

A
COLLECTION
OF
SOME OF THE MOST USEFUL
ACTS AND ORDINANCES
IN FORCE IN
LOWER CANADA,
RELATING TO
CRIMINAL LAW
AND TO THE
DUTIES OF MAGISTRATES.

Published by Authority.



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NOTICE.

WITH the exception of the Acts 14 & 15 Vict. Caps. 54, 95 and 96, and the Ordinance 2 Vict. Cap.^{no} 20, which have already been published in a separate form for the use of Magistracy the following Collection will be found to comprise the most generally useful Provincial Acts and Ordinances in force in Lower Canada, on the subject of Criminal Law, and relative to matters connected with the duties and jurisdiction of Justices of the Peace, for the use of whom (and more especially of those in the country parts) it is intended. But it is not, of course, intended to include every Act conferring jurisdiction or imposing duties upon them, for this would have required the insertion of a very large proportion of the contents of the Statute Book; and those Acts have been selected of which the whole or the greater part relates to the subjects in question; in the other and less frequently occurring cases, the Statute Book must still be referred to.



ADMINISTRATION

OF

CRIMINAL JUSTICE.

4 & 5 VICT. CAP. 24.—1841.

An Act for improving the administration of Criminal Justice in this Province.

WHEREAS it is expedient, with a view to improve the administration of Justice in Criminal Cases in this Province, to define under what circumstances persons may be admitted to bail in cases of Felony; and to make better provision for taking examination, informations, bailments and recognizances, and returning the same to the proper tribunals; and to relax in some instances the technical strictness of criminal proceedings, so as to insure the punishment of the guilty without depriving the accused of any just means of defence; and to abolish the benefit of Clergy and some matters of form which impede the due administration of Justice; and to make better provision for the punishment of offenders in certain cases: Be it therefore enacted &c. that where any person shall be taken on a charge of Felony or suspicion of Felony, before one or more Justice or Justices of the Peace, and the charge shall be supported by positive and credible evidence of the fact, or by such evidence as if not explained or contradicted, shall, in the opinion of the Justice or Justices raise a strong presumption of the guilt of the person charged, such person shall be committed to prison by such Justice or Justices in the manner hereinafter mentioned; but if there shall be only one Justice present, and the whole evidence given before him shall be such as neither to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, such Justice shall order the person charged to be detained in custody, and such person shall be taken before two Justices at the least; and where any person so taken, or any person in the first instance taken before two Justices of the Peace, shall be charged with Felony or on suspicion of Felony, and the

Preamble.

See with reference to this Act 14, 15 V. c. 96, which, tho' it does not expressly repeal any part of this Act, yet makes more ample provisions in some cases, which provisions will supersede those of this Act which may differ from them.

Who may be admitted to bail on a charge of Felony, and who may not.

evidence

See also 14 &
15 V. c. 96, s.
15.

evidence given in support of the charge, shall, in the opinion of such Justices, not be such as to raise a strong presumption of the guilt of the person charged, and to require the committal of such person, or such evidence shall be adduced on behalf of the person charged as shall, in the opinion of such Justices, weaken the presumption of the guilt, but there shall, notwithstanding, appear to such Justices, in either of such cases, to be sufficient ground for judicial inquiry into the guilt of the person charged, such person shall be admitted to bail by such two Justices in the manner hereinafter mentioned; Provided always, that nothing herein contained shall be construed to require any such Justice or Justices to hear evidence on behalf of any person so charged as aforesaid, unless it shall appear to such Justice or Justices, to be meet and conducive to the ends of Justice to hear the same.

Before any person charged with Felony, &c., shall be bail or committed, the Justice shall take down in writing the examination, &c., and bind witnesses to appear at trial.

See also 14 &
15 V. c. 96, s.
9, 10, 11, 12.

Examinations, &c., to be delivered to the Court.

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

III. And be it enacted, That every Justice of the Peace, before whom any person shall be taken on a charge of misdemeanor, or suspicion thereof, shall take the examination of the person charged, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, before he shall commit to prison or require bail from the person so charged; and in every case of bailment, shall certify the bailment in writing, and shall have authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused in like manner as in cases of Felony; and shall subscribe all examinations, informations, bailments and recognizances, and deliver or cause to be delivered the same to the proper Officer of the Court in which the trial is to be, before, or at the opening of the Court, in like manner as in cases of Felony, and that no traverse or other postponement of any trial thereupon had, shall be allowed except upon special cause shewn to the satisfaction of the said Court or by consent of the Prosecutor.*

Duty of Justices on charges of misdemeanors.

See note to preceding section.

No traverse allowed.

IV. And be it enacted, That every Coroner, upon any inquisition taken before him, whereby any person shall be indicted for manslaughter or murder, or as an accessory to murder before the fact, shall, in presence of the party accused, if he can be apprehended, put in writing the evidence given to the jury before him, or as much thereof as shall be material, giving the party accused full opportunity of cross-examination; and shall have authority to bind by recognizance all such persons as know or declare any thing material touching the said manslaughter or murder, or the said offence of being accessory to murder, to appear at the next Court of Oyer and Terminer, or Gaol Delivery, or other Court at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such Coroner shall certify and subscribe the same evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper Officer of the Court in which the trial is to be, before, or at the opening of the Court.

Duty of Coroner.

V. And be it enacted, That when, and so often as any person shall be committed for trial by any Justice or Justices or Coroner as aforesaid, it shall and may be lawful for such Prisoner, his Counsel, Attorney or Agent, to notify the said committing Justice or Justices, or Coroner, that he will so soon as Counsel can be heard, move Her Majesty's Court of Superior Jurisdiction for that part of the Province in which such person stands committed, or one of the Judges thereof, for an order to the Justices of the Peace, or Coroner for the District where

When party committed wishes to be bailed, the Justices on notice thereof to forward all informations to Clerk of the Crown.

* See also for Lower Canada 2 Vic. (3) cap. 23, taking away the right to traverse in cases for misdemeanor before Courts of Oyer and Terminer.

where such Prisoner shall be confined, to admit such Prisoner to bail, whereupon it shall be the duty of such committing Justice or Justices, or Coroner, with all convenient expedition, to transmit to the office of the Clerk of the Crown, close under the hand and seal of one of them, a certified copy of all informations, examinations, and other evidences, touching the offence wherewith such Prisoner shall be charged, together with a copy of the warrant of commitment and inquest if any such there be, and the packet containing the same shall be handed to the person applying therefor, in order to such transmission, and it shall be certified on the outside thereof to contain the information touching the case in question.

Same order to be made as in Habeas Corpus.

VI. And be it enacted, That upon any application to Her Majesty's Court of Superior Criminal Jurisdiction, for that part of the Province within which such person stands committed, or to any Judge thereof the same order touching the Prisoner being bailed or continued in custody, shall be made as if the party were brought up upon a Habeas Corpus.

Penalty on Justices and Coroners contravening this Act.

VII. And be it enacted, That if any Justice or Coroner shall neglect or offend in any thing contrary to the true intent and meaning of any of the provisions of this Act, it shall be lawful for the Court to whose Officer any such examination, information, evidence, bailment, recognizance, or inquisition ought to have been delivered, and such Court is hereby authorized and required upon examination and proof of the offence, in a summary manner, to set such fine upon every such Justice or Coroner as the Court shall think meet.

Provisions to apply to all Justices and Coroners.

VIII. And be it enacted, That the provisions of this Act relating to Justices and Coroners, shall apply to the Justices and Coroners, not only of Districts and Counties at large, but also of all other jurisdictions.

Persons tried for felony to have benefit of Counsel.

IX. And be it enacted, That all persons tried for Felonies shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto by Counsel, learned in the Law, or by Attorney in the Courts where Attornies practice as Counsel.*

Same in cases of summary conviction.

X. And be it enacted, That in all cases of summary conviction, persons accused shall be admitted to make their full answer and defence, and to have all witnesses examined and cross-examined by Counsel or Attorney.

Orders for delivery of prisoners to.

XI. And be it enacted, That when and so often as the attendance of any person confined in any Gaol or Prison in this Province, or upon the limits thereof, shall be required in any Court

* See also for Lower Canada; 5 W. 4. cap 1.

of Assize and Nisi Prius, or Oyer and Terminer or General Gaol Delivery, or other Court, it shall and may be lawful for the Court before whom such Prisoners shall be required to attend, in its discretion to make order upon the Sheriff, Gaoler or other person having the custody of such Prisoner, to deliver such Prisoner to the person named in such order to receive him, which person shall thereupon instantly convey such Prisoner to the place where the Court issuing such order shall be sitting, there to receive and obey such further order as to the said Court shall seem meet: Provided always, That no Prisoner confined for any debt or damages in any civil suit shall be thereby removed out of the District where he shall be confined.

be tried at Assizes.

Proviso.

XII. And be it enacted, That all persons, who, after the passing of this Act, shall be held to bail or committed to prison for any offence against the Law, shall be entitled to require and have on demand (from the person who shall have the lawful custody thereof and who is hereby required to deliver the same,) copies of the examinations of the witnesses, respectively, upon whose depositions they have been so held to bail, or committed to prison, on payment of a reasonable sum for the same, not exceeding three pence for each folio of one hundred words: Provided always, that if such demand shall not be made before the day appointed for the commencement of the Assize or Sessions at which the trial of the person on whose behalf such demand shall be made, is to take place, such person shall not be entitled to have any copy of such examination of witnesses unless the Judge or other person to preside at such trial, shall be of opinion that such copy may be made and delivered without delay or inconvenience to such trial, but it shall, nevertheless, be competent for such Judge or other person so to preside at such trial, if he shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged.

Prisoners entitled to copies of depositions against them.

See also 14 & 15 V. c. 90, s. 19.

XIII. And be it enacted, That all persons under trial shall be entitled, at the time of their trial, to inspect without fee or reward all depositions (or copies thereof) which have been taken against them, and returned into the Court before which such trial shall be had.

Persons under trial may inspect all depositions.

XIV. And be it enacted, That if any person, whatever, being arraigned upon any Indictment for Treason, Felony, or Piracy, shall plead thereto a plea of "not guilty," such person shall, by such plea, without any further form, be deemed to have put himself or herself upon the Country for trial, and the Court shall, in the usual manner, order a Jury for the trial of such person accordingly.

A plea of "not guilty" shall put the prisoner on his trial by Jury.

XV. And be it enacted, That if any person, being arraigned upon or charged with any Indictment or information for Treason, Felony, Piracy, or Misdemeanor, shall stand mute of malice, or

If he refuse to plead, the Court may order a plea of will

"not guilty" to be entered.

will not answer directly to the Indictment or Information, in every such case, it shall be lawful for the Court, if it shall so think fit, to order the proper Officer to enter a plea of "not guilty" on behalf of such person; and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

Every challenge beyond the legal number shall be void.

XVI. And be it enacted, That if any person indicted for any Treason, Felony or Piracy, shall challenge peremptorily a greater number of the men returned to be of the Jury, than such person is entitled by Law so to challenge, in any of the said cases, every peremptory challenge beyond the number allowed by Law in any of the said cases, shall be entirely void, and the trial of such shall proceed as if no such challenge had been made.

Attainder of another offence not pleadable.

XVII. And be it enacted, That no plea setting forth any Attainder shall be pleaded in bar of any Indictment, unless the Attainder be of the same offence as that charged in the Indictment.

Jury shall not inquire of prisoner's lands, &c., nor whether he fled.

XVIII. And be it enacted, That where any person shall be indicted for Treason or Felony, the Jury impanelled to try such person shall not be charged to inquire concerning his lands, tenements or goods, nor whether he fled for such Treason or Felony.

Benefit of Clergy abolished.

XIX. And be it enacted, That benefit of Clergy with respect to persons convicted of Felony shall be abolished; but that nothing herein contained shall prevent the joinder in any Indictment of any counts which might have been joined before the passing of this Act.

What Felonies only shall be capital.

XX. And be it enacted, That no person convicted of Felony shall suffer Death, unless it be for some Felony which was excluded from the benefit of Clergy by the Law in force in that part of this Province in which the trial shall be before the commencement of this Act, or which shall be made punishable with Death by some Act passed after that day.*

Every punishment for Felony after it has been endured shall have the effect of a pardon under the Great Seal.

XXI. And whereas it is expedient to prevent all doubts respecting the civil rights of persons convicted of Felonies not capital, who have undergone the punishment to which they were adjudged; Be it therefore enacted, That where any offender had been or shall be convicted of any Felony not punishable with death, and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, the punishment so endured hath and shall have the like effects and consequences as a pardon under the Great Seal as to

* See sect. 24, as to punishment for Felonies for which no other punishment is specially provided.

to the Felony whereof the offender was so convicted; Provided always, that nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any other Felony.

XXII. And whereas there are certain Misdemeanors which render the parties convicted thereof incompetent witnesses, and it is expedient to restore the competency of such parties after they have undergone their punishment; Be it therefore enacted, That where any offender hath been or shall be convicted of any such Misdemeanor (except Perjury or subornation of Perjury) and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, such offender shall not, after the punishment so endured, be deemed to be by reason of such Misdemeanor, an incompetent witness in any Court or proceeding Civil or Criminal.

No misdemeanor (except perjury) shall render a party an incompetent witness after he has undergone the punishment.

XXIII. And be it enacted, That in all cases in which any person shall be charged with Felony, the Officers of the Court before which such person shall be tried, or any proceeding had with regard to such charge, and who shall render any official services in the matter of such charge, or in the course of such trial, to the person so charged with Felony, shall be paid their lawful Fees for all such services out of the Public Funds, in the same manner as other Fees due and payable to them in respect of official services by them rendered to the Crown, in the conduct of public prosecutions, are now paid, and no such Fees shall in any case be demanded of or payable by the person charged with such Felony.

Officers of Court to be paid their fees from public funds.

XXIV. And be it enacted, That every person convicted of any Felony not punishable with death, shall be punished in the manner prescribed by the Statute or Statutes specially relating to such Felony; and that every person convicted of any Felony for which no punishment hath been or hereafter may be specially provided, shall be deemed to be punishable under this Act, and shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Felonies not capital, punishable under the Act relating thereto, otherwise under this Act.

XXV. And be it enacted, That if any person sentenced or ordered, or hereafter to be sentenced or ordered to be transported, or who shall have agreed or shall agree to transport or banish himself or herself on certain conditions, either for life or for any number of years, shall be afterwards at large within any part of this Province, contrary to such sentence, order or agreement,

Persons returning from transportation may be tried where found, &c.

* But see 6 Vic. cap. 5. sec. 2. as to the shortest term of imprisonment in the Provincial Penitentiary under these Acts. See also 14 & 15 V. c. 2, s. 2, providing that whenever any offender is punishable by imprisonment for more than two years such imprisonment shall be in the Provincial Penitentiary.

agreement, without some lawful cause, before the expiration of his or her term of transportation or banishment, every such offender shall be guilty of Felony, and shall be liable to be transported beyond the Seas, for his or her natural life,† and previously to transportation shall be imprisoned for any term not exceeding four years;‡ and every such offender may be tried either in the District, County or Place where such offender shall be found at large, or in the District, County or Place in or at which such sentence, or order of transportation or banishment was passed or made.

Allegation of sentence, &c., of transportation sufficient, without reference to indictment.

XXVI. And be it enacted, That in any Indictment or Information against any offender for being at large in this Province contrary to the provisions of this Act, or of any other Act hereafter to be in force in this Province, it shall be sufficient to allege the sentence or order of transportation or banishment of such offender, without alleging any indictment, information, trial, conviction, judgment or other proceeding, or any pardon or intention of mercy, or signification thereof, of or against or in any manner relating to such offender.

Certificate of the sentence, by the Clerk of the Court, sufficient evidence, &c.

XXVII. And be it enacted, That the Clerk of the Court or other Officer having the custody of the Records of the Court where any such sentence or order of transportation or banishment shall have been passed or made, or his Deputy, shall, at the request of any person on behalf of Her Majesty, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of any indictment, information, and conviction of such offender, and of the sentence or order for his or her transportation or banishment, (not taking for the same more than the sum of five shillings,) which certificate shall be sufficient evidence of the conviction and sentence or order for the transportation or banishment of such offender; and every such certificate shall be received in evidence upon proof of the signature of the person signing the same.

The Court may order hard labor or solitary confinement as part of the sentence of imprisonment.

XXVIII. And be it enacted, That where any person shall be convicted of any offence punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour in the Common Gaol, or House of Correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of the term of such imprisonment or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the Court in its discretion, shall seem meet.*

XXIX.

† But see 6 Vic. cap. 5. sec. 4. as to transportation.

‡ But see 6 Vic. cap. 5. sec. 2.

* But see 6 Vic. cap. 5. sec. 2. and 14 & 15 V. c. 2, s. 2, if the imprisonment be for more than two years.

XXIX. And be it enacted, That whenever sentence shall be passed for Felony on a person already imprisoned under sentence for another crime, it shall be lawful for the Court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced; and where such person shall be already under sentence of imprisonment, the Court may award such sentence for the subsequent offence to commence at the expiration of the imprisonment to which such person shall have been previously sentenced, although the aggregate term of imprisonment may exceed the term for which such punishment could be otherwise awarded.

If a person under sentence for another crime is convicted of Felony, the Court may pass a second sentence to commence after the expiration of the first.

XXX. And whereas it is expedient to provide for the more exemplary punishment of offenders who commit Felony after a previous conviction for Felony, whether such conviction shall have taken place before or after the commencement of this Act; Be it therefore enacted, That if any person shall be convicted of any Felony not punishable with death, committed after a previous conviction for Felony, such person shall on such subsequent conviction be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years; and in any indictment for any such Felony committed after a previous conviction for Felony, it shall be sufficient to state that the offender was at a certain time and place convicted of Felony, without otherwise describing the previous Felony; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous Felony, purporting to be signed by the Clerk of the Court or other Officer having the custody of the Records of the Court where the offender was first convicted, or by the Deputy of such Clerk or Officer, (for which certificate a fee of five shillings and no more, shall be demanded or taken,) shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same; and if any such Clerk, Officer, or Deputy shall utter any false certificate of any indictment and conviction for a previous Felony, or of any sentence or order of transportation or banishment, or if any person, other than such Clerk, Officer or Deputy, shall sign any such certificate as such Clerk, Officer or Deputy, or shall utter any such certificate with a false or counterfeit signature thereto, every such offender shall be guilty of Felony, and being lawfully convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other Prison

Punishment for a subsequent offence.

* But see 6 Vic. cap. 5. sec. 2, and 14 & 15 V. c. 2, s. 2.

Prison or place of confinement for any term not exceeding two years.

Punishment of the Pillory abolished.

XXXI. And whereas it is expedient to abolish the punishment of the Pillory, Be it therefore enacted, that from and after the commencement of this Act, judgment shall not be given and awarded against any person or persons convicted of any offence, that such person or persons do stand in or upon the Pillory; any Law, Statute or Usage to the contrary notwithstanding. Provided that nothing herein contained shall extend or be construed to extend in any manner to change, alter or affect any punishment whatever which may now be by Law inflicted in respect of any offence, excepting only the punishment of the Pillory.

No Report to be made to the Governor of the case of any capital convict.

XXXII. And be it enacted, That from and after the commencement of this Act, it shall not be necessary that any Report should be made to the Governor, Lieutenant Governor or Person administering the Government, in the case of any prisoner convicted before any Court and now under sentence of death, or who may be hereafter convicted before any Court and sentenced to the like punishment, previously to such sentence being carried into execution; any Law, Usage, or Custom to the contrary notwithstanding.

The Court may abstain from pronouncing judgment on persons convicted of crimes liable to the punishment of death, and order the same to be entered of record.

XXXIII. And be it enacted, That whenever any offender shall hereafter be convicted before any Court of Criminal Judicature, of any crime for which such offender shall be liable to the punishment of Death, and the Court shall be of opinion that, under the particular circumstances of the case, such offender is a fit and proper subject to be recommended for the Royal Mercy, it shall and may be lawful for such Court, if it shall think fit so to do, to direct the proper Officer, then being present in the Court, to require and ask, (whereupon such Officer shall require and ask) whether such offender hath or knoweth any thing to say why Judgment of Death should not be recorded against such offender, and in case such offender shall not allege any matter or thing sufficient in Law to arrest or bar such Judgment, the Court shall and may, and is hereby authorized to abstain from pronouncing Judgment of Death upon such offender, and instead of pronouncing such Judgment to order the same to be entered of Record, and thereupon such proper Officer as aforesaid shall and may and is hereby authorized to enter Judgment of Death on Record against such offender in the usual and accustomed form, and in such and the same manner as is now used, and as if Judgment of Death had actually been pronounced in open Court against such offender by the Court.

Such record to have the same effect as if pronounced.

XXXIV. And be it enacted, That a Record of every such Judgment so entered, as aforesaid, shall have the like effect to all intents, and be followed by all the same consequences as if such judgment had actually been pronounced in open Court.

XXXV.

XXXV. And be it enacted, That whenever any offender shall hereafter be convicted before any Court of Criminal Judicature, of any offence for which such offender shall be liable to and shall receive Sentence of Death, and the Court shall be of opinion that under the circumstances of the case, the Judgment of the Law ought to be carried into effect, it shall be lawful for the said Court, and such Court is hereby required to order and direct execution to be done on such offender in the same manner as any Court is empowered to order and direct execution by the Law as it stood before the passing of this Act.

Court to direct execution in certain cases.

XXXVI. Provided always, and be it enacted, That nothing in this Act contained shall affect Her Majesty's Royal Prerogative of Mercy.

Not to affect the Royal Prerogative.

XXXVII. And for the more effectual prosecution of accessories before the fact to Felony, Be it enacted, That if any person shall counsel, procure or command any other person to commit any Felony, whether the same be a Felony at Common Law, or by virtue of any Statute or Statutes made or to be made, the person so counselling, procuring, or commanding shall be deemed guilty of Felony, and may be indicted and convicted as an accessory before the fact to the principal Felony, either together with the principal Felon, or after the conviction of the principal Felon: or may be indicted for and convicted of a substantive Felony, whether the principal Felon shall or shall not have been previously convicted, or shall or shall not be amenable to Justice, and may be punished in the same manner as any accessory before the fact to the same Felony, if convicted as an accessory, may be punished; and the offence of the person so counselling, procuring, or commanding, howsoever indicted, may be inquired of, tried, determined and punished by any Court which shall have jurisdiction to try the principal Felon, in the same manner as if such offence had been committed at the same place as the principal Felony, although such offence may have been committed either on the High Seas or at any place on Land, whether within Her Majesty's Dominions or without; and in case the principal Felony shall have been committed within the body of any District or County, and the offence of counselling, procuring or commanding, shall have been committed within the body of any other District or County, the last mentioned offence may be enquired of, tried, determined and punished in either of such Districts or Counties: Provided always, That no person who shall be once duly tried for any such offence, whether as an accessory before the fact, or as for a substantive Felony, shall be liable to be again indicted or tried for the same offence.

Accessory before the fact may be tried as such, or as a substantive felon, by any Court which has jurisdiction to try the principal felon, although the offence be committed on the seas or abroad.

If the offence be committed in different districts or counties, accessory may be tried in either.

XXXVIII. And for the more effectual prosecution of accessories after the fact of Felony, Be it enacted, That if any person shall

Accessory after the fact shall

may be tried by any Court which has jurisdiction to try the principal felon.

If the offence be committed in different districts or counties, accessory may be tried in either.

Accessory may be prosecuted after conviction of the principal, though the principal be not attainted.

Offences committed on the boundaries of districts or counties may be tried in either.

Offences committed during a journey or voyage, may

shall become an accessory after the fact to any Felony, whether the same be a Felony at Common Law, or by virtue of any Statute or Statutes made or to be made, the offence of such person may be inquired of, tried, determined and punished by any Court which shall have jurisdiction to try the principal Felon, in the same manner as if the act by reason whereof such person shall have become an accessory had been committed at the same place as the principal Felony, although such act may have been committed either on the High Seas, or at any place on Land, whether within Her Majesty's Dominions or without;* and in case the principal Felony shall have been committed within the body of any District or County, and the act by reason whereof any person shall have become accessory shall have been committed within the body of any other District or County, the offence of such accessory may be enquired of, tried, determined and punished in either of such Districts or Counties: Provided always, That no person who shall be once duly tried for any offence of being an accessory, shall be liable to be again indicted or tried for the same offence.

XXXIX. And in order that all accessories may be convicted and punished in cases where the principal Felon is not attainted, Be it enacted, That if any principal offender shall be in any wise convicted of any Felony, it shall be lawful to proceed against any accessory either before or after the fact, in the same manner as if such principal Felon had been attainted thereof, notwithstanding such principal Felon shall die, or be pardoned, or otherwise delivered before attainder; and every such accessory shall suffer the same punishment, if such accessory be in any wise convicted, as such accessory should have suffered if the principal had been attainted.

XL. And for the more effectual prosecution of offences committed near the Boundaries of Districts or of Counties, or partly in one District or County and partly in another, Be it enacted, That where any Felony or Misdemeanor shall be committed on the boundary or boundaries of two or more Districts or Counties, or within the distance of five hundred yards of any such boundary or boundaries, or shall be begun in one District or County and completed in another, every such Felony or Misdemeanor may be dealt with, inquired of, tried, determined and punished in any of the said Districts or Counties, in the same manner as if it had been actually and wholly committed therein.

XLI. And for the more effectual prosecution of offences committed during journeys from place to place, Be it enacted, That where any Felony or Misdemeanor shall be committed on any person,

* See Imperial Act, 43 Geo. III. cap, 138, as to offences committed in the Indian Territories, or parts of America not within the United States.

person, or on or in respect of any property, in or upon any coach, waggon, cart or other carriage, whatever, employed in any journey, or shall be committed on any person, or on or in respect of any property, on board any vessel whatever employed in any voyage or journey upon any navigable river, canal, or inland navigation, such Felony or Misdemeanor may be dealt with, inquired of, tried, determined and punished in any District or County through any part whereof such coach, waggon, cart, carriage or vessel shall have passed in the course of the journey or voyage during which such Felony or Misdemeanor shall have been committed, in the same manner as if it had been actually committed in such District or County; and in all cases where the side, centre or other part of any highway, or the side, bank, centre or other part of any such river, canal or navigation, shall constitute the boundary of any two Districts or Counties, such Felony or Misdemeanor may be dealt with, inquired of, tried, determined and punished in either of such Districts or Counties, through or adjoining to or by the boundary of any part whereof such coach, waggon, cart, carriage or vessel, shall have passed in the course of the journey or voyage during which such Felony or Misdemeanor shall have been committed, in the same manner as if it had been actually committed in such District or County.

be tried in any county or district through which the coach, &c. passed.

When sides, &c., of highway constitute boundary, offender may be tried in either district or county.

XLII. And in order to remove the difficulty of stating the names of all the owners of property, in the case of partners and other joint owners, Be it enacted, That in any Indictment or Information for any Felony or Misdemeanor, wherein it shall be requisite to state the ownership of any property whatsoever, whether real or personal, which shall belong to or be in the possession of more than one person, whether such persons be partners in trade, joint tenants, parceners or tenants in common, it shall be sufficient to name one of such persons, and to state such property to belong to the persons so named and another or others, as the case may be; and whenever in any Indictment or Information for any Felony or Misdemeanor, it shall be necessary to mention for any purpose whatsoever, any partners, joint tenants, parceners or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and this provision shall be construed to extend to all joint-stock companies and trustees.

In Indictments for offences committed on the property of partners, it may be laid in any one partner by name, and others.

XLIII. And be it enacted, That in any Indictment or Information for any Felony or Misdemeanor committed in, upon, or with respect to any Church, Chapel or Place of Religious Worship, or to any Bridge, Court, Court-house, Gaol, House of Correction, Penitentiary, Infirmary, Asylum, or other public building, or any Canal, Lock, Drain or Sewer erected or maintained in whole or in part at the expense of the Province, or of any division or subdivision thereof, or on or with respect to any Materials, Goods or Chattels whatsoever, provided for or at the expense of the Province, or of any division or sub-division

In Indictments for Felonies, &c., relating to Churches, Bridges or public buildings, property need not be stated as being in any person.

thereof, to be used for making, altering or repairing any Bridge or Highway, or any Court or other such building, Canal, Lock, Drain or Sewer, as aforesaid, or to be used in or with any such Court or other building, Canal, Lock, Drain or Sewer, it shall not be necessary to state such Church, Chapel or Place of Religious Worship, or such Bridge, Court, Court-house, Gaol, House of Correction, Penitentiary, Infirmary, Asylum, or other building, or such Canal, Lock, Drain or Sewer, or any such Materials, Goods or Chattels to be the property of any person.

Property of Turnpike Trust may be laid in Trustees, &c.

XLIV. And with respect to property under Turnpike Trusts Be it enacted, That in any Indictment or Information for any Felony or Misdemeanor, committed on or with respect to any house, building, gate, machine, lamp, board, stone, post, fence or other thing erected or provided, in pursuance of any Act in force in this Province, for making any Turnpike Road, or of any conveniences or appurtenances thereto respectively belonging, or any materials, tools or implements provided for making, altering or repairing any such Road, it shall be sufficient to state any such property to belong to the Trustees or Commissioners of such Road, and it shall not be necessary to specify the names of any such Trustees or Commissioners.

Indictments not to abate by dilatory plea of misnomer, &c.

XLV. And for preventing abuses from dilatory pleas, Be it enacted, That no Indictment or Information shall be abated by reason of any dilatory plea of misnomer, or of want of addition, or of wrong addition of any party offering such plea, if the Court shall be satisfied, by affidavit or otherwise, of the truth of such plea; but in such case the Court shall forthwith cause the Indictment or Information to be amended according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no such dilatory plea had been pleaded.

What defects shall not vitiate an indictment after verdict or otherwise.

XLVI. And in order that the punishment of offenders may be less frequently intercepted in consequence of technical niceties, Be it enacted, That no Judgment upon any Indictment or Information for any Felony or Misdemeanor, whether after verdict or outlawry, or by confession, default or otherwise, shall be stayed or reversed for want of the averment of any matter unnecessary to be proved, nor for the omission of the words, "as appears by the record," or of the words "with force and arms," or of the words, "against the peace," nor for the insertion of the words "against the form of the Statute," instead of the words, "against the form of the Statutes," or *vice versa*, nor for that any person or persons mentioned in the Indictment or Information is or are designated by a name of office or other descriptive appellation, instead of his, her or their proper name or names, nor for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the Indictment, or exhibiting the Information,

or on an impossible day, or on a day that never happened, nor for a want of a proper or perfect venue where the Court shall appear by the Indictment or Information to have had jurisdiction over the offence.

XLVII. And be it enacted, That no Judgment after verdict upon any Indictment or Information for any Felony or Misdemeanor, shall be stayed or reversed for want of a *similiter*, nor by reason that the Jury process has been awarded to a wrong Officer, upon an insufficient suggestion, nor for any misnomer or misdescription of the Officer returning such process, or of any of the Jurors, nor because any person has served upon the Jury who has not been returned as a Juror by the Sheriff or other Officer; and that where the offence charged shall be an offence theretofore created by any Statute, or subjected to a greater degree of punishment, or excluded from the benefit of Clergy by any Statute, the Indictment or Information shall after verdict be held sufficient if it describe the offence in the words of the Statute creating the offence, or prescribing the punishment, or excluding the offender from the benefit of Clergy.

Certain formal defects not grounds to stay or reverse judgment after verdict.

XLVIII. And be it declared and enacted, That where the Queen's Majesty, or the Governor, Lieutenant Governor, or Person administering the Government of this Province for the time being, shall be pleased to extend the Royal Mercy to any offender convicted of any Felony, punishable with death or otherwise, and by warrant under the Royal Sign Manual countersigned by one of the Principal Secretaries of State, or by warrant under the hand and seal at arms of such Governor, Lieutenant Governor, or Person administering the Government as aforesaid, shall grant to such offender either a free or a conditional pardon, the discharge of such offender out of custody, in case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the Great Seal for such offender, as to the Felony for which such pardon shall have been granted: Provided always, That no free pardon, or any such discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any Felony committed after the granting of any such pardon.

Effect of a free or conditional pardon of a convict.

XLIX. And whereas the practice of indiscriminately estreating recognizances for the appearance of persons to prosecute or give evidence, or to answer for a common assault, or in the other cases hereinafter specified, has been found in many instances productive of hardship to persons who have entered into such recognizances; Be it therefore enacted, That in every case where any person bound by recognizance for his or her appearance, (or for whose appearance any other person shall be so bound) to prosecute or give evidence in any case of Felony

Recognizances in certain cases not to be estreated without a Judge's order.

Felony or Misdemeanor, or to answer for any common assault, or to articles of the peace, shall therein make default, the officer of the Court by whom the estreats are made out, shall, and such Officer is hereby required to prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which every such person, or his or her surety was so bound, together with the residence, trade, profession or calling of every such person and surety, and shall in such list distinguish the principals from the sureties, and shall state the cause, if known, why each such person has not appeared, and whether by reason of the non-appearance of such person, the ends of Justice have been defeated or delayed; and every such Officer shall, and such Officer is hereby required, before any such recognizance shall be estreated, to lay such list, if at a Court of Oyer and Terminer or Gaol Delivery in any District or County, or at any of Her Majesty's Superior Courts of Record in this Province, before one of the Justices of those Courts, respectively, or if at a Session of the Peace, before two of the Justices of the Peace who shall have attended such Courts, who are respectively authorized and required to examine such list, and to make such order touching the estreating or putting in process any such recognizance as shall appear to them, respectively, to be just; and it shall not be lawful for the Officer of any Court to estreat or put in process any such recognizance without the written order of the Justice or Justices of the Peace before whom respectively such list shall have been laid.

But see as to recognizances in L. C. 12 V. c. 38, s. 97.

They are not to be estreated but sued upon.

Rule for the interpretation of this and all Acts relating to offences.

L. And be it enacted, That wherever in this Act or in any other Act relating to any offence, whether punishable upon Indictment or summary conviction, in describing or referring to the offence or the subject matter on or with respect to which it shall be committed, or the offender or the party affected or intended to be affected by the offence, any word or words have been or shall be used or employed importing the singular number or the masculine gender only, every such Act shall be understood to include several matters of the same kind, as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction; and wherever any forfeiture or penalty is or shall be made payable to a party aggrieved, it shall be payable to a body corporate in every case where such a body shall be the party aggrieved.

All Acts repugnant to this Act repealed.

LI. And be it enacted, That all Acts or parts of Acts or provisions of Law in force in this Province, or any part thereof, immediately before the time when this Act shall come into force, which shall be inconsistent with or contradictory to this Act, or which make any provision in any matter provided for by this Act, other than such as is hereby made in such matter, shall

shall from and after the time when this Act shall come into force, be and they are hereby repealed, except in so far as may relate to any offence committed before the commencement of this Act, which shall be dealt with* and punished as if this Act had not been passed.

LII. And be it enacted, That the period of imprisonment in the Provincial Penitentiary, in pursuance of any sentence passed under this Act or under any other Act relating to the punishment of offences by confinement and imprisonment in the Provincial Penitentiary, shall be held to commence from the period of passing such sentence, whether the convict upon whom such sentence shall be passed shall be removed to the said Provincial Penitentiary forthwith, or be detained in custody in any other prison or place of confinement, previously to such removal.

From what period the imprisonment is to be reckoned.

LIII. And be it enacted, That this Act shall commence and take effect from and after the first day of January one thousand eight hundred and forty-two.

Commencement of this Act.

12 VICT. CAP. 21.—1849.

An Act for the Removal of Defects in the administration of Criminal Justice.

WHEREAS the technical strictness of Criminal Proceedings might in some instances be further relaxed, so as to insure the punishment of the guilty, without depriving the accused of any just means of defence; And whereas, according to the present practice of Courts of Criminal Jurisdiction, it is not permitted in an Indictment for stealing property to add a Count for receiving the same property, knowing it to have been stolen, or in an Indictment for receiving stolen property, knowing it to have been stolen, to add a Count for stealing the same property, and justice is hereby often defeated: Be it therefore enacted, &c. That from and after the passing of this Act, in any Indictment for feloniously stealing property, it shall be lawful to add a Count for feloniously receiving the same property, knowing it to have been stolen; and in any Indictment for feloniously receiving property, knowing it to have been stolen, it shall be lawful to add a Count for feloniously stealing the same property: And where any such Indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the Jury who shall

Preamble.

In an indictment for stealing a Count may be inserted for receiving; and vice versa. Prosecutor not to be put to his election; but the jury may find a verdict on either Count.

* But see the foregoing provisions of the Act, as to incidents and matters with regard to which such provisions may be consistent with this exception.

As to indictments against two or more persons.

shall try the same to find a Verdict of Guilty, either of stealing the property or of receiving it knowing it to have been stolen : and if such Indictment shall have been preferred and found against two or more persons, it shall be lawful for the Jury who shall try the same, to find all or any of the said persons guilty, either of stealing the property or of receiving it, knowing it to have been stolen, or to find one or more persons guilty of stealing the property, and the other or others of them guilty of receiving it, knowing it to have been stolen.

Recital.

II.— And whereas a failure of Justice frequently takes place in Criminal Trials, by reason of variances between writings produced in evidence, and the recital or setting forth thereof in the Indictment or Information, and the same cannot now be amended at the Trial, except in cases of misdemeanor : For remedy thereof—Be it enacted, That it shall and may be lawful for any Court of Queen's Bench, or other Superior Court of Criminal Jurisdiction in Lower Canada, or of Oyer and Terminer, and General Gaol Delivery in any part of this Province, if such Court shall see fit so to do, to cause the Indictment or Information for any offence whatever, when any variance or variances shall appear between any matter in writing or in print produced in evidence, and the recital or setting forth thereof in the Indictment or Information whereon the trial is pending, to be forthwith amended in such particular or particulars by some Officer of the Court, and after such amendment the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury, and otherwise, as if no such variance or variances had appeared.

Indictment, &c. may be amended by order of the court in case of variance between a writing produced and that recited.

Effect of such amendment.

2 VICT. (3). CAP. 23.—1839.

An Ordinance to abolish the practice of permitting Defendants to Traverse Indictments for misdemeanors, before Courts of Oyer and Terminer, in this Province.

Preamble.

Defendants to plead and be tried during term in which the indictment shall be found.

WHEREAS the practice which has obtained of permitting defendants to traverse indictments, before courts of oyer and terminer in this Province, has led to delays and abuses inconsistent with the proper and impartial administration of justice, and it is expedient and necessary to remedy such evil :—Be it therefore ordained and enacted, &c., that from and after the passing of this ordinance, it shall not be lawful for any defendant or defendants, against whom any indictment or indictments for any misdemeanor shall be found, before any court of oyer and terminer to be hereafter holden within

within the said Province, to traverse any such indictment or indictments; but that in all such cases of indictment or indictments for misdemeanor, defendant or defendants shall plead to the indictment or indictments, and be tried at and during the same session of such court of oyer and terminer in which such indictment or indictments shall be found, unless good and sufficient cause be shewn by such defendant or defendants for putting off any such trial; any law, usage or statute to the contrary hereof in any wise notwithstanding.

5 WILL. IV. CAP. 1.—1836.

An Act to authorise Counsel to address Jurors in behalf of Prisoners in Capital Cases.

WHEREAS it is expedient that persons accused of capital crimes be entitled to plead by counsel:—Be it therefore enacted, &c., that any prisoner accused of any capital crime, may, in all cases, employ the ministry of any advocate or counsel in his defence, which said advocate or counsel may address the jurors on the behalf of the prisoner, in the same manner as in any other prosecution or accusation for any crime or misdemeanor whatsoever.

Preamble.

Counsel may address jurors in behalf of prisoners in capital cases.

See also 4 & 5 V. c. 24, s. 9.

44 GEO. III. CAP. 7.—1804.

An Act for the more easy administration of Oaths to Witnesses before the Grand Jury.

WHEREAS it will contribute to the dispatch of business in courts of criminal jurisdiction, that oaths to witnesses before the grand jury should be administered without recurring to the court for that purpose:—Be it therefore enacted, &c., that from and after the passing of this act, it shall and may be lawful, in all courts of criminal jurisdiction, to and for the foreman of the grand jury, and he is hereby empowered and required to administer, in the presence of the grand jury, the usual oath to such persons as shall appear as witnesses before the grand jury; and such oath so administered shall be as valid and binding in law, as if the same had been administered by the court; any law or usage to the contrary notwithstanding.

Preamble.

The foreman of the grand jury empowered to administer the usual oath to witnesses.

39 GEO. III. CAP. 9.—1799.

An Act for repealing certain Acts granting rates and duties to His Majesty, and for granting new and additional duties in lieu thereof, and for appropriating the same towards defraying the expenses of the administration of Justice and support of the Civil Government within this Province, and for other purposes therein mentioned.

Preamble.

WHEREAS the raising and collecting of the rates and duties imposed on goods imported or brought into this Province, by an act of the parliament of Great Britain, of the fourteenth year of the reign of His present Majesty, chapter eighty-eight, and by two acts of the legislature of this Province, of the thirty-third year, chapter eight, and of the thirty-fifth year, chapter ninth, of His present Majesty, would be simplified, the revenue benefited, and commerce promoted, by consolidating and bringing the said rates and duties into one law:—Be it therefore enacted, &c., that as soon as, &c., (Section 1 to 23, inclusive, are not in force.)

Allowance to poor and needy persons to be paid out of the fines, &c., that may be received.

XXIV And whereas no fund is hitherto provided in this Province, to defray the expenses and loss of time of poor and needy persons, subpoenaed or bound by recognizance to give evidence in the courts of King's bench and general quarter sessions of the peace, touching any felony or misdemeanor, and it being necessary to make provision for the same:—Be it further enacted, &c., that it shall and may be lawful for the court, when any such person shall appear on recognizance or subpoena, to give evidence as aforesaid, to order the clerks of the crown and of the peace, in their respective districts, to pay from and out of the fines, penalties and forfeitures, which they may or shall respectively receive, to every such poor and needy person, such sum as the court shall think reasonable, not exceeding the expenses he or she was *bonâ fide* put unto, making also a reasonable allowance for his or her trouble and loss of time; which sum the clerks of the crown and of the peace aforesaid, upon the production of the said order, shall respectively forthwith pay, and the same shall be allowed and sustained in the respective accounts of the said clerk of the Crown or clerk of the peace; any law or usage to the contrary notwithstanding: And in case the fines, penalties and forfeitures aforesaid, shall not be found sufficient for paying and defraying the expenses and loss of time of poor and needy persons, appearing on subpoena or recognizance as aforesaid, there shall be issued and paid out of the said general fund of the Province, such further sum to the said several clerks for the said districts, as shall appear to be owing and due to them respectively, after their accounts shall have been approved by the

And if the fines, &c., are not sufficient, to be charged upon the general funds of the Province.

the Governor, Lieutenant-Governor or person administering the government for the time being, in His Majesty's executive council.

2 VICT. (3.) CAP. 56.—1839.

An Ordinance to amend an Act of the Legislature of this Province, intituled, *An Act for repealing certain Acts granting rates and duties to His Majesty, and for granting new and additional duties in lieu thereof, and for appropriating the same towards defraying the expenses of the administration of Justice and support of the Civil Government within this Province, and for other purposes therein mentioned.*

WHEREAS it is expedient to amend the twenty-fourth section of an act of the legislature of this Province, passed, &c., (39 Geo. 3. cap. 9.):—Be it therefore ordained and enacted, &c., that in the case of every person subpoenaed on behalf of the Crown, or bound by recognizance to give evidence in the courts of King's bench, courts of oyer and terminer or general gaol delivery, and general quarter sessions of the peace, touching any felony or misdemeanor, it shall and may be lawful for any of such courts, or for any judge or justice of any such court, in which any such person shall appear by virtue of any such subpoena or under any such recognizance to give evidence as aforesaid, to order the sheriff for its district to pay out of the monies which shall and may be advanced to such sheriff as aforesaid for that purpose, out of any unappropriated monies in the hands of the receiver general of the said Province, by warrant of the Governor, Lieutenant-Governor, or person administering the government thereof, to every such person such sum of money as the court, judge or justice thereof shall think reasonable, not exceeding the expenses he or she was *bond fide* put unto, making also a reasonable allowance for his and her trouble and loss of time; which sum the sheriffs aforesaid, upon the production of the said order, shall respectively forthwith pay, and the same shall be allowed and sustained in the respective accounts of the said sheriff; any statute, law or usage to the contrary notwithstanding: Provided always, that any such court, judge or justice shall not make any such order in the behalf aforesaid, unless the attorney general, solicitor general of the said Province, or other prosecuting officer on the part of the Crown, or clerks of the peace, prosecuting felonies in the several courts of quarter sessions of the peace, for and on behalf of the Crown, shall have certified, upon the account made by such person for his or her trouble and loss of time as aforesaid,

Preamble.

Crown witnesses in cases of felony or misdemeanor to be paid their expenses by the sheriff, upon an order from the court.

No order to be given unless the account of the witness be certified by the Crown law Officers or Clerks of the Peace.

said,

said, that the charges therein contained are reasonable, and unless such person claiming the amount of charges stated in his or her account in the behalf aforesaid, shall make affidavit before such court, judge or justice, that the said charges are true and correct, and that unless the same be paid he or she will sustain loss.

Sheriff to render account of the monies advanced to him.

II. And be it further ordained and enacted, &c., that the sheriff to whom any monies shall be advanced under the authority of this ordinance, shall render such account, and support the same by such vouchers, and transmit it at such time, as the Governor or person administering the government, shall direct; and the due application of all such monies shall be accounted for to Her Majesty, Her Heirs and Successors, through the lords commissioners of the treasury, in such manner and form as Her Majesty, Her Heirs and Successors shall direct.

52 GEO. III. CAP. 7.—1812.

An Act for limiting the time during which Penal Actions may be brought in the Courts of this Province.

Preamble.

Limitation of actions, suits or informations under penal laws.

WHEREAS the want of a law limiting the time during which penal actions may be brought in this Province, may cause the most serious inconveniences and daily occasion grievous suits against His Majesty's subjects in this Province, and abuses which it is essentially necessary to prevent:—Be it therefore enacted, &c., that from and after the passing of this Act, all actions, suits or informations which shall be brought or exhibited in this Province for any forfeiture on any statute or law penal, made or to be made, whereby the forfeiture is or shall be limited to the King, His Heirs or Successors only, shall be brought or exhibited within two years next after the offence committed or to be committed against such statute or law penal, and not after two years; and that all actions, suits or informations which, from and after the passing of this act, shall be brought or commenced for any forfeiture upon any penal statute or law, made or to be made, the benefit and suit whereof is or shall by the said statute or law be limited to the King, His Heirs or Successors and to any other person who shall prosecute in that behalf, shall be brought or commenced by such other person that may lawfully sue for such forfeiture as aforesaid, within one year next after the offence committed or to be committed against the said statute or law; and in default of any action or suit by such person, that then the same shall be brought or instituted for the King, His Heirs or Successors, at any time within two years after that year ended; and if any action, suit or information for any offence against any penal statute or law,

law, made or to be made, shall be brought after the time in the behalf limited as aforesaid, that then the same shall be void and of no effect; any law made to the contrary notwithstanding.

II. Provided always, that nothing herein contained shall extend or be construed to extend, to prolong or extend in any manner the time or delay for the commencement of any action or suit in virtue of any penal statute which has fixed or prescribed, or might hereafter fix and prescribe, a shorter time than that hereby limited. Proviso.

4 & 5 VICT. CAP. 25.—1841.

An Act for consolidating and amending the Laws in this Province, relative to Larceny and other Offences connected therewith.

WHEREAS it is expedient to amend and consolidate the provisions contained in various Statutes now in force in this Province, relative to Larceny and other offences of stealing and to Burglary, Robbery, and threats for the purpose of Robbery or of Extortion, and to Embezzlement, False Pretences and the Receipt of stolen property: Be it therefore enacted, &c., That this Act shall commence from and after the first day of January, one thousand eight hundred and forty-two. Preamble.
Commence-
ment of Act.

II. And be it enacted, That the distinction between Grand Larceny and Petty Larceny shall be abolished; and every Larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects as Grand Larceny was before the commencement of this Act; and every Court whose power as to the trial of Larceny was before the commencement of this Act limited to Petty Larceny, shall have power to try every case of Larceny, the punishment of which cannot exceed the punishment hereinafter mentioned for simple Larceny, and also try all accessories to such Larceny. Distinction
between
Grand & Petty
Larceny abo-
lished; all Lar-
ceny shall be
considered as
Grand Lar-
ceny.

III. And be it enacted, That every person convicted of Simple Larceny, or of any felony hereby made punishable like Simple Larceny, shall (except in the cases hereinafter otherwise provided for) be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. Punishment
for simple Lar-
ceny or felony,
punishable as
such.

IV.

*But see 6 Vic. c 5, and 14 & 15 V. c. 2, s. 2.

For all offences under this Act, hard labour or solitary confinement may be added to imprisonment.

IV. And with regard to the place and mode of imprisonment for all indictable offences punishable under this Act, Be it enacted, That where any person shall be convicted of any felony or misdemeanor punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the Common Gaol, or House of Correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the Court in its discretion shall seem meet.

Stealing public or private securities for money, or warrants for goods, &c. shall be felony punishable according to the circumstances, as stealing goods.

V. And be it enacted, That if any person shall steal any tally, order, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any Public Stock or Fund, whether of this Province or of the United Kingdom of Great Britain and Ireland, or of any British Colony, or of any Foreign State or Colony, or in any fund of any body corporate, company or society, or to any deposit in any Savings Bank, or shall steal any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever, for money or for payment of monies, whether of this Province or of Great Britain, or of any British Colony, or of any Foreign State or Colony, or shall steal any warrant or order for the delivery or transfer of any goods or valuable things, every such offender shall be deemed guilty of felony, of the same nature and in the same degree, as if he had stolen any chattel of like value with the share, interest, or deposit to which the security so stolen may relate, or with the money due on the security so stolen or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable things mentioned in the warrant or order; and each of the several documents hereinbefore enumerated, shall, throughout this Act, be deemed for every purpose to be included under, and denoted by the words "valuable security."

Rule of interpretation.

Punishment of robbery attended with cutting, &c.

VI. And be it enacted, That whosoever shall rob any person, and at the time of or immediately before or immediately after such robbery, shall stab, cut or wound any person, shall be guilty of Felony, and being convicted thereof shall suffer death.

Of robbery attended with violence.

VII. And be it enacted, That whosoever shall, being armed with any offensive weapon or instrument, rob, or assault with intent to rob any person, or shall, together with one or more person or persons, rob or assault with intent to rob any person, or shall rob any person, and at the time of or immediately before or immediately after such robbery, shall beat, strike, or use any other personal violence to any person, shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial

Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

VIII. And be it enacted, That whosoever shall accuse or threaten to accuse any person of the abominable crime of Buggery, committed either with mankind or with beast, or of any assault with intent to commit the said abominable crime, or of any attempt to endeavour to commit the said abominable crime, or of making or offering any solicitation, persuasion, promise or threat to any person whereby to move or induce such person to commit or permit the said abominable crime, with a view or intent in any of the cases aforesaid, to extort or gain from such person, and shall by intimidating such person by such accusation or threat, extort or gain from such person any property, shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Punishment for obtaining property by threat of accusing of unnatural crimes.

IX. And be it enacted, That whosoever shall rob any person, or shall steal any chattel, money, or valuable security from the person of another, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years nor less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Punishment for stealing from the person.

X. And be it enacted, That whosoever shall assault any person, with intent to rob, shall be guilty of Felony, and being convicted thereof (save and except in cases where a greater punishment is provided by this Act,) be liable to be imprisoned for any term not exceeding three years.*

Punishment for assault with intent to rob.

XI. And be it enacted, That whosoever shall, with menaces or by force, demand any Chattel, Money, or Valuable Security, of any person with intent to steal the same, shall be guilty of Felony; and being convicted thereof, shall be liable to be imprisoned for any term not exceeding three years.*

Attempting to obtain property by menace.

XII. And be it enacted, That if any person shall knowingly send or deliver any letter or writing, demanding of any person with menaces, and without any reasonable or probable cause, any chattel, money, or valuable security, or if any person shall accuse or threaten to accuse, or shall knowingly send or deliver any letter or writing, accusing or threatening to accuse any person of any crime punishable by law with Death, or Transportation,

Sending letter containing menacing demands, to extort money, &c.

tion,

* But see 6 Vict. c. 5, and 14 & 15 V. c. 2, s. 2.

tion, or of any assault with intent to commit any Rape, or of any attempt or endeavour to commit Rape, with a view or intent to extort or gain from such person any chattel, money or valuable security, every such offender shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour at the Provincial Penitentiary for any term not less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Sacrilege
when Capital.

XIII. And be it enacted, That if any person shall break and enter any Church or Chapel, and steal therein any chattel, or having stolen any chattel, money, or valuable security in any Church or Chapel, shall break out of the same, every such offender being convicted thereof, shall be liable to be imprisoned at hard labour at the Provincial Penitentiary for any term not less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.*

Burglars using
violence, to
suffer death.

XIV. And be it enacted, That whosoever shall burglariously break and enter into any Dwelling House, and shall assault with intent to murder any person being therein, or shall stab, cut, wound, beat or strike any such person, shall be guilty of Felony, and being convicted thereof shall suffer death.

Punishment of
Burglars.

XV. And be it enacted, That whosoever shall be convicted of the crime of Burglary, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

When break-
ing into a
house consi-
dered bur-
glary.

Burglary.

XVI. Provided always, and be it enacted, That so far as the same is essential to the offence of Burglary, the night shall be considered and is hereby declared to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day; And it is hereby declared that if any person shall enter the dwelling house of another with intent to commit Felony, or being in such dwelling house shall commit any Felony, and shall in either case break out of the said dwelling house, in the night time, such person shall be deemed guilty of Burglary.

Stealing in a
dwellinghouse
with menaces.

XVII. And be it enacted, That whosoever shall steal any chattel, money or valuable security in any dwelling house, and shall by any menace or threat put any one, being therein, in bodily fear, shall be guilty of Felony, and being convicted thereof, shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years,

* But see 6 Vic. c. 6, and 14 & 15 V. c. 2, s. 2.

years, nor less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

XVIII. Provided always, and be it enacted, That no building although within the same curtilage with the dwelling house, and occupied therewith, shall be deemed to be part of such dwelling house for the purpose of Burglary, or for any of the purposes aforesaid, unless there shall be a communication between such building and dwelling house, either immediate, or by means of a covered and inclosed passage leading from the one to the other.

What buildings only are part of a house for certain purposes.

XIX. And be it enacted, That if any person shall break and enter any building, and steal therein any chattel, money, or valuable security, such building being within the curtilage of a dwelling house, and occupied therewith, but not being part thereof, according to the provision hereinbefore mentioned, every such offender, being convicted thereof, (either upon an indictment for the same offence, or upon an indictment for burglary, house breaking, or stealing to the value of five pounds sterling, in a dwelling house, containing a separate count for such offence,) shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Robbery in any building within the same curtilage as the house, but not privileged as part of the house.

XX. And be it enacted, That if any person shall break and enter any Shop, Warehouse, or Counting House, and steal therein any chattel, money or valuable security, every such offender, being convicted thereof, shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned.

Robbery in a shop, warehouse, &c.

XXI. And be it enacted, That if any person shall steal any Goods or Merchandize in any vessel, barge, or boat of any description whatsoever, in any port of entry or discharge, or upon any navigable river or canal, or in any creek belonging to or communicating with any such port, river or canal, or shall steal any goods or merchandize from any dock, wharf or quay, adjacent to any such port, river, canal or creek, every such offender, being convicted thereof, shall be liable to any of the punishments which the Court may award as hereinafter before last mentioned.

Stealing goods from a vessel in a port, river or canal, &c.

XXII. And be it enacted, That whosoever shall plunder or steal any part of any ship or vessel which shall be in distress, or wrecked, stranded or cast on shore, or any goods, merchandize, or articles of any kind belonging to such ship or vessel, and be convicted

Punishment for wrecking.

* But see 6 Vic. c. 3, and 14 & 15 V. c. 2, n. 2.

convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years,* or to be imprisoned in any other Prison, or place of confinement for any term not exceeding two years.

Persons in possession of shipwrecked goods, not giving a satisfactory account, shall pay a penalty.

XXIII. And be it enacted, That if any Goods, Merchandize, or articles of any kind, belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore, as aforesaid, shall by virtue of a search warrant, to be granted as hereinafter mentioned, be found in the possession of any person, or on the premises of any person with his knowledge, and such person, being carried before a Justice of the Peace, shall not satisfy the Justice that he came lawfully by the same, then the same shall, by order of the Justice, be forthwith delivered over to, or for the use of the rightful owner thereof; and the offender, on conviction of such offence before the Justice, shall forfeit and pay such sum of money, not exceeding twenty pounds, as to the Justice shall seem meet.

If any person offer shipwrecked goods for sale, the goods may be seized, &c.

XXIV. And be it enacted, That if any person shall offer or expose for sale any Goods, Merchandize or articles whatsoever, which shall have been unlawfully taken, or reasonably suspected so to have been, from any ship or vessel in distress, or wrecked, stranded, or cast on shore as aforesaid, in every such case any person to whom the same shall be offered for sale, or any officer of the Customs, or Peace Officer, may lawfully seize the same, and shall with all convenient speed carry the same, or give notice of such seizure, to some Justice of the Peace; and if the person who shall have offered or exposed the same for sale, being duly summoned by such Justice, shall not appear and satisfy the Justice that he came lawfully by such goods, merchandize or articles, then the same shall, by order of the Justice, be forthwith delivered over to, or for the use of the rightful owner thereof, upon payment of a reasonable reward, (to be ascertained by the Justice,) to the person who seized the same; and the offender, on conviction of such offence by the Justice, shall forfeit and pay such sum of money, not exceeding twenty pounds, as to the Justice shall seem meet.

The stealing &c. of records and other proceedings of Courts of Justice, &c.

XXV. And be it enacted, That if any person shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure or destroy any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order or warrant of attorney, or any original document whatsoever, of or belonging to any Court of Justice, or relating to any matter, civil or criminal, begun, depending or terminated in any such Court, or any bill, answer, interrogatory, deposition, affidavit, order or decree, or any

* But see 6 Vic. c. 5, and 14 & 15 V. c. 2, s. 2.

any original document whatsoever, of or belonging to any Court, or relating to any cause or matter begun, depending, or terminated in any such Court, or any notarial minute, or the original of any other authentic act, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary, for any term not exceeding fourteen years, nor less than seven years,* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the Court shall award; and it shall not in any indictment for such offence be necessary to allege that the article, in respect of which the offence is committed, is the property of any person, or that the same is of any value.

XXVI. And be it enacted, That if any person shall, either during the life of the testator or testatrix, or after his or her death, steal, or for any fraudulent purpose destroy or conceal, any will, codicil or other testamentary instrument, whether the same shall relate to real or personal estate, or to both, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to any of the punishments which the Court may award, as hereinbefore last mentioned; and it shall not in any indictment for such offence be necessary to allege that such will, codicil, or other instrument, is the property of any person, or that the same is of any value.

The stealing
&c. of wills.

XXVII. And be it enacted, That if any person shall steal any original paper or parchment, written or printed, or partly written and partly printed, being evidence of the title, or of any part of the title to any real estate, every such offender shall be deemed guilty of a misdemeanor, and being convicted thereof, shall be liable to any of the punishments which the Court may award, as hereinbefore last mentioned; and in any indictment for such offence, it shall be sufficient to allege the thing stolen to be evidence of the title, or of part of the title, of the person or of some one of the persons having a present interest, whether legal or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof; and it shall not be necessary to allege the thing stolen to be of any value.

The stealing
of writings re-
lative to real
estates.

XXVIII. Provided always, and be it enacted, That nothing in this Act contained relating to either of the misdemeanors aforesaid, nor any proceeding, conviction or judgment, to be had or taken thereupon, shall prevent, lessen or impeach any remedy at law or equity, which any party aggrieved by any such offence, might or would have had if this Act had not been passed; but nevertheless

These provi-
sions as to
wills and writ-
ings shall not
lessen any
other remedy.
Conviction
shall not be

* But see 6 Vic. c. 5, and 14 & 15 V. c. 2, s. 2.

evidence in actions against offender.

Offender shall not be convicted by evidence disclosed by himself.

nevertheless the conviction of such offender shall not be received in evidence in any action at law or suit in equity against him; and no person shall be liable to be convicted of either of the misdemeanors aforesaid, by any evidence whatever, in respect of any act done by him, if he shall at any time previously to his being indicted for such offence, have disclosed such act, on oath, in consequence of any compulsory process of any Court of Law or Equity in any action, suit or proceeding which shall have been *bona fide* instituted by any party aggrieved, or if he shall have disclosed the same in any examination or deposition before any Commissioners of Bankrupt.

Stealing Horses, Cows, Sheeps, &c.

This and the following sections to 36 inclusive, give jurisdiction to Justices out of General or Quarter Sessions.

XXIX. And be it enacted, That if any person shall steal any horse, mare, gelding, colt or filly, or any bull, cow, ox, heifer or calf, or any ram, ewe, sheep or lamb, or any wild, kill any of such cattle with intent to steal the carcass or skin, or any part of the cattle so killed, every such offender shall be guilty of Felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Stealing Dogs, or stealing Beasts or Birds ordinarily kept in confinement, and not the subjects of larceny.

XXX. And be it enacted, That if any person shall steal any dog, or shall steal any beast or bird ordinarily kept in a state of confinement, not being the subject of Larceny at common law, every such offender, being convicted thereof before a Justice of the Peace, shall for every such offence forfeit and pay, over and above the value of the dog, beast or bird, such sum of money, not exceeding five pounds, as to the Justice shall seem meet.

Stealing trees, shrubs, &c. wheresoever growing, &c.

XXXI. And be it enacted, That if any person shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be respectively growing, the stealing of such article or articles, or the injury done, being to the amount of a shilling at the least, every such offender being convicted before a Justice of the Peace, shall for every such offence forfeit and pay over and above the value of the article or articles stolen, or the amount of the injury done, such a sum of money, not exceeding five pounds, as to the Justice shall seem meet.

Stealing, &c. any live or dead fence, wooden fence, stile or gate.

XXXII. And be it enacted, That if any person shall steal, or shall cut, break, or throw down with intent to steal, any part of any live or dead fence, or any wooden post, pale, or rail, set up or used as a fence, or any stile or gate, or any part thereof, respectively, every such offender, being convicted before a Justice of the Peace, shall for every such offence forfeit and pay,

* But see 6 Vic. c. 5.

pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money, not exceeding five pounds, as to the Justice shall seem meet.

XXXIII. And be it enacted, That if the whole or any part of any tree, sapling or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, rail, stile, or gate, or any part thereof, being of the value of two shillings at the least, shall, by virtue of a search warrant, to be granted as hereinafter mentioned, be found in the possession of any person, or on the premises of any person with his knowledge, and such person, being carried before a Justice of the Peace, shall not satisfy the Justice that he came lawfully by the same, he shall on conviction by the Justice, forfeit and pay, over and above the value of the article or articles so found, any sum not exceeding two pounds.

Suspected persons in possession of wood, &c. not satisfactorily accounting for it.

XXXIV. And be it enacted, That if any person shall steal, or shall destroy, or damage with intent to steal any tree, sapling, shrub, bush, plant, root, fruit, or vegetable production growing in any garden, orchard, nursery-ground, hot-house, green-house, or conservatory, every such offender, being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money, not exceeding five pounds, as to the Justice shall seem meet; and if any person so convicted shall afterwards commit any of the said offences, such offender shall be deemed guilty of felony, and being convicted thereof shall be liable to be punished in the same manner as in the case of Simple Larceny.

Stealing, &c. of any vegetable production in a garden, &c. punishable on summary conviction.

XXXV. And be it enacted, That if any person shall steal, or shall destroy or damage with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land open or enclosed, not being a garden, orchard or nursery-ground, every such offender being convicted thereof before a Justice of the Peace, shall forfeit and pay over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money, not exceeding twenty shillings, as to the Justice shall seem meet, and in default of payment thereof, together with the costs, if ordered, shall be committed to the House of Correction for any term not exceeding one calendar month, unless payment be sooner made.

Stealing, &c. vegetable production not growing in gardens, &c.

XXXVI. And be it enacted, That if any person shall steal or rip, cut or break with intent to steal, any glass or woodwork belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material, respectively, fixed in or to any building whatsoever, or any thing made of metal fixed in

Stealing glass, woodwork or fixtures of any kind from buildings, and metal fixtures from grounds.

any land, being private property, or for a fence to any dwelling house, garden or area, or in any square, street, or other place, dedicated to public use or ornament, every such offender shall be guilty of Felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of Simple Larceny; and in case of any such thing fixed in any square, street, or other like place, it shall not be necessary to allege the same to be the property of any person.

Tenants and lodgers stealing any property from houses or apartments let to them.

XXXVII. And for the punishment of depredations committed by tenants and lodgers, Be it enacted, That if any person shall steal any chattel or fixture let to be used by him or her, in or with any house or with any house or lodging, whether the contract shall have been entered into by him or her, or by her husband, or by any person on behalf of him or her, or her husband, every such offender shall be guilty of Felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of Simple Larceny; and in every such case of stealing any chattel, it shall be lawful to prefer an indictment in the common form as for Larceny, and in every such case of stealing any fixture, to prefer an Indictment in the same form as if the offender were not a tenant or lodger, and in either case to lay the property in the owner or person letting to hire.

Clerks and servants stealing property of their masters.

XXXVIII. And for the punishment of depredations committed by Clerks and Servants in cases not punishable capitally, Be it enacted, That if any Clerk or Servant shall steal any chattel, money, or valuable security belonging to or in the possession or power of his master, every such offender, being convicted thereof, shall be liable at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Clerks or servants receiving any money, &c. on their master's account, and embezzling it, shall be deemed to have feloniously stolen it.

XXXIX. And for the punishment of embezzlements committed by Clerks and Servants, Be it declared and enacted, That if any Clerk or Servant, or any person employed for the purpose or in the capacity of a Clerk or Servant, shall, by virtue of such employment, receive or take into his possession any chattel, money or valuable security for, or in the name or on the account of his Master, and shall fraudulently embezzle the same or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his Master, although such chattel, money or security was not received into the possession of such Master otherwise than by the actual possession of his Clerk, Servant or other person so employed; and every such offender being convicted thereof, shall be liable, at the discretion of the Court, to any

* But see 6 Vic. c. 5, and 14 & 15 V. c. 2, s. 2.

any of the punishments which the Court may award as hereinbefore last mentioned.

XL. And for preventing the difficulties that have been experienced in the prosecution of the last mentioned offenders, Be it enacted, That it shall be lawful to charge in the indictment and proceed against the offender for any number of distinct acts of embezzlement, not exceeding three, which may have been committed by him against the same Master within the space of six calendar months from the first to the last of such acts; and in every such indictment, except where the offence shall relate to any chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved, or if he shall be proved to have embezzled any piece of coin or valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly.

Distinct acts of embezzlement may be charged in same indictment.

As to allegation and proof of property embezzled.

XLI. And for the punishment of embezzlements committed by agents entrusted with property, Be it enacted, That if any money or security for the payment of money shall be entrusted to any banker, merchant, broker, attorney or other agent, with any direction in writing to apply such money or any part thereof, or the proceeds or any part of the proceeds of such security, for any purpose specified in such direction, and he shall in violation of good faith, and contrary to the purpose so specified, in any wise convert to his own use or benefit such money, security or proceeds, or any part thereof, respectively, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary, for any term not less than seven years,* or imprisoned in any other Prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the Court shall award; and if any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of this Province or of the United Kingdom of *Great Britain and Ireland*, or of *Great Britain* or of *Ireland*, or of any British Colony or Foreign State or Colony, or in any fund of any body corporate, company or society, shall be entrusted to any banker, merchant, broker, attorney or other agent, for safe custody, or for any special purpose without any authority to sell,

Agents embezzling money entrusted to them, to be applied to any special purposes;

Or embezzling any goods or valuable security entrusted to them for safe custody, or for any special purposes, guilty of a misdemeanor.

* But see 6 Vic. c. 5, and 14 & 15 V. c. 2, s. 2.

sell, negotiate, transfer or pledge, and he shall in violation of good faith, and contrary to the object or purpose for which such chattel, security or power of attorney shall have been entrusted to him, sell, negotiate, transfer, pledge or in any manner convert to his own use or benefit such chattel or security, or the proceeds of the same or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate on any part thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable at the discretion of the Court, to any of the punishments which the Court may award as hereinbefore last mentioned.

Not to affect
trustees or
mortgagees;

Nor bankers,
&c. receiving
money due on
securities;

Or disposing
of securities
on which they
have a lien.

XLII. Provided always, and be it enacted, That nothing hereinbefore contained relating to agents, shall affect any trustee in or under any instrument whatever, or any mortgagee of any property real or personal in respect of any act done by such trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage; nor shall restrain any banker, merchant, broker, attorney or other agent from receiving any money which shall be or become actually due and payable upon or by virtue of any valuable security according to the tenor and effect thereof, in such manner as he might have done if this Act had not been passed, nor from selling, transferring or otherwise disposing of any securities or effects in his possession, upon which he shall have any lien, claim or demand, entitling him by law so to do; unless such sale, transfer or other disposal shall extend to a greater number or part of such securities or effects than shall be requisite for satisfying such lien, claim or demand.

Factors pledg-
ing for their
own use any
goods, or docu-
ments relating
to goods en-
trusted to them
for the purpose
of sale, guilty
of a misde-
meanor.

Not to extend
to cases where
the pledge
does not ex-
ceed the
amount of
their lien.

XLIII. And be it enacted, That if any factor or agent, entrusted for the purpose of sale with any goods or merchandize, or entrusted with any bill of lading, warehouse-keeper's or wharfinger's certificate, or warrant or order for delivery of goods or merchandize, shall for his own benefit and in violation of good faith, deposit or pledge any such goods or merchandize, or any of the said documents as a security for any money or negotiable instrument borrowed or received by such factor or agent, at or before the time of making such deposit or pledge, or intended to be thereafter borrowed or received, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,* or imprisoned in any other Prison or place of confinement, for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the Court shall award; but no such factor or agent shall be liable to any prosecution for depositing or pledging any such goods or merchandize, or any of the said documents, in case the same shall not be made a security for or subject to the pay-
ment

* But see 6 Vic. c. 5, and 14 & 15 V. c. 2, s. 2.

ment of any greater sum of money than the amount which at the time of such deposit or pledge was justly due and owing to such factor or agent from his principal, together with the amount of any bill or bills of exchange drawn by or on account of such principal, and accepted by such factor or agent.

XLIV. Provided always, and be it enacted, That nothing in this Act contained, nor any preceding conviction or judgment to be had or taken thereupon against any banker, merchant, broker, factor, attorney or other agent as aforesaid, shall prevent, lessen or impeach any remedy at law or in equity, which any party aggrieved by such offence might or would have had if this Act had not been passed; but, nevertheless, the conviction of any such offender shall not be received in evidence in any action at law or suit in equity against him; and no banker, merchant, broker, factor, attorney or other agent as aforesaid, shall be liable to be convicted by any evidence whatever as an offender against this Act, in respect of any act done by him, if he shall at any time previously to his being indicted for such offence, have disclosed such act on oath, in consequence of any compulsory process of any Court of law or equity in any action, suit or proceeding which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have disclosed the same in any examination or deposition before any Commissioners of Bankrupt.

These provisions as to agents shall not lessen any remedy which the party aggrieved now has.

XLV. And whereas a failure of justice frequently arises from the subtle distinction between Larceny and Fraud; for remedy thereof, Be it enacted, That if any person shall, by any false pretence, obtain from any other person any chattel, money or valuable security, with intent to cheat or defraud any person of the same, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years,* or imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment, by fine or imprisonment, or by both, as the Court shall award. Provided always, That if upon the trial of any person indicted for such misdemeanor, it shall be proved that he obtained the property in question in any such manner as to amount in law to Larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanor; and no such indictment shall be removeable by *certiorari*; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for Larceny upon the same facts.

Obtaining money under false pretences, a misdemeanor.

No acquittal on the ground that the case proved amounts to larceny.

Not to be afterwards tried for Larceny.

XLVI. And with regard to receivers of stolen property, Be it enacted, That if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing or taking

Where the original offence is felony,

* But see 6 Vic. c. 5, and 14 & 15 V. c. 2, s. 2.

the receiver of stolen property may be tried either as an accessory after the fact, or for a substantive felony.

taking whereof shall amount to a Felony, either at common law or by virtue of this Act, such person knowing the same to have been feloniously stolen or taken, every such receiver shall be guilty of Felony, and may be indicted and convicted either as an accessory after the fact, or for a substantive Felony, and in the latter case whether the principal Felon shall or shall not have been previously convicted or shall or shall not be amenable to justice; and every such receiver, howsoever convicted, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years,* or imprisoned in any other Prison or place of confinement for any term not exceeding two years: Provided always, that no person howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence.

Where the original offence is a misdemeanor, receiver may be prosecuted for a misdemeanor.

XLVII. And be it enacted, That if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining or converting whereof is made an indictable Misdemeanor by this Act, such person knowing the same to have been unlawfully stolen, taken, obtained or converted, every such receiver shall be guilty of a Misdemeanor, or may be indicted and convicted thereof, whether the person guilty of the principal Misdemeanor shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice; and every such receiver shall on conviction, be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any other term not less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

All receivers may be tried where the property is found in their possession, as well as where the receiving takes place.

XLVIII. And be it enacted, That if any person shall receive any chattel, money, valuable security, or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained or converted, every such person whether charged as an accessory after the fact to the Felony, or with a substantive Felony, or with a Misdemeanor only, may be dealt with, tried and punished in any District, County or place in which he shall have or shall have had any such property in his possession, or in any District, County or place in which the party guilty of the principal Felony or Misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the District, County or place where he actually received such property.

The owner of stolen property

XLIX. And to encourage the prosecution of offenders, Be it enacted, That if any person, guilty of any such Felony or Misdemeanor

* But see, 6 V. c. 5, and 14 & 15 V. c. 2, s. 2.

Misdemeanor as aforesaid, in stealing, taking, obtaining or converting, or in knowingly receiving any chattel, money, valuable security or other property whatsoever, shall be indicted for any offence by or on the behalf of the owner of the property, or his heir, curator, executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and the Court before whom any such person shall be so convicted, shall have power to award from time to time writs of restitution for the same property, or to order the restitution thereof in a summary manner: Provided always, that if it shall appear, before any award or order made, that any valuable security shall have been *bond fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument, shall have been *bond fide* taken or received by transfer or delivery by some person or body corporate, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had by any Felony or Misdemeanor been stolen, taken, obtained or converted as aforesaid, in such case the Court shall not award or order the restitution of such security.

Exception.

L. And be it enacted, That every person who shall corruptly take any money or reward, directly or indirectly, under pretence or on account of helping any person to any chattel, money, valuable security, or other property whatsoever, which shall by any Felony or Misdemeanor have been stolen, taken, obtained or converted as aforesaid, shall, (unless he cause the offender to be apprehended and brought to trial for the same,) be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Taking a reward for helping to the recovery of stolen property without bringing the offender to trial.

LI. And be it enacted, That if any person shall publicly advertise a reward for the return of any property whatsoever, which shall have been stolen or lost, and shall in such advertisement use any words purporting that no question will be asked, or shall make use of any words in any public advertisement, purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property, or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of a loan upon any property stolen or lost, the money so paid or advanced, or any other sum of money or reward for the return of such property, or if any person shall print or publish any such advertisement in any of the above cases, every such person shall forfeit the sum of twenty pounds for every such offence, to any person who will sue for the same by action of debt, to be recovered withfull costs of suit.

Advertising a reward for the return of stolen property without inquiry.

LII.

* But see 6 V. c. 5, and 14 & 15 V. c. 2, s. 2.

Receivers of property, where the original offence is punishable on summary conviction.

LII. And be it enacted, That where the stealing or taking of any property whatsoever is by this Act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall, on conviction thereof before a Justice of the Peace, be liable for every first, second or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second or subsequent offence of stealing or taking such property is by this Act made liable.

Principals in the second degree, and accessories.

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

Abettors in misdemeanors.

LIV. And be it enacted, That if any person shall aid, abet, counsel, or procure the commission of any offence which is by this Act punishable on summary conviction, either for every time of its commission or for the first and second time only, or for the first time only, every such person shall, on conviction before a Justice or Justices of the Peace, be liable for every first, second or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second or subsequent offence as a principal offender is by this Act made liable.

Abettors in offences punishable on summary conviction.

A person in the act of committing any offence may be apprehended without a warrant.

LV. And for the more effectual apprehension and discovery of all offenders punishable under this Act, Be it enacted, That any person found committing any offence punishable either upon indictment or upon summary conviction by virtue of this Act, may be immediately apprehended without a warrant, by any Peace Officer, or by the owner of the property on or with respect to which the offence shall be committed, or by the servant of or any person authorized by such owner, and forthwith taken before some neighbouring Justice of the Peace, to be dealt with according to law; and if any credible witness is reasonable cause to suspect that any property whatsoever, on or with respect to which any such offence shall have been committed, is in any dwelling-house, out-house, garden, yard, croft, or other place or places, the Justice may grant a warrant to search such dwelling-house, out-house, garden, yard, croft

A Justice, upon good ground of suspicion proved on oath, may grant a search warrant.

or other place or places, for such property, as in the case of stolen goods; and any person to whom any property shall be offered to be sold, pawned or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and if in his power is required, to apprehend and forthwith to carry before a Justice of the Peace, the party offering the same, together with such property, to be dealt with according to Law.

Any person to whom stolen property is offered, may seize the party offending.

LVI. And be it enacted, That the prosecution of every offence punishable on summary conviction under this Act, shall be commenced within three calendar months after the commission of the offence, and not otherwise; and the evidence of the party aggrieved shall be admitted in proof of the offence.

Limitation as to summary proceedings.

LVII. And for the more effectual prosecution of all offences punishable on summary conviction under this Act, Be it enacted, That where any person shall be charged, on the oath of a credible witness, before any Justice of the Peace, with any such offence, the Justice may summon the person charged to appear at a time and place to be named in the summons; and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person by delivering the same to him personally, or by leaving the same at his usual place of abode) the Justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person and bringing him before himself, or some other Justice or Justices of the Peace; or the Justice before whom the charge shall be made, may (if he shall so think fit,) without any previous summons (unless when otherwise specially directed) issue such a warrant; and the Justice or Justices before whom the person charged shall appear or be brought, shall proceed to hear and determine the case.

Mode of compelling the appearance of persons punishable on summary conviction.

See also the more extended provisions on this subject in 14 & 15 V. c. 95, s. 1 to 7.

LVIII. And with regard to the application of all forfeitures and penalties upon summary convictions under this Act, Be it enacted, That every sum of money which shall be forfeited for, or as the value of any property stolen or taken, or for or as the amount of any injury done (such value or amount to be assessed in each case by the convicting Justice or Justices) shall be paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence, and in that case, or where the party aggrieved is unknown, such sum shall be applied in the same manner as a penalty; Provided always, that where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the value of the property, or to the amount of the injury done, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders only, and the corresponding sum or sums, forfeited by the other offender or offenders shall be applied in the same manner.

Application of forfeitures and penalties on summary convictions. Proviso.

Proviso.

manner as any penalty imposed by a Justice of the Peace is hereinbefore directed to be applied.

If a person summarily convicted shall not pay, &c., the Justice may commit him.

LIX. And be it enacted, That in every case of a summary conviction under this Act, where the sum which shall be forfeited for the value of the property stolen or taken, or for the amount of the injury done, or which shall be imposed as a penalty by any Justice or Justices, together with the costs, if awarded, (which costs such Justice or Justices is and are hereby authorized to award, if he or they shall think fit, in any case of a summary conviction under this Act) shall not be paid either immediately after the conviction, or within such period as the Justice or Justices shall at the time of the conviction appoint, which he or they, is and are hereby authorized to appoint, it shall be lawful for the convicting Justice or Justices (unless where otherwise specially directed) to commit the offender to the Common Gaol or House of Correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the Justice or Justices, for any term not exceeding two calendar months, where the amount of the sum forfeited, or of the penalty imposed, or of both, as the case may be, together with the costs, shall not exceed five pounds; and for any term not exceeding six calendar months, where the amount with costs shall exceed five pounds, and shall not exceed ten pounds; the commitment to be determinable in each of the cases aforesaid, upon payment of the amount and costs.

See also 14 & 15 V. c. 95, s. 17.

Scale of imprisonment.

Justice may discharge the offender in certain cases.

LX. Provided always, and be it enacted, That where any person shall be summarily convicted, before a Justice or Justices of the Peace, of any offence against this Act, and it shall be a first conviction, it shall be lawful for the Justice or Justices, if he or they shall so think fit, to discharge the offender from his conviction upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as shall be ascertained by such Justice or Justices.

Pardon for non-payment of money.

LXI. And be it enacted, That it shall be lawful for the Queen's Majesty, and for the Governor, Lieutenant Governor, or Person administering the Government of this Province, to extend the Royal Mercy to any person imprisoned by virtue of this Act, although he shall be imprisoned for non-payment of money to some party other than the Crown.

A summary conviction shall be a bar to any other proceeding for the same offence.

LXII. And be it enacted, That in case any person convicted of any offence punishable upon summary conviction by virtue of this Act, shall have paid the sum adjudged to be paid, together with costs, if awarded, under such conviction, or shall have received a remission thereof from the Crown, or shall have suffered the imprisonment awarded for non-payment thereof or the imprisonment adjudged in the first instance, or shall have been discharged from his conviction in the manner aforesaid,

said, in every such case he shall be released from all further or other proceedings for the same cause.

LXIII. And be it enacted, That the Justice or Justices before whom any person shall be convicted of any offence against this Act, may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall require, *videlicet* :—

Form of conviction.

“ Be it remembered, that on the _____ day of _____ in the year of our Lord _____ at _____ in the District of _____ (as the case may be) A. O. is convicted before me, J. P. one of Her Majesty’s Justices (or before us J. P. and S. L. Justices) of the Peace for the said District, for that he, the said A. O. did (specify the offence and the time and place when, and where the same was committed, as the case may be; and on a second conviction, state the first conviction) and I, the said J. P. (or, we the said J. P. and S. L.) adjudge the said A. O. for his said offence to be imprisoned in the _____ (or, to be imprisoned in the _____ and there kept to hard labour) for the space of _____ (or, to forfeit and pay _____ here state the penalty actually imposed, or state the penalty and also the value of the articles stolen, embezzled or taken, or the amount of the injury done, as the case may be) and (in any case where costs shall be awarded) also to pay the sum of _____ for costs, and in default of immediate payment of the said sum (or sums,) to be imprisoned in the _____ (or to be imprisoned in the _____ and there kept to hard labour,) for the space of _____ unless the said sum (or sums) shall be sooner paid (or, and I or we) order that the said sum (or sums) shall be paid by the said A. O. on or before the _____ day of _____ that the said sum of _____ (i. e. the penalty only) shall be paid to me (or us, the convicting Justice or Justices,) and that the sum of _____ (i. e. the value of the articles stolen, or the amount of the injury done) shall be paid to C. D. (the party aggrieved, unless he is unknown or has been examined in proof of the offence, in which case state that fact, and dispose of the whole like the penalty as before) and (if the Justice or Justices shall think proper to award the complainant his costs) I (or we) order, that the said sum of _____ for costs shall be paid to C. D. (the complainant.)

See also the forms given in 14 & 15 V. c. 95, and Schedules thereto.

imposed, or state the penalty and also the value of the articles stolen, embezzled or taken, or the amount of the injury done, as the case may be) and (in any case where costs shall be awarded) also to pay the sum of _____ for costs, and in default of immediate payment of the said sum (or sums,) to be imprisoned in the _____ (or to be imprisoned in the _____ and there kept to hard labour,) for the space of _____ unless the said sum (or sums) shall be sooner paid (or, and I or we) order that the said sum (or sums) shall be paid by the said A. O. on or before the _____ day of _____ that the said sum of _____ (i. e. the penalty only) shall be paid to me (or us, the convicting Justice or Justices,) and that the sum of _____

(i. e. the value of the articles stolen, or the amount of the injury done) shall be paid to C. D. (the party aggrieved, unless he is unknown or has been examined in proof of the offence, in which case state that fact, and dispose of the whole like the penalty as before) and (if the Justice or Justices shall think proper to award the complainant his costs) I (or we) order, that the said sum of _____ for costs shall be paid to C. D. (the complainant.)

Given under my hand and seal, (or our hands and seals) the day and year first above mentioned.”

LXIV. And be it enacted, That in all cases where by this Act two or more Justices of the Peace are authorized and required to hear and determine any complaint, one Justice shall be

One Justice may receive original information, &c.

where two or more Justices are empowered to hear and determine.

See also
14 & 15 V. c.
95, s. 25.

be competent to receive the original information or complaint, and to issue the summons or warrant requiring the parties to appear before two or more Justices of the Peace; and after examination upon oath into the merits of the said complaint, and the adjudication thereupon by any such two Justices being made, all and every the subsequent proceedings to enforce obedience thereto, or otherwise, whether respecting the penalty, fine, imprisonment, costs, or other matter or thing relating to the offence, may be enforced by either of the said Justices, or by any other Justice of the Peace for the same District, County, City, Town or Place, in such and the like manner as if done by the same two Justices who so heard and adjudged the said complaint; and where the original complaint or information shall be made to any Justice or Justices of the Peace, different from the Justice or Justices before whom the same shall be heard and determined, the form of conviction shall be made conformable and according to the fact.

Appeal.

LXV. And be it enacted, That in all cases, where the sum adjudged to be paid upon any summary conviction, shall exceed five pounds, or the imprisonment adjudged shall exceed one calendar month, or the conviction shall take place before one Justice only, any person who shall think himself aggrieved by any such conviction, may appeal to the next Court of General or Quarter Sessions, which shall be holden not less than twelve days after the day of such conviction, for the District, County or Place wherein the cause of complaint shall have arisen: Provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such Sessions; and shall also either remain in custody until the Sessions, or enter into recognizance with two sufficient sureties before a Justice of the Peace, conditioned personally to appear at the said Sessions, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and on such being given, and such recognizance being entered into, the Justice before whom the same shall be entered into, shall liberate such person, if in custody; and the Court at such Sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the Court shall seem meet; and in case of the dismissal of the appeal or the affirmance of the conviction, the Court shall order and adjudge the offender to be punished according to the conviction, and to pay such costs, if any, as shall be awarded, and shall, if necessary, issue process for enforcing such Judgment.

Proviso.

Convictions to be returned to Quarter Sessions.

LXVI. And be it enacted, That every Justice of the Peace before whom any person shall be convicted of any offence against this Act, shall transmit the conviction to the next Court of General or Quarter Sessions, which shall be holden for the District, County

County or Place wherein the offence shall have been committed, there to be kept by the proper Officer among the Records of the Court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper Officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against, until the contrary be shewn.

How far evidence in future cases.

See also 2 V. (3) c. 20.

LXVII. And for the protection of persons acting in the execution of this Act, Be it enacted, That all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the District, County or Place where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such action and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become non-suit, or discontinue any such action, after issue joined, or if upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial shall be had shall certify his approbation of the action and of the verdict obtained thereupon.

Venue in proceedings against persons acting under this Act.

Notice of action.

General issue, &c.

But see the Act 14 & 15 V. c. 54, for protection of Magistrates, &c.

LXVIII. And be it enacted, That if any person having stolen or otherwise unlawfully taken any chattel, money, valuable security, or other property whatsoever, the stealing or unlawfully taking whereof is made punishable by indictment by any of the provisions of this Act, in any part of Her Majesty's dominions, shall afterwards have the same property in his possession in any part of this Province, he may be dealt with, indicted, tried and punished for such offence under this Act, in that part of this Province where he shall so have such property, in the same manner as if he had actually stolen or unlawfully taken it in that part; and if any person in any part of this Province shall receive or have any chattel, money, valuable security, or other property whatsoever, which shall have been stolen or otherwise unlawfully taken in any other part of Her Majesty's dominions, such person knowing the said property to have been stolen or otherwise unlawfully taken, he may be dealt

This Act to extend to offences committed out of this Province in certain cases.

dealt with, indicted, tried and punished for such offence in that part of this Province where he shall so receive or have the stolen property, in the same manner as if it had been originally stolen or unlawfully taken in that part of this Province as aforesaid.

All sums to be
currency.

LXIX. And be it enacted, That all fines, forfeitures and penalties imposed by this Act, and all sums expressed as the value of any goods, chattels or other property herein mentioned, shall be deemed and taken to be current money of this Province.

All Acts re-
pugnant to this
Act repealed.

LXX. And be it enacted, That all Acts or parts of Acts or provisions of Law in force in this Province, or any part thereof immediately before the time when this Act shall come into force, which shall be inconsistent with or contradictory to this Act, or which make any provision in any matter provided for by this Act, other than such as is hereby made in such matter, shall, from and after the time when this Act shall come into force, be and they are hereby repealed, except in so far as may relate to any offence committed before the said time, which shall be dealt with and punished as if this Act had not been passed.*

4 & 5 VICT. CAP. 26.—1841.

An Act for consolidating and amending the Laws in this Province relative to Malicious Injuries to Property.

Preamble.

WHEREAS it is expedient to amend and consolidate the provisions contained in various Statutes now in force in this Province relative to Malicious Injuries to Property; Be it therefore enacted, &c., That this Act shall commence from and after the first day of January, one thousand eight hundred and forty-two.

Commence-
ment of this
Act.

Setting fire to
a dwelling
house, &c.

II. And be it enacted, That whosoever shall unlawfully and maliciously set fire to any dwelling house, any person being therein, shall be guilty of Felony, and being convicted thereof shall suffer death.

Setting fire to
a church or
chapel, house,
warehouse,
&c.

III. And be it enacted, That whosoever shall unlawfully and maliciously set fire to any Church, Chapel or Meeting House for the exercise of any mode or form of religious worship whatever, or shall unlawfully and maliciously set fire to any House, Stable, Coach-House, Out-house, Warehouse, Office, Shop, Mill, Malt-House, Hop-Oast, Barn or Granary, or to any building or erection used in carrying on any trade or manufacture,

OR

* But see 4 & 5 Vic. c. 24, was to the administration of the Law enacted by this Act.

or any branch thereof, whether the same or any of them, respectively, shall then be in the possession of the offender, or in the possession of any other person, shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

IV. And be it enacted, That if any person shall unlawfully and maliciously cut, break or destroy, or damage with intent to destroy, or to render useless, any Goods or Article of Silk, Woollen, Linen or Cotton, or of any one or more of those materials mixed with each other or mixed with any other material, or any Frame-work-knitted Piece, Stocking, Hose or Lace, respectively, being in the Loom or Frame, or on any Machine or Engine, or on the Rack or Tenters, or in any stage, process or progress of manufacture; or shall unlawfully and maliciously cut, break or destroy or damage with intent to destroy or to render useless, any Warp or Shute of Silk, Woollen, Linen or Cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any Loom, Frame, Machine, Engine, Rack, Tackle or Implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles; or shall by force enter into any House, Shop, Building or Place, with intent to commit any of the offences aforesaid, every such offender shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Destroying silk, woollen, linen or cotton goods in the loom, &c., or any machinery belonging to those manufactures, &c.

V. And be it enacted, That if any person shall unlawfully and maliciously cut, break or destroy, or damage with intent to destroy or to render useless, any Threshing Machine, or any Machine or Engine, whether fixed or moveable, prepared for or employed in any manufacture whatsoever, (except the manufacture of Silk, Woollen, Linen, or Cotton Goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any Frame-work-knitted Piece, Stocking, Hose or Lace,) every such offender shall be guilty of Felony, and being convicted thereof, shall be liable at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,* or in any other Prison or place of confinement for any term not exceeding two years.

Destroying threshing or other machines in any other manufacture than the foregoing.

VI.

* But see 4 Vic. c. 5.

Riotously demolishing, &c. a church, chapel, house, or certain buildings, or any machinery used in any manufacture.

VI. And be it enacted, That if any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish, pull down, or destroy, or begin to demolish, pull down or destroy any Church, Chapel or Meeting House, for the exercise of any mode or form of religious worship, or any House, Stable, Coach-House, Out-House, Ware-House, Office, Shop, Mill, Malt-House, Hop-Oast, Barn or Granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, every such offender shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Setting fire to ships or vessels with intent to commit murder.

VII. And be it enacted, That whosoever shall unlawfully and maliciously set fire to, cast away, or in any wise destroy any Ship or Vessel, either with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of Felony, and being convicted thereof, shall suffer death.

Hanging out false lights to cause shipwreck.

VIII. And be it enacted, That whosoever shall unlawfully exhibit any false light or signal, with intent to bring any Ship or Vessel into danger, or shall unlawfully and maliciously do any thing to the immediate loss or destruction of any Ship or Vessel in distress, shall be guilty of Felony, and being convicted thereof, shall suffer death.

Setting fire to ships or vessels with intent to destroy the same.

IX. And be it enacted, That whosoever shall unlawfully and maliciously set fire to, or in any wise destroy any Ship or Vessel, whether the same be completed or in an unfinished state, or shall unlawfully and maliciously set fire to, cast away, or in any wise destroy any Ship or Vessel, with intent thereby to prejudice any Owner or Part-Owner of such Ship or Vessel, or of any goods on board the same, or any person that hath underwritten or shall underwrite any policy of insurance upon such Ship or Vessel, or on the freight thereof, or upon any goods on board the same, shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any other term not less than seven years,* or to be imprisoned in any other Prison or place of confinement for any time not exceeding two years.

Impeding any person endeavouring to save life from

X. And be it enacted, That whosoever shall by force prevent or impede any person endeavouring to save his life from any Ship or Vessel which shall be in distress or wrecked, stranded,

or

* But see 6 V. c. 5, and 14 & 15 V. c. 2, s. 2.

or cast on shore, (whether he shall be on board or shall have quitted the same) shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

any ship
wrecked, &c.

XI. And be it enacted, That whosoever shall unlawfully and maliciously destroy any part of any Ship or Vessel which shall be in distress, or wrecked; stranded or cast on shore, or any Goods, Merchandize or Article of any kind belonging to such Ship or Vessel, shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Destroying
wrecks or any
articles be-
longing there-
to.

XII. And be it enacted, That if any person shall unlawfully and maliciously break down or cut down any Sea-Bank or Sea Wall, or the Bank or Wall of any River, Canal or Marsh, whereby any land shall be overflowed or damaged, or shall be in danger of being so, or shall unlawfully and maliciously throw down, level or otherwise destroy any Lock, Sluice, Flood-Gate or other work on any navigable River or Canal, every such offender shall be guilty of Felony, and being convicted thereof, shall be imprisoned for any term not exceeding four years; † and if any person shall unlawfully and maliciously cut off, draw up or remove any Piles, Chalk or other materials fixed in the ground and used for securing any Sea-Bank or Sea-Wall, or the Bank or Wall of any River, Canal or Marsh, or shall unlawfully and maliciously open or draw up any Flood-Gate, or do any other injury or mischief to any navigable River or Canal with intent, and so as thereby to obstruct or prevent the carrying on, completing or maintaining the navigation thereof, every such offender shall be guilty of Felony, and being convicted thereof, shall be imprisoned for any term not exceeding two years.

Destroying
any sea-bank
&c. or works
on any river or
canal.

Removing the
piles of any
sea-bank, &c.
or doing any
damage to ob-
struct the na-
vigation of a
river or canal.

XIII. And be it enacted, That if any person shall unlawfully and maliciously pull down, or in any wise destroy any public Bridge, or do any injury with intent, and so as thereby to render such Bridge or any part thereof dangerous or impassable, every such offender shall be guilty of Felony, and being convicted thereof, shall be imprisoned for any term not exceeding four years.*

Injury to a
public bridge.

XIV. And be it enacted, That if any person shall unlawfully and maliciously throw down, level, or otherwise destroy, in whole or in part, any Turnpike Gate, or any Wall, Chain, Rail, Post, Bar or other Fence belonging to any Turnpike Gate, or

Destroying a
turnpike gate,
toll house, &c.

set

* But see 6 V. c. 5, and 14 & 15 V. c. 2, s. 2.

† See 6 Vic. c. 5, s. 3.

set up or erected to prevent passengers passing by without paying any Toll directed to be paid by any Act or Acts, Ordinance or Ordinances relating thereto, in force in this Province, or any House, Building or Weighing Engine erected for the better collection, ascertainment, or security of any such Toll, every such offender shall be guilty of a Misdemeanor, and being convicted thereof, shall be punished accordingly.

Breaking down the dam of a fishery &c. or mill dam.

XV. And be it enacted, That if any person shall unlawfully and maliciously break down or otherwise destroy, the Dam of any Fish Pond, or of any Water which shall be private property, or in which there shall be any private right of Fishery with intent thereby to take or destroy any of the Fish in such Pond or Water, or so as thereby to cause the loss or destruction of any of the Fish, or shall unlawfully and maliciously put any lime or other noxious material in any such Pond or Water, with intent thereby to destroy any of the Fish therein, or shall unlawfully and maliciously break down or otherwise destroy the Dam of any Mill Pond, every such offender shall be guilty of a Misdemeanor, and being convicted thereof, shall be punished accordingly.

Killing or maiming cattle.

XVI. And be it enacted, That if any person shall unlawfully and maliciously kill, maim or wound any Cattle, every such offender shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Setting fire to agricultural produce.

XVII. And be it enacted, That whoever shall unlawfully or maliciously set fire to any Stack of Corn, Grain, Pulse, Peat, Coals, Charcoal, or Wood, or any Steer of Wood, shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Destroying hop-binds.

XVIII. And be it enacted, That if any person shall unlawfully and maliciously cut or otherwise destroy any Hop-Binds, growing on poles in any plantation of Hops, every such offender shall be guilty of Felony, and being convicted thereof, shall be imprisoned for any term not exceeding four years.†

Destroying or damaging trees, shrubs, &c. growing in

XIX. And be it enacted, That if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any Tree, Sapling or Shrub, or

* But see 6 Vic. c. 5, and 14 & 15 V. c. 2, s. 2.

† See 6 Vic. c. 5, s. 3.

or any Underwood, respectively growing in any Park, Pleasure-ground, Garden, Orchard or Avenue, or in any ground adjoining or belonging to any Dwelling House, every such offender shall be guilty of a Misdemeanor, and being convicted thereof, shall be punished accordingly; and if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any Tree, Sapling or Shrub or any Underwood, respectively, growing elsewhere than in any of the situations hereinbefore mentioned, every such offender (in case the amount of the injury done shall exceed the sum of one pound) shall be guilty of a Misdemeanor, and being convicted thereof, shall be punished accordingly.

certain situations.

See also *Agricultural Abuses Prevention Act 13 & 14 V. c. 40 s. 3. &c.*

The like as to trees, &c. growing elsewhere, if the damage exceed one pound.

XX. And be it enacted, That if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any Tree, Sapling or Shrub, or any Underwood, wheresoever the same may be respectively growing, the injury done being to the amount of one shilling at the least, every such offender, being convicted thereof, before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding one pound; as to the Justice shall seem meet.

Destroying or damaging trees, shrubs or underwood, &c. wheresoever growing to the amount of damage punishable on summary conviction.

This and the following clauses to 24 inclusive, apply to Justices out of General or Quarter Sessions.

Destroying any fruit or vegetable production in a garden, &c.

XXI. And be it enacted, That if any person shall unlawfully and maliciously destroy, or damage with intent to destroy any Plant, Root, Fruit or Vegetable Production, growing in any Garden, Orchard, Nursery Ground, Hot-House, Green-House or Conservatory, every such offender being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding two pounds, as to the Justice shall seem meet.

Destroying &c. vegetable production not growing in gardens.

XXII. And be it enacted, That if any person shall unlawfully and maliciously destroy, or damage with intent to destroy any cultivated Root or Plant used for the food of man or beast or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or enclosed not being a garden, orchard or nursery ground, every such offender, being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding twenty shillings, as to the Justice shall seem meet.

Destroying &c. any fence, wall, stile or gate.

XXIII. And be it enacted, That if any person shall unlawfully and maliciously cut, break, throw down, or in any wise destroy any Fence of any description whatsoever, or any Wall, Stile, or Gate, or any part thereof respectively, every such offender, being convicted before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding one pound, as to the Justice shall seem meet.

XXIV.

Persons committing damage to property in any case not previously provided for, may be compelled by a Justice to pay compensation not exceeding £5.

XXIV. And be it enacted, That if any person shall wilfully or maliciously commit any damage or injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no remedy or punishment is hereinbefore provided, every such person, being convicted thereof before a Justice of the Peace, shall forfeit and pay such sum of money as shall appear to the Justice to be a reasonable compensation for the damage, injury or spoil so committed, not exceeding the sum of five pounds; which sum of money shall, in case of private property, be paid to the party aggrieved, except where such party shall have been examined in proof of the offence; and in such case, or in the case of property of a public nature, or wherein any public right is concerned, the money shall be applied in such manner as every penalty imposed by a Justice of the Peace under this Act, is hereinafter directed to be applied: Provided always, That nothing herein contained shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of.

Proviso.

Malice to the owner not essential to any offence under this Act.

XXV. And be it enacted, That every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment, upon summary conviction, shall equally apply and be enforced, whether the offence be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise.

Principals in the second degree and accessories.

XXVI. And be it enacted, That in the case of every Felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any Felony punishable under this Act, shall, on conviction, be liable to be imprisoned for any term not exceeding two years, and every person who shall aid, abet, counsel or procure the commission of any Misdemeanor, punishable under this Act, shall be liable to be indicted and punished as a principal offender.

Abettors in misdemeanors.

The Court may, for all offences within this Act, order hard labour or solitary confinement.

XXVII. And be it enacted, That where any person shall be convicted of any indictable offence punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour in the Common Gaol or House of Correction; and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the Court in its discretion shall seem meet.

XXVIII.

XXVIII. And for the more effectual apprehension of all offenders against this Act, Be it enacted, That any person found committing any offence against this Act, whether the same be punishable upon indictment or upon summary conviction, may be immediately apprehended, without a warrant, by any Peace Officer or the owner of the property injured, or his servant or any person authorized by him, and forthwith taken before some neighbouring Justice of the Peace, to be dealt with according to law.

Persons in the act of committing any offence may be apprehended without a warrant.

XXIX. And be it enacted, That the prosecution for every offence punishable on summary conviction under this Act, shall be commenced within three calendar months after the commission of the offence, and not otherwise; and the evidence of the party aggrieved shall be admitted in proof of the offence, and also the evidence of any inhabitant of the District, County or Place in which the offence shall have been committed, notwithstanding any forfeiture or penalty incurred by the offence may be payable to any public fund of such District, County or Place.

Limitation as to summary proceedings.

Competency of witnesses.

XXX. And for the more effectual prosecution of all offences punishable on summary conviction under this Act, Be it enacted, That where any person shall be charged on the oath of a credible witness, before any Justice of the Peace, with any such offence, the Justice may summon the person charged to appear at a time and place to be named in such summons, and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode) the Justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person, and bringing him before himself or some other Justice of the Peace; or the Justice before whom the charge shall be made, may, if he shall so think fit, without any previous summons, (unless where otherwise specially directed) issue such warrant; and the Justice before whom the person charged shall appear or be brought, shall proceed to hear and determine the case.

Mode of compelling the appearance of persons punishable on summary conviction.

See also 14. & 15 V. c. 95, s. 1 to 7.

XXXI. And be it enacted, That where any offence is by this Act punishable on summary conviction, any person who shall aid, abet, counsel or procure the commission of such offence, shall, on conviction before a Justice of the Peace, be liable for every such offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of such offence as a principal offender is by this Act made liable.

Abettors in offences punishable on summary conviction.

XXXII. And with regard to the application of all forfeitures and penalties upon summary convictions under this Act, Be it enacted, That every sum of money which shall be forfeited for the amount of any injury done, (such amount to be assessed

Application of forfeitures and penalties upon summary convictions.

in

in each case by the convicting Justice) shall be paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence; and in that case, or where the party aggrieved is unknown, such sum shall be applied in the same manner as a penalty; and every sum which shall be imposed as a penalty by any Justice of the Peace, whether in addition to such amount or otherwise, and shall be paid to the convicting Justice: Provided always, that where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the amount of the injury done, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders only, and the corresponding sum or sums forfeited by the other offender or offenders, together with all penalties, shall be applied in the same manner as any penalty is by law directed to be applied.

Proviso.

If a person summarily convicted shall not pay &c., the Justice may commit him.

Scale of imprisonment.

XXXIII. And be it enacted, That in every case of a summary conviction under this Act, where the sum which shall be forfeited for the amount of the injury done, or which shall be imposed as a penalty by the Justice, shall not be paid, either immediately after the conviction, or within such period as the Justice shall at the time of conviction appoint, it shall be lawful for the convicting Justice, (unless where otherwise specially directed) to commit the offender to the Common Gaol or House of Correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the Justice, for any term not exceeding two calendar months, where the amount of the sum forfeited or of the penalty imposed, or of both (as the case may be) together with the costs, shall not exceed five pounds; and for any term not exceeding four calendar months where the amount with costs shall exceed five pounds, and not exceed ten pounds; and for any term not exceeding six calendar months where the amount with costs shall exceed ten pounds; the commitment to be determinable in each of the cases aforesaid upon the payment of the amount and costs.

The Justice may discharge the offender in certain cases.

XXXIV. Provided always, and be it enacted, That where any person shall be summarily convicted before a Justice of the Peace of any offence against this Act, and it shall be a first conviction, it shall be lawful for the Justice, if he shall so think fit, to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the Justice.

Pardon for non-payment of money.

XXXV. And be it enacted, That it shall be lawful for the Queen's Majesty, or for the Governor, Lieutenant Governor or Person administering the Government of this Province for the time being, to extend the Royal Mercy to any person imprisoned by

by virtue of this Act, although he shall be imprisoned for non-payment of money to some party other than the Crown.

XXXVI. And be it enacted, That in case any person convicted of any offence punishable upon summary conviction by virtue of this Act, shall have paid the sum adjudged to be paid together with costs, under such conviction, or shall have received a remission thereof from the Crown, or shall have suffered the imprisonment awarded for non-payment thereof, or the imprisonment adjudged in the first instance, or shall have been discharged from his conviction in the manner aforesaid, in every such case he shall be released from all further or other proceedings for the same cause.

A summary conviction shall be a bar to any other proceeding for the same cause.

XXXVII. And be it enacted, That the Justice before whom any person shall be convicted of any offence against this Act, may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case may require, *videlicet* :

Form of conviction.

“ Be it remembered that on the _____ day of _____
in the year of our Lord _____
at _____ in the District (or City, &c.)

See also the forms given in 14 & 15 V. c. 95, and the Schedules thereto.

as the case may be) A. O. is convicted before me, J. P. one of Her Majesty's Justices of the Peace for the said District (or City &c.) for that he the said A. O. did (specify the offence, and the time and place when and where the same was committed, as the case may be) and I, the said J. P. adjudge the said A. O. for his said offence to be imprisoned in the

(or to be imprisoned in the _____ and there kept to hard labour,) for the space of _____ (or, I adjudge the said A. O. for his said offence to forfeit and pay _____ (here state the penalty actually imposed, or state the penalty and also the amount of the injury done, as the case may be,) and also to pay the sum of _____

for costs, and in default of immediate payment of the said sums, to be imprisoned in the _____ (or, to be imprisoned in the _____ and there kept to hard labour) for the space of _____ unless the said sums shall be sooner paid ; (or, and I order that the said sums shall be paid by the said A. O. on or before the _____ day of _____ and I direct that the

said sum of _____ (i. e. the penalty only) shall be paid to me the convicting Justice, and that the said sum of _____ (i. e. the sum for the amount of the injury done) shall be paid to C. D. (the party aggrieved, unless he is unknown, or has been examined in proof of the offence, in which case state that fact and dispose of the whole like the penalty as before) ; and I order that the said sum of _____ for costs, shall be paid to _____ (the complainant.)

Given under my hand and seal the day and year first above mentioned.”

XXXVIII.

Appeal.

XXXVIII. And be it enacted, That in all cases where the sum adjudged to be paid on any summary conviction shall exceed five pounds, or the imprisonment adjudged shall exceed one calendar month, or the conviction shall take place before one Justice only, any person who shall think himself aggrieved by any such conviction, may appeal to the next Court of General or Quarter Sessions, which shall be holden not less than twelve days after the day of such conviction for the District, Inferior District, County or Place wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof within three days after such conviction, and seven clear days at the least before such Sessions, and shall also either remain in custody until the Sessions, or enter into a recognizance, with two sufficient sureties before a Justice of the Peace, conditioned personally to appear at the said Sessions, and to try such appeal and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and upon such notice being given, and such recognizance being entered into, the Justice before whom the same shall be entered into, shall liberate such person if in custody; and the Court at such Sessions shall hear and determine the matter of the appeal, and shall make such order therein with or without costs to either party, as to the Court shall seem meet; and in case of the dismissal of the appeal or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction; and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

Convictions to be returned to the Quarter Sessions.

See also 2 V. (3) c. 20.

How far evidence in future cases.

XXXIX. And be it enacted, That every Justice of the Peace, before whom any person shall be convicted of any offence against this Act, shall transmit the conviction to the next Court of General or Quarter Sessions which shall be holden for the District or Inferior District, County or Place, wherein the offence shall have been committed, there to be kept by the proper officer among the records of the Court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper Officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shown.

Limitation of time, and Venue in proceedings under this Act.

Notice of action.

XL. And for the protection of persons acting in the execution of this Act, Be it enacted, That all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the District or Inferior District where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month

month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become non-suit or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between Attorney and Client, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial shall be, shall certify his approbation of the action, and of the verdict obtained thereupon.

General issue.

But See also the Act 14 & 15 V. c. 54, for the protection of Magistrates.

XLI. And be it enacted, That all fines, forfeitures and penalties imposed by this Act, and all sums expressed as the value of any Goods, Chattels, or other Property herein mentioned, shall be deemed and taken to be current money of this Province.

Fines, &c. to be in current money.

XLII. And be it enacted, That all Act or parts of Acts, or Provisions of Law in force in this Province or any part thereof, immediately before the time when this Act shall come into force, which shall be inconsistent with or contradictory to this Act, or which make any provision in any matter provided for by this Act, other than such as is hereby made in such matter, shall, from and after the time when this Act shall come into force, be, and they are hereby repealed, except in so far as may relate to any offence committed before the said time, which shall be dealt with and punished as if this Act had not been passed.

Repealing clause.

Proviso.

10 & 11 VICT. CAP. 9.—1847.

An Act to consolidate and amend the laws, and to repeal certain Acts relating to the crime of Forgery.

WHEREAS it is desirable that the laws concerning offences relating to forged writings and to other forged and counterfeit matters, and to divers false personations, false oaths, false entries, and other false matter, should be amended and consolidated into this Act, and that none of those offences shall be hereafter punishable with death: Be it therefore enacted, &c., That if any person shall forge or counterfeit, or shall utter, knowing the same to be forged or counterfeited, the Great Seal

Preamble.

For giving the Great Seal of Canada or of Upper or

Lower Canada, to be felony, and how punishable.

of this Province, or of the late Province of Upper Canada, or of the late Province of Lower Canada, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be kept confined at hard labour in the public Penitentiary of this Province, for any time not less than seven years.

Forging Seal at Arms of the Governor, Public Register, &c ;

II. And be it enacted, That if any person shall forge or counterfeit, or shall utter, knowing the same to be forged or counterfeited, the Seal at Arms of any Governor, Lieutenant Governor, or Person administering the Government of this Province, to any commission, grant, appointment, license, warrant, order, or other instrument of a public nature appertaining or relating to the affairs of this Province, or to any instrument purporting to be a commission, grant, appointment, license, warrant, order, or other instrument of a public nature appertaining or relating to the affairs of this Province, or shall forge any public register book, appointed by law to be made or kept, or shall wilfully certify or utter any writing as and for a true copy of such public register or book, or of any entry therein, knowing such writing to be counterfeit or false, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than five nor more than fourteen years.

Punishment.

Forging Debentures, assignments of Debentures, Scrip, &c.

13 & 14 Vict. c. 17, s. 16.

See also as to the forging of Post Office Stamps and Post Office other documents to which this Act is declared to apply.

Bank-notes, Wills, Licenses of marriage, &c. Bills or notes, or indorsementsthereon ;

Punishment.

III. And be it enacted, That if any person shall forge or alter, or shall offer, dispose of or put off, knowing the same to be forged or altered, any debenture issued under the authority of any Act of the Legislatures of the late Provinces of Upper Canada or of Lower Canada, or of any Act passed or to be passed hereafter by the Legislature of this Province, or any stamp or endorsement on or assignment of any such debenture, or any scrip issued by the Commissioner of Crown Lands for the time being, in lieu of or in satisfaction of any right or claim to a grant of land from the Crown in this Province or any part thereof, or any bank-note, or any will, testament, codicil, or testamentary writing, or any license of marriage, or any bill of exchange, or any promissory note for the payment of money, or any indorsement on or any assignment of any bill of exchange or promissory note for the payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant or order for the payment of money, with intent in any of the cases aforesaid to defraud any person whatsoever, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than four years nor more than ten years.

Where by any other law the forgery of any

IV. And be it enacted, That where by any law now in force in any part of this Province, any person is made liable to the punishment of death for forging or altering, or for offering, uttering,

uttering, disposing of, or putting off, knowing the same to be forged or altered, any instrument or writing, designated in such law by any special name or description, and such instrument or writing, however designated, is in law, a will, testament, codicil or testamentary writing, or a bill of exchange or a promissory note for the payment of money, or an endorsement on or assignment of a bill of exchange or promissory note for the payment of money, within the true intent and meaning of this Act, in every such case the person forging or altering such instrument or writing, or offering, uttering, disposing of or putting off such instrument or writing, knowing the same to be forged or altered, may be indicted as an offender under this Act, and punished in the manner provided in the next foregoing section thereof.

instrument or writing is made punishable with death, and the same is in law a will, note, bill, &c. within the meaning of this Act, the offender may be punished under this Act.

V. And be it enacted, That if any person shall forge or alter, or shall in any way publish, put off or utter as true, knowing the same to be forged or altered, any copy of letters patent, or of the enrollment or re-registration of letters patent, or of any certificate thereof now or hereafter to be made or given, or purporting to be or to have been made or given, by virtue of any Statute of Upper Canada or of Lower Canada, or of this Province, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than three years nor more than seven years, or to be imprisoned in any Common Gaol for any term not more than two years.

Forging Letters Patent, or enrollment or registration thereof, &c ;

Punishment.

VI. And be it enacted, That if any person shall forge or alter, or shall utter, knowing the same to be forged or altered, any transfer of any share or interest of or in the Capital Stock of any Body Corporate, Company or Society, which now is or hereafter may be established by Charter or Act of Parliament in any part of this Province, or shall forge or alter, or shall utter, knowing the same to be forged or altered, any power of attorney or other authority to transfer any share or interest of or in any such Capital Stock, or to receive any dividend or profit payable in respect of any such share or interest, or shall demand or endeavour to have any such share or interest transferred, or to receive any dividend or profit payable in respect thereof, by virtue of any such forged or altered power of attorney or other authority, knowing the same to be forged or altered, with intent in any of the several cases aforesaid, to defraud any person whatsoever ; or if any person shall falsely and deceitfully personate any owner of any such share, interest, dividend or profit as aforesaid, and thereby transfer any share or interest belonging to such owner, or thereby receive any money due to such owner, as if such person were the true and lawful owner, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept confined at hard labour in the public Penitentiary of this

Forging transfers of stock or power of attorney to transfer &c. or personating the owner thereof, in order to transfer the same, &c ;

Punishment,

this

this Province, for any term not less than four years nor more than ten years.

Personating owners of stock, land scrip, &c;

VII. And be it enacted, That if any person shall falsely and deceitfully personate any owner of any share or interest of or in the Capital Stock of any Body Corporate, Company or Society, which now is or hereafter may be established by Charter or Act of Parliament in any part of this Province, or any owner of any dividend or profit payable in respect of any such share or interest as aforesaid, or any person having a claim for a grant of land from the Crown in this Province, or for any scrip or other payment or allowance in lieu of such grant of land, and shall thereby endeavour to transfer any share or interest belonging to any such owner, or thereby endeavour to receive any money due to any such owner as if such offender were the true and lawful owner, or to obtain any such grant of land, or any scrip or other payment or allowance in lieu thereof, as if such offender were entitled thereto, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than three years nor more than seven years, or to be imprisoned in any Common Gaol for any term not exceeding two years.

Punishment.

Forging signature of witnesses to power of attorney, or other authority to transfer stock, &c;

VIII. And be it enacted, That if any person shall forge the name or handwriting of any person as or purporting to be a witness attesting the execution of any power of attorney or other authority to transfer any share or interest of or in any Capital Stock as is in this Act before mentioned, or to receive any dividend or profit payable in respect of any such share or interest, or to assign or transfer any right to obtain a grant from the Crown of lands in this Province, or to obtain any scrip or other payment or allowance in lieu of such grant of land, or shall utter any such power of attorney or other authority with the name or handwriting of any person forged thereon as an attesting witness, knowing the same to be forged, every such offender shall be guilty of felony, and being convicted thereof, shall be liable at the discretion of the Court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than three years nor more than seven years, or to be confined in any Common Gaol for any term not exceeding two years.

Punishment.

Forging deeds, bonds, memorials, receipts, notarial instruments, *procès verbaux* or any judicial proceeding, or exemption, &c;

IX. And be it enacted, That if any person shall forge or alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or altered, any notarial Act or instrument or copy purporting to be an authenticated copy thereof, *procès verbal* of any Surveyor, or like copy thereof, any judicial record, writ, order, return, exhibit, report, certificate or other document or entry made or filed in any suit or proceeding civil or criminal in any Court of Justice, or with any officer of such Court, or any copy or paper purporting to be an exemplification or authenticated

authenticated or certified copy of any such judicial record, writ, order, return, exhibit, report, certificate, or other such document or entry as aforesaid, deed, bond, writing obligatory, or any assignment of a right to land, certificate of registration or affidavit of execution, or any memorial of any deed, will or other instrument, that may now or hereafter be registered by virtue of any Statute in force in this Province or any part thereof, or any acquittance or receipt either for money or for goods, or any accountable receipt either for money or goods, or for any note, bill or other security for the payment of money, or any warrant, order or request for the delivery or transfer of goods, or for the delivery of any note, bill or other security for the payment of money, or any contract, promise or agreement, with intent to defraud any person whatsoever, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than four years nor more than ten years. Punishment.

X. And be it enacted, That if any person shall knowingly and wilfully before any Court, Judge or other person lawfully authorized to take any recognizance or bail, acknowledge any recognizance or bail in the name of any other person not privy or consenting to the same; whether such recognizance or bail in either case be or be not filed, or if any person shall in the name of any other person not privy or consenting to the same, acknowledge any *cognovit actionem* or judgment, or any deed to be registered or enrolled, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than four years nor more than ten years. Personating parties giving recognizances *cognovit*, &c.;
Punishment.

XI. And be it enacted, That if any person shall, without lawful excuse, the proof whereof shall lie upon the party accused, purchase or receive from any other person, or have in his custody or possession, any forged bank-note or blank bank-note, knowing the same respectively to be forged, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept confined at hard labour in the public Penitentiary of this Province for any term not less than three years nor more than seven years, or to be imprisoned in any Common Gaol for any term not exceeding two years. Having forged Bank-notes in possession, &c.;
Punishment.

XII. And be it enacted, That if any person shall engrave or in any wise make upon any plate whatever, or upon any wood, stone or other material, any bank-note bill of exchange or promissory note for the payment of money, purporting to be the bank-note, bill or promissory note, or part of the bank-note, bill or promissory note of any person or persons, body corporate or company carrying on the business of bankers in this Province, without Engraving Bank-notes, &c. without permission;

Or having plates of such Bank-notes &c., so engraved, in possession ;

Offering or uttering the same ;

Punishment.

Forging or uttering foreign bills, notes, undertakings, &c. ;

Engraving such notes, &c. ;

without the authority of such person or persons, body corporate or company, the proof of which shall lie on the party accused ; or if any person shall engrave or make upon any plate whatever, or upon any wood, stone or other material, any word or words resembling or apparently intended to resemble any subscription subjoined to any bank-note, bill of exchange or promissory note for the payment of money, issued by any such person or persons, body corporate or company carrying on the business of bankers, without such authority to be proved as aforesaid ; or if any person shall, without such authority, to be proved as aforesaid, use, or shall, without lawful excuse, to be proved by the party accused, knowingly have in his custody or possession, any plate, wood, stone or other material upon which any such bank note, bill of exchange or promissory note, or part thereof, or any word or words resembling or apparently intended to resemble such subscription shall be engraved or made ; or if any person shall, without such authority, to be proved as aforesaid, knowingly offer, utter, dispose of or put off, or shall without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession, any paper upon which any part of such bank-note, bill of exchange or promissory note, or any word or words resembling or apparently intended to resemble any such subscription, shall be made or printed ;—every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept confined at hard labour in the public Penitentiary of this Province for any term not less than three years nor more than seven years, or to be imprisoned in any Common Gaol for any term not exceeding two years.

XIII. And be it enacted, That if any person shall forge or alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or altered, any bill of exchange, promissory note, undertaking or order for payment of money, in whatever language or languages the same may be expressed, and whether the same shall or shall not be under seal, purporting to be the bill, note, undertaking or order of any foreign Prince or State, or of any minister or officer in the service of any foreign Prince or State, or of any body corporate or body of the like nature constituted or recognized by any foreign Prince or State, or of any person or company of persons resident in any country not under the dominion of Her Majesty ; or if any person shall engrave or in any wise make upon any plate whatever or upon any wood, stone or other material, any bill of exchange, promissory note, undertaking or order for payment of money in whatever language or languages the same may be expressed, and whether the same shall or shall not be intended to be under seal, purporting to be the bill, note, undertaking or order of any foreign Prince or State, or of any minister or officer in the service of any foreign Prince or State, or of any body corporate or body of the like nature constituted or recognized by any foreign Prince or State, or of any person or company of persons, resident

resident in any country not under the dominion of Her Majesty, without the authority of such foreign Prince or State, Minister or officer, body corporate or body of the like nature, person or company of persons, the proof of which authority shall lie on the person accused; of if any person shall without such authority, to be proved as aforesaid, use, or shall without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession any plate, stone, wood or other material upon which any such foreign bill, note, undertaking or order or any part thereof shall be engraved or made; or if any person shall without such authority, to be proved as aforesaid, knowingly utter, dispose of or put off, or shall, without lawful excuse to be proved as aforesaid, knowingly have in his custody or possession any paper upon which any part of any such foreign bill, note, undertaking or order shall be made or printed;—every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court to be kept confined at hard labour in the public Penitentiary of this Province for any term not less than three years, nor more than seven years, or to be imprisoned in any Common Gaol for any term not exceeding two years.

Having plates &c. of such foreign bills, notes, &c. in possession;

Punishment.

XIV. And whereas by an Act passed in the fifth year of the Reign of Queen Elizabeth, intituled, *An Act against forgers of false deeds and writings*, it is amongst other things provided, that every person convicted of any of the offences first enumerated in that Act shall pay to the party grieved his double costs and damages, and shall forfeit to the Crown the whole issues of his lands and tenements during his life, and shall also suffer imprisonment during his life; And whereas there are certain Acts in force in this Province or in some parts thereof, by which persons convicted of certain offences mentioned in those Acts are subjected to the same pains and penalties as are imposed by the said Act of Queen Elizabeth for the offences first enumerated in that Act; And whereas it is expedient to substitute other punishments in lieu of the punishments of that Act so far as the same have been adopted by any other Act: Be it therefore enacted, That every person who shall after the commencement of this Act be convicted of any offence which is now subjected by any Act or Acts to the same pains or penalties as are imposed by the said Act of Queen Elizabeth for any of the offences first enumerated in that Act, shall be guilty of felony, and shall in lieu of such pains and penalties be liable, at the discretion of the Court, to be kept confined at hard labour in the public Penitentiary of this Province for any term not less than three years nor more than seven years, or to be imprisoned in any Common Gaol for any term not exceeding two years.

English statute 5 Elizabeth, c. 14, re-cited.

Other punishments substituted for those in the said Act.

Punishment.

XV. And be it declared and enacted, That where the forging or altering any matter whatsoever, or the offering, uttering, disposing of or putting off any writing or matter whatsoever, knowing the same to be forged or altered, is in this Act expressed

Forging, uttering, &c., to be an offence within this Act,

wheresoever the thing forged may purport to be made expressed ;

Or in what language soever.

Abettors.

Writings for payment of money, and for some other purpose ;

And wheresoever the money be made payable or in what language soever couched ;

Punishment.

Persons convicted of forging, uttering fraudulently, personating others, &c. after this Act shall be in force, under some other Act, and no other punishment being assigned by this Act, how to be punished ;

expressed to be an offence, if any person shall in this Province forge or alter or offer, utter, dispose of or put off, knowing the same to be forged or altered, any such writing or matter, in whatsoever place or country out of this Province, whether under the dominion of Her Majesty or not, such writing or matters may purport to be made or may have been made, and in whatever language or languages the same or any part thereof may be expressed, every such person and every person aiding, abetting or counselling such person, shall be deemed to be an offender within the meaning of this Act, and shall be punishable thereby in the same manner as if the writing or matter had purported to be made or had been made in this Province ; and if any person shall in this Province forge or alter or offer, utter, dispose of or put off, knowing the same to be forged or altered, any bill of exchange or any promissory note for the payment of money, or any endorsement on or assignment of any bill of exchange or promissory note for the payment of money, or any deed, bond, writing obligatory for the payment of money (whether such deed, bond or writing obligatory shall be made only for the payment of money or for the payment of money together with some other purpose) in whatever place or country out of this Province, whether under the dominion of Her Majesty or not, the money payable or secured by such bill, note, undertaking, warrant, order, deed, bond or writing obligatory may be or may purport to be payable, and in whatever language or languages the same respectively or any part thereof may be expressed, and whether such bill, note, undertaking, warrant or order be or be not under seal, every such person and every person aiding, abetting or counselling such person shall be deemed to be an offender within the meaning of this Act, and shall be punishable thereby in the same manner as if the money had been payable or had purported to be payable in this Province.

XVI. And be it enacted, That when by any law now in force in any part of this Province, any person falsely making, forging, counterfeiting, erasing or altering any matter whatsoever, or uttering, publishing, offering, disposing of, putting away or making use of any matter whatsoever, knowing the same to be falsely made, forged counterfeited, erased or altered, or any person demanding or endeavouring to receive or have any thing, or to do or cause to be done any act upon or by virtue of any matter whatsoever, knowing such matter to be falsely made, forged, counterfeited, erased or altered, or where by any law now in force as aforesaid, any person falsely personating another or falsely acknowledging any thing in the name of another, or falsely representing any other person than the real party to be such party, or demanding or receiving any money or other thing by virtue of any probate or letters of administration, knowing the will on which such probate shall have been obtained to have been false or forged, or knowing such probate or letters of administration to have been obtained by means of any false oath or false affirmation, would be guilty of felony and be liable

liable to any other punishment than is provided by this Act, then and in each of the several cases aforesaid, if any person shall after the commencement of this Act be convicted of any such felony as hereinbefore mentioned, or of aiding, abetting, counselling or procuring the commission thereof, and no other provision is made for the punishment of any such offender under any other clause of this Act, such offender shall be liable at the discretion of the Court to be kept confined at hard labour in the public Penitentiary of this Province for any term not less than three nor more than ten years, or to be imprisoned in any Common Gaol for any term not exceeding two years; Provided always, that nothing herein contained shall affect or alter any law relating to any coin lawfully current in this Province.

Punishment.

Proviso—this Act not to affect any law relating to current coin.

XVII. And be it enacted, That if any person shall commit any offence against this Act, or shall commit any offence of forging or altering any matter whatsoever, or of offering, uttering, disposing of or putting off any matter whatsoever, knowing the same to be forged or altered, whether the offence in any such case shall be indictable at Common law or by virtue of any statute or statutes made or to be made, the offence of every such offender may be dealt with, indicted, tried and punished and laid and charged to have been committed in any district or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that district or place; and every accessory before or after such offence, if the same be a felony, and every person aiding, abetting or counselling the commission of any such offence if the same be a misdemeanor, may be dealt with, indicted, tried and punished, and his offence laid and charged to have been committed in any district or place in which the principal offender may be tried.

Offenders may be tried in the District in which they shall be apprehended or in custody.

And accessories in the same place.

XVIII. And be it enacted, That in the case of every felony punishable under this Act, every principal in the second degree and every accessory before the fact shall be punishable in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act shall on conviction be liable to imprisonment in any Common Gaol for any term not exceeding two years.

Accessories and principals in the second degree how punished.

Accessories after the fact.

XIX. And in order to prevent justice being defeated by clerical or verbal inaccuracies, Be it enacted; That in all informations or indictments for forging, altering or in any manner uttering any instrument or writing, it shall not be necessary to set forth any copy or *fac simile* thereof, but it shall be sufficient to describe the same in such manner as would sustain an indictment for stealing the same.

Fac simile not required in indictment.

What description shall be sufficient.

XX. And be it declared and enacted; That when the having any matter in the custody or possession of any person is in this

What shall be a having any

Act

thing in possession under this Act.

Act expressed to be an offence, if any person shall have any such matter in his personal custody or possession, or shall knowingly or wilfully have any such matter in any dwelling house or other building, lodging, apartment, field or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or for the use or benefit of another; every such person shall be deemed and taken to have such matter in his custody or possession within the meaning of this Act; and where the committing of any offence with intent to defraud any person whatsoever is made punishable by this Act, in every such case the word "person" shall throughout this Act be deemed to include Her Majesty or any foreign Prince or State, or any body corporate or any company or society of persons not incorporated, or any person or number of persons whatsoever who may be intended to be defrauded by such offence, whether such body corporate, society, person or number of persons shall reside or carry on business in this Province or elsewhere in any place or country, whether under the dominion of Her Majesty or not; and it shall be sufficient in any indictment to name one person only of such company, society or number of persons, and to allege the offence to have been committed with intent to defraud the person so named and another or others, as the case may be.

Word "person," how interpreted in this Act.

What allegation as to party intended to be defrauded shall be sufficient in an indictment.

Persons interested in the forged document not incompetent as witnesses.

XXI. And be it enacted, That in all prosecutions by indictment or information against any person or persons for any offence punishable under this Act, no person or persons shall be deemed to be an incompetent witness or incompetent witnesses in support of any such prosecution, by reason of any interest which such person or persons may have or be supposed to have in respect of any deed, writing, instrument or other matter given in evidence on the trial of any such indictment or information; Provided always, that the evidence of any person or persons so interested or supposed to be interested shall in no case be deemed sufficient to sustain a conviction for any of the said offences, unless the same be corroborated by other legal evidence in support of such prosecution.

Proviso: their evidence must be supported by other proof.

Repealing clause.

7th sect. of 4 & 5 Vict. c. 28;

3rd sect. 4 & 5 Vict. c. 33;

Part of 13th sect. 4 & 5 Vict. c. 93;

XXII. And be it enacted, That the seventh section of the Act of the Legislature of this Province, passed in the Session held in the fourth and fifth years of Her Majesty's Reign, and intituled, *An Act to appropriate certain sums of money for Public Improvements in this Province, and for other purposes therein mentioned*,—and the third section of the Act of the said Legislature, passed in the said Session, and intituled, *An Act to facilitate the negotiation of a loan in England, and for other purposes therein mentioned*,—and the thirteenth section of the Act of the said Legislature, passed in the same Session, and intituled, *An Act to regulate the Currency of this Province*, except in so far as the said section applies to any offence relative to any coin current in this Province,—and the twenty-first, twenty-second

twenty-second and twenty-third sections of the Act of the said Legislature, passed in the same Session, and intituled, *An Act to extend the Charter of the Quebec Bank*,—and the forty-third, forty-fourth and forty-fifth sections of the Act of the said Legislature, passed in the same Session, and intituled, *An Act to incorporate sundry persons under the style and title of the President, Directors and Company of the Bank of the Niagara District*,—and the thirty-second, thirty-third and thirty-fourth sections of the Act of the said Legislature, passed in the same Session, and intituled, *An Act to extend the Charter of the City Bank, and to increase the Capital Stock thereof*,—and the thirty-fifth, thirty-sixth and thirty-seventh sections of the Act of the said Legislature, passed in the same Session, and intituled, *An Act to renew the Charter of the Bank of Montreal, and to increase its Capital Stock*,—and the fourth section of the Act of the said Legislature, passed in the sixth year of Her Majesty's Reign, and intituled, *An Act to authorize the raising by way of loan, in England, the sum of one million five hundred thousand pounds sterling, for the construction and completion of certain Public Works in Canada*,—and the thirty-third, thirty-fourth and thirty-fifth sections of the Act of the said Legislature, passed in the said year, and intituled, *An Act to extend the Charter of the Commercial Bank of the Midland District, and to increase its Capital Stock*,—and the thirty-second, thirty-third and thirty-fourth sections of the Act of the said Legislature, passed in the same year, and intituled, *An Act to extend the Charter of the Bank of Upper Canada, and to increase the Capital Stock thereof*,—and the thirty-third, thirty-fourth and thirty-fifth sections of the Act of the said Legislature, passed in the seventh year of Her Majesty's Reign, and intituled, *An Act to incorporate certain persons carrying on the business of Banking in the City of Montreal, under the name of La Banque du Peuple*,—and so much of the seventeenth section of the Act of the said Legislature, passed in the ninth year of Her Majesty's Reign, and intituled, *An Act to consolidate and amend the Registry Laws of that part of this Province which was formerly Upper Canada*, as relates to the forging or counterfeiting of any certificate, affidavit or memorial therein mentioned,—and the Act of the said Legislature, passed in the said year, and intituled, *An Act to amend the Law in cases of Forgery*,—and the third section of the Act of the said Legislature, passed in the said year, and intituled, *An Act to authorize the Issue of Debentures for the erection of a Lunatic Asylum at Toronto*,—and the twenty-eighth section of the Act of the said Legislature, passed in the said year, and intituled, *An Act for enabling Her Majesty to direct the Issue of Debentures to a limited amount, and for giving relief to the City of Quebec*,—and the fourth section of the Act of the said Legislature, passed in the said year, and intituled, *An Act to provide for the payment of certain Rebellion Losses in Lower Canada, and to appropriate the proceeds of the Marriage License Fund*,—and the third section of the Act of the said Legislature, passed in the said year, and intituled,

21st, 22d and 23rd sects. 4 & 5 Vict. c. 94 ;
 43d, 44th and 45th sects. 4 & 5 Vict. c. 96 ;
 32d, 33d and 34th sects. 4 & 5 Vict. c. 97 ;
 35th, 36th and 37th sects. 4 & 5 Vict. c. 98 ;
 4th sect. 6. Vict. c. 8 ;
 33d, 34th and 35th sects. 6 Vict. c. 26 ;
 32d, 33d and 34th sects. 6 Vict. c. 27 ;
 33d, 34th and 35th sects. 7 Vict. c. 66 ;
 Part of 17th sect. 9 Vict. c. 34 ;
 9 Vict. c. 3 ;
 3d sect. 9. Vict. c. 61 ;
 28th, sect. 9. Vict. c. 62 ;
 4th sect 9. Vict. c. 65 ;

3d sect. 9
Vict. c. 66 ;

10th sect. 9
Vict. c. 74 ;

U. C. 50 Geo.
3, c. 4 ;

Part of 25th
and 26th sects.
U. C. 3 Will.
4, c. 3 ;

8th sect. U. C.
7 Will. 4, c.
14 ;

10th sect. L.
C. 35 Geo. 3,
c. 8 ;

6th sect. L. C.
36 Geo. 3, c. 3 ;

L. C. 51 Geo.
3, c. 10 ;

19th sect. L.
C. 3 and 4
Vict. c. 31 ;

34th sect. L.
C. 4 Vict. c.
16 ;

intituled, *An Act for raising on the credit of the Consolidated Revenue Fund, a sum of money required for certain Public Works*,—and the tenth section of the Act of the said Legislature, passed in the said year, and intituled, *An Act for Lighting the City of Quebec with Gas*,—and the Act of the Legislature of the late Province of Upper Canada, passed in the fiftieth year of the Reign of King George the Third, and intituled, *An Act for preventing the Forging and Counterfeiting of Foreign Bills of Exchange, and of Foreign Notes and Orders for the payment of money*,—and so much of the twenty-fifth and twenty-sixth sections of the Act of the said Legislature, passed in the third year of the Reign of His late Majesty King William the Fourth, and intituled, *An Act to reduce the number of cases in which Capital Punishment may be inflicted: to provide other punishments for offences which shall no longer be Capital after the passing of this Act: to extend the privilege and benefit of Clergy, and to make other alterations in certain criminal proceedings before and after conviction*, as relates to the offence of forgery or to any offence concerning which provisions is made by this Act,—and the eighth section of the Act of the said Legislature, passed in the seventh year of the said Reign, and intituled, *An Act to supply by a General Law certain forms of enactment in common use, which may render it unnecessary to repeat the same in Acts to be hereafter passed*,—and the tenth section of the Act of the Legislature of the late Province of Lower Canada, passed in the thirty-fifth year of the Reign of King George the Third, and intituled, *An Act for granting to His Majesty duties on Licenses to Hawkers, Pedlars and Petty Chapmen, and for regulating their trade, and for granting additional duties on Licenses to persons for keeping houses of public entertainment, or for retailing wine, brandy, rum or other spirituous liquors in this Province, and for regulating the same, and for repealing the Act or Ordinance therein mentioned*,—and the sixth section of the Act of the said Legislature, passed in the thirty-sixth year of the same Reign, and intituled, *An Act for the safe custody and registering of all Letters Patent, whereby any grant of the waste or other lands of the Crown, lying within this Province, shall hereafter be made*,—and the Act of the said Legislature, passed in the fifty-first year of the said Reign, and intituled, *An Act for preventing the Forging and Counterfeiting of foreign Bills of Exchange, and of foreign Promissory Notes and Orders for the payment of money*,—and the nineteenth section of the Ordinance of the said Legislature, passed in the Session held in the third and fourth years of Her Majesty's Reign, and intituled, *An Ordinance to provide for the improvement of the Roads in the neighbourhood of and leading to the City of Montreal, and to raise a fund for that purpose*,—and the thirty-fourth section of the Ordinance of the said Legislature, passed in the fourth year of Her Majesty's Reign, and intituled, *An Ordinance for establishing and maintaining better means of communication between the City of Montreal and Chambly*,—and the thirtieth section of the Ordinance of the said Legislature, passed in the same year,

year, and intituled, *An Ordinance to provide for the improvement of certain roads in the neighbourhood of and leading to the City of Quebec, and to raise a fund for that purpose*,—and so much of the fifty-first section of the Ordinance of the said Legislature, passed in the said year, and intituled, *An Ordinance to prescribe and regulate the registering of Titles to Lands, Tenements and Hereditaments, Real or Immoveable Estates, and of charges and incumbrances on the same, and for the alteration and improvement of the Law in certain particulars in relation to the alienation and hypothecation of real estates and the rights and interest acquired therein*, as relates to the forging or counterfeiting of any memorial, certificate or endorsement therein mentioned,—and all other Acts or parts of Acts or Laws now in force, at variance with the provisions of this Act, or respecting matters for which this Act provides, shall continue in force until and throughout the thirty-first day of December in the present year, one thousand eight hundred and forty-seven, and shall from and after that day be repealed, except so far as any of the said Acts may repeal the whole or any part of any other Acts, and except as to offences committed before or upon the said thirty-first day of December, which shall be dealt with and punished as if this Act had not been passed: Provided always, that if any person who shall before or upon the said thirty-first day of December, have committed any offence against any of the several Acts hereby declared to be no longer in force or repealed as aforesaid, shall, after the commencement of this Act, be convicted of the same, and such offence shall have been made heretofore punishable with death, in every such case the person convicted of such offence shall not suffer the punishment of death, but shall in lieu thereof be liable at the discretion of the Court, to be kept confined at hard labour in the public Penitentiary of this Province for any term not less than three nor more than ten years, or to be imprisoned in any Common Gaol for any term not exceeding two years.

30th sect. L.
C. 4 Vict. c.
17;

And part of
51st sect. L.
C. 4 Vict. c.
30;

To continue in
force until 31st
December,
1847, and
thereafter to
be repealed.

Exception.

Proviso: as to
punishment of
persons con-
victed after
this Act of
offences
against Acts
repealed where
under such
repealed Act
the punish-
ment is death.

XXIII. And be it enacted, That this Act shall commence and take effect on the first day of January, one thousand eight hundred and forty-eight.

Commence-
ment of this
Act.

12 VICT. CAP. 20.—1849.

An Act to amend the Criminal Law of this Province relating to the offences of Arson and Counterfeiting Coin.

WHEREAS defects exist in the law touching the counterfeiting Coin and Arson, and it is expedient to amend the same: Be it therefore enacted, &c. That if any person shall

Preamble.
This will ap-
ply to coin
shall

current under
the new Act
16 Vict. c.
158.

Punishment of
persons
counterfeiting
current coin.

First offence.
Second or sub-
sequent
offence.

Difference of
date between
the forged
coin, die, &c.
and true coin
not to be a
ground of
acquittal.

This Act (4 &
5 V. c. 93.) is
repealed by
16 V. c. 158.

Setting fire to
any school-
house, semi-
nary, &c. to
be felony.

How punish-
able.

Owners need
not be named
in the indict-
ment.

shall falsely make or counterfeit, or cause to be made or counterfeited, any coin resembling, or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, or any of the gold or silver coin made or declared to be lawfully current in this Province, such person shall be guilty of a misdemeanor, and on being duly convicted thereof, shall be liable to be imprisoned and kept at hard labour in the Provincial Penitentiary for not more than four years; and if such person shall afterwards offend in like manner, he or she shall, for such second or for any subsequent offence, be deemed guilty of felony, and on being thereof duly convicted, shall be liable to the punishment by law provided for felony.

II. And be it enacted, That upon the trial of any person accused of any offence alleged to have been committed against the form of the Act passed in the Session of this Parliament which was held in the fourth and fifth years of Her Majesty's Reign, intituled, *An Act to regulate the Currency of this Province*, or against the provisions of this Act, no difference in the date or year marked upon the lawfully current coin described in the indictment, and the date or year marked upon the false coin counterfeited to resemble or pass for such lawfully current coin, or upon any die, plate, press, tool or instrument used, constructed, devised, adapted or designed, for the purpose of counterfeiting or imitating any such lawfully current coin, shall be considered a just or lawful cause or reason for acquitting any such offence or accusation.

III. And be it enacted, That whosoever shall unlawfully and maliciously set fire to any school-house, lecture room, seminary of learning, college or building used for the purpose of education, or to any Village, Town or City Hall, or to any Railroad station-house, steam or fire engine-house or toll booth, or to any building used or employed as a Mechanics' Institute, or as a public library, or to any hall or building used by any body or society of persons, by whatever name or designation they may be known, and whether they be associated together for educational, philanthropic or benevolent purposes, or for any other lawful purpose, or to any museum or repository of curiosities, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than three years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years, and further that it shall not be necessary to alledge or set out in the Indictment the name of the owner of any such building.

16 VICT. CAP. 158.—1853. (*Extract from.*)

An Act to regulate the Currency.

XIII. And be it enacted, That if any person shall colour or gild, or case over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin of coarse gold or of coarse silver, or of base metal, resembling any coin made or declared to be current by this Act, or shall make or cause to be made, or shall buy, sell or procure for himself or for another, or shall knowingly bring and import, or cause to be brought and imported into this Province, any forged, false or counterfeit gold, silver or copper coin, like to any of the gold, silver or copper coin made or declared by this Act to be lawfully current, or any coin of coarse gold or of coarse silver, or of base metal colored, gilded or cased over with gold or silver, or with any wash or materials producing the colour of gold or silver, and resembling any such coin, or any piece of gilded silver resembling any such coin, or shall utter or attempt to utter, or tender in payment to any person or persons (as being any of the gold, silver or copper coins hereby made or declared to be current money,) any false or counterfeit piece, counterfeited to any of the gold, silver or copper coins made or declared to be current by this Act, or to any of the higher or lower denominations thereof, knowing the same to be false or counterfeit, such person shall be guilty of a misdemeanor, and on being duly convicted shall be liable to be imprisoned and kept at hard labour in the Provincial Penitentiary for not less than three nor more than fourteen years, in the discretion of the Court before which the conviction shall be had; and if such person shall afterwards offend in like manner, he or she shall for such second or for any subsequent offence, be deemed guilty of felony, and on being thereof duly convicted, shall be liable to be imprisoned in the said Penitentiary for life, or for any term not less than fourteen years, in the discretion of the Court before which the conviction shall be had.

Punishment of persons counterfeiting Coin, or uttering counterfeit Coin.

This Act came into force on the 1st day of August, 1854, by virtue of H. M. Proclamation dated 8th July, 1854.

XIV. And be it enacted, That if any person shall form, make, cut, sink, stamp, engrave, repair or mend, or shall assist in forming, making, cutting, sinking, stamping, engraving, repairing or mending, or shall have in his or her possession, except for some

Punishment of persons making dies, stamps, &c. for counter-

NOTE.—The Coins made current by this Act and to which the foregoing Enactments will apply are—

1st. Any Coins which Her Majesty may cause to be struck for use in the Province and declare current by Proclamation.

2nd. Coins of the United Kingdom, until it shall be otherwise ordered with respect to any such silver or copper coin by Proclamation.

3rd. American gold coins.

4th. Any other foreign gold coins which shall have been declared current by Proclamation.

feiting or having them in possession.

some known and lawful purpose, any false or counterfeit coin, counterfeit to any coin lawfully current under the authority of this Act, or any die, press, tool or instrument, or metal or material of any kind, used, constructed, devised, adapted or designed for the purpose of counterfeiting or imitating any Coin which shall be lawfully current under the authority of this Act, such person shall be guilty of a misdemeanor, and shall be liable to punishment accordingly; and the proof that such false or counterfeit coin, or such die, press, tool or instrument, metal or material was formed, made, cut, sunk, stamped, engraved, repaired or mended by or was in the possession of such person for some lawful purpose, shall lie upon him or her.

Power to issue warrants to search for counterfeit Coin, coining Tools, &c.

XV. And be it enacted, That it shall be lawful for any one Justice of the Peace on complaint made before him upon the oath of one credible person, that there is just cause to suspect that any person or persons is or are or hath or have been concerned in making, counterfeiting or imitating any such Coin as aforesaid, by warrant under the hand of such Justice of the Peace, to cause the dwelling house, room, work-shop, out-house or other building, yard, garden, ground or other place belonging to such suspected person or persons, or where such suspected person or persons shall be suspected to carry on any such making, counterfeiting or imitating, to be searched for any such counterfeit Coin; and if any such Coin or any such die, press, tool or instrument, metal or material as aforesaid shall be found in the possession or custody of any person or persons whomsoever, not having the same for some lawful purpose, it shall and may be lawful to and for any person or persons discovering the same, to seize, and he or they are hereby authorized and required to seize and carry the same forthwith before a Justice of the Peace having jurisdiction within the locality in which the same shall be seized, who shall cause the same to be secured and produced in evidence against any person or persons who shall or may be prosecuted for any such offence as aforesaid, in any Court of competent jurisdiction, and the same after being so produced in evidence, shall by order of the Court be defaced or destroyed, or otherwise disposed of as the Court shall direct.

Counterfeit Coin tendered may be broken, &c.

XVI. And be it enacted, That any person to whom any pretended Gold, Silver or Copper Coin shall be tendered in payment, which shall by the Stamp, Impression, Colour or Weight thereof, afford reason to suspect that the same is false or counterfeit, may cut or break such Coin, and if the same shall be counterfeit, the person who tendered it shall bear the loss, otherwise the person who shall have cut or broken it shall receive it for a sum proportionate to its weight; and if any question shall arise whether such Coin be counterfeit, it shall be determined by any Justice of the Peace, who, if he entertain any doubt in that behalf, may summon three skilful persons, the decision of a majority of whom shall be final.

XVII. And be it enacted, That if any false or counterfeit Coin shall be produced in any Court of Law, the Court shall order the same to be cut in pieces in open Court or in the presence of a Justice of the Peace, and then delivered to or for the lawful owner thereof, if any such lawful owner there be claiming the same.

Counterfeit Coin produced in Court to be broken, &c.

XVIII. And be it enacted, That any person who shall knowingly utter, attempt to utter or offer in payment, as being lawfully current, any Gold Coin of less than its lawful weight, or shall diminish the weight of any such Coin with intent to utter or offer it in payment as lawfully current, shall be guilty of a misdemeanor, and on being duly convicted shall be liable to be punished accordingly.

Wilfully tendering light Coin, to be a misdemeanor.

XIX. And be it enacted, That on any trial for any offence under this Act, it shall not be necessary to call any Officer of the Mint or other person employed in producing the lawful Coin, in order to prove any counterfeit to be such, but the fact may be proved by any evidence which shall be satisfactory to the Jury trying the case.

Evidence in cases of offences against this Act.

4. & 5 VICT. CAP. 17.—1841.

An Act to prevent the fraudulent manufacture, importation, or circulation of Spurious Copper and Brass Coin.

WHEREAS great frauds have been practised upon the Inhabitants of this Province, by evil disposed persons, who have imported into the same or manufactured therein, Spurious Copper or Brass Coin or Tokens, for the purpose of passing them for a much higher value than they were intrinsically worth; Be it therefore enacted, &c.; That no Copper or Brass Coin or Tokens of any description, except the Lawful Copper Coin of the United Kingdom of Great Britain and Ireland, shall be imported into this Province, nor shall any Copper or Brass Coin or Tokens be manufactured therein, except under the authority of an express permission to some certain person, or persons, body politic or corporate, to import or manufacture the same, granted by and under the hand of the Governor, Lieutenant Governor, or Person administering the Government of the Province, who is hereby authorized to grant such permission by and with the advice and consent of the Executive Council thereof; such permission containing a description of the Coin or Tokens to which it shall extend, the quantity thereof to be imported or manufactured, and the time during which such permission shall be in force: Provided always, that such permission shall be announced in

Preamble.

No Copper or Brass Coin or Token, except the lawful Coin of the United Kingdom to be imported nor any to be manufactured in the Province except by the permission of the Governor, &c. with the consent of the Executive Council.

Proviso.

the

Proviso.

the Official Gazette, or Gazettes : Provided also that all Coins imported or manufactured as aforesaid, shall in purity, weight and quality, be equal to five sixths at the least, of the British penny or half-penny, lawfully current in the United Kingdom of Great Britain and Ireland.

Conditions on which Copper Coins or Tokens may be permitted to be imported and manufactured.

II. Provided always, and be it enacted, That no such permission shall be granted by the Governor, Lieutenant Governor, or Person administering the Government of the said Province as aforesaid, for the importation or manufacture of any Copper or Brass Coin or Tokens, under the provisions of this Act, by any person or persons, body politic or corporate, unless such Coin or Tokens be stamped with the nominal value thereof, and with the name of such person or persons, body politic or corporate, and such Coins and Tokens shall be payable or redeemable on demand, by such person or persons, body politic or corporate, at the nominal value thereof, in lawful current Coin, being a legal tender in this Province in payment of a debt equal to the nominal value of the Coins or Tokens for which payment shall be so demanded.

Coins or Tokens imported or manufactured in contravention of this Ordinance.

III. And be it enacted, That all such Coin or Tokens as aforesaid, imported or manufactured in contravention of this Act, shall be forfeited to Her Majesty, Her Heirs and Successors for the public uses of this Province ; and the person or persons who shall have manufactured or imported the same, shall thereby incur a penalty not exceeding five pounds currency, for every pound troy of the weight thereof ; and it shall be lawful for any two or more Justices of the Peace, on the oath of any credible person, that any such Coin or Tokens have been so unlawfully manufactured or imported as aforesaid, to cause the same to be seized and detained, and to summon the person or persons, or any one of them, in whose possession the same shall be found, to appear before him, and if it shall appear to his satisfaction, on the oath of any credible witness other than the informer, that such Coin or Tokens have been manufactured or imported in contravention of this Act, such Justices of the Peace shall declare the same forfeited, and shall place them in safe keeping to await the disposal of the Governor, Lieutenant Governor or Person administering the Government of the Province, for the public uses of this Province ; and if it shall, in like manner, appear to the satisfaction of such Justices of the Peace, that the person or persons in whose possession such Coin or Tokens were found, knew the same to have been so illegally manufactured or imported, he may condemn such person or persons, or any of them, to pay the penalty aforesaid with costs, and may commit him, her or them, or any of them, to the Common Gaol of the District, for a period not exceeding two months, if such penalty and costs be not forthwith paid, or until the same be paid.

Any two Justices of the Peace may take cognizance of such offence.

May commit persons having such Coins in possession.

IV. Provided always, and be it enacted, That if it shall appear to the satisfaction of such Justices of the Peace, that the person or persons in whose possession such Coins or Tokens shall have been found, was not or were not aware of their having been so illegally manufactured or imported, such penalty may be recovered, by any person or persons who shall sue for the same in any Court of competent Jurisdiction, from the owner or any of the owners thereof, on the oath of any one credible witness other than the person so suing.

When persons in possession of such Coins or Tokens, are not aware of its having been illegally manufactured or imported, penalty may be recovered from owner.

V. And be it enacted, That it shall also be lawful for any Officer of Her Majesty's Customs to seize any Coin or Tokens, which any person shall import or attempt to import into this Province in contravention of this Act, and to detain the same as forfeited, to await the disposal of the Governor, Lieutenant Governor or Person administering the Government of this Province, for the public uses of the Province.

Any officer of Her Majesty's Customs may seize such Coins or Tokens.

VI. And be it enacted, That if any such Coin or Tokens, other than the lawful Coin of the United Kingdom aforesaid, shall at the time this Act shall go into force, be in the possession of any person other than the owner thereof, such person may refuse to deliver the same, except upon a permission to that effect from the Governor, Lieutenant Governor or Person administering the Government of the Province, who may, if he shall deem it advisable, make it a condition on which such permission shall be granted, that the person applying for the same shall immediately re-export such Coin or Tokens, in which case any duty paid on the importation thereof shall be returned to the owner, as a draw-back, by the Chief Officer of the Customs at the Port whence such exportation shall be made.

Coin or Tokens other than the lawful Coin of the United Kingdom, in the possession of other than the owner.

VII. And be it enacted, That from and after the expiration of thirty days from the time when this Act shall go into force, no person shall utter, tender or offer in payment any Copper or Brass Coin, other than the lawful Coin of the United Kingdom aforesaid, or the Tokens of some one of the Chartered Banks of this Province, or the *Banque du Peuple* at the City of Montreal, heretofore imported or manufactured under the sanction and authority of the Executive, or under and by virtue of the Ordinances of the late Province of Lower Canada hereinafter mentioned and hereby repealed, or American Cents, or such Coin or Tokens as may have been lawfully imported into, or manufactured in this Province, according to the provisions of this Act, under a penalty of the forfeiture of double the nominal value thereof, which penalty may be recovered, with costs, in a summary manner, on the oath of any one credible witness other than the informer, before any Justice of the Peace, who may, if such penalty and costs be not forthwith paid, commit the

Penalty on persons offering unlawful Coin or Tokens, after the expiration of thirty days from the time of this Act going into force.

How to be recovered.

the offender to the Common Gaol of the District for a time not exceeding eight days, or until the same be paid.*

Moiety of penalty to informer.

VIII. And be it enacted, That one moiety of all the penalties imposed by this Act (but not the Coins or Tokens forfeited under the provisions thereof) shall go to the informer or person suing for the same, and the other moiety shall belong to Her Majesty, Her Heirs and Successors, for the public uses of this Province.

Application of penalties.

IX. And be it enacted, That the due application of all penalties and forfeitures received for Her Majesty, Her Heirs and Successors, under the provisions of this Act, shall be accounted for, to Her Majesty, Her Heirs and Successors, through the Lords Commissioners of Her Majesty's Treasury for the time being, in such manner and form as Her Majesty, Her Heirs and Successors, shall direct.

This Act to be published in Official Gazette.

X. And be it enacted, That this Act shall not be in force until it shall have been published in the Official Gazette, or Gazettes of this Province. †

All Acts or Ordinances relating to Copper Coin repealed as soon as this Act comes into operation.

XI. And be it enacted, That when and so soon as this Act shall be in force, an Ordinance of the Special Council of the late Province of Lower Canada, passed in the second year of Her Majesty's reign, and intituled, "*An Ordinance to prevent the manufacture, importation or circulation of Spurious Copper and Brass Coin,*" and a certain other Ordinance of the said Special Council passed in the third year of Her Majesty's reign, intituled, "*An Ordinance to amend and render permanent an Ordinance passed in the second year of Her Majesty's reign, intituled, 'An Ordinance to prevent the fraudulent manufacture, importation or circulation of Spurious Copper and Brass Coin,*" and all other Acts or parts of Acts relating in any manner to the manufacture, importation, or circulation of Copper or Brass Coins and Tokens, or imposing penalties, or in any manner relating to Copper Coin or Tokens, shall be and are hereby repealed.

* Nothing in this Act makes any token or coin a legal tender; the question whether any coin is a legal tender depending wholly on the Currency Act 16 V. c. 158: but the lawful tokens may be offered to those who are willing to take them, which Spurious Copper Coin may not be.

† This has been done on the 21st October, 1841, and the Act is in full force.

4 & 5 VICT. CAP. 27.—1841.

An Act for consolidating and amending the Statutes in this Province relative to offences against the Person.

WHEREAS it is expedient to amend and consolidate the provisions contained in various Statutes now in force in this Province, relative to offences against the person, Be it therefore enacted, &c., That this Act shall commence and take effect from and after the first day of January, one thousand eight hundred and forty-two.

Preamble:

Commencement of this Act.

II. And be it enacted, That every offence, which before the commencement of this Act would have amounted to Petit Treason, shall be deemed to be Murder only, and no greater offence; and all persons guilty in respect thereof, whether as principals or as accessories, shall be dealt with, indicted, tried and punished as principals and accessories in Murder.

Petit Treason to be treated in all respects as Murder.

III. And be it enacted, That every person convicted of Murder, or of being an accessory before the fact to Murder, shall suffer death as a Felon; and every accessory after the fact to Murder, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Punishment of principals and accessories in Murder.

IV. And be it enacted, That from and after the passing of this Act, sentence of Death may be pronounced after convictions for Murder, in the same manner, and the Court before which the conviction may be had shall have the same power in all respects as after convictions for other capital offences.

Sentence in case of Murder.

V. And be it enacted, That every person convicted of Murder, shall, after judgment, be confined in some safe place within the Prison, apart from all other prisoners, and shall be fed with bread and water only, and with no other food or liquor, except in case of receiving the Sacrament, or in case of any sickness or wound, in which case the Surgeon of the Prison may order other necessaries to be administered; and no person but the Gaoler and his Servants, and the Chaplain and Surgeon of the Prison, shall have access to any such Convict, without the permission, in writing, of the Court or Judge before whom such Convict shall have been tried, or of the Sheriff or his Deputy.

Prison regulations as to Murderers under sentence.

VI. And be it enacted, That where any person, being feloniously stricken, poisoned, or otherwise hurt upon the sea, or

Provision for the trial of Murder and at

* But see 6 V. c. 5, and 14 & 15 V. c. 2, s. 2.

Manslaughter where the death, or the cause of death only, happens in this Province.

at any place out of this Province, shall die of such stroke, poisoning or hurt, in this Province, or being feloniously stricken, poisoned, or otherwise hurt at any place in this Province, shall die of such stroke, poisoning or hurt, upon the sea, or at any place out of this Province, every offence committed in respect of any such case, whether the same shall amount to the offence of Murder or of Manslaughter, or of being accessory before the fact to Murder, or after the fact to Murder or Manslaughter, may be dealt with, enquired of, tried, determined and punished in the District, County or Place in this Province in which such death, stroke, poisoning or hurt shall happen, in the same manner, in all respects, as if such offence had been wholly committed in such District, County or Place.

Punishment of Manslaughter.

VII. And be it enacted, That every person convicted of Manslaughter, shall be liable, at the the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years, or to pay such fine as the Court shall award.

As to Homicide not felonious.

VIII. Provided always, and be it enacted, That no punishment or forfeiture shall be incurred by any person who shall kill another by misfortune or in his own defence, or any other manner without Felony.

Punishment for administering Poison, &c with intent to commit murder.

IX. And be it enacted, That whosoever shall administer or cause to be taken by any person, any Poison or other destructive thing, or shall stab, cut or wound any person, or shall by any means whatsoever cause to any person any bodily injury, dangerous to life, with intent, in any of the cases aforesaid, to commit Murder, shall be guilty of Felony, and being convicted thereof shall suffer death.

Punishment for offences with intent to commit Murder though no injury be effected.

X. And be it enacted, That whosoever shall attempt to administer to any person any Poison or other destructive thing, or shall shoot at any person, or shall by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent in any of the cases aforesaid to commit the crime of murder, shall, although no bodily injury shall be effected, be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

XI.

* But see 6 Vic. c. 5, and 14 & 15 V. c. 2, s. 2.

XI. And be it enacted, That whosoever, unlawfully and maliciously, shall shoot at any person, or shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall stab, cut or wound any person, with intent in any of the cases aforesaid to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Punishment for cutting and maiming with intent to disfigure.

XII. And be it enacted, That whosoever shall unlawfully and maliciously send or deliver to, or cause to be taken, or received by any person, any Explosive Substance, or any other dangerous or noxious thing, or shall cast or throw upon or otherwise apply to any person, any Corrosive Fluid, or other destructive matter, with intent in any of the cases aforesaid to burn, maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, and whereby in any of the cases aforesaid any person shall be burnt, maimed, disfigured or disabled, or receive some other grievous bodily harm, shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Punishment for sending explosive substances or throwing destructive matter with intent to do bodily harm.

See also 10 & 11 V. c. 4.

XIII. And be it enacted, That whosoever, with intent to procure the Miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of Felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Punishment for trying to procure abortion.

XIV. And be it enacted, That if any woman shall be delivered of a child, and shall, by secret burying or otherwise disposing of the dead body of the said child, endeavour to conceal the birth thereof, every such offender shall be guilty of a Misdemeanor, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding two years; and it shall not be necessary to prove whether the child died before,

A woman secreting the dead body of her child, to conceal the fact of its birth, guilty of misdemeanor.

at,

* But see 6 V. c. 5; and 14 & 15 V. c. 2, s. 2.

Proviso.

at, or after its birth : Provided always, that if any woman, tried for the murder of her child shall be acquitted thereof, it shall be lawful for the jury, by whose verdict she shall be acquitted, to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the Court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth.

Buggery.

XV. And be it enacted, That every person convicted of the abominable crime of Buggery, committed either with mankind or with any animal, shall suffer death as a Felon.

Rape.

XVI. And be it enacted, That every person convicted of the crime of Rape, shall suffer death as a Felon.

Carnal knowledge of a girl under 10; the like of a girl above 10 and below 12.

XVII. And be it enacted, That if any person shall unlawfully and carnally know and abuse any Girl under the age of ten years, every such offender shall be guilty of Felony, and being convicted thereof, shall suffer death as a Felon ; and if any person shall unlawfully and carnally know and abuse any Girl, being above the age of ten years and under the age of twelve years, every such offender shall be guilty of a Misdemeanor, and being convicted thereof, shall be liable to be imprisoned for such term as the Court shall award.*

What shall be sufficient proof of carnal knowledge in the four preceding cases.

XVIII. And whereas upon trials for the crime of Buggery, and of Rape, and of carnally abusing Girls under the respective ages hereinbefore mentioned, offenders frequently escape* by reason of the difficulty of the proof which has been required of the completion of those several crimes ; For remedy thereof, be it enacted, That it shall not be necessary, in any of those cases, to prove the actual emission of seed in order to constitute a carnal knowledge, but that the carnal knowledge shall be deemed complete upon proof of penetration only.

Forcible abduction of a Woman on account of her fortune with intent to marry her, &c.

XIX. And be it enacted, That where any woman shall have any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate, or shall be an heiress presumptive or next of kin to any one having such interest, if any person shall, from motives of lucre, take away or detain such woman against her will, with intent to marry or defile her, or to cause her to be married or defiled by any other person, every such offender, and every person counselling, aiding or abetting such offender, shall be guilty of Felony, and being convicted thereof, shall be liable to be imprisoned at hard labour in the Provincial Penitentiary, for any term not less than seven years, † or to be imprisoned in any other

* See 6 V. c. 5. s. 3. in cases where the term awarded exceeds two years.

† But see 6 V. c. 5. and 14 & 15 V. c. 2, s. 2.

other prison or place of confinement for any term not exceeding two years.

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

Unlawful Abduction of a Girl from her parents or guardians.

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

Child Stealing.

Not to extend to fathers taking their illegitimate children.

XXII. And be it enacted, That if any person, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in this Province or elsewhere, every such offender, and every person counselling, aiding or abetting such offender shall be guilty of Felony, and being convicted thereof, shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,† or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years; and any such offence may be dealt with, enquired of, tried, determined, and punished in the District or County where the offender shall be apprehended or be in custody, as if the offence had been actually committed in that District.

Bigamy.

Place of trial.

District

* See 6 V. c. 5. s. 3. in cases where the term awarded exceeds two years.

† But see 6 V. c. 5. and 14 & 15 V. c. 2. s. 2.

Exceptions. District or County: Provided always, that nothing herein contained shall extend to any second marriage contracted out of this Province, by any other than a Subject of Her Majesty, resident in this Province, and leaving the same with intent to commit the offence, or to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time; or shall extend to any person, who, at the time of such second marriage, shall have been divorced from the bond of the first marriage; or to any person, whose former marriage shall have been declared void by the sentence of any Court of competent jurisdiction.

Arresting a
Clergyman
during divine
service.

XXIII. And be it enacted, That if any person shall arrest any Clergyman or Minister of the Gospel, upon any civil process, while he shall be performing divine service, or shall, with the knowledge of such person, be going to perform the same, or returning from the performance thereof, every such offender shall be guilty of a Misdemeanor, and being convicted thereof, shall suffer such punishment, by fine or imprisonment,* or by both, as the Court shall award.

Punishment
for assaults on
Officers, &c.
for their endeavours
to save
shipwrecked
property.

XXIV. And be it enacted, That if any person shall assault and strike or wound any Magistrate, Officer, or other person whatsoever, lawfully authorized, on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, every such offender, being convicted thereof, shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,† or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Assaults with
intent to com-
mit felony;
assaults on
Peace Officers;
or to prevent
the arrest of
offenders; or
in pursuance
of a conspiracy
to raise wages;
punishable
with hard la-
bour.

XXV. And be it enacted, That where any person shall be charged with and convicted of any of the following offences as Misdemeanors, that is to say: of any assault upon intent to commit Felony,—of any assault upon any Peace Officer or Revenue Officer in the due execution of his duty, or upon any person acting in aid of such officer,—of any assault upon any person with intent to resist or prevent the lawful apprehension or detainer of the party so assaulting, or of any other person, for any offence for which he or they may be liable by law to be apprehended or detained,—or of any assault committed in pursuance of any conspiracy to raise the rate of wages, in any such case, the Court may sentence the offender to be imprisoned for any term not exceeding two years, and may also (if it shall so think fit) fine the offender, and require him to find sureties for keeping the peace.†

XXVI.

* See 6 V. c. 5. s. 3. in cases where the term awarded exceeds two years.

† But see 6 V. c. 5, and 14 & 15 V. c. 2, s. 2.

† But see 6 Vic. c. 5, s. 5. as to assaults with intent to Rape or Buggery.

XXVI. And be it enacted, That if any person shall, unlawfully and with force, hinder any Seaman from working at or exercising his lawful trade, business or occupation, or shall beat, wound, or use any other violence to him, with intent to deter or hinder him from working at or exercising the same; or if any person shall beat, wound, or use any other violence to any person, with intent to deter or hinder him from selling or buying any wheat or other grain, flour, meal or malt, in any market or other place, or shall beat, wound, or use any other violence to any person having the care or charge of any wheat or other grain, flour, meal or malt, whilst on its way to or from any city, market-town, or other place, with intent to stop the conveyance of the same, every such offender may be convicted thereof before two Justices of the Peace, and imprisoned and kept to hard labour in the Common Gaol or House of Correction, for any term not exceeding three calendar months: Provided always, That no person, who shall be punished for any such offence, by virtue of this provision, shall be punished for the same offence by virtue of any other law whatsoever.

Assault on any Seaman, &c. to prevent him from working; assault with intent to obstruct the buying or selling of Grain, or its free passage; punishable before two Magistrates, with imprisonment not exceeding three months.

Proviso.

XXVII. And whereas it is expedient that a summary power of punishing persons for common assaults and batteries should be provided under the limitations hereinafter mentioned; Be it therefore enacted, That where any person shall unlawfully assault or beat any other person, it shall be lawful for any Justice of the Peace, upon complaint of the party aggrieved, praying him to proceed summarily under this Act, to hear and determine such offence;* and the offender, upon conviction thereof before him, shall forfeit and pay such fine as shall appear to him to be meet, not exceeding together with costs (if ordered) the sum of Five Pounds, which fine shall be paid to the Treasurer of the Municipal District or Place in which the offence shall have been committed, and make part of the funds of such District, or if the conviction be had in any place not within any Municipal District, then such fine shall be paid over to such Officer, and be applicable to such purposes as other fines and penalties by law are; and the evidence of any inhabitant of the Municipal District shall be admitted in proof of the offence, notwithstanding such application of the fine incurred thereby; and if such fine as shall be awarded by the said Justice, together with the costs (if ordered) shall not be paid, either immediately after the conviction, or within such period as the said Justice shall at the time of the conviction appoint, it shall be lawful for him to commit the offender to the Common Gaol or House of Correction, there to be imprisoned for any term not exceeding two calendar months, unless such fine and costs be sooner paid; but if the Justice, upon the hearing of any such case of assault or battery shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit

Persons committing any common assault or battery may be compelled by a Magistrate to pay a fine and costs not exceeding £5.

Application of the fine.

Commitment on non-payment.

*But see the Election Act 6 V. c. 1. as to assaults within a certain distance of the Poll during Elections.

If the Magistrate dismisses the complaint, he shall make out a certificate to that effect.

merit any punishment, and shall accordingly dismiss the complaint, he shall forthwith make out a certificate under his hand, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred; and if such* costs shall not be paid immediately upon dismissal, or within such period as such Justice shall, at the time of such dismissal, appoint, it shall be lawful for him to issue his warrant to levy the amount of such costs within a certain time to be in the said warrant expressed, and in case no distress sufficient to satisfy the amount of such warrant shall be so found, to commit the party by whom such costs shall be so ordered to be paid, as aforesaid, to the Common Gaol of the District, County or Division where such offence shall be alleged to have been committed, there to be imprisoned for any term not exceeding ten days, unless such costs shall be sooner paid.

Such certificate or conviction shall be a bar to any other proceedings.

XXVIII. And be it enacted, That if any person against whom any such complaint shall have been preferred for any common assault or battery, shall have obtained such certificate as aforesaid, or having been convicted shall have paid the whole amount adjudged to be paid under such conviction, or shall have suffered the imprisonment awarded for non-payment thereof, in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause.

Magistrate may discharge offender on his satisfying aggrieved party.

XXIX. And be it enacted, That when any person shall be summarily convicted before a Justice of the Peace of any offence against this Act, it shall be lawful for such Justice, if he shall so think fit, to discharge the offender from his conviction upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the said Justice.

Where felony intended Magistrate not to adjudicate, but refer the case to the Tribunals.

XXX. Provided always, and be it enacted, That in case the Justice shall find the Assault and Battery complained of to have been accompanied by any attempt to commit Felony, or shall be of opinion that the same is, from any other circumstances, fit subject for a prosecution by indictment, he shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as he would have done before the passing of this Act: Provided also, that nothing herein contained shall authorize any Justice of the Peace to hear and determine any case of Assault or Battery in which any question shall arise as to the title to any lands, tenements or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any Court of Justice.

XXXI.

* But see 6 Vic. c. 5, and 14 & 15 V. c. 2, s. 2.

XXXI. And be it enacted, That if any person shall wilfully disturb, interrupt, or disquiet any assemblage of persons met for religious worship, by profane discourse, by rude, or indecent behaviour, or by making a noise, either within the place of worship, or so near it as to disturb the order or solemnity of the meeting, such person shall, upon conviction thereof before any Justice of the Peace, on the oath of one or more credible witness or witnesses, forfeit and pay such a sum of money, not exceeding Five pounds, as the said Justice shall think fit.

Punishment
for disturbing
Divine Service.

See also Act of
L. C. 7 G. 4,
c. 3.

XXXII. And be it enacted, That in default of payment of any fine imposed under the authority of this Act, on a summary conviction before any Justice of the Peace, together with the costs attending the same, within the period specified for the payment thereof at the time of conviction by the Justice before whom such conviction may have taken place, it shall and may be lawful for such Justice to issue his warrant directed to any Constable to levy the amount of such fine and costs within a certain time to be in the said warrant specified; and in case no distress sufficient to satisfy the amount shall be found, it shall and may be lawful for him to commit the offender to the Common Gaol of the District wherein the offence was committed, for any term not exceeding one month, unless the fine and costs shall be sooner paid.

Fines how
levied.

XXXIII. And be it enacted, That any person who shall think himself aggrieved by any summary conviction or decision under this Act, as aforesaid, may appeal to the next Court of General or Quarter Sessions, which shall be holden not less than twelve days after the day of such conviction or decision for the District wherein the cause of complaint shall have arisen: Provided always, that such person shall give to the other party, a notice in writing of such appeal and of the cause and matter thereof, within three days after such conviction or decision, and seven days at the least before such Sessions, and shall also either remain in custody until the Sessions, or enter into a recognizance with two sufficient sureties before a Justice of the Peace, conditioned personally to appear at the said Sessions, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and upon such notice being given, and such recognizance being entered into, the Justice before whom the same shall be entered into, shall liberate such person, if in custody, and the Court at such Sessions, shall hear and determine the matter of the appeal, and shall make such order therein with or without costs to either party, as to the Court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

Appeal against
convictions to
Quarter Ses-
sions.

Appeals triable by Jury

XXXIV. And be it enacted, That whenever an appeal shall be made from the decision of any Justice under this Act as aforesaid, the Court of General or Quarter Sessions shall have power to empanel a Jury to try the matter on which such decision may have been made, and the Court, on the finding of such Jury, under oath, shall thereupon give such judgment as the circumstances of the case may require; Provided always, that such Court shall not in any case adjudge the payment of a fine exceeding five pounds in addition to the costs, or to* order the imprisonment of the person so convicted, for any period not exceeding one month; and all fines imposed and recovered by the judgment of such Court, shall be applied and disposed of in the same manner as other fines recovered under the provisions of this Act.

* Sic

Punishment of Accessories.

XXXV. And be it enacted, That in the case of every Felony punishable under this Act, every Principal in the second degree, and every Accessory before the fact, shall be punishable with death or otherwise, in the same manner as the Principal in the first degree is by this Act punishable; and every Accessory after the fact to any Felony punishable under this Act, shall, on conviction, be liable to be imprisoned for any term not exceeding two years.

Offences punishable by imprisonment.

XXXVI. And be it enacted, That when any person shall be convicted of any offence punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the Common Gaol or House of Correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the Court in its discretion shall seem meet.

Jury may acquit of Felony and convict of Assault, in certain cases.

XXXVII. And be it enacted, That on the trial of any person for any of the offences hereinbefore mentioned, or for any Felony whatever, where the crime charged shall include an Assault against the person, it shall be lawful for the Jury to acquit of the Felony and to find a verdict of guilty of Assault against the person indicted, if the evidence shall warrant such finding; and when such verdict shall be found, the Court shall have power to imprison the person so found guilty of an Assault, for any term not exceeding three years.*

Not to affect the laws relating to the Forces.

XXXVIII. Provided always, and be it enacted, That nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's Land or Naval Forces.

XXXIX.

* See 6 V. c. 5, if the imprisonment exceeds two years.

XXXIX. And be it enacted, That it shall be lawful for the Queen's Majesty, and for the Governor, Lieutenant Governor or Person administering the Government of this Province, to extend the Royal Mercy to any person imprisoned by virtue of this Act, although he shall be imprisoned for non-payment of money to some party other than the Crown.

Persons imprisoned may be pardoned.

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

Provisions as to offences against this Act punishable on summary conviction.

See also 14 & 15 V. c. 95, s. 1 to 7.

XLI. Provided always, and be it enacted, That the prosecution for every offence punishable on summary conviction by virtue of this Act, shall be commenced within three calendar months after the commission of the offence, and not otherwise.

Time for summary proceedings.

XLII. And be it enacted, That the Justice before whom any person shall be summarily convicted of any offence against this Act, may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall require, that is to say :

Form of conviction.

See also the forms given in 14 & 15 V. c. 95, and Schedule.

“ Be it remembered, that on the _____ day of _____
 “ in the year of our Lord _____
 “ at _____ in the County of _____
 “ (or Riding, Division, District, City, &c. as the case may be.)
 “ A. O. is convicted before me, (naming the Justice,) one of
 “ Her Majesty's Justices of the Peace for the said County
 “ (or Riding, &c.) for that the said A. O. did (specify the
 “ offence, and the time and place when and where the same
 “ was committed, as the case may be;) and I, the said Justice
 “ adjudge the said A. O. for his said offence, to be imprisoned
 “ in the _____ (or to be imprisoned in the
 “ _____ and there kept at hard labour)
 “ for the space of _____ (or I adjudge the said
 “ A. O. for his said offence, to forfeit and pay the sum of
 “ _____ (here state the amount of the fine imposed.)
 “ and also to pay the sum of _____ for costs; and in
 “ default of immediate payment of the said sums, to be impri-
 “ soned in the _____
 “ for the space of _____ unless the said sums shall
 “ be _____

substance, destroy or damage any building with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of felony.

III. And be it enacted, That whoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burn, maim or disfigure, disable or do any grievous bodily harm to any person, shall be guilty of felony.

Doing bodily harm to any Person.

IV. And be it enacted, That whoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send or deliver to or cause to be taken or received by any person any explosive substance, or any other dangerous or noxious thing, or cast or throw at or upon, or otherwise apply to any person any corrosive fluid, or other destructive or explosive substance, with intent in any of the cases aforesaid to burn, maim, disfigure or disable any person, or to do some grievous bodily harm to any person, shall, although no bodily injury be effected, be guilty of felony.

Causing explosion, throwing corrosive fluids, &c. with like intent.

V. And be it enacted, That whoever shall be convicted of any felony hereinbefore mentioned, shall be liable, at the discretion of the Court, to be imprisoned in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any Common Gaol for any term not exceeding three years.

Punishment of persons convicted of such offences.

VI. And be it enacted, That whoever shall unlawfully and maliciously place or throw in, into, upon, against or near any building or vessel, any gunpowder or other explosive substance, with intent to do any bodily damage to any person, or to destroy or damage any building or vessel, or any machinery, working tools, fixtures, goods or chattels, shall, whether or not any explosion takes place, and whether or not any injury is effected to any person, or any damage to any building, vessel, machinery, working tools, fixtures, goods or chattels, 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 time not exceeding seven years, nor less than three years, or to be imprisoned in any Common Gaol for any period not exceeding two years.

Throwing explosive substances into or near to any buildings, &c.

Punishment for such offence.

VII. And be it enacted, That whoever shall unlawfully and maliciously by any overt act attempt to set fire to any building, vessel, or to any stack, or to any vegetable produce of such kind and with such intent, that if the offence were complete the offender would be guilty of felony, and liable to be imprisoned in the Provincial Penitentiary for any term not less than seven years, shall, although such building, vessel, stack, or vegetable produce be not actually set on fire, 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

Attempting to set fire to any building, vessel, &c. the offence not being complete.

Punishment for such offence.

any

any time not exceeding seven years, nor less than three years, or to be imprisoned in any Common Gaol for any term not exceeding two years.

Having explosive substances with intent to commit an offence against this Act, &c.

VIII. And be it enacted, That whoever shall knowingly have in his possession, or make or manufacture any gunpowder, explosive substance or any dangerous or noxious thing, or any machine, engine, instrument or thing with intent by means thereof to commit, or for the purpose of enabling any other person to commit any offence against this Act, shall be guilty of a misdemeanor, and on conviction thereof shall be liable to be imprisoned in any Common Gaol for a period not exceeding two years.

Punishment.

Male offenders under 18 years may be whipped.

IX. And be it enacted, That every male person under the age of eighteen years who shall be convicted of any offence under this Act, or who shall be convicted of feloniously setting fire to any building, vessel or to any stack, shall be liable, at the discretion of the Court before which he shall be convicted, in addition to any other sentence which may be passed upon him, to be publicly or privately whipped in such manner and as often, not exceeding thrice, as the Court shall direct.

Punishment of principals in the second degree and of accessories.

X. And be it enacted, That in the case of every felony punishable under this Act, every principal in the second degree and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act, shall on conviction be liable to be imprisoned in any Common Gaol for any time not exceeding two years.

Court may order hard labour and solitary confinement.

XI. And be it enacted, That when any person shall be convicted of any offence punishable under this Act for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one calendar month at any one time, and not exceeding three calendar months in any one year, as to the Court in its discretion shall seem meet.

Limitation.

Search warrants may be issued to search for gunpowder or explosive substance suspected to be kept for illegal purposes.

XII. And be it enacted, That any Justice of the Peace of any District, City, Town or place in which any gunpowder or other explosive, dangerous or noxious substance is suspected to be made or kept for the purpose of being used in committing an offence under this Act, upon reasonable cause assigned upon oath by any person or persons, may issue a warrant or warrants under his hand and seal for searching in the day time any house, shop, cellar, yard or other building, or any vessel, in which such gunpowder or other explosive, dangerous or noxious substance

substance is suspected to be made or kept for such purpose as aforesaid, and that every person acting in the execution of any such warrant shall have power to seize any gunpowder, explosive substance or any dangerous or noxious thing, or any machine, engine or instrument or thing which he shall have good cause to suspect to be intended to be used in committing or enabling any other person to commit any offence against this Act, and with all convenient speed after the seizure to remove the same to such proper places as they shall think fit, and may detain the same, until ordered to restore it to the person or persons who shall claim the same, by any Judge of any of Her Majesty's Courts of Queen's Bench; and such searcher or searchers, seizer or seizers shall not be liable to any suit for such detainer, or for any loss of or damages which may happen to the same, other than by the wilful acts or neglects of them or the persons with whom they shall entrust the keeping thereof.

The same if found may be seized; how to be dealt with.

Protection to persons searching.

XIII. And be it enacted, That any gunpowder, explosive substance or any dangerous or noxious thing, or any machine, engine, instrument or thing which shall be intended to be used in committing or in enabling any other person to commit any offence against this Act, and which shall be seized and taken possession of under the provisions thereof, shall, in the event of the person or persons in whose possession the same shall be found, or the owner or owners thereof being convicted for any offence under this Act, be forfeited; and the same shall be sold under the direction of the Court before which any such person shall be convicted, and the proceeds thereof shall be paid into the hands of the Receiver General to and for the use of the Province.

Forfeiture of gunpowder, &c. found with persons convicted under this Act.

Sale of such gunpowder.

XIV. And be it enacted, That it shall be lawful for any Constable or Peace Officer to take into custody, without a warrant, any person whom he shall find lying or loitering in any highway, yard or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony under this Act, and to detain such person until he can be brought before a Justice of the Peace to be dealt with according to law.

Persons loitering, &c. and suspected of intention to commit offences against this Act, may be detained.

XV. Provided always, and be it enacted, That no such person having been so apprehended shall be detained after noon of the following day, without being brought before a Justice of the Peace.

Must be brought before a Justice within a certain time.

XVI. And be it enacted, That neither the Justices of the Peace acting in and for any District, Division or City, nor the Recorder of any City, shall, at any Session of the Peace or at any adjournment thereof, try any person or persons for any offence under this Act.

Offender not to be tried by Justices of the Peace or Recorders.

Offences within the Jurisdiction of Vice Admiralty, how dealt with.

XVII. And be it enacted, That where any felony punishable under this Act shall be committed within the jurisdiction of any Court of Admiralty in this Province, the same shall be dealt with, inquired of and tried and determined in the same manner, as any other felony committed within that jurisdiction.

Act may be amended in this Session.

XVIII. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

6 VICT. CAP. 5.—1842.

An Act for better proportioning the punishment to the offence, in certain cases, and for other purposes therein mentioned.

Preamble.

WHEREAS it is expedient to enable the Courts, before whom offenders may be convicted in certain cases, better to proportion the punishment of such offenders to the guilt of the offence; Be it therefore enacted, &c., That so much of a certain Act passed in the Session held in the fourth and fifth years of Her Majesty's Reign, and intituled, *An Act for improving the administration of Criminal Justice in this Province*, or of a certain other Act passed in the same Session, and intituled, *An Act for consolidating and amending the Laws in this Province, relative to Larceny and other offences connected therewith*, or of a certain other Act passed in the same Session, and intituled, *An Act for consolidating and amending the Laws in this Province, relative to malicious injuries to property*, or of a certain other Act passed in the same Session, and intituled, *An Act for consolidating and amending the Statutes in this Province, relative to offences against the person*, or of any other Act or Law, as shall be repugnant to or inconsistent with the enactments of this Act, shall be and is hereby repealed.

4 & 5 Vic. c. 24, cited.

4 & 5 Vic. c. 25, cited.

4 & 5 Vic. c. 26, cited.

4 & 5 Vic. c. 27, cited.

Provisions inconsistent with this Act repealed.

Cases in which offenders may be committed to the Provincial Penitentiary for any term not less than three years.

II. And be it enacted, That for each and every offence for which by any of the Acts hereinabove cited, the offender is liable on conviction to be punished by imprisonment in the Provincial Penitentiary, but may, instead thereof and in the discretion of the Court, be punished by imprisonment in any other Prison or place of confinement for any term not exceeding two years, the offender may, if convicted after the passing of this Act, be punished in the discretion of the Court, by imprisonment in the Provincial Penitentiary for any term not less than three years and not exceeding the longest term for which such offender might have been so imprisoned if this Act had not been passed, or by imprisonment in any other Prison or place of confinement for any term not exceeding two years, in the manner prescribed by such Act; Provided always, that nothing in

in this Act shall prevent such offender from being punished by imprisonment in the Provincial Penitentiary for life, if he might have been so punished if this Act had not been passed.

III. And be it enacted, That for each and every offence, for which by any of the said Acts, the offender may on conviction be punished by imprisonment for such term as the Court shall award, or for any term exceeding two years, such imprisonment, if awarded for a longer term than two years, shall be in the Provincial Penitentiary.

Other cases in which offenders may be so committed.

IV. And be it enacted, That for each and every offence for which by any of the said Acts or by any other Act or Law, the offender might, if this Act had not been passed, have been punished by transportation beyond Seas, such offender may, if convicted after the passing of this Act, be punished by imprisonment in the Provincial Penitentiary for any term for which he might have been transported beyond Seas if this Act had not been passed, or by imprisonment for life, if without this Act he might have been punished by transportation for life.

Instead of being punished by transportation, offenders may be imprisoned for a like term in the Penitentiary.

V. And whereas it is necessary to determine the punishment to be inflicted upon certain offenders, not provided for by the said before recited Act, intituled, *An Act for consolidating and amending the Statutes in this Province, relating to offences against the person*, Be it enacted, that where any person shall be charged with and convicted of any Assault, with intent to commit Rape, or of any Assault with intent to commit the abominable crime of Buggery, either with mankind or with any animal, the Court in any such case may sentence the offender to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding three years, or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Assault with intent to commit Rape or abominable crimes, how punished.

12 VICT. CAP. 19.—1849.

An Act for better giving effect, within this Province, to a Treaty between Her Majesty and the United States of America, for the apprehension and surrender of certain Offenders.

WHEREAS by the tenth article of a Treaty between Her Majesty and the United States of America, signed at Washington on the Ninth day of August, in the year one thousand eight hundred and forty-two, the ratifications whereof were exchanged at London, on the Thirtieth day of October, in the same year, it was agreed that Her Majesty and the said

Preamble.
Treaty with U. S. 9th August, 1842, cited.

United

United States, should, upon mutual requisitions by them or their Ministers, Officers or authorities respectively made, deliver up to justice all persons who, being charged with the crime of Murder, or Assault with intent to commit Murder, or Piracy, or Arson, or Robbery, or Forgery, or the utterance of Forged Paper, committed within the jurisdiction of either of the High Contracting Parties, should seek an Asylum or should be found within the Territories of the other; provided that this should only be done upon such evidence of criminality as according to the Laws of the place where the fugitive or person so charged should be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed; and that the respective Judges and other Magistrates of the two Governments should have power, jurisdiction and authority, upon complaint made under oath, to issue a Warrant for the apprehension of the fugitive or person so charged, so that he might be brought before such Judges or other Magistrates respectively, to the end that the evidence of criminality might be heard and considered, and if on such hearing the evidence should be deemed sufficient to sustain the charge, it should be the duty of the examining Judge or Magistrate to certify the same to the proper Executive Authority, that a Warrant might issue for the surrender of such fugitive; and that the expense of such apprehension and delivery should be borne and defrayed by the party making the requisition and receiving the fugitive; and it is by the eleventh article of the said Treaty further agreed, that the tenth article hereinbefore recited should continue in force until one or other of the High Contracting Parties should signify its wish to terminate it, and no longer: And whereas certain provisions of the Act passed by the Parliament of the United Kingdom of Great Britain and Ireland, in the Session held in the sixth and seventh years of Her Majesty's Reign for giving effect to the Treaty aforesaid, and intituled, *An Act for giving effect to a Treaty between Her Majesty and the United States of America, for the apprehension of certain Offenders*, have been found inconvenient in practice in this Province, and more especially that provision which requires that before any such offender as aforesaid shall be arrested, a Warrant shall issue under the Hand and Seal of the person administering the Government, to signify that such requisition as aforesaid hath been made by the authority of the United States for the delivery of such offender as aforesaid, and to require all Justices of the Peace, and other Magistrates and Officers of Justice, within their several jurisdictions, to govern themselves accordingly, and to aid in apprehending the person so accused, and committing such person to Gaol for the purpose of being delivered up to justice according to the provisions of the said Treaty, inasmuch as by the delay occasioned by compliance with the said provision, an offender may have time afforded him for eluding pursuit: And whereas by the fifth section of the said Act it is enacted, that if by any Law or Ordinance to be thereafter made by the local Legislature of any

British

Imperial Act
6 & 7 Vict.
cited.

British Colony or Possession abroad, provision shall be made for carrying into complete effect within such Colony or Possession, the objects of the said Act, by the substitution of some other enactment in lieu thereof; then it shall be competent to Her Majesty, with the advice of Her Privy Council (if to Her Majesty in Council it shall seem meet, but not otherwise) to suspend the operation within any such Colony or Possession of the said Act of the said Imperial Parliament, so long as such substituted enactment shall continue in force there, and no longer: And whereas it is expedient to make provision for carrying the objects of the said Act and Treaty into complete effect within this Province, by the substitution of other enactments in lieu of the said Imperial Act: Be it therefore enacted &c. That it shall be lawful for any of the Judges of any of Her Majesty's Superior Courts in this Province, or for any of Her Majesty's Justices of the Peace in the same, and they are hereby severally vested with power, jurisdiction and authority, upon complaint made under oath or affirmation, charging any person found within the limits of this Province with having committed, within the jurisdiction of the United States of America, or of any of such States, any of the crimes enumerated or provided for by the said Treaty, to issue his Warrant for the apprehension of the person so charged, that he may be brought before such Judge or such Justice of the Peace, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient by him to sustain the charge according to the laws of this Province, if the offence alledged had been committed therein, it shall be his duty to certify the same, together with a copy of all the testimony taken before him, to the Governor or Lieutenant-Governor of this Province, or to the Person administering the Government of the same for the time being, that a Warrant may issue, upon the requisition of the proper authorities of the said United States or of any of such States, for the surrender of such person, according to the stipulations of the said Treaty; and it shall be the duty of the said Judge or of the said Justice of the Peace, to issue his Warrant for the commitment of the person so charged to the proper Gaol, there to remain until such surrender shall be made, or until such person shall be discharged according to law.

By whose order and on what evidence persons charged with crimes committed in the U. S. may be arrested and detained.

Proceedings to be certified to the Governor.

And the offender to be committed until duly discharged.

II. Provided always, and be it enacted, That in every case of complaint as aforesaid, and of a hearing upon the return of the Warrant of Arrest, copies of the depositions upon which an original Warrant in any of the said United States may have been granted, certified under the hand of the person or persons issuing such Warrant, or under the hand of the Officer or person having the legal custody thereof, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended.

Properly attested copies of depositions taken in U. S. to be received as evidence of criminality.

Governor may order the delivery of the offender to the U. S. or to any one of the States.

III. And be it enacted, That it shall be lawful for the Governor or Lieutenant-Governor of this Province, or the person administering the Government of the same for the time being, upon a requisition made as aforesaid by the authority of the said United States or of any of such States, by Warrant under his hand and seal, to order the person so committed to be delivered to such person or persons as shall be authorized in the name and on the behalf of the said United States or of any of such States, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly; and it shall be lawful for the person or persons authorized as aforesaid, to hold such person in custody, and to take him or her to the territories of the said United States, pursuant to the said Treaty; and if the person so accused shall escape out of any custody to which he or she shall be committed, or to which he or she shall be delivered as aforesaid, it shall be lawful to retake such person, in the same manner as any person accused of any crime against the laws of this Province, may be retaken upon an escape.

Offenders escaping may be retaken.

Any person so arrested and not delivered up within two months, may obtain his discharge, unless good cause for his further detention be shewn.

IV. And be it enacted, That when any person who shall have been committed under this Act and the Treaty aforesaid, to remain until delivered up in pursuance of a requisition as aforesaid, shall not be delivered up pursuant thereto and conveyed out of this Province, within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the Gaol to which he or she may have been committed, by the readiest way out of this Province, it shall in every such case, be lawful for any of the Judges of Her Majesty's Superior Courts in this Province, having power to grant a Writ of *Habeas Corpus*, upon application made to him or them by or on behalf of the person so committed, and upon proof made to him or them that reasonable notice of the intention to make such application has been given to the Provincial Secretary, to order the person so committed to be discharged out of custody, unless sufficient cause shall be shewn to such Judge or Judges why such discharge shall not be ordered.

Commencement and duration of this Act.

V. And be it enacted, That this Act shall come into force upon the day to be appointed for that purpose in any Proclamation to be issued by the Governor, Lieutenant-Governor, or Person Administering the Government of this Province, for the purpose of promulgating any Order of Her Majesty with the advice of Her Privy Council suspending the operation of the Imperial Act hereinbefore cited within this Province, and not before, and shall thereafter continue in force during the continuance of the tenth article of the said Treaty, and no longer.*

* The Proclamation bringing this Act into force issued on the 6th day of April, 1850. The Treaty and this Act are still in force.

36 GEO. III. CAP. 12.—1796.

An Act to authorize the apprehending of Felons and others escaping from the Provinces of Upper Canada and New Brunswick into this Province.

WHEREAS it may happen that felons and other malefactors, having committed crimes in His Majesty's Provinces of Upper Canada or New Brunswick, may escape into this Province, and their offences thereby remain unpunished, for want of a provision by law for apprehending such offenders in this Province, and transmitting them into the Province in which their offences were committed:—For remedy whereof, Be it therefore enacted, &c., That from and after the passing of this Act, if any person or persons against whom a warrant shall be issued by the chief justice or any other justice of the court of King's bench, or any justice of the peace, acting in either of His Majesty's Provinces of Upper Canada or New Brunswick, respectively, for any crime or offence against the laws of either of the said Provinces, shall escape, come into, reside or be in any part of this Province, it shall and may be lawful for any justice of the peace of the district, county, city or place, where such person or persons shall escape, come into, reside or be, to indorse his name on the said warrant, due proof being first made of the hand-writing of the magistrate issuing the same, which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all constables of the district, county, city or place where such warrant shall be so indorsed, to execute the same by apprehending the person or persons against whom such warrant is granted, and to convey him, her or them into the Province from which such warrant originally was issued, and before one of the justices of the peace acting within the said Province, to be there dealt with according to law.

Preamble!

Persons against whom warrants have issued in U. Canada or N. Brunswick, may be apprehended in this Province.

See also as far as regards Upper Canada, 14 & 15 V. c. 95 and 96, published separately.

27 GEO. III. CAP. 6.—1787.

An Ordinance to explain and amend an Ordinance for establishing Courts of Criminal Jurisdiction in the Province of Quebec.

WHEREAS it is expedient that public officers should be established in the several parishes of this Province, under the denomination of peace officers:—It is enacted and ordained, &c., that all and every the captains and other inferior officers of militia in the said several parishes of this Province, duly commissioned by His Excellency the Governor or the

Certain militia officers to be peace officers in the country parishes.

Commander

Commander in Chief, for the time being, and likewise the sergeants named and appointed by the said captains and other officers within their respective parishes, be and they are hereby declared to be public and peace officers within their respective parishes, and authorized and enjoined to do and exercise all and singular the duties and services of public and peace officers, within their respective parishes, according to law.

Peace officers
to be appointed
for the towns.

See the two
following Acts
extending
this to Three-
Rivers and St.
Francis.

II. And be it further enacted, &c., That it shall be lawful for the commissioners or justices of the peace, assembled in quarter sessions, or a majority of the same, and they are hereby required, as soon as conveniently may be, to name and appoint such and so many persons as they may think sufficient, within the towns and *banlieues* of Quebec and Montreal, for carrying into execution the orders and decrees of the several courts, and to preserve the public peace therein; every of which persons so appointed shall faithfully perform the duties of the offices for which he may be so appointed for the space of one year,—previous to the expiration whereof, it shall be the duty of the said commissioners or justices of the peace, annually to appoint others to serve in their stead,—and to increase or diminish the number first appointed, as to them shall appear to be most for the public weal and safety; and that no such appointment shall be valid in Quebec or Montreal and their *banlieues*, respectively, in the case of a civil or a military officer, or any person in priest's orders, or in the profession or practice of physic and surgery, or any miller, ferry-man, school-master or student of any college or seminary, or any person not of full age. And for neglecting or refusing to perform the said office or offices, there shall be the forfeiture of twenty pounds, to be recovered in any court of record, with costs of suit, by bill, plaint or information, in which no *essoine*, *wager of law*, or any more than one *imparlance* shall be allowed.

1 GEO. IV. CAP. 15.—1821.

An Act to extend to the Town of Three-Rivers, certain provisions contained in an Ordinance passed in the twenty-seventh year of His late Majesty's Reign, intituled, *An Ordinance to explain and amend an Ordinance for establishing Courts of Criminal Jurisdiction in the Province of Quebec.*

Preamble.

Provisions of
27 Geo. 3. Cap.
6 extended to
the town of
Three-Rivers.

WHEREAS it is expedient and necessary to extend to the town of Three-Rivers, certain provisions contained in an ordinance passed, &c., (27 Geo. 3. Cap. 6.) :—Be it therefore enacted, &c., that all the provisions contained in the afore-said ordinance passed in the twenty-seventh year of His late

Majesty's

Majesty's reign, intituled, *An ordinance to explain and amend an ordinance for establishing courts of criminal jurisdiction in the Province of Quebec*, which relate to the appointment of constables within the towns of Quebec and Montreal, shall, from and after the passing of this act, have force and effect within the town of Three-Rivers, in the same manner and as fully as if the said town of Three-Rivers had been specially named and included in the aforesaid ordinance.

8 VICT. CAP. 18.—1845.

An Act to extend to the Town of Sherbrooke the provisions of a certain Ordinance therein mentioned, relating to the appointment of Peace Officers and Constables; and also to explain the Jurisdiction of the General Sessions of the Peace for the District of Saint Francis.

WHEREAS it is expedient and necessary to extend to the Town of Sherbrooke certain provisions contained in the Ordinance hereinafter mentioned: Be it therefore enacted, &c. That all the provisions contained in the aforesaid Ordinance, passed in the twenty-seventh year of the Reign of His late Majesty King George the Third, and intituled, *An Ordinance to explain and amend an Ordinance for establishing Courts of Criminal Jurisdiction in the Province of Quebec*, which relate to the appointment of Peace Officers and Constables within the then Towns of Quebec and Montreal, shall, from and after the passing of this Act, have force and effect within the Town of Sherbrooke in the same manner and as fully as if the said Town of Sherbrooke had been specially named and included in the aforesaid Ordinance.

Preamble.

The provisions of 27 Geo. 3, Cap. 6, relative to the appointment of Peace Officers, to apply to the town of Sherbrooke.

II. And whereas it is expedient and necessary to remove all doubts as to the powers, privileges, authority and jurisdiction of the Court of General Sessions of the Peace for the District of Saint Francis, held at the said Town of Sherbrooke, by reason of the same not being Quarter Sessions: Be it therefore enacted and declared, That the said Court of General Sessions of the Peace for the District of Saint Francis shall be, and shall be considered to have been, as well generally as for the purposes of this Act, invested with all the powers, privileges, authority and jurisdiction which now are or shall hereafter be by law exercised and possessed by any Court of General Quarter or Quarter Sessions of the Peace, within that part of the Province of Canada known as Lower Canada, save and except only such as relate to the period or allotted number of the Terms of the same within the year, and also such as shall or may be expressly ordered and ordained otherwise.

Court of General Sessions of the Peace at Sherbrooke to have the same powers as Court of Quarter Sessions in Lower Canada.

Exception.

6 WILL. IV. CAP. 37.—1836.

An Act to provide more effectually for the safe conveyance of Prisoners charged with Criminal Offences, from the country parts of this Province to the Common Gaols of the several Districts.

Preamble.

As to conveyance of prisoners from one District to another—See 14 & 15 V. c. 96. (Published separately, sect. 14.)

27 Geo. 3. Cap. 3, cited.

Officers or sergeants of militia to be Peace Officers.

Their duties as such.

Proviso.

Militiaman may be required to furnish a horse and carriage.

Penalty on refusal.

WHEREAS it is necessary to make more effectual provision than now exists by law, for the conveyance of prisoners charged with criminal offences, from the country parts of this Province to the common gaols of the several districts, and to extend for this purpose the provisions relating to Peace Officers, contained in the Act or Ordinance passed in the twenty-seventh year of the reign of His Majesty, King George the Third, intituled, *An Ordinance to explain and amend an Ordinance for establishing courts of criminal jurisdiction in the Province of Quebec*:—Be it therefore enacted, &c., That from and after the passing of this Act, that each and every captain, officer and sergeant of militia in this Province, shall be a peace officer for the district within which he resides; and it shall be his duty, when thereto commanded by any justice of the peace or superior officer of militia, to accompany, aid and assist any other peace officer or constable, in conveying a prisoner or prisoners, charged with a criminal offence, to or towards any gaol in such district: Provided always, that it shall be lawful for such captain or officer of militia to require any militiaman or militiamen of his company to perform the aforesaid service.

II. And be it further enacted, &c., That it shall be lawful for any justice of the peace in this Province, or for any captain or superior officer of militia, upon the requisition of a justice of the peace, to order any person belonging to the company of such captain, and having a carriage and horse, to furnish the same for the conveyance of a prisoner or prisoners charged with a criminal offence, and the effects of such prisoner or prisoners, or any other effects which it may be necessary to send along with such prisoner, for the purposes of justice, to or towards the common gaol of the county or district; and every person having a carriage and horse, shall be bound to obey such order.

III. And be it further enacted, &c., That any captain, officer or sergeant of militia, who shall refuse to accompany or assist a constable or peace officer, in conveying a prisoner or prisoners charged as aforesaid, to or towards a common gaol, and any person having a carriage and horse as aforesaid, who shall neglect or refuse, when ordered as aforesaid, to furnish the same for the conveyance of such prisoner or prisoners, to or towards such gaol, shall for every such offence, forfeit, being a commissioned officer, a sum not exceeding forty shillings, currency,

currency, and every non-commissioned officer, or militiaman, a sum not exceeding twenty shillings, currency, to be recovered in a summary manner, upon complaint, hearing and conviction before any justice of the peace, on the testimony of one or more credible witness or witnesses; and such penalty, if not paid within twenty-four hours after conviction, shall be levied, together with costs, by distress and sale of the goods and chattels of the party convicted. How enforced.

IV. Provided always, and be it further enacted, &c., That no such officer or sergeant of militia; nor the carriages or horses of persons who shall be commanded to furnish the same, as aforesaid, shall be bound or compelled to go farther than the residence of the nearest captain or other commissioned officer belonging to the next company of militia, being such peace officer as aforesaid, living on or near the most direct or shortest route towards the prison to which such prisoner or prisoners are to be conveyed. Distance to which an officer of militia is bound to go.

V. And be it further enacted, &c., That one moiety of the penalties imposed and to be levied by virtue of this Act, shall go to the informer, and the other moiety shall go to His Majesty, His Heirs or Successors, and shall be paid to the Receiver General of this Province, for the public uses thereof, and shall be accounted for to His Majesty, His Heirs or Successors, through the Lords Commissioners of the Treasury, as His Majesty, His Heirs or Successors shall direct. Penalties how disposed of.

6 WILL. IV. CAP. 19.—1836.

An Act to regulate the Fees of persons employed by Justices of the Peace in the country parishes, as Clerks or Bailiffs, in certain cases.

(This Act is temporary, but is continued to the end of the Session commencing next after 1st January, 1854, and is therefore still in force.)

WHEREAS the want of a tariff for the persons performing the duty of clerks, and for the bailiffs and constables employed by the justices of the peace in the country parishes, gives rise to many abuses and to acts of extortion, and it is expedient to provide a remedy therefor:—Be it therefore enacted, &c., That no individual acting as clerk to any justice of the peace in the country parishes, shall at any time, or under any pretext whatsoever, demand or require higher fees than those hereinafter mentioned, that is to say: Preamble.
Fees to the clerks of justices of the peace in the country parishes.

For drawing up a deposition, two shillings and six pence, currency;
For drawing up a warrant, two shillings and six pence, currency;

For

This Act will not apply to cases where particular fees have been expressly assigned for particular services: and the fees payable under it will be superseded by any fixed for like services under 14 & 15 V. c. 95, s. 26.

- For drawing up a bail bond, two shillings and six pence, currency;
- For making out a *committimus*, two shillings and six pence, currency;
- For a summons, one shilling and six pence, currency;
- For each copy, six pence, currency;
- For a *maad*, one shilling, currency;
- For each copy, six pence, currency;
- For the entry of a final judgment, one shilling and three pence, currency;
- For a copy thereof, one shilling and three pence, currency;
- For a warrant of execution, one shilling and three pence, currency;

For each copy of an entry made in the register kept by such magistrate, at the rate of six pence, currency, for every hundred words: Provided always, that the person performing the duty of the clerk shall not require any payment for any paper he may prepare in any criminal prosecution (where assaults and batteries excepted,) and shall under the dictation and order of the justice of the peace, keep the register of such justice of the peace, without being entitled to any remuneration for so doing; and such clerk shall likewise, at his own cost (either by employing a person to do the duty of crier, or otherwise,) cause order to be maintained during the sittings of the court, and shall execute all the orders which shall be made by any such justice of the peace in that behalf.

Proviso.

Fees to bailiffs and constables.

II. And be it further enacted, &c., That no bailiff or constable employed to execute the orders of any justice of the peace, shall, at any time, or under any pretext whatever, demand or require higher fees than those hereinafter mentioned, that is to say:

For executing any warrant of arrest, five shillings, currency, and two shillings and six pence, currency, for his assistant, (*recors*);

For a seizure and sale under execution, the publication included, seven shillings and six pence, currency, and two shillings and six pence, currency, for his assistant;

And for a seizure only, not followed by a sale, one half of the said fees;

For the service of any summons, *subpena*, or order, one shilling and three pence, currency, and one shilling, currency, for each league travelled to serve the same, the distance in returning not to be reckoned;

For each official return of illegal resistance, two shillings and six pence, currency, and one shilling and three pence, currency, for his assistant.

Proviso.

Provided always, that whenever any bailiff or constable shall serve several summons or *subpenas* for the same complainant, at the same time and on the same road, he shall only be entitled to travelling expenses as far as for one journey, and the fees for the services.

III. And be it further enacted, &c., That every person who shall contravene this Act, shall be liable to a penalty not exceeding five pounds, currency, recoverable in a summary way before any justice of the peace of the district on legal proof, and whereof one moiety shall go to the prosecutor, with reasonable costs, and the other moiety shall belong to His Majesty, for the public uses of the Province, and shall be accounted for to His Majesty, His Heirs and Successors, through the lords commissioners of His Majesty's treasury, in such manner and form as His Majesty, His Heirs and Successors shall be pleased to direct.

Penalty on persons contravening this Act.

IV. And be it further enacted, &c., That it shall be lawful for any justice of the peace to appoint one or more constables, if need shall be, to execute the orders of such justice of the peace, to which constables such justice of the peace is hereby empowered to administer the requisite oath, which shall be enregistered in the register of such justice of the peace.

Justices of the peace may appoint constables.

V. And be it further enacted, &c., That no such clerk or person performing the duty of clerk, no bailiff or constable executing the orders of a justice of the peace, shall in any manner represent either of the parties, or plead before such justice of the peace, under a penalty of twenty shillings, currency, to be recovered and applied in the manner mentioned in the third section of this Act.

Clerks, &c., not to represent the parties.

VI. And be it further enacted, &c., That all bailiffs of the court of King's bench shall, by virtue of this Act, be authorized to execute all orders of justices of the peace within their respective districts, without its being necessary that they should be appointed constables.

Duties of the bailiffs of the King's bench.

VII. And be it further enacted, &c., That the fees or emoluments established by this Act, shall not in any wise prejudice or affect the fees or emoluments now especially established or which shall be so hereafter, by any Act of the provincial parliament concerning the duties and services of clerks, constables or bailiffs above mentioned.

Not to prejudice fees already established.

4 GEO. IV. CAP. 19.—1824.

An Act to regulate the manner in which Justices of the Peace are annually to account for Fines and Penalties, by them imposed and levied pursuant to Law, and for other purposes.

WHEREAS it is expedient to regulate the manner in which the justices of the peace shall proceed in cases of convictions,

Preamble.

Justices of the peace to keep a register of convictions.

But see also 2 V. (3) c. 20, requiring each Justice to make a Return, &c.

Senior justices to keep the minutes.

Clerks of the peace to keep registers.

Costs to be specified in the register.

Justices to pay over to the clerks of the peace the amount of the fines by them levied.

See 2 V. c. 20, as to the particulars required.

victions, and shall annually account for the fines by them imposed, levied and received, according to law;—Be it therefore enacted, &c., That the said justices of the peace throughout this Province, shall, from and after the passing of this Act, be bound to keep, in a register to be by them severally provided for the purpose, true and faithful minutes or memorandums at length of every conviction which shall at any time hereafter be by them severally made, pursuant to any law or statute in force in this Province.

II. And be it further enacted, &c., That in all cases which are cognizable by any two or more justices of the peace, the minutes or memorandums of convictions by this Act required shall be kept by the senior justice of the peace, and be subscribed by the junior justice of the peace who shall have been present during the proceedings which may have been had: Provided always, that in the cities of Quebec and Montreal, and in the town of Three Rivers, the registers which by this Act are ordained and directed to be kept, shall be kept by the clerks of the peace in the said cities and town, respectively, as heretofore, and who shall account for the fines which may be imposed according to law, by the justices of the peace in either of the said cities or town, respectively.

III. And be it further enacted, &c., That all the costs allowed in every such case shall also be specified in such register, as well as the day when execution shall have been issued to levy such costs and condemnation, and the day when the fine shall have been paid into the hands of such justice of the peace, pursuant to such condemnation; and the amount of the fine and costs shall be distinctly specified in every writ of execution that may issue in any such case.

IV. And be it further enacted, &c., That the justices of the peace aforesaid, shall annually, in the month of August, transmit and pay over into the hands of the clerks of the peace in their respective districts, the amount of all fines and penalties by them respectively levied and received, save and except such parts thereof as by law belong to informers; and shall, at the same time, furnish such clerks of the peace with a statement specifying the several offences for which, as well as the several Acts under which, they have been so incurred and levied; which statements shall, by the said clerks of the peace, be laid before the justice of the peace in the general sessions of the peace, at the opening of each session, with a list of the justices of the peace from whom fines have been received, and specifying the amount received from each.

Sections 5, 6 and 8 relate to Clerks of the Peace and forms of convictions, for which see the new Act 14 & 15 V. c. 95.

VII. And be it further enacted, &c., That in all cases where two or more justices are authorized and required to hear and determine any complaint, one justice shall be competent to receive the original information or complaint, and to issue the summons or warrant requiring the parties to appear before two or more justices of the peace, as the case may require; and after examination upon oath into the merits of the said complaint, and the adjudication thereupon by any such two justices being made, all and every the subsequent proceedings to enforce obedience thereto or otherwise, whether respecting the penalty, fine, imprisonment, cost or other matter or thing now enacted or to be hereafter enacted, may be enforced by either of the said justices, or any other justice of the peace for the same county or place, in such and the like manner as if done by the same two justices who so heard and adjudged the said complaint; and where the original complaint or information shall be made to any justice or justices of the peace, different from him or them before whom the same shall be heard and determined, the form of conviction shall be made conformable and according to the fact.

In cases where two or more justices of the peace are authorized to hear complaints, one justice may receive the original information.

See also 14 & 15 P. c. 95, s. 25.

9 VICT. CAP. 5.—1846.

An Act to enforce the attendance of Witnesses before Magistrates in Lower Canada, in certain cases.

WHEREAS in Lower Canada there exists no Law to enforce the attendance of Witnesses before Magistrates in certain cases; And whereas it is expedient to provide for the same: Be it therefore enacted, &c., That if any person, who shall be summoned as a Witness upon any complaint, information or investigation, lawfully brought before any Justice or Justices of the Peace, in that part of this Province which heretofore constituted the Province of Lower Canada, shall refuse or neglect to appear at the time by such summons appointed, having no just cause for such neglect or refusal allowed by such Justice or Justices, it shall be lawful for such Justice or Justices, on proof of such summons having been served, to issue a Warrant, under his hand and seal, or their hands and seals, to bring such persons before him or them; and if any Witness appearing, or on being brought under such Warrant as aforesaid, before any such Justice or Justices, shall refuse to be examined or to answer on oath such questions as may be lawfully put to such Witness concerning the matter before such Justice or Justices, without having some just cause for such refusal allowed as aforesaid, it shall be lawful for such Justice or Justices, by Warrant under his hand and seal, or their hands and seals, to commit such person to the Common Gaol of the District wherein

Preamble.

Justices may issue a warrant to bring before them persons summoned as witnesses and refusing to attend before them.

Justices may commit to gaol witnesses refusing to be examined before them.

See also 14 & 15 P. c. 95, s. 6 and c. 96, s. 8, &c. &c.

wherein

wherein the said Justice or Justices have jurisdiction, there to remain for any time not exceeding ten days, at the discretion of the Justice or Justices.

2. VICT. (3.) CAP. 16.—1839.

An Ordinance to amend a certain Act therein mentioned, and for the more effectual punishment of such persons as shall seduce Soldiers to desert.

Preamble.

Imp. Act.
1 Geo. I,
recited.

WHEREAS by an Act of the parliament of Great Britain, made and passed in the first year of the reign of His Majesty King George the First, intituled, *An Act for the more effectual and exemplary punishment of such persons as shall seduce soldiers to desert, or who being papists, shall enlist themselves in His Majesty's services in Great Britain and Ireland, or in the Islands of Jersey or Guernsey*, which said Act is in force, in this Province, it is among other things enacted in effect, that if any person or persons whatsoever, (other than such as are or shall be enlisted as soldiers, against whom sufficient remedy is already provided by law,) shall, by words or other means whatsoever, directly or indirectly, persuade or procure any soldier or soldiers, in the service of His Majesty, His Heirs and Successors, to desert or leave such service, or shall go about or endeavour, in manner aforesaid, to persuade, prevail on, or procure such soldier or soldiers to desert or leave such service as aforesaid, every such person or persons so offending, as aforesaid, and being thereof lawfully convicted, shall, for every such offence, forfeit to His Majesty, His Heirs and Successors, or to any other person or persons who shall sue for the same, the sum of forty pounds, sterling, to be recovered in the manner by the said Act provided; and that if it shall happen that any such offender, so convicted as aforesaid, hath not any goods and chattels, lands or tenements, to the value of forty pounds sterling, to pay and satisfy the same, or that from the circumstances or heinousness of the crime, it shall be thought proper and convenient, the court before whom such conviction shall be made, as aforesaid, shall award the said offender to prison, there to remain for any time not exceeding six months, without bail or mainprize, and also to stand in the pillory, for the space of one hour, in the manner mentioned in the said Act: And whereas in the prosecution of such offenders, in the manner heretofore provided by law, it frequently happens that during the delay afforded to the offender, previous to his trial, the witness or witnesses against such offender, being soldiers or other persons in Her Majesty's service, are removed from or leave this Province, and the ends of justice are thereby defeated and such offenders escape, and it is there-

fore.

But see 4 &
5 V. c. 24,
s. 31, abolishing the punishment of the Pillory.

fore expedient so to amend the said Act as to remedy this evil : Be it therefore ordained and enacted, &c., That each and every person who, not being such soldiers as aforesaid, shall by words or other means, directly or indirectly, persuade or procure any soldier or soldiers in the service of Her Majesty, Her Heirs or Successors, to desert or leave such service, or shall go about and endeavour to persuade, prevail on, or procure such soldier or soldiers to desert or leave such service, as aforesaid, may be prosecuted either in the manner by the said Act provided, or in a summary manner, before any three justices of the peace for the district in which such offence shall have been committed, and if convicted of such offence on the oath of one or more credible witness or witnesses before such justices of the peace, may by them be condemned to pay the said penalty of forty pounds, sterling, with costs, and may be committed by such justices to the common gaol of the district, for a period not exceeding six months; and (if such penalty and costs be not forthwith paid), then for such further time as the same shall remain unpaid; and such penalty, when paid, shall belong to and be paid to Her Majesty, Her Heirs and Successors, or to the prosecutor or person suing for the same.

Offenders may be prosecuted before any three justices of the peace in the district in which the offence is committed.

II. And be it further ordained and enacted, &c., That no prosecution shall be commenced by virtue of this Ordinance more than six months after the offence committed.

Prosecutions when to be commenced.

47 GEO. III. CAP. 9.—1807.

An Act to prevent the desertion of Seamen and others in the sea service; to punish persons encouraging such Seamen and others to desert, or harbouring or concealing them thereafter; and to repeal certain Acts therein mentioned.

WHEREAS the laws now in force for preventing desertion from ships and vessels in the merchant service, for the apprehension and detention of deserters therefrom, as well as from His Majesty's ships, and for the detection and punishment of persons encouraging or enticing seamen, apprentices and others to desert, and receiving, harbouring or secreting such seamen, apprentices and others, have been found inadequate to the end proposed, and that further and more efficient regulations have thereby become necessary: Be it therefore enacted, &c., that from and after the passing of this Act, all and every part of an ordinance, &c., (30 Geo. 3. Cap. 6), and also an Act, &c., (40 Geo. 3. Cap. 8), shall be, and the same are hereby repealed.

Preamble.

30 Geo. 3, Cap. 6, and 40 Geo. 3, Cap. 8, repealed.

II. And be it further enacted, &c., that if any person or persons whatsoever, other than and except the master or commander or other persons in the third clause of this act described, shall,

Penalty on persons harbouring deser-

ters from the King's or merchant's service.

shall, from and after the passing of this act, either by himself or themselves, or by the means of others acting under his or their orders or control and with his or their knowledge, lodge, harbour, conceal or receive any seaman, landsman or apprentice, seamen, landsmen or apprentices, or any other person legally bound or engaged to serve on board any ship or vessel, who shall have deserted from any ship or vessel, in the service of His Majesty, or who* having regularly entered and signed articles of agreement, or being bound by articles of indenture to serve on board of any merchant ship or vessel, and knowing him or them to be such deserter or deserters, every person so offending; shall, on conviction thereof, for the first offence, forfeit and pay the sum of ten pounds, current money of this Province, and for each and every subsequent like offence shall forfeit and pay double the amount of said penalty; and if such person be an inn-keeper or tavern-keeper, his or her licence for keeping a house or other place of public entertainment, shall also from and after a conviction for every such subsequent offence, be null and void, and not renewable for the space of twelve months; nor until the judgment of the court before which the offence shall have been tried, shall have been certified by the clerk of the peace of the district to have been fully complied with and satisfied; and the said clerk of the peace is hereby required to furnish such certificate on receiving the sum of one shilling and three pence from the party requiring the same; and it is hereby declared, that the suffering any such deserter or person suspected of desertion as aforesaid, to continue in the house, out buildings or premises of the same master or keeper, for the space of three hours between the rising of the sun and the setting of the same, or for the space of any six successive hours, shall be held and construed to be harbouring, concealing, lodging or receiving such deserter or person suspected of desertion as aforesaid, within the true intent and meaning of this Act.

* Sic.

See 13 & 14 V. c. 25, extending this Act to foreign vessels in certain cases.

And see also the acts amending this act and inserted in this collection.

What shall be harbouring.

Penalty on masters of ships concealing deserters on board of any vessel.

III. And be it further enacted, &c. that if the master or commander of any ship or vessel in the merchant service, or the owner or part owners, consignee or consignees, or any agent, servant or person acting on behalf of such owner or owners, part owner or part owners, consignee or consignees, or any other person or persons, acting on the behalf, with the knowledge or under the authority of any such master or commander, or of such owner or owners, part owner or part owners, consignee or consignees, shall engage or shall receive, harbour or conceal on board of any ship or vessel or elsewhere, any seaman, landsman or apprentice, seamen, landsmen or apprentices, or any other person so legally engaged as aforesaid, knowing him or them to be such, who shall have deserted as hereinbefore mentioned, or shall, by himself, themselves or any servant or servants, agent or agents, by words or with money, or by promises of future reward or compensation, or by any other ways or means whatsoever, directly or indirectly,

called,

entice, prevail upon, procure, persuade or encourage or endeavour or attempt to entice, prevail upon, procure, persuade or encourage, any such seaman or seamen, landsman or landsmen, apprentice or apprentices, or any other such person, so legally engaged as aforesaid, to desert from the ship or vessel to which he or they may respectively belong,—every such master or commander, owner and owners, part owner and part owners, consignee and consignees, and all and every other person and persons acting on the behalf, with the knowledge or under the authority of any such master or commander, owner or owners, part owner or part owners, consignee or consignees, shall, on conviction thereof, for every such offence, forfeit and pay a sum not exceeding fifty pounds, nor less than twenty pounds, current money of this Province, at the discretion of the court or magistrate before which the said offence shall be prosecuted, for every seaman, landsman or apprentice, or such other person so legally engaged as aforesaid, who shall be received, harboured, concealed, enticed, prevailed upon, procured, persuaded or encouraged, or attempted to be enticed, prevailed upon, procured, persuaded or encouraged to desert as aforesaid: Provided always, that nothing in this act contained shall extend, or be construed to extend, so to affect His Majesty's service, by sea or land, as to subject any seaman or landsman, or any other person or persons whomsoever, for or in respect of his or their entering into His Majesty's service, nor shall any officer in His Majesty's service, or any other person or persons acting by or on behalf, or in the service of His Majesty, be subject to any pains, penalty or punishment, which he or they would not have been subject to, before the passing of this present statute.

Not to affect
H. M.'s service
by sea or land;

Nor prevent
seamen enter-
ing into H.
M.'s service;

Nor to subject
any officer to
penalty.

IV. And be it further enacted, &c., that upon complaint made upon oath before any one of His Majesty's justices of the peace, by the master or commander of any ship or vessel in the merchant service, or in his absence; by the chief mate thereof, or by any other person having the care or charge of such ship or vessel, that any seaman, landsman or apprentice, or any other person legally bound or engaged to serve on board such ship or vessel, hath deserted therefrom, or hath conveyed away by himself, or by any other means whatsoever, from such ship or vessel, his clothes or bedding, or those of any other seaman, landsman or apprentice, or any other person so legally engaged as aforesaid, or belonging to the said master or commander, mate or mates, or to the owner or owners of such ship or vessel (such seaman, landsman or apprentice, or any such other person as last aforesaid doing so with the view, design or intention of deserting or of aiding, assisting, promoting or facilitating the desertion of any other person or persons lawfully engaged to serve on board any such ship or vessel,) or that such seaman, landsman or apprentice, or other such person or persons, so legally engaged, hath absented himself from such ship or vessel, without leave first obtained from the

Manner of
proceeding
against seamen
who shall have
absented them-
selves from
their duty.

Complaint.

Desertion.

Refusal to do
duty.

Warrant to
issue.

Conviction of
desertion, or
refusal to do
duty.

Committal of
offender.

Conviction of
conveying
away clothes,
bedding, &c.

Committal.

said master or commander, for the space of three hours, after the rising of the sun and before the setting thereof, or for the space of six hours after the setting of the sun, or for six hours succeeding each other, although such last mentioned hours shall commence before the setting of the sun, (unless the person or persons so absenting him or themselves, shall, by the terms of his or their engagements, have contracted for an absence of longer duration than hereinbefore mentioned,) or hath and still doth refuse to do and perform his duty on board of such ship or vessel or elsewhere, agreeable to his articles of agreement or indenture, as the case may be, such justice before whom such complaint as aforesaid, for such offences or either of them, shall so as aforesaid be made, shall, if thereunto required, immediately grant and issue a warrant addressed to and authorising and commanding any constable or constables of the district for which such justice shall act, to apprehend every such seaman, landsman or apprentice or other person so legally engaged, and who shall be so complained of, as aforesaid, and to bring such seaman, landsman, or apprentice, or other such person who had been so legally engaged, before such justice, to answer unto such complaint, and to be further dealt with according to law; and if any such seaman, landsman or apprentice, or other such last mentioned person, shall, by such justice be legally convicted of having deserted from such ship or vessel, or of having absented himself from such ship or vessel, without leave, as aforesaid, during such time as aforesaid, or of having refused to do and perform his duty on board of such ship or vessel as aforesaid, and before such justice shall refuse to return on board of such ship or vessel, or to perform his duty as aforesaid, and shall not assign a sufficient reason for such refusals, and each of them, to the satisfaction of such justice, it shall and may be lawful to and for such justice, to commit such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, so convicted, to the common goal or house of correction of the district in which such conviction shall be had, for any time not exceeding twenty days, then to be returned and put on board the ship or vessel, in which such seaman, landsman or apprentice or other such person so legally engaged as aforesaid, shall be so as aforesaid bound and engaged to serve, provided such ship or vessel shall not then have taken her departure; and if such seaman, landsman or apprentice or other such person so legally engaged as aforesaid, shall, by such justice, be convicted of having conveyed away by himself, or by any other means whatsoever, from such ship or vessel, his clothes or bedding, or those of any other seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, or belonging to the master or commander, mate or mates, or to the owner or owners of such ship or vessel, it shall and may be lawful to and for such justice to commit such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, so convicted, to the common gaol or house of correction of the district in which such conviction shall be

be had, for any time not exceeding thirty days, then to be returned and put on board the ship or vessel in which such seaman, landsman or apprentice or other such person so legally engaged as aforesaid, shall be so as aforesaid bound or engaged to serve, provided such ship or vessel shall not then have taken her departure; and if any such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, shall thereafter be legally convicted by and before any justice as aforesaid, of having deserted from such ship or vessel, or of having absented himself from such ship or vessel without leave as aforesaid, during such time as aforesaid, or of having refused to do and perform his duty on board of such ship or vessel as aforesaid, or of having conveyed away by himself, or by any other means whatsoever, from such ship or vessel, his clothes or bedding, or those of any other seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, or belonging to the master or commander, mate or mates, or to the owner or owners of such ship or vessel, it shall and may be lawful to and for such justice to commit such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, so again convicted, to the common gaol or house of correction of the district in which such conviction, for such second offence, shall be had, there to remain for the space of forty days, or until the ship or vessel in which such seaman, landsman or apprentice, or other such person shall be so bound or engaged to serve, shall sail and depart from such district: Provided always, that any such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, so convicted for such second offence, shall not, by virtue of this act, be detained in such common gaol or house of correction upon such conviction, for such second offence, for any time exceeding forty days: And further, that it shall and may be lawful to and for the master and commander of the ship or vessel in which any seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, detained or imprisoned in any such common gaol or house of correction, under and by virtue of this act, is bound or engaged to serve as aforesaid, to have and obtain at any time the discharge of any such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, so detained or imprisoned for such cause (and for no other) from such common gaol or house of correction, upon application for that purpose to the justice by whom such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, shall have been committed; and such justice upon such application is hereby authorised and required to release and discharge such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, from such common gaol or house of correction, by warrant of deliverance under his hand and seal addressed to the keeper of such common gaol or house of correction, as the case may require: Provided also, that previous to the sailing of such ship or vessel,

Repetition of the offence.

Punishment of the offender on subsequent conviction.

Proviso.

Master may procure the discharge at any time.

Manner of proceeding when seamen, who have been committed to the house of correction, are to be sent on board their ship.

it shall be incumbent on the master or commander thereof, at whose instance any seaman, landsman, or apprentice, or other such person so legally engaged as aforesaid, shall have been so committed, to apply to the justice or justices of the peace who may have granted the warrant of commitment, or in his or their absence to some other justice of the peace, whose duty it shall be to grant an order in writing directed to the gaoler or keeper of the house of correction, where such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, may be detained, immediately to deliver every such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, into the custody of a constable or constables, to be conveyed on board the ship or vessel to which he or they may belong, on such master or commander paying the gaol fees and other reasonable expenses attending such conveyance or delivery.

Fees.

Seamen, &c. committed to gaol, allowed 1s. 6d. per day, during their detention.

V. And be it further enacted &c., that to every seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, committed for desertion from any ship or vessel, on complaint of the master or commander thereof, to the common gaol or house of correction, such master or commander shall pay or cause to be paid in advance, for each and every day such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, shall remain in such gaol or house of correction, the sum of one shilling and six pence, current money of this Province, in lieu of provisions; and in default of such payment by or for such master or commander, upon representation of such default by such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, to any one justice of the peace, in and for the district wherein such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, shall be so confined (if immediate proof of such payment shall not be made by such master or commander to the satisfaction of such justice,) every such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, shall be discharged and set at liberty, upon the warrant or order of such justice under his hand and seal, directed to the gaoler or keeper of such house of correction, and which His Majesty's justices of the Peace are hereby authorized and required, respectively, to grant.

But see 6 V. c. 2, reducing this allowance.

In default of payment, seamen, &c., to be discharged.

Justices of the peace empowered to grant a search warrant to search for seamen, &c., unlawfully harboured or secreted.

VI. And be it further enacted, &c., that, from and after the passing of this Act, it shall and may be lawful for any one of His Majesty's justices of the peace, on complaint being made before him by the oath of one or more credible witness or witnesses, that any seaman or seamen, landsman or landsmen, apprentice or apprentices, or other such person so legally engaged as aforesaid, in the sea service, are concealed or secreted in any dwelling-house or out-house, or on board of any ship or vessel, or elsewhere, and such justice is hereby required to grant

grant a warrant, under his hand and seal, addressed to a constable or constables of the district, requiring and commanding him or them to make diligent and immediate search, in and about such dwelling-house or out-house, or on board such ship or vessel, or such other place or places as shall be specified in the warrant, and to bring before him every such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, as may be found concealed or secreted, whether named in the warrant or not; and on failure of such seaman or seamen, landsman or landsmen, apprentice or apprentices, or other such person so legally engaged as aforesaid, producing to said justice satisfactory proof of being discharged from the ship or vessel to which he or they last belonged, or of having obtained permission for such absence, from those authorized to give the same, it shall be the duty of such justice to commit each and every such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, to the common gaol or house of correction of the district, for any space of time not exceeding one month, or if the ship or vessel from which such seaman or seamen, landsman or landsmen, apprentice or apprentices, or other such person so legally engaged as aforesaid, shall have deserted, be, at the time of his or their apprehension and commitment, within or near the harbour of Quebec, or any where between that and Montreal inclusive, until the time of the sailing of such ship or vessel from Quebec on her outward voyage, when every such seaman, landsman or apprentice, or other such person so legally engaged as aforesaid, shall, in like manner as directed for his apprehension, be conveyed on board of such ship or vessel, and delivered to the master and commander thereof, on payment of all legal fees, disbursements and other reasonable expenses attending such conveyance or delivery.

Justices to commit seamen, &c., brought before them on such warrant and not giving a satisfactory account of themselves.

Fees.

VII. And be it further enacted, &c., that it shall and may be lawful for any one of His Majesty's justices of the peace, on information being given before him, under oath, that any person or persons whatsoever has deserted, or is suspected of having deserted from any of His Majesty's ships or vessels, or from any ship or vessel in the merchant service, and is or are lodged or harboured in any tavern or other house of public entertainment, or in any house of ill-fame, or in any other house whatsoever, to issue an order in writing to the master or keeper of every such tavern, house of ill-fame or other house, commanding such master or keeper to furnish him with a correct list of every such person or persons, stating his or their name and surname as far forth as shall be known to any such master or keeper of every such tavern, house of ill-fame, or other house of public entertainment, or other person whatsoever, how long he or they has or have lodged in the said house, and the name of the ship or vessel on board whereof each and every of them may have declared himself or themselves to have arrived at the port of Quebec; and on the refusal or neglect of such master or keeper

Justices of the peace empowered to grant a search warrant for apprehending deserters from H. M.'s service, or the merchant's service lodged or concealed in any tavern, or house of ill-fame, &c.

Penalty on persons keeping any tavern, &c., who shall not make a return of the persons lodged in their houses.
Proviso.

to comply with such order, within the time specified in such order, or knowingly delivering a false account of such person or persons, such master or keeper shall forfeit and pay a sum not exceeding ten pounds, current money of this Province, for each and every such offence: Provided nevertheless, that in cases in which the party giving such information on oath, seeks to obtain such order against any person, not being a master or keeper of such tavern or house of public entertainment or house of ill-fame, such order shall not be given by any of His Majesty's justices of the peace, unless the person giving the information shall depose on oath, that he verily believes that such person so not being master or keeper of such tavern or house of entertainment or house of ill-fame, doth then harbour or conceal such deserter or person suspected of desertion; and doth also know that the person who has so deserted, or is so suspected of having deserted, is unlawfully and improperly absenting himself from his duty on board the ship or vessel to which he belongs.

Penalty on tavern-keepers, &c., exacting or receiving a reward for procuring seamen.

VIII. And be it further enacted, &c., that if any tavern-keeper or other person keeping a house or other place of public entertainment, shall hereafter exact or receive from the master or commander of any ship or vessel any sum of money as a reward for procuring a seaman or seamen to serve on board such ship or vessel, that in all such cases, every such tavern-keeper or other person keeping a house of public entertainment, shall, on conviction thereof, forfeit and pay a sum not exceeding twenty pounds, nor less than five pounds, current money; and further, on each and every subsequent conviction, the licence of every such person to keep such tavern, house or place of public entertainment, shall be null and void, and shall so continue for twelve months, and further until the judgment of the court before which the offence shall have been tried, shall be certified by the clerk of the peace of the district to have been fully satisfied.

Manner of distinguishing between seamen who are or are not discharged.

By 10 & 11 V. c. 25; no person but the Shipping Master can be legally employed in procuring seamen for others; and if the seaman be a registered British seaman, he must not be shipped without pro-

IX. And be it further enacted, &c., that in order to enable the tavern keepers and others, the better to distinguish between those seamen and landsmen, or such other persons so legally engaged as aforesaid, that are or are not discharged, it shall be the duty of the harbour master of Quebec, for the time being, to provide a sufficient number of blank discharges agreeable to the form hereunto annexed, countersigned by himself, and to distribute the same to the masters of all ships and vessels, on their arrival in this port, in such number as they may severally require, to be by them filled up, signed and delivered to every seaman or landsman, or such other person so legally engaged as aforesaid, they may discharge; for which blank forms the said harbour master of Quebec may lawfully ask and receive from each of the said masters of ships or vessels, a sum not exceeding twelve pence, for each and every form they may so require: And any master of such ship or vessel who shall refuse

refuse to fill up, sign and deliver such form of discharge to any seaman or landsman, or such other person so legally engaged as aforesaid, requiring the same, such seaman or landsman being legally entitled to a discharge from such ship or vessel in this port, shall forfeit and pay the sum of twenty pounds, for each and every such offence.

ducting his Registry Ticket.

Duty of the harbour master in such case.

Penalty on master refusing to give a discharge.

FORM FOR THE DISCHARGE OF A SEAMAN OR LANDSMAN FROM ANY SHIP OR VESSEL.

These are to certify to all whom it may concern, that *seaman (or landsman) the bearer hereof,* aged *year* hair *complexion* feet high *made,* is hereby discharged from the ship under my command, and has received his wages, all legal stoppages being first made.

Form of the discharge.

Witness, my hand, at Quebec,
as the law directs.

18

Harbour Master of Quebec.

X. And be it further enacted, &c., that it shall and may be lawful for each and every constable and other officer, who shall be employed in the execution of any warrant for the apprehension of, or in search of, or for the delivery of any person or persons against whom a warrant or warrants may be issued by virtue of this act, to exact and demand from the person at whose request such warrant shall have been issued, a reasonable recompense for the time he or they shall have been employed, subject to be taxed by the justice of the peace who may have issued such warrant,—and in cases within the jurisdiction of the court of vice-admiralty, according to the legal course of that court,—and recoverable, on refusal of payment, in a summary way by warrant of distress and sale of such person's goods and chattels; which warrant every such justice of the peace is hereby authorised and required to grant, under his hand and seal, on proof of such refusal of payment.

Constable, &c. employed, to receive a reasonable recompense.

XI. Provided nevertheless, and it is hereby also enacted, &c., that nothing in this Act contained, shall be construed to extend to authorise or justify the execution of any warrant or process of any justice or justices of the peace within the jurisdiction of the vice-admiralty of this Province, unless such execution shall have been previously authorised by the judge of the said court of vice-admiralty.

Warrant, &c. within the jurisdiction of the vice-admiralty, to be authorised by the judge.

XII. And be it further enacted, &c., that all and every fine and forfeiture incurred by virtue of, and under the authority of this act, shall and may be sued for within six months after the offence committed, and recovered in a summary manner before any two or more of His Majesty's justices of the peace for the district wherein the offence shall have been committed, on the oath of one or more credible witness or witnesses, other than

Fines, &c. how recoverable.

Committal for want of distress.

than the informer, which oath the said justices are hereby empowered and authorised to administer; and in case of non payment, shall be levied by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of such justices of the peace, directed to a constable or other peace officer, and the overplus, if any, after deducting the penalty and costs of suit, together with the expenses of the distress and sale, shall be returned to the owner, and for want of sufficient distress, the offender or offenders shall be committed, by warrant under the hands and seals of such justices, to the common gaol of the district, for any time not exceeding six months.

Fines how to be disposed of.

XIII. And be it further enacted, &c., that all fines by this Act imposed, shall belong, one half to the informer, and the other half shall be paid into the hands of His Majesty's receiver general, to and for the use of His Majesty, His Heirs and Successors, and towards the support of the civil government of this Province; and shall be accounted for to His Majesty, His Heirs and Successors, through the lords commissioners of His Majesty's treasury, in such manner and form as His Majesty, His Heirs and Successors shall, from time to time, be graciously pleased to direct.

This Act to be publicly read once in every year by the clerks of the peace.

XIV. And be it further enacted, &c., that this Act shall be once in each year, publicly read on the first day of the term of the court of quarter sessions for the month of April, in and during the sittings of the said courts for the districts of Quebec, Montreal and Three-Rivers, respectively, by the clerks of the peace for the said districts, who shall make an entry in the registers of the said courts that this act was so read publicly.

6 VICT. CAP. 4.—1842.

An Act to amend the Act therein mentioned, relative to the desertion of Seamen and others in the Sea-Service.

Preamble.

Act 47 Geo. 3, c. 9.

The allowance to be paid to seamen detained under the said Act, reduced.

WHEREAS it is expedient in the manner herein-after mentioned, the Act of the Legislature of Lower Canada, passed in the forty-seventh year of the Reign of His late Majesty King George the Third, and intituled, *An Act to prevent the desertion of Seamen and others in the Sea-Service; to punish persons encouraging such Seamen and others to desert, or harbouring or concealing them thereafter; and to repeal certain Acts therein mentioned*;—Be it therefore enacted, &c. That the allowance to be paid in lieu of provisions by the Master or Commander of any Ship or Vessel to any Seaman, Landsman, Apprentice or person legally engaged in the manner mentioned in the Act cited in the Preamble to this Act, who having deserted from such Ship or Vessel shall

shall have been in consequence of such desertion imprisoned in any Gaol or House of Correction, shall, from and after the passing of this Act, be seven-pence half penny current money of this Province, and no more, for each day such Seaman, Landsman, Apprentice or person as aforesaid, shall remain in such Gaol or House of Correction; and so much of the fifth section or of any other part of the said Act, as directs that any greater sum be paid as such allowance, is hereby repealed: Provided always, that all other provisions of the said Act shall apply to the allowance hereby directed to be paid, as if the said allowance had been directed to be paid by the fifth section of the said Act, instead of the allowance of one shilling and six pence current money of this Province therein mentioned.

Proviso.

13 & 14 VICT. CAP. 25.—1850.

An Act to extend certain Provincial Acts to Foreign Merchant Vessels, when within this Province.

WHEREAS it is expedient that the Acts hereinafter mentioned should extend to Foreign Merchant Ships: Be it therefore enacted, &c., That in so far as may be consistent with the provisions of any Act of the Imperial Parliament in force in this Province, and with the terms of existing Treaties between Her Majesty and Foreign Powers, respectively, and the rights, privileges, and immunities secured to the Consuls, Vice-Consuls, Commercial and other duly accredited Agents, subjects and citizens of such Foreign Powers respectively, all the provisions and enactments of the Act of the Parliament of Lower Canada, passed in the forty-seventh year of the Reign of King George the Third, and intituled, *An Act to prevent the desertion of Seamen and others in the sea service, to punish persons encouraging such Seamen and others to desert, or harbouring or concealing them thereafter, and to repeal certain Acts therein mentioned*, as amended by the Act of the Parliament of this Province, passed in the sixth year of Her Majesty's Reign, intituled, *An Act to amend the Act therein mentioned relative to the desertion of Seamen and others in the sea service*, and of the Act of the Parliament of this Province, passed in the Session held in the tenth and eleventh years of Her Majesty's Reign, and intituled, *An Act for regulating the shipping of Seamen*, shall extend and are hereby extended, and shall apply to Ships and Vessels in the Merchant Service of Foreign Countries, and to all persons in relation to such Ships and Vessels in the same manner as the same have heretofore extended and applied to Ships and Vessels in the British Merchant Service, and to similar persons, in relation to such last mentioned Ships and Vessels: Provided always, that the oath of the Master of any such Foreign Merchant Ship or Vessel, or of any

Preamble.

Act of L. C. 47 Geo. 3. c. 9, extended to foreign ships in certain cases.

As amended by 6 V. c. 4.

10 & 11 V. c. 25.

Proviso as to proof of engagement.

any

Proviso as to consent of parties or Consuls except in certain cases.

any officer or person employed on board thereof, or on board any other Ship or Vessel of the same country, that to the best of his belief and understanding, any Seaman or other person is bound or engaged to serve on board such Ship or Vessel, according to the law of the country to which such Ship or Vessel shall belong, or of the place where such Seaman or other person shall have been hired, shall be *prima facie* evidence that he is legally bound or engaged to serve on board such Ship or Vessel, within the meaning of the said Act, although he may not have regularly entered into or signed Articles of Agreement, or be bound by Articles of Indenture, in the manner required by law with regard to Seamen and others engaged or bound to serve on board British ships: And provided also, that no Justice of the Peace shall entertain or act upon any complaint or information under the said Acts, or either of them, by or against any person belonging to or connected with any such Foreign Merchant Ship or Vessel, and not being a subject of Her Majesty, or exercise jurisdiction under the said Acts, or either of them, over or at the instance of any such person, without the consent of both parties to such complaint or information, or the consent in writing of the Consul, Vice-Consul, or Commercial or other duly accredited Agent of the country to which such ship or vessel belongs, first had and obtained, unless the parties to such complaint or information be subjects or citizens of a country or countries, by the terms of Treaties in force between Her Majesty's Government and the Government or Governments of which country or countries, it be stipulated that the assistance of British Courts and Magistrates shall be granted to the subjects or citizens of such country or countries, or one of such parties be a subject or citizen of any such country and the other a subject of Her Majesty.

This Act and 6 Vic. c. 4, to be read at Quarter Sessions as 47 Geo. 4, c. 9.

H. And be it enacted, That this Act, and the said above cited Act passed in the sixth year of Her Majesty's Reign, shall be once in each year publicly read on the first day of the term of the Courts of Quarter Sessions for the month of April in and during the sittings of the said Courts for the Districts of Quebec, Montreal and Three-Rivers respectively, by the Clerks of the Peace for the said Districts, who shall make an entry in the Register of the said Courts, that this Act and the said Act were so read publicly.

16 VICT. CAP. 165.—1853.

An Act more effectually to prevent the Desertion of Seamen.

WHEREAS it is expedient to provide more effectually for the prevention of the desertion of Seamen at the Port of Québec: Be it therefore enacted, &c. That any person who shall directly or indirectly persuade, procure, aid or solicit any Seaman or Apprentice to desert or leave his Ship, shall incur a penalty of not more than Ten Pounds nor less than Five Pounds currency, for every Seaman or Apprentice who shall desert or whom he shall persuade, procure, aid or solicit to desert.

Preamble.

Penalty for soliciting, &c. Seamen to desert.

II. Any person who shall knowingly harbour or secrete any Seaman or Apprentice who shall have deserted from his Ship, shall for every such offence incur a penalty not exceeding Ten Pounds nor less than Two Pounds currency.

Penalty for harbouring deserters.

III. Any person found loitering near any Vessel in a Boat or other Water Craft, and not giving a satisfactory account of the business he may have there, or who shall take or receive any clothing or other articles from on board any Vessel without the permission of the Master or person in charge thereof, shall incur a penalty not exceeding Five Pounds and not less than Two Pounds currency, and shall be imprisoned during a period not exceeding three months nor less than one month.

Loitering near Vessels, receiving clothes, &c.

IV. The Inspector and Superintendent of Police may order any Boat or other Water Craft in or on which any such person or clothing or other articles mentioned in the next preceding section, and unlawfully taken from any vessel, shall be found or may have been conveyed, to be detained until the full payment of the fine which such person shall be condemned to pay, and in case such fine shall not be paid before the expiration of the term of imprisonment to which such person shall have been condemned, such Boat so detained, shall be sold by Public Auction, and the proceeds of the sale thereof shall be appropriated to the payment of such fine.

Boats, &c., found so loitering may be detained until penalty be paid.

V. Any person other than such persons as are duly authorized by law, who shall go on board any Vessel arriving at or being in the Port of Québec, for any other purpose than that of passing from such Vessel to another lying alongside, without the permission of the Master or person in charge thereof, shall incur a penalty not exceeding Twenty Pounds nor less than Two Pounds currency; and every such Master or person in charge of such Vessel, is hereby authorized to take into custody any person so offending; and deliver him forthwith to the custody of any Peace Officer, to be by him taken before any Justice of the Peace, provided that if any such offender be arrested after the hour of five in the evening and before the hour

Penalty on persons going on board vessels without lawful authority: such persons may be detained.

hour of eight in the morning, or at any time during Sunday or a Holiday, he shall be detained at the nearest Police Station until the hour of ten in the forenoon next following such arrest or Sunday or Holiday, then to be brought before any Justice of the Peace.

Payments in advance to Seamen must be in money only; and advances in money limited.

Penalties for contravention.

VI. The Owner, Master or person in charge of any Vessel, who shall pay in advance in any manner whatsoever other than in money, or make or deliver any note, bill, order, promise, undertaking or otherwise for the payment of any part of the wages of any Seaman hired or engaged, to be entered on board the said Vessel, before the Ship's Articles shall have been duly signed by such Seaman and by the Owner, Master or person in charge of such Vessel, or shall make an advance in money to any Seaman of any sum larger than One Pound currency, shall incur a penalty not exceeding Five Pounds and not less than Two Pounds currency, and all payments and promises of payment, bills, notes or orders, made contrary to the above provisions, shall be to all intents and purposes null and void, whether in the hands of the person to whom they were made or delivered or of any third party: and any person paying any such bill, note, order or undertaking, knowing it to be void under this Act, shall thereby incur the penalty aforesaid.

Amount recoverable from seamen by lodging-house keepers limited.

VII. No debt exceeding the sum of Five Shillings currency, incurred by any Seaman or Apprentice, shall be recoverable in any Court or pleadable by way of set-off, by any Keeper of a Tavern or House of Public Entertainment or Lodging-House.

Wearing apparel of Seamen not liable for lodging, &c., beyond five shillings.

VIII. The wearing apparel of any Seaman or Apprentice shall not be kept by any Keeper of a Tavern, House of Public Entertainment or Lodging-House, in pledge for any debt or expenses incurred to any greater amount than Five Shillings currency, and on the payment or tender of such sum or of any less sum due, such wearing apparel shall be immediately given up, whatever be the amount due by such Seaman or Apprentice.

Recovery and application of penalties.

IX. And be it enacted, That all penalties imposed by this Act may be recovered with costs before any Justice of the Peace, upon the oath of any one credible Witness other than the Informer, and shall be paid over, one moiety to the Receiver General of the Province, and the other half to the Informer.

45 GEO. III. CAP. 10.—1805.

An Act to prohibit the sale of Goods, Wares and Merchandise, Wine, Spirits and other Strong Liquors, on Sundays.

WHEREAS in defiance of the laws as well divine as Preamble.
human, shopkeepers, hawkers, pedlars and petty chapmen, tavern-keepers and other persons keeping houses of public entertainment, in the cities and towns, and especially in the country parishes of this Province, do sell, vend and retail goods, wares and merchandise, wine, spirits and other strong liquors, on the Lord's day, commonly called Sunday; in order, therefore, to remedy such immoral and irreligious practices:—Be it declared and enacted, &c., That from and after the first day of May next, no shop-keeper, pedlar, hawker, petty chapman, tavern-keeper or other persons who keep a public house of any description whatsoever, in any part of this Province, shall sell, vend or retail any goods, wares or merchandise, wine, spirits or any other strong liquors, during the Lord's day, commonly called Sunday; and that all and every person or persons of the description abovesaid, who shall sell, vend or retail such goods, wares or merchandise, wine, spirits or other strong liquors on the Lord's day, as aforesaid, shall incur and pay for the first offence, a fine or penalty which shall not exceed five pounds, and for the second and every subsequent offence, shall incur and pay a fine or penalty, not less than five nor more than ten pounds, current money of this Province.

Penalty on any shop-keeper, &c., who shall sell any goods, &c., on a Sunday.

II. Provided always, and be it further enacted, &c., That this Act shall not extend or be construed to extend, to hinder the said shop-keepers, tavern-keepers, and other persons who keep public houses, to sell and furnish, on the Sunday, wine, spirits or other strong liquors, for the use of sick persons, and to travellers at their meals: Provided also, that the present Act shall not extend or be construed to extend, to prevent selling at the church doors of the country parishes on Sundays, the *usufruit* or produce of the estates of minors, absentees or persons that are interdicted, or the effects arising from public gatherings, for the benefit of churches, or those destined for pious purposes.

Not to prevent selling wine, &c., to sick persons and travellers, nor the estates of minors, &c., on Sundays.

III. And be it further enacted, &c., That the fines and forfeitures imposed by this Act, shall be recovered before one of His Majesty's justices of the peace nearest to the place where the offence against this Act shall have been committed, and he is hereby authorized and required to hear and determine such offence in a summary way, either by voluntary confession of the party accused, or upon the oath of one or more credible witnesses, other than the prosecutor, which oath the said jus-

Fines, &c., how recoverable.

justice

See 7 G. 3, c. 3, s. 10, making a Church Warden, &c., a competent witness.

tice of the peace is hereby authorized to administer; and in all cases where there is a default of payment of the sum forfeited, it shall be recovered by seizure and sale of the offender's goods and chattels, by warrant or order, under the hand and seal of such justice, addressed to any peace officer or sergeant of militia, and the surplus of the money so recovered, (if any there be,) after deducting the forfeiture and reasonable charges of seizure and sale, taxed by a justice of the peace, shall be returned to the owner.

One moiety of the fines to the prosecutor, the other moiety to His Majesty:

IV. And be it further enacted, &c., That the one moiety or half of the fines and forfeitures imposed by this Act, shall belong to the person or persons prosecuting any such offender or offenders, and that the other moiety or half part thereof, shall be paid to the Receiver General for the use of His Majesty, His Heirs and Successors, and shall remain in the hands of the said Receiver General for the future disposition of the Legislature of this Province, and shall be accounted for to His Majesty, His Heirs and Successors, through the Lords Commissioners of His Majesty's Treasury, in such manner and form as His Majesty, His Heirs and Successors, shall direct.

Limitation of actions.

V. Provided always, and be it further enacted, &c., That no suit or action shall be instituted against any person for any fine or forfeiture imposed by this Act, that shall not be commenced within two months after the offence committed.

7 GEO. IV. CAP. 3.—1827.

An Act more effectually to provide for the maintenance of good order in Churches, Chapels and other places of Public Worship, and for other purposes therein mentioned.

Preamble.

Repeal of 1 Geo. 4. Cap. 1, and 4 Geo. 4. Cap. 35.
See also 4 & 5 V. c. 27, s. 31.

WHEREAS it is expedient to repeal an Act passed in the first year of His Majesty's reign, chapter one, and a certain other Act passed in the fourth year of His Majesty's reign, chapter thirty-five, and to substitute other enactments instead thereof:—Be it therefore enacted, &c., That the said Act, &c., (1 Geo. 4, c. 1.) and the said Act, &c., (4 Geo. 4. c. 35,) shall be, and the same are hereby repealed.

Duty of the church-wardens in and about the churches in this Province.

II. And be it further enacted, &c., That it shall be the duty of the church-wardens in office in each of the parishes and settlements of this Province, to keep up and maintain good order in and about the church or chapel, or other place used for public worship, of each of the said parishes or settlements respectively, as well within as without the said churches and chapels

chapels or other places used for public worship of each of the said parishes or settlements respectively, and in the public hall attached or adjacent to the parsonage house or presbytery, as also in the roads or public places adjoining the same, and to enforce the present Act, and to prosecute offences committed against the same; and all and every church-warden or church-wardens who shall refuse or neglect to do the duties so imposed upon them, in their capacity aforesaid, shall incur and pay, for every neglect or refusal, a sum not less than ten shillings, and not exceeding forty shillings, currency.

Penalty for neglect.

III. And be it further enacted, &c., That any person or persons who shall cause any disturbance in the church, chapel, or other place used for public worship, in any parish or settlement in this Province, during divine service, or shall in any wise indecently or irreverently conduct himself in or about such church or chapel, or other place used for public worship, or shall resist the church-wardens, or other person or persons in the execution of the duties imposed on him or them by this Act, or insult them, shall and may be forthwith arrested by any or either of the said church-wardens, or by any constable or peace officer, and be conducted before a justice of the peace; and upon the oath of such church-warden or church-wardens, constable or peace officer, or of one or more credible witness or witnesses, declaring that such person or persons has or have caused any such disturbance, or conducted himself or themselves irreverently, or otherwise misdemeaned himself or themselves as aforesaid, or on confession of the offender, the said

Penalty on persons causing disturbance in churches, &c.

justice of the peace shall fine such person or persons in a sum not exceeding forty shillings, currency, nor less than five shillings, currency; and if such person or persons shall be unable forthwith to pay such fine, he or they shall and may, by warrant under the hand and seal of such justice, be committed to the common gaol of the district where the offence shall have been committed, there to remain for the space of fifteen days, unless such fine be sooner paid: and any person or persons who shall cause any disturbance, or shall remain or loiter without any such church or chapel, or other place used for

Penalty.

How enforced.

Persons loitering, &c., outside.

public worship, or in the highways and public places adjacent thereto, or in the public hall attached or adjacent to the parsonage house or presbytery, or who so remaining and loitering without the said church, chapel or other place used for public worship, or in the highways and public places adjacent thereto, shall upon being directed to retire or to enter the said church or chapel, or other place used for public worship, during divine service, refuse or neglect so to do, shall and may be arrested by any or either of the said church-wardens, and be conducted before a justice of the peace; and on oath made by such church-wardens or either of them, or of one or more credible witness or witnesses, that such person or persons hath or have so made any disturbance, or loitered without any such church, chapel or place of public worship as aforesaid, or hath or have

Penalty refused.

refused, in manner aforesaid, to retire or to enter such church, chapel or place of public worship, or on confession of the offender, such justice of the peace shall fine such person or persons in a sum not exceeding twenty shillings, nor less than five shillings; and if such person or persons shall be unable forthwith to pay such fine, he or they shall and may, by warrant under the hand and seal of such justice, be committed to the common gaol of the district where such offence shall have been committed, there to remain for the space of eight days, unless such fine be sooner paid.

How enforced.

Offenders may be sued at any time within three months.

IV. Provided always, and be it further enacted, &c., That any person or persons offending as above or hereafter mentioned, although not forthwith arrested, may nevertheless be sued for the offence at any time within one month next after the commission of the same, before any justice of the peace, and upon conviction be fined or imprisoned as in and by this Act it is specified and provided.

Powers granted to officers of militia, &c.

V. And be it further enacted, &c., That all officers and sergeants of militia, and other peace officers in each parish, seignior, township or settlement, or other extra-parochial place, shall have the same powers as those delegated to the church-wardens by this Act, in the execution of the duties imposed upon them by the same.

Penalty on persons loitering and tipping in public houses during divine service.

VI. And be it further enacted, &c., That it shall be the duty of every officer and non-commissioned officer of militia, or other peace officer, to cause to be arrested and carried before any justice of the peace, all and every person or persons whom he or they may find, during any Sunday or holiday, during divine service, loitering or tipping in any house of public entertainment, or in any place of public resort, whether within doors or in the open air, where any ale, wine, spirits or strong drink may be sold or distributed on a Sunday or holiday, during divine service as aforesaid, within the limits of their parishes or settlements respectively, and also each and every person whom they may find cursing and swearing or provoking to fight, drunk, or using violence in the streets, highways or other public places, and such person so conducted before such justice of the peace, may, on conviction, be condemned to pay a fine not exceeding twenty shillings, nor less than five shillings, currency; and if such person shall be unable to pay such fine forthwith, he shall and may be committed, by warrant under the hand and seal of such justice of the peace, to the common gaol of the district in which such offence shall have been committed, there to remain for the space of eight days, unless such fine be sooner paid.

How enforced:

Penalty on persons riding or driving fast

VII. And be it further enacted, &c., That any person attending at, as well in going to as returning from divine service at any such church, chapel, or other place used for public worship, who

who shall, on approaching to or returning from the same, ^{near churches, &c.} within the distance of ten arpents therefrom, drive, whether on horseback, or in a carriage, at any faster pace than a slow and moderate trot, shall, for every such offence, incur a penalty not exceeding ten shillings, nor less than five shillings, currency.

VIII. And be it further enacted, &c., That it shall be lawful for any two justices of the peace, ^{Constables may be appointed to assist church-wardens.} on the request of the church-wardens aforesaid, or any rector or priest officiating in any church or chapel within this Province, to appoint one or two constables for the purpose of assisting the church-wardens in office, in the performance of the duties imposed upon them under and by virtue of this Act, which constables shall obey the orders and directions which, from time to time, shall be given to them by the said church-wardens in office, and may be prosecutors of persons offending against this Act.

IX. And be it further enacted, &c., That all penalties and forfeitures by this Act imposed, for any offence against the same, shall be levied by distress and sale of the goods and chattels of the offender, by warrant of distress, under the hand and seal of a justice of the peace for the district or county where such offence, neglect or default shall happen, rendering the overplus of such distress (if any there be) to the party or parties, after deducting the costs of suit and the charges of making the distress; which warrant such justice of the peace is hereby empowered and required to grant, after complaint or information to him made or given, upon conviction of the offender by confession or upon the oath of one or more credible witness or witnesses; and all the penalties and forfeitures levied under the authority of this Act, shall be paid, one half to the informer and the other half to His Majesty, His Heirs and Successors: Provided always, that no church-warden, constable or peace officer, prosecuting as such, shall be entitled by this Act to any part of any fine, but shall be only entitled to recover his costs: ^{Penalties and forfeitures, how to be recovered.} Provided always, that all suits or actions for offences against this Act shall be commenced within one month next after the commission of the offence, and not afterwards. ^{Proviso.}

X. Provided always, and be it further enacted, &c., That any church-warden, constable or peace officer shall be deemed, in all cases, a competent witness in all matters relative to the execution of this Act, as well as of a certain other Act, passed in the forty-fifth year of the reign of His Majesty, George the Third, intituled, *An Act to prohibit the sale of goods, wares and merchandise, wines, spirits and other strong liquors on Sundays,* notwithstanding he may be the prosecutor or informer, for any offence, neglect or default against either of the said Acts. ^{Limitation of actions.} ^{Church-wardens, constables, &c., to be competent witnesses in certain cases.}

XI. And be it further enacted, &c., That if any action, bill or ^{General issue in actions} plaint be brought against any church-warden or church-wardens,

against church-wardens, &c.

dens, constable or peace officer as aforesaid, for any thing done in virtue of this Act, he or they may plead the general issue, and give the special matter and this Act in evidence; and if a judgment or verdict is given against the plaintiff, or he shall become non-suit or discontinue his suit or action, in every such case the judge before whom the said matter shall have been brought or tried, shall allow to the defendant double costs.

Double costs.

This act with certain parts of other acts to be forwarded to the curates.

XII. And be it further enacted, &c., That separate copies of this Act, and of the fifth section of an Act of the British Parliament, passed in the fourteenth year of the reign of His late Majesty, George the Third, chapter eighty-eight, and of the first, seventh and ninth sections of an Act of the legislature of this Province, of the thirty-fifth year of the reign of His late Majesty, George the Third, chapter eight, and an Act passed in the forty-fifth year of the reign of His late Majesty, George the Third, chapter ten, shall be forwarded in the same manner as the laws enacted in this Province are now forwarded to the curate of each parish within this Province, to be by such curate delivered over to the church-warden on duty (*en charge*) for the time being, to be by him handed over to his successors in office, to be preserved among the papers of the *fabrique*; and to be read yearly at the first general meeting of the church-wardens, after the election of any church-warden or church-wardens, which church-warden or church-wardens shall read the same, or cause the same to be publicly read at the church door of the parish, on the three first Sundays of September in every year, immediately after divine service in the morning, under a penalty of twenty shillings, currency, for each and every offence.

Fines under this act, how to be applied and accounted for, &c.

XIII. And be it further enacted, &c., That all fines imposed and levied in virtue of the present Act, shall be applied to the public uses of the said Province, and towards the support of the government thereof, and the same shall be accounted for to His Majesty, His Heirs and Successors, through the Lords Commissioners of His Majesty's Treasury for the time being, in such manner and form as His Majesty, His Heirs and Successors shall please to direct.

Extract from 57 GEO. III. CAP. 16, intituled :

An Act more effectually to provide for the regulation of the Police in the Cities of Quebec and Montreal, and the Town of Three-Rivers, and for other purposes therein mentioned.

X. And whereas the pernicious vice of gaming has become extremely prevalent in public houses in this Province, to the evil example of the rising generation and the ruin of individuals:—Be it therefore further enacted, &c., That from and after the passing of this Act, if any person licensed to sell spirituous liquors, by retail, or to keep a house of public entertainment within this Province, shall knowingly suffer any gaming in any house, out-house, apartment or ground belonging to or in his or her occupation, for money, liquor, or otherwise, either with cards, dice, draughts, shuffle-board, skittles, nine-pins, or with any other implement or in any other manner of gaming, by any journeyman, apprentice, labourer or servant, and shall be convicted thereof, on the confession or by the oath of one credible witness, before one justice of the peace, if in the villages or country parishes, within fifteen days after the offence committed, or before the justices of the peace in their court of weekly sittings, if in the cities of Quebec and Montreal, or town of Three-Rivers, such person, or persons so offending shall forfeit and pay for the first offence the sum of forty shillings, current money of this Province, and for the second offence the sum of five pounds, current money of this Province, and be deprived of his, her or their license, and also of being incapable of obtaining a license to retail spirituous liquors or to keep a house of public entertainment for the space of one year; and if any journeyman, labourer, servant or apprentice shall game in any of the places or in the manner aforesaid, and shall be convicted thereof, before any justice of the peace in the village or country parishes, or before the justices of the peace in their court of weekly sittings in the cities of Quebec or Montreal, or town of Three-Rivers, by the oath of one credible witness, or by confession, he shall forfeit and pay for every such offence, a sum not exceeding twenty shillings, current money of this Province, and not less than five shillings, current money of this Province; and in default of payment of such fine or penalty within six days, such journeyman, labourer, servant or apprentice shall be committed to the house of correction for a space of time not exceeding eight days, in discharge of such fine or penalty as aforesaid: Penalty on tavern-keepers suffering gaming in their houses. Provided always, that nothing in this Act contained shall be construed or intended to alter or in any wise change or interfere with the provisions or clauses of an Act passed in the forty-first year of His present Majesty's reign, intituled, *An Act for granting to His Majesty a duty on licensing billiard tables for hire, and for regulating the same.* Proviso: not to alter the act 41 Geo. 3, Cap. 13.

Who shall be deemed a competent witness.

XI. And be it further enacted, &c., That in all actions, prosecutions, causes and proceedings relating to or concerning the execution of this present Act, or of any order or regulation to be made in virtue of the same, any inhabitant residing within any city, town, place or district in this Act mentioned or described, shall be a competent witness and be admitted to give evidence upon any action or prosecution as aforesaid, notwithstanding such inhabitant is charged with or liable to pay any rate or perform any duty or service by virtue of or under the authority of this Act.

Appeal allowed.

XII. And be it further enacted, &c., That upon all and every judgment to be made by any justices of the peace at their weekly or special sessions, it shall and may be lawful to appeal therefrom to the justices of the court of quarter sessions of the peace of the district where such judgment may be made, upon which appeal the full merits of the original complaint may be heard and adjudged: Provided always, that the appellant, before the allowance of any appeal as aforesaid, shall give good and sufficient security to pay the amount of the judgments appealed from, and costs as well on the original complaint as in the appeal.

On giving sufficient security.

Penalties incurred for offences against this act, how, and before whom to be recoverable.

XIII. And be it further enacted, &c., That all penalties incurred for offences against this Act or any of the clauses thereof, (those cases which may occur in the villages or country parishes excepted,) and against any of the rules, orders or regulations of police within the cities of Quebec and Montreal and town of Three-Rivers, or against any of the rules, orders and regulations concerning apprentices, domestics, hired servants or journeymen, or their masters or mistresses, which shall be established by authority of this Act, shall be prosecuted for and recovered, with the reasonable costs of such prosecution, before any two of His Majesty's justices of the peace of the district wherein the offence shall have been committed, in the weekly sittings of such justices of the peace, as directed by law to be held in the cities of Quebec and Montreal and town of Three-Rivers, or in special sittings thereof, which may be called for the purpose, where the matter may require a more prompt decision; and the aforesaid justices of the peace are hereby authorized and empowered to hear and determine all causes and complaints touching and respecting the regulations of police, or against any of the rules, orders or regulations concerning apprentices, domestics, hired servants or journeymen, or their masters or mistresses, to be made as aforesaid, in a summary manner, on proof of the offence, either by voluntary confession of the party or parties accused, or by the oath of one or more credible witness or witnesses other than the informer, which oath all and every of the said justices of the peace are hereby empowered to administer; and one moiety of every such penalty, shall belong to the informer, and the other moiety be paid to the road treasurer, to be applied to the purposes of

this

this Act; and in all cases of non-payment of any judgment to be awarded by any of the justices aforesaid, the sum shall be levied by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of the justices of the peace before whom the offence shall have been prosecuted, directed to a constable or peace officer, and the overplus of the money raised, after deducting the penalty and costs, shall be returned to such offender.

XIV. And whereas it is expedient and proper to provide for payment of costs on summary proceedings before His Majesty's justices of the peace out of session, or at any weekly session, or upon appeals to the general quarter session thereupon, by virtue of this Act:—Be it therefore enacted, &c., That it shall and may be lawful to and for the justices of the peace for the said districts of Quebec, Montreal and Three-Rivers, respectively, before whom any such case may have been heard and determined, to award the costs which either of the parties shall have to pay the other, as they shall judge fit; and in case any person against whom any such costs shall be awarded by any such justice or justices of the peace, or by such courts of quarter session, shall not pay such costs within seven days next after the same shall have been so awarded as aforesaid, it shall and may be lawful to and for any such justice or justices of the peace, whether in or out of session, to issue such execution for the same, as is hereinbefore directed with regard to such pecuniary fines, penalties or forfeitures as may be inflicted by virtue of this Act.

Justices of the
peace to award
costs.

7, VICT. CAP. 12.—1843.

An Act to prohibit the hunting and killing of Deer and other Game within this Province, at certain seasons of the year.

WHEREAS it is expedient to amend the Laws now in force for the preservation of Deer and other Game in this Province, and to repeal an Act of the Legislature of the late Province of Upper Canada, passed in the second year of Her Majesty's Reign, and intituled, *An Act to amend an Act passed in the fourth year of the reign of His late Majesty King George the Fourth, intituled, An Act for the preservation of Deer within this Province, and to extend the provisions of the same and to prohibit shooting on the Lord's day*; Be it therefore enacted, &c., that the said Act be and the same is hereby repealed.

Preamble.

U. C. 2 V. c.
12, cited.

The said Act
repealed.

II. And be it enacted, That no person or persons shall, within this Province, after the first day of February in every year hereafter, take or kill, in any manner whatever, any red or grey

Deer not to be
taken or killed
between 1st
grey

February and 1st August. grey Deer, or any Moose, Elk, or other Deer, or any Fawn, until the first day of August.

No person to take or kill certain kinds of game between certain periods in each year.

III. And be it enacted, That if any person shall take, hunt, shoot, kill or destroy, any red or grey Deer, or any Moose, Elk, or other Deer or any Fawn; between the first day of February and the first day of August, or any Game called wild Turkey, Prairie Hen, or Grouse, Grouse-Pheasant, Partridge, Quail, or any or either of them; between the first day of February and the first day of September, in every year, or shall sell, offer for sale, buy, receive or have in his or her possession any Venison or Game aforesaid between those periods (such Venison or Game having been killed after the first day of February in any year, the proof to the contrary whereof shall be upon the party charged,) or if any person shall take, shoot, kill, or destroy, or shall sell, offer for sale, buy, receive or have in his or her possession any Woodcock* between the first day of February and the fifteenth day of July in any year, or if any person shall at any time hereafter erect, make or set either wholly or in part any pen, trap, gin, net, or snare, for the purpose or with the intention of entrapping, taking, or snaring any wild Turkey, within this Province, any such person being convicted of any or either of the said offences before a Justice of the Peace, upon the oath or affirmation of one or more credible witness or witnesses, (which oath or affirmation the Justice is hereby authorized to administer,) or upon view had of the offence by the said Justice himself, shall pay a fine or penalty not exceeding ten pounds, nor less than ten shillings current money of this Province, together with the costs and charges attending the proceedings and conviction.

* But see as to Woodcock. 16 V. c. 171, s. 2;

And s. 3. of the same act, as to muskrats, and 8 V. c. 46, as to certain kinds of wild fowl.

Penalty.

How any person charged in writing with having offended against this Act shall be prosecuted.

IV. And be it enacted, That when any person shall be charged upon oath or otherwise in writing before any Justice of the Peace with any offence against this Act, the said Justice shall summon the person so charged to appear before him at a time and place to be named in such Summons; and if such person shall fail or neglect to appear accordingly, then (upon proof of due service of the Summons upon such person by delivering or leaving a copy thereof at his house or usual place of abode, or by reading the same over to him personally,) the said Justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person and bringing him before himself or some other Justice of the Peace within the same District; and the Justice before whom the person charged shall appear or be brought, shall proceed to hear and determine the case.

In what form the conviction may be.

V. And be it enacted, That the Justice before whom any person shall be convicted of any offence against this Act, may cause the conviction to be drawn up in the following form, or in any other form of words to the same effect, as the case shall require, that is to say: "Be it remembered that on the

The form.

day

day _____, in the year of our Lord
 at _____, in the County of _____ (or District,
 Riding, or Division, as the case may be.) A. B., of
 is convicted before me, C. D., one of Her Majesty's Justices of
 the Peace for the said County (or District, or Riding, or Di-
 vision, as the case may be,) for that he, the said A. B., did
 (specify the offence and the time and place when and where
 the same was committed, as the case may be;) and I, the said
 C. D., adjudged the said A. B., for his offence, to pay
 (immediately, or on or before the _____ day of _____)
 the sum of £ _____, and also the sum of _____
 for costs; and in default of payment of the said sums respect-
 vely, to be imprisoned in the Common Gaol of the said County,
 (or District or Riding, or Division, as the case may be,) for the
 space of _____ months, unless the said sums shall
 sooner be paid; and I direct that the said sum of _____
 pounds (the penalty) shall be paid as follows; (that is to say,
 one moiety thereof to the party charging the offence, and the
 other moiety to the Treasurer of the District, to be by him, the
 said Treasurer, applied according to the provisions of this Act.)

See also forms
 in 14 & 15 V.
 c. 95.

Given under my hand and seal, the day and year first above
 mentioned.

[L. S.]

C. D."

VI. And be it enacted, That a conviction under this Act shall not be quashed for want of form; nor shall any warrant of commitment be held void by reason of any defect therein, provided that it be alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

Conviction not
 to be quashed
 for want of
 form.
 Proviso.

VII. And be it enacted, That in default of payment of any fine imposed under the authority of this Act, together with the costs attending the same, within the period specified for the payment thereof, at the time of conviction, by the Justice of the Peace before whom such conviction shall have taken place, it shall and may be lawful for such Justice of the Peace, (if he deems it expedient to do so,) to issue his warrant directed to any Constable to levy the amount of such fine and costs within a certain time, to be in the said warrant expressed; and in case no distress sufficient to satisfy the amount shall be found, it shall and may be lawful for him to commit the offender to the Common Gaol of the District wherein the offence was committed, for any term not exceeding three calendar months, unless the fine and costs shall be sooner paid.

Fine may be
 levied by dis-
 tress if not
 paid.
 And for want
 of distress, the
 offender may
 be imprisoned.

VIII. And be it enacted, That the prosecution for every offence punishable under this Act shall be commenced within three calendar months after the commission of the offence, and not otherwise; and the evidence of any inhabitant of the County, District, Riding or Division, in which the offence shall have been committed, shall be admitted and receivable, notwithstanding

Limitation of
 time for such
 prosecution.
 Who may be a
 witness.

Proviso.

withstanding the penalty incurred by the offence may be payable for the benefit of the Township or Division where the offence shall have been committed : Provided that, in no case, shall the party, who makes the charge in writing before the Justice, be admitted as a witness in the case.

Appeal given to the Quarter Sessions.

IX. And be it enacted, That any person who shall think himself aggrieved by any conviction or decision under this Act, may appeal to the next Court of General Quarter Sessions, which shall be holden not less than twelve days after the day of such conviction or decision, and if holden in less than twelve days, then to the next ensuing Court of General Quarter Sessions for the District wherein the cause of complaint shall have arisen : Provided that such person shall give to the other party a notice, in writing, of such appeal, and of the cause and matter thereof, within six days after such conviction or decision, and ten days, at least, before the Sessions, and shall also either remain in custody until the Sessions, or enter into recognizance with two sufficient sureties before any Justice of the Peace, conditioned, personally to appear at the Sessions and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and upon such notice being given, and such recognizance entered into, the Justice shall liberate such person, if in custody; and the Court, at such Sessions, shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the Court shall seem meet; and in case of the dismissal of the appeal and the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

Condition of appeal.

Court to hear and determine the same.

Convictions under this Act to be transmitted to the Quarter Sessions.

X. And be it enacted, That every Justice of the Peace before whom any person shall be convicted of any offence against this Act, shall transmit the conviction to the next Court of General Quarter Sessions which shall be holden for the District wherein the offence shall have been committed, there to be kept by the proper officer among the records of the Court.

Within what time actions must be brought for any thing done in pursuance of this Act.

XI. And for the protection of persons acting in the execution of this Act, Be it enacted, That all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the District where the fact was committed, and shall be commenced within three calendar months after the fact committed, and not otherwise; and notice, in writing, of such action, and of the cause thereof, shall be given to the defendant one calendar month, at least, before the action; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence, at any trial to be had thereupon; and no plaintiff shall recover in such action, if tender of sufficient amends

Plaintiff not to recover after

amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant, and if a verdict shall pass for the defendant, or the plaintiff shall become non-suit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs, as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases.

XII. And be it enacted, That all sums of money to be awarded or imposed as fines or penalties, by virtue of this Act, shall be paid as follows, that is to say: one moiety thereof shall be paid to the party charging the offence in writing, before the Justice, and the other moiety shall be paid to the Treasurer of the District wherein the offence was committed, and shall be accounted for by such Treasurer, in the same manner as he is by law obliged to account for other monies deposited with or paid over to him.

XIII. Provided always, and be it enacted, That nothing in this Act shall extend, or be construed to extend, to any Indians now or hereafter to be resident within the limits of this Province; but nothing in this Act shall extend, or be deemed, taken, or construed to extend, to justify or authorize any person to have, receive, purchase, or take from any Indian, any Venison or other Game killed out of season, or between the period within which the taking or killing of game is prohibited by this Act.

XIV. And be it enacted, That this Act shall be deemed a public Act, and shall be taken notice of by all Courts of Law, Judges, Justices, and other persons, without specially pleading the same.

8 VICT. CAP. 46.—1844.

An Act to prevent certain Wild Fowl and Snipes from being destroyed at improper seasons of the year, and to prevent the trapping of Grouse and Quail in this Province.

WHEREAS divers Inhabitants of this Province have, by their Petition to the Legislature, set forth that the various kinds of Wild Fowl commonly called "Duck," and the different sorts of Wild Geese, which used formerly to abound in the lakes, rivers, bays and islands of the Province, and formed a great source of not only profit and marketable commodities, but

but also of nutriment and luxury to a large class of Her Majesty's Subjects, have of late years so materially decreased in number, (owing as is alleged, to their having been destroyed at improper seasons of the year and particularly during the summer months,) and that their entire disappearance from the country is threatened, unless protected by some Legislative enactment; And whereas it is expedient to comply with the prayers of the said Petitions; And whereas the Game called Grouse and Quail in the western parts of this Province have of late years become nearly extinct by reason of the same having been caught in snares, nets, and traps, by day and by night, in an unsportsmanlike manner, and it is expedient to enact a Law to prevent that description of Game (which contributes so much to the amusement and luxury of the Inhabitants of that part of the Province,) from being utterly destroyed by such clandestine means: Be it therefore enacted, &c. That no person or persons shall, within this Province, from and after the passing of this Act, hunt, shoot, take, kill or destroy any Wild Swan, Wild Goose, Wild Duck, Teal, Widgeon or Snipe between the tenth day of May, and the fifteenth day of August in any year.

Prohibition to
kill Game be-
tween 10th
May and 15th
August.

Grouse and
Quail.

II. And be it enacted, That no person shall hereafter trap or set traps, nets or snares for any Grouse or Quail, or kill or hunt or go in quest after the same at night, within this Province.

Penalty.

III. And be it enacted, That if any person shall hunt, shoot, take, kill or destroy any Wild Swan, Wild Goose, Wild Duck, Teal, Widgeon or Snipe between the tenth day of May and the fifteenth day of August in any year, or shall sell, offer for sale, buy, receive, or have in his or her possession, any of the above mentioned birds between those periods, (such birds having been taken or killed after the said tenth day of May, the proof to the contrary whereof shall be upon the party charged,) or if any person shall trap or set traps, nets or snares, for any Grouse or Quail, or shall kill or hunt, or go in quest after the same at night, (that is to say, between Sunset and Sunrise,) any such person being convicted of any or either of the said offences before a Justice of the Peace, upon the oath or affirmation of one or more credible witness or witnesses (which oath or affirmation the Justice is hereby authorized to administer,) or upon view had of the offence, by the said Justice himself, shall pay a fine or penalty not exceeding five pounds, nor less than five shillings, current money of this Province, together with the costs and charges attending the conviction.

How recover-
able.

IV. And be it enacted, That any person or persons offending against this Act, shall be charged in writing, and the conviction shall be drawn up, and the fine or fines and costs levied in manner and according to the Form, or as near thereto as may be, as charges are directed to be made, and convictions drawn up, and penalties and costs directed to be levied, in and by a certain Act of this Province, made and passed in the seventh year

year of Her Majesty, intituled, *An Act to prohibit the hunting and killing of Deer and other Game within this Province at certain seasons of the year*, and all the several provisions of that Act as to the limitation of time for prosecution and as to evidence, and an appeal to the Quarter Sessions, and otherwise, shall (so far as they lawfully can) be made applicable to this Act without here repeating the same.

V. And be it enacted, That nothing in this Act contained shall extend or be construed to extend to the people usually called Indians.

VI. And be it enacted, That the County of Saguenay shall be exempt from the operation of this Act.

9 VICT. CAP. 76.—1846.

An Act for the better preservation of certain Wild Fowl in the County of L'Islet.

WHEREAS it is necessary to make stricter provision than is made by the Act hereinafter mentioned, for preventing the destruction of certain species of Wild Fowl within the County of L'Islet: Be therefore enacted, &c. That no person or persons shall, from and after the passing of this Act, hunt, shoot, take, kill or destroy any Wild Swan, Wild Goose, Wild Duck, Teal, Pidgeon or Snipe, within any Parish or place in the County of L'Islet, in the Spring or in the Autumn of any year, until at least eight days after the arrival of the said Wild Fowl on the beaches, shoals and islands in the said County, shall have been publicly notified in the manner hereinafter mentioned, nor at any time or season whatever, between sunset and sunrise, or on any day of the week except Tuesday and Friday.

Preamble.

Certain Wild Fowl not to be killed within eight days after their arrival at L'Islet.

II. And be it enacted, That it shall be the duty of the Senior Justice of the Peace, or on his refusal or neglect then of the Senior Officer of Militia, in each Parish in the said County of L'Islet, on being certified by the oath of one credible witness (to whom such Justice of the Peace or Officer of Militia shall and may administer the requisite oath,) that the flocks of the said Wild Fowl or any of them have arrived on the beaches, shoals and islands in or opposite to such Parish, to cause notice to be given at the door of the Church of such Parish, immediately after Divine Service in the forenoon, of the arrival of the flocks of such Wild Fowl, and of the day upon and after which it will be lawful to hunt, shoot, kill or take the same, between sunrise and sunset on any Tuesday or Friday as aforesaid.

How such arrival shall be notified.

Penalty for
contravening
this Act.

Act 8 Vict. c.
46, cited.

Indians ex-
cepted.

III. And be it enacted, That any person offending against this Act shall be liable to a penalty not exceeding five pounds, nor less than five shillings, to be recovered and applied in the same manner and under the same provisions as any penalty imposed by the Act passed in the eighth year of Her Majesty's Reign, intituled, *An Act to prevent certain Wild Fowl and Snipes from being destroyed at improper seasons of the year, and to prevent the trapping of Grouse and Quail in this Province*, on persons offending against that Act.

IV. And be it enacted, That this Act shall not extend to the people usually called Indians.

14 & 15 VICT. CAP. 107.—1851.

An Act for the regulation of Hunting and the preservation of Game.

Preamble.

Spring shoot-
ing season.

Fall shooting
season.

Certain mode
of shooting
forbidden.

The game.

Proviso; and
exceptions.

WHEREAS the mode of hunting followed in certain cases, tends to the destruction of Game and to diminish the number of the Birds of Passage which frequent the shores and shoals of the County of Kamouraska in great numbers: Be it therefore enacted, &c. That the spring shooting season shall only commence on the Eighth of April, in each year, and it shall not be lawful to shoot any Game (*Gibier*) frequenting the beach and shoals in the County of Kamouraska, before the Eighth of April, nor after the Thirtieth of May in any year, for the spring shooting. ↗

II. It shall not be lawful to shoot any of the said Game before the Fifteenth of September in any year, which day shall be considered as the beginning of the fall shooting season, which shall last so long as the Game shall remain on the shore.

III. It shall not be lawful at any time, nor in any manner, to hunt Game during the night, nor to shoot Game when it has alighted on or when it is flying over the shoals after sunset and before sunrise, except ducks which may be shot for the space of one hour after sunset.

IV. It shall not be lawful to go in quest of Game on the beach and shoals at low water, nor to hunt Game by approaching it when it is feeding at low water.

V. Provided always, That this prohibition to hunt Game at low water, shall not be construed to prevent the shooting of Game on its passage, by persons on the watch on the points of land, and in the description of shelter called "Gabions," erected

erected on the beach and shoals, provided this method of hunting be used without following the Game, during the day time, and within the periods above fixed for the spring and fall shooting seasons.

VI. The destruction or carrying away of the eggs of any species of wild fowl, is by this Act prohibited in any part of Lower Canada, under the penalties hereinafter provided. The destruction of eggs, &c.

VII. Every contravention of the above provisions, shall be punished by a fine of One Pound for the first offence, and Two Pounds for every subsequent offence; and the said fines may be used for and recovered before any Magistrate within the limits of his jurisdiction, and in the manner and form prescribed in such cases. Penalty for contravention.

VIII. This Act shall only apply to the County of Kamouraska, except the sixth section which applies to the whole of Lower Canada, and shall remain in force until it shall be repealed or amended by the authority aforesaid. Extent of Act.

16 VICT. CAP. 171.—1853.

An Act to amend the Act prohibiting the hunting and killing of Deer and other game within this Province, at certain seasons of the year.

WHEREAS it is provided in and by the Act passed in the seventh year of Her Majesty's Reign, intituled, *An Act to prohibit the hunting and killing of Deer and other game within this Province, at certain seasons of the year*, that one moiety of all sums awarded as fines or penalties under the said Act shall be paid to the Treasurer of the District wherein the offence for which such fines or penalties are imposed shall have been committed; And whereas no such officer exists in Lower Canada, and in consequence thereof difficulties have arisen as to the application of the said sums of money, and it is expedient to amend the said Act in that respect in so far as it applies to Lower Canada: Be it therefore enacted, &c., That whenever the offence for which any such fine or penalty shall be imposed shall have been committed in Lower Canada, one moiety of the said fine or penalty shall be paid to the party charging the offence, and the other moiety to the Secretary-Treasurer of the Municipality within the limits whereof the offence shall have been committed, or such other person as the said Municipality may appoint, to be applied to the uses of the said Municipality, and the form of conviction contained in the fifth Section of the said Act shall be and is hereby amended in so far as it relates to the payment of the said moiety. Preamble. 7 V. c. 12. How the penalty under the said Act shall be applied in L. C.

The said Act amended as regards the season during which Woodcock may be lawfully killed.

II. And be it enacted, That so much of the Act cited in the Preamble of this Act, as relates to the shooting or killing of Woodcock at improper seasons, and the penalties imposed therefor, shall be and is hereby repealed; and if any person shall take, shoot, kill or destroy, or shall sell, offer for sale, buy, receive or have in his or her possession any Woodcock, between the First day of February and the Fifteenth day of August in any year, any such person being convicted of any such offence, shall be subject to the provisions of and to the penalty imposed by the said Act.

At what season only Musk Rats shall be killed in certain counties.

III. And whereas it is expedient to prevent the shooting, killing and destroying of Musk-rats at improper seasons: Be it enacted, That from and after the passing of this Act, it shall not be permitted to any person or persons within the limits of the Counties of Yamaska, St. Maurice, Berthier, Leinster and Richelieu respectively, to kill, shoot or destroy, or to sell, offer for sale, buy, receive or have in his or her possession any Musk-Rat between the Tenth day of May and the First day of November in any year; and any such person who shall, within the limits of the said Counties kill, shoot or destroy, or sell, offer for sale, buy or receive, or have in his or her possession any Musk-Rat between the said Tenth day of May and First day of November, shall, upon being convicted of such offence, be subject to the fines and penalties imposed by the said Act cited in the preamble to this Act.

Penalty for contravening this section.

16 VICT. CAP. 169.—1853.

An Act in addition to the General Railway Clauses Consolidation Act.

Preamble.

Punishment of persons doing any thing to Railway with intent to injure persons or property.

WHEREAS it is necessary to make provision for the protection of persons and property passing over Railways from criminal attempts to injure the same, and for other purposes connected with Railways in this Province, and to amend the General Railway Clauses Consolidation Act: Be it therefore enacted, &c. That if any person shall wilfully and maliciously displace or remove any railway-switch or rail of any Railroad, or break down, rip up, injure or destroy any Railroad track or Railroad bridge or fence of any Railroad, or any portion thereof, or place any obstruction whatsoever on any such rail or Railroad track or bridge, with intent thereby to injure any person or property passing over or along such Railroad, or to endanger human life, every such person so offending shall be guilty of misdemeanor, and shall be punished by imprisonment with hard labor in the Common Gaol of the Territorial Division in which such offence shall be committed or tried, for any period not exceeding one year from conviction thereof; and

and if in consequence of such act done with the intent aforesaid, any person so passing over and along such Railroad, shall actually suffer any bodily harm, or any property passing over and along such Railroad shall be injured, such suffering or injury shall be an aggravation of the offence, and shall render such offence a felony, and shall subject the said offender to such punishment by imprisonment in the Provincial Penitentiary for not less than one year nor more than two years, as the circumstances of the case may, in the opinion of the Court before which he shall be convicted, appear to be proportionate to the offence and the mischief occasioned by it.

And if such damage be actually done.

II. And be it enacted, That if any person shall wilfully and maliciously displace or remove any railway-switch or rail of any Railroad, or shall break down, rip up, injure or destroy any Railroad track or Railroad bridge or fence of any Railroad or any portion thereof, or place any obstruction whatever on any such rail or Railroad track or bridge, or shall do or cause to be done any act whatever whereby any engine, machine or structure, or any matter or thing appertaining thereto shall be stopped, obstructed, impaired, weakened, injured or destroyed, with intent thereby to injure any person or property passing over or along such Railroad, and if in consequence thereof any person be killed or his life be lost, such person so offending shall be deemed guilty of manslaughter, and being found guilty, shall be punished by imprisonment in the Provincial Penitentiary for any period not more than ten nor less than four years.

And if any person be killed or his life be lost, the offence to be manslaughter and punishable as such.

Sections 4, 5, 8 and 9, are omitted as relating only to the civil right of Railway Companies.

VI. And be it enacted, That in all cases where Railroads pass any Draw or Swing Bridge over any navigable River, Canal or Stream which is subject to be opened for the purposes of navigation, the Trains shall in all and every case be stopped at least three minutes, to ascertain from the Bridge Tender that the said Bridge is closed and in perfect order for passing, and in default of so stopping during the full period of three minutes, the Railroad Company shall be subject to a fine or penalty of One Hundred Pounds.

As to Trains passing Draw-bridges.

VII. And be it enacted, That it shall be the duty of every Railway Company, whether any of the clauses or provisions of the said Act be or be not incorporated with the Act incorporating such Company, to cause all cleared land or ground adjoining their Railway and belonging to such Company, to be sown or laid down with grass or turf, and to cause the same so far as may be in their power, to be covered with grass or turf, if not already so covered, and to cause all thistles and other noxious weeds growing on such land or ground, to be cut down and kept constantly cut down or to be rooted out of the same; and

Ground adjoining any Railway, and belonging to the Company, to be laid down with grass and cleared of weeds, &c.

if

if any Railway Company shall fail to comply with the requirements of this Section within twenty days after they shall have been required to comply with the same, by notice from the Mayor, Reeve or Chief Officer of the Municipality of the Township or County in which such land or ground shall lie, such Company shall thereby incur a penalty of Ten Shillings to the use of such Municipality, for each day during which they shall neglect to do any thing which they are lawfully required to do by such notice, and it shall be lawful for the said Mayor, Reeve or Officer, to cause all things to be done which the said Company were lawfully required to do by such notice; and for that purpose to enter by himself and his assistants or workmen upon such lands or grounds, and such Municipality may recover the expences and charges incurred in so doing, and the said penalty, with costs of suit, in any Court having jurisdiction in civil cases to the amount sought to be recovered.

Act to apply to all Railways.

X. And be it enacted, That the provisions of this Act shall, from the passing thereof, apply to every Railway made or to be made in this Province.

13 & 14 VICT. CAP. 31.—1850.

An Act to protect from injury Electro-Magnetic Telegraphs in this Province.

Preamble.

Punishment of parties damaging Telegraph wires, &c.

Who shall have jurisdiction.

How penalties shall be enforced, if not paid.

WHEREAS it is necessary to protect from injury Electro-Magnetic Telegraph Lines in this Province: Be it therefore enacted, &c. That if any person shall wilfully or maliciously cut, break, destroy or injure any instrument, cap, wire, post or other erection, used for or by any Line of Electro-Magnetic Telegraph now or hereafter to be in operation in this Province; under any Act in force therein, or that may be passed by the Legislature thereof, or in any manner by any means impede or obstruct the action and operation of such Line, such person shall be punishable by imprisonment for not less than five days nor more than thirty days, or by fine not exceeding ten pounds, or by both, according to the discretion of the Magistrate before whom the offence shall be charged: That the jurisdiction over all offences against this Act shall be in any Justice of the Peace in any Parish, Village, City, Town or County where the offence was committed, or in which the offender may be found, and the proceedings thereon shall be summary; That the fine imposed, may, if not forthwith paid, be levied, with all costs of the prosecution by Warrant of Distress against and by sale of the goods and chattels of the offender, or such offender may, (in the discretion of the Magistrate) whether imprisonment be or be not part of the sentence, be imprisoned for a period not exceeding thirty days, in addition

addition to and after the expiration of any other imprisonment making part of his sentence, unless such fine and all expenses incurred in the prosecution be sooner paid; and all such fines, when collected, shall belong to the party aggrieved by and complaining of the offence, and be paid over to such party.

13 & 14 VICT: CAP. 40.—1850.

An Act to repeal two certain Acts therein mentioned relating to Agriculture, and to provide for the remedy of abuses prejudicial to Agriculture.

WHEREAS it is expedient to repeal the Act and Ordinance hereinafter mentioned, and to provide more effectually for the prevention of certain trespasses, abuses and evil practices which prevail in Lower Canada, and retard the progress of Agriculture therein: Be it therefore enacted, &c., That the Act of the Legislature of Lower Canada, passed in the sixth year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to repeal a certain Act therein mentioned, and more effectually to remedy divers abuses prejudicial to Agriculture*, and the Ordinance of the Province of Quebec, passed in the thirtieth year of the Reign of King George the Third, intituled, *An Act or Ordinance for preventing Cattle from going at large*, be, and the same are hereby repealed, but no Act or Law thereby repealed shall revive, but shall be and remain repealed; this Act being substituted for all other Acts heretofore passed on the subject to which it relates.

Preamble.

Repeal of 6 W 4, c. 56, and 30 G. 3, c. 4.

Repealed Acts not to revive.

II. And be it enacted, That from and after the passing of this Act, no person shall enter into or pass through any field, whether it be sown or unsown, nor along the banks of any river or rivulet, nor into, nor through any garden, coppice or other property whatsoever, without the permission of the proprietor, or some person duly authorized by him to grant such permission, under a penalty of not less than five shillings nor more than thirty shillings currency, for every such offence, and over and above the amount of all damages occasioned thereby, any law, usage or custom to the contrary notwithstanding; which penalty or damages, or both, may be recovered before any one Justice of the Peace, who shall decide the matter in a summary way, either on view or on confession of the party complained against, or on the oath of one credible witness: Provided always, that it shall be lawful for any landholder, or for his representative or servant, to arrest without warrant any person taken in the act or contravening this section, and to carry him or cause him to be carried forthwith before one of the nearest Justices of the Peace, in order that such Justice of the Peace may decide summarily on the complaint.

Penalty for trespassing on the lands of another.

But See as to exception in favor of lumberers, 14 & 15 V. c. 102.

PROVISO.

Penalty for
destroying
fences, hedges,
trees, &c.

III. And be it enacted, That any person who shall leave open any gate, or pull down, cut, break, remove or injure any fence or part of any fence, or cut or destroy any hedge, or shall cut, bark, fell or remove any tree, shrub or plant, or fell or cut or remove any tree, or any part of a tree, on the land of any other person, or take any skiff, scow, batteau or canoe belonging to any other person from the banks of any river, for any purpose whatsoever, or shall burn any wood on any such land for any purpose whatsoever, without leave from the proprietor or his representative, every such person shall, for every such offence committed in the day time, incur a penalty which shall not be less than five shillings nor more than thirty shillings currency, and shall be double the said sums if the offence be committed in the night time, over and above all damages; which damages or penalty not exceeding six pounds five shillings, or both, may be recoverable before one Justice of the Peace; and that any person who shall have thrown down or carried away any part of any fence, or shall be found on any land, highway or by-road, with any portion of the materials of any fence in his possession, may be detained by any landholder of the vicinage, or any person in the service of such landholder, and carried before one of the nearest Justices of the Peace, who may cause the person so accused to be detained until more ample enquiry can be made, for any time not exceeding twenty-four hours, and who may deal with such person according to the circumstances of the case and according to the requirements of this Act.

How recover-
able.

Detention of
offender.

Justice to sum-
mon before
him parties
infringing this
Act:

See also
14 & 15 V. c.
95, s. 2—au-
thorizing a
warrant in the
first instance
when the com-
plaint is made
on oath.

But see 14 &
15 V. c. 102.

Proviso: how
penalties shall
be enforced.

IV. And be it enacted, That any Justice of the Peace, upon complaint on oath before him of any infringement of the provisions in this Act contained, shall issue his warrant, directed to a bailiff, constable or sergeant of militia, for the apprehension of any person charged with any offence against any of the provisions of this Act, or his summons for the appearance before him or any other Justice of the Peace, of any such person, and shall summarily hear and determine upon the complaint, on the evidence of one credible witness other than the prosecutor, and pronounce a Judgment according to the requirements of this Act: Provided always, that the penalties hereby imposed or authorized to be imposed, shall be levied forthwith by warrant of distress and sale of the goods and chattels of the offender, and if sufficient goods and chattels cannot be found, or if the penalties shall remain unpaid for the space of eight days after such conviction, such Justice shall commit the offender to the Common Gaol until such penalty with the costs of prosecution shall be paid; Provided always, that no person shall remain so committed for a longer time, upon any one conviction for the cause aforesaid, than thirty days.

When offender
is a squatter.

V. And be it enacted, That whenever it shall appear to such Justice of the Peace, by the oath of the prosecutor, or that of one witness, that an offender against any of the provisions of
this

this Act, is a squatter, or a stranger or person without real property in the Parish or Township, or other means to secure the payment of such penalty and costs imposed under authority of this Act, such Justice of the Peace shall commit him to the Common Gaol for a time not exceeding sixty days.

&c., he may be committed.

VI. And be it enacted, That for damages sustained by the trespassing of horses, mules, cattle, or other domestic animals, or poultry, any person may lay his complaint before one of the nearest Justices of the Peace, who shall immediately command the Road Surveyor for the division of the Parish or Township in which the offence is committed, forthwith to give notice to the complainant, as well as to the person or persons complained of, and immediately thereafter to proceed to assess the damages in the presence of the parties, or in their absence when duly notified; and thereupon, the said Road Surveyor shall report the same in writing to such Justice of the Peace, who shall hear the parties, and if good cause be not shown to the contrary, thereupon, allow the prosecutor the amount thereof, with the costs and charges of the view and report, and of prosecution, and shall cause the same to be levied in the manner prescribed by this Act: Provided always, that if on hearing the parties the Justice of the Peace shall see fit to acquit the defendant, then the complainant shall be condemned to pay the costs; And provided also, that the said Justice of the Peace shall allow to the Road Surveyor, a reasonable remuneration for his trouble, and in case of the Road Surveyor being sick, absent, interested or otherwise unable to act, the Justice of the Peace shall name another respectable and competent person.

Complaint for damages by trespass of animals how to be laid.

But See 16 V. c. 210. s. 1, requiring that the parties be first summoned.

Proviso.

Proviso.

VII. And be it enacted, That every such Justice of the Peace may, on the application of either party, issue subpoenas to compel the attendance of witnesses before him or before the said Road Surveyor or other person named as aforesaid, and may swear them in the usual manner, to give true evidence, and may enforce obedience to every such subpoena, and punish or cause to be punished any disobedience thereto, by the usual course of law: Provided that the Road Surveyor, or other person named as aforesaid, shall also have the power to swear such witnesses as may appear before him to give evidence.

Witnesses may be summoned.

Proviso.

VIII. And be it enacted, That it shall not be lawful for any person whomsoever, at any season of the year, to allow his horses, mules, neat cattle, sheep, goats, hogs or any other animal whatever, or poultry, to stray upon any land which does not belong to him, without the permission of the owner thereof, or of his representative, or upon any beach, highway or public place; and whenever any horse, mule, neat cattle, sheep, goat or hog, or any other animal whatever, or poultry, shall be found straying in any such place, the owner of any such horse, mule, neat cattle, sheep, goats, hogs, or any other animal

Abandon of animals forbidden.

Penalties for
contravention.

animal whatever, or poultry, shall (over and above the damages which he may be condemned to pay to the person complaining) incur the following penalties, that is to say : for each mare, gelding, colt or filly, One Shilling and Three Pence currency ; for each ox, cow or calf, One Shilling currency ; for each sheep or goat, Three Pence currency ; for each hog, Two Shillings and Six pence currency ; for each bull or boar or ram, Twenty Shillings currency ; for each stallion, Fifty Shillings currency ; for each goose, duck, turkey or head of other poultry of any kind, Three Pence currency ; and double the said sum for the second time, treble for the third time, quadruple the fourth time, and in that proportion on every subsequent occasion that such animals or poultry shall respectively be seen or found straying upon any lands or fields without the permission of the proprietor thereof or his representative, or on any highway, beach or public place.

Proprietors
&c. of land
may seize and
impound ani-
mals straying
on their land.

IX. And whereas it is expedient to give proprietors or occupiers of lands, who take animals or poultry straying on their lands or in their fields, the right of detaining and keeping them until the penalty and damages by this Act attached to the offence committed, shall have been paid, Be it enacted, That any proprietor or occupier of land, or his servants or representatives, may seize and send to the Pound, or may take and detain any animal or poultry which he or they shall find straying on his land, or in his fields without his permission, and may detain the same until the owner thereof shall have paid the penalty and damages hereby attached to the offence committed ; and that when any animal shall be seen straying on any beach, road or public place, it shall be lawful for the Road Surveyor, or any Overseer under him, or for any freeholder whomsoever of the Parish or Township, to take and send to the Pound, or to detain such animal until the proprietor thereof shall have paid the fine hereby attached to the offence committed : Provided always, that the person who shall have so taken any animal, shall give notice thereof as early as possible to the owner, if known to him, and to the nearest Pound-keeper in the Parish or Township, if there be a Pound established therein ; and if the owner of such animal shall not, within twenty-four hours, come forward and claim the same, and pay to the persons seizing or detaining them, the penalty incurred, with the cost of keeping such animal, or if the person detaining it shall not know the owner thereof, he shall cause public notice to be given that such animal has been so taken and detained, with a description thereof, at the doors of the churches of the Parish or Township on two consecutive Sundays immediately after divine service in the forenoon, and in the same manner on the second Sunday at the doors of the churches in the nearest Parish or Township to the spot where the animal is found, if before that time the owner shall not claim the said animal, and pay the penalty and costs of keeping the same, in which notice the time and place of sale shall be specified ;

Proviso: pro-
ceedings in
such case.

specified; or if there should be no church in the place, he shall give such other public notice as may be considered sufficient, according to the custom of the Parish or Township or Settlement in which such animal shall be so detained: *Provido: if animals be not claimed.* always, that when notice shall have been given in the manner aforesaid, on two consecutive Sundays, of the seizure and detention of any horse, mule, neat cattle, sheep, goats, hogs or any other animal whatever, or poultry, then if such animal or poultry is not claimed and the penalty and costs paid as aforesaid, it shall be lawful for the person who shall have such animal or poultry in his possession, to cause the same to be sold on the Monday next after the last notice shall have been given, by public auction, at the hour of noon: *Provido:* always, that the said auction shall take place near some church door or other place of public worship in the locality, or at the most public and frequented place: *Provido:* the persons intending to sell such animal shall give at least two days' notice of such sale to the Road Surveyor, who shall be bound to attend at such sale, or in case of his absence, through sickness or otherwise, one of the Overseers under him shall, upon being notified of such sickness or absence, act for him, and who shall sell the animal in the capacity of auctioneer and receive the proceeds of the sale, and out of the proceeds of the sale which shall be paid to the Road Surveyor or the person acting for him, by the purchaser, the person having detained the animal shall be entitled to receive from the Road Surveyor the penalty incurred and the reasonable costs of keeping the animal while detained, (which shall be estimated by any Justice of the Peace) with all damages sustained by such detainer; and the balance shall be paid into the hands of the Secretary-Treasurer of the Municipality, who shall pay it over to the owner of the animal as soon as he shall be known; or if such owner shall not become known to him within a year, it shall become the property of the Parish or Township and be applied to the improvement of the bridges and highways therein, under the supervision of the Municipality; and such Surveyor or Overseer of Roads shall report to the nearest Justice of the Peace the due application of the proceeds of the sale of any such animal, within eight days after the sale, under a penalty of Ten Shillings currency.

X. And be it enacted, That the Road Surveyor, or his representative, shall have the right of refusing all biddings at the sale of any such animal or poultry from any person unknown, or a stranger in the parish or Township, or known to be insolvent, until such person shall have given security to the satisfaction of such Road Surveyor or his representative; and the person becoming surety in such case shall be responsible for the price in the same manner as if he were the purchaser: *Provido:* always, that if the Road Surveyor should see fit, the sale shall not be binding unless the price be instantly paid, in which case, at the option of the Road Surveyor, the animal or poultry

Proviso.

poultry shall be put up and sold again under the same rules : And provided also, that if any such animal or poultry is sold at any such subsequent sale for a less amount than was bid at the first or any former sale, the Surveyor may sue the party who shall have made such bid at such first or former sale, before a Justice of the Peace for the recovery of the difference between the amount bid at such first or former sale and the amount for which such animal or poultry shall be sold at such subsequent sale ; and the oath of such Surveyor shall be good and sufficient evidence in the said suit, and shall entitle him to the recovery of the said difference with costs.

Parties receiving cattle to pasture, responsible for damage done by them.

Proviso.

XI. And be it enacted, That any proprietor or occupier of land, who shall receive cattle to pasture on his lands or grounds, or shall permit cattle belonging to others to stray or pasture on his lands or grounds, shall be responsible for such cattle as if he were the owner thereof, without its being necessary that the name of the owner should be ascertained : Provided always, that the complainant may in any case cause the summons or complaint to be served on any grown-up person belonging to the family, in any house built on the land whereon the animals committing the damage are at pasture, and that such service shall be sufficient even if the owner or occupant of the land should not have his domicile there or should be absent.

Duty of Justice of the Peace in the case of rabid dogs.

The complaint should be made on oath if a warrant is required in the first instance; See 14 & 15 V. c. 95, s. 2; and this remark will apply to all cases under this Act, where there is no other express provision.

Penalty.

Proviso: evidence required.

XII. And be it enacted, That it shall be the duty of every Justice of the Peace, on complaint to him made, that any dog belonging to or kept by any person, has bitten any person, horse, cattle or sheep on any spot not included within the property of his owner, or is supposed to be rabid, or has pursued any person or ridden horse, or any horse harnessed to any carriage on the highway, after having heard such complaint in a summary manner, to condemn the person against whom such complaint shall have been made, to pay the costs incurred on such complaint, if proved according to the provisions of this Act, and to order, by a writing under his hand, the owner or keeper of such dog, to keep or cause the same to be shut up for forty days, under a penalty, to be paid by such owner or keeper of such dog, not exceeding Two Shillings currency, for each day that such dog shall be suffered to be at large before the expiration of the said forty days ; Provided always, that in all cases wherein it shall be proved before such Justice of the Peace, by two or more witnesses worthy of credit, that the dog concerning which such complaint shall have been made, is vicious both with regard to travellers or ridden or harnessed horses, and is in the habit of pursuing or biting them, then and in such case, such Justice of the Peace may in the manner herein set forth, order the owner or keeper of such dog to kill it or cause it to be killed, and condemn such owner or keeper thereof, to pay, in addition to the costs above mentioned, a penalty of Five Shillings currency, for every day such dog shall be allowed to live after the said order.

XIII. And whereas it frequently happens that great mischief is done in the country parts by dogs which chase and strangle sheep; and whereas it is sometimes very difficult to prove that the mischief has been occasioned by such dogs: Be it therefore enacted, That it shall be lawful for any person to kill any dog which shall be seen at large in any field being the property or in the occupation of such person or his employer, and chasing or known to have chased sheep, or to complain thereof to any Justice of the Peace, who shall on such complaint summon the owner of the dog to appear before him, and may order him to kill such dog, and shall condemn such owner to pay the costs of such complaint, and such owner shall incur a fine of Five Shillings currency, for every day during which such dog shall be suffered to live after such order.

Provision
in case of dogs
strangling
sheep.

XIV. And be it enacted, That every person who shall allow any hog or pig to be at large without a ring in its nose, shall incur a penalty not exceeding Ten Shillings nor less than Five Shillings currency; the amount whereof shall go to the informer, and double the said sum for the second time.

Pigs at large
without rings.

XV. And be it enacted, That it shall be the duty of every keeper of a Pound, when the fine and expenses incurred as above for the damage caused by or for the impounding of any horse, mule, neat cattle, sheep, goat, hog or any other animal whatever, shall be tendered to him, to deliver the animal so impounded to the owner thereof, or to any other person duly authorized on his part, under pain of incurring a penalty not exceeding Ten Shillings currency, for refusal, and of Five Shillings currency a day, for every day he shall afterwards unjustly detain any such horse, mule, neat cattle, sheep, goat, hog, or any other animal whatever: Provided always, that any person or persons removing or taking away any animal or animals detained for damage done or complained of, or who shall rescue such on the way to the Pound or place of detention, shall forfeit and pay a penalty equal to the whole amount of the damage and penalty to which the owner of the said animals was subject, and also another and further sum of Ten Shillings Currency, and eight days' imprisonment, or either; and provided also that such proprietor shall have his recourse at law for the recovery of the said animal or animals.

When fine,
&c. is tendered
to Pound Keeper,
he shall
deliver the
animal to its
owner's.

Proviso: pe-
nalty for re-
scuing animals
impounded.

XVI. And whereas it is expedient to provide cheap and summary means of adjusting the difficulties which may arise in the country parts respecting fences and ditches necessary for the draining of lands or roads, Be it enacted, That it shall be the duty of the Surveyors of Roads, within their respective divisions, to act as Inspectors of fences, ditches and drains, when and so often as they or any of them may be required so to do; provided no Inspectors of fences or ditches are separately appointed.

Surveyors of
roads may act
as Inspectors
of fences, &c.

Surveyors of roads acting as Inspectors of fences, to take oath required by 10 & 11 Vict. c. 7.

XVII. And be it enacted, That every Road Surveyor, and in the event of his being interested, absent or sick, every Overseer of Roads in the same division, or Surveyor of Roads of any other division in the same Parish or Township, shall perform the duty of an Inspector of fences and ditches, and shall before entering on the duties of his office, as Inspector of fences, ditches and drains, take an oath as required by the sixteenth and seventeenth sections of the Act passed in the Session held in the tenth and eleventh years of Her Majesty's Reign, and intituled, *An Act to make better provision for the establishment of Municipal Authorities in Lower Canada.*

Provision for *découvert* between neighbours.

XVIII. And whereas it is expedient to enable the proprietors of cultivated lands to compel the owners or tenants of adjoining lands to make a *découvert* on the said lands, along the line separating their respective lands, of not less than forty-five feet in width from the said line, Be it enacted, That it shall be the duty of every Road Surveyor, when and so often as he shall be thereunto required by the proprietor of any lands in his division, in a fit state of cultivation, to visit and examine the said lands and the adjoining lands (giving previous notice of the day and hour when such examination will take place, either personally or by notice left at the residence of the proprietor or tenant of such adjoining lands, or of his agent or person usually acting in his behalf, and if any lands be not represented by any proprietor, agent or person usually acting in his behalf, within the Parish or Township, then a notice posted on the Church doors of the Parish, or at the most public place of the Township, at least eight days before making such examination, will be sufficient) and the said Road Surveyor shall determine whether the lands of the party requiring the said *découvert* are in the state of cultivation required by law, and if they are, he shall thereupon order the proprietor or tenant of such adjoining lands to make the said *découvert* within a certain time to be fixed by the said Road Surveyor, which time shall not exceed two months, and if the said proprietor or tenant shall neglect to make the said *découvert* within the time so fixed, he shall incur a penalty of Two Shillings and Six Pence currency for each and every arpent in length of such *découvert*, (any fraction being reckoned as a whole arpent;) Provided always, that no such *découvert* shall extend to any orchard, fruit tree or maple tree.

Proviso.

Penalty on neglect of duty by Road Surveyors.

XIX. And be it enacted, That every Road Surveyor or Overseer of Roads shall, for every neglect or refusal to perform any of the duties with which he is hereby charged, when thereunto required, incur a penalty of Ten Shillings currency, to be sued for and recovered in the manner herein provided.

Water courses to be cleansed before a cer-

XX. And be it enacted, That on or before the fifteenth day of July of each and every year, every brook, water course, drain or ditch shall be thoroughly opened, cleansed and rendered

ed fit for the following and passing through the same of all water that may during any period of the year flow into the same, and that any person or persons failing so to open and cleanse every part of any ditch, drain, water course or brook which may be upon his land or to which he may by law be subjected, shall incur and pay a penalty of Two Shillings and Six Pence currency, for each and every day during which such drain, ditch, water course or brook shall remain unopened and uncleaned.

tain day in
each year.

Penalty.

XXI. And be it enacted, That it shall be the duty of every Road Surveyor, when and so often as he shall be thereunto required by any person being proprietor or occupant of lands within his division, to visit and examine the drains or ditches and the line fences separating the lands belonging to the complainant from the lands of any other person, or of the public; (giving previous notice of the day and hour when such examination will take place, either personally, or by notice left at the residence of the person against whom complaint shall have been made, or of his agent, tenant or person usually acting in his behalf, and if any lands be not represented by any proprietor, agent, tenant or person usually acting in his behalf, within the parish, then a notice posted on the church doors of the Parish, at least eight days before making such examination, will be sufficient;) and the Road Surveyor shall determine whether the fence belonging to the person against whom such complaint shall have been made be sufficient or the drain insufficient to carry off the water; and if the fence or drain belonging to the said party be declared insufficient, such party shall be ordered to make, repair or deepen or clean out the same within a certain time to be fixed by the said Road Surveyor, which time shall not exceed four days in any case wherein it shall be possible to perform the work required within that time; and in all other cases such Surveyor shall allow such further delay as he shall think necessary; and if the person whose fence or drain shall have been so declared insufficient, shall fail to conform to the order made concerning such fence or drain, such person shall incur a penalty of Two Shillings and Six Pence currency for each and every arpent in length of such fence or drain (any fraction being reckoned as a whole arpent) for each and every day such fence or drain shall remain unrepared after the expiration of the time so fixed; Provided always, that no fence or drain shall be considered insufficient which shall not be inferior to the fence or drain on the same line or boundary and in a similar position in the same field or enclosure by the party complaining.

Road Surveyors to visit fences, &c., when required.

Proviso: what shall be a sufficient fence.

XXII. And be it enacted, That it shall be the duty of every such Road Surveyor, after the expiration of the time he shall have fixed for the making or repairing of such fence or drain, or deepening or clearing of such drain, or of making such *découvert* as aforesaid, to authorize the party requiring the

Provision if the fence be not repaired within time fixed.

same,

same, to make or repair the said fence or *découvert* or drain, to proceed to the place and determine upon the value of the said repairing, or of making the said drain or *découvert*, and as soon as the said work is finished, the Surveyor shall determine the value of the same, and shall give his certificate approving the same and stating the value of the work, and also his expenses for attendance, to the party who has performed the work, and such certificate, if sworn to by the Surveyor before a Magistrate, shall be received as a sufficient proof in any Court of Justice or before any Judge, of the value and performance of the said work and of the expenses incurred.

As to bridges crossing any water course.

XXIII. And be it enacted, That it shall also be the duty of the said Road Surveyors respectively to determine where and by whom any bridge for the purpose of crossing any water course, ditch or drain, shall be made and kept up; and the party by whom they shall determine any such bridge to be made shall make and keep up the same in a good and sufficient manner to the satisfaction of the said Surveyors.

As to cases when a new fence or a *découvert* shall be ordered to be made.

XXIV. And be it enacted, That whenever the matter in question shall relate to the making of a *découvert*, or to the erection of a fence where there shall have been none before, or where although there has been a fence, the old fence shall be in such a state that the labour of repairing it shall be equal to that of making a new one, such Inspector shall not condemn the party against whom complaint shall have been made, unless the party complaining shall prove that the party complained against, or his agent or party usually acting in his behalf, was called upon to make the said *découvert*, or to erect the said fence before the first day of December preceding the time at which such complaint shall have been made: Provided always, that if the party complained against does not reside within the District and has no tenant or known agent, or party usually acting in his interest, the complaining party must prove that a notice has been posted to the foregoing effect on the Church doors of the Parish or Township wherein the property is situated, for four consecutive Sundays, during any time of the year immediately preceding the first day of December then last past, or if there be no Church therein, then at one of the most public places therein.

Proviso.

Duty of Road Surveyor as to work to be done by joint labour.

XXV. And be it enacted, That it shall be the duty of every such Road Surveyor, whenever he shall be thereunto required by one or more proprietors or occupants of land, to proceed to inspect all lines dividing their lands from their neighbours', whereon it is proposed to erect a new fence, all ditches opened or to be opened, and all other ditches, drains or water-courses commonly known as work to be jointly performed (*travaux mitoyens* or arising therefrom,) and then and there to order such work as he shall deem necessary, and he shall determine the parties by whom the same shall be performed and kept in repair,

repair, as well as the manner in which the same shall be done, and the time within which it shall be completed, as he shall deem it just and conformable to the custom and laws of this Province in that behalf; and every proprietor or occupant of land as aforesaid, who shall refuse or neglect to make, repair, take care of and keep in order any line fence, ditch or other ditch as aforesaid according to the order made by such Surveyor, within four days, or within the time fixed by such Surveyor not exceeding six additional days (where he shall have thought fit to grant a longer delay) after a written or verbal notice to such person given, shall incur a penalty of Two Shillings and Six Pence currency, for every day that such fence or ditch shall remain unmade or unrepaired in the manner aforesaid.

XXVI. And be it enacted, That it shall also be the duty of every such Surveyor within his division, so often as he shall be thereunto required, to visit and examine all outlets, water courses and brooks common to several lands or to any number of proprietors or occupants of land, the necessary labour concerning which shall have been regulated by *procès-verbal* duly homologated, or by *procès-verbal* heretofore made by any Inspector of fences and ditches, or by an agreement made by the parties interested, or by direction of the Municipal Council, and to see whether such work has been done conformably to such *procès-verbal* or agreement, and to order that the same be done, repaired and kept in order in the manner stated in such *procès-verbal* or agreement; and every person refusing or neglecting to conform to and obey such order within four days after written or verbal notice to that effect shall have been given to such person, or within the time fixed by the said Inspector, shall incur a penalty of Two Shillings currency for each and every day such work shall thereafter remain unperformed: Provided always, that in all cases provided for by this and by any section of this Act, it shall be the duty of every such Road Surveyor, after the expiration of the delays therein specified, to authorize the work to be performed by any party or parties interested in having it made, and after it is so made to give his certificate of the cost and value of the work and also of his expenses for attendance, to the party or parties who have performed the same, and such certificate, if sworn to by the Surveyor before a Justice of the Peace, shall be received as a sufficient proof in any Court of Justice or before any Judge or Justice of the Peace, of the value and performance of such work, and such amount and all expenses may be recovered by suit before any Justice of the Peace, or the land for which such disbursements have been made may be sold, as provided for by this Act.

XXVII. And be it enacted, That in all cases when it shall be necessary to open any outlet or water course, or to enlarge or deepen any brook common to the lands of several persons, the

As to water courses, &c., where the labour shall have been regulated by *procès-verbal*.

Proviso.

Where a water course shall be common to the

lands of several proprietors.

the work connected with which shall not have been apportioned and regulated by any *procès-verbal* or agreement, the matter in dispute shall be adjusted, on the requisition of one of the parties interested, by two Road Surveyors, conversant with such matters and in no wise interested, and residing nearest to the place where such work is to be done, and in case there shall be no such Road Surveyors so conversant and not interested in the Parish or Township, then by two Overseers qualified as aforesaid.

Previous notice to be given.

XXVIII. Provided always, and be it enacted, That before any such Surveyors shall proceed to the execution of the duties hereinbefore assigned to them, public notice shall be given by them, either verbally or by advertisement in writing, posted at the doors of the Churches or other places of public worship, in the Parish or Township where the work is to be done, immediately after Divine Service in the morning, and posted thereon on the Sunday immediately preceding the day on which they intend to visit the place, requiring all persons interested to take notice of the same, and to attend at the time and place appointed; and in places where there shall be no Church or place of public worship, then the said notice shall be posted in one of the most public places in the said Parish or Township.

Proceedings on the day fixed by the Surveyor for deciding the matter.

XXIX. And be it enacted, That after having given the notice aforesaid, the said Road Surveyors shall, on the day and at the hour fixed, proceed to the place accompanied by the parties interested if they see fit, and after inspecting the place or places, and becoming competently acquainted therewith, and after being fully informed of the matter in dispute, shall give their decision, and shall draw up a *procès-verbal* of their proceedings, setting forth every thing to be done with respect to such outlet, water course or brooks, for the general advantage of all parties interested, and the time at which it shall be done, with such further particulars as they shall judge necessary or expedient concerning the matter, comprising also the expenses incurred as well for the examination of the place as for the advertisements, and for drawing up the *procès-verbal*; which *procès-verbal* shall be deposited in the office of the nearest Notary or Justice of the Peace, and such Notary or Justice of the Peace shall give a certified copy thereof to any of the parties interested therein who shall require it, on the payment of the expense of such copy, at the rate of six pence currency for every hundred words; Provided always, that each *procès-verbal* so made, whether it concern one or more Parishes, Townships or Settlements, shall be homologated before one or more Justices of the Peace in the manner hereafter prescribed, and the homologation, and a copy or copies of such *procès-verbal* certified by such Justice or Justices of the Peace, shall be deposited with the Secretary-Treasurer of the Municipality or Municipalities having jurisdiction over every Parish or Township containing land thereby affected, and the Secretary-

Proviso: homologation of *procès-verbal*.

Treasurer

Treasurer of such Municipality shall give a copy thereof certified by him or the Mayor to any party requiring the same on the payment of the expense of such copy at the rate of six pence for every hundred words; and provided always, that whenever the said Surveyors shall differ in opinion as to a decision and the *procès-verbal* to be drawn up, it shall be their duty to call in a third Surveyor of Roads without delay, and after being competently acquainted therewith and fully informed of the matter in dispute, the majority of the said Surveyors shall give their decision, and shall draw up a *procès-verbal* of their proceedings which shall be deposited by them as above provided.

Proviso: when the Surveyors differ.

XXX. Provided always, and be it enacted, That the owners of lands which shall be higher than those of their neighbours shall not in any wise be bound or required by any Road Surveyor to make or assist in making the drains or water courses through their lands of any greater depth than may be necessary for draining their own lands; unless so ordered by any *procès-verbal* which shall or may be made to that effect: Provided further nevertheless, that it shall in all cases be lawful for the persons owning any adjacent lands or swampy grounds, to make use of such drains or water courses as aforesaid, through higher grounds, to clean out and deepen the same at their own expense, or where there are no such drains already existing, to cause the same to be opened in the manner and after the formalities hereinbefore prescribed by this Act, in such manner as to carry off the water from their own lands, or to prevent the same from coming, lodging or remaining thereon: And whereas it has been the custom in Lower Canada to name a third Inspector of fences and ditches when the two named in conformity with the provisions of the hereby repealed Act could not agree in their decision or *procès-verbal*, although doubts could be entertained of the legality of such proceeding, Be it declared and enacted, That any *procès-verbal* made by or with the assistance of a third Inspector named in the manner aforesaid, and homologated by any Justice or Justices of the Peace under the aforesaid hereby repealed Act, shall not be held or declared to be invalid, but on the contrary shall be and is hereby declared valid to all intents and purposes.

Owners of higher lands exempted.

Proviso: as to water courses through such lands.

Declaratory as to P. V. made by assistance of a third Inspector, &c.

XXXI. Provided always, and be it enacted, That it shall be the duty of all Road Surveyors, who shall draw up any *procès-verbal* as aforesaid, to select and appoint from among the parties interested, and after having consulted with them, one or more Overseers, according to the importance of the work to be done, who shall, after their names shall have been inserted in the said *procès-verbal*, carry the same into effect, and see that the work therein ordered to be done, as well with respect to the immediate performance thereof as to the keeping the same in repair in future, be duly performed for the general advantage of the parties interested therein: Provided further, that the persons so

Overseers of joint work to be appointed.

named

Proviso:
Period of service.

Bu See 16 V.
c. 210, s. 2,
providing for
the Election
of Overseers of
the Workes.

Proviso: parties interested may proceed to an election.

named as overseers shall not be bound to act as such during more than four successive years, if they shall consider the office burthensome and wish to be relieved therefrom, in which case, (or in case of death or infirmity, or absence of one or more of such Overseers,) or in case one or more of such Overseers shall sell or dispose of his property, the persons interested shall, when thereunto required by one or more such persons, who shall give notice thereof in the manner hereinbefore set forth respecting the view of the place, meet for the purpose of proceeding to a new election which shall be made by the majority of the persons interested, then and there present, who shall cause a record thereof to be drawn up, and shall deposit the same in the place where the *procès-verbal* to which it has reference shall have been deposited: Provided always, that it shall be lawful for all the persons interested in any *procès-verbal* of a water course, homologated in any Court of Law, or in any such *procès-verbal* made by any Road Surveyor or Inspector of fences and drains, or made by agreement, to proceed in the manner above mentioned, to an election for the purpose of filling up the place of any Overseer or Overseers deceased, absent, or having sold their lands, or desirous to resign their office after four years of service; and when such water course shall concern two parishes, townships or settlements, one or more Overseers from each place shall be appointed to see such *procès-verbal* carried into effect; and any such Overseer who shall neglect or refuse to cause such *procès-verbal* to be carried into effect according to its form and tenor, after having been required so to do by one or more of the parties interested, at least eight days before, shall incur a penalty not exceeding Five Shillings currency, for each day during which such work shall not be done in the manner provided by the *procès-verbal*; allowing four days for performing such work.

Procès-verbal
to be publicly
read, &c.

XXXII. And be it enacted, That the Surveyors, after having drawn up their *Procès-Verbal* as aforesaid, shall have a copy thereof prepared, which they shall cause to be posted or read on the following Sunday after Divine Service in the forenoon, at the Church doors or other places of public worship, and when there is none, then at one of the most central or public places of the Parish or Township for which such *Procès-Verbal* shall be made, and such public notice shall mention the time when such *Procès-Verbal* will be presented for confirmation, and the name of the Justice of the Peace to whom it will be so presented; and that all persons interested therein may appear before such Justice of the Peace for the purpose of stating their reason (if any they have), why such *Procès-Verbal* should not be confirmed, and a copy of the said *Procès-Verbal*, after it shall have been confirmed, shall be deposited in the keeping of such Overseer or Overseers, to be by them kept as a guide in the direction of the work, and for the information of all persons interested, to whom he or they shall give communication thereof, gratis, whensoever they shall require it; and every such

Oppositions
may be heard.

Custody of P.
V.

Overseer

Overseer shall deliver the said *Procès-Verbal*, and all other records and papers relating to his office, to his successor or successors in office; and every such *Procès-Verbal* and certified copies thereof shall be deposited after its homologation with the Secretary-Treasurer of the Municipality in which any Township or Parish having lands affected thereby, shall be.

XXXIII. And whereas the erroneous construction put by certain Justices of the Peace upon the obligation of the Inspectors of Fences and Ditches to prosecute the homologation of the *Procès-Verbaux* by them made according to the requirements of the Act passed in the Session of the Parliament of Lower Canada held in the tenth and eleventh years of the Reign of His late Majesty King George the Fourth, intituled, *An Act to amend an Act passed in the ninth year of His Majesty's Reign, intituled, 'An Act for the more speedy remedy of divers abuses prejudicial to Agricultural improvement in this Province, and to make further provision to the same effect,* and the Act passed in the Session of the same Parliament, held in the third year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to repeal a certain Act therein mentioned and to provide more effectually for the remedy of divers abuses prejudicial to Agriculture,* and referred to in the forty-third section of the Act passed in the Session of the same Parliament, held in the sixth year of the Reign of His late Majesty King William the Fourth, and intituled, *An Act to repeal a certain Act therein mentioned and more effectually to remedy divers abuses prejudicial to Agriculture,* hereby repealed, has become prejudicial to opposants, and tends to impede the purposes of Justice: Be it therefore enacted, That any *Procès-Verbal* drawn up under the authority of the Acts hereby repealed, and concerning one or more localities, which shall have been homologated before one or before two Justices of the Peace, shall be null and of no effect until it shall have been homologated conformably to the requirements of the Act in that behalf, before the Justice or Justices of the Peace nearest to the locality where the work is to be performed.

Recital 10 &
11 G. 4, c. 1;
3 W. 4 c. 31;
6 W. 4, c. 56.

Certain *procès-
verbaux* to be
null unless ho-
mologated.

XXXIV. And whereas it is necessary to fix the time within which the work ordered in any *Procès-Verbal* shall be done, Be it therefore enacted, That the Overseer or Overseers chosen to superintend the execution thereof, shall give public notice at the doors of the Churches or of any place of public worship, on the two Sundays next preceding the day they shall appoint as hereinafter set forth, after Divine Service in the forenoon, and when there is no place of worship, then at one of the most public places in the Settlement, Parish or Township, of the day and hour when they will repair to the spot to cause the work to be begun and performed, whether it is to be done in common, or severally by the persons interested, accordingly as by the *Procès-Verbal* it may have been appointed; and any person interested who shall refuse or neglect to repair to the spot on

Time to be
fixed within
which the
work is to be
done, under
P. V.

Penalty for
neglect.

the

the day appointed, and to perform his share of the work within the time appointed by the Overseer or Overseers, shall incur a penalty of Two Shillings currency for each and every day during which he shall have neglected to do and perform his share of the work; and if on the expiration of eight days from the time appointed for beginning the work, any of the persons interested shall have neglected to perform it, the said Overseer may cause it to be done, and may recover the expenses from the parties in default, by prosecution before any Justice of the Peace, with costs: Provided always, that in cases wherein a work is to be performed in common, the Overseer may at once employ one or more men instead of such of the persons interested as shall neglect their duty, and may recover from every such person in default the amount disbursed in paying the men employed, by prosecution before a Justice of the Peace as aforesaid, with costs.

Proviso.

Allowance to Road Surveyors, Experts, &c.

XXXV. And whereas it is just to allow an indemnification to the Road Surveyors for the time they may employ in the execution of the duties hereby assigned them: Be it enacted, That there shall be allowed to every such Road Surveyor, employed by virtue of this Act, and to every Expert, and he shall be entitled to recover Six Pence for every hour he may be so necessarily employed, which shall be paid by the party in default or in the wrong, whether such party be that at whose instance he acted, or be the adverse party in cases of *travaux mitoyens* or *en commun*, (joint labour,) and when he shall have been called on for a water-course, outlet, rivulet or other stream whatsoever, then the Six Pence per hour, and all the expenses incurred for carrying into effect the notices and *Procès-Verbal*, the copy and other expenses deemed necessary, shall be paid by all the persons interested in such water-course, outlet, rivulet or other stream, and in either case shall be recovered, with costs, in a summary manner before a Justice of the Peace.

How recoverable.

Provision where inhabitants of two or more townships, &c. are interested in any water course.

XXXVI. And be it enacted, That when the inhabitants of any two or more Parishes or Townships, shall be interested in the opening of any such new outlet or water-course, or in the widening or deepening of any old water-course, outlet or brook, the matter in dispute shall be regulated on the requisition of any person interested therein in each of the said Parishes or Townships, by applying to a Road Surveyor of each Parish, Township or settlement, if he be not interested, and if he be interested, to an Overseer of Roads in each such place respectively, who shall act and proceed in the manner prescribed by this Act, and the *procès-verbaux* shall be homologated as provided by this Act for the homologation of one Parish or Township only: Provided always, that where the said Surveyors of Roads are of equal number, and shall disagree, they shall call in another person disinterested in the matter as Umpire, and his decision shall be final.

XXXVII. And whereas great inconvenience might result from the performing of the work by the persons interested, by reason of their great number, and the difficulty of the work: Be it therefore enacted, That at a public meeting, the majority of the persons interested may cause the said work or any part thereof to be performed by collective labour, by separate shares or by contract, each of them paying his share in money, or performing his share in work, according to an apportionment to be made by one or more persons conversant in the matter, which apportionment, before it shall go into operation, shall be ratified by one Justice of the Peace, after having been first read or posted, during two consecutive Sundays, at the doors of the Churches, or any places of public worship in the Parishes or Townships concerned, making known to the persons interested the day and hour and the place where such Justice of the Peace is to sit to take cognizance of the grounds of opposition, if any, to the ratification of such apportionment: Provided also, that in the case of the non-performance of any share of work or of the non-payment of any sum of money imposed by this clause, it shall be the duty of the Overseer or Overseers to apportion such shares and payments amongst the remaining parties interested in such work, and the lands of the defaulting parties shall be subject to the provisions of the forty-first clause, in payment for the same.

Majority of those interested may have the work performed by collective labour, after public notice.

Proviso.

XXXVIII. And be it enacted, That it shall be the duty of the Surveyors appointed with respect to every such outlet, water-course or brook, to collect such sums of money as each of the parties interested shall be liable to pay by reason of the said apportionment, with all expenses incurred therein, and in case of refusal or negligence on the part of any such person, to compel the payment thereof by suit before any Justice of the Peace resident in the place, with costs, including an allowance of six pence per hour to the said Surveyor for the time he shall have lost by reason of the said suit, and the disbursements he may have been obliged to make for the payment of a Clerk, if it shall have been necessary for him to employ one.

Surveyors to collect moneys due from parties interested.

But See 16 V. c. 210, s. 3, providing that changes may be made in certain cases.

XXXIX. Provided always, and be it enacted, That the powers hereby given shall not in any case extend to authorize any Surveyor or Inspector to make any change concerning the work connected with any outlet, water-course or brook which shall have been previously regulated by a *procès-verbal*, lawfully made, whether such outlet or brook be common to several Parishes or Townships, or only one such place be interested therein, unless two thirds, at least, of the persons interested in such work shall require him to do so, and consent to a departure from the old *procès-verbal*.

Inspector not to make any change concerning water courses regulated by *procès-verbaux*.

XL. And be it enacted, That if any of the parties interested in the decision given or orders made by any Surveyor or Surveyors, by virtue of any of the provisions of this Act, relating

Appeal given from the decision of Sur-

veyors in certain cases, and proceedings on such appeal.

But See 16 V. c. 210, as to the Justices to whom application is to be made by the party deeming himself aggrieved.

to outlets, water-courses and brooks, as well those concerning one Parish or Township, as those which concern several, shall deem himself aggrieved thereby, and shall be dissatisfied therewith, such party shall, within eight days (reckoning from the day on which the *procès-verbal* shall have been publicly read or posted as aforesaid, at the Church doors or other places of public worship, or public place) lay his complaint before a Justice of the Peace, neither interested therein nor related to any one so interested within the degree prohibited by law in such cases, that is to say, within the third degree, and the said Justice shall, before the expiration of the said term of eight days, summon the Surveyor or Surveyors to appear before him and the Justice of the Peace before whom the *procès-verbal* is to be presented for homologation, on the day and at the place fixed for the said homologation, and to have with them the *procès-verbal*, which, as well as the reasons in favor of or against it (if any there be) alleged by the parties or their witnesses, shall be maturely examined by the said Justices, and if it shall appear to them that the reasons alleged against the same are insufficient, and that the requisite formalities have been observed, and that there has been no partiality or injustice or negligence in the conduct of the Surveyors, then the said *procès-verbal* shall be ratified, and shall be executed according to the form and tenor thereof; and if on the contrary it shall appear to the said Justices; that there has been partiality or a want of exactness and diligence in examining the place, or that the work has not been equitably apportioned according to the custom of the country, then three *experts* shall be appointed, one by the plaintiff or plaintiffs, another by the defendant or defendants, and the third by the said Justices of the Peace, and if either of the parties shall refuse to name an *expert*, the said Justices shall name one instead of such party; and such *experts*; after being duly sworn before a Justice of the Peace (who is hereby authorized to administer the necessary oath) shall proceed to view the place concerning which the dispute shall have arisen, in the presence of the said Surveyors and of the parties interested (who shall be duly notified by the said *expert*, at least eight days before such second view shall take place, by notice given at the doors of the Churches in the Parish or Township wherein the lands of the parties interested are situated) and the decision of the majority of the said *experts*, whether it be to confirm or set aside the decision given by the Surveyors shall be final and conclusive to all intents and purposes whatsoever; and if the said *experts* shall set aside the decision given by the Surveyors, or if they shall deem it advisable to change the direction of the water-courses concerning which the dispute shall be, then the said *experts* shall make a fresh *procès-verbal* which shall be confirmed by the Justices of the Peace: Provided always, that in every case of such appeal to the decision of the *experts*, the Surveyors by whom the *procès-verbal* appealed from shall have been made, may cause the parties at whose requisition it was made, to intervene and

Proviso: parties may be made to intervene, &c.

and defend such *procès-verbal*, and to pay the costs attending the same, if it be by the fault of the said parties that it is defective, but if it shall appear that such defect shall have arisen from negligence or partiality of the Surveyors, then the said Surveyors shall pay the costs thereof, and the said Justices of the Peace shall homologate such *procès-verbal*, if it be confirmed by such *experts*, and if it be disallowed, they shall homologate that made by such *experts*.

XLI. And whereas it is expedient to provide a simple mode for the sale of the lands of parties who shall have refused or neglected to make, repair, or keep up the water-courses or bridges over the same, fences and *découvert*, which under any *Procès-Verbal* or any provisions of this Act, they are required to make, repair or keep up: Be it enacted, that it shall be lawful for any proprietor who shall have made, repaired or kept up any such water-course or bridge over the same, fence or *découvert*, in the place of the party whose duty it was to make, repair or keep up the same, to apply to the Secretary-Treasurer of the Municipality within which the lands on or respecting which such water-course, bridge, fence or *découvert* ought to have been made, repaired or kept up, shall be, to sell the said lands for the payment of the expenses incurred in the making, repairing or keeping up of the said water-course, bridge, fence or *découvert*, and a copy or extract of such *Procès-Verbal*, accompanied by the certificate mentioned in the foregoing sections, shall be *prima facie* evidence in support of the said application, and the amount mentioned in the said certificate as being the value of the work performed by such proprietor towards the making and repairing or keeping up of such water-course, bridge, fence or *découvert*, shall entitle the said proprietor to a privileged claim upon the said lands in preference to any mortgage, hypothèque, seigniorial dues, and all other debts or demands whatsoever, for or respecting the said lands: and the said Secretary-Treasurer, on such application being made in due form as aforesaid, shall proceed to the sale and adjudication of the said lands for the expenses so incurred, in the manner and after the advertisements, publications and other formalities provided and required by an Act passed during the present Session of Parliament, and intituled, *An Act to amend the Municipal Laws of Lower Canada*, and the amount of expenses incurred by the proprietor applying for such sale, shall be paid over to him by the Secretary-Treasurer, who shall retain the costs incurred in and about such sale, and in and about the proceedings preparatory thereto and incident thereon, and the said Secretary-Treasurer shall have power and authority to execute a deed or deeds of sale of all lands so sold, and any such deed shall have the same force and effect as a deed executed under the authority of the said last recited Act.

Mode of selling lands for defraying expense of making water courses, &c., if the proprietor does not pay the same.

Application of the proceeds of the sale.

XLII. And be it enacted, That a certified copy of every *Procès-Verbal* homologated under this Act, shall be deposited with

Certified copies of P. V. to be deposited

with the Secretary-Treasurer of the Municipality.

with the Secretary-Treasurer of the Municipality within which any lands thereby affected are situated, within ten days after the homologation thereof, by the party applying for the homologation, or by the Surveyors who shall have acted in the premises, and such certified copy shall be received as evidence in all Courts of Justice.

Parties may be required to cut down noxious weeds on their lands.

XLIII. And whereas the seeds of noxious weeds growing on the land or ground of one proprietor, or upon a common, are frequently driven by the winds and otherwise conveyed upon the lands and grounds of the adjoining proprietors, where, to the injury of such proprietors, and their discouragement with respect to agricultural improvement, they grow: Be it enacted, That it shall be lawful for any proprietor or occupier of land, at any time between the twentieth day of June and the first day of the month of August, in each year, by verbal notice in the presence of one witness, or by notice in writing, in the form of Schedule A, left at the domicile of the person to whom it may be addressed, or in case of a common in which several persons have shares or are interested, by notice published at the Church door of the Parish within which such common shall be situate, on a Sunday or Holiday, (*Fête d'Obligation*), immediately after divine service in the forenoon, to require any proprietor or occupier of any adjoining land, or a meadow not being then sown or under crop, or the persons having shares or being interested in common as aforesaid, to destroy or cut down all such noxious weeds, to wit: those commonly called ox-eyed daisies, crowsfoot, thistles, wild endive, succory and swallow-wort, and all other noxious weeds whatsoever, as may be then growing on such adjoining land or piece of ground, and if the weeds so required to be destroyed or cut down are not entirely destroyed or cut down at the expiration of six days from the date of such notice, then it shall be lawful for any Justice of the Peace, upon complaint duly made before him, on the oath of one credible witness other than the complainant, or on the confession of the party or parties complained of, to order, in writing, the proprietor or occupier, or other person or persons against whom such complaint shall be made, to pay day by day to the party claiming, a penalty of Two Shillings and Six Pence currency, for every day that any such weeds shall remain standing or growing from and after the time at which such notice shall have been served, with the costs and expenses incurred in obtaining such order, according to this Act; Provided always, that such order shall be pronounced in a summary way, and shall be in the form of Schedule B.

As to seeds of noxious weeds.

XLIV. And be it enacted, That it shall not be lawful to scatter or allow to be scattered, the seeds of any noxious weeds, to the prejudice of any party whatever.

XLV. And be it enacted, That it shall be the duty of the Surveyors and Overseers of highways, within the time limited in the next but one foregoing section, to cause to be destroyed or cut down by the persons or companies bound to make or keep in repair the highways, by-roads, canal banks, rail-road lands, and all public works and places whatever, in their respective divisions, all weeds growing on highways, by-roads, canal banks, rail-road lands, and all public works and places whatever, in their whole width to the fences inclosing such highways or roads, under the same penalties on the said Surveyors or Overseers, and persons bound to make and keep and repair the said highways and by-roads, as are provided in the Acts now in force, for neglect or default in keeping such highways and roads in repair, and such penalties shall be recoverable in the same manner.

Surveyors to cause weeds growing on highways to be destroyed.

XLVI. And be it enacted, That any person in the employment of Incorporated Companies or of any other party, and receiving moneys on his or their behalf shall be liable to prosecution for penalties under this Act, and shall be answerable as though he were proprietor of the land.

Persons employed by Companies liable for penalties.

XLVII. And whereas it also frequently happens that animals dying of disease or otherwise, remain exposed in public or private roads, fields and other places, whereby travellers are incommoded and exposed to danger, and dangerous disease may be produced: Be it therefore enacted, That the owners of any such animal of what kind soever, who shall refuse or neglect to bury the same at least three feet under ground, and to cover the same with two feet of earth at least, shall incur a penalty of not more than Ten Shillings currency, nor less than Five Shillings currency.

Dead animals to be buried.

See sect. 51, as to mode of enforcing penalties.

XLVIII. And whereas it also frequently happens that animals dying of disease or otherwise are thrown into brooks, rivulets and rivers; and whereas individuals are in the habit of carrying filth in summer, and more particularly in winter, into the brooks, rivulets and rivers, and upon ice of the said brooks, rivulets and rivers: Be it therefore enacted, That every person who shall be convicted, on the oath of a credible witness other than the informer, of having so thrown any such animal, or so carted any such filth (unless in or to a place appointed for that purpose by the competent local authorities) shall incur a penalty of not more than Twenty Shillings currency, nor less than Ten Shillings currency, in addition to all damages: Provided that in all cases where the owners or the offending parties are not known or cannot be reached, then it shall be the duty of the Surveyors and Overseers of roads, within their respective divisions, to bury such animal so found in public or private roads, fields or other places, or in brooks, rivulets or rivers, or to remove such filth, within twenty-four hours after he shall have been informed of the existence of such

Penalty for throwing filth into brooks, &c.

See sect. 51, as to mode of enforcing penalties.

such nuisance, and for such service the Municipality within which his division is situated, shall pay him.

Limitation of suits.

XLIX. And be it enacted, That all fines and penalties incurred under this Act, may be sued for and recovered within three months after the offence may have been committed, and not afterwards.

Provision as to lumber carried upon lands by Spring floods.

L. And be it enacted, That whenever any lumber of any kind shall be carried by Spring floods, or otherwise, unto the lands or banks adjoining any floatable river, and shall be there left until the first day of June, or shall from any cause be upon such lands or banks on the said day, it shall be lawful for the proprietor or occupant of such lands or banks, upon, or at any time after the said day, to cause such lumber to be hauled from off his lands or banks to any safe place, at the expense of the owner of such lumber, and to cause notice to be posted up at the Church doors, (or if there be none, at some public place in the Parish or Township,) and to be read aloud by a Bailiff of the Circuit Court at such Church door (if any there be) on two Sundays, immediately after Divine Service, (or if there be no service, at the usual hour of closing Divine Service,) in the forenoon, stating that such lumber (describing it generally) was found on the lands of the proprietor or occupant, and the place where the same then lies, and that if the expenses of hauling it to such place, and of such notice, be not paid before a certain day (naming it,) the same will be then sold at the place where it lies, by some Bailiff of the said Court; and if such expenses be not paid before such day, or on such day, and before the sale, such lumber shall be then sold by a Bailiff of the said Court by public auction to the highest and best bidder, and out of the proceeds of the sale, all the expenses aforesaid and those of the sale, (all which expenses shall be those allowed to a Bailiff for like services under a Writ of Execution from the Circuit Court,) shall be first paid, and the remainder shall be paid over to the Treasurer of the Municipality and make part of the funds thereof; any law to the contrary notwithstanding.

Fines, &c., how to be sued for, and applied.

LI. And be it enacted, That all fines, penalties and forfeitures imposed or incurred for offences against this Act, and not otherwise provided for, shall be sued and recovered on the oath of one credible witness other than the informer or prosecutor, or by confession of the defendant, before any one Justice of the Peace for the District wherein the offence shall have been committed, and shall be levied, as well as the costs, by Warrant under the hand and seal of the Justice of the Peace before whom the conviction of the offender or offenders shall be had, and by seizure and sale of the goods and chattels; and one half of all penalties shall go to the informer or prosecutor, whether he be or be not interested, and the other half shall be paid to the Secretary-Treasurer of the Municipal Council of the

the Municipality within which the offence shall have been committed.

LII. And be it enacted, That for the more effectual prosecution of offences committed under this Act, all such offences may be tried, determined and punished in any District of Lower Canada where the party accused may be found; any law to the contrary notwithstanding.

Offences may be tried in District where offender is found.

LIII. And be it enacted, That if there be any Writ of *Certiorari* at any time heretofore issued, or at any time after the passing of this Act to be issued for reviewing any decision of any Justice of the Peace, rendered upon any matter growing out of the Act first above cited and repealed by this Act, or out of this Act, the Court out of which such Writ of *Certiorari* shall have issued shall determine the question according to law and practice, and shall award costs to the successful party.

As to Writs of *Certiorari*.

LIV. And be it enacted, That every person who shall be convicted of having wilfully taken a false oath in a case wherein a Justice of the Peace in the due fulfilment of his duties, pursuant to this Act, may deem it necessary to administer an oath, shall incur the pains and penalties by law provided against wilful and corrupt perjury.

False swearing, perjury.

LV. And be it enacted, That all duties relating to fences and water courses hereby imposed on Surveyors of Roads shall be performed by Inspectors of fences and ditches in all Parishes and Townships where such may be chosen and named by the Municipal Council, and they shall be entitled to the same remuneration and subject to the same penalties as herein provided for Road Surveyors.

Certain duties to be performed by Inspectors, if appointed.

LVI. And be it enacted, That one copy of this Act shall be forwarded to each of the Road Surveyors for his guidance in the performance of the duties hereby required of him; and that every such Surveyor upon retiring from office shall transfer such copy of this Act to his successor in office for his guidance; and that every such Surveyor who shall retire from office and refuse or neglect to transmit such copy to his successor in office, shall incur a penalty of not less than Five Shillings currency, nor more than Ten Shillings currency.

Copies of this Act to be sent to Road Surveyors.

LVII. And be it enacted, That any contravention of this Act, whether by doing any thing hereby forbidden, or leaving undone any thing hereby required to be done, and for which no other penalty is hereby provided, shall be an offence by which the party guilty thereof shall incur a penalty of not more than Fifty Shillings, to be recovered with costs in the manner herein provided for the recovery of other penalties not exceeding that amount, and all parties incurring penalties under this Act, if the same be not paid immediately after judgment, may be punished by imprisonment not exceeding thirty days.

Penalty for contraventions not otherwise provided for.

Justices may
convict on
view.

LVIII. And be it enacted, That a Justice of the Peace having under this Act cognizance of any offence, may convict a party of such offence on the personal view of such Justice, if the offence be committed in his presence; any law, custom or usage to the contrary notwithstanding.

Justices, &c.,
not to deter-
mine cases in
which parties
are related to
them.

LIX. And be it enacted, That it shall not be lawful for any Justice of the Peace, Road Surveyor, Overseer or Inspector of fences and ditches, to hear or determine any matter or case brought before them in their respective capacities, wherein they may be interested either in the subject matter before them, or in the event of their determination, or in any case in which the parties litigant before them are related to them within the degree prohibited by the Law regarding witnesses in Courts of Law.

Commence-
ment of Act.

LX. And be it enacted, That this Act shall come into force on the First of January, one thousand eight hundred and fifty-one.

SCHEDULE A.

To

of

Take notice that you are required to cut down, destroy and root out all the noxious weeds on your property, whether the same be oxeyed daisies, crow'sfoot, thistles, wild endive, succory, and swallow-wort, or any other noxious weed whatsoever, within four days from this day, and in default of your so doing I do hereby summon and enjoin you to be and appear before _____, Esquire, Justice of the Peace, at his house, in _____, at the hour of _____ in the _____ noon, on the _____ day of _____ (being the day immediately following the said fourth day, or) then and there to show cause if any you have, why you should not be condemned to pay me Ten Shillings currency for the said four days, and a further sum of Two Shillings and Six Pence for each succeeding day during which any of the said noxious weeds shall remain on your said property; the said sum to be levied day by day by distress; Herein fail not.

(Date.)

(Signature)

SCHEDULE B.

Judgment of the Justice of the Peace.

Be it Remembered, that having upon the complaint of _____ heard him and _____, and examined the witnesses by them produced (or visited the spot and judged upon my own view, as the case may be.) (I do hereby acquit the defendant or) I do hereby enjoin and command to pay to the said _____ the sum of _____ Shillings;

Shillings ; and also a further sum of Two Shillings and Six Pence for each succeeding day during which the noxious weeds specified in the annexed complaint shall not be cut down and destroyed ; the said sum of Two Shillings and Six Pence currency to be levied by distress day by day.

And these are to empower and command all Bailiffs and other Peace Officers to make such distress accordingly with costs taxed at the sum of

As witness my hand.

(Signature.)

14 & 15 VICT. CAP. 102.—1851.

An Act to amend an Act passed in the thirteenth and fourteenth years of Her Majesty's Reign, relating to Agriculture in Lower Canada, in so far as the said Act concerns Navigable Rivers and Rivulets, and the banks thereof used in the floating and conveyance of Wood and Timber.

WHEREAS it is provided and enacted by the second Preamble. section of an Act passed in the thirteenth and fourteenth years of Her Majesty's Reign, intituled, *An Act to repeal two certain Acts therein mentioned relating to Agriculture, and to provide for the remedy of abuses prejudicial to Agriculture,* 13 & 14 Vict. c. 40, cited. "that no person shall enter into or pass through any field, whether it be sown or unsown, nor along the banks of any river or rivulet, nor into nor through any garden, coppice, or other property whatsoever, without the permission of the proprietor, or some person duly authorized by him to grant such permission, under a penalty of not less than Five Shillings, nor more than Thirty Shillings currency for every such offence, and over and above the amount of all damages occasioned thereby," and it hath been represented, that the aforesaid provision is a great impediment to Lumberers, and others engaged in the conveyance of Timber down rivers navigable and used therefor in this Province ; And whereas the Lumbering Business, Manufacture of Wood, and Trade in Timber, are of great importance, and it is therefore necessary to secure to such Lumberers and others, every facility and convenience which the Laws of the Province afford for the driving and safe conveyance by water of such Wood or Timber in Rafts or otherwise, whether for fuel or for mercantile purposes, from the places where manufactured to the market: Be it therefore enacted, &c., That nothing in the aforesaid section of the above in part recited Act shall be construed to prevent any person or persons from the full and free use of any navigable river, rivulet, stream or water-course,

Rivers, Rivulets, &c. in L. C. made free to the public in a certain case.

water-course, and the banks thereof on either side, in that part of this Province which formerly constituted Lower Canada, proper for the floating and conveyance of Wood or Timber, or for the general purposes of navigation, but that all such rivers, rivulets, streams and water-courses, and the banks thereof on either side, to such extent as may be necessary, and in accordance with the laws, usages and customs of that part of this Province which formerly constituted Lower Canada, shall be and remain free to the public, as fully and entirely to all intents and purposes, as if the above recited clause of the aforesaid Act had never been passed, nor made part thereof: Provided always, that all persons so passing, or landing upon the banks of any such river, rivulet, stream or water-course, shall repair immediately thereafter the fences, drains or ditches which they shall have damaged, and be liable for all other damages resulting therefrom.

Proviso.

16 VICT. CAP. 210.—1853.

An Act to amend the Act intituled, *An Act to repeal two certain Acts therein mentioned relating to Agriculture, and to provide for the remedy of abuses prejudicial to Agriculture.*

Preamble.

Sect. 6 of 13 & 14 V. c. 40 amended.

Justice to summon and hear parties before ordering damages to be assessed &c.

WHEREAS it is expedient to amend the Act hereinafter mentioned in certain particulars: Be it therefore enacted, &c., That for and notwithstanding any thing to the contrary in the sixth Section of the Act passed in the Session held in the thirteenth and fourteenth years of Her Majesty's Reign, and intituled, *An Act to repeal two certain Acts therein mentioned relating to Agriculture, and to provide for the remedy of abuses prejudicial to Agriculture*, the Justice of the Peace to whom any complaint shall be made as in the said Section provided, before commanding the Road Surveyor to proceed to assess the damages, shall summon the parties before him, and if, after hearing the parties the Justice shall deem it advisable, then such Justice shall command the Road Surveyor to assess the damages, and shall proceed thereafter as in the said Section it is provided: but if after hearing the parties such Justice shall determine that no damage has been caused, then he shall dismiss the case, with costs against the complainant.

Sect. 31 of said Act amended.

Persons interested in any water course verbalized,

II. And be it enacted, That for and notwithstanding any thing to the contrary in the thirty-first Section of the said Act, it shall be lawful for the persons interested in the *Procès-Verbal* of any water course, as mentioned in the said Section, to meet in any year, on the requisition of any one of themselves, at the time and place appointed for the annual election of Municipal Officers,

Officers, and then and there to elect one of themselves to be Overseer of the work to which such *Procès-Verbal* relates ; or if it concerns more than one Parish, Township or place, then to elect one of themselves as such Overseer for each such place : Provided always, that any person interested in such *Procès-Verbal* may be elected, although he may reside out of the limits of such Parish, Township or place ; each Overseer so elected shall serve until another shall be in like manner elected in his stead ; and the person presiding at the meeting at which such election shall take place, shall transmit the name or names of the person or persons elected to the Council of the Municipality, to make part of the records thereof.

may elect one of themselves as Overseer. §

Proviso : who may be elected.

Term of service, &c.

III. And be it enacted, That for and notwithstanding any thing to the contrary in the thirty-ninth Section of the said Act, any one or more of the persons interested in any *Procès-Verbal* in the said section referred to, may demand a change in the work regulated thereby, provided such demand be supported by the affidavits of two Surveyors or Overseers for the Parish or Township, not interested in the matter, to the effect that in their opinion the regulations made concerning such work by the *Procès-Verbal* ought to be changed in the manner to be set forth in such affidavits, in which case such change may be made in like manner as if two thirds of the persons interested had demanded the same, as in the said Section it is provided.

Sect. 39 of said Act amended.

Persons interested in any *Procès-Verbal* may demand a change in the work thereby regulated, and how.

IV. And be it enacted, That for and notwithstanding any thing to the contrary in the fortieth Section of the said Act, the party deeming himself aggrieved by any *Procès-Verbal*, instead of laying his complaint before some other Justice of the Peace, as provided by the said Section, shall lay the same before the Justice of the Peace to whom the *Procès-Verbal* is to be presented for homologation, who shall not thereafter proceed to consider or to homologate the said *Procès-Verbal*, except with the assistance of some other Justice of the Peace qualified according to law to determine upon the matter, and whose concurrence shall be necessary to the homologation of such *Procès-Verbal* ; and if a difference of opinion shall arise between the said two Justices of the Peace, they shall adjourn the proceedings to a subsequent day, in order to obtain the assistance of a third Justice of the Peace, and hear the parties *de novo*.

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