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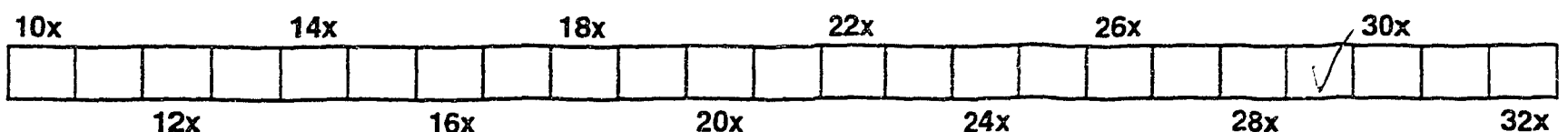
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No. 99.

1st Session, 6th Parliament, 21 Victoria, 1858.

BILL.

An Act to amend and consolidate the Judicature Acts of Lower Canada.

Received and read, first time, Monday, 26th
April, 1858.

Second reading, Wednesday, 29th April, 1858.

MR. PICHÉ.

TORONTO:
PRINTED BY JOHN LOVELL, YONGE STREET.

1070

1921-1

No. 99.]

BILL.

[1858.

An Act to amend and consolidate the Judicature Acts of Lower Canada.

WHEREAS experience hath shewn that in order to facilitate the Preamble. administration of Justice and Procedure, it is expedient to amend and consolidate into one Act the several Judicature Acts of Lower Canada, with the Act passed in the 20th year of Her Majesty's reign, chaptered 44 and intituled, "An Act to amend the Judicature Acts of Lower Canada :"
5 Therefore Her Majesty, &c., enacts as follows :

DIVISION OF LOWER CANADA INTO DISTRICTS.

1. Lower Canada shall be divided into 17 districts in the manner indicated in the table A of this Act, the first column of which contains
10 the name of each District ; the second column the places included within the limits of the District ; and the third column the name of the place at or near to which the sittings of the District Courts shall be held, and at which the Court House and Gaol of the District shall be situated, provided that if the name of any place, being the *chef-lieu* of
15 a district be changed, such place shall nevertheless continue to be the *chef-lieu* under the new name.

Lower Canada divided into districts.

2. A Court House and Gaol shall be immediately erected in the manner hereinafter prescribed, in each of the new districts mentioned
in the 2nd Table.

Court House and Gaol.

ERECTION OF COURT HOUSES AND GAOLS.

20 And whereas it is expedient to create a fund, out of the proceeds of which, without having recourse to the costs and charges of an onerous local taxation, Court Houses and Gaols may be erected in the said districts, and also Court Houses to serve for the sittings of the Circuit Court elsewhere than at the *chef-lieu* of the district :

Building fund.

25 3. The amount of the Municipalities Fund for Lower Canada, created by the Clergy Reserves Act of 1854, chapter 2, after deducting therefrom the charges imposed thereof in virtue of the said Act, shall not be distributed amongst the Municipalities of Lower Canada, nor paid over to them in the manner prescribed by the said Act, but shall
30 be appropriated for the purposes of this Act.

Municipalities fund appropriated.

4. The Governor in Council may from time to time authorize the Receiver General to raise such sum or sums of money, not exceeding in the whole the sum of £75,000, as may be necessary for the purposes

Dobentures may be issued to amount of £75,000.

of this Act, by the issue of Provincial Debentures, to be repaid, both principal and interest, out of the proceeds of the said Lower Canada Municipalities Fund, which shall be and is hereby set apart for that purpose, after payment of the charges aforesaid.

Form of debentures.

5. The Debentures to be issued in virtue of this Act shall be in such form, for such separate amounts, either in sterling or currency at such rate of interest, not exceeding 6 per cent per annum, and shall be payable, principal and interest, at such time and places as to the Governor in Council shall seem most expedient, and as he shall from time to time prescribe ; and all monies forming part of the said fund, and applicable to the repayment of the said principal and interest, which shall not be immediately required for the purposes of this Act, shall be deposited in the Provincial Funds by the Receiver General, under the Direction of the Governor in Council. 5 10

Amount to each district.

6. A sum not exceeding five thousand pounds, to be fixed by the Governor in Council, taking into consideration the extent, population, business and other local circumstances of the district, may be appropriated out of the said Lower Canada Municipalities Fund, for the erection in each of the new districts of a Court House and Gaol in and for such district, and such sum may from time to time be advanced and paid to the Commissioners of Public Works by the Receiver General, upon the warrant of the Governor. 15 20

Municipalities may add to such appropriation.

7. Provided always that if the local municipalities included either wholly or in part in any new district, think proper to raise another sum to add to the amount allowed to the districts in virtue of the next preceding section, and to expend it with the said last sum in the erection of a more commodious Court House and Gaol, they shall be at full liberty to do so, and they enter into a mutual agreement,—by the intervention of their Mayors assembled at a meeting to be held at a time and place fixed by special notice given to the several Mayors, by three electors of the municipality requiring such meeting— as to the amount; and the proportion thereof to be raised in each said municipality, or part of a municipality, and the Council of each said municipality shall have full power to levy the sum so to be raised ; and if any local municipality shall think proper to raise a further sum independently of the other local municipalities in the district, it shall have full power so to do, and any such additional sum shall be employed and expended by the Commissioners of Public Works, in conjunction with the amount granted to the district, in virtue of the next preceding section. 25 30 35 40

Sites.

8. The local municipality in which the Court House and Gaol for a new district shall be erected, shall furnish a site suitable for that purpose, which shall be approved of by the Commissioners of Public Works, and which must also be freed from all charges ; and if the municipality fail to furnish such site when required so to do by the Commissioners, the said Commissioners shall be at liberty to accept any suitable which shall be given to the Crown for the said purpose, at or near the *chef-lieu*, or the Governor may by proclamation select some other place, at which a suitable site shall have been given, to be the *chef-lieu*, and the said shall thereupon be such *chef-lieu* to all intents and purposes as though it had been designated in the Schedule A annexed to this Act. 45 50

9. The sum of £500 shall be granted out of the said Lower Canada Municipalities Fund to each local municipality not being the *chef-lieu* of a district, but which has been fixed by the table B as one of the places at which the Circuit Court shall be held for the construction and acquisition of a Court House on a site to be furnished by the said local municipality, released from all charges whatsoever, and to be approved by the Commissioners of Public Works, and until the said sum is required for that purpose the interest thereon shall be added thereto, to be expended in the erection of a more commodious Court House.

Circuit Court accommodation.

10. If in the local municipality of any new District a Court House exists, not required for the use of any District or Circuit Court, the Governor may, by order in Council, cause the same to be sold, and add the proceeds of the sale to the share of the Municipalities Fund allowed to the District, to assist in the erection of any new Court House or Gaol in the said District.

Former Court Houses.

11. The District Court House and Gaol hereinbefore mentioned shall be erected by the Commissioners of Public Works, under the control of the Governor in Council, and all the powers vested in the said Commissioners with reference to the taking of lands required for public works, and all the other powers vested in them, or in parties authorized to contract with them for the conveyance of such lands, and all the provisions of the Acts relating to the said Commissioners, and to the public works constructed under their superintendence, shall apply in so far as they are not inconsistent with the provisions of this Act, shall apply to the said Court Houses and Gaols, to the sites required therefor, to the erection of the buildings and to the said Commissioners in reference thereof, but no plan shall be adopted by the said Commissioners for the erection of such Court House or Gaols or any of them, unless it has been approved by the Governor in Council, but not being herein contained shall have the effect of preventing any Municipality from exercising the power of taking any lands for Municipal purposes, including the erection of a Court House and Gaol.

How buildings shall be erected.

12. All the Courts to be held at the place at which a Court House shall be erected in pursuance of this Act, shall be held in the said Court House unless the Governor shall, in the event of the building being destroyed or materially damaged, direct that they shall be held in some other building, and the Gaol erected in any District in pursuance of this Act, shall be the Common Gaol, and shall also be the House of Correction for the said District until another House of Correction shall be established, and all the general provisions applicable to Court Houses and Gaols in Lower Canada shall apply to those to be erected in virtue of this Act, in so far as they are not inconsistent therewith.

Courts to be held therein.

13. The title to the District Court House and Gaol in and for the new Districts respectively, shall be vested in the Sheriff of such District for the time being, and his successors in office for ever, and he and each of his successors in office shall be a sole corporation for the purpose of holding the same for the purposes of this Act, but without power to alienate, charge or incumber the same, and the title to any Circuit Court House, and of the site thereof, shall be vested in the

Title thereto.

Municipality of the County, for such estate or right as it shall have acquired therein.

Buildings to be insured.

14. It shall be the duty of the Sheriff of each new District to keep the Court House and Gaol therein insured against loss by fire, for an amount, and by an Insurance Company to be approved by the Commissioners of Public Works, and in case of loss by fire he may recover under the policy; and the amount recovered shall be applied to repair or reconstruct the building destroyed or damaged. 5

Building and Jury Fund.

15. For keeping in good repair the District Court Houses and Gaol to be erected under this Act in the new Districts, and for paying the Petit Jurors in criminal cases in the same, there shall be, in and for such District, a Fund, to be called "The Building and Jury Fund for the District of _____" (as the case may be), which shall consist of:— 10

Fines under police ordinances.

1. All fines, forfeitures and pecuniary penalties collected in the District under the Police Ordinances, as extended by the twenty-fifth section of the Municipal Act of 1855, chapter 100; 15

Crown's share of fines under Acts 4 & 5 V. c. 26 & 27.

2. The Crown's share of all fines, forfeitures or pecuniary penalties collected in the District on summary convictions under the Acts of 1841, amending the Criminal Law, chapters 26 and 27; 20

Do. do.

3. The Crown's share of all fines, forfeitures and pecuniary penalties collected within the District under the Public Worship Act of Lower Canada, passed in 1827, chapter 3; 25

Per centage on monies levied by Sheriff.

4. One per centum upon all moneys levied by the Sheriff of the District, or by any Bailiff therein, under execution in any civil case, such per centage to be retained by the Sheriff or Bailiff out of the sum payable to the party taking out such execution; 30

Fines on juvenile offenders.

5. All fines levied in the District under the Act passed during the present session for the more speedy trial and punishment of juvenile offenders; 35

Fines for contempt of Court, &c.

6. All fines levied in the District for contempt of Court, or for non-attendance of jurors or witnesses, or disobedience to any order of the Court; 40

Yearly contribution from each Municipality.

7. A yearly contribution from each local Municipality in the District, which contribution shall be: twelve pounds yearly from the Local Municipality in which such Court House and Gaol shall be,—six pounds yearly from each other Local Municipality in the county in which such Gaol and Court House shall be,—and three pounds yearly from each other Local Municipality in the District; which contributions shall be paid to the Sheriff by such Municipalities, respectively, in the month next after that in which this Act shall come into force as regards criminal matters, and in the same month in each year thereafter, and if not so paid, may be recovered by the Sheriff for the time being as a debt due to him, or, in his option, may be levied by him from the ratepayers in the Municipality in default by an equal rate on their taxable property according to the valuation-roll then in force; and 45

for collecting and enforcing such rate, and the costs of levying the same, the Sheriff shall have the powers vested in the Secretary-Treasurer of such Municipality for the collection of rates duly imposed and to be collected by him in such Municipality.

- 5 16. The fund last mentioned shall be received and disbursed by the Sheriff, who shall render an account thereof to the Inspector General, at such time, and in such manner and form as that officer shall appoint, and such account shall be audited by the Board of Audit; and the Sheriff shall be deemed an Officer employed in the collection of the Revenue
- 10 within the meaning of the Revenue Management Act of 1845, chapter 4, and the Act amending it, and of the Audit Act of 1855, chapter 78; and any surplus moneys, forming part of such fund may be invested by the Sheriff in Government securities, with the approval of the Inspector General and subject to such conditions as he shall think proper.
- 15 17. If at any time it shall become necessary to re-build or enlarge any District Court House or Gaol, the same shall be re-built or enlarged by the Commissioners of Public Works, but at the expense of the Municipalities in the District, and if the fund established by the next preceding sections added to the sum (if any) recovered by the Sheriff
- 20 for the insurance thereon, shall not be sufficient to defray the expense of re-building or enlarging, then the sum required to make good the deficiency shall be furnished by the said Municipalities, in the proportions mentioned in the seventh paragraph of the next preceding section, and shall be paid over to the Sheriff, at such time as shall be prescribed
- 25 by the Governor in Council, after such re-building or enlarging shall have been commenced, and if not so paid may be recovered by the Sheriff in the same manner and with the same powers as they are provided and given for the recovery of the contributions mentioned in the said seventh paragraph; and the moneys in the hands of the Sheriff
- 30 applicable to such re-building or enlarging shall be disbursed by the Sheriff under the direction of the Commissioners of the Public Works.
18. If at any time the said fund be found in any District to be too large for the purposes to which it is made applicable, the contributions payable thereto by Local Municipalities in such Districts may be
- 35 diminished by order of the Governor in Council to such extent as he may deem advisable; and if at any time the said fund be found insufficient in any District for such purposes, the said contributions may be increased by a like order to the extent which the Governor in Council may deem expedient, but observing the same proportion as to the amount payable
- 40 by the several Municipalities.

Said fund to be disbursed and accounted for by Sheriff.

Rebuilding or enlargement provided for.

In case fund prove insufficient.

JUDGES AND COURTS OF JUSTICE.

19. There shall be for the whole of Lower Canada

- 1st. A Court, to be called the **CIRCUIT COURT**, which shall take cognizance (to the exclusion of any other Court in matters purely personal and moveable), of all Civil causes, the amount or value of
- 45 which shall not exceed \$60, with the exception of constituted rents (*rentes constituées*), under the Seigniorial Act of 1854, of actions exclusively under the jurisdiction of other Courts, Judges or Magistrates, and of those which fall purely under the jurisdiction of the Admiralty.

C. Pro. Lou'a art. 1064.

Circuit Court.

Evocation.

If, however, the right or title to the property or possession of an immoveable, the right to a sum of money payable to Her Majesty, or to any fee of office, or the right of demanding any rent, revenue toll, tax, or imposition whatsoever be contested or be put in question before the said Court, or further, if by the result of any contestation before the said Court, any future rights may be affected, the cause may in any of the said cases upon the application to that effect made by one or other of the parties to the cause at any time before the cause is fixed for evidence, be evoked and transferred to the District Court in the same District, there to be heard, adjudged and decided, and thereupon the cause shall be transferred to the said District Court, which said Court shall first proceed to decide as to whether the evocation be well founded,

34 Geo. III, cap. 6, sec. 27. 12 Vic., cap. 38, sec. 47, 48, 53. C. Pro-Lou' a art. 129 and 1068.

If the said evocation be maintained and declared valid the District Court shall proceed with respect to such cause as though it had originated therein, but if on the contrary the evocation be rejected the cause shall be sent back to the said Circuit Court, there to be proceeded with and finally decided.

District Court.

2nd. A Court to be called the DISTRICT COURT which shall take cognizance of all causes, matters, and business whatsoever of a civil nature with the exception of those which are especially and exclusively within the jurisdiction of the Circuit Court above mentioned, or of other tribunals, judges and magistrates, and of such as fall exclusively under the jurisdiction of the Admiralty.

The District Court shall, moreover, have the power of granting the emancipation of minors upon the advice of their relations or friends, of rescinding or annulling all contracts and *actes* without rendering it necessary to obtain special letters of emancipation or rescision, according to the usage which held under the Government before the conquest, of hearing, determining and deciding all suits, actions, matters and things whatever of a civil nature, which might have been heard and determined in the Courts of *Prevoté justice royale, intendant* or superior Council, under the Government of this Province before the year 1759, and not specially and exclusively assigned to other Courts or Judges, but no power of a legislative character possessed by any Court before the conquest shall be granted to or conferred upon the said District Court.

34 Geo. III., cap. 6, sec. 8. 12 Vic., cap. 38, sec. 64.

Court of Assize.

3rd. A Court to be called the COURT OF ASSIZE which shall take cognizance of all crimes and criminal offences, excepting those which may be punished either by the penalty of death or by imprisonment for life in the Penitentiary or by exile, transportation, or perpetual banishment, or those which fall exclusively under the jurisdiction of the Admiralty.

High Criminal Court.

4th. A Court to be called the HIGH CRIMINAL COURT, which shall take cognizance of all crimes and criminal offences whatsoever with the exception of those which fall exclusively under the jurisdiction of the Admiralty.

5th. A Court to be called the COURT OF APPEAL, which shall have sovereign jurisdiction in matters civil and criminal in any writ of error or appeal from judgments or decisions rendered by the District Court, the High Criminal Court, the Court of Assize, the Court of Oyer and Terminer and General Gaol Delivery, and also in appeal from all judgments, decisions, and proceedings whatsoever, from which recourse may be had thereto, or in relation to which a recourse or appeal to the said Court shall be admissible, but when the judgment appealed from in any civil matter is based upon the verdict of a jury, the law only, and not the facts shall be called in question.

Court of Appeal.

34 Geo. 3, cap. 6, sec. 27 and 28.

20. The District Court shall be composed of eighteen Judges; that is to say, of one Chief Justice and of seventeen Puisné Judges, four of whom shall reside at the city of Montreal, three at the city of Quebec, one at the city of Three Rivers, one at the town of Sherbrooke, one at the village of Aylmer, or in the immediate neighborhood of the said places respectively; two in the District of Gaspé, and one in the District of Saguenay, at such places as shall be appointed by the Governor; and the others at such places as the Governor shall appoint in any of the other districts, who may also from time to time direct them to remove to such places as he may deem suitable for the exercise of their judicial functions.

Composition of District Court.

20 Vic. cap. 44, s. 8, 9 and 11.

21. The District Court shall be held by one of the said District Judges.

Quorum.

22. The Circuit Court shall be held by one of the District Judges.

23. The Court of Appeal shall be composed of five Judges, viz.: one Chief Justice and four Puisné Judges, who shall reside respectively either at Montreal or Quebec, and two at least of them shall reside at each of the said places.

Composition of Court of Appeals.

24. The Court of Appeal shall, as far as possible, be held by all the Judges thereof, but any four of the Judges of the Court shall form a quorum thereof in Appeal and Error, and may hold the Court and exercise all the powers and authority thereof; and any judgment or order in appeal and error concurred in by any three Judges of the Court at any sitting thereof, shall have the same force and effect as if concurred in by all the Judges so present; and no judgment appealed from shall be reversed, altered, or confirmed, unless by the concurrence of three Judges of the said Court.

Quorum.

25. Whenever a cause in appeal or error shall have been heard by four Judges only of the said Court, and taken by them *en délibéré*, and that three of the said Judges shall not hold the same opinion with respect to the judgment which ought to be rendered in such cause, the Court may discharge the *delibéré*, and order that the cause should be heard anew.

Deliberé.

26. The Court of Assize shall be presided over by one only of the District Judges.

Court of Assize.

- High Criminal Court.** 27. The High Criminal Court shall be presided over by one or more of the Judges of the District Court, or by one or more of the Judges of the Court of Appeal.
- Discharge of *deliberé*.** 28. Any Judge, and any one Judge of any Court, even if he be recused, may discharge a cause from *deliberé* if such proceeding become necessary. 5
- Appointment of Judges.** 29. Every Judge not of the District Court and of the Court of Appeal, shall be appointed by Her Majesty, Her Heirs or Successors, by letters patent under the Great Seal of this Province.
- Substitution of Judges.** 30. Whenever any Judge either of the District Court or Court of Appeal shall be called to discharge any duties or functions as such, and such Judge shall be prevented by any of the causes mentioned in the thirty-first section of this Act, or by any other legitimate cause, he may be replaced in the discharge of such duty or functions by a Judge of the same Court, and failing such Judge, by one of the Judges of the other Court, and all the powers and duties of the Judge so replaced shall belong in such case to the Judge who shall have so replaced him. 10 15
- Assistant Judges.** 31. Whenever a Judge of the District Court or of the Court of Appeal shall by any cause of recusation, incompetence, disqualification, sickness, absence or otherwise, be unavoidably prevented from or incapable of acting, and he cannot be replaced by any of the Judges called upon so to do in the manner prescribed by the thirtieth section of this Act, the Governor may in his discretion appoint, by a commission under the Great Seal of the Province, a person competent to be the assistant of such Judge, either for a fixed time or for such time as the latter shall be prevented from or incapable of acting or fulfilling his duties, and for no longer; Provided nevertheless, that in the cases contemplated by this section and the foregoing, the Judge who shall have been summoned to take the place of any other Judge as assistant or otherwise, shall have all the powers of the Judge so replaced with respect to any cause or proceeding commenced before him, until it be terminated or decided, if it be possible so to do, without recommencing the proceedings which shall have been had before him. 25 30
- 20 Vic., cap 44, sec. 18. 35
- Their powers.** 32. Any Assistant Judge shall, during the period of his appointment, have all the powers and authority, and shall fulfil all the duties of the Judge whose assistant he shall have been appointed. 16 Vic., cap. 13.
- Other functions of Judges.** 33. Every Judge of the Court of Appeal and of the District Court shall be *ex officio* a Justice of the Peace, or conservator of the peace, and Coroner for the whole of Lower Canada. 40
- Term of office.** 34. Every Judge (not an assistant) of any of the Courts established by this Act, shall retain office during good behavior, and his commission shall be so made out. 45
- Removal of Judges.** 35. It shall be lawful however for the Governor of this Province,

to remove from office such Judge (not an assistant), upon the Address of the Legislative Council and Assembly, but an Assistant Judge may be removed from office without such formality, whenever the Governor shall think proper so to do.

5 36. Any such Judge (not an assistant) so removed from office, may within six months, appeal to Her Majesty in Her Privy Council against such removal from office, and such motion shall not be deemed final until it shall have been decided by the said Council. Appeal in such case.

10 37. When any Judge of any of the said Courts shall die, or shall resign his office, or be removed, it shall and may be lawful for the Governor, Lieutenant-Governor, or Person administering the Government of this Province, notwithstanding anything hereinafter contained, to appoint by commission under the Great Seal of the Province, some fit and proper person to hold the said office until the Royal pleasure shall be made known; and that such appointment shall be held to be superseded by the issuing of a Commission under the Great Seal of this Province, in the terms first directed by this Act to the same person, or to such other person as Her Majesty, Her Heirs or Successors, shall appoint in the place of any Judge, who has died, or resigned, or been removed, in the manner authorized by this Act, or by the signification within the Province of the Royal decision in the Privy Council, restoring to his office any Judge who may have been so removed. Vacancies how filled.

38. The Judge of highest rank or standing shall have precedence over the others; if all the Judges present be of the same rank, then such precedence shall be given to the Judge holding the commission of longest date; and if their commissions bear the same date, then the senior in age shall take precedence, unless anything to the contrary be expressed in the commission of any Judge, in which case he would take the rank assigned him by his commission. Precedence.

30 39. Every Judge, before entering on the duties of his office, and being qualified for the performance of any act in that capacity, shall be bound to take an oath well and truly to discharge the duties of his office, in the manner following: Oath of office.

1. The Chief Justice of the Court of Appeal shall take such oath before the Governor or the Secretary of the Province, or before some person authorized by the Governor to administer the same, and this oath shall be taken and subscribed in duplicate. 35

2. All the other Judges, both of the Court of Appeal and of the District Court, shall take the said oath before the Chief Justice of the Court of Appeal, after the latter shall have been so sworn in. 40

40. One of the duplicates of the oath made by the Chief Justice of the Court of Appeal shall form part of the archives of the office of the Secretary of the Province, and the other shall be transmitted to the Clerk of the Court of Appeals for the District of Montreal, to form part of the records of his office, and to be by him entered in the register kept for that purpose. 45 Duplicates of oaths how dealt with.

Leave of absence.

41. Any leave of absence for more than two months granted to a Judge of the Court of Appeal, or of the District Court, shall be notified in the first instance by the Provincial Secretary to the Clerk of the District Court to which he shall belong, by means of a letter which shall be registered in the register referred to in the foregoing section, and deposited among the records of the Clerk's office. 5

Jurisdiction of said Courts.

42. The several Courts established by this Act shall have jurisdiction over the whole of Lower Canada, and each of the Judges appointed before or after this Act shall come into force, shall have equal jurisdiction over the whole of Lower Canada, and may exercise their powers and duties over its whole extent wherever their ordinary places of residence may be. 10

SALARIES OF THE JUDGES.

Salaries of the Judges.

43. The Annual Salaries of the Judges of the Court of Appeal shall be as follows:

To the Chief Justice	£1250	0	0	15
To each Puisné Judge.....	1000	0	0	

The annual salaries of the Judges of the District Court shall be as follows:

To each District Judge, residing in the District of Montreal or Quebec.....	£1000	0	0	20
To each District Judge residing in any other District, with the exception of Gaspé and Saguenay	800	0	0	
To each one residing in the Districts of Gaspé and Saguenay	700	0	0	25

Travelling expenses.

The allowance to the Judges for travelling expenses, shall as heretofore be fixed by the Governor in Council.

Present salaries not affected.

The salaries of the Judges of the Court of Appeal and of the District Court appointed before the passing of this Act, shall not be affected thereby. 30

20 Vic. cap. 44.

OFFICERS OF THE COURTS.

Officers in each district.

44. There shall be in each District a Clerk of the District Court, a Clerk of the Crown, a Clerk of the Peace, a Sheriff, a Coroner, Translators, Bailiffs, Criers, Assistant Criers or Tipstiffs, Constables, and such other officers as may be deemed necessary, or may be from time to time appointed, and one or more of these officers' functions may be united in the same person, and separated from time to time, whenever the Governor may think proper so to do. 35

Clerks of the Court of Appeals.

45. For the Court of Appeal there shall be one Clerk who shall

reside in the City of Montreal, and who shall be bound to appoint, by a commission under his hand and seal, with the approval of the said Court, or a majority of the Judges thereof, two or three deputies, one of whom shall reside in the city of Three Rivers, and another in the City of
5 Quebec.

46. Each Clerk of the District Court shall reside at the *chef-lieu* Clerk of District Court.
of his District, and he shall at the same time be the Clerk of the Circuit Court in that District. He may, by Commission, and with the sanction of the Judge residing in such District, appoint as many deputies as he
10 may deem proper, either as Clerk of the District Court, or as Clerk of the Circuit Court, but he shall appoint at least one deputy for each place at which he shall not reside, and at which the Circuit Court shall be held as hereinafter provided.

47. The Sheriff, the Coroner and the Clerk of the Crown may also
15 each appoint one or two deputies and not more, by a commission under their respective hands and seals. Deputies of certain officers

48. It shall be lawful for any Clerk, Sheriff, or Coroner whatsoever
20 at any time to remove any deputy by him appointed, and to appoint another in his place, but such dismissal shall not take place until the sanction therefor similar to that required for the appointment of such deputy shall have been first obtained. Removal of deputies.

49. The Clerk of the District Court, whether acting as Clerk of that
30 Court or as the Clerk of the Circuit Court shall be called and known as the "Clerk of the District Court" of the district to which he shall have been appointed, and each of his deputies shall also be designated in like manner. Titles of officers.

50. The Clerk of the Crown shall in all cases be designated and
35 known as the "Clerk of the Crown" for the district to which he shall have been appointed, and his deputies shall be designated in a similar manner. Clerk of the Crown.

51. The Sheriff shall be designated and known as the "Sheriff of
the District" for which he shall have been appointed, and each of his
deputies as Deputy Sheriff of such district, the Coroner and his deputies shall be similarly designated. Sheriff of the district.

40 52. Every Deputy of any of the above officers shall exercise and discharge all the powers, duties and functions of such officer, and in the event of the dismissal, suspension, resignation or death of such officer, he shall continue to exercise and discharge the same until the appointment of his successor. Powers of deputies.

45 53. Every Clerk, Sheriff, Coroner or other officer shall be responsible for the conduct and acts of each of his deputies. Responsibility

54. Where no provision to the contrary exists or shall hereafter exist, the appointment and removal of the several officers above mentioned shall be vested in the Governor of this Province. Appointments to office.

SECURITIES.

Nature and amount of securities to be given by the said officers respectively.

55. The Clerks and Sheriffs before being competent to perform the duties of their office shall furnish to Her Majesty, Her Heirs and Successors, with a view to guarantee the execution and fulfilment of their duties and the payment of all damages caused by them, and the payment and reimbursement to the person entitled thereto, of all sums of money by them legally had or received in their official capacities respectively, from whatever source it may have been derived, a security, to wit: 5

The Clerk of the Court of Appeals in the sum of £

The Clerks of the Crown for the districts of Quebec and Montreal respectively in the sum of £ 10

The Clerk of the Crown for any other district, in a sum not exceeding £ and not less than £ in the discretion of the person authorized to receive the security bond.

The Clerks of the District Court for the districts of Montreal and Quebec respectively in the sum of £ 15

The Clerk of the District Court for any other district in a sum not exceeding £ nor less than £ in the discretion of the person authorized to receive the security bond.

The Sheriffs of the districts of Montreal and Quebec respectively in the sum of £ 20

The Sheriff of any other district in a sum not exceeding £ nor less than £ in the discretion of the person authorized to receive the security bond.

The Coroners of the districts of Quebec and Montreal in the sum of £ 25

The Coroner of any other district in a sum not exceeding £ nor less than £ in the discretion of the person authorized to receive the security bond.

6, Will. IV, cap. 15, sec. 1, 2.

Bond in duplicate.

56. The security bond in each of the cases above provided for shall be 30 made in duplicate, and shall be taken and received by one of the Judges of the District Court, or by the Provincial Secretary.

Notice.

57. Before taking or receiving such security, notice thereof shall be given in writing to the Provincial Secretary, eight days at least before the period fixed for giving such security, and one day's additional notice 35 shall be given for every five leagues of distance between the place of residence of the Provincial Secretary and the place at which it may be proposed to furnish such security.

Form thereof.

58. The said notice shall set forth the day, hour and place on and at which such security will be given, and also the names, callings and resi- 40

dences of the person or persons to be proposed as sureties, and if it be not certified upon oath that such notice has been given, the security shall not be taken or accepted.

59. Every such surety shall justify his sufficiency to the amount for which he shall have become security, before such security can be deemed valid. Sureties to justify.

60. One duplicate of such security shall be transmitted to the office of the Secretary of the Province, to be placed among the records thereof, and the other shall be transmitted to the Registry office for the county in which the surety or one of the sureties, if there are more than one, shall reside. Deposit of duplicates.

61. In case it shall happen that any person who shall so have become surety shall die or become insolvent, or shall leave Lower Canada, with the intention of fixing his domicile elsewhere, the officer for whom such person shall so have become surety shall be bound within one month to furnish a new security in the manner already prescribed. Renewal of securities.

62. Every person shall be entitled to take communication of any such duplicate, or to obtain a copy thereof duly certified by the Provincial Secretary or the Registrar, as the case may be, upon payment of one shilling for each communication, and five shillings for each copy. Access to security bonds.

6th Will. 4th, secs. 3, 4, 5, 6, 7, 8 & 9.

SALARIES OF CERTAIN OFFICERS OF JUSTICE.

63. The moneys arising from the salaries, fees, emoluments and pecuniary profits whatsoever, which are now or may hereafter be attached to their respective offices shall not be received by them for their own personal profit, but shall be paid over to the Receiver General of the Province, and form a part of the Consolidated Revenue Fund of this Province. Fees to be paid into the provincial revenue.

64. The said officers respectively shall be bound to render every three months to the Inspector General of Public Accounts of the Province in the form and in conformity with the instructions which shall be from time to time prescribed to them by him, or by his orders, true and exact accounts under oath taken before any one of the Judges of any of the Courts established under this Act, of the moneys which each of them shall have received on any account whatever. Such officers to render accounts.

65. It shall be lawful for the Governor, out of the fees, emoluments and pecuniary profits so attached to the respective offices of the said officers of justice hereinafter named to assign salaries to each of them to such amounts as the Governor in Council shall prescribe, viz. :— Governor to fix salaries under certain restrictions.

To the Clerk of the Court of Appeals, a sum not exceeding £
and to each of his Deputies a sum not exceeding £
To the Clerks of the District Court in the Districts of Quebec and Montreal respectively, a sum not exceeding £

To any Deputy of such Clerk, when the Deputy shall reside at the *chef-lieu* of either of the Districts of Quebec or Montreal.

To the Clerk of any other District, a sum not exceeding £

To the Clerks of the Crown for the Districts of Quebec and Montreal respectively, a sum not exceeding £ 5

To the Deputy Clerk of the Crown, when such Deputy shall reside at the *chef-lieu* of either of the said Districts of Quebec or Montreal.

To the Clerk of the Peace for either of the said Districts.

To the Clerk of the Crown for any other District, a sum not exceeding £ 10

To the Clerk of the Peace in any other District.

To the Sheriff of either of the Districts of Quebec and Montreal, a sum not exceeding £

To the Sheriff of any other District, a sum not exceeding £

To the Coroner of either of the Districts of Quebec or Montreal. 15

To the Coroner of any other District, a sum not exceeding £

To each of the Criers, and Tipstiffs attached to the Court of Appeals in each place at which such Court shall be held, a sum not exceeding £

To each of the Criers and Tipstiffs attached to any other Court sitting at Quebec and Montreal, a sum not exceeding £ 20

To each of the Criers and Tipstiffs attached to the District Court, or to any other Court sitting at the *chef-lieu* of any other District, a sum not exceeding £

Criers' and tipstiffs' fees. 66. The monies arising from the salaries, fees, emoluments and pecuniary profits whatsoever, now or which be hereafter granted to the said Criers and Tipstiffs shall not be exacted or received by them, but by the Clerks of the Courts to which they may be attached. 25

Salaries payable quarterly. 67. The salary so assigned to each of the said officers shall be payable every three months of each year. 30

Officers to have clerks. 68. Each of the said officers shall have, for the purpose of aiding him in the due discharge of the duties of his office, certain clerks, whose number and remuneration shall be regulated in conformity with instructions which shall from time to time be transmitted by the Provincial Secretary, to whom he shall furnish annually, and oftener if required, a list of the clerks employed by him. 35

Proportion to be retained by said officer. 69. The said Public Officers shall, in all accounts rendered by them as aforesaid to the Inspector General, be entitled to retain and enter

under the head of expenses, such portion of the annual and fixed salary assigned to them and to the said Criers, as shall correspond with the period comprised in the account so rendered; and after deducting therefrom their fixed salary, the remuneration of their deputies and clerks, and the salaries of the said criers by them paid as aforesaid, the said public officers shall respectively be entitled for their own use and benefit, to a commission of ten per cent. on the balance of the sums acknowledged by them in such account as remaining in their hands; and after the Inspector General shall have examined and approved such accounts, it shall be lawful for the said officers to retain the amount of the said commission, and to enter the same under the head of expenses in their next account.

70. The Inspector General shall keep distinct and separate accounts for each of the districts in Lower Canada, of that portion of the said special fund raised in such district, and an account thereof shall be rendered to Her Majesty, Her Heirs and Successors, of all monies paid in virtue of this Act out of the Consolidated Revenue Fund of this Province in the manner and form prescribed, and a statement thereof shall be laid before each branch of the Legislature at the next ensuing session.

Duty of Inspector General.

71. The Governor in Council shall, during the thirty days next preceding that on which this Act shall come into force, make and establish by proclamation tariffs of fees for all the said officers of justice, and he may afterwards from time to time revoke, alter and amend the same.

Tariffs of fees.

72. The deputies of the Clerk of the District Court residing at places other than the *chef-lieu* of the district, shall not receive any fixed salary, but shall be paid by fees and emoluments to be fixed by tariffs made therefor, and they shall themselves collect such fees and emoluments, which shall be the same as those hereinbefore referred to as allowed by the Governor to the Clerk of the District Court upon the proceedings in the Circuit Court.

Deputies not to have fixed salaries.

APPOINTMENTS, PREROGATIVES, AND DUTIES OF THE VARIOUS OFFICERS OF JUSTICE.

THE CLERKS.

The principal powers and duties of clerks over and above those now or which may be hereafter specially confided to them, and when the contrary is not specially enacted, comprise the following:

73. They shall be bound to keep offices and take charge of the Court Houses; to see that they are in good repair; and in places other than the *chef-lieu* of a district, if there be no public building set apart for the sittings of the Circuit Court, and in which to hold the offices of the said Court, it shall be the duty of the clerk or deputy-clerk residing nearest to the said Court to provide, under the direction of one of the Judges holding the said Court, some building, room, or place suitable for that purpose, and the cost of hiring, warming and keeping in order the said Courts and offices, and all the other necessary expenses for their suitable maintenance, shall be paid by the said clerk or deputy-clerk.

Clerks to keep offices, take charge of Court House, &c.

Registers, &c.
of the Court
to be deposi-
ted with them.

74. With them shall be deposited the registers, proceedings, documents and papers of the Courts and of the Judges, in a word all judicial *actes* and proceedings; they are present at the sittings of the Courts and assist the Judges in the discharge of their duties; they receive and enter the requisitions and depositions of parties, their tenders, affirmations, registrations, productions and appearances (*offres affirmations, insinuations, productions et presentations*); they receive and enter the orders, rules, regulations and judgments whatsoever of the Courts and Judges and give communication and copies of all judicial *actes*. 5

To have safes
for their
preservation.

75. The clerks shall preserve with the greatest care all the judicial proceedings and minutes of the Court, and all the registers, documents and papers entrusted to them in their official capacity, or of which they may be the depositaries: and they shall be provided with safes or bureaux of sufficient size to contain the said papers in safety and under key. 15

Register of
causes, its
contents.

76. In civil matters, the clerks shall keep for the Circuit Court, besides a *feuille d'audience*, at least one register bound, in which the different causes shall be entered in order of date and number, a sufficient blank being left, in which shall be entered as concisely as possible, 20

1st. The title of the cause, that is to say, the names, callings, and residences of the parties.

2nd. The nature and object of the suit, its amount and the day fixed for its return into Court.

3rd. The date of the service or notification made thereof, and of the 25 day of its return into Court.

4th. The appearance or default to appear, or plead of any of the parties, or of the nature of the defence, or of the pleadings, or allegations of the parties.

5th. The names, ages, callings and residences, and the witnesses 30 appearing, and heard on behalf of either of the parties, their degree of relationship to, or alliance with the parties, whether they are in their service, and of the objections urged against them.

6th. The different postponements of the cause for *enquête*, or hearing or for any other purpose, and of the date of its being taken *en delibéré*. 35

7th. The date of judgment and its dispositions to be written out in full.

8th. At the head of each proceeding, which shall have taken place before the Court, the name of the Judge present at the time shall be inserted. 40

C. Pr. Ls., art. 1073, 1074, 1075, 1076, 1083, 1084.—C. Pr. F. art. 40.

Registers for
District Court.

77. For the District Court the Clerks shall keep not less than two registers.

1st. In the first of these registers they shall inscribe, in order of dates and numbers, the titles of all the causes, that is to say, the names callings and residences of the parties, the nature or object of the suit, its amount, date, the day fixed for the return, and the names of the 5 advocates retained by the parties.

2nd. In the second, they shall enter all the orders, rules, and judgments made or rendered by the Court or the Judges, and at least one similar register shall be kept for the Court of Appeals, and for each of the several criminal Courts.

10 3rd. Each of these registers shall be opened to public inspection and shall contain an alphabetical index showing the titles of the causes and the numbers of the pages on which are entered the matters, orders, or judgments relating thereto.

OF SHERIFFS AND CORONERS.

78. It is the duty of Sheriffs to notify and execute the different 15 orders, citations, summonses and judgments which they are charged by the law to notify and execute, or which may be placed in their hands or addressed to them for that purpose; they shall be present at the sittings of the Court, excepting those of the Circuit Court, and all that a bailiff may be by this Act or by another law authorized or charged 20 to do, in the execution of any of the above duties, shall be applicable to the Sheriff, and *vice versa*.

General powers and duties.

79. They shall cause to be executed and served by bailiffs and constables, upon their own responsibility, the different orders, citations, summonses, and judgments which they may be charged to execute 25 and serve.

Service of summonses, &c.

80. In executing the orders and judgments with which they are charged, Sheriffs may, unless the contrary be expressly stated, enter upon the lands and into the house of a debtor, break the doors, and remove the furniture, if the execution cannot be effected by any other means, 30 may remove obstructions which any one may have placed on the public roads; in fact, they may do all such acts as are necessary in the execution of the orders or judgments with which they are charged, and, if resistance be offered them, they are even authorized to demand the assistance from the neighbors or passers-by, and employ all other 35 necessary means for the enforcement of justice.

Powers in respect of service or execution.

81. The Sheriffs shall take charge of the Gaols in their respective Districts and shall appoint the gaolers or custodians of such gaols, and shall be responsible for the doings and conduct of such gaolers, whom they may dismiss at will.

To take charge of Gaols.

40 82. Sheriffs shall from time to time make rules and regulations for the internal good government and police of the gaols in their respective districts, and for governing the conduct of the gaoler and other officers of justice in relation to the care and management of the gaols, and also for the safe keeping, suitable care, and adequate protection of all 45 prisoners for debt, but such regulations shall have no force until they shall have been approved and signed by at least a majority of the

Rules for government of Gaols.

Judges of the Supreme Court, and after the date of the proclamation made thereof in the English and French languages in the Canada Gazette.

Damages. 83. The Sheriffs shall be liable in damages, but not otherwise, for the flight or escape of any prisoner confined for debt in the prisons 5 under their superintendence and charge.

6 W. 4, cap. 15, secs. 8, 9, 14, 15, 16, 17.

Duties as to moneys in his hands. 84. It is the duty of every Sheriff to pay the sums by him levied or received from any source whatsoever in his said capacity or in virtue of any order or judgment of any Court, to the person to whom 10 such moneys belong, or to his Attorney generally or specially appointed for the purpose within three days after the same shall have been demanded from him.

In case of refusal or neglect. 85. If the Sheriff refuse or neglect to pay the sum so demanded, the Court in which the matter shall be depending, or which shall have 15 given the order, or judgment, or any one of the Judges of the said Court, upon motion to that effect made by the party to whom such money shall be due, shall, after three days' notice, condemn the Sheriff, if he still make default, to pay to the party claiming the amount, not only the amount due him, but, in addition, twenty-five per cent. on such 20 sum as damages, and interest moreover, at the rate of six per cent. from the day on which the money ought to have been paid and costs.

Certain statement to be prepared and published. 86. In the course of the month following the expiration of any year during which he shall have held office, or during the month following his going out of office, the Sheriff shall be bound to make, prepare, and 25 publish once in the English and French languages, in two newspapers printed, one in the English and one in the French language, in the District in which such Sheriff may reside, or in any other District selected by one of the Judges of the District Court, an exact statement or account in detail and sworn to before the said Judge, of all the moneys in his hands or by him received as Sheriff, stating when and from 30 whom he shall have received the same, and referring to all the orders or judgments, directing the payment of money to him, since his last accounts were rendered, and shewing also to whom these moneys would be due or payable, also all moneys which he may have paid during the said 35 period, when, how, and wherefore; and lastly, all the moneys remaining unpaid which should have been paid, or of which he may have been directed to make payment, and the reasons for which they shall not have been paid.

Statement to be filed of record. 87. These statements or accounts shall be deposited and remain of 40 record in the District Court of the Districts for which the Sheriffs shall have been appointed, and they shall be entered in a register to be kept for that purpose by the Clerk of the said Court.

Coroner. 88. The Coroner is appointed to discharge the duties of the Sheriff in the event of the office of Sheriff becoming vacant by death, resignation 45 or removal from office, and this until a successor to such Sheriff shall have been appointed.

89. The Coroner shall fulfil the functions of Sheriff in any case in which such Sheriff shall be interested, or incompetent to act in any cause or process; and whenever the office of Sheriff and that of Coroner shall be united in one and the same person, the Clerk of the District Court in the same District shall discharge the duties of Sheriff in relation to any such cause or process or to any matter whatsoever.

To fulfil functions of Sheriff

90. Any Captain or the senior officer of militia, and any Justice of the Peace, or the Mayors or Wardens, are respectively authorized to discharge the duties of Coroner in their respective localities, in case of the finding of the body of any person who may have died from accident, violence, or other similar cause, and they, with six of the notables of their place of residence shall give their opinion upon the cause of such death, and make a report thereof in writing to the Coroner of the District.

Inquests in certain cases.

91. There are, moreover, other duties and functions exclusively confided to Coroners, by special laws made for that purpose.

Other duties.

C. Pr. Ls. art. 760, 773.

TRANSLATORS, BAILIFFS, CRIERS, AND CONSTABLES.

92. Translators shall be appointed, removed, and replaced at will by any of the Courts for which it shall be necessary to appoint them; and in the event of there being no translator appointed, or if there be none such present, the Court may, on the requisition of one of the parties, appoint one temporarily, unless the Judge or one of the Judges think proper to make the translation required, or unless the Attorneys for the parties shall agree to make such translation themselves.

Their appointment.

93. One or more Bailiffs shall be appointed for each District, who shall each be designated as "Bailiff," and by no other title, whose principal duty it shall be to attend upon the different Courts and Judges within the limits of the District in which they reside, and to notify, serve and execute the different orders, citations, summonses, notifications, significations, all necessary proceedings and writs, ordinances, judgments and *arrêts* of the various Courts and Judges established by this Act, and all that they may be by law charged and authorised to do and execute.

Bailiffs, their appointment and duties.

C. Pr. Ls. art. 784, 785.

94. The said Courts and Tribunals may from time to time select from among the said bailiffs, such of them as they may deem most competent to act as criers, assistant criers, or tipstiffs, for the service of the Court during its sittings, and to attend upon the Judges, and shall be at liberty to remove and replace them at pleasure.

Assistant Criers or Tipstiffs.

95. The several Courts and Tribunals, and more particularly the High Criminal Court and the Court of Assize, the Judges, Magistrates, and Justices of the Peace, may from time to time appoint, for such period of time as they shall deem necessary, and remove at will, a sufficient number of persons to be constables, whose principal duties will be, to notify and execute all orders and judgments which may be

Constables.

given, confided, or addressed to them in any matter, but specially in criminal matters, and who shall at the same time be peace officers, and bound to see to the preservation of the peace, to police, good order and public safety.

- Special Constables.** 96. Constables may also be appointed by any person specially authorized to do so, in the manner and for the purposes prescribed. 5
- Bailiffs *ex officio* Constables.** 97. Every bailiff is *ex officio* a constable and also a peace officer, and authorised as such to fulfil the required duties.
- Qualifications for appointment as Bailiff.** 98. Hereafter the qualifications required for appointment as a bailiff shall be: 10
- 1st. To be of the age of twenty-one years.
 - 2nd. To have obtained from the principal officer of a Municipal Council, or from at least three Municipal Councillors, or from one or more Justices of the Peace in the County in which he resides, or from the Sheriff, Coroner, or Clerk (but not from the Deputy of any of these officers) in the vicinity of the Court established by this Act in the District in which the candidate resides, a certificate of moral character and good conduct. 15
 - 3rd. To be able to write legibly in the French or English language.
 - 4th. Lastly, to have obtained from the Clerk of the Court to which 20 the petition of the candidate shall be addressed, a certificate of capacity, and it shall first be the duty of such Clerk to examine the said candidate.
- Examination by Clerk.** 99. Upon each examination the Clerk shall receive the sum of one pound, which shall include the cost of his certificate. 25
- Securities.** 100. Any person so appointed shall, before entering upon his duties, furnish to Her Majesty, Her Heirs and Successors, security to the amount of £100, with one or more sufficient sureties, who shall justify their sufficiency to the satisfaction of the Clerk of the Court by whom he shall have been appointed, to ensure his fidelity and the due execution of his duty as bailiff, and to insure and guarantee to that amount the payment of all damages resulting from his negligence, incapacity or malversation, and the repayment of all monies received by or paid to him in his capacity of bailiff. 30
- Security to be deposited in Clerk's office.** 101. The said security shall be deposited in the office of the said Clerk, who, and also his successors, shall be bound to see that in the event of the decease or insolvency of any of the said sureties, or in case any of them shall leave Lower Canada and reside elsewhere, that a new security be provided as prescribed in the foregoing section, and it shall be his duty to demand the same from the said bailiff. 40
- Their duties.** 102. The bailiffs and constables shall be bound to act in their said capacities whenever required so to do, and without respect of persons, excepting within the limitations prescribed by law, and they shall not act on behalf of their relations or connections up to the degree of cousin german inclusive. 45

103. Any bailiff may be dismissed by the District Court sitting in the district in which he shall reside, and such decision may be pronounced *ex officio* by the said Court, or upon any complaint brought before the said Court by a petition, of which at least eight days previous notice shall be given to the bailiff, and the Court shall proceed to decide the matter in a summary manner. Their removal

12 Vic., c. 38, to 105, 106, 107, 108, 111, 112. Décret Frs. 14th June, 1813.

POWERS AND DUTIES COMMON TO THE RESPECTIVE OFFICERS OF JUSTICE, AND THEIR MALVERSATION.

104. The several Clerks, Sheriffs, and Coroners, shall be appointed by the Governor of this Province, in virtue of a commission under the Great Seal of this Province; their deputies shall be appointed in the manner already provided. Appointment of Clerks and other officers.

105. It shall not be lawful for any public judicial functionary or officer to enter upon the discharge of his duties or office unless he shall have first taken an oath faithfully to discharge the duties of his office, before one of the Judges, either of the Court of Appeal or of the District Court within the district in which such officer shall be appointed to act. Oath of office.

106. A Register shall be kept by each of the several Clerks, Sheriffs, and Coroners, in which every appointment, commission, and the oath of office of any Judge, functionary, or officer of justice whatsoever, who shall be appointed and commissioned either by the Governor, by any Court, or by one or more Judges, or by one of the said Clerks, Sheriffs, or Coroners, or by any other person or authority whatsoever, shall be entered at length, but if any translator or constable be appointed for any period not exceeding one month, a note only shall be made in the said registry of such appointment and of the oath which he shall have taken, and only a note shall be made of the selection which may have been made by any Court of one or more criers, assistant criers, or tipstaffs. Register of appointments to office.

107. Mention shall be made in the said register of any dismissal, replacing, resignation, or retirement from office of any functionary or officer of justice. Dismissal.

108. The said entries shall be respectively made in the register so kept at the *chef-lieu* of each district by the Clerk, Sheriff, or Coroner near to the Court whom such appointment shall affect, but the appointment or commission or the oath of office of every Judge, both of the Court of Appeals and of the District Court, shall be entered in the register to be kept for that purpose by the Clerk of the Court of Appeals appointed for the District of Montreal. In which register entries may be made.

109. Each such register shall have an alphabetical index, containing the names of the persons so appointed, commissioned or sworn in, or their removal, resignation or retirement from office; together with the numbers of the pages containing the appointments, commissions, and oaths, respectively, and the removals, resignations or retirements from office. Such register to have an index.

Certificate of appointment of Bailiff

110. Whenever, after the appointment of a bailiff, he shall have furnished the security and taken the oath required by law, the clerk of the Court by whom he shall have been appointed, shall deliver to him a certificate of his appointment under the seal of the said Court, to enable him to justify his appointment.

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Other books and registers.

111. Besides the registers heretofore ordered, the several officers of the Courts shall keep as many books and registers as the Courts or Judges shall think proper to direct, and in such form and style as they shall prescribe.

Certificate to be contained in such registers.

112. Every book or register kept by any officer of justice shall contain, at the commencement, a certificate signed by one of the Judges of the Court of Appeals, or of the District Court, setting forth its title and purport, each of the pages shall be *paraphée* by the said Judge, and the number of the pages so *paraphées* shall be mentioned in the said certificate.

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Other duties of officers.

113. Besides the duties and powers set forth in the foregoing provisions, there are also others which will be hereinafter specially imposed and conferred upon the said several functionaries or officers of justice, who shall be bound to exercise, observe and discharge, the same as they shall also those which may be conferred and imposed upon them generally or especially by law, in so far as they are not contrary to or inconsistent with the provisions of this Act.

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Their sphere of duties.

114. The several officers of Justice, with the exception of the Clerk of the Court of Appeal and of each of his deputies, who may act and exercise their functions generally throughout Lower Canada, may only regularly act and exercise their functions within the districts for which they shall have been appointed, but it shall be their duty and within their province to execute the orders, ordinances, and judgments of the Court or of the Judges whose officers respectively they may be, not only when such orders, ordinances and judgments shall issue from the said Court or from any of its Judges, sitting or acting in the said district, but also in whatever place or district they may have been given or issued.

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12 Vic., cap. 38, sec. 22.

Exception.

115. The Sheriffs, bailiffs, and constables may also, in virtue of any warrant of arrest which they have been charged to execute, arrest any absconding person in any other district than their own.

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Responsibility

116. The clerks, sheriffs, coroners, and their deputies, and the bailiffs, are responsible for any illegality by which any *acte* or proceeding performed, taken or done by them, may be invalidated; and any of them may by the judgment of the Court, which shall decide upon such illegality, be condemned at the same time to pay to the parties the expense of the *acte* or proceeding so declared invalid, without prejudice to the recourse in damages of any of the parties, should the case give rise thereto.

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Punishment.

117. In case any officer of justice shall be guilty of extortion, malversation, gross negligence, or any bad conduct whatever, or further, if he do not pay or render an account of the monies by him collected and

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received in his official capacity, or under the pretext of executing some order, or of evading any of his duties, or of exercising his authority in any manner, besides being dismissed or suspended from the discharge of his duties, by the authority which shall have appointed him, or being
5 condemned in damages to the parties aggrieved, or exposed or subjected to all the means of punishment and to all and every recourse permitted by law in such cases, he shall incur a penalty not exceeding the sum of £250, which may be enforced before any Court of competent jurisdiction.

118. The District Court may, upon any complaint which may be
10 brought before it by petition, of which notice shall have been given to the said officer at least eight days in advance, proceed to hear summarily the said complaint, and the parties and witnesses, and may give such order as it shall think proper for the reimbursement or payment to the person entitled thereto of any sum of money so extorted, exacted or
15 received, with such costs as it shall think proper to allow; and if such officer do not immediately pay the sum he shall have been ordered to pay, and the costs, he shall be imprisoned in the Common Gaol of the District until perfect payment.

Proceedings in such case.

QUALIFICATIONS REQUISITE FOR CERTAIN OFFICES, AND INCOMPATIBILITY OF CERTAIN FUNCTIONS.

119. No one may be a judge or assistant judge of any of the courts
20 established by this Act, if he have not been admitted as an advocate to the bar of Lower Canada eight years before his appointment, or if at the time of his appointment he be not, or have not been, a Judge either of the Court of Queen's Bench or of the Superior Court, or unless he come under any of the exceptions provided by law.

Qualifications of Judges.

120. No other than an advocate or an attorney may be appointed
25 clerk, sheriff or coroner of any of the said courts, but this restriction shall not apply to the deputies of any of these officers.

Qualifications of Clerks, Sheriffs, and Coroners.

121. The Judges or officers of any of the Courts established by this
30 Act shall not belong to the Executive or Legislative Councils or to the Legislative Assembly, nor to any administrative, legislative or municipal body in this Province, nor hold any other place of profit under the Crown in this Province.

Judges, &c., disqualified in certain cases.

122. The judges, clerks, sheriffs and coroners, or their deputies, shall
35 not, while in the exercise of their functions, practise as advocates, solicitors, attorneys, proctors or counsel, in any court of justice in Lower Canada.

Not to practise their profession.

ADDITIONAL POWERS OF COURTS AND JUDGES.

123. The courts and judges established by this Act have all the powers
40 requisite for the exercise of their respective jurisdictions, and to enforce the execution of their orders and judgments in case of resistance, rebellion, disobedience or insubordination, although such powers may not be expressly conferred upon them by law.

Powers to enforce judgments.

124. The several courts and judges may enforce the observance of
order and decorum, and if during the sitting of any court or tribunal, or

Punishment for contempt, &c.

in any other place in which legal process is in progress, or during the carrying into effect, or on the occasion of the exercise of any proceeding on their part, one or more judges receive any injury or insult either by words, gestures, signs, threats or violence, or in any other manner, or further, if any one violate the rules of decency, civility or order, or create disturbance in any way, the said courts and judges for the maintenance of order, and for the repression or punishment of any of these offences, as also for any contempt of their authority, shall have the following powers, viz:—1st. Either of ordering into the custody of any one, any person who shall be guilty of any of the said offences: 2nd. or of expelling him or causing him to be expelled from the place in which such offence shall have been committed: 3rd. of condemning him to a fine not exceeding £25, or to imprisonment for any period not exceeding six months: 4th. or lastly, of punishing him by two or more of the above penalties at once.

Fines on jurors, &c.

125. The said courts and judges may inflict fines on jurors, sheriffs, clerks, bailiffs, constables and other officers in their service, when they absent themselves from the sittings of the courts or neglect to fulfil any of their duties, but such fine shall not exceed £12 10s. for each offence of this nature.

Powers as to summoning of witnesses.

126. The courts and judges have power to compel witnesses to appear and answer in person before them, after duly summoning them for that purpose, or by requiring them so to do when they are present in court, or in the presence of the judge in whatever part of Canada such witness may be or reside, and each of the said courts or judges is moreover invested with all the powers contained in the provisions of the Act of the Legislature passed in the eighteenth year of her Majesty's Reign, chaptered 9, and they are empowered to exercise them in the manner prescribed, provided that the same are not contrary to this Act.

Failing to appear, witnesses may be arrested, &c.

127. Upon the failure to appear of the witnesses so summoned or bound by the law to appear, the courts or judges may, upon the requisition of one of the parties, order that the said witness or witnesses be arrested, and brought before them, and if the witness so brought do not give to the court satisfactory excuses for such failure on his part to appear, the court or judge may forthwith condemn him and even *par corps* to the payment of a fine not exceeding £25 and costs, the whole to the profit of the party who shall have caused him to be summoned.

Punishment upon refusal to answer.

128. If a witness in any cause shall refuse to answer any question not tending to incriminate him or to expose him to any punishment or penalty, or obliging him to reveal his own guilt or infamy, or lastly, compelling him to disclose any secret or confidential declaration which his position or the law authorizes or binds him to withhold, the court, judge or judges may forthwith condemn him, and even *par corps* to the payment of a fine not exceeding £50 and costs, the whole to be paid to Her Majesty, Her Heirs or Successors, or to the party on behalf of whom he shall have appeared, in the discretion of the court, or to imprisonment for a period not exceeding six months, or to both penalties for the same offence.

Damages.

129. The party deeming himself aggrieved by the failure to appear or refusal of any witness to answer to the questions put to him, has

also an action of damages against him on account of the wrong which he may have sustained.

130. The Courts and Judges may on the requisition of either of the parties, in commercial matters and in any other civil matters, allow 5 interrogatories on *faits et articles* or *sur serment décisoire* or otherwise, and enforce the answering thereof, and may also issue commissions to any tribunal or Court or to any of the Judges of the same, or to any other Court or to any Judge, Justice or other person, at any place whatsoever in Upper or Lower Canada, for the receiving at any time of the declar- 10 ations of the parties or witnesses or the answers to interrogatories put to the parties or to the witnesses and also the answers of aged, sick or infirm witnesses or of witnesses about to leave Lower Canada, in the manner and form prescribed by law, or which may be so prescribed hereafter by the said Courts and Judges.

Faits et articles, commissions, rogatoires, &c.

15 131. The Courts and Judges may also in their discretion upon the requisition of either of the parties, and without any commission being required or any other formality other than the order following, order that the trial of any cause or matter whatsoever, the hearing or exam- 20 ination of the parties or of the witnesses or of any other person requiring to be heard, or to be examined under oath, or otherwise in any civil matter, should be had at any place whatsoever before any tribunal or Court, or any of the Judges of the same Court, or of any other Court, or before any Justice of the Peace or other person whatsoever, 25 in the same manner as before the Court or the Judge or Judges before whom the said matter may have been commenced or may still be pending, and for that purpose may order the transmission of either the whole or any part of the record to the place at which such examination, trial or hearing is about to take place, and the clerk shall act accordingly and take the necessary steps to enforce the attendance of any 30 witness or other person at the place, day and hour which shall have been fixed upon.

Cause to be sent elsewhere for trial in certain cases.

132. The Courts and Judges may also upon the requisition of one of the parties, order the other to produce in Court the subject matter of the contestation, which is in his possession, if it be moveable prop- 35 erty and of a nature to be exhibited, with the view of allowing it to be identified, and in default of such production the identity of such property or article shall be deemed *pleno jure*, to have been duly proved without it being necessary to make any application to that effect.

Identification.

133. The Courts and Judges may also on the requisition of one of 40 the parties, order the other party to produce the books, papers and other documents in his possession, which may be of assistance in the decision of the cause, and failing such production the facts so to be proved shall be *pleno jure*, and without any application to that effect being required, be held to be admitted, unless the party on whose part 45 such production is demanded prove that it was impossible for him to effect such production.

Production of documents.

134. The Courts and Judges may on the requisition of one or more of the parties order a third party to produce any papers, deeds, pro- 50 ceedings or documents in their possession which might be of use in the decision of any cause or matter whatsoever.

By third parties.

- Notaries ex-
cepted.** **135.** Notaries, however, are not obliged to produce the minutes of *Actes* passed by them, and of which authentic copies or extracts may be procured, excepting however when it becomes requisite to identify the original signatures attached thereto, and in all cases of inscription *en faux*. 5
- How produced** **136.** Any party to a cause, or any third party so ordered to produce any books, papers or other documents, must deliver them on the day fixed, to the Clerk of the Court, he giving a receipt therefor, and the clerk shall be bound to keep them and to deliver them back to their owners whenever the cause shall have been finally decided. 10
- Appointment
of Commis-
sioners of Dis-
trict Court.** **137.** The District Court and the Judges thereof may, from time to time, and whenever occasion shall require, by a commission under the seal of the said Court, and signed by the Clerk thereof, an entry at length whereof shall be made in the register, kept for that purpose, or by a simple order, delegate and give to any person whom 15 they may think proper in each district respectively, and who shall prepare a certificate thereof, authority to administer to parties, witnesses, *experts*, arbitrators, tutors, curators, counsel, or to any other person whomsoever, any oath, or oath of office, and to take and receive any affidavit in any case or matter within the Province, or 20 within the cognizance or jurisdiction of any of the Courts established by this Act, or with respect to any matter or thing whatsoever, and every Mayor or Justice of the Peace of Lower Canada is, *ex officio*, a Commissioner of the District Court, and as such authorized to administer, administer and receive in the same manner any such oath, oath of 25 office, or affidavit.
- Effect of affi-
davit.** **138.** The oaths or affidavits so made or administered shall have the same force and effect as though taken before a Court, or before one or more Officers of Justice specially and respectively authorized to take or receive the same. 30
- Title of Com-
missioners.
&c.** **139.** The several Commissioners specially appointed or authorized for that purpose, shall take in any *acte* the title of "Commissioner of the District Court," and no other, indicating at the same time the District for which they are appointed; and before acting as such they shall take an oath for the faithful discharge of their duties before one 35 the Judges of the District Court, and mention shall be made in the register kept for that purpose, both of the said Commission or appointment, and of the oath of office.
- Appointment
of Auditors.** **140.** In any suits which render necessary a settlement of accounts, it shall be lawful for the said Courts respectively to order an audit of 40 the accounts, and to refer any account, or the matters of account in question in any case to a person or persons skilled in such matters, and competent to act as auditors, with power to act and report thereon in the same manner as *experts* in causes in which *experts* may be appointed in virtue of law, and such reports shall be received and 45 taken as are the reports of *experts* appointed as aforesaid.

COMMISSAIRES ENQUETEURS.

141. 1st. In any case in the District or Circuit Court in which there shall be an *enquête* to be taken, it shall be lawful for the Court before which such case shall be pending, to appoint a competent person as *Commissaire Enqueteur* to take such *enquête*, whenever from the nature
 5 of the suit, the number of witnesses to be examined, or the distance at which they reside, or the difficulty or multiplicity of the facts to be proved, or any other sufficient cause, it shall be shown to the Court by any of the parties concerned that by the appointment of such *Commissaire Enqueteur* the purposes of justice will be attained in such suit or
 10 proceeding.

Their appointment, powers, and duties.

2nd. The interlocutory judgment appointing any *Commissaire Enqueteur*, shall mention the place or places where the *enquête* is to be taken, and the period within which it must be completed; but such period may be extended by the Court for any cause which it
 15 shall deem sufficient.

3rd. Every *Commissaire Enqueteur* shall be sworn before a Judge of the District Court, or a Commissioner of the District Court, to the due and faithful performance of his duties.

4th. He shall give at least eight days notice to the parties, of the time
 20 and place at which he will commence the *enquête*.

5th. The witnesses shall be summoned by subpoena from the Court before which the cause is pending, to appear before him to give their evidence.

6th. He shall swear the witnesses.

7th. He may adjourn the *enquête* from day to day, or to any such
 25 further day as he shall appoint, until all the witnesses of the parties shall have been heard; but he shall not so adjourn the *enquête* beyond the period fixed for its completion by the interlocutory judgment, unless such period shall have been extended by the Court.

8th. Every *Commissaire Enqueteur* shall, with regard to the suit or
 30 proceeding in which he is to take the *enquête*, have all the powers of a Judge presiding at an *enquête* in the District Court.

9th. Every witness in any case referred to a *Commissaire Enqueteur*
 shall be examined in the presence of the latter, who may put any
 35 question to the witness which he shall deem pertinent to the issue, and he shall take down in writing, or cause to be so taken down by a writer appointed by him, and under his immediate direction, notes of the material parts of the evidence given by such witness, and of any
 40 objections insisted upon by any party, and his adjudication thereon; and such notes shall be read over, and if necessary explained to the witness, who may have such additions or corrections made thereto or therein as shall be necessary to make them truly state the material parts of his evidence, and shall then sign them if he cannot write; they
 shall then be signed by the *Commissaire Enqueteur*, and shall stand
 45 as the evidence given by such witness.

10th. Every *Commissaire Enquêteur* shall also receive all pertinent documentary evidence adduced by the parties, and shall take or cause to be taken by a clerk to be employed by him, notes of any oral admissions made by the parties, and such notes being signed by the *Commissaire Enquêteur* shall make part of the evidence in the case, and shall avail us if made in writing in due form. 5

11th. Any party summoned to answer interrogatories upon *faits et articles* may, by the summons to be issued by the Court in which the case is pending, be required to answer *viva voce* at the *enquête* before the *Commissaire Enquêteur*, who shall swear the party so summoned to answer, take his answers in writing if he appears for the purpose of answering, or record his default if he does not appear: the *Commissaire Enquêteur* may also put to such party, *viva voce*, any further questions pertinent to the interrogatories, and which he may think necessary to their being fairly and fully answered, or to the facts intended to be proved by them being admitted by refusal to answer them; and the answer or refusal to answer any question so put by the *Commissaire Enquêteur* shall have the same effect as if such question were one of the interrogatories served on such party, and which he was summoned to answer; and any question so put by the *Commissaire Enquêteur* which the party under examination shall refuse to answer, shall be put into writing by the *Commissaire Enquêteur*; and shall then remain of record and have effect as aforesaid. 10 15 20

12th. The *Commissaire Enquêteur* after completing the *enquête* committed to him, shall make his return thereof to the Court, on or before the day fixed for that purpose by the interlocutory judgment, by virtue of which he shall have been appointed, or such further day as shall have been fixed by any subsequent interlocutory judgment. 25

13th. The Judges of the District Court, or any five or more of them, as provided by this Act, may make any Rules of practice which they deem necessary concerning the taking of *enquêtes* by *Commissaires Enquêteurs*, whether such *enquêtes* are in the Superior Court or in the Circuit Court, and also any tariff of fees for the *Commissaires Enquêteurs*, counsel, advocates, attorneys, and other persons employed in the taking thereof, and not being salaried officers, or whose fees are to be fixed by a tariff to be made by the Governor in Council; and any such rule of practice or tariff may be altered or repealed by the said Judges. 30 35

Certain other powers not affected.

14. The power to appoint *Commissaires Enquêteurs* shall not in any way impair the power of the said Courts to issue commissions for the examination of witnesses or of any other persons. 40

Powers to enforce judgments.

142. The Courts and the Judges are invested with power to order the arrest and imprisonment of the parties, *saisie-arrest* before or after judgment, *saisie-gagerie*, *saisie-revendication*, sequestration, seizure, execution, and sale of all their property, but the District Court alone has power to issue writs or orders of *captus ad respondendum*, and the Circuit Court has no authority to dispose of any immoveable property. 45

SUMMARY PROCEEDINGS.

143. In all cases of urgency or absolute necessity, and in all cases or matters where promptness is required, within the jurisdiction of any Court or Judge, every such Court or Judge shall be bound either in Court or out of Court, at the sittings in term or out of term or during
 5 the vacation, in chambers at the Court House, at his domicile, residence or hotel, to proceed, hear, decide and determine in a summary manner, that is to say without complying with the ordinary forms, but at places, days and hours and in the manner and form specially prescribed by law in any such case, and in default of special or contrary
 10 provisions, at places, days and hours and in such manner and form as such Court or Judge shall fix, or as often and in such manner as he shall deem necessary.

Summary proceedings how to be taken.

144. Whenever it is affirmed that any suit ought to be decided in a summary manner, the Court or Judge shall give judgment
 15 in such case with the greatest promptitude, giving it a preference over all other matters to which the law does not accord this privilege, and every summary matter or matter deemed or considered to be so, shall be proceeded with, heard and determined in the manner and at the times and places prescribed in the foregoing and
 20 this section.

How suits may be decided summarily.

145. The District Court or any Judge of that Court shall have jurisdiction in and may proceed in a summary manner, in all matters relating :

In what matters such proceedings may be had.

- 1st. To any alimentary provision or pension.
- 25 2nd. To any possessory action.
- 3rd. To urgent repairs or improvements.
- 4th. To the rescision, annulling or declaring void any lease or any writing, deed, agreement or contract in the nature of a lease.
- 30 5th. To any ejectment from the premises whether or not any lease, writing, deed, agreement or contract in the nature of a lease exist, or whether it have expired or be rescinded, annulled or declared void.
- 6th. To the hearing of any witness who is sick or infirm or on the point of leaving Lower Canada.
- 35 7. To sequestrations, commissioners and guardians.
8. To the election, appointment or removal of tutors, curators, counsel, executors or administrators, the emancipation of minors or to any *avis de parens ou amis* and to the rendering of accounts or to the authorising of a notary or some competent person to receive the *avis*
 40 *de parens ou amis* and to administer any oath required in such cases and to grant a certificate thereof; to the homologation or rejection of proceedings at meetings for the *avis de parens* called or held by a notary or held in his presence.

9th. To voluntary and forced interdiction, to the removal of any such interdiction, and to restoring any person so interdicted to the enjoyment of his rights.

10th. To the giving judgment upon any transfer to provisional possession of the property of an absentee. 5

11th. To the proving of a Will.

12th. To the constraining of heirs or married women in community as to property with their husbands, to declare, after the expiration of the delays for deliberation, whether they accept or renounce to the successions or *communautés*. 10

13th. To the completion of inventories, sales of the property of successions, to voluntary or forced licitations, closing of inventories, attestations of accounts, insinuation, affixing or removal of seals.

14th. To the ordering and regulating of all partitions of the property of *communautés* or of successions, in which minors, interdicted persons, 15 or absentees, are interested, and also to partitions by law between persons of full age and present, when they do not agree as to the partition and the manner of carrying out.

15th. And lastly, in relation to the compelling of any public officer, or person whatsoever, to deliver a copy of any deed or writing what- 20 soever.

Not to affect jurisdiction of Circuit Court.

146. Nothing in the foregoing sections shall have the effect of taking away from the Circuit Court the jurisdiction conferred upon it by the 19th section of this Act, in any of the cases contemplated by the said section, if the interference of such Court be sought, and the matter sub- 25 mitted to it, and the said District Court and the Judges thereof shall only be bound to take cognizance of the matters, jurisdiction in respect of which is already vested exclusively in the said Circuit Court, when called upon to act in a summary manner out of term.

Above powers vested in Clerk in the absence of Judge of District Court.

147. Any Clerk of the District Court may, at the place at which he 30 keeps his office, in the absence of any Judge of the District Court, exercise in the same manner all powers conferred on such Judge under paragraphs 6, 7, 8, and that part of paragraph 13, after the words "*closing of inventories*" to the end, and also all those mentioned in paragraph 15, in section 145, but the appointments and orders so made by the 35 Clerk may, upon summary petition, be set aside by the District Court or any Judge in the same District.

WRITS OF *HABEAS CORPUS*, *MANDAMUS*, &c., &c., &c.

Who may issue the said writ.

148. The Court of Appeal and the District Court, or the Judges of either of the said Courts, may respectively in accordance with the provisions of and saving the restrictions imposed by this Act, grant the 40 following writs, viz.:

Habeas Corpus defined.

1st. The writ of *Habeas Corpus* has the effect of ensuring liberty, and of shielding from any arrest or illegal detention; it is addressed to any one having an individual in charge, or in detention, com-

manding him to bring such individual before the Court or the Judge, at the time and place appointed, to give his reasons for having so detained him in custody or deprived him of his liberty.

2nd. The writ of *Mandamus* has the effect of obviating the disorder which might arise from a denial of justice, or a failure of police, and is granted whenever the law affords no recourse by the ordinary means, and even when the party may have another legal remedy to have recourse to, if the slowness of the ordinary forms cause such delay as to be detrimental to the public welfare, or to the administration of justice; it is addressed to any person or corporation, to any court of inferior jurisdiction, directing him or them to do a specified thing, appertaining to the place, functions, or quality vested in them.

Writ of Mandamus defined.

This writ may also be addressed

1st. To any person claiming, usurping or holding unlawful possession of any office, charge, or public place in any corporation, public body or department, demanding of him by what authority he claims or holds such office, charge or place, and to prevent the illegal detention thereof.

To whom such Writ of Mandamus may be addressed.

2nd. To any association, company, society, community, corporation, body or board, acting as such in Lower Canada, without having been legally incorporated, and without having been recognized as such by the laws of Lower Canada, or to any association, company, society, community, body or board having violated or then in the act of violating the acts or laws, establishing, modifying, renewing or reorganizing it, or any other law, to such a degree as to merit the forfeiture of its charter for its abuse thereof, or when it shall have committed any act equivalent to the renunciation of its rights, privileges and attributes, or further when it shall have exercised or then be exercising any privilege or power not conferred by law, with the view of ordering in each and every such case what law and justice requires.

3rd. To any description of association, company, society, community, corporation, body or board established or authorized by law, directing them, as the case may be, to hold their elections, to fulfil the other duties imposed upon them by law or by their charter, to admit, recognize, or re-establish in their functions such of their members as they may have refused to admit, although legally elected, chosen or appointed, or whom they may have illegally deprived of their office without sufficient cause.

4th. To the Judges of the inferior Courts commanding them to render justice, and to fulfil the other duties of their office, in conformity with the law, and this writ may be issued not only when these Judges are guilty of a denial of justice or unduly delay giving their decisions on causes submitted to them, but also when they refuse to fulfil any of the duties imposed upon them by law, or which may admit of the Superior Courts exercising their jurisdiction in appeal over them, and such writ shall also be granted, to stop proceedings in any cause, whenever the Courts or Judges transgress the limits of their jurisdiction, and it is then addressed to the Judge, and to the party proceeding in any cause pending before an inferior Court, forbidding them to take any further steps in such proceedings on the ground that such cause does not come under the

cognizance of that Court, but of another, or that the said Court is not competent to render a decision.

5th. To any individual, as to the heir or other legal representatives of any public officer deceased, or to such officer himself, if he lives or if he have sent in his resignation or been removed, to compel them or him over to the successor in office of such officer, the papers and other property belonging to his office. 5

6th. To any officer invested with public functions, directing him to fulfil any of the duties attached to his office or which may be legally required of him. 10

Definition of writ of *certiorari*.

III. The writ or order of *certiorari* has the effect of pronouncing upon the validity of any proceeding, and to avoid it if necessary; it is addressed to any Judge or Court of inferior jurisdiction directing him or them to transmit any proceeding decision or judgment which may have been had before or rendered by any such Judge or Court, and this writ may be granted, without the Judge or Court who may be applied to therefor under any pretext or in any case, being acquainted with the merits of the matter, and without their stopping to consider whether in fact justice has been rendered to the petitioner,—in any of the cases or for the reasons following. 15 20

Cases in which it may be granted.

1. If such proceeding, decision, or judgment, be tainted with substantial or radical and evident invalidities.

2. If such proceeding, decision or judgment contain any express contravention of the law, or if the law have not been correctly applied to the point established by the proceeding, decision or judgment. 25

3. If there be incompetency, failure, or excess of power or jurisdiction.

These writs may be addressed by a Superior Court to an inferior.

149. In all cases in which any one of these writs may be addressed to any tribunal or Court of Justice, or to any Judge or Magistrate, the District Court or any of the Judges thereof shall only address it to such Judges, tribunals or Courts of Justice as are inferior to them, as for example, to Justices of the Peace; neither shall they address them to the Circuit Court or to the Court of Assize, and such writ shall only be addressed by a superior Court or Judge to an inferior Court or Judge 30

Above powers to be exercised summarily.

150. All the powers mentioned in the several provisions of the 148th section shall be exercised by the said supreme and district Courts, or by any of the Judges of either, in a summary manner excepting when contrary or other proceedings are prescribed. 35

Letters patent

151. The District Court alone has power to annul and cancel all letters patent issued by the Crown. 40

Powers of District Court under certain

152. The District Court and each Judge of the said Court are invested with all the powers delegated to any Court or Judge by any of the Acts of the Legislature of Canada hereinafter mentioned, and by any subsequent Act in any way amending them, in so far as they are not contrary to the provisions of this Act, viz.: 45

1st. The Act passed in the 14th and 15th years of Her Majesty's 14 & 15 Vic. reign, intituled, "An Act to allow notaries to call meetings of relations and friends in certain cases without being thereto specially authorized by a Judge." cap. 68.

5 2. The Act passed in the eighteenth year of Her Majesty's reign, intituled, "An Act to regulate the proceedings on forced licitations, and to give them the effect of Sheriff's sales." (*Decrêts.*) 18 Vic. cap. 110.

10 153. The Court of Appeal, or the Judges thereof, or at least three of them have power to make, repeal, alter and amend from time to time such rules as they shall deem expedient, for fixing the forms of proceedings in the said Court, or before them or any one of them, in term or out of term, in all cases not provided for by this Act; provided that they contain nothing contrary to this Act or to any other Act or Law. Rules of Practice in Court of Appeal.

15 154. The fees of the several officers of the said Court of Appeal and the fees of the counsel, advocates and attorneys practising therein, shall be those established and fixed by table C of this Act. Fees.

20 155. The District Court or the Judges thereof, or at least five of them have power to make, repeal, alter and amend from time to time such rules as they shall deem necessary for fixing the mode of proceeding in term or out of term before any of the Courts established by this Act (excepting the Court of Appeal) or before the Judges or any of the Judges presiding in the said Courts, or fulfilling any of the functions attached thereto, in all cases not provided for by this Act: Provided that the said rules shall not contain anything contrary to this 25 Act or to any other Act or Law. District Court to make Rules of Practice for itself and Inferior Courts.

30 156. The District Court or not less than five of the Judges thereof have power to make and establish, repeal, alter and amend from time to time tariffs of fees for the counsel, advocates and attorneys and for all the officers of justice whose salary the Governor is not authorised to fix, practising in term or out of term, whether in the District or Circuit Courts or before any of the judges thereof. Tariffs of fees.

35 157. But the said rules and tariffs shall only have force and effect from the day upon which it shall have been printed and published in the English and French languages and then deposited in the office of the court to which they relate. When they shall go into effect.

40 158. The Courts and Judges have moreover all the powers specially vested in them by the different sections of this Act or by any other law, not repealed, amended, modified or superseded by this Act, and they are also bound to fulfil all the duties imposed upon them by this Act or by any other law not repealed, amended, modified or superseded thereby. Other powers.

159. Every prerogative or right of the Crown not specially affected by this Act shall remain intact.

**PLACES AND PERIODS AT WHICH THE SITTINGS OR TERMS
OF THE COURTS SHALL BE HELD.**

Table B, its
contents.

160. Excepting for the District of Gaspé the places at which the several Courts by this Act established shall be held, the number and duration of the terms of each of the said Courts, and the days on which they shall begin and end, are set forth in the table B of this Act, the first column whereof contains the name of each District, the second the name of the place at or near to which the said Courts shall respectively be held in each said District under the designations assigned to them in the said second column, and the third column the number and duration of their terms and the days on which they shall begin and end.

Sittings of
Circuit Courts

161. The Circuit Court shall be held in each District, as set forth in the said table B, at the same place as the District Court, and also at each of the places fixed in the second column of the said table, and shall be distinguished by the numbers assigned to it in the said table for each place in which it shall be held, the said Court when held in the same place as the District Court being called **CIRCUIT COURT, No. ONE**, and so forth, as shewn in the said table.

4 and 5 Vict. cap. 20, sec. 42.

Jury trials.

162. Besides the terms of the District Court above mentioned, separate days shall be fixed in term by the said District Court in each District, for the trial and hearing on the issue of fact, of any cause, suit or trial by jury in any civil matter, and to receive the verdict of the jury.

Criminal
Courts.

163. The high Criminal Court and the Court of Assize shall open respectively at the place and time fixed by the said table B of this Act, and shall continue to sit until they are closed, which shall only be when they are respectively of opinion that nothing more remains to be done during that term.

Oyer and Ter-
miner.

164. Besides the ordinary terms of each of the said Courts of criminal jurisdiction it shall be lawful for the Governor of this Province, whenever he shall deem it expedient or necessary to issue commissions of Oyer and Terminer, and general gaol delivery, for any District or place whatsoever in Lower Canada.

Sittings of
the Court of
Appeals.

165. Four terms of the said Court in appeal and error shall be held in each year at each of the cities of Quebec, Montreal and Three Rivers; the said terms shall commence respectively on the first day of March, the first day of June, the first day of September, and the first day of December, at the City of Montreal; on the twelfth day of March, the twelfth day of June, the twelfth day of September, and the twelfth day of December at the City of Quebec; on the twenty-third day of March, the twenty-third day of June, the twenty-third day of September, and the twenty-third day of December in the City of Three Rivers, and shall continue at the cities of Quebec and Montreal during nine calendar days, and during three days only in the said town of Three Rivers; Provided always, that the Court may on the last judicial day of any such term, adjourn for the purpose of giving judgment

Provido.

only, to any day thereafter, on and after which day it may again adjourn for the like purpose ; and provided also that any one judge, or in the absence of a judge, the clerk of the court or his deputy may, on any day in term, open and adjourn the court, receive returns and motions of course, call parties who ought then to appear in courts, and record appearances or defaults, and do other acts of a like nature requiring no exercise of judicial discretion.

166. The powers conferred upon the Clerk of the Court of Appeal, under the last proviso of the last section, are conferred upon the Clerk or Deputy Clerk of any of the Courts established by this Act, and he may exercise the same in the same manner and under similar circumstances.

Similar power to Clerks of other Courts.

167. The Governor may at any time, and from time to time, by Proclamation, direct an extraordinary term of the said Court in Appeal and Error, to be held either at Quebec or Montreal, and to commence and end on such days as shall be appointed in such proclamation, which shall be issued at least thirty days before that appointed for the commencement of such term ; and to any such extraordinary term all the provisions of this Act, and of the law with regard to ordinary terms of the Court in Appeal and Error, shall apply in so far as may be consistent with such proclamation ; and the sittings at any term of the Court on the Appeal side, ordinary or extraordinary, may be closed, whenever there shall be no business before the Court, or the Term may be continued by the Judges by adjournment until there shall be no business before it.

Extraordinary terms.

168. Cases in Appeal or Error from the Districts of Ottawa, Montreal, Argenteuil, Joliette, St. Francis, Bedford, St. Hyacinth, Iberville, and Beauharnois, shall be heard and determined at the City of Montreal only, and the writs in such cases shall be returnable there ; and cases in Appeal or Error from the Districts of Three Rivers shall be heard and determined in the City of Three Rivers only, and the writs shall be returnable there, and cases in appeal or error from the districts of Quebec, Saguenay, Gaspé, Rimouski, Kamouraska, Montmagny, and Arthabaska, shall be heard and determined at the City of Quebec only, and the writs in such cases shall be returnable there.

To what Districts Appeals shall lie.

169. The places at which the different Courts established by this Act shall be held respectively in the District of Gaspé, the number and duration of the sittings or terms of each of the said Courts, the days on which they shall begin and end, and the name to be taken by each Circuit Court respectively, according to the place at which it shall be held, are fixed by the special provisions hereinafter contained in relation to the said District.

District of Gaspé.

170. The Governor shall, by a proclamation to be issued thirty days before the day fixed for the coming into force of this Act, fix the number and duration of the sittings or terms not heretofore fixed by the said table B or by this Act, and the days upon which they shall begin and end, in case provision shall not have been made therefor, and he may also by proclamation change them from time to time, and this both as regards those which shall have been fixed by the said table, and those which shall have been fixed by proclamation or by this Act.

Proclamation to issue in certain cases.

Holidays.

171. The Sundays and *fêtes d'obligation* included within the periods of time or being the dates fixed for the sittings or terms of any of the Courts established by this Act, are always excepted.

Judge may close sittings in certain cases.

172. Nothing in the next preceding section, or in any proclamation under it, shall prevent the Judge from closing the sittings in any term whenever there shall be no business before the Court, or from continuing any term by adjournment until there is no more business before it, as hereinafter provided; and no term shall be so fixed as that any part of it shall be between the ninth day of July and the first day of September, both days exclusive, except in the districts of Gaspé and Saguenay. 5 10

Vacation.

173. Excepting for the said districts of Gaspé and Saguenay, the period between the ninth July and first September in each year (the said two days inclusive) shall be a vacation, during which the proceedings in every suit or action shall be suspended, and no party shall, during the said period, be bound to file any pleading or to take any step in the proceedings in any cause or suit, returnable or returned during the said period, excepting upon the express order or direction of a Court or Judge. 15

PROCEEDINGS BEFORE THE CIVIL COURTS.

OF SUMMONSES.

Commencement of actions

174. Every *demande*, action or suit brought in the District or Circuit Courts shall be commenced by a writ of summons issued in the name of Her Majesty, Her Heirs or Successors, in the English or French languages, and containing: 20

Contents of Writ of Summons.

1st. The name or title of the Court having cognizance of the action;— 25

2nd. The title of the cause;—

3rd. The names, callings, residences or domiciles of the plaintiff and defendant, or the place at which they may then be respectively, the cause or grounds of the action set forth clearly but summarily and as briefly as possible, unless the writ be accompanied by a petition setting forth in the same manner the cause and grounds of the action and signed by the plaintiff or his agent or attorney, or by his attorney *ad litem*, or by the officer serving the writ, and in such case it will be sufficient to refer in the writ to the petition the cause and grounds of the action;— 30 35

4th. A summons to the defendant to satisfy the *demande* or to appear and answer the said *demande* in Court or at the office of the Court to which he shall be summoned, as the case may be, and indicating the place and the time at which the Court is held, or the place at which the office is kept;— 40

5th. The day and the hour for appearing, if it be in the Circuit Court, and the day only if it be in the District Court, or at the office of the Court;—

6th. The date of the day, month, and year of its issue ;—

7th. The said writ shall be signed by the officer who issues it, and sealed with the seal of the Court under the authority of which it is issued, but the absence of such seal shall not render the writ void.

5 175. If it be a body certain, or some specific matter or object which is sought for, it should be described with exactness in the writ of summons or in the petition annexed thereto, so that there should be no uncertainty as to the matter claimed. Cause of action, how stated.

10 176. In actions real or mixed and in all proceedings relating to immoveables, the situation of the property, and two at least of its boundaries shall be set forth. In real actions.

15 177. The writ of summons shall be prepared and issued by the Clerk or Deputy Clerk of the Court under the jurisdiction of which the matter is, upon a simple application therefor by the party complaining or on his behalf by his agent or attorney, and as many originals thereof may be granted as there are districts in which it has to be served or executed. Writ, how issued.

20 178. The clerk shall also be bound to prepare and issue as many copies thereof as may be required to be served, or as many thereof as may be asked for, and each copy of the said writ shall be certified to be a true copy by the clerk, or it may be certified by the plaintiff's attorney. Copies.

25 179. In any *demande*, action or suit according as it relates to any matter or thing within the competency or jurisdiction of the District or Circuit Court, the defendant shall be summoned to appear at the office of the District Court, or before the Circuit Court at any one of the places of holding the one or the other of the said Courts, in the district in which the domicile or residence of the defendant or of one of the defendants, or one of the parties to the cause shall be ;— In what Court and District Defendant may be summoned to appear.

30 Or in the district in which the writ shall have been personally served upon one of the defendants or one of the parties to the cause ;—

35 Or in the district in which the principal *demande* shall have originated in the case of a *demande en garantie*, *reprise d'instance* or other similar proceeding incidental or relating to any such *demande*, *instance* or proceeding ;—

Or lastly, in the district in which the cause of the *demande*, action, suit or proceeding shall have originated, or in which the debt, sum of money, or thing claimed shall be payable or deliverable.

40 180. Every juridical day of any term of the Circuit Court is a return day for any writ of summons and for any *acte*, document or proceeding returnable into the said Court. Return days for Circuit Court.

181. Every juridical day in the year is a return day for any writ of summons, and for any *acte*, document and proceeding returnable to the office of the District Court or unto the said Court. For District Court.

Delay between service and return.

182. The delay between the day on which the writ of summons shall be served on the defendant and the day fixed for the return and the appearance of the defendant shall be six days, if such defendant reside not less than five leagues from the place of holding the District or Circuit Court and if he reside at a greater distance, the above delay shall be extended one day for every five leagues of distance from his place of abode to the place of holding the Court before which or at the office of which he shall have been summoned to appear. 5

To what officer writ shall be transmitted.

183. The writ of summons and any copy thereof shall be at the option of the Plaintiff transmitted or addressed to the Sheriff or to any Bailiff of the District in which the writ shall have been issued, and if among the defendants or parties to be summoned, there shall be some in one or more other districts, upon whom service ought to be made, an original of the writ and the copies destined for the said defendants or parties shall be transmitted or addressed to the Sheriff or to any bailiff of such several Districts, and to be the said writs and copies, executed, served and returned by such officer with all convenient speed with his return or certificate of such execution or service the whole in conformity with the requirements of the writ, the law and this Act. 10 15

Ordinary service.

184. The writ of summons shall be served in the ordinary manner as follows ;—Upon the Defendant personally by leaving with or delivering to him a copy of the writ, or by leaving or delivering such copy at his domicile, place of abode, or ordinary residence, with himself or with some reasonable member of the household apparently above fourteen years of age. 20 25

In case of resistance.

185. In case the officer charged to effect such service shall not find any person at the ordinary domicile or place of abode of the defendant, upon whom he can legally make such service, or if he be prevented by any cause whatsoever from entering the said house, he shall affix to the door or one of the doors of such house the copy which he would otherwise have left with or delivered to the person in the manner prescribed by this Act and the law ; or, lastly, if he is prevented from approaching the said house or from affixing the said copy as aforesaid by any threat of violence, or any other reasonable obstacle or cause, he shall affix such copy to the door or one of the doors of the church, chapel or other building set apart for religious purposes, and in default of such building to any other building or house, or in any place set apart for any public purpose whatever. 30 35

Married women non séparées.

186. When a *demande* shall be made against a married woman not *separée de corps et de biens* from her husband, the writ of summons shall be served either by delivering the copy to the woman or to her husband personally, or by delivering it at the domicile or ordinary place of abode of the latter, to himself or to his wife, or to any other reasonable person in the house apparently more than fourteen years of age. 40

But if the woman be *separée de corps et de biens* from her husband the service shall be effected as though she were unmarried. 45

Minors, absentees, &c.

187. In any *demande* against minors, not emancipated, interdicted persons or absentees, whose property is administered to by curators, the writ of summons shall be served upon the tutors or curators of such minors, interdicted persons or absentees. 50

In case such minors, interdicted persons or absentees against whom the *demande* is made are not provided with tutors or curators, and the plaintiff shall have caused a special curator to be appointed for such purpose to defend them in the cause, the writ shall be served upon such
5 curator.

If, however, the absentee have an attorney whose name is set forth in the writ, the writ in such case shall be served upon him.

When such *demande* shall be brought against an emancipated minor the writ shall be served upon him, unless he be absent from Lower
10 Canada, in which case such service shall be made on the curator *ad lites* of such minor, if there be any or on the special curator appointed to defend him in such action.

188. In any *demande* against any mercantile company, association or
15 society, community, corporation, body, administration, public establishment or office, or against any number of persons acting collectively, or under a collective name, or as a corporation, the writ of summons shall be served as follows ; Corporations.

In any *demande* against the corporation or municipality of any village,
20 parish or township, or other place, on the mayor or officer performing the duties of mayor, personally or at his domicile or office, by leaving, in the latter case, a copy of the writ with the said officer personally or with some one employed in the said office ; Local Municipalities.

In any *demande* against the corporation or municipality of any county,
25 on the warden or the officer discharging his duties, personally or at his domicile, or on the secretary or secretary-treasurer personally, or at his domicile, or at his office, by leaving, in the latter case, a copy of the writ with the officer himself or with some one employed in the said office ; Country do.

In any *demande* against the corporation of any town or city, on
30 the mayor or officer acting as such, personally, or at the place at which he keeps his office, by delivering a copy of the writ to some person employed in his office ; City Corporations.

In any *demande* against a bank, on the president thereof personally,
35 or at the house in which the bank is kept, by delivering a copy of the writ to the cashier, or in his absence to some other officer or *employée* of the said bank ; Banks.

In any *demande* against any commercial company, association or
40 society, upon any of the members thereof or partners therein, personally, or at the office thereof, or at their warehouse or shop, by delivering a copy of the writ to one of their clerks or *employées* ; Mercantile companies.

In any *demande* against any combination or meeting of creditors, on one of the trustees or directors or at the domicile of one of them.

In any *demande* against any other community, civil or religious, or
50 against any body, administration, public establishment or office, or against any number of persons acting collectively or under a collective

name, or as a corporation upon their presidents, agents, superintendents or representatives, personally or at their office, if they have a permanent one, by leaving, in the latter case, a copy of the writ with some one employed in the office, and if there be no such office, service shall be made upon one of the members of the said communities, bodies, corporations, administrations, establishments or offices, or upon any of the said persons so acting collectively, or under one collective name, by delivering a copy of the writ to such member, either personally or at his domicile. 5

189. In the case of any *demande* against the captain or master of a ship, or of any other vessel or craft, or against any of his crew, not having a domicile or place of abode in Lower Canada, the writ of summons shall be served upon the defendant personally, or on board the ship, vessel or craft on which he shall be employed, by delivering a copy of the writ to any person who shall appear to be above fourteen years of age and belonging to the crew of the said vessel. 10 15

In case defendant conceals himself or his residence be unknown.

190. When a *demande* shall be made against any person who shall conceal himself, and shall have no known place of abode, or if he be absent or reside without the limits of Lower Canada, and being of full age he has no curator or attorney, service of the writ shall be made by affixing a copy thereof to the door of the principal church in the locality in which such person had his last place of abode (if he ever had one), or at the door of the court-room of the Court in which the action shall be brought. 20

Before what Court he shall be summoned.

191. In the case provided for by the next preceding section, the person or defendant shall be summoned to appear at the office of the District Court, or before the Circuit Court, according as the case shall fall within the jurisdiction of one or the other of the said Courts, at any place of holding the one or other of the said Courts in the District in which such person shall have had his last domicile, or else in any District in which he shall have moveables or immoveables, or in the District in which the *demande*, action, suit or proceeding shall have originated, or in which the debt, sum, or thing claimed shall be payable or deliverable, or in the District in which the writ shall have been served upon one of the defendants or upon one of the parties summoned if there be more than one), personally, or at his domicile, or lastly, in any District whatsoever, at the option of the plaintiff, when none of the above circumstances shall have occurred. 25 30 35

Proceedings upon appearance or non-appearance of party summoned.

192. If the party summoned in the manner prescribed by the two foregoing sections shall appear, he shall be permitted to defend himself as in ordinary cases, but if on the other hand he shall fail to appear in person or by his attorney, the Court, or one of the Judges thereof, shall appoint an advocate to represent him and defend the action, and such advocate may, before replying to the *demande*, obtain from the Court or Judge a reasonable delay, to enable him to correspond with the party if his place of abode be known, and receive the necessary instructions. 40 45

Service of papers accompanying writ.

193 The service of any petition, writing, paper or document whatsoever, which may accompany the writ of summons, shall be effected at the same time and in the same manner as the service of the writ.

194. When the Sheriff or Bailiff shall have served a writ of summons in any of the modes above prescribed, he shall make his return thereof in writing upon the back of or annexed to the original, and he shall mention in what manner such service shall have been effected, observing
5 the provisions following :

Form of return of service of process.

If the service have been made at the domicile or place of abode of the defendant by delivering a copy of the writ to any person other than the defendant, he shall make mention in his return of the situation of the domicile or residence of the defendant, the name of the person upon
10 whom such service shall have been made, if he be acquainted therewith, or if such person shall have stated his name upon being requested so to do, and if he refuse, he shall mention it.

Service at domicile.

He shall also mention the particular circumstances which shall have prevented him from effecting a service in the ordinary manner, and
15 which will justify him in having effected it in one way rather than another.

The return of the Sheriff or Bailiff shall mention the place and day of service, and the hour or hours at or between which such service shall have been made, and lastly, it shall be dated and signed by the officer
20 who shall have made it.

It shall be the duty of the Sheriff or Bailiff immediately after the service, to deliver or send back the original of the writ with his return to the Clerk of the Court in which the action has been brought, or to the person who shall have sent it or addressed it to him, so that it may be
25 returned before the expiration of the delay for appearing or answering.

If the Sheriff or Bailiff so charged to effect the service of the writ or *demande* shall neglect or refuse to do so, or do it in an informal manner, or shall neglect or delay without any valid reason, to send back the original of the writ with his return as hereinbefore prescribed, he shall
30 be liable to damages towards the party who shall suffer from such neglect or delay.

Neglect by Bailiff.

195. No service or execution shall be made or effected from the 1st January to the 31st March, and from the 1st October to the 31st December in each year before six o'clock in the morning or after six o'clock
35 in the evening, and from 1st April to the 30th September, in each year, before four o'clock in the morning or after eight o'clock in the evening, nor on Sundays or holidays, unless by express permission of the Judge, in the event of the case being endangered by delay.

Hours within which to serve

C. Pr. Fr., art. 1037.

40 196. Every writ, warrant, order or mandate shall be drawn up as nearly as possible in the form of the writ of summons, excepting such variations as shall be prescribed in certain cases, and such modifications as the circumstances may require.

Forms of writs, orders, &c.

If any oath or affidavit be required for their issue, the officer charged
45 with that duty is authorized to administer such oath, and to receive such

In case of an Oath being required.

affidavit concurrently with any Judge or other person invested with that authority.

Rules of service, application of.

197. The rules and formalities prescribed under this title for the service of writs of summons, and the manner in which they shall be addressed and sent to the different sheriffs and bailiffs for the purpose of being served, executed and returned, shall be observed in all the analogous cases therein contemplated, and shall apply to the service of any writ, order, mandate, rule, regulation, judgment, document, writing paper or judicial *Acte* whatsoever, which may be, or shall require to be served, and it is not provided to what officer it shall be sent or addressed, and whenever no provision whatever, or only a partial provision shall have been made as to the manner in which it shall be served, executed, and returned.

Act 12th Vic, cap. 45, to apply to certain cases.

198. The Act of the Legislature of Canada, passed in the 12th year of Her Majesty's reign, and chaptered 45, intituled "*An Act to facilitate actions against persons, associated for commercial purposes, and against unincorporated Companies,*" as amended by the Act passed in the 19th and 20th years of Her Majesty's reign, chaptered 56, shall be in force, and shall extend and apply in and to all the cases thereby contemplated, to any *demande*, suit, proceeding or writ of summons instituted or issued in virtue of this Act.

Suits *in forma pauperis*.

199. The several courts established by this Act, or any of the Judges thereof, are respectively empowered and authorized to permit parties to sue and defend causes *in forma pauperis*, as hath been heretofore practised, whenever they shall be satisfied by affidavit, that such parties, having a good cause of action, or a good defence, are unable to establish the same in the ordinary course of law, for want of the necessary means to defray the fees and charges of the several officers of the said Courts whose services are required in the conduct of causes before such Courts, and the said Courts have and shall have full power and authority either by interlocutory or by final judgment, to dispauper parties to whom the said privilege of suing *in forma pauperis* shall have been allowed, whenever law and justice shall require them to be so dispaupered.

Minor married women.

200. Any married woman being a minor may be a party to a suit either as plaintiff or defendant, conjointly with or by the authority of her husband, without it being necessary to appoint a curator for her, and this although the said husband be himself a minor, provided that he be in a position himself to be a party to a suit.

Minors may sue in Circuit Court.

201. Any person a minor and under fourteen years of age may sue for the recovery of his wages in the Circuit Court as though he were of age.

APPEARANCE OF THE PARTIES, DEFAULTS, CONGES.

Failure to appear by Defendant.

202. If in any action brought in the Circuit Court, on the day fixed for appearing, the defendant being called does not appear, a default shall in such case be registered against him, and the service of the writ being proved by the bailiff's return, it shall be lawful for the plaintiff to proceed to judgment in as summary a manner as the evidence, the law, justice and equity will permit.

203. If on the contrary the defendant appears, and the plaintiff does not appear, or if the writ of summons be not produced in Court after having been called for, the defendant, upon production of the copy of said writ which has been served upon him, when the original shall not be produced, may obtain the dismissal of the action, with such costs as the Court shall think proper to adjudge against the plaintiff. Plaintiff failing to appear.

204. GENERAL RULE: Every *demande*, action, suit or proceeding whatsoever in the Circuit Court shall be pleaded, heard, tried and determined in a summary manner, and according to law, justice and equity. Proceedings in Circuit Courts.

205. In any suit in the District Court the delay for the appearance of the defendant shall extend to the juridical day subsequent to the day fixed in the writ of summons for its return to the Court, and if on the expiration of that delay, his appearance shall not have been filed at the office into which the said writ shall have been returned, default shall thereupon be registered against the said defendant without any further formality, and upon proof the service of the writ, the plaintiff may proceed to judgment in the cause, according to the forms prescribed. Delay for appearance.

206. When on the contrary the writ of summons by the plaintiff shall not have been left at the office of the Court on the day fixed for its return, the defendant may, on the first juridical day thereafter, obtain on the copy which shall have been served upon him, a certificate from the Clerk of the Court, setting forth the failure to file the original, and upon motion made to the Court on the earliest day after giving one day's notice to the plaintiff, the defendant may obtain dismissal of the plaintiff's action, with such costs as may be adjudged. In case the writ be not returned.

207. Every demand, action, suit, or proceeding whatsoever before the District Court, shall be proceeded with, pleaded, heard, tried and determined in the forms prescribed, according to the circumstances of the case, but always according to law, justice and equity. Proceedings in District Court.

208. After the expiration of the delays for appearing respectively above granted, any appearance shall not be allowed with the express permission of the Court or a Judge, upon such conditions as shall be fixed, and upon giving good and sufficient reasons. Permission to appear.

CONFESSIONS OF JUDGMENT.

208. In the Circuit Court any party may, at any time after the entry of the cause, confess judgment orally, and judgment shall thereupon be rendered, if the plaintiff accept such confession. Confession at any time after entry in Circuit Court.

209. In the District Court it shall also be lawful for the defendant, at any time before the entry of the cause at the office of the Court, to confess judgment, either alone in person, or assisted by an attorney, in the presence of the clerk, who shall take *acte* thereof. Such confession of judgment shall be signed by the party at the time it shall be made, if not mention shall be made thereof, and of the day on which it shall have been made, and the said *acte* shall be complete without any further formality. Do. in District Court.

210. If the plaintiff accept such confession, he may, whenever he Judgment on confession.

shall think proper, inscribe the cause for judgment on the said confession, and the clerk shall thereupon prepare a judgment which shall be registered, observed, and executed in the same manner as any judgment rendered after the hearing by the Court, and shall have all the effects thereof.

5

In case of a non-acceptance by Plaintiff.

211. If the plaintiff shall not accept the confession of judgment made in one or other of the modes above prescribed, he may be condemned towards the party who shall have made the same to the payment of all the costs which may have accrued after such confession, if he obtain nothing in excess of the said confession.

10

RECUSATIONS.

Recusation for affinity or relationship.

212. The relationship or affinity of the Judge to any one of the parties to a cause, shall not continue to be one of the grounds for which a Judge may be recused, unless such Judge shall be related or akin to one of the parties within a less remote degree than cousin german.

15

Where cause shall be heard.

213. When the only Judge residing in any district shall be a party to any suit, either in the Circuit or District Courts in the said district, or shall be liable to recusation in such cause, the action may in the first case be transferred to the Circuit Court sitting at the *chef-lieu* of any adjacent district, and in the second case to the District Court of 20 any such district upon the allegation of the fact, proof of which, if it be contested, shall fall upon the party who shall have alleged it.

If such Judge be recused in the court from any suit or proceeding, the said suit or proceeding shall be removed, and the record transmitted by the clerk without delay, in the first case, to the Circuit Court sitting 25 at the *chef-lieu* of such adjacent district as the Judge may select, and in the second case, to the District Court in any district so selected, and if the recusation be not contested or be maintained, the suit or proceeding shall be decided upon at the place and by the Court to which it shall have been removed, but if on the other hand it be contested and 30 rejected, the cause and the record shall be respectively sent back to the place and court in which the suit or proceeding shall or should have been commenced, and it shall be decided there.

OF PLEADINGS.

PRELIMINARY EXCEPTIONS AND PLEAS.

Security for costs in certain cases.

214. Every foreigner or person not residing in Lower Canada, and being the plaintiff in any suit before any civil tribunal, shall be bound, if 35 required so to do, before any exception, to furnish security at the discretion of a Court, or a Judge, to secure the costs and penalties which might be adjudged against him, and upon failure to furnish such security within the delay fixed, his suit shall be dismissed with costs.

Pleadings in Circuit Court to be *viva voce*.

215. In the Circuit Court every pleading, exception, or *defense* what- 40 soever, shall be made *viva voce*, and the parties shall not be bound to plead in writing, but such pleading *viva voce* shall not exempt the clerk from making mention thereof in the register which he is directed by this

Act to keep, nor from making a note on the back of the writ, proceeding, or record of every pleading put in by the parties.

216. In the District Court every preliminary plea or exception shall be fyled without any demand thereof within the two juridical days next 5 after that on which the defendant appeared, and no pleading of this nature shall be admitted or considered put in when once this delay shall have expired. The plaintiff shall put in his answer within the next two days, if not the answer shall be deemed to be general, and after such answer, or the expiration of the delay therefor, the issue shall 10 thereby be joined, and no replication or rejoinder shall be admitted.

Fyling of preliminary pleas

PLEADINGS AND DEFENCES TO THE MERITS.

217. In the District Court the delay for pleading to the merits of the action shall be ten juridical days, to be computed from the day on which the defendant appeared, who shall be bound within that delay to put in all his pleas to the merits, without any demand thereof being 15 required, and if at the expiration of that period the defendant shall not have pleaded he shall *pleno jure* be foreclosed from so doing, and the plaintiff may, without further formality, and upon simple fyling of a certificate from the Clerk of such default to plead on the part of the defendant, proceed *ex parte* in the cause.

Delay for pleading to the merits.

20 218. If, however, any preliminary pleading or exception shall have been fyled in the cause, the delay for pleading to the merits shall only be computed from the date of the interlocutory judgment, or from the day on which such preliminary plea shall have been withdrawn.

In case of preliminary exception.

219. When a plea to the merits shall have been made and fyled on 25 the part of the defendant, if no new fact be therein alleged, the answer to such plea shall be deemed general and the issue shall thereupon be joined.

Answers.

220. If, on the contrary, the plea fyled by the defendant contains any new fact, the plaintiff may and shall be bound to answer thereto within 30 ten juridical days from the fyling thereof, without any demand thereof being required, and if at the expiration of such delay the plaintiff have not fyled his answer, it shall be deemed to be general, and whether the plaintiff have answered or not, the issue shall thereby be joined and no further pleading shall be fyled or admitted.

Delay for answering.

35 C. Pr. Fr., art. 75 to 83. C. Pr. Ls., art. 428, 238.

221. The delay for fyling any pleading whatsoever may be extended, and permission to fyle any pleading after the expiration of the delay 40 prescribed may be granted, if sufficient reason be shewn, by the competent Court or Judge upon such conditions as they shall think proper to impose.

Extension of delay.

222. When a preliminary exception or plea shall have been fyled, if the plaintiff consider it frivolous or so unfounded as to justify him in taking further proceedings at his own risk or peril, he may in such case, within the delay granted to him to answer to any such preliminary plea 45 (without, however, being exempt from answering thereto or from the

Case in which a plea to the merits may be demanded before judgment on the preliminary exception.

consequences of his default to answer thereto, as in ordinary cases,) require the defendant by notice to plead to the merits of the action, within the period of ten days to be computed from the day on which such notice shall have been served or given, and if at the expiration of that delay, the defendant shall not have so pleaded, he shall *pleno jure* be foreclosed from so doing, and upon the simple filing of the return of service of the said notice and of a certificate from the clerk of such default to plead on the part of the defendant, the plaintiff may afterwards, when the preliminary exceptions or pleas shall have been disposed of or dismissed, proceed on the merits of the case *ex parte*.

223. If, on the other hand, the defendant, in obedience to the notice so given him by the plaintiff, have pleaded to the merits within the delay prescribed, the plaintiff should be bound to answer as though such plea to the merits had been made at first, and the rest of the pleading shall be conducted in conformity to the rules above laid down for ordinary cases.

224. In the case contemplated by the last section any preliminary plea previously filed shall be *de facto* joined to the pleas to the merits which may be put in and to the issue which may be completed on the merits of action, and all subsequent proceedings shall be taken on the whole matter and judgment rendered thereon conjointly; but the plaintiff shall be responsible for all the costs which would otherwise have been incurred.

224. When the defendant shall not have pleaded to the merits after having been required so to do by the plaintiff, as before provided, notwithstanding the existence of any preliminary plea or exception, if the said exception be maintained, to prevent such foreclosure from excluding the defendant from proceeding in the cause, the foreclosure pronounced against him shall be removed, and the delay granted him to plead to the merits shall run from the date of the interlocutory judgment on the preliminary exception, and the ordinary rules shall then be applicable.

225. With the view of determining any preliminary plea or exception filed, as speedily as possible, it shall be lawful for the plaintiff to be heard on the merits of such plea on application for its dismissal, and this by motion before the competent Court, or a Judge, after notice thereof shall have been given to the opposite party, at least on the day before such motion shall be made, but in such case the plaintiff shall, by so proceeding, be deemed to admit the truth of the facts alleged in such exception.

226. When the defendant shall plead to the merits of the action he shall not be bound to plead specially to any of the facts alleged in the plaintiff's action, and with the exception of certain specified cases he may plead the general denial.

227. But the costs which shall result from the written proof or proof by witnesses of any fact which shall have been generally or specially denied by any party, or which such party shall have denied to be to his knowledge or which such party shall not have expressly admitted, shall always be given against him whatever be the issue of the suit, and the judgment rendered in the cause shall distinguish the said costs, for the recovery of which execution may be issued in the ordinary manner, if

they be not paid by the opposite party, or unless an amount equal thereto shall have been deducted or set off from the amount for which judgment shall have been rendered in his favor.

228. Any admission made in any pleading whatsoever may not be ^{Admissions:} divided by the party desirous of taking advantage thereof, but may be 5 negatived by contrary evidence.

229. If in any action on a bill of exchange or promissory note, ^{Presumptions} *cédule*, check, note or promise, or other act or private agreement in ^{in certain cases} writing, the defendant shall make default, or for any other reason the 10 plaintiff shall become entitled to proceed *ex parte*, then such bill or note, check, promise, act or agreements, and every signature and writing to or upon the same, shall be presumed to be genuine without proof thereof, and judgment may be rendered accordingly; and if in any such actions 15 any defendant shall deny his signature, or any other signature or writing to or upon such bill, note, *cédule*, check, promise, act or agreement, or the genuineness of such instrument or of any part thereof, or that the protest notice or service thereof (if any be alleged by the plaintiff) were 20 regularly made, whether such denial be made by pleading the general issue or other plea, such instrument and signatures shall nevertheless be presumed to be genuine, and such protest, notice and service to have 25 been regularly made, unless with such plea there be fyled an affidavit of such defendant, or of some person acting as his agent or clerk, and cognisant of the facts in such capacity, that such instrument or some material part thereof is not genuine, or that his signature or some other 30 to or upon such instrument is forged, or that such protest, notice and service were not regularly made, and in what the alleged irregularity consists; but nothing in this section shall take away any *recours en faux*, or any remedy by *requête civile* after judgment if any such signature be forged.

230. Whenever any pleading, writing or document whatsoever shall 30 have been fyled at any time before, or at the time of the trial or hearing of a cause in contravention of the law, or of the rules of procedure, the subsequent proceedings may be taken without 35 any more regard to such pleading or document than if it had not been fyled, and upon a simple motion praying in general terms the rejection or setting aside of the said pleading, writing or document so fyled of record, without any notice being required, or upon a simple general objection made verbally, or on the back of such pleading, writing or document, the Court in delivering judgment after the hearing in law, or on 40 the merits, as the case may be, shall at the same time give judgment upon such motion or objection. ^{In formal proceedings.}

The provisions hereinbefore contained, as to the manner of pleading ^{Application.} and joining issue upon an action, shall apply to any incidental document *demande en garantie*, or *en intervention*, or other similar proceeding.

FORMS OF ACTIONS AND PLEADINGS, AND THEIR AMENDMENTS.

45 231. No form of action, or formal or technical terms shall be necessary in any action, *demande*, pleading or proceeding whatsoever, and it shall be sufficient to use ordinary, simple, concise and summary forms of expression, and to represent *bona fide* the facts, and the matter under con- ^{No form of action or pleadings required.}

sideration ; Provided always, that the matter be stated clearly enough to explain the intention of the party, and do not create misunderstanding as to his intention or desire, but if it should happen that any *demande*, action, pleading, report, return or proceeding does not even conform to the above conditions, and is defective in form, by reason of some omission, or as regards the style of setting out the facts, allegations and conclusions thereof, the Court may at any stage of the cause before judgment, and upon application to that effect permit the amendment of any such proceeding upon such conditions as they may think just and expedient, and the Court may even allow them to be so amended as to coincide with the facts proved, if the Court be of opinion that such a proceeding would promote the ends of justice and equity.

Amendment
of proceedings

Nature of
amendment.

232. No amendment to any such *demande*, proceeding or pleading shall be allowed, which would have the effect of changing the substance, nature, character or description thereof.

No reply
thereto.

233. When such permission to amend shall have been granted, the opposite party shall not be entitled to reply to such amendment, and shall only have a delay to do so, if the Court allows it by the judgment authorizing such amendment.

ACTIONS EN GARANTIE, AND INTERVENTIONS.

Summons
of *garant*.

234. In all cases of *garantie*, either *formelle* or *simple*, the *garant*, in whatever district he may reside, may be summoned before the Court in which the principal action is pending, in any other Court than that in which he resides, and the writ of summons shall be addressed to and served upon him in the manner prescribed in all similar cases.

Delays of calling
in *garant*
in certain
cases.

235. The delay for calling in a *garant* shall hereinafter be as follows:

The party who shall claim to be entitled to call in a *garant* shall be bound to call in his *garant* within the delays which shall be granted to him for appearing to the principal action, and consequently before the day fixed for that appearance, and the principal action shall be suspended until the expiration of the delay which shall be necessary to be computed from the last day upon which service of the *demande en garantie* shall have been so made on the *garant* to compel him to appear, unless the original plaintiff prove that it was not necessary to call in such *garant*, and in such case he shall, upon motion to that effect made in Court or before a Judge out of Court, be ordered to take further proceedings without reference to the said *demande en garantie*.

Sous garant.

236. If the *garant* claims to be entitled to call a *sous garant*, he shall be bound to do so within the delay and in the manner following, which, with the foregoing provisions shall be observed successively by every subsequent *garant*.

In case plaintiff
requires
a *garant*.

237. If it be the plaintiff who from the nature of the defence pleaded to the action, claims to be entitled to call in a *garant*, he shall bring his *demande*, and cause the same to be served within the delay allowed him for answering to such pleading, and thereafter the rules above established shall be applicable to the case.

238. If the case contemplated by the last preceding section be in the Circuit Court, in consideration of the shortness of the delay therein granted for pleading and answering, the delay for bringing the *demande en garantie* of the principal plaintiff in the cause shall in such case be
5 fixed at the discretion of the Court. If case be in Circuit Court.

239. The party who may claim to have a right to call in *garans* shall not be bound to call first into the cause his immediate *garant*, but if he prefer he may first of all bring his *demande en garantie* against any *garant* whatsoever, at his option, whether it be the first
10 *garant*, *arriere garant*, or any other subsequent *garant*, provided he be so. Any *garant* may be called in.

240. Intervention shall be formed by a petition which shall contain the reasons and conclusions, and which shall be authorized by a Judge before it can have any effect, and this permission shall be given in
15 writing at the foot or on the back of the petition; the intervention shall have the effect of suspending the proceedings in the cause in which it shall have been made, for the space of three days, to be computed from the day on which it shall have been fyled at the office of the District Court in which the action is brought, and it shall, during the
20 said three days, be served upon the parties, in default of which the said *demande* in intervention shall *pleno jure* be deemed not to have been instituted, and the parties may proceed as though the petition had never been fyled. Intervention.

241. If, on the contrary, service have been made, and the return
25 fyled at the office of the Court bear witness thereof, proceedings shall thereupon be taken as in any other action of the same nature. Proceedings.

242. If it be in an action in the Circuit Court that the intervention is brought, the petition shall be presented to the Court, and if it allow the intervention, it shall determine the effect of the intervention, and
30 regulate and order the subsequent proceedings thereon. If in Circuit Court.

INSCRIPTIONS ON THE ROLLS.

243. In the District Court, so soon as issue shall have been joined on the preliminary exceptions or pleadings, no question of law having
been raised by the issue, or forthwith after the expiration of the delay granted to the defendant for pleading to the merits in case he shall have
35 been required to do so after the fying of such pleadings or exceptions, and he shall have failed so to do, it shall be lawful for any of the parties to the cause, to inscribe it, or cause it to be inscribed, either on the *Role de Droit* for final hearing on the merits of such contestation, if no evidence be requisite, or on the *Role d'enquete* for adduction of
40 evidence and final hearing on the merits of such contestation at the same time, when evidence shall be required. Inscriptions on preliminary exceptions.

244. When any question of law shall have been raised on the preliminary exceptions or pleadings, within two juridical days after the issue shall have been joined, or within two days after the expiration
45 of the delay granted to the defendant for pleading to the merits after the fying of such pleadings or exceptions, and he shall have failed to do so, it shall be lawful for the plaintiff to the exclusion of the defen-
Inscriptions on preliminary exceptions.

dant, even when there shall have been an issue in law, to inscribe the cause upon the *role de droit* for final hearing on the merits if there be no evidence to be adduced, or on the *role d'enquête* for evidence and final hearing on the merits at the same time, if evidence shall be required, and in such case the judgment which shall follow thereupon shall pronounce upon all the questions raised in the cause. 5

After the expiration of the said two days, if the plaintiff have not inscribed as he is hereby authorized to do, it shall be lawful for any of the parties to inscribe the cause upon the *role de droit*, for preliminary hearing in law upon all the questions of law raised in the cause. 10

Inscriptions
on pleadings
on the merits.

245. When issue shall have been joined on the merits without any defence or pleading whatever in law having been put in, and every preliminary pleading which shall have been filed having been decided upon, or in case by the action of the plaintiff, as may happen in certain cases hereinbefore provided for, such pleading shall be added to the issue joined on the merits to be decided upon at the same time, it shall be lawful for any of the parties to the cause, so soon as issue shall be joined on the merits, to inscribe the cause either on the *role de droit* for final hearing on the merits upon all the points in contestation, if no *enquête* be required, or upon the *role d'enquête* for evidence and final hearing on the merits at the same time if an *enquête* be required. 15 20

Inscriptions
on pleadings
on the merits.

246. When in any of the cases contemplated by the last preceding section any *défense en droit* or any pleading whatsoever in law shall have been put in to the issue on the merits of the cause, it shall be lawful for the plaintiff to the exclusion of the defendant during the two juridical days after issue shall have been joined on the merits, to inscribe the cause upon the *role de droit* for final hearing on the merits when an *enquête* shall not be required or on the *role d'enquête* for evidence and final hearing on the merits, at the same time, if an *enquête* be required; and the judgment which shall then be rendered shall decide upon all the points raised in the cause. 25 30

After the expiration of the said two days if the plaintiff have not inscribed the cause as he is hereby authorized to do, any one of the parties may inscribe the cause on the *role de droit* for preliminary hearing in law upon the *défense en droit* or upon all other questions of law raised in the cause. 35

Manner of
setting down
on the Roll.

247. A cause may be inscribed or set down upon the *role* as hereinafter provided, as follows:—

By the court upon application *viva voce* by one of the parties, the others being present, and that without any inscription in writing being required for the purpose, and upon a mere entry by the clerk upon the proper *role* or by an inscription in writing signed by the party making the same or by his attorney and then placed in the hands of the clerk and served upon the opposite party, by delivering to him a copy thereof on the day on which it is filed. 40 45

Notice.

248. One day's notice only shall be given to the opposite party of every inscription on the *role de droit*.

249. Eight days' notice shall be given to the opposite party of every Notice. inscription on the rôle d'enquête.

250. In actions *ex parte* so soon as the plaintiff shall have obtained the right of so proceeding, the cause may be inscribed on the rôle de *Ex parte* *causes.* *droit* or rôle d'enquête as the case may be, but one juridical day's notice only to the opposite party shall be sufficient in all cases, and the party against whom proceedings shall so be taken *ex parte* shall not be entitled to adduce any evidence, but his powers during the *enquête* shall be restricted to the cross examination of the witnesses brought forward against him, and to opposing the adduction of any illegal or inadmissible evidence.

251. Causes by default shall be inscribed whenever the plaintiff shall think proper, and in the usual manner, without any notice thereof to the party in default being required. *Causes by default.*

252. In contested causes each party shall be bound to give notice to the other of the names, callings and residences which he intends to bring forward, the witnesses on behalf of the party who shall begin the *enquête* shall be notified seven entire days and those of the opposite party four entire days before the day fixed for the adduction of evidence; and if the party who is to begin the examination intends to bring evidence in rebuttal to that of the other he shall give the opposite party at least one clear day's notice of such witnesses before that fixed for the examination. *Notice as to witnesses.*

253. No other witness shall be heard on the day for hearing the witnesses, unless by express permission of the Court granted for just and reasonable causes. *Restriction.*

254. In the Circuit Court the parties shall be bound on the day that the cause shall be fixed for *enquête* to communicate to each other a similar list of the witnesses which they intend to produce, and on the day for *enquête* no other witness shall be heard unless by express permission of the Court granted for just causes. *In Circuit Court.*

255. Every cause shall be inscribed or set down on the Roll, and it may only be inscribed or set down on the roll for any of the purposes above mentioned, even for *enquête* and final hearing on the merits, on a day of term or of sitting of the District, every such being a day for *enquête* and hearing. *Inscriptions to be on term days.*

256. Every juridical day, however, out of term or in term, excepting between the ninth day of August and the first day of September in each year shall be an *enquête* day for all causes or proceedings by default or *ex parte* in the District Court, and any cause or proceeding of that kind may consequently be inscribed or fixed for any such day for *enquête*, and such *enquête* may be taken before the Clerk of the Court, at the place in which the cause may be pending, and the *enquête* shall be had, and the witnesses sworn and examined by and before the said Clerk who shall both in term and out of term take notes of the evidence, sign them, and do any other matter or thing in relation to the *enquête* in the said causes, that any one judge of the Court is authorized to do, but that shall not have the effect of preventing the same pro- *Default or ex parte causes.*

ceedings being taken as regards *enquête* in the said default or *ex parte* causes as in contested cases before the Court or Judge whose powers and duties in relation thereto are in no way affected thereby.

SUMMONING OF WITNESSES.

Subpœna. 257. Witnesses shall be ordered to appear by a summons or *subpœna* delivered by the clérk whose duty it is, and served in the ordinary 5 manner.

Delay. 258. In the District Court, the delay for summoning shall be, for each witness, one clear day, if he resides, or is served with process, within a distance of five leagues from the edifice or building where he is ordered to appear, and one additional day for every five leagues beyond the 10 first five.

In Circuit Court. 259. In the Circuit Court, it shall be sufficient if the service be made the day before that fixed for his appearance, within the limits of the first five leagues, and two days before, for a distance of five leagues more, and so on for every additional five leagues. 15

Indemnity. 260. The allowance for each witness summoned to appear, or who shall have appeared voluntarily but for the express purpose of giving evidence in any cause, shall be four pence for every mile which he shall be obliged to travel in order to reach the place where he shall be required to appear, and one dollar for each day that he shall be detained to give 20 his evidence in such cause. No allowance shall be made to him for returning.

Number of witnesses limited. 261. The allowance for each witness shall be charged to the party who shall be held liable to pay it according to the result of the *enquête*, provided, however, that the number of witnesses shall not exceed six on 25 each side. Each party shall pay the witnesses whom he shall cause to be summoned, or who shall appear for him, beyond this number; except where it is necessary to establish or prove some fact of public notoriety, or the character, or general reputation of one of the parties, or of one of the witnesses, or his credibility, and then, in each of these cases, or in 30 any similar case, the number of witnesses who may be taxed may amount to ten on each side, but not more.

C. Pr. Ls., 472.

Discretionary powers to Court. 262. It is to be understood that under extraordinary circumstances, or upon considerations which shall appear just and reasonable, the Court or Judge may exercise every discretion and depart from the rules laid 35 down in the two next preceding sections.

Witnesses neglecting to appear. 263. Every witness who has been duly summoned, or who shall be bound by law, or otherwise, to appear, and who shall not appear may, in addition to the penalties imposed upon him by this Act, be summoned again at his own expense; and every proceeding taken for the purpose 40 of compelling him to appear after the first summons shall also be at his own expense.

Pr. Frs., 263.

264. Every witness who shall have been taxed, may obtain an execution in the ordinary manner, for the payment of the amount for which he shall have been so taxed, as well against the party at whose instance he shall have been summoned, or for whom he shall have appeared, as against the party who shall by the judgment of the Court be charged with the payment of such tax. Recovery of indemnity.

265. The expense of a second summons allowed against a witness, and all expenses incurred in forcing him to appear, may be recovered in the same manner by execution against such witness. Expenses of second summons.

10 266. Every book, paper, document, or other thing whatever, which either party may desire a witness to produce, shall be sufficiently designated, or described in the process of summons, in order that the witness may be bound to produce it. Production of papers.

This rule shall apply to all cases in which either party may desire the same thing of the other party in the cause. Application of above rule.

267. If in the course of any proceeding, or at the *enquête* or hearing in any cause or proceeding whatever, the Court or Judge shall perceive it to be useful, in order to secure the ends of truth and justice, to cause any titles, papers, or other objects whatever to be produced, which may be found in the possession of either party, or in that of a third person, the Court or Judge may, provided there be nothing in it contrary to law, or to that protection which is due to every citizen, order their production. The Court may order the production of any paper.

INTERROGATORIES SUR FAITS ET ARTICLES, SERMENT DECISOIRE.

268. Parties may in all cases, and at every stage of a cause, may apply to be allowed to interrogate each other respectively on *faits et articles* pertinent to the issue, and on every matter which may tend to the decision of the cause, without, however, delaying the *instruction* or the judgment. Interrogatories on *faits et articles*.

269. In this case, and also when a party shall desire to interrogate another on the *serment décisoire*, or on any other oath, the party whom it is desired to interrogate, shall be summoned by a writ of summons or rule, delivered by the clerk whose duty it is, and served in the same manner, and with the same delays as a summons addressed to a witness. Proceedings.

270. It shall be at the option of the party who may desire thus to interrogate the other, to annex to the writ of summons or rule, his interrogatories in writing, or to wait until the latter shall appear before the Judge, Court, or Clerk, as the case may be, and put them *vivâ voce*, or in writing, according as he may intend, and the answers of the party interrogated shall be given in writing, or *vivâ voce*, in the manner herein-after directed, according as either party shall require it. Interrogatories in writing.

271. The party summoned to appear and answer *sur faits et articles*, *serment décisoire*, or otherwise, shall be summoned by the writ or rule to that effect, to do so at the office before the Clerk, or before the Judge, at the option of the party interrogating, and the party so summoned shall appear and answer in the manner prescribed by the rule, and it shall be the duty of such Clerk or Judge, or Court, respectively, Before whom questions shall be answered.

if either of the parties shall require it, to take notes of the important parts of the answers of the party interrogated, in the same manner at notes of evidence must be taken, as is hereinafter provided.

Any one present may be ordered to answer.

272. Any party present at the proof or hearing in any cause, may receive from the Court or Judge an order to answer, either on *faits et articles*, or *serment décisoire*, or otherwise, and he shall be bound to answer, without any writ of summons or rule to that effect being necessary. 5

Court or Judge may put questions.

273. The Court or Judge may, of their own proper motion, put *vivâ voce*, or in writing, to the party thus interrogated, any question which may appear to them proper, pertinent and necessary, in order to secure the ends of justice. 10

Effect of refusal, or default to answer.

274. Whenever a party thus interrogated, *vivâ voce*, by the Judge, shall refuse to answer, or shall answer any question in an evasive or unsatisfactory manner, the question may be put in writing by the Judge, as well as his answer, or refusal, or default to answer, and this answer, or refusal, or default to answer, shall have the same effect (when it shall not have more) as that resulting from a question put by the adverse party, or from a summons, or rule issued at the instance of such party ordering the other party to appear, or answer. 15 20

Answers to be categorical.

275. Every party summoned to answer either on *faits et articles*, or *serment décisoire*, or on any other oath, shall be bound to answer categorically each of the questions put to him, and whenever he shall have answered them in a manner evasive, or not explicit, or not at all, the fact on which he shall have so answered, or on which he shall have refused, or neglected to answer, shall be held to be admitted or confessed *pleno jure*, and without any application to that effect being necessary, unless that an objection which he may make summarily before the Court or Judge, before answering the question which shall be put to him, he shall be dispensed from so doing. 25 30

When rule unaccompanied by interrogatories.

276. Whenever a party shall have been summoned to appear and answer on *faits et articles*, by a simple rule, unaccompanied by written interrogatories, or whenever, being present at the time of the proof or hearing in any cause, he shall have received from the Court or Judge, an order or injunction to allow himself to be thus interrogated, and when in the former case he shall have made default to appear, or when in either case he shall have refused or wholly neglected to present himself and to allow himself to be interrogated, the effect shall be the same as if he had made default to appear on a rule for a *serment décisoire* duly served. 35 40

Answer not to be divided.

277. The answer to every interrogatory on *faits et articles*, *serment décisoire*, or other oath, shall be limited to a simple admission or denial of the fact; if, however, the party interrogated can state in his defence any fact closely connected with that on which he is interrogated, he may do so, and his answer shall not be divided, except when it does not coincide, or does not conform or agree with the allegations of the pleading by him made or fyled; and it may also be contradicted by a sufficient proof of the contrary. 45

ENQUETES, PROOF AND HEARING.

278. The *enquêtes*, the proof, and the different hearings in every cause or proceeding, which shall be pending in any of the courts established by this Act, may take place and be conducted at any time during the terms of these Courts, and during the sittings thereof, when the contrary is not expressed. When they may be had

279. Whenever a cause shall have been inscribed or fixed in one of the modes prescribed, on the day fixed, the proof, if there is any to be made, and the witnesses, if there are any, shall be received, heard and examined, and the parties heard in all cases. Evidence to be heard on the day fixed.

10 280. The plaintiff opens the cause by producing his witnesses, or other proof, which he may have to produce, and which he may be then legally entitled to produce : then comes the turn of the defendant, and finally the plaintiff has the right to have other witnesses heard in rebuttal, or the same whom he brought forward at the opening, in order to destroy or lessen the weight of the proof made by the defendant. Order of proceeding.

15 281. Each witness shall be heard separately, if either party shall require it, or if the Court shall so order, and each witness shall be interrogated *vivâ voce*, during the sitting of the Court, before the Judge, or while the Judges are present, and in the District Court it shall be the duty of the presiding Judge to draw up an *Acte* or *procès-verbal* of all the depositions, and notes of the important portions of them shall be taken by him in his own handwriting. Witnesses to be heard separately.

25 The Judge shall also take notes of all exceptions and objections made by parties, and of the manner in which such objections shall have been decided or resolved. These notes shall be read, and if necessary re-read and explained to each witness as regards that portion which concerns him, and he may cause the proper additions and corrections to be made to them, and shall sign them, or mention shall be made that he does know how, or is unable to sign. Judge to take notes.

30 The Judge may also himself put to each witness any questions which shall seem to him pertinent and *légâl*.

It shall also be his duty in the same manner to take notes of admissions made *vivâ voce* by either of the parties.

35 The *enquête* being finished, the notes thus taken by the Judge shall be signed by him, and shall then constitute the true testimony given by the witnesses, and the proof of admission thus made, and shall avail to all intents and purposes whatever.

40 282. In case of appeal, a fair copy of the said notes shall be made by the clerk of the court, which copy, after having been certified by the Judge or clerk, shall be deposited with the said original notes, in order that recourse may be had to them when necessary, among the proceedings of record in the cause, and shall, in case of appeal from any judgment pronounced in any such suit or cause, be transmitted to the Court of Appeal, as forming part of such record, and the said notes and copies shall be considered as forming the true record of the evidence to all intents and purposes whatever. Fair copy of notes to be made.

- Who may be witnesses. 283. Persons related or allied to either of the parties in a more remote degree than that of cousin german exclusively, may be witnesses in civil matters, for or against the said parties.
- Proof in commercial matters. 284. In proof of all facts concerning commercial matters, recourse shall be had in all courts of civil jurisdiction within this Province to the rules of evidence laid down by the laws of England. 5
- 25 Geo. iii., chap. 2, sec. 10.
- Adjournments. 285. If the proof, or the cause cannot be concluded on the same day, it may be adjourned from day to day, and the witnesses who may not have been heard, shall be bound to attend from day to day without a fresh summons, until they shall be discharged. 10
- Argument after proof. 286. Whenever the proof on both sides shall be terminated in any cause on any incidental issue, on the principal issue, or on any issue whatever, it shall be argued and the parties shall be heard.
- Order of hearing. The plaintiff, or any party in an analogous position, has the right to speak first, the defendant afterwards, and the plaintiff in reply; after which nothing more may be said, except that in the case where the plaintiff in reply shall have cited any authority which he has not referred to in opening the cause, the defendant may answer it confining himself strictly to this. 15 20
- Cause to be argued before Judge who received evidence. 287. The cause, the incidental or principal issue in a cause, or any issue whatever joined in a cause, shall be always argued or pleaded before the Judge, who shall have received or heard the evidence of the witnesses, and adjudged and decided by him.
- In case of non-appearance of either of the parties. 288. If on the day fixed, either party do not appear, or do not proceed, his *enquête*, if he have any to make, shall on the application of the adverse party, be declared closed, unless the party who does not thus proceed with his *enquête* shall make proof of proper diligence, and that it has been impossible for him to procure the necessary evidence; and thereupon the Court, on a verbal application to that effect, may, in its discretion, continue the cause to another day, for the evidence of such party, or merely suspend it until his witnesses shall have been found and brought before the Court or Judge, in virtue of an order to bring them up, which may be issued to that effect. 25 30
- DESISTMENT OR DISCONTINUANCE.
- Causes may be discontinued. 289. Any cause or proceeding whatever may be discontinued at any stage thereof and at any time before judgment, and even in vacation provided it be with cost in favor of the adverse party. 35
- By motion. 290. This discontinuance may in all cases be effected by a motion left in the office of the Court, whereof one day's notice shall have been given to the adverse party. 40
- Costs to be paid before renewal. 291. The party who shall have thus discontinued any cause or proceeding, shall not be entitled to renew the same, without having previously paid the costs of the first.

TRIAL BY JURY.

292. In all actions founded on debt, promises, contracts, and agreements, of a mercantile nature only, between merchant and merchant, and trader and trader, so reputed and understood, according to law, and also of personal wrongs proper to be compensated in damages, and finally, in any personal action whatever in which compensation in damages and costs shall be claimed, for any injury suffered in consequence of *débîts* or *quasi-débîts*, in regard to moveable property only, it shall be lawful for either party in the cause to have and obtain the trial and verdict of a jury, as well for the determination of the facts which may require to be established in such commercial cases, as for the assessment of damages in cases of personal wrongs, and in the cases lastly mentioned: Provided nevertheless, that no trial by jury shall be granted in any civil suit or proceeding in which the sum of money or value of the thing demanded, or in dispute, shall not exceed fifty pounds.

Trial by jury in certain cases.

293. In all the cases mentioned in the next preceding section, the agreement of nine of the twelve jurors, who shall compose the jury, shall be sufficient to render a verdict, and such verdict so made and rendered shall be held as legal and effectual to every intent and purpose as if the whole twelve jurors are agreed in opinion; and the Clerk of the Court shall write the names of the jurors on the register of the Court in every case in which verdicts may have been rendered as aforesaid.

The agreement of 9 out of 12 to suffice.

294. All the challenges and exceptions to the panel, or to any particular juror named therein, shall be made and determined in open Court, conformably to the laws of England, as well in civil as in criminal matters.

Challenges how determined.

25 Geo. 3, c. 2, s. 9. 9 G. 4, c. 10.

295. If in any civil suit tried by a jury, objection be made to a portion of the charge of the Judge by either party, the Judge shall, on the application of such party, or afterwards, as soon as he may conveniently do so, reduce such portion of his charge to writing, and shall mention that it has been so objected to, and thereupon such portion of the charge thus put in writing, after being signed by the Judge, shall form part of the proceedings of record in the cause.

Judge to reduce his charge to writing if it be objected to.

JUDGMENT AND COSTS.

296. The judgments of the Court of Appeals, as well as those of the District Court, shall mention in a summary manner, among other things, the points of fact and of law, and the grounds on which they are founded; and those of the Court of Appeals shall mention moreover the names of the Judges who have concurred therein, or their dissent.

Judgments to be moi.

297. Every judgment rendered by the Court of Appeals confirming or reversing a judgment brought before it in appeal, shall be transmitted for execution to the tribunal or judge who has pronounced judgment in the first instance, and no such judgment shall be executed until the same, and the record in the case wherein it has been rendered, shall have been

Judgments in appeal to be transmitted to Court below.

so transmitted to the tribunal or judge who has had cognizance thereof in the first instance; but as soon as this transmission shall have taken place, all judgments rendered in the cause may be executed, unless in any of the cases mentioned above it be otherwise ruled or ordered by the judgment or by law.

5

Execution of judgments.

298. Judgments of the District Court, and those of the Circuit Court, shall not be executed before fifteen days after their date; and the Circuit Court may also grant a delay, not to exceed the period of three months, for the execution of its judgments. It may also order that the amount of the judgment shall be levied by instalments, provided that the last 10 instalment shall not exceed the said period of three months; and in default of payment of any one of such instalments, execution of the judgment may be obtained for the whole amount thereof, or for the balance remaining due.

Party losing to pay costs.

299. Every party who shall fail, whether on the principal issue, or 15 on any incidental issue, shall in all cases be condemned to pay costs, except in cases otherwise provided for by this act and by law, and except also in cases of compensation and tender (*offres réelles*); and in every case in which the parties fail respectively on some points, the Courts or Judges may then compensate the costs in whole or in part, according 20 as may appear to them just and equitable.

Taxation and revision.

300. The Clerk of the District Court and the Clerk of the Circuit Court, at any place, shall have full power to tax costs in causes and proceedings in their respective Courts at such place; and such taxation shall be made under the same rules, and in the same manner, and shall 25 have the same effect as if made by a Judge of the Court, except that it shall be subject to revision by a Judge of the District Court, in the same district, and at the same place, in any term of the District or Circuit Court in which the judgment was rendered, at any time within six months after such taxation by the Clerk, and after sufficient notice (of 30 which sufficiency the Judge shall decide,) to the opposite party or his attorney; but neither the non-expiration of the time allowed for such revision, nor any correction made by the Judge in the Court of such revision, shall operate to stay execution, or be a ground of any opposition; but any sum deducted by the Judge shall be deducted from the 35 amount to be paid or levied, and if levied, shall be returned to the proper party by the Sheriff or Bailiff levying it, or if paid, shall be repaid by the party who shall have received it to the party who shall have paid it, and the Judge's order for deducting such sum shall have the effect of a judgment for the same, and may be enforced by execution accordingly. 40

APPEALS AND MODE OF PROCEEDING BEFORE THE COURT OF APPEALS.

Cases in which an appeal may be had.

301. An appeal may be instituted to the Court of Appeals established by this Act, in every case in which an appeal or recourse in appeal to the said Court is permitted, and there shall also be a right of appeal in all cases and from all the judgments following, to wit:

1. From any final judgment rendered by the District Court, except in 45 the case of *certiorari*;

2. From any final judgment rendered in any of the cases mentioned in the 145th section of this Act, when such case, which is to be tried and determined in a summary manner, shall not have been besides within the exclusive cognizance and jurisdiction of the Circuit Court :

5 3. From any final judgment rendered in any case of *habeas corpus* and *mandamus* only, as mentioned in the 148th section of this Act ;

4. From any interlocutory judgment rendered by the said District Court, and in all cases mentioned in Nos. 2 and 3 of the present section, when such interlocutory judgment may have the effect of causing an irreparable injury to the party against whom the same has been rendered.

302. An appeal from an interlocutory judgment may also be instituted after the final judgment and conjointly with an appeal from the latter judgment. Also from interlocutory judgments.

15 303. The appeal permitted in each of the foregoing cases shall be allowed, even when there has been no exception taken to the judgment, and also when it has been executed without any reserve.

Code d'Ins. Crim. Fr., 416.

C. Ls., 566-571—C. Frs., 451.

25 Geo. 3, ch. 2, sec. 24.

304. Not only the parties themselves to a cause, but also third persons who have not been parties thereto, may institute an appeal from any judgment in any of the foregoing cases, when they pretend to have been aggrieved thereby.

305. The delay for appealing shall be three months and not more, reckoning from the date of the rendering of judgment, but this delay shall not run in the cases, or against the persons following, to wit : Delay for appealing.

25 1. Against minors, women under marital authority or interdicts, who shall have the right of appealing within three months after the termination of their respective disabilities : and in case of the death of any one of these persons during the continuance of such disability, his or her heirs, if then present within this Province, may institute their appeal
30 within three months after such decease ; and if absent from the Province, they shall have five years to do so after such decease ;—

2. Against absentees from this Province, who may appeal from any judgment within five years of the date thereof, if they do not sooner return to this Province, but such appeal shall not be allowed after the
35 expiry of three months from the date of their return ;—

3. In case of the death of any person during the three months following the date of the judgment rendered against him, the heirs of such person, if present within this Province, may appeal from such judgment within three months from the date of such decease, but if absent at the
40 time of such decease, they shall have for this purpose three months from

the day of their return into this Province, provided such return take place before the expiration of five years from such decease.

Pr. Frs., 443. 34 Geo. 3, ch. 6, s. 32.

Manner of proceeding in appeal. 306. The appeals allowed in all the foregoing cases shall be instituted in the manner following :

Notice and security. The party appellant, after giving not less than twenty-four hours' notice to the opposite party, or his attorney, shall give good and sufficient security by one or more sureties, who shall justify their sufficiency to the satisfaction of the person before whom the same shall be given, as hereinafter provided, that the appellant will effectually prosecute the said appeal, if the judgment appealed from should be confirmed. 5 10

Before whom and where security shall be given. 307. The said security shall be given either before a judge of the Court of Appeal at the place the appeal is to be heard, or before the Clerk of the Court of Appeal at such place, and the security bond shall then be deposited and remain on record in the office of the latter, or it shall be given before a judge of the District Court, when at the place where the judgment appealed from shall have been rendered, or before the Clerk of the District Court at such place, and the security bond shall then be deposited and remain of record in the office of the latter. The said judges or clerks respectively are authorized to administer to all persons who may offer themselves as such sureties the oaths required in such cases, and to put all inquiries and questions necessary to satisfy themselves of their sufficiency. 15 20

When execution may be suspended. 308. If the security above required be given within fifteen days from the date of the judgment to be appealed from, the question of such judgment shall remain suspended until the judgment in appeal shall be transmitted to the tribunal or judge who has had cognizance of the cause in the first instance, unless it be otherwise ordered or provided for. 25

Judgment to be executed in certain cases. 309. If on the contrary the said security be not given within the said delay of fifteen days after the rendering of the said judgment ; or if the security be given only for such costs and damages as the Court of Appeals shall award in case the appeal be dismissed (which security may be given in the same manner as the first at any time within the delay fixed for appealing), then the said judgment shall in all cases be executed, unless the amount thereof in principal, interest and costs shall have been previously paid to the party in whose favor the judgment has been rendered, or deposited in the hands of the Clerk of the Court, or with the judge by whom the said judgment has been rendered, or unless it have been previously fully and voluntarily executed. 30 35 40

Securities for costs and damages only. 310. When security for costs and damages only, as last mentioned, shall have been given, the respondent shall not, if the judgment appealed from be reversed, be bound to return to the appellant more than the amount of money so paid to him the respondent, or deposited in the hands of the said Clerk, with legal interest thereon from the day of the payment of the same to the said Clerk,—or more than the sum levied 45

under the execution sued out upon such judgment,—or more than the restitution of the real property whereof the respondent shall have been put into possession by virtue of such judgment, and the net value of the revenues and produce thereof to be computed from the day when he shall have been put in possession thereof until perfect restitution be made, with the cost of such appellant, as well of the Court of Appeals as of the judgment appealed from, but without damages against the respondent in any of the said cases, by reason of the judgment appealed from, or of the execution thereof; any law, usage, or custom to the contrary notwithstanding.

311. Every such appeal shall be prosecuted by petition, in which it shall not be necessary to set forth all the facts and proceedings in the cause, but it shall be sufficient to mention the title of the cause, the date of the judgment, and that the security required by law has been duly given, setting forth clearly and succinctly, in the same manner as if the proceedings were already before the Court of Appeals, and in the ordinary form of pleadings or reasons of appeal, the grounds and reasons of the appeal instituted, with analogous conclusions, and praying, among other things, for the reversal of the judgment appealed from and the rendering of such judgment as the Court below ought to have rendered.

Appeal to be
by petition.

312. A copy of the said petition certified by the appellant or his attorney, as well as a copy of the appeal bond certified by the clerk in whose office it has been given or deposited, shall be served upon the opposite party in one of the modes prescribed for the service of writs of summons, or upon his Attorney before the Court or Judge below, within fifteen days after security given.

Service.

313. Within the same delay of fifteen days after security given, the appellant shall file the original of the said petition, with certificate of service thereto annexed, in the office of the clerk in whose custody the record in the suit in which the appeal is instituted shall be, with a certificate of the Clerk of the Court of Appeals that security in appeal has been given, if the appeal bond is not deposited in the office of the first named Clerk, and thereupon the latter shall deliver to the appellant a certificate of the fying of the said petition, and of the documents accompanying it, for the purpose of proving, if need be, that an appeal has been instituted, and shall forthwith certify under his hand and the seal of the Court, and cause to be transmitted, within eight days at the latest after the fying of the said petition, to the Court of Appeals at the proper place, to be fyled among the records thereof, the said petition, with the judgment, record, evidence and proceedings to which the appeal shall relate.

Original to be
filed in Clerk's
Office.

314. Each party in appeal shall, on the day following the expiry of the delay allowed for the return and transmission to the office of the Court of Appeals of the said petition in appeal, file an appearance in person or by Attorney, in the office of the Clerk of the Court of Appeals, who shall enter each cause, the record whereof shall have been transmitted to him, mentioning whether the parties respectively have appeared, or not; if the respondent do not appear as herein required, he shall be held to make default, and, if the appellant fail to appear, he shall be held to have abandoned his appeal, and the record shall be remitted to the Court or Judge below; Provided always, that it shall

Appearance.

Proviso.

be lawful for the appellant to file, with his appearance, in the office of the Clerk of the Court of Appeals, the certificate of the filing of his said petition in appeal and the documents accompanying it in the office of the Clerk of the Court below, or with the Judge below, in order to prove, when need be, that he brought his appeal, and to enable him to adopt all necessary proceedings against the Clerk, in case of his neglecting or refusing to transmit or to have transmitted, as he is bound to do, to the Court of Appeals the said petition, together with the judgment and all papers and proceedings relating to the appeal. 5

Failure to prosecute appeal.

315. Any appellant who shall neglect to cause a copy of such petition to be served and filed as aforesaid, or who, having caused the same to be so served and filed, shall neglect to prosecute such appeal effectually, shall be considered to have abandoned the said appeal, and, upon the application of the respondent, the Court of Appeals shall declare all right and claim founded on the said appeal to be forfeited, and shall grant costs to the respondent, and order the record (if transmitted) to be remitted to the Court or Judge below. 10 15

Factums.

316. Within the ten days following the return and transmission thus made to the Clerk of the Court of Appeals of the petition in appeal, as well as all proceedings relating thereto, the appellant and respondent respectively shall be bound to file in the office of the said Court of Appeals, a *factum* or case in such cause in appeal, to the number of ten copies on each side; in default whereof the appeal shall, on motion of the respondent, be dismissed with costs, if it be the appellant who has neglected to file his *factum*, and if on the other hand it be the respondent, it shall be lawful for the appellant, without any previous permission to that effect, and without further formality, to proceed alone or *ex parte* to obtain a judgment upon such appeal. 20 25

Inscription.

317. Immediately after the filing of the *factums*, it shall be lawful for either party to inscribe the cause on the roll kept for that purpose, 30 for hearing, after two days' notice; but if the appellant have become entitled to proceed *ex parte*, he alone may inscribe with one day's notice merely: and in either case the appeal shall be heard and decided, without further formality, by the Court of Appeals, which shall render, on such appeal, the judgment which ought to have been rendered by the Court or Judge below. 35

Judgment to be transmitted to Court below.

318. The judgment of the Court of Appeals having been rendered, it shall be the duty of the Clerk of the said Court to transmit, without delay, the said judgment with the whole record in the cause and the security bond in appeal, if deposited in his hands, to the Court or Judge below, in order that the judgment of the Court of Appeals may be there executed, and all other proceedings there taken which are authorised or required, or ordered by law or otherwise. 40

Enforcement of security bond.

319. If after the rendering of judgment in appeal, the obligations expressed in the security bond be not acquitted or fulfilled by the applicant, the respondent may, after the delay of fifteen days from the date of the said judgment in appeal, without waiting for the discussion of the appellant's property, and on a simple motion to this effect made before the Court below, or one of the Judges thereof in vacation, after ten days' notice, obtain execution of the judgment rendered against the appellant 45 50

to the amount expressed in the said bond, or a judgment against any such surety to compel him to fulfil the obligation contained in the said bond; the whole according to circumstances, and according as may seem just and proper to the Court or Judge.

- 5 320. All that has been said and prescribed in regard to ordinary appeals and the mode of bringing such appeals, of instituting, prosecuting, deciding, or adjudging them, shall apply, according to circumstances, to all proceedings for error, *demande en cassation* in civil matters before the Court of Appeals. Above provisions to apply to proceedings for error.

APPEAL TO HER MAJESTY IN COUNCIL.

- 10 321. An appeal may be instituted to Her Majesty in Her Privy Council, from any final judgment rendered by the Court of Appeals in the cases following only: Cases in which such appeal may be instituted.

1. When the sum of money, or value of the thing demanded by the suit or action, shall exceed the sum of five hundred pounds sterling;

- 15 2. In all cases in which, whatever be the amount or value of the thing demanded, the right to any sum of money payable to Her Majesty, or the right to exact any toll, tax or any charge whatever, shall have been disputed or put in issue before the Court or Judge who has pronounced judgment in the first instance.

- 20 322. But causes now pending or adjudged at the time of the coming into force of the present Act, shall be in no wise affected by the foregoing provisions. Pending causes.

323. No judgment rendered by the Court of Appeals in matters of *certiorari* shall be susceptible of appeal. No appeals on certiorari.

- 25 324. All that has been said and prescribed in sections 304 and 305 of this Act, in regard to the appeals which are allowed to the Court of Appeals, shall apply, be followed and observed in all cases in which it is allowed as aforesaid to institute an appeal to Her Majesty in Her Privy Council. Certain provisions of this Act to apply.

- 30 325. No appeal, however, shall in any case be brought to Her Majesty in Her Privy Council, unless the party appealing shall first obtain permission to this effect from the Court of Appeals, within the delay allowed for instituting such appeal, and this on motion-made before the said Court, without any previous notice to the opposite party, provided
35 the judgment of the Court on such motion be served upon him within three days after the rendering thereof. Permission to appeal.

326. This appeal shall be commenced by an ordinary order, or writ of appeal, issued on the *fiat* of the party demanding it or that of his attorney, and the said appeal shall be prosecuted according to the
40 forms and mode hitherto followed, or according to the laws, rules and regulations which may be made and adopted in this regard. Commenced by writ.

327. But such appeal shall have no effect and cannot be prosecuted, unless the appellant do first give, either before a judge of the Court of Security how and when to be given.

Appeals or before the Clerk of said Court or his Deputy, at the place where the judgment appealed from shall have been rendered, security by one or more good and solvent sureties, that he will effectually prosecute his appeal and satisfy the condemnation and pay such costs and damages as shall be awarded by Her Majesty in Her Privy Council, in 5 case the judgment of the said Court of Appeals be affirmed;—or the appellant may give security for the costs of appeal only, in case he should fail therein, if he declares and consents in writing at the office of the Court of Appeals that the judgment rendered against him may be 10 carried into effect, or if he pays the amount thereof, or carries it into effect voluntarily; but in either of the two latter cases the respondent shall not be obliged, in case the judgment appealed from be reversed, to return to the appellant more than the amount of the money paid to him, with 15 legal interest thereon from the day of payment,—or more than the sum levied in virtue of the execution issued on the said judgement,—or more than the restitution of the real property whereof the respondent has been put in possession in virtue of such judgment, and the net value of the produce and revenues thereof from the day on which he has been so put in possession until perfect restitution, with the costs of the said 20 appellant, as well those incurred on the appeal to Her Majesty, as those accrued before the said Court of Appeals—but without any damage against the said respondent, in any of the above cases, by reason of the judgment appealed from, or the execution thereof.

Oaths, &c.

328. Any Judge of the Court of Appeals, and the Clerk of the said Court, or any one of his deputies, are respectively authorized to administer the necessary oaths, and to make any inquiries, and put any questions necessary in such case, in order to satisfy themselves as to the sufficiency of any surety on the said appeal. 25

Suspension of execution.

329. In all cases in which an appeal shall be allowed to Her Majesty in Her Privy Council, and the appellant shall conform to the conditions above required, execution shall be suspended for six calendar months from the day on which such appeal is allowed, and from the expiration of that period to the final determination of the said appeal, if, before the expiration of the said six months, a certificate shall be filed in the Court having jurisdiction in appeal in Lower Canada, signed by 35 the Clerk of Her Majesty's Privy Council, or his Deputy, or any other person duly authorized by him, that such appeal has been lodged, and that proceedings have been had thereon before Her Majesty in Her Privy Council; and if no such certificate be produced and filed in the said Court of Appeals for Lower Canada, within the said six months, 40 the said appeal shall not operate longer as a stay of judgment and execution, but the party who obtained judgment in the said Court of Appeals, may sue out execution as if no such appeal had been made or allowed: any law, usage, or custom to the contrary hereof notwithstanding. 45

Duty of Clerk.

330. On any appeal to Her Majesty in Her Privy Council, from any judgment rendered by the late Court of Appeals of Lower Canada, or from any judgment heretofore rendered by the present Court of Queen's Bench, or from any judgment heretofore rendered, or which shall be hereafter rendered by the Court of Appeals established by this Act, 50 it shall be the duty of the Clerk of the said last mentioned Court to register an official exemplification of the judgment of Her Majesty in

Her Privy Council, immediately on the production of the same by any one interested in the said judgment, and without waiting for, or requiring a previous order to that effect, from the said Court of Appeals, or from any Judge thereof: and the said Clerk shall also, with a copy of such exemplification, and without requiring any such previous order, remit the record of the cause to the Court which has pronounced judgment in the first instance, unless the judgment of Her Majesty order some further proceedings to be had before the said Court of Appeals, but no judgment rendered by Her Majesty in Her Privy Council, before the passing of this Act, shall be affected by the present section.

14 & 15 Vic. cap. 88.

EXECUTION OF JUDGMENTS.

331. The judgment of the Court in civil matters may be executed against the moveables and immoveables, or against the person, or body of the party condemned, or otherwise, according to the nature of the condemnation pronounced by the judgment to be executed, or according as may be allowed, or ordered by the law,—but the judgments of the Circuit Court shall be executed only against the immoveables. (Sic.)

How executed

332. Apart from the exceptions established by this Act, arrest, imprisonment of the person, execution against the person, or *contrainte par corps*, shall continue to be allowed in all cases where the same are now authorised by this Act and by law, or where the same were, before this Act, authorised by law, and nothing herein contained shall prevent the issuing of any writ of execution against the person, in all cases of contempt of court, *rébellion à justice*, fraud, or against any person who may be indebted as tutor, curator, sequestrator, depository, sheriff, coroner, bailiff, or other officer having charge of public monies, or who may be a *caution judiciale*, or indebted for the purchase money of any lands or tenements, goods or chattels, sold and adjudged under the authority of justice by licitation, by the sheriff, by *décret* or otherwise, or for damages arising out of personal wrongs, for which *contrainte par corps* may now by law be awarded, and, finally, in all cases where such rule, or writ of execution might, before this Act, have been legally issued or awarded.

Execution against the person,—in what cases allowed.

333. Whoever, for the purpose of avoiding the effect of an execution, or eluding the execution of any judgment, shall make away with, or secrete his property, or who, by violence, by shutting up his house, store, or other building, or in any other manner, shall resist the execution of any judgment, may, on the order of any competent court or judge to this effect, be apprehended, imprisoned and detained in prison, until he shall have satisfied the judgment pronounced against him.

Imprisonment for rebellion à justice.

25 Geo. 3, chap. 2, sec. 37.

334. Except in certain cases provided by law, regularly the execution of any judgment can only be obtained after the expiration of the delay allowed by the courts or judges, or the delay fixed by law for such execution, if there be no appeal from such judgment during this interval, so as to stay the execution thereof.

Delay for execution.

to appear within the ordinary delay, the said defendant to hear the *saisie-arret* declared good and valid, and the *tiers-saisi* to make his declaration on oath, and all the sections of this Act, from 420 to 427 inclusively, under the title of *saisie-arret* before judgment, shall apply to the 5 present title, and shall be followed and observed in the case of the *saisie-arret* before judgment.

338. When the last-mentioned *saisie-arret* shall have been declared good and valid, all the moveable effects which shall have been attached in the hands of the *tiers-saisi*, except credits, rights, actions and sums of money, 10 may be sold, as in the case of an execution, to the extent of the sum necessary to discharge the amount of the condemnation pronounced in favor of the plaintiff, in capital, interest and costs, and the execution of the judgment rendered against the *tiers-saisi* may be carried into effect in the same manner as the execution of any judgment in ordinary cases. Effect thereof.

339. All the said several writs or orders may, at the choice of the plaintiff, be delivered or addressed in like manner as a writ of summons, to the Sheriff or Bailiff of the district in which the same shall have issued, and section 183 of this Act, under the title of Writs of *Summons (Ajournements)*, shall apply to the mode of addressing, executing, serving, or re- 20 ing as the case may be, the said several writs or orders, but every writ or order of execution against immoveables, or imprisonment, or *contrainte par corps*, shall be delivered or addressed to a Sheriff. Rules respecting writs of summons to apply.

340. As soon as the officer, to whom any of the said several writs or orders shall be delivered or addressed, shall have received the same, it 25 shall be the duty of such officer to execute the same as soon as possible, and in every case in which execution shall be awarded against moveables and immoveables, the moveables, if there be any liable to seizure, shall be first seized and sold, and in default of moveables, or of a sufficiency thereof, the immoveables shall thereupon be seized and sold. Execution of writs.

341. In the case where a judgment may be executed against moveables and immoveables, such execution may be awarded in the same writ or order; Provided always that the moveables, if there be any liable to seizure, shall be first seized and sold. Moveables and immoveables may be attached under same writ.

342. If two or more writs of execution are issued upon judgments of 35 the same date, against one or several defendants, such executions shall have the same privilege, and be satisfied in the same proportion, unless it be otherwise ordered by the proper tribunal, in case of contestations and oppositions fyled, according to law, by the parties. Writs bearing same date.

SEIZURE OF MOVEABLES.

343. The formalities, which should usually precede and accompany 40 the execution of moveables and the sale of the effects seized, shall continue to be followed and observed, whenever any writ or order of execution against the moveables of any debtor is to be carried into effect, save and except as to the changes and modifications introduced by this Act. Formalities.

344. Such seizure need not be preceded by any demand of payment 45 made on the defendant personally, or at his domicile, when the seizure is not made at his dwelling house, or when he is absent, or has no No previous demand of payment necessary.

If the judgment be thus appealed from, the execution thereof shall be stayed until the judgment in appeal shall have been transmitted to the Court or Judge who has had cognizance of the cause in the first instance—unless it be otherwise ordered or provided.

Form of writ
of execution.

335. Execution of any judgment in civil matters shall be ordered by means of a writ or order, either of *saisie exécution*, imprisonment, or *contrainte par corps*, according to the circumstances, in the name of Her Majesty, Her Heirs or Successors, drawn up in English or French, and containing besides, according to the circumstances, the following: 5

1. The name of the Court or Judge by whom the judgment has been rendered. 10

2. The title of the cause, the date, result or nature of the judgment pronounced between the parties, who shall also be mentioned therein as in the judgment.

3. The nature, species, or amount of the condemnation pronounced by the judgment to be executed, and the nature of the execution awarded, or to be made. 15

4. An order or injunction to the officer, whose duty it shall be to execute the same, or to whom it shall be delivered or addressed, to put the same in execution, and make a return thereof to the Court from which it shall have issued, on a day fixed, or within the delay or period prescribed by law or otherwise; but no such writ or order shall become imperative or null and void, by reason of the same not being returned on the day, or within the delay fixed, and the return thereof may be legally made at a subsequent period. 20 25

5. An enumeration of the articles, effects, things and animals exempt from the seizure which is to be made.

6. Finally, such writ or order shall be signed by the officer by whom the same shall be delivered, and sealed with the seal of the Court under the authority whereof it shall issue. 30

Attachment in
hands of third
person.

336. It shall also be lawful for a creditor to execute his judgment by a writ of *saisie-arrêt after judgment*, for the purpose of attaching the moveables, credits, rights and actions of his debtor, in the hands of a third person.

Writs, how
issued.

337. The said several writs or orders shall be respectively delivered by the Clerk of the Court which shall have rendered judgment in the first instance, and as many originals thereof shall be given as there are districts in which the same are to be executed or served. 35

All necessary copies shall be delivered by the said Clerk, and certified as such by himself, or by the Attorney of the party suing out the original. 40

Contents of
writ of *saisie*
arrêt.

The writ of *saisie-arrêt after judgment*, in addition to what is above prescribed in regard to the writ or process of execution, shall contain, like a writ of summons, an order to the defendant, and to the *tiers-saisi*

known domicile ; and it shall, for the future, be sufficient in all cases if the officer charged with the execution be assisted, for the purposes of the said seizure, by one witness or *recors*, provided the latter have, in other respects, all the qualifications required by law, and be not of kin to the officer making the seizure to the degree of cousin-german inclusively. 5

In case house
be shut and
entrance re-
fused.

345. Whenever the house or building where a seizure is intended to be made, is shut up, or ingress thereto is refused, the officer charged with the seizure may set one or more guardians at the doors or in the neighborhood, in order to prevent any making away with the property, 10 and he shall demand assistance, either from a Justice of the Peace, or from the Mayor, or from any Municipal Councillor or militia officer of the place, and he may, in the presence of one of them, proceed to open the doors, and even articles of furniture, (*meubles meublants*), and in default of any of the persons above mentioned, the bailiff shall have 15 recourse to one of the judges of the court, from which the execution shall have issued, for the purpose of being authorized, on a simple verbal application, by an order of such judge, on the back of the writ or order of execution, to proceed to the said opening, which he may thereupon do forthwith, without any other formality, but in presence of two wit- 20 nesses or *recors*, in place of one, as in ordinary cases, and he is authorized in all cases to demand the assistance of neighbors, passers-by or others, and to employ all other means necessary to enforce the law.

Procès-verbal
of seizure, its
contents.

346. The *procès-verbal* of seizure shall contain a detailed enumeration of the effects seized, and shall be returned with the writ or order of 25 execution.

This shall apply also to the *procès-verbal* of the sale of effects seized.

Articles to be
exempt from
seizure.

347. The following articles shall be exempt from seizure and may not be seized :—

1. Beds, bed-clothes and bedding, and the wearing apparel of the 30 debtor and his family, and his militia arms and accoutrements :

2. The implements of trade necessary to the personal occupation of the debtor, to the value of dollars: and the books, machines and instruments belonging to the profession of the debtor to the same value : 35

3. The provisions necessary to the support of the debtor and his family during one week :

4. Finally, one pig, one cow, three sheep, with the straw, fodder and grain necessary for the subsistence of the animals during one week : and also, one stove, one cord of firewood, one table, three chairs, three 40 plates, three knives, three forks, and three spoons, the whole at the choice of the debtor in all cases.

The said articles shall not be liable to seizure for any debt, except it be for food supplied to the debtor, or for sums due to the makers or vendors of the said articles, or to the person who has advanced money 45 to buy, make, or repair them, or for rent of the place where the debtor

himself lives, but the articles mentioned under No. 1, cannot be seized in any case.

348. The *procès verbal* shall contain a notice of the day of sale, unless notice thereof be given in a separate notice to the defendant and 5 to the guardian, eight days, at least, before such sale. Notice of day of sale.

349. A duplicate of the *procès verbal* shall be left with the defendant as well as with the guardian, on the same day on which the seizure is made, or on which it is concluded, if it occupy more than one day, or such duplicate may in either case be delivered to them respectively 10 during the two days following the said seizure :—and if the defendant have no known domicile, or if there be not at the domicile of the defendant, or at his place of residence, any person of the quality and age required, for the service of a process of summons, with whom such duplicate may be left for the defendant, the same shall be affixed to the building, 15 or one of the buildings, where the seizure, or on the site whereof the seizure shall have been made, or it shall be left with a Justice of the Peace, or the Mayor, or one of the Municipal Councillors, or with an officer of militia of the place. Duplicate of *procès verbal* to be left with defendant.

350. If the defendant offer a guardian who is solvent and who under- 20 takes voluntarily and on the spot the guardianship of the effects seized, he shall be appointed by the bailiff :—otherwise the bailiff shall *ex officio* proceed to appoint one himself provided he be solvent and possess the qualifications required by law, and be not of kin, to the degree of cousin-german inclusively, either to the plaintiff, the defendant or the bailiff. Guardian appointment of.

25 351. If a guardian so qualified cannot be found, the officer making the seizure may take possession of the effects seized, and may remove them and put them in a place of safety ; and this may also be done at any time and under any circumstances by a guardian, as well as by the officer who shall have made the seizure, whenever a competent 30 Judge shall permit or order it. In case suitable guardian cannot be found.

352. Until the sale of the effects seized, the Sheriff, bailiff, or guardian, are respectively authorized to do everything necessary to the preservation of the effects and animals seized, which may also be turned to use, made profitable (*exploités*), or hired out, with the express 35 authorization of a competent Court or Judge, in the manner and under the conditions which shall be prescribed ; and whatever is produced therefrom shall be disposed of in like manner as the thing itself which is so turned to use, made profitable, or hired out. Preservation of effects seized.

353. The guardian may demand to be discharged, if the sale be 40 not made on the day at first appointed, unless it be prevented by some obstacle : and in case of any obstacle occurring, such discharge may be demanded two months after the seizure, saving the right to the plaintiff to have another guardian appointed. This discharge shall be demanded by summary petition presented to the judge, after three 45 clear days' notice given to the plaintiff and defendant : but the guardian shall not be discharged until he shall have produced to the bailiff charged with the seizure, or to any other bailiff who may have replaced or may represent him, all the effects confided to his custody. Discharge of guardian.

In case of a
second seizure

354. Any bailiff who, in proceeding to seize, shall find a seizure already made, cannot make a fresh seizure, unless the guardian, or the officer who shall have made the first seizure, refuses to produce the *procès-verbal* thereof: but if the *procès-verbal* is produced to him, he shall proceed to make a *récolement* of the moveables and effects seized, seize those which have not been seized, and give notice to the party, by whom the first seizure has been made, to cause the whole to be sold in the usual manner, within ten days from the first publication, which must be made on the first Sunday after the date of the *procès-verbal* and *récolement*, which shall have all the effect of an ordinary seizure, or of a *procès-verbal* of seizure, as regards the parties, and the guardian and shall have the same effect also as an opposition on the proceeds of the sale, provided a copy thereof be served by the bailiff who shall have made such *récolement* upon the bailiff of the party making the first seizure, who shall make a return thereof with his proceedings.

If the sale as aforesaid be not completed by the party first seizing, within the prescribed delay, the party last seizing may, on the expiration of such delay, cause the said sale to be made in the ordinary manner, after all the required notices have been given, and the first guardian shall remain responsible as on the first seizure.

Contents of
notice of sale.

355. The sale of effects seized shall be published by a notice which shall contain the title of the cause, the name of the Court under the authority whereof the seizure shall have been made, and which, without detailing the effects which have been seized, shall announce that a seizure of moveables having been made on such a day, in the said cause, in virtue of the writ or order, the name and date whereof shall be given, the moveable effects seized upon the defendant, whose name also shall be mentioned, shall be sold at the place and on the day and hour which the officer making the seizure is hereby authorized to appoint and shall appoint. Such notice shall be dated and signed by the officer giving the same, and a correct copy thereof certified by him shall be affixed to the door of the principal church, and if there be no church, on the door of a chapel or other place used for public worship, and if there be no such place, at some other public place, or some place which is used for some public purpose, in the locality where the seizure shall have been made; and the said notice shall be read and published at the place where a copy thereof shall have been thus posted on the two Sundays following the day of such posting.

Suspension.

356. With the consent of parties and the permission of a judge, the publications and sale may be suspended, and one of the publications may even be dispensed with, but no sale shall ever take place without being preceded by one publication at the least.

Where sale
shall be made.

357. The sale shall be made and can only be made in the same parish or locality where the seizure shall have been made, and not less than ten days after the first publication, but it may nevertheless be made at any other more advantageous place, with the permission of the Court, or of a competent judge; and on the conditions and with such other formalities as may be ordered.

Who may
make it.

358. The sale may also be made by any other bailiff or officer than

the one who shall have made the seizure; and all the powers and means which are given to the bailiff or any other officer in order to make and carry out the seizure, shall belong to and are conferred upon him to enable him to carry out and complete the sale.

- 5 359. No sheriff or officer of justice shall be bound to proceed to the seizure of any raft or timber, until he shall have received from the party desiring such seizure to be made an obligation with the security of one solvent person, to the satisfaction of one of the judges of the Court, under the authority whereof such seizure is to be made, by which they shall bind themselves to indemnify and guarantee such sheriff or officer from all damage and costs to result from such seizure; and it shall also be lawful for such sheriff or officer to demand in advance such sum as shall be considered sufficient by one of the said judges for the preservation and guardianship of the said raft or timber; and whenever 10 the sum of money thus advanced shall have been lawfully expended, the said sheriff or officer may, on a summary application addressed to one of the said judges, obtain an order enjoining the said party to advance to him such other sum as the judge shall fix: Provided that notice of such application be given to the party, or to his attorney; 20 and in default of the payment of the sum thus fixed within twenty-four hours after the day in which the said order shall have been given, it shall be lawful for the said sheriff or officer to discontinue, abandon or take off the said seizure, and he shall be discharged from all responsibility whatever in this regard.

Security in the case of seizure of rafts or timber.

- 25 360. The sale and adjudication of all moveables, under execution, shall be made to the highest bidder, for cash; and, in default of the money being paid, the property shall be sold over again forthwith at the *folle-enchère* of the first purchaser.

Adjudication.

- 30 361. No Sheriff, bailiff, or other officer making a sale under authority of justice, shall directly or indirectly become the purchaser of any moveable then sold, under pain of nullity of such adjudication, and of all costs, damages and interests towards the parties.

Officer selling not to purchase.

This provision shall apply to the seizure of immoveables, and to the sale and adjudication of all immoveable property.

Above provision to apply to seizure and sale of immoveables.

SAISIE-RÉELLE, OR SEIZURE OF IMMOVEABLES.

- 35 362. The formalities, which should usually precede and accompany the *saisie-réelle*, the sale of immoveables, and the *procès-verbaux* relating thereto, shall continue to be followed and observed, subject to the changes and modifications introduced by this Act.

Ordinary formalities.

- 40 363. The seizure of immoveables, *saisie-réelle*, need not be pre- ceded by any demand of payment made on the debtor personally, or at his domicile, if he is absent, or has no known domicile, or if the doors of his domicile or place of residence are shut, or an entry therein is refused, or further, if there is no one at the said domicile or place of residence, of the quality and age required for the service of process of summons, 45 and the officer charged with the execution need not, in any case, be assisted by any witness or *recors*, for the purpose of proceeding to a seizure of immoveables.

No demand of payment.

Contents of
procès-verbal.

364. The *procès-verbal* of a seizure of immoveables shall contain as exact as possible a description and designation of the lands or tenements seized, and the said *procès-verbal* shall be returned with the writ or process of execution.

This rule shall apply to the *procès-verbal* of sale.

5

Preservation
of property
under seizure.

365. Until the sale of the property seized, the Sheriff is authorized to do everything necessary to the preservation thereof, and, with the authorization of the Court or of a competent Judge, such property may also be turned to use (*utilisés*), made profitable (*exploités*), leased, or farmed out, and the productions natural, or the result of cultivation 10 sold in the manner and under the conditions which shall be prescribed, and whatever may be produced therefrom, shall be considered as immoveable, and such produce or the proceeds thereof shall be disposed of in the same manner as those of the immoveable sold, and shall be distributed in like manner. 15

Defendant
may remain in
possession in
certain cases.

366. If, at the time of the seizure, the immoveables seized are not leased or farmed out, the defendant shall remain in possession thereof until the sale as judicial sequestrator, (*séquestre judiciaire*), and if the defendant be absent, the Sheriff shall have the guardianship and possession thereof, as sequestrator, unless in either case it be otherwise ordered 20 by the Court or a competent Judge.

Rents and
revenues when
to be deemed
immoveable.

367. The rents and revenues of the lands and tenements seized shall be considered immoveable, (*immobilisés*), from the date of the first insertion in the *Official Gazette* of the advertisement or notice of sale, if such rents or revenues be not then already seized or attached; and, until it 25 be otherwise ordered by the Court or a competent Judge, the payment of such rents or revenues thus made immoveable may be made to the defendant, who shall be accountable as *séquestre judiciaire* for the sums which he shall have received. The said moneys shall be disposed of in the same manner as the immoveable or the price of the immoveable 30 sold, and shall be distributed in like manner.

Copy of *pro-
cès-verbal* to
be delivered to
party seizing.

368. It shall be the duty of the officer, who shall have seized any immoveable, immediately after the closing of his *procès-verbal* of seizure, to deliver a copy, certified as such by himself, to the party seizing, or to any person claiming to be a creditor of the defendant, and, as soon as 35 such copy shall have been registered at the Registry office of the County within the limits whereof the immoveable seized is situate, any subsequent alienation of such immoveable by the defendant shall be null *pleno jure*, without its being necessary to have such nullity declared.

Penalty in case
of injury to or
waste of pro-
perty under
seizure.

369. Any person who shall, personally or by the intervention of 40 others, cause any injury, deterioration or waste to any part or portion of the property under seizure, may, in addition to the damages and interests for which he may be liable, and besides the *contrainte par corps*, on a simple application made in a summary manner before the Court or a competent Judge, and after proof of the facts alleged against him, be 45 condemned by such Court or Judge to imprisonment, and may be imprisoned in consequence for a term not exceeding twelve calendar months.

370. The sale of immoveables seized shall be advertised and proclaimed by the Sheriff by a notice in the form heretofore used and containing among other things, the place, day and hour fixed by the said Sheriff for the sale, the description of the immoveables seized, a notice
 5 addressed to all persons having claims thereon, to make the same known according to law, and to fyle, at any time within six days after the return of the writ, all oppositions *à fin d'annuler, à fin de distraire, or à fin de charge*, (except in the case of *venditioni exponas*, where no such oppositions are allowed,) before the fifteen days immediately preceding the
 10 day of sale,—oppositions *à fin de conserver* being admissible at any time within six days after the return of the writ,—and lastly, the day fixed for the return of the writ or process, in virtue whereof the sale is to take place.

Sale to be advertised and how.

371. When there shall be more than one plaintiff, or more than one
 15 defendant, mentioned in the said writ, or when the plaintiff shall sue as tutor, or the defendant shall be sued as tutor to the minor children of any person deceased, it shall be sufficient to mention in such notice the first plaintiff, or the first defendant, stating always that there are others, or the name of the partnership, if there be one, or that the tutor is tutor
 20 to the minor children of the person deceased, without specifying at length the names of such minor children, the whole as the case may be. And the said notice shall be dated and signed by the said Sheriff.

Contents of notice in certain cases.

372. The said notice shall be published in the *Official Gazette*, and shall be inserted therein three several times, in English and in French,
 25 the first insertion to be made not later than eight days after the closing of the *procès-verbal* of seizure, and the last to be made one month, at least, before the day fixed for the sale.

Publication in *Official Gazette*.

373. If the party seizing shall desire it, the charges, subject to which the immoveable should be sold, shall be mentioned in a summary manner
 30 in the said notice, at the end of the description of the said immoveables.

Charges on property may be mentioned in notice.

374. The said notice of sale shall also be read and published at the Church door of the place where the property seized is situated, on the three Sundays preceding the day of sale, and a copy thereof shall be
 35 posted on the door of said Church; but if there be no Church, it shall be sufficient to post a copy of said notice in any public place of such locality.

Notice to be read at Church door.

375. Such sale shall be made and can only be made in the Parish or place where the immoveable seized is situated, and only after four
 40 months from the date of the *Official Gazette* which contains the first insertion of the advertisement or notice of sale.

Where and when sale may take place.

FOLLE-ENCHÈRE.

376. Whenever it shall appear to the Court out of which any writ
 45 *de terris* shall have issued, by the return of the Sheriff, or of any other officer of the Court, duly authorized to act in such seizure, that the purchaser of real property taken in execution has neglected to pay the price of his adjudication according to the conditions of the sale, the Court, at the instance of the plaintiff, or of the defendant, or of any opposing party, shall order the Sheriff or other officer of the Court as above men-

If the adjudicators do not pay, the property may be again offered for sale.

tioned, to proceed anew with the sale of the said real property, at the *folle-enchère* of the purchaser, after three publications on three consecutive Sundays, at the door of the principal Church of the place where the said real property is situate, if there be any Church, and after two advertisements inserted in the *Official Gazette*; and shall direct the said Sheriff, or such officer of the Court, to require every bidder presenting himself at the time of such second date, before receiving his first bid, to deposit and pay a sum equal to the amount of the costs then due to the plaintiff for costs of judgment and seizure. 5

Commencing
at next pre-
ceding bid.

377. If any bidder refuse to pay such sum, such Sheriff, or officer of the Court shall go on with the said second sale, starting with the next preceding bid, as if such bidder had not offered any bid. 10

Deposit may
be required in
case of third
sale.

378. In case of a third sale and adjudication in consequence of the neglect of the second purchaser to deposit the price of his purchase, it shall be lawful for the Court, if thereto required by any interested party, to order such Sheriff or officer of the Court to require every bidder, before receiving his bid, to deposit and pay into his hands a sum equal to one-third of the debt due the plaintiff in capital, interest and costs, but such sum shall in no case exceed one hundred pounds currency. 15

Plaintiff may
authorize
Sheriff to re-
ceive a bid
without a de-
posit.

379. When the plaintiff, or his attorney *ad litem*, or any person duly authorized to act on behalf of the plaintiff, shall authorize such Sheriff or officer of the Court, or in the presence of two competent witnesses, whose names such officer shall enter in his return of proceedings, to receive the bid of a bidder without requiring the deposit of monies in the cases above mentioned, such Sheriff or officer of the Court shall receive such bid, and shall proceed to the sale and adjudication of the real property seized, without requiring the deposit and payment of the sums aforesaid, or of any sum whatever. 20 25

Court may
order Sheriff
to require
from bidder to
deposit
amount due
for costs.

380. If, after the issuing of the writ *de terris* and before the first adjudication, the plaintiff or his attorney in the cause shall declare on oath before one of the Judges of the Court, that he is credibly informed and believes that the defendant, with view to retard the sale of the real property seized, will cause the real property to be adjudged to insolvent or unknown purchasers, the Court shall have power to order such sheriff or officer of the Court, who is hereby required to obey such order, to require such bidder at the sale of such real property to deposit and pay into his hands a sum equal to that due for costs up to the day of sale, before receiving such bid, unless such sheriff or officer of the Court shall, at the time of the sale, be authorised by the plaintiff, or his attorney *ad litem*, or by some person duly authorised to attend to his interests, to receive such bid without requiring such deposit or payment. 30 35 40

Amount to be
returned, bid-
der not pur-
chasing.

381. Such sheriff, or other officer, shall, immediately after the adjudication, return to the bidders to whom such property shall not have been adjudged, the moneys deposited by them respectively in virtue of this Act, and the amount deposited by the person to whom the property shall be adjudged, shall be considered as part payment of the purchase money. 45

Fol adjudi-
cataire, liable
for all dam-
ages, &c.

382. In every case the *fol enchérisseur et adjudicataire* shall, in addition, be required to pay all other damages and interest accruing to the judgment creditors, and *contrainte par corps* may also issue against such

bidder for the recovery of the difference between the amount bid by him and that of the re-sale on *folle-enchère*, without his being entitled to claim any overplus that may exist, such overplus shall be paid to the other creditors in their order, or, in the absence of other creditors, to the judgment creditor.

383. Such *contrainte par corps* shall be ordered by the Court at the instance of the plaintiff or of the defendant, or of any opposant not collocated for the full amount of his debts, who shall make it appear by production before the Court of the record, and of the proceedings on the seizure of the real property, that such bidder has not paid in and deposited the purchase money, and that a difference exists between the price of such bidder and that of the second sale, and such *contrainte* shall be ordered and shall last until such *fol enchérisseur* shall have paid the amount of such difference, and of all costs incurred in the obtaining of such *contrainte par corps*.

Payment may be enforced by *contrainte par corps*.

384. The seizing creditor and the debtor respectively may become purchasers of the property seized and offered for sale, on the same conditions as any other person.

The seizing creditor and debtor may purchase.

PROCEEDINGS AFTER ADJUDICATION.

385. Whenever the signing creditor shall become purchaser of the whole or part of the property signed and sold, it shall be lawful for him on giving to the sheriff one or more solvent sureties to secure the payment of the amount retained, to retain in his hands so much of the purchase money as shall not exceed the amount due to him and specified in the writ or process of execution, until the return of the said writ by the sheriff, and until the Court, to which such return is made, shall order the distribution of such purchase money; and therefore the said purchaser shall be bound to pay into the hands of the said sheriff so much of such purchase money as shall exceed the amount awarded to him by the judgment of collocation and distribution. The sheriff shall then deliver to him a title deed of the sale and adjudication of the property which shall have been thus sold to him.

Signing creditor purchasing may retain part of purchase money.

386. Every sale and adjudication of any immoveable property made as aforesaid by the sheriff shall have all the effects of a *décret*, and shall have the effect, in itself, of transferring to the purchaser the full and absolute ownership and possession of such immoveable property.

Such sale to have effects of *décret*.

387. If the defendant, upon whom the property shall have been thus seized and sold, neglects or refuses to deliver up to the Sheriff or purchaser the possession and occupation of the said real property, or makes resistance, personally or by the intervention of others, in addition to the damages resulting from such neglect or refusal, and for the recovery whereof he may be sued, a writ or order of possession, delivered or addressed to the Sheriff, shall be granted and issued, on the simple return of such Sheriff establishing the facts, for the purpose of putting the said purchaser in possession of the said real property.

In case defendant refuses to yield possession of the property sold.

388. As soon as possible after the adjudication of the real property, the Sheriff shall execute to the purchaser a deed, in the usual form of the deeds called *Sheriff's deeds*, which shall be executed by and in the

Sheriff to execute a deed to the purchaser.

name of the said Sheriff, shall be signed by him in that capacity, and dated on the day, month and year of the passing thereof.

Register of titles, sales, &c., of immoveables to be kept by Sheriff.

389. The Sheriff shall keep in duplicate a book or register containing on the first page an authentic attestation by the clerk of the District Court, specifying the number of the pages of such register, the purpose for which it is intended, the date of such attestation, and it shall be signed at full length by the said Clerk and paraphed with the initial letters of his usual signature on every subsequent page, and each page numbered; and the said Sheriff shall, from day to day, transcribe and enrol and enter in each of the said registers, without any blank or interval, until the same shall be filled, all and every the titles, or deeds of sale or adjudication of immoveables by him made in his capacity of Sheriff. The said registers shall each be accompanied by an alphabetical index, and as soon as the said registers are filled, the Sheriff shall deposit one duplicate thereof in the office of the Clerk of the District Court, in the district whereof he is Sheriff, and shall keep the other duplicate in his own office; each duplicate shall form part of the archives of the office where it is thus deposited, and each of the officers having the custody thereof may deliver certified copies, which shall be authentic.

Sheriff's commission.

390. The Sheriff shall be entitled to a commission of two and one half per cent. over and above his disbursements, on the whole amount of the monies levied from sales of moveables or immoveables.

OPPOSITIONS.

Opposition by petition.

391. Every opposition to a judgment, or to the execution of a judgment, or to the seizure and sale of moveables or immoveables, shall be ordinarily formed and brought before the Court or Judge, by whom the judgment has been rendered, or under whose authority the same is being executed, by a petition containing the grounds and conclusions of such opposition.

To be registered in the office of the Court.

392. Every opposition to a judgment, or to the execution thereof, and every opposition whatever, save and except as hereinafter provided, shall be enregistered in the office of the Court in which the suit to which the opposition relates was pending, and the return thereof shall be fixed by the Clerk, at his discretion, on the earliest possible day (being a day on which a return may be made), provided a sufficient delay be allowed for the service thereof on the parties against whom such opposition shall be formed, and for the return thereof to the Circuit Court, or to the office of the District Court, (according as the said opposition shall belong to the one or the other Court): but for every kind of opposition to the seizure of immovables, or to the proceeds of the sale of immoveables taken in execution, it shall not be necessary that a day for the return of such opposition should be fixed, and no opposition for such monies need be registered or served.

Service thereof in certain cases.

393. If, in the case of an opposition the service whereof is required as above, any officer is charged, in virtue of a writ, or order, or otherwise, with the execution of the judgment to which the opposition is formed, it shall not be necessary that the service thereof should be made on the parties aforesaid, but it shall be enough to make such

service upon the said officer, and if a Sheriff, it shall be enough to file the said opposition in his office, if the opponent prefers : but notice of such opposition stating merely the title of the cause in which it is made, the date, name, or nature of such opposition, and the day fixed for the return thereof (if there be any,) shall be served upon and given to the said parties, on the same day on which the said opposition shall have been thus served or fyled,—or to their attorneys.

394. Every opposition in the case of a *saisie réelle*, shall be, at the choice of the opponent, served upon the Sheriff of the district where the execution has issued, or merely fyled in his office, and if the opponent or any one on his behalf shall require it, the Sheriff or one of his clerks shall be bound to deliver a certificate of the day and hour when such opposition is fyled.

Opposition to *saisie réelle* to be served on Sheriff.

395. The service thus required of an opposition shall be made in one of the modes prescribed by this Act for the service of writs of summons, but the delay between the service and return shall not be other than what the clerk of the Court is authorised to fix in certain cases, as above mentioned.

How.

396. All oppositions to a seizure of immovables, or to the sale of any immoveable seized, in the nature of an opposition *à fin d'annuler, à fin de distraire, or à fin de charge*, shall be served, fyled or delivered to the Sheriff or at his office, at least fifteen days before the day fixed for the sale and adjudication of the property seized : and no opposition of this nature shall be thus served, fyled, delivered or received, in the case of the sale of any immoveable property under a writ of *venditioni exponas*, when all the previous notices, advertisements and publications, which should follow the first writ of the execution, shall have been duly made and observed :—but the right of the person, who shall have thus neglected to fyle his opposition, shall be converted into an opposition *à fin de conserver* on the proceeds of the sale of the property seized.

Certain oppositions to be fyled 15 days before sale.

397. All oppositions *à fin de conserver* in the proceeds of the sale of immoveable property seized may be fyled in the office of the Court into which the writ or order in virtue whereof such sale shall have taken place shall be made, at any time within six days after such return shall have been made, but after such delay has expired no opposition shall be received, unless with the express permission of the Court, or of a competent Judge, and on such conditions as shall be prescribed.

Oppositions *à fin de conserver*.

398. No opposition, which is served or fyled, shall have the effect of preventing, delaying or suspending the execution of any judgment, seizure or sale, of moveables or immoveables, or any proceeding, unless such opposition be accompanied by a *fuit* or order to this effect, signed by a competent Judge, and in his absence by the clerk of the Court, to which the cognizance of such opposition shall belong.

Judges order to accompany opposition to effect suspension of execution.

399. As soon as an opposition shall have been legally served, fyled, or delivered, in one of the modes above prescribed, to or on the officer charged with the execution of the judgment, or at the office of the Sheriff, it shall be the duty of such officer (if the opposition be accom-

Opposition fyled, proceeding in execution to be stayed.

panied by a *fiat* or Judge's order to this effect) when this is necessary, to stay his proceedings on the writ or process of which he is bearer, and to return the same with his proceedings and the opposition:—and he shall be bound, in all cases, to return the opposition so legally served, fyled, or delivered, on or before the day fixed for such return, and if there be no day fixed, he shall return the same, within twenty-four hours after the service or reception thereof, into the Court, or the office of the Court, to which the cognizance thereof shall appertain. 5

In the case of oppositions à fin de conserver. 400. If an opposition *à fin de conserver*, on the monies levied or to be levied from the sale of moveable effects seized, be served or fyled before such monies shall have been paid over to the party seizing, the said monies shall be paid and deposited, without delay, in the hands of the Clerk of the Court, to which the cognizance of the opposition shall belong, if it be in the Circuit Court, and in the hands and at the office of the Sheriff, if it be the District Court, to be disposed of as the Court shall order. 10 15

Proceedings on oppositions 401. Every opposition shall be proceeded with, argued, decided and determined, according to the forms and rules prescribed for the cause in which such opposition shall be fyled.

On dismissal of opposition, party may be condemned to a penalty. 402. Any party, whose opposition is dismissed, may, by the judgment dismissing the same, be condemned to pay to the opposite party, in addition to the costs, a penalty not exceeding the sum of fifty dollars, without prejudice to the recourse which any of the parties may have in damages, if such opposition be considered by the Court or Judge, who shall decide the same, as vexatious and injurious. 20 25

Same on making default. The same condemnation may be pronounced by a judgment dismissing an opposition in consequence of the default of the opposant to appear in support of the same, or in consequence of the same not being returned or fyled by the neglect or fault of such opposant.

Oppositions for rent. 403. Persons to whom the defendant is indebted for rent shall be entitled to fyle an opposition only on the proceeds of the sale of the effects seized, and shall not have power to stop the sale. 30

REVISION OF CERTAIN JUDGMENTS.

Revision, causes thereof. 404. Among the causes for which a judgment may be revised, reformed, set aside, annulled or revoked, as the case may be, are the following, to wit:— 35

1. If the judgment has been obtained by default against an absentee, who has had no knowledge of the action brought against him, and if he did not owe the whole or part of the amount of such judgment:—

2. If the judgment has been rendered by default against a party who has not received any summons at all in the cause, or who has not been summoned regularly and has not appeared or answered, or if judgment by default has not been regularly obtained against him:— 40

3. If the party has discovered, since the judgment, important evidence bearing upon the cause, which he was not able to procure before, after using all reasonable diligence. 45

405. Every opposition, founded on one or other of the grounds above mentioned, shall be made by the party himself, or by some one having a power of Attorney to act in his behalf, within a year and day after the judgment rendered, and shall not be received, after such delay has expired. Limitation.

406. It shall henceforward be lawful for the holder of constituted rents, (*rentes constituées*) and life rents, (*rentes viagères*) secured by privilege and hypothec of *bailleur défonds*, to proceed by opposition *à fin de charge* for the preservation of their rights in respect of such rents. Opposition à fin de charge in certain cases.

19 Vict. c. 59.

MISCELLANEOUS PROCEEDINGS.

SAISIE-ARRÊT BEFORE JUDGMENT.

407. It shall be lawful for a creditor to obtain from the Circuit Court, or the District Court established by this Act, according as the sum, or value of the thing demanded, may be within the jurisdiction of one or the other of these Courts, a writ of attachment, *saisie-arrêt*, before judgment to seize and attach, at any time before judgment, the moveables, credits, rights, and actions of his debtor which may be found in his possession or in that of third persons, provided such creditor be domiciled or resident in Lower Canada, or the cause of action have arisen there. Who may obtain the writ of *saisie-arrêt*.

408. In order to obtain the said attachment, the creditor, or his book-keeper, clerk, agent, or attorney, shall make affidavit: Affidavit therefor.

“That the defendant is indebted to the plaintiff in a sum, the amount whereof shall be specified, and that he verily believes, either that the defendant is concealing himself, or intends to conceal himself, or that he is immediately about to leave Lower Canada, or that he has left Lower Canada, or that he resides without Lower Canada, or that he is immediately about to secrete, or make away with, or that he has secreted, or made away with, the whole or part of his property and effects, with intent (in each of the above cases) to commit a fraud, and that a writ of attachment before judgment is necessary to secure to the plaintiff the payment of his debt.”

409. Such attachment may be had for every kind of debt, due, or not due, liquidated, or not liquidated, and also for all damages and interests which may be claimed by the plaintiff for any injury which may have been caused to him, in person or property, but if the person making the affidavit is unable to swear positively as to the amount of the sum due or payable, it shall be sufficient that the oath or affidavit should state in regard to this as follows: In what cases it may be had

40 “That the defendant is indebted to the plaintiff in a sum which, when liquidated or determined, will amount, to the best of the deponent’s knowledge and belief, and in his soul and conscience, to the sum of ten pounds or upwards, current money of this Province.”

In cases of supplies or repairs to ships.

410. Any person employed on board any ship, boat, or vessel whatever and any person who has furnished supplies or done repairs to any such ship, boat, or vessel, may equally obtain an attachment before judgment to secure the payment of the sums due to them, on making oath :—

5

“ That the sum claimed by them and the amount of which shall be specified, is justly due to them : that the said ship, boat, or vessel is immediately about to depart beyond the limits of the district in which it then is, and that they fear they will lose their debt, if they should allow the ship, boat, or vessel to leave, without being first paid the amount of their said debt.”

Before whom the affidavit may be made.

411. The oath or affidavit required in the foregoing cases may be made before any Judge of the Court to which the cognizance of the case shall belong, or before any Commissioner of the District Court, or any Deputy of such Clerk, and on the filing of the said affidavit, it shall be the duty of the Clerk of the Court, of whom the same is demanded, to prepare and deliver a writ of attachment before judgment.

15

Form and service of writ.

412. It shall not be necessary to specify the cause and object of the demand in the writ, nor that such writ and the petition (*requête*), which should accompany it, should be served on the defendant within the usual delay, but it shall be sufficient if the sum specified in the affidavit and the name of the person making the same be mentioned in the said writ or endorsed thereon, and that the said writ and petition (*requête*) be served, within five days from the date thereof, upon the defendant by leaving copies thereof for him with the Clerk of the Court to which the cognizance of the case shall belong, or with some one employed in his office.

20

25

If there be one or more *tiers-saisis*.

413. If there be one or more *tiers-saisis*, the writ shall be served upon them within the usual delay and in one of the modes prescribed by this Act under the title of summons (*ajournements*) according as the case may require ; but the petition, which should accompany the writ, may be served upon them within five days after the date thereof, by leaving a copy with themselves personally: but if any of the said *tiers-saisis* shall conceal himself and has no known place of residence, or if he shall be absent, or reside without Lower Canada, and being of the age of majority shall have no known Curator or Attorney, such copy shall, within the said delay of five days, be posted in one of the modes prescribed by the 190th section of this Act.

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Clerk of Circuit court may issue writs.

414. The officer performing the functions of Clerk or Deputy Clerk of the Circuit Court at any place may issue and deliver writs of attachment before judgment for the District Court within his district, and make the same returnable into the office of the said District Court.

40

What property may be seized.

415. All the moveable property of the debtor shall be seized and attached in virtue of the said attachment before judgment, and it shall be the duty of the Sheriff or Bailiff making the seizure to assume the guardianship and possession of all the property and effects so seized, with the exception of the sums of money due by the *tiers-saisis*.

45

Form of seizure.

416. An attachment before judgment shall be made in the same form

as an execution, and the rules and provisions contained in the several sections of this Act under the title of "*seizure of moveables*," in so far as they are applicable to the present title and to the said attachment, shall be followed and observed, according to the circumstances;—but
 5 the sale of the effects seized shall not take place until the said attachment shall have been declared good and valid by the proper tribunal.

417. If the property and effects seized and attached or a portion thereof are of a perishable nature, and there is danger of the loss or deterioration of the same during the pendency of the suit, the Court or
 10 a Judge may, on the application of the plaintiff, order the immediate sale of the said property and effects at public auction, after the usual notices, and after an estimate thereof shall be made by two or three *experts* to be named by the Court or Judge for this purpose, and the proceeds of such sale shall remain deposited in the hands of the Clerk
 15 of the Court into which the writ shall be returnable.

If the property seized be of a perishable nature.

418. If the defendant appears and establishes or proves in a summary manner before any one of the Judges of the District Court, after giving a simple notice in writing of one clear day to the plaintiff, that the facts on which the attachment has been granted, are insufficient or false, he
 20 shall obtain *main-levée* thereof forthwith, and shall be admitted to plead to the action, as in ordinary cases.

Main-levée in certain cases.

419. If the defendant presents himself, or appears, in person, or by attorney, he may also at any time and at any stage of the cause, obtain
 25 *main-levée* of the seizure, and the property and effects seized shall be delivered up and restored to him by the Sheriff or bailiff who shall have made the seizure, on the payment to him by the said defendant of the sum specified in the writ of attachment or in the endorsement thereon, as well as a sum sufficient to cover the interest accrued and all costs incurred in the cause:—or if a written certificate of the plaintiff, or his
 30 attorney be produced to the said Sheriff or bailiff to the effect that the said amount of capital interest and costs in the cause has been paid:—or further if the defendant executes and delivers to the Sheriff, or to the person who exercises the functions of such Sheriff at the Court into
 35 which the writ of attachment shall have been made returnable, his personal obligation with the security of one solvent person who shall justify his sufficiency to the satisfaction of the officer receiving such security and who shall oblige himself jointly and severally with the defendant to pay the amount, in capital, interests and costs, of the judgment to be rendered in the cause; but no Sheriff, or other officer shall be bound to
 40 deliver up or restore the property and effects seized, unless the costs of the seizure and guardianship thereof shall have been first paid to him.

Also on certain conditions.

420. It shall be the duty of the *tiers-saisi*, who is summoned in any suit returnable before the Circuit Court, to appear before the said
 Court, at the place and on the day and hour fixed, and there to make
 45 his declaration on oath, wherein he shall enumerate and detail truly, and without reserve, all the property and effects which he may have in his possession belonging to the defendant, under any title whatever, and all sums of money liquidated, or not liquidated, due or not due, belonging to the defendant, which he may owe, or have in his
 50 possession; but if the suit is returnable in the office of the District Court, the *tiers-saisi* shall appear at such office and there make his declaration

Declaration of *tiers-saisi*.

as aforesaid, on or before the day fixed for the return of the writ of attachment, or on the first juridical day thereafter; but no such declaration shall be thus received before the return day, unless it be shown that twenty-four hours' notice of the intention of the *tiers-saisis* to make such declaration has been previously given to, or served upon the plaintiff or his attorney. 5

Who may receive it.

421. Any Clerk of the District Court, or deputy of such Clerk at any place, as well as any of the Judges established by this Act, is hereby empowered to receive the declaration of *tiers-saisis*, and to administer the oath required in such case. 10

Failure or refusal of *tiers-saisi*.

422. If the *tiers-saisi* does not appear, or neglects, or refuses to make his declaration within the delay aforesaid, either in the District where the writ shall be returnable, or in any other District where he may be authorised to appear and make his declaration as hereinafter provided, his default to appear, or his default or refusal to make his declaration, shall be recorded, and judgment may thereupon be rendered against him personally for the amount, which shall be awarded in favor of the plaintiff, as well in capital as interest and costs. 15

Plaintiff may contest his declaration.

423. The plaintiff may contest the declaration of the *tiers-saisi* and plead thereto, and such contestation shall be made, regulated, proceeded with, and determined in the same manner as the pleadings and proceedings in an ordinary action before the Circuit Court, or District Court, and the proceedings and forms shall be respectively the same; and if it appear from such contestation that the *tiers-saisi* has in his hands any property or effects belonging to the defendant, or that he owes him anything, such property, effects, or debts shall be liable to the judgment which may be rendered against the defendant, and to the execution which shall follow thereon. 25

Where *tiers-saisi* shall appear.

424. Whenever a writ of attachment before judgment shall be returnable, either in the office of the District Court or before the Circuit Court, in any district other than that in which the *tiers-saisi*, or one of the *tiers-saisis* shall reside, the *tiers-saisi* on whom the writ of attachment shall have been served, or upon whom it shall have been executed by the Sheriff, or a bailiff of such other district, shall be bound to appear, answer, and make his declaration, at the place where such writ is returnable, in like manner as if the same had been returnable in the district where the said *tiers-saisi* resides. The said *tiers-saisi* may, however, appear and make his declaration at the office of the District Court in the district where he resides. 35

The declaration to be transmitted to where *saisie* returnable.

425. Whenever any declaration of a *tiers-saisi* shall be made at the office of the District Court, in a district other than the one in which the writ of attachment is returnable, it shall be the duty of the Clerk of the Court, at whose office such declaration shall have been made, forthwith to transmit the same to the Clerk of the District Court, or Circuit Court, at the place where the said writ is thus returnable, and subsequent proceedings shall be had on the said declaration against the *tiers-saisi*, or the defendant in the cause, in the same manner as if the declaration of the *tiers-saisi* were made before the Court, Judge, or Clerk, at the place fixed for the return of the writ; and where the *tiers-saisi* has not appeared, or has neglected or refused to make his decla- 50

ration, within the delay appointed, at the place where the writ is returnable, the certificate of the Clerk of the District Court in the district where the *tiers-saisi* is resident, to the effect that the *tiers-saisi* has made default to appear, or has failed, or refused to make his
 5 declaration within the delay aforesaid, shall be sufficient to enable the plaintiff to proceed by default against the said *tiers-saisi*.

426. In the cases mentioned in the two preceding sections, the contestation of the declaration of the *tiers-saisi* may take place in the district where the writ shall have been returned, and the *tiers-saisi*
 10 shall be bound to plead thereto, and the District Court, or Circuit Court, may proceed to hear, try, and determine the said contestation, as if the *tiers-saisi* were resident there.

Where contestation shall take place in certain cases.

427. When the attachment shall have been declared good and valid, and the plaintiff shall have obtained judgment in his favor against the
 15 defendant, such judgment may be executed as well against the property so seized and attached belonging to the said defendant, as against all his other property, and the same may be sold, or so much thereof as may be necessary to cover the amount of the judgment so rendered in favor of the plaintiff, in capital, interest and costs; and execution of the
 20 judgment rendered against the *tiers-saisi* may be had in like manner as the execution of any judgment in ordinary cases.

Judgment may be executed against all the property of defendant.

428. But if the said judgment has been rendered by default, or if where an Attorney has been appointed by the Court to act for the defendant, and he has not communicated with such defendant, the
 25 plaintiff, before he can obtain an execution on the judgment, shall deliver and deposit in the office of the Court by which the same was pronounced, his obligation in favor of the defendant, with the security of one solvent person, to the satisfaction of the Clerk, or of one of the Judges of the said Court, for security of the repayment of any sum of
 30 money which may be levied in virtue of the said execution, in case the said judgment should be reversed on the revision thereof, which may be demanded within a year and a day after the rendering of the same.

In certain cases plaintiff must give security.

429. If, after the expiration of the delay allowed for the execution of
 35 the judgment rendered in favor of the plaintiff on an attachment (*saisie arrêt*), the amount thereof in capital, interest and costs, has not been paid, the plaintiff may obtain judgment against the surety mentioned in the 419th section of this Act, for the amount of the condemnation pronounced against the defendant, on a simple motion to
 40 this effect made before the Court, by which the said Judgment shall have been pronounced, and without other proof than the production of the security bond assigned to him by the officer who has received the same: Provided that ten days' notice in writing of the said motion shall have been previously given to the said surety.

The plaintiff may obtain execution against the surety.

430. If the officer, by whom the security bond has been received,
 45 refuses to assign the same to the plaintiff, or if, after the discussion of the surety's property, when such assignment has been made, there is not sufficient to pay the debt, interest and costs due to the plaintiff, the latter may, on proof of such refusal, in the former case, obtain a
 50 condemnation against such officer for the payment of the debt and

The officer may be condemned to pay the amount of security bond in certain cases.

interest, and all costs due to him under the judgment rendered in his favor against his debtor, and in the latter case, if it is proved that, at the time the said security bond was received by the said officer, such surety was not sufficient or solvent, the said officer shall be declared responsible as the surety of the defendant, or of the party on whom the seizure has been made, and shall be condemned in consequence to pay to the plaintiff, the amount in capital, interest and costs of his judgment against the defendant, as well as all costs incurred by reason of the discussion of the property of the said surety, or so much as shall be wanting to pay the whole of such amount.

In any of the above cases, the said judgment shall be obtained by the plaintiff on a simple motion made before the Court, by which judgment has been pronounced in the first instance against the defendant, after ten days' notice of the said motion shall have been given to the officer concerned therein.

When the *saisie* may issue.

431. The attachment, *saisie-arret*, may accompany the institution of an action, or may be obtained at the same time or afterwards, at any stage of the cause before final judgment.

SAISIE REVENDICATION.

Cases in which said writ may be obtained.

432. A writ of *saisie-revendication* may be granted or issued, in all cases in which the *saisie-revendication* is at present permitted, either from the District Court, or from the Circuit Court, according as the sum of money or value of the thing revendicated falls within the jurisdiction of one or the other of these Courts, and it shall be the duty of the Clerk of each of the said Courts, or of the officer acting as such, to make and deliver every such writ without the previous permission or authorization of the Court or any Judge.

Contents and service of writ.

433. It shall not be necessary that the cause and object of the *demande* should be stated in the writ, or that such writ and the petition accompanying the same should be served on the defendant or the person in whose possession are the objects, animals or things which it is sought to revendicate, but it shall be sufficient to describe the same in a summary manner therein, and to cause the said writ and petition to be served, within five days from the date thereof, on the defendant or on such person, by leaving copies thereof either with the Clerk of the Court to which the cognizance of the case shall belong, or with some one employed in his office.

Form of writ.

434. The *saisie-revendication* shall be made in the same manner as the *saisie-execution*, and the provisions and rules contained in sections 416 and 431 of this Act, under the title of *saisie-arret* before judgment, shall apply to the present title and to the *saisie-revendication*, and shall be followed and observed according to the circumstances; but the defendant, or the person in whose possession the objects, animals or things revendicated are seized, shall not be made guardian thereof without the consent of the plaintiff, or unless such person gives security by one solvent surety to the satisfaction of the sheriff or bailiff, for the production of the objects, animals or things so seized.

Responsibility of surety.

435. The person who shall have thus become surety, shall be liable

to the same duties, obligations, pains, penalties, punishments, imprisonment and *contrainte* as the guardian in the case of an execution.

436. Any person who shall have, from the nature of his claim, or by law, a lien or privilege upon anything, may attach the same by *saisie-revendication*, even in the possession of a third party, and cause the same to be sold in satisfaction of such claim. Who may obtain such writ.

437. The creditor who wishes to proceed against the thing itself which is thus affected towards him in the case mentioned in the preceding section, or in the case where such thing has been lost or abandoned, or where the owner thereof is unknown or absent, shall, before obtaining a writ of *saisie-revendication* to that effect, declare on oath, or by affidavit, the amount and nature of his claim, and that the object or thing to be attached serves as a pledge (*gage*) to him, or is affected with a privilege in his favor; and in the two latter cases, he shall add, on his oath, that such thing has been abandoned or lost by some one of whose name he is ignorant, or that the same belongs to one or more owners who are unknown to him, or absent. Oath required.

438. If the thing so attached turns out to be lost or abandoned, or if the owner thereof is unknown or absent, as above mentioned, the Sheriff or bailiff making the attachment shall take possession of the thing attached, and shall give public notice to all concerned to appear within fifteen days from the publication of such notice to answer to the writ of *saisie-revendication*: and such notice shall be published in English or French by the said Sheriff or bailiff, by posting a copy thereof in the manner prescribed by section 190 of this Act under the title of "summons" (*ajournement*). Notice in certain cases.

439. At the expiration of the delay of fifteen days mentioned in the preceding section, if no one appears to answer the *demande*, the Court or one of the Judges thereof shall name an attorney to represent the absent owner and to defend his rights in the cause, and when the plaintiff has obtained judgment in the ordinary manner, he may cause the thing attached to be sold in satisfaction of the amount of his judgment in capital interest and costs. Attachment and sale.

440. Section 431 of this Act, under the title of *saisie-arrêt* before judgment, shall apply to the *saisie-revendication* and to the present title. Section 431 to apply.

SAISIE-GAGERIE.

441. The owners, or the principal tenants, of houses, or of rural property, whether there be a lease or not, shall have the right of seizing, by process of *saisie-gagerie*, for arrears of rent due, the moveables, effects, animals and fruits which may be found in the said houses or farm buildings, and upon the property leased. In what cases such writ may be obtained.

They shall have the right of seizing by process of *saisie-gagerie par droit de suite*, even in the hands of a third person, for rent due, or to become due, the moveables, effects, animals and fruits, which were upon the property leased and which garnished the same, if they have been removed without the consent of such owners or tenants: Provided the said seizure take place within fifteen days after such removal.

Certain sections applicable to said writ.

442. In all the foregoing cases, as well as in all others in which the *saisie-gagerie* may take place, sections 432, 434, 435 and 440 of this Act, under the title of *saisie-revendication*, and section 412 of this Act, under the title of *saisie-arret*, before judgment, shall be followed and observed, and all the provisions therein contained shall apply, according to the circumstances, to the present title and to the *saisie-gagerie*, but the moveables, effects, animals and fruits seized, shall not be sold until the *saisie-gagerie* shall have been declared good and valid by the proper Court. 5

ARREST OF DEBTORS, OR CAPIAS AD RESPONDENDUM.

Against whom this writ may be obtained.

443. It shall be lawful for a creditor to obtain from the District Court process of attachment or *capias ad respondendum*, to arrest his debtor and to imprison and detain him in custody, until he shall have obtained his release in one of the modes and on the conditions provided and established by this Act, or until his release shall have been ordered by a competent Court or Judge: but such process shall not be obtained or issued against any priest or minister of any religious denomination whatever, or against any person above the age of seventy years, or against any female, or when the cause of action shall have arisen in a foreign country, or shall not amount to ten pounds current money of this Province. 15 20

Affidavit required.

444. In order to obtain this process, the creditor, or his book-keeper, clerk, agent, or attorney, shall establish an oath:—

“ That the defendant is indebted to the plaintiff in a sum equal to ten pounds or upwards of lawful money of this Province: and further “ that the deponent verily believes (upon grounds to be specially set “ forth in the affidavit) either that the defendant is concealing himself, “ or that he intends to conceal himself, or that he is immediately about “ to leave the Province of Canada, or that he is immediately about to “ secrete, or make away with, or that he has secreted, or made away “ with the whole or part of his property and effects, with intent (in “ any of the above cases) to commit fraud: that the intention of the “ plaintiff is not to harass the defendant, but only to secure the repay- “ ment of his debt, and that a writ of attachment against the person of “ the defendant is necessary to secure to the plaintiff the repayment of “ his debt. 30 35

Certain sections to apply.

445. The provisions contained in sections 409, 411, 412 and 414 of this Act under the title of *saisie-arret* shall apply to the said process of attachment, and shall be followed and observed according to the circumstances.

Person arrested may obtain his release in certain cases.

446. The person arrested may obtain his release on establishing or proving in a summary manner before one of the Judges of the District Court, after a simple notice in writing of one clear day only to the plaintiff, that he is within one of the exceptions above mentioned, or that the grounds or facts, on which the writ of attachment has issued, are insufficient or false. 45

Also on certain conditions

447. The person arrested may also obtain his release, on payment, to the sheriff or bailiff charged with the writ of attachment, or to the

sheriff of the district where the said writ is returnable, or returned, of the sum specified in such writ, or in the endorsement thereon, as well as the interest accrued and all costs incurred; or on the production to the said sheriff or bailiff of a certificate of the plaintiff or his legal attorney that the said amount in capital interest and costs has been paid; or if, at any time before final judgment, when the writ of attachment has been issued before judgment, and at any time before the judgment declaring the arrest good and valid, when the writ has been issued after such final judgment, the person so arrested or imprisoned executes and delivers to the sheriff of the district, when the said writ is returnable or returned, his personal bond with the security of one solvent person, who shall justify his sufficiency, if required, to the satisfaction of the said sheriff, and who shall promise jointly and severally with the person so arrested or imprisoned, that the latter will surrender himself into the custody of the said sheriff, whenever required so to do by any order of such Court or of any Judge, or within one month after the service thereof upon his surety.

448. The defendant thus arrested or imprisoned may relieve himself from the necessity of giving such bail and supply the place thereof, by depositing in the hands of the sheriff goods sufficient to satisfy the amount of the action in the event of judgment being rendered against him.

Defendant may deposit goods instead of giving security.

449. The said bail-bond may be assigned by the sheriff to the plaintiff, but no sheriff shall be answerable to the plaintiff for the solvency of the bail except at the time such bail was taken, and only to the amount of the sum for which the said bail-bond shall have been given.

Bail bond may be assigned.

450. Any one who shall become bail as aforesaid may discharge himself from liability as such by surrendering the body of the defendant into the custody of the sheriff at any time before judgment has been obtained against such bail, as hereinafter provided.

How discharge as bail may be obtained.

451. The sheriff, on receiving the body of the defendant so surrendered to him, shall deliver a certificate of such surrender to the bail, who, on production of the same, and on motion made before the Court in which the cause is pending, or before one of the Judges of such Court, after two days' notice only to the plaintiff, shall be entitled to have his bond annulled.

Certificate of surrender of defendant.

452. Whenever the bail shall desire to surrender the defendant's body as aforesaid, if the latter refuses to appear and surrender himself voluntarily into the custody of the sheriff, such bail may obtain the arrest of the said debtor in order to surrender him to the sheriff, on presenting a summary petition to one of the Judges of the District Court, accompanied by a copy of the bail bond certified by the sheriff.

Defendant not surrendering may be arrested.

453. If at the expiration of the delay allowed to the bail for the production and surrender to the sheriff of the defendant's body, the latter is not produced, or surrendered into the custody of the said sheriff, the plaintiff may in default of payment of the amount in capital interest and costs of the judgment rendered in his favor, obtain judgment against the bail for the amount of the condemnation pronounced

In case defendant's body is not produced judgment may be obtained against surety.

against the debtor, on a simple motion to this effect made before the Court which shall have pronounced such condemnation, and without other proof than the production of the bail bond assigned to him by the sheriff, provided that ten days' notice of the said motion shall have been previously given to such bail. 5

Provisions applicable to this title.

454. The provisions of section 430 of this Act, under the title of *saisie arrêt*, shall apply respectively to the said sheriff in like manner as to the officer mentioned in the said section, in the cases therein mentioned; the rules therein contained shall be followed and observed, and the plaintiff on a *capias ad respondendum* shall share in all the 10 rights and advantages resulting from the said section to a plaintiff on a *saisie-arrêt* before judgment.

Certain sections of 12 V. cap. 42, repealed.

455. Sections 1, 2, 3, 12, 13, 14, and 15 of the Act passed in the 12th year of Her Majesty's reign, chapter 42, intituled "An Act to abolish imprisonment for debt and for the punishment of fraudulent 15 debtors, in Lower Canada, and for other purposes," are repealed, but the remaining sections of the said Act shall continue in force, except in so far as they may contain anything contrary to this Act.

When arrest may be obtained.

456. A creditor may obtain the arrest of his debtor as aforesaid, either at the time of instituting his action, or afterwards, at any stage of 20 the cause, and even in appeal.

Capias ad satisfaciendum abolished.

457. No writ of *capias ad satisfaciendum* or writ of the same nature, shall hereafter be allowed or issued, against the body of any debtor, in execution of a judgment in any commercial case between merchants or traders, and also for debts due to merchants or traders, for merchan- 25 dize and effects sold; but nothing contained in this Act, or in the Act above cited, shall extend to prevent arrest, imprisonment, or *contrainte par corps*, as now permitted in certain cases.

PROCEEDINGS ON THE WRIT OF HABEAS CORPUS.

How obtained.

458. The *habeas corpus* may be obtained on a petition addressed to the Court or a Judge who has the power of granting it. It must be 30 signed by the party, or some other person in his name, mentioning in the latter case the name of the party confined.

Form of petition.

459. This petition shall state in substance, that the party applying is imprisoned or deprived of liberty, and by whom, if the person's name be known, or if it be not known, by designating or describing 35 his person as far as possible.

Do do

460. If the imprisonment or detention exists, by virtue or under pretext of a judicial order, the copy of such order shall be annexed to the petition, or the petitioner shall allege that a copy of it has been demanded and refused. 40

Do do

461. If the imprisonment or detention took place by virtue of a judicial order, regular in its form, but illegally obtained or executed, the petition shall mention in what the illegality consists.

Do do

462. If the imprisonment or detention has not been made by virtue

of a judicial order, the petitioner need only allege that he is illegally imprisoned or confined.

463. The petition shall conclude by praying for a *habeas corpus*; Do do
the petitioner shall swear that it contains the truth to the best of his
5 belief.

464. The Court or Judge to whom this petition is presented, if he has the power of issuing a *habeas corpus*, shall immediately grant one to the petitioner, unless it appear by the petition itself, or by the documents annexed to it, that the party cannot be set at liberty, nor
10 admitted to bail. Duty of court or judge.

465. The *habeas corpus* may be granted in Court, with the signature of the clerk, or the seal of the Court, or out of court under the signature alone of the Judge to whom the petition is presented. Writ may be granted in or out of Court.

466. The *habeas corpus* may be served upon the party to whom it is
15 addressed by any person capable of giving evidence. Service.

467. The person to whom the writ is delivered may serve it by delivering it to the person to whom it is addressed, or who keeps the party in confinement; and if that person refuse to receive the writ, he who is charged to serve it shall inform him of its contents. How effected.

20 But if the person to whom the *habeas corpus* is addressed, conceal himself, or refuse admittance to the person charged to serve it on him, the latter shall affix the order on the exterior of the place where the person resided, or in which the petitioner is confined.

468. The service of the *habeas corpus* shall be proved by the affidavit of the person directed to serve it. Proof thereof.

469. It is the duty of the person on whom a *habeas corpus* is served, whether it be directed to him or not, to obey and return the order without delay to the Court or Judge who issued it. Return.

30 470. Obedience to the *habeas corpus* is manifested on the part of the person to whom it is directed, by his producing the person to be set at liberty, if that person be in his custody; and by making on the back of the order, or separately, his answer in writing, in the form and manner hereafter directed. Obedience how shewn.

35 471. The person on whom a *habeas corpus* is served, shall declare positively in his answer: Answer.

1st. Whether he has or has not in his power or custody, the person to be set at liberty, or whether that person is confined by him.

2nd. By what authority and for what cause he arrested or detained him.

40 472. If the person on whom a *habeas corpus* is served had held the petitioner in confinement, or had detained him within three days preceding the service, or had transferred the custody to another, he shall Particulars in certain cases.

state particularly in his answer to whom, at what time, for what cause, and by what authority he made the transfer.

- D. do** 473. On the contrary if he have the said person in custody, or he be kept in custody by virtue of a judicial order, the original of that order must be annexed to the answer. 5
- Answer to be signed and sworn to.** 474. This answer must be signed and sworn to by the person making it. 5
- Production of person not compulsory in certain cases.** 475. Whenever a *habeas corpus* shall have been obtained for a person who is confined by virtue of a final judgment or order of any competent tribunal of civil or criminal jurisdiction, the officer having the legal custody of such person need not produce him unless specially ordered to do so, notwithstanding such final judgment in the cases laid down in the following article; and it shall be sufficient for him to return the *habeas corpus*, with his answer in writing, annexing the judgment or order by virtue of which the person is confined. 10 15
- Court may order it.** 476. The Court or Judge may direct that the person confined shall be produced before him, notwithstanding any final judgment, sentence, or order, under which he may have been deprived of liberty, if it appear to him that from some cause expressed in the affidavits on which the *habeas corpus* was granted, or in the answer accompanying the writ, this production is necessary to enable him to grant to the party the relief prayed for. 20
- Delay for return of writ.** 477. The return of a *habeas corpus* shall be made in twelve hours after its service, or sooner, if it be so ordered by the writ in every case where the place of confinement is not more than twelve miles from that to which the return is to be made. 25
478. If the person confined is at a greater distance, the time for the return shall be increased one day for every twenty miles distance, and so in proportion for shorter distances.
- In case of failure to produce prisoner.** 479. When the *habeas corpus* has been duly served, if the party in whose favor it has been granted is not produced within the time above fixed, the Judge who issued the writ shall issue a warrant to some officer of justice, commanding him to arrest and take in charge the person who disobeyed the writ, and to bring such person before him to be proceeded against according to law. 30 35
- Party so refusing may be imprisoned.** 480. If the person thus brought before the judge refuses to deliver the *habeas corpus* which has been served upon him, or to produce the party whom he was ordered to produce in the cases where, according to the above provisions, he might be compelled to do it, he shall be sent to prison, and shall remain there until he obeys the *habeas corpus*; and shall be condemned to pay all the costs of the proceeding, besides the action for false imprisonment, which the party may institute against him. 40
- In case of sickness of party confined a special return to be made.** 481. Whenever, by reason of the sickness or infirmity of the party confined, he cannot be brought before the Judge without endangering his life, he who has him in confinement shall mention it in his answer on returning the *habeas corpus*, and if this act be proved by the certificate 45

of a physician or surgeon regularly authorized to practise, and by the declaration of two other witnesses, and the signature of the party confined, if he can write, if the answer appears to him sufficient in other respects, the Judge shall repair to the place where the party is confined, if he can do it without quitting the place of holding his usual sittings, otherwise he may determine on the *habeas corpus* in the same manner as if the party was produced before him.

482. If the person confining the petitioner cannot produce him because he is dead, or through some other unavoidable accident or overpowering force, he shall mention it in his answer to the writ; but this fact, to form an excuse, must be proved in a perfectly satisfactory manner to the Judge: It is to be understood that in this case, and in every other where the person confining another is bound to make proof of the causes which prevent producing him, proof to the contrary may be offered by the person who obtained the *habeas corpus*.

When the person ordered to be produced shall be dead.

483. If the person kept in confinement is represented before the Court or Judge, he may deny all the facts stated in the *habeas corpus*, or he may allege others on his side to show that his detention or imprisonment is illegal, or that he has a right to be set at liberty; which denials and allegations shall be made under oath.

Person in confinement may answer.

484. The Judge shall then proceed in a summary manner to hear the testimony and the reasons adduced, as well by the party confined as by the party confining, and shall pronounce on the whole subject as the nature of the case may require, and according to the rules hereafter established.

Summary proceedings.

485. If the Judge cannot pronounce immediately on the *habeas corpus*, he may, until his judgment is rendered, commit the party to the Sheriff of the district where the writ is issued, or to such other person as the age of the party and other circumstances may render proper.

If the judge cannot decide at once.

486. If it appears to the Court or the Judge, by the answer to the *habeas corpus*, or by the documents which accompany that return, that the person whose liberation is solicited is detained by virtue of an order rendered in a civil suit, or at the request of an individual having an interest in his confinement, the said Judge shall not pronounce on the *habeas corpus*, unless it be proved to his satisfaction that previous reasonable notice in writing has been given to the plaintiff in such civil action, or to any other party interested, or his agent, or attorney, if they are not more than twenty miles distant from the place where the *habeas corpus* has been obtained.

In case *habeas corpus* shall have issued in relation to some civil proceeding.

487. If it appear to the Court or Judge from the examination of the writs or the accompanying documents, that the party is confined by the order of some tribunal, he can only restore such party to liberty in the following cases:

In what cases party may be restored to liberty.

1. Where such tribunal has exceeded its jurisdiction, as defined by law.
2. Where the original imprisonment was lawful, but by some act,

omission or event, which has since occurred, the party becomes entitled to his liberty.

3. Where the order of imprisonment is deficient in some legal requisite.

4. When this order, although in regular form, has been given in any case or under any circumstances in which the law does not authorize the giving of orders of arrest or imprisonment. 5

5. Where the order is in due form but has been rendered or executed by a person not authorised for that purpose, or where the person detaining the prisoner is not the person to whom the law has prescribed that duty. 10

6. Where the order appears to have been obtained under false pretences or by corruption.

7. Where there exists no general law, judgments, orders or decrees of a Court of Justice, if it be in a civil suit, or sentence of conviction, 15 if in a criminal suit, to justify the imprisonment.

Duty of the court or judge.

488. The Court or Judge pronouncing on the *habeas corpus*, cannot otherwise examine the validity or propriety of the judgment or decree of a regularly constituted tribunal under which the imprisonment has taken place; and whenever it shall appear to him that there exists 20 sufficient legal ground for the detention of the prisoner, on account of any offence with which he may stand charged, although the order of imprisonment may have been rendered in an irregular and unauthorised manner, or have been executed by a person not duly authorised for the purpose, the judge shall render a new order of arrest, in regular 25 form, directed to the proper officer, or admit the party to bail, if the nature of the offence allows it.

When prisoner shall be set at liberty.

489. But if it shall appear to the Court or Judge from return and annexed documents, or otherwise, that there is no cause for arrest or confinement, or if he thinks that such arrest and confinement cannot 30 legally continue, he shall immediately set the prisoner at liberty.

When he shall be remanded to prison.

490. But if the Court or Judge decide that the party cannot be released from confinement, nor admitted to bail, he shall remand him to prison, or place him under the same custody in which he was, if the detention was legal; otherwise he shall place him in the custody of 35 the person to whom the law confides such duties.

Party may be again arrested for same offence.

491. A party discharged from imprisonment under *habeas corpus*, in a criminal proceeding, through deficiency of proof or some important defect in the warrant of imprisonment, may be arrested or confined anew, on satisfactory proof and under a legal warrant, although it be 40 for the same offence.

Party released may be again arrested.

492. So also in a civil suit, a party who has been released on account of the illegality of the warrant under which he is confined, or want of authority in the person confining him, may be arrested anew, and imprisoned for the same cause of action, provided it be done in a legal manner. 45

493. The Court or Judge granting the writ of *habeas corpus* may, in their discretion, order the party applying therefor to pay the travelling expenses of the prisoner, at the rate of one shilling per mile, in case the prisoner should be sent back to gaol, and the Court or Judge may also require the party applying for the issue of the writ, security to be given by one solvent person to such amount as the Court or Judge shall fix to guarantee that the prisoner shall not escape on the journey, or during his conveyance from the prison to the presence of the Court or Judge, or *vice versa*.
- 5
494. The Sheriff, Gaoler, or any other person who shall have a prisoner under his charge shall not be bound to bring or cause the prisoner to be brought before the Court or the Judge, when costs shall have been so ordered to be paid for the conveyance of the prisoner, and the amount shall not have been paid to him, or at least shall not have been tendered to him, or also when the security ordered by the Judge shall not have been given or entered into.
- 10
- 15

Travelling
expenses.

Must be paid
or tendered
in advance.

24 Geo. III., c. 1., s. 2 and 10.

495. Any Judge who shall refuse, in vacation, to grant a writ of *habeas corpus*, when it shall have been applied for according to law, and in any of the cases in which he is permitted or directed to grant it, shall be bound to pay to the prisoner, or to the party aggrieved, the sum of five hundred pounds, the amount of which may be sued for and recovered before any Court of competent jurisdiction.
- 20

Penalty on
Judge refusing
habeas corpus.

PROCEEDINGS ON THE WRIT OF MANDAMUS.

496. The writ of *mandamus* may, in all the cases contemplated by the 148th section of this Act, be asked for by any person desirous of prosecuting.
- 25

By whom
obtainable.

497. The party desirous of obtaining this writ must present a petition to that effect, to the competent Court or Judge, in which he shall state clearly and precisely the facts and circumstances of the case, the nature of his right, and the wrong which he shall have received or may then be laboring under.
- 30

How.

498. This petition must be terminated by conclusions analogous to the nature of the case, and by an application for the writ of *mandamus*, it must further be sworn to as containing the truth, at least, to the best of the belief of the person by whom the application shall be made: But this oath shall not be required when the facts shall be apparent upon the simple inspection of any written testimony whatsoever, which may be filed by the party at the time of his application.
- 35

Oath.

499. Any person or party against whom such writ of *mandamus* shall issue shall not be admitted to shew cause upon the said writ, otherwise than by answering or pleading to the said petition, and he shall not be bound to make a return of the said *mandamus*, but the said writ shall be returned by the bailiff or other officer who shall have served the same upon the defendant, with a certificate or return under oath, in the ordinary manner prescribed for the service of writs of summons.
- 40
- 45

Proceedings
on petition.

In case party
appear.

500. If the party against whom the said writ shall have been granted appear within the delay which shall have been fixed by the Court or the Judge, when granting the writ (which delay shall only be computed from the day of the service of the said writ, and that afterwards within the delay which shall also be fixed by the Court or Judge on the day for appearing the said party answer in writing in such a manner as to justify his conduct, the application shall be rejected, and the petitioner condemned in costs. 5

If he fail to
appear.

501. If on the other hand the person to whom this writ shall be addressed does not appear on the day fixed, or if he appears and does not answer within the day fixed as above provided, and in all cases the allegations of the petition being proved or considered sufficient, or further, if the party appears and answers, or makes a defence and his defence is deemed insufficient, then the Court or Judge may order a peremptory order to issue, directing and enjoining him to do what shall be required or demanded, or prohibiting or restraining him from doing something, or directing him to take any further proceedings, as the case may be, and if he do not obey the said order, an order for his imprisonment shall issue against him, and he shall be imprisoned in virtue of the said last order, in the common gaol of the district, until he shall have obeyed the said peremptory order, or conformed to its provisions. 10 15 20

If it be a
corporation.

If such disobedience to the said peremptory order be on the part of any incorporated society, corporation, public body or department, such disobedience shall be punished by a fine not exceeding five hundred pounds, which may be levied, in the ordinary manner, upon the moveable and immoveable property of the said society, corporation, public body or department, without prejudice, to the claim for damages of the party aggrieved. 25

Evidence.

502. Testimony shall be received in all cases of *mandamus*, and notes thereof taken, the whole in the manner prescribed by this Act in ordinary cases. 30

Proceedings
to be summary.

503. Saving the exceptions which result from the various provisions of this title, and of this Act, the trial, hearing, and decision of any case of *mandamus* shall always be proceeded with in a summary manner.

Petition in
case of usurpation.

504. In all cases of *mandamus* having for their object to prevent the usurpation of any office, charge, public place, or franchise, or their illegal possession, the petitioner must state in his petition the name of the person entitled to such public place or franchise, and the necessary facts to establish his right, and in any such case judgment shall be rendered upon the claim of the defendant, and upon the rights of the party claiming to have a title to the said office, charge, or franchise, or solely upon the claim of the defendant, as justice may require. 35 40

Fine.

505. Whenever any party or defendant shall be found guilty of usurping or unlawfully holding any office, franchise, or privilege, judgment shall be rendered that such defendant be ousted and excluded from such office, franchise, or privilege, and also that the plaintiff or party complaining of such usurpation recover his costs against such defendant; and it shall be lawful for the Court, or the Judges rendering such judgment, in its or their discretion, to condemn such defendant to 45

pay a fine or penalty not exceeding one hundred pounds, which fine or penalty, when collected, shall be paid over to Her Majesty's Receiver General of this Province for the time being; and whenever an action or complaint for any such alleged usurpation, intrusion, or detention as aforesaid, shall be dismissed, the defendant shall be entitled to recover costs against the plaintiff or party so complaining.

506. Whenever judgment shall be rendered in any of the cases mentioned in the two last sections favorable to the person who shall have claimed to be entitled to such office or franchise, he shall be entitled, after taking the oath of office, and executing any bond which may be required by law, to take upon himself the execution of such office, or the exercise of such franchise; and it shall be his duty immediately thereafter to demand of the defendant in such case, all the keys, books, papers, and insignia in the custody or within the power of such defendant, belonging to the office or franchise from which he shall have been ousted, and if such defendant shall refuse or neglect to deliver over any such keys, books, papers, and insignia pursuant to such demand, or shall in any other way or manner wilfully obstruct such person so adjudged to be entitled to such office or franchise as aforesaid, with a view to prevent such person from taking upon him the execution of such office, or the exercise of such franchise, he shall be deemed guilty of a misdemeanor; and whenever such refusal or neglect shall occur in any such case, it shall be lawful for the said Court, or the said Judges, to order the sheriff of the district to take possession of such keys, books, papers, and insignia, and to deliver up the same so taken possession of, to the party entitled or adjudged to be entitled to such office or franchise as aforesaid.

Person entitled may enter on the office, &c., usurped.

507. In all the cases of *mandamus* contemplated by paragraph 2 of the 148th section of this Act, it shall be the duty of Her Majesty's Attorney General for the time being to apply for and sue out for and in the name of Her Majesty any writ of *mandamus* as prescribed by this Act, when he shall have reason to believe that these rights may be established in any cause bearing upon the public interest, and also in any other cause in which adequate securities shall be given to indemnify the Government of this Province in respect of all costs and expenses to be incurred in such proceedings.

Duty of Attorney General.

508. Whenever any Corporation, public body or Board, has, by any mis-user, non-user, or surrender, forfeited its corporate rights, privileges and franchises, judgment shall be rendered that such Corporation shall be ousted and altogether excluded from such corporate rights, privileges and franchises, and that the said Corporation, public body or Board be dissolved, and the Court or the Judges rendering such judgment shall thereupon appoint a Curator to and of the property and effects of such Corporation, public body or board, whose duty it shall be, after having given security to the satisfaction of the said Court or the said judges, for the due discharge thereof, to take possession of the said property and effects, to cause an inventory thereof to be made in due form of law in the presence of one or more of the members of such Corporation, public body or board, and after having made such inventory, to dispose to the best advantage of all the personal property which he may have so possessed himself of, and after realizing the proceeds thereof, to cause the same to be distributed amongst the creditors of such

Proceedings on dissolution of a corporation.

Corporation, public body or Board, by the District Court sitting in the District in which the principal office or place of business of such Corporation, public body or Board, shall have been at the time of the reading of such judgment: Provided that due notice be given to such creditors by at least three advertisements, to be printed in at least two such public newspapers as the said Court may direct; of which advertisements the first shall be published at least two months previous to the day fixed, and therein mentioned as the day on which such Curator shall apply to the said Court for the purpose of effecting such distribution: and provided also, that if there be any debts remaining due by such Corporation, public body or Board, the like proceedings shall be had for the discussion of the immoveable property belonging to such Corporation, public body or Board, and for the distribution of the proceeds thereof amongst its creditors, or for dividing the same amongst the parties entitled thereto, as may now by law be had and adopted in Lower Canada, for the discussion, distribution or division of a vacant estate, or of the estate of an absentee to which a Curator has, or Curators have been appointed; and if there be no debts due by such Corporation, public body or Board, or if such debts be unknown to, or be beyond the control of the Curator, then the Curator shall proceed to the sale of the immoveable property held by him in his said capacity to the best and highest bidder, after having given due notice of such sale and of the time and place thereof by three advertisements, in English and French, in the Canada Gazette, the first of which shall be published at least four, and not more than five months before such sale; and all sales of immoveable property made by any such Curator after such notice duly given, shall have the same effect to all intents and purposes as sales made by sheriffs or by *décrot forcé*; and provided also, that whenever judgment shall be rendered in any such case against any Corporation, public body or Board, or against any persons claiming to be a corporation, the costs awarded by such payment may be collected by execution, directed either against the property and effects of such Corporation, public body or Board, or of such persons claiming to be a Corporation, or against the private property of the Directors or other officers of any such Corporation, public body or Board, or of such persons so claiming to be a Corporation aforesaid.

How elections shall be held in certain cases.

509. If it shall happen that in any Corporation, public body or Board within Lower Canada, no election shall be made of the Mayor, Aldermen, Councillors, Assessors, Trustees, Directors, or other officers of such Corporation, public body or Board, or if any such office or offices is, or are now remaining vacant in consequence of such election not having taken place upon the day, or within the time appointed by charter, law or usage, for that purpose, or if such election being made, the same is or shall be void, or shall hereafter, or afterwards, be declared void by a competent tribunal, such Corporation, public body or Board, shall not thereby be, or be deemed, or taken to be dissolved, or disabled from electing such Mayor, Aldermen, Councillors, Assessors, Trustees, Directors or other officers for the future, but every such Corporation shall be adjudged, deemed and taken to be, and to have been, subsisting and capable of electing such officer or officers to all intents and purposes; and in every such case it shall and may be lawful for the District Court sitting in the district in which the principal office or place of business of such Corporation, public body or Board, shall be, or for two or more of the Judges of the said Court in vacation, to issue a writ of *mandamus* requiring the proper officer, or in his absence, such person as the said Court or

the said Judges may please to appoint, to proceed to the election of such Mayor, Aldermen, Councillors, Assessors, Trustees, Directors, or other officers, upon a day and hour, and at a place to be prescribed in such writ of *mandamus*, and to do every act to be done in order to such election, or to signify to the said Court or to the said Judges good cause to the contrary; and such writ of *mandamus* shall be applied for, and the like proceedings shall be had thereon, and for the determination thereof, as in the other cases provided for by this Act; and of the day and time appointed in and by such writ of *mandamus* (if the same be obeyed without cause being shown against it, or in and by the peremptory mandate, if any such mandate shall have issued) for proceeding to such election, public notice in writing, both in the French and English languages, shall by such person as the said Court or the said Judges shall appoint, be affixed at the door of at least one Church in the City, Town, Village, Borough, Parish, or Township, in which the principal office or place of business of such corporation shall be; or if there be no Church, at one of the most public places therein, for the space of at least ten days before the day so prescribed; and in every such case any other act or acts necessary to be done in order to such election, shall be had, made, and done, at the time appointed in such writ of *mandamus*, or in such peremptory mandate, and in such manner and form as the same ought to have been made upon the day, or within the time prescribed by the charter, Act or Acts of incorporation, or usage of such Corporation, public body, or Board, and the Mayor, Aldermen, Councillors, Assessors, Trustees, Directors, or other officers so elected, shall have the same privileges, precedence, powers and authority, in all respects, as if such Mayor, Aldermen, Councillors, Assessors, Trustees, Directors or other officers had been elected on the day, or within the time prescribed for such election by the charter, Act or Acts of such Corporation or usage of such Corporation, public body, or board: Provided always, that no such election, nor any Act done in order thereunto, shall be valid, unless as great a number of persons, having right to be present at and vote therein, shall be present at the assembly holden for such purpose and concur therein, as would have been necessary to be present and concur in such election or act, in case the same had been made or done upon the day, or within the time appointed for that purpose by the charter, Act or Acts of incorporation or usage of such Corporation, public body, or Board; saving only that the presence of the officer who, under such charter, Act or Acts of incorporation or usage ought to preside at such election shall not be necessary: And provided also, that any Mayor, Aldermen, Councillor, Assessor, Trustee, Director, or other officer of any such Corporation in which the election of a successor or successors to any such office or offices shall not have taken place at the time appointed by charter, law or usage for that purpose, shall hold over and continue to act as such officer or officers until a successor or successors of such officer or officers shall have been duly elected under the authority of this Act.

510. In any case in which the rights of a Municipal Corporation Witnesses. shall be called in question, no witness shall be deemed incompetent because he is an elector entitled to vote in the said Municipal Corporation.

511. If a judgment be recovered against an unmarried woman or a Married widow, and she afterwards marry, a writ of error or of appeal may be women.

brought thereon by her and her husband jointly; and if a judgment shall have been obtained against several persons, and one or more of them die, a writ of error or of appeal may be brought thereon by the survivor or survivors; and if, after the issuing of any writ of error or of appeal, whether the same shall have been issued before or after the passing of this Act, any of the parties to the judgment complained of die, or shall have died, the proceedings on such writ of error or appeal may be continued by and between the survivors alone. 5

Scire facias.

512. All writs of *scire facias* shall issue out of the District Court, and it shall be lawful for the said Court to allow any such writs to issue upon the information or petition of Her Majesty's Attorney General or Solicitor General, or other officer duly authorized in that behalf, for the purpose of vacating or annulling any letters patent granted by the Crown in the following cases: 10

Firstly. Where it shall be alleged that such letters were obtained by means of some fraudulent suggestion, or concealment of a material fact, made by the person to whom the same were issued or made with his consent or knowledge. 15

Secondly. Where it shall be alleged that such letters patent were issued through mistake, and in ignorance of some material fact. 20

Thirdly. When the patentee or those lawfully claiming under him shall have done or omitted any act, in violation of the terms and conditions upon which such letters patent were granted, or shall by any other means have forfeited the interest acquired under the same.

And all such informations or petitions shall be heard, tried and determined in the same manner as ordinary civil suits. 25

No affidavit necessary.

513. No special affidavit shall be necessary to procure the service or execution of any order, writ, rule, judgment, or judicial *acte* whatsoever, in any cause or proceeding upon *mandamus* or *scire facias*, and the ordinary return of the office, who shall have served the same shall suffice. 30

No other form of proceeding.

514. No other form of proceeding than those hereinbefore prescribed in all cases of *mandamus* or *scire facias* shall hereafter be ordered or taken.

PROCEEDINGS ON THE WRIT OF CERTIORARI.

Writ obtainable by petition.

515. The party who desires to obtain a writ of *certiorari* in any of the cases mentioned in section 148 of this Act, must present to the Court or competent Judge a petition, setting forth summarily his *moyens* and reasons, and terminating by conclusions adapted to the case, and by an application for the writ of *certiorari*. 35

Oath.

516. Unless the facts alleged in the said petition are apparent by the inspection only of some written proof filed with the said petition, the truth of the allegations must be attested, under oath, by the petitioner, but with regard to nullities or *moyens* of law, he shall only be bound to swear to their existence to the best of his knowledge. 40

517. The inferior Court or Judge to whom this writ is addressed, shall immediately, upon being served therewith, transmit to the Court or Judge who shall have granted the writ, the proceedings and record in the cause or matter mentioned in such writ, and all the documents relating thereto, the whole certified and sealed with the seal of the inferior Court or Judge, if any such seal exist.

Duty of inferior Court or Judge.

518. If after service of such writ the inferior Court or Judge do not as soon as possible transmit the proceedings or record required, or take any further steps in the cause or process, the Court or Judge who shall have granted the writ, upon the simple production of the return of service, and without any further formality, may order the issue of a warrant for imprisonment, which may be executed without delay, and in virtue whereof the inferior Judge shall be imprisoned until he shall have obeyed the writ of *certiorari*, or complied with its requirements, and paid in all cases the costs occasioned by disobedience and imprisonment.

In case of disobedience on part of judge.

519. The simple service of the writ of *certiorari* has the effect of rendering void all the proceedings which might be taken subsequently thereto by the tribunal or judge to whom such writ may be addressed, and if any proceeding should be had subsequently to the service of the said writ, or if further proceedings should be taken by the said inferior court or judge, the latter, and also any officer or person who shall have assisted in the carrying into effect any such act or proceeding, besides being liable in damages to the party aggrieved, and to any other recourse permitted by law, shall be deemed guilty of contempt of Court, and may be condemned by the Court or Judge who shall have granted the writ of *certiorari* to any of the penalties or punishments provided for such cases.

Effect of *certiorari*.

520. If when the proceedings appealed shall have been transmitted in the manner hereinbefore prescribed, and in conformity to the injunction contained in the writ of *certiorari* to the Court or Judge who shall have granted it, if the latter Court or Judge find the proceeding, judgment, decision, or act attacked, null for any of the causes mentioned in the 148th section of this Act, the said Court or Judge shall annul the whole of the said proceeding, *acte*, decision, or judgment; and if there be grounds for so doing, instructions may be given in the same judgment to the inferior tribunal or judge to proceed to try the cause anew, in conformity with the formalities prescribed by law, the whole, with costs, in all cases in favor of the petition against the adverse party in the cause.

Judgment which may be rendered, and instructions to the inferior Court below.

521. If, on the other hand, the Court or Judge who shall have granted the writ of *certiorari*, find that the proceeding, *acte*, decision, or judgment appealed against, is regular, good, and valid, the said Court or Judge shall grant *main-levée* from the said writ of *certiorari*, and condemn the party upon whose application it was granted to all the costs.

Main-levée to be granted if proceeding be found valid.

522. Saving the exceptions which may result from the foregoing provisions, every case of *certiorari* shall be proceeded in and decided in a summary manner, and no other form of proceeding than that

Proceedings to be summary.

prescribed by this Act shall be necessary, or may be ordered to be followed in cases of *certiorari*.

No security of affidavits necessary. 523. No security shall be required, and the return of the service or execution of any writ, judicial act, order, or judgment whatsoever, made in the ordinary manner by the officer who shall have effected such service or execution shall suffice, without in any case any special affidavit being required. 5

PROCEEDINGS BEFORE THE CRIMINAL COURTS.

Jurisdiction of former Courts vested in those established by this Act. 524. Saving the restrictions, modifications and charges resulting from this Act, the High Criminal Court hereby established is intended to replace the Court of Queen's Bench, in its criminal jurisdiction by this Act abolished, and the Court of Assize also established by this Act, is destined to take the place of the Court known as the "*Court of General Sessions of the Peace*," or as the "*Court of Quarter Sessions*," hereby abolished, and all the powers, authorities, jurisdiction and duties which, when this Act shall come into force, belong to any Court so abolished, or to any of the Judges called to preside therein shall devolve to and be vested in, except in so far as they would be contrary to the provisions of this Act, the Court so destined to take the place thereof, and to any Judge presiding therein, and all and every the laws in force when this Act shall come into force, which shall not be repealed, amended or modified thereby, regulating and governing the procedure and practice, in term and in vacation before any of the Judges called to preside therein, shall continue to regulate and govern the procedure, and practice before the Court so destined to take the place thereof, or before any of the Judges called to preside therein. 10 15 20 25

Criminal procedure to remain as heretofore. 525. In general, saving the exceptions, modifications and changes effected by this Act, the procedure and practice in criminal cases which shall govern, when this Act comes into force, shall continue the same and to be observed and adopted as before, both in term and in vacation, before any Court of criminal jurisdiction, which shall exist or sit in virtue of this Act, or before any of the Judges authorized to preside therein, or to exercise any jurisdiction in criminal matters. 30

Information to be transmitted by said Courts to Governor General. 526. It shall be the duty of the said Courts, with all convenient speed, to transmit to the Governor, not only copies of the indictments, informations or charges, and of the pleas and other proceedings in every cause before them had, but of the written and parole testimony read and given to the jury, and the scope and substance of the points ruled in evidence, and of their charge to the jury, and copy of the verdict, and of every material translation in the cause, together with such observations as they may think proper, the whole under the signatures of the Judge or a majority of Judges before whom every such trial was had, but it shall not be necessary to make such report of the proceedings, nor to stay the execution of the sentence or judgment in any case where it shall not extend to life or limb, nor to any greater fine, penalty or forfeiture than the sum of twenty-five pounds, nor shall it be necessary to make such report before the sentence is carried into effect, in any case in which a prisoner is now under sentence of death, or when hereafter any person may be condemned to the same penalty. 35 40 45

527. Whenever a fine, penalty or forfeiture, exceeding the said sum, shall be adjudged in any Court of Session, execution shall in like manner be stayed, until such information is given to the Government by the Judge or the majority of the Judges before whom the trial was had, or judgment given, as is above directed to be given, and except that it shall not be necessary to reduce to writing all the testimony that may be given to the jury on trials before them had, but it shall suffice to report only the main scope and substance thereof, and the execution in every case contemplated by this section, or by the foregoing, in which a return is also ordered, shall be stayed until the pleasure of the Governor be known.

Execution in certain cases to be stayed until such information be given.

JURORS.

528. The provisions of law regulating the making of Jury lists and the summoning of jurors in the Districts of Kamouraska and Ottawa, (including those provisions which apply to those districts in common with other Districts,) shall apply to and regulate the making of jury lists and the summoning of jurors in the new districts constituted by this Act; except that there shall be only one list of grand jurors, which shall include those persons qualified to serve as such at any Court of criminal jurisprudence established by this Act, and the persons on such list shall and may serve as grand jurors at any of the said Courts; and except that there shall be only one list of petit jurors for the Courts of criminal jurisdiction which shall include those persons qualified to serve as such, either at any such Court of criminal jurisdiction; and the persons on such lists shall and may serve as petit jurors at any Criminal Court in the district.

Provisions as to summoning of Jurors.

529. The allowance to be paid to each person serving as a petit juror before any Court of criminal jurisdiction in any of the New Districts, shall be fixed from time to time by the Judge holding such Court, but shall not be less than two shillings and sixpence nor more than five shillings for each day such Juror shall be necessarily absent from his usual place of residence; but he shall have no further allowance for travelling expenses, nor shall any such allowance be paid to any petit juror whose usual residence is within the limits of the city or town, or of the parish or township, in which such Court is held.

Allowance to petit Jurors.

20 Vict. cap. 44, secs. 88, 89.

REVISION AND APPEAL IN CRIMINAL MATTERS.

REVISION.

530. And in order to provide means of deciding any difficult question of law which may arise at Criminal Trials—
When any person shall have been convicted of any treason, felony or misdemeanor, before any Court of criminal jurisdiction held in virtue of this Act, the Court before which the case shall have been tried, may, in its discretion, reserve any question of law which shall have arisen on the trial, for the consideration of the Court of Appeal, and may thereupon respite execution of the judgment on such conviction, or postpone the judgment until such question shall have been considered and decided by the said Court; and in either case the Court before which the case on trial was had, in its discretion, shall

Questions of law may be reserved in criminal matters.

commit the person convicted to prison, or shall take a recognizance of bail with one or two sufficient sureties, and in such sum as the Court shall think fit, conditioned to appear at such time or times as the Court shall direct, and receive judgment or render himself in execution, as the case may be.

5

Proceedings
on such
appeal.

531. The said Court shall thereupon state, in a case to be signed by the Judge or Judges, or officer or other person holding or presiding such Court, the question or questions of law which shall have been so reserved, with the special circumstances upon which the same shall have arisen; and shall forthwith transmit the same to the Clerk of Appeals at the place where appeals from the District in which the conviction was had, are to be heard; and the said Court of Appeals shall have full power and authority at any sitting thereof after the receipt of such case, to hear and finally determine every question therein, and thereupon to reverse, amend or affirm any judgment which shall have been given on the indictment or inquisition on the trial whereof such question arose, or to avoid such judgment, and to order any entry to be made on the record, that in the judgment of the said Court of Appeals, the party convicted ought not to have been convicted, or to arrest the judgment, or to order judgment to be given thereon at some other Criminal Term of criminal jurisdiction held in virtue of this Act, if no judgment shall before that time have been given, as the said Court of Appeals shall be advised, or to make such other order as justice may require.

Execution on
such judgment

532. The judgment or order, if any, of the Court of Appeals in such case as aforesaid, shall be certified under the hand of the Chief Justice or one of the Judges concurring therein, to the Clerk of the Court from which the same was sent, who shall enter it on the original record in proper form, and a certificate of such entry under the hand of such Clerk, in the form, or as near as may be to the effect of the Schedule No. 1, to this Act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by such Clerk to the Sheriff or Gaoler in whose custody the person convicted shall be, and such certificate shall be a sufficient warrant to such Sheriff or Gaoler and all other persons, for the execution of the judgment as the same shall have been so certified to him to have been affirmed or amended, (and execution shall thereupon be done on such judgment), or for the discharge of the person convicted from further imprisonment if the judgment be reversed, avoided or arrested; and in that case such Sheriff or Gaoler shall forthwith discharge him, and at the next sitting of the Court from which the case was sent, the recognizance of bail, if any, shall be vacated; and if the Court from which the case was sent shall be directed by the Court of Appeals to give judgment, it shall give judgment at the next session thereof.

Judgment in
open Court.

533. The judgment of the Court of Appeals in any such case as aforesaid, shall be delivered in open Court, after hearing Counsel or the parties, in case the prosecutor or the party convicted shall think it fit that the case be argued, and in like manner as other judgments of the said Court, but no notice, appearance, or other form of procedure, except such only, if any, as the Court may in such case see fit to direct, shall be requisite.

534. The Court of Appeals, when a case has been so reserved for its opinion, shall have power, if it see fit, to cause the case or certificate to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been 5 amended.

Case may be sent back for amendment.

535. In any criminal case either reserved as aforesaid or brought before it by Writ of Error, the Court of Appeals shall be of opinion that the conviction was bad from some cause not depending upon the merits of the case, it may by its judgment declare the same, and direct that 10 the party convicted be tried again, as if no trial had been had in such case.

536. Whoever shall forge or alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or altered, any certificate or certified copy of any certificate, required or authorized by the next preceding sections, with intent to cause any person to be discharged from 15 custody, or otherwise prevent the due course of justice, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned in the Provincial Penitentiary for any period not more than seven nor less than three years.

Forging certificate to be felony.

20 20 Vic., cap. 44, secs. 22, 29.

APPEAL.

537. An appeal against, or a proceeding in error or *demande en cassation* for the quashing or reversal of any sentence or judgment rendered or pronounced in any criminal matter by any of the Courts or Judges constituted by this Act may be instituted or made.

Appeal, &c., in criminal matters.

25 538. The party who intends to appeal or proceed for error, must state his intention during the sitting of the Court or before the Judge or Judges on the day the sentence is pronounced or judgment rendered, or at all events within three days after the date of the said judgment or sentence, he shall make and file his declaration either in person or 30 by his advocate or attorney at the office of the Court at the place at which the sentence or judgment shall have been pronounced, and the clerk shall himself if required so to do and without charge prepare such declaration which shall be signed by the person by whom it shall be made if he know how, and if he do not the clerk shall make a note 35 thereof and shall sign it in all cases, but the execution of the sentence or of the judgment pronounced shall only be suspended upon an order to that effect made by the Court which shall have rendered, or by one of the Judges sitting therein, which said Court or Judge may in their discretion, impose such conditions as shall appear to them expedient, 40 in consideration of such suspension of execution, or may cause the party appellant to be imprisoned or left in prison, if the case requires it, or may set him at liberty subject to such conditions and security as the Court or one of the said Judges shall deem expedient or sufficient.

Proceedings.

539. The appellant, either at the time of the declaration above mentioned or within ten days thereafter, shall file in the office of the Court 45 which shall have rendered the judgment or sentence appealed against, a petition setting forth concisely as the case may be, his reasons of ap-

Appellants' petition.

peal therefrom and for the annulling or reversal thereof and conclusions to the same purport.

Duty of Clerk. 540. The clerk shall give an acknowledgment thereof to the party, and within ten days after the reception of the said petition he shall transmit it without any charge, together with the judgment or sentence appealed against, and all the papers, evidence, proceedings and documents relating thereto, to the office of the Court of Appeal, at the place at which the said appeal is about to be heard. 5

After transmission. 541. So soon as the said transmission shall have been effected the said appeal or motion to annul or reverse shall be proceeded upon, in the manner and according to the forms prescribed after such transmission, in all cases of appeal in civil cases. 10

Extent of Jurisdiction. 542. In all cases the Court of Appeals may reject the appeal, or confirm or reverse or quash the sentence or judgment appealed against, or render and pronounce the sentence or judgment which ought to have been pronounced by the Superior Court or Judge (which judgment may then be enforced as the judgment of the said Inferior Court or Judge), or the said Court of Appeals may send the cause and the record before any competent Court or Judge, and the said tribunal or Judge shall proceed to take cognizance of the matter and pronounce the proper judgment thereupon. 15 20

Writs of error abolished. 543. No writs of error shall hereafter be issued in any case whatsoever.

Ins. Crim. Frs. 407, 408, 418, 422 to 429.—443 to 447.—20 V. c. 44, s. 27. 25

DISTRICT OF GASPÉ.

Recusations. 544. If the Judge ordinarily holding the Circuit Court at any place, be a party or recused in any case pending thereat, then it shall be removed into the Circuit Court at the *chef-lieu* in the County, or if such cause be lawfully evoked to the District Court, then it shall be removed into the District Court in the same County, there to be heard, tried and determined by any other Judge holding the Court in the County into which it shall have been removed, unless the parties agree that it be removed into the District Court or Circuit Court, (as the case may be), in the other County, in which case it shall be so removed, but subject, in either case, to the same provisions in other respects as cases removed on like grounds from the Circuit Court to the District Court in other Districts. 30 35

In what county actions shall be brought. 545. Notwithstanding any thing to the contrary in this or any former Act, each of the Counties of Bonaventure and Gaspé shall be considered as a separate District, in so far as regards the County in which any civil suit or proceeding in the District Court, or in the Circuit Court at the *chef-lieu* in either County, shall be commenced or brought,—so that no such suit or proceeding shall be commenced or brought in either County unless by reason of the residence of the defendant, or of a defendant therein, or of the cause of action having arisen in such County, the suit or proceeding could be commenced therein if it were a separate District; but nothing in this section shall apply to any suit or proceeding which 40 45

shall be pending when it shall come into force ; And it shall not be necessary that the registers and plunitifs of the District Court should be kept in duplicate in the said District of Gaspé, by the District Court shall have its separate registers and plunitifs in and for each 5 County.

546. Notwithstanding any thing to the contrary in any former Act, it shall be lawful for the Governor, if he shall see fit, to appoint a Sheriff, a Clerk of the District Court, a Clerk of the Circuit Court at the *chef-lieu*, a Clerk of the Crown, and a Clerk of the Peace, in and for each of the Counties of Gaspé and Bonaventure, and the salary now allowed to the persons holding those offices jointly for the whole district of Gaspé, shall then be divided among those who shall hold them separately, in such proportion as the Governor in Council shall direct ; and in case of the death of any of the said officers, the Deputy appointed by him shall hold the office *pro tempore* and perform all the duties thereof until a successor to such officer shall be appointed ; and each such officer for either County shall in and as regards such County have the powers of a similar officer in and as regards a District, and the Sheriff of the County of Gaspé shall appoint a Deputy in and for the Magdalen Islands as the Sheriff of the District of Gaspé might do ; but nothing in this section shall be construed to prevent the Governor from continuing or appointing a Sheriff for the whole District, or Joint Clerks of the District Court, or Joint Clerks of the Circuit Court at the *chef-lieu*, Joint Clerks of the Crown, or Joint Clerks of the Peace, if he shall think it expedient so to do.

547. The record and papers in all suits or actions, real, personal or mixed, before the District Court in which the cause of action shall have arisen in the County of Gaspé, shall be kept in the office of the Clerk of the said Court at Percé, and the records and papers in all such suits or actions in which the cause of action shall have arisen in the County of Bonaventure, shall be kept in the office of the Clerk of the said Court at New Carlisle ; and in cases where the cause of action may not have arisen within the District of Gaspé, the records and papers shall be kept in the office of the Clerk in the County (of Gaspé or Bonaventure, as the case may be,) wherein the defendant shall reside, and if he be a non-resident in the said District, then in the office from which the first writ or process in such suit or action shall have issued : Provided always, that in all cases any records, or papers, or documents, filed in the said Court, may be kept in, or removed to either of the said offices in or into which the Justices of the said Court shall direct them to be kept or removed.

548. The Circuit Courts shall be holden every year at the times and places hereinafter appointed, and the local extent and limits of the jurisdiction of each of the said Courts shall be as follows, that is to say :

In the said County of Gaspé at Percé, in and for the Circuit to be called "The Percé Circuit," from the first to the tenth day of each of the months of March and November, both days inclusive ; and the said circuit shall comprise that part of the said County which extends along the coasts of the Gulf of St. Lawrence, from Whale's Head on the south side of the entrance to Gaspé Bay, to Cap D'Espoir, including the

settlements of Point St. Peter, Malbay, Percé, Ance à Beaufile, and Ance du Cap.

Basin Circuit. In the said County of Gaspé, at the Basin of Gaspé, in and for the circuit to be called "The Basin Circuit," from the fifteen to the twenty-fourth day of each of the months of March and November, both days inclusive; and the said circuit shall comprise that part of the said County which extends along the coast of the River and Gulf of St. Lawrence, from Cap Chats to Whales' Head aforesaid, including all the settlements on Gaspé Bay and along the said coast, within the limits abovementioned.

Grand Rivière Circuit. In the said County of Gaspé at Grande Rivière, in and for the circuit to be called "The Grand Rivière Circuit," from the first to the tenth day of each of the months of April and December, both days inclusive; and the said circuit shall comprise that part of the said County which extends along the coast of the said Gulf of St. Lawrence, from Cap D'Espoir aforesaid westward to Point Mackerel, at the entrance of the Bay of Chaleurs, including the settlements of Cap D'Espoir, Petite Rivière, Grande Rivière, Pabos and Newport.

Magdalen Islands Circuit. In the said County of Gaspé, at Amherst Harbour, on the principal island of the Magdalen Islands, in and for the circuit to be called "The Magdalen Islands Circuit," from the first to the tenth day of July; both days inclusive; and the said circuit shall include all the islands called the Magdalen Islands, so long as the same shall form part of this Province.

New Carlisle Circuit. In the said County of Bonaventure, at New Carlisle, in and for the circuit to be called "The New Carlisle Circuit," from the fifteenth to the twenty-fourth day of each of the months of May and December, both days inclusive; and the said circuit shall comprise that part of the said County which extends along the coast of the said Bay of Chaleurs, from Point Mackerel aforesaid, westward, to the river commonly called and known as the River Capelan, near Black Cape in New Richmond, including the settlements of Ance au Gascons, Port Daniel, East Nouvelle Hope, Paspébiac, New Carlisle and Bonaventure.

Carleton Circuit. In the said County of Bonaventure at Carleton, in and for the circuit to be called "The Carleton Circuit," from the fifteenth to the twenty-fourth day of each of the months of January and July, both days inclusive; and the said Circuit shall comprise that part of the said County which extends eastward from the said River Capelan, to the westernmost boundary of the Seigniori of Shoobred.

Ristigouche Circuit. In the said County of Bonaventure, or as near as conveniently may be to the place called The Mission at Ristigouche, in and for the Circuit, to be called "The Ristigouche Circuit," from the twenty-seventh day of January to the fifth day of February, and from the twenty-seventh day of July to the fifth day of August, both days inclusive; and the said Circuit shall comprise all the settlements on the north side of the said River Ristigouche, from the River Escominac upwards, to the westernmost boundary of the said County.

The three first juridical days only of each term shall be return days ; and at the close of the third juridical day, or at any time thereafter, the Judge may, if there be then no business before the Court, close the sittings thereof until the then next term : And provided also, that any person carrying on business as a trader, or as a fisherman, in more than one of the said Circuits, may be sued in the Circuit in which he shall have his domicile, or in any one in which he shall be carrying on business as aforesaid.

Terms to last three days.

TERMS OF THE DISTRICT COURT.

549. The District Court shall sit every year in the District of Gaspé, at the times and places hereinafter mentioned, to wit : At Percé, aforesaid, from the 21st to the 30th day of August, both days inclusive ; and at New Carlisle, from the 4th to the 13th day of September, both days inclusive, excepting always Sundays and holidays, and the sittings of the Court at the said two places shall be deemed to constitute but one term, each juridical day of which shall be deemed a return day for all actions and orders returnable into the said Court.

In the District of Gaspé.

550. The Court of Assize shall be held yearly in and for each of the said Counties of Gaspé and Bonaventure, by three Justices of the Peace (one of whom shall be a quorum) residing in such County, at the times and places following, that is to say : In the said County of Gaspé, at Percé and at Gaspé Basin, during the three days immediately following the sittings of the Circuit Court at the said places respectively ; and in the County of Bonaventure, at New Carlisle and at Carleton, during the three days immediately following the sittings of the Circuit Court at the said places respectively.

Court of Assize.

SITTINGS OF THE HIGH CRIMINAL COURT.

551. Whenever any offence shall be committed in the said District of Gaspé, the offender, if committed to gaol before trial, may be committed to the common gaol of the County in which the offence shall have been committed, or may in law be deemed to have been committed, and if tried before the High Criminal Court for the said District, shall be so tried at the sitting of such Court held in the County to the gaol of which he shall have been committed, and if imprisoned in the common gaol after trial, shall be so imprisoned in the common gaol of the county in which he shall have been tried.

To what gaol offender shall be committed

552. And to exempt as far as may be consistent with the due administration of justice and the well being of the District, the inhabitants thereof from attending, unless in cases of necessity, the criminal sittings of the High Criminal Court as jurors, by which considerable loss of time and expense are incurred, frequently to the serious inconvenience of individuals, as well as to avoid the expense of summoning at the public charge grand and petty jurors, when there may be no business of urgency requiring the attendance of such at the sittings of the said Court at Percé or at New Carlisle ; Be it enacted, that if during the sitting of the said Court at either of the places aforesaid, there shall be any criminal matters requiring despatch, it shall be lawful for the said Court to fix such day or days in the course of the sittings thereat as may best suit the public convenience for the hearing, trial and

Terms.

disposal of such criminal matters, and to issue the necessary precepts addressed to the Sheriff for summoning grand and petty jurors, but that without such special order of the Court, no precept shall issue for summoning jurors to attend any criminal sitting of the said Court; and in case of the issuing of any such precept, it shall be the duty of the Sheriff of the District of Gaspé to be appointed in pursuance of this Act, to cause such precept to be executed with all possible despatch, and with as little expense as possible to the Province for mileage or other incidental charges arising therefrom. 5

As to sum-
moning of wit-
nesses.

553. In civil cases no person residing in the County of Gaspé shall be liable to be summoned thence as a witness before the District Court when sitting in the County of Bonaventure, nor *vice versa* shall any person residing in the County of Bonaventure be liable to be summoned before the said Court when sitting in the County of Gaspé; Provided always, that nothing herein contained shall exonerate any person being a non-resident in the County in which the said Courts may be sitting or to sit, from appearing and giving evidence as a witness before the said Court, if duly served with a subpoena or order of the Court to that effect, within such County, during the sitting of the Courts or within three days next before such sitting. 15 20

Sales of im-
moveables.

All sales of real or immoveable property of whatsoever description, to be made in the said District of Gaspé by the Sheriff thereof, under any judgment, writ of execution, or order of Court, shall be made in the township, settlement, or place where the property for sale is situate, and on the spot if practicable, or otherwise at the most public place nearest thereto, in the township, settlement, or place within which the property for sale is situate, and of which most public place it shall be the duty of the Sheriff to give particular notice in his official publication of the sale, in addition to the other notices which by law he shall be bound to give in such publication. 25 30

This Act to
apply.

554. All the general provisions of this Act not inconsistent with those specially applicable to the District of Gaspé, in this or any other Act, shall apply to the said District.

MAGDALEN ISLANDS.

And inasmuch as the peculiar situation of the Magdalen Islands, in the Gulf of St. Lawrence, demands special provision touching the administration of justice therein; therefore— 35

Jurisdiction of
Circuit Court.

555. The said Islands shall continue to form a Circuit by themselves, and the Circuit Court sitting there shall not have concurrent jurisdiction with the said Court sitting in any other place in the District of Gaspé, nor shall the Circuit Court at any other place in the said District have concurrent jurisdiction with the Court sitting in and for the said Circuit of the Magdalen Islands, and the Circuit Court shall, with regard to the said Circuit of the Magdalen Islands, have the same jurisdiction in all civil cases as the District Court in any other place; and the Clerk of the said Court shall have the same powers as the Clerk of the District Court at any other place; and no civil case in the said Circuit Court shall be evocable from the same by reason of the nature, value or the amount of the property or sum of money demanded therein. 40 45

556. The proceedings in the said Circuit Court shall be summary, as Summary proceedings.
 in non-appealable cases, except that in appealable cases notes of the
 evidence and oral admissions, and the substance of the pleadings, shall
 be taken by or under the direction of the Judge, signed by him and
 5 filed in the record, in the manner provided by this Act in cases of like
 amount in other Circuits or in the District Court; the pleadings in
 every case shall be *instanter*, as in non-appealable cases, and shall be
 oral, unless the Judge, on the application of the parties, having written
 pleadings ready when they make the application, shall otherwise order.
- 10 557. There shall be two Terms of the said Court yearly in the said Terms.
 Circuit, one of which shall be called and known as the Spring Term, and
 the other the Autumn Term, and the day on which each Term shall
 commence and end shall be fixed by the Governor, by Proclamation,
 and may be altered in like manner; but such Terms may be continued
 15 by the Judge until he shall declare that there is no business before the
 Court, and shall close the Term; and every day in Term and no day out
 of Term shall be a return day for writs and process of the said Court.
558. An appeal shall lie from the Judgment of the Circuit Court in Appeal.
 the said Magdalen Islands to the Court of Appeals at Quebec, in every
 20 case in which an Appeal would lie to the said Court if such Judgment
 had been rendered in the District Court or at any other place, necessary
 that the delay for transmitting the petition in appeal, the record proceed-
 ings and other documents relating to the cause so appealed shall be
 increased threefold that prescribed in ordinary cases.
- 25 559. Any Judge of the District Court while sitting at the Magdalen Powers of Judges.
 Islands shall have all the powers and authority with respect to the ad-
 mission of Bailiffs now vested in the District Court for Lower Canada,
 or any Judge of that Court, and the Clerk of the Circuit Court held at
 the said Islands shall, for such purpose, have all the powers vested in the
 30 Prothonotary of the Superior Court.
560. The Clerk of the Magdalen Islands Circuit Court shall be *ex* Clerk of Cir-
 cuit Court.
officio Deputy Clerk of the Peace, and shall within the limits of the
 said Islands have all the powers and authority of the Clerk of the Peace
 for the District or County of Gaspé.
- 35 561. The Court House or place at which the Circuit Court shall be Court House.
 held shall be provided by and at the cost of the local Municipality of
 the said Islands, in like manner as elsewhere, and under the same pro-
 visions.
- 40 562. Out of the said Lower Canada Municipalities Fund, the sum Allowance
 from Lower
 Canada Muni-
 cipalities fund.
 of four hundred pounds shall be applied to build a Court House and
 Gaol in the said Magdalen Islands, on a site to be furnished by the
 Municipality of the said Islands, and approved by the Commissioners of
 Public Works, in the manner and subject to the provisions hereinbefore
 made relative to the building of Court Houses and Goals in the new
 45 Districts; and such Gaol shall be used as a common Gaol and House
 of Correction.
563. The Sheriff of the District of Gaspé shall appoint a Deputy who Sheriff of Gas-
 pé to appoint
 a Deputy for
 the Magdalen
 Islands.
 shall reside in the Magdalen Islands, and shall have the charge of the
 Court House and of the said Gaol, and of all persons committed for cus-

tody therein, and shall have all the powers of the Sheriff in civil and in criminal cases in and with respect to the said Magdalen Islands, and also in the remainder of the District of Gaspé with respect to the conveyance of prisoners from the said Islands to any common Gaol in the said District, and other matters necessarily connected with the administration of justice in the said Islands, and such further powers as the Sheriff may see fit to depute to him : Provided always, that the said Sheriff shall have another Deputy for all purposes in that one of the Counties in his District in which he does not reside. 5

GENERAL PROVISIONS.

GAOLS.

Removal of prisoners in certain cases.

564. If the Sheriff of any District shall deem any Gaol therein unsafe for the custody of prisoners, or shall deem such Gaol overcrowded, he shall report the fact to the Governor, who may authorize the removal of the prisoners in such Gaol, or any of them, to any other Gaol in Lower Canada, there to be kept until discharged in due course of law, or until they shall be again brought back to the Gaol from which they were so removed, either for trial at the proper Court or to be again kept in such Gaol when it shall have been made safe or shall not be overcrowded ; and a letter from the Provincial Secretary, authorizing the removal or the bringing back of any such prisoners, shall be sufficient, and, by virtue thereof and of this Act, the Sheriff shall have full power to remove or to bring back such prisoners, as the case may be, and he or his Deputies shall, while so doing, have the same powers with regard to them in the District to which they shall be conveyed and in any District through which he shall pass with them, as he would have in his own District ; and the Sheriff and Gaoler of the District to the Gaol in which they shall be conveyed, and their Deputies, shall have the same powers with respect to them, from the time of their delivery to such Sheriff or Gaoler, as they would have if such prisoners had been originally committed to the Gaol in such last mentioned District. 10 15 20 25

DEPOSITING OF NOTARIAL ACTS.

Transmission of Notarial Indexes, Minutes, &c.

565. Within three months after this section shall take effect, all the Notarial Minutes, Repertories and Indexes and other Notarial Documents and papers of any Notary in the custody of any Board of Notaries, shall be transmitted to the Clerk of the District Court in the District including such place where such Notary died or resided when he ceased to practise, or practised next before he left the Province or became incapable of acting as a Notary, or was interdicted or removed from office ; and the same being so transmitted shall remain as part of the Records of the office of such Clerk ; and the expenses of such transmission shall be defrayed by the Clerk of the District for which such Board of Notaries shall have been established, out of the moneys coming into his hands and belonging to the Fee Fund. 30 35 40

Disposition of Minutes, &c. of deceased Notaries.

566. Notwithstanding anything to the contrary in the third, or in the ninth section of the Notarial Profession Act of 1850, chapter 39, the minutes, repertory and index of any Notary practising in any District in Lower Canada, who shall die or become incapable of acting as such, or shall refuse to practise and to deliver copies of his notarial deeds, or shall have been interdicted or removed from office, or shall have left his domicile in Lower Canada, or who shall wish to withdraw from practice, shall be deposited by him, or by the party in 45

whose custody he shall have deposited them, or by his heirs or legal representatives, in the office of the Clerk of the District Court for the District in which such notary shall have resided, instead of being deposited with the Secretary of any Board of Notaries.

- 5 567. The Clerk in whose office and custody any such Notarial Minutes and documents shall be or ought to be deposited under the two next preceding sections shall have the action for compelling such deposit which is given to the Secretary of the Board of Notaries by the said ninth section of the said Act of 1850, chapter 39, and such action
10 may be heard, tried and determined in the manner therein provided, and under the like penalties for enforcing any judgment therein; and generally the said ninth section shall, as regards Notaries, who shall have died or ceased to practise while resident in any District, be construed and carried into effect by substituting the Clerk of such District
15 for the Board of Notaries, or Secretary to such Board, as the case may be; and such Prothonotary shall have the like powers, and shall be entitled to receive the like fees and emoluments for searches and copies, as the said Secretary would have had, and shall pay out of them, in like manner, the like proportion to the widow or the repre-
20 sentatives of the deceased Notary.

Powers of Clerk.

BOARDS OF NOTARIES AND THE BAR.

568. Notwithstanding any alteration in the limits of any District under this Act, the several sections of the Bar and Boards of Notaries in Lower Canada shall not be affected by such alteration, but shall continue with their present local limits and jurisdiction until altered by
25 Proclamation; but the Governor shall have power, by Proclamation, whenever circumstances shall in his opinion render it expedient, to constitute a section or sections of the Bar, or a Board or Boards of Notaries, in and for any District or Districts which he shall think proper to assign as the local limits of any such section or Board, and the local
30 limits of any previously existing Sections or Boards may be reduced accordingly by such Proclamation, but its organization and powers shall not be affected except so far as they depend on such local limits; and any such Proclamation shall take effect, as regards each section or Board, from the day to be appointed therein for that purpose; and each
35 such section of the Bar, or each such Board of Notaries, so constituted by Proclamation, shall have all the powers, rights and privileges vested in or belonging by law to any now existing section of the Bar, or to any now existing Board of Notaries, respectively.

The sections of the bar and present Boards of Notaries not affected.

TRANSMISSIONS OF RECORDS.

569. Saving the exceptions hereinbefore contained in every case
40 where any record or document is by law required to be transmitted by any Court or by an Officer of any Court from one place to another, such transmission may be made through the Post Office, and the party requiring such transmission shall pay the amount of the postage to the transmitting officer before he shall be bound to make such transmission,
45 and any delay caused by such party's failing to pay the same, shall be reckoned against him as occasioned by his default.

Records may be transmitted by post.

SERVICES BETWEEN ATTORNEYS.

570. Any notice, appearance, pleading, or other document or proceeding which it may be necessary to serve in any cause pending before any of the Courts established by this Act, shall be served upon the party
50 or upon his Attorney personally, or at the domicile elected by the party

How such service shall

within one mile from the edifice or building in which the Court shall hold its sittings, but in default of such domicile any such service may be legally made by leaving a copy of the paper or document to be served at the Office of the Court before which the cause shall be pending, or by forwarding it, under cover, to the party or his Attorney by mail, from the place at which such Court shall sit during the hours the Post Office is open. 5

Parties preferring service by post.

571. The party advocate or Attorney who shall prefer that services to be made so upon him should be transmitted by Post as prescribed in the last foregoing section, shall only be obliged to make a declaration to that effect at the office of the proper Court, and thenceforth any such service shall be made on or addressed to him and not otherwise. 10

TRANSITORY PROVISIONS.

When this Act shall go into force.

572. This Act shall go into force on the first day of the month of September, one thousand eight hundred and fifty-eight, to all intents and purposes whatsoever, and in every District, but as regards the administration of Justice in criminal matters only, the District of Argenteuil, the District of Joliette, the District of St. Hyacinth, the District of Iberville and the District of Beauharnois, shall be deemed to form and shall form but one and the same District with the District of Montreal; and the District of Saugenay shall form but one and the same District with the District of Quebec; and the Districts of Rimouski and Montmagny shall be deemed to form and shall form but one and the same District with the District of Kamouraska; and the Districts of Arthabaska and Bedford shall form but one and the same District with the District of St. Francis, until the day following that on which it shall have been declared by the Governor's Proclamation, that a suitable Gaol and Court House have been erected in any of the Districts so united or joined to another. 15 20 25

When the proclamation shall issue.

573. The proclamation mentioned in the last section may issue whenever such Court House and Gaol shall be built and ready in any one District, without awaiting until the same progress shall have been made in all the other Districts; and from and after the day which shall, as above mentioned, follow the issuing of the said Proclamation, this Act shall come into force to all intents and purposes whatsoever in matters both civil and criminal as regards the District to which such proclamation shall have been directed, and all provisions of this Act specially applicable to such District shall apply and take effect; and such District shall thenceforward cease to form a part of the District to which it is united in the manner above mentioned as regards the administration of justice in criminal matters, but this shall in no way affect proceedings pending in the latter District, or which may have been commenced therein previous to the day after the issuing of the said Proclamation, nor prosecutions for any criminal offences whatsoever which may have originated previous to such day. 30 35 40

Substitution of new Courts for present one.

574. Saving the restrictions, modifications and changes resulting from this Act, the *Court of Appeals*, the *District Court*, *Circuit Court*, the *High Criminal Court*, and the *Court of Assize*, shall supersede the present Courts as follows: the first-mentioned Court shall take the place of the Court of Queen's Bench, as a Court of Appeal; the second that of the Superior Court; the third that of the Circuit Court; the fourth that of the Court of Queen's Bench as a Criminal Court, and the fifth that of the court called the *Court of General* 45 50

Sessions of the Peace or Court of Quarter Session, abolished by this Act, as are also all the Courts last above-named:—and all powers, authority, jurisdiction and duties appertaining at the time of bringing this Act into force, to any court so abolished, or to any of the Judges called to preside therein,—shall (in so far as they agree with the provisions of this Act) be vested in the court appointed to supersede such Court and in any Judge called to preside therein;—and all laws in force when this Act shall take effect and not repealed, changed, or modified hereby, which regulate the mode of procedure and practice, both in term and in vacation, before any Court so abolished or before any Judge holding the same, shall continue to govern and regulate the procedure and practice before the Court appointed to supersede the same, and before all Judges called to preside therein.

575. All officers of justice, functionaries, Justices of the Peace, gaolers, bailiffs, constables and all other persons who, being residents within the territory formed by the districts united as above, shall continue to hold their offices as such when this Act shall come into force shall continue to hold and exercise all powers, authority, jurisdiction, and duties in criminal matters, and in all things whatsoever relating to the administration of justice in criminal matters, throughout the whole of such territory, until the day on which one or more of the districts so united to another district shall be detached therefrom by proclamation in the manner hereinbefore provided;—and according as such separation shall take place, the powers, authority, jurisdiction and duties vested in such different officers, shall be restricted to the territory remaining.

Jurisdiction of present officers to continue until division of Districts.

576. All Judges in office when this Act shall come into force, shall remain in office as if they had been appointed under this Act, that is to say, the Chief Justice of the Court of Queen's Bench shall continue to be Chief Justice of the Court of Appeal;—the Chief Justice of the Superior Court shall continue to be and shall be Chief Justice of the District Court, and all puisné Judges of the said Superior Court shall be Judges of the District Court.

Judges to remain in office.

All officers of justice, functionaries, sheriffs, prothonotaries, justices of the peace, bailiffs, constables, and all officers or persons in any way connected with the administration of justice in criminal matters, who may be in office when this Act shall come into force, shall continue to hold such offices as if they were thereunto appointed by this Act.

Officers to continue to hold office.

577. The same shall apply to every prothonotary or Clerk of the Superior Court who shall, after the passing of the said Act, continue to hold the office of Clerk of the District Court for the district in which he may then reside.

Prothonotaries.

578. All commissioners for taking affidavits appointed before this Act shall come into force, and who shall have acted as such up to that time, shall continue to act as commissioners of the District Court as if they were appointed under this Act.

Commissioners for taking affidavits.

- Clerk of Court of Appeal.** 579. The Clerk of the Court of Appeal, acting as such when this Act shall come in force, shall continue to be and shall be "Clerk of the Court of Appeal" as if he were appointed under this Act.
- Exceptions.** 580. But the Sheriffs, prothonotaries, and clerks in office, when this Act shall come in force, in the present districts of Richelieu and Beauce, shall cease to act as such. 5
- Sections not affected.** 581. Nothing in the above shall prevent the effect of the sections 574, 575, and 777.
- Securities of officers of Justice to continue in force.** 582. All bonds given before this Act shall come in force, by any Sheriff, Coroner, Prothonotary or Clerk, Clerk of the Crown or Peace, bailiff or any other peace officer, whether superior or inferior in rank to those above mentioned, and by their sureties, for the due performance of all their duties and functions and for the duly accounting for and reimbursement of all moneys received by them in their respective capacities, shall, notwithstanding this Act and the changes in the names of their offices and of the different Courts to which they may be attached, continue to have full force and effect as regards all parties as if such bonds had been respectively given under the provisions of this Act, and with conditions in accordance therewith. 15
- Appointments** 583. It shall be lawful for the Governor, at any time during the month previous to the day on which this Act shall take effect, to appoint any officers whose services may be useful or necessary for the proper working of this Act. 20
- Transmission of records.** 584. Whenever under any provision of this Act the Court shall cease to be held at any place, the records, registers, muniments, and judicial and other proceedings in the Court at that place where the Superior Court shall be held for the District including the place where the Court shall so cease to be held; and no judgment, order, rule or act of the Court at such place, legally pronounced, given, had or done, shall be avoided by the Court ceasing to be held at such place or by such transmission, but shall remain in full force and virtue; nor shall any action, information, suit, cause or proceeding be thereby abated, discontinued or annulled, but the same shall be transferred, in their then present condition, respectively, to and shall subsist and depend in the Court at the place to which the records therein are so to be transmitted, and as if they had there been respectively brought or recorded, and other and further proceedings shall be therein had to judgment and execution, or subsequent thereto, as they might have been at the place where the Court shall so cease to be held; and any person who shall have been therein ordered to appear or do any other thing at any time at such place, shall appear or do such thing at the same time at the place to which such records are to be transmitted, and under the like penalties in case of default, unless the Judge shall in any case substitute another time, as he is hereby empowered to do. 35 40
- In case of alteration of time for holding terms.** 585. Whenever under the provisions of this Act, or any other, the time or place for holding any Term of any Court shall be altered, and any person shall have been ordered to appear or to do any other thing in such Court which must be done in Term, on a day which by reason of such alteration shall no longer be a day in Term, or at a place where 45

the Court shall no longer be held, then such thing shall be done by such person on the first juridical day in the Term, ordinary or extraordinary, next after that on which but for such alteration it ought to have been done (unless the Court shall appoint another day, as it may do), and at 5 the place where the Court shall be then held, and to which the records and muniments of the Court shall be removed, and at which all matters commenced at the former place of holding the Court shall be continued and completed.

586. No alteration in the limits of any District or Circuit, or in the 10 local jurisdiction of any Court, Judge or Justice of the Peace, shall affect any suit or proceeding pending when such alteration shall take place, but such suit or proceeding may be continued to judgment and proceedings after judgment may be had, in the Court at the place to 15 which such case commenced or to which it shall be transmitted, or before the Judge or Justice before whom it commenced, in like manner as if no such alteration had taken place. Proceedings before Justices of the Peace.

587. The terms and sittings of any Court abolished by this Act, except 20 in so far as they are hereby changed or modified, shall remain the same as regards the new Court, until they shall be differently arranged or until they shall be altered by competent authority, and in the manner prescribed by this Act. Terms of Courts.

588. The rules and regulations as to the mode of procedure before 25 any Court abolished by this Act, or before any Judge holding the same, shall, except in so far as they may be changed, altered, or modified by this Act, remain in force as the mode of procedure and rules of practice before the new Court and before the Judge appointed to hold the same, until they shall be changed, amended, modified or repealed in the manner prescribed by this Act. Rules of practice.

The same shall apply to the salaries to be paid, and to the tariff of 30 fees for officers of justice, advocates, counsel and attorneys. And tariffs of fees.

589. Within three months after the passing of this Act the Judges of 35 the District Court or any five of them shall repeal the rules of practice and tariff of fees then in force, with a view to their total modification and consolidation, and shall substitute therefor such regulations as regards the mode of procedure, and such tariff of fees as they may deem expedient for 40 officers of justice (when the Governor is not authorised to regulate such fees), counsel, advocates, and attorneys practising in or out of term, before any Court created by this Act (the Court of Appeal excepted), or before any Judge holding such Court, and this shall apply in all cases not provided for in this Act, and provided such regulations and tariff contain nothing contrary to the provisions of this or of any Act then in force. Modification and consolidation of rules of practice in District Court, &c.

The same powers and duties shall be vested in the Court of Appeal 45 and in the majority of the Judges of the said Court. Same in Court of Appeal.

590. The new rules and tariffs of fees shall be signed by at least five 50 of the Judges of the District Court, and shall be printed and published in the English and French languages, and filed at the office in the city of Montreal of the Court to which they refer, and shall thenceforward Their publication.

and without further formality take effect throughout the whole of Lower Canada until such time as they shall be rescinded, changed or amended in the manner prescribed by this Act.

ACTS REPEALED.

591. All the Acts enumerated in the Schedule No. 2 to this Act annexed shall be and are hereby repealed, and also all Acts repealed, rescinded or amended by any of the said Acts, and all Acts or parts of Acts in force when this Act shall take effect which may be inconsistent with the provisions of this Act. 5

INTERPRETATION.

Title of this Act. 592. This Act shall be known and referred to and may be cited as "THE JUDICATURE ACT OF 1858." 10

Text. 593. The English and French texts of this Act shall be interpreted the one with the other, to the end that the version and interpretation thereof best calculated to promote the ends of justice, and the elucidation and success of truth and good faith may be thereby attained.

Official Gazette. 594. The words "Official Gazette" shall mean "The Canada Gazette;" or any other journal published in the same manner by and under the authority of the Provincial Government. 15

New Districts. 595. The words "new districts" occurring in this Act shall mean the following districts constituted by this Act:—*the district of Argenteuil, the district of Joliette, the district of Saguenay, the district of Rimouski, the district of Montmagny, the district of Arthabaska, the district of Bedford, the district of St. Hyacinth, the district of Iberville, the district of Beauharnois.* 20

Publication of this Act. 596. The Interpretation Act shall apply to this Act.

PUBLICATION.

597. It shall be the duty of the Provincial Secretary, immediately after the passing of this Act, to cause to be printed a sufficient number of copies thereof in pamphlet form, in the manner in which the Provincial Statutes are now published, with the English and French texts side by side, together with such parts of the Acts mentioned in Schedule No. 3 to this Act annexed as may still remain in force, and an analytical index of the contents, arranged in alphabetical order, and to cause the same to be distributed in Lower Canada as the Governor in Council shall think fit 25 30

TABLE A.

NAMES OF DISTRICTS.	CHEFS-LIEUX.	PLACES COMPRISED.
District of Ottawa.....	Village of Aylmer.....	Counties of Ottawa and Pontiac.
District of Montreal.....	City of Montreal.....	The City of Montreal and the Counties of Hochelaga, Jacques Cartier, Laval, Vaudeuil, Soulanges, Laprairie, (less the Parish of St. Jacques le Mineur) and the Parishes of St. Rémi, St. Michel-Archange and of St. Edouard in the County of Napierville, the County of Chambly, the Parish of Terrebonne in the County of Terrebonne, the County of L'Assomption, (less the Parish of St. Lin, the Parish of L'Assomption, and the Parish of St. Sulpice,) and the County of Verchères, (less the Parishes of Contrecoeur and St. Antoine.)
District of Argenteuil.....	Village of St. Scholastique.....	The Counties of Argenteuil, Two Mountains and Terrebonne, less the Parish of Terrebonne, the Parish of St. Lin, in the County of L'Assomption, and the County of Montcalm, excepting the Parishes of St. Jacques, St. Liguori, St. Alexis, and the Township of Rawdon.
District of Joliette.....	Village of , in the Parish.....	The Counties of Joliette and Berthier, the Parishes of St. Jacques, St. Liguori, St. Alexis, and the Township of Rawdon, in the County of Montcalm, the Parishes of L'Assomption and the Parish of St. Sulpice, in the County of L'Assomption, the Parishes of Contrecoeur and St. Antoine, in the County of Verchères, the County of Richelieu, less the Parish of St. Aimé, and all that part of the County of Yamaska to the South-west of the River St. Francis.
District of Three Rivers.....	City of Three Rivers.....	The Counties of Maskinongé, St. Maurice, (including the City of Three Rivers,) Champlain, Nicolet, and that part of the County of Yamaska to the North-west of the River St. Francis.
District of Quebec.....	City of Quebec.....	The City of Quebec, and the Counties of Quebec, Portneuf, Montmorency, Lóvis, Dorchester, Beauce, and Lotbinière.
District of Saguenay.....	Parish of St. Etienne de la Malbaie, or Murray Bay.....	The Counties of Charlevoix, Saguenay, and Chicoutimi.
District of Gaspé.....	New Carlisle, in the County of Bonaventure, Percé, in the County of Gaspé.....	The Counties of Gaspé and Bonaventure.
District of Rimouki.....	Parish of St. Germain de Rimouski.....	The County of Rimouski.
District of Kamouraska.....	St. Louis de Kamouraska.....	The Counties of Kamouraska and Temiscouata.
District of Montmagny.....	Village of St. Thomas.....	The Counties of L'Islet, Montmagny, and Bellechasse.
District of Arthabaska.....	St. Christophe d'Arthabaska.....	The Counties of Mégantic, Arthabaska, and Drummond.
District of St. François.....	Town of Sherbrooke.....	The Counties of Richmond, (including the Town of Sherbrooke), Wolfe, Compton, and Stanstead.
District of Bedford.....	Nelsonville, in the Township of Dunham.....	The Counties of Shefford, Brome, and Missisquoi, less the Township of Clarencoville and the Parish of St. Thomas.
District of St. Hyacinthe.....	Town of St. Hyacinthe.....	The Counties of St. Hyacinthe, Bagot, and Rouville, less the Parishes of Ste. Marie de Monroir and St. Anthoine, and the Parish of St. Aimé, in the County of Richelieu.
District of Iberville.....	Town of St. John.....	The Counties of St. John, Iberville, and Napierville, (less the Parishes of St. Rémi, St. Michel Archange, and St. Edouard,) and the Township of Clarencoville, and the Parish of St. Thomas, in the County of Missisquoi, and the Parishes of Ste. Marie de Monroir and St. Mathias, in the County of Rouville, and the Parish of St. Jacques le Mineur, in the County of Laprairie.
District of Beauharnois.....	Village of Beauharnois.....	The Counties of Huntingdon, Beauharnois, and Chateauguay.

TABLE B.

NUMBER AND DURATION OF THE TERMS OF EACH COURT.

Names of the different districts.	Names of the different courts and the places at which they shall be respectively held in each district.	Number and duration of the terms of each court.
DISTRICT OF OTTAWA.....	AT THE VILLAGE OF AYLMER: District Court..... Circuit Court, No. 1..... High Criminal Court..... Court of Assize..... Circuit Court, No. 3, at the Village of Buckingham..... Circuit Court, No. 3, at Papineauville, in the Parish of Ste. Angélique.....	4 terms per annum, of 6 days each. 6 terms per annum, of 3 days each. 2 terms per annum. 3 terms per annum. 4 terms per annum, of 3 days each. 4 terms per annum, of 3 days each.
DISTRICT OF MONTREAL.....	IN THE CITY OF MONTREAL: District Court..... Circuit Court, No. 1..... High Criminal Court..... Court of Assize..... Circuit Court, No. 2, in the Parish of St. Marc..... Circuit Court, No. 3, in the Parish of Vaudreuil..... Circuit Court, No. 4, in the Parish of Terrebonne..... Circuit Court, No. 5, in the Parish of L'Assomption.....	The District Court shall sit three days in each week from Monday inclusive. There shall be nine terms of the Circuit Court annually, of three days each. 4 terms per annum. 3 terms per annum. 3 terms per annum, of 3 days each. 6 terms per annum, of 3 days each. 6 terms per annum, of 3 days each. 6 terms per annum, of 3 days each.
DISTRICT OF ANTOURNEAU.....	AT THE VILLAGES OF STE. SCHOLASTIQUE: District Court..... Circuit Court, No. 1..... Court of Assize..... Circuit Court, No. 2, at the Village of St. Jérôme..... Circuit Court, No. 3, in the Parish of Lavhato..... Circuit Court, No. 4, in the Parish of St. Julien de Rivardos.....	4 terms per annum, of 6 days each. 6 terms per annum, of 3 days each. 3 terms per annum. 6 terms per annum, of 3 days each. 4 terms per annum, of 3 days each. 4 terms per annum, of 3 days each.
DISTRICT OF JOUVESTON.....	AT THE VILLAGE OF IN THE PARISH OF District Court..... Circuit Court, No. 1..... Court of Assize..... Circuit Court, No. 2, at the Village of L'Industrie..... Circuit Court, No. 3, at Village River du Loup..... Circuit Court, No. 4, in the Town of William Henry.....	4 terms per annum, of 6 days each. 6 terms per annum, of 3 days each. 3 terms per annum. 6 terms per annum, of 3 days each. 6 terms per annum, of 3 days each. 6 terms per annum, of 3 days each.

DISTRICT OF THREE RIVERS.....	IN THE CITY OF THREE RIVERS: District Court..... Circuit Court, No. 1..... High Criminal Court..... Court of Assize..... Circuit Court, No. 2, in the Parish of St. Thomas..... Circuit Court, No. 3, in the Parish of St. Antoine de the River du Loup..... Circuit Court, No. 4, at the Village of Nicolet.....	4 terms per annum, of 6 days each. 6 terms per annum, of 3 days each. 2 terms per annum. 3 terms per annum. 4 terms per annum, of 3 days each. 4 terms per annum, of 3 days each. 5 terms per annum, of 3 days each.
DISTRICT OF QUEBEC.....	IN THE CITY OF QUEBEC: District Court..... Circuit Court, No. 1..... High Criminal Court..... Court of Assize..... Circuit Court, No. 2, in the Parish of Cap Sainté..... Circuit Court, No. 3, in the Parish of St. François de La Beauce..... Circuit Court, No. 4, in the Parish of Ste. Claire.....	District Court shall sit three days a week from Monday inclusive. 3 terms per annum, of 3 days each. 4 terms per annum. 4 terms per annum. 4 terms per annum. 4 terms per annum, of 3 days each. 5 terms per annum, of 3 days each.
DISTRICT OF SAGUENAY.....	IN THE PARISH OF ST. ETIENNE DE LA MALDAIE OR OF MURRAY BAY: District Court..... Circuit Court, No. 1..... High Criminal Court..... Court of Assize..... Circuit Court, No. 2, in the Parish of Edic St. Paul..... Circuit Court, No. 3, at Tadoussac..... Circuit Court, No. 4, at Chicoutimi.....	3 terms per annum, of 6 days each. 4 terms per annum, of 3 days each. 2 terms per annum. 2 terms per annum. 4 terms per annum, of 3 days each. 4 terms per annum, of 3 days each. 5 terms per annum, of 3 days each.
DISTRICT OF RIMOUSKI.....	IN THE PARISH OF ST. GERMAIN DE RIMOUSKI: District Court..... Circuit Court, No. 1..... Court of Assize..... Circuit Court, No. 2, in the Parish of Macance..... Circuit Court, No. 3, in the Parish of St. Simon.....	3 terms per annum, of 6 days each. 3 terms per annum, of 3 days each. 3 terms per annum. 4 terms per annum, of 3 days each. 4 terms per annum, of 3 days each.
DISTRICT OF KAMOURASKA.....	IN THE PARISH OF ST. LOUIS DE KAMOURASKA: District Court..... Circuit Court, No. 1..... High Criminal Court..... Court of Assize..... Circuit Court, No. 2, in the Parish of l'Isle Verte.....	3 terms per annum, of 6 days each. 6 terms per annum, of 3 days each. 2 terms per annum. 3 terms per annum. 4 terms per annum, of 3 days each.
DISTRICT OF MONTMAGNY.....	IN THE VILLAGE OF ST. THOMAS: District Court..... Circuit Court, No. 1..... Court of Assize..... Circuit Court, No. 2, in the Parish of l'Islet.....	4 terms per annum, of 6 days each. 5 terms per annum, of 3 days each. 2 terms per annum. 5 terms per annum, of 3 days each.
DISTRICT OF ANTARASKA.....	IN THE PARISH OF ST. CHRISTOPHE D'ANTARASKA: District Court..... Circuit Court, No. 1..... Court of Assize..... Circuit Court, No. 2, at Drummondville..... Circuit Court, No. 3, at the Village of Somerset.....	3 terms per annum, of 6 days each. 5 terms per annum, of 3 days each. 3 terms per annum. 4 terms per annum, of 3 days each. 4 terms per annum, of 3 days each.

TABLE B.—(Continued.)

NAMES OF THE DIFFERENT DISTRICTS	NAMES OF THE DIFFERENT COURTS, AND THE PLACES AT WHICH THEY SHALL BE HELD, SPECIALLY HELD IN EACH DISTRICT.	NUMBER AND DURATION OF THE TERMS OF EACH COURT.
DISTRICT OF ST. FRANCIS	<p>IN THE TOWN OF SHEERBROOK:</p> <p>District Court..... Circuit Court, No. 1..... High Criminal Court..... Court of Assize..... Circuit Court, No. 2, at the Village of Richmond..... Circuit Court, No. 3, at Stanstead's Plain.....</p>	<p>1 terms per annum, of six days each. 2 terms per annum, of three days each. 2 terms per annum. 1 terms per annum. 3 terms per annum, of three days each. 1 terms per annum, of three days each.</p>
DISTRICT OF BEDFORD	<p>AT NELSONVILLE, IN THE TOWNSHIP OF DUNHAM:</p> <p>District Court..... Circuit Court, No. 1..... Court of Assize..... Circuit Court, No. 2, at Bedford..... Circuit Court, No. 3, at..... Circuit Court, No. 4, at.....</p>	<p>1 terms per annum, of six days each. 1 terms per annum, of three days each. 3 terms per annum. 1 terms per annum, of three days each. 1 terms per annum. 1 terms per annum.</p>
DISTRICT OF ST. HYACINTHE	<p>IN THE TOWN OF ST. HYACINTHE:</p> <p>District Court..... Circuit Court, No. 1..... Court of Assize..... Circuit Court, No. 2, parish of Ste. Marie du Monnoir.....</p>	<p>1 terms per annum, of six days each. 2 terms per annum, of three days each. 1 terms per annum. 3 terms per annum, of three days each.</p>
DISTRICT OF LEEVILLE	<p>IN THE TOWN OF ST. JOHN:</p> <p>District Court..... Circuit Court, No. 1..... Court of Assize..... Circuit Court, No. 2, in the parish of St. Cyprien.....</p>	<p>1 terms per annum, of six days each. 3 terms per annum, of three days each. 1 terms per annum. 6 terms per annum, of three days each.</p>
DISTRICT OF BEAUPRENOIS	<p>AT THE VILLAGE OF BEAUPRENOIS:</p> <p>District Court..... Circuit Court, No. 1..... Court of Assize..... Circuit Court, No. 2, in the parish of Ste. Martine..... Circuit Court, No. 3, in the township of Durham.....</p>	<p>1 terms per annum, of six days each. 3 terms per annum, of three days each. 4 terms per annum. 4 terms per annum. 6 terms per annum, of three days each. 6 terms per annum, of three days each.</p>

TABLE C.

Costs and fees allowed to the respective Officers, Council, Advocates and Attorneys, on proceedings in the Court of Appeals.

TO THE CLERK OF THE COURT OR JUDGE APPEALED FROM		£	s.	d.
1	For preparing the record of the cause, with all the necessary certificates, and his trouble in its transmission.....	0	10	0
2	For the transcript, 6d. per 100 words, provided that in no case it exceeds.....	1	0	0
3	For the security bond to be furnished on every appeal, or proceeding in error, and for all the necessary copies thereof, to the clerk who shall receive and deliver them.....	0	10	0
TO THE CLERK OF THE COURT OF APPEAL.				
4	On every copy delivered by him, 6d. per 100 words, and 2s. 6d. for the certificate at the foot of each copy.			
5	On every security in appeal to Her Majesty in Council, and for necessary copies, not exceeding two.....	1	0	0
6	For the preparation and transmission of the record, in the case of No. 5.....	2	0	0
7	For the transcript, 6d. per 100 words, in the case of No. 5.			
8	For taxing every bill of costs.....	0	2	6
9	On the entry of any appeal or proceeding in error.....	1	10	0
10	On the appearance of the respondent.....	1	0	0
TO THE ORIEL.				
11	On the entry of any appeal proceeding in error.....	0	5	0
12	On the appearance of the respondent.....	0	2	0
TO THE BAILIFFS.				
13	The same fees as those allowed to bailiffs on any proceeding in the District Court.			
FACTUAL.				
14	For the cost of printing any Factum.....	1	0	0
TO THE ATTORNEYS.				
If there be no contestation on the appeal or proceeding in error:—				
15	To the Attorney for the appellant.....	7	10	0
16	To the Attorney for the respondent.....	5	0	0
If there be a contestation:—				
17	To the Attorney for the appellant.....	10	0	0
18	To the Attorney for the respondent.....	7	10	0
TAXES.				
The taxes imposed in relation to the erection of the Court House in Montreal shall hereafter be as follows:—				
19	On the entry of any appeal or proceeding in error, by the appellant.....	1	10	0
20	On every appearance by the respondent.....	1	0	0
21	On every security in appeal to Her Majesty in Her Privy Council.....	7	10	0
22	On the preparation and transmission of the record in the latter case.....	1	0	0
23	No other costs and fees than those above fixed shall be liable to be taxed as against the losing party, except that in all cases it shall be lawful for the Court of Appeals, by the judgment which shall be rendered in any cause or matter, to allow to the Advocate, Attorney or Counsel of any of the parties such additional fee as the importance of the services rendered, or the particular or extraordinary circumstances of the case may justify.			
24	Every bill of costs shall be first taxed by the Clerk of the Court of Appeals, and afterwards approved by one of the Judges of the said Court, but it may be afterwards revised before the Court or out of the Court, by one of the Judges thereof, on a simple ordinary motion to that effect.			

SCHEDULE No. 1.

Whereas at the (*describe the Court*) held at
 in the District of _____ on the _____ day of
 18 _____ and the following days : A. B. late of
 having been found guilty of (*felony, or as the
 case may be*) and judgment given thereon that (*state the substance of
 the judgment*) the Court before whom he was tried reserved a certain
 question of law for the consideration of the Court of Appeals for
 Lower Canada on the appeal side thereof, an execution was thereupon
 respited in the mean time ; This is to certify that by the said Court of
 Appeals sitting at the City of (*Montreal,*) according to law, it
 was considered by the said Court that the judgment aforesaid should be
 (annulled, and an entry made on the record that the said A. B. ought
 not in the judgment of the said Court to have been convicted of the
 felony aforesaid, (*or as the case may be,*) and you are thereby herewith
 required (forthwith to discharge the said A. B. from your custody, *or as
 the case may be.*)

E. F.

Clerk of, &c., (*name of the Court.*)

To the Sheriff of
 and the Gaoler of
 and to all others whom it may concern.

SCHEDULE NO. 2.

All the Acts and parts of Acts hereinafter mentioned shall be and
 remain repealed from the day on which this Act shall go into force in-
 clusively, and also all the Acts repealed by them, to wit :

Ordinances of the Legislative Council of the Province of Quebec.

The Ordinance twenty-fourth George the Third, chapter one.
 The Ordinance twenty-fifth George the Third, chapter two.
 The Ordinance twenty-seventh George the Third, chapter one.
 The Ordinance twenty-seventh George the Third, chapter four.
 The Ordinance twenty-ninth George the Third, chapter three.
 The Ordinance twenty-ninth George the Third, chapter four.
 The Ordinance thirty-first George the Third, chapter two.
 The Ordinance thirty-second George the Third, chapter two.

Acts of the Parliament of Lower Canada.

The Act thirty-fourth George the Third, chapter six.
 The Act thirty-fifth George the Third, chapter one.
 The Act forty-first George the Third, chapter seven.
 The Act forty-first George the Third, chapter eight.
 The Act forty-first George the Third, chapter fifteen.
 The Act forty-eighth George the Third, chapter twenty-two.
 The Act fifty-second George the Third, chapter eight.
 The Act first George the Fourth, chapter eight.
 The Act third George the Fourth, chapter seventeen.
 The Act fourth George the Fourth, chapter seventeen.
 The Act fifth George the Fourth, chapter two.

- The Act seventh George the Fourth, chapter six.
- The Act seventh George the Fourth, chapter eight.
- The Act seventh George the Fourth, chapter nineteen.
- The Act ninth George the Fourth, chapter ten.
- The Act ninth George the Fourth, chapter twenty-seven.
- The Act ninth George the Fourth, chapter twenty-eight.
- The Act tenth and eleventh George the Fourth, chapter seven.
- The Act tenth and eleventh George the Fourth, chapter seventeen.
- The Act tenth and eleventh George the Fourth, chapter twenty-two.
- The Act tenth and eleventh George the Fourth, chapter twenty-six.
- The Act second William the Fourth, chapter eight.
- The Act third William the Fourth, chapter eighteen.
- The Act fourth William the Fourth, chapter four.
- The Act sixth William the Fourth, chapter four.
- The Act sixth William the Fourth, chapter ten.
- The Act sixth William the Fourth, chapter fifteen.

Ordinances of the Special Council for the affairs of Lower Canada.

- The Ordinance second Victoria, chapter twenty-eight.
- The Ordinance second Victoria, chapter forty-seven.
- The Ordinance second Victoria, chapter forty-eight.

Acts of the Parliament of Canada.

- The Act seventh Victoria, chapter nineteen,
and all subsequent acts amending it in any way.
- The Act seventh Victoria, chapter fifteen.
- The Act seventh Victoria, chapter seventeen.
- The Act twelfth Victoria, chapter thirty-seven.
- The Act twelfth Victoria, chapter thirty-eight.
- The Act twelfth Victoria, chapter thirty-nine.
- The Act twelfth Victoria, chapter forty.
- The Act twelfth Victoria, chapter forty-one.
- The Act twelfth Victoria, chapter forty-three.
and the 1st, 2nd, 3rd, 12th, 13th, 14th and 15th sections of the Act
twelfth Victoria, chapter forty-two, and all subsequent Acts amend-
ing the six last mentioned Acts.
- The Act thirteenth and fourteenth Victoria, chapter thirty-seven, and all the
Acts amending it, excepting all that shall be then in force in the
said Act relating to the compilation and publication of the Judicial
decisions.
- The Act fourteenth and fifteenth Victoria, chapter eighteen.
- The Act fourteenth and fifteenth Victoria, chapter nineteen.
- The Act fourteenth and fifteenth Victoria, chapter eighty-nine.
- The Act sixteenth Victoria, chapter thirteen.
- The Act sixteenth Victoria, chapter one hundred and ninety-four.
- The Act sixteenth Victoria, chapter one hundred and ninety-five.
- The Act sixteenth Victoria, chapter one hundred and ninety-six.
- The Act sixteenth Victoria, chapter two hundred and ninety-nine.
- The Act sixteenth Victoria, chapter two hundred.
- The Act sixteenth Victoria, chapter two hundred and one.
- The Act sixteenth Victoria, chapter one hundred and four.
- The Act eighteenth Victoria, one hundred and five.
- The Act nineteenth and twentieth Victoria, chapter fifty-nine.
- The Act twenty Victoria, chapter forty-four.

SCHEDULE NO. 3.

Acts or sections of Acts to be printed and published with this Act, viz. :

The Act of this Province passed in the eighteenth year of Her Majesty's reign, chapter 9.

The Acts of this Province passed in the fourteenth and fifteenth years of Her Majesty's reign, chaptered 58 and 92; and the Act passed in the sixteenth year of Her Majesty's reign, chaptered two hundred and five.

The Act of this Province passed in the eighteen year of Her Majesty's reign chaptered 110; and that passed in the sixteenth year of Her Majesty's reign, chaptered two hundred and three.

Those sections of the Act passed in the twelfth year of Her Majesty's reign, chaptered 42, not repealed by this Act; and the Act passed in the same year, chaptered 45, as amended by nineteen and twenty Victoria, chapter 52.

The Act of this Province passed in the sixteenth year of Her Majesty's reign, chaptered 198.

And lastly, the Interpretation Act, and the Acts amending it, and all Acts in anywise amending any of the Acts above mentioned.

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