid, before such of her Majesty's justices of the peace as shall be then and there assembled in petty sessions, pursuant to the statute in such case made and provided; but the said C. D. hath neglected and refused so to do: These are therefore to command you, the said constable, to take the said C. D. and him safely to convey to the common gaol at Toronto, aforesaid,

with this precept: and I do hereby command you, the said keeper, to receive the said C. D. into the common gaol, and him there safely keep until the — day of — next; when you, the said keeper, are hereby required to bring him, the said C. D. before the said justices, to answer the said complaint charged against him in the said information, at —, in the said district, unless the said C. D. shall sooner enter into such recognizance as aforesaid. Given under my hand and seal, &c.

The conviction should be in the form required by the \*2 W. 4. c. 4. See *ante*, p. 178. See also title "*Distress Warrant*," *ante*, p. 200, and *Commitment*," *ante*, p. 149.

## WITNESSES.

WITNESSES may be compelled to give their evidence in criminal cases by recognizance or subpœna. If a witness examined before a justice, refuses to be bound over, the justice may commit him. 2 *Hale*, 284. And where a *married woman* refused to undertake to appear at the trial, or to find sureties for her appearance, the magistrate was held justified in committing her. 3 *M. & S.* 1. But though a person may be committed for not entering into recognizance to prosecute and give evidence, yet the party shall not be committed for his inability to find a person to join in such recognizance; his own recognizance is all that can or ought to be required. *Arch. Com.* 12. *Toone*, 270. If the witness, after being served with a *subpœna*, neglect to appear, an application may be made to the court of king's bench, for an attachment against him. *R. v. Ring*, 8 *T. R.* 585. 1 *Star. Ev.* 119. A witness, whether bound over or subpœnaed, or attending voluntarily for the *bona fide* purpose of giving evidence, is privileged from arrest *eundo, redeundo et morando*; if no more than a necessary time is occupied by him upon either of those occasions. 1 *H. B.* 636. 2 *Bl.* 1113. In allowing witnesses time sufficient for these purposes, the courts are always disposed to be liberal. 1 *Phil. Ev.* 4. If a witness, under such circumstances, be arrested, the court out of which the *subpœna* issued, or the judge of the court in which the cause has been tried, will, upon application, order him to be discharged; but this privilege of a witness does not extend to arrests by his bail, for the purpose of surrender; for he is supposed to be in their custody even while he is attending as a witness. *Exp. Lyne*. 3 *Star. Rep.* 132.

\*By stat. 3 W. 4. c. 3. § 8. It is enacted, that when the attendance of any person in gaol or upon the limits, shall be required in court, at the assizes, the court shall and may in its

discretion, order the sheriff, gaoler, or other person having the custody of such prisoner, to deliver him to the person named in such order to receive him, which person shall thereupon instantly convey such prisoner to the place where the court issuing such order shall be sitting, to receive and obey such further order as to the said court shall seem meet, provided that no prisoner for debt or damages be removed out of the district.

To dissuade, or endeavour to dissuade a witness from giving evidence against a person indicted, is an offence at common law, though the persuasion should not succeed, and for which the party may be indicted as for a misdemeanor. 1 *Haw. P. C.* c. 21. § 15. *R. v. Lawley*, 2 *Str.* 904.

*Payment of the Expenses of Witness.*

In civil cases, a witness is not bound to attend unless his reasonable expenses be previously tendered to him, but in criminal cases he is bound to attend unconditionally. 2 *Haw. c.* 46. § 173. But, several statutes enable the court to allow prosecutors and witnesses a remuneration for their expenses and loss of time, and in one particular instance entitled the witnesses to a tender of expenses.

By stat. 25 G. 2. c. 36. § 11. The court before whom any person hath been tried and *convicted* of any grand or petit larceny, or other felony, may, at the prayer of the prosecutor, and on consideration of his circumstances, order the treasurer of the county in which the offence shall have been committed, to pay him such sum as they shall judge reasonable, not exceeding the expenses he was put to in carrying on the prosecution, with a reasonable allowance for his time and trouble; and the clerk of assize or of the peace, shall forthwith make out such an order, and deliver the same to the prosecutor, on paying 1s., and the treasurer shall pay the same on sight, and be allowed the same in his accounts.

By stat. 27. G. 2. c. 3. § 3. When any poor person shall appear on *recognizance* in court to give evidence in cases of grand or petit larceny, or other felony, the court may order the treasurer to pay him such sum as they shall think reasonable for his time, trouble, and expenses; which order the proper officer shall make out for the fee of 6d. And by stat. 13 G. 3. § 7. The court before whom any person hath been tried and convicted of any grand or petit larceny, or other felony; or before whom any person hath been tried and *acquitted* of any grand or petit larceny, or other felony; in case it shall appear to the said court that there was a reasonable ground of prosecution, and that the prosecutor had *bona fide* prosecuted, may order the

treasurer to pay to such prosecutor such sum as they shall think reasonable, not exceeding the expenses he was *bona fide* put unto; making also, if he shall appear to be in poor circumstances, a reasonable allowance for his trouble and loss of time; which order the clerk of assize or clerk of the peace respectively, shall forthwith make out and deliver to him, on being paid for the same 1s. and no more; and the treasurer, upon sight of the order, shall forthwith pay the same.

For the forms of “*Summons*,” “*Warrant*,” and “*Recognizance*” of a witness, see title “*Justice of the Peace*,” *ante*, p. 379.

*Commitment of a Witness for refusing to enter into his own Recognizance to appear and give Evidence.*

Home District. } To the keeper of the gaol at —, in the said  
to wit. } district. Forasmuch as A. B. whose body  
is herewith sent you, hath admitted before me, J. P. esq. one of  
her Majesty’s justices of the peace for the said district, that [he  
was present when a certain felony and robbery was committed  
upon the person of A. B. on Friday last, at —,] but hath re-  
fused to be examined upon oath respecting the said felony, and to  
enter into his recognizance now here required by me, the said  
justice, in the sum of — to appear and give evidence upon a  
bill of indictment to be preferred at the next assizes and general  
gaol delivery for the said district, against C. D. who stands  
charged with said felony; and the said A. B. being a material  
and necessary witness for the prosecution in such case: these  
are therefore to authorise and require you, the said keeper, to  
receive the said A. B. and him safely keep in your custody until  
he shall enter into such recognizance in due form of law, or be  
otherwise discharged in due course of law; and for so doing,  
this shall be your sufficient warrant. Given under my hand  
and seal, at —, this — day of —, 184—.

*Another Form.*

— District, } To the constable of — and to the keeper of the  
to wit. } common gaol at — in the said district, Whereas,  
A. B. was this day charged before me, J. C. Esq. one of her  
Majesty’s justices of the peace in and for the — district, with  
having feloniously stolen — the property of C. D. of — yeoman,  
and upon examination of the said A. B. one E. F. of — in the  
said district, labourer, did give material evidence on oath, be-  
fore me, the said justice, against the said A. B. touching the  
said felony; whereupon the said E. F. is required by me, the



said justice, to become bound in a recognizance in the sum of £ — conditioned for his personal appearance at the next general quarter sessions, to be held in and for the said district, then and there to give evidence as he knoweth, on the part of our lady the queen, against the said A. B. on his trial for the said felony; but inasmuch as the said E. F. hath obstinately and contemptuously refused to enter into such recognizance; these are, in her Majesty's name, to command you, the said constable, forthwith to convey and deliver the said E. F. into the custody of the keeper of the common gaol aforesaid, together with the duplicate of this, my warrant; and also, to command you, the said keeper, to receive the said E. F. into your eustody in the said common gaol, and him there safely to keep, until the next general quarter sessions, to be held in and for the said district, or until he shall enter into such recognizance as aforesaid.

Given under my hand and seal, &c.

*Form of an Indictment for dissuading a Witness to give Evidence.*  
(CHITTY.)

Home District, } The jurors, &c. That on, &c. a certain writ  
to wit. } of our lady the queen, called a *subpœna ad*  
*testificandum*, had been and was duly issued and tested, by and  
in the names of C. D. of &c. at &c. the same day and year afore-  
said, the said C. D. then and there being *custos rotulorum*, in and  
for the said district, which said writ was directed to E. F. and  
G. H. by which said writ our said lady the queen commanded,  
&c. (recite the writ.) And the jurors, &c. do further present  
that a copy of the said writ was on &c. at &c. duly served on  
the said J. K. who then and there had notice to appear and give  
evidence according to the exigency of such writ, and that the  
evidence of the said J. K. at the time of issuing the said writ,  
and from thence until and upon the said &c. therein mentioned,  
was material and necessary to have been given before the said  
grand jury, on the said bill of indictment so to be preferred  
against the said A. B. as aforesaid; and that at the sessions of  
the peace, holden by adjournment at — aforesaid, in and for the  
said district, on &c. aforesaid, such bill of indictment was pre-  
ferred against the said A. B. to and before a certain grand jury,  
then and there duly assembled in that behalf. And the jurors,  
&c. do further present that A. B. late of &c. being an evil dis-  
posed person, and contriving and intending to obstruct and im-  
pede the due course of justice on &c. at &c. unlawfully and  
unjustly dissuaded, hindered, and prevented, the said J. K. from  
appearing before the said justices at the said sessions of the  
peace, holden as aforesaid, to testify the truth and give evidence

before the said grand jury, on the said bill of indictment so preferred against the said A. B. as aforesaid; (and the said A. B. in consequence thereof, did not so appear and give evidence according to the exigency of the said writ,) to the great obstruction, hindrance, and delay of public justice, in contempt &c. to the evil &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present that on the said, &c. a certain other writ of our said lady the queen had duly issued, directed to the said E. F. and G. H. by which said last mentioned writ our said lady the queen commanded the said E. F. and G. H. that &c. (*recite the writ.*) And the jurors, &c. do further present that the evidence of the said J. K. at the time of issuing the said last mentioned writ, and from thence until and upon the said, &c. therein mentioned, was material and necessary to have been given before the said grand jury, in the said bill of indictment, so to be preferred against the said A. B. as aforesaid. And the jurors, &c. do further present that the said A. B. being an evil disposed person, &c. (*same as first count saying, "endeavoured to dissuade," &c. and omitting the allegation between the brackets.*)

## WOLVES.

By the \*6 W. 4. c. 29. the \*49 G. 3. c. is repealed. § 2. Any person who shall produce the head of a wolf with the ears on before any justice of the peace, acting for any district in this province, and shall make oath or affirmation, as the case may be, or otherwise prove to the satisfaction of the justice that the wolf was killed within that district, or within one mile of an actual settlement in the district, shall be entitled to receive of the treasurer of the district the sum of £1 10s. 0d. as a bounty for the same. § 4. The justice before whom the head of the wolf shall be produced having first cut off the ears thereof, shall give the person a certificate that the fact has been proved to his satisfaction, which certificate shall authorize the person holding the same to demand and receive from the treasurer the said bounty. § 4. Who shall pay the same on presenting such certificate, provided the funds of the district in hand shall enable him, otherwise out of the first monies which shall come into his hands. § 5. Annual expences for building a court-house and gaol, and keeping same in repair; the fees of the clerk of the peace, and salary of the gaoler; the maintenance of prisoners, and wages of members of assembly, *to be first paid.* § 6. When the funds of the district are insufficient, such certificate shall be a lawful tender towards any district rate or assessment

wherein such wolf shall have been destroyed. § 7. This act to be in force for *four* years.

Continued by the 4 & 5 V. c. 23. § 1. until the 1st day of November, 1844.

## WOMEN.

If a woman, quick with child, be condemned either for treason or felony, she may alledge her being with child, in order to get the execution respited, and thereupon, the sheriff shall be commanded to take her into a private room and to impanel a jury of matrons, to try and examine whether she be quick with child or not; and if they find her quick with child, the execution shall be respited till her delivery. But a woman cannot demand such respite of execution by reason of her being quick with child more than once. 2 *Haw.* 464.

See also titles "*Abduction,*" "*Rape.*"

## WOOD.

By the 4 & 5. V. c. 25. § 33. If the whole or any part of any tree, sapling or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, rail, stile, or gate, or any part thereof, being of the value of two shillings at the least, shall by virtue of a search warrant, to be granted as in the said act is mentioned, be found in the possession of any person, or on the premises of any person with his knowledge; and such person being carried before a justice of the peace, shall not satisfy the justice that he came lawfully by the same, he shall on conviction by the justice, forfeit and pay over and above the value of the article or articles so found, any sum not exceeding £2. § 55. Any person found committing any offence, punishable by this act, either upon indictment or *summary conviction*, may be immediately apprehended without a warrant by any peace officer, or by the owner of the property, or by the servant of any person authorised by such owner, and forthwith taken before some neighbouring justice, to be dealt with according to law; and if any credible witness shall prove on oath before a justice, that there is reasonable cause to suspect that any property whatsoever, with respect to which any such offence shall have been committed, is in any dwelling house, outhouse, garden, yard, croft or other place or places, the justice may grant a search warrant, as in the case of stolen goods.

For further proceedings, see title "*Summary Conviction.*"

**WRECK.**

By the 4 & 5 V. c. 25. § 22. whosoever shall plunder or steal any part of any ship or vessel which shall be in distress or wrecked, stranded or cast on shore, or any goods, merchandize, or articles of any kind belonging to such ship or vessel, and be convicted thereof, shall be liable at the discretion of the court to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years, or be imprisoned in any other prison or place of confinement for any term not exceeding two years. § 23. If any goods, merchandize or other articles, belonging to any ship or vessel in distress or wrecked, stranded or cast on shore, as aforesaid, shall, by virtue of a search warrant to be granted as hereinafter mentioned, be found in the possession of any person, or on the premises of any person with his knowledge, and such person being carried before a justice of the peace shall not satisfy the justice that he came lawfully by the same, then the same shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof; and the offender on conviction before the justice, shall forfeit and pay such sum of money not exceeding £20, as to the justice shall seem meet. § 24. If any person shall offer or expose for sale any goods, merchandize, or articles which shall have been unlawfully taken or reasonably suspected so to have been from any ship or vessel in distress or wrecked, stranded or cast on shore, as aforesaid, in any such case any person to whom the same shall be offered for sale, or any officer of the customs or peace officer, may lawfully seize the same, and shall with all convenient speed carry the same, or give notice of such seizure, to some justice of the peace; and if the person who shall have offered the same for sale, being duly summoned by such justice, shall not appear and satisfy the justice that he came lawfully thereby, then the same shall be forthwith delivered over by order of the justice to the rightful owner thereof, upon payment of a reasonable reward (to be ascertained by the justice) to the person who seized the same: and the offender upon conviction shall pay not exceeding £20, as to the justice shall seem meet.

By stat. 4 & 5 V. c. 26. § 10. whosoever shall by force prevent or impede any person endeavouring to save his life from any ship or vessel which shall be in distress or wrecked, stranded or cast on shore (whether he shall be on board or shall have quitted the same) shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be imprisoned at hard labour in the Provincial Penitentiary for the term of his

natural life, or for any term not less than seven years, or to be imprisoned in any other prison, or place of confinement, for any term not exceeding two years. § 11. Whosoever shall unlawfully and maliciously destroy any part of any ship or vessel, which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandize, or article of any kind, belonging to such ship, or vessel, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the Provincial Penitentiary, for any term not less than seven years, or to be imprisoned in any other prison, or place of confinement, for any term not exceeding two years.

By stat. 4 & 5 V. c. 27. § 24. If any person shall assault, and strike, or wound, any magistrate, officer, or other person whatsoever, lawfully authorised on account of the exercise of his duty, in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects, wrecked, stranded, or cast on shore, or lying under water, every such offender being convicted thereof shall be liable to be imprisoned at hard labour in the Provincial Penitentiary, for any term not less than seven years, or to be imprisoned in any other prison, or place of confinement for any term not exceeding two years.

For proceedings to recover penalties under 4 & 5. V. c. 25. See title "*Summary Conviction.*"

## WORKMEN.

By stat. 2. & 3 Ed. 6. c. 15. § 1. If any artificers, workmen, or labourers, do conspire, covenant, or promise together, or make any oaths, that they shall not make or do their works but at a certain price, or rate or shall not enterprise, or take upon them to finish that another hath begun; or shall do but a certain work in a day; or shall not work but at certain hours and times; that then every person so conspiring, covenanting, swearing, or offending, being lawfully convicted thereof, by witness, confession, or otherwise, shall forfeit, for the first offence, £10 to the king, if he have sufficient to pay the same, and do also pay the same within six days next after his conviction; or else shall suffer for the same offence twenty days imprisonment, and shall have only bread and water for his sustenance: and for the second offence, shall forfeit £20 to the king, if he have sufficient to pay the same, and also do pay the same within six days next after his conviction; or else shall suffer for the second offence, punishment of the pillory; and for the third offence, shall forfeit £40 to the king, if he have sufficient to pay the same, and also do

pay the same, within six days next after his conviction, or else shall sit on the pillory and lose one of his ears; and also shall, at all times after that, be taken as a man infamous, and his sayings, depositions or oath, not to be credited at any time, in matter of judgment. § 3. Justices of the assize, justices of the peace, &c. at all and every their sessions and courts, shall have full power and authority to inquire, hear, and determine all and singular such offences committed against this statute, and to punish, or cause to be punished, the offenders, according to the statute. Any one workman may refuse to work, till he is paid the price he pleases to fix upon his *own* labour; but if *two* or more enter into an engagement of this kind, they are guilty of a *conspiracy*, and may be prosecuted by an indictment, or an information. *Bl. Com.* p. 160. *Ed.* 15. (*note.*)

FINIS.

# ADDENDUM.

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## MILITIA.

By 4 & 5 V. c. 2. § 1. The 52nd and 53rd sections of the 2 V. c. 9. (U. C.) are repealed. § 2. Quakers, Menonists, or Tunkers, shall not be compelled to serve in the Upper Canada militia, but on producing a certificate, signed by the clerk, pastor, minister, or clan, of the meeting or society to which he shall belong, he shall be exempt. *Provided*, that every such person, from the age of sixteen to sixty, claiming such exemption, shall, on or before the 1st of February in every year, give in his name and place of residence to the assessor of the town or township where he shall reside, and shall pay in time of peace 10s. per annum, and in time of invasion or insurrection, or when any of the militia of the district in which such person shall reside shall be called out on actual service, the sum of £5, in lieu and discharge of such militia service. § 3. Assessors required to annex a column to the assessment roll, and therein insert the names of such persons, and affix the money to be paid opposite, which the collector shall collect as any ordinary assessment, and pay the same to the town clerk, to be expended within the township where levied, in aid of any road tax or assessment raised or levied therein. § 4. Said monies to be paid out by the town clerk from time to time to the order of the road or path master of the division wherein such fine shall have been levied, and expended on the public roads, highways, and bridges within such township or place as by law directed, and to render an account thereof upon oath to the clerk of such town, township, or place, who shall report the same to the general quarter sessions, and if any such post-master or town-clerk shall fail to render such account, or to pay over and distribute such monies, he shall be subject to a penalty of £10 currency, to be recovered with costs by summary process, before any one or more justices of the peace for the division or district in which such town, township, or place shall lie. 6. Prosecutions previously pending against Quakers, Menonists, or Tunkers, for militia fines, to be discontinued.

## CANADA WEST.

District.	District Clerk.	Judges of District Courts.	Clerks of District Courts.	Judges of Surrogate Courts.	Registrars of Surrogate Courts.
Eastern .....	James Pringle	G. S. Jarvis	G. Anderson	John McDonald	Alexander McLean
Ottawa.....	D. McDonald (F.)	Peter Freal	Chandos Hoskyns	David Pattee	Chandos Hoskyns
Johnstown.....	James Jessup	George Malloch	T. D. Campbell	Ormond Jones	James Jessup
Bathurst .....	Robert Moffat	J. G. Malloch	C. H. Sache	E. J. Hubbell	C. H. Sache
Dalhousie .....	—	C. Armstrong	B. Billings, jr.	C. Armstrong	B. Billings, jr.
Prince Edward ....	Thomas Moore	Archibald Gilkison	C. Mortimer	Hon. S. Washburn	John McCraig
Midland. ....	Samuel McGowan	J. S. Cartwright	A. Pringle	G. A. Cumming	Isaac Fraser
Victoria.....	P. O'Reilly	Benjamin Dougall	W. H. Ponton	J. B. Crowe	William Bowen
Newcastle .....	Morgan Jellet	William Falkner	H. Covert	Thomas Ward	M. F. Whitehead
Colborne .....	John Darcus	B. Y. McKyes	Thomas Fortye	B. Y. McKyes	Thomas Fortye
Home .....	John Elliott	John Powell	W. McKenzie	W. H. Blake	William Chewett
Niagara .....	E. B. Raymond	E. C. Campbell	John Clench	Warren Claus	C. B. Secord
Gore .....	E. C. Thomas	M. O'Reilly	John Law	John Willson	George Rolph
Wellington . ....	R. F. Budd	A. J. Fergusson	Robert Alling	A. J. Fergusson	W. D. Powell
Brook .....	W. Lapenotiere	John Arnold	J. G. Vansittart	John Arnold	J. G. Vansittart
Talbot .....	F. T. Wilkes	Edward Gilman	William M. Wilson	Edward Gilman	William M. Wilson
London.....	J. B. Strathly	Henry Allen	J. B. Askin	Henry Allen	H. C. K. Beecher
Huron .....	David Dow	A. Acland	J. Colville	A. Acland	J. Colville
Western .....	John Cowan	Charles Eliot.	W. R. Wood	J. A. Wilkinson	James Askin
Simcoe .....	Jonathan Lane.	J. R. Gowan.	Jonathan Lane.	J. R. Gowan.	—



## CANADA WEST.

COLLECTORS OF CUSTOMS.	PORT.
John Cameron .....	River Raisin.
Guy C. Wood .....	Cornwall.
A. McDonell.....	Mariatown.
Alpheus Jones .....	Prescott.
A. McQueen.....	Maitland.
R. D. Fraser.....	Brockville.
Ephraim Webster .....	Gannonoqui.
T. Kirkpatrick .....	Kingston.
C. McKenzie .....	Bath.
Henry Baldwin.....	Belleville.
William Rorke .....	Hallowell.
Charles Short .....	Trent Port and Presqu' Isle.
M. F. Whitehead .....	Port Hope.
W. H. Kittson .....	Cobourg.
Henry S. Reid .....	Darlington and Bond Head.
Robert Stanton.....	Toronto.
William Simpson .....	Penetanguishene.
William Dow, jr.....	Windsor.
J. W. Taylor.....	Port Credit.
Robert K. Chisholm.....	Oakville.
John Chisholm .....	Burlington Beach.
O. T. Macklem.....	Chippawa.
G. McMicken .....	Queenston.
James Kerby.....	Fort Erie.
John Clark.....	Port Dalhousie.
T. McCormick .....	Niagara.
W. B. Shechan .....	Port Colborne.
G. J. Ryerse.....	Port Dover.
J. Bostwick .....	Port Stanley.
J. P. Bellairs.....	Port Burwell.
M. Burwell .....	Port Talbot.
D. Fisher .....	Turkey Point.
John Galt .....	Goderich
R. E. Vidal .....	Port Sarnia.
William Anderton.....	Sandwich.
F. Caldwell .....	Amherstburgh.
William Cosgrove.....	Chatham.
James Coll.....	Antrim.

## CANADA WEST.

Registrars of Counties.	County.	Residence.
G. D. Reed.....	Prescott and Russell....	L'Orignal
Alexander Fraser ..	Glengarry. ....	Cornwall
John McLean .....	Stormont. ....	Do.
A. McDonell.....	Dundas .....	Mariatown
G. T. Burke .....	Lanark.....	Perth
A. McMillan.....	Carleton.....	Bytown
Andrew Dickson...	Renfrew .....	Packenham
John Patton.....	Grenville.....	Prescott
David Jones.....	Leeds .....	Brockville
Allan McLean.....	Prince Edward .....	Kingston
Do.	Hastings .....	Do.
Do.	Lenox and Addington...	Do.
C. Stuart .....	Frontenac .....	Do.
G. S. Boulton .....	Northumberland .....	Cobourg
C. Rubidge .....	Peterborough .....	Peterborough
Thomas Ward .....	Durham .....	Port Hope
Samuel Ridout.....	York .....	Toronto
George Lount.....	Simcoe.....	Holland Landing
Thomas Racey.....	Halton .....	Dundas
Sir A. N. McNab..	Wentworth .....	Hamilton
H. W. Peterson....	Waterloo .....	Berlin, or Guelph
J. Lyons.....	Lincoln and Haldimand.	Niagara
M. Burwell.....	Middlesex .....	Port Burwell
J. Ingersoll.....	Oxford .....	Oxford
F. L. Walsh.....	Norfolk .....	Vittoria
John Galt.....	Huron .....	Goderich
James Askin.....	Essex .....	Sandwich
William Jones.....	Kent .....	Chatham

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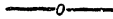
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