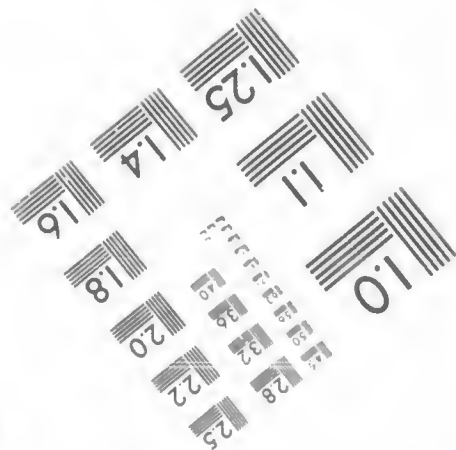
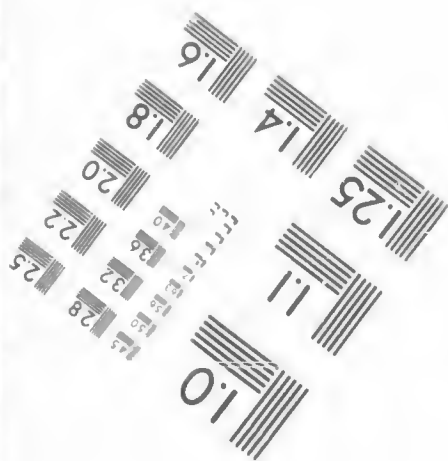
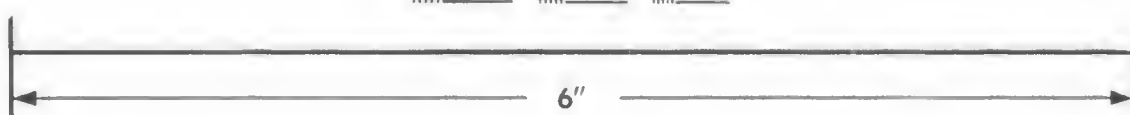
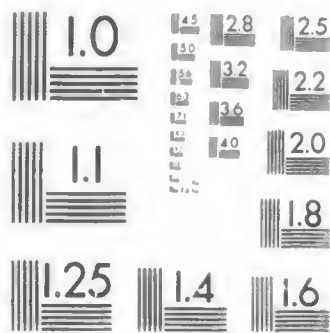


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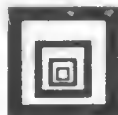
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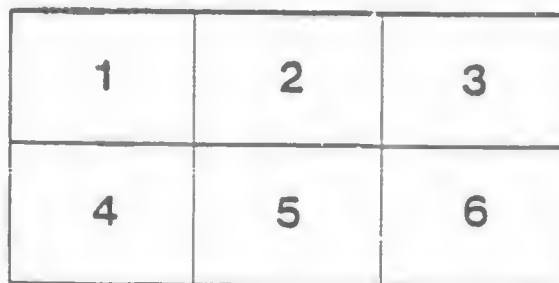
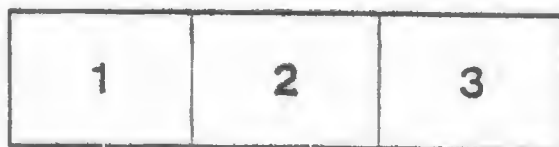
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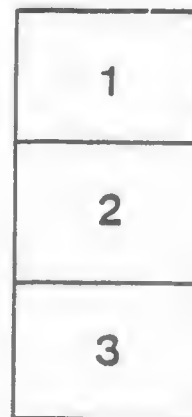
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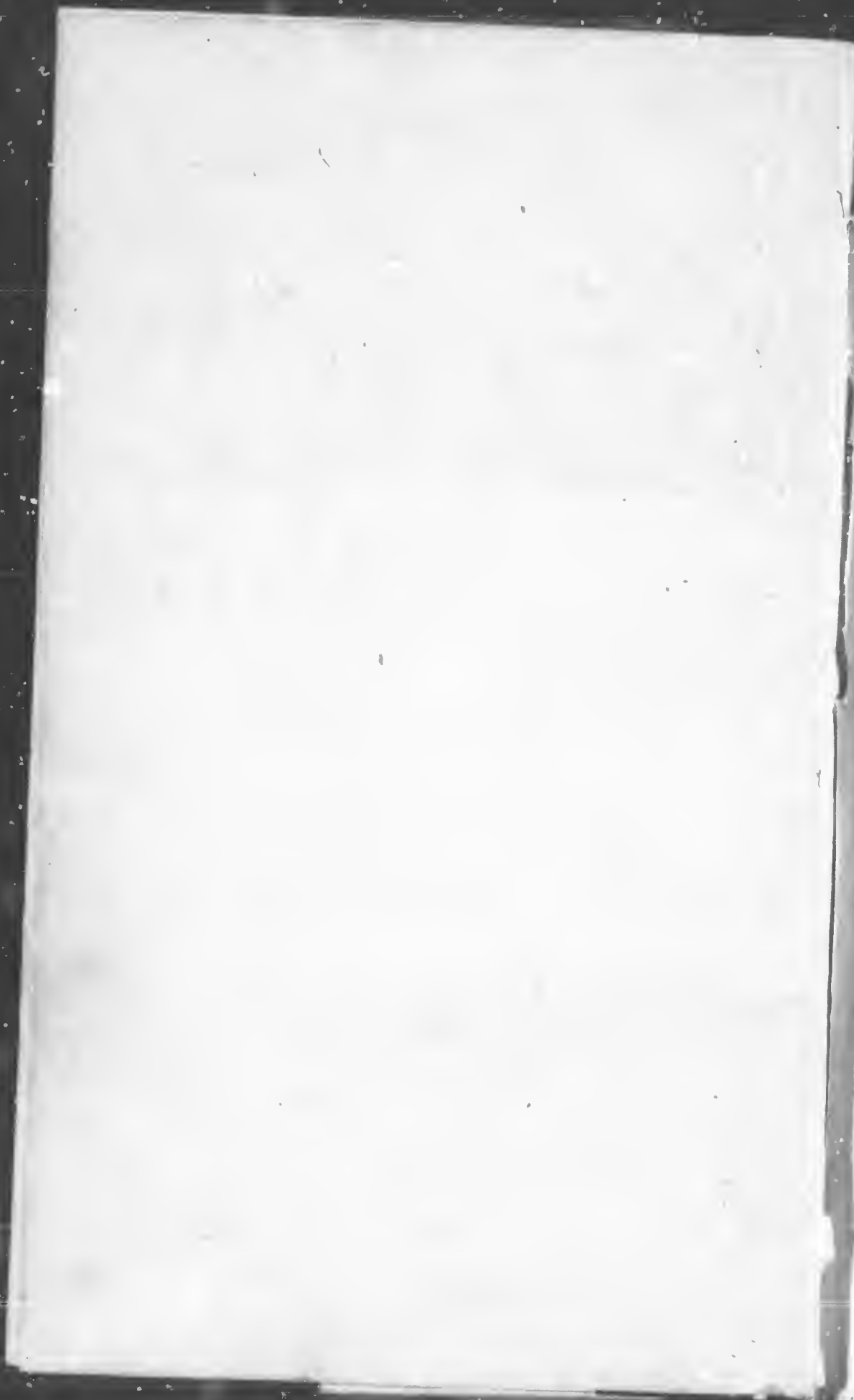
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DIGEST
OF
THE LAWS OF NEWFOUNDLAND,
COMPREHENDING THE
JUDICATURE ACT AND ROYAL CHARTER,
AND
THE VARIOUS ACTS OF THE LOCAL LEGISLATURE IN
AMENDMENT OF THE SAME :
WITH NOTES AND COMMENTS, ILLUSTRATIVE AND EXPLANATORY OF THE
PRACTICE AND DECISIONS OF THE COURTS THEREON.
WITH AN APPENDIX,
CONTAINING THE RULES AND ORDERS OF THE SUPREME AND
CENTRAL CIRCUIT COURTS, AND AN ABSTRACT OF ALL THE
ACTS OF THE LOCAL LEGISLATURE NOW IN FORCE; WITH
TABLES OF THE ACTS DISALLOWED, REPEALED, EXECUTED,
AND EXPIRED.

By **E. M. ARCHIBALD, Esq.**
HER MAJESTY'S ATTORNEY GENERAL FOR NEWFOUNDLAND.

ST. JOHN'S, NEWFOUNDLAND :
HENRY WINTON.
MDCCLXVII.

HENRY WINTON, PRINTER, ST. JOHN'S, NEWFOUNDLAND.

PREFACE.

THE Imperial statute of the 5 Geo. 4. c. 67, and the Royal Charter issued in pursuance of it, not only regulate the judicature, but also the administration of this Colony. The Courts

ERRATA.

Page 30, line 6—*dele* (4).

Page 75, first line of note at foot—For *office*, read *officer*.

Page 113—For “*An Act concerning the registration of deeds*,” read
“*An Act to make further provision for the registration of deeds,
and to amend the law relating to the registration of deeds.*”

Page 132, first line—Between *stated* and *into*, insert *come*.

Page 201—Add to the abstract of the Revenue Act the following section omitted:—Sec. 26.—“*Act to continue in force from 5th July, 1846, for 18 calendar months.*” NOTE.—By the Act 10 Vict., c. 5, the foregoing Act was further continued in force until the last day of December, 1848.

observations upon the propriety of modifying, in some respects, the constitution and practice of the Courts—observations which were naturally suggested by the subjects before me.

During the fourteen years that the Legislative Charter has been in existence, the enactments of the Colonial Legislature have so accumulated as to render it somewhat difficult to distinguish such of them as are in force from those which have been repealed wholly or in part, or have been permitted to expire; and I have therefore thought it would be very advantageous to form an abstract and digest



PREFACE.

THE Imperial statute of the 5 Geo. 4, c. 67, and the Royal Charter issued in pursuance of it, not only regulate the judicature, but form the basis of the jurisprudence of this Colony. The Courts which were established by the Charter have been in operation for upwards of twenty years, and during that period, with few exceptions, no reports of cases decided in them have been published. Among these cases, in the construction of the various provisions of the Act, decisions have from time to time been made, relating to the powers and practice of the Courts themselves, which it is important should be more generally known. Owing, however, to the destructive fires by which the principal towns, and more particularly the capital of the Island, have been visited, copies of the Act and Charter have become very rare. This has suggested to me the usefulness of republishing them, together with the different Acts in alteration or amendment of them, at various times passed by the Colonial Legislature, and of adding, at the same time, some notes and comments illustrative and explanatory of the practice and decisions of our Courts upon the more important parts of the statute. With these notes I have also offered occasional observations upon the propriety of modifying, in some respects, the constitution and practice of the Courts—observations which were naturally suggested by the subjects before me.

During the fourteen years that the Legislative Charter has been in existence, the enactments of the Colonial Legislature have so accumulated as to render it somewhat difficult to distinguish such of them as are in force from those which have been repealed wholly or in part, or have been permitted to expire; and I have therefore thought it would be very advantageous to form an abstract and digest

of them, which is contained in the following pages. The more important Acts I have endeavoured so to abridge as to render them serviceable in the absence of the Acts themselves; but the object of the digest has been rather to classify and arrange under their different heads, in alphabetical order, the various Colonial enactments in force. This has been a work requiring much labour and attention, and will, I think, be found generally useful to all classes, — more particularly to the Legislature, the members of the Bar, and the magistracy. As an addition to the work, which is likewise greatly needed, I have collected together all the rules of the Supreme and Central Circuit Courts in force, and have published them in their order, with marginal and other notes.

The many interruptions arising from constant official occupation, and the difficulties and delays in a new country of executing speedily the publication of a volume of the moderate extent even of the present one, have postponed the appearance of the work longer than I intended. The time and attention, however, which I have bestowed upon it will be amply rewarded, if it may answer the end desired, and be in any degree useful to the inhabitants of a colony in whose welfare and prosperity I feel the deepest interest.

E. M. ARCHIBALD.

St. John's, Newfoundland, May, 1847.

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W. B. Hayward

ANNO QUINTO
GEORGIÆ IV. REGIS.

CAP. LXVII.

*An Act for the better Administration of Justice in
Newfoundland, and for other purposes. (1)*

[17th June, 1824.]

WHEREAS it is expedient to make further provision for the administration of justice in the colony of Newfoundland; be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for His Majesty, by his charter or letters patent under the Great Seal, to institute a superior court of judicature in Newfoundland, which shall be called "The Supreme Court of Newfoundland;" and the said court shall be a court of record, and shall have all (2) civil and criminal jurisdiction whatever in Newfoundland, and in all lands, islands, and territories dependant upon the government thereof, (3) as fully and amply, to all intents and purposes, as His Majesty's Courts of King's Bench, Common Pleas, Exchequer, and High Court of Chancery, in that part of Great Britain called England, have, or any of them hath; and the said Supreme Court shall also be a court of oyer and terminer and general gaol delivery in and for Newfoundland, and all places within the government thereof; and shall also have jurisdiction in all cases of crimes and misdemeanors committed (4) on the Banks of Newfoundland, or any of the seas or islands to which ships or vessels repair from Newfoundland for carrying on the fishery.

His Majesty may institute a superior court of judicature in Newfoundland, — which Court shall be a court of oyer and terminer and general gaol delivery.

Jurisdiction.

Supreme court to be held by a Chief Judge & two Assistant Judges appointed by his Majesty, who may remove them and appoint others.

Governor of Newfoundland may appoint Judges in certain cases.

Issues of fact to be tried at St. John's by a jury.

Appointment of sessions.

II.—And be it further enacted, that the said Supreme Court shall be holden (5) by a chief judge and two assistant judges, being respectively barristers in England or Ireland of at least three years standing, or in some of His Majesty's colonies or plantations, who shall be appointed to such their offices by His Majesty, his heirs and successors: Provided always, that it shall be lawful for His Majesty, his heirs and successors, from time to time as occasion may require, to remove and displace any such chief judge or assistant judge as aforesaid, and in his stead to appoint any other fit and proper person, being a barrister as aforesaid, to be the chief judge or assistant judge of the said court, as the case may be: And provided also, that in case any such chief judge or assistant judge shall be absent from Newfoundland, or die, or resign such his office, or by reason of sickness or otherwise shall become incapable of performing the duties thereof, then and in every such case it shall be lawful for the Governor or acting Governor of Newfoundland, for the time being, to nominate and appoint some fit and proper person to act as chief judge or assistant judge, as the case may be, in the place or stead of the judge so being absent, dying, resigning his office, or becoming incapable of performing the duties thereof, until such judge shall resume the duties of his office, or until a successor shall be appointed by His Majesty, his heirs and successors; and the said chief judge and assistant judges shall respectively have and exercise such and the like powers and authorities in Newfoundland, and in all places dependant upon the Government thereof, as any judge of any of His Majesty's said Courts of King's Bench, Common Pleas, and Exchequer, (6) or as the Lord High Chancellor of Great Britain, hath or exercises in England.

III.—And be it further enacted, that all issues of fact which may be joined between the parties in any action at law originally brought before the said supreme court of record, or which may be joined upon any criminal information or prosecution depending in that court, shall be tried at the town of Saint John's, in the island of Newfoundland, by a jury of twelve men; and for the purpose of (7) hearing and trying all suits, actions, and all informations, prosecutions, and other proceedings, of

what nature or kind soever, which may be brought or commenced in the said supreme court, one or more term or terms, or session or sessions of the said court, shall be held at the town of Saint John's aforesaid, in each year, by the said chief judge and assistant judges, (8) at such times as the Governor or acting Governor of the said colony shall from time to time by any proclamation to be by him for that purpose issued, direct and appoint.

IV.—And be it further enacted, that as often as (9) Actions in breach of any law relating to trade of the British colonies in America, to be tried according to proceedings in Courts of Vice Admiralty. any information, action, or suit shall be brought or prosecuted before the said supreme court, for the breach or violation of any law relating to the trade or revenue of the British Colonies or Plantations in America, such information, action, or suit shall be heard and determined by the said court, according to the course of proceeding in similar cases in the Courts of Vice Admiralty in the said colonies or plantations; and that it shall and may be lawful for the party or parties feeling aggrieved by the judgment or decree of the said supreme court, in any such case, to appeal from such judgment or decree to the high court of admiralty, or to His Majesty in council, under such and the like rules and regulations as are observed in appeals from the said courts of Vice Admiralty. Appeal.

V.—And be it further enacted, that the said supreme court shall have power (10) to grant administration of the effects of intestates, and the probate of wills; and that the effects of deceased persons shall not be administered within the Island of Newfoundland, or any island, place, or territory dependant upon the government thereof, unless administration or probate shall have been duly granted by the said supreme court; (11) and in all cases where the executor or executors of any will in Newfoundland, or the dependencies thereof, upon being duly cited, shall refuse or neglect to take out probate as aforesaid; or where the next of kin shall be absent from Newfoundland, and the effects of the deceased shall appear to the said supreme court to be exposed and liable to waste, it shall be lawful for the said supreme court to authorise and empower the registrar or clerk of the said court, or some other fit and proper person, to collect the said effects, and hold, or deposit or invest the same in such manner and place, or upon such security, Supreme court may grant administration of the effects of intestates, and probates of wills, &c. And appoint receivers.

and subject to such orders and directions as shall be made by the said supreme court in respect of the custody, control, or disposal of such effects.

Supreme court
may appoint
guardians for
infants and lu-
natics.

VI.—And be it further enacted, that the said supreme court shall have power and authority to appoint (12) guardians and keepers for infants and their estates, according to the order and course observed in such cases in England; and also to appoint (13) guardians and keepers of the persons and estates of natural fools, and of such as are or shall be deprived of their reason or understanding, so as to be unable to govern themselves and their affairs, which the said supreme court shall have power and authority to inquire of and determine, by inspection of the person, or by such other ways and means as to such supreme court shall seem best for ascertaining the truth.

Governor may
divide colony
into three dis-
tricts.

VII.—And be it further enacted, that it shall and may be lawful for the governor or acting governor for the time being of Newfoundland, by any proclamation or proclamations to be by him for that purpose issued, (14) to apportion and divide the said colony into three several districts, and to fix and ascertain the boundaries and limits of every such district, and such boundaries or limits from time to time to alter as occasion may require: Provided always, that such apportionment of the said colony into such districts as aforesaid, be made in such manner as to such governor or acting governor may appear to be best adapted for enabling the inhabitants of the said colony to resort with ease and convenience to the circuit courts to be therein established as after mentioned.

His Majesty
may institute
Circuit courts.

VIII.—And be it further enacted, that it shall and may be lawful for His Majesty, by any such charter or letters patent as aforesaid, to institute circuit courts in each of the three districts in which the said colony may be so divided as aforesaid; and each of the said circuit courts shall be holden once at least in each year by the said chief judge, or by one of the said assistant judges of the said supreme court of Newfoundland, at such times, and at such one or more place or places within each of the said districts, as the governor or acting governor for the time being of Newfoundland shall from time to time direct and appoint.

IX. — And be it further enacted, that the said circuit courts shall be respectively courts of record, and shall, (15) within the district in which it may be holden, have and exercise all such and the same jurisdiction, powers, and authority, as is hereby vested in the said supreme court of Newfoundland throughout the whole of the said colony; saving and excepting the trying and determining of treasons or misprisions of treason, and felonies not within the benefit of clergy, and the hearing or determining of any information, suit, or action, for the breach or violation of any Act of Parliament relating to the trade and revenue of the British colonies in America, all which said crimes and offences, informations, suits, and actions, shall be tried, inquired of, heard, and determined in the said supreme court of Newfoundland, and not elsewhere within the said colony.

Circuit courts to be courts of record, exercising the same jurisdiction as the supreme court, except in the cases of treason and felonies not within benefit of clergy, &c.

X. — And be it further enacted, that all crimes and misdemeanors cognizable in the said circuit courts, and all issues of fact which may be joined between the parties in any civil action, depending in the said circuit courts, shall be inquired of, heard, and determined by the said circuit judge, and a jury of twelve men, (16) according to the rules and course of the law of England, as far as the situation and circumstances of the said colony will permit.

Crimes cognizable in circuit courts and civil actions to be tried by jury according to the law of England.

XI. — Provided nevertheless, and be it further enacted, (17) that if upon the trial of any crimes or misdemeanours before any of the said circuit courts, twelve good and lawful men shall not appear to form a jury, then and in all such cases such trial shall be had by the circuit judge and three assessors, being justices of the Peace in and for the said colony, or for some district thereof; and the said justices shall be nominated from time to time to serve as such assessors as aforesaid by the governor or acting governor for the time being of the said colony, and shall severally be liable to be challenged or objected to upon the special ground of direct interest or affection, to be specified in open court at the time of challenge; and in case of such challenge or objection being allowed by the judge of the said circuit court, the justice of the peace so challenged or objected to shall be succeeded by another such justice of the peace, who shall in like manner be nominated by the governor or acting governor for the time being as

But where a jury shall not be formed, trials for crimes shall be had by the circuit judge and three assessors, being justices of the peace and nominated by the governor.

Such assessors liable to be challenged

aforesaid, and be liable in the same manner to challenge or objection, until three such justices of the peace shall appear duly qualified for the trial of any offender in the said circuit courts respectively; and the said justices of the peace shall thereupon severally take and repeat in open court the same oath as is taken by petit jurors impannelled for the trial of any crime or misdemeanour in a court of record in England; and the judges of the said circuit courts respectively shall, together with the said three assessors, give their verdict upon every such trial in open court; but no person shall be found guilty by any such verdict unless the judge of the said court and two at least of his said assessors, shall concur in such verdict; and the proceedings in the said circuit courts respectively shall be under the control and direction of the respective judges thereof, and all matters of law arising in the course of any trial shall be determined by such judges respectively.

Verdict to be given in open court.

Civil actions to be tried by the judge of the court alone where jury shall not be formed.

Evidence where the matter at issue is above the value of 50*l* to be in writing.

On appeal, documents to be produced.

XII. — Provided also, and be it further enacted, that if upon the trial of any issue or issues of fact joined between the parties in any civil suit or action depending in any of the said circuit courts, twelve good and lawful men shall not appear to form a jury, all such issues of fact shall be tried and decided by the judge of such court alone, and without a jury; and that in all cases where the sum or matter at issue in any such suit or action shall exceed or be of the value of more than fifty pounds sterling British money, the judges of the said courts respectively shall cause the evidence on any such hearing or trial as aforesaid to be taken down in writing by the clerk, or other proper officer, in open court, in the presence of the witnesses respectively giving the same, and the evidence so taken shall be entered upon the proceedings of the said courts respectively, and be of record; and in every case in which any appeal shall be made and allowed under the provisions of this Act, from any judgment of the said circuit courts not founded on the verdict of a jury, copies of all documents and papers which shall have been produced and given in evidence, shall be certified by the said clerk or other proper officer, as authentic; and also copies of any documents and papers which shall have been produced and tendered in evidence and rejected, shall, if required

by the party producing the same, be in like manner authenticated, but marked by such officer as aforesaid as rejected, in order that all such copies may be annexed to the record, as part thereof in case of appeal.

XIII.—And be it further enacted, that it shall be lawful for the judges of the said circuit courts respectively, on the application of either of the parties, plaintiff or defendant, at or before the trial of any issue of fact joined in any civil suit or action commenced in the said circuit courts respectively, in case such issue is not tried by a jury, to permit the evidence on such trial to be recorded and certified as aforesaid, although the sum or matter at issue may be less in value than fifty pounds sterling, provided it shall be made to appear to such judge that the judgment, decree, order, or sentence, which may be given, made, or pronounced in such suit or action, may be of such importance as to render it proper that an appeal should be permitted; and if, after giving or pronouncing such judgment, decree, or order, the said judge shall be of opinion that such judgment, decree, or order is of such importance as to make it proper that an appeal should be permitted, it shall be lawful for the said judge to allow either of the said parties, plaintiff or defendant, to appeal to the supreme court, in like manner, and under and subject to the like rules and regulations, as in and by this Act directed in other cases of appeal.

On application of either of the parties before trial, though the sum does not amount to £50, the judge may permit the evidence to be recorded.

Appeal.

XIV.—And be it further enacted, that (18) it shall be lawful for the plaintiff or plaintiffs, defendant or defendants, against whom any judgment, decree, or order of the said circuit courts respectively shall be given, for or in respect of any sum or matter at issue above or exceeding the value of fifty pounds sterling, to appeal therefrom to the said supreme court, and the party or parties appealing from such judgment, decree, or order, shall within fourteen days from the passing thereof, give notice to the adverse party or parties of such appeal, and within fourteen days from and after such judgment, decree, or order, enter into sufficient security, to be approved by the judges of the said circuit courts respectively, to satisfy or perform the said judgment, decree, or order, in case the same shall be affirmed, or the appeal dismissed, together with such

Appeal to the supreme court may be had on giving notice.

Costs.

further costs as shall be awarded thereon: and in all cases of appeal, where notice shall be given and security perfected as aforesaid, execution shall be stayed, and not otherwise; and the said supreme court shall and may inquire into, hear, and decide all questions whether of law or of fact, arising upon any such appeal, but shall not admit or receive any evidence which was not tendered to the circuit court from which such appeal may be brought on the hearing or trial of any such suit or action therein: Provided always, that the said supreme court shall not reverse, alter, or inquire into any judgment of the said circuit courts, founded on the verdict of a jury, except only for error of law apparent upon the record.

Verdict of jury not to be inquired into.

Actions may be removed from one court to another.

On certificate of judge.

XV. — And be it further enacted, that as often as any action or suit shall be brought in the supreme court, or in either of the said circuit courts respectively, and it shall be made to appear to the court before which such action or suit may be pending, that such action or suit may be more conveniently heard and determined either in the said supreme court, or in some other of the said circuit courts, it shall be lawful for such court to (19) permit and allow such action or suit to be removed to such other court, and such allowance shall be certified by the judge, together with the writ or process and proceedings in such action or suit, to the court into which such action or suit shall be intended to be removed; and thereupon it shall be lawful for such last-mentioned court, and such court is hereby required to proceed in such action or suit in like manner as if the same had been originally commenced and prosecuted in such last-mentioned court.

Defendants not appearing on summons, their goods to be attached or persons arrested, &c.

XVI. — And be it further enacted, that in all (20) actions at law or suits in equity, which shall be brought in the said courts respectively, where the debt or sum demanded shall not be sworn to as hereinafter mentioned, the defendant or defendants in such action or suit shall be made to appear to such action or suit by summons, to be issued by the chief judge of the said supreme court, or by the judges of the said circuit courts respectively, and served by the proper officer on the said defendant or defendants personally, or left at his, her or their usual place of abode; and in all cases where such

shall be disobeyed, or where the debt, damages, or thing demanded shall exceed ten pounds sterling money, and shall be sworn to in an affidavit made by the plaintiff or plaintiffs, or his, her, or their lawful attorney, then the said defendant or defendants shall be made to appear by attachment of his, her, or their (21) goods, debts, or effects, or by arrest of the person of the said defendant or defendants; and in case of his, her, or their goods, debts, or effects being attached as aforesaid, such goods, debts, or effects, or so much thereof as shall be judged by the said court sufficient to satisfy the debt or damages, shall be held as security for such debt or damages, and shall abide the order, judgment, or decree of the court issuing such attachment, unless the defendant or defendants, or some person on his, her, or their behalf, shall appear and give (22) good and sufficient bail, to be approved by such court, to satisfy such judgment, decree, or order: and where the defendant or defendants has or have been arrested, he, she, or they shall not be discharged out of custody until he, she, or they shall in like manner have given good and sufficient bail, to be approved by such court, to satisfy the judgment, decree or order, of the court in the cause in which such arrest was made; and it shall also be lawful for the said courts respectively, when any such action or suit as aforesaid shall be depending therein, to (23) cause to appear from day to day all parties interested therein, and to examine upon oath any of such parties in case such examination shall appear to the said court necessary for the discovery of the truth, but not otherwise; and thereupon and after due consideration of all circumstances of the case, to make such order, judgment, or decree therein, and award such damages and costs, as shall be just and equitable, (24) and such order, judgment, or decree shall be enforced by attachment and sale of the goods, debts, and effects, or by arrest of the person or persons against whom such order, judgment, or decree shall be made, and imprisonment of such person or persons, until such order, judgment, or decree shall be performed and satisfied.

XVII. — And be it further enacted, that it shall be lawful for His Majesty, his heirs and successors, by such charter or letters patent as aforesaid, or by any order or Powers given for making rules & orders

for the proceedings in the supreme court & circuit courts, &c. orders to be hereafter issued by and with the advice of his or their privy council, (25) to make and prescribe, or to authorize and empower the said supreme court of Newfoundland, under such limitations as His Majesty shall deem proper, to make and prescribe such rules and orders touching and concerning the forms and manner of proceeding in the said supreme court and circuit courts respectively, and the practice and pleadings upon all indictments, informations, actions, suits and other matters to be therein brought; or touching or concerning the appointing of commissioners to take bail, and examine witnesses; the taking examinations of witnesses *de bene esse*, and allowing the same as evidence; the granting of probates of wills and letters of administration; the proceedings of the sheriff and his deputies, and other ministerial officers; the summoning of assessors for the trial of crimes and misdemeanours in the said circuit courts; the process of the said court, and the mode of executing the same; the empannelling of juries; (26) the admission of barristers, attornies, and solicitors; the fees, poundage or perquisites to be lawfully demanded by any officer, attorney, or solicitor in the said courts respectively; and all other matters and things whatsoever touching the practice of the said courts, as to His Majesty, his heirs and successors, shall seem meet for the proper conduct of business in the said courts; and such rules and orders from time to time to alter, amend or revoke, as to his Majesty, his heirs and successors, shall seem requisite.

Power to the governor to institute a court of civil jurisdiction on the coast of Labrador &c. XVIII.— *And whereas it is expedient to make further provision for (27) the administration of justice on the coast of Labrador; be it further enacted, that so much of an Act passed in the fifty-first year of the reign of his said Majesty George the Third, intituled An Act for taking away the public use of certain ships rooms, in the town of Saint John in the island of Newfoundland, and for establishing surrogate courts on the coast of Labrador, and in certain islands adjacent thereto, as relates to the institution of surrogate courts, shall be, and the same is hereby repealed; and that it shall and may be lawful for the governor or acting governor of Newfoundland for the time being, to institute a court of civil jurisdiction at any such parts or places on the coast of*

Labrador, or the islands adjacent thereto, which, in and by the said Act passed in the fifty-first year of the reign of His Majesty George the Third, are re-annexed to the government of Newfoundland, as occasion shall require: and such court shall be held by one judge and shall be a court of record, and shall have jurisdiction, power, and authority to hear and determine all suits and complaints of a civil nature arising within any of the said parts and places on the coast of Labrador, or the islands adjacent thereto; and the said court shall be holden by a judge, who shall be appointed from time to time by the governor or acting governor of Newfoundland, and shall have a clerk and such other ministerial officers as the governor or acting governor shall appoint; and the proceedings of the said court shall be summary, and such forms of process and such rules of practice and proceeding as shall be settled by the chief judge of the said supreme court, shall be followed by the said court, and no other.

Court to be held by one judge, and to hear and determine complaints of a civil nature.

[Repealed by colonial Act 4 W. 4, c. 20.]

XIX.—And be it further enacted, that it shall and may be lawful for the plaintiff or plaintiffs, defendant or defendants, against whom any judgment, decree, or order of the said court shall be given, for or in respect of any sum or matter at issue above fifty pounds sterling, or where the matter in dispute shall relate to the title to any lands, tenements, right of fishery, annual rent, or other matter, where, in the judgment of the said court, rights in future may be bound, to appeal therefrom to the said supreme court; and the party or parties appealing from such judgment, decree, or order, shall, within seven days from the passing thereof, give notice to the adverse party or parties of such appeal, and within fourteen days from and after such judgment, decree, or order, enter into sufficient security, to be approved by the judge of the said court, or some person to be appointed by him for that purpose in his absence, to satisfy or perform the said judgment, decree, or order, in case the same shall be affirmed, or the appeal dismissed, together with such further costs as shall be awarded thereon; and in all cases of appeal where notice shall be given and security perfected as aforesaid, execution shall be stayed, and not otherwise.

Appeal to supreme court in certain cases.

[Repealed by colonial Act 4 W. 4, c. 20.]

XX.—And be it further enacted, that it shall and may be lawful for His Majesty, by his said charter or

Appeal from supreme court

to His Majesty in council. letters patent, to allow any person or persons, feeling aggrieved by any judgment, decree, order, or sentence of the said supreme court, to appeal therefrom to His Majesty in council, in such manner, within such time, and under and subject to such rules, regulations, and limitations, as His Majesty by such charter or letters patent respectively, shall appoint and direct.

XXI.—And be it further enacted, that the governor or acting governor of Newfoundland, upon the arrival in the said colony of His Majesty's charter or letters patent for the establishment of the said courts by virtue of this act, shall by proclamation notify to the inhabitants of the said colony, the time when the said courts respectively shall be intended to be opened; and as soon as the judges of the said supreme court shall have assumed and entered upon the exercise of their jurisdiction therein, then and from thenceforth so much of the Act passed in the forty-ninth year of the reign of His late Majesty George the Third, intituled *An Act for establishing of courts of judicature in the island of Newfoundland, and in the islands adjacent; and for re-annexing part of the coast of Labrador, and the islands lying on the said coast, to the government of Newfoundland*, as relates to the courts thereby instituted, and respectively called the supreme court of judicature of the island of Newfoundland, and surrogate courts, shall cease to be in force and determine; and every suit, action, complaint, matter, or thing which shall be depending in such last-mentioned courts respectively, shall and may be proceeded upon in the supreme court instituted under and by virtue of this Act, or either of the said circuit courts which shall have jurisdiction within the district or place in Newfoundland where such action or suit respectively was depending; and all proceedings which shall thereafter be had in such action or suit respectively, shall be conducted in like manner as if such action or suit had been originally commenced in one or other of the said courts instituted under this Act; and all the records, muniments, and proceedings whatsoever, of and belonging to the said courts instituted under the said recited Act respectively, shall, from and immediately after the opening of the said courts respectively instituted under this Act, be delivered over and deposited for safe custody in such of the

Governor, on arrival of His Majesty's charter, to notify by Proclamation when the courts shall be opened and thereupon so much of 49 G. 3. c. 27. as relates to the courts thereby instituted, shall be repealed, & proceedings & records of those courts delivered over to the courts instituted under this act.

said courts respectively instituted under this Act as shall be found most convenient, and all parties concerned shall and may have recourse to the said records and proceedings, as to any other records or proceedings of the said courts respectively.

XXII.—And be it further enacted, that (28) courts of general and quarter sessions shall be holden at Newfoundland and its dependencies at such times and places as the governor or acting governor of Newfoundland shall by his proclamation appoint; and the said courts of sessions respectively shall have power and authority in a summary way, to take cognizance of all suits for the payment of debts not exceeding forty shillings, except the matter in dispute shall relate to the title to any lands or tenements, or to the taking or demanding of any fee of office or annual rent, and to award costs therein; and also to hear and determine all disputes, to any amount, which may arise in Newfoundland concerning the wages of seamen or fishermen, the supply of bait, the hiring of boats for the fishery, and all disputes arising in Newfoundland aforesaid concerning the curing or drying of fish, where the sum or matter in question does not exceed or is not of the value of more than five pounds sterling; and the judgment, determination, or award of the said courts of sessions or justices respectively, in all such cases, shall be final.

Courts of general and quarter sessions shall be held at such times & places as the governor shall appoint.

Their powers.

XXIII.—And whereas it is expedient to make provision for declaring insolvencies in Newfoundland; be it therefore enacted, that as often as any writ of attachment, or other process for the recovery of any debt or sum due, shall be issued by the said supreme or circuit courts respectively, against any person or persons residing or (29) having a house of trade, or carrying on business in Newfoundland, or any place within the government thereof, and it (30) shall be made to appear to the said court out of which such writ or process shall have issued, (31) at the return thereof, that the person or persons against whom such writ or process hath issued is or are unable to pay twenty shillings in the pound to all his, her, or their creditors, it shall be lawful for such court to cause the person or persons against whom such process shall have issued, together with all his, her, or their creditors, to be summoned by public notice to

Proceedings in case of insolvency.

Notice to parties to attend.

Provisional
trustees.

Declaration of
insolvency.

Collection and
distribution.

Insolvents, on
making disclo-
sure of their
effects and con-
forming to the
directions of
the judges, may
receive certifi-
cates, with con-
sent of one-half
in number and
value of the
creditors.

attend the said court on a certain day, and in the mean time, if it shall appear necessary to the said court, to appoint one or more of the said creditors, as provisional trustee or trustees, to discover, collect and receive the estates and effects of such person or persons so appearing to be insolvent, subject to the orders and directions of the said court; and if after due examination of the person or persons against whom process shall have issued as aforesaid, or his, her, or their lawful agent or agents, or if such person or persons shall abscond, or fail to attend the said court pursuant to summons as aforesaid, it shall be made to appear to the satisfaction of the said court that such person or persons is or are insolvent, it shall be lawful for the said court to declare such person or persons insolvent accordingly, and immediately to take order for discovering, collecting, and selling the estates, debts, and effects of such insolvent, and distributing the produce thereof amongst all his, her, or their creditors, and for that purpose to authorize any two or more creditors of the said insolvent or insolvents, who shall be chosen by the major part in value of such creditors or their agents duly authorized in such behalf, (32) whose debts amount respectively to the sum of twenty pounds and upwards, to act as trustees of such insolvent estate; and such court shall from time to time make such orders as it shall deem proper, for better discovering, collecting, realizing and distributing the estates, debts, and effects of the person or persons so declared insolvent, and, as often as occasion shall require, for vesting the same, or any part thereof, in the public funds or securities in England, in the name or names of such person or persons as shall for that purpose be appointed by the said court, until distribution can be made as hereafter mentioned.

XXIV.—And be it further enacted, that if such insolvent person or persons shall make a full and true disclosure, discovery and surrender of all his, her, or their estates, goods, debts, and effects, and shall conform to the orders and directions of the said judges of the said courts respectively, the same shall and may with the consent in writing under the hands of one half in number and value of the creditors of such insolvent or insolvents, (33) be certified by the respective judges, under the seal of the said courts respectively; and such certi-

ificate may be pleaded, and shall be a bar to every suit or action which may at any time thereafter be brought in any court in the said island or colony of Newfoundland or its dependencies, for any debt or contract for payment of money due or entered into by such person or persons prior to the time of his, her, or their being declared insolvent as aforesaid; and if any person or persons so declared insolvent as aforesaid shall fail to make a true disclosure and discovery of all his, her, or their estate or estates, and effects, or shall otherwise refuse to conform to the orders or directions of the said judges respectively, it shall be lawful for the said judges respectively (34) to cause such person or persons to be arrested and imprisoned until he, she, or they shall make such disclosure and discovery, and in all respects conform to the orders of the said judges respectively.

XXV.—And be it further enacted, that in the distribution to be made of the produce of the estates and effects of every person or persons hereafter declared insolvent in Newfoundland, or its dependencies as aforesaid, every creditor for supplies necessary, and furnished *bona fide* for the fishery, during the current season, (that is to say), at any time after the close of the last preceding season of the fishery, shall be considered as a privileged creditor, and shall first be paid twenty shillings in the pound, so far as the estates and effects of such insolvent person or persons which may be realized in Newfoundland or its dependencies will go, and that all other creditors shall be paid equally and rateably: Provided always, that nothing in this Act contained (35) shall affect the prior claims of seamen and other servants, actually employed in the catching and taking of fish and oil, upon all fish and oil caught by the hirers or employers of such seamen, fishermen, or servants, or the produce or value thereof; and also provided that (36) menial or domestic servants shall in all cases be paid the balance of their last preceding year's wages out of the household furniture, goods, and effects of every person so declared insolvent.

XXVI.—And whereas it is expedient that the estates and effects of deceased persons which may not be sufficient to pay all their just debts should be distributed according to the manner herein directed concerning the

Creditors for supplies for the fishery for the current season shall be privileged, and be first paid 20s. in the pound.

Not to affect the prior claims of seamen or domestic servants.

Proceedings in cases where persons die insolvent.

estates and effects of persons declared insolvent; be it further enacted, that as often as any person shall (37) die in Newfoundland, or in any place, or seas, or territory within the government thereof, and the estates and effects of such person shall not be sufficient to pay and satisfy all his or her just debts, it shall be lawful for the said courts respectively, at the petition of the executor or executors, administrator or administrators of such deceased person, or any one or more of his or her creditors, to cause a true statement of the effects and debts of such deceased person to be made in writing by and upon the oath of the said executor or executors, administrator or administrators, and laid before the said courts respectively; and if it shall appear to the court before which such statement shall be laid, that the estate and effects of such deceased person are not sufficient to pay all his or her just debts, it shall be lawful for such court to authorise and empower the executor or executors, administrator or administrators of such deceased person to collect, sell, and dispose of all the estates and effects of such deceased person, and to distribute the produce thereof amongst his or her creditors, according to the manner of distribution by this Act directed in respect of the estates of persons declared insolvent, and always subject to the orders and directions of such court: Provided always, that nothing herein contained shall be construed to affect the right of any creditor having a judgment or special security for his or her debts.

Proviso for judgment creditors.

Registrars of deeds appointed.

XXVII.—And whereas it is expedient that provision should be made for (38) the registration, within the said colony of Newfoundland, of all deeds, wills, and other assurances, whereby any lands or tenements therein situate may be granted, conveyed, devised, mortgaged, charged, or otherwise affected; be it further enacted, that the chief clerk of the supreme court of Newfoundland shall be also the registrar of deeds within the district or circuit in which the town of St. John's may be situate, and that the chief clerks of each of the circuit courts to be holden in and for the two other districts of the said colony, shall respectively be the registrars of deeds within such other districts or circuits; and in each of the said three districts an office shall be kept by such chief clerk respectively, for the due registration of all such deeds, wills, and other instruments as aforesaid.

XXVIII.—And be it further enacted, that all deeds, wills, conveyances, and other assurances in writing, of what nature or kind soever, whereby any lands or tenements situate in the said colony, or the dependencies thereof, may be hereafter granted, conveyed, devised, mortgaged, charged, or otherwise affected or intended so to be, shall be registered at the office of registration within the district or circuit in which such lands may be situate: and that all such deeds, conveyances, and other assurances as aforesaid, shall be left for registration at such office within six months next after the execution thereof, by the party or parties from whom any interest may pass, in case such party or parties may, at the time of such execution thereof by him, her or them, be resident within the said colony or its dependencies, or within twelve months in case such party or parties may at that time be resident elsewhere; and all such wills as aforesaid shall be left for registration at such office twelve months next after the death of the testator or testatrix.

Deeds shall be registered at the office of registration within the district in which the lands are situate, within a certain time.

XXIX.—And be it further enacted, that some or one of the parties executing any such deed, conveyance, or other assurance as aforesaid, shall appear before the registrar of deeds, and acknowledge the execution thereof by them, him, or her, or in case none of the parties to any such deed, conveyance, or assurance shall be resident in the said colony, then the same shall be acknowledged before the said registrar of deeds, by some person duly appointed for that purpose as the attorney of such parties; and in that case the execution of every such deed, conveyance, or other assurance shall be further verified by an affidavit to be sworn before the mayor or other principal magistrate of any city, town, or place in or near to which such parties respectively may be resident; and such affidavit shall also be preserved and registered at the office of the said registrar of deeds.

How deeds shall be verified before the registrar.

XXX.—And be it further enacted, that the registrar of deeds shall, and he is hereby required to endorse and subscribe, on every such deed, conveyance, or other assurance, a certificate, in which shall be expressed the day or time when the same was so acknowledged before him, and the names of the person or persons by whom such acknowledgment was made, and the time when the same was actually registered, and the volume and page

Registrar to endorse on the deed a certificate of registry.

in which the registry thereof is entered: and every such certificate so indorsed or subscribed shall be taken and allowed as evidence of the due registration of any such deed, conveyance, or assurance.

XXXI.—And be it further enacted, that the registrar to enter in a book of registry a memorial of the deed acknowledged before him.

of deeds shall and he is hereby required to enter into a book of registry, to be by him regularly kept for that purpose, a memorial of every deed, conveyance, or assurance which shall be so acknowledged before him; and every such memorial shall contain a statement of the year and day of the month on which such deed, conveyance, or assurance shall bear date, the names and additions of all and every the parties, as well as the names and additions, if any, of the several subscribing witnesses thereto, the descriptions at length of the lands or tenements conveyed or intended to be conveyed, charged, or affected by such deed, conveyance, or assurance, as the same are therein described, and the consideration of every such deed, conveyance, or assurance, as the same may be therein stated; all which memorials shall be entered and recorded in the said book of registry with all convenient dispatch, in the order of time in which the same may have been acknowledged before the said registrar.

Deeds hereafter to be made, conveying lands &c. not duly registered, declared void.

XXXII.—And be it further enacted, that every deed, conveyance, or assurance hereafter to be made, whereby any lands or tenements situate in Newfoundland, or the dependencies thereof, shall be granted, conveyed, released, charged, or incumbered, or intended so to be, which shall not be registered within the time and in the manner herein-before mentioned, shall be absolutely null and void to all intents and purposes: Provided always, that every such deed, conveyance, or assurance shall be deemed and taken to be a registered deed, conveyance, or assurance within the meaning of this Act, from the time when the execution thereof shall be acknowledged in manner aforesaid, before such registrar of deeds as aforesaid.

[Repealed by colonial act Vic., cap. 5.]

Supreme court authorized to make rules and orders for the registry of deeds, &c.

XXXIII.—And be it further enacted, that the judges of the supreme court of Newfoundland shall be and they are hereby authorized to make any general rules and orders of court for maintaining order and regularity in the mode of taking such acknowledgments, and registering such deeds, wills, and conveyances, and

other assurances as aforesaid, and for executing the duties of the said office of registrar of deeds; provided that such rules and orders be not in any wise repugnant to the provisions of this present Act in that behalf.

XXXIV.— And whereas the justices of the peace in Newfoundland have been used to grant (39) licenses for the retail of ale and spirituous liquors, and it is proper to regulate the sums to be demanded upon such licenses, and to make provision for the appropriation thereof, and for preventing abuses in the granting of such licenses, and in the sale of spirits by unlicensed persons in the said colony; be it therefore enacted, that it shall and may be lawful for the governor or acting governor of Newfoundland to make, establish, and ordain such rules and ordinances as to him may seem meet, respecting the granting of such licenses, and the recalling the same, and the amount of the sums to be demanded and taken for every such licence, and the appropriation of such sums to His Majesty's service in the said colony, and for preventing the retail of ale and spirituous liquors by persons not duly licensed, and to impose such pecuniary fines or other penalties as may be necessary for enforcing obedience to any such rules or ordinances as aforesaid.

Governor may establish ordinances for the granting of licenses for the retail of ale and spirits, and as to the sums to be paid, and the appropriation.

XXXV.— And be it further enacted, that it shall and may be lawful for His Majesty, by charter or letters patent under the great seal, to constitute and erect such persons as to His Majesty shall seem meet, a body or bodies corporate and politic, for the government of any town or towns situate within the said colony of Newfoundland or its dependencies, and to grant to such body or bodies politic and corporate, power to make bye-laws for regulating the police of any such town or towns, and for the prevention or abatement of nuisances therein, and for the prevention of accidents by fire; and also to grant to any such body or bodies politic and corporate as aforesaid the power to impose and levy such reasonable and moderate rates and assessments upon the inhabitants and householders in such town or towns, as may be necessary for carrying into effect the several purposes aforesaid, or any of them; and it shall also be lawful for His Majesty, his heirs and successors, by any order or orders to be made by or with the advice of his or their privy council, to dissolve any such corporation or corpo

His Majesty may grant charters for establishing corporations for the government of towns.

rations as aforesaid, upon and subject to such conditions and regulations as may be made in and by any such order or orders in that behalf.

Continuance of Act. XXXVI.—And be it further enacted, that this Act sh^{ll} continue and be in force for five years from the 1st of June next; thereof, and no longer.

conditions
any such

this Act
from the

ROYAL CHARTER

FOR ESTABLISHING THE SUPREME AND CIRCUIT
COURTS OF NEWFOUNDLAND.

GEORGE THE FOURTH, by the Grace of God, of the
United Kingdom of Great Britain and Ireland, King,
Defender of the Faith:—To all whom these presents
shall come, greeting:—

WHEREAS, by an Act of Parliament passed in the
fifth year of our reign, intituled “an Act for the better
administration of justice in Newfoundland, and for other
purposes,” it is amongst other things enacted, that it
shall and may be lawful for us, by our charter or letters
patent under the great seal, to institute a superior Court
of judicature in Newfoundland, which shall be called
“the Supreme Court of Newfoundland.” And it is
thereby further enacted, that the said Supreme Court
shall be holden by a chief judge and two assistant
judges, being respectively barristers in England or
Ireland of at least three years standing, or in some of
our colonies or plantations. And it is thereby further
enacted, that it shall and may be lawful for us, by any
such charter or letters patent as aforesaid, to institute
Circuit Courts in each of the three districts into which
the said colony may be so divided, as in the said Act
mentioned. And it is thereby further enacted, that it
shall be lawful for us, our heirs and successors, by such
charter or letters patent as aforesaid, or by any order
or orders to be thereafter issued, by and with the advice
of our or their privy council, to make and prescribe, or
to authorise and empower the said Supreme Court of
Newfoundland, under such limitations as we shall deem
proper, to make and prescribe such rules and orders,
touching and concerning the forms and manner of pro-

Recital of Act
5 G. 4, c. 67.

And of autho-
rity to institute
supreme court.

And circuit
courts.

ROYAL CHARTER.

Recital of authority to make rules & orders, and to empower supreme court to make rules & orders; proceeding in the said Supreme Court and Circuit Courts respectively, and the practice and pleadings upon all indictments, informations, actions, suits, and other matters to be therein brought, or touching or concerning the appointment of commissioners to take bail and examine witnesses; the taking examination of witnesses, *de bene esse*, and allowing the same as evidence; the granting of probates of wills and letters of administration, the proceedings of the Sheriff and his deputies, and other ministerial officers; the summoning of assessors for the trial of crimes and misdemeanours in the said Circuit Courts; the process of the said Courts and the mode of executing the same; the empannelling of juries, the admission of barristers, attorneys, and solicitors; the fees, poundage, or perquisites, to be lawfully demanded by any officer, attorney, or solicitor, in the said courts respectively; and all other matters and things whatsoever, touching the practice of the said courts, as to us, our heirs, and successors shall seem meet, for the proper conduct of business in the said courts; and such rules and orders from time to time to alter, amend, or revoke, as to us, our heirs and successors, shall seem requisite.

And to permit appeals to His Majesty in council,

And it is thereby further enacted, that it shall and may be lawful for us, by our said charter or letters patent, to allow any person or persons aggrieved by any judgment, decree, order, or sentence of the said supreme court, to appeal therefrom to us in council, in such manner, within such time, and under and subject to such rules, regulations, and limitations, as we, by such charter and letters patent, shall appoint and direct. Now know ye, that

Institution of supreme court - to be a court of record, and to be composed and holden by a chief judge and two assistant judges.

We, upon full consideration of the premises, and of our especial grace, certain knowledge, and mere motion, have, in pursuance and by virtue of the said Act of Parliament, thought fit to grant, direct, and appoint, and by these presents do accordingly grant, direct, and appoint, that there shall be within our said colony of Newfoundland a court, which shall be called "The Supreme Court of Newfoundland." And we do hereby create, erect, and constitute the said supreme court of Newfoundland to be a court of record; and do direct and appoint that the same shall be composed of and holden by one chief judge and two assistant judges. And we do hereby give and grant to our said chief judge

rank and precedence above and before all our subjects whomsoever, within the colony of Newfoundland aforesaid, and the islands, territories, and places dependant thereupon, excepting the governor or acting governor for the time being of the said colony, and excepting all such persons as by law or usage take place in England before our chief justice of our Court of King's Bench. And we do hereby give and grant to our said assistant judges rank and precedence within our said colony, and the islands, territories, and places dependant thereupon, next after our said chief judge, the said assistant judges taking precedence between themselves according to the priority of their respective appointments to the said office, or, where they may be both appointed at the same time, then according to their seniority as barristers. And we do further grant, ordain, and appoint that the said supreme court of Newfoundland shall have and use, as occasion may require, a seal bearing a device and impression of our royal arms, within an exergue or label surrounding the same, with this inscription, "The seal of the supreme court of Newfoundland." And we do hereby grant, ordain, and appoint that the said seal shall be delivered to, and kept in the custody of the said chief judge. And we do further grant, ordain, and declare that the said chief judge and assistant judges, so long as they shall hold their respective offices, shall be entitled to have and receive the following salaries, (that is to say) our said chief judge, a salary of one thousand two hundred pounds, sterling money, by the year; and each of our assistant judges, a salary of seven hundred pounds, like sterling money, by the year. And our governor or acting governor for the time being of the said colony, is hereby directed and required to cause such salary to be paid to the said chief judge and assistant judges, out of the revenue of the said colony, by four quarterly payments, at the four most usual days of payment in the year. And we do further grant, ordain, and declare that the said salary shall commence and take place, in respect to any person who shall be resident in Great Britain or Ireland, at the time of his appointment, upon and from the day on which any such person shall thereupon embark, or depart from Great Britain or Ireland, for Newfoundland, and to take upon him the execution

Rank and precedence of chief judge and assistant judges.

Seal of supreme court.

Salaries of judges.

Commencement of salary.

of the said office; and that the salary of any such chief judge, or assistant judges, who shall at the time of his appointment be resident in Newfoundland, aforesaid, shall commence and take place from and after his taking upon him the execution of such his office, and that such salary shall be in lieu of all fees of office, perquisites, emoluments, and advantages whatsoever; and that no fee of office, perquisite, emolument, or advantage, whatsoever, other than and except the said salary, shall be accepted, received, or taken by such chief judge or assistant judges, in any manner, or on any account or pretence whatsoever. Provided, nevertheless, that it shall be lawful for the said chief judge or assistant judge to occupy and inhabit any official house or residence within the said colony of Newfoundland, which hath been, or may hereafter be provided for their or any of their residence and occupation, without paying to us our heirs and successors, any rent for the same, and without being obliged to repair, uphold, or maintain any such house or official residence at his own cost and charges. And we do further grant, appoint, and declare that no chief judge or assistant judges, of the said supreme court of Newfoundland, shall be capable of accepting, taking, or performing any office or place of profit or emolument, on pain that the acceptance of any such other office, or places aforesaid, shall be and be deemed in law, *de facto*, an avoidance of the office of such chief judge or assistant judge, as the case may be; and the salary thereof shall cease, and be deemed to have ceased accordingly, from the time of such acceptance of any such other office or place. And we do hereby constitute and appoint our trusty and well-beloved *Richard Alexander Tucker*, Esq. to be the first chief judge of the said supreme court of Newfoundland, the said *R. A. Tucker* being a barrister in England of three years standing and upwards. And we do hereby constitute and appoint our trusty and well-beloved *Augustus Wallet DesBarres* and *John William Molloy*, Esquires, to be first assistant judges of the said supreme court, the said *Augustus Wallet DesBarres* and *John William Molloy* being respectively barristers of three years standing and upwards. And we do hereby grant, direct, and appoint, that there shall be within our said colony

To be in lieu of
all fees, &c.

Judges, nevertheless, may
occupy official
residences
without pay-
ment of rent
and repairs.

Acceptance of
place of profit
or emolument
to be an avoid-
ance of office.

First chief
judge and as-
sistant judges.

of Newfoundland three circuit courts, to be held in each of the three districts into which the said colony may be divided, in pursuance of the said act of parliament. And we do hereby erect, create, and constitute the said circuit courts respectively, to be courts of record; and do direct and appoint that each of the said circuit courts shall be holden by the chief judge or one of the assistant judges of the supreme court of Newfoundland, aforesaid. And we do direct and appoint that the chief judge of the said supreme court shall be always at liberty to decide which of the three circuit courts shall be holden by him, and that the senior assistant judge shall be always at liberty to decide which of the two remaining circuit courts shall be holden by him. And we do hereby ordain, appoint, and declare, that there shall be and belong to the said supreme court and circuit courts, respectively, such and so many officers as to the chief judge of the said supreme court for the time being shall, from time to time, be deemed necessary for the administration of justice, and the due execution of all the powers and authorities which are granted and committed to the said supreme court and circuit courts respectively by the said act of parliament, or by these our letters patent. Provided, nevertheless, that no office shall be created in the said courts, or any of them, unless the governor or acting governor, for the time being, of our said colony, shall first signify his approbation thereof to our said chief judge, for the time being, in writing, under the hand of such governor or acting governor as aforesaid. And we do further ordain and direct, that all persons who shall and may be appointed to the several offices of master, registrar, accountant-general, or prothonotary, (1) of the said supreme court or circuit courts of Newfoundland, or to any office in the said courts, or any of them, whereof the duties shall correspond to those performed by the master, registrar, accountant-general, or prothonotary of any or either of our courts of record at Westminster, shall be so appointed by us, our heirs and successors, by warrant under our or their royal sign manual, to hold such their offices during our or their pleasure; and that all persons who shall and may be appointed to any other office within the said supreme court of Newfoundland, or within the said circuit courts of Newfoundland, shall be so appointed by

Circuit courts.

Chief judge and senior assistant judge to choose circuits.

Supreme and circuit courts to have so many officers as chief judge shall deem necessary;

But no office to be created without the governor's approbation.

Appointment to offices of master, registrar, &c. to be by warrant under royal sign manual; to other offices by the chief judge.

the chief judge, (2) for the time being, of the said supreme court, and shall be subject and liable to be removed from such their offices by the said chief judge upon reasonable and sufficient cause. And we do hereby authorize and empower the said supreme court of Newfoundland to approve, admit, and enrol such and so many persons having been admitted barristers at law, or advocates, Great Britain and Ireland, or having been admitted writers, attorneys or solicitors, in one of our courts at Westminster, Dublin, or Edinburgh, or having been admitted as proctors in any ecclesiastical court in England, to act as well in the character of barristers and advocates, as of proctors, attorneys, and solicitors in the said supreme court of Newfoundland, and which persons so approved, admitted, and enrolled, as aforesaid, shall be, and are hereby authorized to appear, and plead, and act for the suitors of the said supreme court, subject always to be removed by the said supreme court from their station therein, upon reasonable cause. And we do further authorize the said supreme court of Newfoundland to admit and enrol as barristers, advocates, attorneys, proctors, or solicitors therein, such and so many persons as may have served a clerkship, under articles in writing, for the term of five years at the least to any barrister, advocate, proctor, attorney or solicitor of the supreme court aforesaid. And we do declare that no person or persons, other than the persons aforesaid, shall be allowed to appear, plead, or act in the said supreme court of Newfoundland, for and on behalf of the suitors of the said court, or any of them. Provided always, and we do ordain and declare, that in case there shall not be a sufficient number of such barristers at law, advocates, writers, attorneys, solicitors and proctors, or of persons so admitted and enrolled as aforesaid, to act as such within the said colony, competent and willing to appear and act for the suitors of the said supreme court, then and in that case the said supreme court of Newfoundland shall, and is hereby authorized to admit so many other fit and proper persons to appear and act as barristers, advocates, proctors, attorneys and solicitors as may be necessary, according to such general rules and qualifications as the said supreme court shall for that purpose make and establish. And we do hereby autho-

Supreme court empowered to admit barristers or advocates of Great Britain and Ireland, and attorneys, solicitors and writers of courts at Westminster, Dublin, or Edinburgh — also, proctors in English ecclesiastical courts, to act both as barristers and attorneys, &c. of supreme court of Newfoundland:

Also persons serving a clerkship of five years to any such barrister or attorney.

No other persons to appear and plead.

Proviso in case of insufficient number of such barristers, attorneys, &c.

ize the said supreme court to make and prescribe such rules and orders as to them may seem expedient and necessary, with regard to the admission of persons to practice the law, and appear and act in the character of barristers and advocates, proctors, attorneys and solicitors in the said circuit courts respectively. And we do hereby ordain and declare, that the governor or acting governor, for the time being, of the said colony of Newfoundland, shall yearly, and on the Monday next following the first day of January in each year, by warrant under his hand and seal, nominate and appoint some fit and proper person to act as, and be, the sheriff for our said colony of Newfoundland (3) and its dependencies, other than except the coast of Labrador, for the year ensuing; which sheriff, when appointed, shall, as soon as conveniently may be, and before he shall enter upon his said office, take before the governor or acting governor of our said colony an oath faithfully and impartially to execute the duties of such his office; and such sheriff shall continue in such his office during the space of one whole year, to be computed from the said Monday next following the first day of January in each year, and until another sheriff shall be appointed and sworn into the said office. And in case any such sheriff shall die in his said office, or depart from our said colony of Newfoundland and its dependencies, then and in such case another person shall, as soon as conveniently may be after the death or departure of such sheriff, be in like manner appointed and sworn in as aforesaid, and shall continue in his office for the remainder of the year, and until another sheriff shall be duly appointed and sworn into the said office. And we do further direct and appoint that it shall and may be lawful for the governor or acting governor of the said colony to renew from year to year the appointment of the same person as sheriff for our said colony and its dependencies; and that in selecting the person to be appointed to the execution and discharge of the said office, the said governor or acting governor shall conform to such written instructions or commands as may from time to time be signified by us, our heirs or successors, to him through one of our or their principal secretaries of state. And we do further direct that, before entering upon the execution of the

Court to make rules & orders as to admission of barristers, attorneys, &c.

Appointment of sheriff.

To continue in office for one year.

Provision in case of death, &c. of sheriff.

Governor to renew appointment of same person, and therein to conform to royal instructions.

Securities of sheriff.

ROYAL CHARTER.

duties of his said office, the said sheriff shall enter into recognisance to us, in the said supreme court of Newfoundland, in the sum of five thousand pounds, with two good and sufficient sureties, in the sum of two thousand pounds each, for the due and faithful performance of the duties of such his office, and for the due and punctual payment of all such sums of money as may by him or his lawful deputies be levied or received by virtue of any process, rule, or order of the said supreme court and circuit courts, or any of them. And we do further direct that the said sheriff shall, on the first Monday of each calendar month, produce before the chief judge or one of the assistant judges aforesaid, a written account of all the money by him or by his lawful deputies received during the calendar month last preceding, and stating the application thereof, so far as the same may by him or them have been applied, and also stating the exact balance of such monies then remaining in the possession of himself or his said deputies, so far as the returns received from such deputies enable him to make out the said accounts. And we do further order that the said chief judge or assistant judges, as the case may be, shall cause the said account to be publicly exhibited in the office of the prothonotary or registrar of the said supreme court for the space of one calendar month next after the same shall have been so rendered, and shall then cause the same to be enrolled among the records of the said court. And we do further order, direct, and appoint that the said sheriff and his successors shall, by themselves or their sufficient deputies to be by them appointed and duly authorized under their respective hands and seals, and for whom he and they shall be responsible during his or their continuance in such office, execute, and the said sheriff, by himself or his lawful deputies, is hereby authorized to execute the writs, summonses, rules, orders, warrants, commands, and process of the said supreme court and the said circuit courts, and make return of the same, together with the manner of the execution thereof, to the said supreme court and circuit courts respectively, and to receive and detain in prison all such persons as shall be committed to the custody of such sheriff by the said supreme court and circuit courts respectively, or by the chief judge or assistant judges, or

Duties of sheriff and deputies.

To exhibit monthly accounts.

To execute process.

To have custody of prisoners.

ROYAL CHARTER.

either of them. And we do further direct, ordain, and appoint that whenever the said supreme court, or any of the said circuit courts shall direct or award any process against the said sheriff, or shall award any process in any cause, matter, or thing wherein the said sheriff on account of his being related to the parties, or any of them, or by reason of any good cause of challenge which would be allowed against any sheriff in England, cannot or ought not by law to execute the same; then, and in every such case, the said supreme court or the said circuit courts, as the case may be, shall name and appoint some other fit person to execute and return the same. And the said process shall be directed to the person so to be named for that purpose; and the cause of such special processes shall be suggested and entered on the records of the court issuing the same: provided always, and we do hereby ordain and declare, that the said supreme court and the said circuit courts shall respectively fix certain limits beyond which the said sheriff shall not be compelled or compellable to go, in person or by his officers or deputies, for the execution of any process of the said courts respectively; and upon occasion, when the process of any of the said courts shall be to be executed in any place or places beyond the limits so to be fixed, we grant, ordain, and direct that the said supreme court or circuit courts respectively, as the case may be, shall, upon motion, direct by what person or persons, and in what manner such process shall be executed, and the terms and conditions which the party at whose instance the same shall be issued shall enter into, in order to prevent any improper use or abuse of the process of the said courts. And the said sheriff shall, and he is hereby required, to grant his special warrant or deputation to such person or persons as the court making any such order shall direct for the execution of such process; and in that case we direct and declare that the said sheriff, his heirs, executors, or administrators, shall not be responsible or liable for any act to be done in or any way respecting the execution of such process under and by virtue of such special warrant; and that any person or persons being aggrieved under or by virtue of such special warrant, shall and may seek their remedy under any security which may have been directed to be taken

How process to be directed, &c. where sheriff is interested.

Limits of his jurisdiction to be fixed.

How process to be executed beyond limits.

Special deputation to be granted by sheriff.

upon the occasion, and which the court issuing such process is hereby authorized to direct to be taken. And it is our further will and pleasure, and we do hereby fo-
 us, our heirs, and successors, grant, ordain, establish and appoint, that the said supreme court shall grant probates (4) under the seal of the said court, of the last wills and testaments of all or any of the inhabitants of the said colony and its dependencies, and of all other persons who shall die and have personal effects within the said colony and its dependencies, and to commit letters of administration, under the seal of the said supreme court, of the goods, chattels, credits, and all other effects whatsoever of the persons aforesaid who shall die intestate, or who shall not have named an executor resident within the said colony and its dependencies, or where the executor being duly cited shall not appear and sue forth such probate, annexing the will to the said letters of administration, when such persons shall have left a will, and to sequester the goods, chattels, credits, and other effects whatsoever, of such persons so dying, in cases allowed by the law, as the same is and may be now used in the diocese of London; and to demand, require, take, hear, examine and allow, and, if occasion require, to disallow and reject the accounts of them, in such manner and form as is now used or may be used in the said diocese of London, and to do all other things whatsoever needful and necessary in that behalf. . . Provided always, and we do hereby authorize and require the said supreme court, in such cases as aforesaid, where letters of administration shall be committed with the will annexed for want of an executor appearing in due time to sue forth the probate, to reserve in such letters of administration full power and authority to revoke the same, and to grant probate of the said will to such executor whenever he shall duly appear and sue forth the same. And we do hereby further authorize and require the said supreme court of Newfoundland to grant and commit such letters of administration to any one or more of the lawful next of kin of such persons so dying, as aforesaid, being then resident within the jurisdiction of the said supreme court, and being of the age of twenty-one years. Provided always, that probates of wills and letters of administration to be granted by the said supreme court, shall

Supreme court to grant probates and letters of administration, according to the usage in the diocese of London.

In letters of admin. cum testament annexo for default of appearance of executor, rights of executor to be reserved.

Administration to be granted to next of kin.

Probates & administrations only to affect

ROYAL CHARTER.

be limited to such money, goods, chattels, and effects as the deceased person shall be entitled to within the said colony and its dependencies. And we do hereby further enjoin and require, that every person to whom such letters of administration shall be committed, shall, before the granting thereof, give sufficient security by bond to be entered into, to us, our heirs and successors, for the payment of a competent sum of money, with one, two, or more able sureties, respect being had in the sum therein to be contained, and the ability of the sureties, to the value of the estate, credits, and effects of the deceased, which bond shall be deposited in the said supreme court, among the records thereof, and there safely kept; and a copy thereof shall be also recorded among the proceedings of the said supreme court; and the condition of the said bond shall be to the following effect:—“That if the
 “above bounden administrator of the goods, chattels,
 “and effects of the deceased, do make, or cause to be
 “made, a true and perfect inventory of all and singular
 “the goods, credits, and effects of the said deceased
 “which have or shall come to the hands, possession, or
 “knowledge of him the said administrator, or to the
 “hands or possession of any other person or persons for
 “him; and the same so made do exhibit, or cause to be
 “exhibited, in the said supreme court of Newfoundland,
 “at or before a day therein to be specified; and the
 “same goods, chattels, credits, and effects, and all other
 “the goods, chattels, credits, and effects of the deceased,
 “at the time of his death, or which at any time after-
 “wards, shall come to the hands or possession of such
 “administrator, or to the hands or possession of any
 “other person or persons for him, shall well and truly
 “administer according to law; and further to make, or
 “cause to be made, a true and just account of his said
 “administration at or before a time therein to be speci-
 “fied, and afterwards, from time to time, as he, she, or
 “they shall be lawfully required. And all the rest and
 “residue of the said goods, chattels, credits, and effects
 “which shall be found, from time to time, remaining
 “upon the said administration accounts, the same being
 “first examined and allowed of by the said supreme
 “court of Newfoundland, shall and do pay and dispose
 “of in a due course of administration, or in such manner

property with-
in the colony.

Administra-
tion bond.

Form of it.

ROYAL CHARTER.

“as the said court shall direct, then this obligation to be void and of none effect, or else to be and remain in full force and virtue.” And in case it shall be necessary to put the said bond in suit for the sake of obtaining the effect thereof, for the benefit of such person or persons as shall appear to the said court to be interested therein, such person or persons from time to time giving satisfactory security for paying all such costs as shall arise from the said suit or any part thereof, such person or persons shall, by order of the said supreme court, be allowed to sue the same in the name of the Attorney General for the time being, of the said colony, and the said bond shall not be sued in any other manner. And we do hereby authorize and empower the said supreme court to order that the said bond shall be put in suit in the name of the said Attorney General. And we do further will, order, and require, that the said supreme court shall fix certain periods when all persons, to whom probates of wills and letters of administration shall be granted by the said supreme court, shall from time to time until the effects of the deceased shall be fully administered, pass their accounts relating thereto before the said court; and in case the effects of the deceased shall not be fully administered within the time for that purpose to be fixed by the said court, then, or at any earlier time, if the said supreme court shall see fit so to direct, the person or persons to whom such probate or administration shall be granted, shall deposit and dispose of the balance of money belonging to the estate of the deceased, then in his, her, or their hands, and all money which shall afterwards come into his, her, or their hands, and also all precious stones, jewels, bonds, bills, and securities, belonging to the estate of the deceased, in such manner, and unto such persons, as the said supreme court shall direct, for safe custody. And we require that the said supreme court shall from time to time make such order as shall be just for the due administration of such assets, and for the payment or remittance thereof as occasion shall require, to or for the use of any person or persons whether resident or not resident in the the said colony and its dependencies, who may be entitled thereto or any part thereof as creditors, legatees, or next of kin, or by any other right or title

Bond to be sued
in name of
Attorney General.

Passing of accounts.

Depositing balances.

Distribution.

And we do hereby, in exercise and in pursuance of the power in us by the said act of parliament in that behalf vested, authorize and empower the said supreme court of Newfoundland, under such limitations as hereinafter mentioned, to make and prescribe such rules and orders as may be expedient touching and concerning the forms and manner of proceeding in the said supreme court and circuit courts respectively, and the practice and pleadings upon all indictments, informations, actions, suits, and other matters to be therein brought, and touching and concerning the appointment of commissioners to take bail and examine witnesses; the taking examinations of witnesses, *de bene esse*, and allowing the same as evidence; the granting of probates of wills and letters of administration; the proceedings of the sheriff and his deputies, and other ministerial officers; the summoning of assessors for the trial of crimes and misdemeanours in the said circuit courts; the process of the said courts and the mode of executing the same; the empannelling of juries; the admission of barristers, attorneys, and solicitors; the fees, poundage, or perquisites to be lawfully demanded by any officer, attorney, or solicitor, in the said courts respectively; and all other matters and things whatsoever, touching the practice of the said courts, as may be necessary for the proper conduct of business therein; and such rules and orders from time to time to alter, amend, or revoke, as may be requisite. Provided always, that no such rules or orders be in anywise repugnant to the said Act of Parliament or this our charter. Provided further, that all such rules and orders be promulgated in the most public and authentic manner in our said colony for three calendar months, at least, before the same shall operate and take effect, and that the same be, by the first convenient opportunity, transmitted through the governor or acting governor of our said colony, to us, our heirs and successors, for the signification of our or their pleasure, respecting the allowance or disallowance thereof. And we do hereby direct, ordain, and appoint, that any person or persons feeling aggrieved by any judgment, decree, order, or sentence of the said supreme court, may appeal to us, our heirs and successors, in our or their privy council, in such manner and within such

Supreme court
to prescribe
rules & orders
as to form and
manner of pro-
ceeding, and
the practice of
the supreme
and circuit
courts.

Proviso.

To be promul-
gated 3 months
before taking
effect;

And to be sub-
ject to royal
allowance.

Appeal to His
Majesty in
council, how
regulated.

time, and under and subject to such rules, regulations and limitations as are hereinafter mentioned; that is to say, in case any such judgment, decree, order, or sentence of the said supreme court shall be given or pronounced for or in respect of any sum or matter at issue above the amount or value of five hundred pounds sterling, or in case such judgment, decree, order, or sentence shall involve directly or indirectly any claim, demand, or question of or respecting property, or any civil right amounting to or of the value of five hundred pounds sterling, the person or persons feeling aggrieved by any such judgment, decree, order, or sentence of the said supreme court, may within fourteen days next after the same shall have been pronounced, made, or given, apply to the said supreme court by petition for leave to appeal therefrom to us, our heirs and successors, in our or their privy council; and in case such leave to appeal shall be prayed by the party or parties, who is or are directed to pay any sum of money or perform any duty, the said supreme court shall and is hereby empowered either to direct that the judgment, decree, order, or sentence appealed from shall be carried into execution, or that the execution thereof shall be suspended, pending the said appeal, as to the said court may appear to be most consistent with real and substantial justice. And in case the said supreme court shall direct such judgment, decree, order, or sentence to be carried into execution, the person or persons in whose favour the same shall be given shall, before the execution thereof, enter into good and sufficient security to be approved by the said supreme court, for the due performance of such judgment or order as we, our heirs or successors, shall think fit to make thereupon; or in case the said supreme court shall direct the execution of any such judgment, decree, order, or sentence to be suspended, pending the appeal, the person or persons against whom the same shall have been given, shall in like manner, and before any order for the suspension of any such execution is made, enter into good and sufficient security to the said supreme court for the due performance of such judgment or order as we, our heirs and successors, shall think fit to make thereupon. And in all cases we will and require that security shall also be given by the party or parties

Sum or matter at issue to be above £500, or involve value to that amount.

To petition 14 days after decree, &c.

Terms of leave to appeal.

Judgment to be stayed on security.

Security to be given to prose-

appellant, to the satisfaction of the said supreme court, for the prosecution of the appeal, and for the payment of all such costs as may be awarded by us, our heirs and successors, to the parties or party respondent; and if such last-mentioned security shall be entered into within three months, from the date of such petition, for leave to appeal, then and not otherwise, the said supreme court shall allow the appeal, and the party or parties appellant shall be at liberty to prefer and prosecute his, her, or their appeal to us, our heirs and successors, in our or their privy council, in such manner and form, and under such rules, as are observed in appeals made to us from our plantations or colonies. And we do hereby reserve to ourself, our heirs and successors, in our or their privy council, (4) full power and authority, upon the humble petition at any time of any person or persons feeling aggrieved by judgment, decree, order, or sentence, of the said supreme court, to refuse or admit his, her, or their appeal therefrom, upon such terms and upon such limitations, restrictions, and regulations as we or they shall think fit, and to reform, correct, or vary such judgment, decree, order, or sentence; as to us or them shall seem meet. And it is our further will and pleasure, that in all cases of appeal allowed by the said supreme court, or by us, our heirs and successors, the said supreme court shall certify and transmit to us, our heirs or successors, in our or their privy council, a true and exact copy of all evidence, proceedings, judgments, decrees, sentences, and orders, had or made in such cases appealed, so far as the same have relation to the matter of appeal, such copies being under the seal of the said court. And we do further direct and ordain, that the said supreme court of Newfoundland shall, in all cases of appeal to us, our heirs and successors, conform to and execute, or cause to be executed, such judgments and orders as we, our heirs and successors, shall think fit to make in the premises, in such manner as any original judgment, sentence, decree, or decretal order, or other order or rule of the said supreme court of Newfoundland, could or might have been executed. And we do hereby strictly charge and command all governors, commanders, magistrates, ministers, civil and military, and all our liege subjects within and belonging to the said colony,

cute appeal, &c. within three months from date of petition.

Reservation in case of refusal of leave by supreme court.

Copies of proceedings to be certified, under seal of court.

Supreme court to execute judgment, &c., of court of appeal.

Governors, &c. to aid in execution of the charter.

ROYAL CHARTER.

that in the execution of the several powers, jurisdictions and authorities hereby granted, made, given, or created they be aiding or assisting, and obedient in all things, as they will answer the contrary at their peril. Provided always, that nothing in these presents contained, or any act which shall be done under the authority hereof, shall extend, or be construed to extend, to prevent us, our heirs and successors, as far as we lawfully may, from repealing these presents, or any part thereof, or from making such further or other provision, by letters patent, for the administration of justice, civil and criminal, within the said colony, and the places now or at any time hereafter to be annexed thereto, as to us, our heirs and successors, shall seem fit, in as full and ample manner as if these presents had not been made, these presents or anything herein contained to the contrary notwithstanding. In witness whereof we have caused these our letters to be made patent. Witness ourself at Westminster, the 9th day of September, in the sixth year of our reign.

Proviso that nothing herein contained shall prevent the making of further provision for the administration of justice.

By writ of privy seal.

BATHURST.

Notes
A. H. St. John

NOTES TO JUDICATURE ACT AND ROYAL CHARTER.

(1) *An Act for the better administration of justice, &c.*—This **SEC. 1.** Act, which was passed but for five years, was (together with the Act to regulate the celebration of marriages, 5 Geo. 4, cap. 68,) continued in force by the 10 Geo. 4, cap. 17, until the 31st December, 1832; and with the same Act, was further continued in force by the 2 & 3 W. 4, cap. 78, which, after reciting that it is expedient that the said Acts be further continued in force until the same should be repealed, altered, or amended by any Act or Acts which might for that purpose be made by His Majesty, with the advice and consent of any House or Houses of General Assembly which His Majesty might at any time see fit to convoke within the said colony of Newfoundland, it is enacted “that it shall be lawful for His Majesty or for any governor, lieutenant-governor, or officer administering the government of Newfoundland, in pursuance of any commission or instructions to him for that purpose addressed by His Majesty, with the advice and consent of any House or Houses of General Assembly which His Majesty may be pleased to convoke from among the inhabitants of the said colony, by any Act or Acts to be from time to time for that purpose passed, to repeal in whole or in part, or to amend, alter, or vary the said recited Acts, or any of them, or any part thereof; and that until so repealed, amended, altered, or varied, the said recited Acts shall be and continue in full force and effect.”

(2) *All civil and criminal jurisdiction, &c.*—By the term *jurisdiction*, in its proper signification, is meant the power or authority to minister and execute the law, without reference, in particular, to

SEC. 1.

what law shall be administered. The previous judicature Acts — 32 Geo. 3, cap. 26, and 49 Geo. 3, cap. 27 — prescribed “the law of England so far as the same can be applied,” as the rule of decision for the supreme and surrogate courts thereby established. Newfoundland, however, being a possession acquired by discovery and settlement of the subjects of the crown of England, according to the rule laid down by Sir *William Blackstone*, all the English laws then in being, so far as the same were applicable to its condition and circumstances, were in force here upon the settlement of the colony. In former times it was difficult to ascertain with precision when this settlement took place, so as to fix the period after which no subsequent statute of the imperial parliament in which Newfoundland was not embraced or referred to, should extend to this island. *Mr. Reeves* appears to be of opinion that the policy of the government having been, all along, to prevent colonization, and to encourage merely an annual resort to the country for the purposes of the fishery, a settlement took place every year, and consequently all the laws of England applicable to the state and condition of the settlers were brought over with them as often as they came hither.* The Judicature Acts, however, of 1792 and 1809 set this question at rest, and must be considered as statutable recognitions of the operation in Newfoundland of the English common and statute law, not only down to the time of the passing of those Acts, but during the whole period of their existence. Although, therefore, the section now under consideration does not contain the positive declaration embraced in the previous Judicature Acts, that the law of England is to be the rule of decision, yet the effect of those Acts having been to settle and establish the law of England (subject to the qualification above mentioned,) as the law of this country down to the time of the passing of the present Judicature Act, by the words of this section, giving to the supreme court all the powers of the courts at Westminster-hall, the law of England, for the time being was, before the existence of the local legislature, considered to be in force here.† It is worthy of remark, that in the 9th and 10th sections of this Act, by which the circuit courts are created, and are invested with all such and the same jurisdiction, power, and authority within the districts in which they may be holden, as are vested in the supreme court throughout the whole colony (save in capital felonies and

* *Reeves' Hist. Newfoundland*, 111.

† *See next page.*

cases of revenue), it is enacted "that all crimes and misdemeanours SEC. 1.
 "cognizable in the said circuit courts, and all issues of fact which
 "may be joined between the parties in any civil action depending
 "in the said circuit courts shall be inquired of, heard, and deter-
 "mined, according to the rules and course of the law of England, as
 "far as the situation and circumstances of the said colony will
 "permit."

It was for a long time matter of doubt with the judges of the supreme court whether any statutes of the imperial parliament passed subsequently to this Act, and not having reference to Newfoundland, were in force here; and in 1831 sentence of death upon a party convicted of a capital crime was respited, until the opinion of the law officers of the crown in England upon the question could be obtained. The offender was indicted for having committed the offence "*against the form of the statute*" — the only statute then in force bearing upon the crime being the 9 Geo. 4, cap. 31, which repealed the 18 Eliz. in reference to the same offence. The Attorney and Solicitor General (the present Lord Denman and Sir W. Horne) were of opinion that the words of this section giving to the supreme court in this island all the power that the Court of King's Bench possessed in England, and constituting it a court of Oyer and Terminer and general gaol delivery, empowered it to try all offences against the then existing law of England, and also against any statute thereafter to be enacted, and consequently that the court had power to try the offender under the 9 Geo. 4, cap. 31.*

* The following is a copy of the opinion above referred to:

"LINCOLN'S INN, OCTOBER 14, 1831.—*My Lord*: We have the honor
 "to acknowledge the receipt of your Lordship's letter of the 8th instant,
 "transmitting to us the copy of a despatch which your Lordship had re-
 "ceived from the Governor of Newfoundland, enclosing a report of the trial
 "of Michael Fogarty in that Island, for a Rape; and also enclosing the
 "copy of an opinion given by the Chief Justice of Newfoundland on the
 "27th December, 1824, bearing upon the question of the lawfulness of
 "the conviction in Fogarty's case; Your Lordship desired that we would
 "report our opinion whether the sentence of death in the case of Fogarty
 "could be lawfully carried into execution.

"In compliance with your Lordship's desire, we have taken the case
 "into consideration, and now have the honor to report that we are clearly
 "of opinion that the Act for the better Administration of Justice in
 "Newfoundland (5 Geo. 4, cap. 67) giving to the Supreme Court there
 "all the power that the Court of King's Bench possesses in this country,
 "and constituting it a Court of Oyer and Terminer, and General Gaol
 "Delivery, empowers it to try all offences committed against the then
 "existing Law of England, and also against any statute to be thereafter
 "enacted.—We therefore think that the supreme court had full power to try

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The supreme court adopted and acted upon this opinion, and the offender was punished accordingly, sentence of death being commuted for transportation for life. The construction of this section having been settled by this decision, the practice of the court continued to be in conformity with it down to the period of the establishment of the local legislature, which barred the operation of an subsequent statute of the imperial parliament not expressed or by necessary inference referring to Newfoundland. †

In order to obtain the benefit of the very great improvements which of late years have been made in the English criminal code the Act of the Local Legislature 1 Vic. cap. 4 (which will be found in the appendix) was passed, whereby it is enacted that all the criminal laws and statutes of the imperial parliament in force in England on the 20th day of June, 1837, and all subsequent statutes of the imperial parliament in amendment or alteration of the criminal law, should, within twelve months after the passing of the same respectively, so far as the same can be applied, extend to and be the law of this island and its dependencies in all cases. This Act, which wisely admits of a sufficient lapse of time for the promulgation here of all statutes passed or to be passed by the imperial parliament in amendment of the criminal law, has hitherto in practice worked beneficially. Doubts may exist as to the applicability of some statutes of mixed criminal and civil jurisprudence, and also of such general statutes the peculiar policy of which may appear to render them exclusively applicable to England. These doubts must be left as they arise to the decision of the tribunal before which they may be discussed, and thus precedents be established which will prevent further uncertainty.‡ But in reference to crimes brought under the

“Fogarty for a rape under the 9th Geo. 4, c. 31, s. 16 & 17 (as the case may have been laid in the indictment) and to order his execution now that he is convicted. — We have, &c.”

“T. DENMAN,
“W. HORNE.”

“The Right Honorable Viscount Goderich, &c. &c. &c.”

* 26th July, 1832.

† *Campbell v. Hall*, Cowper 204. 1 Black. Com. 108. 2 Salk. 411. 1 Chal. Opin. 198.

‡ In *Morris vs. Berrigan* (tried in the spring term of the Central Circuit Court, 1845,) which was an action for services performed as the rider of defendant's horse at a race, the stakes upon which were under £50, the court nonsuited the plaintiff on the ground of the illegality of the contract, under the English statutes 13 G. 2, c. 19, and 18 G. 2, c.

adjudication of the superior courts, scarcely an instance has occurred SEC. 1. since the passing of the colonial act in question, in which any difficulty of this nature in the administration of the law has arisen. It is questionable whether the exercise, in this colony, of the very extensive summary jurisdiction as to crimes and misdemeanours of late years vested in justices of the peace in England, applicable to a crowded population, and to a condition of society very different from that existing here, might not be reduced within narrower limits; and a Bill for this purpose was introduced into the Assembly in 1845, but failed to pass into a law.

Could the exercise of judicial discretion, and all doubt as to the positive rule of law to be administered, be removed by the enactment of a criminal code, at once complete and comprehensive, a great advantage would be gained; but so far as my experience enables me to form an opinion, the evils to be apprehended from the exercise of judicial discretion in the application of the existing English criminal law (unless it may be in the full extent of the summary jurisdiction above referred to), are greatly outweighed by the difficulties, not easily estimated, of attempting the construction of such a code as will be both complete in all its parts, and suitable to the condition and circumstances of the colony. By the adoption of the latter alternative we should also, in a great measure, lose the invaluable advantage of the decisions of the English courts for the guidance of our tribunals in the exposition of the law in force here as in the mother country, and more particularly of such statutes as are, from year to year, passed in amelioration of the criminal code.

The question as to the extent to which the common and statute law of England in reference to civil rights is in force in this island, is one the discussion of which would greatly exceed the limits of a note. The recognition by the various acts of parliament regulating the judicature of the colony, down to and including the existing one, of the law of England as the rule of decision, has removed a difficulty which in the other British colonies has more or less

31; but upon subsequent argument of a rule to set aside the nonsuit before the Supreme Court, into which the cause was removed, the judges were all of opinion that the statutes in question, although for the promotion of morality, yet horse-racing not being *malum in se*, and the statutes being strictly penal and intended to have local application, were not suitable to the circumstances of the colony, and not in force here.

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attended the administration of the law, namely, the fixing of a precise period after which no statute of the imperial parliament referring to such colony should have effect there; for it seems not settled that the law of England, both civil and criminal, was at the time of the establishment of our local legislature the law of the country. By the terms, however, of all our Judicature Acts, the English law was to be administered, not unqualifiedly, but so far as the condition and circumstances of the colony would admit. The policy of the imperial government until within the last thirty or forty years, as displayed in the laws for the regulation of the fisheries of Newfoundland, more especially the statutes 10 & 11 Wm. cap. 25, and 15 Geo. 3, cap. 31, was to discourage colonization and settlement. This, however, it was impossible by any laws altogether to prevent; and while the settlement, in opposition to the policy of the government, gradually extended and increased, the limited circle of those acknowledged rights and privileges which, in the recognized colonies of British subjects, spring from the establishment and encouragement of political and social institutions long unknown here, circumscribed within very narrow bounds the exercise of judicial discretion in the application of the law of England in reference to civil rights. During the existence, however, of the Judicature Act of 1809, and of the present Judicature Act prior to the grant of the legislative charter, the extended growth, increasing population, and diversified trade of the colony, and the numerous and varied exigencies resulting from the possession and transfer of property, both real and personal, demanded and received from the judges who presided in our courts a more liberal and extended application of the English law. These judges, of whom it is impossible to mention the names of Chief Justices *Forbes* and *Tucker* without sentiments of the highest respect, seem to have been acting under the impression that they were, in the exercise of their judicial functions, assuming too much the character of legislators, in applying to a state of society then hardly recognized as a settled colony, those portions of the English law for the redress of civil wrongs which its varying condition and circumstances, and continually increasing wants demanded. In the administration of this branch of the law the judges who succeeded them have had duties of a similar nature to perform, and the additional precedents and decisions of our courts for the last fourteen years, with the greatly

extended and more uniform practice now prevailing in them, have thus far elucidated, and will in time settle, by the legitimate weight of judicial authority and decision, the application to this colony of all such portions of this branch of the English common and statute law as are suitable to our condition and circumstances.

It may not be out of place here to advert briefly to the various descriptions of judicature at different times established with reference to this island, the history of which will be found in the noble work of Mr *Reeves* on the constitution of the government of Newfoundland, &c. in the valuable report of the late Attorney General on the judicature laws of the colony, made in 1831. Not to mention the different charters of Newfoundland, the first of which was that granted to Sir *Humphrey Gilbert* in 1578, but the conditions of none of which were ever fulfilled, it appears that as early as 1615 Captain *Richard Whitburne* was sent out with a commission from the High Court of Admiralty, authorizing him to empanel juries, and to make inquiry upon oath of sundry abuses and disorders committed every year among the fishermen on the coast. In 1633 the Star Chamber* established rules and regulations for the governance of the fisheries of Newfoundland, and assumed the power of legislating with reference to the crimes of murder and theft committed in this island, by directing that the offender should be carried to England, that the matter should be heard before the Earl Marshal, and if the fact were proved by two witnesses, the offender was to suffer death. In 1663 the Act of the 10 & 11 W. 3, c. 25, was passed for the regulation of the trade and fisheries at Newfoundland, by the 13th section of which the courts of oyer and terminer and general gaol delivery in any county of England were invested with jurisdiction in cases of robberies, murders, and felonies, and all other capital crimes whatever done or committed in Newfoundland, or the islands thereto belonging; and offenders were to

* The earlier colonies were for a long period treated by the Kings of England as part of their own demesnes, as their exclusive property, and not as subject to the jurisdiction of the state. When the House of Commons attempted to pass laws for establishing a free right of fishery on the coasts of Virginia, New England, and Newfoundland, they were told in the House by the servants of the crown, "That it was not fit to make laws here for those countries which are not yet annexed to the crown." "That this bill was not proper for this House, as it concerneth America." — *Burge's Com.* 45. *Journal of House of Commons, April 25th & 29th, 1621.*

SEC. 1.

be dealt with and punished in the same manner as parties committing the like offences in England. By this Act also was established the jurisdiction in civil matters of the fishing admirals, a system of judicature perhaps more extraordinary (especially in the mode of selecting the judges) than any in the British dominions. The masters of the three vessels first arriving at any port were respectively styled the admiral, vice-admiral, and rear-admiral; and to these three persons, without regard to any other qualification than the accident of the priority of their arrival, was entrusted, for the season, uncontrolled power of deciding upon all matters relating to the fishery and public rights of a civil nature. Their own interests and those of the merchants whom they served, seem to have been for the most part, as might naturally be expected, their law. In 1728 justices of the peace, with restricted powers, were first appointed, who found it difficult to maintain their ground even in the exercise of their criminal jurisdiction, against the influence of the fishing admirals. It was not until 1750, after more than one fruitless attempt, that a commission for the establishment of a court of oyer and terminer was first issued. In 1765 a court of vice-admiralty was instituted at St. John's. The naval commanders, and subsequently the governors, in person and by their surrogates, had before this period taken a part in the administration of justice, at first in conjunction with the fishing admirals, and afterwards as their successors; and from 1750 to 1791 justice in criminal matters was administered by the courts of oyer and terminer, and in civil matters, concurrently by the governor and his surrogates, the sessions of the peace and the court of vice-admiralty, notwithstanding that the jurisdiction of the vice-admiralty court in cases of seamen's wages, and disputes, &c. in the fishery, had been taken away by the 26 Geo. 3, c. 26. In 1791 the first Judicature Act, 31 Geo. 3, c. 29, was passed for instituting a court of civil jurisdiction, with power to decide summarily in matters of debt, contracts, trespasses, &c., relating to the person and personal property only. In the following year the 32 Geo. 3, c. 46, was passed, establishing a supreme court of both civil and criminal jurisdiction, and also surrogate courts of civil jurisdiction. This Act, which was altered in a few points by the 33 Geo. 3, c. 76, continued in force until 1809, and served as the model for the 49 Geo. 3, c. 27, which was in its provisions, with few exceptions, very similar to the previous act. The supreme court was

held by one judge, with power to grant probates of wills and administration of intestate estates, to declare insolvencies, &c. The proceedings in civil matters were summary, either party, plaintiff or defendant, being entitled to have a jury when the cause of action exceeded £10—the defendant only by the previous law being entitled to that privilege, and in cases where the cause of action exceeded forty shillings. This Act (49 Geo. 3, c. 27,) continued in force until January, 1826, when the present judicature law came into operation.

(3) "*As fully and amply to all intents and purposes as His Majesty's Courts of King's Bench, Common Pleas, &c.*"—There is not, I believe, in Her Majesty's dominions, any single court of judicature invested with such extensive powers as the supreme court of Newfoundland, within the limits of its jurisdiction. It resembles and almost equals the *Aula Regia*, from which all the courts in the text were carved out. Besides the possession of these ample powers, it is the probate court for the whole island; is an insolvency court—and, in proceedings for violation of trade and revenue laws, proceeds according to the rules and practice of the vice-admiralty court. The practice of the court, although at first somewhat mixed and incongruous, has now become settled by rules and orders or, in their absence, by an established course of proceeding, in the different branches of its jurisdiction. There are, consequently, separate and distinct courses of proceeding on the crown side, plea side, equity side, and admiralty side, in the probate court, and in matters of insolvency.

(4) "*Crimes and misdemeanours committed on the Banks of Newfoundland, or any of the seas or islands, &c.*"—To sustain a conviction for larceny, the original taking of the goods must have been such whereof the court can take cognizance, and it is not sufficient that the goods stolen were found in the possession of the prisoner within the jurisdiction. The prisoner, a seaman belonging to a British vessel trading from this island, having stolen a watch from a fellow-seaman at Bilboa in Spain, was found with the stolen article in his possession on his return to this island, where he was indicted and convicted; but the conviction, on argument in arrest of judgment, was holden to be wrong, the original taking not having been within the limits of the jurisdiction of the court. *

* *Reg. vs. Robt. Deans*. C. C. Court, spring term, 1811. See *R. vs. Proves*, Mood. C. C. 349.

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(5) "*The said supreme court shall be holden by a chief judge and two assistant judges, being, &c.*" — These words, and those employed in the Royal Charter issued under this Act, in reference to the composition of the court, were considered by the first judges appointed under the charter to require the presence of the whole of the judges at and during all the proceedings before them sitting in court; and even at a late term of the supreme court the assistant judges, during the absence of the chief justice from illness, refused to transact any business as a court, not considering themselves competent to act without the bench being full. The only case in which the question was formally argued and decided, was in that of *Boulton versus Morris and others* — Supreme court, December, 1837. The point there raised was, whether the two assistant judges, or one of them, could constitute the supreme court for the trial of an issue, and the question was very ably argued by the learned plaintiff in person; but the decision of the assistant judges (DesBarres and Brenton) was, in effect, that they were not competent to form the court for the trial of that or any other action. In coming to this conclusion, the assistant judges do not seem to have taken sufficiently into consideration the words of the previous section, conferring upon the supreme court within this island "all the powers of the different common law courts at Westminster Hall, as fully and amply to all intents and purposes as the last-mentioned courts have, or any of them hath;" and the concluding words of this section, which declare that "the said chief judge and assistant judges shall *respectively* have and exercise such and the like powers and authorities in Newfoundland, and in all places dependant on the government thereof, as any judge of His Majesty's said courts of King's Bench, Common Pleas, and Exchequer, or as the Lord High Chancellor of Great Britain hath or exercises in England." Now, in the common law courts at Westminster Hall it is by no means unusual for two or three of the judges to sit for the despatch of business; and it is only a question of discretion, and not of jurisdiction, what they will hear in the absence of the full court, whether it be the trial of an issue, the hearing of an argument on a demurrer, or any less important business. The same practice obtains in the supreme courts of the other North American colonies, which are modelled on those of the Queen's Bench and Common Pleas. There are a

great many matters heard and determined in term time which can be also heard and determined before a single judge at chambers, and it would be anomalous and absurd that two judges sitting in court could not do that which one could do out of term. Moreover, the words in reference to the persons by whom the court shall be holden are affirmative only, and they cannot, without straining, be construed so as to take away the common law powers of the court, and to render nugatory the clear and precise terms both in this and the preceding section, by which the court, as to jurisdiction, is placed on an equality with the courts of Westminster Hall. In practice, too, it sometimes happens that the court is opened and adjourned, and business transacted, in the presence of two or one only of the judges, and yet no objection to the legality of such proceedings has ever been seriously urged or entertained, except in the case referred to; and it is worthy of remark, that several steps in that cause were taken, and more than one argument heard before two judges only.

(6) "*Or as the Lord High Chancellor of Great Britain hath or exercises in England.*" — By this clause of the section, every one of the judges individually may exercise the authority of the chancellor. It would, perhaps, have been better, had the jurisdiction been vested in the three judges collectively, or rather in the court; for circumstances may arise which would cause a conflict of authority, — all the judges being placed upon an equality in this respect, and there being no appeal from one to the other of them, as in England, from the Vice-chancellor and Master of the Rolls to the Lord Chancellor. Were it not that by the ninth section of the Act the circuit courts are severally invested, within their respective districts, with the equity jurisdiction of the supreme courts, the words of this section might be considered as applying to the judges when presiding in their respective circuit courts. In August, 1839, an application was made to the chief justice in chambers at St. John's, and an injunction granted to the judge of the northern circuit court, to stay proceedings in a cause depending before him.*

(7) "*Hearing and trying all suits, actions, &c.*" These words, *SEC. 3.* *hearing and trying*, must be construed, *reddendo singula singulis*, that is, hearing suits in Equity, and trying actions at Law, Indict-

* *Henderson v. Cawley.*

SEC. 3.

ments, &c. "*And other proceedings of what nature or kind soever which may be brought or commenced.*" This must be construed with reference to the subject matter. By the words "*other proceedings*" here, which should be considered in relation to those put for instances, are meant substantive proceedings for the trial of rights, &c. and not interlocutory proceedings such as are usually had on summonses and orders before judges at chambers, in virtue of the powers vested in them by the two preceding sections. The extent of the jurisdiction of the judges in equity matters in vacation has frequently been the subject of discussion, and is not yet clearly defined. The terms of the court being held only twice a year, and business of all kinds being then crowded into a short period, little opportunity is afforded for despatching those portions of equity business which must be disposed of in term time. This is remedied in some measure by parties mutually consenting to hearings and orders in vacation, before the judges at chambers. The practice, if adopted, of appointing special days in vacation analogous to the seal days appointed by the Lord Chancellor, would remove doubts, and ascertain the extent of the powers of the judges in dealing with matters similar to those which are moved and heard on seal days in vacation before the Lord Chancellor: but this still leaves the court powerless for other necessary purposes during the long period that intervenes between the terms or sessions. The evil would be remedied by granting the court power to sit from month to month, or other shorter period, as a court for the hearing of equity matters and other proceedings not requiring the intervention of a jury. It would also afford great facility in the despatch of the business of the terms, both in the supreme and central circuit courts, if the court or a single judge were empowered to try, in a summary way, all actions for the recovery of debts or balances of account, not exceeding £20, subject to the right of either party to have a jury on payment of the expense unless otherwise ordered. By making the writs in these cases returnable at the monthly terms above suggested, the courts would be relieved from the very great burthen now thrown upon them during term time, by the complication and pressure into so limited a period of the multitude of business in every depart-

ment of their jurisdiction, then hurried before them for hasty adjudication; and the public would at the same time, as to the recovery of small debts, be relieved from a most inconvenient and expensive mode of litigation, to which, so far as my experience goes, summary jurisdiction (subject to the resort to a jury at the option of parties) would be greatly preferred. This would, indeed, be only a partial return to a mode of trying issues of fact which formerly and for a long period prevailed in this Island, in all cases, and, I believe, to the satisfaction of the public. In making this suggestion, I would take the opportunity of saying that it is not founded on any incompetency in the juries, nor any dissatisfaction with the manner in which their functions are performed; and to the general probity and impartiality with which their part in the administration of justice has been discharged I gladly bear testimony. But the very great injury and loss to the private business of jurors, especially at the seasons of the year when the terms of the courts are held, by the length of time which they are required to devote to attendance in the courts, and on trials of cases, a large proportion of which are for the recovery of very small sums, is not the least among the inconveniences to the public which are caused by the existing arrangements. The saving of time by the curtailment of the lengthy speeches of counsel to juries in petty cases, would be no little gain. Neither is it to be overlooked that some consideration is due to the judges, whose labours during term time are particularly onerous and fatiguing, and who have not, consequently, the opportunity of deliberating so fully as they could desire upon the many important questions raised before them, and on which their judgment cannot, without great practical inconvenience to suitors, be delayed beyond the close of the term.

Unless some such alterations as those above suggested be adopted, it will be necessary, at no distant period, to divest the supreme and circuit courts of a portion of their present multifarious jurisdiction, and by the establishment of a separate tribunal, to be presided over by one judge, who might be also the judge of the vice-admiralty court, provide for the hearing and determining of all matters in equity, which now form a large and very important portion of the business of the supreme and central

SEC. 3.

circuit courts; as also of all matters in the probate court, and in reference to the persons and property of infants and lunatics. Independent of the great pressure of business in divers branches of jurisdiction, now thrown upon the supreme court, cases have arisen, and, with the increase of business from our growing trade and population, will arise, in which it is inconvenient, and must be unsatisfactory, that in a conflict of jurisdictions, and in the handling of a matter on both sides of the court, viz., common law and equity, the entire adjudication should on all sides be vested in the same persons. The equity court above suggested should also have jurisdiction throughout the whole island, which would insure an uniformity of practice and decision; and as witnesses are not required to attend in person, as in the common law courts, and the suitors themselves need not do so, the benefit to the general administration of justice would greatly overbalance any trifling inconvenience that might be supposed to arise to suitors at distance from the capital.

(8) "*At such times as the governor, &c., by any proclamation &c.*" — The times when, and the period during which, our terms both in the supreme and circuit courts, are now held, are so nearly the same every year, and are consequently so well known, that the fixing of them by law is desirable; but without some further modification of the judicature, would confer very little benefit.

SEC. 4.

(9) "*As often as any information, action, or suit shall be brought or prosecuted before the said supreme court, &c.*" — Until lately all prosecutions in the supreme court for breach or violation of the law relating to the trade or revenue of the British colonies or plantations, in pursuance of the jurisdiction given by this section, have been commenced, as well as heard and determined, according to the course of proceeding in similar cases in the courts of vice-admiralty, that is to say, — by monition and libel in the first instance; and during the period that the court of vice-admiralty was inoperative from the vacancy in the office of judge of that court remaining unfilled, the prosecutions which were necessarily brought in the supreme court, and latterly, from the advantage of obtaining security, are generally instituted therein, were and are very tardy in their progress, owing to the terms of the court being so seldom held during the year. The question as to the power of the court to sit in vacation, for the hearing of matters on the

admiralty side, by adjournment from week to week or other convenient period, has been several times agitated, and after lengthy argument in the case of the *Queen vs. Molloy*, January 12, 1841, it was by the judges unanimously decided that under the positive terms of the preceding section, they were not competent, as a court, to entertain the consideration of any proceeding in the course of the prosecution, unless during the terms appointed by the governor's proclamation. Under this decision, it requires the very lengthy period of at least two years to complete a prosecution of this description, when defended. Such an alteration of the law as above suggested, for monthly sittings of the court, would remedy this defect, by which the prospect of a heavy, perhaps ruinous penalty, has been in some cases suspended over the head of the accused for years; and, in others, the crown has ultimately been left to defray the costs of a fruitless proceeding, the length of which has enabled the defendant to withdraw his person and property from the jurisdiction of the court.*

In the recent case of the *Queen vs. McGrath*, the question was for the first time raised as to the proper construction of the words at the head of this note, and by this decision of the court the crown will, in future, be enabled to obtain security for the amount of the penalty, in case it shall be ultimately decreed. The high court of admiralty in England has no jurisdiction in prosecutions for breaches of the revenue laws, which are there instituted in the court of exchequer, and to which court power is given by the statute 6 Geo. 4, c. 84, to proceed in the first instance by *capias*—a process which in the case of the *Queen vs. Antonio Ramirez*, in the Instance Court of vice-admiralty in this colony, it was held by the present learned chief justice, could not in the first instance be sued out of the latter court in such a prosecution. But the supreme court being invested, in this island, with all the powers of the courts of Queen's Bench and Exchequer in England, it was in the

* Since the above was sent to the press, the judges have in the case of the *Queen vs. Tenny* on the admiralty side of the supreme court, on a motion for the publication of evidence, ruled that it was competent for them in vacation to entertain any proceeding for the advancement of the prosecution, except the final hearing and decree, or definitive sentence which must by the restrictive terms of the third section, be had in term time. This decision overrules in a great measure that of *Reg. v. Molloy*, above-mentioned, and will prevent, in a great degree, the delays in similar prosecutions above referred to.

SEC. 4.

case of the *Queen vs. McGrath* above referred to, ruled, that in the comprehensive course of proceeding by "information, act or suit," it is competent for the crown to adopt the practice of the exchequer by the issue of *apias*, in the first instance, on the filing of an information, and that by virtue of the authority given by the latter part of this section, the further hearing and determination of the information shall be according to the usual course of proceeding, which dispenses with the trial by jury practised in the court of exchequer.

SEC. 5.

(10) "*The said supreme court shall have power to grant administration of the effects of intestates and probates of wills.*" The question has never so far as I know been raised whether or not it is competent for the judges in vacation to grant letters of administration and probate of wills, although a doubt of their authority out of term, with a suggestion that a remedy the defect is intimated in the report of the judges on the judicature act in 1831. The practice, however, in the last fourteen years has been to sue out probate and letters of administration on petition to the judges in chambers at all times when the court is not sitting; and this application is frequently heard and disposed of by one judge only. The court in exercising this branch of its jurisdiction acts by analogy to the ecclesiastical court, and (in compliance with the words of the charter) according to the usage in the diocese of London. The practice has been so long established in the manner described, that it may now be considered as legally settled. No rules to govern it have been made by the court in pursuance of the power given by the 17th section, except in reference to the filing of inventories, which is far from being complied with in the manner it deserves. The usual course of proceeding is by petition and affidavit to the court in term time, or the judges in vacation, when (if necessary) a citation to all parties interested is issued, and other proceedings had analogous to the practice of the English ecclesiastical courts. Original wills, when proved, are deposited in the registrar's office, and a copy delivered out.

This branch of the jurisdiction of the supreme court is of great and increasing importance; and whenever it may be deemed expedient to separate its common law and equity

functions, it would be advantageous to invest the equity judge with the ecclesiastical jurisdiction (if I may so call it) now exercised by the supreme court. Such an arrangement would provide a remedy for the conflict, or rather confusion, of jurisdictions which must arise from these jurisdictions being, as at present, vested in the same persons. The supreme court on its common law side exercises a controlling and superintending power over itself in its ecclesiastical jurisdiction, and may issue mandamus or prohibition, according to the nature of the case may be obtained from the court in its Queen's Bench character, to compel or prohibit the performance of its functions as a probate court. Again, an injunction may be sued out of the court on the equity side to restrain its own proceedings on the ecclesiastical side. Although no serious practical injury has hitherto resulted from this anomalous combination of jurisdictions, yet cases have occurred in which parties have desired to obtain the benefit of the intervention of the common law court, but have been restrained by the consideration of the same judges presiding in both.

(11) "*And in all cases where the executor, &c. shall refuse or neglect; or where the next of kin shall be absent from Newfoundland, &c.*"—An argument has been frequently raised upon the words in this section having reference to the next of kin, and also on the words in the royal charter directing the mode of granting administration, that the widow is excluded from the right to administration. The words of this section, however, and the terms of the charter, which of course is subordinate to and governed by the act, are not susceptible of such a construction. By the charter the court is to grant probate and commit letters of administration, and perform all other necessary acts "in cases allowed by law, as the same is and may be now used in the diocese of London." The court is further authorised and required to grant letters of administration "to any one or more of the lawful next of kin" of the deceased, no mention being made of the widow. But the statutes of the 31 Edw. 3. st. 1, c. 11, and of the 1 Hen. 8, c. 5, as well as the statute of distributions 22 and 23, Car. 2, cap. 10, are in force in this colony. By the former the ordinary "shall depute the next and most lawful

SEC. 5.

"friends of the dead person intestate to administer his goods and by the 21 H. 8, c. 5, s. 3. he shall grant administration "to the widow of the deceased, or to the next of kin "or to both," at his discretion. By this statute also he is at liberty to commit the administration to one or more of diverse persons claiming it, who shall be equal in degree of kinship to the testator or person deceased.

The right of the husband to administration of his wife's goods is now unquestionably established, as well on the ground of his being her "next and most lawful friend," as *jure maritimo*. It was formerly supposed he was entitled as next of kin to his wife, but in *Watt v. Watt*, 3 Ves. 244, it is settled that the husband is not of kin to his wife at all.*

Probates of wills and letters of administration granted in England do not extend to this colony; though if the testator or intestate were domiciled in England, it is said the judge of probate in the plantations is bound by the probate or administration, and ought to grant it to the same person.† The practice here has been to grant administration or administration with the will annexed, to the attorney of the English executor or administrator. It is now a clearly established rule that the law of the country in which the deceased was domiciled at the time of the death not only decides the course of distribution of succession as to personalty, but regulates the decision as to what constitutes the last will; therefore in deciding what is or is not a valid will, the court will be guided not by our own law, but by the law of the country where the deceased was domiciled.‡

SEC. 6.

(12) "*Guardians and keepers for infants and their estates.*"
—The practice is to proceed on the equity side by petition and affidavit of facts to the court in term time, or to the judges at chambers in vacation. If necessary there is a reference to a master; and upon the court or the judges being satisfied that the application should be complied with, letters of guardianship are issued upon the filing of sufficient security by the guardian in the office of the registrar.

* Williams on Executors, 316.

† Burn v. Cole, Ambl. 416. Atkins v. Smith, 2 Atk. 63.

‡ Wms. Executors, 272.

(13) "*Guardians and keepers of the persons and estates of* SEC. 6. *natural fools, &c., which the said supreme court shall have power and authority to inquire of and determine, by inspection of the person, and by such other ways and means as to such supreme court shall seem best for ascertaining the truth.*" — Under this clause of the section there have been during my connection with the court but three proceedings in the nature of commissions of lunacy. In the first case the court proceeded summarily upon petition, and circumstantial affidavits, the lunatic residing in the southern district, and it being very inconvenient for the court to have personal inspection of him. The facts, however, being sufficiently established to the satisfaction of the court, a committee of his person and estate was appointed upon giving the necessary security.* In the two other cases, in both of which the property involved was of large amount, the proceedings were on the equity side of the court by a commission in the nature of a writ *de lunatico inquirendo*, and inquisition by a jury, according to the forms and course of proceeding used in the high court of chancery. † The applications have been entertained and proceeded with by the judges at chambers in vacation, as well as by the court in term time,

(14) "*To apportion and divide the said colony into three* SEC. 7. *several districts, and to fix and ascertain the boundaries and limits of every such district.*" — In pursuance of the power given by this section, a proclamation was issued by Governor Sir *Thomas Cochrane*, under the great seal of the island, dated the tenth day of December, 1825, apportioning and dividing the island into three districts, respectively called the central, northern and southern districts, and directing that the central district should comprise and include all that part of the island extending from Cape St. Francis to Harbour Main inclusive on the one hand, and to Bay Bulls inclusive on the other, and bounded by a line drawn from Bay Bulls to Harbour Main, and including also Belle Isle and the adjacent islands in Conception Bay. That the northern district should comprise and include all that portion of the island and the bays and rivers of the same, and the islands in or adjacent thereto, and dependent on the government thereof, situate and lying between

* *Re* lunacy of John Brown, 1835.

† *Re* Foran, 1838. *Re* McKie, 1840.

SEC. 7.

the northern and western limits of the central district, and Cape Norman in the Straits of Belle Isle, inclusive of the settlements contiguous to the said Cape; and that the southern district should comprise and include all that portion of the island, and the bays and rivers of the same, and the islands in or adjacent thereunto, and dependent on the government thereof, lying and situated between Cape Norman aforesaid, and proceeding by the western, southern, and eastern shores, to the Bay of Bulls aforesaid. By a second proclamation, dated the 21st day of August, 1826, the central district was extended from Bay Bulls to the river La Manche inclusive, and the settlement of Harbour Main (previously within the central district) was annexed to and made part of the northern district, the southern boundary of the central district being a line drawn from the river La Manche inclusive, to Harbour Main exclusive;—and, by a third proclamation, dated the 10th August, 1829, the southern boundary of the northern district was further extended so as to embrace within the said district the settlements of Holyrood and Chapel's Cove in Conception Bay, before then forming part of and lying within the central district. By the two latter proclamations the southern boundary of the central district is now ascertained by a line drawn from the La Manche river, inclusive, to Holyrood in Conception Bay, exclusive.

The first proclamation further declares, that “in order to prevent all doubt with regard to the extent of the interior jurisdiction of the said circuit courts in the said districts, the said jurisdiction shall extend from the sea-coast of the one district unto an equal distance from the sea-coast of the district immediately opposite.” Had the settlements of the inhabitants being almost entirely on the sea coast, no necessity has arisen for ascertaining with greater precision the limits of the interior jurisdiction of the circuit courts, but as the opening of roads between the bays of Conception and of St. Mary's and Placentia will, in time, lead to the settlement of the country lying between them, in the event of a question arising, the imaginary line intended to be defined by the proclamation, as the common boundary of the two jurisdictions, looking at the indentations of the opposite coasts, will not, perhaps, be found the best calculated to “prevent all doubt” upon the subject. The rapidly growing improvement in the internal communications of the colony will soon, it is to be hoped, enable the circuit courts to be holden more

frequently, and with greater certainty, at the less distant SEC. 7. outports.

(15) "*Within the district in which it may be holden have and SEC. 9. exercise all such and the same jurisdiction, powers, &c.*" — Although by these words and the terms of the seventh section, directing the division of the island into districts, the jurisdiction of the circuit courts is restricted within the limits of their respective districts, yet such has not been the uniform construction of these sections, — the chief justice being of opinion that the process of the circuit courts of one district would run into any other district. With this exception, however, the opinion of the judges has been otherwise, and in conformity with what seems to be clearly expressed in the terms of this section; and it has formed a ground of application to remove causes from the circuit to the supreme court, that a subpoena might be issued to enforce the attendance in the latter court of witnesses residing in a different district from that in which the actions were brought. That the local legislature were also of this opinion, is evidenced by the passing of the Act 4 Victoria, cap. 3, by which it is enacted, that whenever any suitor shall have obtained final judgment in any of the circuit courts of this colony, the writ of execution issued by authority of the said court or courts, shall have validity in each and every district of the colony, and the sheriff shall levy under and by authority of the said writ in any district of the colony, as if the same had issued from the supreme court.*

(16) "*Rules and course of the law of England as far as the SEC. 10. situation and circumstances of the colony will permit.*" — In all the previous Judicature Acts the law of England was prescribed as the rule of decision, which may be considered as so many statutable recognitions of it as the law of this island; and the words of this section may be considered in the light of a confirmation of it. It is somewhat remarkable that the law here expressly prescribed to be administered in the circuit courts which (save in capital felonies and in cases for breach of the revenue laws) have, within their districts, equal jurisdiction with the supreme court,

* The criminal jurisdiction of the supreme court is more extensive than its civil jurisdiction, extending, as will be seen on reference to the first section, to crimes and misdemeanours committed on the Banks of Newfoundland, or any of the seas or islands to which vessels repair from Newfoundland for carrying on the fishery.

SEC. 10. should not have been also in the first section prescribed for the supreme court. The opinion of the law officers of the crown referred to in my second note, acquiesced in by the supreme court, of course governed the construction of the section, and the subsequent practice of the court; but with the utmost respect for an opinion emanating from so high an authority, it may admit of a question whether the distinction was sufficiently kept in view between the *jurisdiction* of the court, and the *law* to be administered by it, especially in the consideration of penal statutes passed subsequently to this Act.

SEC. 11. (17) "*That if upon the trial of any crimes, &c.*" — By this section, where a jury cannot be assembled, trials for crimes are to be had before the circuit judge and three assessors. It is worthy of remark, that since the first institution of the circuit courts, it has never been necessary to resort to this provision, and with the increasing population of the island it has become, and is likely to continue, a dead letter. This observation will apply equally to the provision in the twelfth section for the recording of the evidence where the trial of any civil action is not had before a jury.

SEC. 14. (18) "*It shall be lawful for the plaintiff or plaintiffs, defendant or defendants, to appeal, &c.*" — The fourteen days within which the appellant is to give notice and perfect his security have, in practice, commenced to run from the day of actually signing judgment, although out of term, in an action at law, and from the day of signing and passing a decree on the equity side of the court. By a subsequent part of the section, the supreme court is not to admit or receive any evidence which was not tendered to the circuit court, from which the appeal may have been brought; and, as by the concluding proviso the court of appeal is prohibited from altering, reversing or inquiring into any judgment of the circuit courts founded on the verdict of a jury, except only for error of law apparent upon the record, and all issues of fact on the common law side of the circuit courts being now tried by jury, it follows that appeals where the evidence is again inquired into, can only be in cases on the equity side of the circuit courts, and which, in effect, amount to a rehearing before all the judges. The case of *Warren v. Richards*, in 1840, was an instance of an appeal of this nature.

The proper course of procedure in appeals under the terms

of the proviso above mentioned, would be by writ of error. Appeals, SEC. 14. however, from the plea side of the circuit courts have been of such rare occurrence, that there has been no settled course of practice in reference to them.

(19) "*To permit and allow such action or suit to be removed to such other court, &c.*"—A diversity of construction and practice has existed in reference to the terms of this section. Mr. Tucker permitted causes to be removed freely at the instance of either party without special cause shewn. Mr. Boulton held that the court had no power to permit the removal of a cause, without the consent of both parties. His successor, Mr. Bourne, however, sanctioned the former practice but only upon satisfactory cause shewn, and the practice is now rightly settled, upon this construction. The power of removal given to the courts is similar to that exercised in changing the venue; and they are to decide on hearing both parties, (if the application be opposed) as to the balance of convenience. There are no negative terms which make the allowance by the court dependent upon the consent of both parties. The necessity for removing causes from the circuit to the supreme court, for the purpose of enforcing the attendance of witnesses resident in other districts is now obviated by the practice, of late years adopted, of issuing commissions from the circuit courts, to take the examinations of such witnesses.

(20) "*All actions at law or suits in equity, &c.*"—This section SEC. 16. comprises many important subjects connected with the practice of the courts, which are treated of in a summary and confused manner, and it has given rise to more doubts and arguments than all the other sections of the act together. The different subject-matters of process, bail, trial, judgment and execution, should have been treated of in separate sections, to avoid the obscurity and the difficulty of construction which have necessarily arisen from their being all blended together, in this one section. That portion of the section which relates to the process of attachment has been amended by two acts of the local legislature, first by the 5, W. 4, c. 2, which was repealed by the 6 Victoria, c. 10, which will be found in the appendix, and by which amended and more enlarged provisions were substituted for those contained in the repealed act. There are other portions of the section still subject to a doubtful and at best inconvenient construction, more particularly the part relating to

Sec. 16.

bail, which require legislative explanation and amendment. Throughout the act, and especially in this section, the distinction between actions at law and suits in equity, has been overlooked—a similarity of process and proceeding being established for both. Proceedings in courts of equity are, however, very different in their nature from those instituted in the courts of common law, for the recovery of debts, &c. The question as to whether a writ of attachment, as the first process in equity, might not issue, in like manner as in actions at law, where the complainant swore that the defendant was indebted to him in a sum exceeding ten pounds, was raised in the case of *Bennett vs. Morgan* on the equity side of the central circuit court, spring term 1838, in which, after lengthy argument, the court decided that, notwithstanding the positive words of the section, the proceeding in the first instance by attachment must be restricted to actions at law; and that the process to enforce the appearance of a defendant in equity must be according to the course prescribed in the second general rule on the equity side of the court.

(21) "*Goods, debts, or effects, &c.*"—Under these words, even before the passing of the Act declaring all landed property real chattels, it was the practice to attach and sell the interest of parties in real estate. In the late Act amending the law of attachment, the words used are lands, goods, debts, or effects.

(22) "*Good and sufficient bail to be approved by such court to satisfy such judgment, decree, or order, &c.*"—The mode in which bail is to be taken is here made the same, both on writs of attachment and capias. The practice as to taking bail under the terms of this section has varied at different times, and is as yet hardly settled. Formerly it was usual for the sheriff to take a bond in the nature of a bail bond from the defendant and sureties, which was the only security given in cases as well of attachment as of arrest, without the putting in and perfecting bail above. Arrests, however, were of very rare occurrence, and I am not aware of any case having occurred in which the decision of the court was had, as to the proper course of proceeding, until that of *Shanks vs. Traverse* in 1834, in which the defendant was arrested upon mesne process. In that case Chief Justice *Boulton*, upon application to him, ruled that the same course should be pursued by the sheriff in taking bond, and by the defendant in putting in and perfecting

bail above, as in similar cases in the court of Queen's Bench. This SEC. 16. practice, which prevailed for many years, and which was also in conformity with the fifth and twelfth general rules on the plea side of the supreme court, was a most convenient one for all parties, and was further advantageous in this respect, that the decisions upon the practice in like cases in the court of Queen's Bench could be made applicable to it. But it has latterly been held by the present learned and talented Chief Justice,* that a compliance with the words of this section, requires that the security to be given should be approved of by the court in the first instance, as well in cases of arrest as of attachment, and before the defendant or his goods can be discharged from custody; and the present practice in such cases is for the defendant to give security in the first instance by recognizance in the form of a special bail piece before the court, or a judge at chambers — the bail satisfying the court or judge of their sufficiency on examination under oath before them. As to attachments, however, it is still usual for the sheriff, except in important cases, or where the amount in question is large, to take security to himself, making himself responsible for the value of the property attached. The 36th rule † provided for his relieving himself from responsibility by taking security that the property attached should be forthcoming at the return of the writ, or when demanded by him. ‡

* *Tobin vs. Murphy*, central circuit court, October term, 1845. *Marshall vs. Power*, before the chief justice at chambers, May 3, 1845. In this case a certiorari was granted to remove the cause from the southern circuit court into the supreme court, to enable the defendant to give bail on an attachment.

† Page 150, *post*.

‡ The structure and wording of the whole of the 16th section are such as may well have caused the doubts and differences of opinion which have at various times been entertained upon the construction of its different provisions; and no part of it has presented greater difficulty to the judges who have had to deal with it, than that relating to bail. For some years past the practice followed has been analogous to that of the English common law courts upon which ours are modelled; but the late decisions, above referred to, and which were made after much consideration, have now settled the practice otherwise. Considering, however, the different views which have been entertained of this branch of our jurisprudence, I trust I shall not be thought wanting in deference in offering a few observations upon it; and it is, therefore, with great diffidence in my own judgment that, in reference to the words of this section which regulate the mode of taking bail, I venture to express, in conformity with the late practice, a different opinion from that upon which the existing practice is founded.

It is an established rule of law that all acts *in pari materia* are to be taken

S EC. 16.

(23.) "And to cause to appear from day to day all parties interested therein, and to examine upon oath any of such parties &c." — I am not aware that in any contested action at law, the courts have at any time acted upon this portion of the section in admitting the parties, plaintiff or defendant, to be witnesses, although I have known the application to be made more than once. The power here given is at variance with the rule that in actions at law no man shall be witness in his own cause. Formerly, in the assessment of damages upon defaults, which assessments were had in a summary way before the judges, it was the

practice to call together as if they were one law; as also that one part of a statute should be called in to help the construction of another part, so as, if possible, to give effect to the whole. The act of the 23 Hen. 6, c. 9, a statute highly favourable to the liberty of the subject, and which should be construed liberally, has always been considered in force here, as a part of the English statute law equally applicable to our condition and circumstances as to those of our fellow-subjects in England. Now, although the words of the section under consideration declare that the defendant shall not be discharged out of custody until he shall have given good and sufficient bail to be approved by the court, still the two acts being construed together, the words of the latter act do not repeal the 23 Hen. 6, c. 9, by which the sheriff is obliged to take bail, otherwise an action on the case lies against him, and for these reasons:—First, because the words of the section under consideration, so far as concerns the approval of the court, have relation to bail above, or special bail. The return of the sheriff to a writ of *capias* is *cepi corpus et paratum habeo*, and by the exigency of the writ he is required to have the defendant forthcoming only at the return of the writ. It is, then, I conceive, that the court is to signify its approval of the bail to be given, by their justification, addition, &c. after due notice to the plaintiff and time given to him to except. Secondly, because by the first section of the Judicature Act, our courts are invested with all the powers and authority of the common law courts at Westminster Hall, whose practice, or rather that of the court of Queen's Bench, we have until lately followed, particularly in reference to bail, as well by virtue of the 5th and 12th general Acts on the one side of the supreme court, as in pursuance of the terms of the 11th and 12th section. The mode of approving of bail is part of the practice of the court; and the practice in this respect observed by the court of Queen's Bench, is that by which, or by analogy to which, our courts are to be governed. Thirdly, by the words of the following section, "The court may empower any judge or judges to take bail, by which can be only meant special bail, and not the bail to be taken by the sheriff, or bail below. These commissioners are not to be taken from the complete analogy established between our courts and the English common law courts, persons possessing the like powers with commissioners to take bail in England. Now all parts of a statute should be construed so as to give effect to the whole, but if bail is to be put in, in the first instance, and only before the court or a judge, this part of the act would be useless, and the powers of the court to appoint such commissioners nugatory. But the supreme and central circuit courts have for a period of years recognised the practice of

practice to admit the plaintiff to prove his demand upon oath; but SEC. 16. this practice has been discontinued in the supreme and central circuit courts for more than twelve years; and by the 4th new rule on the plea side of the northern and southern circuit courts (December, 1836,) it has been there also abolished.

(24) "*And such order, judgment or decree shall be enforced, &c.*" —To quiet doubts and to legalize the practice of levying on money under writs of execution, the late attachment act, 6 Victoria, c. 10, s. 11, contains provisions inserted for this purpose.

In the case of *Carter and others vs. Garrett*, argued before Chief

bail to the sheriff, and the putting in and perfecting of special bail, and, for the convenience of parties resident in distant parts of the island, commissioners to take recognizances of bail have been appointed in such places.

If, however, the words of the section be construed literally and strictly, the bail to be given in the first instance, and before a defendant be discharged from custody, when arrested, should be approved by the court, and not by a judge, which in most cases of arrest would be impossible. But it is quite competent for the court by its practice, or by rules and orders for that purpose, to signify its approval of the bail as *good and sufficient*, which are taken by the sheriff and perfected in the usual manner, and which under the sheriff's responsibility, as well as that of the bail below, afford the plaintiff all the security he can desire. Again, by a literal construction of the words of the section, a defendant would be debarred from the benefit of the act 43 Geo. 3, c. 46, and thus a stranger who could not find persons to become his sureties, would not be able to make the deposit, in lieu of bail, allowed by this act, inasmuch as only on giving good and sufficient bail, to be approved by the court, he could be discharged from custody. But the latter act, as also the 4 Ann, c. 16, s. 20, for the assignment of bail bonds, have been hitherto considered to be in force here.

The inconveniences growing out of the present practice are great and numerous, and afford a further argument against the construction lately put upon the words of this section. A defendant arrested in a distant part of the island cannot be brought before the court or a judge without great risk, delay, and expense; and in some parts of the island, as well as at certain seasons of the year, such a course would be impossible. Again, notice of the proposed bail, to be approved by the court, should in justice be given to the plaintiff; and as he may reside at a distance, the defendant must be retained in custody in the meantime; for, if he be discharged, leaving the plaintiff to his exception, the bail may or may not justify at their option, their previous justification or swearing before the judge, without notice and opportunity of inquiry and opposition afforded to the plaintiff, not being perfect; and there being no bail below to fall back upon, and the sheriff being discharged from all responsibility, the plaintiff would be without the security to which by law he is entitled. On the other hand, the protection of the plaintiff, and the reasonable liberty of the defendant, are equally secured by entrusting to the sheriff, who is responsible, and who knows best the ability of parties in his bailiwick, the taking bail by bond to himself in the manner formerly practised.

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Justice Bourne and Judge Lilly at Chambers in February, 1841, the question was raised whether or not the sheriff is bound to pay a landlord a year's rent on levies under attachment, in like manner as in cases of levies under execution, pursuant to the statute Anne, c. 14. In that case the judges decided that the sheriff was not justified in paying over to the landlord, but intimated a doubt as to whether he was not bound to retain and not pay over to the plaintiff in the original action, in case he went on to execution. In the case, however, of *Newman vs. Garrett*, tried in the central circuit court, October term, 1845, the same question was again raised. A verdict for the plaintiff was taken, subject to the opinion of the court, and upon subsequent argument the verdict was set aside and a non-suit entered, the judges being of opinion that the writ of attachment in use here, being a process not known to the English courts, was not within the statute of Anne, which applies only to writs of execution.

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(25) "To make and prescribe such rules and orders, &c."—The royal charter issued in pursuance of this act, prescribes the rules and course of proceeding under many of the heads contained in this section; and by the first judges of the supreme court, numerous rules and orders were from time to time framed and altered, and again repealed and altered by subsequent rules. As these rules were promulgated at different times, and owing to destruction by fire and other causes, copies of them have become very rare, I have thought it useful to form a compilation of all the rules and orders of the supreme and central circuit courts now in force, a copy of which, with marginal notes, will be found in the appendix. The rules originally framed under this act and the charter, for the circuit courts, and which now apply only to the northern and southern circuit courts, remain unaltered except in a few particulars. I may observe that by the latter rules the mode of empannelling and summoning juries in the central circuit court was the same as in the supreme court, and by the new rules on the plea side of the supreme court, the practice in both courts is assimilated. By the new rules of the Court of Queen's Bench, adopted since 1833, very many improvements have been made, introducing greater simplicity into practice and pleading, which render the decisions in reference to them in a great measure useless to us; and it would be well to revise and modify our rules so as to adopt the improvements above-mentioned.

February, 1844, bound to pay in like manner the statute 8 sheriff was not a doubt as to the plain- tion. In the central circuit in raised. A of the courts; and a non-suit chment in use was not within cution.

(26) "*The admission of barristers, attornies, &c.*"—The charter SEC. 17. contains several provisions regulating the admission of barristers and attornies, and of persons to act in those capacities; and various rules were, in pursuance of it, made by the first judges of the supreme court, which rules having fulfilled the purposes for which they were framed, were repealed in 1834 by the new general rules on the plea side of the court then promulgated; and the whole law as to the admission of barristers and attornies was, about the same time, altered and remodelled by the act of the 4 W. 4, c. 23, entitled "An act to incorporate a law society in Newfoundland, and to regulate the admission of barristers and attornies to practise in the law in the several courts of this island." Prior to this act, in the year 1833, the act 3 W. 4, c. 6, had been passed by the local legislature, for the purpose of removing doubts, and of declaring that the persons admitted to practise by the supreme court on its first institution, and subsequently, should be deemed and taken, and are hereby declared to be to all intents and purposes, barristers, advocates, proctors, attornies and solieitors of the supreme court, duly admitted and enrolled. By this Act, all doubts were very justly removed as to the qualification of most of the practitioners for advancement to the bench, as prescribed by the second section of the Judicature Act. The law as to the admission of attornies has been further altered by the Act of 9 Vic., c. 5., enabling barristers to practise as attornies, upon compliance with certain rules of the Law Society. The three acts above mentioned will be found in the appendix.

(27) "*The administration of justice on the coast of Labrador.*" SEC. 18. This and the following section were repealed by the 4 W 4, c. 20, upon the ground that the court thereby instituted had, by experience, not been found to answer the purpose for which it was instituted. Since then the Labrador coast has not been provided for in the administration of justice. During a late session of the legislature a petition, numerously and most respectably signed, was presented from the planters and traders of Conception Bay requesting the Labrador, loudly complaining of the want of some means of administering justice there. The settlers on the coast, too, are equally unprotected, and there seems to be a growing necessity, as well as an increasing demand, for the substitution of some new scheme of judicature for that which was abrogated in 1834. It has been suggested, that if a competent person were

SEC. 18. appointed to adjudicate summarily, and to act in the capacity as well of a revenue officer as of a judge, the end desired would be obtained, while the expense of the establishment would be in a great measure defrayed by the amount of customs' duties collected there and which now are lost to the revenue. One of the greatest, indeed the chief objection, to the former system, was the excessive disproportion of the expense to the advantage derived from it.

SEC. 22. (28) "*Courts of general and quarter sessions.*"—The courts of general and quarter sessions are still held by proclamation of the governor, as directed by this section, and at the following places, viz St. John's, Harbor Grace, Carbonear, Brigus, Trinity, Bonavista Greenspond, Twillingate, Ferryland, Trepassey, St. Mary's, Placentia, Burin, Grand Bank, and Harbour Britain.

Until the passing of the colonial act 1 Victoria c. 4, the courts of quarter sessions exercised but a limited jurisdiction in criminal cases. The expediency of their exercising in all cases the extensive summary jurisdiction in criminal matters, by the more recent acts of parliament vested in justices of the peace in England, is very questionable; and in the session of 1845, a bill was introduced into the local legislature for the purpose of divesting them of the powers exercised by justices of the peace in England, in the summary adjudication of crimes and misdemeanours. The bill did not pass into law and was, perhaps, too sweeping in its provisions; but some curtailment and modification of their powers seem desirable, in a colony where the condition of society is variant from that out of which has grown the necessity for the exercise of these extensive summary powers in England; and even there the expediency, has in some cases, begun to be questioned. Besides the extended powers conferred upon courts of sessions and magistrates by the abovementioned act of the legislature, introducing the English criminal law, many local acts have invested them with jurisdiction in special cases, and there is scarcely one in our colonial statute book which does not impose some additional duty on them.

There does not seem to be any good reason for the distinction drawn in this section between disputes as to the curing and drying of fish, and disputes concerning wages, the supply of bait and the hiring of boats,—in the former case, the jurisdiction of the sessions courts being limited to sums not exceeding five pounds, while in the latter cases it is unlimited.

It appears to me that the jurisdiction of the courts of sessions in SEC. 22. simple actions of assumpsit might, with safety and advantage, be extended to the trial of actions for the recovery of sums not exceeding £20. In the distant outports of the island more particularly, owing to the intervention of an entire year between the visits of the circuit court, some such judicature is greatly needed. I am aware that, in the outports, prejudices are said to exist against the exercise of the extended jurisdiction of magistrates here suggested; but the same prejudices would in a short time, with equal force, prevail against the exercise of similar powers by resident local judges. I am inclined to think, however, that these prejudices are greatly exaggerated, while upon the score of competency, the gentlemen forming the stipendiary magistracy of the country, are becoming daily better qualified for the exercise of such an extension of jurisdiction as that above suggested.

(29) "*Having a house of trade, or carrying on business in* SEC. 23. *Newfoundland.*" — It seems questionable whether the law was ever intended to embrace the wide range of persons to whom its provisions have been extended; for, in practice, persons of every trade, profession, and calling have been declared insolvent under the provisions of this section, the sum total of whose debts and credits together has, in many cases, hardly exceeded the sum qualifying a creditor to act as trustee.

In the case of *Wakeham vs. McEachern*, Supreme Court, December, 1842, the court refused to extend the provisions of the law to the defendant, who had large effects within the jurisdiction, but was not a resident, and had not a house of trade, and did not carry on business here, beyond the transactions involved in that case. The court held that in case of non-residence and not having a house of trade, the "carrying on business" must be continuous to bring the party within the scope of the act.

(30) "*It shall be made to appear.*" — It is quite competent for any third party, being a creditor, to interpose and make the defendant's insolvency apparent to the court. I do not, however, recollect an instance in which the proceedings to effect an insolvency have originated with any other party than the defendant against whom the process has issued. The usual course is for a friendly creditor to institute an action against a party desirous of obtaining the benefit of the Act.

SEC. 23.

(31) "*At the return thereof.*"—A diversity of construction has prevailed as to the true meaning of these words, and the time within which the insolvency of the defendant should be disclosed to the court. During the time of Chief Justice *Tucker*, it was the practice for the defendant to file what was called a plea of insolvency, within the period limited for pleading, together with such other plea as he properly could, and might feel disposed to plead; and upon this the necessary steps were taken for the summoning of creditors, &c. Chief Justice *Boulton* held that it was competent for the defendant (and of course any other party entitled) to come in at any time before final judgment, when, of course, the cause was out of court; and he established the practice of a petition with a schedule of debts and credits annexed, verified by affidavit, as the first proceeding towards a declaration of insolvency. Chief Justice *Bourne*, however, ruled that the petition and schedule should be filed within the time limited for pleading or before the plaintiff should have taken another step in the cause and such has since generally been the practice.

The public notice by which the insolvent and his creditors are summoned to attend is by publication always in the *Royal Gazette* and sometimes in other newspapers also, of the order made by the court, and the affixing a copy of such order on the door of the court house. If the creditors reside at a distance, sufficient time is allowed for their notification, and service of the notice on such creditors is sometimes, though not always, directed by the court.

(32) "*Whose debts amount respectively to twenty pounds and upwards.*"—Doubts were formerly entertained whether these words applied to the electing creditors or to the trustees to be chosen; but it seems now to be settled that they apply to the creditors, who are to be chosen as trustees. In some cases where the whole amount of the estate was small and inconsiderable, creditors for sums under £20 have, *ex necessitate* been chosen trustees, or, in default of such choice, the court has appointed a trustee, in the nature rather of a provisional trustee through whose intervention the insolvent estate has been collected and distributed. In order to enforce punctuality and regularity in the accounting of trustees, the new general rule on the equity side of the courts (promulgated in April, 1837,) requires them to account quarterly. The statute prescribes that the court shall

from time to time make such orders as it shall deem proper for better discovering, collecting, realizing, and distributing, &c., and distribution ought not to be made except upon an order of the court, and after the exhibition and allowance of the accounts of the trustees. Although the term "court" is used throughout the section, in practice, all proceedings excepting the declaration of insolvency and appointment of trustees are had before the judges or a judge at chambers in like manner as before the court in term; the inception of the proceeding is on the plea of the court, but the progress and termination of it are within its equitable jurisdiction.

(33) "*Be certified by the respective judges under the seal, &c.*" SEC. 24.

The facility with which insolvents have been enabled to obtain their certificates of discharge, while it assists in re-establishing an honest but unfortunate debtor, is too frequently abused in procuring the discharge of fraudulent and dishonest parties; and to cure this evil it has been often suggested, and I think would be an improvement of the law, that the signatures of two-thirds of the creditors in number and value should be made necessary to the granting of the certificate. By the terms of this section the certificate may be pleaded, and shall be a bar to every suit or action hereafter brought in any court in Newfoundland, for any debt incurred prior to the insolvency. Although suits or actions in any court in Newfoundland only are here mentioned, yet according to the decision in *Potter vs. Brown*, 5 East. 124, such certificate might be pleaded in bar to an action brought in England, for a debt contracted in Newfoundland by the insolvent prior to his declaration of insolvency.*

(34) "*It shall be lawful for the said judges respectively to cause such person or persons to be arrested.*"— Such has been the ease with which certificates of discharge have been obtained, that I cannot find a single instance in which an insolvent under the provisions of this act has been committed by a judge in pursuance of the powers here given.† The acts of the local legislature in

* See also *Plummer vs. Woodburn*, 4 B & C, 625. *Ballantine vs. Holding, Co. Bankt.* L. 347.

† This power of commitment for disobedience of orders after insolvency was exercised by a judge at chambers in the case of an insolvent under legal process, pursuant to the 4 W. 4, c. xi, which gives the courts the same powers in this respect as are given by this section. *Re Morgan's* insolvency.

SEC. 24.

amendment of, or rather in addition to, this branch of our law, a
 1 & 2 W. 4, c. 11, for the relief of insolvent debtors charged
 execution, amended by the 7 Victoria, c. 2, by which more exten-
 sive provisions were adopted. The two Acts will be found in the
 appendix.

The whole law as to insolvencies declared under this Act (1
 Geo. 4, c. 67,) requires revision and amendment, especially for the
 prevention of frauds which are perpetrated with perfect impunity
 by dishonest debtors, in the fraudulent alienation of their property
 and effects up to the very hour when it may suit their purposes to
 seek a declaration of insolvency, and for which there is now no
 remedy whatever beyond the withholding of a certificate of dis-
 charge which, as above-mentioned, can be but too easily obtained.
 To cure this evil the court should be invested with power to punish
 parties by imprisonment, in the same manner as in cases of insol-
 vency declared upon final process. Dispositions of property made
 within a certain period before, or in contemplation of insolvency,
 should be also declared null and void.

A bankruptcy in England by the late amendments in the bank-
 rupt laws, vests in the assignees from the time of their being chosen
 all the bankrupt's real and personal property in the colonies, as
 well as in England.* Formerly it vested in them his real estate
 only from the time of the execution of the conveyance by the
 commissioners to the assignees. Registration of a certificate pre-
 scribed by the Act is necessary in countries and places, where
 registration laws are in force. A prior English bankruptcy gene-
 rally supersedes a declaration of insolvency of the same party in
 the courts of this island†; but the courts of this island will require
 security for the discharge of preferable claims payable by the law
 of this country.

SEC. 25.

(35) "*That nothing in this act contained shall affect the prior
 claims of seamen and other servants, &c.*"—It would be somewhat for-
 eign to my purpose, and quite exceed the limits to which I wish to
 confine myself, were I here to enter into a discussion of the expedi-
 ency or inexpediency of the preferable claims of current suppliers and
 fishing servants in cases of insolvency. While the rights, however
 of the current supplier in cases of insolvency are secured by the pro-
 visions of this section, those of fishing servants in like cases have

* 1 & 2 W. 4, c. 56, s. 25, 26. † Mallowney's insolvency, 1832.

SEC. 25.

general merchant, although at the same time directly concerned in the prosecution of the fishery, has been held not subject to the law of *current supplies*;—otherwise when the supplies were issued on the faith of the proceeds of the voyage†. It seems that rent of a fishing room would be ranked among current supplies under this section.‡

(36) "*Menial or domestic services*."—A shopman to an apothecary has been held not to be a menial or domestic servant within the meaning of this section; § but the courts have given the section a liberal construction, where it has appeared that the party performed menial or domestic services, although generally employed in another capacity.¶ It would be well upon a revision of the law regulating insolvencies, if out of the general proceeds of an insolvent's estate, servants and clerks generally (without affecting the privilege here given to domestic servants) were allowed six months wages in the same manner as a similar allowance is made by the English Bankrupt Act 6 Geo. 4, c. 16, s. 48.

SEC. 26.

(37) "*Shall die in Newfoundland, or in any place or seas or territory within the government thereof*."—In the matter of the estate of *Thomas S. Bird*, in the central circuit court, October term, 1845, it was decided after argument, that the party whose estate is proposed to be declared insolvent, must have actually died within the government of Newfoundland, and that having had a house of trade, or having carried on business here for any period of years and having temporarily resided in the colony, would not give the court jurisdiction. In that case the application was made upon the petition of a creditor of the intestate, and opposed by the administrator. As the distribution to be made by an executor or administrator under this section is to be according to the manner of distribution by this act directed in respect of the estates of persons declared insolvent, with the exception of a reservation of the rights of judgment and specialty creditors only, it may be thence inferred that a simple contract creditor cannot retain.

(38) "*The registration of deeds, wills, and other assurances*."—This and the six succeeding sections have been materially altered

* *Re LeMessurier's insolvency*, select cases, 414. *Fergus and Glen's insolvency*, supreme court, 1831.

† *Congdon's insolvency*, supreme court, 1844.

‡ Select cases, 222.

§ *Re Simpson's insolvency*, supreme court, April, 1845.

¶ *Re Rennie's insolvency*, central circuit court, May, 1846.

since the expiration of the Fishery Act, (5 Geo. 4, c. 51,) until very lately, been considered to have lapsed; and notwithstanding the numerous insolvencies of planters and dealers in the supreme and central circuit court since 1834, when the Fishery Act expired, no application, so far as I am aware, was at any time made to the court for the payment of fishermen's wages, out of the proceeds of an insolvent's estate, until in the recent case of the distribution of the proceeds of the estate of James Sullivan, brought before the judges in chambers, in February, 1846; it being previously understood to be the opinion of the judges that no such preferable claim existed by any law in force.* In the matter of the distribution of the estate of Sullivan above-mentioned, the present learned chief justice, and assistant judges DesBarres and Lilly, after lengthy argument, held, (without giving any opinion whether the 16th sec. of the 15 Geo. 3, c. 31, was or was not in force,) that the proviso to the section now under consideration gave vitality and perpetuity to the prior rights of fishermen, under the 10th section of the Act 5 Geo. 4, c. 51, notwithstanding that the latter Act, being a temporary one, had itself expired.†

But in the case of *Kelly v. Ridway*, tried at Harbour Grace in the last spring term of the northern circuit court, the present learned chief justice, after more mature consideration, expressed an opinion that the 16th section of the 15 Geo. 3, c. 31, was still in force and not repealed by the first section of the 5 Geo. 4, c. 51; and, except in this case, this question was never before fairly submitted for a judicial decision.

The estate of a person carrying on business to a great extent as a

* An opinion to that effect from the late Chief Justice Bourne and judges of the supreme court was laid before the Legislative Council in February, 1841. — *Journals of Council*, 1841. — *Appendix*, Nos. 39 and 43. See to the same effect, the opinion of the crown officers laid before the Assembly in March, 1841. — *Appendix to Journal of 1841*, pages 82, 83. — See also opinions of the crown officers on the question of *lien*, laid before the assembly in 1845. — *Appendix to Journal of 1845*, p. 202.

† The grounds upon which the opinion was previously entertained, that the proviso to this section was not liable to the construction lately put upon it were, that the words of the proviso being *negative*, and the intention and effect of them being merely to prevent the operation of the preceding part of the section prejudicing the prior claims of seamen and other servants, presuming such prior claims to exist, could not be construed *affirmatively*, either to revive or perpetuate claims which the words of the proviso expressly declare "*nothing in this act contained shall effect*," and that the proviso left the prior claims of seamen and other servants, of whatsoever nature they might be, and under whatsoever law denied, precisely as if this Act had not been made.

and amended by the acts of the local legislature 1 Victoria, c. 5; 7 Sec. 27. Victoria, c. 19. and 10 Victoria, c. 6, which will be found in the appendix. By the first-mentioned act the 32d. section of this statute, which declared deeds not registered within a certain time null and void, has been repealed, and the effect of the whole of the laws taken together is now to permit the registration of deeds executed in the island at any time, upon the acknowledgment of the execution, by the parties from whom any interest shall pass, or on proof of execution by affidavit of a subscribing witness before the registrar of any district, a commissioner appointed to take affidavits in the supreme court, or a justice of the peace. Deeds executed out of the island may be registered, on acknowledgment before the registrar by the attorney of the party or parties executing; or by affidavit or declaration (pursuant to the imperial statute 5 & 6 W. 4, c. 62,) of a subscribing witness before a judge of a superior court of record, master in chancery, or chief magistrate of any town or place near to the residence of the witness,—the signature of the judge, master in chancery, or chief magistrate, being verified by the certificate of a notary public or the corporate or public seal of the town or place.

Deeds executed out of the colony may also be registered upon production to the registrar of a copy, verified by affidavit or declaration before, and authenticated by a judge of a superior court of record, master in chancery, chief magistrate, or notary public, near to the residence of the party executing the deed. Parties have still six months for the registration of deeds executed within the colony and twelve months for deeds executed abroad, after which periods non-registered deeds are to be deemed fraudulent and void against any subsequent purchaser or mortgagee for a valuable consideration.

By the Act 1 Victoria, c. 5, s. 3, leases at a rack-rent where the actual possession and occupation shall go with the lease, do not require registration. In *Hannigan vs. Colbert*, supreme court, August, 1831, it had been held, that as between the original parties to a lease, and those who immediately represented them, want of registration did not invalidate a lease.

By the 29th section of the Judicature Act, the acknowledgment for registration is to be by *some or one* of the parties executing; the local acts in amendment direct the acknowledgment to be by some party from whom any interest shall pass. It would seem, therefore,

SEC. 27.

that acknowledgments made within six months and twelve months respectively, in terms of the section referred to, may be made by grantee or lessee executing the deed, &c., as well as by any party from whom any interest may pass.

Although the laws relating to registration are not clear enough yet, being embraced in several statutes, it is desirable that they should be consolidated and reduced into one. It would be well also in any future law to provide for the transmitting half-yearly to St. John's abstracts of deeds registered in the northern and southern districts, or for the interchange of such abstracts between the different registrars. The fees payable upon registration are altogether too high, and should be reduced; compensation, however, being made to the officers who depend upon them. Should an equity court be at any future time instituted, as suggested in my seventh note, the duties of registrar of deeds in the central district might with great advantage be combined with those of the registrar of such court.

(39) "*Licences for the retail of ale and spirituous liquors.*"— This section has been virtually repealed by the Act 3 Victoria, c. 6, by which the power of making regulations for granting licenses is vested in the justices in session; and extended provisions enacted upon the subject. A copy of the Act will be found in the appendix.

NOTES TO THE CHARTER.

(1) "*The several offices of master, registrar, accountant-general or prothonotary.*"—The duties of these several offices, or rather the duties corresponding to those performed by the master, registrar, accountant-general, or prothonotary of any of the courts of record at Westminster, are all discharged by one and the same person, who is styled the chief clerk and registrar, and who, in addition, is called on to perform various other incidental duties of different kinds. The office of clerk and registrar of the central circuit court was, by an act of the local legislature in 1835, combined with that of chief clerk and registrar of the supreme court, and the duties of both offices have since then been performed by one person. That act expired upon the late vacancy, but the crown has continued the same arrangement by appointing one person to fill both offices. The practice and proceedings in both courts on the common law and equity sides being the same, it is convenient that the duties of the two offices in question should be under the uniform management of one person, but from the increase of these duties of late years, and also from their multifarious nature, I think it would conduce to the public advantage to separate the functions of clerk of the probate court and registrar of deeds, from those of chief clerk of the supreme and central circuit courts, and entrust their performance to an officer to be appointed for that purpose.

(2) "*And all persons who shall and may be appointed to any other office, &c., shall be so appointed by the chief judge* for*

* Although this office is styled chief judge both in the Act and Charter, yet by the warrants under the royal sign manual, and commissions appointing the successors of Mr. Tucker, the style of chief justice has been invariably used.

Office of Registrar or Prothonotary.

Officers to be appointed by Chief Justice. *the time being.*" — The only patronage which, by virtue of this clause of the charter, the chief justice has as yet had it in his power to exercise, has been in the appointment of the crier and tipstaff; unless among the officers to be appointed by the chief judge. I include commissioners of affidavits and commissioners for taking recognizances of bail in the outports. In England commissioners for taking affidavits are by the 29 Car. 2, c. 5, appointed under the seals of the respective common law courts at Westminster, by the chief justices and judges, or by any two of the judges of the respective courts, of whom the chief justice or chief baron of the respective court must be one: and commissioners to take bail are by the 4 W. & M., c. 4, appointed in the same manner. In this island these commissioners have been hitherto, by virtue of this and a preceding clause of the charter, appointed by commission under the hand and seal of the chief justice alone. The supreme court being by the Judicature Act vested with the powers and authority of the courts of Westminster-hall, who can appoint commissioners of affidavits and bail only by virtue of the powers and in the mode given and prescribed by the above statutes, it seems reasonable that a similar course of procedure should be followed here, and it may admit of a question whether these commissioners are of the description of officers contemplated by the charter. Besides commissioners of bail and affidavits, commissioners have also, for facilitating the administration of justice, been appointed at distant outports to issue original process returnable in the different courts.

Sheriff of Newfoundland. (3) "*Sheriff of our said colony of Newfoundland and its dependencies.*" — Instead of one sheriff for the whole colony, by the act of last session to regulate the appointment of sheriffs (of which a copy will be found in the appendix) on the first Monday in July in each year henceforth, a sheriff is to be appointed for each of the three districts. To facilitate the administration of justice, the sheriff for the central district is required to transmit to the sheriffs of the other districts the process to be executed by them; and also to grant special deputations to execute process in the northern and southern districts. Salaries are provided for the sheriffs in lieu of fees, which are commuted and to be paid into the treasury.

(4) "*And we do hereby reserve to ourself, our heirs and successors, in our or their privy council, full power and authority, &c.*" —

—The right of appeal to the sovereign which is regulated by this Appeal and the preceding clauses of the charter, is a right of which the subject would not have been deprived although the charter had been silent. In the case of *Christian vs. Corren*,^o it is said that express words in the grant of a charter of justice, excluding appeals, would be void, because the subject has an inherent right, inseparable from him as a subject, to apply to the crown for justice; and on the other hand, the king as the fountain of justice, has an inherent right, inseparable from the crown, to distribute justice among his subjects; and if this were a right in the subjects, no grant could deprive them of it, and that where there are words exclusive of such right of appeal, the king would be construed to be deceived, and his grant void. †

Although by a former part of the charter appeals are directed to be of matters above the value of £500, and the supreme court in allowing them is to be governed by this limitation, the clause under consideration reserves to the sovereign in council the right of permitting an appeal at any time from any judgment, decree, order or sentence of the supreme court. † Various orders may be made affecting the rights of suitors, which, if erroneous, may involve consequences not less serious than those occasioned by a judgment or decree from which an appeal would lie in the ordinary course; and without the above reservation the subject would be without adequate protection if such an appeal were not admitted.

In this colony there is not as in almost all the other possessions of the crown, any court of error, but an appeal lies from the supreme court direct to the king in council. A court of error would in very many cases be beneficial in allowing parties the opportunity of more freely contesting their rights in the colony, and without subjecting them to the enormous expense entailed upon them by an appeal to the privy council; but the materials are too few from which to compose such a court in this colony, and for some time to come they will, I fear, be wanting.

Since the time of the passing of the judicature act, all appeals then and formerly made to the king in council, are placed under

• 1 P. Wms. 329-330.

† See 2 Chal. Op., 177.

‡ *Scoble* that an Act of the legislature of a colony limiting the amount for which appeals may lie would have a different effect. — See *Coverlier vs. Aylmer*, 2 Knapp, 72.

Appeal

the jurisdiction of a court of appeal styled "the judicial committee of the privy council," created by the act 3 and 4 W. 4, c. 41, with extensive and peculiar powers as an appellate court of the last resort from the colonies, and foreign possessions of the crown. This court or committee consists of a number of persons chiefly of the highest judicial functionaries in England; but no matter can be heard nor any order, report or recommendation made unless in the presence of at least four members, and unless a majority present shall concur in such report or order. The judicial committee may examine witnesses *in voce*, or direct depositions to be taken; and witnesses may be re-examined at subsequent stages of the matter before the committee. On the recommendation of the committee the queen in council may remit the subject-matter of appeal to the court from whence it was made, for a rehearing before such court, and for the admission by it of additional evidence, or of evidence before rejected, or for the rejection of evidence before admitted; and Her Majesty in council may also direct one or more feigned issues to be tried in any court of her majesty's dominions abroad for any purpose, and may also direct feigned issues to be tried before the common law courts in England in the same manner as is now done by the high court of chancery. The judicial committee may direct new trials of any issue either generally or on certain points only, with power to admit parol evidence of the testimony of witnesses formerly examined but since dead. The committee may also refer matters to its registrar or other persons who are to have the power of masters in chancery; and it possesses also the same powers of compelling the attendance of parties and witnesses, and the production of documents, of punishing for contempts, and of enforcing and carrying into execution its judgments, decrees and orders as are possessed by the high court of chancery, Queen's bench or any ecclesiastical court.

It is a rule of this court that the appellant shall procure the proceedings to be transmitted and to proceed within a year after the appeal has been allowed in the plantations; but this rule, though usually adhered to, is not considered imperative, and on reasonable grounds shewn, the privy council will permit the party to lodge his appeal, although the year has elapsed. The privy council will not allow an appeal to be instituted, where the court below has refused it on the ground of insufficiency of the security

NOTES.

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tendered—where such security is subject to the approval of the court Appeal. below.* The cases and decisions in this court are now regularly reported, and are important for the consideration of all colonists. In Mr. Burge's able and valuable commentaries on colonial and foreign laws will be found an useful summary of the decisions of this court relating to the practice on appeals.

* 1 Knapp, 251.



APPENDIX.

ANNO QUARTO

GULIELMI IV. REGIS.

CAP. V.

An Act to provide for the banishment of persons convicted of certain offences, and also to provide certain modes of punishment in divers criminal cases.

[12th June, 1834.]

WHEREAS it is expedient to make further provision for the punishment of persons convicted of certain offences in Newfoundland, and to authorise the infliction of other punishments upon offenders than those which may now be legally awarded: Be it therefore enacted, by the governor, council, and assembly of Newfoundland, in parliament assembled, and by the authority of the same, that when any person shall be convicted of any crime for which he or she shall be liable by law to be transported, or to receive any infamous or corporal punishment, the court before which such person shall be so convicted, or any court holden for the same place having like jurisdiction, instead of the sentence of transportation, or of such infamous or corporal punishment, shall and may, should it think fit so to do, order and adjudge that such person be banished from this island, for and during such a number of years, or for life, as to the court in its discretion shall seem meet: and shall also adjudge that such person be confined and kept to hard labour, until such person shall have procured, or have been provided with, a passage to some port or place beyond the government of Newfoundland,

Preamble.

Offenders liable to transportation or corporal punishment may, under this act, be banished,—

—and kept at hard labour till a passage be provided.

and shall have been there landed, put on shore, and discharged by the master of the vessel.

II. — And be it further enacted, that it shall and may be lawful for the sheriff of Newfoundland for the time being, or for any justice of the peace having jurisdiction where such person shall have been convicted; to contract with the master or owner of any such vessel, bound for any port not being within the government of this island, for the removal of any convict under sentence of banishment; and upon delivering such convict on board such vessel to issue his warrant to the master of such vessel, committing the said convict to the custody of such master, who shall thereupon be punishable for the escape of any such convict from the said vessel to any place within the government of Newfoundland, in like manner as any constable, or other peace officer, having the custody of any prisoner, by virtue of any warrant from any justice of the peace, would be liable to be punished for the escape of such prisoner with whose custody he should be so charged.

III. — And be it further enacted, that if any person on whom such sentence of banishment shall have been passed as aforesaid, or to whom His Majesty, his heirs or successors, shall be graciously pleased to extend the royal mercy, on condition of his or her leaving this island, for any term of years or for life, shall be found at large in any part thereof, without some lawful cause, after he or she shall have been so put on board as aforesaid, before the expiration of the term for which such convict shall have been so banished, or shall have so consented to leave the island, every such offender being thereof lawfully convicted, shall be sentenced to be kept at hard labour for such period as the court passing such sentence shall think proper; or shall, in addition thereto, be sentenced to be once, twice, or thrice publicly or privately whipped, and to be banished, for the term of his or her natural life, as to the court shall seem meet: Provided, nevertheless, that the punishment of whipping shall not in any case be inflicted on a female.

Proviso: whipping not to be inflicted on females.

Offenders liable to imprisonment and hard labour, to be kept at work on the high-ways:

IV. — And be it further enacted, that when any person shall be convicted of any offence for which, by the law of England, imprisonment and hard labour may be awarded, it shall and may be lawful for the court, in its discretion, to direct such offender to be kept at hard labour in some gaol or house of correction, or to be employed on the high ways, streets, or roads, in any part of this

island, or both, and during the hours of labour to wear an iron —and to wear
 clog, or other shackle, to prevent the escape of such offender; and an iron clog or
 shackle;
 also to direct that the said offender shall be kept in solitary confinement —and may also
 for the whole, or any portion or portions of such imprisonment be kept in soli-
 as to the court, in its discretion, may seem meet; and to make such tary confine-
 other order for the safe keeping of such offender, when off work, as ment.
 to the said court shall seem expedient and necessary.

V. — And be it further enacted, that it shall and may be lawful Supreme Court
 for the supreme court of Newfoundland to make such rules and to make regu-
 regulations touching the care, custody, treatment, superintendence, lations for pri-
 hours of labour, food, and general management of prisoners, son discipline.
 either before or after conviction and sentence, as to the said court
 shall seem fit and necessary for the support of a proper prison
 discipline.



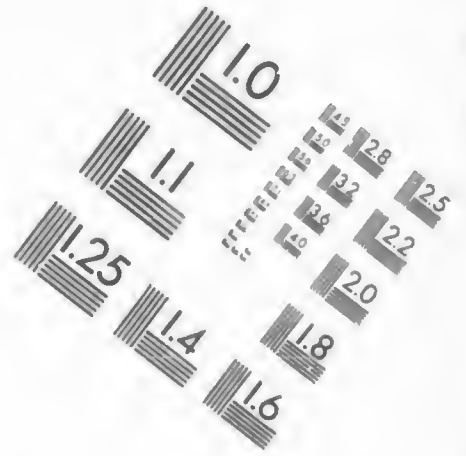
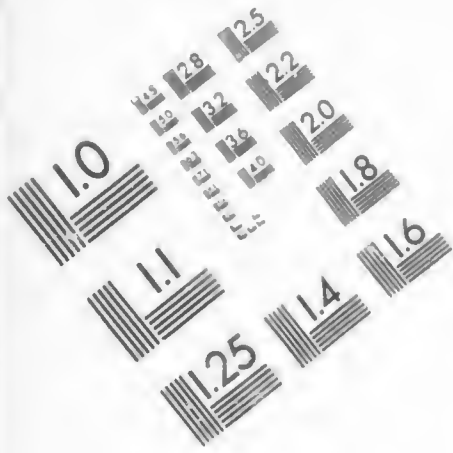
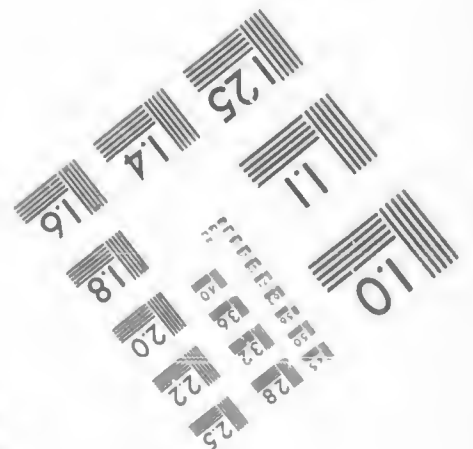
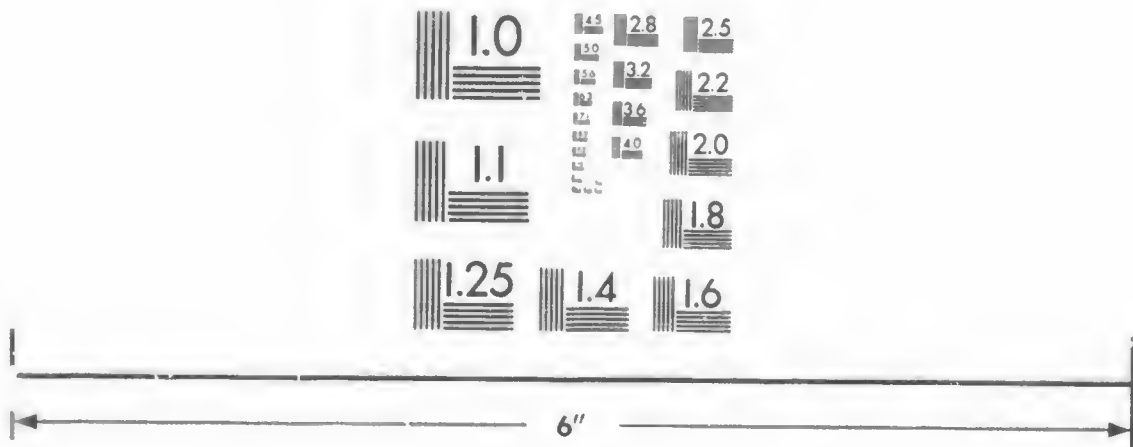


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ANNO REGNI

VICTORIÆ REGINÆ.

CAP. IV.

An Act to extend the criminal laws of England to this colony under certain modifications.

[18th November, 1837.]

Enacted.

WHEREAS the penal code and criminal laws of England have lately undergone very considerable revisions and improvements; and it is highly desirable to extend the same to this colony, together with such further amendments as the said criminal laws may from time to time receive by any act or acts of the imperial parliament to be hereafter passed.

Criminal law of England in force on the 20th June, 1837, to be the law of this colony.

Be it therefore enacted, by the governor, council, and assembly of Newfoundland, in general assembly convened, that from and after the passing of this act the criminal laws and statutes of the imperial parliament in force in England on the twentieth day of June, in the year of Our Lord One Thousand Eight Hundred and Thirty-seven, shall, so far as the same can be applied, extend to and be the law of this island, and its dependencies, in all cases.

Any further amendments therein to be in force in this colony twelve months after the passing thereof.

II. — And be it further enacted, that all statutes of the imperial parliament of Great Britain in further amendment or alteration of the criminal law of England, passed, or which may be passed, subsequently to the twentieth day of June aforementioned, shall in twelve months after the passing of the same, respectively, extend to and be the law of this colony, so far as the same can be applied.

Appropriation of fines and penalties adjudged under this act.

III. — And be it further enacted, that all pecuniary penalties imposed by any law in England which, according to the provisions of this act, shall be held to be in force in this colony, shall be adjudged to be distributed in the following manner, — that is to say, one-half to the informer and the other half to Her Majesty, her heirs and successors, to be paid into the public treasury, to and for the use of this island.

ANNO QUARTO
GULIELMI IV. REGIS.
[2ND SESSION.]

CAP. XL

An Act for the relief of insolvent debtors taken in execution.

[12th June, 1834.]

WHEREAS it is necessary to make provision for the relief of insolvent debtors taken in execution: *Be it enacted*, by the governor, council, and assembly, that from and after the passing of this act, if any person or persons now charged, or who shall or may hereafter be charged in execution for any sum or sums of money and shall be minded to deliver up to all his, her, or their creditors, all his, her, or their effects, towards the satisfaction of his, her, or their debts, it shall and may be lawful to and for such prisoner to exhibit a petition to the supreme court in term time, or to the chief justice, or in his absence, to the other judges* of the said court in vacation, setting forth the cause or causes of his, or their imprisonment, and exhibiting a full and true account of his or their real and personal estate, rights and credits, and an account of his, her, or their debts, as far as his or their knowledge extends therein; and upon such petition the said court or the said chief justice or other judges may, and are hereby respectively required, by order or rule of the said court, or by order under the hand of the said chief justice, or other judges, to cause the said prisoner to be brought before the said court, or before such chief justice or other judges, at a day certain, and not less than ten days after a notice of such application shall have been served upon the several creditors of such person or persons personally, or upon their attorney in court, or left at his, her, or their last place of abode, and published in the *Gazette*,

Insolvents taken in execution may deliver up their effects to creditors;

and on petition may be heard before the supreme court.

Notice of such petition to be given in the *Gazette*, and local paper.

* Any one judge of the supreme court may now hear and determine.
7 Vic., c. 2, s. 9.

and in any local paper published near the residence of such debtor, and upon the day of such appearance, to enter upon and proceed with the same examinations as to the fact of such debtor's insolvency, as though the same had been pleaded at the return of the original writ; and thereupon if it appear, to the said court, or the said chief justice, or other judges respectively, that such debtor is unable to pay twenty shillings in the pound, to all his, her, or their creditors, and that such debtor or debtors might have been declared insolvent at the return of the writ, and that there has been no fraud on the part of such debtor or debtors, to declare the said debtor or debtors insolvent, accordingly; and to take such order for discovering, collecting, and settling the estates, debts and effects of such debtor or debtors and distributing the produce thereof among all his, her, or their creditors, by appointing trustees and otherwise, as if such debtor or debtors had been declared insolvent at the return of the original writ; *Provided always*, that it shall be lawful for the said court to appoint trustees of the estate and effects of debtors declared insolvent, other than creditors of any such debtor or debtors, if the court should deem it expedient so to do.

Such debtors being unable to pay 20s. in the pound, to be declared insolvent.

II.—And be it further enacted, that upon such declaration of insolvency being made as aforesaid, it shall and may be lawful for the said court, or the said chief justice, or in his absence, for the other judges respectively, forthwith to direct the discharge of the said debtor or debtors from gaol, and that such debtor or debtors shall not thereafter be liable to imprisonment for his, her, or their debts, then due or owing.

Judges may on such declaration order the insolvents to be released from gaol.

III. — *Provided always*, and be it further enacted, that in case such debtor or debtors so charged in execution shall be imprisoned elsewhere than in St. John's, it shall be lawful for the said chief justice or other judges respectively, to authorise one or more commissioner or commissioners to take such order for the examination of such debtor or debtors, before his, her or their creditors, as the said chief justice or other judges respectively may think fit to direct; and upon the receipt of such examination so taken as aforesaid, such chief justice or other judge respectively, shall, if satisfied therewith, declare such debtor or debtors insolvent, and proceed therein as hereinbefore directed to be done in case of such examinations being taken before them or either of them.

Debtors imprisoned in any of the outports to be examined under a commission.

IV.— And be it further enacted, that no female shall be charged

in execution by *capias ad satisfaciendum* in any civil suit instituted in any court of law in this island. Females not to be charged in execution.

V. — And be it further enacted, that this Act shall continue in force for two years and no longer. Limitation.

• By the Act 6 W. 4, c. 10, (passed 6th May, 1836,) this act is made perpetual.

By the terms of this Act the judges are empowered to declare the prisoner insolvent, if it appear to them (amongst other things) that he might have been declared insolvent at the return of the writ. It has been held, however, that the provisions of the Act extend to the case of a debtor in execution, under a judgment signed upon a cognovit, where no writ had been issued.—*Re insolvency of John Hennessy, Supreme Court, July 5, 1842.*

Held also after argument, in *Gibbons v. Widdicombe*, which was an action on the case for slander, before Chief Justice Bourne, September 13, 1842, that the plaintiff, who was in custody under a *ca. sa.*, upon a judgment for the costs of the action (a verdict having been given for the defendant), might be declared insolvent and discharged, by an equitable construction of the statute, although he could not have been declared insolvent at the return of the original writ.

It has been ruled, also, that the Act extends to cases where the original writ was in tort.—*Re insolvency of John Coady*, before Assistant Judge DesBarres, September 16, 1846. The same point had been raised, but not decided, in *Re Kenny's insolvency*, September 13, 1842.

Where the defendant has been declared insolvent at the return of the original writ under the Judicature Act, and the plaintiff has nevertheless proceeded to final judgment and charged the defendant in execution, the latter is not entitled to be discharged in consequence of the declaration of insolvency, but must proceed anew under this act; but had the prisoner obtained his certificate and moved upon it in time, the court might have staid execution.—*Newman vs. Butt*, before the judges at Chambers, Sept. 23d, 1843. *S. P. Rogerson vs. Stamp*, Nov. 5, 1839.

ANNO SEPTIMO
VICTORIÆ REGINÆ.

CAP. II.

An Act to amend an act passed in the fourth year of his late Majesty's reign, entitled "An Act for the relief of insolvent debtors taken in execution."

[Passed 29th April, 1844.]

Preamble. WHEREAS an act was passed in the fourth year of the reign of his late Majesty, entitled "An Act for the relief of insolvent debtors taken in execution;" and whereas it is expedient and necessary that the said Act should be in certain respects amended:

Punishment of insolvents in certain cases by imprisonment not exceeding three years. I. — *Be it therefore enacted*, by the governor, council, and assembly, in legislative session convened, that in all cases where any application shall be made to the supreme court, or to the chief justice or other judges thereof, by any person or persons to be discharged from gaol, as an insolvent debtor, or as insolvent debtors, pursuant to the provisions of the said act, and where it shall appear to the said court, or the said chief justice or other judges, that such debtor or debtors have fraudulently, with intent to conceal the state of his or their affairs, or to defeat the purposes of this and the said act, destroyed or otherwise wilfully prevented or purposely withheld the production of, any books, papers, or writings, relating to such of his or their affairs as are subject to investigation under this and the said act, or kept or caused to be kept false books, or made false entries in, or withheld entries from, or wilfully altered or falsified any such books, papers, and writings,—or that such debtor or debtors have fraudulently, with intent of diminishing the sum to be divided among his or their creditors, or of giving an undue preference to any of his or their creditors, discharged or concealed any debt due to or from the said debtor or debtors, or made away with, assigned, conveyed, charged, mortgaged, or concealed, any part of his or their property, of what kind soever, either before or after the commencement of his or their imprisonment, or have been guilty of any other

act or acts of fraud that might have prevented the discharge of such debtor or debtors under the aforesaid act,—then it shall be lawful for the said court or the said chief justice or other judges, to declare such debtor or debtors insolvent, and to appoint trustees for the collecting, selling and realizing the debts, estates and effects of such debtor or debtors, and distributing the produce thereof amongst the creditors of such debtor or debtors, and to adjudge that such debtor or debtors shall be discharged and entitled to the benefit of the provisions of the said act, so soon as he or they shall have been in custody at the suit of some one or more persons as to whose debts and claims such discharge is so adjudicated, for such period or periods, not exceeding three years in the whole, as the said court or the said chief justice, or other judges, shall direct,—to be computed from the time of such adjudication.

II.—And be it further enacted, that in case it shall appear to the court, or the said chief justice or other judges, that such debtor or debtors shall have contracted any of his or their debts fraudulently or by means of a breach of trust, or by means of false pretences, or without having had any reasonable or probable expectation at the time when contracted of paying the same,—or shall have fraudulently or by means of false pretences obtained the forbearance of any of his or their debts by any of his or their creditors,—or shall have put any of his or their creditors to any unnecessary expense by any vexatious or frivolous defence or delay to any suit for recovering any debt or sum of money,—or shall be indebted for damages recovered in any action for a malicious prosecution, or for a libel, or for slander, or for criminal conversation with the wife, or for seducing the daughter or servant, of the plaintiff in such action,—or for damages recovered in any action for a malicious injury, or in any action of tort or trespass to the person or property of the plaintiff therein, where it shall appear that the injury complained of was malicious : then it shall be lawful for the said court or the said chief justice or other judges to declare such debtor or debtors insolvent, and to appoint trustees for the collecting, selling, and realizing the debts, estates, and effects, of such debtor or debtors, and distributing the produce thereof amongst the creditors of such debtor or debtors, and to adjudge that such debtor or debtors shall be so discharged and so entitled as aforesaid forthwith,—except as to such debt or debts,

Punishment in other cases not exceeding two years imprisonment.

sum or sums of money, or damages, as abovementioned; and as to such debt or debts, sum or sums of money, or damages to adjudge that such debtor or debtors shall be so discharged and so entitled as aforesaid so soon as he shall have been in custody at the suit of such person or persons who shall be a creditor or creditors for the same, respectively, for a period or periods not exceeding two years in the whole, as the said court or the said chief justice or other judges shall direct, to be computed as aforesaid.

Court, &c. may
make a contin-
gent order in
certain cases.

III.—And be it further enacted that where it shall appear to the said court or the said chief justice or other judges that certain matters or things ought to be performed by or on behalf of such debtor or debtors before he or they are to be actually discharged from custody, but that nevertheless it is expedient not to adjourn the hearing of the case absolutely to some future occasion without the opportunity of such discharge being had sooner by doing such things as aforesaid, it shall be lawful for the said court, or the said chief justice or other judges, to adjudge that such debtor or debtors shall be so discharged and so entitled on the performance of such matters or things as aforesaid,—and that on the non-performance thereof, the hearing of such case shall stand adjourned according to the direction made in that behalf,—Provided always, and be it enacted, that in all cases where it shall have been adjudged that any such debtor or debtors shall be so discharged and so entitled as aforesaid, at some future period, such debtor or debtors shall be subject and liable to be detained in prison and to be arrested and charged in custody at the suit of any one or more of his or their creditors, with respect to whom it shall have been so adjudged at any time before such period shall arrive, in the same manner as he would have been subject and liable thereto if this act had not passed. Provided nevertheless, that when such period shall have arrived, such debtor or debtors shall be entitled to the benefit of the said act, notwithstanding that he or they may have been out of actual custody during all or any part of the time subsequent to such adjudication, by reason of such debtor or debtors not having been arrested or detained during such time or any part thereof.

Court &c. may
order mainte-
nance to insol-
vent remanded

IV.—And be it further enacted, that in all cases where such debtor or debtors shall, upon such adjudication as aforesaid, be liable to any further imprisonment at the suit of his or their creditor or creditors, it shall be lawful at any time for the said court, or the

and as to said chief justice or other judges, upon the application of such debtor or debtors, to order the creditor or creditors at whose suit he or they shall be so imprisoned, to pay to such debtor or debtors such sum or sums of money, not exceeding the rate of four shillings by the week in the whole, at such times and in such manner as the said court or the said chief justice or other judges shall direct,— and that on failure of payment thereof, the said court or the said chief justice or other judges shall order such debtor or debtors to be forthwith discharged from custody at the suit of the creditor or creditors so failing to pay the same.

V.—And be it further enacted, that whenever any creditor or creditors opposing the discharge of such debtor or debtors shall prove to the satisfaction of the said court or the said chief justice or other judges, that such debtor or debtors have done or committed any act for which, upon such adjudication as aforesaid, he or they may be liable to remain in such custody as aforesaid, for a period not exceeding three years, to be computed as aforesaid, the said court or the said chief justice or other judges shall adjudge the taxed costs of such opposition to be paid to such opposing creditor or creditors out of the estate and effects of such debtor or debtors before any dividend made thereof; and in all other cases of opposition to a debtor or debtors' discharge being substantiated or effectual, it shall be lawful for the said court, or the said chief justice or other judges to adjudge in like manner, if it shall seem fit; and that in case it shall appear to the said court, or the said chief justice or other judges that the opposition of any creditor to the discharge of any such debtor or debtors was frivolous and vexatious, it shall be lawful for the said court or the said chief justice or other judges, to award such costs to such debtor or debtors as shall appear to be just and reasonable, to be paid by the creditor or creditors making such opposition.

VI.—And be it further enacted that the discharge of any such debtor or debtors shall extend to all process issuing out of any court for contempt for the non-payment of any money or of any costs or expenses, in any court, and to all costs which such debtor or debtors would be liable to pay in consequence or by reason of such contempt, or on purging the same.

VII.—And be it further enacted that it shall be lawful and competent for any debtor or debtors who may be declared insolvent by

And may make order as to costs in certain cases.

Discharge of insolvent to extend to certain cases of contempt.

Insolvents may obtain certifi-

ates under this virtue of the provisions of this or the aforesaid act, to obtain
act. be allowed his or their certificate of discharge in like manner
to the like effect as though such debtor or debtors had been declar
insolvent at the return of the writ, and had obtained the like co
sent of creditors as is prescribed by the provisions of the act of t
imperial parliament 5 Geo. 4, chap. 67, entitled "An act for the b
ter administration of justice in Newfoundland and for other pu
poses."

Provisions of VIII.—And be it further enacted, that it shall and may be law
this act exten for any debtor or debtors who, having applied to be discharged
ded to parties insolvent and having been remanded for non-compliance with or
now in custody insolvent and having been remanded for non-compliance with or
having been re- consequence of the provisions of the said act for the relief of insolvent
manded on for- debtors taken in execution, shall be confined in gaol, in this colony
mer applica- debtors taken in execution, shall be confined in gaol, in this colony
tion. and charged in execution at the time of the passing of this act,
and apply by petition to the court or judges by whom such debtor or
debtors may have been so remanded, and thereupon it shall be law
ful for such court or judges, as the case may be, to order such debto
or debtors to be brought before the said court, or before such
judges, on a day certain, (reasonable notice thereof being served on
such of the creditors of such debtor or debtors as may reside in this
colony,) then and there to be examined touching the matter of his or
their petition, and thereon to extend and apply to such debtor or
debtors the provisions of this and of the aforesaid act.

Circuit court in IX.—Provided always and be it further enacted, that it shall
term time, in be lawful for any of the circuit courts of this island, in term time
or any judge of be lawful for any of the circuit courts of this island, in term time
supreme court or for any one judge of the supreme court in vacation, to hear and
in vacation, determine all matters provided by this act, or by the aforesaid act for
may determine the relief of insolvent debtors taken in execution, as fully and
matters provi- amply as the said supreme court, or the said chief justice is by the said
ded by this act. last mentioned act empowered to hear and determine the same.

Penalty on in- X.—And be it further enacted that in case any debtor who shall
solvent debtors be brought up for examination and discharge before any court or
refusing to de- judge as aforesaid, shall wilfully refuse to deliver up to his trustee
liver up pro- judge as aforesaid, shall wilfully refuse to deliver up to his trustee
perty &c. to any money, property, deeds, accounts, books, or other documents
trustees. pursuant to any order of such court or judge, it shall be lawful for
such court or judge to remand to prison such debtor from time to
time, until he shall conform to such order of the said court or
judge.

ANNO SEXTO

VICTORIÆ REGINÆ.

CAP. X.

An Act to repeal an Act passed in the fifth year of the reign of His late Majesty, entitled "An Act to amend the law of attachment, and to facilitate the recovery of debts from absent or absconding debtors;" and to make other provision for the amendment of the law of attachment.

[Passed 22d May, 1843.]

WHEREAS it is expedient to repeal an Act passed in the fifth year Preamble.
of the reign of his late Majesty, entitled "an act to amend the law
of attachment and to facilitate the recovery of debts from absent or
absconding debtors," and to make other provision for the amend-
ment of the law of attachment :

I.—Be it therefore enacted, by the governor, council, and Act 5, W. 4, c.
assembly, in general assembly convened, that an act passed in the 2, sess. 2, re-
pealed.
fifth year of the reign of his late Majesty, entitled "an act to
amend the law of attachment and to facilitate the recovery of debts
from absent or absconding debtors," shall be and the same is hereby
repealed.

II.—And be it further enacted, that in all actions at law, or Parties not ap-
pearing after
suits in equity, which may hereafter be brought, or which are now service of writ,
depending, in the supreme or either of the circuit courts of this plaintiff may
colony, in which the plaintiff shall have proceeded by attachment of enter appear-
ance and pro-
ceed to judg-
ment.
the lands, goods, debts, or effects of the defendant or defendants,
and a copy of the writ or other process, with a notice of the intent
and meaning of the service of such writ or process, and in actions at
law a copy of the plaintiff's declaration, shall have been duly served
upon such defendant or defendants, or upon the agent of any absent
defendant or defendants, or upon such one or more of the said
defendants, being a partner or partners of such absent defendant or
defendants, as shall be within this colony; if such defendant or
defendants shall not appear and plead thereto within four days, or

in actions commenced before the passing of this act, within six days after the return of such writ or process, the plaintiff or plaintiffs in such action or suit shall be at liberty to enter an appearance for such defendant or defendants, and to proceed thereon, as if such defendant or defendants had entered his, her, or their appearance in person: Provided always, that such writ or other process, with an affidavit of the service thereof, and in actions at law the original declaration, shall have been duly returned and filed.

III.—And be it further enacted, that in all actions or suits wherein process of attachment has been or shall be issued against the lands, goods, debts, or effects of any person or persons who are or shall be absent from or not resident in this colony, and have not or shall not have any known agent therein, or who being absent or not resident and having no known agent as aforesaid, shall not be the partner or partners of any defendant or defendants who shall be within this colony, as aforesaid, a copy of such process shall be served upon the person or persons in whose custody or possession such lands, goods, or effects may be, or from whom such debts may be due to such defendant or defendants; and if such defendant or defendants shall not duly enter or cause to be entered an appearance to such action or suit, it shall and may be lawful for the court wherein such action or suit shall be depending, to make such order for the sale of the goods or effects or the collection of the debts, so attached, as the said courts respectively shall deem meet, and to direct the monies arising or accruing under such order to be paid into court, there to abide the further directions of the said courts respectively.

IV.—And be it further enacted, that so soon as the plaintiff or plaintiffs shall make it appear, to the satisfaction of the court, that all reasonable means have been taken to discover the place of residence of any such absent defendant or defendants, who shall not either in person or by an agent or partner, have been served with process as hereinbefore provided, and to apprize him, her, or them of such action or suit having been so instituted as aforesaid, or that such defendant or defendants have been apprized of the institution of any such action or suit, and the said court shall be of opinion that the defendant or defendants could reasonably have appeared thereto, then it shall and may be lawful for the plaintiff to sign judgment by default and proceed to final judgment as in other

Absent debtors not appearing after service of process at last place of abode or upon persons having custody of their goods or effects

Personal property attached may be sold, and proceeds paid in to court.

After reasonable means taken to affect defendant with notice, plaintiff may sign judgment by default and proceed to final judgment without notice of assessment.

cases, without notice of assessment of damages: Provided always, Provided as to sale of land attached. that no lands of the defendant, so attached as aforesaid, shall be sold to satisfy such judgment until the expiration of six months from the return of the writ, unless the court shall be of opinion, from proofs laid before it, that such defendant has willingly absented himself to avoid payment of his debts: Provided also, that no such Further provi-
no as to secu-
rity. final judgment shall be entered up until security has been given, to the satisfaction of the said court, to refund the whole or any part of the money to be recovered under the same; as the said court shall direct, in case the defendant or defendants in such action or suit shall appear thereto at any time within twelve months from the return of the writ or other process, and proceed to the trial of the merits of the said action or suit.

V.—And be it further enacted, that in any action at law which Attachment to
issue for sums
over 40s. may hereafter be brought in the supreme or either of the circuit courts, where the debt shall amount to forty shillings sterling, and shall be sworn to in an affidavit made by the plaintiff or plaintiffs, his, her, or their, lawful attorney, the defendant or defendants may be made to appear by attachment of his, her, or their lands, goods, debts, and effects, and the like proceedings shall be had therein as in cases where the debt sworn to shall exceed the sum of ten pounds.

VI.—And be it further enacted, that when the goods or effects Perishable
goods may be
sold. attached under any process of either of the said courts; shall be of a perishable nature, or be such as either from the expense of holding the same, or from other circumstances, may considerably deteriorate in value before judgment can be obtained in the action or suit in which such goods or effects may have been attached, and good and sufficient bail to satisfy the judgment, order or decree of the said court, shall not have been put in by the defendant or defendants, it shall and may be lawful for such court respectively, or for any judge of the supreme court in vacation, on the application of any plaintiff or defendant, to order the immediate appraisement and sale of such goods or effects, of a sufficiency thereof to satisfy the debts and costs; and to direct the proceeds thereof to be paid into the court, to abide the further order, judgment or decree of the court, in such action or suit.

VII.—And be it further enacted, that so often as any goods, Monies or
goods, in the
hands of third
person attach- debts, or effects, of any defendant or defendants in any action or suit now depending or hereafter to be brought in either of the said

ed to be paid into court or delivered to the sheriff. courts, have been or shall be attached in the hands of any third person, such goods, debts or effects, shall be paid into court or delivered to the sheriff, as the case may be, to abide the order, judgment or decree of the said court: and that for the purpose of ascertaining the nature and amount of such goods, debts and effects it shall be lawful for such courts respectively, or for a judge of the supreme court in vacation, to summon such third person, or in the event of his or her absence from the colony, his or her agent, to appear before such court or judge respectively, to be examined upon oath, and thereupon to make order for the payment into court or delivery to the sheriff, as the case may be, of such goods, debts,

Proviso as to executory contract and accruing interest or effects, and to enforce such order by process of contempt: Provided always, that no such attachment as aforesaid, shall be deemed to operate on or to affect any contract executory, upon which at any day after the service of such attachment, any sum of money shall or may accrue, or become payable to any defendant for or on account of any work, labour, or service, to be executed, performed, or completed by such defendant at any time after the service of such attachment upon the bailee; nor upon any monies, goods, debts, or effects in and over which such defendant shall not have, at the time of the service of any such attachment, a then present interest and disposing power.*

Debts payable in goods, plaintiff to specify goods in certain cases. VIII.—And be it further enacted, that when any debt which has been or shall be so attached as aforesaid, shall be payable in goods to be specified by the defendant or defendants to whom such debt shall be owing, and such defendant or defendants shall neglect or refuse to specify the same previously to or at the time of such

* In the case of *Fleming vs. Savage*, Supreme Court, December, 1843, the amount due to the defendant from the Board of Ordnance, for wages as a workman, was attached in the hands of the Deputy Ordnance Storekeeper, who paid the same to the defendant, notwithstanding the attachment and an order to pay the amount into court; and upon subsequent argument, the court held that under the concluding words of this section, and according to the decision in *Pridley vs. Rose*, 3 Mer. 102, the attachment was binding. There was an appeal to the privy council, but the amount being paid over to the plaintiff in satisfaction of his judgment, at the expiration of a year after the granting of the appeal, and before notice of its allowance, the appeal was not further prosecuted. The decision in this case rested chiefly upon the evidence given by the deputy ordnance storekeeper, upon his examination, of the separate appropriation in his hands of the amount payable to the defendant. Under other circumstances, the court would have been governed by the decision in *Gidley vs. Palmarston*, 3 B. & B. 275.

examination, as aforesaid, such goods to the amount of the debt so attached, shall be delivered to the sheriff, as aforesaid, as the plaintiff or plaintiffs in any such action or suit shall direct and prescribe.

IX.—And be it further enacted, that in all cases where any lands or tenements, or the interest of any person or persons in any lands or tenements, shall be attached by virtue of any process of the said courts respectively, the sheriff, his deputy or bailiff, shall serve notice of such attachments on the tenants, occupiers or owners of such lands or tenements, and thereafter the rents, profits, or annuities, to which such person or persons may be entitled from such lands or tenements, whether then in arrear or thereafter to grow due until final judgment, or so much thereof as shall be sufficient to satisfy the plaintiff's demand, with reasonable costs shall, (after deducting thereout ground rents, if any) be paid to the sheriff to abide the order, judgment, or decree of the said court; and that the like proceedings may be had for ascertaining the nature and amount of such rents, profits, or annuities, and for enforcing payment of the same according to the orders of the court, as are hereinbefore prescribed with respect to debts, goods, or effects attached in the hands of third persons.

Where lands, &c. attached, notice to be served on the tenants, owners, &c.

And like proceedings as in cases of debts attached.

X.—And be it further enacted, that in all actions or suits commenced by attachment, as aforesaid, it shall and may be lawful for the sheriff, in addition to the sum sworn to, further to attach and hold the defendant or defendants, by his, her, or their lands, goods, debts, and effects, in the sums following, that is to say—in all actions or suits where the amount sworn to shall not exceed five pounds, in the sum of thirty shillings; in all actions or suits where the amount sworn to shall be over five pounds and shall not exceed twenty pounds, in the sum of three pounds; in all actions or suits where the amount sworn to shall exceed twenty pounds and shall not exceed fifty pounds, the sum of four pounds; in all actions or suits where the amount sworn to shall exceed fifty pounds, and shall not exceed one hundred pounds, the sum of ten pounds; and in all actions or suits where the amount sworn to shall exceed one hundred pounds, the sum of ten pounds; and a further sum at the rate of five pounds per centum on the amount sworn to above the first hundred pounds, the sums so attached as aforesaid, in addition to the sum sworn to, to be towards answering the costs of any such action or suits respectively.

Costs may be attached as well as debts.

Monies may be
levied on under
writ of execu-
tion.

XI.—And be it further enacted, that it shall be lawful for any party or parties having obtained judgment against a defendant or defendants, or issued a writ of *feri facias* thereupon, to cause warrants under such writ of *feri facias* to be placed in the hands of any party or parties having the custody or control of any monies, goods, debts or effects, of the said defendant or defendants; and the like proceeding shall be had to examine persons holding the said money, goods, debts or effects, and to cause the said money to be paid into court, or the said goods to be sold and the proceeds paid into court, under such warrants as are had under warrants laid in virtue of mesne process.

Sheriff not to
be liable in
case of writs
against the
same person
out of the su-
preme and cir-
cuit courts, ex-
cept in cases
of default.

XII.—And whereas by reason of the concurrent jurisdiction of the supreme court with the circuit courts, the sheriff, when attachments have been issued against the same person both out of the supreme court and one of the circuit courts, and the goods, debts, and effects attached are not sufficient to answer both attachments, may, in certain cases, without any default of him or his deputy, become liable as for a false return: Be it enacted, that whenever an attachment out of the supreme and either of the circuit courts shall be issued against the same person, and the sheriff or his deputy, in the one court, shall have returned the attachment on the writ last delivered to him, without knowledge of the writ of attachment previously delivered to him or his deputy in the other district, he shall not, for so doing, be liable as for a false return, unless the same shall have happened by or through the negligence or default of himself or one of his deputies or bailiffs; and it shall in such case be lawful for the said courts respectively, or any judge thereof, to allow the return of the writs to be amended.

ANNO TERTIO

GULIELMI IV. REGIS.

CAP. VI.

An Act to declare the qualification and character of persons admitted to practise as barristers and attornies of the supreme court of this island.

[17th April, 1833.]

WHEREAS, by a certain Act passed in the imperial parliament in the fifth year of the reign of his late Majesty King George the Fourth, entitled "An act for the better administration of justice in Newfoundland, and for other purposes," it is declared and enacted that it shall and may be lawful for His Majesty, his heirs, and successors, by his charter or letters patent, or by any order or orders to be issued by and with the advice of his and their privy council, to make and prescribe, or to authorise the supreme court of Newfoundland, as His Majesty shall deem proper, to make and prescribe such rules and orders touching and concerning the admission of barristers, attornies, and solicitors in the said supreme court, as to his Majesty, his heirs and successors, shall seem meet, and such rules and orders from time to time to alter, amend, or revoke, as to His Majesty, his heirs, and successors, shall seem requisite: And whereas, in and by the charter or letters patent of his said late Majesty, issued under and by virtue of the said act, bearing date at Westminster the nineteenth day of September, in the year one thousand eight hundred and twenty-five, it is declared that in case there shall not be a sufficient number of persons having been admitted barristers at law or advocates in Great Britain or Ireland, or having been admitted writers, attornies or solicitors in one of His Majesty's courts at Westminster, Dublin, or Edinburgh, or having been admitted as proctors in any ecclesiastical court in England, or of persons having served a clerkship under articles in writing for the term of five years at least to any barrister, advocate, proctor, attorney, or solicitor of the said supreme court, and

admitted and enrolled as barristers, advocates, proctors, attornies or solicitors, to act as such within the said colony, competent and willing to appear and act for the suitors of the said supreme court, that then and in that case the said supreme court was and is thereby authorized to admit so many other fit and proper persons to appear and act as barristers, advocates, proctors, attornies and solicitors, as may or might be necessary, according to such general rules and qualifications as the said supreme court should for that purpose make and establish: And whereas, in and by an act of the imperial parliament passed in the tenth year of the reign of his late majesty King George the Fourth, the aforesaid recited act was continued until the thirty-first day of December in the year one thousand eight hundred and thirty-two: And whereas, in and by a certain Act passed in the imperial parliament in the second and third years of the reign of his most gracious Majesty King William the Fourth, entitled "an act to continue certain acts relating to the island of Newfoundland, and to provide for the appropriation of all duties which may hereafter be raised in the said island," it is enacted that it shall and may be lawful for His Majesty, or for any governor lieutenant-governor, or officer administering the government of Newfoundland, in pursuance of any commission or instructions to him for that purpose addressed by His Majesty, with the advice and consent of any house or houses of general assembly, which His Majesty may hereafter be pleased to convoke from among the inhabitants of the said colony, by any act or acts to be from time to time for that purpose passed, to repeal in whole or in part, or to amend, alter, or vary the said recited act, or any part thereof, and that until so repealed, amended, altered, or varied, the said recited act shall be and continue in full force and effect: And whereas, in pursuance of the said act of the imperial parliament passed in the fifth year of the reign of his late Majesty King George the Fourth, and of the said royal charter, divers persons of the profession of the law were, on the institution and opening of the said supreme court, and have been at divers times and periods since, admitted to practise in the said courts as barristers, advocates, proctors, attornies, and solicitors of the said supreme court: And whereas doubts have arisen whether the persons so admitted shall be deemed to be barristers, advocates, proctors, attornies and solicitors fully admitted and enrolled, and it is necessary that all such doubts should be removed.

Be it therefore enacted, by the governor, council, and assembly, in colonial parliament assembled, that every person who hath been admitted to practise as a barrister or advocate, proctor, attorney or solicitor as aforesaid, in the said supreme court of Newfoundland, and hath continued to practise as such in the said supreme court or circuit courts from the period of his admission until the present time, shall be deemed to have been from the period or date of his respective admission to practise as such barrister or advocate, proctor, attorney or solicitor, and is hereby declared to be to all intents and purposes, a barrister at law and advocate, proctor, attorney and solicitor of the said supreme court of Newfoundland, duly admitted and enrolled; — Provided always, that any person who may have been admitted to practise as aforesaid, and hath been appointed to act in the capacity of clerk in the supreme or circuit courts of this island, shall be considered a practising barrister, advocate, proctor, attorney and solicitor, within the meaning of this Act.

Barristers who have been admitted to practise in the supreme court declared to be Barristers-at-Law admitted and enrolled.

ANNO QUARTO
GULIELMI IV. REGIS.

[2ND SESSION.]

CAP. XXIII.

An Act to incorporate a law society in Newfoundland, and to regulate the admission of barristers and attorneys to practise in the law in the several courts of this island.

[12th June, 1834.]

Practitioners at the bar may form themselves into a society to be called "The Law Society of Newfoundland." **BE IT ENACTED**, by the governor, council, and assembly of Newfoundland, that from and after the passing of this act, it shall and may be lawful for the persons, now admitted to practise in the law, and practising at the bar of any of His Majesty's courts of this island, to form themselves into a society, to be called "The Law Society of Newfoundland," as well for the establishing of order amongst themselves, as for the purpose of securing to the island and the profession, a learned and honorable body, to assist their fellow-subjects as occasion may require, and to support and maintain the constitution of the island.

Power to make bye-laws, &c. **II.** — And be it further enacted, by the authority aforesaid, that the said society shall, and it is hereby authorized to, form a body of rules and regulations for its own government, under the inspection of the judges of the supreme court of this island, for the time being, and to appoint six members, or more, of the present practitioners, and such six members or more for the time being, in all times to come, whereof His Majesty's attorney-general and solicitor-general, for the time being, shall be, and be considered to be two, as governors or benchers of the said society, and also to appoint a librarian and treasurer.

Governors, benchers, and officers of the society. **III.** — And be it further enacted that it shall and may be lawful for the said practitioners, or as many as can be called together, (whereof His Majesty's attorney general and solicitor general shall be two) to assemble at St. John's, in the island aforesaid, on the

Members to meet and frame rules and regulations.

first day of July next after the passing of this act, for the purpose of framing and adopting such rules and regulations as may be necessary for the immediate establishment of the said society, and its future welfare: And such rules and regulations as shall then and there be adopted, shall be openly read, and entered in a book, to be for that purpose provided, and having received the approbation of the said judges, as visitors as aforesaid, shall be, and be considered to be, the constitution of the said society, and binding upon all its members. Provided always, that it shall and may be lawful, in time to come, to add such other rules and regulations, with the approbation of the judges as aforesaid, as may then and there be necessary.

Such rules, when approved by the judges, to be the constitution of the society.

IV. — And be it further enacted, that it shall and may be lawful to and for every person now practising at the bar of any of His Majesty's courts of this island, or who shall hereafter be duly authorized to practise as aforesaid, to take and have three articulated clerks at one time, and no more.

Practitioners may have not exceeding three articulated clerks.

V. — And be it further enacted, that from and after the passing of this Act, it shall and may be lawful for any person, having been duly called to the bar of any of His Majesty's superior courts, not having merely local jurisdiction in England, Scotland, or Ireland, or in any of His Majesty's North American colonies, in which the same privilege would be extended to barristers of this island, on producing sufficient evidence thereof, and also on producing testimonials of good character and conduct, to the satisfaction of the Law Society of this island, to be called, by the said society, to the degree of a barrister, upon his entering himself of the said society, and conforming to all the rules and regulations thereof.

Barristers of the United Kingdom or the North American colonies, may be called to the bar, on being entered of this society.

VI. — And be it further enacted, that no person shall be permitted to practise as an attorney or barrister of this island, who shall not have attained, at the time of his admission and being called to the bar, the full age of twenty-one years.

No person under age to be admitted to practice.

VII. — And be it further enacted, that from and after the passing of this Act, no person shall be admitted by the supreme court to practise as an attorney of this island, unless upon an actual service of five years with some practising attorney of this island, or who having been entered upon the books of the said society as students, at law, shall have been subsequently called to the bar in England, Scotland, or Ireland, or any of His Majesty's colonies: Provided

Qualifications for admission as Attornies

Proviso: Supreme court, in case of defici-

ency of attor- always, that if at any time there shall not, in the opinion of the
 nics, may ad- supreme court, be a sufficient number of fit and proper persons
 mit barristers practising as attorneys in Newfoundland, to conduct the ordinary
 to practise as such. business of the island, in the different courts of justice established
 therein; then, and in such case, it shall and may be lawful for the
 said supreme court to admit any such barrister or barristers as
 aforesaid, who may have been so called to the degree of a barrister
 in this island, to practise also as an attorney or attorneys in the
 several courts thereof.

Treasurer and VIII.—And be it further enacted, that the treasurers and bench-
 Benchers of the ers of the said law society for the time being, and their successors,
 society consti- to be nominated and appointed according to the rules and bye-laws
 tuted a body of the said society, shall be, and they are hereby declared to be, one
 corporate. body corporate and politic, in deed and in law, by the name of the
 “Law Society of Newfoundland,” and shall have perpetual succession
 and a common seal, with power to break, alter, change, or make
 new the same; and they and their successors, by the name aforesaid,
 may sue and be sued, implead and be impleaded, answer and be
 answered unto, in all or any court or courts of record, and places of
 jurisdiction within this island; and that they and their successors,
 by the name aforesaid, shall be able and capable in law, to have,
 hold, receive, enjoy, possess, and retain, for the end and purposes
 of this act, and in trust and for the benefit of the said society, all
 such sum and sums of money, as shall or may be given, devised, or
 bequeathed, by any person or persons, to and for the use of the
 said society; and that they and their successors, by the name afore-
 said, shall and may, at any time hereafter, without any license of
 mortmain, purchase, take, receive, have, hold, possess, and enjoy,
 all lands, tenements, or hereditaments, for the purposes of the said
 society, and for no other purpose whatsoever; and may also, in the
 same manner, sell, grant, lease, demise, alien, or dispose of the
 same, and do and execute all and singular, other matters and things
 that to them shall or may appertain to do.

ANNO NONO

VICTORIÆ REGINÆ.

CAP. V.

An Act to enable barristers and advocates to practise as attorneys, solicitors and proctors, in the several courts of this Island.

[Passed 28th April, 1846.]

WHEREAS it is expedient that persons called by the law society of Newfoundland to the degree of barristers of the said society, should be permitted to practise as attorneys, solicitors and proctors, in the several courts of judicature in this island :

Be it therefore enacted by the governor, council, and assembly, in legislative session convened, that from and after the passing of this act, it shall and may be lawful for every person who either now is or may be hereafter admitted to practise as a barrister or advocate in the said several courts of this island, to practise also as an attorney, solicitor, and proctor, in all or any court or courts of record, or places of jurisdiction, within this island, on taking the usual oaths before one of her majesty's judges of the supreme court; provided always, that every such person shall, previously to his being admitted to practise as an attorney, solicitor, or proctor, as aforesaid, pay to the said law society all such fees as would be payable by such person, were such person entered on the books of the said society as a student-at-law, in order to his admission as an attorney of this island under the seventh section of an act passed in the fourth year of the reign of his late majesty, entitled "An act to incorporate a law society in Newfoundland, and to regulate the admission of barristers and attorneys to practise in the law in the several courts in this island."

Barristers and advocates of the supreme court admitted to practise as attorneys.

Proviso.

ANNO PRIMO
VICTORIÆ REGINÆ.

CAP. V.

An Act to repeal part of an act passed in the parliament of Great Britain in the fifth year of the reign of his Majesty King George the Fourth, entitled "An act for the better administration of justice in Newfoundland, and for other purposes," and to make further provision for the registration of deeds in this colony.

[18th November, 1837.]

Preamble. WHEREAS it is expedient to alter and amend the laws now in force in this colony for the registration of deeds; be it enacted by the governor, council, and assembly, of Newfoundland, and by the authority of the same, that the thirty-second section of an act passed in the parliament of Great Britain in the fifth year of the reign of his majesty king George the Fourth, intituled "An act for the better administration of justice in Newfoundland, and for other purposes," shall be, and the same is, hereby repealed.

5. Geo. 4, c 67. II.—And be it further enacted, that from and after the passing of this act, in all cases where deeds, conveyances, and other assurances of what nature or kind soever, whereby any lands or tenements situate in the said colony or the dependencies thereof, have been or may be hereafter granted, conveyed, mortgaged, charged, or otherwise affected, or intended so to be, shall not have been left at the proper office for the registration thereof within the times prescribed by the said in-part-recited Act, or where the execution thereof shall not have been acknowledged before the registrar by the party or parties from whom any interest may pass, or their attorney duly appointed, it shall and may be lawful for the registrar of deeds for the district wherein the lands affected by the said deed, conveyance, or other assurance shall be situated, and he is hereby required, to register the same upon affidavit being made by one of the subscribing witnesses of the due execution thereof by the parties thereto, which affidavit may be taken before the registrar of each of the said

Where deeds, &c. have not been left for registration within the period required by law, the registrar may register the same on affidavit as herein prescribed.

districts, or before any commissioner duly authorized to take affidavits in the supreme court, or before any justice of the peace of this island, whereupon the said deed, conveyance, or other assurance, shall be deemed and taken to be duly registered, any thing in the said in-part-recited act to the contrary thereof in any wise notwithstanding.

III.--And be it further enacted, that every deed, conveyance, or other assurance, of any lands, tenements, or hereditaments, made or executed after the passing of the before in-part-recited act, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for a valuable consideration, unless such deed, conveyance, or other assurance, shall have been duly registered within the times limited by the said in-part-recited act for the registration thereof, or if subsequently then unless the same shall have been registered before the registry of the deed, conveyance, or other assurance, under which any such subsequent purchaser or mortgagee shall claim. Provided always, and be it further enacted, that nothing in this or in the said in-part-cited act, shall extend to any lease at a rack-rent, where the actual possession and occupation shall go with the lease.

Deeds, &c. executed after the passing of the above recited act to be deemed void unless registered as herein required.

Proviso.

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ANNO SEPTIMO
VICTORIÆ REGINÆ.

CAP. X.

An Act to amend the laws now in force for the registering of deeds in this colony.

[Passed 29th April, 1844.]

Preamble.

WHEREAS by an act passed in the first year of the reign of her present majesty, entitled "An act to repeal part of an act passed in the parliament of Great Britain, in the fifth year of the reign of his majesty king George the Fourth, intituled 'An act for the better administration of justice in Newfoundland, and for other purposes,' and to make further provision for the registration of deeds in this colony,"—it was enacted that from and after the passing of the said act, in all cases where deeds, conveyances, and other assurances, of what nature or kind soever, whereby any lands or tenements situate in the said colony or the dependencies thereof had been or might be thereafter granted, conveyed, mortgaged, charged, or otherwise affected, or intended to so be, should not have been left at the proper office for the registration thereof, within the times prescribed by the said in-part-recited act, of the fifth year of king George the Fourth, or where the execution thereof should not have been acknowledged before the registrar by the party or parties from whom any interest might pass, or their attorney duly appointed, it should and might be lawful for the registrar of deeds for the district wherein the land affected by the said deed, conveyance, or other assurance, should be situated, and he was thereby required, to register the same upon affidavit being made by one of the subscribing witnesses of the due execution thereof by the parties thereto, which affidavit might be taken before the registrar of each of the said districts, or before any commissioner duly authorised to take affidavits in the supreme court, or before any justice of the peace of this island, — whereupon the said deed, conveyance, or other assurance, should be deemed and taken to be duly registered : And whereas it has been doubted

whether by the said act of Her Majesty the registrars of deeds are authorised to register deeds upon affidavits made by subscribing witnesses unless in cases where such deed shall not have been left for registration within the time prescribed by law, or where the execution thereof shall not have been acknowledged before the registrar by the party or parties from whom any interest may pass, or their attorney duly appointed; and it is expedient that in all cases the registry of deeds should be allowed either upon the affidavit of the subscribing witness, or upon the acknowledgment of one of the parties from whom the interest may pass.

I. — Be it declared and enacted, by the governor, council, and assembly, in legislative session convened, that all deeds, conveyances, and assurances, whereby any lands or tenements situate in this colony or its dependencies have been or may be hereafter granted, conveyed, mortgaged, charged, or otherwise affected, may be registered upon the affidavit of one of the subscribing witnesses, taken in the manner required by the said recited act of Her present Majesty, or under the provisions of this act.

All deeds, conveyances, &c. may be registered on affidavit of subscribing witnesses.

II. — And be it enacted, that the affidavit of any such subscribing witness to any such deed, conveyance, or other assurance, residing out of this colony, may be taken before any judge of a superior court of judicature, or before any master-in-chancery, or before the chief magistrate of any town or place in or near to which such witness may reside: Provided that no affidavit to be taken elsewhere than in this colony shall be deemed valid, unless the signature of such judge, master-in-chancery, or chief magistrate, be verified by the certificate of some notary public of or near to the town or place where the same shall be sworn, or by the corporate or other public seal of such town or place.

Such affidavits in case of deeds executed out of the colony to be taken before whom and verified how.

III. — And whereas certain deeds, conveyances, or other assurances aforesaid, executed out of this colony, have been from time to time registered therein on the acknowledgment by persons appointed for that purpose as the attorneys of the parties executing such deeds, conveyances, or other assurances, by instruments not under seal: And whereas doubts have been raised respecting the validity of such appointments: Be it therefore declared and enacted, that all deeds, conveyances and other assurances, aforesaid, which have been so *bona fide* registered, shall be deemed and taken, as far as regards the validity of such appointments, to have been duly

Registry of deeds on acknowledgment by an attorney appointed not under seal, confirmed in certain cases.

Proviso.

registered: Provided always, and be it further enacted, that no appointment which shall be hereafter made for the purpose of acknowledging any such deed, conveyance, or other assurance aforesaid, executed out of this colony, shall be deemed valid or effectual for the registering of any such deed, conveyance, or other assurance aforesaid, in any district of this colony, unless such appointment shall be under the hand and seal of the party or parties executing the same.

Deeds that might be registered on affidavits of subscribing witnesses may also be registered on acknowledgment of parties.

IV.—And be it enacted, that at any time when by the provisions of this act, or of the said act passed in the first year of her majesty's reign, such deed, conveyance, or other assurance, may be registered upon the affidavit of one of the subscribing witnesses, such deed, conveyance, or other assurance, may be registered by acknowledgment of the party or parties from whom the interest may pass.

V.—And be it enacted, that every such deed, conveyance, or other assurance, shall be deemed and taken to be a registered deed conveyance, or assurance, from the time when the execution thereof shall be duly acknowledged before the proper registrar, or from the time when such deed, conveyance, or other assurance, accompanied by the proper affidavit of the subscribing witness, shall be left with such registrar for registration.

Time of such registry taking effect.

Certain registrations of doubtful validity confirmed.

VI.—And be it enacted, that all deeds, conveyances, and other assurances aforesaid, which have been or which hereafter shall be registered on the acknowledgment of a party executing the same after the expiration of six months or twelve months respectively from the time of such execution, shall be deemed to be duly registered in like manner as if such deeds, conveyances, or other assurances had been or were registered on the affidavits of subscribing witnesses under the provisions of the hereinbefore in part recited act; and all deeds, conveyances, or other assurances, aforesaid, which have been, or which hereafter shall be, registered on the affidavits of subscribing witnesses thereto within the period of six or twelve months respectively from the execution thereof, shall be deemed to be duly registered in like manner as if such deeds, conveyances, or other assurances, had been or were registered on the acknowledgment of some party executing the same.

Provisions for registration of certain deeds executed out of the colony.

VII.—And be it enacted, that where any person shall execute in any place out of this colony any deed, conveyance or other assurance, affecting lands, tenements, or hereditaments within this co-

lony, or which require to be registered within the same, it shall be lawful for the registrar of deeds for the district wherein such lands, tenements, or hereditaments are situated, to register such deed, conveyance, or other assurance, upon the production to him of a copy of the said deed, conveyance, or other assurance, duly verified by affidavit and authenticated by the certificate of any judge of a supreme court of record, master in chancery, chief magistrate, or notary public of or near to the place where the person executing such deed, conveyance, or other assurance, may reside; and such registration shall be as valid, to all intents and purposes, as if the original deed, conveyance, or other assurance, had been produced to such registrar.

ANNO DECIMO
VICTORIÆ REGINÆ.

CAP. VI.

An Act concerning the registration of deeds.

[Passed 14th January, 1847.]

WHEREAS in the fire by which a great part of the town of Saint John's was recently destroyed, several volumes of the registry of deeds of the supreme court were burned, and it is expedient to remedy as far as possible any inconvenience which might arise from their loss :

Deeds of which the registry hath been destroyed to be registered anew.

I.—Be it therefore enacted, by the governor, council, and assembly, in legislative session convened, that it shall and may be lawful for any person or persons who may hold any deed, will or other assurance which, before the said fire, had been duly registered in any of the volumes so destroyed as aforesaid, and they are hereby required, to present such deed, will, or other assurance, to the registrar of deeds for the central district ; and such registrar shall register a memorial of such deed, will, or other assurance, free of charge.

Deeds executed out of the colony may be registered on being verified by declaration under act 5, W. 4, c. 62.

II.—And whereas deeds executed out of this colony are frequently verified by a declaration of one of the subscribing witnesses instead of the affidavit now required by law ; and great inconvenience, delay and expense is thereby occasioned to parties interested in it : Be it therefore enacted, that in all cases where any deed, will, conveyance, or other assurance, may now be registered, upon being verified by the affidavit of any witness or other person, such deed, will, conveyance, or other assurance, may be registered, upon being verified by a declaration of such witness or other person, made in the manner and form prescribed by the act of the imperial parliament, made in the fifth year of the reign of king William the Fourth, entitled " An act to repeal an act of the present session of parliament, entitled ' An act for the more effectual

abolition of oaths and affirmations taken and made in various departments of the state, and to substitute declarations in lieu thereof, and for the more effectual suppression of voluntary and extra judicial oaths and affidavits, and to make other provision for the abolition of unnecessary oaths." Provided that such declaration shall be authenticated in the like manner as such affidavit is or may be required to be authenticated.

III.—And whereas by an act of the local legislature passed in the seventh year of the reign of her present majesty entitled "An act to amend the laws now in force for the registering of deeds in this colony," it is enacted that registry of any deed, conveyance, or other assurance executed out of this colony, should be made on production of a copy thereof duly verified by affidavit, and authenticated before any judge of a supreme court of record, master in chancery, chief magistrate, or notary public, of or near to the place where the person executing such deed, conveyance, or other assurance, should reside; and it is expedient that such certificate should be by a judge, master in chancery, chief magistrate, or notary public, of or near to the place where the person verifying such deed, conveyance, or assurance, should reside: Be it therefore enacted, that in all cases within the operation of the seventh section of the said act, such deed, conveyance, or assurance, may be registered upon such affidavit or the declaration allowed by this act being authenticated by such judge, master in chancery, chief magistrate, or notary public residing at or near the place where the person making such affidavit or declaration may reside; and that no registry of any deed, conveyance, or other assurance, which may have been made since the passing of the said act, shall be deemed invalid, by reason of the authentication thereof having been before such judge, master in chancery, chief magistrate, or notary public residing at or near the place where the person making such affidavit may reside, instead of being made before a judge, master in chancery, chief magistrate or notary public, residing at or near the place where the person executing the deed, conveyance, or other assurance may reside.

Deeds executed abroad may be registered on being being verified by certificate of judge, &c. residing near witness.

IV.—And be it enacted, that the secretary of the colony shall, as speedily as may be, after the passing of this act, cause public notice to be inserted in the Royal Gazette, and such other of the public newspapers of this colony as he shall think fit, and also in some Secretary of colony to give notice of the act in Royal Gazette, &c.

one of the public newspapers published in London, Liverpool, Greenock, Bristol, Exeter, Poole, Cork, and Waterford, and in the Royal Gazettes in the respective provinces of Canada, Nova Scotia, New Brunswick, Prince Edward Island, and Bermuda, informing all parties interested of the destruction of said volumes of the registry of deeds, and of the necessity for registering anew deeds and other assurances, of which the registry hath been destroyed; and also, informing such parties that a copy of the laws of this colony concerning the registration of deeds is deposited in some office or place of deposit near to the places respectively where the newspapers referred to may be published, and that such copies of the said laws shall be there open for the inspection of all parties interested: and the said secretary of the colony is hereby empowered to cause such copies of the said laws to be transmitted to the said places of deposit for the purposes above mentioned.

ANNO DECIMO
VICTORIÆ REGINÆ.

CAP. III.

An Act to regulate the appointment of sheriffs.

[Passed 14th January, 1847.]

WHEREAS by an act of the imperial parliament passed in the fifth year of the reign of his late Majesty King George the Fourth, entitled "An Act for the better administration of justice in Newfoundland" and "and for other purposes," and which said act was to continue in force for the period of five years, it was declared and enacted that it should be lawful for his said Majesty by his charter or letters patent under the great seal, to institute a supreme court of judicature in Newfoundland, which should be called "the Supreme Court of Newfoundland." And whereas by subsequent acts of the imperial parliament, passed respectively in the tenth year of the reign of his said Majesty, and in the third year of the reign of his late Majesty King William the Fourth, the said recited act was continued in force until the same should be repealed, altered, or amended, by any act or acts which might for that purpose be made by His Majesty with the advice and consent of any house or houses of general assembly which His Majesty might at any time see fit to convoke within the colony of Newfoundland. And whereas in pursuance of the provisions of the first-recited act his said Majesty King George the Fourth by letters patent under the great seal and dated at Westminster the nineteenth day of September in the sixth year of his said Majesty's reign, did erect and constitute a supreme court of judicature in Newfoundland, and by the said letters patent did further ordain and declare that the governor or acting governor for the time being of the said colony of Newfoundland should yearly and on the Monday next following the first day of January in each year, by warrant under his hand and seal, nominate

and appoint some fit and proper person to act as and be the sheriff of Newfoundland and its dependencies, other than the coast of Labrador, for the year ensuing; which sheriff when appointed should as soon as conveniently might be, and before he should enter upon his said office, take, before the governor or acting governor of the said colony, an oath faithfully and impartially to execute the duties of his said office; and such sheriff should continue in his said office for the space of one whole year, and until another sheriff should be appointed and sworn into the said office; and before entering upon the duties of his office, should enter into a recognizance in the sum of five thousand pounds, with two good and sufficient sureties in the sum of two thousand pounds each, for the due and faithful performance of the duties of his office, and for the due payment of all such sums of money as might by him or his lawful deputies be levied or received by virtue of any process, rule, or order of the supreme and circuit courts or of either of them; and further, that it should be lawful for the governor or acting governor of the said colony, to renew from year to year the appointment of the same person as sheriff of the said colony and its dependencies. And whereas, by an act of the local legislature, passed in the sixth year of the reign of her present Majesty, it was provided that the said sheriff and two deputies, one for the northern and one for the southern judicial districts of the said island, should receive certain salaries in lieu of all fees of office, which fees were to be paid into the colonial treasury. And whereas the amount of fees received and paid into the treasury by the said sheriff, since the passing of the last mentioned act, has been found to be considerably under the whole amount of salaries paid in lieu thereof. And whereas much inconvenience, injury and loss has arisen in the administration of justice, from the want of more deputies than are provided for by the said last-mentioned act; and it is moreover expedient that the said law with respect to the appointment of sheriffs in this colony should be in other particulars amended.

Act of 6 Vic.,
for commuting
sheriff's fees
repealed.

I.—Be it therefore enacted, by the governor, council and assembly, in legislative session convened, that from and after the first Monday in July next after the passing of this act, an act passed in the sixth year of the reign of her present Majesty, entitled “An Act to commute the fees received by the high sheriff of this colony and to provide for the salaries of the said sheriff and his deputies,”

shall be and the same is hereby repealed; and that from and after such time as aforesaid, the office and functions of sheriff of Newfoundland and its dependencies, other than except the coast of Labrador, shall cease and be abolished. Office of sheriff of Newfoundland abolished.

II. — And be it enacted, that the governor or administrator of the government for the time being, shall, on the first on Monday in July next after the passing of this act, and on the first Monday in July in each ensuing year, by warrant under his hand and seal, nominate and appoint in each of the judicial districts of the colony, some fit and proper person to act as and be the sheriff of such district, which sheriff, when appointed, shall, as soon as conveniently may be, and before he shall enter upon his said office, take, before the governor or administrator of the government for the time being, an oath faithfully and impartially to execute the duties of such his office, and such sheriff shall continue in office during the space of one whole year, or until another sheriff shall be appointed and sworn into office; and in case such sheriff shall die in his said office or depart from the colony of Newfoundland and its dependencies, then and in such case another person shall, as soon as conveniently may be after the death or departure of such sheriff, be in like manner appointed and sworn in as aforesaid for the remainder of the year, and until another sheriff shall be duly appointed and sworn into office. Provided that it shall be lawful for the governor or administrator of the government for the time being, to renew, from year to year, the appointment of the same persons as sheriffs in each of the said districts. And provided also, that before entering upon the duties of his office, each of such sheriffs shall enter into a recognizance before the supreme court of Newfoundland, or a commissioner to be appointed for that purpose by the said court, to her Majesty, her heirs and successors, in the sum of one thousand pounds, with sufficient sureties in the sum of one thousand pounds, for the due and faithful performance of the duties of his office, and for the due and punctual payment of all such sums of money as may be by him received by virtue of any process, rule, or order of the supreme court, or of any of the circuit courts of Newfoundland. Three sheriffs to be appointed by the governor for three judicial districts.

III. — And be it enacted, that the sheriffs so to be from time to time appointed as aforesaid, shall, within the districts to which they shall be respectively appointed, have, use, exercise and perform the like powers and duties, and in like manner and under and subject Powers and duties of sheriff.

to the like conditions, limitations, restrictions and provisions, to all intents and purposes, as are declared and provided with respect to the sheriff of Newfoundland and its dependencies, under and by virtue of the royal charter for establishing the supreme and circuit courts of Newfoundland.

Salaries in lieu of fees heretofore received.

IV. — And be it enacted, that the said sheriffs so to be appointed as aforesaid, shall respectively, have and receive the following salaries, that is to say, the sheriff of the central district, five hundred pounds per annum; the sheriff of the northern district, three hundred pounds per annum; the sheriff of the southern district, two hundred pounds per annum; which salaries shall be paid quarterly, by warrant of the Governor or administrator of the government for the time being, upon the colonial treasurer, and shall be in lieu of all expenses incident to the offices of such sheriffs respectively; and in lieu of all fees and costs whatsoever, which by virtue of any law, or general rule or order of the supreme court, have been heretofore taken or received by the sheriff of Newfoundland, by virtue of or as incident to his office, or which after the commencement of this act as aforesaid, might be taken by either of the sheriffs to be appointed under this act.

Fees to be accounted for and paid over annually.

V. — And be it enacted, that the said sheriffs shall respectively make full and true annual returns of all such fees and costs whatsoever, which may have been received or taken by them, and shall pay over the same to the treasurer, for the uses of the colony.

Present sheriff to receive £200 per annum during his incumbency.

VI. — And be it enacted, that it shall be lawful for the governor or administrator of the government for the time being, at the expiration of each year after the commencement of the operation of this act and during the incumbency of the present sheriff of Newfoundland, to issue his warrant to the treasurer of the colony for the payment to him of the sum of two hundred pounds, as compensation for any loss or injury occasioned to the said sheriff by the passing of this act. Provided always, that the said sheriff shall annually make a full and just return of and pay into the colonial treasury, all fees, costs, and emoluments whatsoever, which have been received by him by virtue or under colour of his said office, or by or under any law or rule of court whatsoever pertaining or relating thereto.

Sheriff of Central district to transmit pro-

VII. — And be it enacted, that the sheriff of the central district shall receive and transmit to the said sheriffs of the said northern and southern districts respectively, by Post or such other conveyance as may

offer for the same, such process, rules, and orders issuing out of the supreme court, to be executed in the said northern and southern districts, as shall be delivered to him for that purpose, and shall also grant special deputations, when required, for the purpose of having such process executed in such districts: Provided always, that the said sheriff of the central district shall not be responsible for the execution of such process so transmitted by him, or for or on account of such special deputation; and that the said sheriff shall have and receive the sum of fifty pounds per annum in addition to his salary for the performance of the duties herein imposed upon him.

cess to north-
ern & southern
district.

Proviso.

ANNO TERTIO
VICTORIÆ REGINÆ.

CAP. VI.

An Act to regulate the granting of licenses for the sale by retail of wines, ale, and spirituous liquors in Newfoundland.

[Passed 12th October, 1839.]

Preamble.

WHEREAS in order to conduce to the more equal and efficient collection of license monies from all the venders of wines, ale, and spirituous and other liquors by retail, it is expedient to amend the laws relating to the granting of licenses, and also to provide a more summary and less expensive mode of proceeding against persons guilty of vending the same contrary to law.

Justices in session authorized to make rules, &c. for the granting of licenses under this act.

Be it therefore enacted by the governor, council, and assembly of Newfoundland, that the justices at the several sessions of the peace, that shall be holden next after the passing of this act, or next after the publication thereof in the respective districts of this island, shall and they are hereby authorised and required to make and ordain rules touching and concerning the granting of licenses to persons selling or intending to sell wines, ale, and spirituous liquors in less quantities than two gallons at one time, and by such rules shall regulate the scale of license monies payable within the several localities in the respective districts of this island: Provided that within the town of St. John's and its vicinity the said license money shall not in any place exceed the sum of seven pounds ten shillings, and shall not be less than two pounds ten shillings: And provided further, that in the towns of Carbonear, Harbor Grace and Brigus, and their vicinities, the said license money shall not exceed in any place, the sum of five pounds, nor be less than the sum of two pounds ten shillings.

Sums to be charged for licenses.

Such rules to specify metes

II. — And be it further enacted, that the said rules shall specify the metes and bounds within which, in the said several towns and

vicinages, the said several sums shall be payable for and on account and bounds of such licenses: Provided that in the other towns and places of within which such sums are chargeable. the central district of this island, and in all other places in the northern and southern districts, the sum chargeable for such license shall in all cases be two pounds ten shillings.

III. -- And be it further enacted, that the justices of the peace at Justices to every general or quarter sessions of the peace shall be authorized, and grant licenses to proper persons for one they are hereby empowered, to grant licenses to such persons as the year, said justices shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper, to sell wines, ale, and spirituous and other liquors, by retail; and such license shall be and continue in force for one whole year, from the date of the issue of the same.

IV. -- And be it further enacted, that every person who shall sell, Penalties on barter, exchange, or for valuable consideration otherwise vend, persons retail- wines, ales, or spirituous liquors, by retail, or shall permit or suffer without such any wines, ale, or spirituous liquors to be sold, bartered, exchan- licenses. ged, or otherwise vendued for valuable consideration, by retail, without being duly licensed so to do, shall for every such offence, on summary conviction before any one justice of the peace, forfeit and pay a sum or penalty not exceeding ten pounds, nor less than two pounds ten shillings, together with the costs of the conviction: Provided always, that no penalty for such sale, barter, exchange, or Proviso. other disposal of any such wines, ale, or spirituous liquors by retail, without license, shall be incurred by the heirs, executors, administrators or assigns, of any person licensed under this act, who shall die, become bankrupt, or take the benefit of any act for the relief of insolvent debtors, before the expiration of his license, so as such sale, barter, exchange, or other disposal of such wines, ale, or spirituous liquors, shall be *bona fide* for the benefit of the estate of such person having deceased or become insolvent, and take place prior to the general or quarter sessions then next ensuing, unless such general or quarter sessions shall be holden within fourteen days next after the death, bankruptcy, or insolvency of the said person; and in any such case, to the general or quarter sessions which shall be holden next after such general or quarter sessions as aforesaid.

V. -- And be it further enacted, that any person who shall think Persons ag- himself aggrieved by such conviction may appeal against the same grievied by de-

ction of jus-
tices to appeal
to next sessions
on giving speci-
fied notice
thereof.

to the next general or quarter sessions of the peace holden in or nearest to the place where such conviction shall have been made, unless such general or quarter sessions shall be holden within twelve days next following; and in that case to the next following general or quarter sessions to be holden as aforesaid and not afterwards: Provided that such person shall give to such justice notice in writing of his intention so to appeal, and of the cause and matter thereof, within five days next after such conviction, and shall within such five days enter into a recognizance with two sufficient sureties, before a justice of the peace of the district within which such conviction shall have taken place, conditioned to appear at such session, and to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as by the said court shall be awarded; and the judgment of the said court shall be final to all intents and purposes; and in case the party shall not within the time limited as aforesaid serve such notice of appeal, and enter such recognizance, or in case such conviction shall have been affirmed by the said court of general or quarter sessions, the said penalty, with all reasonable costs, shall be recovered by distress and sale of the offender's goods and chattels.

Penalties for
mixt. deleter-
ious ingredi-
ents with li-
quors.

VI.—And be it further enacted, that no person shall use, mix, or infuse, or cause to be mixed or infused, any foreign grains, Guinea pepper, Coculus Indicus, vitriol, blue stone, tobacco, or any other noxious or pernicious ingredient, with any ale, porter, wine, or spirituous liquor, or shall fraudulently deteriorate or adulterate any ale, porter, wine, or spirituous liquor, for the purpose of sale: or shall vend or offer for sale any ale, porter, wine, or spirituous liquors, in which any foreign grains, Guinea pepper, Coculus Indicus vitriol, blue stone, tobacco, or any other noxious or pernicious ingredient shall have been used, mixed or infused; and any person who shall knowingly or wilfully offend in any of the premises aforesaid, shall for each offence forfeit and pay to our sovereign lady the queen, a sum or penalty of ten pounds, to be recovered upon complaint or information in a summary way before any two or more justices of the peace, and levied, together with all costs, upon the goods and chattels of the offender.

No person
other than
those duly li-
censed to ex-
hibit a sign-

VII.—And be it further enacted that no person other than those duly licensed to sell or vend ale, wine, and spirituous liquors, by retail, shall keep up, or exhibit in or about any house, out-house or building, any sign-board, or sign containing any words or em-

blem to the purport or effect, or any sign intended or calculated to intimate that such house or out-house or building, is an inn or public house, or that ale, wine, or spirituous liquors, are for sale by retail, or in small quantities, in any such house, out-house, or building, or by the owner or occupier of any of the same respectively: And any person or persons knowingly or wilfully offending herein, shall respectively forfeit and pay, for each and every offence, to our sovereign lady the Queen, a sum not exceeding two pounds, to be recovered upon complaint or information, in a summary way, before any two or more justices of the peace, and levied, together with all costs, upon the goods and chattels of the respective offenders.

board or other indication of an inn, &c.

Penalty.

VIII.—And be it further enacted, that no conviction under this act nor any adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by writ of certiorari or otherwise in any of Her Majesty's superior courts of justice.

Convictions under this act not to be quashed for informality.

IX.—And be it further enacted, that all and every fine and penalty recoverable by virtue of this act shall be paid over to the treasurer of this island, to be appropriated by the legislature to the uses of the colony; Provided that in all cases where the said penalties, or any of them, shall have been recovered by the testimony of more than one witness, one moiety of the same shall be paid over to the informer and the other moiety shall be paid unto the treasurer of the colony, to be appropriated as aforesaid.

Application of penalties.

ANNO QUARTO
GULIELMI IV. REGIS.

[2ND SESSION.]

CAP. XVIII.

An Act for declaring all landed property in Newfoundland real chattels.

[12th June, 1834.]

Preamble.

WHEREAS the law of primogeniture, as it affects real estate, is inapplicable to the condition and circumstances of the people in this island: And whereas the partibility of small estates, by descent in coparcenary, or otherwise, would tend to diminish the value thereof, and would in its application, be attended with much expense and inconvenience: Be it therefore enacted, by the governor, council, and assembly of Newfoundland, in parliament assembled, that all lands, tenements, and other hereditaments, in Newfoundland and its dependencies, which, by the common law, are regarded as real estate, shall, in all courts of justice in this island, be held to be chattels real, and shall go to the executor or administrator of any person or persons dying seized, or possessed thereof, as other personal estate now passes to the personal representatives, any law, usage, or custom to the contrary notwithstanding: *Provided always that no executor or administrator shall bargain, sell, demise, or otherwise depart with any estate or interest therein, for a longer period than one year, without the direction of the supreme court of this island, first given for that purpose.**

Proviso.

II. — And be it further enacted, that all rights or claims which have heretofore accrued in respect to any lands or tenements in Newfoundland, and which have not already been adjudicated upon, shall be determined according to the provisions of this Act:

Rights or claims heretofore accruing to be determined

* This proviso was subsequently repealed by the 6 W. 4, c. 5.

Provided always, that nothing herein contained, shall extend to any right, title, or claim, to any lands, tenements, or hereditaments derived by descent, and reduced into possession, before the passing of this act.*

* When this act was being passed by the legislature the words "and hath not hitherto been applied here," were proposed by the Assembly to be inserted in the preamble after the words "this island;" but the amendment was abandoned after conference between the two houses, on the ground that there was no evidence upon which the allegation contained in the amendment could be supported, and that there might reasonably exist much difference of opinion upon the fact thereby asserted.

In the case of *Williams vs. Williams and others*, Select Cases, 120, the question was raised whether real estate in Newfoundland is or is not subject to the English law of inheritance. The whole of the decision of the Chief Justice (Mr. Forbes) was, unfortunately, not preserved; but from what remains of it, the solution of the question appears to have been in the negative. Mr. Forbes states his inability to find any record in the courts which threw "the most distant light upon the subject." He could not, therefore, have been acquainted with a prior decision of Chief Justice Reeves at Ferryland, in 1792, in the case of *Kennedy vs. Tucker*, in which the same question had been mooted. In this case the eldest son claimed the succession as heir-at-law to a "plantation" (a term by which ground with erections and improvements for fishing purposes is generally described) of his intestate father in exclusion of a sister, the only other child of the intestate. Mr. Reeves decided that the property should be equally divided, being of opinion that "lands and plantations in Newfoundland are nothing more than chattel interests, and should, in case of intestacy, be distributed as such."

On the other hand, later chief justices, and among these Mr. Boulton and Mr. Bourne, were of opinion that until the passing of the real chattels act, real estate in this island was governed by the English rules of inheritance. In the case of *Blennerhasset and others vs. Keen*, C. C. Court, 1840, in which the eldest son claimed as heir-at-law, extensive real estate in this island, the late Chief Justice (Mr. Bourne) held that but for the passing of the act above-mentioned he would have been entitled to it. In this case it appeared that the intestate died in December, 1834; the act had passed in the month of June preceding, but had not prior to the intestate's death been left to its operation by the usual order of Her Majesty in council. There being, however, no suspending clause to the act, the court decided that it took effect as law immediately on the assent of the governor to it being given here.

The decisions of Mr. Reeves and Mr. Forbes above referred to were pronounced during the time that the acts 10 & 11 W. 3, c. 25, and 15 G. 3, c. 31, were in full force, and doubtless were influenced by the peculiar policy of those statutes, by which Newfoundland was considered in the light of a fishery only and not as a colony or plantation properly so called. The occupancy of the soil was intended to be but temporary, and for the purposes of the fishery, and indeed until the passing of the act 5, Geo. 4, c. 51, by which all restrictions upon the granting of land in fee were removed, the titles from the crown, if they can be so called, were only licenses of occupation, for the purposes of cultivation, under the hand and seal of the Governors, sometimes for a limited period but more frequently for terms of years renewable, and which of late have generally been commuted for grants in fee simple. But in the case of real property acquired

by an adverse possession for such a period of time as would bar the right of the crown, — by which title a great portion of valuable property in this island has been acquired, as well as in the case of fee simple property in general by whatever title acquired, if the English Law of inheritance did not govern it, it seems difficult, to say what other rule or law could be applied to it. Among the English laws which Sir W. Blackstone lays down as being carried by English subjects to a colony planted and settled by them, are "the general rules of inheritance." Nothing having the legal requisites and force of a custom in this respect can be alleged here; and, in the introductory part of Mr. Forbes' decision, which is all that remains of it, while he lays stress upon the circumstance that the law of inheritable succession had not been urged before the courts of this island, he cites on the other hand no judicial decision to the contrary. But as I have above remarked, the peculiar tenure under which real property was from the first held, and the policy of the Imperial Government in reference to Newfoundland tended to and had the effect of discountenancing the application here of the English law of inheritance. These doubts and difficulties are now all removed by the act declaring landed property real chattels, which so far as relates to distribution in cases of intestacy, is much more suitable to the circumstances of this colony, than the law of England.

In support of the view of the law taken by Mr. Forbes, I may add that I have not been able to trace in the records of the courts, nor by relation of persons capable of affording information, any application of the law relating to dower in this island; and although the statute of frauds has always been held to be in force here, wills of real estate have never been considered invalid from the absence of the attestation of three witnesses, according to this statute.

By the English statute 5 Geo. 2, c. 7, s. 4 lands in the plantations are made liable to debts, and in this island prior to the passing of the Real Chattels Act, it was the practice to attach and sell lands for the satisfaction of debts in like manner as chattels. This branch of the law is now regulated by the local act 6 Vic. c. 10.

In a case lately decided in the Supreme Court, *Doe e. d. Stares vs. Renouf*, a receipt in writing for a sum of money mentioned to be the purchase money for a piece of ground, the possession of which was at the same time delivered to the party paying by the party signing the receipt, was held to be a sufficient conveyance of the title.

GENERAL RULES AND ORDERS
OF THE
SUPREME COURT OF NEWFOUNDLAND.

XX. — The sheriff will keep a list of persons qualified to serve as Qualification of grand jurors. grand jurors; in which will be entered, in alphabetical order, the names of all the principal merchants and gentlemen of the town: and four days before the commencement of each term, a written summons shall be sent to twenty-three of the persons mentioned in this list (beginning with the letter A, and proceeding regularly through the whole alphabet,) commanding them to attend the court at the opening thereof. The persons so summoned will form the grand jury for the whole term, and will be liable to attend the court during the continuance thereof, at such times as the judges shall direct.

XXI.—A fine, of from 50s. to £5, will be imposed upon every grand Fine on grand jurors. juror who shall neglect to attend the court after having been regularly summoned to do so; unless his absence shall be excused by a certificate of sickness, under the hand of a respectable medical practitioner, which must be delivered to the clerk of the court before the opening thereof: And if the non-attendance of the juror shall appear to have been occasioned by any neglect of the summoning officer, the court will inflict the same fine upon him which the juror would have been liable to, had the summons been regular.

XXIV.— All persons possessing real property, to any amount, or Qualification of petty jurors. occupying any house or tenement of the annual rent or value of twelve

* The remainder of this rule, which relates to the summoning of grand jurors from the list in alphabetical order was subsequently abrogated by the 58th of the old rules; but although this latter rule was afterwards rescinded, the whole of the 20th rule has not in practice been held to be revived, and the names of the jurors who are to serve are still drawn by ballot from the box, in which they are kept until the list is exhausted, when the names are returned to the box again. The juries are now, and for many years past have been, summoned under a precept from the judges, issued before the term, as in England.

pounds, within three miles of the court house, and the sons of all such persons, during their residence with their fathers, will be liable to serve as petty jurors, with the following exceptions:—

Exemptions.

All persons under 21 and above 60 years of age.
Magistrates.
Officers belonging to, and persons practising in, the courts.
Clergymen, the ministers of the gospel in all religious congregations, and schoolmasters.
Doctors of medicine and practising surgeons.
Persons whose names are enrolled on the lists of grand and special jurors.*

Sheriff to keep lists.

XXV.—The sheriff will keep a list of all persons liable to serve as petty jurors, in which their names shall be inserted in alphabetical order.

Service of summons on jurors

XXVIII.—The summons shall be printed, or written, and delivered personally to the juror, or to some member of his family, at his house, or usual place of residence.

Fine on petty jurors.

XXXIII.—On the other hand, the court will most rigidly enforce the attendance of jurors by imposing a fine of 30s. in every instance where the absence of the juror shall not be excused by illness, to be certified to the court, before the hour when the party was bound to attend, under the hand of some respectable medical practitioner. The fine to be immediately levied by distress: and where sufficient goods cannot be found to satisfy the distress, the party against whom it issued shall be imprisoned, under an order of court, for the space of 48 hours.

Serving officer to pay fine in case of neglect.

XXXIV.—If the non-attendance of the juror shall have been occasioned by any culpable neglect on the part of the summoning officer, the latter shall be subject to precisely the same fine and penalties as the former would have been liable to had he been duly summoned.

Fees payable to the registrar of deeds.

XLI.—The registrar of deeds will be authorised to charge the following fees:—

For the verification, indorsement, and registry of a deed, or will, under £100—10s. And when the value exceeds £100, a per centage at the rate of one per cent, for the first £100, and 5s. in the £100 for all above that amount.

If the value of the property to be registered shall not appear with sufficient certainty upon the face of the instrument, it must be ascertained by the oath of the party tendering it for registration.

* See further exemptions by 47th rule below.

OF THE SUPREME COURT.

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For the registry of every grant of land, under 100 acres	£0	5	0
And for grants exceeding 100 acres.....	0	10	0
For every certificate, from the record.....	0	5	0
For an inspection of the record.....	0	1	0

R. A. TUCKER,
J. W. MOLLOY,
A. W. DESBARRES.

[Promulgated 2d. January, 1826.]

XLVII.—Among the persons who are to be exempted from serving on juries, the judges deem it necessary to include—

The officers of his majesty's customs, and
All other persons actually and *bona fide* employed in the public service.

R. A. TUCKER,
T. W. MOLLOY,
A. W. DESBARRES.

[Promulgated 31st January, 1826.]

XLVIII.—Where property is held in co-tenancy, joint-tenancy, or in common, any of the parties who wish for a partition thereof may sue out a writ in the following form, against all those persons who have a joint possession with them of such property, and refuse to make a fair partition of it.

George the Fourth by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c. &c.

To the Sheriff of Newfoundland and his Deputy and Deputies,
Greeting:—

Command E. F. to appear in our supreme court of Newfoundland on the _____ day of _____ to shew wherefore he denieth partition to be made between him and A. B. and C. D. of _____ (here state the nature of the property, with such a description of it as would be necessary in a conveyance) which he holds together with the said A. B. and C. D. as they say. And you are commanded to make return of what you shall do, upon this writ, at the time and place abovementioned.

Witness, the honourable _____
the _____ day of _____ in the _____
St. John's, Newfoundland,
year of our reign.
By order of the court,
Clerk Supreme Court.

XLIX.—This writ, like all others, may be sued out in vacation as well as in term; but there shall always be fifteen days at least, between the teste and return of it; and if the tenant shall not then appear, the court will require that proof shall be given of the due and regular service of the writ, by an affidavit to the following effect:

GENERAL RULES AND ORDERS

Between { A. B. and C. D. Demandants,
and
E. F. Tenant.

Affidavit of service.

W. X. of and Y. Z. of officers to the sheriff of Newfoundland, severally make oath and say, that they the said deponents did on the day of in the year of our Lord serve the above-named tenant,* with the writ of partition in this cause, by delivering to and leaving with the said E. F. a copy of the said writ, and acquainting him with the contents thereof: and these deponents did on the said day of in the said year of our Lord, deliver to and leave with R. S. and T. V. the occupiers of the messuages, lands, and tenements in the said writ mentioned, a true copy of the same writ.

Sworn before me at this day of &c.

Judgment by default how to be entered on proceedings thereon.

L. — If, upon this proof of the service of the writ, the court shall be satisfied that a reasonable and sufficient time has been allowed the tenant to obey the command conveyed by it, the demandants will, on the tenant's then neglecting to appear, be permitted to enter an appearance for him; and the court will proceed to examine the demandant's title, and the quantity or proportion of the property to which they are entitled; and accordingly as they shall find the demandant's right and proportion to be, they will for so much give judgment by default, and award a writ to make partition whereby such part and proportion may be set out severally; which writ shall be expressed in these terms:

George the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c. &c.

To the Sheriff of Newfoundland, and his Deputy and Deputies, Greeting:—

Form of writ of partition.

Whereas E. F. late of was commanded to be in our supreme court of Newfoundland, to answer A. B. and C. D. of a plea whereupon the said A. B. and C. D. and the said E. F. held together and undivided (state the property in the same manner as in the original writ) and the said E. F. denied partition thereof to be made between them, and permitted not the same to be done, as they said; and the said E. F. not appearing in our said court according to the command of our said writ, our said court did proceed to examine the title of the said A. B. and C. D. whereupon it was considered in our said court that partition should be made between them of the messuages, lands, and tenements, aforesaid, with the appurtenances; therefore we command you that taking with you 12 free and lawful men of the neighbourhood of aforesaid, by whom the truth of these matters may be better known, in your proper person you go to the messuages, lands, and tenements aforesaid, with the appurtenances,

* If the service was upon an agent, the affidavit must conform to that fact.

and there in the presence of the parties aforesaid, by you to be forewarned, if they shall be willing to be present, the same messuages, lands, and tenements aforesaid, with the appurtenances, by the oath of the said 12 free and lawful men, respect being had to the true value of the messuages, lands and tenements aforesaid, with the appurtenances, you cause to be divided into equal parts and part of these parts to be delivered and assigned to the said A. B. and C. D. and the other part thereof to the said E. F. to be holden to them and their heirs in severalty, so that neither the said A. B. and C. D. and the said E. F. may have more of the messuages, lands and tenements aforesaid, with the appurtenances, than it belongs to them to have; and that the said A. B. and C. D. of their part to them belonging, and the said E. F. of his part thereof to him belonging, may severally apportion themselves, and that that partition by you so distinctly and openly made, you have here on under your seal, and the seals of those by whose oath you shall have made that partition; and have you then the names of those by whose oath you shall have made the same partition, and this writ.

Witness, the honourable St. John's, Newfoundland,
the day of in the year of our reign.
By order of the Court,
Clerk, Supreme Court.

LI. — When this writ shall have been executed, after eight days notice given to the occupier or tenant or tenants of the premises, and returned, final judgment will be entered: and the same shall be good and conclude all persons whatsoever, after notice as aforesaid, whatever right or title they have, or may at any time claim to have, in any of the property mentioned in the said judgment and writ of partition; unless such tenant, or person concerned, or either of them, against whom, or their right and title, such judgment by default is given, shall within the space of one year, or in case of infancy, coverture, *non sanæ memoriæ*, or absence out of this island, within one year after his, her or their return, or the determination of such inability, apply themselves to the court by motion, and show a good and probable matter in bar of such a partition; in which case the court will set aside such judgment, and the cause shall proceed as if no such judgment had been given. But if the court upon hearing thereof shall adjudge for the first demandant, then the said first judgment shall stand confirmed, and shall be good against all persons whatsoever, except such other persons as shall be absent or disabled as aforesaid, and the person or persons so appealing shall be awarded thereupon to pay costs.

Final judgment to be entered after execution of writ and 8 days notice to tenant.

Infants, *Femes covertes*, non sane persons, and absentees, to apply to set aside proceedings in one year after removal of restriction.

LII. — Should any of the persons described in the last article, Proceedings in

case of inequality of partition.

and within the time or times as there stated into court, and admitting the demandant's title shew an inequality in the partition, the court will award a new partition to be made in presence of all parties concerned (if they will appear) notwithstanding the return and filing upon record of the former; and such second partition shall be good and firm for ever, against all persons not labouring under any of the inabilities herein previously mentioned.

In case of appearance issue to be tried by Jury.

LIII.—The preceding rules are applicable to the case of a judgment given by default upon the neglect of the tenant to appear at the return of the writ. In the event of his appearing he may either confess the action, or plead that the demandants do not hold together with him. In the first case a writ of partition, like that described in rule 50, with such slight alterations as may be necessary to adapt it to the present purpose, will issue to the sheriff immediately; but the truth of the tenant's plea must be tried, within a convenient time, by a jury; and if their verdict shall be against him upon that point, the demandant will then be entitled to a writ of partition.

Sheriff's fees.

LIV.—If the value of the property, of which the partition is desired, does not exceed £100 sterling, the price of the original writ will be 10s.; and where the value exceeds £100, the original writ must be paid for at the rate of 10s. for the first hundred, and 5s. for every other hundred pounds of the true value thereof. Thus, supposing the value of the property to be £1000, the price of the original writ will be £2 15s. 0d.

Jurors' fees.

LV.—Each of the jurors by whom the partition shall be made will be entitled to half a guinea; and the fee of the sheriff, upon the execution of the writ of partition, will be the same as the price of the original writ.

Whole costs to be borne by tenant in certain cases.

LVI.—The whole of the costs will be borne by the tenant, if it shall appear to the court that the suit necessarily grew out of his refusal to make partition upon equitable terms.

R. A. TUCKER,
J. W. MOLLOY,
A. W. DESBARRES.

[Promulgated 12th April, 1826.]

NEW RULES ON THE PLEA SIDE OF THE SUPREME COURT.

[Promulgated in January Term, 4th William 4, 1834.]

I. — It is ordered that 1st, 2d, 3rd, 4th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 22d, 26th, 27th, 29th, 30th, 31st, 32nd, 39th, 40th and 59th rules of the supreme court, made on the 2nd January, 1826, and 12th January, 1830, be rescinded, Old rules rescinded.

II. — And it is further ordered, that in cases, where no affidavit shall have been filed on which to ground an attachment or bailable process, a copy of the summons and declaration thereto annexed, according to the forms set forth in the schedule of forms and directions accompanying these rules, shall be served personally upon the defendant, with a notice thereon of the intent and meaning of such service, according to the form also set forth in the said schedule; an affidavit of which service shall be made by the person serving the same; and unless the defendant shall appear and plead thereto in two days after the return thereof, the plaintiff shall be at liberty to enter an appearance for such defendant, and to sign judgment against him for want of a plea; provided the said writ, with an affidavit of the service thereof, shall have been returned and filed, together with the original declaration, on or before the day next after the return thereof. In proceedings by summons copy of writ and declaration to be served. Defendant to plead in two days after the return. Proviso.

III. — And it is further ordered, that the copy of a declaration to be filed on the return of the writ, setting forth as concisely as possible the plaintiff's cause of action, shall be annexed to the copy of such writ so to be served upon the defendant as aforesaid; which declaration, in common actions of assumpsit, may be in the form set forth in the said schedule of forms and directions; as much brevity being observed in all other declarations as shall be found consistent with a perspicuous declaration of the plaintiff's case; and that in all actions arising *ex contractu*, where the plaintiff's demand shall consist of an open account, a copy thereof shall be attached to the declaration at the time of filing the same in the clerk's office. Declaration to be filed at return of writ. Form of declaration. Particulars of demand in certain cases to be attached to declaration when filed.

Form of *capias*
and attachment
prescribed.

IV. — And it is further ordered, that all original writs of *capias ad respondendum* and of attachment, shall be in the form set forth in the schedule before mentioned; and in all cases where the plaintiff shall have proceeded in the first instance by summons, and such summons shall have been disobeyed, and the plaintiff shall thereupon elect to sue out either an attachment or a *capias ad respondendum*, such writ of attachment or *capias* shall be in the form also set forth in the said schedule of forms and directions.

In actions by
attachment or
capias, declara-
tion may be
filed *de bene*
esse. Judgment
by default, how
signed.

V. — And it is further ordered, that in all suits, commenced by attachment or bailable process, the plaintiff shall be at liberty to file his declaration *de bene esse* upon the return of such process, leaving a copy thereof in the office for the defendant; and that unless the defendant shall plead thereto in four days after he shall have put in and perfected bail to the action, or shall have appeared to the attachment, as the case may be, the plaintiff shall be at liberty to sign judgment for want of a plea.

Pleas.

VI. — And it is further ordered, that any defendant, in any action hereafter to be brought, may plead as many several matters thereto as he shall think fit, where he would be entitled to do so by the practice of the court of King's Bench in England.

Replication or
rejoinder.

VII. — And it is further ordered, that the plaintiff or defendant shall reply or rejoin within two days from the filing of the last pleading, in all subsequent stages of the cause after plea filed, without any demand; and that in case of default, either party may sign judgment against the other, either by default or of *non. pros.* as the case may require.

When at issue
causes to be en-
tered in the
docket & tried
in their order.

VIII. — And it is further ordered, that so soon as the parties are at issue, the cause shall be entered by the clerk in the docket for trial, and that all causes shall be tried in the order in which they stand on such docket, without any notice being given, unless the court or a judge in chambers shall otherwise order, upon sufficient grounds to be shewn by affidavit, and upon such terms as may be thought just and reasonable.*

Jurors how
summoned.

IX. — And it is further ordered, that a panel of 48 jurors shall

* The 35th Rule, *post*, allowing either party to take out a rule for a special jury, as of course within two days after entering the record for trial, has been held to govern this, and the 17th Rule, and a defendant cannot therefore be forced on to trial under two days after entering the issue.—*Tobin vs. Colbert*, C. C. C. November Term, 1811.—This, however, has been ruled not to extend to cases where the record has been entered for trial by proviso.—*Coady vs. Moore*, S. C. December term, 1816.

be summoned by the Sheriff eight days previous to the sitting of the court, for the trial of all issues joined therein. Special juries,
how to be
drawn & struck.

X. — And it is further ordered, that in all time coming, the manner of striking special juries shall be as follows :

The Sheriff shall put all the names of persons qualified to be special jurors into a box at the office of the clerk of the supreme court, and in the presence of the parties or their attorneys, shall draw out forty names, and make a list of them as they are drawn ; the plaintiff and defendant shall then alternately strike off a name, until each has stricken off 12, and the remaining sixteen shall then form the panel to be summoned by the sheriff for the trial of the cause wherein such special jury shall have been ordered. Provided, that in case either party shall neglect to attend at the time and place appointed by the Sheriff for striking such jury, due notice thereof having been given, the clerk of the supreme court shall, on behalf of the absent party, strike off the names of 12 of the persons drawn, in the same manner as such party might have done if present ; and if more than one special jury be required, the names of those first drawn shall be put into the box before another jury be drawn.

XI. — And it is further ordered, that the following fees to either counsel or attorney be allowed and taxed as between party and party :— Costs of attorney & counsel
between party
and party.

Warrant and instructions to sheriff defend.....	£0	3	4
Suing out process	0	3	4
Drawing declaration	0	6	8
Copy thereof for each defendant	0	3	4
Drawing affidavit of debt or other special matter.....	0	3	4
Affidavit of service of process, notice, or other paper....	0	1	0
Pleading general issue, with notice of set off.....	0	3	4
Special plea, replication, or other special pleading, including a copy for opposite party	0	6	8
Putting in and perfecting special bail	0	6	8
Entering proceedings on the roll	0	6	8
Taking cognovit where no process has been issued, and entering judgment thereon.....	1	1	0
Same where process has been issued	0	6	8
Drawing summons to attend judge in chambers, and serving the same	0	3	4
For every attendance on summons before a judge in chambers	0	6	8
Fee with brief, in matters over £. 0, and under £25....	0	10	6
Fee with brief, in matters over £25, and under £50....	1	1	0
Fee with brief, in matters over £50, and under £100....	2	2	0
And one guinea for every additional £100 claimed in the particulars of the plaintiff's demand ;*			
Entering final judgment and suing out execution.....	0	6	8

Provided that in all actions arising ex contractu, where the sum

* Rescinded by Rule No. 26, post—which see as to costs in cases of tort.

NEW RULES ON THE PLEA SIDE

bona fide sought to be recovered shall not exceed £10 sterling, no more than sixteen shillings and eight pence shall be allowed in taxed costs between party and party, as paid to the attorney or counsel in the cause.*

In ejectments and cases not provided for, King's Bench practice followed. XII.—And it is further ordered, that in actions of ejectment, and all cases not otherwise provided for, the practice of this court shall be the same as that of His Majesty's court of King's Bench in England.†

SCHEDULE OF FORMS AND DIRECTIONS.

Writ of Summons.

NEWFOUNDLAND,)
 S. S.)
 Form of sum- mons. of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c. by the Grace of God

To the Sheriff of Newfoundland, Greeting:—

183 . We command that you summon

day of of aforesaid, in the Island of Newfoundland, that hebe before our Justices in our Supreme Court, at St. John's, in the island aforesaid, on the next, then and there to answer of a plea of to the damage of the said of Pounds, as it is said; and have then and there this writ. Witness the Hon. Henry John Boulton, our Chief Justice, at Saint John's, aforesaid, the day of in the year of our reign.

Issued By the Court,
 Clerk Supreme Court.

Attorney for Plaintiff.

* Upon motions for the revision of taxations, the court will not interfere, unless both parties have been before the master, or notice of taxation have been given, pursuant to rule No. 12, of Q. B. T. T. 1 W. 4.—*Rutherford vs. Bowring*, at chambers, January, 1855. The costs under this proviso are not in all cases governed by the amount of the verdict, much less by the particulars of the plaintiff's demand, but by a fair consideration of the plaintiff's right to recover. *Doyle vs. Forestal*, C. C. C. 1835.

† As the above rules were promulgated in January term, 1834, which commenced on the 30th December, 1833, this Rule (No. 12) has been construed to enforce here the practice of the Court of K. B. prior only to Hilary term, 1834, when many new rules were adopted which took effect on the first day of the subsequent Easter term (15th April) but which are not operative here. The statute 3 & 4 W. 4, c. 42, however, in so far as of itself it makes any modification of the practice of the K. B. has been considered to be in force here, as well as the previous statutes, concerning pleading and practice, of the 2 & 3 W. 4, c. 71, 2 W. 4, c. 39, 9 G. 4, c. 14, and c. 15, and 4 Anne, c. 16.

Writ of Attachment.

NEWFOUNDLAND, }
s. s. }

by the Grace of God, &c.

To the Sheriff of Newfoundland, Greeting:—

Form of at-
tachment.

183 . We command that you attach
of in the Island of Newfoundland,
by his land and chattels, goods, debts, and effects, so that he
be before our justices of our Supreme Court at Saint John's,
on the day of to answer
A. B. of a plea of to the damage of the
said A. B. of £ as it is said, and have
there then this writ. Witness the Honourable Henry John
Boulton, our Chief Justice, at Saint John's, this
day of in the year of our reign.

By the Court,
Clerk Supreme Court.

Attorney for plaintiff.

If a summons have been previously issued and disobeyed, add, after the words "as it is said," "and to shew wherefore he was not before our Justices aforesaid on (the return day of summons) as he was summoned."

Writ of Capias.

NEWFOUNDLAND, }
s. s. }

by the Grace of God, &c.

To the Sheriff of Newfoundland, greeting:

Form of capias.

183 . We command you that you take A. B. of
in the District of the Island aforesaid
(addition), and him safely keep, so that you have his body
before our Justices in our Supreme Court at St. John's, in
the Island aforesaid, on (day of week) the (day of month)
next, then and there to answer C. D. in a plea of (or
as the case may be), to the damage of the said C. D.
of pounds, as it is said. And have you then
there this writ. Witness the Honourable Henry John
Boulton, our Chief Justice, at St. John's aforesaid, the
(teste day) in the year of our reign.

Clerk Supreme Court.

E. F. Attorney for Plaintiff.

If a summons have been previously issued and disobeyed, after the words "as it is said," add "and to shew cause wherefore he was not before our Justices aforesaid on as he was summoned."

In the Supreme Court.

A. B., Plaintiff)
versus.
C. D., Defendant. }

The defendant is served with this process to the intent that he Notice of intent
may either in person, or by his attorney, appear in the said supreme of writ.

NEW RULES ON THE PLEA SIDE

court by filing an appearance in the office of the Chief Clerk of the said court, in St. John's, at the return thereof, being the day of or within two days thereafter, in order to his defence in this action; other wise the plaintiff will be at liberty to enter an appearance for the said defendant; and to sign judgment against him by default should no plea have been previously filed.

A. B.
Plaintiff's attorney.

Form of an Affidavit of Service.

Affidavit of service. In the Supreme Court, A. B., Plaintiff, } versus C. D., Defendant } of E. F. of in the district of the island of Newfoundland maketh oath and saith, that he did, on the day of instant, personally serve C. D. the within named defendant, with a true copy of the within writ, whereupon was endorsed a notice of the true intent and meaning of such service; and that he necessarily travelled miles to make such service.
Sworn before me at }
this day of 183 . }

Form of appearance to a Summons.

Appearance. In the Supreme Court, Newfoundland, } to wit: } Appearance for C. D. at the suit of A. B. to a summons returnable before His Majesty's Justices at Saint John's, on [according to Rule of Court.]
E. F.
Attorney for Defendant.
Same in cases of default. Or if the appearance be entered by the plaintiff add the words in the brackets and sign it.
E. F.
Attorney for Plaintiff.

Count on a Promissory Note against the Maker, by the Payee or Indorsee, as the case may be.

Declarations on promissory notes. C. D. was summoned or attached to answer A. B. in a plea of trespass on the case, upon promises, and thereupon the said A. B., by E. F. his attorney, complains — For that whereas the defendant on the day of in the year of our Lord at St. John's [or at some other place] in the island aforesaid made his promissory note in writing and delivered the same to the plaintiff, and thereby promised to pay to the plaintiff £
{ days }
{ weeks } after the date thereof [or as the fact may be]
{ months }

which period has now elapsed, [or if the note be payable to A.B.] and then and there delivered the same to A. B. and thereby promised to pay to the said A. B. or order £ $\left\{ \begin{array}{l} \text{days} \\ \text{weeks} \\ \text{months} \end{array} \right\}$ after

the date thereof [or as the fact may be] which period has now elapsed, and the said A. B. then and there indorsed the same to the plaintiff, whereof the defendant then and there had notice, and then and there in consideration of the premises promised to pay the amount of the said note to the plaintiff according to the tenor and effect thereof.

Count on a Promissory Note against Payee by an Indorsee.

Whereas one C. D. on the day of in the year of our Lord at Saint John's [or some other place] made his promissory note in writing, and thereby promised to pay the defendant or order £ $\left\{ \begin{array}{l} \text{days} \\ \text{weeks} \\ \text{months} \end{array} \right\}$ after the date thereof [or

as the fact may be] which period has now elapsed, and the defendant then and there indorsed the same to the plaintiff [or, and the defendant then and there indorsed the same to X. Y. and the said X. Y. then and there indorsed the same to the plaintiff,] and the said C. D. did not pay the amount thereof although the same was there presented to him on the day when it became due, of all which the defendant then and there had due notice.

Count on a Promissory Note against Indorser by Indorsee.

Whereas one C. D. on at St. John's, in the Island aforesaid, made his promissory note in writing, and thereby promised to pay to X. Y. or order £ $\left\{ \begin{array}{l} \text{days} \\ \text{weeks} \\ \text{months} \end{array} \right\}$ after the date thereof

Declaration on promissory notes.

[or as the fact may be] which period has now elapsed, and then and there delivered the said note to the said X. Y., and the said X. Y. then and there indorsed the same to the plaintiff, [or, and the defendant then and there indorsed the same to Q. R., and the said Q. R. then and there indorsed the same to the plaintiff,] and the said C. D. did not pay the amount thereof although the same was then presented to him on the day when it became due, of all which defendant then and there had due notice.

Count on an Inland Bill of Exchange against the Acceptor by Drawee, being also Payee.

Whereas the plaintiff on at St. John's, in the Island aforesaid, made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the plaintiff £ $\left\{ \begin{array}{l} \text{days} \\ \text{weeks} \\ \text{months} \end{array} \right\}$ after the $\left\{ \begin{array}{l} \text{sight} \\ \text{date} \end{array} \right\}$ thereof,

On Bills of Exchange.

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which period has now elapsed, and the defendant then and there accepted the said bill, and promised the plaintiff to pay the same according to the tenor and effect thereof and of his said acceptance thereof, but did not pay the same when due.

—

Count on an Inland Bill of Exchange against the Acceptor by the Drawer, not being the Payee.

Whereas the plaintiff on _____ at St. John's, [or _____] made his bill of exchange in writing and directed the same to the defendant, and thereby required the defendant to pay to O. P. or order, £ { days weeks months } after the { date sight } thereof, which period has now elapsed, and then and there delivered the same to the said O. P., and the said defendant then and there accepted the same and promised the plaintiff to pay the same according to the tenor and effect thereof and of his acceptance thereof, yet did he not pay the amount thereof although the said bill was there presented to him on the day when it became due, and thereupon the same was then and there returned to the plaintiff, of all which the defendant then and there had due notice.

—

Count on an Inland Bill of Exchange against the Acceptor by Indorsee.

Whereas one E. F. on _____ at St. John's, [or _____] made his bill of exchange in writing and directed the same to the defendant, and thereby required the defendant to pay to the said E. F. or to G. H. or order: £ { days weeks months } after the { day sight } thereof, which period has now elapsed, and the defendant then and there accepted the said bill, and the said E. F. [or the said G. H.] then and there indorsed the same to the plaintiff, [or, and the said E. F. or said G. H. then and there indorsed the same to K. Y. and the said K. Y. then and there indorsed the same to the plaintiff,] of all which the defendant then and there had due notice, and then and there promised the plaintiff to pay the amount thereof according to the tenor and effect thereof, and of his acceptance thereof.

—

Count on an Inland Bill of Exchange against the Acceptor by the Payee.

Whereas one E. F. on _____ at St. John's [or _____] made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the plaintiff £ { days weeks months } after the { date sight } thereof, which period has elapsed, and the defendant then and there accepted the same, and

promised the plaintiff to pay the same according to the tenor and effect thereof and of his acceptance thereof.

Count on an Inland Bill of Exchange against the Drawer by Payee, on Non-acceptance.

Whereas the defendant on _____ at St. John's, [or _____] made his bill of exchange in writing and directed the same to J. K. and thereby required the said J. K. to pay to the plaintiff £ { days weeks months } after the { sight date } thereof, and then and there delivered the same to the said plaintiff, and the same was then and there presented to the said J. K. for acceptance, and said J. K. then and there refused to accept the same, of all which the defendant then and there had due notice.

Count on an Inland Bill of Exchange against Drawer by Indorsee on Non-acceptance.

Whereas the defendant on _____ at St. John's, [or _____] made his bill of exchange in writing, and directed the same to J. K. and thereby required the said J. K. to pay to the order of the said defendant £ { days weeks months } after the { sight date } thereof, and the said defendant then and there indorsed the same to the plaintiff [or, and the said defendant then and there indorsed the same to L. M. and the said L. M. then and there indorsed the same to the plaintiff,] and the same was then and there presented to the said J. K. for acceptance, and the said J. K. then and there refused to accept the same, of all which the defendant then and there had due notice.

Count on an Inland Bill of Exchange against Indorser by Indorsee on Non-acceptance.

And whereas one N. O. on _____ at St. John's [or _____] made his bill of exchange in writing and directed the same to P. Q. and thereby required the said P. Q. to pay to his order £ { days weeks months } after the { sight date } thereof, and the said N. O. then and there indorsed the said bill to the defendant [or to R. S. and the said R. S. then and there indorsed the same to the defendant,] and the same was then and there presented to the said P. Q. for acceptance and the said P. Q. then and there refused to accept the same, of all which the defendant then and there had due notice.

Count on an Inland Bill of Exchange against Payee by Indorsee by Non-acceptance.

Whereas one N. O. on _____ at Saint John's [or _____] made his bill of exchange in writing and directed the same to P. Q. and

NEW RULES ON THE PLEA SIDE

thereby required the said P. Q. to pay to the defendant or order
 £ { days }
 { weeks } after the { sight } thereof, and then and
 { months } { date }
 there delivered the same to the defendant, and the defendant then
 and there indorsed the said bill to the plaintiff [or to R. S. and the
 and the said R. S. then and there indorsed the same to the plaintiff.]
 and the same was then and there presented to the said P. Q. for
 acceptance, and the said P. Q. then and there refused to accept the
 same, of all which the defendant then and there had due notice.

Directions in *Direction for Declaration on Bills where Action brought after time of payment expired.*
 certain cases.

1st.—On Bills payable after Date.

If the declaration be against any party to the bill except the drawee or acceptor, and the bill be payable at any time after date, and the action not brought till the time is expired, it will be necessary to insert, as in declarations on promissory notes, immediately after the words denoting the time appointed for payment, the following words: viz. which period has now elapsed, and instead of averring that the bill was presented to the drawee for acceptance and that he refused to accept the same, to allege that the drawee [naming him] did not pay the said bill, although the same was there presented to him on the day when it became due.

2nd.—On Bills payable after Sight.

And if the declaration be against any party except the drawee or acceptor, and the bill be payable at any time after sight, it will be necessary to insert after the words denoting the time appointed for payment the following words: viz. and the said drawee [naming him] then and there saw and accepted the same, and the said period has now elapsed, and instead of alleging the bill was presented for acceptance and refused, to allege that the drawee [naming him] did not pay the said bill, although the same was presented to him on the day when it became due.

Direction for Declaration on Bills or Notes payable at Sight.

If a note or bill be payable at sight the form of the declaration must be varied so as to suit the case, which may be easily done.

On Foreign Bills.

Declaration on foreign bills may be drawn according to the principle of these forms, with the necessary variations.

COMMON COUNTS.

Goods sold and delivered. Whereas the defendant on at St. John's [or] was indebted to the plaintiff in £ for the price and value of goods then

and there { bargained } and { sold } by the
 sold delivered }
 plaintiff to the defendant at his request:

And in £ for the price and value of work then and there done Work & labour.
 and materials for the same, provided by the plaintiff for the defen-
 dant at his request:

And in £ for money then and there lent by the plaintiff to the Money lent.
 defendant at his request:

And in £ for money then and there paid by the plaintiff for Money paid.
 the use of the defendant at his request:

And in £ for money then and there received by the defend- Money had and
 ant for the use of the plaintiff. received.

And in £ for money found to be due from the defend- Account stated
 ant to the plaintiff on an account then and there stated between
 them.

General Conclusion.

And whereas the defendant afterwards on, &c. in consideration Conclusion.
 of the premises, respectively then and there, promised to pay the
 said several monies respectively to the plaintiff on request, YET
 he hath disregarded his promises, and hath not paid any of the said
 monies or any part thereof to the plaintiff's damage of £ and
 thereupon he brings suit.

Direction as to the General Conclusion.

If the declaration contains one or more counts against the maker
 of a note or acceptor of a bill of exchange, it will be proper to place
 them first in the declaration, and then in the general conclusion to
 say promised to pay the last-mentioned several monies respectively.

Form of entering proceedings on the Roll.

NEWFOUNDLAND, }
 s. s. } Pleas before the Honourable Chief Proceedings on
 Justice and others the Assistant Judges of the Supreme Court, at the Roll.
 St. John's, of Term [the Term in which the process is return-
 able] in the year of the reign of c Sovereign Lord
 of the United Kingdom of Great Br and Ireland, King,
 Defender of the Faith, and in the year of our Lord 183 .

NEWFOUNDLAND, }
 s. s. } C. D. was summoned [or attached, as the
 case may be] to answer A. B. of a plea, &c. [to the end of declara-
 tion, and then on a new line.]

And the said C. D. in his own proper person [or by E. F. his at-
 torney] comes and defends the wrong or injury, when &c. and say
 &c. [nothing or pleads.]

When the parties are at issue, and have put themselves upon the Venire.
 country, say "therefore let a jury thereupon come before the Jus-

tices aforesaid, at St. John's aforesaid, on &c., who neither, &c. to recognize, &c., because as well &c., the same day is given to the parties aforesaid at the same place."

Entry of continuance.

If there be an issue in law, and none in fact, enter continuances by *curia advisare vult*.

If the cause be not tried during the term to which the proceedings were last continued, the next continuance may be in the following form :

Posted.

Afterwards the process thereof is continued between the parties aforesaid until the day of next, and the same day is given to the parties aforesaid at the same place.—If the jury come, and the trial be had, proceed as follows :

At which day, before the justices aforesaid, at St. John's aforesaid, come the parties aforesaid by their attorney aforesaid, and the juries being summoned also come, who to speak the truth of the premises being chosen, tried and sworn, say upon their oath, &c.

Then state the verdict and enter judgment according to the forms in Tidd's appendix.

H. J. BOULTON, *Chief Justice*.

E. B. BRENTON, *Assist. Judge*.

E. M. ARCHIBALD, *Assist. Judge*.

A new general rule for regulating the practice of the Central Circuit Court of Newfoundland, adopted and promulgated by the Chief Justice and the Assistant Judges in the January term of the Supreme Court, 4 William IV. :

It is ordered, that the rules, practice, and mode of proceeding in the Central Circuit Court of Newfoundland shall be the same as are adopted and used in the Supreme Court of the said island.

H. J. BOULTON, *Chief Justice*.

E. B. BRENTON, *Assist. Judge*.

E. M. ARCHIBALD, *Assist. Judge*.

REGULÆ GENERALES.

[Promulgated in July Term, 1834.]

XIII.—It is ordered that the 5th, 6th, 7th, 8th, 9th 19th, 23rd, 35th, 36th, 37th, 38th, 42d, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, and 65th, rules of the supreme court, be rescinded.

XIV.—It is ordered, that the sheriff shall not be compellable to execute any civil process at the requisition of any party to a suit in this court, under circumstances requiring him to proceed by the

open sea, unless the party requiring his service shall provide a passage on board a safe vessel for himself or his officer; but if the sheriff shall decline the execution of the process tendered to him, he shall execute a warrant under his hand and seal, authorising such person as the party shall nominate, to perform the service required, such party giving security, to the satisfaction of the sheriff, for the due performance of his duty.

XV.—It is ordered, that the fees set forth in the following table be taken for the several duties therein mentioned :—

SHERIFF.

On the Civil side of the Court.

For serving every writ of Summons*.....	£0 7 6	Sheriff's fees.
Necessary Travelling, to serve any Process or Proceeding—per mile	0 3 0	
For every Arrest.....	1 1 0	
For every return to an Attachment, Bailable Process, and Writs of Execution†	0 3 4	
For transmitting Process to the Under Sheriff or Bailiff out of the Central district	0 3 4	
On Attachment, and levies under Writs of Execution, where the property attached or seized shall not exceed the value of £100—Five per Cent; and Two and a half per Cent for any additional sum; ‡		
Executing every writ of Habere Facias Possessionem.	1 1 0	
Fee on every jury sworn.....	0 5 0	
Attendance in striking special jury; returning and summoning the same.....	1 2 6	
Service of Subpoena—each witness.....	0 1 0	

Crown Side.

Drawing, summoning, and returning every grand jury....	2 2 0
Drawing, summoning, and returning petit jury, in obedience to the precept of the judges.....	3 3 0

JURORS.

Special jurors each.....	0 5 0
Petit jury.....	1 1 0

WITNESSES.

Per Diem, coming to, staying (after cause set down for trial) at, and returning from, court.....	0 3 0	Witnesses
And reasonable expenses, actually incurred, to be authenticated by proper accounts and vouchers, shewing their payment.....		

* For fees on service of attachment, see Rule 37.

† For fee on bail bond and *ca sa*, see Rule 18.

‡ See Rule 36, as to expenses of keeping property attached

NEW RULES ON THE FLEA SIDE

INCIDENTAL.

To the clerk for every process, to pay for the expense of }
 printing and stationery in his office. * } 0 1 0

H. J. BOULTON, *Chief Justice.*

E. B. BRENTON, *Assist. Judge.*

E. M. ARCHIBALD, *Assist. Judge.*

In force in Circuit Courts. It is ordered, that the foregoing rules shall be observed and enforced as well in the circuit courts as in the supreme court of this island.

H. J. BOULTON, *Chief Justice.*

E. B. BRENTON, *Assist. Judge.*

E. M. ARCHIBALD, *Assist. Judge.*

REGULA GENERALIS.*

[Promulgated in November Term, 5th William 4.]

Commissioners fees. XVI. — It is further ordered, that the commissioners appointed for taking affidavits in matters pending in the supreme and circuit courts, shall, for drawing every such affidavit, and administering an oath or oaths, to the person or persons making the same, be entitled to the sum of five shillings sterling; — and for every oath administered by such commissioners, where the affidavit shall have been previously prepared, the sum of one shilling sterling.

For every writ of mesne process prepared and issued by a commissioner for that purpose appointed, such commissioner shall be entitled to receive the sum of five shillings sterling.

For every witness examined *de bene esse* by commissioners appointed for that purpose, there shall be paid to every commissioner, who shall have actually examined such witness, the sum of five shillings sterling.

H. J. BOULTON, *Chief Justice.*

E. B. BRENTON, *Assist. Judge.*

G. LILLY, *Assist. Judge.*

REGULÆ GENERALES.

[Promulgated in December Term, 6th William 4.]

Costs in case of neglect to try cause in its order. XVII. — And it is further ordered, that if any plaintiff neglects to try his cause in the order in which it stands on the docket of issues, he shall not be entitled to tax against the defendant any

* Repealed by Rule 19

costs which may accrue in the further progress of the cause; and that if the defendant be prepared to proceed, he shall be entitled to deduct from the plaintiff's costs taxation, all disbursements which he may be put to, in consequence of the plaintiff's not proceeding.

XVIII.—And it is further ordered, that the sheriff shall be entitled to jourdage on writs of *capias ad satisfaciendum* as well as other executions, and also to a fee of five shillings upon every bail bond. Sheriff's fees on ca. sa. and bail bond.

XIX.—And it is further ordered, that so much of the 15th rule of this court as allows the clerk of the court a fee of one shilling, to pay for the expense of printing and stationery in his office, be rescinded. Part of the 15th rule rescinded.

XX.—And it is further ordered, that the clerk be entitled to the following fees, viz. Clerk's fees:

For every process signed and sealed by him (subpœnas excepted)	£0 2 6
For every writ of subpœna	0 1 0
For swearing the jury and entering the verdict	0 2 6
For entering and signing final judgment	0 2 6
For every rule of court	0 1 0
For every affidavit	0 1 0
For every search	0 0 6

XXI.—And it is further ordered, that the foregoing rules shall extend to, and be in full force in, the Circuit Courts of this Island.

H. J. BOULTON, *Chief Justice.*

A. W. DESBARRES, *Assist. Judge.*

E. B. BRENTON, *Assist. Judge.*

REGULÆ GENERALES.

[Promulgated December Term, 7 William 4th, 1836.]

XXII.—It is ordered, that to all notices or pleas of set off, a bill of the particulars thereof shall be annexed. Particulars of set off.

XXIII.—It is further ordered, that in all actions arising ex contractu upon the common counts, no issue shall be entered for trial, until a bill of the particulars of the plaintiff's demand and of the defendant's set off, if the latter has been furnished to the plaintiff, shall first have been annexed to the roll. Particulars to be attached to issue.

XXIV.—It is further ordered, that in all cases where damages shall be assessed by a jury, where there shall be no issue in fact to Notice of assessments.

Particulars. be tried, two days' notice of assessment shall be given to the defendant, one day inclusive and the other exclusive, and the particulars of demand and set off shall be annexed to the roll as in the preceding rule.

Tuesdays and Fridays crown days. XXV. — It is further ordered, that every Tuesday and Friday during each term, shall be days for the trial of indictments and other prosecutions at the suit of the crown; and that every Saturday during term, shall be a day for hearing matters in equity, and special arguments.

Brief fees. XXVI. — It is further ordered, that so much of the 11th rule of this court as allows one guinea to be taxed as a fee with brief for every £100 over the first £100 claimed in the particulars of the plaintiff's demand, be rescinded; and that "in all cases arising ex-contractu, where £100 and more shall be recovered, as well as in all cases of tort, the clerk shall be at liberty to tax such sum, not exceeding five guineas, as he shall deem reasonable, subject to the revision of a judge."*

Jury fees in assessments under £50 XXVII. — It is further ordered, that in all cases of assessment of damages, where the sum claimed shall not exceed fifty pounds, the jury shall only be entitled to the sum of twelve shillings.

Affidavits to postpone trials. XXVIII. — It is further ordered, that in future, upon every motion for putting off a trial, on account of the absence of a material witness, the affidavit upon which such motion shall be founded, shall set forth in general terms the object for which the testimony of such witness shall be required.

C. C. Court. XXIX. — And it is further ordered that the forgoing rules shall extend to and be in force in the central circuit court as well as in the supreme court.

H. J. BOULTON, *Chief Justice.*

E. B. BRENTON, *Assist. Judge.*

G. LILLY, *Assist. Judge.*

REGULE GENERALES.

[Promulgated April Term, 7th William 4th, 1837.]

Notice of trial. XXX. — It is further ordered, that eight days' notice of trial shall be given in all cases where the trial shall not have been had in the

The court, on revision, allow an increase of the brief fee where more than one counsel have been employed, or the trial has occupied more than one day. *McDonald vs. Garrett*, Chambers, July, 1844 — *Alca vs. Douglas* — *Rutherford vs. Bowering*, at Chambers, January and February, 1845.

term when it is issued was joined, and that such notice may be given by the defendant if the plaintiff shall have neglected so to do before the first day of the ensuing term or terms to which the trial shall have been postponed; and that if the plaintiff shall neglect to call on the cause, the defendant may do so as in case of a trial by proviso, he paying the jury in case the plaintiff shall not appear to prosecute his suit.

Trial by proviso, when.

XXXI.—It is further ordered, that in all cases not heretofore provided for by the general rules of this court, where a demand of plea is required by the practice of the King's Bench in England, the party plaintiff or defendant shall plead, reply, rejoin, &c. within four days after such demand, both days inclusive, unless otherwise ordered by the court or a judge in chambers.

Demand of plea &c.

XXXII.—It is further ordered, that a counsel fee of ten shillings and sixpence be taxed between party and party, upon the argument of any special matter.

Counsel fee on special argument.

XXXIII.—It is further ordered, that the party applying for a special jury, shall only be entitled to the costs of a common jury unless the court before which the cause shall have been tried shall otherwise order.

Costs of special jury.

XXXIV.—It is further ordered, that the foregoing rules shall extend to and be in full force in the central circuit court.

C. C. Court.

H. J. BOULTON, *Chief Justice.*

E. B. BRENTON, *Assist. Judge.*

GEO. LILLY, *Assist. Judge.*

REGULÆ GENERALES.

[Promulgated December Term, 1st Victoria, 1837.]

XXXV.—It is ordered that a rule for a special jury may be had as of course, upon filing a motion-paper with the clerk within two days after the record shall have been entered for trial; and that in case a tales shall be prayed in default of any of the jurors first summoned appearing, they shall be struck by the parties in the same manner as the first panel was struck, instead of being named by the sheriff, unless the parties shall consent to his naming them: provided that the number to be drawn from the sheriff's list shall bear the same proportion to the number of talesmen required that forty bear to

When special jury rules may be had.

Tales, how struck.

* This does not preclude parties from moving for a special jury afterwards.

sixteen, fractions being regarded as whole numbers, and that each party, beginning with the plaintiff, shall strike off one or more names until the list be reduced to the number required.

Charge for keeping possession of property attached. XXXVI.—It is further ordered, that the sheriff shall be entitled to charge a sum, not exceeding five shillings per diem, to any person he may employ to keep possession of goods seized under attachment, until either party shall relieve him from that responsibility by giving security to him that the same shall be forthcoming at the return of the writ, or when demanded by him: Provided always, that should he be enabled to remove the goods so seized to a place of safety, he shall be entitled to charge the expence necessarily incurred by such removal and storage, when the allowance aforesaid shall be discontinued.

Proviso.

Sheriff's fee on service of copy and warrant of attachment. XXXVII.—It is further ordered, that the sheriff shall be entitled to a fee of two shillings and sixpence for serving each defendant with a copy of the attachment, and also to the like sum for serving each notice of such attachment, at the request of the plaintiff, upon any person supposed to owe any money to such defendant, or to be possessed of any goods or effects, to his use, exclusive of milage.

Circuit courts. XXXVIII.—It is further ordered, that the foregoing rules shall extend to and be in force in the circuit courts of this island.

H. J. BOULTON, *Chief Justice.*

A. W. DESBARRES, *Assist. Judge.*

E. B. BRENTON, *Assist. Judge.*

[Rules No. 39, 40, and 41, promulgated in December Term, 1839, and June Term, 1842, in relation to fees of special jurors and exempting certain persons from serving on juries, were disallowed.]

GENERAL RULES AND ORDERS

ON THE EQUITY SIDE OF THE SUPREME COURT.

[Promulgated in July Term, 5th William IV., 1834.]

I.—THE process for compelling the attendance of defendants on the equity side shall be the same as that used on the plea side of the court, with this exception,—that after the word “answer,” in the body of each process, instead of saying “to a plea of

the following be inserted, “To a bill of complaint exhibited against him, her, or them, in our said court by
And to do further, and receive what our said court shall have considered in that behalf.”

II.—Every summons on the equity side of the court may be served personally on the defendant or defendants, or may be left with some adult member of the family at the usual place of abode, of such defendant or defendants; And in case such defendant or defendants shall neglect to enter an appearance in the office of the registrar of this court within four days after the same shall be returnable, and shall have been regularly filed with an affidavit of service in the said office, a writ of attachment or *capias*, at the option of the plaintiff, may issue to enforce the appearance of defendant or defendants as shall have made default in appearing before the issuing of such writ of attachment or *capias*.

III.—Whenever any defendant or defendants having been personally served with any such summons as aforesaid, shall have neglected to appear thereto, and the sheriff shall have returned “Nihil” or “non-est-inventus” to a writ of attachment or *capias* issued by reason of such default, the plaintiff may have an order of course that such defendant or defendants do appear within ten days, or that the bill be taken as confessed, so far as relates to the defendant or defendants making default; such order to be affixed on the outside of the door of the court-house during that period: And at the end of that time, if no appearance be then filed, the plaintiff may have an order to take the bill as confessed.

Process of summons.

Service of summons.

In default of appearance attachment or *capias* to issue.

When bill may be taken as confessed for default of appearance.

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On appearance ten day order to answer to issue.

IV. — Upon an appearance being filed by any defendant, the plaintiff may have an order of course that such defendant or defendants do put an answer in ten days after service of a copy of the bill and notice of the order, or that the bill be taken as confessed; and that where a discovery is necessary, on filing an affidavit thereof, the order may be varied so as to require the defendant to answer in like manner, or that an attachment issue. And in either case, if the defendant does not file his answer and serve a copy within the time prescribed in such order, or such further time as may be allowed him for that purpose, the plaintiff, on filing an affidavit shewing the defendant's default, may have an order to take the bill as confessed, or that an attachment issue for his contempt in accordance with the original order.

In default, bill to be taken as confessed or attachment to issue.

Proceedings in case of attachment for contempt.

V. — If the defendant appears personally, or is brought into court, or before a judge in chambers, by the sheriff, on an attachment for contempt in not answering, he shall put in his answer and pay the costs incurred by his contempt, instant, or within such time as the court, or judge, shall then appoint, or be committed until he complies; or the plaintiff may have an order that the bill be taken as confessed, and that the defendant be committed until the costs are paid.

If plaintiff do not serve defendant with copy of bill in 10 days after appearance and order to be dismissed.

VI. — When the defendant has appeared, he may have an order of course that the plaintiff do deliver a copy of the bill to him or his solicitor within ten days, or that the suit be dismissed: And if such copy be not delivered within ten days after service of such order, or within such further time as may be allowed for that purpose, the defendant, on filing an affidavit of the service of such order, and that no copy of the bill has been served, may have a decree dismissing the suit with costs, for want of prosecution, so far as relates to him.

Exceptions to answer.

VII. — If the plaintiff waives the necessity of the answer being made on oath, it must be so stated in the bill, and when the answer is put in without oath, it may be excepted to for scandal or impertinence, but no exception shall be taken for insufficiency: — All material allegations in the bill which are not distinctly answered, shall be taken to be admitted; and if no replication be filed, the matters of defence set up in the defendant's answer, will, on the hearing, be considered as admitted by the plaintiff.

Allegations in bill and answer when admitted.

VIII. — When the defendant pleads or demurs to a bill, the plain-

Defendant shall have four days to reply or amend his bill, unless further Demurrer and plea.
 time be granted; and if he does not take issue on his plea, or amend his bill, within that time, either party may set down the plea or demurrer for argument at the next or any subsequent sitting of the court.

IX.—If a plea or demurrer be over-ruled as frivolous, or a plea Proceedings if overruled as frivolous.
 upon issue be taken thereon is found to be untrue, the plaintiff may have an order to take the bill as confessed, or he may compel the defendant to answer the bill, at his election.

X.—In all other cases, if the plea or demurrer be overruled, no If otherwise overruled, what proceedings.
 other plea or demurrer shall be received, and the defendant shall answer the bill and pay the costs of the hearing within eight days after notice of the order over-ruling the plea or demurrer, or such other time as may be prescribed by the court in such order,—if he fails to put in his answer, and pay the costs within the time prescribed, the bill or so much thereof as was covered by the plea or demurrer, may be taken as confessed, and the matter thereof decreed accordingly; or the plaintiff may have an attachment to compel a further answer.

XI.—The plaintiff shall have ten days after the defendant's answer shall have been put in, to except to the same, at the expiration of which time, if no exceptions are taken and no order for farther time has been granted, the answer shall be deemed sufficient,—although he may immediately after answer put in, set the cause Hearing on bill and answer.
 down for a hearing upon bill and answer; but if he excepts to the answer for insufficiency, the defendant may within five days thereafter give a written notice of his submission to answer any or all of such exceptions, and he shall be liable for the costs of such exceptions which he submits to answer.

XII.—If any exceptions are not submitted to, within the time Reference of exceptions.
 prescribed, the plaintiff at any time within four days thereafter, may have an order of course to refer the exceptions not submitted to, or such of them as he may think proper.

XIII.—Every exception not submitted to, and which is not Exceptions when considered abandoned.
 referred within the time specified, shall be considered as abandoned, and the answer, notwithstanding such exceptions, shall be deemed sufficient.

XIV.—Whenever an answer or other pleading or proceeding is In what further cases exceptions
 referred for insufficiency, scandal, or impertinence, the exceptions

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to be considered abandoned. shall be considered abandoned, if the party obtaining the reference shall not procure and file the master's report within eight days from the date of the order of reference, unless the master shall within that time certify that a further time to be specified in his certificate is necessary to enable him to make a satisfactory report; in which case the exceptions shall be considered as abandoned, if the report be not obtained within the further time so stated.

Master to fix time for putting in further answer. XV. — If on a reference of exceptions to an answer, or the reference of a second answer on the old exceptions, the master shall find the answer insufficient, he shall fix the time for putting in a further answer, and specify the same in his report.

Master's report to be excepted to in 4 days. XVI. — Every party shall have four days after receiving notice of the filing of the master's report to except to the same, and if he does not except within that time he shall not be permitted to do so afterwards without leave of the court; and the same shall be regarded as absolute as against him.

Answer when to be deemed sufficient. XVII. — If none of the exceptions to an answer are submitted to by the defendant or allowed by the master, the answer shall be deemed sufficient from the time of the report thereon becoming absolute.

Costs for scandal or impertinence. XVIII. — Upon matter being expunged for scandal or impertinence, the adverse party shall pay the costs of the exceptions and the proceedings thereon, within four days after service of a copy of the master's allocatur on him or his solicitor.

Proceedings in case defendant submits to all the exceptions. XIX. — On exceptions to an answer for insufficiency, if all the exceptions are submitted to by the defendant, or a part are submitted to and the rest are abandoned or disallowed, on reference the plaintiff may have an order of course that the defendant put in a further answer within eight days after notice of the order and pay the costs of the exceptions, or that an attachment issue against the defendant, or that the bill be taken as confessed at the election of the plaintiff; a bill of the costs being furnished to the defendant four days before the expiration of the time fixed for putting in the further answer.

Answer reported insufficient. XX. — If on a reference of exceptions, or the reference of a second answer upon the old exceptions, the answer is found insufficient, and the master's report has become absolute against the defendant, the plaintiff may have a similar order of course to put in a further answer and pay the costs within the time specified in the master's report.

Proceedings thereon.

XXI.—If the plaintiff has amended his bill so as to require an answer to the amendments as well as to the exceptions, the defendant shall have the same time to answer the amendments and exceptions together, as he originally had to answer the bill.

Time for answering amended bill.

XXII.—If the defendant does not put in a further answer and pay the costs within the time prescribed, the plaintiff, on filing an affidavit shewing such default, may have an order of course to take the bill as confessed, or for an attachment against the defendant.

In default of further answer bill taken as confessed, &c.

XXIII.—The argument of exceptions to a master's report on exceptions shall be heard as a special motion; either party may set the same down for hearing, and the party excepting to the report shall furnish the necessary papers for the court, and if he neglect so to do on or before the day next before that appointed for the argument, the report may be confirmed, but if both parties have excepted to the report, each shall furnish copies of his own exceptions, and the party obtaining the reference shall furnish such other papers as may be necessary.

Argument of exceptions to master's report.

XXIV.—When exceptions are taken to an answer for insufficiency, or to any pleading or proceeding for scandal or impertinence, the party excepting shall only be entitled to the costs of the exceptions which are submitted to, and those which are finally allowed after reference to a master, and no part of the costs of a reference shall be allowed to the party for obtaining such reference, unless the major part of the exceptions referred are finally allowed; but if any of the exceptions referred are sustained, the adverse party shall not be entitled to costs on the reference. The costs of exceptions shall not be taxed until all the exceptions are submitted to, abandoned, allowed, or finally disposed of; and then the whole costs to which the exceptant is entitled shall be included in one bill, to which the adverse party may set off any costs he is entitled to.

Costs of exceptions how governed.

XXV.—If a third answer is reported insufficient on the original exceptions, and the master's report has become absolute, the plaintiff on filing an affidavit of the facts, may have an order of course for an attachment against the defendant, and he shall be examined upon interrogatories to the points reported insufficient, and shall stand committed until he shall have answered such interrogatories to the satisfaction of the master, and pay the costs incurred by reason of his default. If the defendant cannot be arrested on the attachment and shall not surrender himself thereon within eight days after no-

Proceedings in case of third answer being reported insufficient.

tice to him or his solicitor of the issuing thereof, or within such further time as may be allowed him by the court or a judge in chambers: or being arrested on such attachment, if he shall neglect or refuse to answer such interrogatories to the satisfaction of the master, the plaintiff, on filing an affidavit of the facts, may have an order of course to take the bill as confessed, and the defendant may be further punished for the contempt, in the discretion of the court.

Cause, when to be deemed at issue.

XXVI.—Every cause shall be deemed at issue on filing a general replication to the answer; and no special replication shall be filed but by leave of the court, or a judge in chambers, on cause shown.

Hearing on bill and answer.

—If the plaintiff does not reply to the defendant's answer within four days after it is deemed to be sufficient, he shall be precluded from replying, and the cause shall stand for hearing on bill and answer, and either party may set it down for hearing as soon as it is in readiness for hearing against the other defendants.

Proceedings when plaintiff does not use due diligence.

XXVII.—Where the cause stands for hearing on bill and answer against some of the defendants, if the plaintiff does not use due diligence in proceeding against the others, any of those who have perfected their answer may apply to dismiss the bill for want of prosecution; and on such application, farther time shall not be allowed to the plaintiff unless excuse be shown for the delay.

Hearings. Four days notice thereof or of special motions.

XXVIII.—Either party may, when a cause is ripe for hearing, set it down for a day certain and give notice thereof to the opposite party. All notices of hearing, or of special motions, or of the presenting of petitions, when required, shall be four days; and a copy of the petition, affidavit, or certificate, on which any special application is founded, shall be served on the adverse party previous to making the application to the court.

Copies of petitions &c. to be served.

XXIX.—When a cause is heard or submitted on bill, answer and replication, or on the pleadings and proofs, if the parties do not agree upon a case to be signed by them, containing with all requisite brevity a statement of the pleadings and proofs, the plaintiff shall furnish the court with a case, stating the time of filing the bill, the change of parties, if any has taken place pending the suit, and a very brief history of the proceedings in the cause, and a short abbreviation of the pleadings, with a copy of the points on which each party relies; of which case the judge is to have a copy: the copy prepared by the plaintiff, to be delivered to the chief justice, and two copies to be prepared by the defendant and delivered to the assist-

Case to be stated—if not, how briefs are to be prepared.

and judge, in the margin whereof, opposite each paragraph of the bill, answer or other pleading or document, as they are briefed, the page or folio of the office copy shall be noted in figures for the more convenient reference by the court on the hearing. Any party neglecting to deliver these copies will not be heard at the hearing or argument; either party may deliver to the court, and adverse party, a draft of the minutes of the decree to which he conceives himself entitled.

XXX.—The solicitor or officer of the court who draws any pleading, deposition, or report, or enters any decree, shall distinctly number and mark each page thereof, and all copies either for the parties or the court, shall be paged and marked in the margin, so as to conform to the original draft or entry, and to each other; and no allowance shall be made in the taxation of costs, for copies not paid and marked in conformity to this rule. And all bills, answers, and other proceedings and copies thereof, shall be fairly and legibly written, and if not so written, the registrar shall not file them: and in the entitling and endorsement of papers by either party, the plaintiff's name shall be placed first in the margin of the brief statement.

Documents to be paged and numbered.

All proceedings to be fairly written.

PROCEEDINGS IN THE MASTER'S OFFICE.

XXXI.—Where a matter is referred to a master to examine and report thereon, on bringing the decree or order into his office, he shall assign the time and place for hearing the parties, and give to the party bringing in such decree or order, a summons for the adverse party to attend at the time and place so appointed. The summons shall be served on the adverse party or his solicitor, such time previous to the day appointed for hearing, as the master may deem reasonable, and by a note on the summons shall direct; taking into consideration the nature of the matters to be examined, and the residence of the parties; but the time of service, unless otherwise ordered by the court, or a judge in chambers, shall not be less than two days.

Master to fix time of hearing, &c.

Two days notice to be given

XXXII.—If the party who is entitled to prosecute such decree or order of reference, does not procure and serve such summons within eight days after the decree or order is entered; any other party or person interested in the matter of the reference, shall be at

In what case proceedings may be begun.

liberty to apply to the court or a judge in chambers, to commit to him the prosecution of the decree or order before the master, and any party neglecting to attend, being duly summoned, may be proceeded against, *ex parte*, if the master shall think it expedient so to do; and no proceeding had before the master in the absence of parties duly summoned, shall be reviewed, except upon special application to him for that purpose by the party who is absent, when, if the master shall be satisfied that such party was not guilty of wilful delay or negligence, the same may be re-heard upon payment of all costs occasioned by his non-attendance; such costs to be certified by the master at the time, and paid by the party or his solicitor, if he were in fault, before such proceeding shall be reviewed; and every summons to attend before a master, shall be considered peremptory.

Costs in such case.

Examinations before the master.

XXXIII. — The master shall be at liberty to examine any witness or party, or any creditor or other person coming in to claim before him, either upon written interrogatories, or *viva voce*, or in both modes, as the nature of the case may appear to him to require; the examination or evidence being taken down at the time by the master, and preserved in order that the same may be used by the court, if necessary.

Exceptions to proceedings before the master, how to be dealt with.

XXXIV. — If a party wishes to complain of any matter introduced into any state of facts, affidavit or other proceeding before the master, on the ground that it is scandalous or impertinent, or that any examination of a party before him is insufficient, such party shall be at liberty to file exceptions thereto, with the master; and without any order of reference, he may take out an order for the master to examine the matter upon such exceptions, and the master shall have authority to expunge any such matter which he shall find to be scandalous or impertinent; and in deciding on the sufficiency or insufficiency of the examination of a party, or of any answer to a bill, the master shall always take into consideration the relevancy or materiality of the statement or question referred to in the exception; on exception to the master's report, or his certificate of the sufficiency or insufficiency of an examination, the party shall be confined to the objections taken before the master.

Manner of accounting before the master.

XXXV. — All parties accounting before a master, shall bring in their accounts in the form of debtor and creditor; and any of the other parties who shall not be satisfied with the accounts so brought

in, shall be at liberty to examine the accounting party upon oath, as the master may direct.

XXXVI.—In all matters referred to a master, he shall be at liberty, upon the application of any party interested, to make a separate report or reports, from time to time, as he shall deem expedient; the costs of such separate reports to be in the discretion of the court; and where the master shall make a separate report of debts or legacies, he shall be at liberty to make such certificate as he shall think fit with respect to the state of the assets; and any person shall thereupon be at liberty to apply to the court, as he shall be advised.

Separate reports by the master.

XXXVII.—When the master has prepared the draft of his report, he shall, in matters of importance (should he deem it necessary) deliver copies thereof to such of the parties as apply for the same, and shall assign a time and place for the parties to bring in objections and hear arguments thereon; and the master shall settle and sign his report, and cause it to be filed in the office of the registrar within four days after the argument on such objections is closed: If no objections are made to the draft, the master shall sign his report, and file it in the proper office forthwith.

Reports of master in cases of importance, how settled.

XXXVIII.—After the report is filed, either party may have an order of course to confirm the same, unless cause to the contrary hereof be shewn in four days; and if no exceptions are served and filed within that time, the order shall become absolute of course without notice or further order; or either party may file exceptions, and have an order of course to confirm the report, so far as the same is not excepted to, and with the like effect.

Confirmation of reports.

XXXIX.—No private agreement or consent between the parties in respect to the proceedings in a cause, shall be alleged or suggested by either of them against the other, unless the evidence thereof shall be in writing, subscribed by the party against whom it is alleged or suggested, or by his solicitor or counsel.

Private agreements not binding unless in writing.

XL.—All rules to take effect Nisi, &c., unless otherwise specially directed, shall be four days; and the time on all rules, orders, notices, and proceedings, where a time is given or stated, shall, unless otherwise expressly provided, be deemed and taken to be one day inclusive, and one day exclusive; but if the time expire on Sunday, the whole of the succeeding day shall be included.

Rules Nisi to be 4 days unless specially directed.

XLI.—All bills, answers, pleas, orders, decrees, reports, and other proceedings, shall be drawn up as shortly as may be consistent with the nature of the cause.

Bills, pleas, &c. how to be drawn.

tent with a clear and perspicuous statement of what is necessary to be alleged therein, respectively, and without any superfluous or unnecessary recital of matter which hath been set forth in any former pleading in the cause, and which may be conveniently referred to by date, or otherwise.

Extending time. XLII. — The court, or a judge in chambers, upon special cause shown, may extend the time for putting in or serving any pleading or exceptions, or for any other proceeding which is required by the rules of the court to be done within a limited time; and may set aside any order or decree obtained by default, upon such terms as may be deemed just and proper.

Re-hearing. XLIII. — A re-hearing may be applied for at any time before the decree is enrolled, if such re-hearing be applied for during the same term in which the same hath been pronounced, or within ten days thereafter.

Costs. XLIV. — The following fees may be taxed on the equity side of the court, between party and party:—

SOLICITOR.

Solicitor.	Warrant and instructions to sue or defend.....	20	13	4
	Drawing every bill or answer.....	1	1	0
	Copy for each defendant served.....	0	7	0
	Drawing demurrer or other plea.....	0	6	8
	Copy and service thereof on each defendant.....	0	3	4
	Suing out process.....	0	5	0
	Copy for each defendant.....	0	1	8
	Instructions for drawing interrogatories.....	0	3	4
	Drawing interrogatories for the examination of every necessary witness.....	6	6	8
	Drawing affidavit of service, and attending to swear the same.....	0	1	0
	Every special affidavit.....	0	3	4
	Drawing every rule of court, copy and service.....	0	3	4
	Every summons to attend a judge or master, and serving the same.....	0	3	4
	Every special attendance before the master, or a judge in chambers, on summons.....	0	6	8
	A brief statement of the bill, answer, pleadings and evidence, to the time of hearing.....	1	1	0
	Copies for the judges, each.....	0	7	0
	Fee on common motions.....	0	10	6
	Fee with brief on every special argument.....	1	1	0
	Fee with brief on final hearing of the cause, to be taxed by the master.....			

MASTER.

Master.	Every attendance upon an ordinary reference.....	0	10	6
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Report thereon	0 6 0	Master's fees.
Attendance on every special reference	1 1 8	
And if occupied therein more than one day—a guinea each day		
Report thereon	1 1 0	
Every summons	0 1 0	
Every certificate of facts	0 2 6	
Printing costs	0 6 8	
Making every affidavit	0 1 0	
Poundage on sales, and for preparing deeds, if necessary—three per cent. on the first hundred pounds, and one per cent. on the residue of the purchase money.		

XIV. — All persons to whom the probate of any will, or administration of the estate of persons dying intestate, shall be granted by this court, shall within six months after the probate or letters of administration shall have issued, file in the office of the registrar of this court a just and true inventory, upon the oath of some or one of them, of the whole real and personal estate and effects which were of the testator or intestate at the time of his or her decease, and which have come to the knowledge or hands of the executors or administrators to be administered; and such executors or administrators shall annually thereafter, so long as any part of the estate of the deceased remain unadministered and not accounted for to this court, file in the same office an inventory and account, under oath, of any other property or effects which have been since discovered or come to the hands of such executors or administrators to be administered, stating the balance due from or to him at the time of rendering the last account, and the receipts and expenditures since that time, in the form of debtor and creditor; and shall also state why any goods, property, or effects, which may have come to the knowledge of the executors or administrators as belonging to the estate of the deceased, but which have not yet come to their hands, have not yet been gotten possession of and reduced into a due course of administration.

Executors and administrators to file inventory on oath within six months:

And annually thereafter.

XV. — No legacy shall be paid until an order has been obtained from the court, or a judge in chambers, for that purpose, and until such inventory and account shall have been filed; and that when any legacy or legacies shall be left for any charitable purpose, the executor or executors shall not dispose of or pay over the same, until a report in writing has been made to this court of the manner in which it shall be proposed to invest or otherwise appropriate the

No legacy to be paid without order of court; and if for charitable purposes, report thereof to be filed.

152 GENERAL RULES ON THE EQUITY SIDE

same for the use of such charity, and the sanction of the court shall have been obtained approving thereof, in order that the court may see that the intentions of the testator are fulfilled.

Copy of rule to be annexed to probate, &c.

XLVII.—The registrar, at the time of issuing the probate or letters of administration, shall annex thereto a printed copy of this and the foregoing rule, and shall furnish the executors or administrators with such forms of annual accounts and inventories to be rendered by them, as shall, from time to time, have been sanctioned and approved of by the court; and shall also, on the first day of each term, present to this court a schedule of all executors and administrators who shall have neglected to file their inventories or their accounts, according to the requisitions of the said rule, to the end that such order may be made for the removal or prosecution of the delinquents, as may be just; a copy of which schedule shall be affixed on the door of the court house during the term, for the information of all concerned.

Executors not filing accounts to be reported.

In the matter of the executorship [or administration] of the estate of A. B. late of deceased.

Form of an inventory and account current, to be rendered by executors or administrators, under the rule of the supreme court, promulgated in July Term, 5th William IV.

In the Supreme Court of Newfoundland.

Form of inventory and account.

A just and true inventory of the goods, chattels, rights, credits, lands, tenements and effects, which were of the said deceased at the time of his death, and which have come to the knowledge or hands of C. D., of St. John's, and E. F. of the same place, administrators of the estate of the said A. B. to be administered.

183	Dr.	£ s. d.
Cash in the house at the death of the said A. B.		4 10 0
One silver watch, valued at		3 8 0
One note of hand made by John Bell, for		28 5 0
One horse, in the possession of John Doe, which is understood to be the property of the estate, although he refuses to give him up		

£

	Cr.	£ s. d.
To paid funeral expenses		2 9 0
To paid Dr. Carson his bill for medical attendance		4 10 0
To paid Mr. Row for professional advice on the affairs of the estate		2 2 0

£

Form of Affidavit.

In the Supreme Court,
Newfoundland, s. s. }

Affidavit in
verification
thereof.

C. D. of Saint John's in the island of Newfoundland,
maketh oath and saith, that the above is a just and true inventory
of the whole of the goods, chattels, rights, credits, lands, tenements,
and effects, which were of the said A. B. deceased, at the time of
his death, and which have come to his hands to be administered, or
of which he hath any knowledge, and a just and true account of the
receipts and disbursements on account of the said estate, since he
hath intermeddled therewith, (or if it be a second account, since
this deponent rendered his last account current in this matter.)

XLVIII. — It is ordered, that the fees set forth in the following
table be taken by the clerk of this court for the several duties
therein mentioned: that is to say, Registrars fees
on probates &
administra-
tions.

In all cases where the value of the estate of any person deceased,
in which application shall be made for administration, shall not
exceed one hundred pounds, a per centage at the rate of two-and-a-
half per cent in lieu of all fees. And if the value of the estate shall
exceed one hundred pounds, the following fees, viz.:

	£	s.	d.
For taking proof of the will in the office	0	10	6
Registering the will—every folio of 100 words.	0	1	0
Taking proof of will by dedimus protestatem; where necessary	1	1	0
Granting probate of letters of administration.	1	1	0
Taking bonds from administrators and sureties—affi- davits, &c.	0	10	6
Copy of will to be annexed to probate or administration, every folio	0	1	0
Entry and record of probate or administration.	0	10	6
Filing and entering inventory.	0	5	0
Affidavit of the same.	0	1	0
Filing and entering every annual return and affidavit.	0	2	6
Every search.	0	1	0
Every form of inventory and affidavit*.	0	1	0

H. J. BOJLTON, *Chief Justice.*
E. B. BRENTON, *Assist. Judge.*
E. M. ARCHIBALD, *Assist. Judge.*

* The foregoing rules on the equity side of the Supreme Court have
never been by any express rule declared to be in force in the Central
Circuit Court; but they have notwithstanding, since the time of their
promulgation, been always acted upon in the latter court, and now
govern the practice on the equity side of it. In all cases not provided for
by the above rules, the practice of the English Court of Chancery is
referred to as the rule of decision.

NEW RULE ON THE EQUITY SIDE OF THE SUPREME COURT.

[Promulgated April Term, 7th William 4th, 1837.]

Trustees of insolvent estates to file accounts on oath. XLIX.—It is ordered, that all persons who may be appointed trustees of the estates of persons declared insolvent, shall, within three months after the order appointing them to be such trustees shall have been issued, file in the office of the clerk of the court in which the insolvency may have been declared, a just and true inventory, upon the oath of some or one of them, of the whole of the real and personal estate and effects which were of the insolvent at the time of his being so declared insolvent, and which have come to the knowledge or hands of the trustees; and such trustees shall, every three months thereafter, so long as any part of the estate of the insolvent shall remain out-standing and not realised, file, in the same office, an inventory and account, under oath, of any other property or effects which have since been discovered or come to the hands of the trustees, stating the balance in their hands at the time of rendering the last account, and the receipts and disbursements since that time, in the form of debtor and creditor, and shall also state why any goods, property, or effects which may have come to the knowledge of the trustees, as belonging to the estate of the insolvent, but which have not come to their hands, have not yet been collected or reduced into possession.

This rule to extend to circuit courts. It is further ordered, that the foregoing rule shall extend to and be in full force in the circuit courts for the central, northern, and southern districts.

H. J. BOULTON, *Chief Justice.*
E. B. BRENTON, *Assist. Judge.*
GEORGE LILLY, *Assist. Judge.*

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ABSTRACT AND DIGEST
OF THE
ACTS OF THE GENERAL ASSEMBLY
OF NEWFOUNDLAND
NOW IN FORCE;
WITH A TABLE OF THE ACTS,
DISALLOWED, REPEALED, EXECUTED AND EXPIRED.

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ABSTRACT AND DIGEST OF THE ACTS OF THE
GENERAL ASSEMBLY.

ACADEMY.

7TH VICTORIA, c. 3. — *An Act to provide for the establishment of an Academy at St. John's* — [29th April, 1844.]

- Sec. 1. — The sum of £3,000 granted for the erection and establishment of an Academy in St. John's, and for providing library and apparatus.
2. — Governor to appoint a board of nine directors; of whom five to be a quorum; vacancies by death, resignation, or twelve months' absence from colony, to be filled up by the governor.
3. — Directors incorporated by the name of "the Directors of the St. John's Academy."
4. — Governor to appoint senior and junior masters: provided that no minister of religion having any fixed pastoral charge shall be eligible as a master.
5. — Directors to prescribe course of instruction; appoint terms; fix rates of fees; and may apply them to the increase of salaries of masters, and discharge of incidental expenses; — and to make bye-laws, subject to the approval of the governor in council.
6. — Salary of senior master to be £300; of junior master £250; payable out of general revenues of the colony.
7. — Directors to report to the governor annually, on or before the 10th of January, the state and progress of the institution.
8. — Governor for the time being to be visitor of the Academy.
9. — Treasurer to raise by loan, for the purposes of the Act, £3,000 on debentures, to be paid off in seven years from date of issue.
10. — Treasurer to issue debentures for sums of not less than £100. Debentures assignable by endorsement, &c.
11. — Suspending clause.
- Schedule. — Form of debenture.

ACTS OF LEGISLATURE, commencement of.

4 W. 4, c. 21. — *An Act for ascertaining the time of the commencement of the Acts of the Parliament of this colony.* — [12th June, 1844]

- Sec. 1. — The Clerk of the Legislative Council shall endorse on the back of every act the day of the month and year of the governor's assent thereto; act to take effect from that time, unless otherwise provided for therein.

ASSEMBLY. — See House of Assembly.

ATTACHMENT. — See 3 Vict., c. 10, *ante* page 93.

ATTORNEYS. — See Acts 3 W. 4, c. 6, 4 W. 4, c. 23, and 9 Vict. cap. 5, *ante* page 99—105.

BANISHMENT—See 4 W. 4, c. 5, *ante* page 81.

BANKING COMPANIES.

7 VICT., c. 11.—*An Act to incorporate sundry persons by the name of "The Newfoundland Bank."*— [April 29, 1841.]

- Sec. 1.—Incorporates certain persons by the name of "The Newfoundland Bank."
 2.—The Capital stock to be £50,000 in specie. One half to be paid within one year from passing of the act; the residue by instalments within 5 years—stock to be divided into 2,000 shares of £25 each.
 3.—Corporation may hold real estate to the value of £3,000; may take mortgages to any amount as securities; but not to lend money on mortgage.
 4.—When 400 shares subscribed, a meeting to be held for choosing seven directors, and making bye-laws.
 5.—Annual meeting for choice of directors to be holden on the first Tuesday in June. Directors to choose president and vice-president. Four of the directors to be re-elected at annual meetings, of whom president shall always be one.
 6.—Directors to appoint officers, clerks, &c.
 7.—Four directors to be a quorum; president to vote as director, and also have a casting vote. No bill to be refused discount by a single vote.
 8.—No director to be paid except the president.
 9.—Qualification of director—to be stockholder of 20 shares.
 10.—Cashier and clerks to give security.
 11.—Stockholders to vote as follows:—holding 5 shares, and under 10, one vote; 10 shares, and under 20, two votes; 20 shares, and under 30, four votes; 30 shares, and under 40, six votes; 40 shares, and under 60, eight votes; 60 shares, and under 80, ten votes; 80 shares, and under 100, twelve votes; 100 shares, thirteen votes; every additional 15 shares, one vote; but no stockholder to have more than 20 votes.
 12.—Stockholder may vote by proxy, being a stockholder.
 13.—No stockholder to hold at any one time more than twenty per cent. of the capital stock.
 14.—Directors to fill up vacancies by death, resignation, or six months' absence; stockholders to fill up vacancy caused by removal for misconduct.
 15.—Stockholders to have notice of payment of instalments; no bank bill or note to be issued until £25,000 actually paid up.
 16.—Governor to appoint commissioners to count money in the vaults, to ascertain that £25,000 are actually paid in.
 17.—Shares to be assignable subject to regulations, but assignment not valid unless all debts due the corporation are paid off.
 18.—Corporation may deal in bills of exchange, promissory notes, gold and silver, or on sale of goods and stock pledged.
 19.—Stockholder liable in their individual capacity to an amount equal the stock respectively held by them; joint stock nevertheless liable.
 20.—Bonds, bills, notes, &c. to declare payment to be made from the joint funds of the corporation.
 21.—Debts not to exceed twice the amount of capital paid in; directors, under whom excess may be occasioned, liable for the same in severalty.
 22.—Directors to make half yearly dividends.
 23.—Books to be subject to the inspection of directors.
 24.—Bills or notes to be signed by president and cashier.

- Sec. 25.—Corporation to pay to *bonâ fide* holder original amount of any counterfeited or altered note.
- 26.—No action to be had on any bank bill until after presentment at the bank.
- 27.—Bank to be kept in St. John's.
- 28.—Statement of affairs to be laid before stockholders at annual general meeting; particulars of statement.
- 29.—Joint committee of Legislative Council and Assembly to have access to books and vaults.
- 30.—Twelve stockholders of 200 shares may at any time call a general meeting; directors, or any four of them, to have the like power.
- 31.—On dissolution of corporation, directors to close the concerns; stockholders liable for two years after dissolution for bills issued and not paid, according to section 19.
- 32.—Cashier to make half yearly returns of the state of the bank to the Colonial Secretary's office. Return of shareholders to be made when required; secretary to lay the same before the Legislature.
- 33.—Delinquent sheet to be furnished to the directors on discount days; no delinquent director to sit at the board.
- 34.—Directors continuing delinquent for thirty consecutive days, disqualified—See sec. 14.
- 35.—Shares in the stock deemed personal estate.
- 36.—Shares liable to seizure on attachment or execution by service of process on cashier, who may be examined as in other cases; on sales by sheriff he may execute assignment.
- 37.—Capital stock may be increased to £100,000.
- 38.—Additional shares to be sold at public auction.
- 39.—Additional shares so sold, together with premium, to be paid into bank.
- 40.—Directors, upon default, to sell and dispose of such shares.
- 41.—Advertisements required by this Act to be inserted in *Royal Gazette*.
- 42.—The act to be a public act.
- 43.—To be in force until June 1st., 1865.

8 VICT., CAP. 10.—*An Act to amend an Act passed in the last session of the Legislature, entitled "An Act to incorporate sundry persons by the name of the Newfoundland Bank."* [23rd April, 1845.]

Preamble recites that Her Majesty's pleasure on the act, not being signified, directors had not called on shareholders to pay up the £25,000.

SEC. 1.—Time for payment of the £25,000 extended to one year from the passing of this act, and of residue to five years from the same time; stockholders desirous of withdrawing, may do so on payment of their proportion of charges and liabilities.*

BANK FOR SAVINGS.—See Savings Bank.

BARRISTERS.—See Acts 3 W. 4, c. 6, 4 W. 4, c. 23, and 9 Vict., c. 5, *in extenso*—ante page 99—105.

BASTARD CHILDREN, maintenance of.

4. W. 4. c. 7.—*An Act to provide for the maintenance of Bastard Children*.—[12th June, 1831.]

Sec. 1.—A justice of peace upon the examination upon oath of any woman delivered

* Under these acts directors were elected and a considerable portion of the stock subscribed, but the company has never gone into operation.

or about to be delivered of a child likely to be a bastard, and become chargeable to the colony or district, may apprehend the person charged by such woman as the father of such child, who shall give security for its maintenance and for his appearance at the next quarter sessions, and until the woman be delivered, or in default to be committed—provided that if the woman die, miscarry, or be married before delivery, or appear not to have been with child at the time of the examination, the man shall be discharged.

2. — Two justices may make order for the maintenance of bastard child by mother or reputed father, or pay to the magistrates of the district £20 sterling, for that purpose. In default whereof father or mother to be committed to gaol or house of correction for six months—unless he or she give security to perform the order, or to appear at the next quarter sessions, and abide the order of the justices.
3. — Women making false charges may be sent to the gaol or house of correction not exceeding six months.
4. — Any person thinking himself wrongfully charged, or if the woman charging be a person of ill fame or a common whore, on giving security may appeal to the next sessions, when the whole cause shall be tried and determined by a jury.

BELLE ISLE. — See *Broad Cove*.

BILLS OF EXCHANGE, damages on.

- 4 W. 4, c. 13. — *An Act for ascertaining the damages to be paid upon protested Bills of Exchange.* — [12th June, 1834.]
- Sec. 1. — All Bills drawn in this island on persons residing in the North American colonies or West Indies, subject to five per cent. damages, and six per cent. interest, from the date of protest to the time of payment; bills drawn on persons elsewhere, subject to seven and a-half per cent. damages, and six per cent. interest, in like manner.
2. — Six per cent. interest payable on bills drawn in and on persons residing in the island from the date of protest or refusal.

BOOKS, NEWSPAPERS, AND PRINTED PAPERS.

- 6 W. 4, c. 11. — *An Act to prevent the mischiefs arising from the printing and publishing of books, newspapers, and papers of a like nature by persons unknown, and to regulate the printing and publishing the same.* — [6th May, 1836.]
- Sec. 1. — No newspaper or other paper of like description to be printed or published until an affidavit or affirmation be lodged in the office of the Colonial Secretary, or with the persons named by him in different towns, specifying facts hereinafter mentioned.
2. — The affidavit or affirmation shall specify the true name, addition, description, and place of abode of all and every person and persons intended to be the printer and publisher, or printers and publishers, of the newspaper or other paper, and of the proprietors of the same, and all the proprietors of the printing press and types generally used in the printing thereof, the title of the paper, and the true description of the house or building where printed.
 3. — Similar affidavits to be made as often as the place of publication, printer or proprietary of such newspaper shall be changed.
 4. — Such affidavit to be made in writing by the printer, publisher, or

proprietor, and to be signed by the person making the same before a stipendiary magistrate.

5. — Persons wilfully inserting in affidavits other than the facts, or wilfully omitting to insert therein all the necessary facts, to be deemed guilty of wilful and corrupt perjury, and liable to the penalties thereof.
6. — Such affidavits to be kept and filed in such manner as the Secretary or acting Secretary shall direct, and certified copies thereof to be evidence in any civil or criminal proceedings touching such newspaper against the parties signing and making, and against any proprietor therein named, until the contrary be proved: provided, that parties ceasing to be printers, proprietors, and publishers, and placing in the Secretary's office an affidavit to that effect, before the publication of the paper touching which proceedings may be taken, shall not be affected by such first-mentioned affidavit; and provided that such first-mentioned affidavit shall be evidence only against the parties making it, and not against others, unless a copy thereof shall have been served on them or left at their houses before the publication of the objectionable matter.
7. — Newspapers to set forth the names of the several printers, publishers, and proprietors, under penalty of £50.
8. — After affidavits of the nature herein required shall have been put in evidence, and proof of the identity of the newspaper, it shall be unnecessary to prove purchase thereof at shop, &c., or from servant of defendant.
9. — Secretary or acting Secretary to furnish certified copies of such affidavits when required as evidence.
10. — Every printer to deliver to Secretary, or officer appointed by him, a copy of his newspaper signed, with the name of such printer, within six days after publication thereof; papers so lodged to be paid for by Secretary, penalty for neglect to lodge such papers, £50; papers so lodged to be produced by Secretary, &c., when required, within two years from the publication thereof, and on security being given for returning the same.
11. — All books and papers to have the names and residences of the printers and publishers distinctly printed and set forth therein upon the first and last leaves thereof, under penalty of £20; not to extend to any papers, &c. printed by government or the legislature, or by any clergyman, and containing only religious instruction.
12. — Fines and penalties to be recovered, in name of Attorney or Solicitor-general, in any court of record, and applied to public purposes of colony.
13. — Suspending clause.

BROAD COVE —

4 W. 4., c. 6. — *An Act to annex Broad Cove, and other places therein mentioned, to the District of St. John's.* — [1st August, 1833.]

To remove doubts, the settlements of Broad Cove and Petty Harbour, and Islands of Great and Little Belle Isle, and Kelly's Island, annexed to the district of St. John's.

CARBONEAR, keeping of gunpowder therein.

4 W. 4., c. 4. — *An Act to prevent dangerous quantities of gun-*

powder being kept within the town of Carbonear. —
[1st August, 1833.]

The same provisions as those enacted with reference to St. John's by the act 3 W. 4, c. 2.

SEC. 6. — Town of Carbonear, for the purposes of this act, to extend from Crocker's Cove Point to Musquito Point, including all buildings within one half mile of high water mark on the North and West sides, and one quarter of a mile on the South side of Carbonear harbour.

CARBONEAR, streets of.

5 W. 4, c. 12. — *An Act to regulate the streets of the town of Carbonear.* — [8th May, 1845.]

Sec. 1. — Main street of Carbonear to be fifty feet wide, from the water side line; the said main street to extend from J. Buckingham's, on the south side, round the Pond at the western end of harbour, and thence to Crocker's Cove beach. No building erected before the passing of the act to be removed.

2. — Similar provision for choosing commissioners and appraisers as in the Harbor Grace street act, 4 W. 4, c. 2, s. 4.

3. — Commissioners, upon the removal of buildings, by fire, or otherwise, to enter upon ground and lay out cross streets and fire breaks; to appraise value of ground so taken, which shall be paid for by a rate on landlords and tenants, according to their interests, situate between Harbor Rock Hill, on the east; the western end of the pond, on the west, and 250 yards north and north-west from high water mark.

4. — If in widening the main street any proprietor's lot is diminished in width to less than 40 feet, commissioners may appraise and assess for the value in like manner as for cross streets. Compensation may be made by appropriating adjoining ground at the discretion of the commissioners for the ground taken for widening the streets; if the same can be done at a less expense to the proprietors generally.

5. — Rates and assessments may be recovered in a summary way in any court of record.

CARBONEAR, Fire Companies.

4 VICT. CAP. 4. — *An Act to establish and regulate Fire Companies in the town of Carbonear.* — [26th April, 1841.]

☞ This act, in its provisions, is a copy of the Harbor Grace Fire Companies' acts, 3 W. 4, c. 4, and 4 W. 4, c. 5, allowing for difference of locality.

This act was suspended for a year by the 6 Vic. c. 21, and I believe has not yet gone into operation.

CHATELS REAL—See act 4 W. 4, c. 18, ante page 124.

COD FISHERY.

8 VICT., CAP. 7. — *An Act for the encouragement of the Bank Fishery.* — [23d April, 1845.]

Sec. 1. — Grants a bounty of thirty shillings per ton on each of the three vessels fitted on the *bultoe* system, for the prosecution of the bank cod-fishery, which shall land the largest quantity of fish for the season in proportion to the crew; no bounty for any one vessel to exceed £200.

2. — Bounties to be paid on proof to the satisfaction of governor and council.

3. — Act to continue in force for three years, and to the end of the then next session of the legislature.

CODFISH, Cullage of.

9 VICT., c. 3. — *An Act to regulate the Cullage of Fish in this colony.* — [28th April, 1846.]

Declares it to be unlawful for persons to cull cod-fish, without being sworn before a stipendiary justice of the peace: provided that buyers and sellers may employ unsworn cullers, if they so agree.

COLONIAL BUILDING.

6 WILLIAM 4, c. 14. — *An Act to authorise the erection of a colonial house in the town of St. John's, and the raising by loan a sum of money for that purpose.* — [6th May, 1836.]

Sec. 1. — Governor to appoint nine commissioners to superintend the erection of a colonial house and public market house; the cost not to exceed £15,000; vacancies by death, resignation and departure from the colony to be filled up by the governor.

2. — Commissioners authorized to settle claims to the ground appropriated for the purposes of this act; to be referred to two arbitrators; one to be chosen by the commissioners and one by the claimant; in case of disagreement, governor to appoint umpire, whose award shall be conclusive; claimants to give notice within six months after passing of act.

3. — Commissioners may take such adjoining land as may be necessary on giving six months' notice to parties interested—to compensate them out of monies granted for the purposes of this act; price to be ascertained by arbitrators, or by the verdict of a jury.

4. — Governor to appoint three persons to receive a grant of the ground assigned for the purposes of this act, in trust for the purposes of such erection.

5. — Commissioners to advertize for plans and specifications of the intended building, and award compensation to the person whose plan shall be adopted, £50; and the two next best £30 and £20 respectively.

6. — To advertize for tenders for the erection of the said building, and to enter into contracts for the work to be performed.

7. — Commissioners to appoint superintendant or inspector, who shall be sworn, and shall receive four per cent. on the amount expended about the said building; no commissioner, nor the superintendant, to be in any way interested in the contract, under a penalty of £1,000.

8. — Commissioners authorised to raise by loan a sum not exceeding £15,000; to be repaid out of funds of the colony, with interest at six per cent. per annum.

9. — Treasurer to issue debentures for sums not less than £50, to be countersigned by Colonial Secretary, and to be transferable.

10. — Interest to be paid half-yearly on the last days of June and December, at Treasurer's office.

11. — Debentures to be repaid out of public monies and surplus rents beyond sufficient to pay interest.

7 VICT., c. 8. — *An Act to amend an act passed in the 6th year of the reign of His late Majesty, entitled "An act to authorise the erection of a Colonial House in the town of St. John's," and the raising by loan a sum of money for that purpose.* — [12th April, 1844.]



174 COLONIAL BUILDING. CROWN LANDS.

Sec. 1. — Monies borrowed by commissioners under provisions of former act may be repaid in ten years, if then required, or afterwards on six months' notice.

2. — Commissioners empowered to procure further plans, and choose such as they shall approve, notwithstanding former act.

9 VICT., c. 6. — *An Act to authorise the raising by loan a further sum of money for the erection of a Colonial Building in St. John's, and for other purposes.*—[28th April, 1846.]

Preamble recites passing of acts 6 W. 4, c. 14, and 7 Vic. c. 8, and expediency of raising further sum of money.

Sec. 1. — Commissioners under first mentioned act empowered to raise further sum, not exceeding £7,000, to be raised and appropriated in like manner as by said acts.

2. — Governor and Council may select a more suitable site than Church-hill, provided no additional expenditure be incurred beyond that of preparing site at Church-hill; Commissioners nevertheless to proceed with all reasonable despatch in erection of market house.

CONTAGIOUS DISEASES—See Quarantine.

CRIMINAL LAW—See acts 4 W. 4, c. 5, and 1 Vict. c. 4, ante pages 81, 84.

CROWN LANDS.

7 VICT., c. 1. — *An Act to make provision for the disposal and sale of ungranted and unoccupied Crown Lands within the Island of Newfoundland and its dependencies, and for other purposes.*—[29th April, 1844.]

Sec. 1. — Grants to be made only to natural born subjects, denizens or naturalized subjects.

2. — No ungranted or unoccupied Crown Lands to be disposed of otherwise than by sale, and on payment of purchase price. Grants in fee simple under the Great Seal of the Island to be issued to the purchaser; their assigns, and heirs.

3. — Such lands to be sold by public auction; upset price to be fixed by the Governor; the minimum rate to be two shillings per acre.

4. — Sales by auction to be at the office of the Surveyor General in St. John's, or of the deputy surveyor in the district where the lands lie after reasonable notice in the *Gazette*, and also in the principal locations of the district where the lands are situate. Notice to set forth particulars of granting, situation, upset price, &c. Times of sale to be appointed by the Governor.

5. — Deposit of one shilling per acre to be made at sale; remainder in four months: on default, one deposit forfeited, and sale void.

6. — Lands offered at public sale more than once without a bid, may be sold by the Governor at private sale at last upset price.

7. — The Governor may reserve and appropriate such portions of land as with the advice of the Council he may deem expedient for erecting court houses, market places, churches, chapels, or other places of public worship, school houses, or for any other public use or purpose; also portions of unappropriated ships' rooms, beaches and shores, as may be convenient for general and public uses of the inhabitants in any district.

8. — Bog for fuel and manure, and portions of forest necessary for the uses of the fishery, to be reserved in like manner.
9. — Grants of Crown Lands may be issued to officers of the army and navy under regulations to be prescribed by her Majesty, and signified through the Secretary of State for the colonies.
10. — Governor and Council to order surveys of saleable lands, and defray charges of same and plans thereof out of monies voted for the purpose. Surveys, plans, &c. to be deposited in Surveyor General's office, and to be open to public inspection—public notice thereof being given by the Surveyor General.
11. — Persons desiring grants to petition the Governor in manner to be appointed by him with advice of the Council. Surveyor General to enter particulars of petition in regular order in a book for the purpose to be open to public inspection. Such petitions to be laid before the Governor without delay.
12. — Surveyor General to supply applicants with printed forms of petitions.
13. — Persons intruding on crown lands since 1st January, 1840, and before the passing of this act, on petition and payment of same upset price as for other like land, shall obtain a grant in fee simple of the whole, or such portion as the governor may deem just and expedient. If such persons do not petition within twelve months, or having petitioned, do not comply with terms, then on twelve months notice to them from Surveyor General or deputy Surveyor, such land to be deemed unoccupied and sold accordingly: provided, that in particular cases, where any such persons shall have made considerable and meritorious improvements, the governor may issue grant at lower rate than upset price, or a free grant according to circumstances and merits of the case.
14. — Persons who previous to 1st January, 1840, by themselves or tenants, and since then until the passing of the act, have been in the *boni fide* occupation of ungranted land, and made improvements thereon, and who shall, within four years from the passing of the act, apply for a survey, are confirmed in possession, and shall receive a grant on payment of the charge mentioned in the 13th section; no party to receive more than 20 acres unless brought into a state of cultivation; nothing herein to affect the interests of parties disputing the right of possession; and provided, that unless within eight years from passing of act, parties apply for and take up such grant, the crown may resume the land on giving twelve months' notice of intention to do so.
15. — Copies of this act and regulations to be deposited in offices of Surveyor General and deputy Surveyors, and to be open to public inspection.
16. — Parties to whom grants may be issued under the terms of the 13th and 14th sections, to pay five shillings for any grant of land under five acres, and for grants exceeding five acres, one shilling per acre.
17. — Surveyor General to furnish the governor, on the 1st day of October yearly, to be laid before the Assembly, a detailed return of lands sold or granted, with particulars of dates, names, sums, and expenses.
18. — Salary of Surveyor General to be £500 per annum, in lieu of all fees; chairman allowed £40 per annum in lieu of fees; and £50 per annum to be paid to the Colonial Secretary in lieu of all fees on grants; the said sums to be paid out of the general revenues by warrant in usual form.

- 19.—Proceeds of sale and rental of crown lands and ships' rooms to be paid over by the receiver (deducting five per cent for collection) to the Colonial Treasurer for general purposes of the colony.
- 20.—Following charges to be paid out of general revenues, heretofore chargeable on crown lands, revenues, &c.:—Repairs of government-house and offices, subject to direction of committee of two members of legislative council, and two members of Assembly, appointed annually; printing, stationery, fuel, and light for Surveyor General's office; superintendant of colonial buildings, £50; Mrs. Westcott's pension, £30.
- [21.—*No lot of land offered for sale to exceed 100 acres; and every grant to be conditioned for cultivation within five years of five per cent. of whole land contained in such grant.*]—Repealed.
- 8 VICT., c. 6.—*An Act to amend an Act passed in the seventh year of the reign of Her present Majesty Queen Victoria, entitled "An Act to make provision for the disposal and sale of ungranted and unoccupied Crown Lands within the Island of Newfoundland and its dependencies, and for other purposes."*—[23d April, 1845.]
- Sec. 1.—Repeals so much of the 21st section of said act as requires grants to be conditioned for cultivation of five per cent. of whole amount of land granted.
- 2.—No grant to be forfeited, defeated, or avoided by any clause, condition, or proviso therein contained for the clearing, cultivation, or improvement, within a certain time, of any portion of the land by such grant conveyed.

DEBTORS, absent or absconding.—*See Attachment.*

DURATION OF ASSEMBLIES.—*See House of Assembly.*

DUTIES.—*See Revenue.*

EDUCATION.

- 6 VICT. CAP. 6.—*An Act for the encouragement of Education in this colony.*—[22d May, 1843.]
- Sec. 1.—£5,100 annually granted for the support of education, of which one-half to be appropriated to support of Protestant, and one-half to support of Roman Catholic schools.
- 2.—Distributes the above sum amongst the districts of St. John's, Brigus, Harbour Grace, Carbonar, Trinity Bay North, Trinity Bay West, Trinity Bay South, Bonavista Bay South, Bonavista Bay North, Fogo, Twillingate, Bay Bulls, Ferryland, St. Mary's, Placentia, Burin, and Fortune Bay.
- 3.—Defines the boundaries of the foregoing districts.
- 4.—The Governor to appoint, in said districts, Protestant Boards of Education, to consist of seven persons, of whom the senior clergyman of the district shall be one: provided that where the amount appropriated to the Protestant part of any district shall be less than £25, such sum shall be appropriated by the adjoining Protestant Board.
- 5.—The Governor to appoint a Catholic Board of Education in each district in manner prescribed in preceding section.

6. — In case of a vacancy occurring in any board, the same to be filled up by the Governor.
7. — Boards appointed as aforesaid, may make regulations for the establishment and management of schools in their respective districts, and for the appropriation of monies granted them: provided, that five members shall form a quorum, and that no regulations shall be of force until the same shall have received the sanction of the Governor.
8. — On the first Wednesday in July in each year, a meeting of each board shall be holden for auditing accounts, &c.; and thereafter a report of the state of the schools shall be transmitted to the Governor.
9. — Provides the places in each district where such annual meeting shall be holden.
10. — School-houses, and lands held by former boards, shall be held in future by the boards to be appointed under this act.
11. — Certain school-houses in the district of St. John's, Conception Bay, and Trinity, and the school-houses in all other districts where the majority of the population are Protestant, to be held by Protestant boards.
12. — Certain other school-houses in the districts of St. John's and Conception Bay, and the school-houses in all other districts where the majority of the population are Roman Catholic, to be held by the Roman Catholic boards.
13. — A fee of four shillings and four-pence to be paid by each pupil attending the said schools: provided that the boards may remit such fee to persons unable to pay the same.
14. — Protestant boards for the St. John's, Brigus, Harbour Grace, Carbonear, Trinity, Bonavista, Fogo, Twillingate, and Fortune Bay districts, to appropriate certain portions of the money granted them towards the support of the schools of the Newfoundland School Society.
15. — Protestant boards of St. John's, Brigus, Harbour Grace, Carbonear, Trinity, and Burin, to appropriate portions of the money granted them to support of Wesleyan schools.
16. — Catholic boards of St. John's and Harbour Grace to appropriate portions of the money granted to them to the support of certain Catholic schools.
17. — Boards of one district may appropriate portions of the money granted them to the support of schools in other districts.
18. — £200 granted for compensating parties who may suffer by operations of the 11th and 12th sections.
19. — Provides for appointment of an inspector. (Repealed by 9 Viet., cap. 10.)
20. — Monies hereby granted to be paid quarterly under Governor's warrant.
21. — Governor to be visitor of schools established under the act.
22. — Act to continue six years, and until the end of the then next session of the legislature.

9 VICT., c. 10. — *An Act to repeal in part an act passed in the sixth year of the reign of Her present Majesty, entitled "An Act for the encouragement of Education in this colony."*
[28th April, 1846.]

Repeals nineteenth section of said act, which provided for the appointment of an inspector.



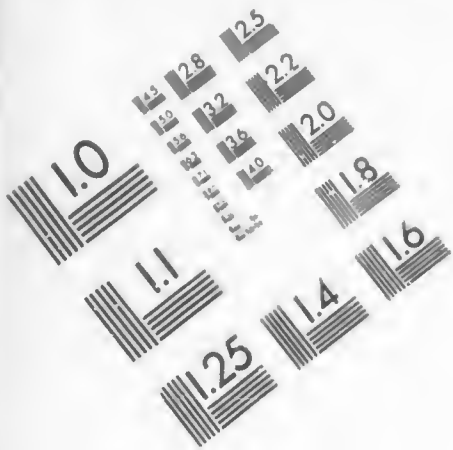
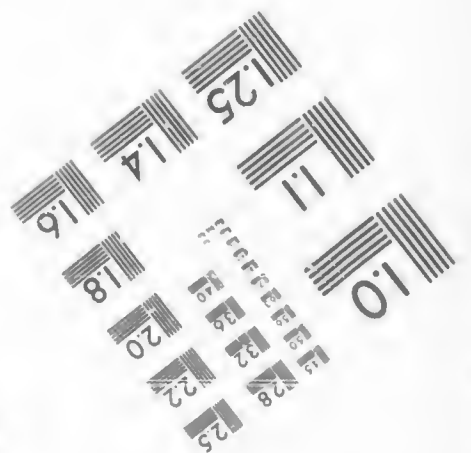
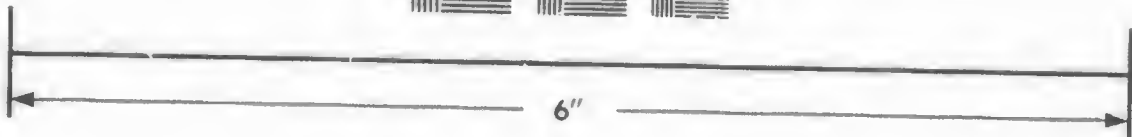
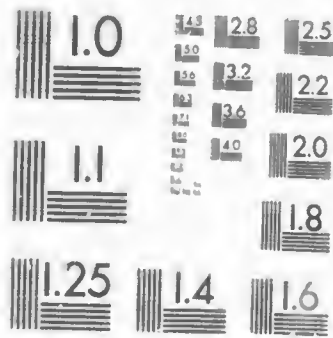


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178 ELECTIONS (REGISTRATION OF VOTERS.)

ELECTIONS.

4 W. 4, CAP. 15.—*An Act for registering the names of persons entitled to vote at elections.*—[12th June, 1834.]*

- Sec. 1. — Persons not registered according to this act not entitled to vote at elections for members of the Assembly.
2. — Justices in session to parcel out their district amongst themselves every year, and each justice to direct the constables within his division to make a list of all persons therein entitled to vote, which lists are to be appended to the doors of places of public worship, with notices annexed, requiring all persons omitted therefrom, who may claim to vote at elections, to prefer such claim before the first of September following. Provided that persons, whose names shall have been once placed on the register, shall not be required to make such claim while their former qualification and place of abode remain as before; and provided also, that any person absent from his place of abode during the taking of such lists and until after the said 20th September, and omitted therefrom, may have his name inserted at any time before next annual revision on establishing his claim before the revising magistrate or court of sessions.
 3. — Constables to make such lists as aforesaid, and return them to the respective justices.
 4. — Justices before the 20th September in each year to make out general lists in alphabetical order of all persons entitled to vote or claiming to vote at elections within their districts, marking, as objected to, those whom they may consider not entitled to vote, and such lists shall be printed and hung up at places of worship and other public places, and the said justices shall also keep at courts of revision one of such lists which shall be open to public inspection during the sittings of such courts.
 5. — Any registered voter may object to the registration of any other person by serving written notices of such objection upon the magistrates making out such lists, and upon the party objected to before the 20th September in any one year.
 6. — Courts of revision of the lists to be prepared as aforesaid shall be held in each district by one or more justices upon the 20th of September, in each year, at which the constables who shall have taken the said lists may be examined upon oath, and the revising justices shall retain upon such lists all persons who shall not have been objected to in manner aforesaid, and shall reject therefrom all persons who, having been so objected to, shall not prove themselves to be entitled to vote. Provided that persons omitted from such lists, who shall have given the notice provided by the second section, shall be inserted thereon, on proof of his being entitled to vote on the 1st September then last past.
 7. — Justices holding the said courts may adjourn from time to time, and from place to place, may examine upon oath all persons claiming to vote, or objecting to others' votes, and all witnesses; and all persons swearing falsely shall be guilty of perjury. Justices shall also determine upon the validity of all claims and objections, shall note all alterations in the said lists, and shall sign the same when settled,

* The operation of this Act was suspended for one year by the 5 W. 4, c. 2, after which it took effect.

and shall cause a fair register to be made of such lists, which register shall be transmitted by the Chief Magistrate to the Colonial Secretary, to be by him transmitted at every election to the Returning Officer.

8. — Any person aggrieved by the decision of the revising justices, may appeal to the sessions who shall amend the said lists by the addition of such person if he shall appear to have been entitled to vote on the 1st September then last past.
9. — Any person not registered, in consequence of the decision of any justice or sessions, may tender his vote at any election, and the returning officer shall receive such vote, distinguishing the same from those of registered voters. Provided that every person though not registered shall be entitled to vote at an election, upon proof to the returning officer that he was not entitled to be registered on the first of September then last past, but that subsequently to that time, and previously to such election, he did become so entitled.
10. — In case of any controverted election before the Assembly, either party may impeach the correctness of the register in full at such election, by proving that the name of any person had been improperly retained in or omitted from such register, or from the poll-book, and the committee upon such controverted election shall alter the poll according to the truth of the case, and report thereon to the Assembly, who shall carry such report into effect, and shall declare such election void, or cause the return thereof to be amended, as the case may be, and who shall also correct the said register, or make such other order as they shall deem proper.
11. — No more than one person entitled to vote for any one dwelling house, provided that every tenement shall be deemed a dwelling house, for which the occupier pays rent by the year, and of which he has the exclusive possession.

Schedule of Forms.

ELECTIONS in district of St. John's, act to prevent disqualification of voters by reason of the fire. — See *St. John's (voters.)*

EXECUTIONS, levying of.

4 VICT., CAP. 3. — *An Act to authorise the Sheriff of Newfoundland to levy Executions in the several districts of this Colony, after final judgment.*—[26th April, 1841.]

Enacts that a writ of execution upon final judgment in any of the circuit courts shall have validity in every district of the colony; Sheriff may levy under authority of same in any district, in like manner as if it had issued from the supreme court.

FEEES IN SESSION COURTS. — See *Police Offices.*

FERRIES.

8 VICT., c. 8.—*An Act for the regulation of Ferries.*—[23d April, 1846.]

Sec. 1. — Governor in Council to appoint and establish ferries, and grant licenses to ferrymen, subject to rules and rates of fees to be made and fixed in manner provided by second section; penalty of forty shillings imposed on ferrymen for neglect or refusal to comply with rules.

2. — Nearest courts of sessions to make rules and establish rate of fees, subject to the approval of the governor for the time being.

3. — Justices in session may suspend ferrymen in case of neglect or improper

conduct; to transmit complaint, &c., to the Governor; and appoint another ferryman *pro tem*.

4. — In case of parties injuring ferry-boats, a justice of the peace may apprehend offender, and on summary hearing award reparation; offenders not complying, may be imprisoned not exceeding thirty days.
5. — Penalties imposed may be recovered in a summary manner before a justice of the peace, and levied by warrant of distress and sale of offender's goods.

FIRE COMPANIES. — See *Harbour Grace and Carbonear*.

FISH (Pickled), exportation of.

4 VICT., CAP. 2. — *An Act to regulate the packing and inspection of Pickled Fish for exportation from this Colony.*
[26th April, 1841.]

- Sec. 1. — All casks in which fish shall be packed for exportation to be new, of sound and well seasoned wood, four hoops on each bilge and chime respectively; hardwood bung stave. Thickness of staves, heading, and other requisites prescribed.
2. — Governor to appoint two inspectors of pickled fish in St. John's, and one in each out-port where necessary. Inspectors to be sworn and to give security.
 3. — Tierces to contain 300 lbs., barrels 200 lbs., and half-barrels 100 lbs. weight of fish, over and above salt and pickle.
 4. — Dimensions of casks prescribed—viz., tierces of staves 30 inches in length, and heading of 20 inches diameter, and 23 inches clear in bilge; barrels of staves 27 inches in length, heading 16½ inches, and 19½ inches in the bilge. Half-barrels and tierces in like proportion.
 5. — Every barrel of pickled fish to have 5 gallons of coarse salt, clean and good. Half-barrel and tierce in like proportion.
 6. — Particular details of the mode of sorting, weighing, salting and packing fish in barrels prescribed.
 7. — There shall be three numbers or qualities of salmon and mackerel, and two of herrings, description of the different qualities, no mackerel not split to be inspected, and all rusted fish to be branded No. 4, "Rusty." No tainted or damaged fish of any kind shall be packed or inspected for exportation.
 8. — Casks of fish packed and inspected to be branded in legible characters on their heads, with number and quality thereof, month and year, initial of christian name and whole surname of inspector, and place where he acts, and also the letters N.F.L.D., with date of year in which fish was caught. If such date be not ascertained, fish to be branded "old."
 9. — Sorting, weighing, inspecting, and branding to be made by or in presence of sworn inspector, under penalty of £3 sterling, and like penalty on inspector suffering breach hereof.
 10. — Repacking, where necessary, to be done in presence of inspector, if within five miles.
 11. — No pickled fish to be exported unless master or owner produce to Collector certificate of inspector of inspection and branding according to this act. Master, owner or shipper to make declaration before Collector, of compliance with the law. Persons receiving on board or shipping fish packed in casks not inspected and branded as by this act directed, shall forfeit one half the value of such uninspected fish.

12. — Persons intermixing or shifting inspected fish, or exporting any tainted or damaged fish, or not producing inspector's certificate to principal officer of Customs, before vessel's departure from the port, to forfeit 20s. sterling for every cwt. of fish herein referred to.
13. — Inspectors to pay double the value of every cask proving unequal in quality to the brand; such deficiency to be clearly proved to be through inspector's default, and not from subsequent casualty.
14. — All fish shifted or intermixed after inspection declared forfeited.
15. — No pickled fish to be exported without inspector's certificate first produced to collector; nothing herein to affect fish sold in ports of the island in bulk or casks by planters and fishermen; nor to fish in casks of less than ten gallons.
16. — Officers of customs and inspectors to enforce act and prosecute for penalties.
17. — Officers of customs to grant certificate (in form prescribed in the section) to masters of vessels clearing out pickled fish according to this act.
18. — Inspectors to be paid for every certificate one shilling sterling; inspecting and branding every tierce, ten pence; barrel, seven pence; half-barrel, four pence half-penny; to be paid by exporter or purchaser in addition to cost of fish. Inspectors to make annual returns to governor of all fish inspected by them.
19. — Inspector branding cask not inspected by him, or permitting other persons to use his brand, to forfeit £5 sterling for every cask, and be removed from his office.
20. — Fish shipped with intent to export the same contrary to the provisions of this act shall be seized, inspected, and detained, until charges are paid; any justice of the peace to issue his warrant to seize the same; persons refusing to aid constable in seizing, to forfeit thirty shillings for neglect or refusal.
21. — When not more than five barrels of fish to be inspected, they shall be brought to inspector's place of business; if more, inspector shall attend within two days, under penalty of forty shillings for each day; to receive nine pence mileage for travelling beyond one mile.
22. — Salted or pickled herrings may be exported in bulk; and also salted or pickled herrings or mackerel packed in ordinary pork or beef barrels, although not of the dimensions above prescribed.
23. — Such herrings and mackerel to be, nevertheless, packed and inspected as above directed, but in no case to be branded No. 1.
24. — Penalties to be recovered in a summary way before two justices, or any court of record; proceeds for public uses of colony; one moiety to go to informer, where the conviction is by evidence of two witnesses.
25. — No fish to be exported except from place where it was inspected; inspector granting certificate of fish not inspected personally by him, guilty of a misdemeanour.
26. — Purchasers of inspected pickled fish may have same re-inspected on payment of expenses.
27. — Act to continue in force four years.

8 VICT., c. 5. — *An Act to continue and amend an act passed in the fourth year of the reign of Her present Majesty, entitled*

"An act to regulate the packing and inspection of Pickled Fish for exportation from this colony."—[23d April, 1845.]

- Sec. 1. — Continues the act, 4 Vict. c. 2, for five years, and to the end of then next session.
2. — Imposes a duty of three shillings per cwt. on the exportation from this colony of fresh and salted or pickled herrings and caplin in bulk.
 3. — Declares it unlawful to export salted or pickled caplin in casks, unless packed and inspected in like manner as pickled herrings by the said act : and imposes a duty of 2s. 6d. per barrel thereon—dried caplin, excepted.
 4. — £500 granted towards defraying the expense of procuring and maintaining Revenue Cruisers for protection of the British fisheries and Revenue.
 5. — Duties imposed to be secured and collected by means of the Imperial acts 3 & 4 W. 4, c. 53, and 4 & 5 W. 4, c.
 6. — Operation of act suspended until Her Majesty's pleasure be known.*

GAS LIGHT COMPANY.

7 VICT., c. 12. — *An Act to incorporate a company under the style and title of "The St. John's Gas-light Company."*— [29th April, 1844]

- Sec. 1. — Company incorporated ; to hold real estate not exceeding £1,000 per annum.
2. — Capital stock £6,000 ; may be increased to £12,000 ; shares, £10 each.
 3. — After 500 shares subscribed, general meeting to be held ; seven directors, each proprietors of ten shares, to be chosen ; and bye-laws made.
 4. — Annual general meetings on the first Monday in May, to pass accounts declare dividends, elect directors, and alter bye-laws.
 5. — Directors to choose president and vice-president ; four to be a quorum : directors to supply vacancies until annual general meeting.
 6. — Directors to appoint officers, clerks, and servants, and fix their salaries ; and generally to manage affairs of company.
 7. — Stockholders to have a vote for each share, but not exceeding fifty votes ; president to have casting vote.
 8. — Stockholders to vote by proxy, constituted by writing.
 9. — Shares to be personal estate ; assignments to be registered.
 10. — Shares subject to attachment by service of process on president or vice-president ; officers may be examined as to defendant's interest, &c.
 11. — Stockholders privately liable to amount equal to stock held by them ; joint stock, nevertheless, liable.
 12. — Proceedings in case of dissolution ; liability of stockholders to continue two years thereafter.
 13. — Ten stockholders of 100 shares to form directors empowered to call a general meeting.
 14. — Company empowered to trench streets, &c., for laying pipes and mains, doing no unnecessary damage ; penalty of £5 for neglect.
 15. — Company empowered to carry pipes through intermediate buildings and ground to houses of consumers.

* This act has been confirmed by Her Majesty and gone into operation.—An act, prohibiting the sale of bait to foreigners, and to prevent encroachments on the fisheries, was passed in 1836, (6 W. 4, c. 3.) but did not receive the royal confirmation.

16. — Gas-works subject to inspection of stipendiary magistrates, and their orders, subject to penalty of £5 for non-compliance.
17. — Persons fraudulently using, or wrongfully wasting, gas, subject to penalty to company of £10.
18. — Persons wilfully damaging pipes or apparatus, or wilfully hindering or obstructing construction, repairing, &c., of works, to forfeit £5; any person may apprehend offenders without warrant; in case of non-payment of penalty, offender to be committed for period not exceeding three calendar months.
19. — A magistrate, on complaint, may award sum to be paid by party negligently or carelessly breaking lamps, &c.; to be levied by warrant of distress.
20. — Penalties, the recovery of which not otherwise provided for, to be recovered by action of debt; conviction not to be quashed for want of form.
- 21, 22. — This act to be deemed a public act, and to continue in force for fifty years.

GRAMMAR SCHOOLS.

6 VICT., c. 8. — *An Act to authorise the Governor to appoint Commissioners for the appropriation of certain monies granted to Her Majesty for the establishment of a Grammar School at Carbonear, and remaining unappropriated, and to make further provision for the support of the said school.*
[22d May, 1843.]

Preamble recites grant of £400 for the support of a Grammar School at Carbonear by the appropriation acts of 1838 and 1839, remaining yet unexpired, and necessity for making provision for support of said school.

- Sec. 1. — Empowers Governor to appoint seven Commissioners, (of whom four to be a quorum) as a board for establishing and managing grammar school at Carbonear, and expending monies granted in building, &c.
2. — Commissioners incorporated by name of "The Directors of the Carbonear Grammar School."
 3. — Vacancies by death, resignation, or 12 months' absence from the colony, to be filled up by the Governor, either permanently or temporarily as he may think fit.
 4. — Board of Commissioners empowered to appoint master, and, if necessary, an usher,—fix salary of usher—prescribe branches of learning to be taught—establish fees, and make rules and bye-laws, subject to the approval of the Governor.
 - 5, 6, 7, 8, and 9, are the same as the like sections in the act establishing the Harbour Grace Academy.
 10. — Makes the school subject to the inspection of the Inspector of Schools under the Education.—[*This office since abolished.*]

6 VICT. c. 7. — *An Act for the establishment and support of a Grammar School at Harbour Grace.*—[22d May, 1843.]

- Sec. 1. — £400 granted to be expended by Commissioners in purchasing, building, or leasing a school house at Harbour Grace, and providing library and apparatus.
2. — Governor to appoint seven Commissioners for managing the affairs of the said school, who are incorporated by the name of "The Commissioners of the Harbour Grace Grammar School."

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3. — Vacancies by death, resignation and 12 months' absence, to be filled up by the Governor.
4. — Five of the Commissioners to be a quorum—to appoint master and usher, if necessary, and remove and re-appoint. To establish course of instruction—rates of fees, and to make bye-laws subject to the approbation of the Governor.
5. — Classics, mathematics, and navigation to be taught in the school; and no books or treatises to be used without the approval of the Commissioners.
6. — Salary of Master £150, exclusive of fees.
7. — Report and register to be kept in School of number, names, ages and places of residence of pupils, with other particulars.
8. — Commissioners to make report annually to the Government, for the information of the Legislature, the progress and condition of the school, with full particulars and an amount of the appropriation of the fees.
9. — The Governor to be the visitor of the school.
10. — Monies granted by this act to be paid out of the general revenue in the usual manner.

GUNPOWDER STORAGE ACTS, Explanation of.

4 W. 4, c. 19.—*An Act to explain certain Acts passed for the safe keeping of Gunpowder, and to remove doubts respecting the same.* — [12th June, 1834.]

Preamble recites acts 3 W. 4, c. 2, and 5 W. 4, c. 4, and the existence of doubts as to whether the acts apply to the storing of gunpowder in His Majesty's stores and magazines.

Sec. 1. — Declares that the provisions of the said acts shall not extend to government magazines.

GUNS, FIRING OF — (in towns of St. John's, &c.)

5 W. 4, c. 9. — *An Act to prevent the unnecessary discharging of guns and other fire-arms in the towns of St. John's, Harbour Grace, Carbonear, Port-de-Grace, and Brigus, and the suburbs thereof.* — [8th May, 1835.]

Sec. 1. — No fire-arms to be discharged within the said towns and suburbs for the purpose of creating a noise and disturbance, and without reasonable cause or excuse for so doing, under penalty of ten shillings, or imprisonment for twenty-four hours on conviction before a justice of the peace; provided complaint be made within forty-eight hours after the offence committed; and that nothing herein shall extend to Her Majesty's troops, or others acting under lawful authority.

HARBOUR GRACE, Fire Companies in.

3 W. 4, c. 4. — *An Act to establish and regulate Fire Companies in the town of Harbour Grace.* — [17th April, 1843.]

Sec. 1. — Town divided into two wards,—western, from Ship's Head to Parkins's Lane,—eastern, from thence to Bear's Cove.

2. — A fire company to be established in each ward; every male house-keeper to be enrolled as a member, (save judges, magistrates, public officers, clergymen, and persons over 60 years of age, and persons infirm or disabled.) Any person claiming exemption from personal

service, other than clergyman or medical practitioner, having a clerk, son, or man-servant, under 17 years of age, resident in his house, to cural him as a substitute, and to be liable for his attendance.

- 3.— On public notice by two justices, upon the requisition of ten house-keepers, all persons liable to serve to meet and choose officers by ballot: viz., in each ward four wardens, one captain and two lieutenants, to serve for a year. General annual meeting and election of officers to be on the first Wednesday of July in each year.
- 4.— Wardens and captains to form a committee; make rules and regulations, and establish fines, for the conduct and government of fire companies, subject to approval of Governor, and publication in *Royal Gazette*.— [Amended by 4 W. 4, c. 5, q. v.]
- 5.— Fire engine to be kept in each ward, in a house for the purpose, to which a bell shall be attached: all to be under control of wardens and officers.
- 6.— Houses to be built, and engines and apparatus to be purchased by fire wardens; to defray which assessment to be levied on landlords and others deriving a profit rent (public buildings, school houses, and charitable institutions excepted); stone or brick buildings liable to half assessment only.
- 7.— Assessment to be made by order of two justices; not to be levied on public buildings, churches, chapels, public or free-school or charitable institution.
- 8.— Rates to be recovered by suit in a summary way in name of treasurer or warden, and levied with costs on goods of defendant.
- 9.— Senior warden to be treasurer, and junior warden secretary; general treasurer to be chosen from wardens by ballot.
- 10.— General treasurer to pay no monies except on order signed by majority of wardens.
- 11.— Wardens to be sworn, and when on duty to be conservators of the peace,—six men in each ward nominated by the wardens, to have also power of special constables.

4 W. 4, c. 5. — *An Act to amend an Act of the General Assembly of this island, passed in the third year of his present Majesty's reign, entitled "An Act to establish and regulate Fire Companies in the town of Harbour Grace." — [1st August, 1833.]*

Fire wardens and captains may make rules and regulations respecting chimnies and stove-pipes, and impose fines and penalties; rules and regulations, being first approved by the governor, and published in the *Royal Gazette* or one of the Harbour Grace newspapers, to have the force of law; fines to be recovered in a summary way by treasurer of fire companies before any justice of the peace, and proceeds applied to use of fire companies.

HARBOUR GRACE, Storage of gunpowder in.

4 W. 4., c. 3. — *An Act to prevent dangerous quantities of gunpowder being kept within the town of Harbour Grace, and to provide for the safe storing of the same.*—[12th June, 1831.]

The provisions of this act are in almost every particular the same as those of the 3 W. 4, c. 2, with respect to St. John's, for which see *St. John's*.

Sec. 6. — Provides that on the erection of a suitable magazine, the proprietors may charge the following rates for storage for one year, viz.: — Every barrel, 3s. 6d.; half-barrel, 2s. 2d.; quarter barrel, 1s. 1d. sterling; and for every year afterwards, 2s. 6d. sterling per cwt.

8. — Harbour Grace, for the purposes of the act, to extend from Bear's Cove to Ship's Head.

HARBOUR GRACE, Regulation of streets of.

3 W. 4, c. 5. — *An Act to regulate the streets of the town of Harbour Grace.* — [17th April, 1833.]

Amended by 4 W. 4, c. 2, which repeals the 1st, 2d, and 3rd sections, and the further exercise of the power and authority of the commissioners appointed thereby, indemnifying them, however, for any lawful act done by them.

Sec. 4. — Directs commissioners to proceed in the taking of ground to widen streets, and to award compensation to be paid by a rate to be levied, in equal proportions, on the appraised value of the interests of all landlords and tenants between Ship's Head and Bear's Cove; commissioners may also appropriate adjoining ground in compensation if they think proper.

5. — Rates and assessments to be recovered summarily in any court of record.

6. — Commissioners might postpone the opening of intended new street, and extend fire-breaks.

4 W. 4, c. 2. — *An Act to amend an act of the General Assembly, entitled "An Act to regulate the streets of the town of Harbour Grace."* — [1st August, 1833.]

Sec. 1. — Repeals portions of preceding act. — *See above.*

2. — Main and cross-streets to be as laid out by commissioners in 1832.

3. — Width of main street to be fifty feet throughout.

4. — Nine commissioners of roads and appraisers to be appointed as follows: — A public meeting of proprietors and tenants to be held; four persons to be chosen by the proprietors of ground to be taken; and four persons by proprietors and householders, or tenants of lands and tenements generally, which eight persons shall choose a ninth as umpire; being sworn, the said nine persons shall be commissioners of roads, and appraisers, and are authorized to mark out a street forty feet wide in the rear of and parallel to the main street, and additional cross-streets or fire-breaks westward of those marked out by the former commissioners; to award compensation and appropriate adjoining ground, and to raise and levy rates and assessments in same manner as by the former act.

5. — No building erected previous to the 27th August, 1832, to be removed.

6. — Authority of former commissioners annulled.

8 VICT. c. 12. — *An Act to amend an act passed in the fourth year of the reign of His late Majesty, entitled "An act to amend an act of the General Assembly entitled 'An act to regulate the streets of Harbour Grace.'"* — [23rd April, 1845.]

Sec. 1. — Repeals all such parts of the third section of the recited act (4 W. 4, c. 2) as relates to buildings thereafter to be erected on the north and south sides of Water-street in the said town, westward of William Innot's house.

2. — To form the south side of the said street, a straight line be drawn from the south parapet of Fox's bridge, to the south parapet of Martin's bridge; north side line to be a parallel of fifty feet.

9 & 10 VICT., c. 4. — *An Act for the laying out of streets and cross-streets or fire-breaks in the town of Harbour Grace.*
[4th August, 1846.]

- Sec. 1. — Governor in Council to nominate three Commissioners to lay out in Harbour Grace such cross-streets or fire-breaks as they may deem necessary for the security of the town, not exceeding five, from the waterside northward, intersecting Harvey street; after compensation tendered and said streets laid out, ground included therein to be public, and erections thereon to be nuisances, and to be abated by order of two or more stipendiary magistrates for Conception Bay.
2. — Compensation to be ascertained by award of arbitrators to be appointed by party interested and Commissioners. In awards of sums beyond £100, party dissatisfied may appeal to northern circuit court.
3. — Compensation for sums exceeding £25 to be made by Treasury notes payable in ten years with interest at five per cent. Under £25 to be paid by warrant on the Treasurer. Whole compensation not to exceed £3,000.
4. — Commissioners out of the said sum of £3,000 to make Harvey and Water-streets.
5. — Commissioners or arbitrators may compensate parties for ground taken, by taking adjoining ground where it can be done without material injury, and by payment in addition, (if necessary) of such sum as may be a full satisfaction.

HIGHWAYS,—*See Roads.*

HOSPITAL,—*See Seamen and Fishermen.*

HARBOURS AND ROADSTEADS.

2 VICT., CAP. 7. — *An Act to preserve the Harbours and Roadsteads of Newfoundland and its dependencies from nuisances and obstructions.* — [25th October, 1838.]

- Sec. 1. — Any persons throwing out of any ship, vessel, or boat any ballast, stones, or other thing hurtful to any harbour or roadstead in this island or its dependencies, to pay a fine of not less than forty shillings, nor more than £10, or be imprisoned not exceeding ten days.
2. — Complaint to be heard in a summary way before two justices; and fines to be levied on goods and chattels of offender, and paid into the colonial treasury for public purposes.

HOUSES OF ASSEMBLY. Duration of.

4 W 4, (SESSION 2), c. 7. — *An Act to limit the duration of the present and all future Houses of Assembly in this colony.* — [6th May, 1836.]

- Sec. 1. — The existing House of Assembly to cease on the 1st January, 1838.*
2. — All future Houses of Assembly to have continuance, notwithstanding the demise of the crown, for the period of four years from the day on

* It was dissolved by proclamation in 1836.

which they shall by proclamation be appointed to meet; not to prevent dissolution by the crown sooner, if deemed expedient.
 HOUSES, in St. John's, building of. — See *St. John's*.

ICE CHANNELS.

4 W. 4, (SESSION 2), c. 2. — *An Act to regulate the cutting of Channels in the Ice, in the various ports and harbours of this Island.* — [12th June, 1834.]

- Sec. 1. — Owners, masters, and agents of owners of all sealing vessels, or a majority of them, in every port where they shall fit out, on due notice given by a justice of peace on the requisition of three owners, to meet and choose by ballot an "Ice Committee," who shall appoint a chairman and treasurer, and frame regulations for cutting channels through the ice in the respective ports—regulations being published to have force of law for one year. In ports where there is no justice of peace, a sheriff's officer or three owners or agents of owners of sealing vessels may convene meeting.
2. — Committee to exist until successors be chosen at the next general meeting, which shall be holden on the last Tuesday of January, or next convenient day thereafter—succeeding committees to confirm, alter or amend rules, if they shall think proper.
3. — Committee to provide, at the expense of owners of sealing vessels, necessary tools for cutting channels in the ice, and compel the attendance of men from the crews of sealing vessels: or levy a rate on them, one-half to be paid by owners, and the other half by the masters and crews; other vessels using channel to pay a toll not exceeding forty shillings per 100 tons.
4. — Rates to be recovered summarily by treasurer, before a justice of the peace, and levied with costs of suit.
5. — Regulations of committees to be enforced by fines not exceeding £5; to be recovered summarily before a justice of the peace, and, with rates, &c., to be applied to purposes of this act.

INSOLVENT DEBTORS, — See act for relief of, taken in execution, 4 W. 4, c. 11. *ante* page 85.

INTEREST, Rate of.

4 W. 4, (SESSION 2), c. 12. — *An Act to establish the rate of interest in this Island.* — [12th June, 1834.]

- Sec. 1. — Interest at six per cent. shall be allowed on debts due by written contract from the time of their being due; and on debts due from the time of demand of payment made in writing, and that interest will be claimed from the date of the demand.
2. — No part of the law of England relating to usury to be of any force in this island.
3. — No claim for interest exceeding six per cent. recoverable against an insolvent estate.

LANDED PROPERTY. — See *Real Chattels Act* 4 W. 4, c. 18, *ante* page 124.

LAW SOCIETY. — See Act, 4 W. 4, c. 23, *ante* page 192.

LIGHT HOUSES.

4 W. 4, c. 4. — *An Act for the establishment of Light Houses.* — [8th May, 1835.]

- ☞ All the provisions of this act, except those as to loan of money for building light-house on Cape Spear, repealed by 3 Vic., cap. 5.
- Sections 3, 10, and 11, provide for the borrowing of £1,000 sterling, at six per cent., for the building of Cape Spear light-house.
- 5 W. 4, c. 6.—*An Act for raising a further sum of money for completing the erection of a Light House on Cape Spear.*— [8th May, 1835.]
- Sections 1, 2, and 3 authorize the treasurer to raise by loan, on debentures, the further sum of £500 sterling, at six per cent. interest, to complete the said light house.
- 5 W. 4, c. 7.—*An Act for the establishment of a Light House on Harbour Grace Island.*— [8th May, 1835.]
- Sections 2, 8, and 9 provide for the raising by loan, on debentures, the sum of £1,000 sterling, at six per cent. interest, for the erection of a light-house on Harbour Grace Island; all the other provisions of the act repealed by the 3 Viet., c. 5.
- 5 W. 4, c. 12.—*An Act to authorize the raising by loan of a further sum of money for the completion of the Light House on Harbour Grace Island.*— [6th May, 1836.]
- Sec. 1.—Commissioners to raise by loan the further sum of £1,000, on interest at six per cent.; provided that no part of the said sum shall be raised or expended until estimates, &c., be first approved by the Governor in Council,
- 2.—Treasurer to issue debentures, &c., according to Act 5 W. 4, c. 7.
- 1 VICT., c. 8.—*An Act to authorize the raising by loan of a further sum for the completion of the Light House on Harbour Grace Island, and to make further regulations respecting the same.*— [18th November, 1837.]
- Sections 1 and 2 provide for raising by loan the further sum of £500 sterling, by debentures at six per cent. interest, for the completion of the said light-house; all the other provisions of the act repealed by the Act 3 Viet., c. 5.
- 3 VICT., c. 5.—*An Act to amend several acts now in force respecting Light Houses, and to make further provision for the said Light House, and to consolidate the laws respecting the same.*— [12th Oct., 1829.]
- Sec. 1.—Repeals 4 W. 4, c. 4, 5 W. 4, c. 7, and 1 Viet. c. 8., excepting the clauses relating to monies borrowed from any person or persons, and which provide for the security of such public creditors.
- 2.—All expenses of supporting Light Houses now or hereafter to be erected, salaries to keepers, &c. to be defrayed out of public treasury.
- 3.—Governor to appoint five Commissioners, of whom three to be a quorum; for superintending and managing affairs of light houses; to be a board of audit and control. All purchases for light houses to be by public advertisement and tenders; all amounts and vouchers to be furnished to the Colonial Treasurer before the monies are drawn; Governor to fill up vacancies in Commissioners.
- 4.—Commissioners to appoint light-house keepers and assistants; their

salaries and all expenses of light houses to be subject to the control and approval of the legislature.

5. — Light dues: upon every vessel entering a port between Capes Ray and John, (other than coasting, sealing and fishing vessels) a duty of three pence sterling, per ton register tonnage; not to be levied more than twice in one year. Upon every decked vessel in the sealing, fishing, coasting trade, or Labrador, entering any of the ports aforesaid, above 90 tons, twenty shillings sterling per annum; between 60 and 90 tons, fifteen shillings per annum; and under 60 tons, ten shillings sterling per annum.
6. — Collector of Her Majesty's Customs to appoint proper persons in out-ports to collect light dues, to be paid over quarterly to him for the use of the colony. Ten per cent. allowed the Collector for collection of dues.
7. — Light dues may be recovered in a summary way before any one or more justices of peace, and levied on goods of owner or of master vessel with costs.
8. — Vessels not to be admitted to entry by Collector, nor clearance to fishing or coasting vessels till dues are paid.
9. — Detailed accounts of all rates and dues received, and of all charges and disbursements on account of light house shall be furnished to the Governor by the Commissioners, to be laid before the legislature at the commencement of each session.
10. — Overplus of monies collected under this act after payment of annual expenses of light houses, to remain in Treasurer's hands as a distinct fund, and not placed by him in his general accounts of monies and duties received for the service of the colony.
11. — Act to continue in force for three years.*

4 VICT., CAP. 6. — *An Act to make provision for a Light House on or near to Cape Bonavista.* — [26th April, 1841.]

- Sec. 1. — Colonial Treasurer authorized to raise by loan £1,755 sterling, for the purposes of this Act, repayable with interest out of the public funds of the colony in three equal instalments of £585, in three, four, and five years after date of debentures.
2. — Commissioners of light-houses under Act 3 Vict., cap. 5, to procure plans, specifications, and estimates, and proceed to the erection of light-house on or near to Cape Bonavista.
 3. — Governor to draw warrants on treasurer for amount necessary to complete building of said light-house; not exceeding in whole £1,755 *stg.*

7 VICT., CAP. 5. — *An Act for the maintenance of a Light House on Cape Pine.* — [29th April, 1844.]

Preamble recites, as the result of correspondence on the subject, a proposition of the Lords of the Treasury to recommend a grant for the erection of a light-house on Cape Pine; on condition of provision for its maintenance being made by this colony separately, or jointly with other North American colonies.

- Sec. 1. — Grants £500 annually for the maintenance of the said light-house, when erected.
2. — The said light-house to be under the control of the commissioners of light-houses appointed or to be appointed under the Act 3 Vict., cap. 5.

* Continued by various acts, and now in force by 9 & 10 Vict. c. 6

LICENSES. — See Act 3 Viet., c. 6, ante page 120.

LOAN.

6 VICT., CAP. 23. — *An Act to authorize the Treasurer to raise by loan, on the credit of the colony, a sum of money to be applied to the general purposes of the colony.*— 22d May, 1843.]

Preamble recites the expiration on the 30th June previous of the general revenue act, whereby £20,257 9s. 0d. had been lost to the colony, and the expediency of borrowing an equal sum.

Sec. 1. — The Treasurer authorised to raise by loan on the credit of the colony £20,000, to be repaid out of funds of colony with interest at 6 per cent.

2. — Treasurer to issue debentures for sums not less than £50.

3. — Monies to be repaid in equal instalments of £5,000, at the expiration of three, four, five, and six years from the date of the debentures respectively.

4. — No interest to be paid on any debenture subsequent to the time appointed for payment of such debenture.

Schedule. Form of debenture.

9 VICT., c. 7. — *An Act to raise by loan a sum of money for the general purposes of the colony.*— [23th April, 1846.]

Preamble recites road acts 7 Viet. c. 9, and 8 Viet. c. 4, and provisions therein for raising money by Treasury notes, none of which having been issued, it is expedient the said monies should be raised by loan instead of by the manner in the said acts provided.

Sec. 1. — The Treasurer may raise by loan £18,500 for the general purposes of the colony, chargeable on and payable out of the funds of the colony, one moiety in five years, and the other moiety in ten years from time of borrowing.

2. — Loan to be raised by public advertisement for tenders; interest payable half-yearly.

3. — Prescribes the form of debentures to be issued for sums not less than £100, to be issued by the Treasurer, and countersigned by the Colonial Secretary, and to be transferable by endorsement.

10 VICT., c. 2. — *An Act to raise by loan a sum of money for the general improvement of the colony.*— (14th January, 1847.)

Sec. 1. — Governor and Council to negotiate loan of sums not exceeding in all £200,000 chargeable upon and repayable with interest from public funds of the colony. by instalments.

2. — Debentures to be issued for sums loaned to be executed on behalf of the colony by such persons as the Governor by warrant under Great Seal shall appoint for the purpose.

3. — Grant of sum not exceeding £10,000 a year towards paying interest of loan, payable out of general funds of the colony.

4. — Of the loan to be raised, £100,000 to be expended in construction of main roads in manner directed by the legislature; and £100,000 towards rebuilding town of St. John's, to enable private parties to reconstruct their houses and stores of brick or stone, under the direction of five commissioners to be appointed for the purpose of taking security from applicants. Commissioners to advance sums not exceeding three-fourths of their value interests. Loans to be on express condition that they be expended in the erection of buildings, and security

in that behalf to be taken by such trustees, and under such regulations as shall be prescribed by the Governor in Council.

5. — No greater interest than four and a half per cent. to be paid upon money to be raised in manner and for the purposes aforesaid.

LUNATIC ASYLUM.

9 VICT., c. 4. — *An Act for the establishment of a Lunatic Asylum in St. John's.*—[29th April, 1846.]

- Sec. 1. — Grants £1500 for establishment of a lunatic asylum at St. John's.
 2. — Governor and Council to direct expenditure of money in providing a suitable building, and to make rules and orders for management of asylum.
 3. — Governor to appoint seven commissioners, of whom three shall be a quorum; and to supply vacancies caused by death, resignation, or 12 months' absence.
 4. — Governor to appoint medical and other superintendants, keepers and servants, and fix and regulate their salaries.
 5. — Commissioners to carry into effect rules and orders for government of asylum, and generally to superintend management of the same.
 6. — Monies to be drawn by warrant in usual manner.
 7. — Commissioners yearly, on the 10th January, and when required, to transmit to the Colonial Secretary full report and statement of receipts and disbursements, and progress and condition of asylum.

10 VICT., c. 4. — *An Act for granting a further sum for establishing a Lunatic Asylum in St. John's.*—(14th January, 1847.)

Preamble recites insufficiency of sum granted by 9 Viet., c. 4.

- Sec. 1. — Grants further sum of £1500 for carrying into effect the object and provisions of the said recited act.

MARRIAGES.

3 W. 4, c. 10. — *An Act to repeal the laws now in force concerning the celebration of Marriages, and to regulate the future celebration of Marriages in this Island.*—(8th July, 1833.)

- Sec. 1. — Repeals Imperial act 5 G. 4, cap. 8, except parts repealing former marriage acts, and rendering valid all marriages had in Newfoundland within a certain period.
 2. — All future marriages, except in cases hereinafter mentioned, (see sec. 8,) to be celebrated by persons in Holy Orders, by resident ministers of congregations having a church or chapel; or by teachers or preachers of religion duly licensed by the Governor, to celebrate marriages.
 3. — All marriages under this act to be celebrated in presence of two witnesses, under a penalty of £50 upon the person celebrating the same: but the want of such witnesses not to invalidate any marriage.
 4. — Any person authorised or licensed under this act celebrating a marriage between persons either of whom shall be minors, not having published the banns for such marriage upon three successive Sundays in some church or chapel, or where there is no church or chapel, not having placarded public notice for three weeks preceding the day appointed for such marriage in some place of public resort, without the consent of such minors' parents or guardians, to be guilty of high misdemeanour, and to suffer a penalty not exceeding £50.

5. — All marriages to be registered in a book (to be kept for such purpose by the person celebrating the same) by the entry therein of a certificate of such marriage, signed by the person celebrating, by the persons married, and by two witnesses present. Such register or book to be open to public examination at all convenient times, and an attested copy of any entry therein to be given to any person requiring it upon payment of 2s. 6d. Any person celebrating a marriage, and omitting to register the same, to pay a penalty of £5.
6. — The entry of any marriage in manner aforesaid in any such book of registry, or an attested certificate of such entry, (the handwriting of the attesting minister being proven) shall be sufficient proof of the marriage to which such entry refers.
7. — Any person destroying or defacing any registry of any marriage with intent to avoid, cancel, or annul such marriage guilty of felony.
8. — Magistrates duly licensed by the Governor may celebrate marriages where no person authorised, as beforementioned, shall reside within ten miles of the residence of the woman about to be married, and laymen duly licensed may celebrate marriages where no person authorised, as aforesaid, shall reside within fifteen miles of the residence of the woman about to be married.
9. — All persons celebrating marriages where there is no church or chapel, shall, within twelve months after any marriage, cause a certificate thereof to be registered in the office of the Colonial Secretary under a penalty of £5; and the Colonial Secretary shall, within seven days after receipt thereof, enter the same in a public register; and such register shall be open to public inspection, and every person requiring it shall be entitled to a copy and certificate of any entry of marriage therein, under the hand of the Secretary, upon payment of 2s. 6d.
10. — The entry of any marriage in such public register, or such copy and certificate of such entry (the hand-writing of the Secretary being proven), shall be sufficient proof of the marriage to which such entry refers.
11. — All penalties imposed by this act may be recovered in any court of record, and shall be paid half to the informer, and half to the crown, for the use of the colony.

MECHANICS' SOCIETY. — See *St. John's*.

NUISANCES.

3 W. 4, c. 8. — *An Act for the more speedy abatement of nuisances.* — [31st May, 1833.]

☞ Parts of sections 3, 4, and 9, and the whole of the 10th section, repealed by 9 Vict., c. 9.

Sec. 1. — Courts of session, or any one justice of the peace, empowered to adjudge summarily upon nuisances in this act referred to; and to fine and award costs.

2. — Courts of session, or any one justice of the peace, in their respective districts, empowered to contract for sale or lease of filth, rubbish, or other offensive matter, and for the removal thereof from streets and lanes; contractors to give security for removal, and to have exclusive right to remove the same. Contractors negligent to forfeit security, or part thereof, at the discretion of sessions or justice.

3. — Persons obstructing, molesting, or hindering contractor, to forfeit forty shillings.
4. — If no party contract, occupiers of houses to remove filth, rubbish, &c. in front of their houses to the middle of the street, under penalty of twenty shillings, and expenses of removal.
5. — Persons depositing filth or rubbish in streets, &c. after they shall have been cleaned, shall forfeit five shillings, and all costs and removal thereof.
6. — Constables to report names of all offenders to the nearest justice of the peace, under penalty of forty shillings.
7. — All carts employed in the removal of night soil, or such offensive matter, shall be tight and covered, and call at houses between hours of ten at night and five in the morning.
8. — Declares it unlawful for persons to bring into or carry through any of the streets, lanes, or places of any of the populous towns of this island, any putrid substance, or other offensive matter or thing, unless in carts tight, close, and covered, under penalty of five shillings.
9. — Justices in sessions to make regulations for preventing entire horses going at large, and dogs and goats, unless yoked, under penalty of forty shillings.
11. — One third of a street may be used for building materials, provided room be left for a cart to pass.
12. — One moiety of penalties to go to the prosecutor, and the other to the treasurer, for public purposes.

☞ The foregoing is an abstract of so much of the act as is not repealed by the 9 Vict., c. 9.

6 VICT., c. 14. — *An Act for granting to Her Majesty a sum of money for making, constructing, and repairing Roads, Streets and Bridges in this Colony, and for regulating the expenditure of the same.*—(22d May, 1843.)

Sec. 17. — Declares all cellars and other excavations, and all doors, hatchways, flakes, and other erections heretofore, or which should thereafter be excavated, placed or erected under, over or upon any street, lane or road upon the north side of the towns of St. John's, Harbor Grace and Carbonear, public nuisances, and that it shall be lawful for *the chairmen of the Boards of Commissioners appointed under the said Act*, or any two justices of the respective district, to order the abatement thereof by the owner or occupier, or by the party who shall have excavated, placed, or erected such nuisances: and if the owner, occupier, or party aforesaid, after ten days' notice in writing from such Justices, or such Chairman, shall refuse or neglect to abate the nuisance, he shall pay a fine not exceeding £5, recoverable with costs before two justices, and to be levied by distress and sale of the offender's goods, *to be paid over to the Board of Road Commissioners for the purposes of the said act.* Provided that it shall be lawful for the proprietor or occupier of any such cellar to continue to use the same, on arching or roofing it with stone, or brick and mortar, and also to use any such cellar, door, or hatchway, on having the same covered with a strong iron grating level with the surface.

☞ This appears to be the only section of this act in force. The grants of money having been expended, the functions of the Board of Road Commissioners

have terminated. By the 8 Vict. c. 3, still in force, a new and complete system for the expenditure of road monies was enacted, referable to all subsequent grants.
 9 VICT., c. 9. — *An Act to amend an act passed in the third year of His late Majesty's reign, entitled "An Act for the more speedy abatement of nuisances."* — (28th April, 1846.)

- Sec. 1. — Repeals so much of third section as prescribes notice to parties claiming rubbish, &c. deposited in street, &c.; and so much of fourth section as limits obligation of occupier of house, &c. to remove, filth, rubbish, &c. to cases where the rubbish, &c. has been so placed by such occupier; and so much of the ninth section as permits dogs having collars on their necks, to go at large without logs; and also repeals the 10th section.
2. — Any justice of the peace may cause dogs going at large contrary to this and the said act to be destroyed; lawful for any person to seize swine or goats at large contrary to law, and on oath thereof before a justice of the peace, to sell the same, unless redeemed within forty-eight hours by fine of five shillings, together with costs and expenses. Proceeds of sale: one half to the seizer, and the other half to the colony.

ORDNANCE PROPERTY.

6 VICT., CAP. 19. — *An Act for vesting all estates and property occupied for the Ordnance Service of Her Majesty in the principal officers of the Ordnance Department.* — (22d May, 1843.)

Preamble, recites that various messuages, lands, tenements, estates, and other hereditaments have at various times been set apart from the Crown Lands, or purchased and placed under the charge of the Government, or ordnance officers, for military purposes, and it may be expedient that such parts thereof as are not required for military defence should be sold, and for effectuating such sales it is necessary to vest the said lands, &c., in the principal officers of Her Majesty's ordnance for the time being.

1. — Enacts that all such messuages, lands, &c. however acquired or purchased, and all buildings, &c., thereon, shall be vested in the principal officers of Her Majesty's ordnance for the time being, and their successors, in trust for Her Majesty, for the service of the department, in such manner as they shall direct.

All Messuages, lands, &c. &c. hereafter acquired by purchase, grant, demise, &c., by the officers of the ordnance, or placed under their charge for the service of the department, shall in like manner remain and continue vested in the principal officers of Her Majesty's Ordnance in trust as aforesaid.

PICKLED FISH. — See *Fish (pickled.)*

PILOTS AND PILOTAGE.

8 VICT., c. 14. — *An Act to amend the laws for the regulation of Pilots and the pilotage of vessels at the Port of St. John's.* — (23d April, 1847.)

- Sec. 1. — Repeals the Act 2 Vic., cap. 6, excepting the first section thereof, which repealed the 3 W. 4, c. 7.
2. — Governor in council to appoint five commissioners to examine and license pilots for the port of St. John's; commissioners to be sworn, and to act gratuitously.

3. — Commissioners to license and grant certificates to as many pilots as they think necessary; certificates to be numbered and registered.
 4. — Rates of pilotage, according to schedule C. annexed, to be paid when vessels boarded to the southward or eastward of Cape Spear, or northward of Sugar Loaf; two-thirds when boarded inside of said places, and before coming to anchor. Each licensed pilot to pay to the secretary of commissioners forty shillings annually for the benefit of the pilots' fund, according to the 14th section.
 5. — Unlicensed person to resign charge of vessel to a licensed pilot, under penalty of forty shillings.
 6. — Pilot not to be taken to sea, except from stress of weather, under penalty of £50; pilots, when taken to sea, to receive £3 10s. a month, besides meat and drink and passage home.
 7. — Licensed pilot to carry a flag, and have his boat marked, &c., as directed by commissioners, under penalty of £3; penalties for misconduct, suspension or dismissal, besides fine of £3.
 8. — Pilot lending his certificate to forfeit £5; exacting more than proper dues, to forfeit forty shillings, and refund excess.
 9. — Commissioners to make rules, subject to approval of governor and council, for extra remuneration of pilots in certain cases; and adjustment of disputes between masters and pilots.
 10. — Persons acting as pilots in absence of licensed pilots, to receive compensation according to rates.
 11. — All vessels bound to take pilots except Her Majesty's ships, Royal Yacht Clubs, and coasting vessels, and vessels not boarded until after entering the narrows; no vessel to be deemed a coaster if owned out of this colony, unless usually employed as a *bona fide* coaster; or, if such vessel have on board part of a cargo imported therein from any place out of the colony; or if going out of the colony, or to an outpost to load for a foreign market.
 12. — Vessels approaching St. John's harbour at night, and liable to pilotage, to carry a light at the fore; or, in default, to pay full pilotage.
 13. — Commissioners empowered to hear and determine claims for pilotage and salvage services, according to practice in sessions court; amount of judgment and costs to be levied on goods and chattels of defendant, or on the vessel and her tackle, &c.
 14. — Penalties to be recovered before any two justices of the peace for St. John's, and levied by warrant of distress; in default of goods, offender to be imprisoned one day for every five shillings of penalty; one-third of penalty to go to party suing; two-thirds to be reserved to form a fund in hands of commissioners to defray salary of secretary and contingencies; surplus to be for benefit of infirm and disabled pilots.
 15. — Appeal to supreme or central circuit court from judgment of commissioners exceeding £3.
 16. — If steam-tug be established by pilots, commissioners may appropriate reserved fund towards their support.
- Schedule A. — Oath of Commissioners.
 B. — Form of pilots' license.
 C. — Rates of pilotage, viz.:—

	\pounds	s.	d.
Vessels under 80 tons N. M., or 100 O. M.....	2	0	0

currency.

PILOTS. POLICE OFFICES (FEES).

197

	£	s.	d.	
From 80 to 130 N. M., or 100 to 150 O. M.	2	10	0	currency.
“ 130 to 180 N. M., or 150 to 200 O. M.	3	0	0	“
“ 180 to 230 N. M., or 200 to 250 O. M.	3	5	0	“
“ 230 to 300 N. M., or 250 to 300 O. M.	3	10	0	“
Vessels of 300 tons, and upwards.	4	0	0	“
Her Majesty's ships under 6th rate.	2	10	0	“
Ditto ditto of 4th, 5th, and 6th rates.	3	10	0	“
Ships of the line, 1st, 2nd, and 3d rates.	5	0	0	“
Coasting vessels taking pilots to pay one-half.				

POLICE OFFICES, Fees in.

3 VICT., CAP. 3, (2D SESSION.) — *An Act to establish the fees and costs chargeable in the several police offices and courts of session in this colony.* — [29th April, 1840.]

Sec. 1. — Following fees and costs to be taken in police offices, and courts of session; a printed table of the same to be exhibited in a conspicuous place in every police office and court of session, viz. :—

No. 1. — *Fees chargeable on colony for the sheriff of Newfoundland.*

Summoning and empannelling grand jury.	1	1	0
Same every petit jury.	0	10	6

No. 2. — *Fees payable to the clerk of the peace in courts of session.*

Every precept for quarter session.	0	7	6
Calling and swearing grand jury.	0	5	0
Same every petit jury.	0	2	0
Drawing and engrossing indictment or information, and conducting proceedings to final judgment.	1	1	0
Entering proceedings on trial by jury to final judgment.	0	6	8
Preparing and engrossing record of conviction, or acquittal, when required.	0	6	8
Every recognizance for sureties of the peace by party bound. .	0	3	4
Attendance during each quarter sessions.	1	0	0
Making up record thereof, payable only when service certified by justices or justice.	1	10	0

No. 3. — *Fees payable to the clerk of the peace in civil or petty criminal cases.*

Summons or subpœna.	0	1	0
Hearing of every cause.	0	1	0
Entering proceedings to judgment.	0	1	6
Warrant in execution.	0	1	0
Recognizance.	0	1	0

In civil actions under 20s.; fees not to exceed 3s. 6d. in the whole.

No. 4. — *Fees to clerk of the peace in cases of felony or misdemeanour before a justice of the peace.*

Deposition or examination.	0	2	0
Summons.	0	1	0
Subpœna.	0	1	0
Warrant.	0	1	6
Commitment.	0	1	6
Recognizance of prosecutor or witness.	0	1	6

No. 5. — *Fees payable to constable or bailiff.*

Service of summons or subpœna.	0	1	0
Executing warrant to arrest person.	0	2	6

198 POLICE OFFICES (FEES). QUARANTINE.

Mileage, beyond two miles	0	0	6
Levying execution and sale of goods on judgment under 20s.	0	1	0
Above 20s., 5 per cent. additional.			

Sec. 2. — Persons exacting any greater amount of fees to forfeit £5 for every offence.

3. — Act to continue in force three years.

6 VICT., CAP. 18. — *An Act to revive and amend an act passed in the third year of the reign of Her present Majesty, entitled "An act to establish the fees and costs chargeable in the several police offices and courts of session in this colony.* — [22d May, 1843.]

Sec. 1. — Act 3 Vic., cap. 3, revived and continued in force for three years, and to the end of the then next session.

2. — Present clerk of the peace for St. John's to receive, during his incumbency, a salary of £300 per annum.

3. — All fees paid into the office of clerk of the peace for the central district to be accounted for quarterly, and certified by court of session; amount of such fees to be paid to colonial treasurer for public uses; detailed statement to be laid before legislatures.

[The foregoing acts are continued in force from the 4th August, 1846, for three years, and to the end of the then next session, by the 9th and 10th Vic., c. 8.]

PROTESTED BILLS, Damages cn. — See *Bills*.

QUARANTINE.

3 W. 4, c. 1. — *An Act to provide for the performance of Quarantine, and more effectually to provide against the introduction of infectious or contagious diseases, and the spreading thereof in this island.* — [27th March, 1833.]

Sec. 1. — Governor and council to declare what places are infected; all vessels and boats receiving any persons, goods, &c. from any vessel coming from or having touched at an infected place, liable to quarantine, and to any orders by the governor and council; all persons (pilots as well as others), goods, &c., from on board vessels having touched at an infected place, liable to quarantine; governor to appoint quarantine stations; governor and council to regulate the mode of communication with vessels liable to quarantine; masters of vessels, and others liable to quarantine, subject to the provisions of this act, &c.

2. — Governor and council to appoint stations for the inspection of vessels.

3. — To specify what goods are liable to retain infection, and to order thereon.

4. — To make orders in cases of emergency with respect to any vessel; to empower persons at the outports to shorten the period of quarantine.

5. — Vessels arriving from sea with disease on board to proceed to such place as governor and council may direct; master to make known his case to collector of customs, or health officer, &c., who shall send intelligence thereof to the governor, or, in his absence, to Her Majesty's council, that precautions may be taken; penalty for disobedience of orders.

6. — Vessels liable to perform quarantine to hoist a distinguishing flag, to be kept flying till released, under penalty of £20.

7. — Master to give the pilot a true account of places where the ship loaded

- or touched during the voyage, under penalty of £100; pilot to give notice to commander if any place mentioned in such account be liable to quarantine, under penalty of £20.
8. — All vessels from foreign parts to be brought to be interrogated; pilot or commander refusing liable to a penalty of £20.
 9. — Vessels attempting to enter any port liable to be interrogated; false answers liable to a penalty of £100.
 10. — Vessels to anchor at the quarantine ground appointed, and there remain until examined; His Majesty's officers, upon due notice, to be aiding and assisting in requiring vessels to repair to quarantine ground; no person to land from said vessels till permission given; refusal to give information, making false representation, or obstructing officer, penalty £200.
 11. — Master to deliver bill of health and manifest, with his log book, to health officer.
 12. — Responsible for any person quitting his vessel; to take his vessel and lading to the quarantine station, under a penalty of £400; pilot or other person going on board not to quit the vessel; any person may compel the pilot or other person quitting such vessel to return on board, penalty six months imprisonment and fine of £200.
 13. — All persons liable to perform quarantine, subject to the orders of the health officer; officers to call in assistance if necessary; watchmen and others appointed to see quarantine performed, to compel parties to return on board.
 14. — Persons contravening the act may be apprehended and carried before a magistrate, who may grant warrants for apprehending and conveying on board, but not confine in a public gaol; board of health, or his majesty's council, may give direction for the disposal of such person.
 15. — Governor or commander-in-chief may, either by order in Council, by proclamation, or publication in the Royal Gazette, prohibit vessels or boats going within the limits of quarantine station.
 16. — Officer of health or superintendent of quarantine, &c. embezzling any goods or articles performing quarantine to forfeit office, and subject to a fine of £200; officers neglecting their duty, giving a false certificate, or wilfully damaging goods, penalty £100.
 17. — Report of examination by the proper officer to be made to the board of health, Governor, or his Majesty's Council. On production of officer's certificate, Collector to admit vessels to entry.
 18. — Vessels having performed quarantine, masters to make oath thereof before health officer, when they will be subject to no further restraint.
 19. — Goods to be aired, as shall be appointed by the governor or commander-in-chief; proof thereof to be made on oath of the master, the officers to be appointed for the purpose, or of two credible witnesses serving in lazaretto or vessel; certificate to be granted on such proof by the proper officer.
 20. — Forging, &c. such certificate, a felony.
 21. — Landing any goods, &c. from vessels under quarantine, penalty £300; persons clandestinely conveying goods, &c. from vessels under quarantine subject to a penalty of £100.
 22. — Persons authorised to take examinations may administer oaths; persons swearing falsely or procuring others to do so, guilty of perjury.
 23. — All appointments to be made under signature of the Governor. In the absence of health officer, officer of Customs may act for him.

24. — Publication in the Royal Gazette of any order of the Governor, &c. or of Governor's proclamation, to be deemed a sufficient notice.
25. — Penalties incurred may be recovered by suit in any of His Majesty's courts of record; and where no court, before one or more justices of the peace; one moiety to the informer, the other to his Majesty. Persons aggrieved may appeal from justices decision—giving security to prosecute such appeal, to be heard in the supreme or circuit courts; actions for the recovery of fines, &c. to be entered in the name of Attorney or Solicitor General, under direction of the Governor or board of health.
26. — Attorney or Solicitor General may stop proceedings.
27. — Offences against this act, for which no specific penalty is provided may be tried before one or more justices of the peace; penalty not to exceed £50, nor imprisonment to exceed six months.
28. — In any prosecution the answers of the commander shall be received as evidence that such vessel was liable to quarantine, unless shewn that she did not come from the place or places contained in the said answers, or that she was not liable to quarantine.
29. — Governor by and with the advice of Council, or Council in the absence of Governor, to revoke, alter, &c. regulations for the prevention of disease.
30. — All orders and regulations so made to be certified by the Secretary or Clerk of Council, and published in the Royal Gazette:
31. — And kept in force so long as the Governor or Council may require; penalties not to exceed £100; such orders, &c. to be binding, although they may exceed the powers vested by existing laws. Disobedience of them a misdemeanour.
32. — Governor, with advice of Council, may appoint health officers and boards of health, for carrying regulations into effect; prescribe the duties of such health officers, &c. and empower them to make rules and regulations. Governor in Council, or Council, to fill up vacancies.
33. — Health officer to repair alongside any vessel entering, to make strict search and inquiry, and report his observations to the Governor or Council, &c. Health officers empowered to administer oaths.
34. — No vessel subject to examination to be admitted to entry without a certificate from the health officer.
35. — Vessels suspected and reported are to be subject to such fees as the Governor in Council shall establish; which fees are to be paid by the masters, owners or consignees before the vessels are admitted to entry, and applied towards the expenses of the quarantine establishments.
36. — Governor and Council at St. John's, and justices of the peace in other districts, to appoint health wardens, who are to act gratuitously, and are authorised to enter and examine, in the day time, houses, &c., and to ascertain and report their condition to the Governor or such person as may be appointed to receive such report. Health wardens with approbation of the board of health to give orders for the removal of nuisances, &c.
37. — To cause houses &c. to be white-washed, fumigated, &c., and to order all putrid substances to be removed.
38. — A violation of this act to be deemed a misdemeanour; penalty not to exceed £10, nor be less than £5.
39. — Defendant may plead general issue in any action taken against any

person acting in pursuance of this act. Where judgment shall have been given in favour of defendant, he may recover treble costs. Limitation of action for anything done in pursuance of this act, six months.

40. — Act to continue in force one year.

41. — May be altered, amended or repealed in the present session.

The foregoing act was revived and continued by the act 4 Vict., c. 9, and subsequently made perpetual by the act 6 Vict., c. 17.

REGISTRATION OF DEEDS.—See Acts 1 Vict. c. 5; 7 Vict. c. 10, and 10 Vict. c. 6, *ante* pages 106, 112.

———— OF MARRIAGES.—See *Marriages*.

———— OF VOTERS.—See *Elections*—and *St. John's (Voters of.)*

RESERVED SALARIES.

6 VICT., c. 12. — *An Act to extend and continue certain provisions of an act of the Parliament of the United Kingdom passed in the second and third year of the reign of his late Majesty King William the Fourth.*—[22d May, 1843]

Preamble recites act of the Imperial Parliament 2 & 3 W. 4, cap. 78, providing for the appropriation by the Assembly of the colony of all duties collected by any act of Parliament; excepting thereout £6550 towards the maintenance and support of the Governor, Judges, Attorney General, and Colonial Secretary. Recites also act 5 & 6 Vict., c. 46, to amend the act regulating trade of British Possessions abroad whereby divers duties had been repealed and diminished and have failed to produce the annual sum of £6550 set apart as aforesaid, for remedy whereof,

Sec. 1. — Enacts that out of the net proceeds of all duties levied in this colony whether by imperial or local acts, £6550 shall be deducted annually and applied towards the maintenance of the Governor, &c. in the manner provided and described by the 2d & 3d W. 4, c. 78.

REVENUE.

3 VICT., CAP. 3. — *An Act to provide for the safe keeping and due collection of the Colonial Revenues of Customs.*— [12th October, 1839.]

Preamble recites passing of Colonial Act 2d Vict., c. 2, and that the management and collection of duties were placed under collector and other officers of Her Majesty's customs, and that it was advisable that the collector and all such other officers should be placed in the same position with respect to the collection of colonial as of imperial duties.

Sec. 1. — Enacts that the collector, and all other persons employed under him in collecting duties under the recited act, or any like future revenue act, should give such securities for their due collection and safe-keeping as the governor in council should deem reasonable.

6 VICT., c. 1. — *An Act for granting to Her Majesty certain duties on goods, wares, and merchandize imported into this colony and its dependencies.*— [28th April, 1846.]

Sec. 1. — Grants to Her Majesty, on the importation into the colony of the under-mentioned articles, the following duties, viz. :—

WINES, videlicet :	£	s.	d.
All wines in bottles, the gallon	0	2	6

	£	s.	d.
All other wines, the gallon	0	1	6
For every gallon of Brandy, Geneva, Cordials, or other spirits not herein defined or enumerated, and not exceeding the strength of proof by Sykes's Hydrometer, and so in proportion for any greater strength, and for any greater or less quantity than a gallon—the gallon	0	2	6
For every gallon of Rum and Whiskey not exceeding the strength of proof by Sykes's Hydrometer, and so in proportion for any greater strength and for any greater or less quantity than a gallon—the gallon	0	0	6
For every barrel of Apples	0	1	6
For every one hundred and twelve pounds of Meat, salted or cured . .	0	1	6
For every one hundred and twelve pounds of Bread or Biscuit	0	0	3
For every one hundred and twelve pounds of Butter	0	2	0
For every ton of coals	0	1	0
For every cwt. of bastard Sugar, or Sugar the result of any manufacturing process, not being refined Sugar, and not subject to duty under the Imperial Tariff	0	5	0
For every barrel of Flour not exceeding in weight one hundred and ninety-six pounds	0	1	6
For every barrel of Oatmeal, not exceeding in weight two hundred pounds	0	0	6
For every gallon of Molasses	0	0	1½
Salt			Free
Implements and material fit and necessary for the fisheries—that is to say—Lines, Twines, Hooks, Nets, and Seines			Free.
Coin and Bullion			Free.
Horses, Mares, and Geldings			Free.
Neat Cattle and Calves			Free.
Sheep and Hogs			Free.
Corn and Grain, unground, and all Seeds			Free.
Potatoes and all other Vegetables			Free.
Manures of all kinds, including Lime and Limestone			Free.
Printed Books, Pamphlets, Maps and Charts			Free.
For every thousand feet Lumber, one inch thick	0	2	6
For every ton of ton Timber, and for every ton of Balk of any kind, including Scantling	0	1	6
For every thousand of Shingles	0	1	0
For every pound of Tea	0	0	3
For every one hundred and twelve pounds of refined Sugar	0	5	0
Unrefined or crude Sugar			Free.
For every thousand of Cigars	0	10	0
For every pound of manufactured, and for every pound of leaf, Tobacco	0	0	2
For every one hundred and twelve pounds of Tobacco Stems	0	2	0
Coffee			Free.
Rice-feed Refuse Rice, ground Rape-seed, and Linseed Cake			Free.
Ale, Porter, Beer, Cider, Perry—for every one hundred pounds of the true value thereof	10	0	0
Household Furniture, manufactured from wood—for every one hundred pounds of the true value thereof	10	0	0
Goods, wares and merchandize, not otherwise enumerated, described			

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and Greenspond, £100 each; preventive officer at Bay Bulls, £50; tide waiters at St. John's, £207 17s.; to imperial sub-collectors, £200; none to receive more than 2½ per cent. on duties collected by him.

22. — £186 13s. 4d. for colonial preventive boat and crew.
 23. — Penalties to be divided one-third to informer, one-third to seizing officer suing, and a third to the use of the colony.
 24. — Royal Yacht Club vessels exempted from dues and entry.
 25. — Officers of customs may take samples of goods.

ROADS AND HIGHWAYS.

4 W. 4, (2nd SESSION), CAP. 6. — *An Act to regulate the making and repairing of Roads and Highways in this Island.*—
 (12th June, 1834.)

Secs. 1 and 2, repealed by 5 W. 4, sess. 2, c. 5, by which this act is amended.

Sec. 3. — Surveyors of highways may substitute labour of men for work to be performed by trucks.

4. — The constables of the several districts to make out lists for surveyor of all persons liable to work on the roads, and to summon such persons when required by the surveyor.

5. — Surveyors shall cause persons liable as aforesaid to be summoned on seven days' notice to work on the highways as prescribed by this act, and shall oversee such labour. Provided that all persons engaged in the fishery shall while so engaged be exempt from labouring on the roads.

6. — One or more justices may lessen the amount of labour to be performed by any poor person.

7. — All owners of carts, trucks and carriages who by reason of their age are exempt from personal service shall send their carts and trucks to work four days upon the roads.

8. — (Repealed by 5 W. 4, sess. 2, cap. 5.)

9. — Surveyors may direct work to be done in the winter for clearing roads from snow: provided, that one day's work only shall be required for each fall of snow, or where the snow shall not exceed twelve inches in depth.

10. — Persons refusing to perform such work to be fined in manner directed with respect to summer labourers.

11, 12, and 13 repealed by 5 Will. 4, sess. 2, cap. 5.

14. — Damage occasioned to owners of land by alterations made in the roads, to be assessed upon the district by order of justices, upon the presentment of the grand jury.

15 and 16 repealed by 5 Will. 4, sess. 2, cap. 5.

17. — Any person unlawfully altering or encroaching upon any public or private road lawfully laid out and established, shall forfeit £5, and the expense of abating such nuisance.

18. — One justice may upon view, or the oath of one witness, impose a fine not exceeding twenty shillings upon any person encumbering any road by laying timber, &c. thereon; such fine to be levied by distress, and sale of the offender's goods, or by the sale of matter encumbering such road if the offender be not found, and to be paid to the treasurer for purposes of the act; every continuance of such nuisance to be deemed a new offence.

19. — Provided that persons may occupy one-third of the breadth of any road with building materials, leaving sufficient room for a cart to pass.

20. — Courts of General Session may make rules and regulations for the protection of side-walks, and parties offending against any such, shall upon conviction in a summary manner, pay a fine not exceeding 40s. nor less than 5s., to be levied by distress, and applied to repair of such sidewalks.
21. — (Repealed by 5 W. 4, sess. 2, cap. 5.)
22. — Persons residing upon Islands on which are public roads, shall perform labour on such roads and shall not be compelled to labour upon the main land.
23. — Persons residing on an Island connected with the main by a bridge or causeway shall perform such part as may be necessary of the labour to which they are liable upon such bridge or causeway.
24. — All fines incurred by persons neglecting to perform the labour required of them under this act, may be recovered in a summary manner before one or more justices, at the suit of the surveyor, and shall be applied to the repairs of roads and highways.
25. — (Repealed by 5 W. 4, sess. 2, cap. 5.)
26. — Persons cutting down or destroying trees upon ungranted land within forty yards of any public road, shall forfeit forty shillings, to be recovered in a summary manner, and paid half to the informer, and half to the surveyor of highways, for the improvement thereof.
27. — All carts, waggons, and catamarans used upon any public road shall have the owner's name painted thereon; no person shall ride on any cart or catamaran, or the shafts of the same, without reins to the horses drawing the same; and all carts, carriages, waggons, catamarans, sleighs, and other vehicles meeting any other carts, &c. shall keep the left side of the road; any person infringing any of the regulations of this section, liable to a penalty of forty shillings, to be recovered in a summary manner before one justice.
28. — Repealed by 5 Will. 4, sess. 2, cap. 5.
- 5 W. 4, (2d Session), c. 5. — *An Act to amend an act passed in the second session of the parliament of this colony, entitled 'An Act to regulate the making and repairing of roads and highways in this island.'*—(8th May, 1835.)
- Sec. 1. — Repeals 1st, 2d, 8th, 11th, 12th, 13th, 15th, 16th, 21st, 25th, and 28th sections of the 4 W. 4, (sess. 2.) cap. 5.
2. — Every inhabitant between 15 and 60, not an owner or occupier of a dwelling house, nor owning a horse or team, to work two days on the public roads; every labourer or common servant occupying a dwelling house and not owning a horse or team, to work four days; every person not a servant or labourer owning or occupying a dwelling house, and not owning a horse or team, to work six days; every person keeping a carriage, cart, truck, team, horse, or oxen, to work four days with a cart, team or truck (drawn by two horses or oxen, if owning more than one, and by one horse or ox if owning only one) and one able man. Provided that no person shall be compelled to work more than eight hours a day.
3. — Any person liable to labour as aforesaid, may compound therefore at the rate of 2s. 6d. per diem for manual labour; 8s. per diem for a two-horse cart or carriage; and 6s. per diem for any other cart, &c.; any person not performing the labour required of him, shall be taken to

have elected to compound for his labour unperformed, and shall pay therefor on demand to the road surveyor at the rates aforesaid; any monies so due remaining unpaid after ten days after demand shall be levied by distress and expended under direction of commissioners towards the objects of the act.

4. — Governor and Council may appoint five commissioners, of whom three shall be a quorum, and to form a board of road commissioners for the central district; in the other districts two or more justices residing within twenty miles of the settlement where statute labour is required to be performed upon public notice, may meet and form a board of commissioners for the settlements within their jurisdiction, and such board of whom two shall be a quorum, shall consist of all such justices as reside within such jurisdiction, and shall keep records of their proceedings.
5. — On the first week in June, in each year, the three respective boards shall appoint so many surveyors under them as may be necessary and give them such directions respecting the performance of their duties as may be required, which directions such surveyors are to obey.
6. — Each surveyor, within a time to be appointed by the board, shall make a list of all persons liable to perform statute labour, and of the work for which such persons shall be liable; any wilful omission in this respect occasioning a loss of labour, shall be made up by the surveyor guilty thereof: provided that every such surveyor shall be at liberty to employ any persons so liable to assist him in making such list, and shall not himself be liable to statute labour.
7. — Any surveyor negligent, or remiss in his duty, may be dismissed by the board, and fined forty shillings, which shall be levied by distress and sale of his goods and chattels.
8. — The board for the central district may appoint one surveyor for the town of St. John's, at a salary of £75, to be paid out of fines and composition money collected within the town.
9. — The several boards may make order for altering, widening, or shutting up any old road or lane, or opening any new one, so as such alteration shall not occasion the removal of any building over the value of ten pounds, and may also employ statute labour in removing any house that may lawfully be removed, and re-erecting the same in another situation.
10. — Compensation to be made to any person injured by any such alteration by assessment, to be levied in manner prescribed by the 4 Will. 4, sess. 2, cap. 6: the amount of such compensation to be fixed by the road surveyor and two arbitrators, of whom one shall be appointed by the party grieved, and the other by the board.

ROADS AND BRIDGES.

8 VICT., c. 3. — *An Act to regulate the making and repairing of roads, streets, and bridges within this colony.*—[23d April, 1845.]

- Sec. 1. — All monies hereafter granted for roads, streets, and bridges, to be expended under provisions of this act.
2. — Governor in Council to appoint boards of road commissioners for several districts, or any road or street therein; and the chairman thereof; and to supply vacancies.
 3. — Governor to fix number of quorum of board, who are authorized to construct and repair, and (with approval of board of control) to alter

- roads, &c. — to appoint surveyors and officers necessary; no commissioner acting as secretary or surveyor to receive compensation; nor, under penalty of £100, to be concerned in contracts for roads.
4. — Commissioners to proceed by contracts in writing upon tenders; contracts to be in duplicate, signed by contractors, and quorum of commissioners or chairman authorized to sign on their behalf; specifications and diagrams to be attached.
 5. — Written or printed notices of work to be performed, and requiring tenders therefor, to be posted for sixteen days on places of public worship, if any, or other conspicuous place nearest the work, in the town, harbour, or settlement; all tenders to be signed by party tendering with his addition, &c., and annexed thereto an undertaking of two sufficiently responsible persons in penalty equal to amount of contract, for its due performance, if tender accepted; form of undertaking prescribed; all tenders to be opened by the boards of commissioners in presence of parties tendering, and their sureties, if required.
 6. — Lowest tender to be accepted, unless unreasonable; in case of no tender within period advertised, or all be unreasonable, commissioners, *toties quoties*, may give further notice.
 7. — Boards, before contracting, to take security as above provided; may advance to contractor one-third of amount of contract, to be paid by colonial secretary on production of certificate from chairman of board of such contract being entered into; another third on certificate of completion of half the work; duplicates of certificates to be sent to board of control; remaining third to be retained until production of affidavit of inspector and surveyor of board, of final completion and passing of work.
 8. — No new road to be opened until surveyed and approved by or under direction of Board of Commissioners; provided no line on which money has already been expended be altered without express approval of Board of Control; and no new road be gravelled till twelve months after making thereof.
 9. — Five persons in the vicinity complaining to Board of Control of any line of road, shall be lawful for the Board of Control to order a resurvey by their own surveyor, and decide thereon finally.
 10. — Commissioners to compensate for ground taken for widening roads. In case of disagreement, a justice of peace, with two assessors, one named by Board, and the other by owner, shall award finally, with costs and expenses of witnesses. The justice of peace shall name assessor for owner, in case of delay, for five days. Justice of peace and assessors to receive each ten shillings sterling. On tender of sum awarded, land to be taken by Board.
 11. — Surplus monies to be expended in same district.
 12. — Roads to be left 60 feet wide through ungranted land, not to be gravelled more than seven feet, nor have more than fourteen feet, where such roads are more than five miles from St. John's, or four miles from Harbor Grace, Carbonear and Brigus.
 13. — Chairmen of Boards under this act to have some authority in abatement of nuisances. as chairmen of boards under road act 6 Vict. c. 1.
 14. — Chairmen of Boards to make annual reports and returns to Colonial Secretary of full particulars and estimates.
 15. — Unappropriated monies under former road acts to be expended by commissioners under this act.

16. -- Board of Control to be appointed by Governor, to consist of five persons. Chairman and Secretary, at a salary of £100 each. Boards of Commissioners to transmit to them all contracts accepted or rejected, with full particulars in every respect. Last instalment: contracts to be subject to the approval and order of Board.
 17. -- Governor to appoint surveyor at a salary of £150, to be under the direction of Board of Control, and official inspector of all roads in the colony. Governor may appoint additional surveyors if necessary on representation of Board of Control.
 18. -- Division of districts for purposes of this act.
 19. -- Monies to be paid by warrant in usual way; one-half per cent. on gross amount, to defray expense of clerk to assist secretary.
 20. -- For contingent expenses of boards, ten per cent. on amount granted, to be appropriated by Governor.
 21. -- One calendar month's notice of action to be given to commissioner, surveyor, contractor, &c.
 22. -- Who may tender accounts.
 23. -- Or pay money into court.
 24. -- This Act to be in force for five years, and to the end of the then next session.
- 9 VICT. c. 2.— *An Act for granting to Her Majesty a sum of money for the construction and repairs of Roads and Bridges.*— [28th April, 1847.]
- Grants £10,150 for roads, viz.: District of St. John's, £2,089. Ferryland, £380. Placentia and St. Mary's, £336. Burin, £361. Conception Bay, £2,323. Bonavista, £599. Fortune Bay, £423. Trinity, £730. Twillingate and Fogo, £559. Main lines, £2,150.
- ☞ The greater part of the grants in the above act have been expended.

SAVINGS BANK.

- 4 W 4, (SESSION 2D), c. 10. — *An Act for the establishment of a Savings' Bank in Newfoundland.* — [12th June, 1834.]
- Sec. 1. — The treasurer of the colony, together with depositors in the Bank, incorporated by the name of the "Newfoundland Savings' Bank."
2. — Colonial treasurer to be the cashier; and that the members of the executive council, with an equal number of members of the assembly named by the governor, shall be Governors, for the management and inspection of the affairs of the institution; three governors to be a quorum.
 3. — Governors, or major part of them, to make bye-laws; to appoint a clerk, and fix his salary.
 4. — All deposits to be paid into the public chest, and for which the colonial treasurer shall be responsible, and for the safe keeping thereof and all other funds of the institution: Provided that the governors may lend any part of the funds on real, personal and Government securities.
 5. — The public revenue to be chargeable with any loss for the default or neglect of the treasurer in the care or management of the funds of the Bank.
 6. — All persons depositing, for any period not less than six months, any sum not less than 20s., nor more than £50, to receive interest at three per cent., to be paid out of the profits of the Bank, or, in default thereof, out of the public monies of the colony; no interest payable

on the fractional part of a pound, nor for a less period than a month; nor an interest account opened before the first day of the month ensuing the deposit.

7. — The governors may appoint branch offices in the out-ports.
8. — Monies paid into Supreme Court on account of infants, lunatics, &c. may be received by bank, subject to orders of supreme court; interest thereon to be at the discretion of the governors.
9. — Disputes touching deposits, or business of bank, to be heard by supreme court in term time or vacation on petition.

SEAMEN.

1 VICT., CAP. 9. — *An Act for regulating the service of merchant seamen engaged in the vessels of this colony.*—[Nov. 18, 1837.]

- Sec. 1. — No master of any vessel registered in this colony to carry to sea any seaman without entering into an agreement in writing, in form prescribed by the act, which shall be signed by master and seaman, and be read over to seaman previously to its being signed by him.
2. — Such agreement to be in form set forth in the schedule to the act.
 3. — Seaman not to be deprived of ordinary means for recovery of wages by entering into such agreement, and no agreement contrary to the act shall be valid; where production of agreement necessary, no suit by seaman shall fail for want thereof, or for want of notice to produce the same.
 4. — Any seaman refusing to join, or deserting without sufficient reason, after entering into such agreement, may be committed to gaol by a justice for thirty days, unless upon being apprehended he consent to return to his duty. The costs of such apprehension not exceeding £3 may be deducted from his growing wages.
 5. — Any seaman having signed any such agreement, and leaving his ship, absenting himself, or neglecting his duty, shall in all cases (not of absolute desertion,) forfeit at the rate of two days' pay for every twenty-four hours of such absence or neglect; and every such seaman absenting himself without leave after signing such agreement, and before discharge of cargo at port of delivery, shall forfeit one month's pay; provided that the particulars of such misconduct shall be entered in the log-book, and, in case of dispute, be substantiated by some credible witness.
 6. — In cases where seamen shall have continued to be paid by the run, the amount of forfeiture for such misconduct as aforesaid shall be calculated as follows:—If the voyage exceed a month the forfeiture shall be in such proportion to the whole wages as a month or two days, respectively, bears to the whole time employed in the voyage; if the time spent in the voyage do not exceed one calendar month, a forfeiture of one month's pay shall mean a forfeiture of the whole wages, and so with respect to a forfeiture of two days' pay.
 7. — Any such seaman deserting his ship shall forfeit his clothes remaining on board, and all wages then due, provided such desertion be duly entered in the log-book; absence within twenty-four hours of ship sailing under certain circumstances an absolute desertion, and any expense to which the master may be put in procuring a substitute may be recovered from deserter by summary proceeding.
 8. — Any person harbouring a deserter subject to a penalty of £10; no debt exceeding 5s., shall be recoverable from a seaman until the close of

- the voyage, nor shall it be lawful for any such debt to detain a seaman's clothes; any justice may inquire into the matter of any complaint for any such detention, and may by warrant cause the clothes detained to be seized and delivered to the owner.
9. — The wages of every seamen to be paid within three days after delivery of cargo, or within ten days after discharge, receiving at time of such discharge one-fourth of the estimated balance due; penalty for each day's delay in such payment, two days for one, not exceeding ten days; provided that this clause shall not extend to seamen paid by shares.
 10. — Such payment to be valid, notwithstanding prior assignment or attachment, and powers of attorney made irrevocable invalid.
 11. — Master to give seaman certificate of discharge, if required, under a penalty of £5.
 12. — Justice may order immediate payment of wages to seaman discharged three days, and proceeding to sea in another ship, unless satisfactory cause be shewn for delay.
 13. — Any justice of the peace near the port of discharge or of clearance, or near the residence of the master or owner, upon complaint upon oath of wages being due, may summon master or owner before him and make order for payment thereof. If order not obeyed within two days justice may levy amount due by warrant of distress or upon ship in which the service was performed, or may, if nothing be found whereon to levy, commit the party disobeying such order to gaol. The decision of such justice to be final.
 14. — Any seaman instituting a suit for recovery of his wages in a court of record, where such wages might have been recovered in a summary manner as aforesaid, the judge of such court may certify to deprive the plaintiff of costs.
 15. — Every British vessel sailing from this colony to a port out of the same to keep a sufficient supply of medicines, and in default thereof, or in case of any seaman being hurt in the service of the ship, the expense of surgical attendance, &c., until such seaman shall have been cured, or brought back to the colony, to fall upon the ship.
 16. — Nothing in this act or in any agreement to prevent seamen from entering the navy, and clauses in agreements to such effect forbidden.
 17. — Seamen entering the navy, not being treated previously as actual deserters, entitled to receive their clothes, and all wages due, under a penalty of £25; if no freight has been then earned, wages shall be paid by a bill payable on ship's arrival at destined port; if master unable to say what amount of wages are due, he shall give a certificate of service, and shall produce agreement to the master of the ship into which such seaman has entered, and such last-mentioned master to give to the master of the ship which the seamen shall have left a certificate of such entry.
 18. — The term master in this act to mean the person in charge of any ship the term seamen, all persons employed on board other than apprentices; the term ship, every vessel navigating on the sea; the term owner, every person to whom a ship belongs;—and all steam and other vessels to be deemed trading ships within the act.
 19. — Any two or more justices near where any ship may arrive may inquire into the complaints of any apprentices serving on board, and make such order as the law directs in other cases of apprentices.

20. — In case of any assault or battery committed at sea on board any ship belonging to this colony, two justices in any part of the colony may inquire into the same, and adjudicate thereon as in the case of the like offence committed on shore.
21. — All penalties for the recovery of which no mode is hereinbefore defined, and not exceeding £10, may be recovered with costs by summary proceeding before two justices, and enforced by distress, or by commitment of the offender, and all exceeding £10 may be recovered with costs in any court of record in the name of the attorney general; all penalties not hereinbefore appropriated shall be paid half to the informer, and half to the treasurer of the colony: provided that the court, or justice adjudicating, may mitigate or reduce any penalty to one-half; provided also, that all proceedings shall be commenced within two years after the offence, or within six months after the return of the offender, or of the complainant.

Schedule of forms.

SEAMEN AND FISHERMEN.

6 W. 4, c. 1. — *An Act for the relief of Sick and Disabled Seamen, Fishermen and other persons.*—[30th March, 1836.]

- Sec. 1. — Provides for election of a board of fifteen directors in each electoral district, of whom seven shall be a quorum for the purposes of the act.
2. — Mode of electing the first directors; owners and masters of registered vessels to elect, but in districts where not thirty registered vessels, then owners and masters of all vessels owned in such district, together with planters and boat-keepers, on second Monday of May, after ten days' public notice by a justice of the peace, to meet and elect directors from among themselves; places of holding elections named; justice of the peace may name subsequent day in case no election shall have taken place.
3. — Directors to serve four years; new elections to take place every four years, in manner aforesaid.
4. — Directs that all rates and dues collected in each district, together with all other monies, goods, and chattels, lands and tenements, which shall come into the hands of the several boards, or be appropriated towards the endowment of the several hospitals to be founded under this act, shall be vested in the said boards for the use, benefit, and support of the said hospitals.
5. — Empowers each board of directors to elect from among themselves a president and vice-president, and to appoint a treasurer and secretary, with such other officers as may be necessary, and to provide medical attendance upon the sick received into the said hospitals, or who may be ordered to be relieved as out-patients.
6. — Empowers boards to make rules and regulations as to the manner of receiving and disposing of rates and dues; and of granting relief to the persons entitled to the benefit of the act; for the management of hospitals and the times for meeting of directors in their several districts, and other general purposes: provided they be not repugnant to this act.
7. — Directors to appoint collectors of rates and dues, who shall give security to the satisfaction of respective boards for all monies received by them; empowers collectors to receive all rates and dues imposed by this act; and to keep books of accounts of all such sums so

- received, with the names of the seamen, fishermen, and other persons who have paid the same; and shall account for and pay the same as the respective boards shall require; such collectors to be remunerated for their services in such manner as such boards shall respectively determine; provided that such collectors shall not be members of the boards for any of the said districts.
8. — Persons liable to pay dues; masters, mates, and seamen above the age of seventeen years, belonging to all registered vessels employed in the coasting trade and fisheries of this colony, shall pay at the rate of sixpence per man per month in each year in which they shall be employed; and every master, shareman, sealer, and servant, engaged in the seal fishery shall pay three pence in the pound on the amount of his wages or share arising from the sealing voyage in each year, after deducting berth money; and every fisherman, shareman, and other person engaged in the coasting fisheries of this colony, shall pay 2s. 6d. for each fishing season.
9. — Directs that the master of every vessel, and every planter and other person carrying on a fishery in this colony, shall stop and retain out of the wages of each fisherman, shoreman, sealer, and servant in his employ, all such rates and dues payable as aforesaid; and shall keep a muster-roll of such seamen, &c.; and a correct account of all such rates and dues retained by him; and shall pay to the collector of rates for each respective district the full amount of all such monies, with a correct account of the same; also, a true copy of the muster-roll, which shall be verified before a magistrate, if required by the collector or the directors; penalty for non-performance, treble the amount so retained, or which should have been retained; penalty for omitting to stop dues, the full amount of such respective rate or due.
10. — Provides that rates and dues payable on account of seaman on board a vessel engaged on a foreign voyage shall be paid on the arrival of such vessel at her port of discharge in this colony; and that such vessel shall not be entered inwards until a receipt for the payment of the same; signed by the collectors thereof, shall have been produced, or the amount paid to such officers of customs, or to such person as they shall appoint to receive the same; and all rates payable by any seaman or sealer engaged in a coasting or sealing voyage, shall be paid at the conclusion of the voyage; and all rates payable by fishermen, shoremen, and other servants, shall be paid at the conclusion of the current fishing voyage; provided that all such rates shall be paid over to the collector of rates for the district in which such vessel shall be owned.
11. — Provides that every seaman, fisherman, and other persons who having paid rates, and who may be afflicted with sickness, or who may have incurred bodily injury, shall, on application to the board of directors of district in which he shall then be, be entitled to such relief as his case may require; and the board of that district shall be entitled to claim the expenses incurred for such person from the board of the district in which such person paid the last yearly dues.
12. — Empowers collectors to grant certificate to any seaman, fisherman, or other person who may request the same, of the payment of such rates; penalty for altering or counterfeiting such certificate — to be deprived of all benefit to be derived under this act, and shall, on conviction, be

imprisoned for a period not exceeding three months: provided that no person shall be entitled to such certificate after the expiration of six months from the time when he shall have paid his rates.

13. — Directs that all actions relating to the affairs of hospitals shall be brought against the several boards by the style of "the Directors of the Hospital," and that all debts under £20 shall be heard and determined in a summary way before one or more justices of the peace residing in the district where the debt shall be due, and shall be levied by distress and sale of the party's goods, together with costs of suit; penalties and forfeitures incurred under this act shall be sued for and recovered on the complaint of the collector, or other officer appointed by each board; one-half penalties to be paid informer, the other to be applied to the use of the hospital of the district where such penalty shall have been incurred.
14. — Boards of directors to transmit their accounts on the 1st December in each year to the governor, to be laid before the legislature, stating the number of persons paying rates, the amount by them received, to be in the form in the schedule marked A, and how the same have been appropriated.

7 VICT., c. 13. — *An Act to provide for the collection and appropriation of all monies stopped or detained by any person or persons by virtue of the provisions of an act passed in the sixth year of the reign of His late Majesty, entitled "An act for the relief of sick and disabled seamen, fishermen and other persons," and not appropriated to the purposes of the said act.*—[29th April, 1844.]

Preamble recites that in several districts the act 6 W. 4, c. 1, had not gone into operation, but various sums of money had from time to time been stopped and detained under it, and that it was expedient the same should be appropriated to the purposes after mentioned.

Sec. 1. — Governor to appoint one or more stipendiary magistrates in districts referred to, to receive from all parties who have detained and stopped dues, &c., the amount thereof, and a full account of the same on oath, and to pay over the amount so received to the Colonial Treasurer.

2. — Parties refusing to account and pay over may be compelled, by order of any superior court on petition on oath to be filed by the collecting magistrate; the order of the court to be enforced by process of contempt.

3. — Monies collected under this act to be appropriated towards relief of indigent widows and orphans or other poor persons in the districts in which the same shall have been collected.

SESSIONS COURTS, Fees in. — See *Police Offices*.

SHERIFFS, appointment of. — See act 10 Vict., c. 6, ante page 115.

SHERIFFS' FEES, commutation of.

6 VICT., c. 22. — *An Act to commute the fees received by the High Sheriff of this colony, and to provide for the salaries of the said Sheriff and his deputies.*—[22d May, 1843.]

Sec. 1. — All fees and costs by any law or rule or order of the supreme court taken and received by the sheriff, to be paid over and accounted for to the Treasurer of the colony in such manner as the Governor may, in that behalf direct.

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2. — High Sheriff to receive £750 salary and to cover incidental expenses of his office in the supreme court, central circuit court, and sessions court of central district. Deputy sheriff of Northern district £200 for salary and incidental expenses,—of Southern district £150 for salary and incidental expenses.

3. — Act to take effect from 1st January, 1843.

Note. — By the act 10 Viet., cap. 3, regulating the appointment of sheriffs, (*ante* page 115) the above act is repealed from and after the first Monday in July, 1847.

STATUTE LABOUR.—See *Roads and Highways*.

STREETS.—See *Roads—St. John's—Harbor Grace—Carbonear*.

St. JOHN'S (Gunpowder in.)

3 W. 4, c. 2. — *An Act to prevent dangerous quantities of Gunpowder being kept within the town of St. John's.*—
[27th March, 1833.]

- Sec. 1. — Prohibits persons from keeping more than 25lbs. gunpowder in any house, shop, &c. in St. John's, or within one mile thereof, (all buildings adjoining each other and occupied together, to be deemed one house) save in the magazine at Crows Nest, or other public magazine appointed by lawful authority.
2. — Not more than 25 lbs. of gunpowder to be kept in any ship, boat, or vessel longer than 24 hours after coming alongside of a wharf or other vessel, or being moved within 50 fathoms of any wharf or other building; Her Majesty's ships of war or vessels employed in the public service excepted.
3. — Magistrates on complaint may issue warrant to search houses and places and vessels in which deposit of unlawful quantities is suspected; may break open house, &c. and make search therein, and seize any greater quantity of gunpowder than is allowed by this act. Magistrates to summon owners &c. and on conviction to confiscate gunpowder. Constable authorised to sell, one half proceeds to go to the informer, the other half to the support of the St. John's Fire Companies; constable or person seizing to be a competent witness.
4. — Offenders against the provisions of this act to forfeit for first offence, £10, second £20, and third £30; one half to person suing, and the other for the support of the St. John's Fire Companies. Prosecution to be within 12 months after forfeiture incurred.
5. — Rates established for stowing gunpowder in magazine: barrel 2s. 6d. half-barrel 1s. 6d., quarter barrel 1s. currency, for one year. Beyond that time, 2s. 6d. per ewt. per annum.
6. — Gunpowder in removal to magazine to be water-borne so far forth as it may.

St. JOHN'S. — Mechanics' Society.

4 W. 4, (SESSION 2), c. 22. — *An Act to incorporate the St. John's Mechanics' Society.* — [12th June, 1831.]

- Sec. 1. — Incorporates certain persons by the name of "the St. John's Mechanics' Society," with power to make bye-laws.
2. — Corporation may hold real and personal estate, not exceeding £800 per annum.
3. — Election of officers to take place annually on the 3d. March

ST. JOHN'S. — Re-building of.

9 & 10 VICT., c. 3. — *An Act to regulate the re-building of the town of St. John's, and the drainage and sewerage of the same, and to repeal certain acts therein mentioned.* — [4th August, 1846.]

Sections 1st, 2nd, 3d, 7th, 10th, 15th, and part of the 5th and 12th sections, repealed by the 10 Viet., c. 1, s. 1, and new provisions substituted in lieu thereof.

- Sec. 4. — After the streets, &c., are laid out, and compensation tendered, and notice in the *Gazette*, ground included in streets to become public property; all erections thereon after the first day of May, 1849, to be deemed public nuisances, and be abated by order of any two stipendiary magistrates, who shall furnish assistance of constables and others; offenders also subject to punishment by law inflicted in cases of public nuisances.
5. — After 1st May, 1849, unlawful to build or erect any building or erection whatsoever, other than of brick, stone, or other uninflam- mable material, to the southward of a line parallel to and 60 feet to the northward of Duckworth-street—[see 10 Viet., c. 1 s. 1.]; erections other than herein directed to be deemed nuisances, and treated as by sec. 4; provided that stages and flakes of wood, and used exclusively in carrying on the fishery, may be built to the eastward of Woodley's Cove, or westward of Newman's.
6. — No buildings to be erected within twenty-five feet of centres of Gower and other streets, when declared main streets by Governor and Council.
8. — All buildings of any kind erected on firebreaks within the burnt district to be abated as nuisances.
9. — Governor to appoint general supervisor of streets, to be sworn; to have a salary of £300, and his office to continue for five years only.
11. — Compensation for ground taken for widening streets, if under £25, to be paid by warrant on the treasurer; if above that sum, by a treasury note at five per cent. interest, payable in ten years, or upon three months' notice by the treasurer.
12. — Expenses of drains and sewers to be raised by assessment. [Provi- sion as to salary of supervisor repealed.]
13. — Appraisers for assessment to be appointed by the justices; assessments to be recovered summarily.
14. — All drains and sewers under this act to be constructed by tender and contract.
16. — Repeals 4 W. 4, c. 3, 4 W. 4, c. 3, 3 Viet. c. 8, 3 W. 4, c. 3, and 5 W. 4, c. 8.
17. — No person to build or commence to build without two days notice to supervisor, or neglecting to obey his directions subject to penalty of five pounds; any work done deemed a nuisance.
18. — Supervisor to regulate party walls.
19. — Governor to direct suitable levels of streets to be taken, by which all parties are to govern themselves.
20. — Party walls to project 12 inches above the roof. No wood or inflam- mable material to be within 4½ inches of the outside of building, save door and window frames and sashes, and roof boarding; chimnies to extend two feet above the ridgepole.
21. — Cornices, piers, pilasters, &c. may project beyond line of street, if of uninflam- mable materials.

22. — A substantial ladder to be fixed to the roof of every house, except where access to the roof from within is provided.
23. — Side paths in Water and Duckworth streets to be ten feet wide.
24. — Supervisor to inspect chimnies and stove pipes; penalty for not keeping same in repair, 40s.
25. — No building to be constructed so as to obstruct the line of fire from Forts William and George, provided compensation be tendered by Board of Ordnance,—[as to mode of ascertaining compensation, see 10 Vict. cap. 1, sec. 15.]
26. — Lines of streets laid out not to be departed from, except the description by points of compass be erroneous; departure to be first approved by the Governor and Council.
27. — Supervisor may administer oath to party claiming compensation.
28. — Tenants holding under leases commencing prior to the 9th June, and not surrendered in consequence of the fire, and compelled by this act to rebuild of stone or brick, where they might otherwise rebuild of wood, at the expiration of their leases shall receive from their landlords compensation by an extension of term not exceeding in the whole forty years, or by a payment in money to be ascertained by arbitrators.
29. — Compensation may be recovered in an action of assumpsit against the landlord in case of his refusal to arbitrate, or disagreement of arbitrators.
30. — Limits of town of St. John's, for the purposes of the act, commencing at gas works fire break, running to Monday Pond road, thence to Rennie's mill bridge, thence by stream to Quidi Vidi Lake, thence to Ordnance boundary line, Signal hill road, thence by the O. B. line to Harbour, and thence to place of beginning.
31. — Houses of Robert Prowse, James Cullen, and Walter Dillon excepted from the provisions of this act, as to lines of street, if completed, of stone or brick, according to this act.
- 10 VICT., c. 1. — *An Act to amend an act passed in the ninth and tenth years of the reign of Her present Majesty, entitled "An Act to regulate the re-building of the town of St. John's, and the drainage and sewerage of the same, and to repeal certain acts therein mentioned."*—[14th Jan., 1847.]
- Preamble recites expediency of repealing certain parts of said act, and substituting other provisions in lieu thereof, and otherwise to amend the same.
- Sec. 1. — Repeals 1st, 2nd, 3d, 7th, 10th, and 15th sections, and so much of the 5th sections as requires buildings to be of uninflamable material to the northward of Duckworth-street; and so much of the 12th section as provides for the salary of the supervisor.
2. — Defines the south side line of water-street, extending from Quidi Vidi firebreak to Job's Bridge; street to be sixty feet wide; the south side line to be the same as on the 8th day of June last, excepting at Magotty Cove, and the premises of Messrs. N. Gill, Job, Brothers & Co., W. & H. Thomas & Co., E. & N. Stabb, P. Rogerson & Son, and to the westward of Newman & Co.; foundation walls of P. Duggan and others to remain as on the 8th day of June last.
3. — Duckworth-street to extend from Quidi Vidi firebreak to Williams's lane; to be sixty feet in width, and the south side line to be, with few exceptions, the same as on the 8th day of June last.

4. — New Gower-street to run from the Theatre to Flower-hill firebreak, to be fifty feet wide; George-street to extend from Flower-hill firebreak to Williams's Lane, and to be fifty feet wide; all houses on the south side, and to the southward thereof, to be of uninflamable materials.
5. — Quidi Vidi firebreak to be sixty feet wide from the harbour to Dunreonib's Bridge; Hill of Chips firebreak, sixty feet wide; King's Beach firebreak, as on the 8th of June last, except from Thomas Murray's to Michael Foley's, where it shall be bounded by a straight line; from Duckworth-street to run to the Military Road; Prescott-street firebreak, from Water to Duckworth-street, as on the 8th June, —a space equal to the width of McLarty's Lane to be added —from Duckworth-street to run to the Queen's Road; Church-hill firebreak, south of Water-street, shall be 80 feet wide, and north thereof to Gower-street, 100 feet wide from the present western boundary, thence to the rear line of town as laid down by commissioners—not to affect new cathedral; McBride's Cove firebreak to be as on the 8th day of June last; Beek's Cove firebreak, to Duckworth-street as on the 8th June, thence to Gower-street 60 feet wide; Codner's Cove firebreak, 60 feet wide from the present western side line, to run to the Pennywell road, and thence to rear line of town; Queen-street to be 60 feet wide; Stuart and Rennie's Cove 60 feet wide from the western boundary line; Flower-hill firebreak to be 60 feet wide, to run from the south-east angle of Newman's house to Mr. Hutchings', thence to the Lazy Bank road and rear line of the town; Gas Works and River-head as laid down by the commissioners; Gregory's Lane to be widened to 20 feet, provided the compensation do not exceed £100.
6. — Supervisor to cause bond-stones and stakes marking lines of streets to be put down; parties damaging or removing them subject to fine not exceeding £5, or imprisonment not exceeding 30 days.
7. — Parties prohibited from building within certain distances from the centres of firebreaks and streets not yet to be opened.
8. — No party to build within limits of streets and firebreaks, whether they have been compensated or not; all such buildings to be abated as nuisances or a summary proceeding before two justices; parties offending also liable to fine of £5.
9. — To ascertain amount of compensation to be made for ground, &c. taken for widening street; proprietors of ground necessary to be taken to meet under a proclamation of the Governor, and elect two appraisers; Governor in Council to name two other appraisers, the four appraisers to choose a fifth, and, in case of disagreeing, Governor in Council to nominate; the five appraisers, when sworn, to appraise the value of ground taken, and estimate damage occasioned to any party; award of appraisers to be final, and compensation to be paid as directed by the said recited act; appraisers may mark off adjoining ground to first proprietor in lieu of compensation.
10. — Vacancies among appraisers to be supplied in the same manner as they were originally chosen or appointed.
11. — Appraisers may examine witnesses on oath; require the production of deeds; proceedings to be open to the public; no compensation to be paid to any party for any house built since the 9th June, except a sufficient sum for the removal of L. Gearan's house.

12. — Not compulsory in widening streets to remove buildings erected prior to the 9th June, without previous approval of Governor and council, and expense thereof not heavy; not to affect buildings referred to in 31st section of recited act.
13. — Appraisers to be paid £800 in full of all expenses and contingencies.
14. — No interference with ordnance boundaries or communications, without permission of Board of Ordnance, and payment of compensation, if required.
15. — Compensation for interference with rights of parties where buildings would obstruct line of fire from Forts William and George, to be ascertained by arbitration.
16. — Interest on Treasury notes to be payable half yearly, on the last days of June and December.
17. — No new private road north of Duckworth street and New Gower street to be less than twenty feet wide; parties building before laying down sills to give six days' notice to the supervisor. Offenders subject to fine of not less than £5, nor more than £10.
18. — Governor and Council to declare streets to be of certain widths less than 50 feet, in the same manner as streets of 50 feet width by said recited act.
19. — Proprietors of dwelling houses not providing ladders as required by 22d section of recited act to pay a fine of ten shillings.
20. — Parties using wooden window or door sills after 1st May, 1849, to pay a fine of twenty shillings sterling for every such sill.
21. — Form of summary conviction before magistrates prescribed; magistrates to have power to enforce attendance of witnesses.
22. — To provide means for defraying compensation beyond £20,000 provided by the recited act, a per centage of £10 to be levied on every £100 of duties collected on the importation of goods, &c. into the port of St. John's; to be collected under means and powers of Revenue Act 9 Vict., c. 1; said per centage to be in addition to any duties imposed.
23. — Treasury notes to be issued for compensation beyond the £20,000 in same manner as by the recited act directed; and to be discharged out of monies to be collected under preceding section, which are to be paid over to the Treasurer for that purpose.
24. — Additional duty or per centage to cease after payment and discharge of amount required for compensation beyond the sum of £20,000 in the said recited act mentioned.

SCHEDULES. — Oath of appraisers, and form of Treasury note.

ST. JOHN'S, (Voters in.)

9. & 10 VICT., c. 9. — *An Act to prevent the disqualification of persons entitled to vote at elections or to serve in the General Assembly for the district of St. John's.*—[4th August, 1846.]

- Sec. 1. — No person having been the occupier of dwelling-house destroyed by fire on the 9th June last, and in other respects qualified to serve as a member of the General Assembly, shall be disqualified from being elected as a member by reason of not having occupied a dwelling-house for two years next preceding any such election.
2. — Similar provision as to electors.
3. — Nothing herein shall qualify either candidate or voter who would not have been qualified if such fire had not occurred.

4. — Act to continue in force three years and no longer.
 ST. JOHN'S WATER COMPANY.—See *Water Company*.

TREASURY NOTES.

9 & 10 VICT., c. 5. — *An Act to authorize the issue of Treasury Notes.* — [4th August, 1846.]

- Sec. 1. — Governor to appoint three commissioners to issue Treasury notes to the amount of £20,000 in bills of £10, £25, and £50 each, bearing interest at 5 per cent., signed by Treasurer, and countersigned by Commissioners; form of note prescribed.
2. — Notes to be issued in discharge of sums payable under acts of the General Assembly at the option of party receiving payment. To be received in payment of Colonial duties at their specified value, and interest to be computed and allowed thereon.
3. — Treasurer to indorse on notes the day of issue, to bear interest from that time.
4. — Time of being received in payment of duties to be noted also by Collector; not to be re-issued.
5. — Forging or altering notes punishable by transportation for life, or imprisonment and hard labour, at the discretion of the court.
6. — Notes to be paid off by Treasurer in 60 days after notice in Royal Gazette; all interest to cease thereafter.
7. — On payment of note for duties no interest for a fractional part of a month to be allowed.
8. — Governor may by warrant to the Commissioners within two years after passing of this act, authorize them to issue new notes equal in amount to those paid in.
9. — Treasurer and commissioners authorized to contract for the printing, &c. of notes directed to be issued by this act.

VOTERS.—Registration of.—See *Elections*.

WATER COMPANY.

9 VICT., c. 8. — *An Act for the Incorporation of the St. John's Water Company.*—[28th April, 1846.]

- Sec. 1. — Certain persons incorporated by the name of the "St. John's Water Company."
2. — Capital stock to be £6,000, in shares of £10 each. Stock may be increased by further sum of £6,000 by one or more instalments.
3. — First general meeting to be held when 500 shares are subscribed, for choosing seven directors being each stockholders of ten shares, and to establish rules and bye-laws.
4. — Directors to continue in office until first Tuesday in May, 1847; succeeding directors to be chosen annually on the first Tuesday in May, and general meetings to be held annually on those days to examine accounts, declare dividend, and transact general business.
5. — Three directors to be a quorum, to chose president and vice president, and supply vacancies until annual general meeting.
6. — Directors to appoint officers, &c. and regulate salaries, and generally manage affairs of corporation.
7. — Stockholders to have a vote for each share not exceeding twenty; among directors president or vice-president to have a casting vote.

8. — Stockholders may vote by proxy appointed by writing.
 9. — Stock to be personal estate, but no assignment to be valid until registered; stockholder assigning all his shares, to cease to be a member of the corporation.
 10. — Shares in stock subject to attachment, or execution, by service of process on president or vice-president; any officer to be examined as to interest of defendant.
 11. — Stockholders liable to debt in his private capacity in a sum equal to the stock held by him; joint-stock, nevertheless, liable.
 12. — Proceedings to be had in case of dissolution; liability of stockholders to continue only two years thereafter.
 13. — Ten stockholders of 100 shares, or four directors, may call general meeting, giving ten days' notice of time, place, and object of such meeting.
 14. — Company empowered to trench streets to lay pipes, &c. &c.
 15. — On tender of compensation, to enter on and take possession of land of private parties for reservoirs and mains; land so taken to be property of company.
 16. — Parties dissatisfied may bring an action of trespass within three years; evidence may be given of compensation tendered.
 17. — Company may pay money into court in any such action.
 18. — Company may carry pipes over intermediate property; to uplift common ways, doing no unnecessary damage, and making satisfaction to owners, &c.
 19. — Persons defrauding the company of water to pay, besides value of water, a penalty of £10, recoverable by civil action in a court of record, except in cases of fire.
 20. — Persons wilfully damaging works, &c. of company, or hindering their construction, subject to penalty of £5, recoverable summarily before two justices of the peace, and shall also make satisfaction; any person seeing offence committed may apprehend without warrant.
 21. — Mode of recovering penalties not previously provided for.
 22. — Company shall only divide ten per cent. as a net profit on capital; surplus to be expended in establishing additional fire-plugs, and providing water gratis for the poor.—[Repealed.]
 23. — Company to expend, free of charge, grants of legislature for pumps and fountains connected with their mains, &c., and supply water for the same, gratis.
 24. — Company to report to the governor annually for the information of the legislature.
 25. — This to be deemed a public act.
 26. — Act to continue in force for fifty years.
- By the 9 and 10 Vict., c. 10, the 22d. section of the foregoing act is repealed.

WEIGHTS AND MEASURES.

4 W. 4 (SESSION 2), c. 9. — *An Act to regulate the standard of weights and measures in this colony, and to provide for the surveying of lumber.* — [12th June, 1834.]

Sec. 1. — All weights and measures used in the colony shall be in conformity with those established by the Imperial Act 5 Geo. 4, cap. 74, and the treasurer shall import a set of imperial weights and measures for the

use of the colony; the sessions in St. John's shall appoint an assayer of weights and measures, who shall have the custody of the weights and measures so to be imported, who shall be sworn into office, and who shall publish in the *Gazette* his appointment, and the situation of his office.

2. — The assayer shall assay and adjust according to the standard aforesaid, and shall stamp or mark all weights and measures that may be brought to his office for such purpose, and give to the owner a certificate of such assay having been made, for which certificate he shall receive threepence for each beam, weight, or measure assayed.
3. — Justices in sessions may appoint assayers in their several districts, who shall perform the like duties, and under the same regulations as before prescribed with respect to the assayer of St. John's.
4. — Treasurer to procure from England pattern sets of weights and measures for the said outpost assayers.
5. — The use of beams, weights, or measures not stamped and marked as aforesaid, for the sale, exchange, or barter of any commodity prohibited, and the use of wooden beams prohibited, under a penalty of five pounds.
6. — The said assayers shall have full power to inspect all weights and measures, and for such purposes may visit the premises of persons selling or bartering any commodity; and seize all unstamped weights and measures; and every person having in his possession any weights or measures not marked or stamped, and short of or exceeding the standard aforesaid, shall be subject to a penalty of five pound.
7. — Goods commonly sold by heaped measure shall, when sold, be measured in a measure to be marked and assayed as aforesaid, which measure shall be heaped to the height of three-fourths of the depth of such measure, and if sold by the barrel, such barrel shall contain three bushels struck measure; all goods sold by struck measure shall also, when sold, be measured by a measure stamped or marked as aforesaid; and all persons offending herein shall be subject to a penalty of £5.
8. — The use of steelyards prohibited under penalty of 20s., except for weighing hay or straw.
9. — Salt to be sold by weight according to the standard aforesaid, and not by measure, under a penalty of £5.
10. — Hogsheads for the measurement of coal shall contain sixty-three gallons imperial measure; shall be thirty-nine inches wide at top, and thirty-six at bottom; and shall be heaped sixteen inches above the brim.
11. — All lumber, timber, shingles, &c. shall be surveyed by a sworn surveyor previously to being sold, and all not merchantable shall be marked R., and sold as refuse; all shingles falsely or fraudulently packed shall be forfeited; the cost of survey shall be paid by the seller; and if any person shall sell any lumber or shingles without the same being surveyed, he shall pay a penalty not exceeding £5 sterling; and every surveyor unfaithful or negligent in the discharge of his duty shall pay a penalty of £20, and be no longer capable of acting.
12. — Such surveyors to be appointed by the justices in session, and to be sworn and to give security, and any surveyor refusing to survey

WILD FOWL. WIVES (DESERTION.)

after twelve hours' notice shall pay a fine of forty shillings. Any person acting as surveyor before being qualified as aforesaid shall forfeit £5. Such surveyors to be paid at certain rates.

13. — Every person obstructing assayer in execution of his duties shall forfeit £10.
14. — All penalties may be recovered with costs in a summary manner before two or more justices, and shall be paid half to Her Majesty and half to the informer.
15. — Until the time fixed for commencement of this act (January 1, 1836), all weights and measures shall conform to a set deposited in the court-house, and shall be inspected by persons to be appointed by the sessions; penalty of £5 for selling by measures not conforming to such last-mentioned standard.

WILD FOWL.—Protection of.

8 VICT., c. 13. — *An Act for the protection of the Breeding of Wild Fowl in this colony.*—[23d April, 1845.]

- Sec. 1. — Declares it unlawful for any person to break, destroy, use, carry away, sell, or barter, &c., eggs of wild fowl frequenting the coasts; nor wilfully to destroy or remove any of the said wild fowl during the breeding season, from the tenth of May to the first of September in each year; any person offending to pay a penalty of twenty pounds.
2. — Penalties to be recovered in a summary way in the superior courts or quarter sessions, and to be paid to the Treasurer for the purposes of the colony: Provided that all prosecutions be commenced within three months after forfeiture incurred.

WIVES AND CHILDREN deserted, relief of.

4 W. 4, (SESSION 2), c. 8. — *An Act to afford relief to wives and children deserted by their husbands and parents.*— [12th June, 1834.]

- Sec. 1. — One or more justices may, on complaint made, apprehend husband, father, or mother absconding or about to abscond, and refusing or neglecting to provide for wife or children, and make such order for the payment of a sum weekly or monthly, for their maintenance, as he or they shall think fit, and shall require security for return of parents leaving the colony that their families shall not become chargeable. Such father, mother or husband refusing shall be deemed a rogue and vagabond, and may be imprisoned and kept on bread and water for a month.
2. — Persons neglecting to work for the support of their families or spending their earnings in dissipation, may be committed to hard labour on the public roads for not exceeding fourteen days.
3. — Goods and chattels of offenders against this act may be seized by justices and sold and disposed for benefit of their families. Wages may be attached in hands of employer.
4. — Persons considering themselves aggrieved may appeal to the next quarter sessions.
6. — Act to continue in force for five years.

4 VICT., c. 7. — [26th April, 1841.]—Revives and continues 4 W. 4, c. 8 in force for five years, and thence to the end of the next session.

9 VICT., c. 11. — [28th April, 1846.]—Continues in force Act 4 W. 4, c. 8. for five years.

WOLVES (DESTRUCTION OF.)

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WOLVES, destruction of.

3 Vict.; c. 1. — *An Act to encourage the killing of Wolves in this Colony.*—[14th September, 1839.]

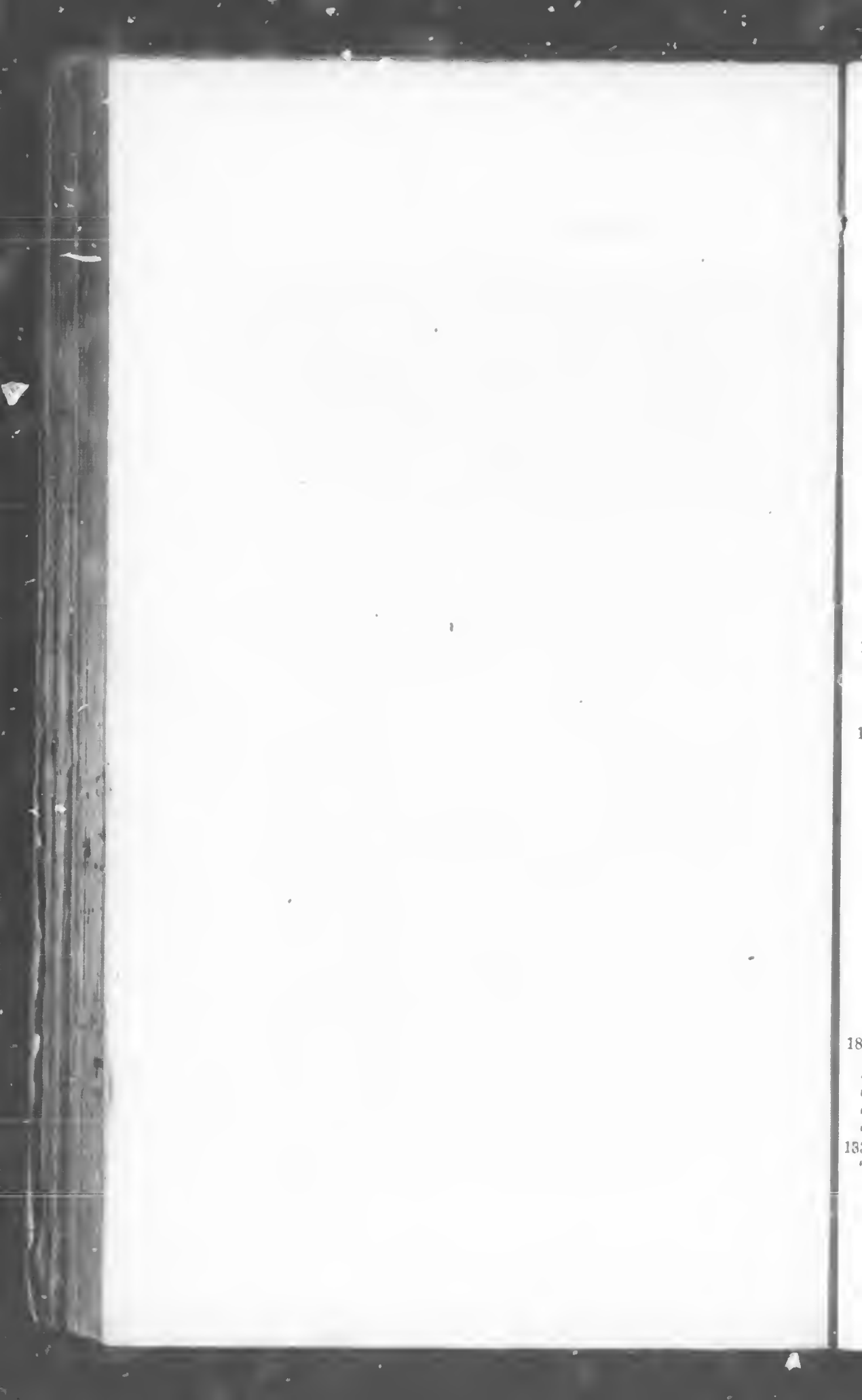
Sec. 1. — Persons producing skin of recently killed wolf before a justice of peace, and making declaration that it was killed by or for them, to receive £5 reward. Making a false declaration guilty of misdemeanour.

2. — Justice of peace on proof as aforesaid to give certificate, which being laid before Colonial Secretary, Governor to issue his warrant for payment of said £5.

3. — Return of such certificates with particulars to be laid before the Legislature.

4. — Act to continue in force two years.

By the 6 Vict., cap. 13, this act is continued in force from the 22d May, 1843; for four years, and thence to the end of the then next session.



TABLE

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TABLE

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LOWED, REPEALED, EXECUTED OR EXPIRED.

No. OF ACT.	SUBSTANCE OF TITLE.	DISSALLOWED, REPEALED, EXECUTED, OR EXPIRED.
3 W. 4, c. 3	—St. John's Fire Companies	Repealed by 9 & 10 Vict., c. 3
"	7—Pilots and Pilotage, St. John's	Expired.
"	9—New Street, St. John's	Executed.
4 W. 4, c. 1	—Revenue	Expired.
"	3—Building of Houses in Water-street, St. John's	Repealed by 9 & 10 Vict., c. 3.
2d Sess., c. 1	—Increase of Revenue	Expired.
"	14—Increase of Representatives in General Assembly	Disallowed.
"	16—Inspection, &c. of Pickled Fish	Expired.
"	17—Public Wharf, Beck's Cove	Repealed by 9 & 10 Vict., c. 3.
"	20—Appeal of Labrador Court	Executed.
"	24—Declaration of legality of collection of Duties	Ditto.
"	25—Appropriation Act	Ditto.
"	26—Contingencies ditto	Ditto.
5 W. 4, c. 1	—Quarantine Act (<i>continuation</i>)	Expired.
"	3—Treasury Notes	Executed.
"	4—Grant for Cholera Expenses	Ditto, (never required).
2d Sess., c. 1	—Revenue	Expired.
"	2—Attachment Law	Repealed by 6 Vict., c. 10.
"	3—Caplin for Manure	Expired.
"	4—Breeding of Wild Fowl	Ditto.
5	8—St. John's Fire Companies (<i>amend- ment</i>)	Repealed by 9 & 10 Vict., c. 3.
"	10—Duration of Parliaments	Disallowed.
"	11—Clerk of Supreme and Central Court combination	Expired.
"	13—Appropriation Act	Executed.
"	14—Legislative Contingencies	Ditto.
6 W. 4, c. 2	—Grant for Small Pox Expenses	Ditto.
"	3—Encroachments on Fisheries	Disallowed.
"	4—Ascertaining Census	Executed.
"	6—Revenue Acts (<i>continuation</i>)	Expired.
"	8—Pilots' Act (<i>continuation</i>)	Ditto.
"	9—Quarantine Act (<i>continuation</i>)	Ditto.
"	13—Education Act	Ditto.
"	15—Grant for Roads and Bridges	Executed.
"	16—Appropriation	Ditto.

TABLE OF ACTS EXPIRED, &c.

No. OF ACT.	SUBSTANCE OF TITLE.	DISALLOWED, REPEALED, EXECUTED, OR EXPIRED.
6 W. 4, c. 17	Legislative Contingencies	Executed.
1 Vict. c. 1	Revenue	Expired.
"	2—Grant for Roads and Bridges	Executed.
"	3—Inspection of Pickled Fish (<i>con- tinuation</i>)	Expired.
"	6—Pilots (<i>amendment</i>)	Ditto.
"	7—Quarantine (<i>continuation</i>)	Ditto.
"	10—Appropriation (in part)	Executed.
2 Vict., c. 1	Appropriation	Ditto.
"	2—Revenue	Expired.
"	3—Grant for Roads and Bridges	Executed.
"	4—Loan for Roads	Ditto.
"	5—Education (<i>amendment</i>)	Expired.
"	6—Pilots and Pilotage	Repealed by 8 Vict., c. 14.
"	8—Pickled Fish (<i>amendment</i>)	Expired.
"	9—Declaring value of the Dollar	Disallowed.
"	10—Appropriation	Executed.
"	11—Legislative Contingencies	Ditto.
3 Vict., c. 2	Revenue	Expired.
"	4—Protection of Revenue	Ditto.
"	7—Facilitating Steam Communication	Repealed by 3 Vict, c. 4, 2d [sess.
"	8—Rebuilding Houses in Water-street, (<i>al repeal</i>)	Repealed by 9 & 10 Vict., c. 3.
3 Vict., c. 9	Irish Society Incorporation	Disallowed.
"	10—Delegation Expenses	Executed.
"	11—Waterford Bridge Grant	Ditto.
"	12—General Appropriation	Ditto.
2d Sess., c. 1	Support of Paupers	Ditto.
"	2—Revenue	Expired.
"	4—Steam Communication with Halifax	Executed.
"	5—Whale Fishery encouragement	Expired.
"	6—Clerk of Supreme Court (<i>con- tinuation</i>)	Ditto.
"	7—Claims on St. John's Road Com- missioners	Executed.
"	8—Tonnage Duty	Disallowed.
"	9—General Appropriation	Executed.
"	10—Additional Supply	Ditto.
4 Vict., c. 1	Revenue	Expired.
"	5—Pilots and Pilotage	Ditto.
"	8—Irish Society Incorporation	Disallowed.
"	10—Indemnity	Executed.
6 Vict., c. 1	Revenue	Expired.
"	2—Appropriation, 1842-43	Executed
"	3—Trial of Controverted Elections	Expired.
"	4—Grant for Roads, and regulation of Expenditure	Executed.*

* Except as to the 17th section, which is still in force; new provisions made by 3 Vict., c. 3.

TABLE OF ACTS EXPIRED, &c.

NO. OF ACT.	SUBSTANCE OF TITLE.	DISALLOWED, REPEALED, EXECUTED, OR EXPIRED.
6 Viet., c.	5—Revenue	Expired.
"	9—Abolition of Oaths by Members of Assembly	Disallowed.
"	11—Salary of Clerk of Supreme and Central Courts (<i>amendment and continuation</i>)	Expired.
"	14—Pilots and Pilotage (<i>continuation and amendment</i>)	Ditto.
"	15—Encouragement of Whale Fishery	Ditto.
"	16—Light Houses (<i>continuation</i>)	Ditto.
"	20—Indemnity to Governor	Executed.
"	24—General Appropriation	Ditto.
"	25—Contingencies of Legislature	Ditto.
7 Viet., c.	4—Copper Coinage	Disallowed.
"	6—Light Houses (<i>continuation</i>)	Expired.
"	7—Pilots (<i>continuation</i>)	Ditto. [by 9 Viet., c. 7.]
"	8—Grant for Roads and Bridges	Executed and partly repealed
"	14—Revenue (<i>continuation</i>)	Expired.
"	15—General Appropriation	Executed.
"	16—Contingencies of Legislature	Ditto.
8 Viet., c.	1—Revenue (<i>continuation</i>)	Expired.
"	2—Census	Executed.
"	4—Grant for Roads and Bridges	Ditto. [Sec. 3 repealed by 9 Vict., c. 7.]
"	9—Encouragement of Whale Fishery	Expired.
"	11—Light Houses (<i>continuation</i>)	Ditto.
"	15—General Appropriation	Executed.
"	16—Contingencies of Legislature	Ditto.
9 Viet., c.	12—Contingent Expenses of Legislature	Ditto.
"	13—General Appropriation	Ditto.
9 & 10 Viet., c.	1—Loan for re-building St. John's	Disallowed.
"	2—Securing interest on Loan	Repealed by 10 Viet., c. 7.
"	7—Whale Fishery encouragement	Expired.
10 Viet., c.	7—Interest on proposed Loan (<i>repeal</i>)	Executed.

A D D E N D A .

As the Act of the Imperial Parliament 1 Geo. 4, c. 51, commonly called the Imperial Street Act, is in force except so far as the later provisions of the acts of the Colonial Legislature have altered the lines and extended the width of the main and cross streets, and established regulations as to the materials of which houses are to be built, &c., I think it advisable to subjoin here a copy of it.

The varying opinions which have at different times been entertained and expressed as to whether the 16th section of the 15 Geo. 3, c. 31, is or is not in force, induce me also to give below the section in question, together with the 1st and 10th sections of the late Fishery Act (5 Geo. 4, c. 51), *verbatim*. In order to arrive at a right opinion upon the construction of the repealing words in the 1st section of the 5 Geo. 4, c. 51, nearly the whole of the 15 Geo. 3, c. 31, should properly be set out; but as my space is limited, I give, together with the 16th section, an abstract of the sections preceding and following it, and directly referred to in the repealing section of the 5 Geo. 4, which may answer the purpose.

1 GEO. 4, CAP. 51. — *An Act to regulate the re-building of the town of St. John's in Newfoundland, and for indemnifying persons giving up ground for that purpose.*—[15th July, 1820.]

WHEREAS the town of St. John, in the Island of Newfoundland, hath recently been visited by very great and destructive fires, the ravages whereof have been chiefly occasioned by the narrowness of the streets, and the difficulty of arresting the progress of the flames; And whereas it will greatly contribute to the convenience of the said town, as well as to its future security, if certain regulations be made for the rebuilding of such parts thereof as have been destroyed, and also for the erection of any houses or buildings in the said town hereafter; Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the lower street in the said town, commonly called Water-street, shall not be less than fifty feet in width in every part thereof, extending from the house and stores occupied by

Brown, Hoyles and Co., at the East end, to the public Ships Room, commonly called the Western Ships Room, at the West end thereof; and that the upper street, commonly called Duckworth-street, shall not be less than forty feet in width; and that all and every houses, stores, erections and buildings whatsoever, built and erected since the first day of June, 1818, or which shall at any time or times hereafter be erected and built in the said street or either of them, whether the same be upon any vacant spot of ground or upon the site of any former building, shall be made to conform to the width of the said streets, as the same is respectively hereby established and directed; provided always, that nothing herein contained shall be construed to extend to any house, store, erection, or building, which, since the first day of June, 1818, may have been or at any time hereafter may be erected in Water-street aforesaid, the same being built and made entirely of stone or bricks, and covered with slates or tiles, and always having a clear width in the said street of not less than forty feet.

II. — And be it further enacted, that there shall be four cross-streets or open spaces to serve as fire-breaks, and intersect the said streets called Water-street and Duckworth-street as nearly as might be at right angles; and that all and every of the said cross-streets shall not be less than sixty feet in width, and shall run in the following directions, that is to say, the first or western cross-street from the water-side, in a line with the corner of Dinah Elliott's shop and Maddoek's Lane to Duckworth-street; the second from the waterside running in a line with the corner of James Clift's and Perkins and Winter's tenements leading up the Church Hill; the third to run from the waterside between Clapp's and Keen's properties, lately held by George Niven and A. Chambers, the middle of the cove to be the centre of the street, through the ground lately occupied by William Barnes and others; and the last or Eastern street from the Ordnance Wharf up to the King's Road; and that no house, store, erection or building whatsoever, shall be erected or built so as to front above Water-street, upon any or either of the said cross-streets, but that the same shall be and remain open and free from any buildings whatsoever, other than the inclosures thereof; and also, that in case any other cross-streets may be hereafter required as a security against fire, upon the same being marked out and presented by the grand jury, and approved by the governor for the time being, there shall be such other cross-streets or firebreaks, of the like dimensions of those herein-before mentioned, and according to the boundaries so presented and approved; and the ground and property necessary to be taken shall be estimated and paid for in like manner as is hereinafter mentioned; provided always, that nothing herein contained shall authorize the taking of any fishing-room, flakes, or any part thereof, which may be actually occupied and employed for the purpose of curing fish.

III. — And be it further enacted, that it shall not be lawful for any person or persons, at any time or times hereafter, to build, occupy, or use as a cooper's shop, any house, building, or place whatsoever, in any or either of the said streets hereinbefore mentioned, or in any manner adjoining or connected with the same, excepting only such temporary sheds or coverings as may be erected upon any wharf or wharves for the trimming and preparing of casks or other articles of cooorage for immediate use and shipment.

IV. — And whereas it is just and proper that such persons as may have sustained any loss of property by reason of the same being taken in the public streets hereinbefore mentioned, should be remunerated for the same; be it therefore enacted that it shall be lawful for all and every of the proprietors of houses, tenements and lots or parcels of ground lying and being within the town of St. John, in the Island of Newfoundland, and also for all and every of the said proprietors of such portions

of ground as have been or may be necessary to be taken for the purpose of making and widening the said streets as aforesaid, or their agents usually acting in their behalf, to meet at such time and place as the Governor of the said Island of Newfoundland for the time being may for such purpose publicly notify and appoint; and then and there to choose four persons, (two whereof to be chosen by the first-mentioned proprietors, or the majority thereof which may be assembled as aforesaid, and the remaining two by the last-mentioned proprietors, or the majority thereof, or their agents as aforesaid,) who together shall have power to elect a fifth person as umpire; and which five persons so chosen and elected shall thereupon, after being duly sworn in such behalf before the chief magistrate of the said town for the time being, be appraisers, and shall forthwith proceed to appraise the value of all and every such portions of ground as have been or may be necessary to be taken for the purposes aforesaid, always taking into account the additional value derived to the several proprietors from the convenience and security afforded by the widening of the said streets; and that the said appraised value shall be deemed and considered as the true value of the said portions of ground, and shall be paid by all and every the proprietors of houses, tenements, lots and parcels of ground, lying and being within the limits of the said town of St. John's, in such proportions, with reference to the value of their several interests therein, as the said appraisers so chosen and elected as aforesaid shall assess and appoint, and which they are hereby authorized and required to do: provided always, that if the said appraisers shall be of opinion that any proprietors of the said ground so required for the streets as aforesaid, or any of them, may be indemnified at a less expense to the proprietors in general, by having an equal portion of ground assigned to them from any ground adjoining, and that such adjoining ground may be taken without material injury to the proprietor or proprietors thereof, it shall be lawful, and the said appraisers are required to mark off, and in like manner to appraise so much of the said adjoining ground as they may think sufficient to replace the ground required for the said streets; and the same so marked off shall belong to the first-mentioned proprietors, and be in lieu of all and every indemnity whatsoever; and the appraised value of the same shall be paid by the said proprietors in general to the proprietor or proprietors from whom the same was respectively taken, and shall be as a full satisfaction and release of the same, and of all right and title thereto.

V.—And be it further enacted, that the said appraisers shall have power and authority, and they are hereby directed and required, to enter into and upon all and every the lots and parcels of ground lying and being between the said streets called Water-street and Duckworth-street, and there to mark off such bounds and limits for the building of all houses, out-houses, offices, and buildings, at the back of all and every of the houses, tenements, and lots situated in the said streets respectively, as to the said appraisers may seem just and equitable between the parties; always taking care, and it being the special intention of this clause, that sufficient intervals and spaces be in all cases left open and free from wooden or other combustible buildings, to prevent as much as possible the communication of fire from one of the said streets to the other, by means of any buildings at the back of the same; and the said bounds and limits for building houses, out-houses, and back-buildings as aforesaid, be in all cases inviolable: provided always, however, that nothing in this clause contained shall extend to prevent or hinder any person or persons from building any office, out-house, or other building, of stone or bricks, to be covered with slates or tiles, upon any part of the said ground lying between the said streets as aforesaid.

VI.—And in order to remove any doubts or difficulties which may at any time hereafter arise, as to carrying into effect the provisions of the first section of this Act, be it further enacted that the metes and bounds of certain parts of Water-street and Duckworth-street, as respectively laid out and marked by the Committee appointed for that purpose by the proprietors assembled at the said town of St. John, in or about the month of June, 1818, aforesaid, be confirmed, and the same are hereby declared to be the lawful and established bounds of the said streets, so far as the same may go and extend; and that as often as any new building shall at any time hereafter be intended to be erected in or upon any part or parts of either of the said streets, where such bounds have not been already laid out by the Committee as aforesaid, and do not extend to the south sides of the said streets as they now respectively stand and are, shall be considered as fixed boundaries thereof; and any deficiency in the width of the said streets, or either of them, shall be taken from the ground lying on the north sides of the same respectively, unless it should be made to appear by the presentment of the grand jury, or otherwise by consent of parties, to be sanctioned by the Governor, that the additional width might with greater convenience be taken from the south sides of the said streets respectively, in which case the said deficiency shall be taken from the south sides, so as that in all cases the said streets be respectively made conformable to the width directed and established by this Act.*

15 GEO. 3, c. 31. — *An Act for the encouragement of the fisheries carried on from Great Britain, Ireland, and the British dominions in Europe, and for securing the return of the fishermen, sailors, and others employed in the said fisheries, to the ports thereof, at the end of the fishing season.*

- SEC. 2. — Enacts that any part of Newfoundland not in use may be used by the masters and crews of fishing vessels for curing and drying fish, and shall be henceforth taken to be ships' rooms, any custom to the contrary notwithstanding.
4. — Declares that in order to obviate doubts, the right and privilege of drying fish on the shores of Newfoundland shall be held and enjoyed only by His Majesty's subjects arriving at Newfoundland from the British dominions in Europe.
7. — Provides that all vessels fitted and cleared out as fishing ships under this Act, or of the 10 & 11 W. 3, or any craft carrying coastwise fish, oil, or necessaries for the fishery, shall not be liable to any restraint as to hours of working; nor to make any entry at the Custom House, except a report on arrival and on clearing out, &c.
12. — Provides that in order to secure the return of fishermen, sailors, artificers, &c., employed in the fishery to the British dominions in Europe, no shipmaster shall carry as passengers any such seamen, fishermen, sailors, artificers, and others to the continent of America from Newfoundland without permission of the Governor, under penalty of £200.

* It is desirable that by some enactment of the Imperial Parliament the Local Legislature should be empowered to repeal, vary, or amend this statute, in order that they may deal more freely with the subject-matter of it.

13. — For securing the return of seamen and fishermen at the end of the fishing season, enacts that no person shall employ, or cause to be employed, any seamen or fishermen going as passengers, or hired at Newfoundland, without first entering into an agreement in writing as to the wages and time of service, to be signed by both parties, wherein it shall be stipulated (amongst other things) that the person hiring shall deduct and retain, and he is hereby required to deduct and retain out of the wages, a sum equal to the then current price of a man's passage home, not exceeding forty shillings for each man, which sum, the hirer, at the end of the fishing season, or covenanted time of service of such seaman or fisherman, shall pay to the master of a passage or other ship who shall undertake to carry such seaman or fisherman home to the country whereto he belongs, and shall convey such seaman or fisherman on board the passage ship, taking the master's receipt for the money.
14. — Provides that no hirer shall pay to such seaman or fisherman more than half the wages at any time due to him; but at the end of the season, or covenanted time of service, shall pay the full balance (except the passage money above-mentioned) in good bills of exchange on Great Britain or Ireland, or the country to which the party belongs; hirer not to turn away seaman or fisherman, except for wilful neglect of duty, or other sufficient cause; penalty for non-compliance with this section, £10, besides wages and passage money.
15. — In cases of disputes concerning the wages of any such seamen or fisherman, the hirer or employer shall produce the contract or agreement in writing above-directed to be entered into with him.
- SEC. 16. — "And be it further enacted, by the authority aforesaid, that all the fish and oil which shall be taken and made by the person or persons who shall hire or employ such seaman or fisherman shall be subject and liable, in the first place, to the payment of the wages of every such seaman or fisherman."
17. — Any such seaman or fisherman wilfully absenting himself from duty without leave, or wilfully refusing to work, shall, for every day's absence or refusal, forfeit two days' pay; wilfully absenting himself five days, shall be deemed a deserter, and forfeit all wages then due, except his passage money home; the Governor, his surrogate, commissary of the vice-admiralty, or a justice of the peace, to apprehend such deserter and commit him to prison until next court of session; and, if then found guilty, to be publicly whipped as a vagrant, and put on board a passage ship to be sent home.
18. — Disputes, and all other offences, to be heard and determined by the court of session or court of vice-admiralty.

5 GEO. 4, CAP. 51. — *An Act to repeal several laws relating to the Fisheries carried on upon the Banks and shores of Newfoundland, and to make provision for the better conduct of the said Fisheries for five years, and from thence to the end of the then next session of Parliament.*—[3d June, 1821.]

SEC. 1. — "Whereas it is expedient to repeal and amend divers statutes and laws

" relating to the fisheries on the Banks and shores of Newfoundland,
 " and to make such further provisions as the present state and condition
 " of the colony require ; be it therefore enacted by the King's Most
 " Excellent Majesty, by and with the advice and consent of the Lords
 " Spiritual and Temporal, and Commons, in this present Parliament
 " assembled, and by the authority of the same, that the Act passed in
 " the tenth and eleventh year of the reign of His Majesty King William
 " the Third, intituled *An Act to encourage the trade to Newfoundland* ;
 " and so much of another Act passed in the fifteenth year of the reign of
 " his late Majesty King George the Third, intituled *An Act for the*
 " *encouragement of the fisheries carried on from Great Britain, Ireland,*
 " *and the British dominions in Europe, and for securing the returns of*
 " *the fishermen, sailors, and others employed in the said fisheries to the*
 " *ports thereof, at the end of the fishing season,* as relates to the masters
 " and crews of fishing ships occupying or using any vacant spaces in
 " Newfoundland, to the privilege of drying fish on the shores, to fishing
 " ships or boats not being liable to restraint or regulations with respect
 " to days or hours of working, or making entry at the Custom House,
 " to the carrying or conveying of passengers to the continent of America,
 " to agreements or contracts between hirers or employers and seamen or
 " fishermen, to the penalties on such hirers or employers advancing
 " wages, and on such seamen or fishermen absenting themselves from
 " their duty or neglecting or refusing to work, and the manner of
 " determining disputes and offences ; and also so much of another Act
 " passed in the twenty-sixth year of the reign of His said Majesty King
 " George the Third, intituled *An Act to amend and render more effectual*
 " *the several laws now in force for encouraging the fisheries carried on at*
 " *Newfoundland and parts adjacent, from Great Britain, Ireland, and*
 " *the British dominions in Europe, and for granting bounties for a*
 " *limited time, on certain terms and conditions,* as relates to the wages
 " of green men, the using of seans or nets, seamen or fishermen absent-
 " ing themselves or neglecting their duty, or deserting or intending to
 " desert ; and also so much of another Act passed in the twenty-ninth
 " year of the reign of His said Majesty George the Third, intituled *An*
 " *Act for further encouraging and regulating the Newfoundland and*
 " *Greenland and southern whale fisheries,* as relates to the privileges of
 " landing and drying fish in Newfoundland, shall be and the same are
 " hereby repealed."

SEC. 10. — " And be it further enacted, that all the fish and oil which shall be
 " taken and made by the person or persons who shall hire or employ
 " such seaman or fisherman, shall be subject and liable in the first place
 " to the payment of the wages or shares of every such seaman or
 " fisherman, and of the demands of such person or persons as shall *bona*
 " *fide* supply bait to such seaman or fisherman for the use and benefit
 " of the hirer or employer of such seaman or fisherman."

In the sections preceding the 10th, provisions were made for regulating the
 mode of hiring by contract or agreement in writing—the advance of wages during
 service—for prohibiting the discharge of the seaman or fisherman except for wilful
 neglect—for the production of the agreement by the hirer in case of dispute, &c. ;
 and, by the 11th section, are declared the penalties upon seamen and fishermen
 wilfully absenting themselves from their duty, and the course of proceeding to be

observed in such cases, in substitution of the provisions of the 17th section of the 31 Geo. 3, c. 31.

The above Act, which was passed for a period of five years, was further continued in force, until the 31st December, 1831, when it expired.

