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THE
PROVINCIAL JUSTICE,
OR
MAGISTRATE'S MANUAL,
BEING A COMPLETE DIGEST
OF THE
CRIMINAL LAW OF CANADA,
AND
A COMPENDIOUS AND GENERAL VIEW
OF THE
PROVINCIAL LAW OF UPPER CANADA:
WITH PRACTICAL FORMS,
FOR THE USE OF THE MAGISTRACY.

BY W. C. KEELE, Esq.,

ATTORNEY-AT-LAW.

FOURTH EDITION.

TORONTO:
HENRY ROWSELL, KING STREET.

1858.

*Entered, according to Act of the Provincial Legislature, in
the year 1858, by WILLIAM CONWAY KEELE, the Author
and sole Proprietor, in the office of the Registrar of the
Province of Canada.*

DEDICATED,

WITH SINCERE RESPECT,

TO

THE EARLY PATRONS OF THIS WORK,

The Magistracy

OF

UPPER CANADA,

BY

THE AUTHOR.

INTRODUCTION.

The third edition of this work, published in 1851, has been long since distributed. The compiler has been urged in many quarters to publish another edition. He has now the pleasure of complying with the wishes of his friends and patrons, by presenting them with a new edition in a much enlarged and improved form. It will be found a complete digest of the criminal law as it now stands. Several important and valuable measures have been enacted since the publication of the last edition. Among them is the statute for the summary disposal of petty larcenies, instead of the dilatory and expensive process by indictment. Provision has also been made for the summary trial of juvenile offenders, and for the establishment of a reformatory prison, in which, as the statute in its preamble states, "they may be detained and corrected, and receive such instruction, and be subject to such discipline as shall appear most conducive to their reformation and the repression of crime." Provision too has been made for the erection of a criminal lunatic asylum, for the safe keeping of convicts under sentence, while insane—and for the confinement of lunatics whose malady may render their being at large dangerous to public safety.

Improvement has also been made in procedure upon criminal trials, by allowing indictments to be amended in court according to the facts given in evidence, so that an offender may not escape upon mere technicalities. An act was also passed in the last session of the legislature, to extend the right of appeal in criminal cases in Upper Canada. It seems to have been an anomaly in our criminal code that so just a provision should have been so long omitted—while in civil suits, as well as upon summary convictions before justices, the right of appeal has been long since conceded. Where the life or personal liberty of the accused is at stake, it is but just

and reasonable that he should be at liberty to shew if he can, good and sufficient cause for a new trial. The whole of the above may be considered as decided improvements in our criminal code, and will no doubt give general satisfaction to the country.

With respect to the magisterial office, the acts of the 16 V., cs. 178, 179, simplify and elucidate their duties upon indictable offences, and summary procedure. They are accompanied by schedules of forms. The whole will be found inserted in the present work. By a late statute, the office of "county attorney" has been created—an officer whose services at the sessions will be found a valuable acquisition on crown prosecutions. To him the magistrates are also, by the same statute, privileged to resort, should they require his advice or aid in matters brought before them for preliminary investigation.

Having thus briefly glanced at the leading measures of improvement, the author will conclude with the hope that this new edition of the *PROVINCIAL JUSTICE* will prove a useful guide to the magistracy, and worthy of the patronage bestowed on its predecessors.

The law and office of coroner has been added.

The municipal law has been omitted, as a bill is now before parliament for its consolidation. It will probably pass this session; upon which the existing law will of course become defunct.

W. C. KEELE.

Toronto, 31st May, 1858.

ERRATA.

PAGE.

255. *County Court*.—The 9 V., c. 7 is repealed by 20 V., c. 58, and the terms altered to the first Monday in January, April, July and October.
347. *Forgery*.—The 35 G. III., c. 5 is repealed by 9 V., c. 34.
360. *Gaols*.—The 1 V., c. 5 is superseded by 20 V., c. 28.
See title "*Inspectors of Gaols*."
430. *Qualification of Jurors*.—§ 4 is repealed by 16 V., c. 120, and a new provision made reducing the number to one-half, instead of three-fourths of the inhabitants assessed.

CORRIGENDA.

6. *Accessory*.—For 4 & 5 V., c. 27, read c. 26, § 27.
8. *Accident*.—For 10 & 11 V. c. 61, read c. 6.
26. *Amendment*.—For 1 W. IV., c. 2, read c. 1.
29. *Appeal*.—For term, read terms,* 2nd line from the bottom.
51. *Arson*.—For 10 & 11 V., c. 5, § 1, read c. 4, § 1.
76. *Attainder*.—For 3 W. IV., c. 5, read c. 4.
126. *Census*.—For January, 1862, read 1861.
151. *Clerk of the Peace*.—Census Act, *dele* § 14.
164. *Common Schools*.—For 18 V., c. 121, read c. 131.
171. *Common Schools*.—For 14 & 15 V., c. 3, read c. 111.
294. *Elections*.—For 14 & 15 V., c. 7, read 16 V., c. 7.
308. *Emigrants*.—For 16 V., c. 82, read c. 86.
335. *Fish*.—For § 24 (second), read § 36, and for 12 V., c. 61, read c. 81.
362. *Gaol Limits*.—For 19 & 20 V., c. 43, § 201, read § 301.
371. *Habeas Corpus*.—For 31 G. II., c. 2, read 31 C. II., c. 2.
429. *Jury*.—For 32 G. III., c. 1, read c. 2.
430. *Selection and Distribution*.—For juries, read jurors.
431. *Jury*.—For the word members, read numbers.
435. *Grand Jury*.—For 14 & 15 V., c. 66, read c. 65.
438. *Jury*.—For 3 W. IV., c. 4, read c. 3.
517. *Land Surveyors*.—For 12 V., c. 11, and 35, read c. 35.
557. *Malicious Injury*.—For 4 & 5 V., c. 27, § 6, read § 9.
602. *Patent Rights*.—For 12 V., c. 22, read c. 24.
625. *Penitentiary*.—For 14 & 15 V., c. § 1, read c. 2, § 1.
692. *Public Works*.—For 14 & 15 V., c. 37, read c. 57.
694. *Felony*.—For § 34, read 24.
699. *Homicide*.—For § 27, read § 8.
750. *Sessions*.—For 20 V., c. 70, read c. 28.

 The above typographical errors can be easily corrected with a pen.

* The word "terms," is inserted in the Act, but it is clearly a clerical error, the word "term" being intended.

THE

MAGISTRATE'S MANUAL.

A * placed at the head of a Statute, denotes that such Statute relates to Upper Canada only, and was passed before the Union.

ABDUCTION.

By the 4 & 5 V. c. 27, § 19: where any woman shall have any interest, whether legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or shall be an heiress presumptive or next of kin to any one having such interest, if any person shall from motives of lucre take away or detain such woman against her will, with intent to marry or defile her, or to cause her to be married or defiled by any other person, every such offender and every person counselling, aiding or abetting such offender, shall be guilty of felony, and being convicted thereof shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. § 20. If any person shall unlawfully take or cause to be taken any unmarried girl being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable to suffer such punishment by fine or imprisonment, or by both, as the court shall award.

ABORTION.

By the 4 & 5 V. c. 27, § 13, administering poison or other noxious thing to any woman with intent to procure abortion, or unlawfully using any instrument or other means whatsoever with the like intent, is made felony, and the offender liable at the discretion of the court to be imprisoned at hard labour in the Penitentiary for life, or

Absconding Debtors.

any term not less than seven years, or in any other place of confinement not exceeding two years.

ABSCONDING DEBTORS.

By the Division Court Act, 13 & 14 V. c. 53, § 64, it is enacted, that if any person or persons in any county of Upper Canada, being indebted in any sum not exceeding *twenty-five pounds*, nor less than *twenty shillings*, for any debt or damages arising upon any contract express or implied, or upon any judgment, shall abscond from this Province, leaving personal property liable to seizure under execution for debt in any county in Upper Canada, or shall attempt to remove his, her or their personal property of the description above mentioned, * either out of Upper Canada or from one county to another therein, or from Upper to Lower Canada, or shall keep concealed in any county of Upper Canada to avoid service of process, it shall and may be lawful for any creditor or creditors of such person or persons, his, her or their servant or agent, to make application to the clerk of any division court of the county wherein the debtor or debtors were or was last domiciled, or where the debt was contracted, or to the judge of the county court therein, or to *any justice of the peace* in any county of Upper Canada, and upon making or producing an affidavit or affirmation to the purport of that in the schedule to this act annexed, marked D, (which affidavit or affirmation the said clerks, judges, and *justices of the peace* are respectively hereby authorised to administer,) and upon then and there filing the said affidavit or affirmation with such clerk or judge, or if taken before a justice of the peace, with such justice of the peace (whose duty it shall be to transmit the same forthwith to the clerk of the division court, within whose division the same was so made or taken, to be filed and kept among the papers in the cause,) it shall be lawful for such clerk, judge, or justice of the peace forthwith to issue a warrant under his hand and seal, directed to the bailiff of the division court within which the same was issued, or to any constable of the county, commanding such bailiff or constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person or persons, of what nature and kind soever, liable to seizure under execution for debt, within such county, or a sufficient portion thereof to secure the sum mentioned in the warrant, with

* Goods or chattels.

the costs of the action, and to return the same forthwith to the division court of the division wherein such warrant was issued, upon receipt of which warrant the bailiff or constable to whom the same may be directed shall (upon being paid his lawful fees for levy, mileage, and otherwise thereupon, including the fees of appraisement) forthwith execute the same, and make a just and true inventory of all such personal estate and effects as he shall seize and take by virtue thereof, and such bailiff or constable shall within twenty-four hours thereafter call to his aid two freeholders, who shall first be sworn by such bailiff or constable, to appraise the said personal estate and effects so seized; and such bailiff or constable shall forthwith return the said inventory, which shall be attached to such appraisement, to the clerk of the division court of the division within which such warrant was issued, and which warrant may be in the form of that in the schedule to this act annexed, marked E: provided always, that the said appraisers shall be entitled to receive for each day they may be employed in carrying its enactments into effect the sum of *two shillings and sixpence* each, to be paid in the first instance by the plaintiff or plaintiffs, and allowed in the costs of the cause: provided always, that proceedings may be conducted to judgment and execution in any case commenced by attachment under the provisions of this section, in the division court of the division within which the warrant of attachment shall issue; and that when proceedings shall be commenced in any case before the issuing of an attachment under the provisions of this section, such proceedings may be continued to judgment and execution in the division court within which such proceedings may have been commenced; and the property seized upon any such attachment shall be liable to seizure and sale under the execution to be issued upon such judgment, or the proceeds thereof, in case such property shall have been sold as perishable, shall be applied in satisfaction of such judgment: provided further, that it shall not be lawful for any plaintiff to divide any cause of action into two or more suits for the purpose of bringing the same within the provision of this section, but any plaintiff having a cause of action above the value of *twenty-five pounds*, for which an attachment might be issued under this section if the same were not above the value of *twenty-five pounds*, may abandon the excess, and upon proving his case, shall and may recover to an amount not exceeding *twenty-five pounds*, and the judgment of the court in such case shall be in full

Absconding Debtors.

discharge of all demands in respect of such cause of action, and the entry of judgment therein shall be made accordingly.

SCHEDULE D.

County of }

A. B. of in the county of (*here state the county*) the plaintiff (*or agent, as the case may be*) maketh oath and saith, that C. D., (*the debtor's name*) is (*or are*) justly and truly indebted to (*the creditor's name*) in the sum of of lawful money of Canada, for (*here state the cause of action briefly*;) and this deponent further saith, that he hath good reason to believe, and verily doth believe, that the said C. D. hath absconded from this province, and hath left personal property liable to seizure under execution for debt within the county of ; (*or*) that the said D. C., is (*or are*) about to abscond from this province, or to leave the county of with intent and design to defraud the said (*the creditor*) of the said debt, taking away personal estate liable to seizure under execution for debt; (*or*) that the said C. D. is concealed within the county of to avoid being served with process, with intent and design to defraud the said (*the creditor*) of his said debt; and this deponent further saith, that this affidavit (*or affirmation as the case may be,*) is not made, nor the process thereon to be issued, from any vexatious or malicious motive whatever.

A. B.

Signature of deponent.

Sworn (*or affirmed as the case may be,*) before me, the day of one thousand eight hundred and

SCHEDULE E.

County of } To A. B., bailiff of the division
(*here insert the county*) } court of the said county of (*or*)
 } to A. B., a constable of the county
 } of (*as the case may be.*)

You are hereby commanded to attach, seize, take and safely keep all the personal estate and effects of C. D., (*naming the debtor,*) an absconding, removing or concealed debtor, of what nature or kind soever, liable to seizure under execution for debt within the county of (*here name the county*) or a sufficient portion thereof to secure A. B., (*here name the creditor,*) for the sum of (*here state the amount sworn to be due*) together with the costs of his suit thereupon, and to return this warrant with what you shall

have taken thereupon, to the clerk of the (*here state the number of the division*) division court of the county aforesaid forthwith:—and herein fail not.

Witness my hand and seal, the day of 18

E. F.

(L.S.)

Judge, clerk or justice of the peace, (*as the case may be.*)

ACCESSORY.

An accessory is one guilty of felony, not as a principal, but by participation, command, advice or concealment. In high treason there can be no accessories, as all concerned are considered principals. The mere concealment of a felony *intended* to be committed, does not render the concealer an accessory. It is only misprision of felony.

—2 *Haw. c. 29, § 23.*

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

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

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

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

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

Anciently, the accessory could not be tried unless the principals were attainted; 3 *Ed. I. c. 14*; but the law in this respect has been altered by several statutes, * and now, by the 4 & 5 *V. c. 24, § 37*, accessories before the fact to felony at common law, or by statute, shall be deemed guilty of felony, and may be indicted and convicted as accessory before the fact to the principal felony, either together with, or after the conviction of the principal felon, or may be indicted for and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, and may be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished, and such accessory may be tried and punished by any court having jurisdiction to try the principal felon. § 38. Acces-

* 1 *Ann. c. 9, § 1.* 19 *G. II. c. 30.*

sories after the fact, may also be tried where the principal felony was committed, or where the party shall have become accessory: accessories not liable to be again indicted for the same offence. § 39. Accessories may be prosecuted, notwithstanding the principal felon shall die or be pardoned, or otherwise delivered before *attainder*. § 33. In the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable, and every accessory, after the fact to any felony punishable by this act, (except only a receiver of stolen property), shall, on conviction, be liable to be imprisoned for any term not exceeding two years; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanour punishable under this act, shall be liable to be indicted and punished as a principal offender.

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

The 4th and 5th V. c. 27, § 26, also contains a provision similar to the 4th and 5th V. c. 25, § 54, for the punishment of accessories to felonies, &c., under that act.

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

Form of Information and Complaint against an Accessory before the fact.

PROVINCE OF CANADA:

County of } The information and complaint of A. B.
to wit. } of the township of yeoman, taken

Accessory.

this day of in the year of our Lord , before the undersigned, (one) of her Majesty's justices of the peace, in and for the said county of , who saith that on the day of last, his dwelling house, situate at was about the hour of ten o'clock, in the night of the same day, feloniously and burglariously broken and entered, and that (describe the property stolen) his property were then and there feloniously stolen, taken, and carried away, and that he hath just cause to suspect, and doth verily suspect and believe that C. D., of aforesaid, labourer, did commit the said felony and burglary, and that E. F., of aforesaid, labourer, did advise, aid, and abet, the said C. D., in the said felony.

Sworn before (me) the day and } C. D.
year first mentioned. }

J. P.

Warrant thereon.

PROVINCE OF CANADA :

County of } To all or any of the constables or other
to wit. } peace officers in the county of

Whereas C. D., of and E. F., of have this day been severally charged upon oath before the undersigned (one) of her Majesty's justices of the peace, in and for the said county of . For that the said C. D., did on the day of last, about the hour of ten o'clock, in the night of the same day, feloniously and burglariously break and enter the dwelling-house of A. B., situate at , and feloniously steal, take, and carry away (describe the articles) the property of the said A. B. and that the said E. F. did advise, aid and abet, the said C. D. in the said felony. These are therefore to command you in her Majesty's name, forthwith to apprehend the said C. D., and E. F., and to bring them before (me) or some other of her Majesty's justices of the peace, in and for the said county of to answer unto the said charge so preferred against them respectively, and to be further dealt with according to law.

Given under (my) hand and seal this day of in the year of our Lord, 185 , at in the county of aforesaid. J. S. (L.S.)

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

PROVINCE OF CANADA ;

County of } To all or any of the constables or other
to wit. } peace officers in the county of

Whereas C. D , of stands charged this day upon oath before the undersigned, (one) of her Majesty's justices of the peace in and for the said county of . For that he the said C. D. (stating the offence as above); and whereas G. H.

Accident.—Acquittal.

hath also this day been charged upon oath before me, the said Justice, for that he the said G. H., since the said felony and burglary was committed, hath received, harboured and maintained him the said C. D., in the dwelling-house of him the said G. H., at aforesaid: he the said G. H. well knowing the said C. D. to have committed the said felony and burglary. These are therefore to command you in her Majesty's name, forthwith to apprehend the said G. H., and to bring him before (*me*), or some other of her Majesty's justices of the peace, in and for the said county of to answer unto the said charge, and to be further dealt with according to law.

Given under (my) hand and seal, this day of in the year of our Lord 185 , at in the county of aforesaid. J. P. (L. S.)

ACCIDENT.

By 10 and 11 V. ch. 61, in case of death by the wrongful act, neglect, or default of any party, such party may be sued for damages by the executor or administrator of the deceased party, and the amount divided among the deceased's wife and family, as the jury by their verdict shall find and direct.—See *post* title "*Duel*."

ACCIDENTS OF RAILWAYS.

See "*Railways*."

ACQUITTAL.

And see—"Autrefois Acquit."

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

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

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

But if there was probable cause for the indictment, or where the acquittal arises from the incompetency of a witness, the court will not then permit the prisoner to have

a copy of the indictment.—*R. v. Quick*, 1 *Leach*, 28, *Note (a)*; *R. v. Bevan*, *Ibid* 1; *Ld. Ray.*, 253.

ACTION.

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

By 16 V. c. 180, § 7, no action shall be brought against a justice of the peace for any thing done by him in the execution of his office, unless the same be commenced within six calendar months next after the act complained of § 8, nor until one calendar month at least after a notice in writing of such intended action shall have been delivered to him, or left for him at his usual place of abode, by the party intending to bring such action, or by his attorney or agent, in which said notice, the cause of action, and the court in which the same is intended to be brought shall be clearly and explicitly stated; and upon the back thereof shall be endorsed the name and place of abode of the party so intending to sue; and also the name and place of abode, or of business, of the said attorney or agent, if such notice have

been served by such attorney or agent.—See further on this subject under the title of “*Justices of the Peace.*”

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

To A. B., one of Her Majesty’s Justices of the Peace, acting in and for the County of

SIR,

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

Yours, &c.,

E. F., residing at *City of Toronto*,
Attorney for the said C. D.

Demand on a Constable of perusal and copy of his warrant.
To MR. C. D.

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

Yours, &c.,

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

City of Hamilton.

The like on a Gaoler.

To MR. A. B.

I do hereby, as the attorney for E. F., of _____, &c., according to the form of the statute, &c., (*as before*) demand of

* Or the Court intended.

you the perusal and copy of the warrant of commitment and detainer under which you received into your custody the said E. F. on or about the day of instant. Dated, &c.

Yours, &c.,

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

City of Hamilton.

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

ACTS OF PARLIAMENT.

* By the 41 G. III., c. 11, it is enacted, that the Secretary of this Province shall endorse on every act of the legislature which should pass during the then present and every future session thereof, immediately after the title of such act, the day, month and year, when the same shall have passed, and received the royal assent: and such endorsement shall be taken to be a part of such act, and to be the date of its commencement, when no other commencement shall be therein provided.

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

By the 4 & 5 V. c. 24, § 50, in cases of indictment or summary conviction, the singular number or masculine gender shall be understood to include several matters as well as several persons, and females as well as males, and bodies corporate as well as individuals, unless otherwise provided or repugnant to the act; and forfeitures shall be payable to a body corporate, if the aggrieved party.

A penal statute is to be construed according to its spirit and the rules of natural justice, not according to its very letter.—*Rex v. McIntosh*, Easter *7 W. IV., *Cameron's Digest*, p. 55. See also "*Interpretation Act.*"

ADJOURNMENT.

When a court of sessions of *oyer and terminer*, and gaol delivery breaks up without any *adjournment*, or upon a void one, as being made without the consent of the majority of the commissioners, the commission is determined, if no time be limited for its continuance, as where it is appointed *pro hac vice* only; but if it be granted for a certain time, or, *quamdiu nobis placuerit*, it does not necessarily require

Affidavit.

any adjournment, and may be holden again on a new summons.—2 *Haw. c. 5, § 7.*

AFFIDAVIT.

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

An affidavit ought to set forth the matter of the *fact* only which the party intends to prove by his affidavit, and not to declare the merits of the case, of which the court alone is to judge.—21 *C. 1 B. R.*

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

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

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

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

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

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

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

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

County of _____ } A. B., of _____, in the said County; surgeon,
to wit. } maketh oath and saith, that C. D., of _____,
yeoman, is confined to his house by severe illness, and that this deponent saw the said C. D. this day, and verily believes he is incapable of travelling without manifest danger of his life.
Sworn, &c. A. B.

AFFIRMATION.

See "Oath."

AFFRAY.

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

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

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

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

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

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

Indictment for an Affray. (Archbold.)

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

AGENT.

By 10 & 11 V., c. 10, § 7, if any agent entrusted, as in the

act mentioned, (a) shall contrary to, or without the authority of his principal in that behalf, for his own benefit, in violation of good faith, make any consignment, deposit, transfer, or delivery of any goods and merchandize, or documents of title so entrusted to him as aforesaid, as and by way of a pledge, (*gage*,) lien and security, or shall contrary to or without such authority for his own benefit, and in violation of good faith accept any advance on the faith of any contract or agreement to consign, deposit, transfer or deliver such goods and merchandize, or documents of title aforesaid, every such agent shall be deemed guilty of a *misdemeanor*, and being convicted thereof shall be sentenced to suffer such punishment by fine or imprisonment in the common gaol for any time not exceeding two years, or by both, as the court having jurisdiction in such cases shall award: and every clerk or other person who shall knowingly act and assist in making any such consignment, deposit, transfer or delivery, or in accepting or procuring such advance as aforesaid, shall be deemed guilty of a *misdemeanor*, and being convicted thereof shall be liable at the discretion of the court, to any of the punishments which such court shall award as hereinbefore mentioned.

AGRICULTURAL AND MECHANICAL SCIENCE.

By 20 V., c. 32, § 1, the 16 V., c. 11 is repealed, but all acts thereby repealed, shall remain repealed and the bureau of agriculture, and all agricultural societies, associations and boards of agriculture, incorporated, organised or established under the said act shall continue except as altered or affected by this act.

BUREAU OF AGRICULTURE.

§ 2. To continue attached to one of the public departments, and the head of such department shall be charged with the direction of the said bureau, and be known as the "Minister of Agriculture." § 3. Said minister shall be *ex officio* member of all boards of agriculture; and it shall be lawful for said boards to elect from among themselves a president and vice-president at their first and annual meetings thereafter. § 4. Said minister to receive all applications, descriptions, specifications and models for patents for inventions. § 5. Said minister shall also be a member of the board of registration and statistics in place of the Inspector-General, and shall be chairman thereof, and have charge of the census and

(a) See the act.

statistical returns. § 6. It shall be the duty of said minister to institute inquiries and collect statistics relating to the agricultural, mechanical and manufacturing interests of the province, and to adopt measures for disseminating the same: and shall submit a report of his proceedings to parliament within ten days after the opening of each session. § 7. All Boards of Agriculture and other institutions are required to answer promptly official communications from the Board of Agriculture; and any officer wilfully neglecting to answer shall incur the penalty of £10. § 8. The said minister authorised to appoint persons to inspect the books and accounts of any society receiving government aid in connexion with said Bureau of Agriculture.

BOARDS OF AGRICULTURE.

§ 9. Presidents for the time being of the agricultural associations hereinafter mentioned, and all professors of agriculture in chartered colleges, universities, and other educational institutions, and the chief superintendents of education in Upper and Lower Canada, shall respectively be members *ex officio* of the Board of Agriculture of their locality. § 10. Four members of the said board to retire annually, each seat being vacated every alternate year. The name of such retiring members to be published in the local agricultural journals. § 11. The county agricultural societies, shall at their annual meetings in January, nominate four fit and proper persons to be members of the said boards, and transmit their names to the bureau, and the four persons who shall have been nominated by the greatest number of societies shall be members in the place of those vacating their seats: casual vacancies to be filled up by the Governor. § 12. In case of an equality of votes, the Minister of Agriculture shall decide, and notify the result to the board. § 13. Members of the board to be allowed their actual expenses only in attending regular meetings. Each board may appoint a secretary at a reasonable salary. § 14. The regular meeting of the boards shall be held pursuant to adjournment, or be called by the secretary at the instance of the president or vice-president, or upon the written request of any three members, and five days' notice given. In the absence of the president and vice-president, a chairman to be appointed *pro tem*. Five members to be a *quorum*. § 15. It shall be the duty of the board to receive the reports of agricultural societies, and before granting the certificates hereinafter mentioned, to see that they have complied with the law; to take measures, with the approbation of the minister, to procure and set in operation a model, illustrative,

or experimental farm or farms in their respective localities, and in connexion with any public school, college, or university, or otherwise, and to manage and conduct the same; to collect and establish at Toronto and Montreal, an agricultural museum, and an agricultural and horticultural library; to take measures to obtain from other countries animals of new or improved breeds, new varieties of grain, seeds, vegetables or other agricultural productions; new or improved implements of husbandry, or new machines which may appear adapted to facilitate agricultural operations, and to test the quality, value and usefulness of such animals, grains, seeds, vegetables or other productions, implements or machines, and generally to adopt every means in their power to promote improvement in the agriculture of this province; and said boards shall keep a record of their transactions, and from time to time publish in such manner and form, so as to secure the widest circulation among the agricultural societies, and farmers generally, all such reports, essays, lectures and other useful information as the said boards may procure and adjudge suitable for publication. And if the board shall publish a monthly journal, or adopt the agricultural journals now published, agricultural societies receiving any share of the government grant shall give at least one month's notice of the time and place of holding their exhibitions in such journals. § 16. Said boards shall transmit to the bureau, a copy of their resolutions and by-laws, or other formal proceedings immediately after the adoption thereof: and every resolution, by-law or other proceeding, involving an expenditure exceeding £10, shall not be passed except with the assent of a majority of the members. § 17. Boards incorporated with power to hold land, &c.

BOARD OF ARTS AND MANUFACTURES.

§ 18. Incorporation of "the Board of Arts and Manufactures for Upper Canada." § 19. Incorporation of a similar board for Lower Canada. § 20. Said corporations to consist of the Minister of Agriculture for the time being, (*ex officio*); the professors of and lecturers on the various branches of physical science in all the chartered universities and colleges in Upper and Lower Canada; the chief superintendents in both sections for the time being, (*ex officio*); the president for the time being, and one delegate from each of the Boards of Trade; the presidents of and delegates from each of the incorporated Mechanics' Institutes, or of any incorporated arts associations qualified as hereinafter mentioned, in Upper and Lower Canada, to be chosen annually as hereinafter provided. § 21. Said corporations

empowered to hold real or immoveable property for corporate purposes. § 22. The Board of Trade in each city and town in Upper Canada, authorised at its first meeting in January, annually to elect and accredit one of its members to the Board of Arts, &c., for Upper Canada. § 23. Contains a similar provision with respect to the Boards of Trade in Lower Canada. § 24. Each incorporated Mechanics' Institute in both sections, authorised at its first meeting in January, annually, to elect and accredit to said Board of Arts, &c., one delegate for every twenty members on its roll, being actual working mechanics or manufacturers. Provided that such Mechanics' Institute shall have contributed to the funds of such board, at least one tenth of the government aid to such institute for the year previous. § 25. The auditor shall transmit to the Board of Arts, &c., in March annually, statements of the number of members on the books, and the revenue of each institute, exclusive of provincial aid. § 26. The names of the delegates to be transmitted by the secretary of the institute, to the secretary of the proper board, with affidavit by the secretary of such institute, sworn before a justice, of the names of all the members on the roll, being actual working mechanics or manufacturers, and having paid subscriptions of at least 5s. each to its fund for the last year. § 27. It shall be the duty of the Board of Arts, &c., to take measures with the approbation of the Minister of Agriculture to collect and establish at Toronto and Montreal for the instruction of practical mechanics and artizans, museums of minerals and other material substances and chemical compositions susceptible of being used in mechanical arts and manufactures, with models of works of art, and of implements and machines other than implements of husbandry, and free libraries of reference, containing books, plans and drawings, selected with a view of imparting useful information in connexion with mechanical arts and manufactures, to take measures to obtain from other countries new or improved implements and machines (not agricultural), to test the quality, value and usefulness of the same, and generally to adopt every means in their power to promote improvement in mechanical arts and manufactures. And the Minister of Agriculture may cause duplicates or copies of patented inventions to be placed in the model room, museums or libraries of said Board of Arts, &c. Said boards authorised with the consent of the Minister of Agriculture to establish in connexion with their museums, model rooms or libraries, schools of design for women, on the most approved plan, and furnished and supplied in the most complete and appropriate manner, that the funds at their disposal

may admit of; also to found schools or colleges for mechanics, and to employ competent persons to lecture: and said boards shall keep records of their transactions and publish the same. § 28. Said Board of Arts, &c., authorised to make by-laws, copies of the same to be transmitted to the Bureau of Agriculture. § 29. Said Board of Arts, &c., to meet at Toronto and Montreal, four times a year, viz., on the first Tuesday in January, April, July and October, provided the same be not a holiday, in such case the next day thereafter. Special meetings may be called by the president, or in his absence the vice-president, whenever he may deem it necessary, or upon the requisition of any ten members, in the interval between any two quarterly meetings, upon seven clear days' notice to be given by the secretary of the board. § 30. Each board at its quarterly meeting in January each year, to elect a president, vice-president, and a secretary and treasurer for the ensuing year, appoint a sub-committee of not less than five nor more than nine of their number for the management of affairs. The president and vice-president to be *ex officio* members of such sub-committee, and a majority to be a *quorum*.

AGRICULTURAL ASSOCIATIONS.

§ 31. The members of the Boards of Agriculture and of the Boards of Arts and Manufactures, the presidents and vice-presidents of all lawfully organised county Agricultural Societies, and of all Horticultural Societies, and all subscribers of five shillings annually, shall constitute an agricultural association for that section. § 32. Members of the Board of Agriculture, and of the Board of Arts and Manufactures, and the president and vice-presidents of county societies and Horticultural Societies (or any two members appointed directors instead of its president and vice-president) shall be the directors of such agricultural associations and may elect a

[For conclusion see page 861.]

ALE-HOUSES.

The power of licensing houses of this description was formerly vested in justices of the peace, but is now vested in the municipal authorities, who are by law authorised to make by-laws regulating the same, and imposing duties, &c.

ALIENS.

An alien is one, generally speaking, who is born in a foreign country out of the allegiance of the king.—4 *Bl. Com.* 342.

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

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

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

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

A conveyance in fee to an alien is not void, but he holds for the benefit of the crown, and is entitled, as against all others, until the land is seized into the hands of the Queen on office found; and if a subject be a trustee for an alien, he has the legal estate and the Queen is entitled to the profits; and a person claiming through an alien may have the benefit of the crown; and *semble*, a person claiming lands under a sheriff's deed sold at the suit of an alien, is entitled to recover in ejectment, notwithstanding stat. 5, G. II., it being necessary to take the objection of alienage, if available at all, before execution.—*Cameron's Digest*, p. 5.

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

Various provincial statutes (*a*), have been from time to time passed in favour of aliens domiciled in this province, but as these statutes were limited in their operation with respect to time, it has been deemed expedient by the legislature to pass a general law on the subject, under which aliens now coming into the province, and complying with the requisitions of the

(a) 9 G. IV., c. 21; 1 W. IV., c. 7; 2 W. IV., c. 7; 2 V., c. 20; 4 V., 7; 10, 11 V., c. 112.

act may acquire the rights and privileges of British born subjects.

The statute referred to is the 12 V. c. 197 (a *reserved* act passed the 3rd May, 1849, the royal assent being given thereto the 6th October, 1849, and proclaimed the 23rd November, 1849.)

By this statute, the former act 8 V. c. 107, (in the act called the 9 V. c. 149,) is repealed.

§ 2 enacts, that all aliens who had their settled place of abode in either of the late provinces of Lower or Upper Canada, before the tenth day of February; in the year of our Lord, one thousand eight hundred and forty-one, and who are still resident in this province, shall be, and are hereby admitted to, and confirmed in all the privileges of British birth, and shall be deemed, adjudged, and taken to be, and to have been natural born subjects of her Majesty, to all intents and purposes whatsoever, as if they and every of them had been born in this province, and that the children or more remote descendants of every such person who may be dead, shall be and are hereby admitted to the same privileges which such parents or ancestors, if living, could claim under this act: provided always, nevertheless, that none of such persons (except females) who have not taken the oath or affirmation of allegiance before some of her Majesty's justices of the peace or other person duly authorised by law to administer the same, shall be entitled to the benefit of this act unless they shall take such oath or affirmation before such justice or other person as aforesaid.

§ 3. That all aliens who had their settled place of abode in this province, on the tenth day, of February, in the year of our Lord, one thousand eight hundred and forty-eight, not being of either of the descriptions of persons before mentioned, who shall have resided or shall continue to reside therein or in some other part of her Majesty's dominions, until they shall have been resident inhabitants thereof for the space of seven years continually, without having been during that time stated residents in any foreign country, shall be, and are hereby admitted to all the privileges of British birth, and shall be deemed, adjudged, and taken to be and to have been natural-born subjects of her Majesty to all intents and purposes whatsoever, as if they and every of them had been born in this province: provided always, nevertheless, that none of the persons described in this clause (except females), who have not taken the oath or affirmation of allegiance before some of her Majesty's justices of the peace, or other

person duly authorised by law to administer the same, shall be entitled to the benefit of this act, unless they shall take such oath or affirmation before such justice of the peace or other person as aforesaid.

§ 4. That every alien now residing in, or who shall hereafter come to reside in, any part of this province, with intent to settle therein, who, after a continued residence therein for a period of seven years or upwards, shall take the oaths or affirmations of residence and allegiance (or the oath of affirmation of residence only if a female) and procure the same to be filed of record as hereinafter prescribed, so as to entitle him or her to a certificate of naturalization as hereinafter provided, shall thenceforth enjoy and may transmit all the rights and capacities which a natural-born subject of her Majesty can enjoy or transmit.

§ 5. That every such alien shall take and subscribe the following oath of residence, or being one of those persons who are allowed by the laws of this province to affirm in judicial cases, shall make affirmation to the same effect, that is to say :

Oath of Residence.

“ I, A. B., do swear (*or, being one of the persons allowed by law to affirm in judicial cases, do affirm*) that I have resided seven years in this province, with intent to settle therein, without having been during that time a stated resident in any foreign country. So help me God.”

And every such alien being a male shall also take and subscribe the following oath of allegiance, or being one of those persons who are allowed by the laws of this province to affirm in judicial cases, shall make affirmation to the same effect, that is to say :

Oath of Allegiance.

“ I, A. B., do sincerely promise and swear (*or, being one of the persons allowed by law to affirm in judicial cases, do affirm*) that I will be faithful and bear true allegiance to her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of the Province of Canada, dependent on, and belonging to the said United Kingdom, and I will defend her to the utmost of my power against all traitorous conspiracies and attempts whatever which shall be made against her person, crown and dignity ; and that I will do my utmost endeavour to disclose and make known to her Majesty, her heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against her or any of them ; and all this I do swear without any equivoca-

tion, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or persons whatever to the contrary. So help me God.

Which oath or oaths, or affirmation or affirmations, shall be taken and subscribed by the said alien, and shall be duly administered to him or her, by or before any justice of the peace or any person having *ex officio* the power and authority of a justice of the peace within the city, town, parish, village or township in which the said alien may reside, which said justice of the peace or person having such power as aforesaid, shall thereupon grant unto the said alien a certificate of residence, setting forth that such alien has taken and subscribed the said oath or oaths, or affirmation or affirmations, and (if the fact is so) that such justice or person having such power as aforesaid, has every reason to believe that such alien had been so resident within the province for a period of seven years or upwards; that he or she is a person of good character, and that there exists to the knowledge of such justice or person having such power as aforesaid, no reason why the said alien should not be granted all the rights and capacities of a natural-born British subject.

§ 6. That it shall be lawful for the said alien to present the certificate of residence from the said justice of the peace, or other person as aforesaid, to the court of quarter sessions of the peace, or the recorder's court of the district, county or city within the jurisdiction of which he shall reside in Upper Canada, or to the circuit court in and for the circuit within which he shall reside in Lower Canada, in open court, on the first day of some general sitting thereof, and it shall thereupon be the duty of such court to cause the same to be openly read in such court; and thereupon, if in the interval the facts mentioned in the said certificate of residence shall not be controverted, or any other valid objection made to the naturalization of such alien, it shall and may be lawful for such court, on the last day of such general sitting, to direct that such certificate of residence shall be filed of record in the said court, and thereupon such alien shall be thereby admitted and confirmed in all the rights and privileges of British birth, to all intents, constructions and purposes whatsoever, as if he or she had been born within this province.

§ 7. That every such person shall be thenceforth entitled to receive a certificate of naturalization under the seal of such court and the signature of the clerk thereof, that he or she hath complied with the several requirements of this

act; which certificate of naturalization may be in the following form, or to the like effect, that is to say:

CANADA
Circuit,
or

District of

or

County of

or

City of

To wit :

In the Court of

Whereas A. B., of, &c. (*describing him or her as formerly of such a place in this province, and adding his or her addition*) hath complied with the several requirements of a certain act of the parliament of this province passed in the _____ year of the reign of her Majesty Queen Victoria, intituled, "An Act," (*insert the title of this act*) and the certificate thereof had been this day read in open court, and thereupon, by order of the said court, duly filed of record in the same, pursuant to the directions of the said act; these are therefore to certify to all whom it may concern, that under and by virtue of the said act, the said A. B., hath obtained all the rights and capacities of a natural born British subject within this province, to have, hold, possess and enjoy the same within the limits thereof, upon, from, and after the _____ day of _____ (*the day of filing the certificate of residence*) in the year of our Lord, one thousand eight hundred _____ and this certificate, therefore, is hereby granted to the said A. B., according to the form of the statute in such cases made and provided.

Given under my hand and the seal of the said court, this _____ day of _____ in the year of our Lord, one thousand eight hundred and _____

Signature,

C. D.

Clerk of the Peace,

(*or, Clerk of the Recorder's Court, or Clerk of the Circuit Court, as the case may be.*)

§ 8. that a copy of the said certificate of naturalization may, at the option of the party, be entered and registered in the registry office of any county or division of a county within this province, and a certified copy of such registry shall be sufficient evidence of such naturalization in all courts and places whatsoever.

§ 9. Provided always, and be it enacted, that it shall be lawful for any alien entitled to be naturalized under the provisions of the second or of the third section of this act, to take the oaths or affirmations of residence and of allegiance, and to obtain certificates as aforesaid in the same manner as

aliens entitled to be naturalized under the provisions of the fourth section of this act only, with the same effect to all intents and purposes.

§ 10. That any woman married, or who shall be married to a natural born British subject, or person naturalized under the authority of this, or any other, or former act either of this province or either of the late provinces of Lower or Upper Canada, shall be deemed and taken to be herself naturalized, and to have all the rights and privileges of a natural born British subject.

§ 11. That the said justice of the peace, or other person as aforesaid, for administering the oath or oaths or affirmation or affirmations above mentioned, shall be entitled to recover and receive from the person to whom the same may be administered, the sum of one shilling and three pence, and no more; and that the clerk of the peace or clerk of the recorder's court, or clerk of the circuit court shall, for reading and filing the certificate of residence, and preparing and issuing the certificate of naturalization under seal of the court, be entitled to recover and receive from such person, the sum of one shilling and three pence, and no more; and that the registrar of the county, shall, for recording the said last mentioned certificate, be entitled to recover and receive from such person, the sum of one shilling and three pence, and a further sum of one shilling and three pence for every search and certified copy of the same, and no more.

§ 12. That from and after the passing of this act, every alien shall have the same capacity to take, hold, possess, enjoy, claim, recover, convey, devise, impart and transmit real estate in all parts of this province, as natural born subjects of her Majesty, in the same parts thereof respectively; provided always, that nothing herein contained shall alter, impair, or affect, or be construed to alter, impair, or affect in any manner or way whatsoever, any right or title legally vested in or acquired by any person or persons whomsoever previous to, or at the time of the passing of this act.

§ 13. Provided always, and it is hereby declared, that the privileges of naturalization imparted by his act to the several classes of persons herein mentioned, are imparted to such persons respectively, on the respective terms and conditions herein stated and set forth, and to be by such persons exercised and enjoyed within the limits of this province, according to the true intent and meaning of an act passed in the parliament of the United Kingdom of Great Britain and

Ireland, in the tenth and eleventh years of her Majesty's reign, and intituled, *An Act of Naturalization of Aliens.*

§ 14. That nothing in this act contained shall be taken to repeal or in any manner affect or interfere with a certain act of the legislature of Upper Canada, passed in the fifty-fourth year of the reign of his late Majesty King George the Third, intituled *An Act to declare certain persons therein described Aliens, and to vest their estates in his Majesty*, or any proceedings had under the said act.

§ 15. That any person who shall wilfully swear falsely or make any false affirmation under the authority of this act, before any justice of the peace, or before any person having *ex officio* the power and authority of a justice of the peace, as aforesaid, shall be deemed guilty of wilful and corrupt perjury, and every such person shall, on conviction thereof, in addition to any other punishment authorised by law, forfeit all the privileges and advantages which he or she would otherwise by making such oath or affirmation have been entitled to under this act, but the rights of others in respect to estates derived from, or held under him or her, shall not thereby be prejudiced, excepting always such others as shall have been cognizant of the perjury at the time the title by which they claim to hold under him or her was created.

ALLEGIANCE.

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

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

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

Local allegiance is such as is due from an alien or stranger born, for so long a time as he continues within the king's dominions and protection; and this ceases the instant such

stranger transfers himself from this kingdom to another.—1 *Bl. Com.* 370.

Oath of Allegiance.

I, A.B., do sincerely promise and swear, that I will be faithful and bear true allegiance to her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this province dependant on and belonging to the said kingdom, and that I will defend her to the utmost of my power against all traitorous conspiracies or attempts whatever which shall be made against her person, crown and dignity; and I will do my utmost endeavour to disclose and make known to her Majesty, her heirs or successors, all treasons or traitorous conspiracies and attempts which I shall know to be against her, or any of them; and all this I do swear, without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or power whatsoever to the contrary—So help me God.

By 13 & 14 V. c. 18, § 3, it is enacted that the above form of oath and no other shall be that of the oath of allegiance to be administered to and taken by all persons in this province who, either of their own accord or in compliance with any lawful requirements made on them to take the oath of allegiance to her Majesty, or in obedience to any statute, shall be willing or desirous to take the same; and the power to tender or administer such oath is hereby declared to be vested in all magistrates and other officers now lawful authorised, or hereafter to be lawfully authorised, either by virtue of their office or by special commission from the crown for that purpose, to administer the oath of allegiance in this province or any part thereof.

AMENDMENT.

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

See also title "*Indictment.*"

AMNESTY.

By 12 V. c. 13, a free pardon is granted to all persons in regard to the rebellion in 1837 and 1838; and by § 2, all

lands and tenements, goods and chattels, forfeited to the crown, are restored to the offender, excepting those actually seized and sold under lawful authority, in consequence of any such forfeiture or attainder, by any public officer or minister of justice; and by the same clause, *corruption* of blood, and forfeiture wrought by such attainder, are taken away.

ANATOMY.

By 7 V. c. 5, entitled "An Act to regulate and facilitate the Study of Anatomy," § 1. Enacts that the bodies of persons found dead publicly exposed, or who immediately before their death shall have been supported in and by any public institution receiving aid from the provincial government shall be delivered up as hereinafter mentioned, unless the person so dying shall otherwise direct: or unless such bodies be claimed by *bonâ fide* friends or relations for interment. § 2. Persons qualified to receive such unclaimed bodies shall be public teachers of anatomy or surgery, or private medical practitioners having three or more pupils. But any public medical school in the locality to have a preferable claim. § 3. The Governor authorised to appoint inspectors of anatomy in certain places. § 4. Their duties. § 25. The coroner presiding at the inquest on any body found publicly exposed and unclaimed shall notify the local inspector of anatomy if there be one, otherwise cause the body to be interred as heretofore. § 6. Superintendents of public institutions shall notify in like manner such inspector of anatomy. § 7. A register to be kept by such superintendents of the bodies so delivered up. § 8. Emoluments of the inspectors fixed. § 9. Medical practitioners availing themselves of this act to give security for the decent interment of the remains.

By 20 V. c. 28, § 30, bodies of convicts in the penitentiary and unclaimed may be delivered up to the inspector of anatomy.

APPEAL.

Formerly, an appeal against a conviction lay in cases only where it was expressly given by statute; but the law in this respect has been altered, and now appeal lies in all cases, under the 13 & 14 V. c. 54, which enacts as follows, viz:

That from and after the passing of this act, any person, complaint or respondent who shall think himself aggrieved by any conviction or decision before any one or more justices of the peace, mayor or police magistrate, in any matter cognizable by them, not being a crime, may appeal at the next court of general

quarter sessions of the peace which shall be holden not less than twelve days after the day of such conviction or decision, for the county wherein the cause or complaint shall have arisen: *Provided* such person shall give to the other party, or leave with the convicting magistrate for him, a notice in writing of such appeal, and of the cause and the matter thereof, within *four* days after such conviction or decision, and eight days before such sessions, and shall also either remain in custody until such sessions, or enter into a recognizance with two sufficient sureties before a justice of the peace, conditioned to appear at the said sessions and try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given and recognizance entered into, the justice before whom the same shall be entered into shall liberate such person if in custody, and the court at such sessions shall hear and determine the matter of such appeal, and make such order therein, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing the judgment. § 2. The court of quarter sessions, at the request of either appellant or respondent, shall impanel a jury to try the matter on which such decision may have been made, and administer to such jury the following oath:

“ You do solemnly swear that you will well and truly try the matter of the complaint of C. D. against E. F., and a true verdict give, according to the evidence—So help you God.”

And the court, on the finding of such jury, shall thereupon give such judgment as the circumstances of the case may require; not, however, to exceed the amount of penalty or period of imprisonment that might be imposed or awarded under any law giving cognizance to the said justices, mayor or police magistrate. § 3. Any appellant may abandon the appeal by giving the opposite party notice of such intention in writing *six* days before the sessions; and thereupon such convicting justice may tax the respondent's additional costs (if any), which shall be added to the original costs, and proceed on the original conviction or decision in the same manner as if no appeal had been had thereon.

By 16 V., c. 178, § 26, reciting that doubts might exist whether under the above statute (13, 14 V., c. 54) appeals would lie from convictions under by-laws of municipalities, it is enacted, that in all cases of complaints against any person for committing any offence against any by-law of any municipal corporation in Upper Canada, all decisions, convictions and orders made by any justice of the peace, or any person by law authorised to act in that capacity, shall be

subject to an appeal in the manner, and subject to the provisions prescribed in the above recited act.

It is also enacted that the several forms in the schedule to this act contained, or forms to the like effect, shall be deemed good, valid and sufficient in law.

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

See title "*Summary Conviction,*" for the forms of notices.

Appeal in Criminal Cases.

By 20 V. c. 61, § 1, any person convicted before any court of Oyer and Terminer and General Gaol Delivery, or Quarter Sessions, of any treason, felony or misdemeanor, may apply for a new trial to either of the superior courts of common law, where such conviction has taken place before a judge of either of such courts, or to such court of quarter sessions, when the conviction has taken place at such sessions, upon any point of law or question of fact, as in the case of any civil action. § 2. If such appeal be made to the quarter sessions, and a new trial refused, the party convicted may then appeal to one of the superior courts upon a case to be prepared by such party, and signed by the recorder or chairman: and such case shall be transmitted by the court to one of the said superior courts on or before the first day of the term next after; and such superior court shall have full power to hear and finally determine such appeal, and affirm such conviction, or order a new trial, or make such order as justice may require. § 2. In case of conviction at any court of oyer and terminer or gaol delivery such application for a new trial must be made to such superior court in or before the last day of the first week of the term, next succeeding such court of oyer, &c., and upon such application, the court shall make such order either for affirming the conviction or granting a new trial, or otherwise, as the justice of the case may require. § 4. If the superior court shall affirm such conviction, the party convicted may appeal to the court of error and appeal, but not unless allowed by such superior court, or two of the judges thereof in term or vacation, within six calendar months after such conviction affirmed, unless otherwise ordered by such court of error and appeal. § 5. No sentence of death in any case of capital felony, shall be passed to take effect until the expiration of the term next succeeding the sitting of the court, at which such sentence of death shall be passed. § 6. The judges of

the superior courts and of the said court of error and appeal authorised to make rules to carry out the provisions of this act. § 7. This act not to affect the 14, 15, V., c. 13, except in so far as the same may be inconsistent.

APPRENTICES.

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

The 5 Eliz. c. 4, commonly called the Statute of Apprenticeship, provides and enacts, that all indentures for a less term than seven years shall be void. But now by statute 14 & 15 V. c. 11, a shorter term is legal.

It has been held not an indictable offence to entice away an apprentice from his master, on the ground that it is not an act of a public nature, but a mere private injury, and therefore the proper subject of an action.—*Rex v. Daniel*, 6 Mod. 182; *Rex v. Collingwood*, 1 Salk. 380.

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

It is an indictable offence to refuse or neglect to supply necessaries to a child, a servant, or apprentice, whom a person is bound by duty or contract to provide for.—*R. v. Friend*, Russ. & Ry. 20.

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

Differences between the Master and Apprentice.

The master is allowed by law, with moderation, to chastise his apprentice.—*Dalt.* c. 68.

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

By 5 Eliz. c. 4, § 35, if any master shall misuse or evil entreat his apprentice, or the apprentice shall have any just

(a) See also *post* title "Embezzlement."

cause to complain, or the apprentice do not his duty to his master, then the master or apprentice being grieved and having cause to complain, shall repair unto *one* justice of the peace within the county, or to the mayor or other head officer of the city, town corporate, market town, or other place where the said master dwelleth, who shall by his wisdom and discretion take such order and direction between the master and his apprentice as the equity of the case shall require.

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

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

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

(a) By 20 G. II. c. 19, § 3, it shall and may be lawful to and for any *two* or more justices of the peace of the county, riding, city, liberty, town corporate or place where such master or mistress shall inhabit, upon any complaint or

(a) It is questionable whether this and the following statutes, 6, G. 3, c. 25, have not been virtually repealed or superseded by provincial statute 14, & 15 V. c. 11.

application by any apprentice, upon whose binding out no larger a sum than *five pounds* of lawful British money was paid, touching or concerning any misuseage, refusal or necessary provision, cruelty or other ill-treatment of or towards such apprentice, by his or her master or mistress, to summon such master or mistress to appear before such justices at a reasonable time, to be named in such summons; and such justices shall and may examine into the matters of such complaint, and upon proof thereof made upon oath to their satisfaction, (whether the master or mistress be present or not, if service of the summons be also upon oath proved,) the said justice may discharge such apprentice by warrant or certificate under their hands and seals, for which warrant or certificate no fee shall be paid.

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

By § 5, provided, that if any person or persons shall think himself, herself or themselves aggrieved by such determination, order or warrant, of such justice or justices as aforesaid, (save and except any order or commitment,) he, she or they may appeal to the next general quarter sessions of the peace to be held for the county, riding, liberty, city, town corporate, or place where such determination or order shall be made, which said next general quarter sessions is hereby empowered to hear and finally determine the same, and to give and award such costs to any of the respective persons, *appellant* or *respondent*, as the said sessions shall judge reasonable, not exceeding *forty shillings*; the same to be levied by distress and sale.

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

By 6 G. III. c. 25, if any apprentice (except such whose master shall have received with such apprentice the sum of *ten pounds*) shall absent himself from his master's service before the term of his apprenticeship shall be expired, every

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

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

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

Upon these acts Mr. Chitty, in his treatise on the law relative to apprentices, observes, that a more extensive power is given to the sessions than to justices in the first instance; that under the statute 5 Eliz. c. 4, *one justice* is only constituted a mediator, and has no power to proceed unless the master agree to be bound by his determination, and if he do not, the only course is to resort to the *sessions*; but if the master agree, though the apprentice do not, the magistrate may, by order under his hand and seal, direct him to be discharged, for no option is given by the statute to the apprentice, but only to the master.

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

Besides the power of *discharging*, the sessions have, by the 35 § of 5 Eliz. c. 4, power to cause such *due correction and punishment* to be ministered unto the apprentice as they may

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

Proceedings at Sessions under 5 Elizabeth.

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

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

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

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

There is no power to discharge for sickness, as, "where the apprentice was lame and in the surgeon's opinion incurably inflicted," for the master takes him for better or worse, and is to provide for him in sickness and in health.—1 *Str.* 89; *Bott.* 574.

The order must be under the hands and seals of four justices, and enrolled as the act directs, or the superior courts will set it aside.—1 *Saund.* 316, n. 5; 2 *Salk.* 470; 1 *Bott.* 572; 1 *Str.* 99.

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

It has been decided and settled, that the justices have power to order restitution of the premium received with the apprentice, or such part of it as they may think fit, as an incident to their authority to discharge.—1 *Saund.* 313, n. 3, cites 1 *Salk.* 67, 68; 2 *Salk.* 481, S. C.; *Skin.* 108; 1 *Bott.* 571, 576, acc.; 1 *Str.* 79, contra, and see the proceedings in 2 *Bernard K. B.*, 244, 296, and *Chitty on App. Laws*, 107.

If against the Master.

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

Proceedings under Provincial Statute.

By 14 & 15 V. c. 11, entitled *An Act to amend the law relating to Apprentices and Minors.*

Whereas there is no statute in force in that part of this province called Upper Canada, to provide for binding apprentices for a less term than seven years; and whereas it would promote the general interest of society if shorter terms of apprenticeship were made legal, and the law relating to apprentices more clearly defined: be it therefore enacted, &c., that from and after the passing of this act, it shall be lawful for any parent to, guardian, or other person having the care or charge of any minor, not under the age of fourteen years, with the consent of such minor, to put and bind the same as an apprentice by written indenture, to any master mechanic, farmer, or other person carrying on any trade or calling for any term not to extend beyond the minority of such apprentice.

§ 2. That in any city or incorporated town, it shall be lawful for the mayor, recorder, or police magistrate, and in any county or union of counties, for the chairman of and at any court of general quarter sessions of the peace, to put and bind as aforesaid, to any master mechanic, farmer or other person as aforesaid, with the consent of such person, and with the consent of the minor, any minor who may be an orphan, or who may be deserted by his or her parents or guardian, or whose parents or guardian may for the time be committed to any common gaol or house of correction, or any minor who may be dependent upon any public charity or support: and such apprentice, and the master of such apprentice shall severally be held in the same manner as if such apprentice had been bound by his or her parent.

§ 3. That if any master of any such apprentice shall die, such apprentice shall by act of law, be transferred to the party, if any such there be, who shall continue the establishment of the deceased master, and such party shall hold such apprentice upon the same terms as his master if alive would have done, and any master may legally transfer his apprentice to any person competent to receive or take any apprentice.

tice; provided always, that no master shall transfer his apprentice except to another carrying on the same kind of business as himself.

§ 4. That every master shall provide suitable board, lodging and clothing, or such equivalent therefor as may be mentioned in the indenture, to his apprentice during the term of his apprenticeship, and shall also properly teach and instruct, or cause him to be taught and instructed in the art and mystery of his trade or calling.

§ 5. That every apprentice shall, during the term of his apprenticeship, faithfully serve his master, shall obey all lawful and reasonable commands, and shall not absent himself from his service, day or night, without his consent.

§ 6. That any justice of the peace, mayor, or police magistrate, shall have power, on complaint made before him on oath, by any apprentice against his master for any refusal of necessary provisions, misusage, cruelty or ill-treatment, after having duly summoned such master to appear before him to answer to the complaint, to hear and determine such complaint, and on conviction to levy such fine on the offender not exceeding the sum of five pounds currency, as to such justice, mayor, or police magistrate may seem meet, and to issue distress to collect such fine and the necessary costs, and in default of satisfaction of such distress, to imprison the offender in any common gaol for a term not exceeding one month. And any of the said justices, mayor, or police magistrate shall have power also, on complaint of any master against his apprentice for refusal to obey his commands, for waste or damage to property, or for any other improper conduct, to cause such apprentice to come before him, and to hear and determine such complaint, and on conviction, to order such apprentice to be imprisoned in any common gaol or house of correction for any time not exceeding one month.

§ 7. That if any apprentice shall absent himself from his master's service or employment before the time of his apprenticeship shall be expired, he shall at any time thereafter, wherever he shall be found in this province, be liable and may be compelled to serve his master for so long a time as he shall have so absented himself from his service, unless he shall make satisfaction to his master for the loss he shall have sustained by his absence from his service. And in case such apprentice shall refuse to serve as hereby required, or to make such satisfaction to his master as aforesaid, or in case any such apprentice refuse to obey the lawful commands of his master, or in any other way or manner refuse to perform his duty to his master, or neglect to perform the

same, such master, or his overseer or agent, may complain on oath to any justice of the peace, mayor, or police magistrate, either in the county, city or town where such master resides, or in any county, city or town where such absconding apprentice may be found; and any such justice, mayor, or police magistrate may, by warrant under his hand and seal, cause such apprentice to be apprehended and brought before him, or some other justice of the peace, and upon hearing the complaint, may determine what satisfaction shall be made by such apprentice to his master; and in case such apprentice shall not give or make such satisfaction immediately, or if the satisfaction be of such a nature as not to allow of immediate performance, give sufficient surety to make such satisfaction, then in either case it shall be lawful for such justice, mayor, or police magistrate to commit such apprentice to the common gaol, or house of correction of such county, city or town, for any time not exceeding three months: provided always, that such imprisonment shall not release such apprentice from his obligation to make up his lost time to his master as aforesaid: and provided also, that where such apprentice shall not have left that part of this province called Upper Canada, or having left it, shall return thereto, such master shall not proceed under this act against such apprentice, except within three years next after the expiration of the term for which such apprentice shall have contracted to serve, or next after such his return, as the case may be.

§ 8. That any person who shall knowingly harbour or employ any absconding apprentice, shall be liable to pay to the master of such apprentice the full value of such apprentice's labour, which value shall be deemed and taken to be the value which such master would have received from the labour and service of such apprentice if he had continued faithfully in his service, which may be recovered in any court having jurisdiction where such apprentice may be employed, or where his master may reside.

§ 9. That if any apprentice shall become insane, or be convicted of any crime of the degree of felony, or be sentenced to the provincial penitentiary, or abscond, his master may avoid the indenture of apprenticeship, from the time he shall give notice in writing of his intention to do so to the other parties to the indenture, either by serving them with such notice or copy thereof, or by inserting the same in some newspaper of the county or city where such master's establishment is situated, or in the *Canada Gazette*: Provided always, such master make such election within one

month after the happening of the event upon which such right of election arises, but not otherwise.

§ 10. That the provisions of a certain act of the parliament of this province, passed in the session thereof held in the thirteenth and fourteenth years of the reign of our sovereign lady Queen Victoria, intituled, *An Act to extend the right of appeal in certain cases in Upper Canada*, shall be held to extend and apply to all cases arising under this act, or having any reference thereto.

§ 11. That nothing in this act shall be construed to deprive the court of quarter sessions of primary jurisdiction over offences committed against this act, but that whenever the said court of quarter sessions shall be called upon to adjudicate in any matter or case arising under this act, in addition to the powers now possessed by such court, it shall have power and discretion in cases where it shall appear necessary for the full and perfect administration of justice, to annul any apprenticeship, and compel the parties to the indenture of apprenticeship to deliver the same up to be cancelled, and make such further order as the circumstances may require.

§ 12. That all fines imposed and collected under this act shall be paid to the chamberlain of the city, or to the treasurer of the county or town respectively, where the offence was committed.

§ 13. That the word "master," when it occurs in this act, shall include any person or number of persons, male or female, carrying on business singly or in co-partnership; and words importing the singular number or masculine gender, shall include several persons, and males as well as females, unless there be something in the subject inconsistent with such interpretation.

§ 14. That any minor over the age of sixteen years having no parent or legal guardian, or who shall not reside with his parent or guardian, who shall, after the passing of this act, enter into any engagement written or verbal to perform any service or work, shall be subject to the same legal provisions, and have the same benefit as if such minor had been of legal age at the time of making such agreement.

§ 15. That this act shall extend only to Upper Canada.

The forms found under the title "*Summary Conviction*" may be used in proceedings under this act.

Common form of Indenture of Apprenticeship.

This Indenture witnesseth, that A. B. of the age of _____ years, the son of B. C. of the township of _____ in the county

of _____, yeoman, by and with the consent of his said father, doth put himself apprentice to C. D. of the city of Toronto, shoemaker, to learn his art, and with him, after the manner of an apprentice, to serve, from the day of the date of these presents, unto the full end and term of _____ years from thence next following, to be fully complete and ended; during which term the apprentice his master faithfully shall serve, his secrets keep, his lawful commands every where gladly do: he shall do no damage to his said master, nor see it to be done of others, but to his power shall let or forthwith give warning to his said master of the same: he shall not waste the goods of his said master, nor lend them unlawfully to any: he shall not commit fornication nor contract matrimony within the said term: he shall not play at cards, dice tables, or any other unlawful games, whereby his said master may have any loss with his own goods or others, during the said term, without license of his said master: he shall neither buy nor sell: he shall not haunt taverns or play houses, nor absent himself from his said master's service day or night, unlawfully, but in all things as a faithful apprentice he shall behave himself towards his said master and all his, during the said term. And the said D. C. in consideration of the faithful services of the said apprentice, and of the sum of £ _____ of lawful and current money of the province of Canada, to him in hand paid by the said B. C. at or immediately before the execution hereof, the receipt whereof is hereby acknowledged, his said apprentice in the art of a shoemaker which he useth, by the best means that he can, shall teach and instruct, or cause to be taught or instructed, finding and providing unto the said apprentice sufficient meat, drink, lodging and all other necessaries, during the said term, and moreover, (here add any special contract for wages, in case any are to be paid to the apprentice), and for the true performance of all and every the said covenants and agreements, each of the said parties bindeth himself unto the other, and others of them firmly by these presents. In witness whereof, the parties above named to these indentures interchangeably have put their hands and seals, at the city of Toronto aforesaid, the _____ day of _____ in the year of our Lord 18 _____

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

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

PROVINCE OF CANADA:

County of _____, }
to wit: } To the Constable of the Township of _____.

Whereas complaint and information hath been made unto me _____, one of her Majesty's justices of the peace in and for the said county, by A. B., apprentice to C. D., of _____, in

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

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

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

PROVINCE OF CANADA:

County of , }
to wit: } To the Constable of .

Whereas complaint and information hath been made unto me , one of her Majesty's justices of the peace in and for the said county, C. D. of , in the said county, shoemaker, that A. B., now being an apprentice to him the said C. D., is negligent, stubborn, disorderly (*or as the case may be*), and doth not his duty to him his said master. These are, therefore, to command you to summon the said A. B. to appear before me at , in the said township, on the day of at the house of . in the afternoon of the same day, to answer the said complaint, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal, &c.

Form of Recognizance to appear at the Sessions.

See the usual form—title "*Recognizance.*"

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

Taken and acknowledged, &c.

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

County of , }
to wit: } At a general quarter sessions of the peace,
day of } holden at , in and for the said county, the
in the year of the reign of our Sovereign
Lady Victoria, by the grace of God, of the United Kingdom of
Great Britain and Ireland, Queen, defender of the faith, and so
forth, before justices of our said Lady the Queen, assigned
to keep the peace in the said county, and also to hear and de-

termine divers felonies, trespasses and other misdemeanors in the said county committed, and of the quorum—it is ordered as followeth :

Upon the petition of A. B., apprentice to C. D., of in the said county, shoemaker, to be relieved upon certain neglects of the said master in instructing him in his trade, and in misusing and evil entreating the said apprentice by cruel punishment (*or as the case may be*). And the said master having likewise appeared, upon his recognizance taken before J. P., Esquire, one of the said justices, to answer to the complaint of the said petitioner, and having proved nothing whereby to clear himself of the said complaint; but on the contrary, the said A. B. having given full proof of the truth of the said complaint, to the satisfaction of the said court, we therefore whose hands and seals are hereunto set, being four of the said justices, and of the quorum, do hereby order, pronounce and declare, that the said apprentice shall be, and is hereby discharged and freed from his said apprenticeship. And this is to be a final order betwixt the said master and apprentice, any thing in their indenture of apprenticeship, or otherwise to the contrary notwithstanding. Given under our hands and seals, the day and year first above written.

Assignment of an Apprentice.

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

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

cause to be taught, instructed and informed, as much as thereunto belongeth, or in anywise appertaineth, and shall also, during the said term, find and allow unto the said A. P. sufficient meat, drink, apparel, washing, lodging, and all other things needful or meet for an apprentice.

In witness, &c.

APPROVERS.

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

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

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

And see *post* title "*King's Evidence.*"

ARBITRATION.

By 9 & 10 W., c. 15, § 1, all merchants and others, desiring to end any controversy (for which there is no remedy but by personal action or suit in equity) by arbitration, may agree that their submission of the suit to the award of any persons shall be made a rule of her Majesty's courts of record,

and may insert such their agreement in their submission, or the condition of the bond or promise; and upon producing an affidavit of such agreement, and upon reading and filing such affidavit in court, the same may be entered of record, and a rule shall be thereupon made, that the parties shall submit to, and finally be concluded by such arbitration; and in case of disobedience thereto, the party shall be subject to all the penalties of contemning a rule of court, and process accordingly; which shall not be stopped by any order, &c. of any other court, either of law or equity, unless it appear on oath that the arbitrators or umpire misbehaved themselves, and that such award was corruptly procured.

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

The form of an Agreement.

Articles of agreement entered upon this day of 18 , between A. B. of , of the one part, and C. D. of , of the other part. Whereas (*here state the subject in dispute, and that an action is now pending in the Court of Q. B.*) And whereas the said A. B. and C. D., for the purpose of putting an end to all controversy touching the matters in question, have respectively agreed to refer all questions, differences and disputes whatsoever, now pending in the said matters, (*and if an action is pending, "also by whom, to whom, and in what manner, the costs of all the parties in such cause or suit shall be paid"*) to the consideration, judgment and arbitrament, and final award of , being a person indifferently named and chosen by the parties hereto, as an arbitrator in the premises; and further, that the said reference and submission shall and may, in pursuance of the statute in that behalf made and provided, be made an order of her Majesty's said court of Queen's Bench, if the said court shall think fit to order the same. Now these presents witness, that for the consideration and purposes aforesaid, it is hereby declared and agreed upon, by and between the said parties to these presents, that they the said parties hereto, and each of them, their and each of their heirs, executors and administrators, on his and their respective parts, shall and will well and truly stand to, abide by, perform, fulfil and keep, the order, arbitrament, final determination, and award of the said the arbitrator so as aforesaid indifferently named and chosen by them the said parties hereto, to adjudge, arbitrate, determine, order and award between them, of and concerning all questions, titles, controversies, differences and disputes, now pending or subsist-

ing between them in the premises, and also by whom and in what manner, and to whom the costs in the said suit are or ought to be paid, so as the said arbitrator shall make such his order, arbitrament, final determination and award in writing, under his hand and seal, ready to be delivered to the said parties, or such of them as shall require the same, on or before the day of next ensuing the date of these presents. And it is hereby agreed by and between the said parties hereto, that no action at law or suit in equity, shall be commenced or prosecuted by any or either of them against the said , for or on account of his award, to be made pursuant to this agreement.

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

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

The Award.

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

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

In witness whereof, I have hereunto set my hand and seal, the day of , 18 .

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

(a) The arbitrator may award otherwise, as he may think proper, and award either party to pay the whole.

ARRAIGNMENT.

The arraignment of a prisoner consists in calling him to the bar by his name, and commanding him to hold up his hand, in order to identify his person, reading over distinctly the indictment to him, that he may understand the charge, and demanding of him whether he is "guilty" or "not guilty." The practice formerly was to ask him, in addition, how he would be tried—to which the answer was—"by God and my country." But now, by 4 & 5 V., c. 24, § 14, if any person whatsoever, being arraigned upon an indictment for treason, felony or piracy, shall plead thereto a plea of "not guilty," such person shall by such plea, without any further form, be deemed to have put himself or herself upon the country for trial, and the court shall, in the usual manner, order a jury for the trial of such person accordingly.

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

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

ARREST.

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

Arrest by Warrant.

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

A justice may grant a warrant in all cases where he has a jurisdiction over the offence, in order to compel the person accused to appear before him.—12 *Co.* 130; 2 *Haw.* 34; *Bane v. Methuen*, 2 *Bing.* 63.

Thus a warrant may be granted in all treasons, felonies and breaches of the peace, and also for all such offences as a

justice has power to punish by statute.—*Ibid.* So a justice may grant a warrant against an offender charged on oath with having published a *libel*, and compel him to find sureties.—*Butt v. Conant*, 1 *Brad. & B.* 548.

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

But no warrant should in any case be granted without an examination upon oath of the party requiring it, as well to ascertain that there is a felony or other crime actually committed, as also to prove the cause and probability of suspecting the party against whom the warrant is prayed.—2 *Hale*, 100.

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

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

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

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

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

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

The warrant of a justice of the peace in one county must be backed, that is, signed by a justice of the peace in another, before it can be executed in the latter county; and see 23 *G. II.*, c. 25, and 24 *G. II.*, c. 55, also 16 *V. c.* 178, § 3, and 16 *V. c.* 179, § 7.

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

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

Arrest without Warrant.

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

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

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

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

And if one menace another to kill him, and complaint be made to the constable forthwith, the constable may (in order to avoid the present danger) arrest the party, and detain him till he can conveniently bring him to a justice of the peace; and this on the ground that it is the duty of the officer to

prevent a probable felony, (2 *Hale*, 88; or, according to *Dalton*, c. 116, § 3) even a probable battery or assault.

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

By 4 & 5 *V.*, c. 25, § 55, any person found committing any offence punishable by indictment, or upon summary conviction under this act, may be apprehended without a warrant by any peace officer, or the owner of the property. The 4 & 5 *V.*, c. 26, § 28, contains a similar provision for offences under that act.

By private persons.

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

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

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

By 18 *V.*, c. 92, § 40, (the criminal law amendment act) it is enacted that it shall be lawful for any person whatsoever to apprehend any person who shall be found committing any offence against the provisions of this act, or any indictable offence in the night, and to convey him, or deliver him to some constable or other person in order to his being conveyed as soon as conveniently may be, before a justice of the peace, to be dealt with according to law.

The manner of making an Arrest.

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

But otherwise, if the officer and his business be known.—*Mackally's case*, 9 *Co.* 59; *Pew's case*, *Cro. Car.* 183. And this will apply as well to a special bailiff as to a known officer.—2 *Russ.* 787.

After a due notification to the party, a bailiff *juratus et cognitus* (sworn and known) acting in his own district, need not shew the warrant by which he is constituted bailiff—1

Hale, 458, 461, 583; 9 *Co.* 69; *Gordon's case*, 1 *East. P. C.* 315: or, as it seems, the particular warrant directed to him to execute.—1 *East. P. C.* 315.

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

If a constable has no authority, a notification of his authority becomes more essential. In this case, it seems that the production of his *staff* of office, or any other known ensign of authority, will be sufficient.—1 *Hale*, 406, *et seq.*; *Fost.* 310; *Kel.* 66, 115; 1 *Russ.* 738.

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

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

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

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

Where one is *known* to have committed a treason or felony, or to have given another a dangerous wound—then, if pursued by an officer, or even a *private person*, with or without warrant, doors may be broken to apprehend him.—1 *Hale*, 459; 2 *Haw. c.* 13, § 7; *Fost.* 320.

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

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

Or, on the warrant of a justice for *levying a penalty* on a conviction grounded on any statute, which gives the whole

or any part of such penalty to the king.—2 *Haw. c. 14*, § 5. But in this case the officer, if required, must shew the warrant, and suffer a copy to be taken.—27 *G. II.*, c. 20.

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

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

So wherever a person *escapes* from a lawful arrest, and shelters himself in a house, the officer may break open doors to retake him, whatever the cause of arrest may have been.—2 *Haw.* 78. But if it be upon a fresh pursuit, the officer (it seems) should have a warrant.—1 *East. P. C.* 324.

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

What is to be done after making an Arrest.

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

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

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

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

For forms of warrants see "*Indictable Offences*," "*Summary Conviction*."

ARSENALS.

See "*King's Stores*."

ARSON.

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

By Statute.

The statutes relating to this offence are the 23 H. VIII., c. 1; 25 H. VIII., c. 3; 4 & 5 *Ph. M.*, c. 4; 22 & 23 C. II., c. 7; all of which are now obsolete.

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

And now by stat. 4 & 5 V., c. 26, § 2, whosoever shall unlawfully and maliciously set fire to any dwelling-house, any person being resident therein, shall be guilty of felony, and being convicted thereof shall suffer death. § 3. Whosoever shall unlawfully and maliciously set fire to any church, chapel, or meeting house for religious worship; or any house, out-house, ware-house, office, shop, mill, malt-house, hop-oast, barn or granary, or to any building or erection used in carrying on any trade or manufacture or any branch thereof, whether the same or any of them shall then be in the possession of the offender, or in the possession of any other person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. § 17. Whosoever shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, peat, coal, charcoal, or wood, or any steer of wood, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

By 10 & 11 V., c. 5, § 1, destroying or damaging any dwelling house by the explosion of gunpowder, or other explosive substance, is made felony.—See *post* title "*Explosive Substance.*"

By 12 V., c. 20, setting fire to any school-house, lecture-room, seminary of learning, college, or building used for the purpose of education, or any village, town or city hall, or to

any railroad station house, steam or fire-engine house, or toll-booth, or any other building used or employed as a mechanics' institute or as a public library, or to any hall or building used by any body or society of persons by whatever name or designation they may be known, and whether they are associated for educational, philanthropic or benevolent purposes, or for any other lawful purpose, or to any museum or repository of curiosities, shall be felony, and the offender liable to imprisonment in the penitentiary for his natural life, or for any term not less than three years, or to imprisonment in any other prison for any term not exceeding two years.

By 18 V., c. 92, § 34, if any person shall wilfully and maliciously set fire to any station-house, engine-house, warehouse, or other building belonging or appertaining to any railway, lock, canal, or other navigation, or to any goods or chattels being in any building, the setting fire to which is made felony by this or any other act of parliament, every such offender shall be guilty of felony, and shall be liable to be punished as in the next preceding section of the act is mentioned.

§ 35. If any person shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, straw, hay, coals, charcoal or wood, he shall be guilty of felony, and upon conviction, liable to be imprisoned in the provincial penitentiary for a period not less than two, nor more than five years.

For forms, see "*Indictable Offences.*"

ARTICLES OF THE PEACE.

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

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

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

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

When the articles are exhibited before a *justice of the peace*, the party, if present, may be immediately committed, unless he offer sureties; but if he be absent, the justice cannot commit him for not finding security, until he has been required, and has refused to do so; and the warrant in that case must shew the cause for which it is granted, and at whose suit.—1 *Haw.*, c. 60, § 9; *Rex v. Wilks*, *Ib.* 5.

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

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

If the warrant is special, the party must be carried before the justice granting it, and no other; but if general, the offender may be taken before any justice, and the officer may take him to prison on refusing to give sureties before such justice.—1 *Haw.*, c. 60, § 13. If the accused, on being apprehended, refuse to obey the warrant, or to find sureties, the officer may, without further warrant, convey

him to gaol: but the warrant should so direct; otherwise it is prudent to bring him before the justice, by whom, on refusal to find sureties, he may be committed without further warrant.—2 *H. H.* 112; *Dalt.* c. 118.

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

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

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

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

If the party accused be in prison for want of sureties, on the death of the party demanding the peace, he shall be released, or if he offers sufficient surety while in prison.—*Dalt.*, c. 118.—See also *post* title "*Surety for good Behaviour.*"

Information to require Surety of the Peace and good behaviour.

PROVINCE OF CANADA :

County of _____, } The information and complaint of A. B., of
to wit. } _____, taken on oath before me, the under-
signed, one of her Majesty's justices of the peace in and for
the said county of _____ at _____ in the said county this _____ day of
_____, 18 _____ who saith that C. D., of _____, yeoman, did, on the
day of _____, threaten the said A. B., in the words, or to the
effect following, that is to say, (*Set them out with the circumstan-
ces under which they were used*) and that from the above and other
threats used by the said C. D. towards the said A. B., he, the

said A. B., is afraid that the said C. D. will do him some bodily harm, and therefore prays that the said C. D. may be required to find sufficient sureties to keep the peace and be of good behaviour towards him, the said A. B. And the said A. B. also saith, that he doth not make this complaint against, nor require such sureties from the said C. D., from any malice or ill will, but merely for the preservation of his person from injury.

Sworn before &c.

A. B.

Warrant thereon.

PROVINCE OF CANADA :

County of , } To the constable of , in the County of
to wit. }

Whereas A. B., of , yeoman, hath on this day of personally come before me, J. C., Esq., one of her Majesty's justices of the peace in and for the said county, and hath this day made information and complaint upon oath that C. D., of , yeoman, did on the day of , at , threaten to beat, &c., (*here follows the information*) and that from the above and other threats used by the said C. D. towards the said A. B., he, the said A. B., is afraid that the said C. D. will do him some bodily harm, and hath therefore prayed of me the said justice, that the said C. D. may be required to find sufficient sureties to keep the peace and be of good behaviour towards him the said A. B. These are therefore to require you immediately upon sight hereof, to apprehend and bring the said C. D. before me, to find sufficient sureties as well for his appearance at the next general quarter sessions of the peace to be holden in and for the said county, then and there to answer to the premises, and to do and receive what shall be then and there enjoined him by the court, as also to keep the peace and be of good behaviour towards her Majesty and all her liege people, and especially towards the said A. B. Given under my hand and seal, at , in the said county, the day of .

Condition of Recognizance to appear at the Sessions.

The condition of the within written recognizance is such, that if the within bounden C. D., of &c., shall appear at the next court of general or quarter sessions of the peace to be holden in and for the said county of , to do and receive what shall be then and there enjoined him by the court; and in the mean time shall keep the peace, and be of good behaviour towards her Majesty and all her liege people, and especially towards A. B. (of , &c.) for the term of, now next ensuing, then the said recognizance to be void, or otherwise to stand in full force and virtue.

Condition of the Recognizance to keep the Peace, &c., without appearance at the Sessions.

The condition of the above recognizance is such, that if the

Articles of the Peace.

above bounden C. D. shall keep the peace, and be of good behaviour towards her Majesty and all her liege people, and especially towards A. B. of _____, for the space of one year, (*or longer if need be.*) then this recognizance to be void, or else to remain in full force and virtue.

Commitment for want of Sureties.

PROVINCE OF CANADA :

County of _____, } To the constable of _____, and to the keeper of
to wit. } the common gaol of the said county at _____,
in the said county.

Whereas, on the _____ day of _____ instant, complaint on oath was made before the undersigned, one of her Majesty's justices of the peace in and for the said county of _____, by A. B. of _____ that C. D. of _____ on the _____ day of _____, at the township of _____ aforesaid, did _____ &c., (*follow to end of complaint as in form above*), and whereas the said C. D. was this day brought and appeared before me the said justice, to answer unto the said complaint, and having been required by me to enter into his own recognizance in the sum of £ _____, with two sufficient sureties in the sum of £ _____ each, as well for his appearance at the next general quarter sessions of the peace to be held in _____ and for the said county of _____, to do what shall be then and there enjoined him by the court, as also in the meantime to keep the peace and be of good behaviour towards her Majesty and all her liege people, and especially towards the said A. B., and the said C. D. hath refused and neglected, (a) and refuses and neglects to find such sureties. These are therefore to command you the said constable of the township of _____, to take the said C. D. and him safely to convey to the common gaol at _____ aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said common gaol, to receive the said C. D. into your custody in the said gaol, there to imprison him until the said general quarter sessions of the peace, unless he in the meantime find sufficient sureties as well for his appearance at the said sessions as in the meantime to keep the peace as aforesaid. Given under my hand and seal this _____ day of _____, in the year of our Lord, 18 _____, at _____ in the county aforesaid.

J. P. (L.S.)

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

PROVINCE OF CANADA :

County of _____, } J. C. Esq., one of the justices of our lady
to wit: } the Queen, assigned to keep the peace with-
in the said county, to the sheriff of the said county, and to the constables and others, the faithful ministers and subjects of our

(a) A neglect or inability to find securities is the same as a refusal at law.

said lady the Queen within the said county, and to every of them, greeting.

Forasmuch as C. D., of , in the said county, yeoman, hath personally come before me at , in the said county, and hath found sufficient surety, that is to say, E. F., of yeoman, and E. H., of , yeoman, either of whom hath undertaken for the said C. D., under the pain of £20, and he, the said C. D. hath undertaken for himself, under the pain of £40, that he, the said C. D., shall personally appear at the next general quarter sessions of the peace to be holden in and for the said county, then and there to do and receive what shall be then and there enjoined him by the court, and in the meantime to keep the peace and be of good behaviour towards her Majesty and all her liege people, and especially towards A. B., of , therefore, I do command you and every of you, that you utterly forbear and do cease to arrest, take, imprison, or otherwise by any means, for the said cause, to molest the said C. D., and if you have for the said occasion and for none other taken and imprisoned him the said C. D., that then him you deliver or cause to be delivered and set at liberty without further delay. Given under my hand and seal, this day of , &c.

Release of the Surety for the Peace, &c.

PROVINCE OF CANADA :

County of , } Be it remembered, that A. B., of , in
to wit. } said county, yeoman, on the day of ,
in the year of the reign of our sovereign lady Victoria, came before me, J. C., Esq., one of the justices of our said lady the Queen assigned to keep the peace within the said county, and there remised and freely released to C. D., of , in the said county, yeoman, the surety of the peace and good behaviour by him the said A. B. before me prayed against the said C. D. Given under my hand and seal, the day of , in the year of our Lord, 18 .

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

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

Discharge of one Committed for want of Sureties.

PROVINCE OF CANADA :

County of , } J. C., Esq., one of the justices of our lady
to wit. } the Queen assigned to keep the peace in the
county of , to the keeper of her Majesty's common goal at in the said county, greeting.

Forasmuch as C. D., in the prison of our said lady the Queen, in your custody now being, at the suit of A. B., of , in the said county yeoman, for the want of his finding sufficient

sureties, &c. (as in the former precedent of a supersedeas.) Therefore, I do command you that if the said C. D. do remain in the said gaol for the said cause, and none other, then you forbear to grieve or detain him any longer, but that you deliver him thence and suffer him to go at large, and that upon the pain which will fall thereon. Given under my hand and seal, this day of , 18 .

J. C.

Form of Articles of the Peace.

PROVINCE OF CANADA :

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

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

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

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

Articles of the peace should have the signature of counsel.

ASSAULT AND BATTERY.

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

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

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

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

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

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

Aggravated Assaults.

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

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

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

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

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

to stop the conveyance of the same; every such offender may be convicted thereof before two justices of the peace, and imprisoned and kept to hard labour in the common gaol, or house of correction, for any term not exceeding three calendar months: provided always that no person who shall be punished for any such offence, by virtue of this provision, shall be punished for the same offence by virtue of any other law whatsoever.

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

Common Assault.

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

(a) The 14 & 15 V., c. 119, § 4, now authorises the amount to be levied by distress.

to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, he shall forthwith make out a certificate under his hand, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred: and if *such costs* (a) shall not be paid immediately upon dismissal, within such period as such justice shall at the time of such dismissal appoint, it shall be lawful for him to issue his warrant to levy the amount of such costs within a certain time to be in the said warrant expressed; and in default of sufficient distress, may commit the party by whom such costs shall be so ordered to be paid as aforesaid to the common gaol of the district, county, or division where such offence shall be alleged to have been committed, there to be imprisoned for any term not exceeding ten days, unless sooner paid.

§ 28. Such certificate, or in case of conviction the payment of the amount adjudged, or imprisonment awarded and suffered for nonpayment, shall release the party from all further proceedings, civil or criminal, for the same cause.

§ 29. When any person shall be summarily convicted before a justice of the peace of any offence against this act, it shall be lawful for such justice, if he shall so think fit, to discharge the offender from his conviction upon his making such satisfaction to the party aggrieved, for damages and costs or either of them, as shall be ascertained by the said justice.

§ 30. If the justice shall find the assault complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is, from any other circumstance, a fit subject for indictment, he shall deal with the case accordingly: justices not to determine any case of assault in which any question shall arise as to the title to lands, or any interest therein, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice.

§ 33. Any person aggrieved by any summary conviction or decision under this act, may appeal to the next court of general or quarter sessions which shall be holden not less than twelve days after the day of such conviction, giving to the other party a notice in writing of such appeal, and of the cause and matter thereof, within three days after conviction or decision, and seven days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognizance with two sufficient sureties before a justice of the peace, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judg-

(a) *Quære*—What costs?

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

§ 34. The court shall have power to empanel a jury to try the matter, and on the finding of the jury shall give judgment accordingly: provided, that the court shall not in any case adjudge the payment of a fine exceeding £5, in addition to the costs, nor order imprisonment for any period exceeding one month; and all fines imposed and recovered by the judgment of the court shall be applied as other fines recovered under this act.

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

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

For forms, see "*Summary Conviction.*"

Indictment for a Common Assault.

County of , } The jurors for our lady the Queen, upon
to wit: } their oath, present, that A. O., late of the
township of , in the county of , butcher, on the
day of , in the year of the reign of our Sovereign lady
Victoria, with force and arms, at the township aforesaid, in the
county aforesaid, in and upon one A. I., in the peace of God

and our said lady the Queen then and there being, did make an assault, and him the said A. I. then and there did beat, wound and ill-treat, and other wrongs to the said A. I. then and there did, to the great damage of the said A. I., and against the peace of our said lady the Queen, her crown and dignity.

Indictment for an Aggravated Assault—(Archbold).

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

For Assaulting a Constable in the execution of his Office.

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

ASSESSMENTS.

By 16 V., c. 182, the act 13 & 14 V., c. 67, and 14 & 15 V., c. 110 are repealed.

Property liable to Taxation.

All land and personal property in Upper Canada shall be liable to taxation, subject to the exemptions hereinafter specified.—§ 2.

The occupant of any land belonging to Her Majesty shall be liable to taxation for the land so occupied.—*Ib.*

The word "land" to include buildings, machinery, or other things so fixed to any building as to form in law part of the realty, and all trees or underwood, mines, minerals,

quarries, and fossils, in and under the same, except mines belonging to her Majesty.—*Ib.*

The terms “real estate” and “real property” to be construed as “land.”—*Ib.*

The term “personal estate,” and “personal property,” to include goods and chattels, shares in incorporated companies, money, notes, accounts and debts at their full value, and all other property except land, as above defined.—*Ib.*

The term “property” to include both real and personal property as above defined.—*Ib.*

Assessment Scale for Personal Property.

£25 or more, but under		£50	
£50	do.	do.	£100
£100	do.	do.	£250
£250	do.	do.	£500
£500	do.	do.	£1000
£1000	do.	do.	£2500
£2500	do.	do.	£5000
£5000	do.	do.	£10000
£10000	do.	do.	£15000
£15000	do.	do.	£20000

And so forward, the sums thenceforth increasing by £5000.—§ 4.

No person deriving income from any trade, calling, office, or profession, exceeding £50 per annum, shall be assessed for a less sum as the amount of his net personal property, than the amount of the last year's income, but such last year's income shall be held to be his net personal property, unless he has other personal property to a greater amount.—§ 5.

Property Exempt from Taxation.—§ 6.

1. All property belonging to her Majesty, Indian lands, and lands held for the public use of the province.

2. Every place of worship, church-yard or burying-ground, colleges, grammar schools, and public educational institutions, so long as such real estate shall be so used and occupied, *but not if occupied by others, or unoccupied.* Every public school-house, town or city hall, court-house, gaol, house of correction, lock-up house, or public hospital, with the land attached thereto, and the personal property belonging to each; every public road and way, or public square, and the property belonging to any township, village, town, city, or county, if occupied for the purposes thereof, or unoccupied.

3. The provincial penitentiary. 4. Every industrial farm, poor-house, alms-house, house of industry, or lunatic

asylum, and every house of reformation of offenders, and the real or personal property belonging thereto. 5. The property of every public library, mechanics' institute or other public literary or scientific institution, and of every agricultural society. 6. The personal property of the governor, and the official income of the public administration. 7. Official occupants of public property, held in an official capacity. 8. Imperial salaries, provisions, or gratuities, and the personal property of officers on full pay, or in actual present service, who are also to be exempt from statute labour. 9. All public pensions under £50 per annum.

10. Incomes derived from farms, and crops for the current year.

11. Mortgages on land, money arising from the sale of land.

12. Bank and railroad stock, subject to any special tax upon bank issues.

13. Property, stocks and securities owned out of the province.

14. Personal property equal to the debts owing by any party, excepting debts secured by mortgage upon his real estate, or unpaid on account of purchase money. 15. The nett personal property of any individual under £25 value.

16. Stipends of ministers of religion, under £300 per annum.

17. Household effects, books and wearing apparel.

Lands to be assessed where situate, and in the name of the owner, if known and occupied by him, or unoccupied. If non-resident or owner unknown, and the land occupied, then in the name of the occupant. If the owner be known, then in the name of both owner and occupant. If owned or occupied by more than one party, then any one shall be liable, saving his recourse against the others, and any occupant may deduct from his rent the taxes paid, unless a special agreement to the contrary.—§ 7.

Unoccupied lands of owners unknown, or resident out of the locality, to be denominated lands of "non-residents.—§ 8.

Real estate of incorporated companies to be assessed in the locality; their personal property exempt, but each shareholder shall be assessed for his stock, except when such stock is exempted by this act.—§ 9.

Partnership property to be assessed against the partnership, and where more than one place of business, each branch to be assessed in that locality, and if this cannot be done, the parties may elect at which place it will be assessed for the whole, producing a certificate at each of the other places, of

the amount assessed elsewhere.—§ 10. Any party carrying on any trade, &c., in two or more localities to be assessed proportionally in each; or if this cannot be done, he may be assessed for part in one, and part in another, or for all at one place, at his discretion, producing a certificate at each other place; and if no place of business, the party shall be assessed at his residence, and such assessment shall include with his own property, all personal property in his own possession, or under his control as trustee, guardian, executor, &c., and if owned or possessed, or under the control of more than one party, each shall be assessed for his share, or if held in a representative character, each for an equal portion.—§ 11.

Real property to be estimated at its real value, as if appraised in payment of a first debt from a solvent debtor: *yearly value* to be the real rack rent to be ascertained by the assessors. If more than one quarter of an acre attached to any house, &c., the overplus to be held vacant ground, to be estimated by the assessors, and six per cent thereon shall be deemed its yearly value; and the yearly value of personal property shall be calculated at six per cent. Real estate at a less rental than six per cent. on the real value, to be assessed according to such real value.—§ 13.

Assessments.

One or more assessors to be appointed in and for any city, town, village, or township.—§ 15.

Townships, cities, towns, &c., to be divided into assessment districts.—§ 16.

Assessment roll to be prepared, its form and contents.—§ 17.

Non-residents on the roll to be distinguished as such.—*16*.

Parties liable to assessment to deliver to the assessors, if required, a statement in writing signed by the party of all his assessable property, under the penalty of £5.—§ 18.

Penalty not exceeding £5 for making any false statement.—§ 19.

Parties assessed as trustees, &c., to be so designated in the assessment.—§ 20.

Railway companies to transmit annual statements, describing the value of their real property to the clerk of the municipality, and they shall deliver at or transmit by post to any station or office of the company notice of the assessment.—§ 21.

Lands of non-residents how to be designated on the roll.—§ 22.

Assessors to give notice to the parties of the value at which their properties are assessed.—§ 23.

Assessment rolls to be completed between the 18th day of February, and not later than 15th day of April.—§ 24.

And delivered to the clerk of the municipality, who shall put up a copy in some convenient public place until after the meeting of the court of revision; and when revised, transmit a certified copy to the county clerk.—§ 25.

Parties aggrieved may within fourteen days after the time fixed for the return of the assessors roll, notify the clerk of the municipality, and such complaint shall be tried by a court of *five* members of the municipal council; any *three* or more members being a *quorum*, and the majority of such quorum to decide.—§ 26.

The court to have the power also to correct wrong entries, or omissions as to other parties, upon the complaint of any municipal elector. A list of complaints to be posted up with notice of day of hearing; a list also to be left with the assessor, who shall notify complainants, six days before the sitting of the court.—*Ib.*

Parties complaining against over-charge may make a declaration in the form given, and the court of revision shall correct the assessment accordingly. Any person making a false declaration, to be guilty of a misdemeanor and punished as for perjury.—§ 27.

Parties dissatisfied with the decision of the court may appeal to the judge of the county court, upon serving clerk of the municipality with notice of such intention within *three* days after the decision. At the same time giving a written notice of such appeal to the clerk of the revision court, and depositing 10s. to cover the costs. The judgment of the county court judge to be final. Costs of the court to be paid by the appellants in all cases; but each party to pay the costs of his own witnesses, except in case of wilful fraud or corruption, when the judge may order the offender to pay the costs.—§ 28.

Court of revision authorised upon petition to reduce or remit taxes in cases of vacant possession, for more than three calendar months, sickness, or extreme poverty, or gross error in the roll.—§ 29.

Court, authorised to meet and adjourn at pleasure, to summon witnesses, &c.—§ 30.

Municipal Rates.

Estimates to be made of sums required for municipal purposes during the current year, and the municipal council authorised to pass by-laws for levying and collecting a rate at so much in the pound as shall be sufficient to raise the

sum required: any deficiency to be made up from any unappropriated funds, or if none, then equally deducted from the sums estimated to be required. Surplus amounts to form part of the general fund, and be at the disposal of the municipality.—§ 31.

In counties and townships the rates to be calculated at so much in the pound upon the *actual value* of all the real and personal property therein, and in cities, towns and villages, upon the *yearly value*.—*Ib.*

Assessment rolls to be examined annually by municipal councils of the county, for the purpose of equalising the valuation in the different municipalities.—§ 32.

The apportionment of county rates to be based upon the assessment rolls of the preceding year.—§ 33.

Municipal council to direct by by-law what part of any sum required for county purposes shall be levied in any township, town or village.—§ 34.

Statute Labour.

Every male inhabitant of any city or incorporated town or village, of the age of 21 and under 60 years of age (and not otherwise exempt) not assessed upon the assessment roll, or if assessed and his taxes are under ten shillings currency, shall pay ten shillings yearly for statute labour.—§ 35:

Every male inhabitant of any township, between the ages aforesaid, and not otherwise assessed, shall be liable to two days' statute labour.

Parties assessed upon the assessment roll shall be liable as follows:

At not more than £50, two days' statute labour.

At more than £ 50, but not more than £ 100, 3 days' labour.

“	100,	“	150,	4	“
“	150,	“	200,	5	“
“	200,	“	300,	6	“
“	300,	“	400,	7	“
“	400,	“	500,	8	“
“	500,	“	600,	9	“
“	600,	“	800,	10	“
“	800,	“	1000,	12	“

For every 200 above the sum of 1000. 1 “

Unless the municipality of such township shall by by-law direct that a sum of money be paid in commutation: with power to the municipal council by by-law to reduce or increase the number of days' labour.—§ 36.

Payment of the tax under § 35, 36, in lieu of statute labour, may be enforced by distress, or committal.—§ 37.

Statute labour performable by non-residents in townships, to be commuted at 2s. 6d. a day, and charged against the land. Non-residents who have required their names to be entered on the roll, shall be admitted to perform statute labour as residents, and liable to fine for non-performance, &c. If such labour be not performed or commuted, the overseer to return defaulters before the first day of September: and if at any time before the first of May next ensuing, any owner of non-resident's land, returned as such, shall have given to the treasurer of the county a list of the lands owned by him, and shall have tendered to him the taxes in full on such lands, and commutation money as herein provided, he shall be liable to the commutation for statute labour only upon the aggregate value of all the lands, but after the first of May, no change to be made in the charge against each separate parcel.—§ 38.

Collection of Rates.

Clerk of the municipality to make out the collector's roll, and deliver such roll to the collector on or before the first day of October, or such other day as prescribed by by-law.—§ 39.

To make out another roll of lands of non-residents whose names are not in the assessor's roll, and transmit it to the county treasurer, or city chamberlain, at the same time as prescribed for delivery of the collector's roll.—§ 40.

Collectors to call at least once on the party taxed, or at his usual place of residence, or place of business, and demand payment; and to non-residents entered on the roll, transmit by post a statement and demand.—§ 41.

If payment not made, the collector shall levy with costs by distress and sale of the goods and chattels of the party, *or of any goods or chattels in his possession*; and at any time after one month from the delivery of the roll, may levy upon any goods or chattels which he may find on the land of non-residents, for the taxes inserted against the same on the roll.—§ 42.

The collector to give six days' notice of sale.—§ 43.

The surplus to be paid, if unclaimed, to the party in possession of the goods. But if the right be contested, then to be paid over to the treasurer, &c., until such right be determined.—§ 44.

Any party assessed removing from the locality before collection, the collector may levy and collect such tax in any township, &c., within the county in which he shall reside, upon any goods or chattels in his possession thereon. Taxes

not otherwise recoverable may be recovered by action at law, and in the meantime be a special lien on the land.—§ 45.

Collectors required on or before the 14th December, in each year, or on such other day appointed by the municipal council, not later than the first day of March, next following, to return collection roll and pay over amount to the treasurer.—§ 46.

Taxes remaining unpaid to be specially returned.—§ 47.

Non-residents.

Crown land commissioner to furnish county treasurer, annually in the month of January, with a list of lands granted or leased; treasurer to furnish a copy to the clerk of the municipality, who shall furnish the assessors with a statement shewing what lands are liable to assessment.—§ 48.

Treasurer of the municipality, within 14 days after the time for the return and settlement of the collector's roll to furnish treasurer of the county with a copy of the roll shewing payments and arrears.—§ 49.

After collector's roll has been returned, the collection of arrears to belong to the treasurer of the county only. Partial payments not to be received. But he may receive those for any subdivision of a lot established to his satisfaction.—§ 50.

Lands on which taxes remain unpaid to be entered in books kept for that purpose by the county treasurer, &c.—§ 51.

Lands omitted in the assessment roll, to be entered on the collector's roll of the year following, and charged with the arrears.—§ 52.

Ten per cent. to be added yearly to taxes in arrear.—§ 53.

County treasurer, authorised to pay arrears upon lands of non-residents, by warrant under hand and seal to the sheriff, upon any goods or chattels found thereon.—§ 54.

Arrears of taxes on lands remaining for *five* years to be levied by warrant of the treasurer to the sheriff. But the municipal council may extend the period.—§ 55.

Distinction to be made in such warrant and sheriff's advertisements between lands leased by the crown, and those granted by patent, and the interest of a lessee or locatee only to be sold.—§ 56.

List of lands and arrears to be prepared and published by the sheriff in the Government Official Gazette, and in some local newspaper, with the day of sale, &c., which shall be more than *three* months after the first publication; a similar advertisement to be posted at the court house, at least *three* weeks before the sale.—§ 57.

In case of distress found on the land after the receipt of

the warrant, the sheriff required to levy, but default herein not to invalidate any sale.—§ 58.

If the taxes not previously paid, sale to be made of so much of the land as shall be sufficient, the sheriff selling in preference such part as he may consider it most for the advantage of the owner to sell first; and within one month after sale to make return of lands sold, to the treasurer, and pay over the money. And if no bidder, the sheriff may adjourn the sale, and if the purchaser fail to pay, the sheriff may resell.—§ 59.

The sheriff to give the purchaser a certificate describing the land sold, the quantity, sum, and expenses of sale, &c.—§ 60.

The purchaser, on receipt of the sheriff's certificate, to be deemed the owner so far as to protect the land from spoliation or waste; but he shall not knowingly permit any timber to be cut or other injury done to the land; after tender to the treasurer of the full amount of redemption such rights to cease.—§ 61.

Provision for collection of arrears previous to this act coming into operation.—§ 62.

Sheriff to receive 5 per cent. commission on moneys collected, besides fees for distress and sale.—§ 63.

Owners entitled to redeem within one year from the day of sale on paying or sending to the treasurer the amount paid by the purchaser, with 10 per cent. thereon, and the treasurer shall give the party redeeming a receipt therefor, which shall be evidence of the redemption.—§ 64.

If the land not redeemed within the year, the sheriff then to deliver a deed of sale to the purchaser, with certificate of the execution of such deed for registration.—§ 65.

Provision respecting sales before 1851, under *6 G. IV. c. 7.—§ 66.

Sheriff to enter in a book a description of the lands conveyed.—§ 67.

Moneys received by the county treasurer for taxes on non-resident lands to constitute the "non-resident land fund"—§ 68.

All arrears to form one charge upon the lands subject to them.—§ 69.

Provision for issuing debentures on the credit of the "non-resident land fund."—§ 70.

For payment of the interest on such debentures.—§ 71.

Surplus of the "non-resident land fund," to be divided among the municipalities.—§ 72.

Treasurer not to make any charge upon persons paying taxes, but to receive other compensation.—§ 73.

An annual statement of the funds to be submitted by the treasurer to the county council, and copy transmitted to the provincial secretary.—§ 74.

Responsibility of Officers.

Treasurer or chamberlain to enter into bond with two sufficient sureties for the faithful performance of their duties.—§ 76.

Any assessor or clerk neglecting duties to forfeit £25, and the other assessor to perform such duties *pro. tem.*—§ 77.

Any clerk, assessor, or collector, making any fraudulent assessment, collection, &c., to be guilty of a misdemeanor, and subject to a fine not exceeding £50, (and to imprisonment until fine paid), or to imprisonment in the common gaol for a period not exceeding six calendar months.—§ 78.

Collector neglecting to pay over, or duly account, the treasurer shall, within twenty days after, issue a warrant to the sheriff (or high bailiff of any city) for levying the amount with costs on the goods, chattels, lands and tenements, of such collector or his sureties. Such warrant to be returned within forty days.—§ 79.

The sheriff (or high bailiff) required to execute the same, and pay over the amount levied.—§ 80.

Any sheriff (or high bailiff) neglecting to levy, or pay over, or making a false or insufficient return, or refusing to make any return, may be compelled to do so upon application to the superior courts of common law, or a judge thereof, who may order a writ of *feri facias* to be issued for the amount upon the goods and chattels of the delinquent, with costs.—§ 81.

Any sheriff (or high bailiff) wilfully omitting to perform any duty required by this act, to be liable to a penalty of £50.—§ 82.

Moneys levied under the U. C. Public Buildings' Act, 13 & 14 V., c. 68, to be assessed and collected in like manner as other taxes.—§ 83.

And shall be paid over to the local treasurer, and by him to the county treasurer.—§ 84.

Treasurer of township, &c., to pay over money raised for county purposes to the county treasurer—§ 85.

County treasurer and chamberlain of cities to account to the Crown for moneys levied under the 83rd sec.—§ 86.

Counties and cities to be responsible to the Crown, and to other parties interested for moneys received by the treasurer or chamberlain.—§ 87.

Miscellaneous.

Any person who shall wrongfully tear down, injure, or deface any assessment roll, advertisement, notice or other

document, required by this act to be posted up at some public place, for the information of all parties interested, he shall, upon conviction before any justice of the peace, or any other person acting in that capacity, and having jurisdiction in the locality, be liable to a fine of £5.—§ 88.

Fines and forfeitures imposed by this act (not otherwise provided for) may be levied and collected by distress, and sale of the offender's goods and chattels under the authority of any warrant of distress for that purpose to be issued by the justice or other person before whom the conviction shall be ; and in default of distress, such offender may be committed to the common gaol of the county for any period not exceeding one month.—§ 89.

ASSESSORS.

By the general Municipal Act, 12 Vic., c. 81, § 28, the municipality for each township shall so soon as conveniently may be after their own election or appointment, nominate and appoint *three* assessors for the township, and one collector, who shall hold office from thence until the third Monday in January of the year next after their appointment, and until the appointment of successors.

§ 78. Town councils of incorporated towns shall appoint three assessors, and one collector for each ward.

By 13 & 14 V., c. 67, § 14, notwithstanding said act, 12 V., c. 81, the number of assessors or collectors for any city, town, village or township, shall be *one or more*, in the discretion of the municipality or council thereof ; and such municipality or council may, in their discretion, appoint the same assessor or collector to act in and for any number of wards, or for the whole city or town. The general Assessment Act, 16 V., c. 182, also contains a similar provision as to the number of assessors ; and also prescribes the duties to be performed by them under that act.—See "*Assessments.*"

ASSIZES.

* By the 7th W. IV., c. 1, § 8, it is enacted, that it shall be lawful for the Governor, &c., to issue yearly in the vacation between Easter and Trinity terms, also in the vacations between Michaelmas and Hilary terms, such commissions of assize and *nisi prius*, into the several districts, as may be necessary for the purpose of trying all issues joined in the said court (Queen's Bench), in any suit or action which, according to the practice of the court, ought to be tried in such districts respectively. And that in like manner commissions of oyer and terminer and general gaol delivery,

shall be issued into the several districts of the province twice in the year, within the periods aforesaid: provided always, that it shall be in the power of the Governor, &c., to issue special commissions for the trial of offenders upon extraordinary occasions.

S. 9. And that whenever, from the illness of the judge, or from unavoidable detention at the last assize town, or from other casualty, it may happen that the judge appointed shall not arrive in time, or shall not be able to open such court on the day appointed, it shall be lawful for the sheriff of the district, or in his absence, his deputy, after the hour of eight o'clock in the afternoon of such day to adjourn by proclamation the courts so appointed to be opened on that day, to an hour on the following day to be by him named, and so from day to day until until the judge shall arrive to open such courts, or until he shall receive other direction from such judge.

The 12 V., c. 63, § 21, directs the issuing of commissions into the County of York three times a year; and the 14 & 15 V., c. 15, fixes the periods for holding such courts in said county to be on the first Thursday in January, the first Monday in May, and the second Monday in October, annually.

The 14 & 15 V., c. 118, § 1, enacts, that deputy clerks of the crown, in counties, shall be *ex officio* clerks of assize.

The 18 V., c. 92, § 43, enacts that it shall not be necessary in future to issue commissions of assize, but that such courts shall be held at such times as the judges of the superior courts of common law (*Queen's Bench and Common Pleas*), shall appoint subsequent to the several terms after which they are now directed by law to be holden; except where such courts are or shall be held at any stated time under any statute; and the judges of the several superior courts shall and may preside over the courts of assize, and *nisi prius*, oyer and terminor, and general gaol delivery in the same manner, &c., without the issuing of any commissions, as they have been accustomed to under commission.

Provision for issuing special commissions.—*Ib.*

§ 44. Provides that it shall be the duty of the Secretary of this Province yearly, on or before the first day of the second term next after which the courts of assize are directed to be holden, to transmit to the said superior courts of law, a list of associate justices, and at the same time transmit to the sheriffs a similar list, and to notify such associate justices of their appointment, and such associate justices shall have and exercise all the powers, &c., now used and exercised by any justices associated under any such commissions as in the next preceding section mentioned.

§ 45. Provides, that any person being one of her Majesty's counsel, learned in the law, may be an associate justice of any such court for the despatch of business (civil or criminal), and may act as judge in the absence of any judge of such superior courts.

ATTAINDER.

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

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

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

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

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

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

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

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

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

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

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

Lands are only forfeited upon *attainder*, but goods and chattels upon *conviction*. The forfeiture of goods has no relation backwards; those only which a man has at the time of his conviction are actually forfeited. Therefore, a traitor or felon may, *bonâ fide*, sell any of his chattels, real or personal, for the sustenance of himself and family, previous to *conviction*: but not if they be collusively, and not *bonâ fide*, parted with, and the object of the transfer be merely to defraud the crown.—13 *Eliz.*, c. 5; 3 *Inst.* 232; 2 *Haw.*, c. 49, § 34; 4 *Bl. Com.* 388.

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

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

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

AUCTIONEER.

By 16 V., c. 184, (repealing former acts). § 3. The municipal council of any township, incorporated village, or town, or city in Upper Canada, is authorised to make by-laws (*inter alia*,) for regulating and governing auctioneers and other persons selling or putting up to sale goods, wares, merchandise or effects, by public auction or outcry, to the highest or best bidder within such municipality, and for requiring any such person to take out a license from such municipality officer as shall be designated in such by-law before it shall be lawful for him to act as an auctioneer, or to sell or put up to sale, as aforesaid, any goods, wares, and merchandise or effects within such municipality, and for fixing the sum which shall be payable for such license, and the time during which it shall be in force, for making such further provisions as may be deemed necessary for giving full effect to such by-law, and for imposing penalties for the contravention thereof.

AUTREFOIS ACQUIT.

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

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

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

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

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

But then the insufficiency of the indictment should appear in the record of the judgment of acquittal.—2 *Hale*, 385.

When the defendant has been tried by a *foreign tribunal* of

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

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

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

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

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

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

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

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

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

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

For the same reason, if an indictment for *murder* is brought in an *improper county*, an acquittal upon such indictment cannot be pleaded to a subsequent indictment in the proper county.—2 *Haw. c. 35, § 3; Contra Staundf.* 105.

But if a man steal goods in one county and carry them into another, as he may be indicted for the larceny in either county, it seems that an acquittal in one county would be a bar to a subsequent prosecution for the same stealing in the other county.—1 *Haw. c. 35, § 4.*

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

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

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

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

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

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

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

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

Practice.

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

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

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

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

By 18 V., c. 92, § 27.—In any plea of *autrefois convict* or of *autrefois acquit*, it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted, as the case may be, of the said offence charged in the indictment.

Record of Acquittal.—(Cr. Cir Com.)

County of , } Be it remembered, that at the general quarter
to wit: } sessions of the peace of our Sovereign Lady
the Queen, holden at the city of Toronto, in and for the said
county of York, on the day of , in the year, &c.,
before W. M., K. R., R. R., and Z. Z., Esquires, justices of our
said lady the Queen assigned to keep the peace of our said
lady the Queen in and for the said county of York, and also to
hear and determine divers felonies, trespasses and other mis-
deeds, committed in the said county, by the oath, &c., (*the*
grand jury stating all their names) good and lawful men of the
county aforesaid, then and their sworn and charged to inquire
for our said lady the Queen, for the body of the said county,

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

AUTREFOIS ATTAINT.

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

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

AUTREFOIS CONVICT.

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

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

Record of Conviction—See “*Autrefois Acquit*.”

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

BACKING WARRANT.

A justice of the peace has no authority beyond his territorial jurisdiction. He may, however, issue a warrant for the apprehension of a party who has *escaped* or is residing out of his jurisdiction, but such warrant cannot be legally executed unless such execution of it be sanctioned by some justice of the peace residing in the locality where the accused party is residing. This is usually done by the constable having charge of the warrant calling upon such justice for leave to execute the same within his jurisdiction, who, on proof upon oath of the signature to the original warrant, is authorised by law to endorse permission or leave to execute such warrant within his jurisdiction. This is called "backing the warrant;" with respect to which the "Summary Conviction Act" 16 V. c. 178 provides as follows:

§ 3. And if the person against whom any such warrant has been issued be not found within the jurisdiction of the justice or justices by whom it was issued, or, if he shall escape, go into, reside or be or be supposed or suspected to be in any place within this province, whether in *Upper or Lower Canada*, out of the jurisdiction of the justice or justices issuing the warrant, any justice of the peace within whose jurisdiction such person shall be or be suspected as aforesaid, upon proof alone upon oath (a) of the handwriting of the justice or justices issuing the warrant, may make an endorsement upon it, signed with his name, authorising the execution of the warrant within his jurisdiction; and such endorsement shall be a sufficient authority to the person bringing the warrant, and to all other persons to whom it was originally directed, and to all constables or other peace officers of the territorial division, where the endorsement is made to execute the same in any place within the jurisdiction of the justice of the peace endorsing the same, and to carry the offender, when apprehended, before the justice or justices who first issued the warrant, or some other justice having the same jurisdiction.

By the 16 V., c. 179 § 7, (*relating to indictable offences*) a similar provision is made for backing warrants against a party residing out of the jurisdiction, and conveying him when apprehended into the jurisdiction from which the warrant issued, but with this special provision in addition, viz. : provided always, that if the *prosecutor or any of the witnesses* upon the part of the prosecution, shall then be in the territorial

(a) The constable having charge of the warrant, should either see it signed, or be well acquainted with the handwriting of the justice to enable him to make the requisite oath.

division, where such person shall have been so apprehended, the constable or other person or persons who shall have so apprehended such person, may, if so directed by the justice backing such warrant, take and convey him *before the justice who shall have so backed the said warrant*, or before some other justice or justices for the same territorial division: and the said justice or justices may thereupon take the examination of such prosecutor or witnesses, and proceed in every respect in manner hereinafter directed with respect to persons charged before a justice or justices of the peace for an offence alleged to have been committed in another territorial division than that in which such persons have been apprehended.

Form of Endorsement in backing a warrant.

PROVINCE OF CANADA:

County (or united counties, or }
as the case may be.) of , }

Whereas, proof upon oath hath this day been made before me, one of her Majesty's justices of the peace in and for the said county (or united counties, or as the case may be) of , that the name of J. S. to the within warrant subscribed is of the proper handwriting of the justice of the peace within-mentioned. I do, therefore, hereby authorise W. T., who bringeth to me this warrant, and all other persons to whom this warrant was originally directed, or by whom it may be lawfully executed, and also all constables and other peace officers of the said county (or united counties, or as the case may be) of , to execute the same within the said last mentioned county (or united counties, or as the case may be).

Given under my hand, this day of in the year of our Lord , at , in the (county, &c.) aforesaid,

J. L

See also *post* titles "*Indictable Offences*," "*Summary Conviction*."

BAIL.

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

By the declaration of rights, 1 W. session 2, c. 2, excessive bail ought not to be required. To refuse bail where the party ought to be bailed, (the party offering the same,) is a misdemeanor, punishable not only by the suit of the party, but also by indictment.—2 *Haw.* 90 *H. P.* 97. And to admit bail where it ought not to be admitted, is punishable by the judges of assize by fine, or punishable as a negligent escape at common law—*H. P.* 97; and so if a justice take

insufficient bail.—*Ib.* A justice of the peace cannot take bail for murder.—2 *Inst.* 186. And if a person be dangerously wounded, the justice ought to be very cautious how he takes bail, till the year and day be passed, for if the party die, and the offender appear not, the justice is in danger of being severely fined.—1 *Haw.* 138. The court of King's Bench, however, may admit a person to bail who has been committed for murder, if they think the circumstances of the case will justify their doing so. *Lord Mohun's case*, 1 *Salk.* 104; *R. v. Magrath*, *Str.* 1242. If the bail taken be insufficient, the justice may require better sureties, and commit the party on refusal.—2 *Haw.* 89.

Bail may be taken in all cases of *misdemeanor*, and by one justice. It may also be taken in cases of felony, where the evidence adduced shall, in the opinion of the justices before whom the accused party is brought, be sufficient to put him on trial, but shall not furnish such a strong presumption of guilt as to warrant his *committal* for trial. "But if the evidence given, be such as to raise a strong presumption of guilt, then such justice or justices, shall by his or their warrant commit the party to the common goal for the territorial division to which he may by law be committed.—16 V., c. 179 § 15, 17 (a).

One justice alone cannot take bail for felony. The above statute requires that *two* justices be present on such occasion.

The same statute also expressly prohibits bail being taken in cases of treason or murder; except by order of her Majesty's Court of Queens Bench, or Common Pleas, or one of the judges thereof in vacation.

See further on the subject under the titles "*Indictable Offences*," "*Coroner*."

Acknowledging Bail in another man's name.

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

See also *post* title, "*Habeas Corpus*."

(a) The provisions of the former statute 4 & 5 V., c. 24, respecting bail before justices seem to be superseded by this act.

BANISHMENT.

*By 40 G. III., c. 1, § 5, banishment is substituted for transportation; and by § 6 of the same statute, being afterwards found at large within the province was made a capital offence.

*By 3 W. IV., c. 3, reducing and defining what shall be *capital* offences, returning from banishment is not included.

*By 7 W. IV., c. 7, § 1, transportation may be substituted for banishment; § 2, and the provision of the * 40 G. III., c. 1, respecting persons returning to the province before the expiration of the sentence, shall extend to any person returning from transportation under this act.

By 4 & 5 V., c. 24, § 25, returning from transportation or banishment before the expiration of the term, is made felony, and the offender liable to transportation for life.

By 6 V., c. 5, § 4, it is enacted "that for any offence for which by any of the acts cited, (including 4, 5 V., c. 24,) or by any other act or law the offender might, if this act had not been passed, have been punished by transportation beyond the seas, such offender may, if convicted after the passing of this act, be punished by imprisonment in the provincial penitentiary for any term for which he might have been transported beyond seas if this act had not been passed, or by imprisonment for life, if without this act he might have been punished by transportation for life.

BANKS—BANKING.

By 13 & 14 V., c. 21, which repeals the *7 W. IV., c. 13, § 2, it is enacted, that it shall not be lawful for any person, or association of persons, body corporate or politic, or party whatsoever, except only banks, now incorporated by royal charter or by act of the legislature, and thereunto expressly authorised, or such as shall be authorised under this act, to make, issue, sign, &c., any note, *bon*, check, or promise in writing for the payment of money, in the nature of a bank note, or bank bill, or intended to pass as money. § 3. No bank notes shall be issued for less than five shillings, or made payable otherwise than on demand, in current coin of this province, and at some certain place within this province. § 4. A penalty of £100 shall be incurred by any party issuing, circulating, or passing, or attempting to circulate or pass, any unlawful bank note in contravention of this act. § 5. Foreign banks prohibited from opening or keeping any office or place of discount or deposit, or for the issue, circulation, or redemption of its bank notes within this province, under the penalty of £100. § 6. All such unlawful notes

shall be void: as well as securities given for securing any loan or advance made in such notes, as also any receipt or discharge for money paid in such notes. § 7. The business of banking shall comprise the making and issuing of bank notes, the dealing in gold and silver bullion, and exchange, discounting of promissory notes, bills, and negotiable securities, and such other trade as belongs legitimately to the business of banking. But any company or party lawfully exercising the business of banking under this act shall have power to hold property *bonâ fide* mortgaged or pledged as security for debts previously contracted, and sold under any process at law or in equity, and bought at such sale by such company or party, with power to re-sell.

§ 8. Any individual or co-partnership may carry on the business of banking in this province at some one place, being a city, town or village. § 9. Joint-stock banks to be composed of not less than five persons, and the whole capital not less than £25,000; shares not less than £10 each; articles of co-partnership to be filed in the office of the clerk of the county court. § 10. Shareholders to be liable for *twice* the amount of their shares, and no more. § 13 (a). Banks not to commence business until they have deposited with the receiver-general provincial debentures or securities to the amount of £25,000, to be held in pledge for redemption of the bank notes of the bank. § 14 (b). Upon such deposit being made the inspector-general is authorised to deliver to the bank bank notes for not less than 5s. each, numbered, registered, and counter-signed by him, not exceeding the amount deposited, for circulation, and so long as the bank shall pay such notes in specie, on demand, they shall be receivable in payment of duties. § 15. Banks may make further deposits not less than £5000 at one time, and increase their circulation accordingly. § 17. If any such bank note shall not be paid in specie on demand at the bank, the same may be protested and forwarded to the inspector-general, who shall then by letter require the bank to pay the same, with costs of protest and postage and interest, within ten days, or the bank shall be closed (unless there be a legal defence for the non-payment of such note), and notice thereof given in the *Gazette* by the inspector-general, stating that he will redeem the notes to the extent of the funds deposited; provision is then made for appointing a receiver for settling the affairs of the bank, who is authorised to take possession of the bank property, books and papers; and any banking

(a) This section is amended by 19 V., c. 3.

(b) This section also amended by the same act.

partner, associate, or shareholder, or any director, managing officer or servant of such banker or bank, or other person who shall have been entrusted with the same without having any legal title to or lien thereupon, who shall have any money, property, securities, books, accounts, papers or documents of the bank in his possession or under his control, and shall not forthwith deliver the same to the said receiver, shall be held to have *fraudulently embezzled* the same, and shall be punishable accordingly; and the receiver may recover possession of the same, as any party may recover property fraudulently embezzled: the receiver shall settle the affairs of the bank, and report thereon to the inspector-general who shall sell the deposits and apply the proceeds, *first* in redemption of the bank notes, and *then* in payment of other liabilities. The act then provides for the way in which the business and affairs of the bank are to be wound up: a schedule of bank liabilities and assets is to be filed in the county court, and a day appointed by the judge for settling disputed claims, with power to appeal to the Court of Queen's Bench against his decision. § 22. The bank may also be closed if it permit any judgment against it to remain *three months* unsatisfied, and no appeal pending. § 24. Every bank shall keep in the office a list of shareholders open to the public, and deliver copies of the bank articles to any person on demand, on payment of 7½d., under a penalty of £100. § 27. The total liabilities of the bank never to exceed *three* times the amount of its capital, under a penalty of £100 per diem for the excess. § 28. No dividend to be made out of bank capital. § 30 (a). Half-yearly accounts (on 1st January and 1st July) to be rendered by the bank to the inspector-general of bank assets and liabilities, under a penalty of £25 per diem for neglect, and if not transmitted within a month, the bank may be closed. § 36. A general statement of all the banks under this act to be laid before the legislature within thirty days after the opening of each session.

BANK NOTES.

By 4 & 5 V., c. 29, § 1, banking companies are required to deliver a statement in writing on the 15th May and the 15th November, annually, to the receiver-general, of the amount of notes or bills issued and in circulation at the end of each calendar month, certified by the cashier and president; and the person or persons so certifying, shall make and sign a declaration in writing before a justice of the peace, that he or they had the means of knowing that such statement was

(a) Monthly by 14 & 15 V., c. 69, § 1.

correct, and that it is so to the best of his or their knowledge and belief. § 2. Any wilful false allegation in any such statement shall be a misdemeanor, punishable as for perjury. § 3. A duty of one per cent per annum, imposed on the average amount of notes and bills in circulation *pro tem*. § 4. The bank or party neglecting or refusing to deliver such statement, shall forfeit to her Majesty £1000 for the use of the province, to be recovered with costs, as any other debt of the crown.

By 10 & 11 V., c. 9, § 3, forging or knowingly uttering forged bank notes is made felony. See further on this subject, *post* title "*Forgery*."

BANKS OF RIVERS.

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

BARRATRY.

A barrator, in legal acceptation, signifies a common mover, exciter, or maintainer of suits or quarrels, either in courts or in the country—1 *Inst.* 368; 1 *Haw.* 243. *In courts*, means either courts of record, or not of record. *In the country*, in three manners: 1. In disturbance of the peace. 2. In taking or keeping possession of lands in controversy. 3. By false inventions and sowing of calumnious rumours and reports, whereby discord and disquiet may arise between neighbours.—1 *Inst.* 368. No one can be a barrator in respect to one act only.—1 *Haw.* 243. Neither is an attorney guilty of an

act of barratry in respect of his maintaining another in a groundless action, to the commencing whereof he was in no way privy.—1 *Haw.* 243. Nor shall a man be adjudged a barrator in respect of any number of false actions brought by him in his own right; for in such case he is liable to double costs.—1 *Haw.* 243.

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

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

BASTARD.

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

See *post* title, "*Concealing Birth.*"

BAWDY-HOUSE.

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

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

For forms of complaint, summons, &c., see *post* title "Indictable Offence."

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

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

BEEF AND PORK.

By the 4 & 5 V., c. 88, (reserved act) reciting that it was expedient that the regulations in force in Lower Canada and Upper Canada, with regard to the curing, packing, and inspection of beef and pork, should be consolidated,—that one uniform law should be enacted for the whole Province of Canada, and that the inspection of the articles aforesaid intended for exportation should *cease to be compulsory*, but should be *optional* to the parties interested: § 1, enacts that the L. C. act, 44 G. III., c. 9, ord. 2 V., c. 15; U. C. act *45 G. III., c. 8, and *3 V., c. 25, shall be repealed. § 2. After the passing of, this act the board of trade in Quebec, Montreal, Toronto and Kingston, and municipal authorities in other places where inspectors may be required, may appoint a board of examiners, to consist in Quebec and Montreal of *five*, and in other places of *three* fit and proper persons, residents, who, before acting shall take and subscribe the following oath before any justice of the district:

"I, A. B., do swear that I will not, directly or indirectly, personally, or by means of any person or persons in my behalf, receive any fee, reward, or gratuity whatever, by reason of any

function in my office of examiner, and that I will therein well and truly in all things act without partiality, favour or affection, and to the best of my knowledge and understanding. So help me God."

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

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

§ 7. The present inspectors to be re-appointed without examination. § 8. The inspectors for Quebec and Montreal to appoint one or more assistants when required by the board of trade, subject to the approval of the board of examiners, for whose acts the inspector shall be responsible; each assistant to furnish two sureties in £250, and take and subscribe the following oath :

"I, A. B., do swear that I will diligently, faithfully and impartially execute the office of assistant to the inspector of

beef and pork for _____, according to the true intent and meaning of an act of the legislature of this province, intituled, "*An act to regulate the inspection of Beef and Pork*;" and that I will not directly or indirectly, personally or by means of any person or persons in my behalf, receive any fee, reward or gratuity whatever, by reason of my office of assistant to the said inspector (except my salary from the said inspector), and that I will not, directly or indirectly, trade in the articles of beef or pork, or be in any manner concerned in the purchase or sale of beef and pork, except so far as may be necessary for myself and family. So help me God."

§ 9. To be paid and hold office at the pleasure of the inspector. § 10. Inspectors and assistants are required to cut up, salt, pack, cure, or if already packed, to unpack and examine throughout, adding salt if necessary, and cooperating up the same according to this act, each and every barrel or half barrel, tierce or half tierce, of beef and pork submitted to their inspection, such inspection to be made at the store, shop, or warehouse of such inspector (to be kept in a convenient situation), or at some store within the limits of the city, &c., for which he may be appointed, at the option of the proprietor. § 11. Inspectors and assistants to have iron or metal brands, and immediately after inspection to brand on each barrel, tierce or half tierce the words "Quebec," "Montreal," "Toronto," or "Kingston," or the name of the place (as the case may be), and the initial of the christian name and the surname at full length of the inspector, with the quality thereof, and if found to be soft or still fed shall be branded with the word "soft," and if unsound or unmerchantable with the word "rejected," and the month and year in which it was inspected, with the net weight and quality so packed and examined, and to receive for such inspection *one shilling* for each barrel, $7\frac{1}{2}$ d. for a half barrel, *one shilling and six pence* for each tierce, and *eleven pence* for a half tierce, exclusive of cooperage and repairs not exceeding *six pence* per barrel or half barrel, tierce or half tierce, delivered in good shipping order: such fee or allowance to be paid by the owner or consignee before removal: after inspection a certificate or bill of inspection shall be furnished by the inspector or assistant, without charge, specifying the quantity and the owner's marks, and the quantities and qualities ascertained by inspection, and the charges thereof: any inspector or assistant giving an untrue certificate, or without a personal examination, shall incur a penalty of £20 currency, and be dismissed from office: beef or pork re-inspected, to bear the brand of the year and month originally affixed—such brand-marks to be brand-

Beef and Pork.

ed on one head of the barrel or tierce, &c. Where beef or pork shall be sold subject to inspection, the cost shall fall on the vendor (if not the applicant), unless agreement to the contrary at the time of sale. Provided also, that any such agreement shall imply a warranty that this act has been complied with, as well with regard to the provisions, as to the vessels containing the same, and the marks thereon.

§ 12. All brands to be large and legible, within a space not exceeding *fourteen inches* long by *eight inches* broad, under a penalty of £20 currency for each barrel, &c. § 13. Inspector not to charge storage unless left in store more than three days after notice of inspection. § 14. Any inspector suffering beef or pork left in his charge to be exposed, after inspection, to the heat of the sun, or inclemency of the weather, longer than *six days*, shall be liable to the penalty of £10 currency for every offence; and for not providing a suitable store in a convenient situation, *twenty shillings* a day. § 15. Barrels and salt, &c., to be furnished by the inspector, or owner, at the option of such owner or consignee. § 16. In case of dispute between the inspector and owner, with regard to the quality and condition, either party may apply to a justice, who shall summon *three* persons of skill and integrity, one to be named by the inspector and one by the proprietor, and the third by the justice, who shall examine and report their opinion under oath (to be administered by such justice), and the decision of the majority shall be final, and the inspector brand accordingly, and if the opinion of the inspector be confirmed, the costs shall be paid by the proprietor, *otherwise* by the inspector. § 17. Any inspector or assistant neglecting or refusing, when called upon by any proprietor between *sunrise* and *sunset* (not being previously engaged), within *two hours* to proceed to such inspection, shall forfeit to the person applying, on conviction before any one justice, the sum of £5 currency over and above all other damages. § 18. On the head of any barrel, &c., containing any thin, rusty, measley, tainted, sour, or unmerchantable pork, or unmerchantable or spoiled beef, branded "rejected," the true character both as to quality and condition of such pork or beef shall be marked with black paint, and the inspector shall certify, when required, the quality, state and condition thereof, and the package containing the same, specifying the extent of damage and apparent cause thereof, with the brands or other marks upon the casks or packages, and the name of the owner. § 19. Barrels, &c., to be made of good seasoned white oak staves; and heads not less than $\frac{3}{4}$ inch thick; each stave on the edge

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

§ 20. The salt to be used shall be clean *St. Ubes, Isle of May, Turk's Island*, or other coarse ground salt of equal quality; and every barrel of fresh beef or pork shall be well salted with 75 pounds, and every tierce with 112 pounds of good salt as aforesaid, exclusive of a sufficient quantity of pickle as strong as salt will make it, and to each barrel of beef and pork shall be added four ounces, and to each tierce six ounces of saltpetre; and each half barrel of fresh beef and pork shall be salted with half the quantity of salt and saltpetre above mentioned, with a sufficiency of pickle, and in all cases of packing and re-packing beef and pork to be inspected and branded under the authority of this act, the inspector is hereby authorised to use salt, saltpetre, and pickle, in his discretion. § 21. All beef which an inspector shall find on examination to have been killed at a proper age, and to be fat and merchantable, shall be cut into pieces as nearly square as may be, not more than eight nor less than four pounds weight; and shall be sorted and divided for packing and re-packing in barrels and half barrels, tierces and half tierces, into four different sorts, to be denominated respectively mess—prime mess—prime—and cargo beef.

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

Beef and Pork.

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

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

Cargo beef shall consist of the meat of fat cattle, of all descriptions, of three years old and upwards, with not more than half a neck and three shanks, (with the hough cut off above the first joint), and the meat otherwise merchantable; and barrels and half barrels, and tierces and half tierces, containing such beef, shall be branded on one of the heads *Cargo Beef*.

And each barrel, in which beef of either of the foregoing descriptions shall be packed or repacked, shall contain two hundred pounds of beef, and each half barrel, one hundred pounds; each tierce, three hundred pounds, and each half tierce, one hundred and fifty pounds.

§ 22. All pork which an inspector shall find to be fat and merchantable, shall be cut in pieces as nearly square as may be, and not exceeding six, nor less than four pounds weight, and shall be sorted and divided into four sorts, to be denominated respectively mess—prime mess—prime—and cargo pork.

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

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

Prime pork shall consist of the pieces of good fat hogs, not

(a) Amended by 20 V., c. 13, including hogs exceeding 200 lbs. weight.

weighing less than one hundred and fifty pounds each, the barrel to contain the coarse pieces of one hog and a half only, that is to say, three half heads, (not exceeding together twenty-four pounds in weight,) three hams and three shoulders, and the remaining pieces of a hog and a half hog; the tierce to contain the relative proportions of heads, shoulders and hams, and the remaining pieces of two hogs and a quarter of a hog; and each barrel or half barrel, tierce or half tierce, containing pork of this description, shall be branded on one of the heads *Prime Pork*.

Cargo pork shall consist of the pieces of fat hogs, weighing not less than one hundred pounds each, the barrel to contain the coarse pieces of not more than two hogs, that is to say, four half heads, (not exceeding together in weight thirty pounds), four shoulders and four hams, and the remaining pieces of two hogs, and shall be otherwise merchantable pork; the tierce to contain the relative proportion of heads, shoulders and hams, and the remaining pieces of three hogs; and the barrels and half barrels, tierces and half tierces, containing pork of this description, shall be branded on one of the heads *Cargo Pork*; but in all cases the following parts shall be cut off and not packed, viz., the ears close to the head, the snout above the tusks, the legs above the knee joint, the tail shall be cut off, and the brains, tongue and bloody grizzle taken out; and each barrel, in which pork of any of the foregoing descriptions may be packed or repacked, shall contain two hundred pounds; and each tierce three hundred pounds; and each half barrel, or half tierce, one-half those qualities respectively, of the several qualities of pork as aforesaid, and shall be branded accordingly. § 23. No inspector or assistant inspector of beef and pork shall directly or indirectly trade or deal in beef or pork, or be concerned in such trade, whether by buying, bartering, or exchanging any live or dead cattle or hogs, with a view to pack the same or get them packed, or by buying, bartering or exchanging beef or pork when packed; nor shall he purchase beef or pork of any description, otherwise than for the use and consumption of his family, under a penalty of £50 currency for each offence, and on pain of being removed from office. § 24. If any packer or any other person shall, with a fraudulent intent, efface or obliterate any of the inspector's brand marks, or shall counterfeit any such marks or brand the same on any barrel or half barrel, tierce or half tierce, or shall empty or partially empty any barrel or half barrel, tierce or half tierce, branded after inspection, in order to put into the same other beef or pork, or shall use, for the purpose of packing any beef or pork, old barrels or

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

court of competent jurisdiction, and levied by execution, as in the case of debt, and one moiety of such fines and forfeitures (except such as hereinbefore directed to be otherwise applied) shall be immediately paid into the hands of the treasurer of the city of Toronto, or place wherein the suit shall have been brought, and shall remain at the disposal of the corporation for the public uses thereof, and the other moiety shall belong to the prosecutor, unless the action be brought by any officer of such corporation, in which case the whole shall belong to the corporation for the uses aforesaid. § 27. Actions to be commenced within six calendar months. § 28. Act to be in force from the 1st January, 1842. § 29. And to continue in force till the 1st January, 1848, and the end of the next session.

By 13 & 14 V., c. 30, it is enacted that none but inspectors or their assistants duly appointed, or actual owners, shall inspect any beef or pork, or brand or mark any barrel or half barrel, tierce or half tierce, or cask, or vessel of any kind containing the same, under a penalty of £10, to be recovered and applied as provided by 4 & 5 V., c. 88: and if any owner shall brand any such vessel without affixing to it his name and the initial of his christian name, the date when branded, and the word "owner" or "owners," he shall incur the penalty aforesaid. § 2. Notwithstanding § 11 of said act, it shall be lawful to brand on the vessel containing any beef and pork "re-inspected," the date thereof, and other particulars required in case of inspection—but no former inspection brand to be effaced; every re-inspection made contrary to this section liable to the penalty aforesaid. § 3. Notwithstanding § 13 of former act, inspector not to charge storeage on beef or pork inspected by him, unless left in his store more than *ten* days after notice by him of inspection to the proprietor or consignee. § 4. The act 4 & 5 V., c. 88, as amended, made permanent.

BENCH WARRANT.

*By 55 G. III., c. 2, § 3, the process upon every indictment to bring the person indicted into court, shall be a *capias*, in the usual form, issued from the court before whom the said indictment shall be found, directed to the sheriff of the district wherein the said court shall be then sitting, commanding him to take the person so indicted and bring him before the said court, and if the person cannot be taken during the sitting of the said court, that then so soon after as he shall be taken he do bring or cause him to be brought before some justice of the peace of the said district, to be

dealt with according to law; which said *capias* shall be made returnable in the court of King's Bench on the first day of the term next after the sitting of the said court before which the said indictment shall have been found. And if upon the return of the said writ the sheriff of the said district shall return that the person therein named is not to be found in his district, then an *alias* writ of *capias* shall issue from the Court of King's Bench, under the seal of the said court, tested of the first day of term time, or on the last day of the preceding term, if in vacation, returnable before the said Court of King's Bench on the first day of the term next ensuing. § 4. And if to the said writ of *alias capids* the sheriff shall return *non est inventus*, then upon motion in court, or before a judge in vacation, a writ of exigent shall issue. For further proceedings see *post* title "Outlawry."

The above act was allowed to expire, but was revived and continued by the *3 W. IV., c. 5, (passed in February, 1833,) for six years, and to the end of the next session. And by *2 V., c. 7, was made perpetual.

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

Upon the party being taken, (if the charge be *misdemeanor* only,) he may give recognizance to appear to any magistrate, who thereupon will grant a *supersedeas* of the warrant. But if the charge be *felony*, magistrates should be exceedingly cautious in taking bail after an indictment found by the grand jury; and the better course would perhaps be, to leave the prisoner to apply to a judge, who will bail him or not, according to his discretion.

Form of a Bench Warrant.

County of York, }
to wit. } To the Sheriff of the County of York, Greeting:

These are to will and require, and in her Majesty's name to command you, upon sight hereof, to bring before us, J. C. and S. P., Esquires, two of her Majesty's justices of the peace for the county of York, at the general quarter sessions of the peace now being holden at the city of Toronto, in and for the said county of York, or such other two or more of her Majesty's justices of the peace for the said county as shall be then and there sitting, the body of A. B., who stands indicted before us at this same sessions for an assault, (*or for larceny*,) if the court shall be then and there sitting; and if he cannot be taken during the present sessions, that then so soon after as he shall be taken you bring or cause him to be brought before some justice of the peace of the said county, to be dealt with according to law; and what you shall have done herein make appear to

her Majesty's justices of the Court of Queen's Bench at Toronto, on the first day of term now next ensuing, and have you there this warrant. Dated in open sessions, at the city of Toronto, this day of , in the year of our Lord 18 .

J. C.
S. P.

BENEFIT OF CLERGY.

Benefit of clergy was a privilege allowed by the law to clerks in orders, and afterwards to those among the laity who could read, by virtue of which a criminal, though duly convicted, was discharged from the sentence of the law in the king's courts and delivered over to the ordinary, to be dealt with according to the ecclesiastical canons.—4 *Bl. Com.* 368. Owing to the ancient severity of the British law, which subjected all persons convicted of felony, of any description, to the penalty of death, the benefit of clergy appears to have been a remedy invented by the church in her day of power to rescue offenders convicted of felony from the punishment consequent thereon; subsequently the legislature, to distinguish such crimes as were by statute to be punished with death, usually enacted that the offender, upon conviction, should be deemed guilty of felony without benefit of clergy, thus leaving the criminal to rely only upon the royal prerogative for a mitigation of his punishment. The real distinction therefore, in cases of felony, appears to have been this: felonies at the common law or by statute, within the benefit of clergy, were no longer deemed capital; but such as were not within this privilege partook of all the ancient rigour of the law, and were deemed capital or punishable with death. Benefit of clergy is now very properly abolished and a milder criminal code substituted: this important change was effected in England by 7 & 8 G. IV., c. 27, and in Upper Canada by statute *3 W. IV., c. 5.

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

BENEFIT SOCIETIES.

See "*Provident Societies.*"

BIGAMY.

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

By 4 & 5 V., c. 27, § 22, if any person, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have

taken place in this province or elsewhere, every such offender, and every person counselling, aiding or abetting such offender, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years, and any such offence may be dealt with, enquired of, tried, determined and punished in the district or county where the offender shall be apprehended or be in custody, as if the offence had been actually committed in that district or county: provided always, that nothing herein contained shall extend to any second marriage contracted out of this province, by any other than a subject of her Majesty resident in this province, and leaving the same with intent to commit the offence, or to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time; or shall extend to any person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.—For forms see “*Indictable Offences.*”

BILLIARD TABLES.

By 12 V., 81, § 60, municipalities are authorised to make by-laws for the regulation of such.

By 16 V., c. 184, § 3, they are also authorised to make by-laws for regulating and governing the keepers of, and for licensing the same, and fixing the amount of duty, and for imposing penalties for the infraction of such by-laws.

BLASPHEMY AND PROFANENESS.

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

And if any person shall, in any stage-play, interlude, show, May-game or pageant, jestingly or profanely speak

or use the holy name of God, or of Christ Jesus, or of the Holy Ghost, or of the Trinity, he shall forfeit £10—half to the king and half to him that shall sue.—3 *J. C.* 21.

BOARD OF HEALTH.

See "*Public Health.*"

BOARD OF WORKS.

"See *post* title "*Public Works.*"

BOUNDARY LINES.

By 12 V., c. 35, reciting that it was expedient to amend and consolidate the laws respecting land surveyors, and the survey and admeasurement of lands, by § 1, former acts (*a*) are repealed.

§ 26. Stone monuments, or monuments of durable materials, to be placed at the several corners, governing points or offsets of every township surveyed or hereafter to be surveyed; and also at each end of the several concession lines of such townships; and lines drawn as hereinafter prescribed therefrom shall be the permanent boundary lines of such townships and concessions. § 27. Such monuments to be placed under the direction and order of the Commissioner of Crown lands. § 28. That the courses and lengths of said boundary lines so ascertained and established, shall be the true courses and lengths of the boundary lines of said townships and concessions, whether the same do or not, on actual survey, coincide with the courses and lengths in any letters patent or other instrument. § 29. If any person shall knowingly and wilfully pull down, deface, alter or remove, any such monument so erected as aforesaid, he shall be guilty of felony; and if any person shall knowingly and wilfully deface, alter or remove any other land-mark, post or monument, placed by any land surveyor to mark any limit, boundary or angle of any township, concession, range, lot or parcel of land, such person shall be guilty of misdemeanor, and being convicted before any competent court, shall be punished by fine or imprisonment, or both; fine not to exceed £25, nor imprisonment three months: but this clause not to prevent land surveyors, in their operations, from taking up posts or other boundary marks when necessary; after which they shall carefully replace them as before. § 30. Monuments not to be placed under § 26, 27, except on application of the municipal council of the district. § 31. It

(*a*) 38 G. III., c. 1; 59 G. III., c. 14; 2 V., c. 17; 4 & 5 V., c. 9.

shall be lawful for the district council, on application of one-half of the resident landowners in any concession (or without such application if the council shall deem necessary), to make application to the governor to cause any such line to be surveyed and marked by permanent stone boundaries under the direction and order of the Commissioner of Crown Lands, at the cost of the proprietors of the lands in such concession or part of a concession interested; and it shall be lawful for such district council to cause an estimate of the sum requisite to defray the expenses to be incurred to be laid before them, in order that the same may be levied on the said proprietors in proportion to the quantity of land held by them respectively in such concession or part of a concession, in the same manner as any sum required for any other purpose authorised by law may be levied; and the lines or parts of lines so surveyed and marked as aforesaid, shall thereafter be taken to be the permanent boundary lines of such concessions or parts of concessions to all intents and purposes; and all expenses incurred in performing any survey or placing any monument or boundary under this section, shall be paid by the district treasurer to the person employed, on certificate of the Commissioner of Crown Lands: provided that the lines shall be drawn so as to leave each of the adjacent concessions of a depth proportionate to that intended in the original survey. § 32. All boundary lines of townships, cities, towns, villages, concession lines, governing points, and all boundary lines, of concessions, sections, blocks, gores, commons, and all side lines and limits of lots surveyed; and all posts or monuments which have been placed or planted at the front angles of any lots or parcels (provided the same have been or shall be marked, placed or planted, under the authority of the executive government of the late province of Upper Canada, or under the authority of the executive government of this province), shall be, and the same are hereby declared to be, the true and unalterable boundaries of the same, whether the same shall upon admeasurement be found to contain the exact width, or more or less, expressed in any letters patent, grant or other instrument in respect thereof; and such township, city, town, &c., shall embrace the whole width contained between the first posts, monuments or boundaries, planted or placed at the front angle of any such township, city, town, &c., so marked, placed or planted as aforesaid, and no more nor less. § 33. All allowances for roads or streets in any city, town or village, to be public highways. § 34. As to lands granted in blocks and subsequently surveyed by the grantees—such

surveys to be deemed original surveys. § 35. The course of the boundary line of each and every concession, on that side from which the lots are numbered, shall be, and the same is hereby declared to be, the course of the division or side lines throughout the several townships; *provided* that such division or side lines were intended in the original survey to run parallel to the said boundary; and all surveyors are hereby required to run division or side lines, which they may be called upon to survey, so as to correspond with and be parallel to that boundary line of the concession in which such lands are situate, from whence the lots are numbered as aforesaid: *provided* always, that such division or side lines were intended in the original survey to run parallel to the said boundary: *provided* also, that when the end of a concession from which the lots are numbered is bounded by a lake or river, or other natural boundary, or where it has not been run in the original survey, performed under such competent authority as aforesaid, or when the course of the division or side lines of the lots therein was not intended in the original survey to run parallel to such boundary, the said division or side line shall run parallel to the boundary line at the other extremity of such concession, provided their course was intended in the original survey to be parallel thereto, and that such boundary line was run in the original survey: *provided* further, that when in the original survey the course of the division or side lines in any concession was not intended to be parallel to the boundary line at either end of such concession, they shall be run at such angle with the course of the boundary line at that end of the said concession from which the lots are numbered, as is stated in the plan and field notes of the original survey; *provided* such line was run in the original survey as aforesaid, or with the course of the boundary line at the other extremity of the said concession, if the boundary at that end of the concession from which the lots are numbered was not run in the original survey; or if neither of the aforesaid boundaries of the concession were run in the original survey, or if it be bounded at each end by a lake or river or other natural boundary, then at such angle, with the course of the line in front of the said concession, as is stated in the plan and field notes aforesaid: *provided*, nevertheless, that if any division or side line between lots, or proof line intended to be parallel to the division or side lines between lots, shall have been drawn in any such concession in the original survey thereof, the division or side lines between the lots therein shall be drawn parallel to such division or side line, or proof

line; and when two or more such division or side lines, or proof lines, have been drawn in the original survey, that division or side line, or proof line nearest to the boundary of the concession from which the lots are numbered, shall govern the course of the division or side lines of all the lots in such concession, between the boundary of the concession from which the lots are numbered and the next division or side line, or proof line drawn in the original survey, which shall govern the course of the division or side lines of all the lots up to the next division or side line, or proof line, drawn in the original survey, or to the boundary of the concession towards which the lots are numbered (as the case may be): *provided* further, that in all those townships which in the original survey have been divided into sections, pursuant to an order in council, dated 27th March, 1829, the division or side lines in all concessions, in any section, shall be governed by the boundary line of such section, in like manner as the division or side lines in townships originally surveyed before that day are governed by the boundary lines of the concession in which such lots are situate. § 36. The front of each concession where only a single row of posts has been planted, and the lands have been described in whole lots, shall be that end or boundary of such concession which is nearest to the boundary of the township from which the concessions are numbered; *provided*, that in those townships bounded in front by a river or lake, where no posts were planted in the original survey to regulate the width in front of the lots in the broken front, the division or side lines of such lots shall be drawn from the posts or boundaries on the concession line in the rear, parallel to the governing line determined as aforesaid, to the river or lake in front; *provided* also, that when the line in front of any such concession has not been run in the original survey, the division or side lines of the lots in such concession shall be run from the original posts or monuments planted on the rear thereof, parallel to the governing line determined as aforesaid, to the depth of the concession, viz.: to the centre of the space contained between the lines in front of the adjacent concessions, if the concessions were intended in the original survey to be of an equal depth; or if they were not so intended, then to the proportionate depth intended in the original survey, having due respect to any allowance for road made in the original survey; and that a straight line joining the extremities of the division or side lines of any lot in such concession, drawn as aforesaid, shall be the true boundary line of that end of the lot which has not been run in the original

survey. § 37. That in townships in which the concessions have been surveyed with double fronts, that is with posts or monuments planted on both sides of the allowance for roads between the concessions, and the lands have been described in half lots, the division or side lines shall be drawn from the posts at both ends to the centre of the concession, and each end of such concession shall be the front of its respective half of such concession, and a straight line joining the extremities of the division or side lines of any half lot, in such concession drawn as aforesaid, shall be the true boundary of that end of the half lot which has not been bounded in the original survey.

§ 38. That in those townships where each alternate concession line only has been run in the original survey, but with double fronts; the division or side lines shall be drawn from the posts or monuments on each side of such alternate concession lines, to the depth of a concession, viz., to the centre of the space contained between such alternate concession lines, if the concessions were intended in the original survey to be of an equal depth, otherwise to the proportionate depth intended; and each alternate concession line as aforesaid, shall be the front of each of the two concessions abutting thereon.

§ 39. Every land surveyor running any side line between lots shall, if not done before, or if done, and the course cannot be ascertained, determine by astronomical observation, the true course of a straight line between the front and rear ends of the governing boundary line of the concession or section, and shall run such side line parallel thereto, if so intended in the original survey, or at such angle therewith as stated in the plan and field notes. § 40. Relating to surveys when the original post or monument cannot be found is repealed by 18 V., c. 83, and other provisions made by § 10 of that statute.

§ 44. In cases where letters patent have issued for several lots, in concessions adjoining each other, the side lines shall commence at the front angles of such lots, and shall be run as hereinbefore provided, and shall not continue on in a straight line through several concessions, unless the side lines, when run as aforesaid, shall intersect the corresponding post or monument in the front of the concession next in rear; each lot being surveyed and bounded independently of all other lots mentioned in the grant. § 48. False swearing under this act to be deemed perjury. § 49. If any action of ejectment shall be brought against any person who, after any line or limit shall have been established according to this act, shall be found, in consequence of unskilful survey, to have improved on lands not his own, the judge of assize shall

direct the jury to assess such damages for the defendant for any loss he may sustain thereby, and to assess the value of the land; and if verdict be found for the plaintiff, no writ of possession shall issue, until such plaintiff shall have tendered or paid such damages, or shall have offered to release the land to the defendant, provided the defendant should pay or tender to the plaintiff the value of the land so assessed, before the fourth day of the ensuing term. § 50. If upon the trial it should appear, that defence made was only for the purpose of obtaining the value of improvements in consequence of unskilful survey, and the judge shall so certify, the defendant shall be entitled to his costs, provided that at the time of entering into the *consent rule* the defendant shall have given notice to the plaintiff that he only claimed the amount of his improvements, and did not intend to contest plaintiff's title; and in case such notice shall not be given, or the jury shall assess less than the amount claimed, the defendant shall pay costs to the plaintiff. § 51. Interpretation clause. § 52. A copy of this act to be sent to every land surveyor.

By 18 V., c. 83, § 7, when any surveyor shall be in doubt as to the true boundary or limit of any township, concession, range, lot or town, which he may be employed to survey, and shall have reason to believe that any person is in possession of important information, touching such boundary or limit, or of any writing, plan, or document, and the party is not willing to attend or produce the same, such surveyor, or his employee, upon making an affidavit of the facts before a justice of the peace, and filing the same in the office of the county court, may obtain a *subpœna duces tecum*, and serve a copy on the party personally, or leave it at his usual place of abode, at the same time exhibiting the original, and if the party named therein, upon being tendered his reasonable expenses, shall neglect or refuse to appear before such surveyor, or produce such documents, or give such evidence, he shall be guilty of a *contempt*, and punished by fine or imprisonment in the discretion of the judge. § 8. Whenever the municipal corporation of any township, city, town, or incorporated village shall adopt a resolution on application of one-half the resident land holders to be affected thereby, that it is desirable to place stone or other durable monuments at the front or at the rear, or at the front and rear angles of the lots in any concession or range, or part of a concession or range in their township, city, town, or incorporated village, it shall be lawful for such municipal corporation to make application to the Governor in the same manner provided in the 31st § of the 12 V., c. 35, praying him to cause a survey

of such concession or range, &c., to be made, and such boundaries to be planted under the authority of the Commissioner of Crown Lands; and the person or persons making such survey shall, accordingly, plant stone or other durable monuments at the front or at the rear, or at the front and rear angles of each and every lot in the said concession or range, or part of the same, and the limits of each lot so ascertained shall be taken to be, and are hereby declared to be, the true limits thereof: and the costs of the said survey shall be defrayed in the manner prescribed by the said 31st §, 12 V., c. 35. § 9. The limits or side lines of double fronted concessions to be drawn from the posts at both ends thereof to the centre of the concession, as provided in the 37th § of the said act, 12 V., c. 35, without reference to the manner in which the lots in such concession shall have been described for patent. § 10. In case the original post or monument from which any side line or limit between lots should commence, cannot be found, the surveyor shall obtain the best evidence the case will admit of respecting the same; but if the same cannot be satisfactorily ascertained, he shall measure the true distance between the nearest undisputed posts, limits or monuments, and divide such distance into such number of lots as the same contained in the original survey, assigning to each a breadth proportionate to that intended in such original survey, as shewn on the plan and field notes thereof; and if any portion of the line in front of the concession in which such lots are situate, or boundary of the township shall be obliterated or lost, then he shall run a line between the two nearest points or places where such line can be clearly and satisfactorily ascertained, and shall plant all such intermediate posts or monuments as he may be required to plant, having due respect to any allowance for roads, or commons set out in such original survey, and the limits so found shall be the true limits thereof.

By 20 V., c. 73, § 1, notwithstanding said act 12 V., c. 35, (or any other act,) it shall be lawful for surveyors, and they are hereby required, when called on to determine disputed boundaries in the said townships, to ascertain and establish the division or side lines of the lots by running such side lines as they were run in the original survey, whether the same were run from the front of the concession to the rear, or the rear to the front, in the original survey, and to adhere to all posts, limits or monuments, planted on the division or side lines in the original survey, as being or designating corners of lots under such original survey.

BREAD.

*By 6 G. IV., c. 6, entitled, "An Act for the better regulating the assize and fixing the Price of Bread in the several police towns throughout the province," certain provisions were made on the subject. But this act, although not expressly repealed, is now superseded by the municipal act 12 V., c. 81, § 30, which amongst other things authorises the municipalities of incorporated villages, &c. to make by-laws for regulating the assize of bread.

BRIBERY.

Bribery is the receiving of any undue reward by any person whatsoever, whose ordinary profession or business relates to the administration of public justice, or who is in any official situation, in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity, and the person who *gives* the bribe is as much guilty of the offence as he who takes it.—3 *Inst.* 149; 1 *Haw. c.* 67, § 2; 4 *Bl. Com.* 139.

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

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

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

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

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

BRIDGES.

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

By statute 8 V., c. 44, if any person shall drive or ride at

a faster rate than a walk over any public bridge exceeding thirty feet in length in Upper Canada, each and every person so offending, upon proof of such offence before any justice of the peace for the district, either by confession of the party, or by the oath of one or more credible witness or witnesses, and on conviction thereof shall be liable to a fine of not less than 5s. nor more than 20s., to be paid forthwith, and in default thereof to be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of such justice; and in case of insufficiency of distress, or the offender not being resident in the district, it shall be lawful for such justice, by warrant under his hand and seal, to commit such offender to the common gaol of the district for a period not exceeding two days, unless penalty and costs sooner paid. § 2. Penalties to be paid to the treasurer for the use of the district. § 3. Notice of this act to be printed and put up at each end of the bridge in the form prescribed. § 4. Any person defacing such notice shall be liable to a fine of not less than 5s. nor more than 40s., receivable as other fines imposed by this act.

By 9 V., c. 37, § 7. The management of all bridges on which provincial funds have been expended is transferred to the commissioners of public works. § 23. And vested in her Majesty.

Bridges in Upper Canada mentioned in the Schedule to this act.

The Union Suspension, and other bridges over the Ottawa river between Bytown and Hull.

The Trent bridge at the mouth of the Trent.

The bridge at the mouth of Lake Simcoe.

The Dunnville bridge.

The Brantford bridge.

The Paris bridge.

The Delaware bridge.

The Chatham bridge.

The Municipal Act 12 V., c. 81, § 31, authorises township municipalities to make by-laws for regulating the driving and riding over any bridge erected or to be erected in such township.

See also "*Highways,*" "*Travellers.*"

BUGGERY.

Buggery is a detestable and abominable sin, not to be named, committed by carnal knowlege against the ordinance of the Creator and order of nature by mankind, or with

brute breast, or by womankind with brute beast.—3 *Inst.* 58. And by stat. 25 H. VIII., c. 6, buggery committed with mankind or beast, is made felony; which said statute making it felony generally, there may be accessories before and after, but those that are present, aiding and abetting, are all principals; and although none of the principals are admitted to their clergy, yet accessories before and after are not excluded from clergy.—1 *H. H.* 670.

If the party buggered be within the age of discretion, (fourteen years) it is no felony to him, but in the agent only; but if buggery be committed on a man of the age of discretion, it is felony in both of them.—3 *Inst.* 59; 1 *H. H.* 67.

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

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

BUILDINGS.

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

See also titles "*Arson*," "*Burglary*."

BUREAU OF AGRICULTURE.

See "*Agricultural Societies*."

BURGLARY.

Burglary is a felony at common law, in breaking and en-

tering the mansion-house of another in the *night*, with intent to commit some felony within the same, whether the felonious intent be executed or not.—*Hale's Pl.* 79.

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

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

Every entrance is not a breaking—as, if the door stand open, and the thief enter, this is no breaking; so, if the window be open, and the thief draw out some of the goods, this is not burglary, because there is no actual breaking; but if the thief break the glass of the window, and draw out the goods, this is burglary.—3 *Inst.* 64. And Lord *Hale* says these acts amount to an actual breaking—opening the casement, or breaking the glass window; picking open the lock of the door, or putting back the lock, or the leaf of a window, or unlatching the door that is only latched—1 *H. H.* 552; and so does the pushing open of folded doors—*Rex v. Brown*, 2 *East. P. C.* 487; 2 *Russ.* 902: pulling down the upper sash of a window—*Rex v. Haines*, *Russ. & Ry.* 451: *S. C. nom.*, *Rex v. Harrison*, 1 *Chetw. Brom.* 497: creeping down a chimney.—*Crompt.* 32; *Dalt.* 253; 1 *Haw. c.* 38, § 6.

The breaking is not confined to the outer door or external parts of a house, for if A. enters the house of B., the outward door being open, or by an open window, and when within the house turn the key of a chamber door, or unlatch it with intent to steal, this will be burglary—*Johnson's case*, 2 *East. P. C.* 488; and the like if any lodger in a house or guest in a public inn open and enter another person's chamber door, with intent to commit a felony—1 *Hale*, 553, 554; 4 *Bl. Com.* 227; *Rex v. Bington*, 2 *East. P. C.* 448; but if an inn-keeper break the chamber of his lodger or guest at night to rob, this would not be burglary, for a man cannot

commit a burglary by breaking his own house.—2 *East. P. C.* 502; *Kel.* 84.

Constructive breaking is where, in consequence of *violence* commenced or threatened, the owner of the house (through fear or in order to repel the violence) opens the doors, and the thief then enters, this amounts to burglary, for the opening of the door in this case is as much imputable to the thief as if it had been done by his own hands.—*Cromp.* 32, (a); 1 *Hale*, 553; 2 *East. P. C.* 486. And so, if in consequence of any *fraud* or *deceit* the owner is induced to open his door to the thieves, this will amount to breaking; as, where thieves came with a pretended hue and cry, and required a constable to go with them to apprehend the owner and search his house, and the owner, at the command of the constable, opens the door, when the thieves bound the constable and robbed the house, this was held to be burglary.—1 *Hale*, 553; 3 *Inst.* 64; *Cromp.* 32, (b); 4 *Bl. Com.* 226. And the like if a man go to a house under pretence of being authorised to make a distress, and by this means obtain admittance.—*Gascoigne's case*, 1 *Leach*, 284. For in all these cases the law will not endure to have its justice defrauded by such evasions.—1 *Haw. c.* 38, § 5; 4 *Bl. Com.* 227.

What is an Entering.

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

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

What is a Mansion or Dwelling-house.

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

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

There is no severance, however, where there is *any internal communication*, though there may be a separate entrance from without to the part let off; as where the communication was formed by means of a trap-door and a ladder, which were seldom used, but the trap-door was never fastened. Lord Ellenborough said it could make no difference whether the communication was through a trap door, or by a common stair-case. *Rock v. Stockton*, 2 *Taunton*, 339; 2 *Leach*, 1015. And when the owner of the house continues to sleep in it, no part of it then can be so severed by being let off to a tenant or a lodger, as to become a separate mansion house. *Rex v. Rogers*, 1 *Leach*, 89; 2 *East. P. C.* 507. Unless, indeed, that which was one house originally comes to be divided completely into two separate tenements, and there is a distinct outer door to each, without any internal communication; in which case they will then become separate houses.—*Per* *Ld. M. Cowp.* 8. But if the owner of a house neither *inhabits* it himself nor any of his family, it will not then become *his* dwelling-house, as applicable to the offence of burglary. Therefore when a man purchases or rents a house with intention to reside in it, and moves some of his furniture into it, but neither he or any of his family ever sleep there, and it is broken open in the night, the judges

have determined that a breaking into a house of this description does not amount to burglary.—*R. v. Lyons*, 1, *Leach*, 185; 2 *East. P. C.* 496; *R. v. Hallard*, 2 *East.* 498; 2 *Leach*, 701 (note a); *R. v. Thompson*, 2 *Leach*, 771; 2 *East.* 498; *Contra*, 1 *Haw. c.* 38, § 18; 1 *Kel.* 46. And this, even though the owner of the house has used it for his meals and for all the purposes of his business.—*Rex v. Martin, Russ & Ry.* 108. Or, though a person actually sleep in the house for the purpose of protecting it, if such person forms no part of the domestic family of the owner—as where the owner puts in a workman or other person, who is in no situation of servitude to him, for the purpose of taking care of his goods.—*Rex v. Fuller*, 2 *East P. C.* 498; 1 *Leach*, 186 (note b.); *Rex v. Harris, Leach*, 701; 2 *East. P. C.* 498.

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

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

By 4 & 5 V., c. 25, § 18, no building, although within the same curtilage with the dwelling-house and occupied therewith, shall be deemed to be part of such dwelling-house, for the purpose of burglary, or for any of the purposes in said act, unless there shall be a communication between such building and dwelling-house, either immediate or by means of a covered and inclosed passage leading from the one to the other. § 19. If any person shall break and enter any building and steal therein any chattel, money, or valuable security, such building being within the curtilage of a dwelling-house, and occupied therewith, but not being part thereof, every such offender being convicted thereof, shall be liable to be imprisoned at hard labour in the provincial penitentiary for any term not exceeding fourteen years, nor less than seven years, or be imprisoned in any other prison or place of confinement not exceeding two years. § 20. If any person shall break and enter any shop, warehouse or counting-house, and steal therein any chattel, money, or valuable

security, every such offender being convicted thereof, shall be liable to any of the punishments which the court may award as hereinbefore last mentioned.

Of the time of Committing the Offence.

It must be *in the night*; and, by 4 & 5 V., c. 25, § 16, in cases of burglary, the night shall be considered to commence at *nine* in the evening and to conclude at *six* the next morning.

It being moonlight will make no difference, for then many midnight burglaries would go unpunished; and the malignity of the offence, as Blackstone observes, does not indeed so properly arise from its being done in the dark, as at the dead of night, when all the creation, except beasts of prey, are at rest; when sleep has disarmed the owner, and rendered his castle defenceless.—4 *Bl. Com.* 224.

The breaking and entering need not be the *same night*: for if thieves break a hole in the house one night, with the intent to enter another night and commit felony, and they accordingly do so, through the hole they made the night before—this seems to be burglary.—1 *Hale*, 554; 4 *Bl. Com.* 226.

Of the Intent.

The intent of the breaking and entering must be to commit a *felony*. Therefore, if the intention was only to commit a *trespass*, the offence will not be a burglary. Thus, an intention to *beat* a man in the house, will not be sufficient; for though killing or murder may be the consequence of beating, yet if the primary intention were not to kill, a breaking and entering, for the purpose of beating, will not amount to burglary.—1 *Hale*, 561; *East. P. C.* 509. And where a man broke into a house with intent to commit a rape, this was held to be burglary.—*Rex v. Gray*, 1 *Str.* 481.

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

By 18 V., c. 92, § 28, any person found by night armed

with any dangerous or offensive weapon or instrument, with intent to break or enter into any dwelling-house or other building, and to commit any felony therein; or any person found by night having in his possession, without lawful excuse, any picklock, key, crow, jack, bit, or other implement of housebreaking, or any match or other combustible or explosive substance, or any person found by night having his face blackened, or otherwise disguised, with intent to commit felony, or any person found by night, in any dwelling-house or other building, with intent to commit any felony therein, shall be guilty of a misdemeanor, and liable at the discretion of the court to be imprisoned with or without hard labour for any time not exceeding two years.

Punishment.

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

For forms see "*Indictable Offences.*"

BY-LAWS.

By the Municipal Amendment Act, 16 V., c. 181, § 31, the following clause is substituted for the repealed section 185 of the original Municipal Act, 12 V., c. 81, viz: "that all persons committing any offence against any by-law lawfully made by any municipal corporation under the authority of this or any other act, and with regard to prosecutions for which no other provision is hereby made, may be prosecuted in a summary way before any one or more justices of the peace having jurisdiction within the locality in which the offender shall be resident, or within that in which the offence was committed; and such justice or justices, or other authority before whom any conviction for any such offence shall be had (and any such offender may be convicted on the oath or affirmation of any competent witness other than the prosecutor or informer), shall have full power and authority to award the penalty, or the imprisonment, as the case may be, imposed by the by-law under which the conviction shall be had, with the costs of prosecution against the offender, and to commit the offender to the common gaol, (if the offence be punishable by imprisonment,) and to cause the penalty to be levied with costs, if not forthwith paid, by distress and sale of the goods and chattels of the offender, by

warrant under the hand and seal of such justices, or one of them, or of the chairman or presiding officer of the court before whom such conviction was had; and one moiety of any such pecuniary penalty shall go to the informer or prosecutor, and the other moiety shall be paid to the treasurer or chamberlain of the corporation, against the by-law whereof the offence shall have been committed, and shall form part of the funds at the disposal of such corporation: provided always, *firstly*—that any such prosecution may be brought in the name and on the behalf of such corporation as aforesaid; and in that case, the whole of such pecuniary penalty shall be paid to the treasurer or chamberlain of such corporation, and form part of such fund as aforesaid: and provided, *secondly*—that any member of the municipal corporation, under the by-law whereof any such prosecution as aforesaid shall be brought, being *ex officio*, or otherwise, a justice of the peace within such locality, may act as such with regard to such prosecution.

§ 186. (a) That as well with regard to any such prosecution, as to any suit, action or proceedings to which any corporation created or to be created by or under this act shall be a party, no member, officer or servant of such corporation shall be deemed an incompetent witness, nor shall his testimony be objected to on the ground of his being interested in the matter as such member, officer or servant of such corporation, nor shall he be liable to challenge on such ground as a juror, if he have no more direct interest in the issue of such suit or prosecution, or be not otherwise rendered incompetent; any law, &c., to the contrary notwithstanding.

§ 199. Original by-laws, and all minutes of proceedings of any such corporation shall be kept in the office of their clerk, and shall be open at all seasonable times and hours to the inspection of the public; and the clerk shall furnish copies thereof at the rate of 6d. per 100 words, or at such lower rate as the corporation shall appoint; and all meetings and proceedings of any such corporation shall be held openly, and so that no person shall be prevented from being present thereat, except only when the public interest shall require the contrary.

By 16 V., c. 178, § 26, reciting that doubts might exist whether under the statute 13, 14 V., c. 54, appeals would lie from convictions under by-laws of municipalities, it is enacted that in all cases of complaints against any person

(a) This and the following section, 199, of the original act 12 V., c. 81, have not been repealed or altered.

for committing any offence against any by-law of any municipal corporation in Upper Canada, all decisions, convictions and orders made by any justice of the peace, or by any person by law authorised to act in that capacity, shall be subject to an appeal in the manner and subject to the provisions prescribed in the above recited act 13, 14 V., c. 54.

See also title "*Appeal*;" and for forms see title "*Summary Conviction*."

CALENDAR OF PRISONERS.

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

CANALS.

See "*Banks of Rivers*."

CAPITAL PUNISHMENT.

By statute * 3 W. IV., c. 3, the preamble of which recites "that it is fit that it should be plainly declared in the statutes of this province for what crimes offenders shall be liable to be punished with *death*, and that it does not seem to be indispensable for the security and well being of society that the punishment of death should be inflicted in any other cases than those hereinafter mentioned. It is therefore enacted, that persons convicted of the following offences shall suffer death as felons, viz.:—1. High treason. 2. Murder. 3. Petit treason. 4. Rescuing a person convicted of murder or committed for murder. 5. Rape. 6. Carnal knowledge of a girl under the age of ten years. 7. Sodomy. 8. Robbery of the person. 9. Robbing the mail. 10. Burglary. 11. Arson. 12. Accessories before the fact to any capital offence. Rioters to the number of twelve or more remaining after proclamation to disperse, pursuant to the 1 G. I., c. 5, or committing other offences mentioned in that act. Burning the king's naval stores in any dock yard." (a.)

* By 7 W. IV., c. 6, § 3, the Governor may commute the sentence of death (except in cases of high treason or murder, and then only by express authority from the crown), for transportation for life, or for a term of years, to such place of his Majesty's dominions as may be assigned for the reception

(a) §§ 2, 3, 5, 6, 7, 9, 10, 11, 12, of the above act, although not expressly repealed, seem in effect superseded by the 4 & 5 V., cc. 25, 26, 27, which enumerate what shall be deemed capital offences.

of convicts; or for banishment from this province for life or for any term of years; or for solitary confinement, or for confinement with or without hard labour in any penitentiary or house of correction that may be appointed for such purpose, either during life or for any term of years. § 4. Imprisonment after sentence to be reckoned in the term of transportation.

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

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

And by 4 & 5 V., c. 26, § 7, setting fire to any ship or vessel, with intent to murder or endanger the life of any person. § 8. Exhibiting any false lights, with intent to bring any ship or vessel into danger, or maliciously doing any thing to the immediate loss or destruction of any ship or vessel.

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

CARRIERS.

It has been held that a carrier embezzling goods which he has received to carry to a certain place, is not guilty of felony, because there was not a felonious taking, but is liable only to a civil action.—*Haw.* 89, 90. But if a carrier open a pack and take out part of the goods, with intent to steal it, he may be guilty of felony, in which case it may be said, not only that such possession of a part distinct from the whole was gained by wrong, and not delivered to the owner, but also that it was obtained basely, fraudulently, and clandestinely, in hopes to prevent its being discovered at all, or fixed upon any one when discovered—1 *Haw.* 90; so if a carrier, after he has brought the goods to the place appointed, take them away again secretly, with intent to steal them, he is guilty of felony, because the possession which he received from the owner being determined, his second taking is in all respects the same as if he were a mere stranger—1 *Haw.* 90; and if goods be delivered to a carrier, to be carried to a certain place, and he carries them to another place, and disposeth of them to his own use, this is felony, because this declareth that his intention originally was not to take the goods upon the agreement and contract of the party, but only with a design of stealing them.—*Kelynge*, 82. Where goods are delivered to a carrier, and he is robbed of them, he shall be charged and answer for them, by reason of the hire; and generally, if a man delivers goods to a common carrier to carry to a certain place, if he loses or damages them, an action upon the case lies against him; for by the custom of the realm he ought to carry them safely.—1 *Bac. Ab.* 343. Where goods are stolen from a carrier, he may prefer an indictment against the felon, as for his own goods.—*Kelynge*, 39.

See post title "*False receipts.*"

CATTLE.

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

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

CATTLE RUNNING AT LARGE.

By the General Municipal Act, 12 V., c. 81, the municipalities of incorporated towns, villages and cities, are empowered to make by-laws "for restraining and regulating the running at large of horses, cattle, sheep, goats, swine and other animals, geese, turkeys and other poultry; and to impound, or provide for the impounding of the same; and for fixing the periods of the year during which such animals or poultry shall be permitted to run at large."

By 20 V., c. 12, (Railway Act,) § 16, cattle found running at large-upon any highway within half a mile of any railway crossing, may be impounded.

See also "*Railways, Accidents on Railways.*"

CEMETERIES.

By the Municipal Act, 12 V., c. 81, the municipalities are authorised to make by-laws for "laying out, improving and regulating any public cemetery, and for selling or leasing such portions thereof as they may think proper, and for the improvement, ornament and protection of such cemetery."

By 13 & 14 V., c. 76, entitled "An Act to authorize the formation of companies for the establishment and management of Cemeteries in Upper Canada," any number of persons not less than *twenty*, may form a company under the provisions of this act. § 2. And when they shall have subscribed and paid in a sufficient quantity of stock adequate, in their judgment, to the purchase of the ground required for a cemetery, and shall have executed an instrument according to the form in the schedule A., and shall have paid to their treasurer *twenty-five* per cent. upon the capital stock, intended by such company to be raised for the purpose aforesaid, which sum shall not be less than that required for the purchase of the grounds necessary for such cemetery, and shall have registered such deed at full length, together with the treasurer's receipt for such first instalment of *twenty-five* per cent., with the register of the county, such

company shall thenceforth become a body corporate by such name as shall be designated in such deed, with a common seal; and they and their successors, by their corporate name, shall be capable of taking, purchasing, having, holding, conveying, selling and departing with any piece or parcel of land in Upper Canada, to be used exclusively as a cemetery, or a place for the burial of the dead. § 3. Affairs of the company to be managed by *nine* directors, to be elected by the stockholders annually, by ballot, on the third Monday in January—each shareholder being entitled to one vote for every share he may hold up to ten, and one vote for every five shares above ten; but no stockholder shall vote unless he shall have paid at least ten shillings upon each share. § 4. Such lot or share in such cemetery to contain not less than 100 superficial feet, and the holder of any such lot, having paid as aforesaid, shall be deemed a shareholder, and every shareholder who shall have paid in not less than £2 shall be eligible for a director. § 5. The directors to elect a president, and to have the power of making by-laws for laying out, selling and management of the grounds—for regulating the erection of tombs, monuments or grave-stones therein, and for empowering the president to execute deeds or conveyances of plots of ground in the cemetery to shareholders; and shall keep a book for recording their by-laws and proceedings, which shall be open to public access without charge. § 6. The real estate of the company to be free from taxes: moneys arising from sales to be applied first in payment of the original purchase of the land, and the residue in preserving, improving and embellishing the cemetery—and no dividend or profit shall be paid to the members. *Provided*, nevertheless, that the directors shall be *personally* liable for any judgment recovered against the company. § 7. Any company so formed as aforesaid shall furnish graves for strangers and the poor of all denominations, free of charge, on the certificate of a minister or clergyman of the denomination to which such person may have belonged, that the relatives of deceased are poor and cannot afford to purchase a lot: the directors may sell any lot of any size whatever, but no proprietor of a lot of a less quantity than 100 superficial feet, to be a member, or vote. § 8. The lots sold to be conveyed by deed, according to the form in schedule D., which need not be registered. § 9. Any person who shall wilfully destroy, mutilate, deface, injure or remove any tomb, monument, grave-stone or other structure placed in any cemetery, or any fence, railing or other work for the protection or ornament of any cemetery, or of any tomb,

monument, grave-stone or other structure aforesaid, or of any cemetery lot within any cemetery—or shall wilfully destroy, cut, break or injure any tree, shrub or plant within the limits of any cemetery, or play at any game or sport, or discharge fire-arms (save at a military funeral) in any such cemetery, or who shall wilfully and unlawfully disturb any persons assembled for the purpose of burying any body therein, or who shall commit any nuisance in any such cemetery, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof before any justice of the peace, or other court of competent jurisdiction, be punished by a fine of not less than *one pound*, nor more than *ten pounds*, according to the nature of the offence—and such offender shall also be liable to an action of trespass against him by such corporation for damages. § 10. Company to make regulations for ensuring burials being conducted in a decent and solemn manner. § 11. No body shall be buried in any vault under any chapel or other building in any such cemetery, nor within fifteen feet of the outer wall. § 12. Cemeteries to be enclosed with walls or fences, of the height of eight feet at the least. § 13. Cemeteries to be kept in good order. § 14. To be properly drained. § 15. Any such company causing or suffering to be brought or to flow into any river, spring, well, stream, reservoir, aqueduct, pond, or watering place, any offensive matter from such cemetery, whereby the water shall be fouled, shall forfeit for every such offence £12 10s. § 16. To be recovered with full costs by any party aggrieved. § 17. Who may also sue for further damage specially sustained by him; or if no special damage alleged, for the sum of £2 10s. for each day, during the cause of complaint, after giving the company twenty-four hours' notice of the offence. § 18. Directors empowered to call for instalments, on pain of forfeiture. § 19. This act to be a public act.

For the Schedules—see the act.

By 13 & 14 V., c. 77, reciting “that in many parts of Upper Canada the inhabitants are desirous of securing the title to land requisite for a burying ground, which shall not belong exclusively to any of the various denominations of Christians, and that the same should be taken and held by trustees acting in a corporate capacity, and having perpetual succession,” it is enacted that whenever the inhabitants of any township or locality in Upper Canada, to the number of ten or more, shall desire to take a conveyance of land for the purpose aforesaid, it shall be lawful for them to appoint

trustees, to whom and their successors, to be appointed as specified in the deed of conveyance, the requisite land shall be conveyed; and such trustees, and their successors in perpetual succession, shall hold the same accordingly; the quantity of land so conveyed not to exceed ten acres for any one township or locality.

CENSUS.

By statute 10 & 11 V., ch. 14, former acts are repealed. § 2 enacts that the Receiver-General, Secretary of the province, and the Inspector-General shall continue to be a board of registration and statistics. § 3. Board to have the general supervision of the statistics of the province, and shall draw up an annual report to be laid before the legislature. § 4. Secretary to be appointed. § 5 to 15 are repealed by 14 & 15 V., c. 49. § 16. Ministers of religion to keep a registry of baptisms, marriages, funerals and deaths, and forward same to the clerk of the peace or town clerk within five days after the first day of January, April, July and October in every year (*a*). § 17. In case of no resident minister or teacher, the heads of families to notify the township clerk of any birth, marriage or death. § 18. Returns to be forwarded by clerks of the peace and town clerks to the board on or before the first day of January, yearly. § 19. Coroners also to return lists of inquests and findings of juries to the board on or before the first of January, yearly. § 20. Clerks of the peace to furnish lists (in triplicate) of convictions at sessions, or before justices, as the board shall appoint. § 21. Any person neglecting or refusing to comply with this act in any matter for which no punishment is specially provided, shall be guilty of a misdemeanor and punishable accordingly, and all penalties incurred under this section to be applied as other penalties before provided for.

By 12 V., c. 90, § 1, returns required by the 16th section of last recited act to be made once Sa iar only, whin five days after the first of January. § 20 t.y long as such act, 10 & 11 V., c. 14, shall remain in force, it shall not be necessary for any minister, clergyman or justice, to return to the clerk of the peace the list of marriages solemnised by him, required by the 6th section of * 11 G. IV., c. 36.

By 14 & 15 V., c. 49, § 2, census of the province shall be taken in January 1852, in January 1862, and every tenth year afterwards. § 3. Census to be taken under the

(a) But now once a year only under 12 V. c. 90.

superintendence of the board of registration and statistics, which shall frame instructions and forms. § 4. The same to extend to all heads of statistical information included in the schedule to the census act, 4 & 5 V., c. 42 (a), and to such further information as the board may deem proper. § 5. The Governor to appoint commissioners for counties, cities, and incorporated towns containing by the last census five thousand souls or upwards. § 6. Census commissioners for each locality to appoint one or more enumerators for each township, and for each ward of city, or incorporated town, and may divide such wards into two or more enumeration districts, and appoint one or more enumerators for each. The penitentiary, gaol or house of correction, public hospital, lunatic asylum to be separate enumeration districts, and the warden, gaoler, keeper, or other person in charge to be the enumerator. § 7. Enumerators to act under the direction of the commissioners, and each commissioner shall instruct and furnish forms to the enumerators, cause public notice to be given of taking the census, and information to be given to the enumerators, &c. § 8. Enumerators required on the second Monday in January in every year in which the census is to be taken, and on such number of days next after as may be necessary, under the instructions of the commissioner, to visit every house in his enumeration district, and take an account in writing of the name, sex, age and occupation of every living person abiding therein on the night of Sunday next preceding such Monday (distinguishing such as are permanent or transient) and verify such account before a justice of the peace, in the form given, and deliver the same to the commissioner on or before the 15th of February. § 9. Census commissioner to examine such accounts, and cause such defects to be supplied. § 10. Census commissioner to return such accounts certified by him to the board. The board to examine, and cause any defects or inaccuracies discovered to be corrected, and then to make such abstracts and tables as the Governor in council shall direct, to be laid before the next session of parliament. § 11. Enumerators to be supplied with printed schedules to be left with occupants of houses, &c., in the course of the week ending on Saturday next before the second Monday in January. Every such occupant to fill up the same to the best of his knowledge or belief, and deliver the same to the enumerator when required, under a penalty of not less than *two* nor more than *five* pounds. § 12. Enumerators to collect such schedules

(a) The act itself repealed by 10 & 11 V., c. 14.

on the second Monday in January, or so soon as possible afterwards, and correct the same if erroneous, with power to make inquiries: and when so completed or corrected shall copy the information therein contained into the account to be by them taken as aforesaid, and add thereto the accounts they may have taken, and information collected of persons and things not returned in the schedules, and then return the same to the commissioner, who shall deliver them with his return to the board. § 13. Enumerators empowered to ask questions, and have free access to all assessment rolls and other statistical documents. Any person refusing to answer, or answering falsely, to incur a penalty of not less than *twenty* shillings nor more than £5, in the discretion of the magistrate before whom the same shall be sued for. §. 14. Penalties may be recovered in a summary manner at the suit of any enumerator before any one justice of the locality on the oath of the enumerator or any other credible witness, and if the penalty and costs (not exceeding 10s.) be not forthwith paid upon conviction, the said justice may in his discretion cause the same to be levied by distress and sale, by warrant under his hand and seal, or commit the offender to the common gaol of the place for any period not exceeding one month, or until penalty paid. One moiety of the penalty to belong to the crown for the use of the province, and the other to the prosecutor, unless examined as a witness, in which case the whole to go to the crown. § 15. Any census commissioner or enumerator wilfully disobeying or contravening any of the provisions of this act, or wilfully making any false return, shall be guilty of a *misdemeanor*, and on conviction liable to a penalty not exceeding £25 nor less than £5, in the discretion of the court, and to imprisonment until paid. Such penalty to belong to the crown. § 16. Provision for removal of any officer appointed under this act. § 17. Allowance to commissioner and enumerator as therein provided. § 18. Report to be laid before parliament. § 19. Interpretation clause. § 20. Power to the Governor to alter the month for taking the census in any county, in case of necessity.

CERTIORARI.

A certiorari is an original writ issuing out of the Court of Chancery or the King's Bench, directed in the king's name to the judges or officers of inferior courts, commanding them to certify or to return the records of a cause depending before them, to the end the party may have the more sure and speedy justice before the king or such justices

as he shall assign to determine the cause.—1 *Bac. Abr.* 559; and no proceedings of any court of criminal jurisdiction can be removed into a superior court, but by a writ of error or *certiorari*.—2 *Haw.*, c. 1, § 14.

A *certiorari* lies in all judicial proceedings in which a writ of error does not lie, and it is a consequence of all inferior jurisdictions erected by act of parliament, to have their proceedings returnable in the King's Bench.—*L. Raym.* 469, 580. And therefore a *certiorari* lies to justices of the peace even in such cases which they are empowered by statute finally to hear and determine; and the superintendency of the Court of King's Bench is not taken away without express words.—2 *Haw.* 286. But it seems agreed that a *certiorari* should never be granted to remove an indictment after a conviction, unless for some special cause; as when the judge below is doubtful what judgment to give.—2 *Haw.* 288. Also, it seems a good objection against granting a *certiorari*, that issue is joined in the court below and a *venire* awarded for the trial of it.—2 *Haw.* 288.

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

How to be granted and allowed.

1. On indictment or presentment, by statute 5 W., c. 11, and 8 & 9 W., c. 33, it is enacted "that in term time no writ of *certiorari* at the prosecution of any party indicted, shall be granted out of the King's Bench, to remove any indictment or presentment of trespass or misdemeanor before trial had from before the justices in sessions, unless such *certiorari* shall be awarded upon motion of counsel, and by rule of court made for the granting thereof. But in the vacation writs of *certiorari* may be granted by any justice of the King's Bench whose name shall be endorsed on the writ, and also the name of the person at whose instance it is granted, and all parties prosecuting such *certiorari*, shall, before the allowance thereof, find two sufficient manucaptors who shall

enter into a recognizance before a justice of the King's Bench, (who shall indorse the same on the writ), or before a justice of the peace of the county or place, in the sum of £20, with condition at the return of the writ to appear and plead to the said indictment or presentment in the said Court of King's Bench, and at their own cost and charges to cause and procure the issue that shall be filed thereon, or any plea relating thereto, to be tried at the next assizes for the county wherein the indictment or presentment was found, after such certiorari shall be returned, or the next term, if in London, Westminster or Middlesex, unless the court shall appoint another time, and if so, then at such other time; and to give due notice of such trial to the prosecutor or his clerk in the court, and also that the party prosecuting such writ of certiorari shall appear from day to day in the said Court of King's Bench, and not depart until he shall be discharged by the court.

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

On a Conviction or Order.

By 13 G. II., c. 18, no certiorari shall be granted to remove any conviction, judgment, order or other proceeding, before any justice of the peace, or quarter sessions, unless it be applied for *six calendar months* after such proceedings had or made, and unless it be duly proved upon oath that the party suing for the same hath given six days' notice thereof in writing to the justice or justices, or two of them, (if so many there be), before such proceedings have been, to the end that such justices may shew cause, if they so think fit, against the issuing of the certiorari; and by 6 G. II., c. 19, no such certiorari shall be allowed to remove any such

judgment, unless the party prosecuting the certiorari, before the allowance thereof, enter into a recognizance with sufficient sureties before a justice of the county or place, or before the justices at sessions where such judgment or order shall have been given or made, or before a justice of the King's Bench, in £50, with condition to prosecute the same at his own costs and charges with effect, without wilful delay, and to pay the party in whose favour the judgment or order was made within a month after the same shall be confirmed his full costs, to be taxed according to the course of the court where such confirmation shall be; and if he shall not enter into such recognizance, or shall not perform the conditions, the justices may proceed and make such further order for the benefit of the party for whom the judgment shall be given, in such manner as if no certiorari had been granted; the said recognizance to be certified into the King's Bench, and then filed with the certiorari and order or judgment removed thereby, and if the order or judgment shall be confirmed by the court, the person entitled to the costs, for the recovery thereof, within ten days after demand made, upon oath of such demand and refusal of payment, shall have an attachment granted for the contempt, and the recognizance shall not be discharged till the costs are paid and the order complied with.

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

The effect of it.

After a certiorari is allowed by the inferior court, it makes all the subsequent proceedings on the record, that are removed by it, erroneous.—2 *Haw.* 293. But if a certiorari for the removal of an indictment before justices of the peace be not delivered before the jury be sworn for the trial of it, the justices may proceed.—2 *Haw.* 294. And the justices may set a fine, to complete their judgment, after a certiorari delivered.—*L. Ray.* 1516. A certiorari removes all things done between the *teste* and *return*.—*L. Ray.* 835, 1305.

The return of it.

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

If the person to whom a certiorari is directed, do make a false return, yet the court will not stay filing it on affidavit of its being false, except in public cases, as in commissioners of sewers, or for not repairing highways, or for some such special causes, because the remedy for a false return is either an action on the case at the suit of the party grieved, or an information at the suit of the king.—*Dalt. c.* 195. If the person to whom the certiorari is directed do not make a return, then an *alias*, that is, a second writ; then a *pluries*, that is, a third writ, or *causam nobis significes* shall be awarded; and then an attachment.—*Crom.* 116.

The return of a certiorari may be thus:—

On the back of the writ endorse these words, or the like—

“*The execution of this writ appears in a schedule to the same writ annexed.*”

And that schedule may be thus, on a piece of parchment, by itself, and fixed to the writ:

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

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

Recognizance on Certiorari.

County of , } Be it remembered, that on the day of
to wit. } in the year of the reign, &c., A.B. of ,

C. D. of _____, and E. F. of _____, came before me, J. C. Esquire, one of the keepers of the peace and justices of our lady the Queen in and for the county of _____, and acknowledged to owe to our sovereign lady the Queen the sum of £50, of lawful money of Canada, to be levied upon their goods and chattels, lands and tenements, to her Majesty's use, upon condition that if _____ shall prosecute with effect, without any wilful or affected delay, at his own proper costs and charges, a writ of certiorari, issued out of the court of our said lady the Queen, before the Queen herself, at Toronto, to remove into the said court all and singular the records of conviction, of whatever trespasses and contempts, against the form of the statute made and passed in the _____ year of her Majesty's reign, entitled, "An Act," &c., whereof the said _____ is convicted before me, J. C. Esquire, one of the keepers of the peace and justices of our said lady the Queen in and for the said county of _____, and shall pay to the prosecutor, within one month next after the said record of conviction shall be confirmed in the said court, all his full costs and charges, to be taxed according to the course of the said court; then this recognizance to be void, or else to remain in full force. Taken and acknowledged, the day and year first above said.

J. C.

CHALLENGE TO FIGHT.

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

The punishment for this offence is discretionary, by *fine* and *imprisonment*, and is guided by such circumstances of

aggravation as appear in each particular case.—1 *Haw.*, c. 63, § 21; *Rex v. Rice*, 3 *East*. 384.

Indictment for sending a challenge. (Archbold.)

County of _____, } The jurors for our lady the Queen, upon
to wit. } their oath present, that J. S., late of the town-
ship of _____, in the county of _____, gentleman, being a person
of a turbuleut and quarrelsome temper and disposition, and contriving and intending not only to vex, injure and disquiet one J. N., and to do the said J. N. some grievous bodily harm, but also to provoke, instigate and excite the said J. N. to break the peace, and to fight a duel with and against him the said J. S., on the _____ day of _____, in the _____ year of the reign of our sovereign lady Victoria, at the township aforesaid, in the county aforesaid, wickedly, wilfully and maliciously did write, send and deliver, and cause and procure to be written, sent and delivered unto him the said J. N. a certain letter, and paper writing, containing a challenge to fight a duel with and against him the said J. S., and which said letter and paper writing is as follows: (*here set out the letter, with such inuendoes as may be necessary*) to the great damage, scandal and disgrace of the said J. N., in contempt of our lady the Queen and her laws, and against the peace of our lady the Queen, her crown and dignity.

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

CHALLENGE OF JURORS.

See "*Jury.*"

CHAMPERTY.

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

CHANCE MEDLEY.

Chance medley is where homicide is committed by a man upon a sudden affray, in his own defence.—4 *Bl. Com.* 184. The true criterion between *chance medley* and *manslaughter*, seems to be this,—where both parties are actually combatting at the same time when the mortal stroke is given, the slayer is then guilty of manslaughter; but if the slayer hath not begun to fight, (or having begun) endeavours to decline any further struggle, and afterwards being closely pressed by his adversary, kills him to avoid his own destruction, this is *chance medley*, or homicide excusable by *self-defence*.—*Ibid.* The party assaulted, therefore, in order to excuse himself in killing his assailant, must flee from him as far as he conveniently can, either by reason of some wall or ditch, or other impediment, or as far as the *fierceness* of the assault will permit him; for it may be so fierce as not to allow him to yield a step without manifest danger of his life, or enormous bodily harm, in which last predicament he may, in his own defence, kill his assailant instantly.—1 *Hale. P. C.* 483.

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

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

CHATTEL MORTGAGE.

By 20 V., c. 3, § 1.—Every *mortgage* or conveyance intended to operate as a mortgage of goods and chattels, in Upper Canada, not accompanied by an *immediate delivery* and an actual and continued change of possession of the things mortgaged, shall be absolutely void as against creditors of the mortgagor, and against subsequent purchasers or mortgagees in good faith for valuable consideration, unless the mortgage or conveyance, or a true copy thereof, together with an affidavit of a witness thereto, sworn as hereinafter provided, of its due execution, together with an affidavit of the mortgagee or his agent properly authorised

to take such mortgage in writing, (a copy of which authority shall be registered therewith if such agent be aware of all the circumstances connected therewith,) that the mortgagor is justly and truly indebted to the mortgagee in the sum mentioned therein; that it was executed in good faith and for the express purpose of securing the payment of the money so justly due, or accruing due, and not for the purpose of protecting the goods and chattels mentioned therein, against the creditors of the mortgagor, or preventing the creditors of such mortgagor from obtaining payment of any claim against him, shall be registered as hereinafter provided within *five* days from the execution thereof.

§ 2. Every sale of goods and chattels which shall not be accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods and chattels sold, shall be in writing, and such writing shall be a conveyance under the provisions of this act, and shall be accompanied by an affidavit of a witness thereto of the due execution thereof, and an affidavit of the bargainee or his agent duly authorised in writing to take such conveyance, a copy of which authority shall be attached to such conveyance that the sale is *bonâ fide*, and for good consideration, as set forth in the conveyance, and not for the purpose of holding, or enabling the bargainee to hold the goods mentioned therein against the creditors of the bargainor, and shall be registered as hereinafter provided within *five* days from the execution thereof, otherwise such sale shall be absolutely void as against the creditors of the bargainor, and as against subsequent purchasers or mortgagees in good faith.

§ 3, contains a provision for making valid mortgages of personals for securing future advances to be made. § 4.— That all instruments mentioned in this act shall contain a full description of the goods, &c. § 5. That the instruments mentioned shall be registered in the office of the clerk of the county court, who shall endorse thereon the time of receiving the same. § 8. That every such mortgage shall cease to be valid as against creditors and others after the expiration of *one year* from the filing thereof, unless within *thirty* days next preceding the expiration of the said term, a true copy thereof, with a statement exhibiting the mortgagee's interest in the property, and of the amount still due for principal and interest thereon, and of all payments made on account, shall be again filed in the office of the clerk of the county court, where such goods are then situate, with an affidavit of the mortgagee or his agent duly authorised verifying such statements. § 11. That the interest or

equity of redemption in any such goods and chattels may be seized and sold by the sheriff under any writ of execution against the goods and chattels of the party. § 13. Affidavits to be sworn before a judge of the superior courts, a commissioner, or a justice of the peace: fee, one shilling. § 14, repeals the former acts, 12 V. c. 74, and 13 & 14 V., c. 62, saving acquired rights. § 15. Act to commence on the first day of August next (1857).

CHEATS.

By the Common Law.

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

On an indictment against the defendant, a miller, for changing corn delivered to him to be ground, and giving bad corn instead of it, it was moved to quash the same, because it was only a private cheat, and not of a public nature; it was answered, that being a cheat in the way of trade, it concerned the public, and therefore was indictable, and the court unanimously agreed not to quash it.—*T. 16, G. 2, K. and Wood, 1 Sess. C. 217.*

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

Where a person who was committed to gaol under an attachment for a contempt in a civil action, counterfeited a pretended discharge (as from his creditor) to the sheriff and gaoler, under which he obtained his release from gaol, it was held that this was a cheat and misdemeanor at common law, in thus effecting an interruption to public justice.—*R. v. Fawcett, 2 East. P. C.* 862, 952. Public officers are also indictable for frauds committed in their public capacities; thus, where two persons enabled others to pass their accounts with the pay office in such a way as to defraud the government, they were held to be indictable for the fraud.—*R. v. Cambridge, cit. 5 East.* 136. A surveyor of the highways may

be indicted for converting to his own use gravel which had been dug at the expense of the inhabitants of the parish, and for employing, for his own private gain and emolument, the labourers and teams of the parishioners, which he ought to have employed in repairing the highways.—3 *Chit. C. L.* 666. So also, any fraud which is practised on the public by means of *false weights* or *measures*, or any *false token*, having the semblance of public authority, and purposely calculated for deceit, and by which the public may be imposed upon, without any imputation of folly or negligence, is indictable at common law.—2 *East. P. C.* 820. As where a person sells corn in a bushel, short of the statute measure, or puts something into the bushel to help to fill it up.—*R. v. Pinckney*, 2 *East. P. C.* 820. There appears, however, to be this distinction—where a man sells by *false weights* or *measures*, it is an indictable offence, but if *without false weights* or *measures*, he sells merely a less quantity than he pretends to sell, he is not then indictable, but liable only in an action for the deceit.—*R. v. Young*, 3 *T. R.* 104, *per Buller, J.*; *R. v. Nicholson*, *cit.* 2 *Burr.* 1130; *R. v. Driffield*, *say.* 146.

By Statute.

By statute 4 & 5 V., c. 25, § 45: if any person shall by any false pretence obtain from any other person any chattel, money or valuable security, with intent to cheat or defraud any person of the same, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned at hard labour in the provincial penitentiary for any term not exceeding fourteen years, nor less than seven years, or imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award: provided always, that if upon the trial of any person indicted for such misdemeanor it shall be proved that he obtained the property in question in any such a manner so as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanor, and no such indictment shall be removable by certiorari, and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

By 18 V., c. 92, § 11, if any person shall obtain any property whatever with intent to defraud, such offender upon conviction shall be liable to be imprisoned for any period not exceeding two years, with or without hard labour.

For forms of procedure see title "*Indictable Offences.*"

CHILDREN.

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

From a supposed imbecility of mind, the protective humanity of the law will not, without anxious circumspection, permit an infant under 14, to be convicted on his own confession.—*Cro. Jac.* 446; 1 *Hale*, 24; *Fost.* 70. Yet, if it appear, by strong and pregnant evidence and circumstances, that he was perfectly conscious of the nature and malignity of the crime, a jury may then find him guilty, and judgment of death may be given against him.—1 *Hale*, 20, 25, 434; *Fost.* 71; 4 *Bl. Com.* 23, *O. B.* 1784, p. 971. On the attainment of 14 years of age, the criminal actions of infants are subject to the same mode of construction as those of the rest of society; for the law presumes that the human mind has acquired at this period a complete sense of right and wrong.—*Doct. & St. c.* 26; *Co. Lit.* 79, 181, 247; *Dalt.* 476, 505; 1 *Haw. c.* 1, (*note*) 1.

See *post* title "Orphan Children."

CHILD STEALING.

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

CHLOROFORM.

By 18 V., c. 92, § 29, any person unlawfully applying or administering, or attempting to apply or administer to any other person any chloroform, laudanum, or other stupifying or overpowering drug, matter or thing, with intent to enable such offender or any other person to commit, or with intent to assist such offender or other person in committing any felony, shall be guilty of felony, and liable at the discretion of the court to be imprisoned in the provincial penitentiary for any term not less than two nor more than five years.

CHURCHWARDENS.

See next title, "*Church of England.*"

CHURCH OF ENGLAND.

By the imperial statute 31 Geo. III., c. 31, § 36, his Majesty was empowered to make an allotment and appropriation of lands for the support of a protestant clergy (a) equal to *one-seventh* of the lands comprised in any grant or patent. § 38, 39, also to authorise the Lieutenant-Governor, with the advice of the Executive Council, to erect parsonages and endow them; and the Lieutenant-Governor was authorised to present incumbents, who are to enjoy the same in like manner as incumbents in England. § 40. Every such presentation shall be subject to the spiritual and ecclesiastical jurisdiction of the Bishop of Nova Scotia. (b) § 41, 42. The provisions respecting the allotment of lands for the support of a protestant clergy, to be subject to be varied or repealed by any express provisions for that purpose contained in any act or acts of the provincial legislature, and assented to by his Majesty, and laid before the British parliament previous to receiving his Majesty's assent.

By 3 V., c. 74, § 1, it is enacted that the soil and freehold of all churches now or hereafter to be erected, and of the church-yards and burying-grounds attached thereto, shall be in the parson or incumbent for the time being, and that the possession thereof shall be in the incumbent and churchwardens. § 2. Pew-holders and holders of sittings to form a vestry. § 3. Vestry meetings to be holden on *Monday* in *Easter* week yearly, after due notice thereof given during divine service on *Easter Sunday*, for the purpose of appointing churchwardens for the ensuing year; one to be appointed by the incumbent, and the other by the vestry. In case the

(a) The Clergy Reserves have since been *secularised* by 18 V., c. 2.

(b) Which ceased on the creation of other bishoprics within the province.

incumbent shall neglect to nominate one, then both to be elected in the manner aforesaid; and in case the vestry shall neglect to elect a churchwarden, then both shall be nominated by the incumbent: provided, that if from any cause a vestry meeting shall not take place at the time aforesaid, churchwardens may be appointed at any subsequent vestry-meeting; in case of death or change of residence to twenty miles or more from the church, of either of the churchwardens, a vestry meeting shall be called for the election of another. § 4. None to be eligible except members of the Church of England of full age, and members of the vestry. § 5. To hold office for the current year, and until the appointment of successors. § 6. Churchwardens to be a corporation to represent the interest of such church and of the members thereof, and may sue and be sued, &c., and prosecute indictments, presentments, and other criminal proceedings in respect of such churches, church-yards, and things appertaining thereto, and may, in conjunction with the rector or incumbent, execute faculties or conveyances, or other proper assurances in the law to pew-holders by purchase or lease, and grant certificates for sittings at the expense of the applicants, and to sell, lease, and rent pews and sittings, upon such terms as may be settled at vestry meetings to be holden for that purpose. § 7. In case of absolute purchase, pews to be construed as freehold of inheritance not subject to forfeiture by change of residence or by discontinuing to frequent the same, and may be sold and assigned to any purchaser being a member of the church. § 8. Pew-holders to have the right of action against any person injuring or disturbing. § 9. Churchwardens, within fourteen days after the appointment of successors, to deliver an account to them in writing, in a book or books to be kept for that purpose and signed by them, of all moneys received by them and sums due, and also of all goods, chattels, and other property of such church or parish in their hands, and of all moneys paid, and of all other things concerning their said office; and shall pay over and deliver all such remaining in their hands unto their successors, which account shall be verified by oath before one or more justices; and said books shall be carefully kept by the churchwardens, and may be inspected by any member of such vestry on payment of *one shilling*; and in case churchwardens shall make default in yielding such account, or in delivering over such money or goods, their successors may proceed against them at law or in *equity*; and in case of the re-appointment of churchwardens, such account shall be made and rendered at an

adjourned vestry meeting *fourteen* days after such re-appointment. § 10. Incumbent or churchwardens may call a vestry meeting at any time, upon application in writing of six members of such vestry; and in case of refusal, then *one week* after demand any *six members* of such vestry may call same by notice to be affixed on the outer church door (or doors) at least one week previous. § 11. The rector or incumbent to be chairman at all vestry meetings if present, and if absent such person as the majority shall name; vestry clerk to be secretary; proceedings to be entered in a book and kept by the churchwardens. § 12. Pew rents to be regulated at vestry meetings. § 13. The organist, vestry clerk, sexton, and other subordinate servants of the church to be appointed by the churchwardens. § 14. Fees on marriages, baptisms, and other services, and burials to be regulated by the ordinary, or in case of no ordinary by the bishop. § 15. Vestries to make by-laws for regulating their proceedings and management of the church property. § 16. Grants of property for the use of the church to be valid, notwithstanding the statutes of *mortmain*. § 17. Church endowments may be made upon the bishop's license, and the founder to have the right of presentation in perpetuity. § 18. No spiritual jurisdiction to be conferred by this act.

By 7 V., c. 68, (*reserved and assented to*, 23d May, 1844) entitled, *An Act to incorporate the Church Societies of the Church of England and Ireland in the Dioceses of Quebec and Toronto*, the preamble recites "that certain persons named, and others, inhabitants of Lower Canada and Upper Canada, had established themselves together under a constitution, rules and regulations, and had contributed or engaged to contribute considerable sums of money, and had given or granted, or promised to give or grant lands or real estate for the following objects, viz.—1. For the encouragement and support of missionaries and clergymen of the United Church of England and Ireland, severally within the dioceses of Quebec and Toronto, and for creating a fund towards the augmentation of the stipends of poor clergymen, and towards making a provision for those who may be incapacitated by age or infirmity, and for the widows and orphans of the clergy of the said church respectively in the said dioceses. 2. For the encouragement of education, and the support of day schools and Sunday schools in the said dioceses, in conformity with the principles of the said church. 3. For granting assistance where necessary to those who may be preparing for the ministry of the gospel in the said church. 4. For circulating in the said dioceses the Holy Scriptures,

the book of Common Prayer of the said church, and such other books and tracts as shall be approved by the central boards or managing committees of the said associations.

5. For obtaining and granting aid towards the erection and maintenance of churches according to the establishment of the said church; the creation and maintenance of parsonage houses, the setting apart of burial grounds and church yards, the endowment and support of parsonages and rectories, according to the said establishment, and the management of all matters relating to such endowments," and that it would tend greatly to facilitate and promote the purposes of the said associations that they should severally be incorporated, &c.

It is therefore enacted, that the several persons in said act named and their successors to be elected in the manner hereinafter provided shall be and are declared to be a body corporate and politic in name and in deed by the name of the "Church Society of the Diocese of Quebec," and that the Lord Bishop of Toronto, and other persons in the same act named, and such other persons as were then members of a certain association of the Diocese of Toronto, according to the rules and regulations thereof and their successors to be elected as hereinafter provided, and such other persons as shall from time to time hereafter be elected to be members of the said association in the manner hereinafter provided, shall be and are declared to be a body corporate and politic in name and in deed by the name of "The Church Society of the Diocese of Toronto," with a common seal, &c., and that they and their successors by the name aforesaid, shall be able and capable in law respectively to purchase, take, have, hold, receive, enjoy, possess and retain, without license in mortmain or *letters d'Amortissement*, all messuages, lands, tenements, and immovable property, money, goods, chattels and movable property which have been or hereafter shall be paid, given, granted, purchased, appropriated, devised or bequeathed in any manner or way whatsoever, to, for, and in favour of the said Church Societies respectively, to and for the uses and purposes aforesaid, or any of them, and to do, perform, and execute all and every lawful act and thing useful and necessary for the purposes aforesaid in as full and ample a manner to all intents and purposes as any other body politic or corporate by law may or ought to do. § 3. All funds, money and other property which shall have been, or shall hereafter be paid, given, granted, purchased, appropriated, devised or bequeathed to or in favour of the said corporations for the purposes aforesaid, shall be and are thereby vested in said

corporations respectively for the use and purposes aforesaid, subject to such by-laws and regulations as may be made by said corporations respectively as hereinafter provided, and that the said corporations, or the central boards thereof, or such other executive and managing committees thereof as shall from time to time be appointed and authorised by the by-laws of the said corporations, shall have power and authority to alienate or exchange, demise, let and lease for any term of years, such messuages, lands, tenements hereditaments and immovable property, and to receive and take the purchase money, rents, &c., for the uses and purposes hereinbefore mentioned. § 3, provides for meetings and assemblies of the said corporations; but no act done in any such meeting or assembly shall be valid or effectual unless six persons of such corporations at least shall be present, and the majority consenting thereto. § 4. Said corporations at such meetings empowered to make by-laws, rules and regulations, touching and concerning the well-ordering and governing of the affairs and business of the said corporations and the due administering and improving the property thereof, and the more effectually promoting the purposes thereof as aforesaid, with power to abrogate, repeal, change, or alter the same as may be found expedient. § 5. No such constitution, by-law, rule or regulation, nor any such abrogation of the same shall have force or effect until sanctioned and confirmed by the Bishop of the Diocese for the time being.

By 14, 15 V., c. 175 (*reserved and assented to*, 15th May, 1852) §§ 38, 39, and 40 of the imperial act 31 G. III., c. 31, (which enabled the erection and endowment of rectories,) are repealed. Such repeal not to affect any proceedings heretofore had whereby certain parsonages or rectories were erected and endowed, or supposed to be erected and endowed by the authority aforesaid, or whereby certain incumbents or ministers were presented or supposed to be presented under the same authority, to such parsonages or rectories, or any of them, but the legality or illegality of all such proceedings shall be left open to be adjudicated upon and determined as if this act had not been passed. § 3. Enacts that in the event of its being judicially decided that any of such parsonages or rectories were erected according to law, and until a judicial decision shall be obtained (*a*) on such question, the right of presenting an incumbent or minister to such

(*a*) The legality of such parsonages or rectories has been recently established by the Court of Chancery.

parsonage or rectory, shall vest in and be exercised by the Church Society of the church of England diocese within which the same shall be situated, or in such other person or persons, bodies politic or corporate, as such Church Society by any by-law or by-laws to be by them from time to time passed for that purpose, shall or may think fit to direct or appoint in that behalf.

By an act of the provincial legislature passed on the 19th of June, 1856 (and 19th year of the reign of her present Majesty, *reserved and assented to*, 6th May, 1857,) entitled *An Act to enable the members of the United Church of England and Ireland in Canada to meet in Synod*," it is provided and enacted as follows :

Whereas, doubts exist whether the members of the United Church of England and Ireland, in this province, have the power of regulating the affairs of their church, in matters relating to discipline, and necessary to order and good government, and it is just that such doubts should be removed, in order that they may be permitted to exercise the same rights of self-government that are enjoyed by other religious communities : therefore her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The bishops, clergy, and laity, members of the United Church of England and Ireland, in this province, may meet in the several dioceses, which are now, or may be hereafter constituted in this province, and in such manner and by such proceedings as they shall adopt, frame constitutions and make regulations for enforcing discipline in the church, for the appointment, deposition, deprivation, or removal of any person bearing office therein, of whatever order or degree, any rights of the Crown to the contrary notwithstanding, and for the convenient and orderly management of the property, affairs and interests of the church, and the officers and members thereof, and not in any manner interfering with the rights, privileges or interests of other religious communities, or of any person or persons not being a member or members of the said United Church of England and Ireland ; provided always that such constitutions and regulations shall apply only to the diocese or dioceses adopting the same.

2. The bishops, clergy, and laity, members of the United Church of England and Ireland, in this province, may meet in general assembly within this province, by such representatives as shall be determined and declared by them in their

several dioceses ; and in such general assembly frame a constitution and regulations for the general management and good government of the said church in this province ; provided always, that nothing in this act contained shall authorise the imposition of any rate or tax upon any person or persons whomsoever, whether belonging to the said church or not, or the infliction of any punishment, fine, or penalty upon any person, other than his suspension or removal from any office in the said church, or exclusion from the meetings or proceedings of the diocesan or general synods ; and provided also, nothing in the said constitutions or regulations, or any of them, shall be contrary to any law or statute now or hereafter in force in this province.

With reference to this act and its importance to the Church of England establishment within this province, his lordship the Bishop of Toronto, makes the following remarks in his opening address at the first synod held under it at Toronto, on the 17th of June, 1857 :

The object of this act, as set forth in the preamble, is to confer on the members of the Church of England and Ireland, in Canada, the power of regulating the affairs of their church, in matters relating to discipline, and necessary order and good government, and to exercise the same rights of self-government that are enjoyed by other religious communities.

The statute contains two enacting clauses. The first confers power to hold diocesan synods, to frame constitutions, and make regulations for enforcing discipline in the church, for the appointment, deposition, deprivation, or removal of any person bearing office therein, of whatever order or degree, "any right of the Crown to the contrary notwithstanding ;" and for the convenient and orderly management of the property, affairs, and interests of the church, in matters relating to or affecting only the said church, and the officers and members thereof, and not in any way interfering with the rights, privileges, or interests of other religious communities, or of any person or persons not being a member or members of the said United Church of England and Ireland : provided always that such constitutions and regulations shall apply only to the diocese or dioceses adopting the same. Now, it may be seen that this measure is very comprehensive in its provisions, and gives ample powers to meet all the probable requirements of the church ; and yet the royal prerogative is sufficiently guarded, and our connexion with the mother church through its head distinctly preserved. 1st. The power of choosing our bishops is substantially but not directly

conferred; the sanction of her Majesty, through her secretary of state, to the person chosen, if required, and in an extreme case may be withheld, but if ever withheld, it will be salutary and for the good of the church. In the second place, the Queen preserves her territorial sovereignty in settling the limits of new bishoprics when required to be established. The second clause of the statute is still more comprehensive, and contemplates provincial synods in which all the dioceses may be represented. Such a provision is absolutely necessary to the salutary extension and well-being of the church in this great country. Questions will arise from time to time which "will affect the welfare of the church in these colonies, and will render it necessary, as it is desirable, that the bishops, clergy and laity should meet in council under the provincial, metropolitan, or senior bishops, with power to frame rules and regulations for the better conduct of our ecclesiastical affairs as by such provincial synod may be deemed expedient. It should also be divided into two houses, the one consisting of the bishops of the several dioceses under their metropolitan or senior bishop, and the other of the presbyters and lay members of the church assembled by representation." For all this the second clause of the statute amply provides, and its objects will, doubtless, be carried out so soon as the necessities of the church require.

CLERGY.

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

See also *post* title "*Punishment*," § 36.

CLERGY RESERVES.

By 18 V., c. 2, which by § 1, provides that the moneys arising from the sale of clergy reserves in Upper Canada, shall continue to form a separate fund, to be called "The Upper Canada Municipalities Fund," and that certain annual stipends or allowances charged on the reserves before the passing of the imperial act 16 V., c. 21, should continue to be a first charge thereon, and payable during the lives of the present incumbents, with power to such recipients to

commute for such stipends and receive the actual value in money. § 5. Provides that the residue of such fund, remaining unexpended and appropriated on the 31st of December in each year, shall, by the Receiver-General be apportioned equally among the several county and city municipalities in proportion to the population of such municipalities according to the then last *census*; and the portion coming to each municipality shall be paid over by the Receiver-General to the treasurer or chamberlain or other officer having the legal custody of the moneys of such municipality, and shall make part of the general funds of the municipality, and be applicable to any purpose to which such funds are applicable.

By 19 & 20 V., c. 16, § 1, it is enacted that the amount of "The Upper Canada Municipalities Fund," remaining unexpended and unappropriated under the provisions of the 1, 2, 3, and 4 sections of the above act, on the 31st of December, 1855; and on the same day in each year afterwards shall, by the Receiver-General, be apportioned equally among the several city, town, incorporated village, and township municipalities in Upper Canada in proportion to the number of rate-payers that shall appear on the assessment rolls of such municipalities, for the year next before the time of such apportionment. § 2. It shall be the duty of the clerks of such municipalities on or before the 1st day of July, next after this act, to transmit to the Receiver-General a true return of the number of rate-payers appearing on the said assessment rolls for the year 1855, and on or before the 1st day of December in each year thereafter, to transmit to the Receiver-General a similar return for the year in which such return shall be made, and to make an affidavit on each of said returns, sworn before a justice of the peace of the correctness of such return. § 3. Under the penalty of £25 for default. § 4. Any money overpaid on any erroneous return to be a debt due to the Crown and recoverable from such municipality. § 5. Repeals so much of section 5 of the above act as shall be inconsistent with this.

By 20 V., c. 71, § 1, the word "rate-payers," in the 1st and 2nd section of the act 19, 20 V., c. 16, shall mean only those who shall be residents within the limits of such municipalities, and whose names shall appear as rate-payers on the assessment roll; and the affidavits to be made by the clerks of such municipalities and returned to the Receiver-General's office under the 2nd section of said act, shall be in the form in the schedule to this act annexed. § 3. It shall

be lawful for such municipalities, by by-law, to set apart for any special purpose, to be mentioned in such by-law, the whole or any part of the moneys derived from "The Upper Canada Municipalities Fund," and to invest the same in the purchase of provincial consolidated loan fund or municipal debentures for the purposes mentioned in such by-law, and from time to time, to sell and dispose of such securities and invest the proceeds in other like securities, or otherwise appropriate the same in the manner mentioned in and directed by the said by-law, or other by-laws passed for that purpose. § 3. By-laws already passed authorising the investment of such moneys as last aforesaid shall be held good and valid.

Schedule.

A. B. clerk of the municipality of the (city, town, township or village *as the case may be*.) maketh oath and saith, that the (above within written or annexed return, *as the case may be*.) contains a true statement of the number of resident rate-payers appearing on the assessment roll of the said city, &c., *as the case may be*, for the year one thousand eight hundred and fifty

Sworn before me, &c.

CLERK OF THE PEACE.

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

The clerk of the peace is appointed by the Governor, by commission under the great seal of the province, and holds his office *quamdiu se bene gesserit*. And by the late act 20 V., c. 59, § 9, no person shall be appointed a clerk of the peace for any county in Upper Canada who is not a barrister at law of not less than two years standing at the Upper Canada bar, and such clerk of the peace shall be *ex officio* county attorney for the county of which he is clerk of the peace. He may also execute his office by deputy.—37 *H. VIII.*, c. 1.

By stat. 1 W. & M., c. 21, § 6, if he shall misdemean himself in office, and a complaint in writing be exhibited against

him to the justices in sessions, the justices may, on examination and due proof thereof, suspend him from his office; and before entering upon the execution of his office, must take the following oath, besides the oaths of allegiance, supremacy and abjuration. (a)

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

Duties of his office. (Dickenson.)

The clerk of the peace, by himself, or his sufficient deputy, must be in constant attendance on the court of quarter sessions. He gives notice of its being holden or adjourned; issues its processes; records its proceedings, and does all the ministerial acts necessary to give effect to its decisions. It is his duty when prosecutors do not choose to seek professional assistance, to draw bills of indictment. In the actual course of the sessions it is his duty to read the acts directed to be read in sessions; to call the jurors and make known their defaults and excuses to the courts; to call the parties under recognizance, whether to prosecute, plead or give evidence; to present the bills to, and receive them from the grand jury; to arraign prisoners; to receive and record verdicts; to administer all oaths, and make true entries of all proceedings. By an ancient statute, he is bound to certify to the Court of King's Bench the names of such as shall be outlawed, attainted, or convicted of felony; and if he shall discharge or conceal any fine or forfeiture, unless by rule of court, he is liable to forfeit treble value, half to the king and half to him that shall sue, to lose his office, and be incapacitated ever to hold any office connected with the revenue.—22, 23, Car. II., c. 22, § 9. Neither he nor his deputy, may act as solicitor, attorney or agent, or sue out any process at any general quarter sessions, where he shall execute the office of clerk of the peace, or deputy, on pain of £50.—2 G. II., c. 46, § 4.

His duties by Provincial Statute.

Convictions.—By statute * 40, G. III., c. 1, § 6, to grant certificates *gratis* from the records of any conviction or pardon granted; and by statute 4 & 5 V., c. 12, § 4, to

(a) But see 13 & 14 V., c. 18, which regulates the form of oath to be taken by public officers.

publish returns of convictions within seven days after the first adjournment of the general quarter sessions, in one public newspaper of the district, and fix up a schedule of such returns in the court-house, and a conspicuous place in his office. § 5. Within twenty days after the end of each quarter sessions, to transmit to the inspector-general a true copy of all such returns within his district.

Records in Criminal cases, how to be drawn up.—18 V., c. 92.

Heir and Devisee Act, 8 V., c. 8, § 6, to make list of claims once in every three months, and affix the same in some conspicuous part of the court-house, and cause the same to be publicly read and proclaimed in open court at the general quarter sessions, immediately after the charge to the grand jury, and give certificates thereof.

Census Act, 10 & 11 V., c. 14, § 14. § 18. To forward returns of "Births, deaths and marriages," as filed in his office under the statute, to the Board of Registration and Statistics on or before the 1st January, yearly. § 20. To furnish triplicate lists of convictions at sessions, or before justices, at such periods as the board shall appoint.

Jurors' Act, 13 & 14 V., c. 55, § 16, to prepare jurors' books (as amended by 14 & 15 V., c. 65.) § 18. To prepare ballots. § 19. (a) To bring into court (annually on the first day of sessions next after the first of October,) and deliver to the chairman, the jurors' books and ballots, verified by oath. § 20. (b) To proceed (with the chairman) to ballot as directed by the act, for grand jurors of superior courts. § 21. For grand jurors of inferior courts. § 22. Jury lists to be certified and deposited with the clerk of the peace. § 23. (c) To deposit correct copies of jurors' books in the office of each of the clerks of the crown and pleas, and in that of the deputy for the county or union of counties, for which the same shall have been so prepared, on or before the 31st December. § 25. To be present on the drafting of jury panels. § 27. (d) Mode of proceeding thereat. § 65. To copy from the sheriff's list the fines from jurors making default, on the roll of fines and forfeitures imposed at quarter sessions, to be estreated and levied accordingly. § 73. Clerks of the peace guilty of dereliction of duty, under § 18, 19, 20, 21, 22 and 23, liable to £50 penalty.

Marriages.—Certificates of license for celebration of, to

(a) Amended by 14 & 15 V., c. 65, and time extended to 31st October.

(b) Amended by same act.

(c) Amended by same act, and repealed as amended by 16 V., c. 120.

(d) Repealed by 16 V., c. 120.

be published.—*38 Geo. III., c. 4, § 3. Annual returns to be made to clerk of the peace.—*11 Geo. IV., c. 36. But not while the census act 10 & 11 V., c. 14, § 2, remains in force.

Forfeited estates.—Duplicate returns to be transmitted to the clerk of the peace.—*59 Geo. III., c. 12, § 6.

Insane destitute.—Account of moneys necessary for the support of, in the Home District, to be laid before the grand jury.—*11 G. IV., c. 20, § 1., extended to all the districts by *3 W. IV., c. 45.

Illegitimate children.—Affidavit by the mother to be filed in the office of the clerk of the peace.—*7 Wm. IV., c. 8, § 4.

Fines and forfeited recognizances.—*7 Wm. IV., c. 10.

To be entered on a roll within 21 days after adjournment of the quarter sessions. Such roll to be made in duplicate, and signed by the clerk of the peace.—§ 3. One to be deposited in the office of the clerk of the peace, and the other sent to the sheriff, with writs of *feri facias* and *capias* as per forms in schedule B.—§ 4.

Affidavit to be made by the clerk of the peace at the foot of each roll.—§ 7.

Writs to be returned by the sheriff and filed by the clerk of the peace, and copy sent to the Receiver-General.—§ 11.

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

County accounts *7 Wm. IV., c. 18.

Accounts to be delivered to the clerk of the peace, before the first day of the general quarter sessions.—§ 1.

No accounts to be audited unless *seven* justices present.—§ 2.

Accounts to be taken into consideration on the *second* day of the sessions.—*Ib.*

Clerks of the peace to furnish the county treasurer with lists of orders for payment in their priority.—§ 3.

The treasurer to furnish a balance sheet on the *first* day of each session for the preceding quarter.—*Ib.*

Orders made not to be rescinded, except by an equal number of justices.—§ 4.

No order to be made unless there be funds to meet the same, except where debts actually due.—§ 5.

Lunatic asylum, (private,) 14 & 15 V., c. 84, certain duties to be performed under this act by clerks of the peace.

Clerk of the Peace.

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

	£	s.	d.
Drawing the precept, and attending justices to sign the same, and transmitting it to the sheriff	1	0	0
Attending each Quarter Sessions	1	10	0
Making up the records of each sessions.....	2	10	0
Notice of every appointment	0	1	0
Making up estreats of each session, and transmitting same to the Inspector-General.....	0	5	0

To be paid by the parties.

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

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

Other Fees to be taken by the Clerk of the Peace, by Statute.

	£	s.	d.
For each certificate of Dower, *37 G. III., c. 7, § 2; *50 G. III., c. 10, § 2	0	5	0
For each certificate of alienation of real estate, by <i>femmes covert</i> , *2 G. IV., c. 14, § 2.....	0	5	0
For certificates to ministers of Church of Scotland, to authorise their marrying, *38 G. III., c. 4, § 2...	0	5	0
For certifying notices under the heir and devisee act, 8 Vic., c. 8, § 6	0	2	6

Fees to be taken by the Clerk of the Peace, established by the Judges, under 8 V., c. 38.

See the printed "*Tariff of Fees*," published in 1849.

FEES ON BALLOTING JURIES, &c.

See "*Jurors' Law Amendment Act*," 19, 20 V., c. 92, 1856.

Form of the appointment of a Deputy.

I, G. G., clerk of the peace in and for the county of York, do hereby make, substitute and appoint J. H. S. D., of the city of Toronto, in the said county, gentleman, my true and lawful deputy, in the office of clerk of the peace for the said county, so long as I shall hold the same, and during the continuance of my will and pleasure. Witness my hand and seal, this day of 18 .

CLERKS AND SERVANTS.

Stealing by, see "*Embezzlement.*"

COALS.—CHARCOAL.—WOOD.

Maliciously setting fire to any, declared felony by 4 & 5 V., c. 26, § 17.—See also "*Arson.*"

COIN.

By 4 & 5 V., c. 17, § 1, no copper or brass coin, or token of any description, except the lawful copper coin of the United Kingdom of Great Britain and Ireland, shall be imported into this province; nor shall any be manufactured therein, except under the authority of the Governor to some person or persons, body politic or corporate, to import or manufacture the same. § 2. No such permission to be granted, unless such coin or tokens be stamped with the nominal value thereof, and with the name of the issuers, and such coins shall be payable or redeemable on demand, by such issuers, at the nominal value thereof, in lawful current coin. § 3. Coins or tokens imported or manufactured contrary to this act shall be forfeited to her Majesty, and the manufacturer or importer incur a penalty not exceeding £5 currency for every pound troy weight thereof; and it shall be lawful for any two or more justices of the peace, on the oath of any credible person, that any such coin or tokens have been so unlawfully manufactured or imported as aforesaid, to cause the same to be seized and detained, and to summon the party in possession of the same to appear before *him*, and if it shall appear to *his* satisfaction, on the oath of any credible witness other than the informer that such coin or tokens have been manufactured or imported in contravention of this act, such justices shall declare the same forfeited, and shall place the same in safe keeping, to await the disposal of the Governor, for the use of the province; and if it shall appear to the satisfaction of such justices, that the possessor of such coin or tokens knew the same to have been so illegally manufactured or imported, *he* may condemn such person or persons to pay the penalty aforesaid, with costs, and may commit him, her, or them, or any of them, to the common gaol of the district, for a period not exceeding two months, until paid. § 4. If it shall appear to the satisfaction of such justices, that the possessors were not aware of the same having been illegally manufactured or imported, such penalty may be recovered by any person from the owners, who shall sue for the same in any court of compe-

tent jurisdiction, on the oath of one credible witness other than the person so suing. § 5. Officers of her Majesty's customs may seize any coin or tokens imported, or attempted to be imported contrary to this act, and detain the same as forfeited, to await the disposal of the Governor, for the use of the province. § 7. After the expiration of thirty days from this act, no person shall utter, tender, or offer in payment, any copper or brass coin, other than the lawful coin of the United Kingdom aforesaid, or the tokens of the chartered banks, or the *Banque du Peuple*, at the city of Montreal, heretofore imported or manufactured under the authority of the executive, or by virtue of the ordinances of Lower Canada, or American cents, or such coins or tokens as may have been lawfully imported into or manufactured in this province, according to the provisions of this act, under a penalty of the forfeiture of double the nominal value thereof, to be recovered with costs in a summary manner, on the oath of any one credible witness other than the informer, before any justice, who may, if penalty and costs be not forthwith paid, commit the offender to the common gaol of the district for a time not exceeding eight days, or until paid. § 8. One moiety of the penalties imposed by this act (but not the coins or tokens) shall go to the informer, and the other moiety to her Majesty, for the use of the province. § 11. Certain ordinances in Lower Canada repealed, as soon as this act shall come into force.

By 12 V., c. 20, after reciting that defects existed in the law touching the counterfeiting coin, it is enacted, that if any person shall falsely make or counterfeit, or cause to be made or counterfeited, any coin resembling, or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, or any of the gold or silver coin made or declared to be lawfully current in this province, such person shall be guilty of *misdemeanour*, and on conviction shall be liable to imprisonment in the penitentiary for not more than four years; and upon a second offence shall be deemed guilty of *felony*, and on conviction punished accordingly. § 2. Variation in date between the forged coin and the lawful coin described in the indictment, or upon any *die*, shall not be a ground of acquittal.

By 20 V., c. 30, § 1, any person who shall colour or case over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin of coarse gold or silver, or of base metal resembling any coin made, coined, or struck by or under the authority of any foreign prince or state, and then actually current in the dominions or country

of such prince or state, although not current by law in this province, or who shall make or cause to be made, or buy, sell or procure, or knowingly bring or import into this province any forged, false or counterfeit coin, resembling any such foreign gold or silver coin as aforesaid, or any coin of coarse gold or silver, or base metal coloured or cased over with gold or silver, or with any wash or materials producing the colour of gold or silver, and resembling any such foreign gold or silver coins as aforesaid, or who shall offer, utter, tender or put off as being any such foreign gold or silver coin as aforesaid, any forged, false or counterfeit piece or coin counterfeited to, and resembling any such foreign gold or silver coin as aforesaid, knowing the same to be forged, false or counterfeit, shall for the first offence be guilty of a misdemeanor, and for any subsequent offence, felony. § 2. Any person who shall form, cast, make, sink, stamp or engrave, repair or amend any die press, mould, matrix, tool, instrument or machine, metal or material of any kind used or designed for the purpose of counterfeiting any such foreign gold or silver coin, shall for the first offence be guilty of misdemeanor, and for any subsequent offence, felony. § 3. Any person who shall knowingly (except for some lawful purpose) have in his possession any such forged, false or counterfeited piece or coin, or any die press or other articles as aforesaid, shall for the first offence be guilty of a misdemeanor, and for any subsequent offence, felony. § 4. Any person convicted of misdemeanor under this act shall be imprisoned in the common gaol, with or without hard labour, for any term under two years; or in the penitentiary for any term not less than two nor more than seven years; and upon conviction for a subsequent offence shall be deemed guilty of felony, and imprisoned in the penitentiary for any term not less than two nor more than fourteen years, in the discretion of the court.—See also title “*Currency.*”

COMMITMENT.

There is no doubt but that persons apprehended for offences which are not bailable, and also all persons who neglect to offer bail for offences which are bailable, must be committed —2 *Haw.* 116; and wheresoever a justice is empowered by any statute to bind a person over, or to cause him to do a certain thing, and such person, being in his presence, shall refuse to be bound, or to do such thing, the justice may commit him to the gaol, there to remain till he shall comply. —2 *Haw.* 116. If a person be brought before a justice, expressly charged with felony upon oath, the justice cannot

discharge him, but must bail or commit him—2 *H. H.* 121; but if he be charged with suspicion of felony only, yet if there be no felony at all proved to be committed, or if the fact charged as felony be in truth no felony in point of law, the justice may discharge him; but if a man be killed by another, though it may be misadventure, or self defence (which is not properly felony), or in making an assault upon a minister of justice in execution of his office (which is not at all felony), yet the justice ought not to discharge him, for he must undergo his trial for it, and therefore he must be committed.—2 *H. H.* 221.

See also further on this subject under title "*Indictable Offences.*"

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

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

By stat. 5 *H. IV.*, c. 10, all felons shall be committed to the common gaol, and not elsewhere; but by statute 6 *G.*, c. 19, vagrants and other criminals, offenders, and persons charged with small offences, may, for such offences, or for want of sureties, be committed either to the common gaol or house of correction, as the justices may think proper. And by stat. 10 & 11 *V.*, c. 41, § 5, any person charged upon oath with any criminal offence may be temporarily confined or detained by the written order of any justice in the "Lock-up-house," in any township, town or village, (not exceeding two days,) until he can be examined and committed for trial. See also *post* title "*Lock-up-houses.*"

If a man commit felony in one county, and be arrested for the same in another county, he may be committed to gaol in

that county where he is taken.—*Dalt.* c. 170. And if he escape and is taken on fresh suit in an another county, he may be carried back to the county where he was first taken.—*Dalt.* c. 170. Also, by stat. 24 G. II., c. 55, if a person is apprehended upon a warrant, endorsed in another county, for an offence not bailable, or if he shall not there find bail, he shall be carried back into the first county, and be committed (or if bailable, bailed) by the justices in such first county.

By 12 V. c. 10, § 5, art. 21, if in any act a party be directed to be imprisoned, or committed to prison, such imprisonment or committal shall, if no other place be mentioned, be to the common gaol of the locality in which the order of commitment shall be made, or if none there, then in or to the common gaol which shall be nearest to such locality.

Form of the Commitment.

It must be in writing, either in the name of the king, and only tested by the person who makes it, or it may be by such person in his own name, expressing his office or authority, and must be directed to the goaler or keeper of the prison.—2 *Haw.* 19. It should contain the name and surname of the party committed, if known—if not known, then it may be sufficient to describe the person by his age, stature, complexion, colour of his hair, and the like—and to add that he refuseth to tell his name.—*H. H.* 577. It should set forth that the party is charged upon oath.—2 *Haw.* 120. It ought to contain the cause—as, for treason, or felony, or suspicion thereof—otherwise the prisoner would not only be entitled to his discharge, under the *habeas corpus* act, but if no cause be expressed, and the prisoner escape, neither himself nor the gaoler would be punishable for the escape; whereas if the commitment contained the cause of imprisonment, the escape itself will then be an offence of the same degree as that for which the party was committed.—2 *Inst.* 52, 591. The cause also should be stated with *sufficient certainty*, in order that the party may know for what he is committed, and that it may appear to the court or judge, upon a *habeas corpus*, whether the cause assigned for the commitment was a legal one or not; therefore if the commitment be for felony, the warrant ought not to state generally *for felony*, but it should state the special nature of the felony—as felony *for the death of J. S.*, or burglary *in breaking* the house of J. S., otherwise the court could not determine whether the offence amounted to felony or not.—2 *Hale*, 122; 2 *Inst.* 592; 1 *Ld. Ray.* 213.

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

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

By stat. 17 G. II., c. 5, § 32, where any offender is committed by any justice out of sessions, to the house of correction, by virtue of any law in force which does not expressly limit the time and manner of punishment, the justice shall commit the offender to be kept to hard labour until the next general or quarter sessions, or until discharged by due course of law; but two justices (of whom the committing justice must be one) may discharge the offender before the sessions if they see cause; or the sessions may do so, or continue him in custody not exceeding three months; it must be under seal, and without this the commitment is unlawful; the gaoler is liable to false imprisonment, and the wilful escape by the gaoler, or breach of prison by the felon, makes no felony.—*H. H.* 383. But this must not be intended of a commitment by the sessions, or other court of record; for then the record itself, or the memorial thereof, which may at any time be entered of record, is a sufficient warrant, without any warrant under seal.—1 *H. H.* 584. It should have also set forth the place at which it was made.—2 *Haw.* 119; and it must have a certain date of the year and day.—2 *H. H.* 123.

Charges of the Commitment.

As to the immediate charges of the commitment, and the conveyance of the offender to the gaol, it is provided by stat. 3 Jac. I., c. 10, § 1, that every person who shall be committed to gaol by any justice of the peace, for any offence, if he has means or ability thereto, shall bear his own reasonable charges of his conveyance to gaol; and the charges of such as shall be appointed to guard him thither, and in default of payment, the same may be levied by distress on his goods and chattels, if he shall have any in the county; and by statute 27 Geo. II., c. 3, if the offender has not sufficient effects to bear these charges, then a magistrate shall, upon examination on oath, make an order on the treasurer of the county to pay the same.

Gaoler shall receive the Prisoner.

If the gaoler shall refuse to receive a felon, or take any thing for receiving him, he shall be punished for the same, by the justices of gaol delivery.—4 Ed. III. c. 10; *Dalt. c. 170*. But if a man be committed for felony, and the gaoler will not receive him, the constable must bring him back to the town where he was taken, and that town shall be charged with the keeping of him, until the next gaol delivery; or the person that arrested him may, in such case, keep the prisoner in his own house.—*Dalt. c. 170*. But in other cases, it seems that no one can justify the detention of a prisoner in custody out of the common gaol, unless there be some particular reason for so doing; as, if the party be so dangerously sick that it would apparently hazard his life to send him to the gaol, or there be evident danger of a *rescue*, or the like.—2 *Haw. 118*.

By statute 3 Hen. VI., c. 3, the sheriff or gaoler shall certify the commitments to the next gaol delivery.

Commitment—how it may be Discharged

It seems that a person legally committed for a crime certain cannot (unless under the Habeas Corpus Act) be lawfully discharged by any one but the king, till he be acquitted on his trial, or have an *ignoramus* found by the grand jury, or none to prosecute him on a proclamation for that purpose by the justices of gaol delivery: but if a person be committed on a bare suspicion, without an indictment, for a supposed crime, when afterwards it appears that there was none; as, for the murder of a person thought to be dead, who afterwards is found to be alive; it hath been holden that he may

be safely dismissed without any further proceeding.—2 *Haw.* 121. This position, however, will not always hold good; for though a person supposed to be murdered may have recovered from the injuries he received, yet the offender may still be indicted for an *attempt to murder*, or do the party some bodily harm, in which cases it would be highly improper that any gaoler should take upon himself to discharge the prisoner, without an order from a magistrate.

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

For the several forms of "*Commitments*," See "*Indictable Offences—Summary Conviction.*"

COMMON SCHOOLS.

Common School Act: 1850.

By 13 & 14 V., c. 48, § 1—former acts 7 V., c. 29, and 12 V., c. 83, are repealed. § 2. Annual school meetings are to be held in villages, towns, cities and townships throughout Upper Canada, on the second Wednesday in January, at the hour of 10 in the forenoon. § 3. One trustee in each school section is to be elected at each annual school meeting: the same individual may be re-elected (with his own consent) during the four next years after going out of office. § 4. *Mode of calling the first school meeting in a new section.* § 5. At the first school section meeting, the majority are to elect a chairman and appoint a secretary: the chairman to have a casting vote, but no other vote: at the request of any two electors a poll is to be granted: at such meeting *three* trustees are to be elected for such section, who are to retire in succession as provided. § 6. At the township annual school section meeting the majority present are to—

1. Elect a chairman and secretary.
2. To receive and decide upon the report of the trustees under the eighteenth clause of the twelfth section of this act.
3. To elect one or more persons as trustees, to fill up vacancies: no teacher in such section to hold the office of school trustee.
4. To decide respecting the salary and expenses of the schools.

§ 7. Voters at such meetings on being required shall make

a declaration of their qualification in the form prescribed: any false declaration is to be a *misdemeanor* punishable by fine or imprisonment, at the discretion of the quarter sessions, or by a penalty of not less than 25s., nor more than 50s., to be recovered by the school trustees before any justice of the peace within such section. § 8. Any trustee refusing to serve shall forfeit 25s., and after election and not refusing to accept, refusing or neglecting duty, shall forfeit £5, to be recovered as above: trustees may resign with consent of colleagues and local superintendent. § 9. The proper person neglecting to call annual school meeting to forfeit 25s., and any *two* freeholders may, within *twenty days* after, call such meeting by giving six days' notice. § 10. Trustees of each school section to be a corporation—not to cease for want of trustees, but in such case any *two* freeholders may, on giving six days' notice, call a meeting, which shall elect three trustees, as prescribed by the 5th section, such trustees retiring in succession. § 11. Site of the school-house to be fixed by arbitration, in case of difference.

§ 12. *Duties of the Trustees.*—1. To appoint a secretary-treasurer, for certain duties, as prescribed. 2. A collector of school rates; his remuneration not to be less than five, nor more than ten per cent. on collection. 3. To take and keep possession of all the common school property. 4. To provide school premises and accommodation. 4. To employ teachers and fix their salaries, and establish both male and female schools, if they think proper. 6. To give orders to teachers for school moneys, but to none but qualified teachers. 7. To provide for the salaries of teachers and the expenses of the schools, as desired by a majority of school electors at a special meeting, and to employ all lawful means for collecting the same; and to make additional rates, if necessary, to make up any deficiency. 8. To make out a rate list and warrant for collection, payable monthly, quarterly, half-yearly or yearly, as they may think expedient. 9. To apply to the municipality of the township, or employ their own authority for raising and collecting school moneys by rate according to valuation on the assessor's or collector's roll. 10. To exempt indigent persons. 11. To sue defaulters. 12. To cause notices to be posted, and fix the place of annual school meeting, and to call special meetings for filling up vacancies. 13. To permit residents in such section, between the ages of five and twenty-one, to attend the school, upon their complying with rules and paying fees. 14. To visit the school and see that it is conducted according to law. 15. To provide proper and prohibit improper books for the

school. 16. To exercise corporate powers for the fulfilment of any contract. 17. To appoint a librarian and establish a school library. 18. To ascertain the number of resident children between the ages of five and twenty-one in their section, on the 31st day of December, yearly; and to prepare and read their annual school report at the annual section meeting, including receipts and expenditures, such accounts to be audited if required. 19. To prepare and transmit before the 15th January the annual school report to the local superintendent.

Contents of Report.

1. Time of keeping school open. 2. Amount of moneys received, from what sources and how expended. 3. Number of resident children of school age; attendance of pupils in winter and summer. 4. Branches of education taught, text books used, number of public examinations, lectures and visits, and other information respecting school premises and library.

§ 13. Any trustee knowingly signing a false report, or teacher keeping a false school register, or making a false return, with the view of obtaining a larger proportion of school moneys, shall forfeit to the school fund £5, upon conviction before any justice of the peace, on the oath of any one credible witness, to be levied with costs, by distress and sale of the goods of the offender, under warrant of such justice; or said offender shall be liable to be tried and punished for *misdeemeanor*. § 14. Foreign books not to be used without the express permission of the council of public instruction: religious books prohibited, if objected to by parents or guardians.

Common School Teachers and their Duties.

§ 15. School teachers to be qualified by certificate. § 16. *Teachers' Duties:*

1. To teach diligently all the branches required according to engagement, and the provisions of this act. 2. To keep school registers—to maintain order and discipline—to keep a visitors' book, and solicit visitors' remarks. 3. To have a public examination at the end of each quarter, giving due notice thereof to parents and guardians, and the trustees and school visitors in the neighbourhood. 4. To furnish, when desired, information respecting the school to local or chief superintendent. 5. On leaving school to deliver to the trustees' order the registers and visitors' books.

§ 17. The teacher to be paid at the same rate after the

period of his engagement, until the trustees shall have paid his whole salary: in case of any difference between the trustees and a teacher, in regard to salary, the same to be settled by arbitrators, as provided (a).

Duties of Township Councils.

§ 18. Their duties to be:

1. To levy assessments for common school purposes as desired by trustees; with power if deemed expedient, to grant to trustees authority to borrow money for school purposes, and cause to be levied assessment sufficient to pay principal and interest in ten years. 2. To levy a sufficient sum for the site, erection and support of a township model school and library. Members of the township councils to be trustees of such model schools; and common schools may, with consent of trustees and council, be *merged* into such model school; tuition therein to student teachers to be free. 3. To form new school sections where none before established. 4. To unite school sections under certain conditions: any such alteration not to take effect before the 25th of December afterwards: all parties concerned to be previously notified of such intended alteration. Union school sections of parts of two or more townships may be formed by the reeves and local superintendents at a meeting appointed by any two of such reeves: other parties to be duly notified: each union school section to be deemed one school section, and in respect to superintendence and taxing for the school house, as belonging to the township where the school house is situated. 5. Township clerks to furnish the local superintendent with a copy of the proceedings of such council relative to the formation or alteration of school sections.

§ 19. Township council or board of trustees, on the application of twelve or more resident heads of families, to establish separate schools for Protestants, Roman Catholics (b), or coloured people: coloured people *only* allowed to vote for the election of trustees of the separate school for their children; and petitioners only for a separate Protestant or Roman Catholic school to vote at the election of trustees of such school: school moneys to be apportioned according to the average attendance of pupils. § 20. All the school sections in a township may, at the request of a majority of resident householders of the several school sections, by a by-law of the township, be conducted under one system, and one

(a) The last proviso of this section is repealed by 16 V., c. 185, s. 15.

(b) Repealed as to Roman Catholics by 18 V., c. 121, s. 1.

management, like the schools in cities and towns, and be managed by one board of trustees—one to be chosen in and for each ward, if township divided into wards, otherwise the whole chosen in and for the whole township, and invested with the same powers, &c., as mentioned in the 24th section of this act.

Councils and Trustees in Cities, Towns, Incorporated Villages, and their Duties.

§ 21. The council, or common council of such city or incorporated town shall be invested within its limits, and be subject to the same obligations, as are the municipal council of each county and township by the 18th and 27th sections of this act: provided that the appointment of local superintendents for such city or town be made by the board of trustees for the same. § 22. Two trustees to be elected in each ward of cities and towns by a majority of the taxable inhabitants—to retire in succession annually, as provided. § 23.

On the *second* Wednesday in January each year one fit person to be elected trustee in each ward, and to continue in office for *two* years. § 24. The board of school trustees to be incorporated under the name of *The Board of School Trustees of the city (or town) of* , *in the county of* .

Duties of such board to be:

1. To appoint annually, or oftener, a chairman, secretary, superintendent of schools, and one or more collectors of school rates, and to appoint times and places of meetings, &c.
2. To manage and dispose of school property and school moneys.
3. To provide for school premises, books and libraries.
4. To determine the sites and number of schools, teachers to be employed, the terms, and amount of remuneration and duties, superintendent's salary and duties, and to adopt measures for uniting common schools with the grammar school.
5. To appoint annually or oftener a committee of not more than *three* persons, for the charge and oversight of each school.
6. To lay estimates before the municipal councils of the sums required for the teachers' salaries and other school purposes.
7. To levy at their discretion any rates upon the parents or guardians of pupils and by the same means as trustees of common schools may do under the 12th section of this act.
8. To give orders for payment of teachers and other school officers, upon the chamberlain or treasurer of such city or town.
9. To call annual and special meetings of the taxable inhabitants, as prescribed in the 12th section of this act.
10. To see that the pupils are supplied with authorised text books, and to

appoint a librarian. 11. To see that the schools are conducted according to law, and to publish an annual report in one or more papers of their proceedings, and the progress and state of the schools, receipts and expenditures of school moneys; and to transmit report annually, before the 15th January, to the chief superintendent, as required by the 12th section of this act.

§ 25. Village municipalities to exercise all such powers as are conferred by this act upon city corporations: provided, that on the *second* Wednesday in January, 1851, a meeting shall be held in each such incorporated village, to be organized and conducted in the same manner as prescribed by the 23rd section of this act, for the election of *six* fit and proper persons, resident freeholders or householders, as school trustees, to be divided into *three* classes, numbered 1, 2, 3—the *first* class to hold office one year, the *second* two years, the *third* three years—such trustees retiring to be eligible for re-election: provided, secondly, that there be an annual school meeting in such incorporated village, for the election of *two* trustees in the place of those retiring. The first meeting to be called by the town-reeve, giving six days' notice thereof. § 26. The trustees elected under the preceding section to succeed to all the powers and liabilities of the present trustees, and to be incorporated under the title of "*The Board of School Trustees of the incorporated village of* , *in the county of* , and to possess all the powers so conferred by the 24th section of this act upon the trustees of cities and towns.

Duties of County Municipal Council.

§ 27. The duties of such council shall be :

1. To raise by assessment upon the several townships such amount, for the payment of common school teachers' salaries as shall be equal to the school money apportioned to the several townships by the chief superintendent; to be increased at the discretion of such council, for the purposes stated: assessments to be collected and paid to the county treasurer on or before the 14th of December; and in case of non-payment, the teacher may be paid by order of the superintendent on the county treasurer, in anticipation of such county school assessment; and the county shall make provision accordingly.
2. To raise money for the establishment and maintenance of a county common school library.
3. To appoint annually a local superintendent for the whole county, or for any one or more townships: to fix within the limits of the 30th section of this act, and provide for super-

intendent's salaries: no such local superintendent to have the oversight of more than two schools; the county clerk to notify chief superintendent of the appointment of local superintendent, and county treasurer, and to furnish copies of proceedings in council relative to school matters. 4. To see that sufficient security be given by officers entrusted with school moneys: that no deduction be made from the school fund by the county treasurer for the receipt and payment of school moneys: to appoint *sub-treasurers* (if expedient) for one or more townships, who shall be subject to the same obligations as by this act imposed upon the county treasurer. 5. To appoint auditors of school accounts, who are to report thereon to the council; and an abstract of such report to be transmitted annually by the county clerk, on or before the 1st day of March, to the chief superintendent.

Constitution and Duties of the County Boards of Public Instruction.

§ 28. Trustees of the county grammar school and local superintendents to constitute a county board of public instruction. If more than one grammar school in such county, then such county to be divided into as many circuits as grammar schools; and the trustees of each county grammar school and local superintendents of schools in each circuit shall be a board of public instruction for such circuit; not less than *three* members to constitute a *quorum* for examining and granting certificates to common school teachers; and not less than *five* to be a *quorum* for other business. Board expenses to be provided for by the county council.

§ 29. Duties of the county board of instruction:

1. To meet not less than four times a year. 2. To examine and give certificates to common school teachers, arranging them into three classes, according to their attainments and abilities; to annul certificates: teachers to furnish satisfactory proof of good moral character, and to be natural born or naturalised subjects, and take the oath of allegiance before a justice of the peace. 3. To select (if deemed expedient) text books for the county or circuit schools. 4. To promote the establishment of libraries.

Duties of Local Superintendents of Schools.

§ 30. Each entitled to not less than £1 currency per school under his charge, together with any additional county allowance; to be paid quarterly by the county treasurer.

§ 31. Local superintendent's duties to be—

Common Schools.

1. To apportion the common school fund among the several sections according to the ratio of attendance, unless otherwise directed. 2. To give to qualified teachers, and no others, on the order of the trustees, a cheque on the county treasurer, for any money apportioned and due to such section; such orders not to be paid unless a satisfactory report shall have been received from such section for the year ending December preceding; nor unless it shall appear that a school has been kept in such section for at least *six* months of the year preceding such report; *new* school sections excepted. 3. To visit common schools at least once in each quarter, to examine into the state of the school, and give such advice as he shall judge proper. 4. To deliver in each school section a *public lecture* on practical education once a year, and to stimulate parents and guardians to improve the schools and secure sound education. 5. To see that the schools are conducted according to law; to prevent the use of unauthorised books. 6. To attend the meetings of the county board: to meet and confer with the chief superintendent on his official visits. 7. To attend arbitrations, and to meet the town reeves, as provided by the 12 & 18 § of this act, and to decide upon any other questions of difference submitted to him; with an appeal from his decision to the chief superintendent. 8. To suspend teacher's certificate when necessary until the next meeting of the county board, who shall dispose of the matter. 9. To act in accordance with regulations and instructions according to law; to give any information in his power to the chief superintendent respecting school matters; to furnish county auditors when required with the trustees' orders as the authority for his *cheques* for school moneys; to deliver copies of his official correspondence and all school papers in his possession to the order of the council, on retiring from office. 10. To prepare and transmit an annual report to the chief superintendent, stating—1st. The number of schools and sections under his jurisdiction. 2nd. The number of pupils taught therein, and their ages; the whole number of children residing in each section over the age of *five* and under *sixteen*. 3rd. The time each school has been kept open; the branches taught; number of pupils in each branch, and the books used; the average attendance of scholars, male and female, summer and winter. 4th. The amount of moneys received and expended; annual salaries of teachers. 5th. The number of his school visits and lectures; number of school-houses, &c. 6th. The number of qualified teachers, private schools, libraries, and any other information on educational matters.

School Visitors and their Duties.

§ 32. Clergymen of all denominations, judges, members of the legislature, magistrates, members of county councils and aldermen, to be school visitors within their respective localities. § 33. School visitors authorised to visit the schools, attend examinations, examine into the state and progress of the schools, and give advice as they may think proper. A general meeting of visitors may be convened by any two visitors, to provide for the efficient visitation of schools, &c.

Duties of the Chief Superintendent of Schools.

§ 34. Superintendent to be appointed by the Governor; his salary the same as now or may be hereafter provided by law, and to be responsible to and subject to the directions of the Governor-General; to account for the contingent expenses of his office; allowed two clerks, with same salaries as in Lower Canada. § 35. His duties to be—

1. To apportion legislative grants to the several counties and localities, according to the *ratio* of population.
2. To certify such apportionment to the Inspector-General and county clerks, &c.
3. To prepare suitable forms for reports and proceedings under this act, and transmit the same to the proper officers.
4. To print and distribute from time to time printed copies of this act, with the necessary forms and regulations, to officers of common schools.
5. To see that the moneys apportioned be properly applied: to decide on all matters of complaint submitted to him involving expenditure.
6. To appoint a deputy and special inspectors (without salary.)
7. To superintend the Normal School.
8. To promote the establishment of libraries, provide plans of school-houses, and collect and diffuse useful information on the subject of education.
9. To submit to the Council of Public Instruction, books, manuscripts, &c., designed as text or library books; and to prepare and lay before such council general regulations, &c.
10. To apportion grants for school libraries.
11. To appoint proper persons to conduct county teachers' institutes, and furnish rules and instructions.
12. To be responsible for moneys paid through him for normal and model schools, and to give security therefor: and to prepare and transmit correspondence directed by the Council.
13. To make an annual report on or before the 1st July to the Governor, of the actual state of the normal, model and common schools, and finances, with suggestions for improvement.

By 18 V., c. 132, § 3, to account yearly to the legislature.

Constitution and Duties of the Council of Public Instruction.

§ 36. The Governor to appoint not more than *nine* persons (the chief superintendent to be one) to be the Council of Public Instruction for Upper Canada, to hold office during pleasure.

§ 37. The chief superintendent to provide a place of meeting, to call the first meeting, and a special meeting at any time. The expenses of the council to be accounted for as contingent expenses of the Education Office. The senior clerk in Education Office to be recording clerk of the council. § 38. Three members to constitute a quorum, and their duties to be—

1. To appoint a chairman and times of meeting. 2. To adopt all needful measures for establishment of the Normal School, containing one or more model schools. To make rules and regulations for the government of such Normal School; to select the location, and erect buildings: to determine the number and compensation of teachers, &c. 4. To make rules for the government of common schools and school libraries. 5. To examine and recommend, or disapprove of text books and library books. To transmit annual account to the Governor, of the Normal School expenditure.

Miscellaneous Provisions.

§ 39. A sum not exceeding £1500 per annum to be allowed out of the legislative grant for the contingent expenses of the Normal School, and a sum not exceeding £1000 per annum for the attendance of teachers in training. § 40. The money appointed by the chief superintendent, and that raised by assessment, to constitute the common school fund of the locality, and shall be duly expended. But no locality shall be entitled to a share of the legislative grant, without raising an equal sum by assessment, clear of expenses; and in case of deficiency in such assessment, the public grant to diminish in proportion. § 41. The Governor in council authorised to appropriate annually out of the public grant a sum not exceeding £3000 for school libraries; £25 in any county or riding for a teachers' institute, and £200 per annum for plans and publications for the improvement of school architecture and practical science. § 42. The moneys apportioned to be payable on or before the 1st July, annually, to the treasurer of the county, &c. § 43. In case of loss or embezzlement of school funds, and insufficient security taken, the person who ought to have exacted such security to be held responsible. Any secretary-treasurer, wrongfully withholding or refusing to deliver up, or to account for and pay over, books, papers, chattels or moneys, when directed, shall

be guilty of a misdemeanor; and upon the application of a majority of the trustees (supported by affidavit of such wrongful withholding, or refusal made before a justice of the peace) to the judge of the county court, such judge shall thereupon order the parties to appear before him, and on proof of service, such judge may, in a summary manner, whether the defendant do or do not appear, hear the complaint; and if well founded, order the defendant to deliver up, account for and pay over, the books, papers, chattels or moneys aforesaid, by a certain day to be named by him, with costs to be taxed by the judge; and in case of default, then to order the defendant to be arrested by the sheriff and committed to the common gaol of the county without bail or main-prize, until the books, papers, &c., be delivered up or paid over.

§ 44. Chief superintendent authorised, upon the recommendation of the Normal School teachers, to give certificates of qualification to any teacher of a common school, which shall be valid throughout Upper Canada. § 44. Salaries of chief local superintendents and other persons employed, or expenses incurred in the execution of this act, not to be paid out of the common school fund, which shall wholly be expended in teachers' salaries. § 46. Any person wilfully disturbing, interrupting, or disquieting the proceedings of any school meeting or school, under this act, shall for each offence forfeit to the school section, for school purposes, a sum not exceeding £5, upon conviction before any justice of the peace, on the oath of one credible witness other than the prosecutor; and if not *forthwith* paid, may be levied with costs by distress and sale of the offender's goods, by warrant of such justice: or such offender may be indicted and punished for the same as a misdemeanor. § 47. The first election of trustees to take place as provided for by this section.

By 14, 15 V., c. 3, reciting that it was desirable to remove doubts which had arisen in regard to certain provisions of the 19th section of 13, 14 V., c. 48, and that it was inexpedient to deprive any of the parties concerned of rights which they had enjoyed under preceding school acts. It is enacted that each of the parties applying according to the provisions of said act shall be entitled to have a separate school in each ward, or in two or more wards united, as said parties shall judge expedient in each city or town. Such separate schools to be subject to all the conditions and obligations, and entitled to all the advantages conferred upon separate schools by said 19th sec.

Supplementary School Act, 1853.

By the Supplementary School Act, 16 V., c. 185, § 1,

enacted that the board of school trustees in each city, town, and incorporated village shall, in addition to the powers with which they are now legally invested, possess and exercise, as they shall judge expedient, in regard to each such city, town, and village all the powers with which the trustees of each school section are or may be invested by law in regard to each school section. The chairman of each such board of school trustees to be elected by the trustees from their own number. § 2, provides for the election of school trustees in villages and towns becoming incorporated. § 3. A certain form of declaration required to be made by any voter at an election of school trustee whose right to vote shall be questioned. False declaration to be a misdemeanor punishable by fine and imprisonment as provided by § 7 of the act of 1850. § 4. Persons sending their children to separate schools, or subscribing thereto an amount equal to what they would otherwise have to pay for common schools, to be exempt from payment of common school rates. Separate schools to share in the legislative grant only (and not in any school money raised by assessment) according to the average attendance of pupils attending common schools. A certificate of qualification signed by the majority of the trustees of such separate school, to be sufficient for any teacher of such school. The exemption from school taxes to be limited to the period of sending children to or subscribing for such separate school: nor shall it extend to school rates or taxes imposed to pay for school houses. Trustees of such separate schools to make half-yearly returns on the 30th of June and the 31st of December, to the local superintendent, of the names of all persons of the religious persuasion of such separate school, who shall have sent children to it or subscribed during the six months previous, with the names of the children sent, and amounts subscribed, with the average attendance of pupils. Superintendent to make a return accordingly to the clerk of the municipality, and the parties so exempt not to be included in the collector's roll for school rates. The provisions of the 13th § of the act of 1850 to apply to trustees of separate schools. Trustees of separate schools to be a corporation with power to impose, levy, and collect school rates or subscriptions upon persons sending children thereto. No person belonging to the religious persuasions of such separate school, and sending a child or children thereto, or subscribing for the support thereof, shall be allowed to vote at the election of common school trustees. § 5. Trustees of each school section to transmit half-yearly returns (on or before the 30th of June and 31st December)

to the local superintendent of the average attendance of pupils. Any school section neglecting to make such return, not entitled to the apportionment of the school fund. § 6. Trustees of each school section authorised to assess and collect school rates for school sites and school houses. Provided that they shall take no steps for procuring a school site, or changing one established, without calling a special meeting of the freeholders and householders of their section to consider the matter; and if the majority present differ from a majority of the trustees as to the site of a school house, the question shall be disposed of in the manner prescribed by the 11th § of the act of 1850. § 7. School trustees to see that each school is provided with a register and visitors' book. § 8. Trustees authorised to unite their school with any public grammar school within the section. § 9. Trustees to be personally responsible for the amount of any school moneys which shall be forfeited and lost to such school during their continuance in office in consequence of their neglect of duty, which shall be collected and applied as provided by the 9th § of the act of 1850 for the collection of fines. § 10. Trustees of each school section to incur a forfeiture of £1 5s. for every week they shall neglect after the 31st of January yearly to forward their school report to their local superintendent. § 11. Agreements between trustees and teachers made between the 1st of October and the second Wednesday in January, not to be valid unless signed by *two* trustees of such school section whose period of office shall extend to one year beyond the second Wednesday of January after the signing of such agreement. § 12. Any person residing in one school section and sending his children to a neighbouring school section to be liable for the school rates of the section in which he resides. But this clause not to apply to separate schools. § 13. School expenses, how provided for. § 14. Local superintendent to continue in office until the 1st of April of the year following his appointment. No local superintendent to be a teacher or trustee during his office. Nor required to make more than two official visits to each section under his charge. Local superintendents authorised to determine the sum payable from the school apportionment and assessment of each township in support of schools of union school sections, and how to be paid. And in case of disagreement the warden of the county to decide. Each local superintendent to have the power to appoint the time and place of a special school section meeting, at any time, and for any lawful purpose. To have the power also within twenty days after the election of

common school trustees to receive and investigate any complaint respecting such election; also empowered on due examination to give any candidate a certificate of qualification as teacher within the limits of his charge, until the next ensuing meeting of the county board of public instruction of which such superintendent is a member: but no such certificate shall be given a second time, or shall be valid if so given. In the event of a local superintendent's resignation, the warden of the county is authorised to appoint a successor until the next meeting of the council. § 15. Repeals the last proviso of § 17 of the act of 1850, and enacts that the arbitrators shall have power to administer oaths to, and summon witnesses, and enforce the collections of sums awarded by them. § 16. Provision for the assessment of lands situate within the limits of two or more school sections. § 17. Only one school rate to be levied in one year, except for the purchase of a school site, or the erection of a school house. Nor shall the 9th clause of § 12 of the act of 1850, be enforced unless the trustees of such school section make application to the council, at or before its meeting in August of such year. The township council authorised to form such part of any union school section as is situated within the limits of its jurisdiction, into a distinct school section, or attach it to others. § 18. The chief superintendent authorised to apportion school moneys according to the time schools have been kept open. § 19. "If any person shall wilfully disturb, interrupt, or disquiet any common or other public school by rude or indecent behaviour, or by making a noise within the place where such school is kept or held, or so near thereto as to disturb the order or exercise of such school, such person shall, on conviction thereof, before any justice of the peace, on the oath of one or more credible witnesses, forfeit and pay such a sum of money not exceeding £5, together with the costs of and attending the conviction, as the said justice shall think fit. Such conviction, and all other convictions before a justice of the peace under this act, or the act of 1850, and the costs thereof to be levied and collected from the offender, who in default of payment, may be imprisoned for any time not exceeding thirty days, unless such fine and costs, and the reasonable expenses of endeavouring to collect the same, shall be sooner paid."

§ 20. Certain certificates heretofore granted of qualification to teach, given by county or circuit boards confirmed.

§ 21. Trustees of school sections may be made collectors.

§ 22. Provision for the collection of arrears of school rates.

§ 23. Additional legislative school grants to be expended as

follows:—1. A sum not less than £4000 for the support of common schools, as provided in section 35 of the act of 1850, provided that not more than £500 be expended in new and poor townships. 2. A sum not exceeding £1000 per annum in further support of the normal and model school, and in supplying a copy of the *Journal of Education* to each school corporation, and each local superintendent, provided that not more than £450 be expended in the circulation of such journal, and the balance shall be expended as provided in section 38 of the school act of 1850. 3. A sum not exceeding £500 per annum may be expended by the chief superintendent in the purchase of books, &c., suitable for a Canadian library and museum to be kept in the normal school buildings. 4. A sum not exceeding £500 per annum shall be applied towards the support of superannuated or worn out common school teachers under the regulation of the council of public instruction, approved by the Governor in council, provided, that no teacher be entitled to share who shall not contribute to the fund at least £1 per annum, while teaching school, and furnish satisfactory proof of inability from age or loss of health to pursue the profession. No allowance to exceed £1 10s. for each year such teacher shall have taught. § 24. The chief superintendent authorised to appeal from decisions of the division courts in school matters to the superior courts of common law. § 25. Clerk of each municipality to prepare a map thereof in duplicate, shewing school sections, &c., one copy to be furnished to the county clerk for the use of the county council, the other to be retained in the township clerk's office for the use of the township municipality.

Separate Schools for Roman Catholics.

By 18 V., c. 131, § 1, § 19 of the act of 1850, so far as regards Roman Catholics, is repealed. § 2. Any number of persons not less than *five*, heads of families, being freeholders or householders within any school section, and being Roman Catholics, may convene a public meeting. § 2. At which meeting the majority present (not less than *ten*) and being Roman Catholics, may elect *three* trustees. § 3. A notice to the reeve, or chairman of the board of common school trustees may be given by Roman Catholic resident freeholders or householders of the section favourable to the establishment of such separate school, whether present at the meeting or not, declaring their desire for such school, and designating trustees. § 5. Such notice to be delivered by one of the trustees so elected. § 6.

From the receipt of such notice, the trustees therein named to be a "body corporate." § 7. Union of several single separate schools provided for. § 8. Trustees under this act empowered to impose and levy school rates for the support of such schools, and to possess the same powers as trustees of other separate schools. § 9. Trustees to remain in office until the second Wednesday in January following, on which day annual meetings to be held for the election of trustees. § 10. Children from other sections, being Roman Catholics, may be admitted. § 11. Trustees may grant certificates to teachers, and dispose of school funds. § 12. Any Roman Catholic supporting a separate school, and giving notice to the clerk of the municipality, on or before the first day of February, shall be exempt from other school rates or school libraries. Any person fraudulently giving such notice, or making any false statement, to incur a penalty of £10, recoverable with costs before any justice of the peace at the suit of the municipality. § 13. Separate schools established under this act to share in the common school fund in proportion to the number of children attending: provided that the average attendance shall not be less than *fifteen*. Such separate schools not to be entitled to share in local rates for common schools. And in case such separate school shall not be open the whole year, the apportionment of money to be accordingly. § 14. Trustees required to transmit to the chief superintendent half-yearly returns, on or before the 30th June and 31st December, of the names of children in attendance, and the time the school has been kept open; and the chief superintendent shall apportion the legislative grant accordingly. § 15. The election of trustees to be void if school not established within two months after election. § 16. Supporters of such schools not to vote at the election of other common school trustees.

By 18 V., c. 78, § 13, the superintendents of common schools are required to make an annual report to the Board of Audit, on or before the 30th January. § 15. Under the penalty of £25.

By 18 V., c. 132, § 2, the county judge may try contested elections of school trustees.

COMMON SCOLD.

A common scold, *communis rixatrix*, (for our law-Latin, says *Blackstone*, confines it to the feminine gender,) is a troublesome, angry woman, who by her brawling and wrangling amongst her neighbours, breaks the public peace; increases discord and becomes a public nuisance to the neigh-

bourhood: she is, therefore, liable to be indicted as a public nuisance, and, on conviction, to undergo the punishment of the tre-bucket, or ducking-stool.—4 *Bl. Com.* 168.

COMPOUNDING FELONY.

Is a misdemeanor at common law called *Theftbote*—which is, where the party robbed not only knows the felon, but also takes his goods again, or other amends, upon agreement not to prosecute. This is frequently called *compounding of felony*, and formerly was held to make a man an accessory, but is now punished only with fine and imprisonment.—4 *Bl. Com.* p. 133, 16 *Ed.*; 1 *Haw. c.* 59, § 5.

By 4 & 5 V., c. 25, § 50, every person who shall corruptly take any money or reward, directly or indirectly, under pretence of helping any person to any stolen property whatsoever, shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of felony, and, upon conviction, be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for not less than seven years, or to be imprisoned in any other place of confinement for any term not exceeding two years. § 51. If any person shall publicly advertise a reward for the return of any property stolen or lost, and shall in such advertisement use any words, purporting that no question will be asked; or shall make use of any words, in any public advertisement, purporting that a reward will be given or paid for any property stolen or lost, without seizing or making any inquiry after the person producing the same, or shall promise or offer, in any such public advertisement, to return to any pawnbroker or other person, who may have bought or advanced money by way of loan upon any property stolen or lost the money so paid or advanced, or any other sum of money or reward for the return of such property; or if any person shall print or publish any such advertisement, in any of the cases, every such person shall forfeit the sum of £20 for every offence, to any person who will sue for the same by action of debt, to be recovered with full costs of suit.

Indictment for Compounding a Felony.—(Archbold.)

County of _____, } The jurors for our lady the Queen, upon
to wit. } their oath present, that heretofore, to wit, on
the _____ day of _____ in the _____ year of the reign of our sovereign
lady Victoria, at the township of _____ in the county of _____,
one A. wife of J. N. feloniously stole, took, and carried away,
one silver spoon of the value of twenty shillings, of the goods
and chattels of one J. S., against the peace of our lady the
Queen, her crown and dignity. And that the said J. S. late

of the township aforesaid, in the county aforesaid, labourer, well knowing the said felony to have been by the said A. so as aforesaid done and committed; but contriving and intending unlawfully and unjustly to prevent the due course of law and justice in that behalf, and to cause and procure the said A. for the felony aforesaid, to escape with impunity; afterwards, to wit, on the day and year aforesaid, unlawfully, and for wicked gain's sake, did compound the said felony with the said J. N. the husband of the said A., and then and there did exact, take, receive and have of the said J. N. the sum of twenty-six shillings, for and as a reward for compounding the said felony, and desisting from all further prosecution against the said A. for the felony aforesaid; and that the said J. S., on the day and year aforesaid, at the township aforesaid, in the county aforesaid, did therefore desist, and from that time hath desisted from all further prosecution of the said A. for the felony aforesaid to the great hindrance of justice, in contempt of our lady the Queen, her crown and dignity.

COMPOUNDING OTHER OFFENCES.

The compounding of *informations on penal statutes*, is a misdemeanor against public justice, by contributing to make the laws odious to the people.—4 *Bl. Com.* 136. Therefore, in order to discourage malicious informers, and to provide that offences, when once discovered, shall be duly prosecuted, it is enacted by the statute 18 *Eliz.*, c. 5, § 4, that if any informer, by colour or pretence of process, or without process, upon colour or pretence of any manner of offence against any penal law, make any composition, to take any money or consent to the court, he shall stand two hours in the pillory; be for ever disabled to sue on any popular or penal statute, and shall forfeit £10. This severe statute extends even to penal actions, where the whole penalty is given to the prosecutor.—*Bl. Com.* 136, note (a.) But it does not apply to penalties which are only recoverable by information before justices; and an indictment for making a composition in such a case, was holden bad in arrest of judgment.—*Rex v. Crisp and others*, 1 *B. & A.* 282.

It has been decided that a party is liable to the punishment prescribed by the 18 *Eliz.*, c. 5, for taking the penalty imposed by a penal statute, though there was no action or proceeding for the penalty.—*Rex v. Gotley, East. T.*, 1805, *Russ. & Ry.* 84.

CONCEALING BIRTH.

By 4 & 5 *V.*, c. 27, § 14, if any woman shall be delivered of a child, and shall, by secret burying or otherwise disposing of the dead body of the said child, endeavour to conceal the

birth thereof, every such offender shall be guilty of a *misdemeanor*, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding two years; and it shall not be necessary to prove whether the child died before or at its birth: provided always, that if any woman tried for the murder of her child, shall be acquitted thereof, it shall be lawful for the jury by whose verdict she shall be acquitted, to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof; and thereupon the court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth.

See also *post* title "*Punishment*," § 36.

CONFESSION.

If a party, on examination before a justice, confess a crime, it may be given in evidence against him, but not against others—2 *Haw. c.* 46, § 3; and it is sufficient, though there is no other proof of his having committed the offence, or of the offence having been committed, if such confession was in consequence of a charge against him—*Rex v. Eldridge, Russ. and Ry. c. c. R.* 440; but it must be voluntary, and not have been obtained by any promise, favour, menace or terror. The admissibility of a confession must depend upon circumstances—*Phil. Ev.* 104; and the identity of the examination must be proved before it can be read in evidence—*Sum.* 263; it must be in writing, and not orally, and must be taken altogether and not by parcels.—2 *Haw. c.* 46, § 5; *Leach*, 286; and such examination should not be on oath.—*Bull, N. P.* 242. Persons confessing themselves, and on that confession adjudged guilty of felony, cannot be admitted to bail—as the only reason for admitting to bail in felony, is where the crime is doubtful.—2 *Haw. c.* 15. § 40. The confession must be in the very words used by the party, and not in the language of another, from recollection.—*Rex v. Sexton, 1 Burn*, 692. Prisoner may be convicted on the uncorroborated evidence of his own confession.—*Leach*, 287.

See also "*Indictable Offences*."

CONFINEMENT.—SOLITARY.

May be ordered by the court, in addition to other punishment in certain cases by stats. *3 *W. IV.*, c. 3, § 24; 4 & 5 *V.*, c. 24, § 28; 4 & 5 *V.*, c. 25, § 4.

CONSPIRACY.

Is a combination of *two* or more persons to injure a third person—1 *Haw. c.* 72, § 2; or to injure or prejudice the community—8 *Mod.* 11, 320; 3 *M. & S.* 67; thus, where the defendants were charged with conspiracy in causing a man to be convicted and executed for robbery, which they knew he was innocent of, with intent to obtain the reward then given by act of parliament—*R. v. Macdaniel*, 1 *Leach*, 45; *Fost.* 130: so, where the defendants were indicted for conspiring to accuse another of taking hair out of a bag, without alleging that it was done feloniously, *Lord Mansfield* held, that the gist of the offence was the unlawfully conspiring to do an injury to another by a false charge; and that whether the conspiracy be to charge a man with criminal acts, or such only as affect his reputation, it is sufficient—*R. v. Rispal*. 1 *Bl. Rep.* 368; 3 *Burr*, 1320: so, where the prosecution is for the sole purpose of extorting money—*R. v. Hollingbury*, 4 *B. & C.* 329: so also, a conspiracy to prevent a prosecution for a felony, is as much an offence as a conspiracy to institute a false prosecution—14 *Ves.* 65; and a conspiracy of two magistrates to prevent the course of justice, on an indictment for not repairing a highway, by signing a false certificate of the highway being in repair, in order to prevent the court from imposing a fine on the defendants, has been also held to be an indictable offence.—*R. v. Mawley*, 6 *T. R.* 619. Among various other subjects of conspiracy may be mentioned a conspiracy to obtain, by procuring in return, the appointment to a public office—*R. v. Pollman*, 2 *Camp.* 229; of several defendants to injure a man in his trade—*R. v. Eccles*, 1 *Leach*, 274; to sell unwholesome wine or provisions—*R. v. Macarty*, and *Fordenborough*, 2 *Ld. R.* 1179; journeymen combining not to work unless for certain wages—*R. v. Journeyman Tailors of Cambridge*, 8 *Mod.* 10; to suppress a will—*Breerton's case*, *Noy*, 103; or to cause an illiterate person to execute a deed to his prejudice, by reading it over falsely to him.—*R. v. Skirret*, 1 *Sid.* 312, 431.

If all the defendants who are indicted for a conspiracy be acquitted but one, the acquittal of the rest is the acquittal of that one also, as there must be *two* concerned in the conspiracy—*Cro. Cir. Com.* 159; 2 *Ld. Ray.* 1167; 2 *Burr.* 993: but an indictment against one person and others unknown, is maintainable.—3 *Chit. c.* 4, 1141.

By 4 & 5 V., c. 27, § 25, in case of any assault committed in pursuance of any conspiracy to raise the rate of wages,

the court may sentence the offender to be imprisoned for any term not exceeding two years, and may also (if it shall so think fit) fine the offender and require him to find sureties for keeping the peace.

The offence of conspiracy may be tried by justices of the peace in their quarter sessions—*R. v. Rispal*, 3 *Burr*, 1320; and the act of one party, in pursuance of the common object, is evidence in law against all the parties.—*Ph. on Ev.* 76. If one only of two persons indicted appear, he may be tried in the absence of the other defendant.—*R. v. Kinnerley*, 1 *Str.* 193. The punishment for a conspiracy is by pillory (a), fine and imprisonment, and sureties for the good behaviour.—2 *Burr.* 1027.

See also *post* title “*Workmen.*”

Indictment for Conspiracy. (Chitty.)

County of _____, } The jurors for our lady the Queen, upon
to wit, _____ } their oath present, that A. B., late of _____,
in the county of _____, yeoman, C. D., late of _____, in the said
county, yeoman, and E. F., late of _____, in the same county,
labourer, being persons of evil minds and dispositions, on the
day of _____, in the _____ year of the reign of our sove-
reign lady Victoria, with force and arms, at the township
aforesaid, in the county aforesaid, unlawfully and wickedly
(*or, if the conspiracy be malicious, say “falsely and maliciously”*)
did conspire, combine, confederate and agree together, to (*here
state the object of the conspiracy*) and the jurors aforesaid, upon
their oath aforesaid, do further present, that the said A. B.,
&c., in pursuance of, and according to the said conspiracy,
combination, confederacy and agreement, between them, the
said A. B., &c. as aforesaid had, did, on, &c., at, &c. (*the place
where the overt act took place*) (*here set out the overt acts of conspi-
racy*) to the great damage of, &c. (*the party immediately injured*)
to the evil example of all others, and against the peace of our
said lady the Queen, her crown and dignity (*add a second
count, stopping at the statement of the conspiracy, omitting the overt
acts, and concluding as above.*)

CONSTABLE.

Who are liable to Serve the Office.

No person can be appointed a constable who is not an inhabitant of the place where he is to serve—1 *Burn.* 703; *R. v. Adbard*, 4 *B. & C.* 772: and if a very poor and ignorant person be chosen, he may by law be discharged, and an abler person appointed in his room.—*Ibid.*; *Dalt. c.* 28.

Barristers at law, attorneys, and other officers of the Court

(a) Pillory is now abolished by the 4 & 5 V., c. 24, § 31.

of King's Bench, are exempt from serving the office—2 *Keb.* 508; *Cro. Cir.* 389; 2 *Haw. c.* 10, § 30: and by the ancient custom of the realm, surgeons have been allowed the like privilege.

An officer in the King's service, or a gentleman of quality, may perhaps be relieved from serving such office, upon application to the Court of King's Bench, provided there are other persons sufficient to execute the office.—2 *Haw. c.* 10, § 41.

It hath been holden that the King may exempt any person, if the exemption be not extended so far as to prevent the existence of the office in any place.—*Rex. v. Clark*, 1 *T. R.* 682. By 10 & 11 *W. III.*, c. 23, § 2, 3, the prosecutor of a felon to conviction is discharged from liability to serve as constable. A foreigner, though naturalized, is not liable to serve.—*Rex. v. De. Mierre, Burr*, 278. No man that keeps a public house ought to be made a constable, if there are other persons in the parish proper to serve.—*Per Holt, C. J.* 6 *Mod.* 42.

How Appointed, and how Punishable for refusal to serve.

*By 33. *G. III.* c. 2, § 10, it is enacted, that it shall be lawful for justices of the peace, within the respective limits of their commissions, at their general quarter sessions in April, (but now March, under the 20 *V.*, c. 58, § 16,) (a) or the greater part of them, to nominate and appoint, yearly, a sufficient, discreet and proper person, to serve the office of high constable, in each and every district; and also to nominate and appoint such a sufficient number of persons as in their discretion will be necessary to serve the office of constable, in each and every township, reputed township or place; and the said constable and constables, before they enter into their office, shall severally take the following oath (b):

You shall well and truly serve our sovereign lord the King, in the office of _____, for the _____ of _____, for the year ensuing, according to the best of your skill and knowledge. So help you God.

And after such service, such persons shall be exempt from any of the offices mentioned in this act, for three years.

By 13 & 14 *Car. II.*, c. 12, § 15, if a constable die, or go out of the parish, any two justices may make and swear

(a) By the same statute 20 *V.*, c. 58, the Quarter Sessions are to be held on the second Tuesday in March, June, September, and December.

(b) The whole of the *33 *G. III.*, c. 2, excepting the 10th clause has been repealed by the *5 *W. IV.*, c. 8.

a new one till the next quarter sessions, which shall either approve or appoint another.

If a constable being duly appointed, refuse to take the oath, he may be indicted at the assizes or sessions, when, if found guilty, he may be fined, and in default of payment, he may be committed—*Rex. v. Lane*, 2 *Str.* 920; but if he has once been allowed to appoint a deputy, who is approved of, he is altogether discharged—3 *Esp. Rep.*; but such deputy must be duly sworn.—*Wood's Inst.* 61, c. 7.

Powers and Duties of the Office.

The *high constable* has the superintendence and direction of all *petty constables* within his district, and he is, in a manner, responsible for their conduct, since he is bound to notice and present their defaults, for the neglect of which duty he is in fact presentable himself.

Every high and petty constable is, by the common law, a conservator of the peace—2 *Haw.*, c. 8, § 6; therefore, he is authorised, without any warrant, to arrest all traitors, felons, and suspicious persons, and all those whom he shall see upon the point of committing treason or felony, or doing any act which would manifestly endanger life.—2 *Haw.*, c. 12, § 19; 1 *Bac. Ab.* 441. In case of any breach of the peace committed, or one about to be committed, in the presence of a constable—as where violent attempts are used by any person to beat or hurt another—the constable may arrest the party and carry him before a magistrate, or detain him till he can conveniently do so—*Dalt. c.* 1, 116, § 3. A constable has no right to execute a warrant out of the jurisdiction of the justice who grants it—*Milton v. Green* 5. *East.* 223—unless backed by a magistrate of the district in which the offender is found.—24 *G. II. c.* 55. It is said, however, that a constable is not obliged to execute a warrant out of his district.—*v. Norman*, 1 *Ld. R.* 736. A constable cannot imprison a person arrested by him for any longer time than he can conveniently bring him before a magistrate.—*Sav.* 98; *H.* 92; 4 *Com. Dig. Leet*, (M. 9). A constable (after giving notice that he is one) may break open the doors of a house to arrest a felon, if he be concealed therein, and peaceable entrance is denied—2 *H. P. C.* 90, 82; and if the felon resists or flies, it is not murder if the constable kill him (a). He may commit affrayers to the stocks on his own view—but not if absent—

(a) QUÆRE.—Whether it must not be a case of extreme necessity to justify this.

Dalt. c. 1, Cro. Eliz. 375, 376; he may imprison to prevent a felony—*Moore*, 284; and if one be menaced, he may compel the menacer to find surety, or commit him to prison till he does—4 *Inst.* 265, *Cro. Eliz.* 375-6; he may break open a house, when entrance is denied, to abate an affray, or to suppress disorderly drinking, or noise, at an unreasonable hour of the night—*Hale, P. C.* 95; he may imprison one who insults or assaults himself, or opposes him, though verbally, in the execution of his office, and may beat another in his own defence—*Crompt. J. P.* 131; if a warrant be directed generally, “to bring before me, or some other justice,” he may carry the prisoner before what justice he chooses, in the district—but not if specially directed—5 *Rep.* 596; he has no right to handcuff a prisoner except he has attempted to escape, or that it is necessary in order to prevent an escape—3 *Ma. Ca.* 299; he should seize the goods of felons who fly the country, for the King’s use—*Crompt. J. P.* 201; he is to aid and assist in the appraisement and sale of goods distrained for rent, and may swear the appraisers—2 *W. & M. sess.* 1, c. 5; he is also to aid landlords in seizing, as a distress for rent, goods fraudulently removed to avoid such distress, and they may break open a house wherein they are deposited—(oath being first made before a justice, of reasonable suspicion of their being there).—11 *G. II.*, c. 19. Constables may seize a stranger guilty of profane cursing and swearing, and carry him before a justice; but if known, he must lay an information.—19 *G. II.*, c. 21, § 3. When on a warrant indorsed he apprehends an offender, he is to carry him before the justice who indorsed it; and if the offender find bail, he is to receive the recognizances, examination, &c., and deliver them to the clerk of assize, or clerk of the peace of the district where such offender is required to appear; and if the offender is not bailed, he is to carry him before a justice of the county where the offence was committed.—24 *G. II.*, c. 55. A constable making a distress under a justice’s warrant, shall, on demand, shew the same to the party, and permit a copy to be taken.—27 *G. II.*, c. 20. But if a constable be duly sworn, and commonly known to be an officer, and act within his own precinct, he need not show the party his warrant, though he should demand it; but he ought to acquaint the party with the substance of it.—2 *Haw. c.* 13; 1 *East. P. C.* 319. He is not discharged from his office until his successor is sworn.—12 *Mod.* 256.

As the office of a constable is wholly ministerial, he may appoint a deputy to execute a warrant directed to him, when,

by reason of sickness, absence, or otherwise, he cannot do it himself.—2 *Haw. c.* 10, § 36. And such a deputy may be appointed by parol, and need not be sworn.—*Medhurst v. Wate*, 3 *Burr.* 1259. But unless the deputy is duly allowed and sworn, the constable is answerable for him in case of any misconduct—*Wood's Inst. b.* 1 *c.* 7 ;—though, if duly sworn, the liability of the principal is at an end.—*Underhill v. Witts*, 3 *Esp.* 56.

Indemnity and Protection.

An action against a constable for any act done in the execution of his office must be brought in the district where the offence was committed, to which action he may plead the general issue, and give the special matter in evidence; and if he recover he shall have double costs—21 *Jac. I., c.* 12. This extends also to his deputy.—*Crompt. J. P.* 201. And every man aiding a constable in the execution of his office, has by law the same protection as the constable.—2 *Hale, P. C.* 97. A justice's warrant is a good justification of a constable, in any matter within the jurisdiction of such justice, but not otherwise.—*Str.* 711.

By stat. 24 *G. II., c.* 44, the constable is not answerable for the execution of a warrant, in case the magistrate who made it has no jurisdiction, if he complies with the requisitions of that statute; and by § 6, no action shall be brought against him or any person acting by his order and in his aid, for any thing done in obedience to a warrant under the hand or seal of a justice, until demand in writing hath been made, or left at his usual place of abode, of the perusal and copy of the warrant, and the same hath been refused or neglected for six days after such demand; and if, after compliance therewith, any action shall be brought without making the justice a defendant, the jury shall, on production of the warrant, give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. If the action be brought jointly against the justice and constable, the jury shall, on proof of the warrant, find for the constable, notwithstanding such defect of jurisdiction. By § 8, no action shall be brought against any constable acting in the execution of his office, unless commenced within six calendar months after the act committed.

If a constable acting under a distress warrant, seize the goods of A., mistaking them for the goods of B., he is entitled to the protection of the statute.—*Carton v. Williams*, 3 *B. A.* 330. A constable who arrests a person given him in charge, is not liable to an action for false imprisonment, though the charge be ill founded, unless he make himself a

party in oppressing the person so arrested, knowing the charge to be false.—*White v. Taylor*, 4 *Esp.* 80.

Of his Punishment.

He may be fined or imprisoned, or both, for refusing to serve the office when appointed.—*Arch. C. P.* 384. He is indictable for neglecting his duty, either at common law or by statute.—1 *Salk.* 331. And may be fined for not endeavouring to pacify an affray in his presence.—*Cromp. J. P.* 130. If he will not return his warrant, or what he has done under it (for he ought to keep the warrant for his own justification) the sessions may fine him.—6 *Mod.* 83. He is guilty of felony if he lets a felon out of the stocks.—*Hale, P. C.* 696. He may be removed for just cause by the authority which appointed him.—*Bulst.* 174.

Special Constables.

By stat. 10 & 11 V., c. 12, it is enacted, that where it shall be made to appear to any two or more justices of the peace, upon the oath of any credible witness, that any tumult, riot, or felony has taken place, or is continuing, or may be reasonably apprehended, within the jurisdiction of such justices, and such justices shall be of opinion that the ordinary officers of the peace are not sufficient for the preservation of the peace and for the protection of the inhabitants and property, such justices may, by precept or writing under their hands, nominate and appoint so many as they shall think fit of the householders or other persons (not exempt from serving the office of constable) residing in the parish, township, or place, or in the neighbourhood thereof, to act as special constables for such time and in such manner as to the said justices shall seem fit, for the preservation of the peace and protection of property; and such justices, or any one of them or any other justice acting for the same limit, may administer to any person so appointed the following oath:—

I, A.B., do swear that I will well and truly serve our sovereign lady the Queen, in the office of special constable, for the of without favour or affection, malice or ill will; and that I will, to the best of my power, cause the peace to be kept and preserved, and will prevent all offences against the persons and properties of her Majesty's subjects, and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law. So help me God.

Notice of such appointment to be transmitted by such justices to the secretary of the province. § 2. Such justices, or any two of them, or the justices for the limit, or the major part of such last mentioned justices, at a special session may,

from time to time, make orders and regulations for rendering such special constables more efficient, and shall have power to remove any of them. § 3. Every such special constable shall have, throughout the entire jurisdiction of the appointing justices, all such powers, &c., as any constable duly appointed by law. § 4. Under special circumstances, any two or more justices may authorise such special constables to act in an adjoining district. § 5. Any special constable so appointed refusing to be sworn when required by any two justices of the limit, may be convicted thereof before such justices, and shall forfeit and pay such sum, not exceeding £5, as to said justices shall seem meet; and if any special constable shall neglect or refuse to appear when summoned for the purpose of taking the oath, he shall be liable, on conviction before any two justices of the limit, to pay such sum, not exceeding £5, as to them shall seem meet, unless he shall prove to their satisfaction that he was prevented by sickness or other sufficient excuse. § 6. The like penalty is also imposed on neglect or refusal to serve or obey lawful orders and directions. § 7. Justices at a special session may also suspend or determine the service of all or any of such special constables; and notice thereof shall be forthwith transmitted to the secretary of the province. § 8. Special constables shall, within one week after their discharge, deliver over to their successors (or such other persons as any justice for the limit may direct) every staff, weapon, and other article provided under this act, under a penalty not exceeding £2, upon conviction before *two* justices. § 9. Any person assaulting or resisting any special constable while in the execution of his office, or encouraging any other person so to do, shall, on conviction before *two* justices, forfeit and pay any sum, not exceeding £10, or shall be liable to such other punishment as by law established. § 10. Justices at a special sessions may order a reasonable allowance to special constables, not exceeding 5s. a day, by order upon the district treasurer. § 11. Special sessions under this act may be adjourned from time to time. § 12. Prosecutions under this act to be commenced within two calendar months after the offence; and penalties paid to the district treasurer, or other municipal division within which the offence was committed; and inhabitants may be competent witnesses. § 13. Convicting justices may adjudge offenders to pay immediately, or within a certain time; and in case of non-payment penalties may be levied by distress and sale of the offender's goods, with reasonable charge of distress; and for want of sufficient distress such offender shall be imprisoned in the common gaol for any term not exceeding one calendar

Taking prisoners to gaol, 4d. per mile, exclusive of disbursements necessarily expended in their conveyance, (to be paid out of the district funds, or by the party, as the case may be.)	0 10 0
Summoning jury for inquest.....	0 10 0
Attending inquest for each day other than the first...	0 5 0
Serving notice of appointment of constables, when personally served	0 2 6
Levying upon distress warrant and returning the same, where charge not provided by law.....	0 5 0
Travelling to make distress, or to search for goods to make distress when no goods are found, 4d. per mile, when charge not otherwise provided by law.	
Appraisement, whether by one appraiser or more, 4d. in the pound on the value of the goods.	

Note.—The above costs are by the 9 V., c. 58, chargeable (with other costs) on the public revenue, and by order in council are to be rendered in duplicate to the treasurer of the county during the sitting of the quarter sessions, or within three days thereafter, verified by affidavit and certified by the justice under whose authority the services were performed.

See further under title "Costs."

Form of appointment of a Deputy Constable.

I, C. D., constable of in the county of , do hereby make, substitute and appoint G. H. of yeoman, my true and lawful deputy, in the office of constable of the said township, so long as I shall hold the same (or during the continuance of my will and pleasure). Witness my hand, the day of in the year of our Lord 18 .

Oath to be administered by Constable to Appraisers, on Goods being distrained for Rent.

You shall swear that you will faithfully appraise the goods taken in distress, and mentioned in the inventory to you shewn, as between buyer and seller, according to the best of your skill and knowledge. So help you God.

Memorandum to be endorsed by the Constable on the Inventory.

Memorandum, that on the day of in the year of our Lord 18 , A. B. of and C. D. of two sworn appraisers, were sworn upon the holy Evangelists, by me E. F., constable, well and truly to appraise the goods and chattels mentioned in this inventory, according to the best of their skill and knowledge; as witness my hand.

E. F., Constable.

Present at the time of swearing the said A. B. and C. D. as above, and witness thereto.

J. K.
L. M.

Proclamation of Constable for Rioters to disperse.

Our sovereign lady the Queen charges and commands all persons here assembled, immediately to disperse themselves, and peaceably depart to their several habitations, on pain of imprisonment.

Indictment for refusing to serve the office of High Constable, (Archbold).

County of ,) The jurors for our lady the Queen, upon
to wit.) their oath present, that at the general quarter
sessions of the peace holden at the city of , in and for the
county of , on the day of , in the year of the
reign of our sovereign lady Victoria, to wit, at the city aforesaid,
in the county aforesaid, before A. B. and C. D. Esquires, and
others their associates, justices of our said lady the Queen as-
signed to keep the peace of our said lady the Queen in and for
the said county, and also to hear and determine divers felonies,
trespasses and other misdemeanors in the said county committed,
one J. S., late of the township of , in the county of ,
yeoman, then, and long before, being an inhabitant and residing
in the township last aforesaid, in the county aforesaid, and a
fit and able person to execute the office of high constable within
the said county, at the said sessions, by the justices aforesaid
in due manner, was then and there elected to be high constable
of the said county, in the room and stead of one J. N. ; whereof
the said J. S. afterwards, to wit, on the day and year aforesaid,
at the township aforesaid, in the county aforesaid, had notice:
nevertheless the said J. S. not regarding his duty in that
behalf, but contriving and intending the due execution of
justice to hinder and prevent, afterwards, to wit, on the day
and year aforesaid, at the township aforesaid, in the county
aforesaid, unlawfully, wilfully, obstinately and contemptuously
did refuse, and from thence continually, until the day of the
taking of this inquisition, unlawfully, willfully, obstinately and
contemptuously hath refused, and still doth refuse, to take upon
himself and execute the said office of high constable within and
for the county aforesaid, to wit, at the township aforesaid, in
the county aforesaid, contrary to his duty in that behalf, in
manifest contempt and delay of justice, against the form of the
statute in such case made and provided, and against the peace
of our lady the Queen, her crown and dignity.

The above form, with a slight variation, will answer for petty constables also.

CONSTITUTIONAL ACTS.

By the imperial statute 14 G. III., c. 88, entitled, "An Act for making more effectual provision for the government of the province of Quebec, in North America," it is enacted that the inhabitants of the said province of Quebec may have,

hold and enjoy, the free exercise of the religion of the church of Rome, subject to the king's supremacy declared and established by the 1 Q. Eliz. over all the dominions and countries which then did, or thereafter should, belong to the imperial crown of this realm: and that the clergy of the said church may hold, receive and enjoy their accustomed dues and rights, with respect to such persons only as shall profess the said religion. § 5. And that it shall be lawful for his Majesty, his heirs or successors, to make such provision out of the rest of the said accustomed dues and rights, for the encouragement of the Protestant religion, and for the maintenance and support of a Protestant clergy within the said province, as he or they shall from time to time think necessary and expedient. § 6. Provided that no person professing the religion of the church of Rome, and residing in the said province, shall be obliged to take the oath required by the said statute 1 Q. Eliz., or any other oaths substituted by any other act in the place thereof; but that every such person who by the said statute is required to take the oath therein mentioned, shall be obliged to take and subscribe the following oath, before the Governor, or such person in such court of record as her Majesty shall appoint.

Form of the Oath.

I, A. B. do sincerely promise and swear, that I will be faithful and bear true allegiance to his Majesty King George, and him will defend to the utmost of my power, against all traitorous conspiracies and attempts whatsoever which shall be made against his person, crown and dignity; and I will do my utmost endeavour to disclose and make known to his Majesty, his heirs and successors, all treasons and traitorous conspiracies and attempts, which I shall know to be against him or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any power and person whomsoever to the contrary. So help me God.

And every such person who shall neglect or refuse to take the said oath, shall incur the penalties of the 1 Q. Eliz.

§ 8. That in matters of controversy relative to property and civil rights, resort shall be had to the laws of Canada, as the rules for the decision of the same.

§ 17. And that nothing herein contained shall extend, or be construed to extend, to prevent his Majesty, his heirs and successors from erecting, constituting and appointing such courts of criminal, civil and ecclesiastical jurisdiction, as he or they shall think necessary and proper for the circumstances of the province.

By the imperial statute 18 G. III., c. 12, it is declared that the imperial parliament will not impose any duty or tax on any colony, except only for the regulation of commerce, the net produce of such duty or tax to be applied for the use of the colony in the same manner as duties imposed by the local legislature.

By the imperial statute 31 G. III. c. 31, entitled, "An Act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign, entitled 'An Act for making more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the said province.'" after noticing that his Majesty had been pleased to signify, by his message to both houses of parliament, his royal intention to divide his province of Quebec into two separate provinces, to be called the province of Upper Canada, and the province of Lower Canada, certain provisions were thereby made for the division of the said province, and providing a separate legislature for each province. But as the two provinces have been since re-united by an act of the imperial legislature, and now again constitute but one province, it will be sufficient here to give the provisions of the act by which the re-union has been effected.

By imp. stat. 3 & 4 V., c. 35, entitled, "An Act to re-unite the provinces of Upper and Lower Canada, and for the government of Canada:" after reciting that it was necessary that provisions be made for the good government of the provinces of *Upper Canada* and *Lower Canada*, in such manner as might secure the rights and liberties and promote the interests of all classes of her Majesty's subjects within the same, and that to this end it was expedient that the said provinces be re-united and form one province for the purposes of executive government and legislation: it is enacted, that it should be lawful for her Majesty, with the advice of her privy council, to declare or authorise the Governor-General of the said two provinces to declare by proclamation that the said provinces, upon, from and after a certain day in such proclamation to be appointed, which day shall be within fifteen calendar months next after the passing of this act, should form and be one province, under the name of the Province of Canada, and thenceforth the said provinces should constitute and be one province, under the name aforesaid, upon, from, and after the day so appointed. § 2. Provided that so much of the 31 Geo. III., c. 31, as provides for constituting and composing a Legislative Council and Assembly within each of the said provinces respectively, and

for the making of laws; and the whole of Lower Canada acts 1 & 2 V., c. 9; 2 & 3 V., c. 53; 1 & 2 W. IV., c. 23, should continue in force until the union by proclamation, and should be repealed from that day, but not revive any former enactment by such repeal. § 3. After the re-union there shall be within the province of Canada one Legislative Council and one Assembly, to be called the Legislative Council and Assembly of Canada, with power to her Majesty, by and with the advice and consent of such council and assembly, to make laws for the peace, welfare and good government of the province of Canada; such laws not being repugnant to this act, &c. § 4. It shall be lawful for her Majesty, by an instrument under the sign manual, to authorise the Governor, in her Majesty's name, by an instrument under the great seal of the province, to summon to the Legislative Council^(a), such persons being not fewer than *twenty*, as her Majesty shall think fit, and from time to time in like manner to summon to the said council such other person or persons as her Majesty shall think fit, and every person so summoned shall thereby become a member of the Legislative Council; but no person shall be so summoned who shall not be of the full age of 21 years, and a natural born subject, or naturalized by act of Parliament of Great Britain, or by the legislature of Upper or Lower Canada. § 5. Members to hold their seats for life, subject to the provisions hereinafter contained. § 6 authorises members to resign their seats. § 7. And if any Legislative Councillor shall be absent two successive sessions without permission of the Governor, or shall take the oath of allegiance to any foreign power, or do any act whereby he may become a subject or citizen of any foreign power, or become entitled to the rights or immunities of such, or shall become bankrupt or insolvent, or a public defaulter, or be attainted of treason, or convicted of felony or of any infamous crime, his seat shall thereby become vacant. § 8 Legislative Council to determine questions of vacancy, subject to an appeal to her Majesty. § 9. The Governor to appoint and remove the speaker. § 10. Ten members, including the speaker, to constitute a *quorum*; and all questions to be decided by the majority, and the speaker to have a casting vote. § 11. Authorises the Governor from time to time, in her Majesty's name, to summon and call together a Legislative Assembly. § 12. Upper and Lower Canada to be represented by an equal number of representatives. § 13. *County of Halton*, in Upper

(a) The Legislative Council is now by the 19 & 20 V., c. 140, made elective.

Canada, to be divided into two ridings, east and west, and each to be represented by one member. § 14. County of Northumberland, in Upper Canada, to be divided into two ridings, north and south, and each to be represented by one member. § 15. County of Lincoln, in Upper Canada, to be divided into two ridings, north and south, each to be represented by one member. § 16. Every other county and riding in Upper Canada to be represented by one member. § 17. City of Toronto to be represented by two members. The towns of Kingston, Brockville, Hamilton, Cornwall, Niagara, London, and Bytown, to be represented by one member. § 18. Every county in Lower Canada, which before the 1 & 2 V., c. 9, was entitled to be represented, except the counties of *Monmorency*, *Orleans*, *L'Assomption*, *La Chesnaye*, *L'Acadie*, *Laprairie*, *Dorchester*, *Beauce*, to be represented by one member. § 19. The counties of *Montmorency* and *Orleans* to be united and called the county of *Montmorency*. The counties of *L'Assomption* and *La Chesnaye* to be united and called the county of *Leinster*; and the counties of *L'Acadie* and *Laprairie* to be united and called the county of *Huntingdon*; and the counties of *Dorchester* and *Beauce* to be united and called the county of *Dorchester*; and each of said counties to be represented by one member. § 20. Cities of *Quebec* and *Montreal* to be each represented by two members; and the towns of *Three Rivers* and *Sherbrooke* to be each represented by one member. § 21. Boundaries of cities and towns to be settled by the Governor: the parts adjoining and not included within such boundaries to be taken as part of the adjoining county or riding. § 22. Returning officers to be appointed by the Governor. § 23. No person obliged to execute such office for any longer term than one year, or oftener than once, unless otherwise provided by the legislature. § 24. Writs of election to be issued by the Governor within fourteen days after the sealing of the instrument, for calling together the assembly: directed to the returning officers, returnable within fifty days unless otherwise provided by the legislature: and writs in like manner to be issued in the case of any vacancy, returnable as above; and in case such vacancy shall happen by death of the member, or his being summoned to the council, the writ shall be issued within *six* days after notice thereof left at the office of the proper officer for issuing the same. § 25. The Governor to fix the time and place of holding the elections, giving not less than eight days' notice thereof. § 26. The legislature authorised to alter the divisions and extent of the several counties, ridings, cities and

towns, and to establish new divisions; and to alter the apportionment of representatives, and alter and regulate the apportionment of returning officers, and make provision for issuing and return of writs of election: provided that no bill be presented for her Majesty's assent by which the representation in the Assembly shall be altered, unless the second and third reading thereof in the *council* and *assembly* shall have passed with the concurrence of *two-thirds* of the members for the time being of both houses; and unless *addresses* from both houses be presented to the Governor stating that such bill has been so passed. § 27. Until otherwise provided by the legislature, the laws in Upper Canada in force at the time of passing this act, the laws of Lower Canada in force at the time of passing the 1 & 2 V., c. 9, relating to the qualification or disqualification of members (except the property qualification hereinafter provided,) and relating to the qualification and disqualification of electors, and to the oaths by them, and the powers and duties of returning officers, and the proceedings at such elections, and the period of continuance thereof, and relating to the trials of controverted elections, and vacating seats of members, shall be applied to elections of members for the province of Canada. § 28. No person shall be capable of being elected a member who shall not be legally or equitably seised as of freehold, for his own use, of lands or tenements held in free and common soccage; or seised or possessed, for his own use, of lands or tenements held in *fief* or *en roture*, within the province of Canada, of the value of £500 sterling over and above all incumbrances; and every candidate, before he shall be capable of being elected, shall, if required by any other candidate, or by the returning officer, make the following declaration:—

I, A. B., do declare and testify, that I am duly seised at law or in equity as of freehold, for my own use and benefit, of lands or tenements held in free and common soccage (or duly seised and possessed, for my own use and benefit, of lands or tenements held in *fief* or *in roture* (as the case may be) in the province of Canada of the value of five hundred pounds of sterling money of Great Britain, over and above all rents, mortgages, charges or incumbrances charged upon or due or payable out of or affecting the same; and that I have not collusively or colourably obtained a title to or become possessed of the said lands and tenements, or any part thereof, for the purpose of qualifying or enabling me to be returned a member of the Legislative Assembly of the province of Canada.

§ 29. False declaration to be deemed a misdemeanor, and

punished as false and corrupt perjury. § 30. It shall be lawful for the Governor for the time being to fix such place or places, within any part of the province of Canada, and such times for holding the first and every other session of parliament, as he may think fit; to be afterwards changed or varied, as the Governor may judge desirable and most consistent with general convenience and the public welfare, giving sufficient notice thereof; and also to prorogue the parliament and dissolve the same by proclamation, or otherwise, whenever he shall deem it expedient. § 31. A session to be held once at the least every year, so that twelve calendar months shall not intervene between the last sitting in one session and the first sitting of the next: and every assembly shall continue for *four* years from the day of the return of the writs; subject, nevertheless, to be sooner prorogued or dissolved by the Governor. § 32. The parliament to be convened for the first time within six calendar months after the re-union. § 33. The assembly, at the first meeting after every general election, to elect one of their number to be speaker; and in case of his death, resignation, or removal, forthwith to elect another. § 34. Twenty members at the least, including the speaker, to constitute a *quorum*. All questions to be decided by the majority present, and the speaker to have a casting vote. § 35. No member of the council or assembly to sit or vote until he shall have taken and subscribed the following oath before the Governor, or some other person or persons by him authorised:—

I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to her Majesty Queen Victoria, as lawful sovereign of the United Kingdom of Great Britain and Ireland, and of this province of Canada, dependent on and belonging to the said United Kingdom; and that I will defend her to the utmost of my power against all traitorous conspiracies and attempts whatever which shall be made against her person, crown and dignity; and that I will do my utmost endeavour to disclose and make known to her Majesty, her heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against her or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or persons whatever to the contrary. So help me God.

§ 36. Affirmation may be made where authorised by law. § 37. The Governor may, in her Majesty's name, assent to or reserve bills for her Majesty's pleasure. § 38. Bills assented to may be disallowed within two years. § 39. No reserved bill to be in force until the Governor, by speech or

message to both houses, or by proclamation, shall signify her Majesty's assent. § 40. Provision made for the appointment of a Lieutenant-Governor by her Majesty, and a deputy or deputies by the Governor, with adequate powers. § 41. After the re-union, all legislative records to be in the English language. § 42. All bills affecting ecclesiastical and Crown rights to be reserved and laid before the imperial parliament, and not assented to until thirty days after the same shall have been laid before both houses, nor in case either house shall present an address against such bills. § 43. Provision for the regulation of colonial commerce. § 44. And respecting the Courts of Appeal, Probate, Queen's Bench, and Chancery, in Upper Canada; and Court of Appeal in Lower Canada. § 45. Powers, authorities, and functions of the government to be vested in and exercised by the Governor of the province of Canada, with the advice, or with the advice and consent of, or in conjunction with the Executive Council, or any member thereof, as may be appointed by her Majesty for the affairs of the province; or by the said Governor *individually* and alone, in cases where the advice, consent, or concurrence of the Executive Council is not required. § 46. All existing laws in both provinces to remain in force, except in so far as repealed by this or any subsequent act of the legislature. § 47. The courts of civil and criminal jurisdiction within both provinces to remain until otherwise provided. § 48. Provides for temporary enactments. § 49. Repeals the provisions contained in the 3 G. IV., c. 119, respecting the revenue claims of the two provinces. § 50. The revenue in future to form one consolidated fund. § 51. Charged with the costs of collection. § 52. £45,000 payable thereout to her Majesty, her heirs and successors, for defraying the expense of the several services in schedule A.; and during the life of her Majesty, and for five years afterwards, a further sum of £30,000, payable to her Majesty, her heirs and successors, for defraying the expenses in schedule B. § 53. The salaries of the Governor and of the judges to be as stated in schedule A., until altered by the legislature: but it shall be lawful for the Governor to abolish any of the offices named in schedule B., or to vary the sums appropriated therein, and any saving accruing from any such alteration in either of the schedules shall be appropriated as her Majesty may think fit: accounts in detail of the expenditure of the said sums of £45,000 and £30,000 shall be laid before both houses of the legislature within thirty days next after the beginning of the session after such expenditure made: *provided*, that not

more than £3,000 shall be payable at the same time, for pensions to the judges, out of the said sum of £45,000; and not more than £5,000 payable at the same time for pensions out of the said sum of £30,000: and a list of all such pensions shall be laid yearly before the legislature. § 54. During the time aforesaid, said sums of £45,000 and £30,000 shall be accepted by her Majesty by way of *civil list* instead of territorial and other revenues now at the disposal of the Crown, and *three-fifths* of the nett produce of said territorial and other revenues shall be paid over to the consolidated revenue fund; and during the life of her Majesty, and for five years afterwards, the remaining *two-fifths* shall also be paid over to the said consolidated fund. § 55. Consolidation of the revenues not to affect the payment out of the consolidated fund of any sum or sums heretofore charged upon the rates and duties of either of the said provinces, for such time as shall have been appointed by the respective legislatures. § 56, provides for the charges on the consolidated fund, in the following order: First—The expenses of collection. Second—The annual interest of the *public debt* of the provinces of Upper Canada and Lower Canada at the time of the re-union. Third—Payments to the clergy of the United Church of *England and Ireland*, and to the clergy of the Church of Scotland, and to ministers of other denominations, pursuant to any law or usage. Fourth—The said sum of £45,000. Fifth—The said sum of £30,000. Sixth—The other charges upon the rates and duties levied within the said province of Canada. § 57. Subject to the above charges, the consolidated revenue fund to be appropriated by the legislature: *provided*, that all bills for appropriating such *surplus*, or for imposing any new tax or import, shall originate in the Legislative Assembly; to be *first* recommended in a message by the Governor. § 58. Authorises the Governor to constitute new townships, under the great seal. § 59. The powers given to the Governor shall be exercised in conformity with her Majesty's instructions and orders. § 60. The Magdalens may be annexed to the island of Prince Edward, at her Majesty's pleasure. § 61. Interpretation clause. § 62. This act may be amended or repealed during the present session.

SCHEDULE A.

Governor	£ 7,000
Lieutenant-Governor	1,000
<i>Upper Canada.</i>	
One Chief Justice.....	1,500
Four Puisné Judges, at £900 each.....	3,600

One Vice-Chancellor 1,125

Lower Canada.

One Chief Justice, Quebec.....	1,500
Three Puisné Judges, Quebec, at £900 each	2,700
One Chief Justice, Montreal	1,100
Three Puisné Judges, Montreal, at £900 each	2,700
One resident Judge at Three Rivers.....	900
One Judge of the Inferior District of St. Francis	500
One Judge of the Inferior District of Gaspé.....	500
Pensions to the Judges, Salaries of the Attorneys and Solicitors-General, and Contingent and Miscellaneous Expenses of Administration of Justice throughout the Province of Canada	20,875
	£45,000

SCHEDULE B.

Civil Secretaries and their Offices.....	8,000
Provincial Secretaries and their Offices	3,000
Receiver-General and his Office	3,000
Inspector-General and his Office	2,000
Executive Council	3,000
Board of Works	2,000
Emigrant Agent	700
Pensions	5,000
Contingent Expenses of Public Offices.....	3,300
	£30,000

By imp. stat. 17, 18 V., c. 118, power was given to the Provincial Legislature to alter the constitution of the Legislative Council.

By provincial stat. 19, 20 V., c. V., 140 (*reserved, and assented to 24th June, 1856, proclaimed 14th July, 1856,*) the Legislative Council is made elective, and to be composed of the present members thereof, and of forty-eight members to be elected as provided by the act, and to this end the act provides that the province shall be divided into forty-eight electoral divisions, twenty-four in Upper Canada and twenty-four in Lower Canada, as set forth in Schedule A. to the act; no person shall be eligible to sit or vote as a Legislative Councillor unless he be a British subject by birth or naturalization resident in Canada, of the full age of thirty years, and legally or equitably seised of real estate to the value of £2,000 currency, over and above all incumbrances, nor unless his residence or property to the value aforesaid be within the limits of the electoral division for which he is elected.

The other provisions of the act with respect to the mode of

elections, qualification of voters, electoral divisions, &c., will be found under the general heads of "*Parliamentary Representation*" and "*Elections*."

CONTEMPT.

A contempt is in legal meaning either an open resistance or insult to the power of a court of record, committed by any person in the face of the court, or disobedience to its rules, orders or process, by a party who is not present in court—*4 Bl. Com.* 283; so, where abusive words are spoken to a justice of the peace in the execution of his office, whilst sitting as a magistrate, he may commit for the contempt; but if the words are spoken of him behind his back, the party can then only be indicted.—*R. v. Revel*, 1 *Str.* 420. A commitment by the sessions or other court of record need not be under seal, as the memorial thereof, which may at any time be entered of record, is sufficient without any warrant.—*1 Hale*, 583, 584; but a justice cannot commit for contempt, except by warrant in writing—*Mayhew v. Locke*, 7 *Taunton*, 63; and unless the words be spoken under circumstances which render it probable they may prevent the due administration of justice, it will be safer for the magistrate to abstain from summary punishment and proceed by indictment, which will certainly lie for words addressed to him while in the discharge of his duty—*Dikenson*, *Q. S.* 43; if, however, the party be imprisoned *instante*, the commitment must be for a time certain, and a commitment *until the defendant is discharged by due course of law* is bad.—*Rex v. James*, 5 *B. & A.* 894. It has been held that a commitment which charged the party generally with having insulted justices of the peace in the execution of their office, without specifying what he said or did, is sufficient—*2 Barnard*, 155; it is, however, in general advisable to describe the offence concisely but in substance as in an indictment.—*Chitty*, *C. L.* p. 112. A justice of the peace may commit for contempt while in the execution of his office out of the sessions, but the commitment must be by warrant in writing and for a specified period.—*Jones v. Glarford*, *Michs.* 2 *V.*, *Cameron's Digest*, 544.

Commitment for Contempt.

PROVINCE OF CANADA :

County of } To the keeper of
to wit. }

Receive into your custody the body of C. D. herewith sent you by me A. W., Esquire, one of her Majesty's justices of the peace in and for the said county, and convicted (or charged, as the case may be) by me, the said justice, with contempt and

indecent behaviour in my presence, by insulting and obstructing me, the said justice, in the due execution of my office, as such justice as aforesaid, (*and for saying, &c., in the presence and hearing of me, the said justice,*) [*here set forth the particulars, if the justice shall think it necessary,*] and him the said C. D. detain in your custody, in the gaol aforesaid, for the space of hours, to be computed from the hour of o'clock, in the forenoon of this present day of instant, for his contempt aforesaid, (or until he find two sufficient sureties for his appearance at the next general quarter sessions of the peace for the said county, to answer to the charge aforesaid, or be otherwise discharged by the due course of law.) Given under my hand and seal, at , in the said county, the day of .

CONVICTION.

A conviction ought to be in words and figures at length. It is not usual or necessary for the convicting justices to draw up a formal conviction in the first instance, in every case in which a penalty is inflicted, but to make minutes of the proceedings (without attending to the precise form) at the time of pronouncing the judgment, from which they may afterwards, if occasion require, make out a regular conviction; nor is it necessary that it should be drawn up in due form, before the penalty is levied.—*Paley on Con.* 316. Even after an action brought, it seems that justices may draw up a conviction, and give it in evidence, by way of defence, provided the date is warranted in fact by the time when the conviction actually took place.—*Massey v. Johnson*, 12 *East.* 82.

When the statute prescribes a particular form of conviction, it must be exactly followed; but when it is merely directory, “that the justice be authorised or empowered to draw up the conviction in the form or to the effect following,” then the justice is not bound to any precise form of words, although it will be prudent for him to adhere to the form given, as nearly as possible, and pursue the words of the statute.—*Pal. on Conv.*

In cases of “summary conviction” the statute 16 V., c. 178, s. 27, enacts that the several forms in the schedule to this act shall be deemed good, valid, and sufficient in law; for which see *post* title “*Summary Conviction.*”

A defendant is entitled to a *copy* of the conviction, and the justice is bound to give it him, if requested.—*R. v. Midlum, Burr*, 1720. But the justice is not thereby precluded from drawing up and returning a conviction in a formal shape; for this last is to be taken as the only authentic record

of the proceedings.—*R. v. Barber*, 1 *East*. 82; *R. v. Allan*, 15 *East*. 332.

A justice should, in all cases, return a conviction to the sessions, whether the party appeal or not, or whether an appeal is or is not given, in order that the Crown may not be deprived of its share of forfeitures.—*R. v. Eaton*, 2 *T. R.* 285.

By 4 & 5 V., c. 12, § 1, every justice of the peace before whom any trial or hearing shall be had, under any law now or hereafter to be in force, imposing any fines, forfeitures, penalties or damages upon the defendant or defendants in case of convictions, shall make a due return thereof in writing, under his hand, to the next general quarter sessions for the district in which such conviction shall take place, and of the receipt and application by him of the moneys received from any such defendant or defendants; and in case such convictions shall have taken place before two or more justices, each justice joining in such conviction shall make an immediate return thereof, as nearly as possible in the form set forth in the annexed schedule; and the justices to whom any such moneys shall be afterwards paid shall make a return of the receipts and application thereof to the next general quarter sessions, to be filed by the clerk of the peace with the records of his office. § 2. In case any such justice shall neglect or refuse, or shall make a false, partial, or incorrect return, or shall wilfully receive a larger amount of fees than by law is authorised, then he shall forfeit and pay £20, with full costs of suit, to be recovered by any person in any court of record in Canada West; one moiety to be paid to the party suing, and the other to the Receiver General, for the use of the province. § 3. Penalties to be sued for within six months after cause of action, and tried in the district where such penalties accrued; and in case of verdict for the defendant, or non-suit, or discontinuance, the defendant shall recover full costs. § 4. Clerk of the peace, within seven days after the general quarter sessions shall have first adjourned, shall publish said returns in one public newspaper in the district, and fix up a schedule of such returns in the court house and some conspicuous place in his office, and the same to continue fixed up until the end of the next general quarter sessions; and for every schedule so made and exhibited he shall be entitled to the fee of one pound, besides the expense of publication, in his accounts with the district. § 5. Clerk of the peace, within twenty days after the end of each quarter sessions, shall transmit to the Inspector-General a true copy of all such returns within his district. § 6. Justices of the peace not exonerated from duly returning convictions to the general

quarter sessions, as by law required. § 7. Act not to prevent any person aggrieved from prosecuting by indictment. § 8. Sheriff required to transmit quarterly, to the Inspector-General, an account of fines, or to be liable to the same penalty as justices. § 9. Act limited to Upper Canada.

SCHEDULE TO WHICH THIS ACT REFERS.

Returns of Convictions made by me (or us, as the case may be) in the months of , 18 .

Name of the Prosecutor.	Name of Defendant.	Nature of the Charge.	Date of Conviction.	Name of Convicting Justice.	Amount of penalty, fine, or damage.	Time when paid or to be paid to said Justice.	To whom paid over by said Justice.	If not paid, why not, and general observations, if any.
								<i>A. B. Convicting Justice, C. or D. Convicting Justices. (as the case may be.)</i>

See also post title "*Summary Conviction.*"

CORONER.

The court of the coroner is a court of record, to enquire when any one dies in prison, or comes to a violent or sudden death, by what manner he came to his end, and this he is only entitled to do *super visum corporis*, (upon view of the body).—4 *Inst.* 271; *Hale's P. C.* 53. The coroner's duty being partly judicial, it cannot be executed by deputy.—*Impey, O. C.* 473.

Bystat. 4 Ed. I., c. 2, called the statute *de officio coronatoris*, which enacts, "that the coroner, upon information, shall go to the place where any be slain, or suddenly dead, or wounded, and shall forthwith command four of the next towns, or five, or six, to appear before him in such a place; and when they are come, the coroner upon the oath of them, shall enquire if they know where the person was first slain, whether it were in any house, field, &c., and who where there. Likewise it is to be enquired, who were culpable either of the act or of the force, and who present, and of what age they be, (if they can speak, and have discretion,) and as many shall be found culpable by the inquest shall be committed to gaol; and such as shall be found there, and be not culpable, shall be attached until the coming of the justices, and their names shall be written in the rolls. If any man

be slain suddenly, which is found in the fields, or in the woods, first it is to be seen whether he were slain in the same place or not, and if he were brought there they shall do as much as they can to follow their steps that brought him; it shall be enquired also, if the dead person were known, and where he lay the night before. And if any be found culpable of the murder, the coroners shall go to his house and enquire what goods he hath, and what corn he hath in his grange; and if he be a freeman, they shall enquire how much land he hath, and what it is worth yearly, and what crop he hath upon the ground. And they shall cause all the land, corn, and goods to be valued, and delivered to the townships, which shall be answerable before the justices; and likewise of his freehold, how much it is worth yearly, and the land shall remain in the King's hands until the lords of the fee have made fine for it. And these things being enquired, the body shall be buried." § 1.

"In like manner it is to be enquired of them that be drowned, or suddenly slain, whether they were drowned, slain, or strangled, by the sign of the cord about their necks, or any other hurt found upon their bodies; and if he were not slain, then ought the coroner to attach the finder and all others in the company. A coroner also ought to enquire of treasure found, who were the finders, and who is suspected thereof; and that may be perceived where one liveth riotously haunting taverns, and hath done so of long time, hereupon he may be attached for this suspicion by four, or six, or more pledges. Also all wounds ought to be viewed, the length, breadth and deepness, and with what weapons, and in what part of the body the wound is; and how many be culpable, and how many wounds there be, and who gave the wound: all which things must be enrolled in the roll of the coroners. Concerning horses, boats, carts, &c., whereby any are slain, they shall be delivered unto the towns, as before is said. If any be suspected of the death of a man, being in danger of life, he shall be taken and imprisoned. In like manner hue-and-cry shall be levied on all murderers, burglars, and for men slain, or in peril of death; as is used in *England*, and all shall follow the hue and steps as near as can be; and he that doth not, and is convict, shall be attached to be afore justices of the gaol." § 2.

Of Sudden, Violent Deaths, which are all within the Coroner's Office to enquire, and Inquisitions.

Sudden, violent deaths, are of these kinds:—1. *By the visitation of God*:—2. *By misfortune*, where no other had

a hand in it; as if a man fall from a horse or cart. 3. By his own hand, as *felo de se*. 4. By the hand of another, where he is known, whether by murder, manslaughter, *se defendendo*, or *per infortunium*.—2 *Hale*, P. C. 62.

Coroners are not to obtrude themselves into private families, where there is no pretence for supposing that the deceased died otherwise than by a natural death.—11 *East*. 231.

1. The dying suddenly is *not* to be understood of a fever, apoplexy, or other visitation of God, for then the coroner might be sent for in every case.—*Umfr.* 208. If the inquisition find that he died *by visitation of God*, there is no more to be done, only the inquisition, together with the examination, are to be returned to the next gaol delivery.

2. If the inquest find the death *per infortunium* simply, as a *fall*, &c., then the coroner is to take examination, and return the same, with the inquisition, *to the next gaol delivery*, and to enquire of the *deodand* and the value, and in whose hands, and to seize and deliver the same to the township, to be answerable for the same to the King.—4 *Ed.* 1.

3. If the inquest find a man *felo de se*, who is one that puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death: as, if attempting to kill another, he runs upon his antagonist's sword; or shooting at another, the gun bursts and kills himself; they ought to find the *special matter*, and also what goods and chattels he had, of what value, and seize and deliver the same to the township, to be answerable to the King, or his almoner, or the lord of the franchise, to whom they belong, and shall bind over the first finder of the body to next gaol delivery.—2 *H. P. C.* 62.

4. If a party be slain, and the felon is *not known*, they are to find their inquisition accordingly, and shall bind over the first finder of the body to the next gaol delivery, and return his examinations, together with his inquisitions.—2 *H. P. C.* 63.

5. But if the person was slain, and the party that did it was known, and the inquisition found him guilty of the death, or that he died by his own hand, there were these proceedings, viz:—The inquest were also to enquire of all that were *present*, *aiding* and *abetting*; they shall also enquire of all accessories *before the fact*; but they cannot enquire of accessories *after the fact*. If they find him guilty, as principal, or accessory before the fact, they shall enquire whether he *fled* for the same; if the inquisition find that he fled, it is a forfeiture of his goods; but they cannot be seized before

he be convicted of the felony.—1 *R. III. c. 3*; 2 *H. P. C. 63*.

If the persons that are found guilty by the inquest be taken, the coroner may and must commit them to the sheriff, (a) and he is to send them to the gaol; but if they be not found he is not to proceed to *outlawry*, but return his inquisition to the next gaol delivery, and the justices of gaol delivery are to proceed against the offenders if in gaol; if not, then to certify the inquisition into the King's Bench, and then process of *outlawry* to go against them upon that inquisition.—4 *Ed. I.*; 3 *H. VII. c. 1*; 2 *H. P. C. 64*.

It is clearly agreed that the inquest shall be taken on the *view* of the body, and that an inquest otherwise taken by the coroner is void.—2 *Haw. P. C. c. 9, § 23*. But when the body cannot be found, or is so putrefied that a view would be of no service, the coroner, without a special commission, cannot take the inquest; but in such cases it shall be taken by justices of the peace, or other justices authorised, by testimony of witnesses.—*Vent. 352*; *Haw. P. C. c. 9, § 25*. It is an indictable offence to bury the body before, or without, sending for the coroner.—1 *Salk. 377*. And a coroner may, within a convenient time, take up a dead body out of the grave, in order to view it and hold an inquest. The coroner may enquire of accessories *before* the fact, but not of accessories *after* the fact.

Where there is no pretence for supposing that the deceased died otherwise than by a natural death—for instance, if he died of fever, apoplexy, or other visitation of God—an inquisition ought not to be held.—*Umfr. 208*. The coroner ought also to enquire of the death of all persons who die in prison, that it be known whether they die by violence or any unreasonable hardships; for if a prisoner, by the duress of the gaoler, come to an untimely death, it is murder in the gaoler.—3 *Inst. 52, 91*. And this inquest upon prisoners ought to consist of a party jury—that is, six of the prisoners (if so many there be), and six of the next ville or parish not prisoners.—*Umfr. 212, 213*.

Of Crimes.

The crimes which are likely to come under the cognizance of a coroner, and the law thereon, are fully set forth under the title "Homicide," with the exception of the crime of *Felonia de se*, or suicide; which is committed when a person

(a) The modern practice is to commit the prisoner to the common gaol direct, for which see the form of such commitment—*post*.

of the age of discretion and *compos mentis*, kills himself by stabbing, poison, or any other way.—1 *Hale*, P. C. 411. If he lose his memory by sickness, infirmity or accident, and kills himself, he is not *felo de se*, neither can he be said to commit murder upon himself or any other. It is not every melancholy or hypochondriacal distemper that denominates a man *non compos mentis*, for there are few who commit this offence but are under such infirmities, but it must be such an alienation of mind that renders them to be madmen, or frantic, or destitute of the use of reason. A lunatic killing himself in a fit of lunacy is not *felo de se*; but if he kills himself in a lucid interval he is *felo de se*.—1 *Hale*, P. C. 412. If a man voluntarily give himself a mortal wound, and die within a year and a day of that wound, he is *felo de se*, and he cannot purge the crime nor the forfeiture inflicted by the law, by his repenting what he had done.—*Ib.* 411. It must be simply *voluntary* and with an *intent* to kill himself. If A., to prevent a *gangrene* beginning in his hand, doth, without advice, cut off his hand, by which he dies, he is not thereby *felo de se*; for though it was a voluntary act, yet it was not with an intent to kill himself.—*Ib.* 412. A *felo de se* shall be buried in the highway, with a stake driven through his body.—4 *Bl. Com.* 190. This barbarous custom has, however, been repealed in England, by statute 4 G. IV. The forfeiture of *felo de se* is of goods and chattels only.—1 *Hale*, P. C. 413.

Of Deodands.

A deodand is where any man kills himself, or is by misfortune slain by a horse, cart, or any other thing that *moveth* to his death, then the thing which is the cause of, or moved to his death shall be forfeited to the King.—*Lill. Pr. Reg.* 607. No deodand is due when an infant, under the age of discretion, is killed by a fall from a cart, or horse, or the like, not being in motion.—1 *Hale*, 422. But if a horse, or ox, or other animal, of his own motion kill, as well an infant as an adult, or if a cart run over him, they shall in either case be forfeited as deodands. Where a thing *not in motion* is the occasion of death, that part only which is the immediate cause is forfeited; as, if a man climbing up the wheel of a cart, and is killed by falling from it, the wheel alone is a deodand; but wherever the thing is in motion, not only that part which immediately gives the wound, (as the wheel which runs over the body) but all things which move with it, and help to make the wound more dangerous, as the cart and loading, are *deodand*.—1 *Haw. P. C. c.* 26.

Where the act of one Coroner shall be as effectual as if done by all.

Wherever coroners are authorised to act as judges, as in the taking of an inquisition of death, the act of any one of them who first proceeds in the matter, is of the same force if all had joined in it.—1 *Hale, P. C.* 56. But it is said, that *after* such proceeding by any one of them, the act of any other will be void.—*Ib.* 59. Also, it is certain that when coroners are empowered to act only ministerially, as in the execution of a process directed to them upon the default or incapacity of the sheriff, all their acts will be void, wherein they do not all join. *Staunf. P. C.*, 53, a. One coroner may execute the writ, as in the case of an *exigent*; but if there be more coroners than one for the county, the return must be in the name of all.—2 *Hale, P. C.* 56. The taking of an inquisition cannot be done by deputy.—2 *Hale, P. C.* 58, 60. In the case of process to coroners upon any disability in the sheriff, the sheriff is no longer considered as an officer of the court in that suit; and the coroners may do all such lawful acts as the sheriff himself might have done, and they may take the *posse comitatus*.—*Hob.* 85. If the sheriff be sued, the writ is to be directed to the coroners.—*Impey.* 490. If there be above two coroners in a county, and a writ be directed to the coroners though one die, the others may execute; but if one only survive, he can neither execute nor return the writ till another be made.—2 *Hale, P. C.* 56. Where the sheriff and coroners of particular places and liberties, have been all challenged, in all cases *elisors* have not been appointed, but *venires* have been directed to the sheriff of the county at large, to summon a jury from the next adjacent *visne*; and two *elisors* at least ought to be appointed.—*Bendl.* 23; *Dy.* 367. The same challenges that may be made to the sheriff, may also be made to the coroners; in which case, if all the coroners be challenged, the *venire* may then be awarded to *elisors*, who are always chosen and appointed by the court, by rule, to return the jury.

By 12 V. c. 81, § 136, one or more coroners shall and may be appointed for every city and town incorporated under the authority of this act.

His Duties by Provincial Statute.

By 4 & 5 V., c. 24, s. 4, it is enacted that every coroner upon any inquisition taken before him whereby any person shall be indicted for manslaughter, or murder, or accessory

to murder *before the fact*, shall, in the presence of the party accused, if he can be apprehended, put in writing the evidence given to the jury before him or as much thereof as shall be material, giving the party accused full opportunity of cross examination, and shall have authority to bind by recognizance all such persons as know or declare any thing material touching the said manslaughter or murder, or the said offence of being accessory to murder, to appear at the next court of oyer and terminer or gaol delivery, or other court at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such coroner shall certify and subscribe the same evidence and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper officer of the court in which the trial is to be, before or at the opening of the court.

§ 5. That when any person shall be committed for trial by any coroner it shall be lawful for such prisoner, his counsel, attorney or agent, to notify the coroner that he will, so soon as counsel can be heard, move her Majesty's court of superior jurisdiction, or one of the judges thereof, for an order to the coroner to admit such prisoner to bail, whereupon it shall be the duty of such coroner, with all convenient expedition, to transmit to the office of the clerk of the crown, close, under hand and seal, a certified copy of all informations, examinations, and other evidences touching the offence wherewith such prisoner shall be charged, together with a copy of the warrant of commitment and inquest, if any such there be, and that the packets containing the same shall be handed to the person applying therefor in order to such transmission, and it shall be certified on the outside thereof to contain the information touching the case in question.

§ 6. That upon any application to her Majesty's Court of Superior Criminal Jurisdiction, the same order touching the prisoner being bailed or continued in custody shall be made as if the party was brought up on *habeas corpus*.

§ 7. If any coroner shall neglect, or offend against this act, it shall be lawful for the court to whose officer such examination, &c., ought to have been delivered, in a summary way to set such fine upon such coroner as the court shall think meet

By 7 V., c. 5, § 5, the coroner presiding at any inquest on any body found publicly exposed and unclaimed by any *bonâ fide* friend or relation, shall give notice thereof to the inspector of anatomy of the locality, if there be any, failing which, he shall cause the body to be interred as has been heretofore customary.

By 10 & 11 V., c. 14, § 19, the coroner is to return a list of inquests and findings of juries to the Board of Registration and Statistics, on or before the 1st day of January yearly.

By 13 & 14 V., c. 56, entitled "An act to amend the law respecting the office of coroner," it is enacted by § 1, that from and after the passing of this act, no inquest shall be holden on the body of any deceased person by any coroner, until it has been first made to appear to such coroner that there is reason to believe that such deceased person came to his death under such circumstances of violence or unfair means, or culpable or negligent conduct, either of himself or of other, as require investigation, and not through any mere accident or mischance: provided always, that an inquest shall be holden on the body of any person who shall die while in confinement in the provincial penitentiary.

§ 2. That upon the death of any prisoner or any lunatic confined in any lunatic asylum, it shall be the duty of the warden, gaoler, keeper or superintendent of any penitentiary, gaol, prison, house of correction, lock-up house, or lunatic asylum, in which such prisoner or lunatic shall have died, immediately to give notice of such death to some coroner of the county or city in which such death shall have taken place, and thereupon such coroner shall proceed forthwith to hold an inquest upon the body of such deceased prisoner or lunatic.

§ 3. That if any person, having been duly summoned as a juror or witness to give evidence upon any coroner's inquest, shall not, after being openly called three times, appear and serve as such juror, or appear and give evidence on such inquest, every such coroner shall be empowered to impose such fine upon any person so making default as he shall think fit, not exceeding *twenty shillings*; and every such coroner shall make out and sign a certificate, containing the name, residence, trade or calling of such person so making default, together with the amount of the fine imposed, and the cause of such fine, and shall transmit such certificate to the clerk of the peace in the county in which such defaulter shall reside, on or before the first day of the quarter sessions of the peace then next ensuing for such last mentioned county, and shall cause a copy of such certificate to be served upon the person so fined, by leaving it at his residence within a reasonable time after such inquest; and all fines and forfeitures so certified by such coroner shall be estreated, levied and applied in like manner, and subject to the like powers, provisions and penalties in all respects as if they

had been part of the fines imposed at such quarter sessions : provided always, that nothing herein contained shall be construed to affect any power now by law vested in any coroner for compelling any person to appear and give evidence before him on any inquest or other proceeding, or for punishing any person for contempt of court, in not so appearing and giving evidence, or otherwise.

§ 4. That no inquisition found upon or by any coroner's inquest, nor any judgment recorded upon or by virtue of any such inquisition, shall be quashed, stayed or *reserved* (a) for want of the averment therein of any matter unnecessary to be proved, nor for the omission of any technical word or words of mere form or surplusage, and in all such cases, and all others of technical defect, it shall be lawful for either of the superior courts of common law, or any judge thereof, or any judge of the assize or gaol delivery, if he shall think fit, upon the occasion of any such inquisition being called in question before them or him, to order the same to be amended, and the same shall be amended accordingly.

§ 5. That whenever upon the summoning or holding of any coroner's inquest, it shall appear to the coroner that the deceased person was attended at his or her death, or during his or her last illness by any legally qualified medical practitioner, it shall be lawful for the coroner to issue his order in the form in the schedule hereunto annexed, for the attendance of such practitioner as a witness at such inquest ; and if it shall appear to the coroner that the deceased person was not attended immediately at or before his or her death by any legally qualified medical practitioner, it shall be lawful for the coroner to issue such order for the attendance of any legally qualified medical practitioner being at that time in actual practice in or near the place where the death has happened ; and it shall be lawful for the coroner, either in his order for the attendance of the medical witness, or at any time between the issuing of such notice and the termination of the inquest, to direct the performance of a *post mortem* examination, with or without an analysis of the contents of the stomach or intestines, by the medical witness or witnesses who may be summoned to attend at any inquest : provided that if any person shall state upon oath before the coroner, that in his or her belief the death of the deceased individual was caused partly or entirely by the improper or negligent treatment of any medical practitioner or other person, such medical practitioner or other person

(a) So in the act : should be "reversed."

shall not be allowed to assist at the *post mortem* examination of the deceased.

§ 6. That whenever it shall appear to the majority of the jurymen sitting at any coroner's inquest, that the cause of death has not been satisfactorily explained by the evidence of the medical practitioner or other witness or witnesses who may be examined in the first instance, such majority of the jurymen are hereby authorised and empowered to name to the coroner, in writing, any other legally qualified medical practitioner or practitioners, and to require the coroner to issue his order, in the form hereinbefore mentioned, for the attendance of such last mentioned medical practitioner or practitioners, as a witness or witnesses, and for the performance of such *post mortem* examinations as in the fifth section of this act mentioned, whether such examination has been before performed or not; and if the coroner, having been so required, shall refuse to issue such order, he shall be deemed guilty of a misdemeanor, and shall be punishable by fine not exceeding £10, or by imprisonment not exceeding one month, in the discretion of the court trying such offence, or by both, as to the said court shall seem fit.

§ 7. That where any legally qualified medical practitioner has attended upon a coroner's inquest, in obedience to any such order as aforesaid of the coroner, the said practitioner shall receive for such attendance, if without a *post mortem* examination, £1 5s.; if with a *post mortem* examination, without an analysis of the contents of the stomach or intestines, £2 10s.; if with such analysis, £5; together with the sum of 1s. per mile, for each mile he shall have to travel in going to and returning from such inquest, such travel to be proved by his own oath to the said coroner, who is hereby authorised and empowered to administer the same; and the coroner is hereby required and commanded to make his order on the treasurer of the county in which such inquest shall be holden, in favour of such medical practitioner or practitioners, for the payment of such fees or remuneration, and such treasurer is hereby required and commanded to pay the sum of money mentioned in such order of the coroner, to the medical witness therein mentioned, out of any funds he may then have in the county treasury.

§ 8. That where any order for the attendance of any medical practitioner as aforesaid, shall have been personally served upon such practitioner, or where any such order not personally served shall have been received by any medical practitioner as aforesaid, or left at his residence in sufficient

time for him to have obeyed such order, and in every case where such medical practitioner has not obeyed such order, he shall for such neglect or disobedience forfeit the sum of £10, upon complaint made thereof by the coroner or any two of the jury holding such inquest, before any two justices of the peace of the county where the inquest was held, or the county where such medical practitioner resides; and such two justices are hereby required, upon such complaint, to proceed to the hearing and adjudication of the same; and if such medical practitioner shall not shew to the said justices a good and sufficient reason for not having obeyed such order, to enforce the said penalty by distress and sale of the offender's goods, as they are empowered to proceed by any statute for the summary enforcement of any penalty or forfeiture.

§ 9. That this act shall be in force in Upper Canada.

Schedule to which this act refers.

Coroner's inquest at _____, upon the body of _____. By virtue of this my order, as coroner for _____, you are required to appear before me and the jury, at _____, on the _____ day of _____, at _____ o'clock, to give evidence touching the cause of death of _____, (and then add, when the witness is required to make or assist at a post mortem examination,) and make or assist in making a post mortem examination of the body, with (or without) an analysis, (as the case may be), and report thereon at the said inquest.

(Signed)

Coroner.

By 20 V., c. 36, coroners are required to hold inquisitions in cases of fire occurring within any city or incorporated town, or incorporated village within their jurisdiction. See title "*Fires.*"

Of discharging the Coroner, and for what misdemeanors punished.

The coroner in this province holds his office during her Majesty's pleasure, and is therefore removable at any time upon just cause shewn.

By stat. 3 H. VII. "If any coroner be remiss, and make not inquisition upon the view of the body slain or murdered, he shall forfeit for every default 100s."

And by 1 H. VIII. it is enacted, "that if any coroner shall not endeavour himself to do his office upon any person dead by misadventure, he shall forfeit 40s."

Also, by 3 H. VII. it is enacted, "that if any coroner do not certify his inquisition, he shall forfeit 100s."

By the 1 and 2 P. & M., c. 13, § 5, every coroner, upon any inquisition before him found, whereby any person shall be indicted for *murder* or *manslaughter*, or as accessory before the offence committed, shall put in writing the effect of the evidence given to the jury before him, being material; and shall bind over the witnesses to the next general gaol delivery to give evidence; and shall certify the evidence, the recognizance, and the inquisition or indictment before him taken and found, at or before the trial, on pain of being fined by the court.

The inquisition so returned by the coroner must be engrossed on parchment, indented at the top, and be an exact copy of that signed by the jurors, and in words at length; and such return is to be made under his hand and seal only, with the name of his office.—*Umfrev.* 312.

He is to return his inquisition at the next gaol delivery; and because he did not, the court discharged him, and set a fine of £100.—*R. v. Ld. Buckhurst, Keb.* 208, *Pl.* 81.

By stat. 25 G. II. "If any coroner, who is not appointed by virtue of an annual election or nomination, or whose office of coroner is not annexed to any other office, shall be lawfully convicted of *extortion*, or wilful neglect of his duty, or misdemeanor in his office, it shall be lawful for the court before whom he shall be convicted, to adjudge that he shall be removed from his office."

This statute is only in furtherance of the powers which before existed for their removal.

By stat. 1 H. VIII. justices of assize, and justices of peace within the county, have power to inquire of, and punish the defaults of coroners.

Coroner's Fees.

By 8 V., c. 38, § 1, justices of the peace, at the general quarter sessions in July (1845), are required to frame a table of fees for all services now rendered in the administration of justice, and for district purposes, by any sheriff, coroner, clerk of the peace, &c.; and the several clerks of the peace shall forthwith transmit such table to the clerk of the crown, at Toronto, to be laid before the justices of the court of Queen's Bench, and such judges are authorised by rule in term, from time to time, to appoint the fees to be taken by such officers accordingly. § 5. The district treasurer is required to pay such fees, when duly allowed by magistrates in quarter sessions, in the order prescribed by the 59 § of 4 & 5 V., c. 10.

Table of Fees.

*Coroner's Fees as established by the Judges under the
8 V., c. 38.*

Precept to summon jury	£0	2	6
Impanelling a jury	0	5	0
Summons for witnesses, each	0	1	3
Information or examination of each witness	0	1	3
Taking every recognizance	0	2	6
Necessary travel to take an inquest, per mile	0	1	0
Taking inquisition and making return	1	0	0
Exery warrant	0	5	0

NOTE.—The costs of inquisitions are by the 9 V., c. 58, chargeable (with other costs relative to the administration of justice) on the public revenue, and by order in council are to be rendered in *duplicate* to the treasurer of the county during the sittings of the Court of Quarter Sessions, or within three days thereafter, and verified by affidavit. See further under title "Costs."

Jurors' Fees.

The law makes no provision for the payment of any fees to jurors.

Proceedings by the Coroner.

When the coroner receives notice of a violent death, casualty, or misadventure, which regularly ought to be given from the peace officer of the parish, place or township, where the body lies dead, he is then to issue his precept, or warrant, to summon a jury to appear at a particular time and place named, to enquire when, how, and by what means the deceased came by his death; which warrant is directed to the peace officers of the parish, place or precinct, where the party lies dead.

Form of the Warrant.

PROVINCE OF CANADA :

County of _____, } To the constables and peace officers of the
to wit. } township of _____, in the county of _____.

By virtue of my office, these are in her Majesty's name to charge and command you, that on sight hereof, you summon and warn twenty-four able and sufficient men of your township, personally to be and appear before me, on _____ the day of _____ at _____ o'clock in the forenoon of the same day, at the house of A. B., called or known by the name or sign of the _____, situate in the said township, then and there to do and execute all such things as shall be given them in charge, on behalf of our sovereign lady the Queen, touching the death of

R. F., (a) and for so doing, this shall be your sufficient warrant ; and that you also attend at the time and place above mentioned, to make a return of the names of the persons whom you shall have so summoned. and further, to do and execute such other matters as shall be then and there enjoined on you. And have you then and there this warrant. Given under my hand and seal, this day of , 18 .

G. H. (L. S.)
Coroner.

If there be not sufficient jurors in the place, the coroner may summon them from the adjoining township or parish.—*Impey*, 512.

The coroner should furnish a sufficient number of blank summonses to the constable, for service by him upon the jurors, pursuant to the above warrant.

Form of the Summons.

PROVINCE OF CANADA :

County of , } To R. M., of the township of , in the
to wit. } county of , yeoman.

By virtue of a warrant, under the hand and seal of G. H., gentleman, one of her Majesty's coroners for the said county, you are hereby summoned to be and appear before him as a juryman, on the day of at of the clock in the forenoon of the same day, at the house of known by the sign of the in the township of in the said county, then and there to inquire in her Majesty's name touching the death of R. F., and further to do and execute such other matters and things as shall be then and there given you in charge, and not to depart without leave. Herein fail not, at your peril. Dated the day of 18 .

E. F., Constable.

On the day appointed, the coroner attends, and having received the return of the jurors, and precept, &c., the first thing he does, is to direct the officer to open the court by proclamation, viz., by proclaiming "Oyez" three times, and to repeat after him as follows:—

"You, good men of this county, summoned to appear here this day, to inquire for our sovereign lady the Queen, when, how and by what means R. F. came to his death, answer to your names as you shall be called, every man at the first call, upon the pain and peril that shall fall thereon."

The coroner then proceeds to call over the jury by name, marking the names of such as appear in the list. There

(a) Or if unknown then say "of a man (or woman), male, or female, infant child, whose name is unknown."

must be twelve at the least to constitute a jury, but it is usual to swear thirteen or more; the jurors then proceed to elect their foreman; when done, he is called to the book and sworn first, the coroner at the same time saying to the rest of the jurors, "Gentlemen, hearken to your foreman's oath: for the oath he is to take on his part you are severally to observe and keep on your part."

Foreman's Oath.

"You shall diligently inquire and true presentment make of all such matters and things as shall be here given you in charge on behalf of our sovereign lady the Queen, touching the death of R. F. now lying dead, of whose body you shall have a view; you shall present no man for hatred, malice or ill will, nor spare any through fear, favour or affection; but a true verdict give according to the evidence. So help you God."

The rest of the jurors are then sworn thus, four at a time:

"The same oath your foreman has taken on his part, you and each of you are severally well and truly to observe and keep on your part. So help you God."

After they are sworn it is usual for the coroner to give a charge acquainting them with the purpose of the meeting, as thus:—

"Gentlemen, you are sworn to enquire on behalf of the Queen, how and by what means R. F. came to his death; your duty is to take a view of the body of the deceased, wherein you will be careful to observe if there be any marks of violence thereon, from which and on the examination of the witnesses intended to be produced before you, you will endeavour to discover the cause of his death, so as to be able to return me a true verdict on this occasion."

When the charge is finished the coroner goes with the jury to take a view, and examine the body of the deceased. As soon as the view is taken it is usual for the coroner again to call them over, and add to his former charge some necessary observations he has made on view of the body; and add, "that he shall now proceed to hear and take down the evidence respecting the fact, to which he must crave particular attention." Particular charges are not necessary but in particular cases arising from the fact or in the course of evidence, such as lunacy, *felo de se*, deodand, flight, forfeiture, &c. The deodand requires no other charge than of a value to be put upon what caused the death, and of whose property and in whose possession. As to the particular charge in case of a flight, which induces a forfeiture, where the party charged is not forthcoming, it may be necessary to add something to the general charge; as thus:—

“Your charge will be further to enquire in what degree the party charged is guilty, whether of murder or manslaughter, or of a killing in his own defence; if you find him guilty of murder or manslaughter, you are then to enquire what goods and chattels, lands or tenements he had at the time of the act committed or at any time since; if you find the fact to be of a justifiable homicide, from inevitable necessity, or in defence of his own person, life, or property, or where a suspected person doth fly and resist the proper officer, and is from necessity slain because he could not be otherwise taken: this flight and resistance presumes a guilt, and will incur a forfeiture; and therefore you are to enquire whether, in either of the instances the party fled for it, this is a presumptive confession of the charge; and you are then to enquire of his goods and chattels, but not lands or tenements, in the same manner as if you had found him guilty.”

The latter charge may be given after the evidence taken, so as to have a perfect verdict.

If the inquiry be of the death of one man by another, and it be doubtful whether the wound be mortal or not, a surgeon should be present examine and shew the wound.

After the general charge is given to the coroner, the officer then calls silence, and repeats after the coroner thus:—

“If any one can give evidence on behalf of our sovereign lady the Queen, when, how and by what means R. F. came to his death, let them come forth and they shall be heard.”

The witness appearing, the coroner takes down his name, place of abode and occupation, and then the officer tenders to him the following oath:—

“The evidence you shall give to this inquest on behalf of our sovereign lady the Queen, touching the death of R. F., shall be the truth, the whole truth, and nothing but the truth. So held you God.”

The evidence should be taken down in writing, (a) and as nearly as possible in the words of the witness.

The examinations should be entitled thus:—

PROVINCE OF CANADA:

County of } Informations of witnesses severally taken and
to wit. } acknowledged on the behalf of our sovereign
lady the Queen, touching the death of R. F., at the dwelling
house of J. B., known by the name or sign of the , in the
township of , in the county of , on the day of ,
in the year of the reign of our sovereign lady Queen Vic-
toria, &c., before G. H., Esquire, one of the coroners of the
said county, on an inquisition then and there taken on view of

(a) And in cases of “murder” or “manslaughter,” in the presence of the party accused, if apprehended.—See *ante* 4, 5 V., c. 24, § 4, page 209.

the body of the said R. F., then and there lying dead, as follows, to wit:

A. B., of the township of _____, in the said county, yeoman, being sworn, saith, &c.

Before the witness signs his examination it should be read over to him, and he should be asked "if that is the whole of the evidence he can give." He then signs it to the right hand of the paper. The coroner generally asks the jurors before the witness signs, whether they have any questions for him to ask the witness; and if any be asked, and the answer prove material, it should be added to the deposition. When the witness has signed his name to the examination taken, the coroner writes thus, to the left hand side: "taken and acknowledged the day, year, and at the place above mentioned, before G. H., coroner;" or if there are several witnesses, then at the end of the last information, thus, "all the above informations were severally taken and acknowledged on the day and year and at the first place above mentioned, before G. H., coroner."

If the evidence be not all taken, the coroner may adjourn the jury to another day, to the same or another place, to take and receive other evidence, first binding the jurors in a recognizance to appear at the adjournment, thus:—

"Gentlemen, you acknowledge yourselves severally to owe to our sovereign lady the Queen, the sum of ten pounds, to be levied on your goods and chattels, lands and tenements, for her Majesty's use, *upon condition* that you and each of you do personally appear here again (or other appointed place) on the day of instant, at _____ of the clock in the forenoon precisely, then and there to make further enquiry on behalf of our said lady the Queen, touching the death of the said R. F., of whose body you have already had the view. Are you all content?"

The coroner then adjourns the court, thus:—

Gentlemen, the court doth dismiss you for this time: but requires you severally to appear here again (or at the adjourned place) on the _____ day of _____ instant, at _____ of the clock in the forenoon precisely, upon pain of £10 a man, on the condition contained in your recognizance entered into.

The coroner may in his discretion grant his warrant to bury the body of the deceased to prevent infection. Then the officer adjourns the court by making proclamation, thus:—

"Oyez! oyez! oyez! all manner of person who have any thing more to do at this court before the Queen's coroner for this county, may depart hence and give their attendance here again (or other adjourned place) on _____ the _____ day of _____"

instant, at of the clock in the forenoon precisely. God save the Queen."

The coroner will make a proper entry in his minutes of the recognizance and the adjournment, &c.

When the jury are met at the adjourned time and place, the officer opens the court by proclamation as in the first instance, with this addition:—

"And you, gentlemen of the jury, who have been empannelled and sworn on this inquest to enquire touching the death of R. F., severally answer to your names, and save your recognizance."

If foreigners are examined as witnesses, the coroner is to have an interpreter, who is to be sworn, thus:—

"You shall well and truly interpret unto the several witnesses here produced on behalf of our sovereign lady the Queen, touching the death of R. F., the oath that shall be administered to them, and also the questions and demands which shall be made to the witnesses by the court or jury, concerning the matters of this enquiry, and you shall well and truly interpret the answers which the witnesses shall thereunto give. *So help you God.*"

He then interprets the oath to the witnesses, and their answers, which the coroner takes down in writing in the same way as other depositions.

After the additional evidence has been taken down in writing and subscribed by the witnesses, the coroner then sums up the whole of the evidence to the jury, at the same time explaining to them the law upon the case when necessary. He then desires the jury to consider their verdict. If they withdraw to consider their verdict, the officer is sworn to take care of them, thus:—

"You shall well and truly keep the jury upon this enquiry without meat, drink, or fire: you shall not suffer any person to speak to them, nor you yourself, unless it be to ask them whether they be agreed to their verdict, until they shall be agreed. *So help you God.*"

The officer takes them to a convenient room, and attends the door on the outside until they are agreed; when agreed, they return, and the coroner calls over their names, and afterwards asks them if they be agreed in their verdict; if the foreman replies in the affirmative, the coroner asks them "who shall say for you?" to which they reply "our foreman." Then the coroner says, "Mr. Foreman, how do you find that R. F. came to his death, and by what means?" The foreman then delivers the verdict, which the coroner records.

It seems that twelve at least must agree if there be no

division; but if there be a division, the coroner then collects their voices, beginning with the last on the panel and rising upwards to the foreman, who declares last. The coroner collects the numbers and declares the majority into which the minority sinks, and the finding (which is to be given by the foreman) is from necessity taken and considered as the verdict of all. When the verdict is given, the coroner then draws up his inquisition in form, and at the foot affixes a seal for himself and each of the jurymen. The coroner and jurors then sign their names opposite the seals; to the coroner's name he adds "the office" thus, G. H. "coroner."

The inquisition being thus completed, the coroner then addresses the jury as follows:—

"Gentleman, hearken to your verdict, as delivered by you, and as I have recorded it. You find &c." (*Here repeat the substance of the verdict*).

If it is a case that will come to the assizes, the coroner binds all proper persons over in a recognizance to appear, prosecute and give evidence.

He should in the first place bind over one of the parties (generally the next of kin to the deceased) to appear and prosecute.

If the grand jury should return, "no bill," the party may still be arraigned and tried on the coroner's inquisition.

The usual manner of taking a recognizance is by calling the parties by name and thus addressing them:

"You J. R., E. D., and G. B., severally acknowledge to owe to our sovereign lady the Queen, the sum of each of good and lawful money of this province, to be made and levied upon your respective goods and chattels, lands and tenements, by way of recognizance, to her Majesty's use if default shall be made in the condition following."

(*For condition see below.*)

The coroner then says "are you content?"

Form of a Recognizance to Appear and Prosecute.

PROVINCE OF CANADA:

County of } Be it remembered that on the day of
to wit. } in the year of our Lord J. R. of
yeoman, personally came before me one of her Majesty's coroners for the said county, and acknowledged himself to owe to our sovereign lady the Queen, the sum of , of good and lawful money of this province, to be made and levied on his goods and chattels, lands and tenements, by way of recognizance to her Majesty's use, if default shall be made in the condition following:

The condition of this recognizance is such, that if the above bounden J. R. do personally appear at the next session of general gaol delivery to be holden in and for the county of , and shall then and there prefer, or cause to be preferred, to the grand jury, a bill of indictment against C. D. late of , labourer, and now in custody for the wilful murder of A. B. late of &c., and that the said J. R. do then and there personally appear and give evidence upon such bill of indictment to the said grand jury, and in case the said bill of indictment be found by the grand jury a true bill, that then the said J. R. do personally appear at the said general gaol delivery, and there prosecute the said C. D. on such indictment, and do then and there give evidence to the jury that shall pass on the trial of the said C. D. touching the premises, and in case the said bill of indictment shall be returned not found, that then the said J. R. do personally appear at the said general gaol delivery, and then and there prosecute and give evidence to the jury that shall pass on the trial of the said C. D. upon an inquisition taken before me, one of her Majesty's coroners for the said county, on the view of the body of the said A. B., and not depart the court without leave, then this recognizance to be void, otherwise to remain in full force. Taken and acknowledged this day of before me

G. H. Coroner.

Form of a Recognizance to appear and give Evidence.

PROVINCE OF CANADA :

County of } Be it remembered that on the day of
to wit } in the year of our Lord , S. R. of
yeoman, E. D. of blacksmith, and G. B. of , mason,
personally came before me one of her Majesty's coroners for the said county, and severally acknowledged themselves to owe to our sovereign lady the Queen the sum of of good and lawful money of this province, to be made and levied on their respective goods and chattels, lands and tenements, by way of recognizance, to her Majesty's use if default shall be made in the condition following :

“The condition of this recognizance is such, that if the above bounden S. R., E. D. and G. B. do severally appear at the next session of general gaol delivery to be holden in and for the said county, and then and there give evidence upon a bill of indictment to be then and there preferred to the grand jury against C. D., late of the township of in the said county, labourer, for the wilful murder of R. F. late of &c. And in case the bill of indictment be found by the grand jury a true bill, then if they the said S. R., E. D. and G. B. do severally appear and give evidence to the jury that shall pass on the trial of the said C. D. upon the said indictment: and in case the said indictment shall be returned by the grand jury afore-

said "not found," then if they the said S. R., E. D. and G. B. do severally appear at the said session of general gaol delivery, and then and there give evidence to the jury that shall pass on the trial of the said C. D. upon an inquisition taken before me, one of her Majesty's coroners for the said county, on the view of the body of the said R. F., and not depart the court without leave, then this recognizance to be void, otherwise to remain in full force. Taken and acknowledged this day of
before me
G. H. Coroner.

If one of the witnesses be a married woman, and the husband not present to enter into a recognizance for her, she is not to be bound in any sum penal, but "on pain of imprisonment," thus: S. the wife of J. S. of, &c., labourer, on pain of imprisonment, in case she shall make default in such condition; but if the husband be present, he is also to be bound for the appearance of his wife; and if the witness happen to be an infant, (or minor under the age of twenty-one years,) the parent or master should be bound in a recognizance for his appearance.

Form of a Recognizance by Husband and Wife.

PROVINCE OF CANADA:

County of } Be it remembered that J. P. of the town-
to wit. } ship of in the county of , yeoman,
and E. P., his wife, severally acknowledged themselves to be bound by recognizance to our sovereign lady the Queen, as follows, that is to say, the said J. P. in the sum of £20 of lawful money of the province of Canada, to be levied on his goods and chattels, lands and tenements, by way of recognizance, to her Majesty's use, and the said E. P. his wife, on pain of imprisonment, in case default shall be made in the condition following:—The condition of this recognizance is such, that if the said E. P., the wife of the said J. P., do and shall personally appear, &c. (*as in the former Recognizance, page 222.*)

Form of Recognizance by a Master, (parent or guardian,) for the appearance of an apprentice or minor.

PROVINCE OF CANADA:

County of } Be it remembered, that on the day of
to wit. } in the year of our Lord J. P., of the
township of in the said county, shopkeeper, the *mainpernor* of J. J. his apprentice (*or son*), an infant, personally came before me, one of her Majesty's coroners for the said county, and acknowledged himself to owe to our sovereign lady the Queen, the sum of good and lawful money of this province, to be levied on his goods and chattels, lands and tenements, by way of recognizance, to her Majesty's use, if default shall be made in the condition following.

The condition of this recognizance is such that if the above named J. J. the apprentice (*or son*) of the said J. P., do appear at the next session of general gaol delivery to be holden in and for the said county, and then and there give evidence upon a bill of indictment to be then and there preferred to the grand jury, against C. D. late of the township of in the said county, labourer, for the wilful murder of R. F. late of &c. And in case the bill of indictment be found by the grand jury a true bill, then if the said J. J. do appear and give evidence to the jury that shall pass on the trial of the said C. D. upon the said indictment; and in case the said indictment shall be returned by the grand jury aforesaid "not found," then if the said J. J. do appear at the said session of general gaol delivery, and then and there give evidence to the jury that shall pass on the trial of the said C. D. upon an inquisition taken before me, one of her Majesty's coroners for the said county, on the view of the body of the said R. F., and not depart the court without leave, then this recognizance to be void, otherwise to remain in full force. Taken and acknowledged this day of before me

G. H. Coroner.

The business of the court being concluded, the officer then makes proclamation thus:—

"You good men of this township, who have been empannelled and sworn of the jury to enquire for our sovereign lady the Queen, touching the death of R. F., and who have returned your verdict, may now depart hence and take your ease. God save the Queen."

The following forms of inquisitions, summonses, warrants, &c., are transcribed from *Impey's Office of Coroner*.

Form of an Inquisition on a Lunatic.

PROVINCE OF CANADA:

County of } An inquisition indented, taken for our sovereign lady the Queen, at the township of
to wit. }
in the county of the day of in the year of the
reign of our sovereign lady Queen Victoria, &c., before G. H.,
gentleman, one of the coroners of our said lady the Queen for
the said county, on view of the body of R. F., then and there
lying dead, upon the oath of A. B., &c., (*here insert the names of all
the jurors sworn,*) good and lawful men of the said township, duly
chosen, and who being then and there duly sworn and charged
to enquire for our said lady the Queen, when, where, how, and
after what manner, the said R. F. came to his death, do, upon
their oath say, that the said R. F. not being of sound mind,
memory and understanding, but lunatic and distracted, on the
day of in the year aforesaid, at the township aforesaid,
in the county aforesaid, to wit, into the river Humber there

did cast and throw himself, by means of which said casting and throwing, he the said R. F., in the waters of the said river was then and there suffocated and drowned: of which said suffocation and drowning, he the said R. F. then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say that the said R. F. in manner and by the means aforesaid, not being of sound mind, memory, and understanding, but lunatic and distracted, did drown and kill himself. In witness whereof, as well the said coroner as the jurors aforesaid, have to this inquisition set their hands and seals, on the day and year, and at the place first above mentioned.

G. H. Coroner, [L. S.]

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

&c.

Felo de se, by Drowning.

That the said R. F., not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on , with force and arms, at the township aforesaid, in the county aforesaid, in and upon himself, in the peace of God, and of our said lady the Queen, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault, and that the said R. F. into a certain river or stream of water, commonly called , at the township aforesaid, in the county aforesaid, did violently cast and throw himself, by means of which said casting and throwing, he, the said R. F., in the waters of the said river, was then and there suffocated and drowned, of which said suffocation and drowning, he the said R. F. then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F. in manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder himself, against the peace of our said lady the Queen, her crown and dignity; and that the said R. F., at the time of the said felony and murder, so as aforesaid done and committed, had no goods or chattels, lands and tenements, within the said county, or elsewhere, to the knowledge of the said jurors;—(or that the said R. F. at the time of doing and committing of the felony and murder aforesaid, had goods and chattels contained in the inventory to this inquisition annexed, which remain in the custody of C. D., who claims the same.) In witness, &c.

Upon an Accidental Death occasioned by a Cart.

That W. C., late of the township aforesaid, in the county aforesaid, carman, on , at the township aforesaid, in the county aforesaid, in a certain public street or highway, there called , being negligently driving in a cart, drawn by one horse, and loaded with twelve barrels of flour; it so happened, that the said A. P. being in the street and highway aforesaid, was

then and there accidentally, casually, and by misfortune, forced to the ground by the horse so drawing the said cart as aforesaid, and the said cart so loaded as aforesaid, was then and there, by the said horse violently and forcibly drawn to and against the said A. P., and the wheel of the said cart, so drawn and loaded as aforesaid, did then and there accidentally, casually and by misfortune, violently go upon, and pass over the breast and body of the said A. P., by means whereof the said A. P., from the weight and pressure of the said cart, so loaded and drawn as aforesaid, did then and there receive one mortal bruise in and upon his said breast and body, of which said mortal bruise, he the said A.P. then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say that the said A.P., in manner and by the means aforesaid, accidentally, casually, and by misfortune came to his death, and not otherwise; and that the said horse, cart, and loading were the cause of the death of the said A.P., and that the said twelve barrels of flour are of the value of , the said cart of the value of , and the said horse of the value of , amounting in the whole, to the sum of , of lawful money of the province of Canada, and are the property and in the possession of D. E. of yeoman, or of his assigns. In witness, &c.

(a) If it be intended to impose a nominal fine or deodand only, then say,

“And that the said horse, cart, and loading are of the value of five shillings of lawful money, &c.” (*as before.*)

By a Fire.—That on , at, &c., the warehouse of C. D., situate in the same township and county, casually took fire, and the said A. B., being then and there present, aiding and assisting to extinguish the said fire; it so happened, that a piece of timber, by the force and violence of the said fire, then and there accidentally, casually, and by misfortune, fell from the top of the said warehouse, in and upon the head of him, the said A.B. by reason whereof, he the said A. B. then and there received a mortal fracture on the head of him, the said A. B., of which said mortal fracture, he, the said A. B., from the said day of , in the year aforesaid, until the day of , in the year aforesaid, there did languish, and languishing did live; on which said day of , in the year aforesaid, at the township aforesaid, in the county aforesaid, he, the said A.B., of the mortal fracture aforesaid, did die. And so the jurors aforesaid, &c., and that the said piece of timber was the occasion of the death of the said A.B., and is of no value: (or it is of the value of, &c.) and in the possession, &c. In witness, &c.

By Drowning.—That the said A. B. on aforesaid, in a certain river, called , at the township, and in the county

(a) The amount is generally regulated by the nature of the case; if purely accidental the deodand is nominal: but in cases of gross or culpable negligence the amount is accordingly.

aforesaid, accidentally, casually, and by misfortune, was in the waters of the said river, then and there suffocated and drowned: of which said suffocation and drowning, he, the said A. B. then and there instantly died. And so the jurors, &c.

Natural Death.—That the said A. B., on and for a long time before, at, &c., did labour and languish under a grievous disease of body, to wit, an asthma; and that on the said day of , in the year aforesaid, at, &c., she the said A. B. departed this life, by the visitation of God, in a natural way, to wit, of the disease and distemper aforesaid, and not by any hurt or injury received from any person, to the knowledge of the said jurors. In witness, &c.

Found Dead.—That the said A. B., on, &c., at, &c., in a certain brick-field, in the possession of one C. D., was found dead. That he the said A. B., for some time before, had been very ailing and infirm, and not able to work; that he had no marks of violence appearing on his body, and departed this life by the visitation of God, in a natural way, to wit, of his said ailment and infirmity, and not by any violent means whatsoever, to the knowledge of the said jurors. In witness, &c.

Stranger found Dead.—That the said man, unknown, on, &c., at, &c., to wit, in a certain wood, there called the long wood, was found dead. That the said man, unknown, had no marks of violence appearing on his body; but how, or by what means he came to his death, no evidence thereof doth appear to the said jurors. In witness, &c.

By Excessive Drinking.—That the said A. B., on, &c., at, &c., departed this life by excessive drinking of ardent spirits, and not from any hurt, injury or violence done or committed by any person or persons whatsoever to the knowledge of the jurors. In witness, &c.

Inclemency of the Weather.—That the said man, unknown, was found dead in a certain lane, situate in the said township, commonly called , that the said man unknown, had no marks of violence appearing on his body, but died through want and inclemency of the weather, and by no violent ways or means whatsoever, to the knowledge of the said jurors. In witness, &c.

Death in Prison.—That the said A. B., being a prisoner for debt in the gaol of , at, &c., in the gaol aforesaid, departed this life by the visitation of God, in a natural way, to wit, of a fever, and not otherwise. In witness, &c.

Falling out of a Boat.—That the said C. D., on, &c., being in a certain boat with a certain sail and oars, the property of him, the said C. D., at, &c., it so happened, that by the violence of the wind and waves, the said boat was then and there accidentally, casually, and by misfortune, upset, by means whereof the said C. D. was then and there accidentally, casually, and by misfortune cast and thrown into the waters of the said

river, and in the waters of the said river was then and there suffocated and drowned, of which said suffocation and drowning, he the said C. D. then and there instantly died. And so the jurors, &c., and that the said boat, and the sail and oars thereof, did occasion the death of the said C. D., and are of the value of 10s., and in the possession of _____, or his assigns. In witness, &c.

Murder.—That C. D., late of, &c. labourer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on, &c., with force and arms, at, &c., in and upon the said A. B., in the peace of God, and of our said lady the Queen, then and there being, feloniously, [*wilfully and of his malice aforethought,*] did make an assault, and that the said C. D. with a certain iron poker of the value of 1s., which the said C. D. then and there had and held in both his hands, him the said A. B., in and upon the head of him the said A. B., then and there, divers times, feloniously, [*wilfully and of his malice aforethought,*] did strike and beat, then and there giving unto him. the said A. B., in and upon the back part of the head of him, the said said A. B., with the iron poker aforesaid, one mortal fracture of the length of two inches, of which said mortal fracture he the said A. B. then and there instantly died. And so the jurors aforesaid upon their oath aforesaid, do say, that the said C. D. him, the said A. B. in manner, and by the means aforesaid, feloniously, [*wilfully, and of his malice aforethought,*] did [*kill and murder,*] against the peace of our lady the Queen, her crown and dignity, and that the said C. D. after the doing and committing of the said felony and [*murder*] aforesaid, withdrew and fled for the same, and that neither at the time of the doing and committing thereof, nor at any time since, he the said C. D. had any goods or chattels, lands or tenements within the said county or elsewhere, to the knowledge of the said jurors. In witness, &c.

Manslaughter.—The form is precisely the same, except that the words “wilfully and of his malice aforethought,” are to be left out, and the words “feloniously did *kill and slay,*” substituted for “kill and murder,” and the word “manslaughter,” for “murder,” in another part.—See the parts marked with brackets.

Se Defendendo.

That on the _____ day _____ in the year aforesaid, at the township aforesaid, in the county aforesaid, the said A. B. being in a certain common drinking room belonging to a public house there situate, known by the name or sign of _____, in which said common drinking room one C. D., late of the township aforesaid, in the county aforesaid, labourer, and divers other persons was and were then and there present; and that the said A. B., without any cause or provocation given by the said C. D., did then and there menace and threaten the said C. D. to turn him the said C. D. out of the said common drink-

ing room, and for that purpose did then and there lay hold of the person of him the said C. D., and on him the said C. D., in the peace of God and of our said lady the Queen then and there being, violently did make an assault, and him the said C. D., without any cause or provocation whatsoever, did then and there beat, abuse and evilly entreat, whereupon the said C. D. for the preservation and safety of his person, and of inevitable necessity, did then and there with the hands of him the said C. D. defend himself against such the violent assault of him the said A. B. as it was lawful for him to do; and the said A. B. did then and there receive against the will of him the C. D., by the falls and blows which he the said A. B. then and there sustained by him the said C. D's. so defending himself as aforesaid, divers mortal bruises, in and upon the head, back and loins of him the said A. B., of which said mortal bruises he the said A. B. from the said day of , in the year aforesaid, until the day of the same month in the same year, at the township aforesaid, in the county aforesaid, did languish, &c., (as in former precedent); and so the jurors aforesaid, upon their oath aforesaid, do say that the said C. D. him the said A. B. in the defence of himself the said C. D. in manner and by means aforesaid, did kill and slay; but what goods or chattels the said C. D. had at the time of the doing and committing the said manslaughter in his own defence as aforesaid, the said jurors know not. In witness, &c.

By Suffocating a Bastard.—That A. B., late of &c. , single woman, on &c. , being then and there big with a female child, afterwards, to wit, on the same day and year, at the township aforesaid, in the county aforesaid, the said female child, alone and secretly from her body, by the providence of God, did bring forth alive, which said female child by the laws of this province was a bastard; and that the said A. B. not having the fear of God, &c., (as before), afterwards, to wit, on the same day and year aforesaid, with force and arms, at the township aforesaid, in the county aforesaid, in and upon the said newborn female bastard child so alive, and in the peace of God and of our said lady the Queen then and there being, feloniously, wilfully, and of her malice aforethought, did make an assault, and that the said A. B., her the said newborn female bastard child with both her hands, in a certain linen cloth of no value, then and there feloniously, wilfully and of her malice aforethought, did wrap up and fold, by means of which said wrapping up and folding of her the said new-born female bastard child, in the linen cloth aforesaid, she the said newborn female bastard child was then and there suffocated and smothered, of which said suffocation and smothering she the said new-born female bastard child then and there instantly died; and so the jurors aforesaid, do say that the said A. B. her, the said new-born female child, in manner and by the means aforesaid, feloniously, wilfully and of her malice afore-

thought, did kill and murder, against the peace of our said lady the Queen, her crown and dignity, [flight, forfeiture,—as before]. In witness, &c.

By throwing down a Privy.—And that the said A. B. him, the said new-born male child, did then and there take into both her hands, and him the said new-born male child into a certain privy, or necessary house, there situate, then and there feloniously, wilfully and of her malice aforethought, did violently cast and thrown down, by means whereof he, the said new-born male child, in the soil or filth then and there contained in the said privy or necessary house, was then and there suffocated and smothered, of which said suffocation and smothering he the said new-born male child then and there instantly died; and so the jurors, &c. [as before] [flight, forfeiture—as before]. In witness, &c.

Against Aiders and Abettors, in murder or manslaughter.—And the jurors aforesaid, upon their oath aforesaid, do further say that S. W. late of &c. labourer, and G. W., late of the same place, labourer, at the time of the doing and committing of the felony and murder, (*or felony and manslaughter*) aforesaid, were present, aiding, abetting, assisting, comforting and maintaining the said C. D. to kill and murder (*or kill and slay*) the said A. B., in manner aforesaid; and so the jurors aforesaid, upon their oath aforesaid, do say that the said C. D. and E. F. him, the said A. B., in manner and by the means aforesaid, feloniously, wilfully and of their malice aforethought, did kill and murder, (*and in cases of manslaughter say, feloniously did kill and slay*), against the peace, &c., (*conclude with flight and forfeiture*). In witness, &c.

Form of the Warrant to Summon a Jury.

PROVINCE OF CANADA :

County of } To the constables of the township of , in
to wit. } the county of , and all other her Majesty's
officers of the peace in and for the said county.

By virtue of my office, these are in her Majesty's name to charge and command you, that on sight hereof you summon and warn twenty-four able and sufficient men of your township, personally to be and appear before me, on the day of at o'clock in the forenoon, at the house of A. B., called or known by the name or sign of the situate at in the said township, then and there to do and execute all such things that shall be given them in charge on behalf of our sovereign lady the Queen's Majesty, touching the death of R. F., and for so doing this shall be your sufficient warrant: and that you also attend at the time and place above mentioned, to make a return of the names of the persons whom you have so summoned, and further to do and execute such other matters as

shall be then and there enjoined you, and have you then and there this warrant. Given under my hand and seal, this day of 18 . G. H., Coroner.

Form of the Constable's Summons.

PROVINCE OF CANADA:

County of } By virtue of a warrant under the hand and
to wit. } seal of G. H., gentleman, one of her Majesty's coroners for this county, you are hereby summoned personally to be and appear before him as a juryman, on the day of at of the clock in the forenoon, precisely, at the house of known by the sign of the in the township of in the said county, then and there to enquire in her Majesty's behalf, touching the death of R. F., and further to do and execute such other matters and things as shall be then and there given you in charge, and not to depart without leave. Herein fail not at your peril. Dated the day of in the year of our Lord 18 . Constable.

N.B.—The Coroner should furnish a sufficient number of printed or written summonses to the constable for service on the Jurors.

Warrant to Bury after a View.

PROVINCE OF CANADA:

County of } To the minister and churchwardens of the
to wit. } township of , in the county of , and to all others whom it may concern.

Whereas I, with my inquest, the day and year hereunder written, have taken a view of the body of J. D., who not being of sound mind, memory and understanding, but lunatic and distracted, shot himself, (or agreeably to the finding of the jury), who now lies dead in your township, and have proceeded therein according to law. These are therefore to certify that you may lawfully permit the body of the said J. D. to be buried: and for so doing this shall be your warrant. Given under my hand and seal the day of

G. H., Coroner.

Warrant to Bury a felo de se, after Inquisition found.

PROVINCE OF CANADA:

County } To the churchwardens and constables of the
to wit. } township of , in the county of

Whereas by an inquisition taken before me, one of her Majesty's coroners for the said county, this day of , in the year of the reign of her present Majesty Queen Victoria, at the township of , in the said county, on view of the body of J. D., then and there lying dead, the jurors in the said inquisition named have found that the said J. D. feloniously, wilfully and of his malice aforethought killed and murdered himself (as the finding may be); these are therefore, by virtue of

my office, to will and require you forthwith to cause the body of the said J. D. to be buried according to law; and for your so doing this is your warrant. Given under my hand and seal this day of

G. H., Coroner.

N. B.—The last form of warrant should not be directed to the minister.

The Return thereto.

By virtue of the within warrant to us directed, we have caused the body within named to be buried according to law.

C. D. }
E. F. } *Churchwardens.*
I. D. *Constable.*

Warrant to Bury without a View, where no effectual Inquest can be taken.

PROVINCE OF CANADA:

County of } To the minister and churchwardens in the
to wit. } township of , in the county of .

Whereas I am credibly informed that on the day of , the body of a new born male child was found dead in a coffin, in the churchyard of the said township, and that there is not any evidence to be found to make appear to the jury either by what means the said male child was there laid, or who was the mother thereof, or how it came to his death, nor are there any marks of violence appearing on its body. These are therefore to certify that in the county charge you may permit the body of the said new born male child to be buried: and for so doing this is your warrant. Given under my hand and seal this day of

G. H., Coroner.

Another form of Warrant to Bury without a view.

PROVINCE OF CANADA:

County of } To the minister and churchwardens to the
to wit. } township of , in the county of .

Whereas I am credibly informed, that on the day of instant, A. B. died suddenly in the street, to wit, (*name the street*) in the township of , in the said county, as supposed by a fit of an apoplexy or other sudden visitation of God, and that he came not to his death by any violent means whatsoever. These are therefore to certify that in ease of the county charge you may permit the body of the said A. B. to be buried: and for so doing this shall be your warrant. Given under my hand and seal this day of

G. H., Coroner.

Warrant to Bury without a View, when the Body was found Drowned.

PROVINCE OF CANADA :

County of } To the minister and churchwardens of the
to wit. } township of , in the county of .

Whereas I am credibly informed that on the day of
the body of a man unknown was taken up dead, and floating
in the river , in the township of in the said county,
and that no marks of violence do appear on the body of the said
man unknown ; and whereas there is no evidence to make ap-
pear to a jury how or by what means the said man unknown
came to his death. These are therefore to certify that in ease
of the county charge you may permit the body of the said man
unknown to be buried : and for so doing this is your warrant.
Given under my hand and seal, this day of

G. H. Coroner.

Warrant to take up a Body interred.

PROVINCE OF CANADA :

County of , } To the minister and churchwardens of the
to wit. } township of , in the county of .

Whereas, complaint hath been made unto me, one of her
Majesty's coroners for the said county, on the day of
that the body of one G. R. was privately and secretly buried in
your township, and that the said G. R. died not of a natural,
but violent death : and whereas no notice of the violent death
of the said G. R. hath been given to any of her Majesty's cor-
ners for the said county, whereby, on her Majesty's behalf, an
inquisition might have been taken on view of the body of the
said G. R. before his interment, as by law required. These
are therefore, by virtue of my office, in her Majesty's name to
charge and command you, that you forthwith cause the body of
the said G. R. to be taken up and safely conveyed to in the
said township, that I with my inquest, may have a view thereof,
and proceed therein according to law. Herein fail not, as you
will answer the contrary at your peril. Given under my hand
and seal, the day of

G. H., Coroner.

Warrant to Apprehend a Person for Murder.

PROVINCE OF CANADA :

County of } To the constables of the township of , in
to wit. } the county of , and all other her Ma-
jesty's peace officers in the said county.

Whereas, by an inquisition taken before me , one of her
Majesty's coroners for the said county, this day of , at
 , in the said county, on view of the body of G. R., then
and there lying dead, one C. D., late of , in the said county,

labourer, stands charged with the wilful murder of the said G. R., these are, therefore, by virtue of my office, in her Majesty's name, to charge and command you, and every of you, that you or some one of you, without delay, do apprehend and bring before me the said coroner, or one of her Majesty's justices of the peace of the said county, the body of the said C.D., of whom you shall have notice, that he may be dealt with according to law. And for your so doing, this is your warrant. Given under my hand and seal, this day of

G. H., Coroner.

Commitment for Murder.

PROVINCE OF CANADA :

County of , } To the constables of the township of in
to wit. } the county of , and all other her Majesty's
officers of the peace for the said county, and to the keeper of
her Majesty's gaol, at , in the said county.

Whereas, by an inquisition taken before me, one of her Majesty's coroners for the said county, the day and year here under-mentioned, on view of the body of R. L., lying dead in the said township of , in the county aforesaid, J. K., late of the township of , in the said county, labourer, stands charged with the wilful murder of the said R. L. These are, therefore, by virtue of my office, in her Majesty's name to charge and command you, the said constables and others aforesaid, or any of you, forthwith safely to convey the body of the said J. K. to her Majesty's gaol at aforesaid, and safely to deliver him to the keeper of the said gaol ; and these are likewise by virtue of my said office, in her Majesty's name, to will and require you, the said keeper, to receive the body of the said J. K. into your custody, and him safely to keep in the said gaol, until he shall be thence discharged by due course of law, and for your so doing this shall be your warrant. Given under my hand and seal, the day of .

G. H., Coroner.

Summons to a Witness.

PROVINCE OF CANADA :

County of , } To A. P., of the township of , in the
to wit. } county of , yeoman.

Whereas I am credibly informed that you can give evidence on behalf of our sovereign lady the Queen, touching the death of A. P., now lying dead in the township of , in the said county. These are, therefore, by virtue of my office, in her Majesty's name, to charge and command you personally to be and appear before me, at the dwelling-house of J. R., known as the sign of , situate at , in the said township, at o'clock in the forenoon, on the day of instant, then and there to give evidence and be examined on her Majesty's behalf

before me and my inquest touching the premises: herein fail not, as you will answer the contrary at your peril. Given under my hand and seal this day of

G. H., Coroner.

Warrant for Contempt against a Witness for not appearing to give evidence.

PROVINCE OF CANADA:

County of , } To the constable of the township of ,
to wit. } in the county of , and to all other her
Majesty's officers of the peace in and for the same county.

Whereas I have received credible information that A. P. of the township of , in the said county, can give evidence on behalf of our sovereign lady the Queen, touching the death of C. D., now lying dead in the said township; and whereas the said A. P. having been duly summoned to appear and give evidence before me and my inquest touching the premises, at the time and place in the said summons specified, of which oath hath been duly made before me, hath refused and neglected so to do, to the great hindrance and delay of justice. These are, therefore, by virtue of my office, in her Majesty's name, to charge and command you, or one of you, without delay to apprehend and bring before me, one of her Majesty's coroners of the said county, now sitting at the township aforesaid, by virtue of my said office, the body of the said C. D., that he may be dealt with according to law: and for your so doing this is your warrant. Given under my hand and seal the day of .

G. H., Coroner.

Warrant to Commit a Witness refusing to give Evidence.

PROVINCE OF CANADA:

County of , } To the constables of the township of in
to wit: } the county of , and all other her Majesty's
officers of the peace in and for the county aforesaid, and also to the keeper of the gaol in the said county.

Whereas I heretofore issued my summons under my hand, directed to A. P. of, &c., requiring his personal appearance before me, then and now one of her Majesty's coroners for the said county, at the time and place therein mentioned, to give evidence and be examined on her Majesty's behalf, touching and concerning the death of C. D., then and there lying dead, of the personal service of which said summons oath hath been duly made before me; and whereas the said A. P. having neglected and refused to appear pursuant to the contents of the said summons, I thereupon afterwards issued my warrant, under my hand and seal, in order that the said A. P., by virtue thereof, might be apprehended and brought before me to answer the premises. And whereas the said A. P., in pursuance thereof, hath been apprehended and brought before me, now duly sitting by virtue of my office, and hath been duly required to give evidence, and be examined before me and my inquest on

her said Majesty's behalf, touching the death of the said C. D., yet the said A. P. notwithstanding, hath absolutely and wilfully refused, and still doth wilfully and absolutely refuse to give evidence and be examined touching the premises, or to give sufficient reason for his refusal, in wilful and open violation and delay of justice: these are, therefore, by virtue of my office, in her Majesty's name, to charge and command you, or any one of you, the said constables and officers of the peace in and for the said township and county, forthwith to convey the body of the said A. P. to the gaol of the said county, at the city of _____, in the said county, and him safely to deliver to the keeper of the said gaol: and these are likewise by virtue of my said office, in her Majesty's name, to will and require you, the said keeper to receive the body of the said A. P. into your custody, and him safely to keep until he shall consent to give his evidence, and be examined before me and my inquest on her Majesty's behalf, touching the death of the said C. D., or until he shall be from thence otherwise discharged by due course of law, and for so doing this is your warrant. Given under my hand and seal, the _____ day of _____.

G. H., Coroner.

Commitment of a Witness for refusing to sign his Information.

PROVINCE OF CANADA :

County of _____, } To the constable of the township of _____ in the
to wit. } county of _____, and all other her Majesty's
officers of the peace in and for the said county, and also to the
keeper of the gaol of the said county.

Whereas A. B. of _____, is a material witness on behalf of our sovereign lady the Queen, against J. P., late of the township of _____, in the county aforesaid, labourer, now charged before me, one of her Majesty's coroners for the said county, and my inquest, with the wilful murder of C. D., there now lying dead; and whereas the said A. B. at the time of my inquiry, on view of the body of said C. D., how and by what means he the said C. D. came by his death, hath personally appeared before me and my said inquest, and on her Majesty's behalf hath given evidence and information on oath touching the premises, which said information having by me been reduced into writing, and the contents thereof by me, in the presence of the said inquest, openly and truly read to him the said A. B., who doth acknowledge the same to be true, and that the same doth contain the full substance and effect of the evidence by him given before me to my said inquest, and the said A. B. having by me been requested and desired to sign and set his hand to his said testimony and information, and to acknowledge the same as by law is required, yet, notwithstanding, the said A. B. doth wilfully and absolutely refuse so to do, in open defiance of law, and to the great hindrance of justice. These are, therefore, by virtue of my office, in her Majesty's name to charge and command you, or some one of you, the said constables

and other her Majesty's officers of the peace in and for the said county, forthwith to convey the body of the said A. B. to the gaol of the said county, at _____ in the said county, and him safely to deliver to the keeper of the said gaol; and these are likewise by virtue of my said office, in her Majesty's name to will and require you the said keeper to receive the body of the said A. B. into your custody, and him safely to keep in prison until he shall duly sign and acknowledge his said information, or shall be from thence otherwise discharged by due course of law: and for so doing this is your warrant. Given under my hand and seal, this _____ day of _____

G. H., Coroner.

Commitment of a Witness for refusing to enter into Recognizance to appear to give Evidence.

PROVINCE OF CANADA :

County of _____ } To the constable of the township of _____,
to wit. } county of _____, and all other her Majesty's officers of the peace in and for the same county, and also to the keeper of the gaol of the said county.

Whereas upon an inquisition this day taken before me, one of her Majesty's coroners for the county aforesaid, at _____ in the said county, on view of the body of C. D. then and there lying dead, one J. U., late of the township aforesaid, in the county aforesaid, labourer, was by my inquest then and there sitting, found guilty of the wilful murder of the said C. D.; and whereas one U. B. of the township and county aforesaid, yeoman, was then and there examined and gave information in writing before me and my inquest touching the premises, and which said information he, the said U. P., then and there before me and my inquest duly signed and acknowledged, and by which said information it appears that the said U. P. is a material witness on her Majesty's behalf against the said J. U. now in custody, and charged by my inquest with the said murder, and the said U. P. having wilfully and absolutely refused to enter into the usual recognizance for his personal appearance at the next general gaol delivery to be holden in and for the county of _____ aforesaid, and then and there to give evidence on her Majesty's behalf against the said J. U., to the great hindrance and delay of justice. These are, therefore, by virtue of my office, in her Majesty's name to charge and command you, or one of you, the said constables and other her Majesty's officers of the peace in and for the said county, forthwith to convey the body of the said U. P. to the gaol of the said county, at _____ in the said county, and him safely to deliver to the keeper of the said gaol there; and these are likewise by virtue of my said office in her Majesty's name to will and require you the said keeper to receive the body of the said U. P. into your custody, and him safely to keep in prison until he shall enter into such recognizance before me, or before one of her Majesty's justices of the peace for the said county,

for the purposes aforesaid, or in default thereof, until he shall be from thence otherwise discharged by due course of law: and for so doing this is your warrant. Given under my hand and seal, this day of .

G. H., *Coroner.*

Recognizance by Husband for Wife's appearance, and by Master, &c., for the appearance of an Apprentice, &c.

PROVINCE OF CANADA :

County of } J. P. of the township of in the said coun-
to wit. } ty, blacksmith; T. P. of the same place,
victualler; J. R. of the same place, whitesmith, the husband
of S. R.; J. B. of the same place, shopkeeper, the *mainpernor*
of J. J. his apprentice, an *infant*; J. S. of the same place,
yoeman, the *mainpernor* of G. S. his son, an infant, do severally
acknowledge to owe to our sovereign lady the Queen the sum
of pounds, of lawful money of Canada, to be levied on their
respective goods and chattels, lands and tenements, by way of
recognizance, to her Majesty's use, in case default shall be
made in the condition following. And S., the wife of J. P. of
the same place, labourer, on pain of imprisonment, in case she
shall make default in such condition.

The condition of this recognizance is such, that if the above bounden J. P., T. R., S. R. the wife of the said J. R., J. J., G. S., and S. R. the wife of the said J. P., do severally personally appear at the next general gaol delivery to be holden in and for the county of , and there give evidence on a bill of indictment to be preferred against W. T. now at large for the wilful murder of S. his wife, and in case the said bill of indictment shall be returned by the grand jury a true bill, then that they do severally personally appear at the session of general gaol delivery for the said county next after the apprehending or surrender of the said W. T., and then and there severally give evidence to the jury that shall pass upon the trial of the said W. T. touching the premises, and in case the said bill of indictment shall be returned by the grand jury not found, that then they do severally personally appear at such session of general gaol delivery to be then and there holden for the said county, and then and there give evidence to the jury that shall pass upon the trial of the said W. T. upon an inquisition taken before me, one of her Majesty's coroners for the said county, on view of the body of the said S. T., and not depart the court without leave, then this recognizance to be void, otherwise to be and remain in full force. Taken and acknowledged this day of .

G. H., *Coroner.*

§ COSTS.

By 8 V., c. 38, justices of the peace, at the general quarter sessions in July next, (1845), are required to frame

a table of fees for all services now rendered in the administration of justice, and for other district purposes, by any sheriff, coroner, clerk of the peace, constable and crier, not remunerated by any law now in force; and the several clerks of the peace shall forthwith transmit such table to the clerk of the Crown at Toronto, to be laid before the judges of the Court of Queen's Bench; and such judges are authorised, by rule in term from time to time, to appoint the fees to be taken by such officers accordingly. § 2. All per centage, fees, or allowances, on levying fines and recognizances; and all fees on services for the private benefit of, or in the nature of a civil remedy for, individuals at whose instance the same are performed, shall be paid by such individuals, and the judges shall, in the table to be framed by them as aforesaid, distinguish the fees to be paid by private individuals, and, except as in this act otherwise provided, all other fees shall be paid out of the district funds. § 3. When any person or persons shall be convicted before any court of quarter sessions of any assault and battery or other misdemeanor, such person or persons shall pay such costs as shall be allowed and taxed by the court; but when any defendant shall be acquitted, the costs of the prosecution shall be paid out of the district funds; and in case of prosecution for felony, upon conviction or acquittal, or discharge otherwise, the costs of prosecution shall be paid out of the district funds. § 4. Any officer exacting greater fees than established by this act shall for every offence forfeit £10 to any person who shall sue for the same in any court of competent jurisdiction. § 5. District treasurer required to pay fees payable out of the district funds when duly allowed by magistrates in quarter sessions, in the order prescribed by the 59th § of the 4 & 5 V., c. 10. (a) § 6. All suits under this act to be brought within six calendar months after offence committed.

By the 16 V., c. 178, (Summary Convictions Act), § 17, in all cases of summary conviction it shall be lawful for the justice or justices in his or their *discretion*, to award and order in and by such conviction or order that the defendant shall pay to the prosecutor or complainant, such costs as shall seem reasonable and not inconsistent with the fees established by law to be taken on proceedings had by and before justices of the peace under the 14 & 15 V., c. 119, or any other act regulating fees and costs, and in cases of dismissal to award that the prosecutor or complainant pay to the defendant such costs as shall seem reasonable and according to law as aforesaid, and the costs

(a) The 4 & 5 V., c. 10, is repealed by 12 V., c. 80.

so allowed shall be specified in the conviction or order of dismissal, and recoverable in the same manner and under the same warrants as any penalty or sum of money, adjudged to be paid in such conviction, and when there is no penalty or money to be thereby recovered, then such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of such distress, imprisonment with or without hard labour for any time not exceeding one calendar month, unless sooner paid.

See also *post* title "*Summary Conviction.*"

Administration of Justice—Expenses of.

By 9 V., c. 58, entitled, "An act for defraying the expenses of his administration of justice in criminal matters in that part of the province formerly Upper Canada," it is by § 1, enacted that after the year 1847, the whole of the expenses of the administration of criminal justice in Upper Canada heretofore paid by local taxation shall in time to come be paid out of the public funds of the province under the provisions hereinafter made. § 2. All accounts of or relative to the said offences shall be examined, credited, vouched, and approved under such regulations as the Governor in council shall from time to time decide. § 3. That the several heads of expense mentioned in the schedule to this act shall be deemed expenses of the administration of criminal justice within the meaning of this act.

For the Schedule, see "the Act."

NOTE.—It comprises certain fees payable to the clerk of the peace, sheriff, coroner, constable, crier, and includes other matters relative to the maintenance of prisoners confined on criminal charges, a portion of the gaoler's salary, and other items.

With reference to the above act the following order in council has been made as to the mode of rendering accounts:

"That all accounts for the payment of which, or any part of which, the province is by act liable, shall be rendered in duplicate to the treasurer of each county during the sittings of the court of quarter session, or within three days thereafter, and shall include all the demands of the party rendering the same (payable as aforesaid by the province), and refer to the authority of the charge."

"That such account, before rendered to the treasurer, shall be verified by the oath of the party, that it is just and correct, to the best of his knowledge and belief. And in cases where mileage is charged, there shall be an affidavit stating the places to which, and from which, the mileage is

reckoned, as well as the number of miles; and that in no case shall more than the actual number of miles travelled be allowed, nor a greater number of miles than the distance from the court house to the place of service."

COUNTIES.

By 12 V., c. 78, it is enacted that this act shall come into operation on the first of January, 1850.

I. Abolition of District Divisions.

§ 2. The districts in Upper Canada for judicial and other purposes are abolished. § 2. Courts, court-houses and gaols to be called county courts, court-houses and gaols; district grammar schools, county grammar schools, and district offices and offices, to be styled "county." § 4. Courts of assize, &c., sessions of the peace, and district courts, to be held in and for said counties, and the name county used in designating such courts, and also in legal proceedings.

II. Unions of Counties for Judicial Purposes.

§ 5. Counties mentioned in schedule A. shall for all judicial, municipal, and other purposes, (except representation and registration of titles,) be formed into unions, and each union under the name of the united counties of _____, and (naming them) shall for all such purposes, have all courts, offices and institutions now pertaining to districts, so long as such counties shall remain united. § 6. County property of all such united counties to be common property. § 7. *Venue* in any judicial proceeding shall describe the county as one of the united counties, and jurors shall be summoned from the body of the united counties as if one county. § 8. All existing laws applicable to districts (excepting representation and registration of titles) shall apply to every such union, as if but one county.

III. Dissolution of Unions of Counties.

§ 9. The county where the court-house and gaol are situate, shall be deemed the senior county. § 10. So soon as it shall appear by any census taken, that any junior county contains a population of not less than 15,000, it shall be lawful for the Governor, upon the petition of two-thirds or more of the town reeves, for the time being, of such junior county, (if deemed expedient,) to issue a proclamation under the Great Seal, setting forth the same, naming a place within such junior county for a county town, and erecting the town reeves thereof into a provisional municipal county, until the dissolution of such

union of counties, as provided for by this act: no such petition to be presented or acted upon, unless adopted and signed by such two-thirds, in the month of February after their election, nor until a resolution declaratory of the expediency of such petition shall have been adopted by a majority of the town reeves present at two several meetings, called for that purpose by a majority of such town reeves—the one to be held in February, in the year next but one preceding that in which such petition shall be adopted; and the other in February next preceding the last mentioned year. Provided also, *secondly*, that such provisional municipal council shall, during its continuance, consist of the town reeves in such junior county. § 11. Such provisional council shall have all the powers with respect to such junior county as are now by law vested in municipal councils for purchasing property for court-house and gaol, and for levying funds therefor, &c. § 12. Such provisional council may appoint officers to hold office during pleasure. § 13. Such provisional council shall be a body corporate, with corporate powers. § 14. Moneys may be assessed and levied upon such junior county by any by-law of such provisional council, in the same manner as by the union council, and paid over to provisional treasurer. Collectors to receive $2\frac{1}{2}$ per cent. for collection. § 15. So soon as such provisional council shall have erected a suitable court-house and gaol, the debt of the union shall be apportioned by agreement; and in default of agreement the amount shall be settled by *three* arbitrators, or the majority of them, to be appointed as follows: one by the municipal council, another by the provisional council, and the third by such two arbitrators; or in default of the two making such appointment within ten days after their own appointment, then by the Governor in council. This clause also contains other provisions in respect to such arbitration of a usual character, as to the finality of the award, and making the same a rule of court. § 16. Assessments of the current year of the dissolution to belong to the union council. § 17. After compliance with preceding clauses, a judge and other officers to be appointed, and at least twelve justices of the peace. § 18. So soon as appointments made, proclamation to issue, declaring such junior county disunited. § 19. Provides for a separate registry of titles. § 20. Property of the union to belong to each county according to location. § 21 provides for continuation of legal proceedings; § 22, and transfer of records. § 23. All rules and regulations contained in any act of parliament relating to court-houses and gaols, shall extend to such junior county so disunited, and

the courts of assize, &c. Sessions of the peace and every other court of such junior county shall be holden at the courthouse of such county. § 24 enacts that the several counties in schedules B. and C. shall for all purposes include the townships lying therein. § 25. For *judicial* purposes only, the townships of Oneida and Seneca shall be attached to the county of *Lincoln*; § 26, and the townships of Rainham and Walpole to the county of *Haldimand*. § 27. That the counties in schedule C. shall, as well for the purpose of representation and registration, as for judicial, municipal, and all other purposes, include the townships and places of which, for the purpose of representation, such counties now by law consist, subject to the proviso hereinafter mentioned. § 28. For the purposes of *representation*, the city of Toronto and the liberties thereof, the cities of Kingston and Hamilton, and the towns of Niagara, Cornwall, Brockville, London and Bytown, shall form no part of the counties within which they are situated. § 29. Cities of Toronto, Kingston, and Hamilton, shall be united to their respective counties for judicial purposes.

IV. *Miscellaneous and Temporary Provisions.*

§ 30. Town reeves of the different townships, &c., in the counties of Kent and Lambton, are to form a provisional municipal council for such counties as united counties, with full powers. § 31. Provides for dissolving the union between the united counties of Kent and Lambton, and the county of Essex, and after such dissolution, said united counties of Kent and Lambton shall form a union of counties. § 32. Judicial proceedings in the several districts to be deemed as pending in the united counties to which they are transferred. § 33. Town reeves of the townships, unions of townships, &c., in the counties of Haldimand and Welland, to form a provisional municipal council for each county, and possess full powers. § 34. Provision for dissolving the union of counties of Lincoln, Haldimand and Welland. § 35. All district property to be vested in the municipal corporations, as set forth in schedule B. § 36. All acts inconsistent with this repealed. § 37. Justices of the peace for districts to have like powers in united counties. § 34. Act may be amended this session.

SCHEDULE A.

Counties of Upper Canada united for Judicial and other purposes.

The united counties of—

1. Essex and Kent.
2. Frontenac, Lenox, and Addington.

Counties.

3. Lanark and Renfrew.
4. Leeds and Grenville.
5. Lincoln, Haldimand, and Welland.
6. Northumberland and Durham.
7. Prescott and Russel.
8. Stormont, Dundas, and Glengary.
9. Wentworth and Halton.

SCHEDULE B.

Counties and Unions of Counties in Upper Canada, to which Judicial and other proceedings of the late Districts are transferred respectively, under this act.

1. Carleton	those of the	Dalhousie	District.
2. Essex and Kent	"	Western	"
3. Frontenac, Lenox and Addington	"	Midland	"
4. Hastings	"	Victoria	"
5. Huron	"	Huron	"
6. Lanark and Renfrew....	"	Bathurst	"
7. Leeds and Grenville....	"	Johnstown	"
8. Lincoln, Haldimand and Welland	"	Niagara	"
9. Middlesex	"	London	"
10. Norfolk	"	Talbot	"
11. Northumberland and Durham.....	"	Newcastle	"
12. Oxford.....	"	Brock	"
13. Peterborough	"	Colborne	"
14. Prescott and Russel....	"	Ottawa	"
15. Prince Edward.....	"	Prince Edward	"
16. Simcoe	"	Simcoe	"
17. Stormont, Dundas and Glengary	"	Eastern	"
18. Waterloo	"	Wellington	"
19. Wentworth and Halton	"	Gore	"
20. York	"	Home	"

SCHEDULE C.

Counties in Upper Canada which henceforth shall, for all purposes, include and consist of the townships and places therein mentioned.

1. Haldimand, which shall include and consist of the townships of Canboro', Cayuga, Dunn, Moulton, Oneida, Rainham, Seneca, Sherbrooke and Walpole.

2. Halton, which shall include and consist of the townships of Beverley, Dumfries, Esquesing, East Flamborough, West Flamborough, Nassagaweya, Nelson and Trafalgar.

3. Norfolk, which shall include and consist of the townships of Charlotteville, Houghton, Middleton, Townsend, Woodhouse, Windham, Walsingham and Long-Point, and Ryerson's Island in Lake Erie.

4. Waterloo, which shall include and consist of the townships of Arthur, Amaranth, Bentinck, Derby, Eramosa, Egremont, Erin, Guelph, Glenelg, Garrafraxa, Holland, Luther, Mornington, Minto, Maryborough, Melancthon, Normanby, Nichol, Peel, Proton, Puslinch, Sydenham, Sullivan, Waterloo, Wilmot, Woolwich and Wellesley.

5. Wentworth, which shall include and consist of the townships of Ancaster, Brantford, Binbrooke, Barton, Glandford, Onondaga, Saltfleet and Tuscarora.

By 12 V., c. 79, § 1, the county of *Kent* is to include the several townships named in this section, and the county of *Lambton* is to include the several townships also named in this section; and the county of *Lambton* for the purpose of representation is to continue united with the county of *Kent*, and together return one member—said counties of *Kent* and *Lambton*, and the county of *Essex*, to form a union of counties, and be known as the united counties of *Essex*, *Kent*, and *Lambton*, until dissolved by proclamation, as provided by law. § 2. Parts of *Dawn*, *Sombra*, and *Zone* detached, under the name of the *Gore of Camden* and attached to *Camden*; also other part of *Sombra* detached, under the name of the *North Gore of Chatham*, and attached to *Chatham*; and part of the township of *Zone* detached, and to form the new township of *Euphemia*. § 3. Provisions of the 33 and 34 § of the 12 V., c. 78, to extend to the united counties of *Essex*, *Kent*, and *Lambton*; and all the provisions of 10 & 11 V., c. 39, respecting township councillors of the townships of the said county of *Kent* shall be vested in the provisional municipal council of said county of *Kent*. § 4 provides for the dissolution of the said county of *Lambton*, upon the petition of two-thirds or more of the town reeves of said county.

By 16 V., c. 181, prisoners in gaol, or on bail, on the dissolution of unions of counties may be tried in either county. —§ 14.

Alteration and Territorial Division of.

By 14 & 15 V., c. 5, reciting that it was expedient to make certain alterations in the present territorial divisions of Upper Canada, for judicial, municipal and other purposes. It is enacted by § 1. That after the time this act shall come into force, (1st day of January, 1852), Upper Canada shall be divided into the counties mentioned in schedule A., which counties shall include and consist of the several townships mentioned in the schedule, and the cities, towns and villages and liberties of the said several cities therein: provided, that for *municipal* purposes the cities of *Toronto*, *Hamilton* and *Kingston* and the liberties thereof shall not form part of

the counties of York, Wentworth and Frontenac, within the limits whereof they are situate, but shall be counties by themselves; and that for the purpose of representation in the provincial parliament, neither the said cities nor liberties thereof, nor the towns of London, Niagara, Brockville, Bytown or Cornwall, respectively, shall form part of the counties of York, Wentworth, Frontenac, Middlesex, Lincoln, Leeds, Carleton and Stormont, within the limits whereof they are situate.

§ 2. That the counties mentioned in schedule B., for all judicial and municipal purposes, and for all other purposes except *representation*, shall be formed into unions, as in the schedule, and each of such unions shall, for all such purposes (except as aforesaid) have in common between them all such courts, offices and institutions as by the 5 § of 12 V., c. 78, are to be had in common by counties united under said act: provided that any county or counties now having between them a registry office for the registration of titles shall continue to have the same as before this act, except that each county entitled to a representative shall also have a separate registry office.

§ 3. All the provisions in §§ 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 35 and 37 of 12 V., c. 78, (respecting the dissolution of unions of counties) shall, in so far as consistent with the other provisions of this act, apply to the unions of counties formed under this act.

§ 4. That at any time after the first day of February next (1852), it shall be lawful for the Governor in council to issue a proclamation with reference to any of the counties of Elgin, Waterloo, Ontario, Brant, Grey, Lambton, or Welland, naming a place within such county for a county town, and erecting the town reeves into a provisional municipal council for such county; and each such provisional council shall, with respect to such county, possess and exercise all the rights, powers, privileges and duties conferred upon provisional municipal councils, under the said recited act (12 V., c. 78.) The first meeting of such provisional municipal council to be held at the county town appointed by such proclamation, and at such time as thereby appointed.

§ 5. That so soon as the court house and gaol in one of the said counties shall have been completed in the county town, according to the 15 § of the act last cited, and the other provisions of that section complied with, it shall be lawful for the Governor in council to issue a proclamation dissolving the union between such county, and the county or counties united with; it and if united with more than one

county, the remaining counties shall form a union until separated under the provisions of this act.

§ 6. Provision made for the county property in cases of townships or other tracts of land or localities being detached from one county and attached to another.

§ 7. And for the apportionment of the debt between the elder and younger counties, by which names they are to be in future designated.

§ 8. Provision also made for the Guelph and Dundas road debt.

§ 9. Acts 12 V., c. 81, and 13 & 14 V., c. 64, to apply to counties and townships constituted under this act.

§ 10. Inconsistent enactments repealed.

§ 11. The limits of all the townships on the river St. Lawrence, lake Ontario, the river Niagara, lake Erie, the river Detroit, lake St. Clair, the river St. Clair, or lake Huron, shall extend to the boundary of the province in such lake or river, and shall include islands. The limits of the townships on the river Ottawa shall extend to the middle or main channel including islands, except the islands in front of the seignory of La Petite nation and the "Grand Calumet," and "Grand and Little Allumettes islands," which belong to Lower Canada, the middle of the main channel between the said named islands, and the southerly bank of the Ottawa river, being the boundary between Upper and Lower Canada. The limits of the townships in the county of Glengary, extended to the middle of lake St. Francis, and to the middle of the main channel of the river St. Lawrence, including islands. The limits of the townships on the bay of Quinté, the river Trent and its lakes, lake Simcoe, the river Severn, the river Rideau and its lakes, and the river Thames, the Grand river, and other rivers, lakes and bays not herein-before mentioned, extended to the middle of the said lakes and bays, and to the middle of the main channels of such rivers, including islands, excepting islands or parts of islands which are townships by themselves, or included in other townships in the original survey.

§ 12. Provision as to suits pending.

§ 13. That for the purposes of representation in the Provincial Parliament, the counties mentioned in schedule C. shall be united under the names assigned, and each union shall be represented by one member, and every other county in Upper Canada, except the county of York, by one member, and the county of York by two members.

§ 14. That the small tracts of land mentioned in schedule D. shall form new townships by the name assigned, and provision made as to the property and debts of the "elder" and

“younger” townships; and where two townships shall be united under this act, the property and liabilities of each shall be assumed by the new township, and at the first election of councillors in any such new township, the warden of the county shall appoint the returning officer, the place of election, and time and place of the first meeting of town council.

§ 15. The portions of townships in schedule E. detached, and to form part of the townships as per schedule.

§ 16. Prisoners for debt on the limits of the united counties of Essex and Lambton, may pass through Kent on their way to either of said counties, and so the sheriff in conveying any such prisoner to the gaol of the said counties in Essex.

§ 17. Fees to registrars furnishing statements.

§ 18. This act to commence on the 1st day of January, 1852.

SCHEDULE A.

Counties.

1. *The County of Glengary* shall consist of the townships of Charlottenburgh, Kenyon, Lochiel, Lancaster and the Indian reservation adjoining to the said townships of Charlottenburgh and Kenyon.

2. *The County of Stormont* shall consist of the townships of Finch, Osnabruck, Roxborough, and Cornwall.

3. *The County of Prescott* shall consist of the townships of Alfred, Caledonia, Hawkesbury East, Hawkesbury West, Longueil, Plantagenet North, and Plantagenet South.

4. *The County of Russell* shall consist of the townships of Clarence, Cumberland, Cambridge and Russell.

5. *The County of Carleton* shall consist of the townships of Fitzroy, Goulburn, Gower North, Gloucester, Huntly, March, Marlborough, Osgood, Tarbolton and Nepean.

6. *The County of Renfrew* shall consist of the townships of Admaston, Blithfield, Bagot, Bromley, Horton, McNab, Pembroke, Ross, Stafford, Westmeath, and all that tract of land lying between the western boundaries of the townships of Lavant, Blithfield, Admaston, Bromley, Stafford and Pembroke, and the Ottawa river, and a line drawn parallel to the general course of the said boundaries of the said townships from the western corner of the township of Clarendon to the Ottawa river.

7. *The County of Lanark* shall consist of the townships of Montague, Elmesley North, Burgess North, Sherbrooke North, Sherbrooke South, Bathurst, Drummond, Beckwith, Dalhousie, Lanark, Ramsay, Lavant, Darling and Pakenham.

8. *The County of Dundas* shall consist of the townships of Mountain, Matilda, Winchester and Williamsburg.

9. *The County of Grenville* shall consist of the townships of Edwardsburgh, Wolford, Gower South, Oxford, and Augusta.

10. *The County of Leeds* shall consist of the townships of North Crosby, South Crosby, Burgess, Bastard, Elmsley, Kitley, front of Leeds and Lansdown, rear of Leeds and Lansdown, Escott, Yonge, and Elizabethtown.

11. *The County of Frontenac* shall consist of the townships of Wolfe Island, (including Simcoe Island, Garden Island, Horse Shoe Island, and Mud Island), Clarendon, Barrie, Palmerston, Kennebec, Olden, Oso, Hinchinbrooke, Bedford, Portland, Loughborough, Storington, Pittsburgh, Howe Island, and Kingston.

12. *The County of Addington* shall consist of the townships of Camden, Ernestown, Kalader, Anglesea, Sheffield, and Amherst Island.

13. *The County of Lennox* shall consist of the townships of Adolphustown, Fredericksburg, Fredericksburgh additional, and Richmond.

14. *The County of Prince Edward* shall consist of the townships of Athol, Ameliasburgh, Hillier, Hallowell, Marysburgh, and Sophiasburgh.

15. *The County of Hastings* shall consist of the townships of Lake, Tudor, Grimstrophe, Marmora, Madoc, Elzevir, Rawdon, Huntingdon, Hungerford, Sidney, Thurlow and Tyendinaga.

16. *The County of Northumberland* shall consist of the townships of Murray, Brighton, Cramahe, Haldimand, Hamilton, Seymour, Percy, Alnwick, and Monaghan South.

17. *The County of Durham* shall consist of the townships of Hope, Clarke, Darlington, Cavan, Manvers, and Cartwright.

18. *The County of Peterborough* shall consist of the the townships of Belmont, Methuen, Burleigh, Dummer, Harvey, Douro, Smith, Monaghan North, Asphodel, Ennismore, and Otonabee.

19. *The County of Victoria* shall consist of the townships of Mariposa, Ops, Emily, Eldon, Fenelon, Bexley, Verulam and Somerville.

20. *The County of Simcoe* shall consist of the townships of Orillia, Matchedash, Tay, Medonte, Oro, Vespra, Flos, Tiny, Sunnidale, Nottawasaga, Gwillimbury West, Essa, Tecumseth, Adjala, Tossorontio, Mulmur, Mono, and Innisfil, together with the tract of land bounded on the east by the line between the late Home and Newcastle Districts prolonged to French River, on the west by Lake Huron, on the north by French River, and on the south by the River Severn and the township of Rama, and the islands in Lakes Simcoe and Huron, lying wholly or for the most part, opposite the said county of Simcoe, or any part thereof, and contiguous thereto.

21. *The County of York* shall consist of the townships of

Etobicoke, Vaughan, Markham, Scarborough, York, King, Whitchurch, Gwillimbury East, and Gwillimbury North.

22. *The County of Peel* shall consist of the townships of Albion, Caledon, Chinguacousy, Toronto, and Toronto Gore.

23. *The County of Ontario* shall consist of the townships of Whitby, Pickering, Uxbridge, Reach, Brock, Georgina, Scott, Thora, Mara, Scugog, and Rama.

24. *The County of Halton* shall consist of the townships of Esquesing, Trafalgar, Nassagaweya and Nelson.

25. *The County of Waterloo* shall consist of the townships of North Dumfries, Waterloo, Wilmot, Woolwich, and Wellesley.

26. *The County of Brant* shall consist of the townships of Brantford, Onondaga, Tuscarora, Oakland, South Dumfries, and Burford, and the village of Paris.

27. *The County of Wellington* shall consist of the townships of Erin, Puslinch, Guelph, Nichol, Garafraxa, Eramosa, Peel, Maryborough, Minto, Arthur, Luther, Amaranth and Pilkington.

28. *The County of Grey* shall consist of the townships of Derby, Sydenham, Saint Vincent, Sullivan, Holland, Euphrasia, Collingwood, Bentinck, Glenelg, Artemesia, Osprey, Normanby, Egremont, Proton, and Melancthon, together with that portion of the peninsular tract of land known as the Indian Reserve, and situated between a line drawn northward from the north east angle of Arran, and the northwest angle of Derby, until it strikes Colpoy's Bay on the east side of the Indian Village, and the waters of the Georgian Bay, together with the islands contiguous thereto.

29. *The County of Bruce* shall consist of the Townships of Huron, Kinloss, Culross, Carrick, Kincardine, Greenock, Brant, Bruce, Saugeen, Elderslie, and Arran, together with all that portion of the peninsular tract of land known as the Indian Reserve, and not included in the County of Grey, together with all the islands in Lake Huron and the Georgian Bay contiguous thereto.

30. *The County of Huron* shall consist of the townships of Hay, Stephen, McGillivray, Biddulph, Usborne, Howick, McKillop, Grey, Morris, Turnberry, Ashfield, Wawanosh, Colborne, Hullett, Tuckersmith, Stanley, and Goderich.

31. *The County of Perth* shall consist of the townships of Blanchard, Hibbert, Fullerton, Downie, including the Gore of Downie, Logan, Ellice, Easthope North, and Easthope South, Elma, Wallace, Mornington.

32. *The County of Lambton* shall consist of the townships of Bosanquet, Plympton, Warwick, Sarnia, Moore, Enniskillen, Brooke, Sombra, including Walpole Islands, St. Ann's Island, and the other islands at the mouth of the river St. Clair, Dawn and Euphemia.

33. *The County of Kent* shall consist of the townships of Orford, Howard, Camden, Chatham, Harwich, Dover East, Dover West, Raleigh, Tilbury East, Romney and Zone.

34. *The County of Essex* shall consist of the townships of Mersea, Gosfield, Colchester, Rochester, Maidstone, Malden, Anderdon, Tilbury West, and Sandwich.

35. *The County of Elgin* shall consist of the townships of Aldborough, Dunwich, Southwold, Yarmouth, Malahide, Bayham, and South Dorchester.

36. *The County of Middlesex* shall consist of the townships of Mosa, Ekfrid, Caradoc, Metcalfe, Adelaide, Williams, Lobo, Nissouri West, North Dorchester, Delaware, Westminster and London.

37. *The County of Norfolk* shall consist of the townships of Houghton, Middleton, Charlotteville, Windham, Townsend, Woodhouse, Walsingham, including Long Point.

38. *The County of Oxford* shall consist of the townships of Zorra East, Zorra West, Oxford North, Oxford East, Oxford West, Dereham, Norwich, Blenheim, Blandford, Nissouri East, and the village of Woodstock.

39. *The County of Haldimand* shall consist of the townships of Walpole, Oneida, Seneca, North Cayuga, South Cayuga, Canborough, Rainham, Dunn, Moulton and Sherbrooke.

40. *The County of Welland* shall consist of the townships of Pelham, Thorold, Stamford, Crowland, Willoughby, Wainfleet, Humberstone, and Bertie.

41. *The County of Lincoln* shall consist of the townships of Grimsby, Clinton, Louth, Grantham, Caistor, Gainsborough, and Niagara.

42. *The County of Wentworth* shall consist of the townships of Beverly, Flamborough East, Flamborough West, Ancaster, Glanford, Binbrook, Saltfleet, and Barton.

SCHEDULE, B.

Counties united for Municipal, Judicial, and other purposes.

1. Essex and Lambton.
2. Huron, Bruce and Perth.
3. Middlesex and Elgin.
4. Lincoln and Welland.
5. Wentworth, Halton, and Brant.
6. Wellington, Waterloo and Grey.
7. York, Ontario and Peel.
8. Northumberland and Durham.
9. Peterborough and Victoria.
10. Frontenac, Lennox and Addington.
11. Leeds and Grenville.
12. Lanark and Renfrew.
13. Prescott and Russell.
14. Stormont, Dundas and Glengary.

SCHEDULE, C.

Counties United for the purpose of Representation.

Superseded by the 16 V., c. 152. See title "*Parliamentary Representation.*"

SCHEDULE D.

New Townships.

1. *Howe Island* shall consist of the island of that name.
2. *East Nissouri* shall include and consist of that part of the present township of Nissouri, which lies eastward of the line dividing the seventh concession thereof from the eighth.
3. *West Nissouri*, which shall include and consist of the residue of the present township of Nissouri.
4. *North Dumfries*, which shall include and consist of the six northern concessions of the present township of Dumfries.
5. *South Dumfries*, which shall include and consist of the residue of the present township of Dumfries.
6. *North Dorchester*, which shall include and consist of all that part of the present township of Dorchester, lying to the northward of the line between the 6th and 7th concessions south of the river Thames.
7. *South Dorchester*, which shall include and consist of the residue of the present township of Dorchester.
8. *Pilkington*, which shall include and consist of that part of the present township of Woolwich, known as the Pilkington tract.
9. *Scugog*, which shall include and consist of all those parts of the present townships of Cartwright and Reach which compose the island known as Scugog Island.
10. *Orillia*, which shall include and consist of the present township of North Orillia and the present township of South Orillia.
11. *Brighton*, which shall include and consist of all the lots from number 1 to 10, both inclusive, in the 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 concessions, and in the broken front of the present township of Cramahe, and of the lots from number 23 to 35, both inclusive, in the 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 concessions, and in the concessions A. and B., and the broken front of the present township of Murray, and the peninsula of Presqu' Isle.

SCHEDULE E.

Tracts detached from Townships and attached to others.

1. The lots on Yonge-street, in the present township of West Gwillimbury, shall be detached from the said township, and be annexed to and form part of East Gwillimbury; and the residue of that part of the said township of West Gwillimbury

which lies on the south-east side of the west branch of the Holland river shall be detached from the said township of West Gwillimbury, and be annexed to and form part of the township of King.

2. That part of the present township of Cartwright, lying to the north of Scugog lake, shall be detached from the said township of Cartwright, and be annexed to and form part of the township of Mariposa.

3. That part of the present township of Nichol, known as the Town Plot of the village of Elora, shall be detached from the present township of Nichol, and be annexed to and form part of the township of Pilkington, and the boundaries of such Town Plot shall be fixed by proclamation, to be issued by the Governor-General in council.

4. The peninsula of Presqu' Isle shall be detached from the present township of Murray, and shall be annexed to and form part of the township of Brighton.

5. The Gore of Murray, lying between the tenth concession of the township of Murray and the township of Seymour, shall be detached from Murray and form part of the township of Seymour.

6. That part of the present township of North Dorchester, lying north of the river Thames and east of the middle of the road allowance between lots numbers eighteen and nineteen, shall be detached from the said township, and shall be annexed to and form part of the township of Oxford North.

The counties are differently arranged for representation purposes by the 16 V., c. 152.

See title "*Parliamentary Representation.*"

COUNTY ATTORNEY.

By 20 V., c. 59, § 1, there shall be a county attorney in each county, to aid in the administration of justice.—§ 2. Such county attorney shall be a barrister of not less than three years' standing, and a resident in the county. § 3. To be appointed by the Governor. § 4, not to act directly or distinctly as counsel or attorney for any prisoner or party charged with any offence punishable by the criminal law. § 5. His duties—1. To receive all papers connected with criminal charges transmitted to him by magistrates; to cause further investigation when necessary; to compel attendance of witnesses at the assizes or quarter sessions. 2. To institute and conduct prosecutions at the sessions on the part of the Crown, and in recorder's courts. 3. To watch over private prosecutions at the sessions, and to assume the conduct of the case where justice towards the accused seem to demand his interposition. 4. To deliver to the crown officer all papers connected with the criminal business of the court of

assize; to represent, and if required, aid the crown officer; and, in the absence of the crown officers to represent the Crown and conduct the criminal business. § 5. To institute and conduct summary proceedings before magistrates where the public revenue, &c., is concerned. § 6. To advise and instruct magistrates in respect of criminal offences brought before them for preliminary investigation or adjudication upon request in writing. § 7. To perform such other duties as the Governor in council shall require. § 8. To act as "receiver of fees" in respect of the county court, court of insolvent debtors and division courts in his county. § 9. To perform such other duties as may be assigned to him by any statute. § 6. Such county attorney to take the oath of office prescribed. § 7. Entitled to certain fees on trials at the quarter sessions. § 8. The Governor in council authorised to make regulations as to the duties of county attorneys. § 9. Clerks of the peace to be hereafter appointed to be barristers of not less than three years' standing; and shall be *ex officio* county attorneys. § 10. In case of the illness or unavoidable absence of the county attorney, the senior judge of the county court is to appoint another barrister *pro tem.* § 11. Justices committing or bailing parties on criminal charges to deliver the informations, depositions, and other papers connected therewith to the county attorney; also, the coroner, the inquisition, recognizances, depositions and statements of the accused taken before him; and in every case in which an information or complaint may be laid before a justice, whether proceedings have been taken thereon or not, such justice shall hand over to the county attorney, all papers connected therewith, on being required by such county attorney. §§ 13, 14, 15, 16 & 17, relate to financial matters.

COUNTY COURT.

By 8 V., c. 13, entitled "An Act to amend, consolidate and reduce into one act the laws now in force establishing or regulating the practice of district courts, &c.," all former acts are repealed, and it is enacted, "that there be established in every district a court of law and record by the name of the District Court, with one or more judges over the same, being barristers of at least five years' standing, to hold plea of all causes or suits relating to *debt, covenant, or contract*, to the amount of £25; and in contract or debt on the common counts, where the amount is ascertained by the signature of defendant, to £50, and in matters of *tort* not exceeding £20, and where titles to land shall not be brought in question."

By 9 V., c. 7, the court is to hold four terms in each year, commencing on the Monday in the week next but three preceding the week in which the county quarter sessions are held, ending on Saturday of the same week.

By 9 V., c. 36, the judge is to hold office during pleasure.

By 12 V., c. 63, appeals to lie from the County Court to Common Pleas, as well as the Queen's Bench.

By 12 V., c. 78, § 4, name of the court changed to "County Court."

By 13 & 14 V., c. 52, the jurisdiction of this court is extended to and authorised to hold plea of all causes relating to debt, covenant, or contract, to the amount of £50; and in debt or contract, where the amount is ascertained by the signature of the defendant, to £100, and in matters of *tort* relating to personal chattels, where the damages shall not exceed £30, and the title to land not be brought in question. Superior law courts to have a concurrent jurisdiction, but the plaintiff not to recover more than county court costs.

§ 2. Writs of summons and pleadings in this court may be served in any county, and the defendant must plead thereto within the usual time, as if served in the county where suit instituted.

§ 3. Writ of subpoena and *execution*, and rules on sheriff's orders and proceedings, may be issued into any other county, and served and executed there.

§ 4. All actions in the county courts shall be brought either in the county in which the defendants, or one or more of them shall then reside, or in the county in which the debt was contracted or made payable, or the contract was made, at the option of the plaintiff; and in default thereof the proceedings before plea, on judgment signed, may be set aside with costs.

By 16 V., c. 20, the judge whose commission is of the oldest date is to be judge of the court: others to be junior judges.

By 18 V., c. 20, in case of the judge's unavoidable absence the judge of any other court may act in his place.

By 16 V., c. 119, an equitable jurisdiction is conferred upon this court in minor matters and to a limited extent.

COUNTY FUNDS.

By 8 V., 4, c. 72, § 3, moneys arising from duties on licenses to keep houses of public entertainment issued after this act, shall be appropriated to the uses of the districts, or other municipal divisions of the province in which they shall be collected, and shall be paid over to the treasurers thereof

accordingly. § 4. Upper Canada rebellion losses debentures to be issued under this act, to be first paid out of the duties on licenses in Upper Canada.

COURT HOUSE.

The 32 G. III., c. 8, provides that one shall be erected in every district.

See also *post* title "*Gaols.*"

CRIMINAL LAW.

By imp. statute 14 G. III., c. 83, § 11, it was enacted that the criminal laws of England should continue to be administered and observed as law in the province of Quebec (of which the province of Upper Canada then formed a part) as well in the description and quality of the offence, as in the method of prosecution and trial, and the punishments and forfeitures thereby inflicted, to the exclusion of every other rule of criminal law, or mode of proceeding, which prevailed in the said province before the year 1764; subject to such alterations as the provincial legislature might thereafter make therein.

After the division of the said province into the late provinces of Upper Canada and Lower Canada, by stat. *40 G. III., c. 1, entitled, "An Act for the further introduction of the criminal law of England into this province," it is enacted, that the criminal law of England, as it stood on the 17th day of September, 1792, shall be and the same is thereby declared to be the criminal law of Upper Canada.

Subsequently, many alterations and improvements were made in the criminal law of Upper Canada, which are referred to in different parts of this work; and since the re-union of the said provinces, now constituting the province of Canada, the following important acts have been passed relating to the whole of the united province, viz:—

The 4 & 5 V., c. 24, intituled "An Act for improving the administration of criminal justice in this province."

The 4 & 5 V., c. 25, intituled "An Act for consolidating and amending the laws in this province relative to larceny and other offences connected therewith."

The 4 & 5 V., c. 26, intituled "An Act for consolidating and amending the laws in this province relative to malicious injuries to property."

The 4 & 5 V., c. 27, intituled "An Act for consolidating and amending the statutes in this province relative to offences against the person."

The provisions contained in these acts will be found under their respective titles: each of the said acts contains a clause repealing all former acts or provisions of law inconsistent or contradictory to said acts. The following acts relating to criminal law and procedure have also been subsequently passed, viz., 6 V., c. 5; 12 V., c. 21; 14 & 15 V., c. 13; 18 V., c. 92; 20 V. c. 61; the details of which are given under the titles to which they severally relate.

CRIMINAL LUNATIC ASYLUM.

By 20 V., c. 28, § 28, provision is made for the erection of an asylum at Kingston for the reception of lunatic convicts, and the Governor may appoint thereto a medical superintendent and other officers with the same powers and duties as those possessed by similar officers of the provincial lunatic asylum at Toronto. § 29. Provision for the removal of convicts to the criminal lunatic asylum; and for reconveyance to the penitentiary upon their recovery. § 31. Said criminal lunatic asylum may also be used for the safe keeping of insane and dangerous lunatics under the 14 & 15 V., c. 83.

CRUELTY TO ANIMALS—PREVENTION.

By the municipal act, 12 V., c. 81, the municipalities of incorporated towns, villages and cities respectively, are empowered to make by-laws for preventing the excessive beating or cruel and inhuman treatment of animals on the public highway of such localities.

By 20 V., c. 31, § 1. If any person shall, from and after the passing of this act, wantonly, cruelly and unnecessarily beat, bind, illtreat, abuse or torture any horse, mare, gelding, bull, ox, heifer, steer, calf, mule, ass, sheep, lamb, pig or other cattle, or any poultry, or any dog or domestic animal or bird, or if any person who shall drive any cattle or other animal, shall, by negligence or ill-usage in the driving thereof, be the means whereby any mischief, damage or injury shall be done by any such cattle or other animal, every such offender being convicted of any or either of the said offences before any one justice of the peace for the city, town, district or county in which any such offence shall have been committed, shall, for every such offence, forfeit and pay (over and above the amount of damage or injury, if any, done thereby, which damage and injury shall and may be ascertained and determined by such justice), such a sum of money not exceeding £2 10s., nor less than 5s., with costs, as to such justice shall seem meet: or the offender shall, in default of payment, be committed to the common gaol or

house of correction for the city, town, district or county in which such offence shall have been committed, there to be imprisoned for any time not exceeding fourteen days; provided that nothing in this act contained shall prevent or abridge any remedy by action against the employer of any such offender, when the amount of damage is not sought to be recovered by virtue of this act: provided that nothing in this section contained shall make it unlawful for any person to bind any sheep, lambs, calves or pigs, for the purpose of conveying and delivering them to or at any market at a distance not exceeding fifteen miles from the owner's house or premises; but such animals shall not remain so bound for a longer space than half-an-hour after their arrival at such market.

§§ 2 and 3 relate to the treatment of cattle impounded—for which see *post* title "*Pound Keeper*."

§ 4. That when and so often as any of the said offences shall happen, it shall be lawful for any constable or other peace officer, or for the owner of any such cattle, &c., or upon the information of any other person, (who shall declare his or their name or names and place or places of abode to the said constable or other peace officer) to seize and forthwith (without any other authority or warrant) to convey any such offender before any one justice of the peace of the locality, to be dealt with according to law, and such justice shall forthwith proceed to examine upon oath any witness or witnesses.

§ 5. If any person apprehended under this act, shall refuse to discover his name and place of abode to the justice, he shall immediately be delivered over to a constable or other peace officer, and shall by him be conveyed to the common gaol or house of correction for the city, town, &c., within which the offence was committed, or in which the offender was apprehended, there to remain for a space not exceeding one calendar month, or until he shall make known his name and place of abode to such justice.

§ 6. Offences to be prosecuted within three calendar months; and the evidence of the complainant to be sufficient in the absence of other evidence.

§ 7. In case of non-payment of the damage or penalty within such period as the convicting justice shall appoint, it shall be lawful for such justice (unless where otherwise specially directed) to commit the offender to the common gaol or house of correction, to be imprisoned with or without hard labour, for any term not exceeding *fourteen days*, when the amount awarded, or penalty imposed, or both (as the case

may be), with costs, shall not exceed £5, and for any term not exceeding *two* calendar months, when exceeding £5. The commitment in either case to be determinable on payment of the amount and costs.

§ 8. It shall be lawful for any one such justice, in all cases in which no other mode of proceeding is provided for by this act, or in case where any person shall not be conveyed before any justice by the authority of this act, upon information or complaint made by any person of any offence against this act, within *fourteen days* (a) next after the commission of any such offence, to summon the accused to appear before him, or any other justice, at a time and place to be named, and on his appearance, or default, such justice may proceed to examine into the matter, and upon due proof by voluntary confession, or by oath of one or more credible witnesses, to award, order, give judgment or convict for the damage or injury, penalties or forfeiture, as the case may be.

§ 9. The conviction to be in the following form, or to the effect thereof, or as near thereto as may be :

County (as the case } Be it remembered that on the day
 may be) of } of in the year of our Lord,
 at , in the County (or as the case may be) of , A. B.
 is convicted before me J. P., one of her Majesty's justices of
 the peace for the said county (or as the case may be) for that the
 said A. B. on the day of in the year at
 in the said did (*here specify the offence*); and I the said
 J. P. do adjudge the said A. B. for his said offence to forfeit
 and pay the sum of (*here state the penalty actually imposed, or
 the penalty, and also the amount of damages for the injury done,
 or as the case may be*), and also to pay the sum of for costs,
 and in default of immediate payment of the said sums, to be
 imprisoned in the , (*and as the case may be*) to be there
 kept at hard labour for the space of unless the said sums
 shall be sooner paid; and I direct that the said sum of (*the
 penalty*) shall be paid as follows; that is to say, one moiety
 thereof to the of the said of to be by
 applied according to ; and the other moiety thereof to C.
 D. of the prosecutor, (*or as the case may be*) and that the
 said sum of (*the sum for the amount of injury done, if any
 sum is awarded*) shall be paid to E. F. (*or the said C. D. as the
 case may be*); and I do order that the said sum of for
 costs shall be paid to the said C. D.

Given under my hand and seal, the day and year first above-mentioned.
J. P. (L. S.)

(a) The previous 6 § limits the prosecution of offences to three calendar months; the 8 § would seem to imply that it must be within *fourteen days* after the offence.

§ 10. Summons against offenders may be served personally or left at his usual or last place of residence in whatever county or place. § 11. Any constable or peace officer refusing or neglecting to serve or execute any summons or warrant under this act shall forfeit any sum not exceeding £5; and in default of payment be committed to the county gaol or house of correction for one calendar month unless sooner paid. § 12. Penalties under this act to be distributed as follows, viz., one moiety to the treasurer of the locality, to be applied on the streets or roads, and the other moiety with full costs to the prosecutor or such other person as to such justice shall seem fit; and all damages shall be paid to the person sustaining the same. § 13. Any person giving information shall be deemed a competent witness, notwithstanding he may be entitled to any part of the penalty. § 14. All actions brought against any person for any thing done in pursuance of this act shall be commenced within *one calendar month*, and shall be brought and tried in the county or place where arising; and notice in writing thereof shall be given to the defendant *fourteen* days before the commencement; and the defendant may plead the general issue and give this act in evidence; and if the cause of action shall appear to arise in respect of any matter or thing done in pursuance or under the authority of this act, or if brought after the expiration of one calendar month, or in any other county or place, or if notice shall not have been given as aforesaid, or if *tender* of sufficient amends shall have been made before action commenced, or a sufficient sum paid into court afterwards, the verdict shall be for defendant; and if a verdict for the defendant, or the plaintiff become nonsuit, or shall discontinue, or if on demurrer or otherwise judgment shall be given against him, defendant shall recover full costs as between attorney and client; and if verdict given for the plaintiff, he shall not have costs unless the judge shall certify his approbation of the action, and verdict obtained thereupon. § 15. Any person aggrieved by conviction of any justice under this act, may appeal against such conviction, giving *fourteen* days' notice of such appeal, and of the cause and matter thereof to such justice to the next quarter sessions, who shall have power to hear and determine such appeal in the usual manner, and award costs. § 16. Interpretation clause, defining the meaning of certain words and expressions. § 17. This act not to affect any municipal by-law, except so far as the same may be at variance or inconsistent with this act. § 18. The 2 and 3 §§ shall extend to Upper Canada only. § 19. To be a public act.

CURRENCY.

By 16 V., c. 158, all former acts relating to the currency are repealed. § 1. The denominations of money in the currency of this province shall be pounds, dollars, shillings, pence, cents, and mills. The pound, shilling, and penny, shall have the same proportionate value as they now have. The dollar shall be one-fourth of a pound, the cent 100 part of a dollar, and the mill $\frac{1}{10}$ of a cent; and in any statement as to money, or money value in any agreement, *indictment*, or *legal proceeding*, the same may be described in pounds, shillings, and pence, or in dollars, cents, and mills, or in either denomination.

§ 3. The pound currency shall be equivalent to 101 grains, and 321 thousandths of a grain troy weight of gold of the standard of fineness now prescribed by law for the gold coins of the United Kingdom; and the dollar currency shall be equivalent to $\frac{1}{4}$ part of the weight aforesaid of gold of the same standard; and any gold coins of the standard aforesaid struck at the Royal Mint shall by such names as shall be assigned to them in any proclamation declaring them lawful money, pass current, and be a legal tender.

§ 4. The pound sterling shall be equal to £1 4s. 4d., or \$4 86 cents and $\frac{2}{3}$ of a cent currency; and any British sovereign of lawful weight shall pass current and be a legal tender for that sum; and the other gold coins of the United Kingdom of lawful weight shall pass current, and be a legal tender for sums in currency equal according to the proportions aforesaid, to their sterling value.

§ 5. Proviso as to the meaning of the word "Sterling" in contracts, &c., made before this act shall be in force.

§ 6. Public accounts to be kept in such denominations as her Majesty shall direct. (*But see 20 V., c. 18, which directs that all government accounts shall from and after the 31st December, 1857, be rendered in dollars and cents.*)

§ 7. Silver coins struck at the Royal Mint of the fineness now fixed by law for the silver coins of the United Kingdom, shall, by such names as shall be assigned to them by proclamation, pass current and be a legal tender at the rates assigned.

§ 8. Silver coins of the United Kingdom, until otherwise ordered by proclamation, shall pass current for sums in currency equal to the sums in sterling for which they pass current in the United Kingdom, but after the proclamation shall cease to be current.

§ 9. Silver coins not to be a legal tender over £2 10s. in any one payment.

§ 10. Copper coins of the United Kingdom, while lawfully current therein, shall pass current, and be a legal tender in this province to the amount of *one shilling* currency at the following rates: viz., the copper penny for *two* cents, the copper half-penny for *one* cent, and any other subdivision of the said copper penny, in proportion. Provided, that any copper coins of like weight, which her Majesty may direct to be struck for the purpose, shall pass current, and be a legal tender as aforesaid, and if such coins be struck, her Majesty may by proclamation declare the copper coins of the United Kingdom shall not be lawful money of this province.

§ 11. The gold eagle of the U. S. coined before the 1st July, 1834, and weighing 11 penny weights 6 grains troy weight, shall pass current and be a legal tender for 10 dollars and $66\frac{2}{3}$ cents. or £2 13s. 4d. currency; and the half eagle of like date, and proportionate weight, for only half the said sum. The gold eagle coined after the last mentioned day, and before the 1st of January, 1852, or after that day, but while the standard of fineness for gold coins then fixed by the laws of the U. S. shall remain unchanged, and weighing 10 penny weights, 18 grains troy weight, shall pass current and be a legal tender in this province for 10 dollars, or £2 10s. currency; and the multiples or halves of said eagle of the date and proportionate weight shall pass current and be a legal tender for proportionate sums.

§ 12. Other foreign gold coins may be made current by proclamation. § 13. If any person shall colour or gild or case over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin of coarse gold or of coarse silver, or of base metal resembling any coin, or shall make or cause to be made, or shall buy, sell, or procure for himself or for another, or shall knowingly bring and import, or cause to be brought and imported into this province, any forged, false or counterfeit gold, silver, or copper coin, like to any of the gold, silver, or copper coin made or declared by this act to be lawfully current, or any coin of coarse gold, or of coarse silver, or of base metal coloured, gilded or cased over with gold or silver, or with any wash or materials, producing the colour of gold or silver, and resembling any such coin, or shall utter or attempt to utter, or tender in payment to any person or persons (as being any of the gold, silver or copper coins hereby made or declared to be current) any false or counterfeit piece counterfeited to any of the gold, silver, or copper coins made or declared to be current by this act, or any of the higher or lower denominations thereof, knowing the same to be false or counterfeit, such person shall

be guilty of a *misdemeanor*, and on conviction be liable to be imprisoned and kept at hard labour in the provincial penitentiary for not less than three nor more than fourteen years, in the discretion of the court; and for a second offence shall be deemed guilty of *felony*, and liable to imprisonment for life in the said penitentiary, or for any time not less than *fourteen* years in the discretion of the court.

§ 14. If any person shall form, make, cut, sink, stamp, engrave, repair or mend, or assist in so doing, or shall have in his or her possession, except for some known and lawful purpose, any false or counterfeit coin, counterfeit to any coin lawfully current under this act, or any die, press, tool or instrument, or metal or material of any kind used, constructed, devised, adapted or designed for counterfeiting any coin lawfully current under this act, such person shall be guilty of a *misdemeanor* and punishable accordingly, and the proof of *lawful purpose* shall lie upon him or her.

§ 15. It shall be lawful for any justice of the peace on complaint made before him upon the oath of *one* credible person that there is just cause to suspect that any person or persons is or are, or hath or have been concerned in making counterfeiting or imitating any such coin as aforesaid by warrant under the hand (a) of such justice of the peace to cause the dwelling house, room or workshop, outhouse or other building, yard, garden, ground or other place belonging to such suspected person or persons, or when such suspected person or persons shall be suspected to carry on such making, counterfeiting or imitating, to be searched for any such counterfeit coin; and if any such coin, or any such die, press, tool or instrument, metal or material as aforesaid shall be found in the possession or custody of any person or persons whomsoever, not having the same for some lawful purpose, it shall be lawful for any person or persons discovering the same to seize, and he or they are hereby authorised and required to seize and carry the same forthwith before a justice of the peace having jurisdiction within the locality in which the same shall be seized, who shall cause the same to be secured and produced in evidence against any person or persons who shall or may be prosecuted for any such offence as aforesaid in any court of competent jurisdiction, and the same after being so produced in evidence shall by order of the court be defaced or destroyed, or otherwise disposed of as the court shall direct.

§ 16. Any person to whom any pretended gold, silver, or

(a) *Hand* only in the act; but "hand and seal" probably meant.

copper coin shall be tendered in payment, which shall by the stamp, impression, colour or weight thereof, afford reason to suspect that the same is false or counterfeit, may cut or break such coin, and if counterfeit, the person who tendered it shall bear the loss, otherwise the person who shall have cut or broken it, shall receive it for a sum proportionate to its weight; and if any question shall arise whether such coin be counterfeit, it shall be determined by any justice of the peace, who if he entertain any doubt may summon three skilful persons, the decision of a majority of whom shall be final.

§ 17. If any false or counterfeit coin shall be produced in any court of law, the court shall order the same to be cut in pieces in open court, or in the presence of a justice, and then delivered to or for the lawful owner, if any, claiming the same.

§ 18. Any person knowingly uttering or attempting to utter or offer in payment, as being lawfully current, any gold coin of less value than its lawful weight, or who shall diminish the weight of any such coin with intent to utter or offer it in payment, shall be guilty of a *misdemeanor* and punishable accordingly.

§ 19. Evidence to be given in cases under this act.

§ 10. This act to have force and effect from the day to be appointed by proclamation.

The act came into force on the 1st of August 1854, under proclamation dated 5th July, 1854.

CUSTOMS.

By 10 & 11 V., c. 31. After various provisions relative to importation and entry of goods, &c., it is enacted by § 37, that if any person shall forge or counterfeit any mark or brand to resemble any mark or brand which shall be provided for the purposes of this act, or shall forge or counterfeit the impression of any such mark or brand, or shall sell or expose to sale, or have in his, her or their custody or possession, any goods with a counterfeit mark or brand, knowing the same to be counterfeit, or shall use or fix any such mark or brand to any other goods required to be stamped as aforesaid, other than those to which the same was originally affixed, such goods so falsely marked shall be forfeited, and every such offender or offenders, his, her or their aiders, abettors or assistants, shall, for every such offence, forfeit and pay the sum of £50, which penalty shall be recoverable in a summary way before any two justices of the peace in this province, and in default of payment, the offender shall

be committed to any of her Majesty's gaols in this province, for a period not exceeding twelve calendar months. And if any wilfully false oath be made in any case, where, by this act, an oath is required or authorised, the offender shall be guilty of wilful and corrupt perjury, and punishable accordingly.

§ 36. If any person shall counterfeit or falsify, or use when so counterfeited or falsified, any paper or document required under this act, or for any purpose therein mentioned, whether written, printed or otherwise, or shall by any false statement procure such document, or shall forge or counterfeit any certificate relating to any oath, affirmation or declaration hereby required or authorised, knowing the same to be so forged or counterfeited, such person shall be guilty of a *misdemeanor*, and, on conviction, punished accordingly.

§ 37. If any person or persons shall offer for sale any goods *under pretence* that the same are prohibited, or have been unshipped and run on shore, or brought in by land, or otherwise without payment of duties, such goods (although not liable to duties or prohibited), shall be forfeited, and the offender shall forfeit *treble* the value of such goods, or the penalty of £50, at the election of the prosecutor, recoverable in a summary way, upon legal proof thereof, before any one or more justices, and in default of payment, the offender shall be committed to any of her Majesty's gaols for a period not exceeding sixty days.

§ 38. Contains provisions for custom-house officers making search for smuggled goods, detaining vessels, carriages, &c., engaged in smuggling, and then provides that all masters or persons in charge of any such vessels, and all drivers or persons conducting or having charge of such vehicles or conveyances, refusing to stop when required so to do by such officer or person in the Queen's name, or any person being present at any such seizure or stoppage, and being called upon in the Queen's name by such officer or person to aid and assist him in a lawful way, and refusing so to do, shall forfeit and pay the sum of £50, recoverable on legal proof before any two justices of the peace, and in default of payment, the offender shall be committed to any of her Majesty's gaols for a period not exceeding six months.

§ 39. If any person or persons whatsoever, shall, under any pretence, either by actual assault, force or violence, or by threats of such assault, force or violence, in any way resist, oppose, molest or obstruct any officer of customs or any person acting in his aid or assistance in the discharge of

his or their duty under this act, or any other act of this province relating to customs trade or navigation; or shall wilfully or maliciously shoot at or attempt to destroy or damage any vessel or boat belonging to her Majesty, or in the service of the province, or maim or wound any officer of the army, navy, marine or customs, or any person acting in his aid or assistance, while duly employed for the prevention of smuggling, and in execution of his or their duty; or if any person or persons shall be found with any goods liable to seizure or forfeiture under this or any other act relating to customs trade and navigation, and carrying offensive arms or weapons, or in any way disguised, or shall stave, break, or in any way destroy any such goods before or after the actual seizure thereof, or shall scuttle, sink or cut adrift any vessel, or destroy or injure any vehicle before or after such seizure, or shall wilfully and maliciously destroy or injure by fire or otherwise, any custom-house, or any building whatsoever in which seized or forfeited goods are deposited or kept; such person or persons being convicted thereof, shall be judged guilty of *felony*, and be punishable accordingly.

§ 40. If any five or more persons in company be found together, and they or any of them shall have any goods liable to forfeiture under this act, every such person shall be guilty of *misdemeanor*, and be punishable accordingly.

§ 45. If any person, whether pretending to be the owner or not, shall either secretly or openly, and whether with or without force or violence, take or carry away any goods, vessel, carriage, or other thing which shall have been seized or detained on suspicion, as forfeited under this act, before the same shall have been declared by competent authority to have been seized without due cause, and without the permission of the officer or person having seized the same, or of some competent authority, such person shall be deemed to have stolen such goods, being the property of her Majesty, and to be guilty of *felony*, and liable to punishment accordingly.

§ 47. That if any such goods shall be stopped or taken by such police officer on suspicion that the same have been feloniously stolen, he shall convey the same to the police office to which the offender is taken, there to remain until trial. And the police officer shall give notice in writing to the collector or principal officer of her Majesty's customs at the nearest port of his having so detained such goods; and immediately after the trial such goods shall be deposited in the custom house or other place appointed, and proceedings had

according to law. And in case any police officer making detention of such goods shall neglect to convey the same to such warehouse, or to give such notice of having stopped the same as before described, he shall forfeit £25, recoverable in a summary way before any *two* or more justices, and in default of payment be committed to any of her Majesty's gaols for a period not exceeding thirty days.

The above clauses appear to be all that in any way relate to justices of the peace, or which bring offenders within their cognizance. There are numerous other penalties imposed for contravention of the other clauses, but such penalties are recoverable in another form, and not before justices of the peace.

By the *amendment* act 12 V., c. 1, § 5, *ad valorem* duties are to be ascertained by appraisement. Appraisers to be appointed by the Governor, and such appraisers before acting shall take and subscribe an oath of office (in the form given) before some justice of the peace having jurisdiction where such oath is taken.

§ 19. If any person shall knowingly and wilfully with intent to defraud the revenue of this province, smuggle or clandestinely introduce into the province any goods subject to duty without paying or accounting for the duty thereon, or shall make out or pass or attempt to pass through the custom house any false, forged or fraudulent invoice, or shall in any way attempt to defraud the revenue by evading the payment of the duty or of any part of the duty on any goods, every such person, his, her or their aiders or abettors shall, in addition to any other penalty or forfeiture to which they may be subject for such offence, be deemed guilty of a *misdemeanor*, and on conviction liable to a penalty not exceeding £50, or to imprisonment for a term not exceeding one year, or both, in the discretion of the court.

By the *amendment* act 16 V., c. 85, § 7, it is enacted, that if any warehoused goods shall be fraudulently concealed in or removed from any public or private warehouse in this province, such goods shall be forfeited; and any person fraudulently concealing or removing such goods, or aiding or abetting such removal, shall incur the penalties now imposed on persons illegally importing or smuggling goods into this province.

See also *post* title "*Provincial Revenue.*"

CUTTING AND MAIMING.

Stabbing, cutting or wounding any person with intent to *commit murder* is made a capital offence, punishable by death by 4 & 5 V., c. 27, § 9.

See "*Capital Punishment.*"

And if with intent to disfigure or do some grievous bodily harm, or prevent the apprehension or detainer of any person is made *felony* by 4 & 5 V., c. 27, § 11.

See "*Malicious injury.*"

DEATH—SENTENCE OF.

By *7 G. IV., c. 3, the pronouncing of sentence is dispensed in cases where the court shall be of opinion that the offender is a fit and proper subject to be recommended to the royal mercy.

By *7 W. IV., c. 6, § 3, it may be commuted by the Governor in other cases (excepting treason and murder) for transportation for life, or term of years, or banishment, or solitary confinement with or without hard labour in any penitentiary or house of correction appointed for such purpose. And by 4 & 5 V., c. 24, § 33, may be *recorded* only against the offender when the court shall be of opinion that he is a fit subject for the royal mercy. § 35. Such recording to have the same effect as if the court had pronounced judgment. *See also* § 48, as to the effect of a free or conditional pardon.

By 20 V., c. 61, which provides for appeals and new trials in criminal cases, it is enacted by § 5, that no sentence of death in any case of capital felony shall be passed *to take effect* until the expiration of the term next succeeding the sitting of the court at which such sentence of death shall be passed.

DEER.

See "*Game.*"

DESERTERS.

By *3 V., c. 3, the *44 G. III., c. 2, which related to desertion, is repealed. § 2. If any person, other than enlisted soldiers in her Majesty's service, or sailors engaged in the naval service of her Majesty, shall, by words, or with money, or by any ways, methods, or means whatsoever, directly or indirectly prevail upon, procure, persuade or encourage any such soldier or sailor to desert or leave her Majesty's naval or military service as aforesaid, and shall be thereof lawfully convicted before any court of oyer and terminer and general gaol delivery in this province, such person so offending shall be deemed guilty of a misdemeanor, and upon conviction, shall be liable to be punished by imprisonment in the common

gaol of the district in which such conviction shall happen, or by imprisonment in the provincial penitentiary in this province, for such period as the court before which such trial shall take place shall, in their discretion, adjudge, and shall be further liable to the payment of such fine as the said court shall impose upon such offender. § 3. If any person, other than an enlisted soldier or sailor, shall harbour, conceal, receive, or assist any deserter from her Majesty's naval or military service, knowing him to be a deserter, such person so offending shall be deemed guilty of a misdemeanor, and, upon conviction, shall be liable to the penalties and punishments above-mentioned.

DISTILLERS.

By 9 V., c. 2, § 1, all former acts are repealed. § 2. No person shall act as a distiller, unless licensed, under a penalty of £10 for each day, and forfeiture of stock and apparatus. § 3. District inspector to issue licenses, on payment of £10 duty, to remain in force until 5th January next after date thereof. § 4. No license to be granted except on a written requisition signed by the party. § 5. A further duty imposed of 2d. a gallon on spirits, strong waters or spirituous liquours, to be paid to the district inspector; spirits re-distilled exempt. § 6. Parties obtaining license also to give bond with two sureties, for rendering accounts and payment of duties; § 7, such bond to remain in force during the license; a new bond to be entered into when a new license is granted. § 8. Distillers to have their names and calling inscribed in legible characters in front of the building, under a penalty of £5 for each day of omission. § 9. Distillers to keep a book in the form to be furnished by district inspector, and to be open at all seasonable times to his inspection, wherein such distiller shall enter, daily, the quantity of grain or other vegetable production, or other substance, put by him into the tub, or otherwise used by him for the purpose of producing beer or wash, or consumed by him in any way for the purpose of producing spirits, strong waters, or spirituous liquours, or otherwise disposed of, and the quantity of spirits, spirituous liquours, or strong waters, by him distilled, shewing the quantities produced each time, if there shall have been any distinct sets of operations by reason of which duties shall have become payable, under a penalty of £50 for neglect or false entry; and the inspector may at all times demand to be shown the stock of grain, &c., on hand. § 10. Accounts to be rendered by distillers twice a month to the inspector, of spirits, &c., distilled, with the strength thereof

and the quantity produced each time; and shewing also the quantity of grain, &c., used; such account to be on oath, and in the form following:—

I do solemnly swear, that the account above written, to which I have also subscribed my name, contains a true account of the total quantity of every kind of spirits, or strong water, or spirituous liquors, distilled, manufactured, or made by me, (or by *as the case may be.*) within the time mentioned in the same account, and on which duty is payable, and of the quantities of each kind respectively, and the strength thereof, and also of the quantities produced at each separate time therein mentioned, by a distinct set of operations; and also of the quantities of all grain or other vegetable production or substance consumed by me, (or by the said *as the case may be.*) during the said time. So help me God.

Such affidavit to be made before a justice and delivered with the account to the inspector, who may further interrogate the party, on oath, as to such account, before a justice.

§ 11. False statements to be perjury. § 12. Distillers to produce books to the inspector at any seasonable time, and inspector to have free access to the premises at all times, under a penalty of £20 for each neglect or refusal; no admittance to be required between sunset and sunrise, except when distiller is at work, or unless inspector be accompanied by a peace officer. § 13. Duties to be paid when account rendered, under a penalty of £20 and forfeiture of license. § 14. Duties recoverable although account not rendered, but with three times the amount, as additional penalty. § 15. Distiller not to work his distillery without *ten days'* previous notice, in writing, to the inspector; such notice not to extend to a longer period than *thirty days*; and any distiller working his distillery without giving such notice shall be liable, each day, to the same penalty and forfeiture as if doing so without a license. § 16. Payment of penalties not to release parties from the duties; duties to be recovered with full costs in any court of competent jurisdiction; and the stock in trade and apparatus on the premises are made specially liable therefor; and if forfeited under this act, may be seized, marked and secured by the inspector until condemned, or released by competent authority, and shall not be used in the meantime. § 17. Distillers required to furnish the inspector with lights, ladders, and measures for examining, guaging, &c., any still, vessel, or stock on such premises, under a penalty of £20. § 18. District inspector and persons acting under him to have free access to the premises at any hour of the day or night, and make all necessary inquiries

and searches, subject to the restrictions aforesaid. § 19. Inspectors, or any other persons acting under them, having first obtained a search warrant from a justice of the peace, on affidavit shewing reasonable grounds for issuing thereof, may, at any hour between sunrise and sunset, search any house, building, or place mentioned in such warrant, suspected of having any unlicensed still, auxiliary vessel, mash tub, or other vessel illegally in use therein. § 20. Penalties under this act may be recovered before any *two* or more justices of the peace, where the offence committed, on the oath of two credible witnesses, and if not paid, levied by distress and sale; or such justices may, in their discretion, commit the offender to the common gaol until penalty and costs are paid—one moiety of the penalty to belong to her Majesty, and the other moiety to the prosecutor. § 21, contains a provision also for recovery of the penalties, in civil courts. § 22. Revenue officers to be competent witnesses if not prosecutors; and no person making any seizure under this act shall be liable for damages, if the court shall certify there was *probable cause*. § 23 imposes a penalty of £5 on persons refusing to give evidence when summoned, to be recovered as other penalties. § 24 directs the appropriation of duties. §§ 25, 26. This act to commence on the 5th January, 1847, and to continue in force till the 1st January, 1848, and from thence to the end of the next session.

By 12 V., c. 14, § 1, the duty of 2d. per gallon is repealed; and by § 2, a duty of *one penny* per gallon, wine measure, is substituted, for spirits not exceeding the strength of proof by *Sykes' Hydrometer*, and so in proportion for any greater strength than the strength of proof, and for any greater or less quantity than a gallon, and such duty shall be charged upon the quantity of spirits to be ascertained after the first process of rectification. § 4 authorises the Governor in council to make regulations for warehousing. § 5 enacts that the word *spirits* shall include all spirits, strong waters, and spirituous liquors of any kind. § 6. The 9 V., c. 2, as now amended, is continued until repealed by competent authority.

For forms of proceeding see title "*Summary Conviction.*"

DISTRESS.

To justify taking a distress, the party must have a regular warrant for so doing, and must take care that the things taken are distrainable, and that the distress is made in due time and place.—*Co. Lit.* 47. All distresses must be made in the day time, unless in the case of cattle distrained *damage feasant*.—1 *Inst.* 142; *Bull, N. P.* 61. Persons

making a lawful distress may sell the same upon the premises, in like manner as may be done off the same.—2 *W. & M. Sess.* 1, c. 5.

Of Distress by Warrant of Justices of the Peace.

By statute 27 G. II., c. 20, it is enacted as follows:—In all cases where any justice of the peace is, or shall be required or empowered by any act of parliament to issue a warrant of distress, for the levying of any penalty inflicted, or any sum of money directed to be paid by such act, it shall be lawful for the justice granting such warrant, therein to order and direct the goods and chattels, so to be distrained, to be sold and disposed of within a certain time, to be limited in such warrant, so as such time be not less than *four* days, nor more than *eight* days, unless the penalty or sum of money for which such distress shall be made, together with the reasonable charges for taking and keeping such distress, be sooner paid: and the officer making such distress shall and may deduct the reasonable charges of taking, keeping and selling such distress, out of the money arising by such sale, and the overplus, if any, (after such charges, and also the said penalty or sum of money shall be satisfied and paid,) shall be returned, on demand, to the owner of the goods so distrained; and the officer executing such warrant, if required, shall shew the same to the person whose goods are distrained, and shall suffer a copy thereof to be taken.

When an act of parliament orders a distress and sale of goods, it is in the nature of an execution, and replevin will not lie.—*Bac. Abr.* title "*Replevin.*"

If, in seizing for the whole amount, the first distress is found insufficient, from mistaking the value of the goods seized, a second distress may be made.—*Burr.* 589.

By 16 V., c. 178, § 18, it is enacted that when a conviction adjudges a penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorising such conviction or order such penalty, compensation or money, is to be levied upon the goods and chattels of the defendant by distress and sale, and also in cases where the statute provides no mode of raising or levying or enforcing the payment of the same, it shall be lawful for the justices or any of them making such conviction or order, or for any other justice of the locality, to issue his warrant of distress for the purpose of levying the same under the hand and seal of such justice; and if after the delivery of such warrant to the constable or constables to

whom directed, sufficient distress shall not be found within the locality, then upon proof upon oath of the handwriting of such justice granting the warrant, before any justice of any other territorial division, such justice shall endorse on such warrant authority for the execution of such warrant within the limits of his jurisdiction, by virtue of which said warrant and endorsement the penalty and sum aforesaid and costs, or so much as may not have been levied or paid, shall and may be levied by the person bringing such warrant, or by the person or persons to whom the same was originally directed, or by any constable or other peace officer of such last mentioned territorial division, by distress and sale of the goods and chattels of the defendant in such other territorial division: provided that whenever it shall appear to any justice to whom application shall be made for any such warrant of distress that the issuing thereof would be ruinous to the defendant and his family; or whenever it shall appear, by the confession of the defendant, that he has no goods and chattels whereon to levy such distress, then, in every such case it shall be lawful for such justice, *if he shall deem fit*, instead of issuing such warrant of distress, to commit the defendant to the common gaol or lock-up house of the locality, to be imprisoned with or without hard labour, for such time and in such manner as by law such defendant might be so committed, in case such warrant of distress had issued and no goods or chattels had been found whereon to levy.

§ 19. In all cases where a justice of the peace shall issue any such distress warrant it shall be lawful for him to suffer the defendant to go at large, or verbally, or by a written warrant, order the defendant to be kept in custody until return shall be made to such warrant, unless such defendant shall give sufficient security by recognizance or otherwise to the satisfaction of such justice for his appearance before him at the time and place appointed for the return of such warrant, or before such other justice or justices for the same territorial division as may then be there.

§ 20. If the constable shall return that he could find no goods or chattels whereon he could levy the sum or sums mentioned, together with the costs of, or occasioned by, the levy of the same, it shall be lawful for the justice before whom the same shall be returned to issue his warrant of commitment under his hand and seal directed to the same or any other constable, requiring such constable to convey such defendant or other person to the common gaol or lock-up house within the territorial division for which such

justice shall be acting, and there to deliver him to the keeper thereof, and requiring such keeper to receive the defendant into such gaol or lock-up house, and there to imprison him and keep him to hard labour, in such manner and form as shall be appointed by the statute, unless the sum or sums adjudged to be paid and all costs and charges of distress, and also the costs and charges of the commitment and conveying to prison (if such justice shall think fit so to order, the amount being ascertained and mentioned in such commitment) shall be sooner paid.

§ 24. In all cases where a warrant of distress shall issue as aforesaid against any person, and he shall pay or tender to the constable the sum or sums mentioned in such warrant, together with the expenses of such distress up to the time of such payment or tender, such constable shall cease to execute the same.

For the requisite forms see *post* title "*Summary Conviction.*"

DIVISION COURTS.

By 13 & 14 V., c. 53, § 1, all former acts are repealed. § 2. The limits to remain as at present until altered, as hereinafter provided. § 3. Provides that there shall not be less than *three* courts in each county, nor more than *twelve*: and there shall be one division court held in each city and county town, and that a court shall be holden under this act once in every two months in such division, or oftener, in the discretion of the judge, who shall affix and appoint the times and places. § 4. Empowers the justices in general quarter sessions to declare and appoint the number, limits and extent of every such division within their respective counties, subject to the restrictions contained in the act; and from time to time to alter the number, limits and extent of such divisions: provided that a less number of justices shall not have power to rescind or alter any order made by a greater number at any previous sessions. § 7. Judges of the county courts to preside over such division courts. § 13. Clerks of division courts to issue summonses, furnish copies of particulars of plaintiff's demand and defendant's set off; and issue warrants, precepts and writs of execution, tax costs (subject to revision by the judges) and register judgments, and keep an account of court fees and money paid in and out of court, &c. Any person wrongfully holding or getting possession of such papers, processes or proceedings, accounts, moneys, books and matters aforesaid, or any of them, shall be guilty of a misdemeanor, and may, by

order of the judge of any of the superior courts, be arrested by the sheriff and committed without bail (except by a judge) until discharged in due course of law. Bailiffs of division courts to serve summonses and execute writs, &c., and exercise the power and authority of a constable and peace officer during the holding of the court, with full power to prevent breaches of the peace, riots or disturbances within the court room or building, public streets, squares or other places within hearing of the court, and to arrest without warrant all parties offending herein, and to bring them before the nearest justice or other judicial officer. § 23. The judge to have power, jurisdiction and authority to hold plea of all claims and demands whatsoever for or against any person or persons, bodies corporate or otherwise, where the amount or balance claimed shall not exceed £25, and in all *torts* to personal chattels to and including the amount of £10; (a) and the judge shall hear and determine the same in a summary way: and every such judge shall have power to make such orders, judgments and decrees thereupon as shall appear to him to be just and agreeable to equity and good conscience; and that upon any contract for the payment of a sum certain in labour or in any kind of goods or commodities, or in any manner otherwise than in money, viz., upon any contract for the delivery of goods or commodities, or the doing of work or labour for value received, or for or upon a past or executed consideration, it shall be lawful for the judge, after the day has past on which the goods or commodities ought to have been delivered, or the labour or other things performed, to give judgment for the amount in money, as if the contract had been so originally expressed: provided that no action shall be brought or tried in any such division court for any gambling debt, nor for any spirituous or malt liquors drunk in a tavern or alehouse, nor for any cause involving the right or title to real estate, or involving any right to any custom or toll. Division courts not to be courts of record. § 24. Plaintiff to enter a copy of his account or demand in writing, to be attached to the summons, and served at least ten days before the court on the defendant, his wife or servant, or any grown person being an inmate of his dwelling-house or usual place of abode, trading or dealing. *Personal service necessary in all cases where the amount exceeds 40s.* § 25. Suits to be tried in the division where the defendant resides or carries on business at the time of entering suit, or where debt contracted. (b) § 26. Plaintiff

(a) Also in *all personal actions* to £10—by 16 V., c. 177.

(b) Or an adjoining division in certain cases.—16 V., c. 177, § 9.

not to divide cause of action into two or more suits, but any plaintiff having a cause of action above £25 may sue for the same as a *balance*: provided that no unsettled account to a greater amount than £50 shall be sued for in any division court. Judgment of the court in such cases to be in full of all demands. § 27. Plaintiffs under the age of twenty-one may sue for claims not exceeding £25 for wages. § 28. No privilege or exemption allowed. § 29. Parties liable on joint demands but residing in different divisions, may be sued separately, and the joint property and separate property of the party served may be sold under execution. § 30. Judge of the court to be sole judge in all matters, unless the amount claimed (in *tort* or *trespass*) exceeds £2 10s.—in other cases £5, and where the parties shall require a jury. § 31. In suits for debt or demand not exceeding £5, the judge may receive affidavits of parties or witnesses residing out of the jurisdiction, if sworn before a judge of a division court or a commissioner, with power for the judge before judgment to require witnesses or parties to answer interrogatories to be filed. § 32. In actions of *tort* or *trespass* exceeding £2 10s., and in all other cases exceeding £5, either party may require a jury, plaintiff giving notice to the clerk thereof at the time of entering suit, or defendant within *five* days after service of summons. § 33. The party requiring a jury to pay down the fees mentioned in the schedule. § 34. Separate lists of causes to be made, to be called “the judge’s list” and “the jury list.” The jury list to be first disposed of, except when the judge shall see cause otherwise. § 35. All male persons, subjects, above twenty-one years of age and not above sixty, assessed upon the collector’s roll and resident in the division, shall be liable to serve as jurors, and their names taken from the collector’s roll of the preceding year, and to be summoned in rotation. The collector to furnish clerk of the court with correct lists, and not less than fifteen to be summoned, and *three* days’ notice given, personally or by leaving the same with a grown up person at the juror’s residence. Parties entitled to their challenge as in other courts. Any juryman neglecting to attend liable to a fine not exceeding 20s. Serving as juror in division court not to exempt parties from serving on other juries. § 36. Each juror entitled to 6d. for every cause in which he is sworn. § 37. Jury to be composed of *five* jurors, and their verdict to be unanimous. § 38. The jury may be discharged in case of disagreement and a new jury summoned for next court, unless the parties consent to abide by the decision of the judge on the evidence given. § 39. The judge

to pronounce his decision in court as soon as may be after hearing, with power to postpone giving judgment, naming a subsequent day and hour at the clerk's office. § 40. Summonses and writs not to have any blanks. § 41. On the day named in the summons, plaintiff may appear in person or by some person on his behalf (not being the clerk or bailiff), and defendant may answer in like manner. § 42. Evidence to be confined to the demand, or set-off entered. § 43. Defendant may plead set-off, Statute of Limitations, or discharge under any statute; and if defendant's demand exceeds the plaintiff's, plaintiff may be *nonsuited*; or if defendant's demand, after remitting any portion, does not exceed £25, court may give judgment for the balance found in his favour. No statutory defence admissible unless notice in writing and copy of set-off delivered to the plaintiff, or left at his place of abode, if within the division, or if living without the division to the clerk of the said court, *six* days before trial or hearing. Judgment given in favour of the defendant to be in full discharge. § 44. Judge of the court empowered to make rules of practice, to be first submitted to the judges of the Queen's Bench, or Common Pleas for approval. § 45. In case of defendant not appearing at the court, the plaintiff may proceed to hearing or trial, on proof of service of the summons; and in case of personal service of the summons, with detailed particulars of plaintiff's claim (except in *tort* or *trespass*), the judge may, in his discretion, give judgment without further proof. But the judge may grant time to plaintiff or defendant for proceeding. § 46. Defendant may pay money into court, with the costs incurred, not less than six days before trial; and notice shall be given thereof to plaintiff by the clerk, and the same shall be paid to plaintiff, and proceedings stayed, unless he shall within *three* days after receipt of notice signify to the clerk his intention to proceed for the remainder; and if plaintiff fail, he shall pay to the defendant costs to be settled by the court. § 47. False swearing to be *perjury*. § 48. Either party may obtain from the clerk a summons for witnesses, with or without production of books, papers and writings, to be served by any *literate* person, personally on the witness, or at his or her usual place of abode, and *tender* made of expenses; and witness neglecting to appear (without sufficient cause), or to produce books, &c., required, and any person called upon in court to give evidence, and refusing, shall forfeit and pay such fine, not exceeding £2, as the judge shall fix, and be liable to *imprisonment* for any term not exceeding *ten* days; such fine to be applicable to the party injured.

Subpoenas may be issued from superior courts for attendance of witnesses residing in any part of Upper Canada. § 49. Clerk to enter suits, orders and judgments, executions and returns, in a book, and the same to be evidence in all cases. § 50. The judge may make orders concerning the time or times and proportions for payment of debt and costs. Issuing of execution not to be postponed for more than *fifty* days after service of the summons. § 51. In case of cross judgments, execution to issue for the balance only on the largest judgment. If judgments be equal, satisfaction on both to be entered. § 52. Costs not to be allowed in suits brought on *judgments* in this court without the order of the judge on sufficient cause shewn. § 53. In case of default in payment of money ordered to be paid, execution may be issued by the clerk against the goods and chattels of the party, at the request of the party entitled, with interest from the date of the judgment. § 54. The bailiff or clerk may take *confessions*. § 55. In case of the party against whom the judgment shall be given removing to another county, the judge of the division court there may order execution to issue for the amount, upon production of a certified copy of the judgment. § 56. Every writ of execution to be dated when issued, and returnable in thirty days. § 57. Judgments above £10 to bind lands upon return of *nulla bona*; and on filing a transcript of the judgment in the county court, the same to stand as a judgment of such county court, with the like powers and remedies. § 58. Any party obtaining judgment exceeding £10. may, within fourteen days, obtain a certificate and register the same, and bind the lands. 59. Bailiff neglecting to return writ of execution within *three* days after the return thereof, or making a false return, liable (and his sureties) to be sued for the amount of such execution and interest from the date of judgment. § 60. No sale under execution to take place until after the end of *eight* days next following the day of seizure: and the goods to be advertised at least eight days before sale. § 61. Bailiff not to purchase goods at such sales. § 62. Suits against clerk or bailiff may be brought in the next adjoining division court. § 63. The judge may order immediate execution to issue, on plaintiff proving to the satisfaction of the judge that the debt is in danger. § 64. Attachment may be issued by the clerk of the court, judge of the county court, or justice of the peace, against the personal estate and effects of any absconding or concealed debtor, for any sum not exceeding £21, nor less than 20s., on application by plaintiff, supported by affidavit, according to schedule D., or a sufficient portion to

to secure the debt and costs—bailiff seizing to make an inventory, and within *twenty-four* hours afterwards to cause the same to be appraised by two freeholders, who shall be entitled to 2s. 6d., each to be paid in the first instance by the plaintiff. § 65. In case of several attachments issuing, proceeds to be distributed ratably among such creditors obtaining judgment, in proportion to their judgments: provided attachment be sued out, and notice given to clerk of division court out of which the first attachment issued, or shall be returnable, within *one month* from issuing such first attachment. § 66. All property seized under attachment to be handed over to the clerk of the division court. § 67. Property may be restored on defendant tendering bond, with sureties to be approved by the judge or clerk, in *double* the amount claimed. § 68. If bond not given within one month from seizure, as soon as judgment has been obtained, execution may be immediately issued and property sold: provided, in case defendant has been personally served with summons before seizure, the trial is to proceed, and execution forthwith awarded after judgment, unless otherwise ordered. § 69. In cases of attachment, and defendant not previously sued, the summons may be served personally or by leaving copy at his last place of abode, trade or dealing, with any person dwelling there, or by leaving the same at the dwelling if no person be there found: creditors suing out attachments without probable cause, not entitled to costs. § 70. Cattle and perishable goods may be sold at the request of the plaintiff at *eight days'* notice, on giving bond with sureties for return of the value, in case he shall not obtain judgment. § 71. Residue, after satisfying judgments and costs, to be returned to the defendant or his agent, or the party in whose custody the goods were found. § 72. Plaintiff's *books* to be evidence to the extent of £5, except in *tort* or *trespass*. § 73. Judgments may be revived against personal representatives of deceased parties. § 75. Any person wilfully insulting the judge or any officer of the division court, or interrupting the proceedings, may be taken into custody and fined not exceeding £5, and in default of *immediate* payment committed to the common gaol for any period not exceeding one calendar month, unless fine, costs and expenses sooner paid. § 76. Any bailiff or officer of the court guilty of *extortion* or misconduct, or not duly paying or accounting for moneys levied or received, shall be liable to such order for repayment, with damages and costs, as the judge shall think just; and in default of payment the amount shall be levied by distress and sale; and in default of distress, or *summarily*

in the first instance, the judge may commit the offender to the common gaol for any period not exceeding three calendar months. § 77. Any clerk or officer taking higher fees than allowed by law, shall be incapable of being employed again under this act, and liable to damages. § 78. No costs allowed in superior courts unless the judge shall certify that it was a fit cause to be withdrawn from the division court; but costs as between attorney and client shall be allowed to the defendant against the judgment. § 79. Want of form not to vitiate proceedings upon any levy or distress under this act. § 80. Executors and administrators may sue and be sued in this court. § 81. Parties to the suit may be examined upon oath, at the instance of the opposite party or the judge. § 82. Fines to be enforced by order of the judge. § 83. Costs of the division court, not otherwise provided for, to be apportioned between the parties as the judge shall think proper; and in cases where the plaintiff shall not appear, or shall not prefer his demand, the judge may award costs to the defendant, and a further sum for his trouble and attendance. § 84. Judgment of the court to be final, with power to order new trial upon terms, if applied for within *fourteen* days and good grounds shewn. § 85. Suit brought in this court may be removed into any of the superior courts by *certiorari*, if the amount claimed shall amount to £10 and upwards. § 86. Division court to have a seal, and process to be stamped therewith. Forging, or *knowingly* serving forged process, or copy, or acting under the same, to be *felony*. § 87. Summons to be served out of the division, may be served by the bailiff of such other division. (a) § 88. And such service may be proved by affidavit sworn before any judge or clerk of a division court, or a commissioner. Fee for drawing affidavit 6d., and oath 6d., and no more. § 89. Bailiff acting under execution may seize and take any goods or chattels of defendant (*wearing apparel and bedding of such defendant or his family, and his tools and implements of trade to the value of £5 excepted*) money or bank notes, cheques, bills of exchange, promissory notes, bonds, specialities, or securities for money. § 90. Plaintiff may sue on such notes, &c., in the name of the defendant, on giving security for costs. § 91. Any plaintiff may summon the defendant upon any unsatisfied judgment to appear before any division court where he shall dwell or carry on business, to be examined upon oath touching his estate and effects, the circumstances under which the debt was con-

(a) Repealed by 16 V., c. 177, and new provision made, § 29.

tracted, and the means or expectation he then had of paying the same, and as to his present property and means. § 92. Defendant not appearing, or refusing to be sworn, or not answering to the satisfaction of the judge, or if it shall appear that *credit* was obtained under false pretences, or by fraud, or breach of trust, or that the debt was contracted without a reasonable expectation of being able to pay, or if defendant shall have made any gift, delivery, or transfer of any property, or removed or concealed the same with intent to defraud his creditors, or if it shall appear to the satisfaction of the judge that the defendant had then, or since the judgment obtained sufficient means of payment, by instalment or instalments as ordered by the court, in which judgment was obtained, and he shall have neglected to pay, it shall be lawful for the judge to *commit such party to the common gaol* of the county for any period not exceeding *forty* days. § 93. The judge may, if he think fit, rescind or alter any order previously made against any defendant, for payment by instalment or otherwise, and make a new order. § 94. The judge, at the hearing of any cause, if the defendant shall appear and judgment be given against him, shall have the same power of examining the defendant and the plaintiff and other parties, touching the matters aforesaid, and of committing the defendant to prison, as he might have done under the provisions before mentioned. § 95. Commitment to be by warrant under seal of the court, and obeyed by all constables and peace officers, &c. § 96. Such imprisonment not to extinguish the debt, nor prevent imprisonment for other causes. § 97. Warrant of execution or commitment may be executed by the bailiff out of the county, or sent to the clerk of the division court there, and may be executed by bailiff of such other court. § 98. The judge may, if he think fit, stay judgment, order or execution, in case of sickness or other sufficient cause shewn upon oath. § 99. Defendant may be discharged out of custody on payment of debt and costs. § 100. Any person assaulting any officer in the execution of his duty, or attempting rescue of goods seized, shall be liable to a fine not exceeding £5, to be recovered by order of the court, or before a justice of the peace of the county, (and to imprisonment not exceeding three calendar months,) and such officer may take the offender into custody, with or without warrant, and bring him before the court or justice. § 101. Any bailiff neglecting to make levy under execution, shall be liable to pay such damages by order of the court as the plaintiff shall sustain, not exceeding such levy. § 102. If any claim be made to goods taken in execution or by at-

Division Courts.

tachment, by a third party, the clerk of the court (or the bailiff) may summon the plaintiff and the claimant before the next division court, and the judge shall adjudicate upon such claim. § 103. Penalties, fines and forfeitures imposed by this act (and not otherwise directed to be applied) shall be paid over to the county treasurer as part of the *fee fund*. § 104. In all cases where by this act any penalty or forfeiture is made recoverable before a justice of the peace, such justice may summon the party, and on return of such summons hear and determine the complaint, and on proof of offence convict the offender and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same, though no information in writing shall have been exhibited before him, and such proceedings shall be as valid as if information had been exhibited in writing. § 105. The form of conviction to be in words or to the effect following:

Be it remembered, that on this day of , in the year of our Lord , A. B. is convicted before , one of her Majesty's justices of the peace for the county of , or before a judge acting under an act passed in the year of the reign of her Majesty Queen Victoria, intituled "An Act," &c., (*insert the title of this act*), of having (*note the offence*); and I (*or we*) the said do adjudge the said to forfeit and pay for the same the sum of , or to be committed to the common gaol of the county of for the space of . Given under hand and seal the day and year aforesaid.

§ 106. No order, verdict or judgment to be quashed for want of form. § 107. Actions brought against any person acting under this act, to be brought and tried in the county where the fact was committed, and within six calendar months, and *one calendar* month's previous notice in writing to be given of such action. Defendant may tender amends, and plead the general issue. § 108. The plaintiff bringing such action in any superior court, and not recovering more than £2 10s. damages, not entitled to costs, unless the judge shall certify. § 109. Power given to the executive to regulate the holding of courts where business may not require the court to be held every two months. § 110. Clerks of division courts to make half-yearly returns *upon oath* of all fees and emoluments. § 111. Interpretation clause. § 112* relates to proceedings under former acts. § 113. This act to come in force on the first day of January, 1851, and not before.

By 16 V., c. 177, § 1, the jurisdiction of the court is extended in all *personal* actions to £10. § 2. Judge may

increase the fee for hearing any defended cause, to a sum not exceeding 10s. § 4. May with consent of parties refer any case to arbitration. The award to be entered as a judgment. The judge on application may set aside award and order another reference. § 5. Witnesses compellable to attend before arbitrators, who may administer oaths, and false swearing to be perjury. § 6. Part of the statute of 8th of Anne, not to apply to execution under division court, but the landlord of any tenement may deliver his claim, in writing to the bailiff for rent in arrear not exceeding *four* weeks, when let by the week, and not exceeding the rent in two terms of payment when let for any other term less than a year, and not exceeding in any case one year's rent. The bailiff may distrain for such arrears and cost, and the amount of execution, but shall not proceed to sell until after the end of *eight* days. Bailiff shall be entitled to have as costs of distress instead of fees allowed by the division court act 13 & 14 V., c. 53, the fees allowed by 1 V., c. 16; and if goods replevied, so much of the goods taken shall be sold as will satisfy the execution and the costs of sale, and the surplus of sale and goods distrained shall be returned. But no execution creditor shall be paid out of the proceeds of such execution and distress or execution only, where the tenant replevies, until the landlord conforming to this act shall be paid his arrears of rent as above. § 7. Section 102 of 13, 14 V., c. 53, *amended*, and in case of any claim for rent or otherwise, on goods seized, the parties may be summoned, and any action (if brought) stayed, and the judge of the court shall adjudicate between the parties, and such order be final and conclusive. § 8. Suits may be entered and tried in the court where the cause of action arose, or where the defendant resides or carries on his business, or by leave of the judge (according to the next section) in the court adjacent to where the defendant resides. § 9. Any division court suit may by leave of the judge be entered and tried in any court in which the judge shall specially order. § 10. The Governor authorised to appoint *five* of the *county court judges* to frame division court rules, which being approved by a chief justice, and three judges of the superior courts at Toronto, shall be valid. § 11. Judge may order any fact in a suit to be tried by a jury of *five* persons *instanter*, and may give judgment on the verdict, or grant a new trial. § 12. Clerks and bailiffs of division courts to give security. § 13. Clerks to make out yearly lists of moneys paid into court and unclaimed during a certain time. List to be posted up, and sums remaining unclaimed *six* years to be carried to the account of the general fee fund. § 14.

No action to be brought against any bailiff until demand made of the perusal and copy of warrant, and the same refused; and in case of demand and compliance, if any action brought without making the clerk of the court defendant, or producing or proving such warrant at the trial, the jury shall give a verdict for the defendant; and if brought against the clerk and bailiff jointly, then on proof of such warrant the jury shall find for the bailiff; and if verdict against the clerk the plaintiff shall recover his costs against him, and in any such action the defendant may plead the general issue, and give special matter in evidence. § 15. Interpretation of the words "Landlord," "Agent." § 16. In case of separation of united counties, the division courts of the junior county shall remain until otherwise ordered. § 17. Provision made for proceedings in case of any alteration made in divisions. § 18. For the transfer of papers and documents on separation of unions of counties, or by judge's order. § 19. Provision made where upon separation a division court shall be partly in a senior, and partly in a junior county. § 20. Justices at the first quarter sessions after the separation of any union of counties to appoint (not less than three nor more than twelve) limits and extents of the divisions within such county or counties. § 21. Any collector neglecting for *six* days after demand to furnish the clerk of the division with a correct list of persons liable to serve as jurors, to incur a penalty not exceeding £5.—No person shall be compelled to serve as juror in any division court, who is by law exempt as a petty juror in any of the superior courts. § 22. The judge authorised to examine plaintiff or defendant in suits not exceeding 40s., and give judgment thereon. § 23, and may also in other suits examine plaintiff or defendant upon oath, at his discretion. § 24. Judgments, &c., of former courts of requests may be dealt with as judgments of division courts. § 25. Additional allowance of £50 per annum to county judges for travelling expenses. § 26. Judge may adjourn the hearing of any cause in order to allow the production of further evidence. § 27. Proceedings by defendant on plea of *tender*. § 28. Plaintiffs' and defendants' books admissible in evidence: power given to grant new trials. § 29 repeals 87th § of 13, 14 V., c. 53, and provides for the service of summons by the bailiff of any other division court. § 30. The summons under the 91st § of 13, 14 V., c. 53, may be issued from the court where judgment obtained, or where the defendant resides or carries on business. § 31. Affidavits of service of process to be prepared by the clerk. § 32. Short titles of the acts. § 33. Affidavits may be sworn

before any county court judge, or any clerk of division court, or commissioner. § 34. Commencement of the act, 1st July, 1853.

By 18 V., c. 125, § 1, suits may hereafter be entered and tried in the division where the cause of action arose, or where any of the defendants (if more than one) shall reside or carry on business, except that no writ of *fi. fa.* or attachment shall be executed out of the division where issued, provided that when the defendant resides in a county adjoining, and none of them resides in the county where action brought, the summons shall be served *fifteen* days; and when none of the defendants reside in the county where action brought, nor an adjoining county, then the summons must be served *twenty* days before the court; and in case of defence under the 43rd § of the act of 1850, notice thereof must be given to the clerk of the court *five* days before the holding. § 2. Bailiffs of any division court authorised to serve and execute summonses, writs, and orders of other division courts. § 3. Proceedings for enforcing the judgment of one court in another county. Clerk of division court bound to forward summonses to other divisions for service when required, and in like manner to receive and return. § 4. Provision as to costs of suit. § 5. Fees of clerks and bailiffs increased; clerks as per schedule, and bailiffs' mileage to be *five* pence per mile.

§ 6. Act to commence on 1st July, 1855.

TABLE OF FEES, 13, 14 VIC., CAP. 53.

	Not exceeding £2.	Exceeding £2. and not exceeding £5.	Exceeding £5. and not exceeding £10.	Exceeding £10. and not exceeding £15.	Exceeding £15.
	s. d.	s. d.	s. d.	s. d.	s. d.
FEE FUND.					
Entering account and issuing summons.....	0 4	0 6	1 3	2 0	3 0
Hearing an undefended cause	0 6	0 9	1 3	3 0	3 0
Hearing a defended cause	1 0	2 0	3 9	5 0	7 6
Every order or judgment (not to be charged when the defend- ant has given a confession of judgment).....	0 3	0 6	0 9	1 3	2 0
On every confession of judgment.....	0 3	0 3	0 3	0 6	0 6
CLERK'S FEES.					
Entering every account and issuing summons	0 6	0 3	1 0	1 3	1 6
Copy of summons, particulars of demand or set-off when not furnished by plaintiff or defendant, each.....	0 3	0 6	0 6	0 6	0 6
Every summons to witness, in which any number of names may be included	0 3	0 3	0 3	0 3	0 3
Adjournment of any cause	0 3	0 6	0 9	0 9	0 9
Entering set-off or other defence requiring notice to the plaintiff	0 6	0 9	1 0	1 0	1 0
Entering every judgment	0 6	0 6	0 9	1 0	1 0
Every search into a proceeding over a year old	0 6	0 6	0 6	0 6	0 6
Taking confession of judgment	0 6	0 6	0 6	0 9	1 0
Every warrant, attachment, or execut on	0 6	1 0	1 6	1 6	1 6
To the clerk for taking charge of and keeping the property seized, such sum as the judge may order in each parti- cular case.	1 3	1 3	1 3	1 3	1 3
For every copy or certificate of judgment to another county...	...	5 0	5 0	5 0	5 0
Deposit to be paid by party requiring jury .....	...	0 6	0 9	1 0	1 6
Entering and giving notice of jury being required .....	...	2 6	2 6	5 0	5 0
Making out summons for the fifteen jurors, to be apportioned between and paid in the first instance by parties applying for juries.....	...	2 6	2 6	5 0	5 0
THE BAILIFF'S FEES.					
Service of summons, or other proceeding, except subpoena on each person	0 4	0 6	0 9	0 9	1 0
Service of subpoena on each witness	0 4	0 4	0 4	0 4	0 4
For taking confession of judgment.....	0 4	0 6	0 6	0 9	1 0
Drawing and attending to swear to every affidavit of service of summons, when served out of the division	1 0	1 0	1 0	1 0	1 0
Enforcing every warrant, execution, or attachment, against the goods or body.....	1 6	1 6	2 0	3 0	3 9
For every mile necessarily travelled from the clerk's office, to serve summons or subpoena, and in going to seize on execution where money made or case settled after the levy. 4d.	...	0 6	0 9	1 6	1 6
For every jury trial.....	...	0 6	0 9	1 6	1 6
For carrying delinquent to prison, including all expenses and assistance, per mile, 1s.	...	2 6	2 6	2 6	5 0
Every schedule of property seized, return, including affidavit of appraisal .....	...	2 6	2 6	2 6	5 0
Every bond, including affidavit of justification .....	...	2 6	2 6	2 6	5 0
Every notice of sale, not exceeding three, under execution, on attachment, 6d. each.	...	2 6	2 6	2 6	5 0
That there be allowed to the bailiff, upon the sale of property under any execution the sum of 2½ per cent. upon the amount realized, and not to apply to any overplus on the said execution.	...	2 6	2 6	2 6	5 0

SCHEDULE A.

AMENDED TARIFF OF ALLOWANCES TO BE RECEIVED BY CLERKS OF DIVISION COURTS IN UPPER CANADA.

	Not exceeding £5.	Exceeding £5, & not £15.	Exceeding £15.
	£ s. d.	£ s. d.	£ s. d.
Entering every account and issuing summons	0 1 0	0 1 6	0 2 0
Copy of summons, particulars of demand or set-off, each.....	0 0 6	0 0 9	0 1 0
Every summons to witness with any number of names	0 0 6	0 0 6	0 0 6
Entering bailiff's returns to summons to defendant.....	0 0 3	0 0 3	0 0 3
Every copy of subpoena when made by the clerk	0 0 3	0 0 3	0 0 3
Entering set-off or other defence requiring notice to plaintiff	0 0 9	0 1 0	0 1 0
Adjournment of any cause	0 1 0	0 1 0	0 1 0
Entering every judgment or order made at hearing.....	0 0 9	0 1 0	0 1 3
Taking confession of judgment.....	0 0 9	0 0 9	0 0 9
Every warrant, attachment or execution	0 1 3	0 1 6	0 2 0
Every copy of judgment to another county.....	0 1 3	0 1 3	0 1 3
Transcript or certificate of judgment for registration in the county registry office	0 1 3	0 1 3	0 1 3
Entering and giving notice of jury being required.....	0 1 0	0 1 3	0 1 6
Making out summons to jury, for each jurymen	0 0 6	0 0 6	0 0 6
For every affidavit taken, and drawing the same	0 1 0	0 1 0	0 1 0
Returns to treasurer to be paid out of the fee fund, including attendance on the judge to audit the same, each, and to be retained from the fee fund in his hands	1 0 0	1 0 0	1 0 0
Every search on behalf of a person not a party to a suit, to be paid by the applicant	0 0 6	0 0 6	0 0 6
Every search for a party to a suit when the proceedings are over a year old	0 0 6	0 0 6	0 0 6
Transmitting papers for service to another county or division. in addition to the necessary postage on transmission and return	0 1 0	0 1 0	0 1 0
Receiving papers from another county or division for service, entering same in a book, handing the same to the bailiff, and receiving his return, to be paid when the claim is paid, when the claim is filed or defence entered	0 1 0	0 1 0	0 1 0

DOGS.

By the municipal act, 12 V., c. 81, the several municipalities are empowered to make by-laws for imposing a tax on the owners, possessors or harbourers of dogs, and for regulating their running at large, and destroying the same if found running at large.

A mastiff going at large, unmuzzled, from the ferocity of his nature being dangerous, seems to be a common nuisance, and the owner may be indicted.—1 *Burn*, 918.

The stealing of dogs is not a *felony* either at common law, or by statute.—4 *Bl. Com.* 236; but is punishable by the following statute:

By 4 & 5 V., c. 25, § 30, if any person shall steal any dog, or shall steal any beast or bird ordinarily kept in a state of confinement, not being the subject of larceny at common law, every such offender being convicted thereof before a justice of the peace, shall, for every such offence, forfeit and pay over and above the value of the dog, beast or bird, such sum of money not exceeding £5, as to the justice shall seem meet.

For form of procedure, see title "*Summary Conviction.*"

DOMESTIC ANIMALS.—BIRDS, &c.

See title "*Dogs.*"

DOWER.

The wife is entitled by law to be endowed of one-third part of all such lands and tenements of which her husband was seised in fee-simple or fee-tail, at any time during the coverture or marriage: to hold the same during the term of her natural life.—*Co. Litt.*—31. But that she might be entitled thereto, she must be the wife of the party at the time of his decease; for if she be divorced *a vinculo matrimonii*—that is, from the band of matrimony—she shall not be endowed. By statute 13 *Edw. I.*, c. 34, if a woman elope from her husband and live with an adulterer, she shall lose her dower, unless her husband be voluntarily reconciled to her. And the widows of traitors, or persons attainted of treason, are barred of dower; but not the widows of felons.—2 *Black.*, 131. An alien (*a*) cannot be endowed, unless she be queen consort; for an alien is incapable of holding lands.—*Co. Litt.* 31. The wife's dower may also be excluded by the husband taking a conveyance to himself and a trustee.—*Co. Litt.* 31. And a wife cannot be entitled to dower out of an estate which at the time of her marriage was subject to a mortgage in fee.—*Co. Litt.* 208, *note 1*, 13 *edit.* But upon the mortgage being paid off; and the estate reverting to her husband, the wife will become dowable.

The mode of Barring Dower.

* The stat. 3 *Wm. IV.*, c. 9, prescribes the form and manner in which dower may be barred before any two justices; but now by the *2 *Vic.*, c. 6, § 3, whenever any married woman shall join with her husband in any deed of conveyance whatever (wherein a release of dower is contained), it shall not be necessary to acknowledge the same before any court, judge, or justice of the peace, but such execution shall be deemed a valid and effectual bar of dower of and in the premises described in such deed or conveyance.

See 13 & 14 *V.*, c. 58, for the recovery of dower by action at law.

DROWNING.

By 4 & 5 *V.*, c. 27, § 10, whosoever shall attempt to drown, suffocate or strangle any person with intent to commit the crime of murder shall, although no bodily injury shall be

(a) But now may claim dower, under the late alien act 12 *V.*, c. 197.—See page 24.

effected, be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any period not less than seven years, or imprisoned in any other prison or place of confinement for any term not exceeding two years.

DUELLING.

By 10 & 11 V., c. 6, § 3, the principal as well as the seconds are rendered liable to be sued for damages by the executor or administrator of any person whose death shall be caused in a duel, and the amount shall be apportioned among the surviving relations, as the jury shall by their verdict direct.

See also *post* title "*Homicide.*"

ELECTIONS.

Qualification of Members, House of Assembly.

By the imperial statute 3 & 4 V., c. 35, entitled, "An Act to re-unite the provinces of Upper and Lower Canada, and for the government of Canada." § 28. No person shall be capable of being elected a member of the Legislative Assembly of *Canada* who shall not be legally or equitably seised, for his own use and benefit, of lands or tenements, held in free and common soccage, or seised or possessed, for his own use and benefit, of lands or tenements, held in fief or en roture, within the said province of Canada, of the value of £500 sterling, over and above all incumbrances; and every candidate, before he shall be capable of being elected, shall, if required by any other candidate, or by any elector, or by the returning officer, make the following declaration :

I, A. B., do declare and testify, that I am duly seised at law, or in equity as of freehold, for my own use and benefit, of lands or tenements held in free and common soccage (or duly seised or possessed, for my own use and benefit, of lands or tenements held in fief or en roture [*as the case may be*], in the province of *Canada*, of the value of five hundred pounds of sterling money of *Great Britain*, over and above all rents, mortgages, charges and incumbrances, charged upon or due and payable out of or affecting the same; and that I have not collusively or colourably obtained a title to or become possessed of the said lands and tenements, or any part thereof, for the purpose of qualifying or enabling me to be returned a member of the Legislative Assembly of the province of *Canada*.

§ 29. Making a false declaration shall be deemed a misdemeanor, and punishable as wilful and corrupt perjury.

By 12 V., c. 27, § 1, former acts—*4 G. IV., c. 3; *3 W. IV., c. 11; *4 W. IV., c. 14; 4 & 5 V., c. 52; 6 V., c. 1, are repealed. § 2. Relates to Lower Canada.

Returning Officers.—§ 3. Which provided for the appointment of returning officers, is repealed as to Upper Canada by 14 & 15 V., c. 108, § 1, which enacts by § 2, that the high sheriffs of the several counties and unions of counties for judicial purposes, shall be *ex officio* returning officers for the counties and unions of counties, for the purposes of representation, over which their authority shall extend, and in which they shall reside; also for *cities* and *towns* sending members to parliament, lying within the local limits of such counties or unions: and for other counties or unions for the purpose of representation, for which no sheriff shall be *ex officio* returning officer, the *registrar* of deeds for such counties or unions, or for any of the counties included in such unions, shall be *ex officio* returning officers.

Special provision is also made by the same act 14 & 15 V., c. 108, with respect to the (three) united counties of Ontario, York and Peel, and during the union of the counties of Ontario and York, if there be no separate registrar for Ontario, the registrar of the county of York shall be *ex officio* returning officer for the county of Ontario. And if more than one person, who may under the foregoing provisions be *ex officio* returning officer for any place, the writ of election may be directed to either. And where writs of election are returnable, before others issue, for places for which the same person would be returning officer, the Governor may specially appoint the returning officer. And by § 3 of the same act (14 & 15 V., c. 108), if there shall be no *ex officio* returning officer, or if any returning officer be absent from the province or incapacitated by sickness, the Governor may appoint any person qualified, as in § 5, to be returning officer. § 4. Writs of election to be addressed accordingly. § 5. Sheriffs and registrars, if members of the Legislative Council, to be disqualified as returning officers; and in such case, or in case of death, or absence, or other incapacity, the Governor, as heretofore, may appoint any qualified person to be returning officer; such person to be an elector and a resident twelve months preceding his appointment; any unqualified person acting shall be subject to a penalty of £50. § 6. The following persons are disqualified from acting as returning officer, deputy, election or poll clerk, viz.—1st, members of the Executive Council; 2nd, members of the Legislative Council; 3rd, members of the Legislative Assembly; 4th, any

minister, priest, ecclesiastic, or teacher under any form of faith; 5th, judges of superior courts, and judges of circuit courts and district courts; 6th, members of Legislative Assembly in the session next immediately preceding the election, or in the then present session, under a penalty of £50.

§ 7. The following persons are exempt from serving unless they be sheriffs, or registrars, or town clerks, or assessors:—1st, physicians and surgeons; 2nd, millers; 3rd, post-masters; 4th, persons 60 years of age and upwards; 5th, persons who shall have previously served as returning officers. § 8. Any person refusing to act as returning officer shall be liable to a penalty of £50, unless claiming exemption within two days after the receipt of writ.

Place of Election.—§ 9. The returning officer, on receiving the writ, shall endorse thereon the date of receipt, and within eight days next after date of reception shall, by proclamation under his hand, in the form A. of schedule annexed, fix the place, day and hour of election, to be posted up at least eight days before the nomination day; and the place of election shall be in the public place most central and convenient for the great body of the electors; the hour fixed to be between eleven in the forenoon and two in the afternoon; the proclamation also to fix the day of polling in each place; if for a city, or town, such proclamation to be posted at the city or town hall and some public place in each ward, and if for a county or riding, at the town hall, where there is one, and at least one other public place; the nomination day and day of posting not to be included in the eight days. Penalty for neglect, £25. § 10. Returning officer to make and subscribe before a justice of the peace the oath of office (No. 1) in the schedule, before the day of election, and such justice shall, under a penalty of £10, deliver to him, in the form B., a certificate of his having taken the oath, to be annexed to his return to the writ. Any returning officer neglecting the above shall incur a penalty of £10. § 11. Returning officer, before the day of nomination, shall appoint, in form C., an election clerk, who shall make and subscribe before a justice of the peace, or before the returning officer, the oath (No. 2) in said schedule, and shall obtain a certificate thereof in form D; and in case of refusal to act or be sworn, shall incur a penalty of £10. In case of death, illness, or absence of election clerk, such returning officer may appoint another, subject to the same liabilities; and in case the returning officer shall become unable to perform the duties of his office, by death, sickness, absence, or otherwise, such election clerk shall act as returning officer, under the like penalties.

Proceedings at Elections.—§ 12. The returning officer shall proceed to the hustings at the time and place appointed, (*in the open air*), and shall make proclamation in form E.,—read the writ of election, and his commission,—and shall then require the electors present to name candidates; and if no poll be demanded the election shall be closed and members proclaimed; if poll demanded by any elector or candidate, the returning officer shall grant such poll; and in case of refusal such election shall be *ipso facto* null, and returning officer incur a penalty of £200.

Polls.—§ 13. The poll to be opened and kept separately in each parish, township, or union of townships, or ward, in some building near where the last township meeting was held, and in cities and towns at the most convenient place in each ward—provided it be not a tavern or place of public entertainment, and that there be free access to every elector; and electors shall vote at the polling place within the limits of the property upon which they vote, and not at any other poll, under a penalty of £10.; [and by 14 & 15 V., c. 108, s. 1, in townships divided into wards the poll shall be held at the town hall of the municipal council, and if no town hall then at the place where the municipal council shall have held its first meeting in the year of polling; and where there is no place at which the poll ought to be held then the deputy returning officer shall appoint the place, being the most central and convenient for the electors.]

§ 14, 15, relate to Lower Canada. § 16. If poll demanded on the nomination day, the returning officer shall, immediately after granting such poll, publicly proclaim the day and place of polling in each parish, &c., and shall allow six days at least; and not more than ten, between the day of election and polling. Proceedings to be then adjourned to another certain day to be called the day of closing the election, and one of the ten days above mentioned. § 17.

Polls not to be held on certain *feast days*, and shall be the same day in each place, and shall be held on that and the following day, unless Sunday or one of the holidays above mentioned, and then on the following day, to commence at nine o'clock in the forenoon, and finish at five in the afternoon of each day. § 18. Returning officer to appoint deputies in form F., for taking the polls, who shall take and subscribe the oath (No. 3) before a justice or the returning officer, who shall deliver him a certificate thereof in form G.; and in case of refusal to act or take the oath, he shall incur a penalty of £25: provided, that in counties or ridings the town clerk shall be appointed deputy, and in

case of his absence, sickness or death, then the assessor or collector of such township: and every deputy shall appoint, in form H., a poll clerk, who shall take and subscribe before a justice, or returning officer, or deputy, the oath (No. 4), who shall deliver to him a certificate thereof, in form J.; and in case of refusal to act or take the oath, such poll clerk shall forfeit £10. In case of death, illness, or absence of deputy returning officer, or refusal to act, returning officer to appoint another, under the same liabilities. § 19. Returning officer, by warrant in form K., shall require deputies to open and hold the polls, and take and record the votes, and return to him the poll book, signed and sealed, on or before the day for closing the election. § 20. Deputy returning officers to record in such poll books, and in the order they shall be given, the votes of the electors, by entering the names, surnames, legal addition and residence of each elector voting, and by inserting the word "proprietor" or "tenant" in the poll book, according to his right of voting. § 21. Poll clerks to aid and assist deputy returning officer and obey his orders, and in case of neglect, death, illness, or absence of deputy returning officer, poll clerk (under the like penalties) to act as deputy without taking any new oath; and in such case he shall appoint, in form H., another person as poll clerk, and administer to such person the oath of poll clerk; and in case of neglect, refusal or incapacity of any poll clerk, the deputy returning officer may appoint another, in form H.

Poll Book.—§ 22. Every poll clerk, after closing the poll and before the return of the poll book, shall make and subscribe before a justice, or the deputy returning officer, or returning officer himself, the oath in form M., to be annexed to the poll book; and the deputy shall, before returning the poll book, make and subscribe before a justice, or the returning officer, the oath in form N., to be annexed to the poll book; and he shall then return the poll book to the returning officer, on or before the day of closing the election; and any deputy or poll clerk neglecting any of his aforesaid duties shall, for each neglect or refusal, incur penalties, viz., the deputy £50, and poll clerk £25. § 23. On the day for closing the election the returning officer shall, at the appointed hour and place, in the presence of the electors, ascertain the state of the general poll, and then and there openly proclaim as duly elected the person or persons having a majority of the total number of votes; but the returning officer shall not proclaim any person duly elected unless all the poll books shall have been returned.

[The words, "having a majority of the total number of votes" in the last clause, are explained and amended by 14, 15 V., c. 7, which enacts that the true meaning of the act is that the returning officer shall add together the votes given for each candidate, and shall proclaim as duly elected the candidate who shall have received the greatest number of votes; and if two members are to be elected, then also the candidate who shall have the next greatest number of votes]. § 24. If poll books be not returned, the proceedings to be adjourned from day to day until all the books are returned. § 25. After close of the election, the returning officer shall forthwith execute, under his hand and seal, and the hands and seals of at least three electors, an indenture in the form O., in duplicate or triplicate, as the case may require; one copy to be delivered to each person elected, and one copy to be transmitted by him to the clerk of the crown in Chancery with the return of the writ. § 26. In case any poll book shall be stolen, lost, or destroyed, the deputy returning officer shall report the same personally to the returning officer, and the poll clerk shall also attend the returning officer and be examined by him on oath as to such loss and contents thereof; examination to be in writing and annexed to the return, and the number of votes the returning officer shall by this means find to have been recorded for each candidate shall be included in his summing up of the votes, as if taken from such poll book; any deputy or poll clerk refusing to attend or be sworn, shall be subject to a penalty of £50, and in case of a refusal to be sworn shall be committed by the returning officer to the common gaol of the county or district, until discharged by order of the House of Assembly. § 27. The returning officer shall make, or cause to be made, exact copies of all the poll books, and within ten days after close of the election deposit the same, duly certified, in the office of the registrar of deeds, and such registrar shall allow inspection to any person, on payment of 1s., and allow such person to take a copy of the same at his own expense; the originals to be then transmitted with the writ of election to the clerk of the crown in Chancery, within fifteen days after closing the election.

Scrutiny.—§ 28. No scrutiny to be granted, except as to each vote before it is recorded.

Agents.—§ 29. In the absence of any authorised agent, any elector in the interest of a candidate may act as agent; and any counsel, agent, attorney, or clerk who shall receive or expect to receive, during or after the election, from any candidate or other person, for acting in such capacity, any

money, fee, office, place or employment, or any promise, pledge or security therefor, shall be incompetent to vote at such election—his vote shall be void, and he shall incur thereby a penalty of £25.

Qualification of Voters.

Proprietors.—§ 30. No person shall be entitled to vote at any election for a county or riding, unless at the time possessed for his own use as proprietor, in fee simple or in freehold, or by virtue of any act or acts of the legislature, of lands or tenements lying in such county or riding, of the clear yearly value of 44s. 5½d., (equal, at the time of passing the imperial act 31 G. III., c. 31, to 40s. sterling,) or upwards, over and above all annual rents, or any other rents and charges payable out of the same, nor unless in actual uninterrupted possession, or receipt of rent and profits, at least *six* calendar months before the date of the writ of election, unless the same shall have come by descent or inheritance, devise or marriage, or unless the deed or patent under which he claims shall have been registered *three* calendar months before the date of the writ; provided that no person shall vote by virtue of any conveyance made to his wife after marriage, unless such conveyance shall have been registered *three* calendar months as aforesaid, or such person shall have been in possession for *six* calendar months before the date of the writ. § 31. And for cities and towns, the qualification shall be real estate of the yearly value of £5 11s. 1½d., (equal to £5 sterling,) or upwards, over and above all other rents and charges, and uninterrupted possession of such real estate, or receipt of rents and profits six calendar months before the date of the writ, unless the same shall have come by descent, &c., or unless the deed of conveyance or patent so registered shall have been registered *three* calendar months before the date of the writ; with similar proviso as above in respect to qualification by virtue of any conveyance to the wife after marriage. § 32. Persons qualified to vote, notwithstanding any subsisting covenant, contract or agreement between landlord and tenant for the removal of buildings, or allowance of money therefor.

(a) *Tenant Voters.*—§ 33. Tenants not entitled to vote for any city or town, unless residing at the time within the limits of such city, or town, or liberties, and having so resided during the period of [*twelve*] calendar months next before the date of the writ, by actual residence in a dwelling house or

(a) See post "*Elective Franchise—Extension of.*"—18 V., c. 87.

part of dwelling house lying within the limits of such city, or town, or liberties, [nor unless he shall have paid *bona fide* one year's rent for the same, at the rate of £11 2s. 2½d. (equal to £10 sterling) or upwards a year; such year's rent to be up to the last yearly, half yearly, quarterly, or other day of payment next before the date of the writ; but if the annual rent shall exceed £11 2s. 2½d., then payment of that sum shall be deemed sufficient.] Persons only holding a shop, counting-house, office, or other place of business, and who shall not have an actual residence, shall not be entitled to vote: change of residence in any such city not to disqualify, provided the tenant be in other respects qualified, and in such case he shall vote in the ward where residing. § 34. Tenants otherwise qualified may vote whether the dwelling house be erected by himself or others, and whether or no there be any subsisting covenant or contract between the landlord and tenant for removal of the building, or allowance of money in lieu thereof at the end of the term.

Government and Corporate Officers.—§ 35. Persons occupying houses in such capacity shall not be entitled by reason thereof to vote, unless such party shall have contracted to pay, and have *bona fide* paid one year's rent for the same.

Lands in Several Counties.—§ 36. The proprietor may vote for the part lying within the county where the election is had, if in other respects qualified; and if within the limits of two polling places he may vote at either at his discretion.

Lands partly in Cities and Towns.—§ 37. Party not entitled to vote unless the dwelling-house shall be wholly within the limits.

§ 38 relates to Lower Canada.

(a) *Joint Tenants.*—§ 39. Each may vote upon his undivided share, provided such part or share be of the yearly value of at least [£2 4s. 5½d. as required by § 30, if such lands be situated in any county or riding, or of the yearly value of £5 11s. 1½d., as required by § 31, if situate in any city or town, over all rents and charges.]

Incorporated Companies.—Shareholders in, not entitled to vote.

Disputed Votes.—§ 40. The words "objected to" to be written after the name in the poll book, and the name of the objecting candidate. The situation of the property voted upon may be demanded by the deputy returning officer, or a candidate or his agent, and such voter shall give the particulars thereof before voting, verbally; and

(a) See post "*Elective Franchise—Extension of.*"—18 V., c. 87.

the deputy shall, if required by any candidate or agent, note the same in the poll book.

(b) *Electors' Oath.*—§ 41. Voters may be required by one of the candidates or his agent, *and not otherwise*, before voting, to take one of the oaths or affirmations as under, viz.: if the election be for a county or riding, oath No. 10, 11, 12 or 13; if for a city or town, No. 14, 15, 17 or 18 if voting as a proprietor; and No. 16 if voting as a tenant: and any such voter may be required to take the oath No. 19. Oath to be taken before the deputy returning officer, who on neglect or refusal, or administering any such oath without being required, shall incur a penalty of £10; and any elector voting without taking such oath (when required) shall incur a penalty of £10. If the voter shall refuse the oath, his refusal shall be noted in the poll book, and his vote shall not be taken; and if taken shall be void, and the officer shall incur a penalty of £10.

British Subjects.—§ 42. Such only by birth or naturalization and of the full age of 21 entitled to vote; and in case of dispute the party shall be allowed to prove himself a British subject, by producing a lawful certificate of naturalization, or, at his option, taking the oath No. 19 before the deputy returning officer.

Oath of Allegiance.—§ 43. Deputy returning officers authorised to administer the oath.

Unqualified Voters.—§ 44. Any person voting, and knowing himself to be unqualified, shall incur a penalty of £10, and his vote shall be void; and any person voting more than once at the same election, shall incur a like penalty of £10, and such subsequent vote shall be void.

Fraudulent Conveyance.—§ 45. Conveyance being made of any lands for the purpose of giving a vote, such vote shall be void, and the voter liable to £25 penalty; and such conveyance shall nevertheless be valid, and transfer the property out of the party executing the same, and vest the same in the other party; and every agreement to annul or revoke or re-convey, shall be null and void.

Females.—§ 46. Not permitted to vote at county or city elections.

Interpreters.—§ 47. For appointment of.

Qualification of Candidate.—§ 48. Every candidate before making the declaration required by § 28 of the Union Act, shall, when personally required to make the said declaration, before he shall be elected, give and insert at the foot of the

(b) See also same statute for additional oath, if required.

declaration, a correct description of the lands or tenements on which he claims to be qualified, and of their local situation, by adding after the word "Canada," the following words, "and I further declare that the lands or tenements aforesaid consist of, &c.," and every person giving a false description shall be guilty of misdemeanor, and incur the pains and penalties of perjury. § 49. Any candidate, as well before or after the date of the writ of election, may voluntarily make such declaration, as in preceding section. But no such declaration need be made, unless required on or before the day of nomination, and before poll granted; and when any such declaration shall be required, the candidate may make the same at any time during the election: provided it be made before the proclamation at the close of the election; and such declaration, voluntary or otherwise, may be made before the returning officer, or a justice of the peace, or the mayor, or one of the aldermen of the city or town, who shall take and attest the same, thus: "taken and acknowledged before me," or words to the like effect, and by dating and signing such attestation and such declaration, delivered to the returning officer at any time before the close of the election, shall be a compliance with the law, and such returning officer shall, under a penalty of £50, give forthwith to the candidate an acknowledgment under his hand of the delivery of such declaration.

Conservators of the Peace.—§ 50. Returning officers and their deputies, after subscribing the oath of office, until the day next after the final closing of the election, shall be conservators of the peace, and invested with the powers of justices of the peace, for the maintenance of the peace, arrest, detention or admission to bail, trial and conviction of any person or persons who shall break the law or trouble the peace; and for the maintenance of peace and good order at such elections they may require the assistance of all justices, constables and other persons present, whether at the hustings or polling places, and to swear in special constables; and such returning officer or deputy may arrest or cause to be arrested by *verbal* order, and place in the custody of one or more constables or other persons, for such time as he shall deem expedient, any person disturbing the peace or good order; or cause such person to be imprisoned under an order signed by him, until any period not later than the close of the poll; which verbal order all persons shall be bound to obey without delay, under a penalty of £5. § 51. Special constables may be sworn in by the returning officer or deputy, on requisition by any candidate, his agent, or any two or more

electors. § 53. The returning officer or deputy may demand the surrender of arms and offensive weapons during the election: any person refusing, to be guilty of misdemeanor and punishable by fine not exceeding £5., or imprisonment not exceeding three calendar months, in the discretion of the court. § 35. Assault and battery during the election to be deemed an aggravated assault.

Bribery, &c.—Any candidate, directly or indirectly, employing any means of corruption, or threat, with intent to corrupt or bribe, or keep back any elector, or keeping open houses of entertainment, his election shall be declared void by the proper tribunal, and he shall be incapable of being elected or returned during that parliament. § 55. Parties giving or receiving any gratuity or reward for voting or forbearing to vote at any election, shall forfeit and pay not less than £5., nor more than £50. § 57. And the name of such voter shall be struck off the poll-book by the proper tribunal. § 57. Entertainment not to be furnished by any candidate to any meeting of electors assembled to promote his election previous to, or during the election, except entertainment at his usual place of residence.

Strangers.—§ 58. Prohibits persons not having a stated residence in the township for at least six months before the election (except the returning officer, his deputy, clerk, or constables) from coming into such township during the poll, armed with offensive weapons of any kind, or any person living in the township to arm himself and approach within two miles of the poll.

Flags, &c.—§ 59. Ensigns, standards, colours or flags, not to be supplied by any candidate or other person, or used on the day of election, or within eight days before, or during such election, as a party flag. § 60. Nor any ribbon, label, or favour. 61. Any person offending against any of the four last clauses, shall be guilty of a misdemeanour, punishable by fine not exceeding £25, or imprisonment not exceeding six calendar months.

Poll Books.—§ 62. Any person stealing or unlawfully taking, destroying, injuring or obliterating, or aiding therein, any writ of election, or return, indenture, poll-book, certificate or affidavit, or other document or paper under this act, shall be guilty of felony, and liable to imprisonment in the penitentiary from three to seven years, or imprisonment elsewhere, not exceeding two years, or fine or imprisonment, or both, as the court shall award.

Administering Oaths.—§ 63. Oaths under this act shall be

lawfully administered by the parties required to administer the same.

Penalties, recovery of.—§ 64. Penalties under this act recoverable with costs in any of the courts of competent jurisdiction; and in default of payment the offender shall be imprisoned in the common gaol until payment: suits to be commenced within *nine* calendar months.

Cities and Towns—§ 64—having the right to elect members, not to form any part of the county or riding, as regards elections; and no person shall vote in any county or riding upon real estate in any city or town.

Fees—§ 66—in the annexed schedule to be allowed to the several officers, viz.:

To the Returning Officer.

For attendance on the day of opening election	£2	0	0
For attendance on closing the election.....	2	0	0
For an election clerk for each of those two days, when required	1	0	0
For two constables on each of those two days.....	0	5	0
For each copy of proclamation required by law to be posted	0	2	6
For each commission for deputy and election clerk	0	2	6
For each warrant to deputy to take the poll	0	2	6
For each indenture	0	5	0
For each mile actually and necessarily travelled for attending elections, posting proclamations, and transmitting commissions and poll books.....	0	0	6
For each poll book furnished to deputy	0	5	0
For each copy, per folio of one hundred words	0	0	3

And reasonable expenses incurred in providing hustings, and reasonable expenses in transmitting poll books and returns to the clerk of the crown in Chancery.

To each Deputy.

For each day of holding the poll	1	0	0
For the commission appointing a poll clerk	0	2	6
For a poll clerk, each day	0	10	0
And for mileage actually and necessarily travelled to and from the poll, per mile	0	0	6
For two constables, each per diem	0	5	0
For mileage actually and necessarily travelled for transmitting poll books to returning officer, per mile	0	0	6

And reasonable expenses incurred in providing hustings or polling places.

To Justices of the Peace,

When required to administer oath in a *public manner*,
 mileage at the rate of, per mile 0 0 6

Such fees and allowances to be paid to the returning officer, by warrant on the receiver general, and distributed to the several parties.

§ 67. One copy of this act, with index, and one for each of his deputies, to be transmitted with the writ of election to the returning officer.

§ 68. (a) Contains a provision for extending the time of polling in the townships of Waterloo and Wilmot. § 69. Act may be annulled or repealed this session.

For schedule and forms, see "*The Act.*"

Elective Franchise—Extension of.

By 18 V., c. 87, s. 1, former acts 16 V., c. 153, and 18 V., c. 7, are repealed. § 2. In addition to the persons qualified as voters under the 12 V., c. 27, the following persons, being of the full age of 21, and subjects of her Majesty by birth or naturalization, and not being otherwise disqualified, shall be entitled to vote at elections, viz :

1. *Cities or Towns.*—Every male person having been six months previous to the election and at the time of voting the legal *bonâ fide* owner or freeholder, tenant or occupant of real property within any city or town entitled to send a member to parliament, of the actual value of £75 or upwards, or of the yearly value of £7 10s. or upwards, or having been *six months* previous to and at the time owner, tenant or occupant of any real property within the limits of such city or town for the purposes of representation (but not for municipal purposes) of the actual value of £50 or upwards, or yearly value of £5.

2. *Townships.*—Every male person having been for *six months* previous to and at the time of voting, the legal and *bona fide* owner or freeholder, tenant or occupant of real property, of the actual value of £50 or upwards, or yearly value of £5 or upwards, in any parish, township, town, village or place not being within any city or town entitled to send a member to parliament.

3. *Lessees.*—No person shall be entitled to vote as tenant or occupant of any real property unless the original lease was for a term of not less than one year ; and persons voting as tenants or occupants of real property shall vote

in the ward or place in which such property lies; and no person shall be deemed an occupant of real property, unless he shall occupy with the consent of the owner of the property, and with the intent of obtaining the title.

§ 4. *Joint Tenants, Partners, &c.*—Whether owners, tenants or occupants may vote separately, if the actual or yearly value of his part or share would be sufficient, if held by him separately, (except members of bodies corporate).

§ 5. No person shall be entitled to vote on real property on which any instalment of purchase money or rent or other money shall be due to the owner and unpaid.

Oath of Qualification—And any person claiming the right of voting under the election act of 1849 (12 V., c. 27) shall, if required by any candidate or agent, or deputy returning officer, take the oath or affirmation, No. 5 in the schedule to this act.

§ 6. *Other Oaths.*—Persons claiming to vote under this act shall take the oath or oaths Nos. 1, 2, 3, 4, in the schedule (according to the case), if required by any candidate, agent or deputy returning officer.

§ 7. Provisions of the elections act of 1849 with respect to disqualification inconsistent with this act repealed, the remainder to continue in force.

Controverted Elections.

By 14, 15 V., c. 1, the petition to the House of Assembly may be signed by any elector or candidate. § 2. If arising out of an election on the expiration or dissolution of any parliament, must be presented to the House of Assembly within the first fourteen days of the session: provided the house shall, on the last of such fourteen days, have gone through with the daily routine of presenting and bringing up petitions; and if not, then such petition shall be presented on the first day after the house shall have gone through such daily routine. § 3. Petitions against other elections to be presented within the first fourteen days of the session next after such return. § 4. If parliament in session at the time of such return, then such petition shall be presented within the first fourteen days after such return brought into the office of the clerk of the crown in Chancery. § 5. Such petition may be brought up as a matter of privilege during any part of the day. § 6. No session which shall not have lasted fifteen days to be deemed a session in such cases. § 7. In cases of alleged bribery or corruption the petition may be presented within twenty-eight days, instead of fourteen. § 8. If not presented in time, not to be deemed an

election petition. § 9. May be withdrawn on certain conditions.

Recognizances.—§ 10. Before presentation of any petition the petitioner to give security by recognizance for £200 for payment of costs. § 11. Sitting member to give security for costs to the amount of £100 before issuing a commission on his behalf to take evidence. § 12. Sureties to justify upon oath for the amount they are bound for. § 13. To be designated by their names, residence and occupation. § 14. Recognizances to be entered into before the Speaker or a justice of the peace. § 15. Money may be deposited instead of giving security. § 16. Petition not to be received unless the Speaker certify by indorsement that the requisite security has been entered into, or amount deposited. The other clauses relate to subsequent proceedings, for which the reader is referred to the act.

Evidence.—By 20 V., c. 23, s. 1, notice to be given by the party intending to contest the election, on ground not appearing on the face of the return, to the member elected within fourteen days after the close of the election, such notice to specify the facts on which he intends to contest the election. § 2. The member elect, within fourteen days after service thereof, shall answer such notice by admission or denial of the facts, setting forth the facts upon which he rests the validity of such election, and he shall not be permitted to give evidence of any other facts or circumstances. § 3. Such answer to be served, within the time limited, by delivering a copy to the party in person, or by leaving the same at his residence with some grown-up person of his family, and proved by affidavit sworn before a justice or commissioner, stating the time, place and manner of service. § 4. Either party desirous of taking evidence may apply to the judge of the county court in Upper Canada, residing or having jurisdiction within the electoral division, to take such evidence: and the judge shall forthwith appoint the time and place, of which six days' notice shall be given to the opposite party; but such application shall not be received unless made within six days from the service of the answer of the returned member, or from the expiration of the time allowed for such service: nor unless at the time of such application such contesting party shall produce and file with such judge a copy of his intended petition, and a copy of the said notice, sworn to by the person who served the same, and a copy of the answer, if any, and if no answer, then with an affidavit denying that any answer has been served, together with a recognizance and the affidavit or affidavits of sufficiency on

the part of the sureties required by the election petitions act of 1851 (14, 15 V. c. 1): provided that the application shall be held void if the contesting party shall wilfully omit to file the notice in answer (if any) of the member elected or returned: and such application shall not be received on the part of the member who has been declared elected by any such judge, unless made within six days after the service of such answer, nor unless at the time of application the said member shall produce to such judge a copy of the notice served on him, and his answer thereto, together with an affidavit of the service of such answer, and a recognizance and affidavits of the sufficiency of the sureties required by said election petitions act of 1851 from the sitting member. § 5. The recognizance on behalf of the contesting party shall be held to refer to the petition to be presented, of which the copy shall have been filed with the judge as aforesaid, and to no other: and no other or different petition shall be received by the Legislative Assembly; and unless such copy of the intended petition be so filed, the application shall not be deemed validly made, but void. § 6. So soon as the said application shall have been validly made as aforesaid the judge so applied to shall be deemed to all intents and purposes a commissioner for inquiring into, examining and taking evidence upon all the matters of fact and circumstances mentioned in the notice of the contesting party, and the answer (if any) of the returned member, and shall take and cause to be taken by those whom he shall employ as clerks or bailiffs the oath of office in the schedule to the said election petitions act of 1851 contained, varying the words thereof so as to suit the circumstances: and it shall be the duty of the said judges respectively to take upon them the duties imposed by this act, and they shall then have all the powers and rights (including remuneration for their services and the right of appointing deputies to act for them as such judges while engaged in consequence of such application), and shall perform all the duties and be subject to all the liabilities assigned by the said act of 1851 to persons appointed commissioners to take evidence relative to any controverted election, saving only that their powers shall be limited to the questions of fact set forth in the notice and answer (if any) of the parties, and the questions concerning the validity of the recognizance, if it be objected to: and the select committee may deal with any such judge as if he had been appointed a commissioner by them. § 7. The evidence so taken to be transmitted to the clerk of the Legislative Assembly in the manner prescribed by the said

act of 1851. § 8. The select committee may in the meantime proceed with other matters incident to the contest, or they may adjourn until such evidence be received.

§ 9. Nothing in this act shall prevent the presentation or reception of an election petition containing allegations of bribery or corruption under the special provisions of the 7th § of the said elections act after the time limited for presenting election petitions in other cases shall have expired; or shall be applied to any such petition presented by virtue only of the said section, or shall prevent the application of the 160th § of the said act in any case not provided for in this act.

For *Electoral Divisions*, see title "*Parliamentary Representation.*"

EMBEZZLEMENT.

By stat. 4 & 5 V., c. 25, § 39, if any clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, shall by virtue of such employment receive or take into his possession any chattel, money, or valuable security for, or in the name, or on the account of his master, and shall fraudulently embezzle the same or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money or security was not received into the possession of such master otherwise than by the actual possession of his clerk, servant, or other person so employed; and every offender, upon conviction, shall be liable, at the discretion of the court, to any of the punishments which the court may award, as in said act mentioned. § 40. Any number of distinct acts of embezzlement not exceeding three, committed within six calendar months, may be charged in the indictment; and except in the case of chattels, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security. § 41. If any money or security for the payment of money shall be intrusted to any banker, merchant, broker, attorney or other agent, with any direction in writing to apply the same, or the proceeds of such security, for any purpose specified in such direction, and he shall in violation of good faith, contrary to the purpose so specified, in anywise convert the same, or any part thereof to his own use or benefit, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or imprisoned in any other prison or place of

confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award. And if any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of this province, or of the United Kingdom of *Great Britain and Ireland*, or of *Great Britain*, or of *Ireland*, or of any British colony, or foreign state or colony, or in any fund of any body corporate, company, or society, shall be intrusted to any banker, merchant, broker, attorney or other agent, for *safe custody* or for any *special purpose*, without any authority to sell, negotiate, transfer, or pledge, and he shall in violation of good faith, and contrary to the object or purpose for which the same shall have been intrusted to him, sell, negotiate, transfer, pledge, or in any manner convert the same or the proceeds thereof to his own use, every such offender shall be guilty of a misdemeanor, and upon conviction shall be liable, at the discretion of the court, to any of the punishments which the court may award, as thereinbefore mentioned. § 42. This act not to affect any trustee in or under any instrument whatever, or any mortgagee of real or personal property; nor restrain any banker, merchant, broker, or attorney or other agent, from receiving any money due and payable by virtue of any valuable security, according to the tenor and effect thereof; nor from selling, transferring, or otherwise disposing of any securities or effects in his possession, upon which he shall have any lien or claim, entitling him to do so: unless such sale or transfer shall extend to more than what shall be requisite for satisfying such lien, claim or demand. § 43. If any factor or agent intrusted with any goods or merchandise for sale, or with any bill of lading, warehouse keeper's or wharfinger's certificate, or warrant or order for delivery of goods or merchandise, shall for his own benefit and in violation of good faith, deposit or pledge the same or any of them as a security for any money or negotiable instrument, borrowed or received by such factor or agent, at or before the time of making such deposit or pledge, or intended to be thereafter borrowed or received, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award; but no such factor or agent shall be liable to any

prosecution for depositing or pledging any such goods or merchandise or any of the said documents, in case the same shall not be made a security for or subject to the payment of a greater sum than the amount justly due and owing to such factor or agent from his principal, together with the amount of any bill of exchange drawn by or on account of such principal, and accepted by such factor or agent. § 44. This act not to deprive the party aggrieved of any remedy at law or in equity; nor shall the conviction of any offender be evidence against him; nor shall any accused party be convicted upon any evidence disclosed by him in any court of law or equity, or before commissioners of bankruptcy.

By 18 V., c. 92, it is provided that if any person indicted for embezzlement as a clerk, servant or person employed in that capacity shall be proved to have taken the property in any manner as to amount in law to larceny, he may be found guilty of larceny and punished accordingly: and so *vice versa* upon an indictment for larceny the defendant may be found guilty of embezzlement according to the facts and punished accordingly.

See also Bank of Upper Canada Amendment Act, 19 & 20 V., c. 121, § 40, which makes it felony for any cashier, assistant cashier, manager, clerk or servant of said bank to secrete, embezzle or abscond with any bond, bill or note, or any security for money or any moneys or effects of said bank, or other parties deposited with said bank. § 41. Punishment therefor imprisonment in the provincial penitentiary for any term not less than two years, or in any other gaol for a lesser term.

*Form of Indictment for Embezzlement pursuant to
18 V., c. 92.*

County of) The jurors for our lady the Queen upon their
to wit.) oath present that A. B. on the day of
in the year of our Lord one thousand eight hundred and
at in the county of being a servant (*or clerk*) then
employed in that capacity by one C. D. did then and there in
virtue thereof receive a certain sum of money, to wit, to the
amount of for and on account of the said C. D., and the
said money did feloniously embezzle.

EMBRACERY.

Is an attempt to influence a jury corruptedly to one side by promises, persuasions, entreaties, money, entertainments and the like. The punishment for the person embracing is by fine and imprisonment; and for the juror so embraced,

if it be by taking money, the punishment is (by divers statutes of the reign of E. III.) perpetual infamy, imprisonment for a year, and forfeiture of the tenfold value.—*Bl. Com. p. 140, 16 Ed.*

EMIGRANTS.

By 16 V., c. 82, an act to amend and consolidate the laws relative to emigrants and quarantine, former acts are repealed.

§ 2. Imposes certain rates or duties on the master or person in command of every vessel arriving in the ports of Quebec or Montreal from the United Kingdom or Europe, with passengers or emigrants therefrom, viz: *five shillings* currency for every adult passenger or emigrant, and *three shillings and nine pence* for others between the ages of one and fourteen years, and *seven shillings and six pence* for those embarking without the sanction of her Majesty's government. § 3. And for every passenger not included in the list of passengers, in addition to the above rates, the sum of *forty shillings* currency. § 4. The master or person in command of any such vessel permitting any passenger to leave the vessel, until permission given, and duties paid, liable to a penalty of not less than £5, nor more than £25 for each passenger so leaving. § 5. Imposes a penalty of from £2 to £5 upon the master of any vessel arriving from any port or place in Europe or any other port of her Majesty's dominions, having on board, or having had on board during the voyage, more than one adult passenger for every twelve clear superficial feet on the lower or platform deck, appropriated to the use of passengers, or a greater number of persons (including the master, crew and cabin passengers), than one person for every two tons of the tonnage of such ship. § 6. The master, within twenty-four hours after the ship's arrival, shall deliver to the collector a correct list of all his passengers, under a penalty of £5 per diem, and £2 for every passenger omitted in such list. § 7. The master shall also report to the collector the name and age of all the passengers embarked on such voyage who shall be lunatic, idiotic, deaf and dumb, blind or infirm, stating whether they are accompanied by relatives able to support them; and in case of making any false report, shall incur a penalty of from £5 to £25 for every such passenger omitted, or in regard to whom any such false report shall have been made, and for which penalty the owners of the vessel shall also be liable. § 8. The report shall also contain the name, age, and last residence of every passenger dying during the voyage, and

whether accompanied by relatives or others entitled to take charge of the deceased's property, and if no such persons, then the report shall specify the property (money or otherwise) of such passenger, and he shall pay over and account for the same to the collector, and in case of default the master shall incur a penalty of from £5 to £250 for every such case of neglect or refusal. § 9. Passengers allowed to leave the vessel before arriving at the ports aforesaid under particular circumstances, but in such case the names of passengers so leaving shall be entered in the manifest on the emigrant list, and certified by the signatures of the passengers so leaving. And in case the number remaining on board shall not correspond with such manifest, after deducting the number leaving, the master shall incur a penalty of £5 for each person not found on board. § 10. Any pilot having charge of any such vessel, knowing that any passenger has left contrary to the provisions of this act, and not reporting the same to the collector within twenty-four hours after the arrival of such vessel shall incur a penalty not exceeding £5 for every such passenger. § 11. Passengers entitled to remain on board with their luggage after the ship's arrival *forty-eight* hours, and if compelled by the master to leave sooner, the master shall incur a penalty not exceeding £5 for every such passenger; nor shall the master, during the same period, remove the berth or accommodation of any passenger under the like penalty, except with the permission of the medical superintendent at the quarantine station. § 12. It shall be the duty of such medical superintendent, forthwith after the arrival thereof of any passenger vessel, to examine into the condition of the passengers; and if on such examination there shall be found any lunatic, idiotic, deaf and dumb, blind or infirm person, not belonging to any emigrant family, and any such person shall, in the opinion of such medical superintendent, be likely to become a permanent public charge, the superintendent shall forthwith report the same to the collector, who shall require the master, in addition to the rate or duty payable for the passengers generally, to execute with two sufficient sureties a bond to her Majesty in £75 for every such passenger so reported, conditioned to indemnify the province or any municipality, village, city, town or county, or charitable institution therein, from any expense, or charge for three years for the maintenance of such passenger. § 13. And in case any such passenger shall become chargeable within the three years, such bond shall be enforced for his support. § 14. The master of any vessel refusing to execute such bond, shall incur a penalty of £100. § 15. Such bond,

when executed, to be transmitted to the Receiver-General. And it shall be the duty of the chief emigrant agent to report any claims made for the support of such passengers to the Governor, and the penalty in such bond shall be sued for. § 16. Passengers to be landed with their baggage on wharves free of expense, at the usual landing place of the port, at reasonable hours, under a penalty of £10 for any offence. § 17. Steam vessels receiving emigrants on board in the stream at Quebec, are not to proceed upwards without first returning to the wharf and remaining there at least two hours, under a penalty of £10 on the master of such steam vessel. § 18. Repeals certain former quarantine acts. (L. C. 36 G. III., c. 5; 12 V., c. 7.) § 19. The Governor in council is authorised to make such regulations with respect to quarantine and purifying vessels, as may be necessary for the preservation of public health, and the prevention of disease from spreading; and by such regulations may impose fines not exceeding £100 on persons contravening the law. § 20. The quarantine at Grosse Isle to consist of a superintendent of emigration and a medical superintendent, with subordinate help, as the Governor in council shall deem necessary. § 21. Regulations to be published in the official "Gazette." § 22. Expenses under this act to be defrayed out of public moneys. § 23. All duties and penalties imposed by this act to be a special lien on the vessel. § 24. When collected to be paid over to the Receiver-General. § 25. Moneys raised under this act to be applied in defraying emigrant expenses. § 26 and following sections relate to the mode of recovering and application of penalties.

By the general customs act 12 V., c. 1, the following articles in the occupation or employment of persons coming into this province for the purpose of actually settling therein, are exempt from duties, viz: wearing apparel in actual use, and other personal effects, not merchandize; horses and cattle; implements and tools of trade of handicrafts men

ESCAPE.

Where a person hath another in lawful custody upon an arrest, whether made by himself or another, if he suffer him to go at large, before he is delivered by lawful authority, it is an escape, for which he is punishable; but the arrest must be for a real and not a supposed crime.—2 *Haw.*, c. 19, § 2. And the imprisonment must be for a criminal offence.—*Ib.* § 3. And a gaoler is guilty of the offence, if he give a prisoner more liberty than the law allows; or, if he suffer the prisoner to go out for a time though he after-

wards return.—*Ib.* § 5, and *Dalt.* c. 159. Where a person is found guilty on an indictment for a negligent escape, he is punishable by fine and imprisonment, according to the quality of the offence.—2 *Haw.* c. 19; 1 *Hale*, 600, 604. And if a voluntary escape, he is punishable in the same degree as the offence of which the party is guilty; but no one shall be deemed guilty but the actual offender.—2 *Haw.*, c. 19, § 23.

By statute 16, G. II., c. 31, to assist a prisoner convicted of treason or felony to attempt an escape, is felony, and subjects the offender to transportation for seven years; and if the party be committed for petit larceny, or on a civil process for debt, amounting to £100, he shall be guilty of a misdemeanor, and liable to fine and imprisonment; and for conveying any disguise, or instrument, or arms, to facilitate the escape of prisoners convicted of, or committed for treason or felony, the offender shall be transported for seven years; or if for petit larceny, or civil process for a debt, &c., amounting to £100, he shall be deemed guilty of a misdemeanor, and be liable to fine and imprisonment. § 2 & 3. And assisting a felon to escape from a constable, is by this statute also made felony, and subjects the offender to transportation for seven years.—*Ib.*

This statute does not extend to causes where an *actual escape* is made, but only to cases where an *attempt* is made, without effecting the escape.—*R. v. Tilly and others*, O. B. Sess. 1795.

ESTREAT.

An estreat (from *extractum*) is a true copy or extract of some original writing or record, containing an entry of fines or amerancements imposed by a court of record, or other competent authority; but when applied to a recognizance itself, is *extracted* or taken out from among the other records, and sent up to the exchequer.—4 *Bl. Com.* 253.

* By the 7 W. IV., c. 10, § 3, all fines, issues, and amerancements, and forfeited recognizances, (except such as shall by any act be directed to be otherwise levied), which shall be set, imposed, lost, or forfeited, by or before any general quarter sessions of the peace, shall, within 21 days after the adjournment of the court be entered on a roll by the clerk of the peace, which roll shall be made out in duplicate and signed by the clerk of the peace. § 4. One of the said rolls to remain deposited in the office of the clerk of the peace, and the other shall, as soon as prepared, be sent by the clerk of the peace, with a writ of *fieri facias* and *capias*, according to

the form in the schedule marked B., to the sheriff of the district, which writ shall be authority to such sheriff for levying the same, or for taking into custody the bodies of such persons, in case sufficient goods cannot be found; and every person so taken shall be lodged in the common gaol of the district until satisfaction be made, or until the general quarter sessions shall, upon cause shewn by the party as hereinafter mentioned, make an order in the case, and such order be fully complied with. § 5. In every case of default whereby a recognizance may be forfeited, if the cause of absence be made known to the court, the court may on consideration of such cause, and also considering whether by the non-appearance of such person the ends of justice have been defeated or delayed, forbear to order the recognizance to be estreated: and with respect to all recognizances estreated in court, and fines imposed for the non-attendance of any juror or constable, or of any public officer bound to attend at such court, it shall be in the power of the chairman of the sessions, and any two justices who presided at such court, to make an order directing that the sum forfeited upon such recognizance or fine imposed be not levied, provided it shall appear satisfactorily that the absence of such party was justifiable; and for such purpose it shall be necessary for the clerk of the peace, before sending to the sheriff any roll with a writ as directed by this act, to submit the same to the chairman for his revision, who, taking to his assistance two of the presiding justices, shall make a minute on the roll of such recognizances and fines as they may think fit to direct not to be levied, and the sheriff shall forbear to levy the same. § 6. The sheriff upon taking lands or tenements in execution, shall advertise the same in like manner as lands in execution in other cases, and no sale shall take place in less than twelve calendar months from the time the writ shall come into the sheriff's hands. § 7. The clerk of the peace shall at the foot of each roll make and take the following affidavit: "I A. B. (describing his office) make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, recognizances and forfeitures, which were set, lost, imposed or forfeited, at or by the court therein mentioned, and which in right and due course of law ought to be levied and paid, are to the best of my knowledge and understanding inserted in the said roll, and that in the said roll are contained and expressed all such fines as have been paid to or raised by me, either in court or otherwise, without any wilful discharge, omission, misnomer, or defect whatsoever. So help me God!"

which oath any justice of the peace for such district may administer. § 8. The justice before whom any recognizance shall be entered into, shall give at the time of entering into such recognizance to the person or persons entering into the same, and to each of his sureties, a written or printed paper or notice, in the form in the schedule marked C., and every such justice shall in such recognizance state and specify particularly the profession, art, or trade of every person so entering into such recognizance, together with the christian name and surname, and also the place of his or her residence. § 9. Persons on whom levies are made for forfeited recognizances may give security to the sheriff or other officer for their appearance in court at the return day of the writ, to abide the decision of the court, and to pay such forfeited recognizance or money to be paid in lieu or satisfaction thereof, together with such lawful expenses as shall be ordered by the court, and thereupon the sheriff may discharge such person out of custody: provided that in case such party shall not appear, it shall be lawful for the court forthwith to issue a writ of *feri facias* and *capias* against the sureties. § 10. The court of general quarter sessions into which the writ of *feri facias* or *capias* shall be returnable, may inquire into the circumstances of the case, and in its discretion order the discharge of the recognizance, or money paid or to be paid in lieu thereof, and make such order thereon as to them may appear just. § 11. The sheriff shall return the writ on the day the same is returnable, and state on the back of the roll attached to such writ what shall have been done in the execution thereof, which return shall be filed in the court, and a copy thereof certified by the clerk of the peace shall be forthwith transmitted to the Receiver-General, with a minute thereon of any sums remitted by order of the court, in the whole, or in part, or directed to be forborne. § 12. The sheriff shall without delay pay over all moneys by him collected to the Receiver-General.

SCHEDULE A.

William the Fourth, by the Grace of God, &c.

To the Sheriff of . . . Greeting:

You are hereby commanded to levy of the goods and chattels, lands and tenements, of all and singular the persons in the roll or extract to this writ annexed mentioned, all and singular the debts and sums of money upon them severally imposed and charged, as therein is specified, and if any of the said several debts cannot be levied, by reason of no goods or chattels, lands or tenements, being to be found, belonging to the said parties

respectively, then and in all cases that you take the bodies of the parties respectively, and keep them safely in the gaol of your district, there to abide the judgment of our Court of King's Bench, upon any matter to be shewn by them, or otherwise to remain in your custody, as aforesaid, until such debt shall be satisfied, unless any such person shall give sufficient security for his or her appearance at the said court, on the return day hereof, for which you will be held answerable; and what you shall do in the premises make appear before us, in our Court of King's Bench, at Toronto, on the day of term next, and have you then and there this writ. Witness, &c. A. B., clerk of assize, at the last assizes, for the district of , this day of , 18 .

SCHEDULE B.

William the Fourth, by the Grace of God, &c.

To the Sheriff of . Greeting:

You are hereby commanded to levy of the goods and chattels, lands and tenements, of all and singular, the persons in the roll or extract to the writ annexed mentioned, all and singular, the debts and sums of money upon them respectively imposed and charged, as therein is specified, and if any of the said several debts cannot be levied, by reason of no goods or chattels, lands, or tenements, being to be found, belonging to the parties respectively, then and in all cases, that you take the bodies of the parties respectively, and keep them safely in the gaol of your district, there to abide the judgment of the court of general quarter sessions for the said district, upon any matter to be shewn by them, or otherwise to remain in your custody, as aforesaid, until such debt shall be satisfied, unless any such person shall give sufficient security for his or her appearance at the said court, on the return day hereof, for which you will be held answerable; and what you shall do in the premises, make appear at the next court of general quarter sessions, of the peace, for the said district, on the first day of the said court, and have then and there this writ. Witness, C. D., clerk of the peace for the district of , this day of 18 .

SCHEDULE C.

District, } Take notice, that you , are bound in the
to wit. } sum of pounds, and your sureties in the
sum of pounds each, to appear at , to be holden at ,
and unless you personally make your appearance accordingly,
the recognizance entered into by yourself and your sureties
will be forthwith levied on you and your bail. Dated this
day of 18 . A. B. justice of the peace for the district.

By 4 & 5 V., c. 24, § 49, reciting that the indiscriminate estreat of recognizances had been in many instances productive of hardship, it is enacted, and the officer of the court is

required to prepare a list in writing of forfeited recognizances, specifying the names of the defaulters, the nature of the offences, with the residence, trade, profession or calling of the parties, distinguishing the principals from the sureties, stating the cause, if known, why the parties have not appeared, and whether the ends of justice have been defeated thereby, and such officer before estreating such recognizances, shall lay such list, if at a court of oyer and terminer or gaol delivery, before one of the justices thereof, or if at a session of the peace before two justices, who shall have attended such court, and who are required to examine such list, and to make such order touching the estreating of any such recognizance as shall appear to them just; and the officer of the court shall not estreat any such recognizance without the written order of the said justice or justices.

EVIDENCE.

Evidence, in its general sense, is the testimony of witnesses, given upon an issue joined between parties in a civil or criminal suit.—1 *Inst.* 283. In general, a person is a competent witness unless interested in the event of the suit, either directly or indirectly—7 *T. R.* 62; and by the common law, informers who participate in any penalty are not competent witnesses; but they are sometimes rendered so by act of parliament in particular cases.—1 *Ph. Ev.* 117. The confession of a defendant taken on an examination before justices, is allowed to be evidence against the party confessing, but not against third persons.—2 *Haw.* c. 46, § 3. The distinction between a *credible* and a *competent* witness is, that the former is not disabled from being sworn, but the *credit* of his testimony depends upon his moral character; the latter may be disabled by interest, and other causes, from giving evidence, and on that account is *incompetent*.—2 *H. H.* 276, 277.

If a person be convicted of treason, felony, forgery, perjury, subornation of perjury, attaind of false verdict, and other offences of the same description, which involve the charge of falsehood, and affect the administration of justice, he is incompetent to give evidence. So, if convicted of bribing a witness to absent himself and not give evidence; barratry or conspiracy to accuse another of a capital offence.—*Russell on Cr.* 592, 593. The incompetency must be proved by the production of the record of conviction and judgment.—*Gill.* 128, 129. The admission of the witness himself that he had been convicted of grand larceny, and was then under sentence, was held insufficient.—8 *East.* 78.

And an admission by a witness that he has been guilty of perjury, affords no objection to his competency, whatever effect it may have upon his credit.—*R. v. Teal*, 11 *East*. 189. And by stat. 9 Anne, c. 14 & 15, a person convicted of winning by fraud or ill practice in certain games is rendered incompetent. The incompetency arising from infamy may be removed—1st, by endurance of punishment; 2nd, by pardon; 3rd, by reversal of the punishment. *By statute 31 G. III., c. 35, no person shall be incompetent by reason of a conviction for petit larceny.

By 4 & 5 V., c. 24, § 22, offenders convicted of *misdemeanors* affecting their competency as witnesses, and having endured the punishment adjudged for the same, shall not afterwards be deemed incompetent witnesses (convictions for perjury or subordination of perjury excepted).

A witness cannot be asked any question, the answer to which would criminate himself; but he may be asked whether he has not been in the pillory for perjury.—*T. R.* 440. An infant fourteen years of age, and even under, if of competent discretion, may be sworn to give evidence.—2 *H. H.* 278. The deposition of a witness taken *extra judicially* before a magistrate is not evidence.—*Leach*, 397. Husband and wife are not admitted as evidence against each other, except in treason; but in polygamy (for the second marriage being void) the second wife may be admitted as a witness. A wife may also be permitted to swear the peace against her husband, and *vice versa*.—*Buller, N. P.* 286. A woman living with a man as his wife, though not actually so, cannot be examined as a witness on his behalf.—*Campbell v. Twemlow*, 1 *Price*, 81; 1 *Phil. Ev.* 82. Quakers, Menonists and Tunkers, &c., are admissible as witnesses upon their simple affirmation.—*10 *G. IV.*, c. 1.

EXAMINATION.

Summary Convictions.

By 16 V., c. 178, § 11, it is enacted that every complaint or information shall be heard, tried, determined and adjudged by one or more justices (according to the act or acts upon which the complaint shall be founded,) and if there be no direction in the act in this respect, then such complaint or information may be heard, tried and adjourned by any one justice of the division, where the matter of complaint shall have arisen: and the room or place in which such justice or justices shall sit to hear and try any such complaint, shall be deemed an *open and public court*, to which the public

generally may have access, so far as the same can conveniently contain them. And the party against whom such complaint is laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross examined by counsel or attorney on his behalf. And every complainant shall be at liberty to conduct such complaint, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

See further on this subject under the title "*Summary Conviction.*"

Indictable Offences.

By 16 V., c. 179, § 9, it is enacted that in all cases where any person shall be brought before any justice or justices charged with any indictable offence, such justice or justices, before he or they shall commit the accused to prison for trial, or admit him to bail, shall *in the presence* of such accused person, who shall be at liberty to put questions to any witness produced against him, take the statement on oath or affirmation of those who shall know the facts and circumstances of the case, and shall put the same in writing, and such depositions shall be read over to and signed by the witnesses, and by the justice or justices taking the same.

§ 10. After the examination of all the witnesses on the part of the prosecution shall have been completed, the justice or one of the justices, by or before whom such examination shall be completed, shall, without requiring the attendance of the witnesses, read or cause to be read to the accused the depositions taken against him, and shall say to him these words, or words to the like effect—"Having heard the evidence, do you wish to say any thing in answer to the charge? You are not obliged to say any thing unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial;" and whatever the prisoner shall then say in answer thereto shall be taken down in writing, and read over to him, and shall be signed by the said justice or justices, and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned: and afterwards upon the trial of the said accused person, the same may be given in evidence against him without further proof, unless it shall be proved that the justice or justices purporting to sign the same, did not in fact sign the same. Provided always that such justice or justices, before such accused person shall make any statement, shall state to him, and give him clearly to understand "that he has nothing to hope from any promise of favour,

and nothing to fear from any threat which may have been holden out to him to induce him to make any admission or confession of his guilt, but whatever he shall then say, may be given in evidence against him upon his trial, notwithstanding such promise or threat. Provided nevertheless that nothing herein contained or enacted shall prevent the prosecutor in any case from giving in evidence any admission or confession, or other statement of the accused made at any time which would by law be admissible as evidence against such person.

§ 11. The room or building in which such justice or justices shall take such examination and statement as aforesaid *shall not be deemed an open court* for that purpose : and it shall be lawful for such justice or justices, in his or their discretion, to order that no person shall have access to, or be, or remain in such room or building without their consent or permission, if it appears to him or them that the ends of justice will be best answered by so doing.

§ 19. After the examination is completed, the accused is entitled to have copies of the depositions from the officer in charge, on payment of a reasonable sum, not exceeding the rate of *three pence* for each folio of 100 words.

With respect to "*Bail*" and other matters see *post* title "*Indictable Offences.*"

EXECUTION.

Execution is the last stage of criminal proceedings. This must, in all cases, be performed by the sheriff, or his deputy, whose warrant for so doing was anciently by precept, under the hand and seal of the judge. For a long time past, however, it has been the established practice for the judge to command execution to be done without any writ. The usage is for the judge to sign the calendar or list of all the prisoners, with their separate judgments in the margin, which is left with the sheriff. Thus, for a capital felony, it is written opposite to the prisoner's name—"Let him be hanged by the neck;"—formerly, in the days of latin and abbreviation—*sus. per. coll.* for *suspendatur per collum*. This is the only warrant which the sheriff has for so material an act as taking away the life of another.—4 *Bl. Com.* 402. The place, however, ought to be somewhere in the county where the criminal was tried and convicted—unless the record of attainder be removed into the King's Bench : which court may award execution in the county where it sits.—3 *Inst.* 31, 211, 217; 4 *Bl. Com.* 404. If upon judgment to be hanged by the neck till dead, the criminal be not thoroughly killed, but revives,

the sheriff must hang him again, for the former hanging was no execution of the sentence; and if a false tenderness were to be indulged in such cases, a multitude of collusions might ensue.—2 *Hale*, 412; 2 *Haw.* 463; 4 *Bl. Com.* 406. The body of a traitor or felon is, in strictness of law, forfeited to the king, by the execution, and he may dispose of it as he pleases; but it is usual in all cases, except *murder*, to give up the body for interment. Execution may be avoided by a *reprieve*, or a *pardon*; the former is only temporary, but the latter is permanent. Every judge who hath power to order execution, hath also power to grant a reprieve.—2 *Hale*, 412. When a woman *quick* with child is condemned, although this is no cause to stay the judgment, yet it is good cause to respite the execution until she be delivered. Upon this plea being made, the judge must direct a jury of twelve matrons, or discreet women, to inquire the fact; and if they bring in their verdict *quick with child*—for barely *with child*, unless it be alive in the womb, is not sufficient—execution shall be stayed generally till the next assizes, until she is either delivered, or proves, by the course of nature, not to have been with child at all.—4 *Bl. Com.* 395. If a prisoner become *non compos mentis* between the judgment and award of execution, the judge ought in this case also to reprieve him, for *furiosus solo furiose punitur*; and the law knows not but he might have offered some reason, if in his senses, to have stayed the execution.—*Ibid.* Execution may be also avoided by a plea of diversity of persons, viz., that he is not the same that was attainted, and the like. In this case, a jury shall be empannelled to try the facts. In all such collateral issues, the trial must be *instanter*, and no time allowed the prisoner to make his defence, or produce his witnesses, unless he will make oath he is not the person attainted.—*Fost.* 42.

*By statute 3 Wm. IV., c. 3, § 19, instead of the former punishment for *treason*, viz., disembowelling the traitor, and dividing his body into four quarters, it is enacted that the sentence to be pronounced shall be, “that such person be drawn upon a hurdle to the place of execution, and be there hanged by the neck till such person be dead, and that afterwards the body of such person shall be dissected and anatomized;” and when any person shall be convicted of *murder*, his body shall be delivered by the sheriff to a surgeon for dissection. § 20. After sentence pronounced as aforesaid, the judge may, if he see probable cause, order a respite.

By 4 & 5 V., c. 27, § 4, sentence of death may be pronounced, after conviction for murder, in the same manner,

and the court before which the conviction may be had shall have the same power, in all respects, as after conviction for other capital offences. § 5. Every person convicted of murder shall, after judgment, be confined in some safe place within the prison, apart from all other prisoners, and shall be fed with bread and water only, and with no other food or liquor except in case of receiving the sacrament, or in case of any sickness or wound, in which case the surgeon of the prison may order other necessaries to be administered: and no person but the gaoler and his servants, and the chaplain and surgeon of the prison, shall have access to any such convict without the permission in writing of the court or judge before whom such convict shall have been tried, or of the sheriff or his deputy.

EXTORTION.

Extortion is an abuse of public justice, consisting in the unlawful taking by an officer, by *colour of his office*, of any money or thing of value, where either none at all is due to him, or not so much is due, or before any is due.—*Co. Lit.* 368; 10 *Rep.* 102. This offence, it has been justly observed, may be, in some cases, considered more odious than robbery; because it carries with it an appearance of truth, and is often accompanied with perjury, by the breach of an oath of office. The punishment for this offence, at common law, is by fine and imprisonment, and also by a removal from the office, in the execution of which it was committed. And there is a further additional punishment by the statute of Westminster 1, (3 *Ed. I.*, c. 26), by which any sheriff, or other king's officer, who shall take any reward to do his office, shall yield twice as much, and shall be punished at the king's pleasure; under which statute an action lies also to recover this double value.—3 *Com. Dig.* 323. But justices of the peace, whose office was instituted after the act, are bound by their oath of office to take nothing for the execution of their office but of the king, and fees accustomed, and costs limited by statute. And generally, no public officer can take any other fees or rewards than those given him by the statute, or such as have been anciently and accustomedly taken, without being guilty of extortion.—*Dalt. c.* 41.

It is extortion in a gaoler to obtain money from his prisoner, by colour of his office.—*R. v. Broughton, Trem. P. C.* 111; in a coroner to refuse taking an inquest till his fees are paid.—3 *Inst.* 149; or in an *under sheriff* to obtain his fees by refusing to execute process till they are paid, or to take a bond for his fee, before execution is sued out.—1

Salk. 330. It is also extortion in a *miller* or *ferryman* to take more toll than is due by custom.—*R. v. Burdett*, 1 *Ld. Ray*, 149. It is also an indictable offence to persuade another to extort money from a person, whereby money was actually extorted from him.—*R. v. Tracy*, 3 *Salk.* 192.

By 4 & 5 V., c. 25, § 8. If any person shall accuse or threaten to accuse another of the abominable crime of buggery, with mankind or beast, or of any assault with intent to commit such crime, or of any attempt, or endeavour, or making, or offering any solicitation, persuasion, promise or threat to any person whereby to move or induce such person to commit or permit such abominable crime; with a view or intent to extort or gain from such person, and shall by intimidating such person by such accusation or threat, extort or gain from such person any property, shall be guilty of felony, and on conviction liable to imprisonment with hard labour in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding *two* years.

EXPLOSIVE SUBSTANCE.

By 10 & 11 V., c. 4, § 1, any person unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroying or damaging any dwelling house, any person being therein; § 2, or destroying or damaging any building with intent to murder any person, or whereby the life of any person shall be endangered; § 3, or shall by any explosive substance burn, maim, disfigure, disable or do any grievous bodily harm to any person; § 4, or shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send, or deliver to, or cause to be received by any person any explosive substance, or any other dangerous or noxious thing, or cast or throw at or upon, or otherwise apply to any person any corrosive fluid, or other destructive or explosive substance, with intent to burn, maim, disfigure, disable, or to do some grievous bodily harm, shall, although no bodily injury be effected, be guilty of felony. § 5. Offenders liable, at the discretion of the court, to be imprisoned in the provincial penitentiary for not less than *seven* years; or to be imprisoned in any common gaol not exceeding three years.

§ 6. Maliciously placing or throwing in, into, upon, against or near any building or vessel, any explosive substance with intent to do any bodily damage to any person, or to destroy or damage any building or vessel, or any machinery, work-

ing tools, fixtures, goods or chattels, whether any explosion takes place, and whether or not any injury be effected, is also made felony, and the offender liable to seven years' imprisonment in the penitentiary, or two years' imprisonment in the common gaol, at the discretion of the court.

§ 7. Attempt by any overt act to set fire to any building, vessel, or to any stack, or to any vegetable produce of such kind, and with such intent, that if the offence were complete, the offender would be guilty of felony and liable to be imprisoned seven years in the penitentiary, is also made felony, and the offender liable to seven years' imprisonment in the penitentiary, and not less than three years, or imprisoned in any common gaol not exceeding two years.

§ 8. Any person knowingly having in his possession, or making or manufacturing any explosive substance, or other dangerous or noxious thing, or any machine, engine, instrument or thing, with intent to commit any offence against this act, shall be guilty of a misdemeanor, and liable to be imprisoned in any common gaol not exceeding two years.

§ 9. Such offenders under *eighteen* years of age, liable to be publicly or privately whipped in addition, at the discretion of the court.

§ 10. Principals in the second degree, and *accessories before* the fact, punishable as principals in the first degree: *accessories after* the fact liable to imprisonment in any common gaol not exceeding two years.

§ 11. Offenders may also be sentenced to hard labour, or to solitary confinement not exceeding one month at a time, nor three calendar months in the year, at the discretion of the court.

§ 12. Any justice of the peace of the neighbourhood, upon reasonable cause assigned upon oath, may issue a warrant for searching in the day time any house, shop, cellar, yard or other building, or any vessel in which such explosive or noxious substance is suspected to be made or kept for such purpose as aforesaid; and every person acting in the execution of such warrant, shall have power to seize any gunpowder, explosive substance or any dangerous or noxious thing, or any machine, engine or instrument, which he shall have good cause to suspect to be intended to be used in committing any offence under this act, and to remove the same to such proper places as he shall think fit, and detain the same, until ordered to restore it by any judge of the court of Queen's Bench, and such searchers shall not be liable to any suit for such detainer, or for any loss or damage, other than by the wilful acts or neglects of the parties entrusted with the keeping thereof.

§ 13. Any gunpowder, explosive substance, or dangerous

or noxious thing, or any machine, engine or instrument, intended to be used to commit any offence against this act, and seized accordingly, in the event of conviction, shall be forfeited, and sold under the direction of the court, and proceeds paid to the Receiver-General.

§ 14. Any constable or peace officer may take into custody, without warrant, any person found lying or loitering in any highway, yard or other place during the night, and suspected of intending to commit any felony under this act, and to detain such person until brought before a justice to be dealt with according to law. § 15. Such person not to be detained after noon of the following day, without being brought before a justice. § 16. Offenders under this act not to be tried before justices in session, or any recorder of any city. § 17. Offences committed within the admiralty jurisdiction to be tried accordingly.

FALSE LIGHTS.

Hanging out to cause shipwreck, is made felony by 4, 5, V., c. 26, s. 8.—See "*Wreck*."

FALSE PRETENCES.

See "*Cheats*,"—p. 137.

Form of Indictment for False Pretences, 18 V., c. 92.

County of } The jurors for our lady the Queen on their
to wit. } oath present, that A. B., on the day of
, in the year of our Lord, one thousand eight hundred and
, at , in the county of , unlawfully, fraudulently
and knowingly, by false pretences, did obtain from C. D. [*six*
yards of muslin] of the goods and chattels of the said C.D. with
intent to defraud.

FALSE RECEIPTS.

By 12 V., c. 12, if any keeper of any warehouse, or any forwarder, common carrier, agent, clerk, or other person employed in or about any warehouse; or if any other factor or agent, or any clerk or other person employed in or about the business of such factor or agent, shall knowingly and wilfully give to any person a writing, purporting to be a receipt for, or an acknowledgment of any goods or other property having been received in his warehouse, or in the warehouse in or about which he shall be employed, or in any other manner received by him or by the person in or about whose business he shall be employed, before the goods or other property named in such receipt shall have been actually delivered to him as aforesaid, with intent to mislead, deceive, injure or defraud any person or persons

whomsoever, known or unknown; or if any person shall knowingly and wilfully accept or transmit or use any such false receipt or acknowledgment, the person *giving* and the person *receiving* the same shall be severally guilty of a *misdemeanor*, and upon conviction liable in the discretion of the court to be imprisoned in the penitentiary, and kept at hard labour for any period not exceeding three years nor less than one year. § 2. And if any owner of merchandize, or other person in whose name merchandize shall be shipped or delivered to the keeper of any warehouse, or other factor or agent or carrier, to be shipped or carried, shall, after the advance to him of any money, or the giving to him of any negotiable security by the consignee of such merchandize, for his own benefit, and in violation of good faith, and without the consent of such consignee first obtained, make any disposition of such merchandize different from the agreement in that behalf between such owner or other person aforesaid and such consignee at the time of or before such money being so advanced, or such negotiable security being so given, with the intent to deceive, defraud or injure such consignee, such owner or other person aforesaid, and every other person knowingly and wilfully acting and assisting in making such disposition for the purpose of deceiving, defrauding or injuring such consignee, shall be deemed guilty of a misdemeanor, and, upon conviction, liable to the same punishment as above. Proviso—that no person shall be subject to prosecution who shall, before making such disposition, pay or tender to the consignee the full amount of any advance thereon. § 3. Interpretation clause.

FEES.

See title "*Costs.*"—"*Justices of the Peace.*"

FELLING TREES.

* By statute 2 V., c. 16, reciting, whereas much injury has arisen from the felling of trees into the Grand River, Smith's Creek or River Nith, Orb's Creek or River Speed, in the district of Gore; Otter Creek, in the district of London; the River Credit, in the Home District; the River Otonabee, from Sturgeon Lake to Rice Lake, the River Scugog and River Trent, from Rice Lake to the Bay of Quinte, and Crow River, in the Newcastle and Midland Districts; Rivers Gananoque, Rideau, and Petite Nation, in the Johnstown district; and the Rivers Tay, Mississippi, Bonchere, Madawaska, and Goodwood, in the Bathurst district, in this province, by endangering the mill-dams and bridges, and impeding the navigation thereof; it is therefore, by § 1, enacted, that

every person or persons, or their employers, cutting and felling any trees into the said rivers, or upon such parts of the banks thereof as are usually overflowed in the autumn or spring, by means of the rising of the waters of the said rivers, who shall not lop off the branches of such trees, and cut up the trunks thereof into lengths of not more than eighteen feet, before they are or shall be allowed to be floated or cast into the said rivers, or any of them, shall, for every such offence, forfeit and pay the sum of fifty shillings, or such less sum as is hereinafter provided. § 2. Any person who shall cut down or fell any trees as aforesaid, contrary to this act, shall, upon conviction before any two justices of the district, upon the oath of one or more witnesses, pay such fine as to the justices the case may seem to require, not exceeding fifty shillings, to be levied by distress, by execution under the hand and seal of either of said justices; and in default of such distress or payment of the fine within three days after conviction, said justices may confine the offender in the common gaol of the district for the space of ten days, unless the said fine and costs be sooner paid. § 3. All fines levied under this act shall be paid to the treasurer of the district, and be applied to the improvement of the roads within the same. § 6. This act not to apply to any round or squared timber or trees, masts, staves, deals, boards, or other sawed or manufactured lumber or saw-logs, prepared for transportation to a market.

FELONY.

Felony, in its general sense, comprises every species of crime which occasioned, at common law, the forfeiture of lands or goods—4 *Bl. Com. p. 94*; and by the common law is against the life of a man—as murder, manslaughter, *felo de se*, &c.; against a man's goods—as larceny and robbery; against his habitation—as burglary, arson; and against public justice—as breach of prison.—3 *Inst. 31*. And by statute—as forgery, &c.

Before the reign of Hen. I. felonies were punished with pecuniary fines; for he was the first who, about the year 1108, ordered felons to be hanged. Since his reign, the judgment for felony continued the same by the common law, unless the offender was allowed to pray the benefit of clergy.—4 *Inst. 124*. But this custom has been recently abolished by statute *3 *Wm. IV., c. 3*; by which statute the particular crimes which, for their enormity, ought to be punished with death, (a) are expressly mentioned; and all other felonies

(a) See also 4 & 5 *V., c. 24, § 20*, defining capital offences.

shall be punished by banishment or transportation, or by imprisonment with hard labour.

See further on this subject, title "*Punishment.*"

In all felonies, the offender forfeits to the king all his goods and chattels, absolutely, and the profits of all his freehold estates for life, and for a year and a day after his death.—1 *Inst.* 391.

But now, by the 4 & 5 V., c. 24, § 21, after punishment endured, the same shall have the like effects as a pardon. § 23. Costs of prosecution, in all cases, to be paid out of the public funds, and no such fees shall in any case be demanded of or payable by the accused.

FENCES.

By 4 & 5 V., c. 25, § 32, if any person shall steal or shall cut, break or throw down, with intent to steal, any part of any live or dead fence, or any wooden post, pale or rail, set up or used as a fence, or any stile or gate, or any part thereof respectively, every such offender being convicted thereof before a justice of the peace, shall, for every such offence, forfeit and pay over and above the value of the article or articles so stolen, or the amount, of the injury done, such sum of money not exceeding £5, as to the justice shall seem meet.

By 4 & 5 V., c. 26, § 23, if any person shall unlawfully and maliciously cut, break, throw down, or in any wise destroy any fence, of any description whatsoever, or any wall, stile or gate, or any part thereof respectively, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay over and above the amount of the injury done, such sum of money not exceeding £1, as to the justice shall seem meet.

By the Municipal Act 12 V., c. 81, the township municipalities are authorised to make by-laws for "settling the height and description of lawful fences."

See also *post* title, "*Line Fences and Watercourses.*"

FERRIES.

*By statute 37 G. III., c. 10, justices in sessions are empowered to make such rules and regulations as shall appear necessary at ferries, and to establish rates and fees to be taken thereat, a list or table of which rules and regulations, rates and fees, shall be set up in some conspicuous place at such ferries, and any person having charge of a ferry, convicted before any one justice of demanding or receiving any higher or

greater rate or fee, or of any breach of the rules or regulations, shall forfeit 20s., to be recovered before any one justice, and levied by distress and sale, one-half to the informer, and the other to the district.

By 12 V., c. 80, so much of the above statute as vests any powers in the magistrates in quarter sessions, is repealed; and by the 12 V., c. 81, the council of each county is authorised to make by-laws for regulating ferries, &c.

By 8 V., c. 50, § 1, any person unlawfully interfering with the rights of any licensed ferryman, by taking, carrying and conveying at any such ferry across the river or stream there, any person, cattle, carriage or wares, in any boat, vessel or other craft, for hire, gain, reward, profit or hope thereof, or doing any thing to lessen the tolls and profits of such ferry, upon being convicted thereof before a justice of the peace, shall forfeit and pay such sum, not exceeding £5, as to such justice shall seem meet, to be paid to the party aggrieved, (*except when examined as a witness,*) and in such case the money shall be applied in the same manner as for a breach of the peace. § 2. If not immediately paid, the offender may be committed to the common gaol for any term not exceeding two calendar months, unless the penalty and costs sooner paid. § 3 License for a ferry to be under the great seal of the province. § 4. Defendant may appeal to the next general quarter sessions to be holden not less than twelve days after conviction. § 5. Ferries not to extend any greater distance than one mile and a-half on each side of the point at which the ferry is usually kept, unless where limits previously established.

Steamboats—Encouragement of.

By 20 V., c. 7, § 1, it is enacted, that where a ferry is required over any stream or other water within Upper Canada, and the two shores of such stream or water shall be in different municipalities not in the same county, it shall be lawful for the Governor in council to grant a license under the great seal of the province to either of such municipalities exclusively, or to both conjointly, as may be most conducive to the public interest, such license to confer on such municipality or municipalities a right to establish a ferry from shore to shore on such stream or water, and with such limit and extent as shall appear advisable to the Governor in council, upon condition that the craft to be used for the purpose of such ferry shall be propelled by steam; and the craft shall be of such dimensions, and engine of such power as the Governor in council shall direct; and also subject to such further and

other conditions as to the Governor may seem meet. § 2. Such license may be granted for any period not exceeding fifty years. § 3. Upon the receipt of such license it shall be lawful for such municipality or municipalities to whom such license shall have issued to pass a by-law declaring their determination to sub-let the said ferry, which ferry they are hereby authorised to sub-let for such price, and upon such terms, and to such parties, and on such conditions as to rates of ferriage to be paid as the said municipality or municipalities may deem best: provided that in so sub-letting the terms of the license from the Crown shall not in any way be contravened. § 4. In all cases where the one shore of such stream or water is within the limits of a city, town or incorporated village, and the other shore of the same in a township or other rural municipality, the license in such case shall be issued to the city, town, or incorporated village: provided always, that in all cases where the rural municipality opposite to any such city, town, or incorporated village, shall be an island, then the license shall be granted to the island municipality. § 5. No license shall in future be granted to any person or body corporate beyond the limits of the province, but to the municipality within the limits of which such ferry exists, or in case of the establishment of any additional ferry on the provincial frontier, then to the municipality in which any such additional ferry shall be established.

FINES AND FORFEITURES.

*By statute 11 G. IV., c. 1, it is enacted, that in all cases in which, by the criminal law of England, the whole or any part of any fine or penalty, imposed for the punishment of any offence, is in any manner appropriated for the support of the poor, or to any parochial or other purpose, inapplicable to the existing state of the province, such fine or penalty, or such part thereof as shall be so appropriated, shall be paid, when received, to the treasurer of the district, for the use of the district, and to be accounted for in the same manner as assessments.

*By 7 W. IV., c. 14, § 5, fines not otherwise appropriated shall go to the use of the province.

By 4 & 5 V., c. 12, s. 1, justices of the peace are required to make a return of all convictions had before them imposing any fines, forfeitures, or penalties, to the next general quarter sessions, and of the receipt and application of the same. § 2. Under the penalty of £20. § 6. Sheriffs are required to transmit *quarterly* to the Inspector-General an account

upon oath of all fines, penalties and forfeitures levied by them, and pay over the same within *twenty* days after collection, under the like penalty for neglect.

By 12 V., c. 81, s. 185, all fines under any municipal by-law shall go, one-half to the informer, and the other to the municipality; and the whole to the municipality in case of prosecution by them.

By 12 V., c. 10, *art.* 17, whenever any pecuniary penalty or any forfeiture is imposed for any contravention of any act, if no other mode be prescribed for the recovery thereof, the same shall be recoverable with costs by civil action at the suit of the Crown, or of any private party suing as well for the Crown as for himself, before any court of competent jurisdiction, upon the evidence of one witness; and if no other provision made for the appropriation of the same, one-half shall belong to the Crown, and the other half to the private plaintiff; and if there be none, the whole shall belong to the Crown.

FIRE.

*By statute 32 G. III., c. 5, justices in quarter sessions are empowered to make such orders and regulations for the prevention of accidental fires, as to them shall seem meet and necessary, and to appoint firemen or other officers, for the purpose of extinguishing the same, and to make such orders and regulations as to them shall seem fit or necessary, in any town or place where there may be forty storehouses, within half a mile square.

By the Municipal Act 12 V., c. 81, § 51, any person who shall light a fire in any of the streets, lanes, or public places of any said police villages, shall for every such offence incur a penalty of 5s. currency, to be sued for and recovered by the inspecting trustee, before any one justice residing within five miles of such village, and to be levied by distress and sale, and applied to the repairs and improvement of the streets and lanes.

By 20 V., c. 36, s. 2, it shall be the duty of the coroner within whose jurisdiction any city or incorporated town or incorporated village (*a*) in this province shall lie, whenever any fire shall occur whereby any house or other building in such city, town or village shall be wholly or in part consumed, to institute an inquiry into the cause or origin of such fire, and whether it was kindled by design or accident, or was the

(*a*) The act does not seem to extend to townships, but is limited to cities, towns, and incorporated villages.

result of negligence or accident, and to act according to the results of such inquiry; and for the purpose aforesaid such coroner shall summon and bring before him all persons whom he may deem capable of giving information or evidence touching or concerning such fire, and shall examine such persons on oath and reduce their examinations to writing and return the same to the clerk of the peace for the district or county within which they shall have been taken. But such inquiry is not to be instituted until it has first been made to appear to such coroner that there is reason to believe that such fire was the result of culpable or negligent conduct or design, or occurred under such circumstances as in the interests of justice and for the due protection of property to require an investigation. § 3. Such coroners may in their discretion or on the written requisition of any insurance agent, or of any three householders in the vicinity of such fire, to impanel a jury from among the householders resident in the vicinity of such fire, to hear the evidence that may be adduced touching such fire, and to render a verdict thereupon in accordance with the facts. § 4. The coroner is empowered to summon and compel the attendance of witnesses as at ordinary inquests before him. § 5. He may impose a fine not exceeding 20s. on any juror neglecting to attend after being duly summoned and called three times; a certificate of such names and fines signed by the coroner to be transmitted to the clerk of the peace on or before the first day of the next ensuing quarter sessions, and a copy served on the defaulters: and fines so certified shall be levied as fines imposed at quarter sessions. § 7. Coroner's fee for holding such inquiry to be £2 10s. per day not over *two* days, to be paid by the treasurer of the city, town or village where the inquiry shall be holden.

FIREMEN.

By 4 & 5 V., c. 43, § 1, the *7 G. IV., c. 8, is repealed. § 2 enacts, that whenever any company or companies shall have been regularly enrolled in any city, town, or place in which the formation of companies of firemen is by law authorised and regulated, it shall be lawful for the corporate authorities or board of police in such city or town, or if no such authorities, for the justices of the peace of the district in general quarter sessions assembled, or the majority of them, being satisfied of the efficiency of such persons and accepting their enrolment, to direct the clerk of the peace for the district to grant to each member of such company a certificate that he is enrolled in the same, which certificate

shall exempt the party during his enrolment and continuance in actual duty as such fireman; from militia duty in time of peace; for serving as a juryman or a constable, and from all parish and town offices. § 3 authorises corporate authorities or board of police in any city or town, or if no such authorities, then the justices of the peace for the district, or the majority of them at any general or adjourned session, upon complaint to them made of neglect of duty by any individual of such fire company, to examine into the same; and for any such cause, or in case any individual of such company shall be convicted of a breach of any of the rules legally made for the regulation of the same, to strike off the name of such individual from the list of the company, and thenceforward the certificate granted to such individual shall have no effect in exempting him from any duty or service mentioned: provided always, that it shall be in the discretion of the corporate authorities or boards of police, or of the justices of the peace for the district, as aforesaid, respectively to consent to the formation as aforesaid of any fire company in any such city, town, or place as aforesaid, or to defer the same, as may be deemed expedient: also in their discretion to discontinue or renew any such company.

By 12 V., c. 36, members of enrolled companies of firemen who have regularly and faithfully served seven consecutive years, shall be entitled to a certificate thereof from the clerk of the peace, which shall exempt them from serving in the militia in time of peace, and from all parish and town offices.

FIREWORKS.

By statute 9 & 10 W. III., c. 7, § 1, making or selling, or throwing fireworks from any house into any public street or road, shall be adjudged a common nuisance; and by § 2, any person selling fireworks, or implements for making the same, shall, upon conviction before one justice, on oath of two witnesses, forfeit £5, half to the poor, and half to the prosecutor, to be levied by distress; and any person permitting same to be cast or thrown from his house into any public street or road, shall forfeit 20s. § 3. And any person who shall cast, or fire, or aid in casting or firing any, shall forfeit 20s.; and if not immediately paid, shall be committed to the house of correction, to be kept to hard labour, not exceeding one month.

By the municipal act 12 V., ch. 81, the municipalities are authorised to make by-laws for preventing or regulating the firing or setting off of fire-balls, squibs, crackers, or fireworks.

FISH.

* By statute 3 W. IV., c. 29, entitled, "An Act to protect the white fish fisheries, in the straits or rivers Niagara, Detroit and Saint Clair, in this province," a penalty of £125 is imposed upon any person using any seine or net for the taking of white fish, in any of the above waters, of a greater length than 50 fathoms. § 2. Also a penalty of £50 on persons fishing on Sunday. § 3. And a penalty of £125 for attempting to divert the natural progress or running of the white fish, by shingling or other device; or imprisonment, not exceeding three months. § 4. Fishing in front of lands of another individual (except in the channel) subject to a penalty of £50. § 6. The above penalties to be recovered by action of debt, with costs of suit, before any court of competent jurisdiction; one moiety to the informer, and the other to the province.

By statute * 3 V., c. 24, § 1, the Governor may appoint one or more inspectors of fish. § 2. Inspectors before entering upon the duties of their office to take the following oath or affirmation:

"I do solemnly swear, or affirm (*as the case may be*) that I will faithfully, truly and impartially, according to the best of my judgment, skill and understanding, execute, do and perform the duty and office of an inspector of fish, according to the true intent and meaning of the act, intituled, 'An act to regulate the inspection of fish, and to prevent non-residents in this province from fishing in the waters of the same.'"

§ 3. Inspector to make annual returns to the clerk of the peace, in the month of January, of the quantity of each quality inspected. § 4. It shall be the duty of the inspector, on application being made for that purpose, to proceed to inspect all fish, by opening one of the heads of each barrel or half barrel, and if the same is found to contain sound and merchantable fish, with a sufficient quantity of salt to preserve the same, he shall then brand the same, as hereinafter provided, on the head of such barrel or half barrel; and if the fish are found unsound or not merchantable, the same shall be destroyed by the inspector; and if the barrel or half barrel is not full, or not salted with a sufficient quantity of salt, in that case the said inspector shall fill the same with sound or merchantable fish, or add such quantity of salt as he may deem requisite: each barrel to contain *two hundred pounds*, and each *half barrel one hundred pounds*. § 5. Each barrel or half barrel shall be filled with fish of one and the same kind, and the inspectors shall brand in plain legible letters on the head of each barrel or half barrel of fish in-

spected by them respectively No. 1 or No. 2, representing the quality of the fish packed or re-packed, and they shall also brand on the head of each barrel or half barrel the species of the fish, the initials of the christian name and the whole of the surname of the inspector, the name of the district in which such fish was inspected, and the words "Upper Canada." § 6. If any person shall intermix, take out, or shift any fish of any barrel or half barrel inspected and branded as by this act required, or put into any barrel or half barrel inspected and branded, any other fish for sale or exportation, or alter the face of or change the brand or mark of any inspector contrary to this act, the offender shall forfeit and pay £5 on conviction before any two justices, upon the oath of one or more witnesses: such penalty, if not paid in three days after conviction, to be levied of the goods and chattels of the offender as hereinafter provided. § 7. All pickled fish duly inspected in any district in this province, shall not be liable to re-inspection in any other district, and may be shipped and exported to any foreign port. § 8. All barrels or half barrels used for packing and re-packing pickled fish, shall be manufactured in this province, and shall be made of sound well seasoned white, red or black oak, white ash, or white pine timber. The barrels and half barrels shall be well hooped with at least ten good hoops each, and shall be made in a workmanlike manner. The fees for inspecting and branding shall be, for each barrel 6d. currency, and for each half barrel 4d. currency; and for overhauling, re-packing, inspecting and branding, for each barrel 1s., and for each half barrel 7½d., exclusive of cooperage; and for every bushel of salt or part thereof so consumed as aforesaid, the value of such salt according to the market price thereof at the time and place of such inspection; the fees and charges to be paid by the person employing the inspector. § 9. If any inspector shall be guilty of any fraud or neglect in inspecting fish, or of offering any fee or reward to owners of fish or their agents, or to any other person, in order to obtain the profits of inspecting or re-packing the same, or shall brand any barrel or half barrel containing fish contrary to this act, or which has not been actually inspected, or shall permit any other person to use his brand in violation or evasion of the provisions of this act, he shall, on conviction before any two justices of the district, upon the oath of one or more witnesses, forfeit and pay £10, and in default of payment within six days after conviction, such justices, or any one of them, may issue an execution against such inspector's goods and chattels, as by any law of this

province is authorised in judgments awarded in the Court of Requests. § 10. No person not residing in this province shall fish within the waters of Upper Canada, or be directly or indirectly engaged in the same, either as owner or agent, or part owner of a seine, or as a partner, or have any seine, net or line upon any part of the beach of the waters of this province: and every person so offending shall be liable to be imprisoned for a period not less than thirty days nor exceeding ninety days, upon the oath of one or more credible witnesses. § 11. If it shall appear to the inspector that a part of the fish in any barrel or half barrel inspected by him is sound and part unsound, it shall be lawful for said inspector to separate the sound from the unsound, and re-pack the sound fish, and add such salt or pickle as he may judge necessary, and brand the same as aforesaid, and such fish as the inspector shall judge not capable of preservation he shall condemn as bad. § 12. This act not to apply to any fish packed out of the province and imported.

By 20 V., c. 21, § 1, the 7 V., c. 13, § 8, c. 47, and the 18th sub-section of the 60th § of the Municipal Corporations Act 12 V., c. 81 are repealed. § 4, authorises the Governor to appoint two superintendents of fisheries, one for Upper Canada and one for Lower Canada. § 18. The main channel of rivers not to be obstructed by nets or fishing apparatus for the purpose of taking salmon or fish, under a penalty not exceeding £5, and the forfeiture of the fishing apparatus, and in no case shall the said channel or course left open be less than one-third of the whole breadth of the river. § 19. Penalties and forfeitures under this act, or the regulations to be made under it, may be recovered on complaint before the superintendent of fisheries, or any stipendiary or other magistrate in a summary manner, with costs, the same as provided by law, in either section of the province, in other cases where summary jurisdiction is given to magistrates. § 20. Any offender who shall not forthwith pay the fine and costs, shall be committed to gaol for any time not exceeding one month. § 28. Penalties to be sued for within twelve months from the commission of the offence. § 26. From the 1st of June to the 20th of October in each year, the owner of any dam or slide on any river which salmon may ascend, shall for the purpose of affording a passage to the fish, attach to each dam or slide, a fish-way of such form and dimensions, as shall be determined by the Governor in council, under a penalty of one pound for each day on which he shall fail so to do. § 27. It shall not be lawful to catch salmon in any way whatever, except with a rod and line between the 1st of September

and the 10th of March in Upper Canada. § 29. It shall not be lawful to kill salmon, maskilongé, speckled trout, nor bass at any time by the aid of spears, torchlight, or other artificial light in Upper Canada. § 32. Nor for any person to buy or sell such fish; and any fish so taken may be declared forfeited to the complainant by any magistrate. § 33. In every case of contravention of this act, or of the regulations to be made under it, for which no other penalty is provided, the offender shall incur a penalty of not less than £2, nor more than £5. § 34. It shall not be lawful to construct any fish-pond in any river or brook. § 34. The power heretofore vested in the municipalities by the 18th subsection of the 60th section of the 12 V., c. 61, as extended by the 67th and 106th sections of said act are hereby transferred to the Governor in council. § 37. For the purpose of encouraging and affording information with respect to the production of salmon and other fish, an apparatus for the artificial propagation of fish shall be kept in the department of the Commissioner of Crown Lands.

FISH DAMS.

By 4 & 5 V., c. 26, § 15, maliciously destroying any dam to any fish-pond or private fishery, is made a misdemeanor.

FLOUR AND MEAL.

By 19 & 20 V., c. 87, former acts are repealed. § 3. The boards of trade in Quebec, Montreal, Toronto, Kingston and Hamilton, and the municipal authorities in other places where inspectors may be required, are authorised to appoint boards of examiners of applicants for the office of inspector. § 4. The mayor of the cities of Quebec, Montreal, Kingston and Hamilton, and the mayor or chief municipal officer of other places may appoint an inspector for their localities, to be first examined and approved by the board of examiners; and where there is a board of trade, such appointment must be on the requisition of such board. § 6. Inspectors required to take a certain oath of office before acting. § 11. The board of trade of any city or place may hear complaints against inspectors or assistants, and notify the mayor, &c., to remove such inspector. § 12. Directs in what manner flour shall be inspected, and on whose requisition and where to be made. § 13. And flour taken from any barrel by the inspector shall be re-delivered to the owner, under the penalty of £5. § 14. Each inspector to be provided with branding irons, and to brand each barrel immediately after inspection. "Sour" and "unmerchantable

flour" to be marked accordingly. A bill of inspection to be furnished by the inspector, and if false, the inspector to be liable to a penalty of £20 and dismissed from office. § 15. The weight of every cask to be ascertained, if suspected not to be of full weight; the deficiency to be made good by the proprietor, and every inspector making default herein shall be liable to the penalty of £20 and other damages. § 16. Brand marks to be neat and legible and according to the act, under the penalty of £5. § 17. Disputes between the inspector and owner with respect to the quality or condition of flour, to be decided by three persons summoned and sworn before a justice of the peace. § 18. Any inspector refusing or neglecting to act when required (unless at the time employed in his duty) to incur a penalty of £5 on conviction before any one justice, over and above damages. § 19. Adulterated flour may be seized by the inspector and detained, and the offender liable to a penalty of £20. Prosecution for to be commenced within one month. § 20. Manufacturers or packers undermarking the *tare* of any barrel or half barrel, to incur a penalty of 20s. § 21. And any person offering for sale any barrel, &c., deficient in weight, shall incur a penalty of 20s. for each cask. § 22. Inspectors and assistants not to deal in flour directly or indirectly, or act as agent for any seller or purchaser, under the penalty of £50 and removal from office. § 23. Qualities of flour, how to be designated. § 25. Every half barrel of flour to contain 98 pounds net: every barrel 196 pounds net. Rye flour and Indian meal same weight; every half barrel of oatmeal 112 pounds net: every barrel of oatmeal 224 pounds net. The name of the packer or manufacturer to be branded, painted or marked at full length, the name of the mill or place of packing, quality and weight and tare, under a penalty of *two shillings* for each barrel or half barrel. § 26. Barrels to be of a certain size and construction, under the penalty of *two shillings* for each barrel. § 27. Inspectors to make weekly returns to the board of trade of flour or meal inspected. § 28. Any manufacturer or packer obliterating the inspector's marks, or counterfeiting any such marks, or using old barrels without destroying the old marks, or using inspector's brands without authority, shall incur a penalty of £50; and any inspector or assistant inspecting or marking flour out of his jurisdiction, or hiring out his marks, or conniving at any fraudulent evasion of the act, shall incur a penalty of £50. § 29. All fines and penalties under this act not exceeding £10, shall be recoverable by any inspector, or other person suing, in a summary way before any

two of her Majesty's justices of the peace for the locality, and levied by distress; and if exceeding £10, then by information or civil action in a recorder's court, or any other court of competent jurisdiction; one moiety of such penalties to be paid to the treasurer of the municipality, and the other to the inspector or informer. § 30. Prosecutions to be commenced within six months. § 31. Inspection of flour not to be compulsory. § 32. The word "meal" to indicate "Indian meal and oatmeal."

FORCIBLE ENTRY AND DETAINER.

What is a Forcible Entry.

A forcible entry is committed by violently taking possession of lands and tenements, with menaces, force and arms, and without the authority of the law.—4 *Bl. Com.* 148. And even if a man have a good right to the land, and enter forcibly, he may be indicted.—*Dalt. (Ed. 1727) c.* 129. A single person may commit a forcible entry as well as a number of persons.—1 *Haw., c.* 64. § 8, 12, 29. A forcible entry is made with a strong hand, with unusual weapons; an unusual number of servants or attendants; or with menace of life or limb; or, by breaking open the doors of a house, whether any person be in it at the time or not; and though a man enter peaceably, yet if he turn the party out of possession by threats, or violence, this also amounts to a forcible entry.—1 *Haw., c.* 64. § 25. But merely drawing a latch, and entering a house; or opening the window or door with a key; or entering by an open window, do not constitute a forcible entry.—*Ibid.*

What is a Forcible Detainer.

A forcible detainer, is where a person who enters peaceably, though unlawfully, detains possession by force; and the same circumstances of violence or terror which makes an entry forcible, will also constitute a forcible detainer. Therefore, whoever, after an unlawful entry, keeps in the house an unusual number of persons, or weapons, or threatens to do some bodily hurt to the former possessor, is guilty of a forcible detainer. So, if a man shuts the door against a justice of the peace, coming to view the force, and obstinately refuses to let him come in; so a lessee, who, after the end of his term, keeps arms in his house to oppose the entry of the lessor, is guilty of a forcible detainer; and the same with regard to a lessee at will, after the will is determined; or of a mortgagor, after the mortgage is forfeited.—2 *Haw.,*

c. 64, § 30; 4 *Com. Dig.* 201. But the mere refusal to go out of a house, and continuing therein in despite of another, does not amount to a forcible detainer.—1 *Haw.*, c. 64, § 30. Therefore, if a lessee at will (after the determination of his tenancy,) merely denies possession to the lessor, or even shuts the door against the lessor when he would enter, this is not a forcible detainer.—*Cro. Car.* 486. And a man who breaks open the doors of his own dwelling-house, forcibly detained by one who has the bare custody of it, is not guilty of a forcible entry or detainer.—1 *Haw.*, c. 64, § 32.

Of the Remedy.

At common law, a man disseised of any lands or tenements, if he could not prevail by fair means, might lawfully regain the possession thereof by force.—1 *Haw.* 140. But this indulgence of the common law having been found, by experience, to be very prejudicial to the public peace, it was thought necessary, by many severe laws, to restrain all persons from the use of such violent methods of doing themselves justice.—*Ib.* 141. Accordingly, by 4 R. H., statute 1, c. 8, none shall make entry into lands but where entry is given by law, and in such case not with strong hand nor with multitude of people, but only in lawful and easy manner. And if any do the contrary, and thereof be convicted, he shall be punished by imprisonment and ransomed at the king's will.

By 15 R. H., c. 2, at all times that forcible entries be made, and complaint thereof cometh to justices of the peace, or any of them, the same justices or justice shall take sufficient power of the county, and go to the place where such force is made; and if they find any that hold such place forcibly, they shall be taken and put in the next gaol, there to abide convict by the record of the justices or justice, till they have made fine and ransom to the king. And all they of the county, as well the sheriff as others, shall attend upon the justices, to assist them to arrest such offenders, upon pain of imprisonment, and to make fine to the king.

By 8 H. VI., c. 9, where any doth make forcible entry into lands, tenements, or other possessions, or them hold forcibly, after complaint made to the justices of the peace, or one of them, by the party grieved, the justices or justice, within a convenable time, shall cause the statute duly to be executed at the costs of the party grieved.—§ 2.

Though such persons making such entries be present, or voided before the coming of the justices; nevertheless, the

justices, in some town next the tenement, or in other convenient place, shall have power to enquire by the people of the county, as well of them that make such forcible entries into lands and tenements, as of them which the same hold with force. And if it be found before them, that any doth contrary to this statute, the justices shall cause the tenements so entered or holden to be re-seised, and put the party so put out in full possession.—§ 3.

When the justices make such enquiries, they shall cause their precepts to be directed to the sheriff, commanding him to cause to come before them sufficient and indifferent persons dwelling next about the lands so entered, to enquire of such entries, whereof every man empannelled shall have lands of the yearly value of 40s. And the sheriff shall return issues upon them at the day of the first precept returnable, 20s.; and at the second day, 40s.; at the third time, 100s.; and every day after, the double. And if any sheriff or bailiff make not execution duly of the said precepts, he shall forfeit to the king £20, and moreover make fine and ransom.—§ 4.

An inquisition for a forcible entry taken before magistrates under 8 H. VI., c. 9, must shew what estate the party expelled had in the premises, and if it do not, the inquisition will be quashed, and the court will award restitution. The inquisition will also be bad if it appear to the court that the defendant had no notice, or that any of the jury had not lands or tenements of the value of 40s., or that the party complaining was sworn as a witness.—*Rex. v. McHeavrey et al.*, and *Mitchell v. Thompson*, *Michs. 1 Vic.*; *Cameron's Digest*, p. 38.

By 21 Eliz., c. 11, no restitution upon any indictment of forcible entry, or holding with force, shall be made, if the persons indicted had the occupation or had been in quiet possession, three years next before the day of such indictment found, and their estate therein not ended, which the party indicted may allege for stay of restitution; and if the other traverse the same, and the allegation be found against the party indicted, he shall pay costs.—§ 3.

By 21 Jac. I., c. 15, a justice of the peace may also give like restitution of possession to tenants for term of years. If the offender, being in the house, make no resistance, then the justice can neither arrest nor remove them on his view, and the party cannot be arrested unless the *force* be found by the enquiry of a jury, and if such forcible entry and detainer be found, then the justice shall cause the lands to be restored.—*Dalt. I.*, 44. Although one justice alone may

proceed in such cases, yet it may be advisable for him, if the time for viewing the force will suffer it, to take to his assistance one or two more justices.—*Burns, J.*, 179.

A conviction by a justice for a forcible entry, on view, must set a fine upon the defendant, otherwise the Court of King's Bench will discharge him from a commitment on such conviction, by *habeas corpus*.—*R. v. Elwell, Str.*, 794; *Ld. R.*, 1514. If a fine be set, the conviction cannot be quashed on motion, but the defendant must bring his writ of error; but if no fine be set, it may then be quashed on motion.—*R. v. Layton, 2 Salk.*, 450.

Restitution

Must be awarded by the same justices before whom the inquest was found. If a restitution shall appear to have been illegally awarded or executed, the Court of King's Bench will set it aside, and grant a re-restitution to the defendant.—*1 Haw.*, c. 94, § 63, 64, 65.

The sheriff, in executing the writ of restitution, may raise the power of the county to assist; but the justices may, if they think proper, make restitution in person. A justice, or the sheriff, may break open a house to make restitution; and if the possession be avoided by a fresh force, the party may have a second writ of restitution without a new requisition, if applied for within a reasonable time.—*Haw.*, c. 64, § 49, 52; *4 Com. Dig.*, 204.

How Punishable by Indictment.

A forcible entry and detainer is also, at common law, punishable by indictment; and if three or more be concerned, it is also a riot, and may be proceeded against accordingly.—*Dalt.*, c. 44.

Record of a Forcible Detainer upon view, before three Justices. (Burn.)

[Or it may be before one Justice only.]

County of } Be it remembered, that on the day of
to wit. } , in the year of the reign of our
sovereign lady Victoria, at , in the county aforesaid,
complained to us and Esquires, three of the justices of
our said lady the Queen, assigned to keep the peace in the said
county, and also to hear and determine divers felonies, trespasses,
and other misdemeanors, in the said county committed, that
and , late of , in the said county, yeomen, into the
message of her the said , situate within the township of
 , in the county aforesaid, did enter, and her the said ,
of the message aforesaid, whereof the said , at the time of

the entry aforesaid, was seised, as of the freehold of her the
 , for the term of her life, unlawfully ejected, expelled and
 removed, and the said messuage from her the said , unlaw-
 fully, with strong hand and armed power, do yet hold and from
 her detain, against the form of the statute in such case made
 and provided; whereupon the said then, to wit, on the said
 day of , in the year aforesaid, at the township of ,
 in the county aforesaid, prayeth of us as aforesaid, being justices,
 that a due remedy be provided to her in this behalf, according
 to the form of the statute aforesaid; which complaint and prayer
 by us the aforesaid justices being heard, we the aforesaid ,
 justices, aforesaid, to the messuage aforesaid, personally have
 come, and do then and there find and see the aforesaid , the
 aforesaid messuage, with force and arms unlawfully, with
 strong hand and armed power detaining, against the form of the
 statute in such case made and provided, according as she the
 , hath so as aforesaid unto us complained; therefore it is
 considered by us, the aforesaid justices, that the aforesaid
 of the detaining aforesaid, with strong hand, by our own proper
 view, then and there as is aforesaid had, are convicted, and
 every of them is convicted, according to the form of the statute
 aforesaid, whereupon we, the justices aforesaid, upon every of
 the aforesaid do set and impose severally, a fine of of
 good and lawful money of this province, to be paid by them
 and every of them, severally, to our said sovereign lady the
 Queen, for the said offences, and do cause them and every of
 them then and there to be arrested, and the said and
 being convicted, and every of them being convicted, upon our
 own proper view of detaining aforesaid with strong hand, as is
 aforesaid by us, the aforesaid justices, are committed, and every
 of them is committed to the common gaol of our said lady the
 Queen, at , aforesaid, in the county aforesaid, being the
 next gaol to the messuage aforesaid, there to abide respectively
 until they shall have paid their several fines respectively, to
 our said lady the Queen, for their respective offences aforesaid,
 concerning which, the premises aforesaid, we do make
 this our record. In witness whereof, we the said , the
 justices aforesaid, to this record our hands and seals do set, at
 , aforesaid, in the county aforesaid, on the day of ,
 in the year of the reign of our said sovereign lady the Queen.

Mittimus for a Forcible Detainer, upon view, by one Justice.
 (Burn.)

To all or any of the constables or other peace officers in the
 said county of , and to the keeper of the common gaol at
 in the said county of .

PROVINCE OF CANADA.

County of } Whereas upon complaint this day made unto
 to wit. } me J. C., Esq., one of her Majesty's justices

of the peace for the county of _____, by A.B. of _____, in the said county, yeoman, I, the said justice, did immediately go to the dwelling-house of the said A. B. at _____, aforesaid, and there found upon mine own view C. D. late of _____, labourer, E. F., late of the same place, labourer, and G. H. late of _____, carpenter, forcibly with strong hand and armed power holding the said house, against the peace of our said lady the Queen, and against the statute in such case made and provided; therefore I send you, by the bringers hereof, the bodies of C. D., E. F. and G. H. convicted of the said forcibly holding, by mine own view, testimony and record; commanding you, in her Majesty's name, to receive them into your said gaol, and there safely to keep them and every of them, respectively, until they shall have respectively paid the several sums of [_____], of good and lawful money of this province, to our said sovereign lady the Queen, which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses, respectively. Herein fail you not, on the pain that will ensue thereon. Given at _____ aforesaid, in the county aforesaid, under my hand and seal, the _____ day of _____, in the _____ year of the reign of our sovereign lady the Queen, and in the year of our Lord 18 _____ J. C.

Justice's Precept to Summon a Jury. (Burn.)

PROVINCE OF CANADA.

County of _____ } J.C., Esq., one of the justices of our lady the
to wit. } Queen, assigned to keep the peace in the
said county, and also to hear and determine divers felonies,
trespasses and other misdemeanors, in the said county committed
—to the sheriff of the said county, greeting:

On behalf of our said lady the Queen, I command you that you cause to come before me, at _____, in the said county, on the _____ day of _____, next ensuing, twenty-four sufficient and indifferent men of the neighbourhood of _____ aforesaid, in the county aforesaid, every one of whom shall have lands and tenements of 40s. yearly at the least, above reprises, to enquire upon their oath, for our said lady the Queen, of a certain entry made with a strong hand, as it is said, into one messuage, of one A. B. at _____, aforesaid, in the county aforesaid, against the form of the statute in that case made and provided; and you are to return upon every of the jurors by you in this behalf to be empanelled 20s. of issues at the aforesaid day, and have you then and there this precept, and this you will in no wise omit, upon the peril that thereon shall ensue. Witness the said J.C. at _____, in the said county, the _____ day of _____, in the _____ year of the reign of our sovereign lady Victoria.

Foreman's Oath.

You shall true enquiry and presentment make of all such things as shall come before you concerning a forcible entry [or

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detainer] said to have been lately committed in the dwelling-house of A. B. at ; you shall spare no one for favour or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you. So help you God.

To the other Jurors.

The oath that A. B., your foreman, hath taken on his part, you and every of you shall truly observe and keep on your parts. So help you God.

The Inquisition or Finding of a Jury. (Burn.)

PROVINCE OF CANADA.

County of } An inquisition for our sovereign lady the
to wit. } Queen, indented and taken at , in the
county of , the day of , in the year of the reign
of our sovereign lady Victoria, by the oath of good and lawful men of the said county, before J. C., Esquire, one of the justices of our said lady the Queen, assigned to keep the peace for the said county, and also to hear and determine divers felonies, trespasses and other misdeeds, in the county committed, who say upon their oath, aforesaid, that A. B. of , long since lawfully and peaceably was seised in his demesne as of fee (*if not freehold say, "possessed"*) of and in one messuage with the appurtenances in , aforesaid, in the county aforesaid, and his said possession (*or seisin*) so continued, until C. D., late of , &c., E. N., of, &c., and G. H., of, &c., and other malefactors unknown, the day of , now last past, with strong hand and armed power, into the messuage aforesaid, with the appurtenances aforesaid, did enter, and him the said A. B. thereof disseised (*or dispossessed*), and with strong hand expelled, and him the said A. B. so disseised (*or dispossessed*) and expelled from the said messuage, with the appurtenances aforesaid, from the day of until the day of the taking this inquisition, with strong hand and armed power did keep out, and do yet keep out, to the great disturbance of the peace of our said lady the Queen, and against the form of the statute in that case made and provided. We, whose names are hereunto set, being the jurors aforesaid, do upon the evidence now produced before us, find the inquisition aforesaid true. A. B., &c.

Warrant to the Sheriff for Restitution. (Burn.)

PROVINCE OF CANADA.

County of } J. C., Esquire, one of the justices of our
to wit. } sovereign lady the Queen assigned to keep
the peace in the county of , and also to hear and determine
divers felonies, trespasses and other misdemeanors, in the said
county committed; to the sheriff of the said county of ,
greeting:

Whereas, by an inquisition taken before me, the justice aforesaid, at _____, in the county aforesaid, on this present day of _____, in the _____ year of the reign of _____, upon the oaths of _____, and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found that C. D., &c., into a certain messuage, &c. (*as in the inquisition*) as by the inquisition aforesaid more fully appeareth of record; therefore, on the behalf of our said sovereign lady the Queen, I charge and command you, that, taking with you the power of the county (*if it be needful*) you go to the said messuage, and other the premises, and the same with the appurtenances you cause to be re-seised, and that you cause the said A. B. to be restored and put into his full possession thereof according as he before the entry aforesaid was seised, according to the form of the said statutes; and this you shall in no wise omit, on the penalty thereon incumbent. Given under my hand and seal at _____ in the said county, the _____ day of _____, in the _____ year of the reign _____.

Indictment for a Forcible Entry and Detainer at Common Law.

PROVINCE OF CANADA.

County of _____ } The jurors for our lady the Queen, upon their
to wit. } oath present, that J. S., late of the township of
_____, in the county of _____, gentleman, K. T., of the same
township, carpenter, and L. W., of the same township, labourer,
together with divers other evil disposed persons, to the number
of six or more, to the jurors aforesaid unknown, on the _____ day
of _____, in the _____ year of the reign of our sovereign lady
Victoria, with force and arms, to wit, with pistols, sticks, staves
and other offensive weapons, in the county aforesaid, into a
certain barn and a certain orchard, there situate and being, and
then and there in the possession of one J. N., unlawfully, vio-
lently, forcibly, injuriously and with strong hand, did enter,
and the said J. S., K. T. and L. W., together with the said
other evil disposed persons, to the jurors aforesaid unknown as
aforesaid, then and there, with force and arms, to wit, with
pistols, swords, sticks, staves and other offensive weapons, un-
lawfully, violently, forcibly, injuriously and with a strong hand,
the said J. N., from the possession of the said barn and orchard,
did expel, remove and put out, and the said J. N. so as aforesaid
expelled, removed and put out, from the possession of the said
barn and orchard, then and there, with force and arms, to wit,
with pistols, swords, sticks, staves and other offensive weapons,
unlawfully, violently, forcibly, injuriously, and with a strong
hand did keep out, and other wrongs to the said J. N. then and
there did, to the great damage of the said J. N. and against the
peace of our lady the Queen, her crown and dignity.

FOREIGN AGGRESSION.

*By 3 V., c. 12, § 1, reciting that it was necessary to

amend the provisions of the *1 V., c. 3, said act is therefore repealed. § 2. If any person, being a citizen or subject of any foreign state or country at peace with the United Kingdom of Great Britain and Ireland, shall, after the passing of this act, be or continue in arms against her Majesty, her heirs or successors within this province, or shall commit any act of hostility therein, or shall enter this province with design or intent to levy war against her said Majesty, her heirs or successors, or to commit any felony within the same, for which any person convicted of such felony would by the laws of this province be liable to suffer death, then it shall be lawful for the Governor to order the assembling of a militia general court martial for the trial of such person, agreeably to the militia laws of this province, and upon being found guilty by such court martial of offending against this act, such person shall be sentenced by such court martial to suffer death, or such other punishment as shall be awarded by the court. § 3. If any subject of her Majesty, her heirs or successors, shall within this province levy war against her Majesty, her heirs or successors, in company with any of the subjects or citizens of any foreign state or country then at peace with said United Kingdom, or shall enter this province in company with any such subjects or citizens of a foreign state or country at peace with said United Kingdom, with intent to levy war on her Majesty, or to commit any such felony as aforesaid within the same, with the design or intent to aid and assist such last mentioned person or persons to levy war or to commit any such act of felony as aforesaid, then such subject of her Majesty shall be liable to be tried and punished by a militia court martial, in like manner as any citizen or subject of a foreign state or country at peace with her Majesty. § 4. Any citizen or subject of any foreign state or country offending against this act, shall be deemed guilty of felony, and may, notwithstanding the above provisions, be prosecuted and tried before any court of oyer and terminer and general gaol delivery, in and for any district of this province, in the same manner as if the offence had been committed in such district, and upon conviction shall suffer death, as in cases of felony.

FOREIGN SERVICE.

Any engagement with a foreign state is a contempt against the prerogative, and a high misdemeanor at common law.—*4 Bl. Com.*, 122.

FORESTALLING.

At the common law, every practice or device to enhance

the price of victuals, or other necessaries of life, is held to be a misdemeanor—3 *Inst.*, 196; and forestalling, in its legal signification, anciently comprehended all offences of this description, including those of *ingrossing* and *regrating*. *Ingrossing* is the purchase of the whole of any commodity for the sake of selling it again at a high price. *Regrating* signifies, properly, the scraping or dressing of cloth, or other goods, in order to sell the same again. The offences of forestalling, *ingrossing*, and *regrating* have been also especially provided against by various statutes, from the 3 & 4 Ed. VI., c. 21, downwards to the 12 G. III., c. 71; by which latter statute all the preceding statutes were repealed, leaving the offence only to be dealt with as it stood at common law, under which it still continues an indictable offence, punishable by fine and imprisonment.—*Cr. C. C.*, 232.

FORGERY.

Forgery is the fraudulent making or alteration of a writing, to the prejudice of another man's right. It is a *misdemeanor* at common law, punishable by fine, imprisonment, and pillory—4 *Bl. Com.*, 247; but is made *felony* by a variety of statutes; and forgery is complete, although no person be actually prejudiced by it.—*Ward's case*; *Ld. Raym.*, 1461. The following instances come under the denomination of forgery:—making a fraudulent insertion, alteration, or erasure in any material part of a true instrument: converting a bond for £500 into one for £5000, by adding an 0 to the number.—1 *Haw.*, c. 70, § 2. Altering a banker's note or bill of exchange from £10 to £50.—*R. v. Teague*, 2 *East. P. C.* 979. Altering the date of a bill, whereby payment is accelerated.—2 *East. P. C.* 852. So, if a man who is ordered to draw a will for a sick person, insert legacies in it of his own head.—3 *Inst.* 170. So, a man may be guilty of forgery in signing any instrument in his own name, if he represent himself to be some *other person* of the same name.—*Mead v. Young*, 4 *T. R.* 28.

As to Forgery by Statute Law.

By 5 Eliz., c. 14, § 2, forging any false deed, charter, or writing sealed, court roll, or the will of any person, or publishing any such as true, shall subject the party to double costs and damages; be set in the pillory, &c.; and by stat. 2 G. II., c. 25, revived and made perpetual by 9 G. II., c. 18—any person forging any deed, will, bond, writing obligatory, bill of exchange, promissory note, indorsement or assignment thereof, or uttering same as true, shall be guilty

of felony. By 24 G. III., st. 2, c. 37, forging the superscription of a letter, to avoid the payment of postage, is made felony.

*By 35 G. III., c. 5, § 14, any person forging any memorial, &c., under the registry act, shall be subject to the pains and penalties of the 5 Eliz.

By 10 & 11 V., c. 9, intituled "An Act to consolidate and amend the laws, and to repeal certain acts relating to the crime of Forgery."

The Great Seal.—§ 1. Any person forging or counterfeiting, or altering, knowing the same to be forged or counterfeited, the Great Seal of this province, or of the late province of Upper Canada, or of Lower Canada, shall be guilty of felony, and liable to imprisonment in the penitentiary for any term not exceeding seven years. § 2. Any person forging or counterfeiting, or uttering, &c., the *seal at arms* of any governor, lieutenant-governor, or person administering the government, to any commission, grant, appointment, license, warrant, order, or other instrument of a public nature appertaining to the affairs of the province; or any public register book or copy, or of any entry therein, shall be guilty of felony and liable to imprisonment in the penitentiary for not less than five, nor more than fourteen years.

Securities for Money, Wills, &c.—§ 3. Any person forging or altering, or offering, disposing or putting off, knowing, &c., any provincial debenture, or any stamp or endorsement on or assignment thereof, or any government scrip for land, or any bank note, will, testament, codicil or testamentary writing, or any license of marriage, or any bill of exchange, or any promissory note for the payment of money, or any indorsement on, or any assignment of any bill of exchange, or promissory note for payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant or order for payment of money, with intent to defraud any person, shall be guilty of felony, and liable to imprisonment in the penitentiary for not less than four, nor more than ten years. § 4. When by any other law the forgery of any instrument or writing is made punishable with death, the offender may be indicted under this act.

Letters Patent.—§ 5. Any person forging or altering, or uttering, &c., any copy of letters patent, or enrolment thereof, or any certificate thereof, purporting to be given under any statute, shall be guilty of felony, and liable to imprisonment in the penitentiary for not less than three, nor more than seven years; or imprisonment in any common gaol for not more than two years.

Bank Stock.—§ 6. Any person forging or altering, or uttering, &c., any transfer of any share or interest in the capital stock of any body corporate, company or society; or any power of attorney or other authority to transfer such stock, or to receive any dividend or profit payable thereon; or who shall demand or endeavour to effect such transfer; or to receive any dividend or profit in respect thereof, by virtue of any such forged or altered power of attorney or authority, knowing the same to be forged or altered with intent to defraud such person: or if any person shall falsely and deceitfully personate any owner of any such share, interest, dividend or profit, and thereby transfer any share or interest belonging to such owner, or thereby receive any money due to such owner, he shall be guilty of felony, and liable to imprisonment in the penitentiary for not less than four, nor more than ten years.

Personating Owners.—§ 7. Any person falsely and deceitfully personating any owner of any share or interest in the capital stock of any body corporate, company or society, or any owner of any dividend or profit in respect thereof; or any claimant for land from the crown; or for any scrip or allowance in lieu thereof; and thereby endeavour to receive any money due to the owner, or to obtain such land or scrip or allowance, shall be guilty of felony, and liable to imprisonment in the penitentiary for not less than three, nor more than seven years: or imprisonment in any common gaol not exceeding two years.

Forging Names of Witnesses.—§ 8. Any person forging the name of any witness to any power of attorney or other authority, for the transfer of any share or interest in any capital stock aforesaid, or to receive any dividend or profit, or to assign or transfer any right to obtain a grant from the Crown of lands, or to obtain any scrip or other allowance in lieu thereof, or who shall utter any such knowingly, shall be guilty of felony, and liable to imprisonment in the penitentiary for not less than three, nor more than seven years, or imprisonment in any common gaol not exceeding two years.

Forging Records, Deeds, &c.—§ 9. Any person forging or altering, or uttering, &c., any notarial act or copy, *proces verbal* of any surveyor, or copy, judicial record, writ, order, return, exhibit, report, certificate or other document, or entry made or filed in any suit or proceeding, civil or criminal, in any court of justice, or with any officer of such court, or any exemplification, or authenticated or certified copy of any such documents or entry as aforesaid, deed, bond, writing obligatory, or any assignment of right of land, cer-

tificate of registration, or affidavit of execution, or any memorial of any deed, will, or other instrument, or any acquittance or receipt for goods, or any accountable receipt for money or goods, or for any note, bill or other security for payment of money, or any warrant, order or request for delivery or transfer of goods, or delivery of any note, bill, or other security for money, or any contract, promise or agreement, with intent to defraud any person, shall be guilty of felony and liable to be kept confined at hard labour in the penitentiary for not less than four, nor more than ten years.

Recognizances—Cognovits.—§ 10. Any person acknowledging bail in the name of another, not privy or consenting thereto, or any *cognovit actionem*, or judgment, or any deed registered or enrolled, shall be guilty of felony and liable to hard labour in the penitentiary for not less than four, nor more than ten years.

Possession of Forged Notes, &c.—§ 11. Any person, without lawful excuse, purchasing or receiving, or having in his custody, any forged bank note, or blank bank note, knowing the same to be forged, shall be guilty of felony, and liable to imprisonment in the penitentiary for not less than three, nor more than seven years.

Engraving Bank Notes.—§ 12. Any person engraving, or making upon any plate, wood, or stone, or other material, any bank note, bill of exchange, or promissory note for money without authority; or any subscription thereto without such authority; or having in his custody any plate, wood, stone, or other material, or any superscription, so engraved or made; or knowingly uttering or having in his possession any paper upon which any part of such bank note, &c., or superscription shall be made or printed, shall be guilty of felony, and liable to hard labour in the penitentiary for not less than three nor more than seven years: or imprisonment in any common gaol for not more than two years.

Foreign Bills, &c.—§ 13. Any person forging or altering, or uttering knowingly, any forged or altered bill of exchange, promissory note, undertaking or order for payment of money, in whatever language expressed; or engraving or making upon any plate, wood, stone or other material, any such instrument, without authority; or without such authority shall use, or without lawful excuse have in his possession, any plate, stone, wood or other material, upon which any such foreign bill, &c., shall be engraved or made; or shall without authority, knowingly utter, or have in his possession any *paper* upon which any part of such foreign bill, &c.,

shall be made or printed, shall be guilty of felony and liable to hard labour in the penitentiary for not less than three, nor more than seven years, or imprisonment in any common gaol not exceeding two years.

Statute of Elizabeth.—§ 14. Any person subject to imprisonment under this statute shall be guilty of felony, and liable to hard labour in the provincial penitentiary for not less than three, nor more than seven years; or imprisonment in any common gaol not exceeding two years.

Foreign Matter.—§ 15. Where the forging or uttering any matter is in this act expressed to be an offence, if any person shall in this province forge or utter the same, in whatever place or country, out of this country, foreign or otherwise, such matter may purport to be made, and in whatever language expressed, every such person and his aiders and abettors, shall be deemed to be an offender within this act, and punishable as if the matter had purported to be made in this province: and if any person shall in this province forge, or utter any forged bill of exchange, promissory note for money, or any endorsement or assignment of such, or any deed, bond, writing obligatory, for payment of money, in whatever country out of this province the same may purport to be payable, and in whatever language expressed, such person, his aiders and abettors, shall be an offender within this act, and punishable as if the money had been payable in this province.

General Clause.—§ 16. That when by any law now in force, any person forging any matter whatsoever, or knowingly uttering the same, or demanding or causing any thing to be done by virtue of any forged matter; or falsely personating another, or demanding or receiving any money by virtue of any probate or letters of administration, knowing the will to be forged, or such probate, &c., obtained by false oath, would be guilty of felony, and liable to any other punishment than is provided by this act: any person convicted of such a felony, his aiders and abettors, (and no other punishment be provided under this act,) shall be liable to hard labour in the penitentiary for not less than three, nor more than ten years: or imprisonment in any common gaol not exceeding two years. This act not to alter any law respecting coin.

Venue.—§ 11. Offenders may be tried in the district where apprehended or in custody.

Accessories.—§ 18. Principals in the second degree, and accessories before the fact, punishable in the same manner as principals in the first degree; and accessories after the

fact liable to imprisonment in the common gaol not exceeding two years.

Indictment.—§ 19. Fac simile of any matter not required to be inserted; but it shall be sufficient to describe the same as in an indictment for stealing.

Possession.—§ 20. Meaning actual possession, or knowingly having such matter in any dwelling-house or other building, lodging or apartment, field or other place, open or inclosed, occupied by the offender or not; and whether such matter be for his own use or for the use of another.

Witnesses.—§ 21. Parties interested may be competent witnesses.

Repeal of Acts (a).—§ 22. *Inter alia* 7 §, 4 & 5 V., c. 28. *Public Improvements*—3 §, 4 & 5 V., c. 33. *Government Loan*—part of 17 §, 9 V., c. 34. *Registry Law*—9 V., c. 3. *Forgery*—3 §, 9 V., c. 61. *Lunatic Asylum*—4 §, 9 V., c. 65. *Rebellion Losses, Lower Canada*—3 §, 9 V., c. 66. *Public Works*—*50 G. III., c. 4. *Bills of Exchange*—part of 25 & 26 §§ of *3 W. IV., c. 3. *Capital Offences*—8 §* 7 W. IV., c. 14. *Forms of Enactment.*

Commencement of Act.—§ 23. Act to commence on 1st January, 1848.

By 13 & 14 V., c. 53, § 86, (Division Court Act) any person forging the seal or process of this court, or serving or enforcing any forged process, or delivering or causing to be delivered to any person, any paper falsely purporting to be a copy of any summons or process of the court, *knowing* the same to be false, or who shall act or profess to act under any false colour, or pretence of the process of this court, shall be guilty of *felony*.

By 13 & 14 V., c. 17, s. 16, forging, or issuing any forged *postage stamps*, is made felony.

By 13 & 14 V., c. 19, § 6, forging the seal or signature to any *certified copy* of certain official documents pertaining to the courts of law or equity therein mentioned is made felony.

By 16 V., c. 19, § 11, forging any seal, stamp or signature, to any document mentioned in this act (act to improve the law of evidence in Upper Canada), or knowingly tendering the same in evidence, is made felony.

FREE GRANTS.

By 16 V., c. 159, § 9, free grants not exceeding 100 acres

(a) The other acts referred to as repealed, are of a private description; or relate to Lower Canada, and are not therefore inserted in this work.

Fugitive Felons.

may be made to actual settlers on the line of roads in new settlements. § 10. Or for markets, and other public purposes, to the extent of *ten* acres.

FREE TRADE.

See "*Reciprocity.*"

FRUIT TREES.

See *post* title "*Trees.*"

FUGITIVE FELONS.

* By statute 37 G. III., c. 15, if any person, against whom a warrant shall be issued by the Chief Justice, or any other magistrate in any of his Majesty's provinces in North America, for any felony or crime of a higher nature, shall escape, and come into any part of this province, any justice of the peace, where such felon shall be, may (upon due proof of the hand-writing of the magistrate issuing the warrant) endorse the same, which shall be a sufficient authority for the execution thereof, where such warrant shall be so endorsed. § 2. The person having such warrant, first entering into recognizance with sufficient sureties, in not less than £50, to indemnify the province against any expenses arising from the apprehension of such offender, and the magistrate to whom such application is made may take such recognizance.

(a) *By statute 3 W. IV., c. 6, entitled, "An Act to provide for the apprehending of fugitive offenders from foreign countries, and delivering them up to justice," it is enacted, that the Governor shall have power, and he is hereby authorised at his discretion, and by and with the advice of the executive council, on requisition being made by the government of any country, or its ministers or officers authorised to make the same, within the jurisdiction of which country the crimes hereinafter mentioned shall be charged to have been committed, to deliver up to justice any person who may have fled to this province, or who shall seek refuge therein, being charged with murder, forgery, larceny or other crime, committed without the jurisdiction of this province, which crimes, if committed within this province, would, by the laws thereof, be punishable by death, corporal punishment, by pillory or whipping, or by confinement at hard labour, to the end that such person may be transported out of this

(a) This act, although not expressly repealed, is virtually superseded by the Ashburton treaty; so held in the case of *Regina v. Tubbee*, *Robinson's Practice Reports in Chambers*, vol. 1, page 98.

province to the place where such crime shall have been charged to have been committed; provided always, that this shall only be done *upon such evidence of criminality as according to the laws of this province, would, in the opinion of the Governor and of the executive council, warrant the apprehension and commitment for trial of such fugitive from justice, or person so charged, if the offence had been committed within this province.* § 2. And for preventing the escape of any person so charged, before any order for his apprehension can be obtained from the Governor, it shall be lawful for any judge, or for any justice of the peace, within his jurisdiction, to issue his warrant for the apprehension and for the commitment of the accused, until application can be made to the Governor, and an order made thereupon; which warrant shall, nevertheless, only be granted upon such evidence (on oath) as shall satisfy such judge or justice that the person accused stands charged with some crime of the description hereinbefore specified, or that there is good ground to suspect him to have been guilty thereof.

By 12 V., c. 19, reciting that,

Whereas by the tenth article of a treaty between her Majesty and the United States of America, signed at Washington, on the 9th day of August, 1842, (the ratifications whereof were exchanged at London, on the 30th day of October, in the same year,) it was agreed that her Majesty and the said United States should, upon mutual requisitions by them or their ministers, officers, or authorities respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or *robbery*, or forgery, or the utterance of forged paper, committed within the jurisdiction of either of the high contracting parties, should seek an asylum, or should be found within the territories of the other; provided that this should only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged should be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed; and that the respective judges and other magistrates of the two governments should have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, so that he might be brought before such judges or other magistrates respectively, to the end that the evidence of criminality might be heard and considered; and if, on such hearing, the evidence should be deemed sufficient to sustain the charge, it should be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant might issue for the surrender of such fugitive, and that the expense

of such apprehension and delivery should be borne and defrayed by the party making the requisition and receiving the fugitive; and it is, by the eleventh article of the said treaty, further agreed, that the tenth article hereinbefore recited should continue in force until one or other of the high contracting parties should signify its wish to terminate it, and no longer; and reciting, that the provisions of the imperial act, 6 and 7 V., had been found inconvenient in this province, and more especially that provision which requires that before any such offender shall be arrested a warrant shall issue under the hand and seal of the person administering the government, to signify that such requisition as aforesaid hath been made by the authority of the United States, for the delivery of such offender as aforesaid, and to require all justices of the peace, and other magistrates and officers of justice, within their several jurisdictions, to govern themselves accordingly, and to aid in apprehending the person so accused, and committing such person to gaol, for the purpose of being delivered up to justice according to the provisions of the said treaty, inasmuch as by the *delay* occasioned by compliance with the said provision, an offender may have time afforded him for eluding pursuit; and reciting, that by the fifth section of the said act it is enacted, that if by any colonial enactment provision shall be made for carrying into complete effect, within such colony, the objects of the said act, by the substitution of some other enactment in lieu thereof, then it shall be competent to her Majesty to suspend the operation within such colony of the said imperial act, so long as such substituted enactment should continue in force there: and reciting that it was expedient to make such provision within this province accordingly.

§ 1. It is therefore enacted, that it shall be lawful for any of the judges of her Majesty's superior courts in this province, or for any of her Majesty's justices of the peace in the same, upon complaint made under oath or affirmation, charging any person found within the limits of this province with having committed, within the jurisdiction of the United States of America, or of any such States, any of the crimes enumerated or provided for by the said treaty, to issue his warrant for the apprehension of the person so charged, that he may be brought before such judge or such justice of the peace, to the end that evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient by him to sustain the charge according to the laws of this province, if the offence alleged had been committed therein, it shall be his duty to certify the same, together with a copy of the testimony taken before him, to the Governor or Lieutenant-Governor of this province, or to the person administering the government of the same for the

time being, that a warrant may issue upon the requisition of the proper authorities of the said United States, or of any of such States, for the surrender of such person according to the stipulations of the said treaty; and it shall be the duty of the judge, or of the justice of the peace, to issue his warrant for the commitment of the person so charged to the proper gaol, there to remain until such surrender shall be made, or until such person shall be discharged according to law. § 2. In every case of such complaint, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any of the United States may have been granted, certified under the hand of the person or persons issuing such warrant, or under the hand of the officer or person having the legal custody thereof, and attested, upon the oath of the party producing them, to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended. § 3 authorises the Governor, upon such requisition of the United States, or any of the States, to order the delivery up of the offender accordingly; and in case of escape, the offender may be re-taken in the same manner as any person accused of crime against the laws of this province. § 4. When any person committed under this act, and not delivered up and conveyed out of the province within two calendar months after his commitment, over and above the time actually required to convey the prisoner from the gaol to which he or she may have been committed, by the readiest way out of this province, it shall be lawful for any of the judges of her Majesty's superior courts, having power to grant a writ of *Habeas Corpus*, upon application, and upon proof of reasonable notice given to the provincial secretary, to order the prisoner to be discharged, unless sufficient cause be shewn to the contrary. § 5. This act to continue during the continuance of the tenth article of said treaty, and no longer.

Warrant to apprehend a Fugitive Felon.

PROVINCE OF CANADA.

County of } To all or any of the constables or other peace
to wit. } officers in the county of .

Whereas A.B. of , in the state of New York, constable, hath this day made information and complaint upon oath, before me, J. C., Esquire, one of her Majesty's justices of the peace for the said county, that C. D., late of Buffalo, in the said state of New York, labourer, now stands charged upon oath, in the said state of New York, to wit, at Buffalo, with having (*here state the offence charged*), and that a warrant hath been

issued at Buffalo aforesaid, for the said C. D., for the felony aforesaid, but that the said C. D. hath, on account of the said felony, fled to and come into this province, and is now residing at _____, in the said county. These are, therefore, by virtue of the statute in such case made and provided, to command you, in her Majesty's name, forthwith to apprehend and bring before me, or some other justice of the peace for the said county, the body of the said C. D., to be dealt with according to law. Herein fail not. Given under my hand and seal, &c.

Mittimus of a Fugitive Felon.

PROVINCE OF CANADA.

County of _____ } To all or any of the constables or others, the
to wit. } peace officers of the county of _____, and to
the keeper of the common gaol at _____, in the said county
of _____.

These are to command you, the said constables in her Majesty's name, forthwith to convey and deliver into the custody of the keeper of the said gaol the body of C. D., late of _____, who is charged on the oath of A. B., &c., [*here state the particulars,*] and you the said keeper are hereby required to receive the said C. D. into your custody, in the said goal, and him safely keep, to be dealt with, and until he shall be delivered from your custody according to law. Given under my hand and seal, &c.

GAME.

By 19 & 20 V., c. 94 (which repeals all former acts), § 1, enacts that no deer, moose, elk, reindeer, or cariboo shall be hunted or killed between the 1st February and the 1st of August. § 2. No wild turkey, grouse, partridge, or pheasant, shall be hunted, taken or killed between the 1st of March and the 1st of September. § 3. No duck shall be hunted, taken or killed between the 1st of March and the 1st of July. § 4. No woodcock, between the 1st of March and the 1st of July. § 5. No wild swan, goose or duck of the kinds known as the mallard, grey duck, black duck, wood duck or any of the kinds of duck known as teal, between the 15th of April and the 1st of August. § 6. No wild turkey, grouse, partridge, or pheasant, quail or woodcock shall be trapped or taken by traps, nets, springes or other means (other than shooting) at any time whatever, nor shall any trap, net, or snare be made, erected, or set for such purpose. § 7. No person shall have in possession any of the animals or birds aforesaid, within the times prohibited without lawful excuse. § 8. Any offence against this act shall be punished on conviction before a justice of the peace, by a fine not exceeding

£5, nor less than 5s., in the discretion of such justice, with costs, or in default of payment, by imprisonment for a time not exceeding one month: one-half of the fine to go to the municipality, and the other half to the informer. § 10. This act not to apply to Indians—§ 11, and shall only extend to Upper Canada.

GAMING.

By stat. 33 Hen. VIII., c. 9, no person shall keep any common house, alley, or place of bowling, coyting, closh cayls, half-bowl, tennis, dicing table, carding, or any unlawful game, then, or thereafter to be invented, on pain of 40s. a-day—§ 11; and persons frequenting such house shall forfeit 6s. 8d. each time—§ 12.

Justices may enter suspected houses, and arrest and imprison the keepers and persons resorting thereto, until the keeper give security no longer to keep the said house. § 14, 15. No apprentice, journeyman artificer, serving man, &c., shall play at unlawful games, except at Christmas, and at their master's houses, &c., or in his presence, under penalty of 6s. 8d. each time.—§ 16.

By 2 G. II., c. 28, if proved on the oath of two witnesses before any justice, or upon his own view, that any person hath used any unlawful game, contrary to 33 H. VIII., c. 9. such justice may commit the offender, unless he give security not to play in future.—§ 9.

By 16 Car. II., c. 7, § 2, if any person by any *fraud*, unlawful device, or ill practice, in playing at or with cards, dice tables, tennis, bowls, skittles, shovel-boards, or in or by cock-fighting, horse-races, dog-matches, foot-races, or *other* pastimes, or by betting thereon, shall win any money, &c., the offender shall forfeit treble the value, with treble costs, one moiety to the king and the other to the party grieved, if he shall sue within six months; and by § 3, if any person shall play at any of the said games, or any other pastime or game whatsoever (other than with and for ready money) or shall bet on such as play, and lose above £100 at any one time, upon ticket or credit, or otherwise, the securities shall be void, and the winner shall forfeit treble the value, with treble costs, if sued within a year; one moiety to the king and the other to the informer.

By 9 Anne, c. 14, any person who shall at any time or sitting, by playing at cards, &c., or by betting, lose and pay £10, the loser may, within three months, recover the same by action; and if he shall not sue within three months, then any other person may recover the same, with treble value

and costs; half to the prosecutor and half to the poor. § 2. And if any person shall *fraudulently* win at cards, &c., or acquire by betting, &c., any sum of money or other valuable thing, above £10, and being convicted on indictment and information, he shall forfeit five times the value, to be recovered by the person who shall sue. § 5. Any two justices on just cause of suspicion, may cause any person to be apprehended who has no visible means of living except by gaming, and may require security for his good behaviour for twelve months, or commit him until such security be given. § 6. And any person assaulting or challenging another, for money won by gaming, shall forfeit to the king all his goods and personal estate, and be imprisoned two years.

Upon these statutes it has been held, that a wager above £10 on a horse race is illegal—2 *Str.* 1159; 2 *Wils.* 309; and a wager to any amount, on a horse race, where the race is for less than £50, cannot be recovered; for all such races are illegal by the 13 G. III., c. 19, § 3; and if two persons play at cards from Monday evening to Tuesday evening, without any interruption, except for an hour or two at dinner, and one of them win a balance of 17 guineas, this is won at one sitting, within the 9 Anne, c. 14.—2 *Bl. Rep.* 1226. A foot race is also an illegal game—2 *Wils.* 36; and so is cricket, so far as to invalidate a bet of more than £10 upon the players.—1 *Wils.* 220.

By 10 & 11 W. III., c. 17, § 1, all lotteries are declared to be public nuisances; and by sec. 2, no person shall expose to be played, drawn or thrown at, either publicly or privately, or shall draw, &c., at any lottery, either by dice, lots, cards, balls, numbers or figures, or any other way, under the penalty of £500; one-third to the king, one-third to the poor, and one-third with double costs to the informer; and the offenders may also be prosecuted as common rogues: and every person who shall play, throw or draw, at any such lottery, shall forfeit £200, to be recovered in like manner.

By 10 Anne, c. 26, § 109, insurances on marriages, births, christenings or service, are prohibited under the penalty of £500.

By 8 G. I., c. 2, § 36, every person who shall keep any office for the sale of houses, lands, &c., by lottery, for the improvement of small sums of money, shall forfeit £500; and every person who shall be an adventurer therein shall forfeit double the sum paid.—§ 37.

By 9 G. I., c. 19, § 4, foreign lotteries are prohibited under the penalty of £200. By 6 G. II., c. 35, § 29, if any person shall sell or deliver any ticket belonging to such foreign lottery, he shall forfeit £200.

By 12 G. II., c. 28, § 1, if any person shall keep any office for the sale of houses, lands, goods or other things, by lottery, numbers, figures, cards or dice, he shall forfeit £200 on conviction by one justice, on the oath of one witness, or on view of such justice, to be levied by distress and sale; one-third to the informer, and two-thirds to the poor. The games of ace of hearts, fano, basset and hazard, are declared games and lotteries prohibited by this statute. § 2. Adventurers in such games shall forfeit £50, to be sued for and recovered as aforesaid.—§ 3

By 13 G. II., c. 19, the game of passage, and all games with dice (backgammon excepted) are declared illegal, and within the 12 G. II., c. 28.

By 18 G. II., c. 34, § 1, no person shall keep any house, &c., for the game of roulette, otherwise *roly poly*, or any other game with cards or dice, prohibited by law, under the penalties of 12 G. II., c. 28. By § 4, witnesses may be summoned under this act, or under the 12 G. II., c. 28, to give evidence, under the penalty of £50, or imprisonment for six months, in case of default.

See also title "*Lotteries.*"

GAOLER.

* By the 32 G. III., c. 8, § 14, the sheriff shall have the power to appoint, remove and discharge the gaoler. § 15. Any gaoler knowingly permitting any spirituous liquors or strong waters to be used in the gaol, or brought into the same, except by the order of a physician, shall forfeit £20. § 17. And the justices shall fix a yearly salary to be paid to the gaoler in lieu of all fees. And if the gaoler keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler by the common law; and this is the cause, that if a prisoner die in gaol the coroner ought to hold an inquest.—3 *Inst.* 91.

For the treatment of prisoners after sentence, see title "*Execution.*"

GAOLS.

The gaol is the king's, but the keeping thereof is incident to the office of sheriff.—2 *Burn's J.*, 430.

By the 3 Hen. VII., c. 3, those that have the custody of gaols must certify the names of all prisoners to the justices of gaol delivery, in order to their trial or discharge, on pain of £5.

By stat. 31 Ch. II., c. 2, if any person shall be committed to any prison, for any criminal or supposed criminal offence,

he shall not be removed thence, unless it be by *habeas corpus*, or some other legal writ; or where he is removed from one prison to another within the same county, in order to his trial or discharge; or in case of sudden fire, or infection, or other necessity, on pain that the person signing any warrant for such removal, and the person executing the same shall forfeit for the first offence £100, and for the second £200 to the party grieved. § 9. But on emergent occasions, as in the case of infectious diseases, the sheriff or gaoler, with the advice and consent of three or more justices, may, if they shall find it needful, provide other safe places (with the owner's consent) for the removal of sick or other persons out of the usual gaols.—19 C. II., c. 4, § 2. The gaoler shall not put, keep or lodge prisoners for debt and felons, together in one room or chamber, on pain of forfeiting his office, and treble damages to the party grieved.—22 & 23 Ch. II., c. 20, § 13.

* By statute 32 Geo. III., c. 8, § 1, it is enacted that a gaol and court-house shall be erected in every district throughout the province. § 16. Justices in every quarter sessions (a) may frame such rules and regulations for the gaols as they may think proper, which having been approved and signed by one of the judges, shall be binding on the gaoler and prisoner. By the *50 Geo. III., c. 5, until houses of correction shall be erected the common gaols shall be constituted houses of correction.

* By the 1 V., c. 5, § 1, the Lieutenant-Governor is authorised to appoint three commissioners, who, together with the chief justice, vice-chancellor, the judges of the King's Bench, and the sheriffs of the several districts, shall compose a board of commissioners, for the purposes of this act. § 2. After the passing of this act every gaol shall be erected according to a plan approved of by the commissioners, or a majority of them; and no gaol built otherwise, or that shall not, after its completion, receive their sanction, shall be deemed to be in law the gaol of such district. § 3. Contracts not completed shall be submitted, with plans and specifications, to the consideration of the board, who shall determine whether it may be expedient to proceed therewith or abandon the same, or erect such gaol wholly or in part, upon a different plan; if existing contract abandoned, the damages sustained by the contractor shall be ascertained by arbitration; the board shall appoint two arbitrators, and the contractor two, which four persons

(a) But see next statute 1 V., c. 5, § 6, which transfers this power to commissioners.

shall choose a fifth, and the award of such five, or the majority, shall be final; proceedings of such arbitrators shall be governed by the same rules, &c., and the award subject to be set aside by the Court of King's Bench, as in other cases.

§ 4. The sum awarded shall be paid out of the funds of the district, by order of the justices. § 5. The board of commissioners, before deciding in any case upon the plan of a gaol

most proper to be adopted, shall take into their consideration the nature and extent of the ground on which the gaol is to be built; its relative situation to streets and buildings, and to any river or other water; its comparative elevation and capability of being drained; the materials of which it is to be composed; the necessity of guarding against cold and damp, and of providing properly for ventilation; the proper classification of prisoners, having respect to their age, sex, and the cause of their confinement; the best means of ensuring their safe custody, without the necessity of resorting to severe treatment; the due accommodation of the keeper of the gaol, so that he may have ready access to the prisoners, and may conveniently oversee them; the exclusion of any intercourse with persons without the walls of the building; the prevention of unwholesome nuisances from whatever cause; the combining provision for the reformation of convicts, so far as may be practicable, and for their employment, in order that the common gaols may really serve for places of correction, according to the intention of the law; the admission of prisoners to air and exercise without the walls of the building, when that may be proper; and the enclosure of the yards and premises with a secure wall; and that regard shall be had to the ability of the district to meet the expense of any proposed building, and to the expediency of adopting such a plan as may most conveniently and properly admit of the erection of additional cells and apartments, when the same may be required. § 6. The commissioners shall, as soon as may be convenient, frame a set of rules and regulations for the government of the common gaols in this province, extending to the maintenance of the prisoners in regard to diet, clothing, bedding, and other necessaries, medical attendance, religious instruction, the conduct of the prisoners, and the restraint and punishment to which they may be subjected, and also to the treatment and custody of prisoners generally, and to the whole internal economy and management of the gaol, and all such matters connected therewith as shall be thought by them expedient; which rules and regulations shall be transmitted to the Lieutenant-Governor of this province to be laid before each house of the

legislature at their next session, and shall not take effect until after the termination of such session. § 7. First meeting of the commissioners shall be on the first Monday in May next, at which meeting arrangements shall be made for subsequent meetings; and a majority present at any meeting shall be competent to transact business. § 8. Commissioners shall make a yearly report to both branches of the legislature.

*By the 3 V., c. 14, § 1, if any person shall convey or supply to any prisoner, confined in any common gaol or house of correction, in any district in this province, any rum, brandy, whiskey or other spirituous liquors, contrary to such rules and regulations as have been or shall be hereafter established by law, every such offender, being duly convicted thereof before two justices, shall be liable to a fine not exceeding £5. § 2. Any person being charged on the oath of one or more witnesses before any one justice, with any offence against this act, such justice may summon such person to appear at a time and place to be named in such summons, and if he shall not appear, then (upon proof of the due service of the summons upon such person personally) any *two* justices of the district may hear and determine the case, *ex parte*, or issue their warrant for apprehending such person, or any one justice may, if he shall think fit, without any previous summons, issue such warrant. § 3. No conviction under this act shall be quashed for want of form, and no warrant of committal held void by reason of any defect therein: provided it be alleged that the party has been convicted, and there is a good and valid conviction to sustain the same. § 4. Such justices shall have power to summon witnesses in support of the prosecution, or for the defendant; such witnesses neglecting to attend without some reasonable excuse, may be fined by the justices assembled to try the offence in any sum not exceeding £5. § 5. In default of payment of any fine imposed under this act, together with the costs, within the time specified at the time of the conviction by the justices, such justices may issue their warrant to any constable to levy the same within a certain time, expressed in the warrant; and in default of sufficient distress, to commit the offender to the common gaol or house of correction, for any time not exceeding one calendar month, unless the fine and costs be sooner paid.

By 19 & 20 V., c. 43, § 201, the limits of each county and union of counties in Upper Canada for judicial purposes are declared to be the limits of the gaols of such counties or union of counties.

For all purposes of arrest the limits constitute the gaol,

and the debtor while confined within the limits is in custody.
—*Harrison's C. L. Procedure Act*, p. 501, note 1.

GARDENS.

By statute 4 & 5 V., c. 26, § 21, if any person shall unlawfully and maliciously destroy, or damage with intent to destroy, any plant, root, fruit, or vegetable production growing in any garden, orchard, nursery ground, hot house, green house, or conservatory, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding *two pounds*, as to the justice shall seem meet. § 22. And if any person shall unlawfully and maliciously destroy, or damage with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land open or enclosed, not being a garden, orchard, or nursery ground, every such offender being convicted thereof before a justice of the peace, shall forfeit and pay, over and above the amount of injury done, such sum of money not exceeding *twenty shillings*, as to the justice shall seem meet.

See also *post* title "*Vegetables*."

GAS AND WATER WORKS.

By 16 V., c. 173, § 1. Any five or more persons may form a company for the purpose of supplying any city, town or incorporated village with gas or water upon the conditions mentioned in the act. § 24. Municipalities where the works are created may subscribe for stock. § 26. The company may break up streets for laying the mains and pipes. § 27. And may carry pipes over and through private property in certain cases and on certain terms. § 28. The works in no wise to endanger public health. § 30. If any person shall wilfully or maliciously damage or destroy any main pipe, engine, waterhouse, pipe, plug or other works or apparatus, or any materials, or any injury or damage for the purpose of obstructing or hindering the construction or repairing of any such works; or shall bathe, wash or clean any cloth, wool, leather, skin, animals or any nauseous or offensive thing, or cast, throw or put any filth, dirt or nauseous thing, or suffer the water of any sink, sewer or drain to run into, or cause any other conveyance to the water within any reservoir, cistern, pools, ponds, sources or fountains supplying water, or shall increase the supply of gas or water by

increasing the number or size of the holes in gas burners, or using the gas without burners, or otherwise wrongfully, negligently or wastefully burring the same, or by wrongfully or improperly wasting the water or gas, every such person on conviction thereof before a justice of the peace, or any other person authorised to act in that capacity in the locality, shall pay for the use of the company a penalty not exceeding £5, together with the costs of prosecution, or be confined in the common gaol for a space not exceeding *three* months, as to such justice shall seem meet. If any person shall wilfully or maliciously damage or suffer to be damaged any meter, lamp, lustre, service pipe, or fittings belonging to the company, or impair or alter the same so that the meter or meters shall indicate less gas than actually passes, every such person shall incur to the use of the company for any such offence, a penalty not less than £1 5s., nor exceeding £5, and shall pay all charges of repairs, and double the surplus gas so consumed, to be recovered with costs as hereinafter provided. § 34. If any person shall wilfully extinguish any of the public lamps, or lights, or shall wilfully remove, destroy, damage, or fraudulently alter, or in any way injure any pipe pedestal, post, plug, lamp, or other apparatus belonging to such company he shall forfeit and pay to the use of the company a penalty not less than £1 5s., nor more than £5, and shall be liable to make good all damages. § 32. The company authorised to cut off gas or water from persons neglecting to pay their rent, and may enter the premises for such purpose; and if any person refuses to permit the servants and officers of the company to enter and perform the acts aforesaid, every person so refusing or obstructing shall incur a penalty to the company for every offence of £10, and a further penalty of £1 a-day, for each continued refusal. § 39. All fines and penalties imposed by this act may be recovered with costs in the manner hereinbefore directed, or before a justice or justices of the peace, or person authorised to act in that capacity where the offence is committed, on the oath of any one credible witness, and when damages as well as a penalty may be given, such damages and penalty may be sued for separately, and levied by distress from the goods of the defendant, and in default of distress the defendant may be committed to the common gaol for such period not exceeding *two* months, as the justice or the court may direct.

See also 18 V., 94, which amends the above act in some other particulars.

GENERAL QUARTER SESSIONS.

By 20 V., c. 58, § 16, the 7 V., c. 32, appointing the time for holding the general quarter sessions is repealed, and it is enacted that from and after the 1st August next, (1857), the court of general quarter sessions of the peace in and for the several counties and divisions of counties in Upper Canada, (and the sittings of the county courts also), shall be held on the *second* Tuesday in the months of March, June, September and December in each year: and it shall be lawful for the said courts at their sittings in the month of March in each year to nominate and appoint a high constable and a sufficient number of persons to serve the office of constable for their several counties.

By 18 V., c. 92, § 39, it is enacted that it shall not be necessary in opening the court to read the commission of the peace.

See also title "*Sessions.*"

GRAMMAR SCHOOLS.

By 16 V., c. 186, (which repeals former acts,) all moneys arising from the sale of grammar school lands, or grants from the Crown, shall form a fund, to be called *The Upper Canada Grammar School Fund*, and invested upon government or other securities by direction of the Governor in council; the annual income, after deducting £100 per annum for a *senior* grammar school for each county or union, and other appropriations under this act, shall be with said £100 for each senior grammar school as aforesaid, annually apportioned to the several counties or unions in Upper Canada by the chief superintendent of schools, according to the ratio of population in each county and union as compared with the population of Upper Canada: or in case of a *defective census*, then (with the approbation of the Governor in council) according to the best evidence of the relative proportions of such population, having respect to an equitable apportionment according to the ratio of population. Provided that when the senior county grammar school of any county or union is situate within the limits of any city, the said £100 per annum shall be paid to such school.

§ 2. Municipalities authorised to levy such assessments as they may judge expedient for the site, building or rental, &c., of a grammar school-house or grammar school-houses, and for procuring apparatus and text books, for providing the salaries of teachers, and all other necessary expenses; and such sums shall be paid over to the treasurer of the county grammar school.

Grammar Schools.

§ 3. The chief superintendent shall, on or before the first day of May in each year, notify each county council through their clerk, of the annual apportionment of grammar school moneys, and give notice thereof to the Inspector-General; and such moneys shall be payable to the treasurer of each county entitled, one-half on or before the first day of July, and the other on or before the 31st day of December, in such manner as may be determined by the Governor. Provided always that the sums raised by local assessment or subscriptions shall be payable on or before the fourteenth day of December.

§ 4. The sums so annually apportioned as provided in § 1, shall be expended in the payment of the salaries of teachers and for no other purpose.

§ 5. That in each grammar school provision shall be made for instruction by a teacher or teachers of competent ability and good morals, in all the higher branches of a practical English and commercial education, including the elements of natural philosophy and mechanics, and also in the Latin and Greek languages, and mathematics, so far as to prepare students for University College or any college affiliated to the University of Toronto, according to a programme of rules to be prescribed by the council of public instruction for Upper Canada, and approved by the Governor in council.

§ 6. The council of public instruction (of which the president of the University and the president or head of each of the affiliated colleges shall be members for the purposes of this act) shall prepare a list of text books, programme of studies and general rules for the government of such grammar schools, to be approved by the Governor in council.

§ 7. The chief superintendent to make an annual report to the Governor, on or before the first of July, of the actual state of such grammar schools, shewing moneys expended and from what sources derived, with such suggestions for improvement as he may deem expedient—to see that the county grammar school fund so apportioned is duly applied—and that such schools are conducted according to law, and to prepare suitable forms, and give such instructions as he shall judge necessary for making reports and conducting proceedings under this act, and to cause the same, with a sufficient number of copies of this act, and such rules and regulations approved as aforesaid to be printed and transmitted to the proper parties. § 8. The trustees appointed before this act shall come into force to continue *ex-officio* trustees until the appointment of new boards. § 9. The several grammar school trustees shall meet together on the

first Wednesday in January next after this act, and select from among themselves *three* trustees (one of whom shall annually retire on the 31st January) for each of the grammar schools in such county or union, who, with three other trustees for each school to be chosen as hereinafter provided by the municipal council of the county or union, shall compose the board of trustees (consisting of six members, three of whom shall constitute a *quorum*) for each such grammar school, to retire in order by *lot*: and the several county municipalities at their first sittings after the first of January next, shall select and appoint three fit and proper persons, one of whom shall retire annually on the 31st day of January, to be trustees for each grammar school within their counties or unions, and shall also decide the order in which the persons so chosen shall retire from the board. Vacancies to be filled up by such county municipality for the residue of the year, and the places of the two persons annually retiring (but may be re-elected) shall be filled up by the county municipality at its first meeting after the first of January in each year. § 10. Contains a provision for the appointment of a board of trustees (not less than six nor more than eight) for any county or union to be *hereafter* formed. § 11. Boards of trustees incorporated. To meet annually on the first Wednesday in February. Their duties being, 1st, to appoint annually a chairman, secretary and treasurer, and to fix the times and places of meeting, &c. 2nd, to take charge of the county grammar school, remove or appoint the master or other teachers, as they think fit—fix their salaries and prescribe their duties; to appoint officers or servants in such school, and fix their remuneration. To take care of the school buildings, &c., and to apply for the requisite amount to be raised by the municipality. Provided that no person (except a graduate of some university or college) shall be appointed master of a grammar school, unless he shall have previously obtained a certificate of qualification from a committee of examiners (one of whom shall be the head master of the Normal School) appointed by the council of public instruction. 3rd, to settle the amount to be paid by parents for each pupil attending such school, and the time of payment, and to apply the money towards teachers' salaries, providing apparatus, books, &c., and other necessary expenses. 4th, to employ such means as they may judge expedient in concurrence with the trustees of the school section, for uniting one or more common schools with such grammar school. The schools when united to be under the management of the joint board of grammar and common

Grand Jury.

school trustees. 5th, to see that the pupils are supplied with proper text books, that public half-yearly examinations are held and due notice given, and that such school is conducted according to law. 6th, to give the necessary orders upon the county treasurer for the school money, and upon their own treasurer for moneys in hand, for payment of salaries and expenses; and to prepare and transmit before the 15th January their annual report of the school to the chief superintendent.

§ 12. Each grammar school to be designated by a certain description. § 13. The grammar school in any county town to be deemed the *senior* county grammar school—and any city in which the *assizes* are held shall be considered a county town for the purposes of this act. § 14. County municipalities authorised to establish additional grammar schools within their limits, appoint trustees according to the tenth section, but not until the state of the grammar school fund shall be able to contribute £50 per annum for such new school. *Provided always* that the moneys apportioned out of the grammar school fund to each county, shall be distributed amongst the grammar schools within the restrictions imposed by this act, under such rules and regulations as may be made by the council of public instruction.

§ 15. That the present grammar schools shall be continued at the places where they are now held, subject to be changed by resolution of the board of trustees, approved by the Governor in council. § 16. Masters of senior grammar schools required to keep certain meteorological journals, and the school provided with requisite instruments. § 17. Repeal of former acts, viz.: *47 G. III., c. 6; *48 G. III., c. 16; *59 G. III., c. 4; *7 W. IV., c. 106; 4 & 5 V., c. 19; 9 V., c. 19; 13 & 14 V., c. 91; 14 & 15 V., c. 125. § 18. Act to commence on 1st January, 1854.

GRAND JURY.

It has been laid down in general terms, by some of the greatest lawyers, that the grand jury ought only to hear the evidence for the King—that is to say, on the side of the prosecution.—2 *Hale*, 157. But others have received this position with some qualifications—(4 *Bl. Com.* 303,) as indeed it ought to be; for the inquest are sworn to present the truth, and nothing but the truth; and it may so happen that they may not be able to elicit truth from the witnesses on the part of the prosecution only; and they may actually be convinced of that circumstance. The true intention seems to be this, viz.: *prima facie* the grand jury have no concern with any

testimony but that which is regularly offered to them with the bill of indictment, on the back of which the names of the witnesses are written; their duty being merely to inquire whether there be sufficient ground for putting the accused party on his trial before another jury of a different description. If nothing ambiguous or equivocal appear on this testimony, they certainly ought not to seek any further; but if their minds be not satisfied of the truth, so far as is necessary for their preliminary inquiry, they are not prohibited from requiring other evidence in explanation of mere facts; but they can proceed no further; for that would be to *try*, although their duty is confined merely to the question "whether there be sufficient pretence for trial."—3 *Inst.* 25; *Dickenson, Q. S.* 96.

The grand jury are sworn to inquire *pro corpore comitatis*; and therefore, by common law, they cannot regularly indict or present any offence which does not arise within the county or precinct for which they are returned. But it seems by the common law, if a fact done in one county prove a nuisance to another, it may be indicted in either. Also by the common law, if one guilty of larceny in one county, carry the goods stolen into another, he may be indicted in either. Also by the common law, if one guilty of larceny in one county, carry the goods stolen into another, he may be indicted in either.—*Haw. B.* 2, c. 25.

The grand jury being sworn, proceed, in a private room, to consider the bills brought before them. Although sworn to secrecy, they may, in cases of difficulty, allow the prosecutor, or his attorney, to assist them, by marshalling the evidence, and examining the witnesses. If any doubts occur on points of law, they should return into court and obtain the opinion of the court. A majority of twelve, at the least, is necessary to find the bill; if they be equally divided, or the majority be less than twelve, it is thrown out.

A grand jury must find a *true bill*, or *no bill*, for the whole; which is now usually done by endorsing on it the words "a true bill," or "no true bill," as their decision is; and if they take upon them to find it specially or conditionally, or to be true for one part only, and not for the rest, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew.

But this rule relates only to cases where the grand jury take upon themselves to find part of *the same count* to be true, and part false, and do not either affirm or deny the fact submitted to their inquiry. But where there are two distinct counts, viz., one for riot, and the other for an assault, the

grand jury may find a true bill as to the assault, and endorse *ignoramus* as to the riot.

The grand jury may present any offence within their own knowledge, without a bill being sent before them, at the instance of an individual prosecutor, if the offence be one of which they can legally take cognizance.—*Haw. B. 2, c. 2, § 51.* This presentment is delivered into court, and the clerk of the peace then puts it into the form of an indictment, on which process may issue as in ordinary cases.

By 20 V., c. 4. "*Act to facilitate the dispatch of business before Grand Juries.*" The foreman of the grand jury is authorised to administer oath to witnesses on bills of indictment before them. § 2. And it shall not be necessary for such witnesses to be sworn in open court.

For the mode of selecting grand jurors see *post* title "*Jury.*"

GRAND LARCENY.

The crime of larceny was formerly distinguished by two degrees: 1, grand larceny, which by *Ord. Qu. 29 G. III., c. 4,* included the stealing of goods and chattels above *twenty shillings* sterling, and *petit larceny*, property under twenty shillings. But now, by the 4 & 5 V., c. 25, § 2, the distinction between grand larceny and petty (or *petit*) larceny is abolished, and every larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature, and subject to the same incidents, as grand larceny.

See further on this subject *title "Larceny."*

GUARDIANS.

*By the 8 G. IV., c. 6, the judge of the Provincial Court of Probate, and the judges of the Surrogate Court in their respective districts, upon the written application of an infant (*or minor*) residing within the jurisdiction of such judge, and not having a father living, nor a legal guardian, after 20 days' public notice of such application, and proof of 20 days' public notice to the mother of such infant, or proof to the satisfaction of such judge, that such infant has no mother living in this province, may appoint some suitable and discreet person or persons to be guardian or guardians of such infant, and to require from such guardians a bond in the name of such infant, in such sum as the judge shall direct, conditioned for the faithful performance of the trust, and that such guardians will, when their ward shall become of age, or whenever such guardianship shall be determined, if thereto required, render to such ward a true and just account of the property of such ward which shall have come into their hands,

and, without delay deliver and pay over to said ward the property or balance in hand, deducting a reasonable sum for expenses, which bond shall be recorded by the registrar of said court. § 2. The guardians during their office, shall have full authority to act on behalf of their ward, and prosecute or defend in his name, and shall have the charge and management of the real and personal estate of such ward, and, with the approbation of two justices, may bind such ward apprentice. § 3. The judge, or his successor, shall have power to remove such guardians, upon reasonable complaint, and appoint others. § 4. And when the property shall be situated in one district, the right of appointment shall belong to the Surrogate Court; and if in two districts, then to the Court of Probate, which court shall also be a court of appeal. § 5. Appeal shall lie from the Court of Probate to the Governor in council. § 6. And the following fees may be demanded and taken by the respective officers:—

Official Principal, or Surrogate Judge.

	£	s.	d.
For the appointment of a guardian, with seals thereto	0	15	0
For auditing a guardian's account, when required so to do	0	10	0
For an order for removing a guardian from his guardianship	0	3	4

Registrar.

For entering the appointment of a guardian	0	2	6
For entering an order of the judge.....	0	2	6
For drawing and recording a bond of guardianship ..	0	6	8
For copies given out of his office—the same as in cases of probate.			

*By 2 W. IV., c. 35, guardians may act for infants in matters of partition of real estate.

By 13 & 14 V., c. 50, may execute conveyances in equity suits for partition, on behalf of their wards.

GUNPOWDER.

By the municipal act 12 V., c. 81, § 60, municipalities are authorised to make by-laws for regulating magazines for, and for the sale of gunpowder.

HABEAS CORPUS.

If bail cannot otherwise be obtained, the law hath provided a remedy in most cases, by the Habeas Corpus Act, 31 G. II., c. 2, the substance of which is briefly this:—If the commitment is for treason or felony, plainly and specially expressed in the

warrant of commitment; also, if any person is committed, and charged as accessory before the fact to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and especially expressed in the warrant of commitment; in such cases the person shall not be bailed on a writ of *habeas corpus*; otherwise he may be bailed. Also, if a person is committed for treason or felony, specially expressed, yet, if he shall in open court the first week of the term, or first day of assize, petition to be tried, and shall not be indicted some time in the next term or assize after the commitment, he shall upon motion, the last day of the term or assize, be bailed, unless it shall appear to the judge, upon oath, that the king's witnesses could not be produced within that time, and then, if he is not tried in the second term or assize, he shall be discharged. Previous to the aforesaid bailment, the prisoner, or some person on his behalf, shall demand of the officer or keeper a true copy of the warrant of commitment, which he shall deliver in *six hours*, on pain of £100, to the party grieved, for the first offence; and £200 and forfeiture of his office for the second: then application is to be made in writing by the prisoner, or any person for him, attested and subscribed by two witnesses, who were present at the delivery thereof to the Court of Chancery, King's Bench, Common Pleas, or Exchequer; or if out of term time, to the Lord Chancellor or one of the judges; and a copy of the warrant of commitment shall be produced before them, or oath made that such copy was denied; but if any person hath wilfully neglected by the space of two terms to apply for his enlargement, he shall not have an *habeas corpus* granted in the vacation. This being done, the Lord Chancellor or judges respectively shall award an *habeas corpus*, under the seal of the court, on pain of £500, to be marked in this manner, *per statutum tricesimo primo Caroli secundi regis*, and signed by the person that awards the same, and shall be directed to the officer or keeper, returnable *immediate*; and the charges of bringing the prisoner shall be ascertained by the judge or court that awarded the writ, and endorsed thereon, not exceeding twelve pence a mile: then the writ shall be served on the keeper, or left at the gaol with any of the under officers; and the charges, so endorsed, shall be paid or tendered to him, and the prisoner shall give bond to pay the charges of carrying him back, if he shall be remanded, and that he will not make any escape by the way. This done, the officer shall within three days after service, (if it is within twenty miles) return the writ, and bring the body, and shall

then certify the true cause of the imprisonment; if above twenty miles and less than one hundred, then within ten days; if above one hundred, then within twenty days; on like pain as before. But, after the assizes are proclaimed for the county where the prisoner is detained, he shall not be removed. Then if it shall appear to the said Lord Chancellor or judges that the prisoner is detained on a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by warrant of a judge or justice of the peace, for matters for which by the law he is not bailable, in such case the prisoner shall not be discharged: if he shall be discharged, he shall thereupon enter into recognizance to appear on his trial, and the writ and return thereon, and recognizance, shall be certified into court where the trial must be; but persons charged in debt, or other action, or with process in any civil cause, after their discharge for a criminal offence, shall be kept in custody for such other suit; and persons so set at large shall not be recommitted for the same offence, unless by order of court, on pain of £500 to the party grieved.

*By 3 W. 4, c. 2, § 7, upon application to the Court of Queen's Bench or any judge thereof, the same order touching the person being bailed or continued in custody, shall be made as if the party were brought upon *habeas corpus*.

The 4 & 5 V., c. 24, § 6, also contains a similar provision.

HAWKERS AND PEDLERS.

By 16 V., c. 184, § 2, (the act repealing all former acts,) the municipal council of any county or city in Upper Canada, is authorised to make by-laws for regulating and governing hawkers and petty chapmen, and other persons going from place to place, or to other men's houses, or who have not become householders by permanent residence in any town or place within such county or city, or travelling either on foot or with a horse or horses, mule or mules, or other beast or beasts, bearing or drawing burthen, boat or boats, decked vessel or vessels or other crafts, or otherwise within such county or city carrying to sell or exposing to sale any goods, wares or merchandize, and for requiring any such person to take out a license from such officer of the municipality as shall be designated in such by-law, before it shall be lawful for him to exercise any such calling as aforesaid, within such county or city, and for fixing the sum which shall be payable for such licenses and the time during which the same shall be in force, and for imposing penalties for the contravention of any such by-law.

HEIRS AND DEVISEES.

By 8 V., c. 8, § 1, all the former acts are repealed. § 2. The Governor authorised to issue commissions to the chief justice of the Queen's Bench, (a) the vice-chancellor and the puisne justices of the said court of Queen's Bench, and such other persons as he shall see fit; three of whom (the chief justice, vice-chancellor, or one of the puisne judges being one) to be a *quorum*, with full power to determine who is the party entitled to patent: sittings to be held at Toronto on the first Monday in January and first Monday in July every year. § 3. Any party claiming lands (for which no patent has been issued) as heir, devisee or assignee of the original nominee of the crown, or claiming from or through such parties, is required to bring his claim before the commissioners, and his documents, proofs and evidence in support thereof—such evidence to be given *viva voce* before the commissioners, or by written depositions sworn before one of the commissioners, or before the judge of any circuit court, clerk of the peace, or any commissioner for receiving affidavits in the Queen's Bench. § 4. The commissioners empowered to command the attendance of witnesses, and to issue commissions for the examination of witnesses not resident in Upper Canada. § 5. No claim to be received or proceeded upon by the commissioners until claimants (or one of them, if more than one) shall have made and produced before the commissioners an affidavit in writing, signed by him, that such claim is just and well-founded to the best of his knowledge and belief, and that he is not aware of any adverse claim; or if he be aware of any adverse claim, that he has caused notice in writing of his claim and of his intention to bring the same before the said commissioners at the time when it shall be actually so brought (a copy of which notice shall be annexed to the affidavit), to be served on the party having or being supposed to have such adverse claim, at least *one month* before the date of such affidavit. § 6. Notice specifying such claim, and the name or names of the parties, together with the number of the lot (or part thereof) claimed, concession and township where situate, to be put up in the office of the clerk of the peace of the district at least thirty days before the claim is heard before the commissioners, and to be certified by the clerk of the peace accordingly; the clerk of the peace, once in every three months, to make a list of the claims so put up in his office, and the particulars thereof, and to affix such list in some conspicuous part of

(a) Common Pleas, included by the 14 & 15 V., c. 12.

the court-house, and cause such list to be publicly read and proclaimed in open court at the general quarter sessions, by the crier of the court, immediately after the charge to the grand jury—for which certificate the clerk of the peace shall be entitled to two shillings and six-pence, and no more.

§ 7. The commissioners may defer claims for further evidence, as they shall deem expedient; § 8, and after full examination, reject or allow such claims as in their judgment the justice and equity of the case may require, without regard to legal forms, or to the strict letter of the law, or legal rules of evidence, and to report their decision to the Governor in council—such decision to be final and conclusive (except as hereinafter mentioned), and patents to issue accordingly; such patents not to affect any existing charge or incumbrance.

§ 9. Patent not to issue until after one calendar month from the time of such report; and if in the meantime any *quorum* of the commissioners shall have reason to believe that such decision and report were obtained by surprise, or erroneously made, then such *quorum* may report accordingly to the Governor, and the patent shall be stayed until re-hearing and further report, with power to award costs to either party according to circumstances. § 10. Purchasers of unpatented lands sold for arrears of taxes, may file their claims for a patent.

§ 11. Any mortgage, incumbrance or lien on unpatented lands to have the same effect as if patent had been previously issued. § 12. Unfinished proceedings before former commissioners may be continued before those appointed under this act. § 13. Affirmation instead of oath may be made by persons allowed by law to affirm; and false swearing or affirming to be perjury. § 14. Commissioners may make and establish rules and forms of proceeding.

§ 15. And allow witnesses' expenses. § 16. Fees to be taken by the clerk to the commissioners as follows, viz:—

	£	s.	d.
For filing petition.....	0	1	0
For setting down claim to be heard.....	0	2	6
On the hearing of any claim	0	5	0
For making report thereon	0	10	0
For each certificate of allowance.....	0	1	3
For copy of order respecting any claim.....	0	1	3
For each summons for a witness.....	0	2	0
For each commission for examination of witnesses.....	0	10	0
For any certified copy of any paper (for the certificate)	0	1	3
And for every folio of 100 words.....	0	0	6
And such reasonable fees for extra services as the commissioners shall allow.			

§ 17. The copy of any order, report, or decision made by the commissioners, certified by the clerk, and countersigned by one of the commissioners, to be evidence at law. § 18. Interpretation clause.

Notice of Claim.

Notice is hereby given, that A. B., of _____, in the county of _____, yeoman, will claim before the commissioners appointed to ascertain the heirs and devisees of original nominees of the Crown to lands not under patent, at their sittings at Toronto, in the month of July next, lot number _____, in the concession of the township of _____, in the county of _____ (*here describe any other lot also under claim*) as eldest son and heir-at-law, (*or as assignee or devisee under the will*) of C. D. late of _____, the original nominee.

Certificate thereon.

Office of the clerk of the peace, } I do hereby certify, that the
for the county of _____, } within written notice was put
in the court-house at _____ in the county aforesaid, on the
day of _____ last, and has remained so put up until this day:
And further, that the said notice was proclaimed in open court
at the general quarter sessions of the peace of the said county,
held in the month of _____ last, at _____ aforesaid immediately
after the charge to the grand jury pursuant to the statute in
such case made and provided.

Dated at _____ aforesaid, the _____ day of _____ 18 _____.

G. G., *Clerk of the Peace, County of _____.*

By 14 & 15 V., c. 12, commissions to be directed to the judges of the Queen's Bench and Common Pleas, and the Chancellor and Vice-Chancellor, and as many others as the Governor may see fit; any three to be a *quorum*. The Chief Justice of Q. B., or C. P., or one of the judges, the Chancellor or Vice-Chancellor, being one.

By 14 & 15 V., c. 56, the right to any patent when established may be assigned.

HIGHWAYS.

A highway is a public passage for all the king's liege subjects, for which it is denominated in legal proceedings, the king's highway.—*Deacon's C. L.* 567. A way may also become a public highway by a dedication of it by the owner of the soil to the public use; and eight years, without any impediment, has been held sufficient dedication.—11 *East.* 375.

All injuries to a highway—as by digging a ditch, or making a hedge across it, or laying logs of timber on it, or by doing any other act which renders it less commodious, are

public nuisances at common law, and indictable.—1 *Haw. c.* 76, § 144. On an indictment for obstruction to a highway, the judgment of the court is usually a fine, as well as an order on the defendant to abate the nuisance; in order to warrant a judgment for *abating* a nuisance, it must be alleged in the indictment to be continuing.—*R. v. Stead*, 8 *T. R.* 142.

By statute *50 G. III., c. 1, § 12, all allowances for roads, by king's surveyors, and all roads under any act of parliament, or any roads whereon the public money has been expended, or statute labour done, or any roads passing through Indian lands, shall be deemed common and public highways, unless any have been altered according to law.

Where in the original plan of a township, a piece of ground was laid out as a highway, which was subsequently granted by the crown in fee to several individuals, and was occupied by them and others claiming from them, for upwards of thirty years, held, that an indictment for a nuisance, for stopping up that piece of ground, claiming it as a highway, could not be sustained.—*Rex v. Allan*, Tr. 1 & 2 W. IV., *Cameron's Digest*, p. 40.

An indictment for obstructing a highway laid out under *50 G. III., c. 1, cannot be supported, when the highway has not been established in the manner marked out by the statute, as when the report to the magistrates in quarter sessions by the surveyor of roads does not express the exact width of the road, nor the precise line in which it is to run; and *semble*, in such a case, all the steps necessary to be taken before a highway can be legally established under that act, should be proved by the prosecutor to have been taken, before the defendant can be found guilty.—*Rex v. Sanderson*, Easter 3 W. IV., *Cameron's Digest*, p. 41.

By 12 V., c. 35, § 41, all allowances for roads, streets or commons in towns and villages in Upper Canada, and upon which lots of land fronting thereon have been sold to purchasers, shall be public highways.

By the general municipal act 12 V., c. 81, § 31, township municipalities are authorised to make by-laws for—

10. The opening, constructing, making, levelling, pitching, raising, lowering, gravelling, macadamizing, planking, repairing, planting, improving, preserving and maintaining of any new or existing highway, road, street, side-walk, crossing, alley, lane, bridge or other communication within such township, and for the stopping up, pulling down, widening, altering, changing or diverting of any such highway, road, street, side-walk, crossing, alley, lane, bridge or other communication within the same: provided that no such alteration shall en-

croach upon any dwelling-house, barn, stable or outhouse, or any orchard, garden, yard or pleasure ground, without the owner's consent. 11. For providing that on each side of any highway passing through a wood, the timber shall be cut down for a space not exceeding 25 feet by the proprietor, or in case of his default, by the overseer of highways; such timber to be removed by the proprietor, or in case of default, by the overseer, and in such case appropriated by him for the use of the highways and bridges in his division, or sold to defray expenses: orchards, shrubberies and trees planted for ornament or shelter excepted. 12. For the protection and preservation of timber, stone, sand or gravel upon any allowance or appropriation for any public road, and for sale of any timber growing thereon if thought proper by the council. 13. For regulating the driving and riding over bridges. 15. For making regulations as to pits, precipices and deep waters, or other places dangerous to travellers. 16. For granting money to the county councils, or the adjoining one, to aid in the making, opening, building, maintaining, widening or improving any highway, road, street, bridge or communication between such and any other township, or making or improving any highway, road, street, bridge or communication within such township assumed by the county council. 21. For the destroying or suppressing weeds detrimental to good husbandry.

§ 38. All roads and bridges between different townships situate in the same county, shall be exclusively within the jurisdiction, and subject to the control of the municipal council of such county, as far as respects the making, maintaining or improving the same, or the stopping up, altering or diverting the same, or the protection and preservation of timber, stone, sand or gravel thereon, or the regulating the driving or riding thereon, or other use of the same, and this notwithstanding that the line of such road or bridge may occasionally deviate from its course between such townships, and in some parts thereof may be wholly within one of such townships. § 39. Roads and bridges between different counties, or between a county and a city within the boundaries of such county, or on the bounds of a town or incorporated village within such county, shall be within the jurisdiction and control of the municipal corporation of both counties, as far as the making, maintaining or improving the same, or the stopping up, altering or diverting the same, or the protection of any timber, stone, sand or gravel thereon, or regulating the driving or riding thereon, or other use of the same, and be subject to corresponding by-laws only. § 187. It shall not be competent to the municipality of any township, or municipal council of any county, to pass any by-law for stopping up any original allowance for roads in any

township or county, nor on the limits of any village, town or city therein. § 188. On the alteration of any road under the authority of this act (not being an original allowance for road, or where the same shall lie within any incorporated village, town or city, or the liberties thereof), the site of such old road shall be sold and conveyed by the municipal corporation to the party next adjoining to whose lands the same shall have run; and in case of his or her refusal to purchase at such price as the corporation shall think reasonable, then to any person, but not to such other person at any *given price*, unless such price be first refused by such adjoining owner; and in case any person now in possession of any concession road or side line may have laid out streets in any city, town or village without any compensation therefor, he shall be entitled to retain the land within such city, town or village originally set apart for such concession road or side line, in lieu of the street set apart by him in place thereof. § 189. No road to be hereafter laid out, under this act, shall be more than ninety feet nor less than forty feet in width: this clause not to affect established roads, or when altered. § 190. All powers, duties or liabilities vested in or belonging to the magistrates in quarter sessions, with respect to any particular highway, road or bridge in Upper Canada, shall from henceforth become vested in the municipality of the county, or if between two counties, then in the municipalities of both counties, subject to the provisions of this act as to the mode and manner of performance of such powers, duties and liabilities. § 191. Municipal corporations may authorise by by-law, contracts for planking, gravelling or macadamizing any road, or to build any bridge within their jurisdiction, and to grant for such work the tolls thereon, such tolls being first fixed by by-law; and such grant not to exceed *ten years*—the grantee to keep such road or bridge in repair. § 192. No by-law to be made for stopping or altering any public highway, road, street or lane, until one calendar month's notice be given by the corporation in the six most public places in the neighbourhood, nor until objecting parties have been heard against the same in person by counsel or attorney. This section not to extend to any roads or bridges under the ordnance department; § 194—nor to allow roads being run through ordnance property except by consent. § 195. In case it shall be necessary for roads to pass over private property, arbitrators to be appointed to fix compensation (if any); awards to be subject to the Court of Queen's Bench. § 196. In case of special

actions, tender of amends may be pleaded. § 197. Damages to be apportioned according to the benefit the plaintiff may derive from opening such road.

By 13 & 14 Vic., c. 15, s. 1, all roads and bridges in cities and incorporated towns are vested in the local municipality, and shall be kept in repair at their cost, and, in case of default, the corporation shall be guilty of a *misdemeanor*, and punishable by fine; also civilly responsible for damages. § 2. Provincial roads, &c., when relinquished by the commissioner of public works, to be under the control and maintained by the local municipal authority.

Joint Stock Road Companies.

By 16 V., c. 190, entitled "An Act to amend and consolidate the several Acts for the formation of Joint Stock Companies, for the construction of roads and other works in Upper Canada," certain former acts relating thereto—viz., 12 V., c. 84; 14 & 15 V., c. 122; 12 V., c. 25; and §§ 2, 3, 4, 5, 6, 7, and 8 of 14 & 15 V., c. 57, and 16 V., c. 4—are repealed. § 2 enacts that any number of persons, not less than *five*, may form a company under this act for the purpose of constructing in and along or over any public road or highway, allowance for road, or over any land, a road or roads of the kind mentioned in the preamble (*plank, macadamised or gravelled roads, and bridges, piers and wharves connected therewith*), not less than two miles in length, and also any bridge or bridges, pier or piers, wharf or wharves in Upper Canada, the consent of the owner or occupier of any land being first obtained (except as hereinafter provided); such road not to be of a higher grade than one foot elevation to twenty feet, without the sanction of the county engineer: provided also, that no such road shall be constructed or pass within the limits of any city or the liberties thereof, or of any incorporated town or village, except by permission under a by-law of the same. § 3. Notice to be served on the head of the municipality previous to the commencing of any such work, which is empowered to prohibit the work contemplated; and when any new road is opened, or the line of any old road changed, to direct by by-law that the old road be closed up and embraced within the enclosure of the person from whom ground shall have been taken to form such new road. § 4 prescribes the conditions on which such companies may be formed as to their capital and means, &c., § 5, and their general powers after formation. § 6. Authorised to explore the country and to take land and materials, make drains,

&c., on adjoining lands. § 7. Arbitrators to be appointed in case of owners of property through which the road may pass disagreeing with the company as to compensation. § 8. How such arbitrators shall be appointed when the owners of land are absent, or the lands mortgaged, &c. § 9. Provision respecting Indian lands. § 10. Meetings and proceedings of the arbitrators. § 11. Power to widen, extend, or alter the projected line of road, construct side roads, and increase their capital. § 12. Shares in such companies to be £5 each, and transferable. § 13. Affairs of the company to be managed by *five* directors, mode of election, &c. § 14. A president and other officers to be appointed. § 15. Vacancies, how to be filled up. § 16. Calls on shares, when and how to be made; forfeiture in default of payment. § 17. The company may sue for the amount of calls. § 19. Provision made for the union of two or more companies in certain cases as one company, and how. § 20. Roads and materials to be vested in the company. § 21. Authority given to companies already formed to search for and take materials for making and keeping roads in repair. § 22. Materials of which roads under this act may be formed. § 23. Municipalities authorised to acquire stock in such companies, and to direct the chief officer thereof to subscribe and vote on behalf of such municipality. § 24. Municipalities also authorised to make loans to such companies, and issue debentures. § 25. Companies empowered to sell any such road to the local municipality. § 26. And municipalities authorised to sell any road which they may have constructed or purchased, or any road stock. § 27. Companies incorporated under this act bound to complete the work within a certain period, or forfeit their charter. § 28. Authority vested in the president and directors of any such company to fix, regulate, and receive the tolls and charges to be received. Provided that so soon as two or more miles of any such road or extension thereof shall have been completed, tolls may be taken therefor, but on no other work until the same be completed. § 29 enacts that tolls may be taken by any such company at each time of passing each gate upon any road constructed or owned by such company for any portion of such road on either side, or on both sides of the said gate (not being more than five miles) to the next gate or gates on the same road, if any, and not exceeding five miles in the whole, or for the whole of such road, if the length thereof do not exceed five miles, and there be only one gate thereon, at the following rates, viz :

Highways.

	PER MILE.		
	£	s.	d.
For every vehicle whether loaded or otherwise, and for the horse or other beast, or one of the horses or other beasts drawing the same	0	0	1
And for every additional horse or other beast drawing any such vehicle.....	0	0	0½
For every horse and rider.....	0	0	0½
For every horse	0	0	0½
For each head of neat cattle.....	0	0	0½
For every score or number less than a score of sheep or swine.....	0	0	0½

Provided always that any company shall have power to charge over and above these rates the sum of *one half-penny* for every 100 pounds over and above 4,000 pounds each loaded vehicle may weigh; and also that every vehicle loaded with masts, spars, hewn or round timber or otherwise exceeding in weight *two tons* shall, when loaded, at each time of passing each gate, pay for each ton over and above *two tons* the sum of 2s. 6d. currency. And all vehicles with wheels, used for the above purpose, shall have not less than five inch tires, under penalty of paying double the amount of toll above provided. Provided also, that whenever any road to be constructed under this act, or already constructed under any act of the legislature shall intersect a road constructed or owned by another chartered company, no higher rate of toll shall be demanded from persons travelling along the said last-mentioned road for the distance travelled between such intersection, and either of its *termini*, than the rate per mile charged by the said company for travelling along the entire length of their road so intersected: provided it shall be incumbent on such persons to produce a ticket from the last toll gate on the intersecting road as evidence of their having travelled only from such intersection. § 30. Tolls or bridges may, with the consent of the municipal council, exceed the said rates. § 31. Companies authorised to erect toll gates, check gates and side bars, and fix the tolls to be collected thereat not exceeding the rates aforesaid. Provided always, that no toll shall be taken for merely crossing any road, or for travelling thereon in crossing from one transverse road to another not exceeding one hundred yards. § 32. Tolls not to be demanded at check-gates when taken at the principal gate, and *vice versa*. § 33. Directors may commute with any person residing within half a mile of the nearest gate. § 34. After any road, bridge, or work constructed or acquired by any

company or municipality under the authority of this act, or of any previous act of parliament, shall be completed, and tolls established thereon, it shall be the duty of such company or municipality to keep the same in good and efficient repair; and if any such road shall go to decay, or get out of repair, it shall be lawful for the judge of the county court where such road is situated, upon the requisition of twelve freeholders of the county, stating that such road is so much out of repair as to impede or endanger her Majesty's subjects and others travelling thereon, to direct the engineer for the county, and if none, then any competent engineer to examine the road; and if, upon examination, the road shall be found so much out of repair as to impede or endanger travelling thereon, then he shall notify the president of the company or head of the municipality to whom the road may belong, by leaving a written notice with any of the keepers of the toll-gates, that he has inspected and found the road out of repair, and requiring them to take notice thereof and cause the same to be repaired within a limited time, to be named in such notice, sufficient for making such repairs.

§ 35. And if the repairs shall not be made within the time, then after the expiration of such period no toll shall be demanded or taken from any person passing through the nearest toll-gates on either side of the road so reported out of repair.

§ 36. And if any person acting as a toll-gate keeper on a road belonging to any such company or municipality, which shall have neglected to make the necessary repairs within the period limited, shall, after the expiration thereof, and before the repairs shall be completed, ask, demand or receive any toll from any person travelling with or without any beast or vehicle along such road at the nearest toll-gate on either side of the portion so reported out of repair, or shall refuse to allow them to pass through such toll-gates without payment thereof, such person shall, upon conviction before any justice of the peace for the county, upon the oath of one credible witness, forfeit and pay the sum of not less than *five shillings* nor more than *one pound* for every such offence.

§ 37. And if any renter or collector of such tolls at any gate on any such road shall take a greater toll than is authorised by law, he shall for every such offence forfeit and pay the sum of £5.

§ 38. Gate-keepers not bound to give change for a larger amount than 5s.

§ 39. *Exemption from toll*, viz., all her Majesty's officers and soldiers being in proper staff or regimental uniform, dress or undress, and their horses, (but not when passing in any hired or private vehicles), and all recruits marching by

route, all prisoners under military escort, enrolled pensioners in uniform when called out for training or in aid of the civil power, and all carriages and horses belonging to her Majesty's service, conveying such persons or their baggage, or returning, embarking or disembarking from or upon any pier or wharf, quay or landing-place, or passing turnpike roads or bridges: and all persons, horses or carriages going to or returning from any *funeral*, or any person with horse or carriage going to or returning from his or her usual place of religious worship on the *Lord's day*, and any farmer residing on the line of any such road passing any toll-gate opposite to and immediately adjoining his farm, when going to or returning from his work on such farm.

§ 40. Tolls may be charged on mail carriages, except on roads and bridges constructed by the provincial government or board of works, and transferred to any company on condition that the mail should pass free; but no such exemption to exist in favour of any mail stage drawn by two horses and carrying the mail and containing more than four passengers, or drawn by *four* horses and containing more than *eight* passengers, but for each passenger over *four* or *eight* a toll of one penny shall be payable. § 41. If any person, not exempted by law, shall wilfully pass or attempt to pass any toll-gate, check-gate or side-bar lawfully established, without first paying the legal toll, he shall forfeit a sum not exceeding £5 and costs, to be recovered in the same manner as other fines and forfeitures under this act: and in case no sufficient distress can be found to satisfy any warrant that may be issued against the goods and chattels of the offender, he shall then be committed to the common gaol of the county for any period not exceeding *one month*. Provided always that a warrant of commitment may issue, and the party may be imprisoned thereon in the first instance upon any conviction under this section, without issuing any warrant of distress, where the offender after conviction shall neglect or refuse to pay the fine and costs, and it shall be made to appear to the satisfaction of the acting justice or justices, by affidavit, that the offender has no goods or chattels within the jurisdiction of such justice or justices. § 42. If any person liable shall, after demand, refuse to pay the toll, the collector taking such assistance as he may think necessary, may seize or distrain any horse, beast, cattle, carriage or other thing upon or in respect of which any such toll is imposed, together with their bridles, saddles, gear, harness or accoutrements (except the bridle or reins of any horse or beast separated therefrom), or any carriage in respect of the horses or cattle

drawing the carriage on which such toll is imposed, or any of the goods and chattels of the party so required to pay, and if the toll and the reasonable charges of such seizure and distress shall not be paid within *four* days after such seizure, the person so seizing and distraining, after giving four days' public notice, may sell the horse, beast, cattle, carriage and things so distrained, or a sufficient part thereof, returning the overplus and what shall remain unsold, upon demand, to the owner, after such tolls and the reasonable charges occasioned by such seizure, distress and sale shall be deducted.

§ 43. If any person shall, after proceeding on such road with any waggon, carriage or other vehicle or animal liable to toll, turn out of such road into any other road or field or piece of land, for the purpose of avoiding payment of such toll, and shall enter the road beyond any of the said gates or check-gates, by crossing the road or otherwise without paying toll, whereby such toll shall be evaded, such person or the owner of such vehicle or animals shall, for every such offence, forfeit and pay 10s. and costs: and any one justice of the peace for the county shall, on conviction, fine such offender in the said penalty and costs, and cause the same to be levied as aforesaid.

§ 44. If any person shall permit or suffer any person to pass through any lands occupied by him, or through any gate, passage or way thereon with any carriage, sleigh, horse, mare, gelding or any other animal liable to toll, who shall before or after passing through such land, travel more than one hundred yards upon such road, whereby such payment shall be avoided, every person so offending, and also the person riding or driving, or the owner of the animal or animals or carriage whereon such payment is avoided, being thereof convicted before any one justice as aforesaid, shall for every such offence severally incur a penalty not exceeding 20s. and not less than 5s., to be levied as aforesaid with costs.

§ 45. If any person shall leave upon any such road any horse, cattle, beast or carriage whatsoever, by reason whereof the payment of any tolls or duties shall be avoided or lessened; or shall take or cause to be taken off any horse or other beast or cattle from any vehicle either before or after having passed through any toll-gate, or after having passed through, shall afterwards add or put any horse or other beast to any such carriage and draw therewith upon any part of such road, so as to increase the number of horses or other beasts drawing said vehicles, after the same shall have passed through any toll-gate, whereby the payment of toll

shall or may be evaded, every such person shall, for every such offence, forfeit and pay a sum not exceeding 20s., to be levied as aforesaid with costs.

§ 46. Any person falsely claiming exemption, or evading the toll by any false representation or act, shall forfeit to the company or municipality owning the road, one pound and costs, to be recovered summarily before any justice of the peace in the manner provided for recovery of other penalties.

§ 47. If any person shall wilfully and maliciously burn, break down, injure, cut, remove or destroy in whole or in part, any toll-house, turnpike-gate, wall, lock, chain or other fastening, rail, post, bar or other fence belonging to any toll-gate or toll-house, set up, erected or used for the purpose of preventing the passing by such gate of persons, carriages or other property liable to toll at such gate, or any house, building, engine or weighing-machine erected or used for the better ascertainment or security of any such toll; every such offender shall be guilty of a misdemeanor, and, on conviction, punished either by imprisonment in the penitentiary for a term not exceeding three years, or by fine and imprisonment in the common gaol for any term not exceeding *two* years, at the discretion of the court.

§ 48. If any person shall remove any earth, stone, plank or other materials used or intended to be used in or upon the said road, for the construction, maintenance and repair thereof, or shall drive any loaded wheel carriage or other loaded vehicle upon that part of any of the roads constructed under this act, or by any incorporated company under any other act, between the stones, plank or hard road and the ditch further than may be necessary in passing any other vehicle, or in turning off or upon such road, or shall cause any injury or damage to be done to the bridges, culverts, pools, rails or fences, or shall haul or draw upon any part of any road constructed as aforesaid, any timber, stone or other thing which shall be carried principally or in part upon wheeled carriages, or upon sleighs, so as to drag or trail upon such road to the prejudice thereof; or if any person shall leave any waggon, cart or other carriage whatsoever, upon such road without some person in care thereof, longer than may be necessary to load and unload the same (except in case of accident, and in case of accident for any longer time than necessary to remove the same) or shall lay any timber, stones, rubbish, or other thing whatever upon the said road to the prejudice, interruption and danger of any person travelling thereon, or if any person shall after having blocked or stopped any cart, waggon or

other carriage in going up a hill, or rising ground, cause or suffer to remain on such road, any stone, or other thing with which such cart or carriage shall have been blocked or stopped, or if any person shall pull down, damage, injure or destroy any lamp or lamp-post, put up, erected or placed in or near the side of such road, or any toll-house erected thereon, or shall wilfully extinguish the light of any such lamp; or if any person shall wilfully pull down, break, injure or damage any table of tolls, put or fixed at any gate, check-gate or bar, or any part of such road, or any sign board erected by any company upon any road or bridge constructed by them, or shall wilfully deface or obliterate any of the letters, figures, or marks thereon, or on any finger-post, or mile-post, or stone; or if any person shall throw any earth, rubbish, or any other matter or thing into any drain, ditch, culvert or other water-course made for draining such road; or if any person shall, without permission, carry away any stones, gravel, sand or other materials, dirt or soil from any part of any such road, or dig any holes or ditches on the allowance for the same; or if any person shall allow any swine to run at large to the injury of the said road, every such person shall, upon conviction in a summary way before any justice of the peace in or near the place where the injury shall have been done, be sentenced to pay all damages sustained, by such justice on hearing the complaint: and to pay a fine of not more than 50s. nor less than 5s. with costs, such damages, fines and costs to be paid within a time to be limited by such justice, and in default, levied as hereinafter provided. § 49. It shall not be lawful for any company, municipality, contractor or sub-contractor, or person employed by them, to leave or place upon the graded part of any road, whether or not macadamised, gravelled or planked, any stone, gravel, plank, timber, or other materials, so as to prevent the public from using, or to impede the free use of the whole of such graded portion of the road; and for any offence against this section, such company, &c., shall be responsible for all damages arising from such offence: and such contractor, sub-contractor or other person as aforesaid shall also incur a penalty of not less than 5s. nor more than £5, to be recovered summarily before any justice of the peace, in the manner provided by this act for the recovery of other penalties. § 50. The fines and forfeitures authorised to be summarily imposed by this act, shall and may be recovered upon information and complaint before any justice of the peace of the county within which the same shall have been incurred: and may be levied and collected by distress and sale of the offender's goods and chattels

by warrant of distress for that purpose to be issued, and in case there shall be no goods or chattels to satisfy such warrant, such offender or offenders shall and may be committed to the common gaol of the county, for any period not exceeding *one month*: provided that neither this section, nor any thing therein shall be held or construed to interfere with the provisions made in the 41st § of this act, for issuing a warrant of commitment in the first instance.

§ 51. The offender to be summoned: and in the default of his appearance upon proof of the service of such summons on the party personally, or by leaving a copy at his usual place of abode, such justice may proceed to hear and determine the case *ex parte*, or issue his warrant to bring the party before him or some other justice; or the justice may, if he thinks fit, without previous summons, issue such warrant, and the justice before whom such party shall appear, or be brought, shall proceed to hear and determine the case.

§ 52. Fines and forfeitures not otherwise appropriated shall, when collected, be paid to the treasurer of the company or municipality owning the road.

§ 53. Suits for any thing done in pursuance of this act to be commenced within *six* calendar months. § 54. Officers and stockholders may be witnesses. § 55. Companies formed *bonâ fide* under former acts confirmed notwithstanding any informality in their formation, &c. § 56. Directors to make annual reports to the municipality of expenditure, &c. § 57. After 21 years from the completion of the work, the municipality may purchase the stock of the company at its value, and stand in their place. § 58. Provision for amending the act. § 59. The provisions contained in §§ 3, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, of this act shall extend to and regulate all turnpike road companies in Upper Canada in the collection of tolls or otherwise, whether constructed under any of the acts mentioned in the preamble, or under the 13 & 14 V., c. 72, or under the 12 V., c. 5, or constructed by or belonging to any municipality under any act. Provided however, that *lower rates* of toll upon any road hereafter transferred to any company by the acts cited in this section may be fixed or established in the order in council transferring the same. Provided also, that the provisions contained in §§ 6, 7, 8, 9, 10, 11, 12, 19, 20, 21, 22, 23, 24, 25, 26, 28, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 57 and 58 of this act, together with this proviso,

shall also extend to road companies having private acts of incorporation, but that no other section of this act shall apply to such companies.

§ 60. Road companies required to lay down in grass all cleared lands belonging to them, and adjoining their roads, and to cause thistles and weeds thereon to be cut down and rooted out, under a penalty of 10s. a-day.

See also titles "*Public Works*," "*Travellers*," "*Railways*."

Indictment for Digging a hole in a Street, being the Queen's Highway C. C. C.

PROVINCE OF CANADA :

County of , } The jurors, &c. That A. F. late of, &c.,
to wit. } yeoman, on the, &c., with force and arms,
at the township aforesaid, in the county aforesaid, in a certain street, being the Queen's common highway there, called , used for all the Queen's subjects, with their horses, coaches, carts, and carriages, to go, return, ride, pass, repass, and labour at their free will and pleasure, unlawfully did dig, and cause to be dug, a certain pit, containing in circumference fifteen feet, and in depth thirteen feet; and the same pit so as aforesaid dug and caused to be dug in the street and highway aforesaid, from the day of , in the year aforesaid, until the day of the same month, in the year aforesaid, at the township aforesaid, in the county aforesaid, unlawfully and injuriously did continue; by reason whereof the Queen's subjects, during the time aforesaid, could not go, return, pass, repass, ride and labour, with their horses, coaches, carts and other carriages, in, by, and through the same street and highway, as they were wont, and ought to do, without great peril and danger of their lives, to the great damage and common nuisance of all the liege subjects of our said lady the Queen, in, by, and through the same street and highway, returning, passing, re-passing, riding and labouring, and against the peace, &c.

Indictment for Stopping up a Watercourse, whereby the Highway is overflowed.

PROVINCE OF CANADA :

County of , } The jurors, for our lady the Queen, upon
to wit. } their oath present, that A. O., late of the
township of , in the county aforesaid, on the day of
 , in the year of the reign with force and arms, at the township aforesaid, in the county aforesaid, a certain ancient watercourse adjoining to the Queen's common highway, within the same township, leading from to , with gravel and other materials unlawfully and injuriously did obstruct and stop up, and the said watercourse so as aforesaid obstructed and stopped up from the said day of in the year aforesaid, until the day of the taking of this inquisition, at the

township aforesaid, in the county aforesaid, unlawfully and injuriously hath continued, and still doth continue, by reason whereof the rain and waters that were accustomed, and ought to flow and pass through the said watercourse, on the same day and year, and divers other days and times afterwards, between that day and the day of the taking of this inquisition, did overflow and remain in the Queen's common highway aforesaid, and thereby the same was, and yet is, greatly hurt and spoiled, so that the liege subjects of our said lady the Queen, through the same with their horses, waggons, carts and carriages, then and on the said other days and times could not, nor yet can, go, return, pass, ride and labour, as they ought and were accustomed to do, to the great damage and common nuisance, &c.

HOMICIDE.

Homicide in law signifies the killing of a man by a man.—1 *Haw.*, 66. And may be classed according to the following degrees:—

- | | |
|------------------------------|------------------|
| 1. Justifiable homicide. | 4. Manslaughter. |
| 2. Homicide by misadventure. | 5. Murder. |
| 3. Homicide by self-defence. | 6. Self-murder. |

1. *Justifiable Homicide.*

To make homicide justifiable, it must be owing to some unavoidable necessity to which the person who kills another must be reduced, without any manner of fault in himself.—1 *Haw.* 69. If any evil disposed person shall attempt feloniously to rob or murder any person in any dwelling-house or highway, or feloniously attempt to break any dwelling-house in the night time, and shall happen in such felonious intent to be slain, the slayer shall be discharged.—24 *H. VIII.* c. 5. So, if rioters, or forcible enterers or detainers, stand in opposition to the justices' lawful warrant and any of them be slain, it is no felony.—*Hale's Pl.* 37. And if a man come to burn my house and I shoot out of my house, or issue out of my house and kill him; it is no felony.—*Hale's Pl.* 38. So, if a woman kill him that assaulteth to ravish her, it is no felony.—*Ib.* 36. If a person having actually committed a felony, will not suffer himself to be arrested, but stands on his own defence, or flies, so that he cannot possibly be apprehended alive by those who pursue him, whether private persons or public officers, with or without a warrant, he may be lawfully slain by them.—1 *Haw.* 70. So, if a felony hath actually been committed, and an officer having lawful warrant, arrest an innocent person, and such person assault the officer, the officer is not bound by law to give back, but to carry him

away ; and if in execution of his office, he cannot otherwise avoid it, but in striving, kill him ; it is no felony.—3 *Inst.* 56. Also, if a person arrested for felony break away from his conductors to gaol, they may kill him if they cannot otherwise take him. But in this case likewise there must have been a felony actually committed.—*Hale's Pl.* 36, 37. Also, if a criminal endeavouring to break the gaol, assault his gaoler, he may be lawfully killed by him in the affray.—1 *Haw.* 71. In *civil cases*, although the sheriff cannot kill a man who flies the execution of a civil process, yet if he resist the arrest, the sheriff or his officers need not give back, but may kill the assailant.—*Hale's Pl.* 37. So, if in the arrest and striving together, the officer kill him, it is no felony.—*Ib.* 37. In all these cases (*a*) the party upon arraignment having pleaded not guilty, the special matter must be found: whereupon the party shall be dismissed without any forfeiture or pardon purchased.—*Ib.* 38.

2. Homicide by Misadventure.

Homicide by misadventure is where a man is doing a lawful act without intent of hurt to another, and death *casually* ensues.—*Hale's Pl.* 31. As, where a labourer being at work with a hatchet the head flies off, and kills one who stands by.—1 *Haw.* 73. Or where a third person whips a horse, on which a man is riding, whereupon he springs out and runs over a child and kills him, in this case the rider is guilty of homicide by misadventure, and he who gave the blow, of manslaughter.—1 *Haw.* 73. But if a person riding in the street whip his horse to put him into speed, and run over a child and kill him, it is homicide, and not by misadventure ; and if he ride so, in a press of people with intent to do hurt, and the horse killeth another, it is murder in the rider.—1 *H. H.* 476. If a person drive his cart carelessly, and it run over a child in the street, if he have seen the child and yet drive on upon him, it is murder : but if he saw not the child, yet it is manslaughter ; but if the child had run the cross way, and the cart run over him before it were possible for the carter to make a stop, it is by misadventure.—1 *H. H.* 476. So, where workmen throw stones, rubbish, or other things from a house, in the ordinary course of their business, by which a person underneath happens to be killed, if they look out and give timely war-

(a) Although such may be the law as laid down by ancient writers, common humanity will prompt *officers* to act with the greatest possible forbearance ; and it must be a *very extreme case of necessity* that would justify homicide.

ning to those below, it will be homicide by misadventure; if without such caution it will amount to manslaughter, at least, if it was a lawful act, but done in an improper manner.—*Fost.* 262, 263. If the act be unlawful it is murder; and if a person meaning to *steal* a deer in another man's park, shoot at the deer and by the glance of the arrow killeth a boy that is hidden in a bush, this is murder; for that the act was unlawful, although he had no intent to hurt the boy, nor knew of him. But if the owner of the park had shot at his own deer, and without any ill intent had killed the boy by the glance of his arrow, this had been homicide by misadventure, and no felony.—3 *Inst.* 56. And it is a general rule in case of all felonies, that wherever a man intending to commit one felony, happens to commit another, he is as much guilty as if he had intended the felony which he actually commits.—1 *Haw.* 74.

Homicide by misadventure, though not felony, yet a person guilty thereof is not bailable by justices of the peace, but must be committed to the assizes.—1 *Haw.* 75. But if he is taken only on a slight suspicion, the justices of the peace may bail him.—2 *Haw.* 305.

3. *Homicide by Self-defence.*

Homicide in a man's own defence is, where one who hath no other possible means of preserving his life from one who combats with him, on a sudden quarrel, kills the person by whom he is reduced to such an inevitable necessity. 2. And not only he, who upon assault, retreats to a wall or some such strait, beyond which he can go no farther, before he kills the other, is judged by law to act upon unavoidable necessity; but also he, who being assaulted in such a manner and in such a place, that he cannot go back without manifestly endangering his life, kills the other without retreating at all. 3. And notwithstanding, a person who retreats from an assault to the wall, give the other wounds in his retreat, yet, if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *se defendendo* only.—1 *Haw.* 74. 4. But if the mortal wound was first given, then it is manslaughter.—*Hale's Pl.* 42. 5. And an officer who kills one who resists him in the execution of his office (*a*); and even a private person that kills one who feloniously assaults him in the highway, may justify the fact, without ever giving back at all.—1 *Haw.* 75. 6. But if a person upon malice *prepense* strike another, and then fly to the wall, and there in his own defence

(a) See note at foot of page 391.

kills the other, this is murder.—*Hale's Pl.* 42. A person guilty of this offence cannot be bailed by justices of the peace.—1 *Haw.* 76. But otherwise, if taken only on a slight suspicion.—2 *Haw.* 105.

4. Manslaughter.

By manslaughter it is to be understood—1. Such killing of a man as happens on a sudden quarrel, or in the commission of an unlawful act without any deliberate intention of doing any mischief at all.—1 *Haw.* 76. 2. The difference between murder and manslaughter is, that murder is committed upon *malice aforethought*, and manslaughter *without malice aforethought*, upon a sudden occasion only: as, if two meet together, and striving for the wall the one kill the other, this is manslaughter and *felony*; and so it is if they had upon a sudden occasion gone into a field and fought, and the one had killed the other, this had been but manslaughter, and no murder; because all that followed was but a continuance of the first sudden occasion, and the blood was never cooled till the blow was given.—3 *Inst.* 55. There can be no accessories to this offence, before the fact, because it must be done without premeditation.—1 *Haw.* 76. But there may be accessories after the fact.—3 *Inst.* 55.

The offence being a *felony* is not bailable by justices, but the party must be committed for trial at the assizes.

The punishment for this offence, formerly, was burning in the hand and forfeiture of goods and chattels, for which punishment that of imprisonment for a year and the imposition of a fine was afterwards substituted by the 19 G. III., c., 74.

But now, by 4 & 5 V., c. 27, § 7, it is punishable at the discretion of the court with imprisonment at hard labour in the provincial penitentiary for life, or for any term not less than seven years; or imprisonment in any other prison or place of confinement for any term not exceeding two years, or to pay such fine as the court shall award.

Form of Indictment for Manslaughter, 18 V., c. 92.

County of } The jurors for our lady the Queen upon
to wit. } their oath present, that A. B. on the day of
 } in the year of our Lord one thousand eight hundred and
at in the county of } did feloniously kill and slay one C. D.

5. Murder.

Murder, is when a man of sound memory and of the age of discretion unlawfully killeth another under the king's peace, with malice aforethought, either expressed by the party or implied by law, so as the party wounded or hurt die of the wound or hurt within a year and a day.—3 *Inst.* 47.

By *malice expressed*, is meant a deliberate intention of doing any bodily harm to another, whereunto by law a person is not authorised—1 *H. H.* 451, the evidences of which are—1. Lying in wait. 2. Menacings antecedent. 3. Former grudges. 4. Deliberate compassings and the like.—1 *H. H.* 451.

Malice implied is in several cases, as where one voluntarily kills another without provocation; for in this case the law presumes it to be malicious, and that he is a public enemy of mankind. 2. Poisoning also implies malice, because it is an act of deliberation. 3. Also, when an officer is killed in the execution of his duty, it is murder, and the law implies malice.—*H. H.* 455, 456, 457. 4. Also where a prisoner dieth by duress of the gaoler, the law implies malice, by reason of the cruelty.—3 *Inst.* 52. 5. And in general, any formed design of doing mischief may be called malice; and therefore not such killing only as proceeds from premeditated hatred or revenge, but also such as is accompanied with those circumstances that the heart to be perversely wicked, is adjudged to be of *malice prepense*, and consequently murder.—2 *Haw.* 80; *Strange*, 766. No breach of a man's word or promise, no trespass either to lands or goods, no affront by bare words or gestures, however false or malicious and aggravating, will excuse him from being guilty of murder, who is so far transported thereby, as immediately to attack the person who offends him in such a manner as manifestly endangers his life, without giving him time to put himself upon his guard, if he kills him in pursuance of such an assault, whether the person slain did at all fight in his defence or not.—1 *Haw.* 82.

If two fall out upon a sudden occasion, and agree to fight in such a field, and each of them go and fetch his weapon, and the one killeth the other—this is no *malice prepense*; for the fetching of the weapon and going out into the field is but a continuance of the sudden falling out and the blood was never cooled; but if there were deliberation—as, where they meet the *next* day—nay, though it were the same day, if there were such a competent distance of time that in common presumption they had time to deliberate—then it is murder.—3 *Inst.* 51; 1 *H. H.* 453. And the law so far abhors all duelling in cold blood, that not only the principal who actually kills the other, but also his seconds, are guilty of murder, whether they fought or not; and the seconds of the party slain are likewise guilty, as accessories.—1 *Haw.* 82.

If a physician or surgeon gives a person medicine with intent to cure or prevent a disease, and contrary to his expectation it kill the person—this is no homicide.—1 *H. H.*

429. But if a woman be with child, and any one give her a potion to destroy the child within her, and it work, and so strongly that it kills the woman—this is murder.—1 *H. H.*

430. But if a woman, quick with child, by a potion or otherwise killeth it in her womb; or if a man beat her, whereby the child dieth in her body, and she is delivered of a dead child—this is not murder, but a great misprision. If the child be born alive, and then die of the potion, battery or other cause—this is murder.—3 *Inst.* 50. Lord Hale says, that in this case it cannot be legally known whether the child were killed or not; and that if the child die after it is born and baptised, of the stroke given to the mother, yet it is not homicide.—*H. H.* 433. And Mr. Dalton says, whether it die within her body or shortly after her delivery, it maketh no difference.—*Dalt.* 330. But Mr. Hawkins says, that (in the latter case) it seems clearly to be murder, notwithstanding some opinions to the contrary.—1 *Haw.* 80. And if a person counsel or advise a woman to kill her child when it shall be born, and she afterwards kill it in pursuance of such advice, he is an accessory to the murder. 1 *Haw.* 80. And by *3 *W. IV. c. 4, § 12*, accessories before the fact to any capital offence shall suffer death.

They that are present when any man is slain, and do not their best endeavour to apprehend the murderer or manslayer, shall be fined and imprisoned.—3 *Inst.* 53.

By 4 & 5 *V., c. 27, § 4*, sentence of death may be pronounced after conviction for murder in the same manner, and the court before which the conviction may be had shall have the same power, in all respects, as after convictions for other capital offences. § 6. And where any person being feloniously stricken, poisoned or otherwise hurt, upon the sea, or at any place out of this province, shall die thereof in this province, or being feloniously stricken, &c., in this province, shall die thereof out of this province, every such offence, whether murder or manslaughter, or being accessory before or after the fact, may be tried and punished in the district, county or place in this province in which such death, stroke, poisoning or hurt shall happen.

Form of Indictment for Murder, 18 V., c. 92.

County of } The jurors for our lady the Queen upon their
to wit. } oath present, that A. B., on the day of
in the year of our Lord one thousand eight hundred and at
in the county of did feloniously, wilfully, and of his
malice aforethought, kill and murder one C. D.

See also title "*Execution.*"

6. *Self-murder.*

A *felo-de-se*, or felon of himself, is a person who, being of

sound mind, and of the age of discretion, voluntary killeth himself.—3 *Inst.* 54; 1 *H. H.* 411. The offender herein incurs a forfeiture of goods and chattles, but not of lands; for no man can forfeit his land without an attainder by course of law.—3 *Inst.* 54. He shall also be buried ignominiously in the highway, with a stake driven through his body.—4 *Bl.* 190. This barbarous custom has however been abolished in England by statute 4 G. IV.

For forms see *post* title "*Indictable Offences.*"

HORSES.

The stealing of a horse is felony at common law, and by the 4 & 5 V., c. 25, § 29, is punishable at the discretion of the court by imprisonment at hard labour in the provincial penitentiary for any term not exceeding fourteen years nor less than (a) seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

By 2 & 3 P. & M., c. 7, and 31 E., c. 12, the keeper of every fair and market shall yearly appoint a certain special and open place where horses shall be sold in any fair or market overt; § 2, and shall appoint one or more persons to take toll there, and to keep the same place from ten in the forenoon till sunset. § 3. And the sale or exchange, in any fair or market overt, of any stolen horse shall not alter the property, unless the same shall be in the time of the said fair or market openly ridden, led, walked, driven, or kept standing, for one hour together at least, between ten of the clock and sunset, in the open place of the fair or market wherein horses are commonly used to be sold, and not within any house, backside or other privy or secret place. § 4. Nor unless all the parties to the bargain shall come together, and bring the horse to the open place appointed for the toll-taker, or for the book-keeper, where no toll is due. § 5. Nor unless such toll-taker, or (*where no toll is paid*) the book-keeper, or chief officer of the fair or market, shall take upon him perfect knowledge of the seller, and of his true christian name and surname and place of abode, and shall enter all the same down in a book to be kept for that purpose, or else that the seller shall bring to the toll-taker, or other officer aforesaid, one credible person that shall testify that he knoweth the seller, and his true name, surname, mystery and dwelling place, of him that so avoucheth his knowledge. § 6. Nor unless he also cause to be entered the true price. § 7. And also the colour, and one special mark at least.

(a) Reduced to three years by the 6 V., c. 5, § 2.

§ 8. And the buyer shall pay the toll if any is due, if not, then 1d. for the entry. § 9. Which done, the person entering the same shall give to the buyer, requiring, and paying 2d. for the same, a note in writing of all the contents of such entry, subscribed with his hand. § 10. Every person offending in any of the premises shall forfeit £5; half to the king and half to him that shall sue before the justices in sessions, or in any ordinary court of record; and the sale shall be void; and the owner may seize and take his horse again, or have an action.

And if any horse shall be stolen, and shall afterwards be sold in open market, and the sale shall be in conformity with the above provisions, yet, nevertheless, such sale, in six months after the felony done, shall not take away the owner's property, so as claim be made in six months, where the horse shall be found, before the mayor, if in a town corporate, or else before a justice near the place where found, and so that proof be made before such magistrate in forty days next ensuing, by two witnesses, that the property in such horse was in the party claiming, and was stolen from him within six months next before such claim; but the party from whom the same was stolen may at all times after, notwithstanding such sale, take again the said horse, on payment, or readiness to offer, to the party who hath possession, so much as he shall swear, before such magistrate, that he paid for the same.

Where a horse was stolen from the plaintiff and bought by the defendant at public auction, but not in *market overt*, and the plaintiff afterwards seeing the horse took possession of it, and the defendant immediately retook it; held that the plaintiff had a right to retake it.—*Bowman v. Yielding*, Michs. 3 V., *Cameron's Digest*, p. 82.

See also title "*Cattle Running at large.*"
For forms see *post* title "*Indictable Offences.*"

HOUSE BREAKING.

See "*Burglary.*"

HOUSE OF CORRECTION.

*By the 50 G. III., c. 5, it is enacted, that until houses of correction shall be erected, the common gaol in each of the districts shall be a house of correction; and that all idle and disorderly persons, rogues, vagabonds, and incorrigible rogues, or any persons by law subject to be committed to a house of correction, shall be committed to the said common gaols; any law or usage to the contrary notwithstanding.

By 12 V., c. 81, § 41, the municipality of each county is

authorised to make by-laws for the erection, preservation, improvement or repair of a shire-hall, court-house, gaol, *house of correction, &c.*

§ 68. The gaol, court-house, and house of correction of the county within the limits or on the borders of which every such town shall be situate, shall be and continue to be the gaol, court house and house of correction *of such town*, as well as of such county; and the sheriff, gaoler and keeper of such county gaol and house of correction, shall be bound to receive and safely keep until duly discharged, all persons committed there-to by any competent power or authority of such town,

§ 107 authorises the common council of any city also to make by-laws for (*inter alia*) establishing and providing for a house of correction, &c.

HOUSE OF INDUSTRY.

*By stat. 7 W. IV., c. 24, § 1, it is enacted that at the court of general quarter sessions in each district, after the presentment of three successive grand juries recommending the same, it shall be the duty of the justices of the said district to procure plans and estimates for the erection of suitable buildings for the reception and employment of the poor and indigent, and of the idle and dissolute, and to procure and purchase a suitable site whereon to erect the same, and to contract for the erection thereof, provided the expense shall not exceed £1000; and also to appoint five inspectors, who shall have the inspection and government of the said house, with full power to appoint a master, mistress, and needful assistance for the immediate care and oversight of the persons received into or employed in that house; which inspectors, once every month, and at such other times as occasions may require, shall meet for the purpose of determining the best method of discharging the duties of their office, and at such meeting shall have power to make orders and regulations for the government of said house, and to alter the same from time to time as expedient, and all such by-laws for the ordering and regulating the said house, and the affairs thereof, as may be necessary, the same not being repugnant to the laws of the land. § 3. Any two justices, or inspectors, may commit to such house by writing under their hands and seals, to be employed and governed according to the rules, regulations, and orders of said house, any person or persons residing in the district, declared liable by this act to be sent thither. § 4. The persons so liable shall be poor and indigent persons, incapable of supporting themselves; all persons able of body to work and without any means of maintaining themselves, who refuse or neglect so to do; all persons living a lewd,

dissolute, vagrant life, or exercising no ordinary calling or lawful business, sufficient to gain or procure an honest living; all such as spend their time and property in public houses, to the neglect of their lawful calling. § 6. Inspectors to keep an account of the charges of erecting, keeping, upholding and maintaining such house, together with an account of all materials found and furnished, and the names of the persons received into such house, as well as those discharged therefrom, and of the earnings; one copy of which shall be presented to the justices of the peace of each district once in every year, or oftener when required by such justices in general quarter sessions assembled, and one copy to each branch of the legislature. § 6. All persons so committed, if fit and able, shall be kept diligently employed in labour during his or her continuance there; and in case the person so committed shall be idle, and not perform such reasonable task or labour as shall be assigned, or shall be stubborn, disobedient or disorderly, he, she, or they shall be punished according to the rules and regulations made for governing and punishing persons there committed.

By 12 V. c. 80, so much of the 1st § of the *7 W. IV., c. 24, as vests any powers granted thereby in the grand juries or magistrates in quarter sessions, or limits the expenditure, and the whole of the 2nd § of said act is repealed.

By 12 V., c. 81, § 41, the municipal council of the county (a) is empowered to make by-laws for the erection, preservation, improvement or repair of a house of industry, and for the appointment of inspectors of the same, and other officers, and

For the appointment of the inspectors of the county house of industry, and of such and so many officers as may be necessary for carrying into effect any of the provisions of this act, or of any other act of the legislature of the province of Upper Canada, the erection or maintenance of such houses of industry, or of any by-law or by-laws of the municipal council of such county respecting the same.

ILLEGITIMATE CHILDREN.

By *7 W. IV., c. 8, § 9, any person who shall furnish food, clothing, lodging or other necessaries, to any child who shall be born after the passing of this act not in lawful wedlock, shall be entitled to maintain an action for the value thereof against the father of such illegitimate child; provided such illegitimate child shall have been a minor at the

(a) § 107 of this act also authorises the common council of any city to establish and provide for a house of industry.

time of such necessaries found, and shall not have been then residing with his or her reputed father, and maintained by him as a member of his family; and provided also, that where the person suing for the value of such necessaries shall be the mother of such child, or any person to whom the mother has become accountable for such necessaries, then the fact of the defendant being the father of such child must be proved by other testimony than that of the mother; and provided also, that no action shall be sustained under this act unless it shall be shown upon the trial thereof, that while the mother of such child was pregnant, or within six months after the birth of her child, she did voluntarily make an affidavit in writing, before some one of his Majesty's justices of the peace for the district in which she shall be residing, declaring that the person who may be afterwards charged in such action is really the father of such child, and unless she has deposited such affidavit, within the time aforesaid, in the office of the clerk of the peace, there to remain filed.

See also titles "*Bastard*"—"*Concealing Birth*."

INDECENCY.

All open and gross indecency is a *misdemeanor* at common law, and is indictable, not only as a nuisance to the rest of the community, but being injurious to public morals.—2 *Str.* 790; 4 *Bl. Com.* 65. It is an indictable offence for a man to undress himself on the beach and bathe himself near inhabited houses.—*R. v. Crumden*, 2 *Camp.* 89. This offence is punishable by fine or imprisonment, or both.

Indictment against a man, for publicly exposing his naked person. (Archbold.)

PROVINCE OF CANADA.

County of } The jurors of our lady the Queen upon their
to wit. } oath present, that J. S., late of the township
of , in the county of , labourer, being a scandalous and
evil disposed person, and devising, contriving and intending
the morals of divers liege subjects of our lady the Queen to
debauch and corrupt, on the day of , in the year of the
reign of our sovereign lady Victoria, at the township aforesaid,
on a certain public and common highway there situate, in the
view of divers liege subjects of our said lady the Queen, then
and there being, and within sight and view of divers other liege
subjects, through and on the said highway, then and there
passing and re-passing, unlawfully, wickedly and scandalously
did expose to the view of the said persons so present and so
passing and re-passing as aforesaid, the body and person of him

the said J. S. naked and uncovered, for a long space of time, to-wit. for the space of one hour, to the great scandal of the said liege subjects of our lady the Queen, to the manifest corruption of their morals, in contempt of our said lady the Queen and her laws, to the evil example of all others in the like case offending, and against the peace of our lady the Queen, her crown and dignity.

INDIANS.

By imperial statute 43 G. III., c. 138, all offences, committed within any of the Indian territories, not within the limits of this province, or of the United States, shall be tried in the same manner, and subject to the same punishment as if the same had been committed within this province.

(a) *By 3 V., c. 13, § 1, it shall not be lawful for any persons to sell, barter, exchange or give to any Indian man, woman or child, within this province, any kind of spirituous liquors in any manner or way, or to cause or procure the same to be done for any purpose whatever, (§ 2) under a penalty not exceeding £20, to be recovered before any one justice upon the testimony of one or more credible witnesses, one moiety to be paid to the informer and the other moiety to be collected in the same manner as fines and penalties collected under the act for the summary punishment of petty trespasses, (b) and to be applied for the improvement of the roads through the section of the country where the offence is committed. No penalty to be incurred by the furnishing to any Indian any spirituous liquors by or under the direction of a medical man, in case of sickness.

By 13 & 14 V., c. 74, § 3. No confession of judgment shall be taken from any Indian, unless such Indian be seised in *fee simple* in his own right of real estate, and shall be assessed in respect thereof to £25 or upwards. § 4. No taxes or assessments to be levied on Indian lands. § 5. Statute labour by Indians to be performed on Indian lands only. § 6. If any person shall sell, barter, exchange or give any spirituous liquors to any Indian man, woman or child, or cause the same to be done, he shall be guilty of *misdemeanor*, and, on conviction, be fined at the discretion of the court not exceeding £5, and shall also forfeit £1 5s. for every such offence, to be recovered in any court of competent jurisdiction with costs, one *moiety* to go to the infor-

(a) *Quare*—whether this statute is not superseded by the next statute cited, 13 & 14 V., c. 74, which contains similar prohibitions, but reduces the *maximum* of the penalty to £5, and makes the offence a *misdemeanor* and punishable by indictment, and not by summary conviction.

(b) *4 W., IV., c. 4.

mer, the other to her Majesty, for the benefit of the Indians. No such penalty to be incurred for liquor furnished to any Indian in case of sickness, either by or under medical direction. § 7. Pawn not to be taken from Indians for liquor: such pawn if taken may be recovered by the Indian with costs in any court of competent jurisdiction. § 8. Indian presents or property acquired in a certain way not liable to distress or seizure for any matter or cause whatsoever.

By 20 V., c. 26, entitled an act to encourage the gradual civilization of the Indian tribes in this province, and to amend the laws respecting Indians, various provisions are therein made for effectuating the purposes of the act, to which the reader feeling interested on the subject, is referred.

INDIAN LANDS.

By *2 V., c. 15, reciting, whereas the lands appropriated for the residence of certain Indian tribes in this province, as well as the unsurveyed lands, and lands of the crown ungranted and not under location, or sold or held by virtue of any lease or license of occupation, have from time to time been taken possession of by persons having no lawful right or authority so to do; and whereas the said lands have also been from time to time unlawfully entered upon, and the timber, trees, stone and soil removed therefrom, and other injuries committed thereon; and whereas it is necessary to provide by law for the summary removal of persons unlawfully occupying the said lands, as also to protect the same from future trespass and injury; be it therefore enacted, that it shall be lawful for the Lieutenant-Governor, &c., from time to time to appoint two or more commissioners under the great seal of the province, to receive information and inquire into any complaint that may be made to them against any person illegally possessing himself of any of the aforesaid lands, for the cession of which to her Majesty no agreement hath been made with the tribes occupying the same and who may claim title thereto, and also to inquire into any complaint against any person for having unlawfully cut down or removed any timber, trees, stone or soil on such lands, or for having done any other wilful and unlawful injury thereon. § 2. If such commissioners find upon investigation any person is unlawfully in possession, it shall be lawful for them to give notice to such person to remove from the occupation of such lands within thirty days, and in case of neglect, the commissioners or any one of them may issue a warrant directed to the sheriff, commanding him to eject the person named in

such warrant. § 3. And if any person after removal shall return and unlawfully resume the occupation thereof, the commissioners or any one of them, upon complaint and proof, may order such person to be committed to the common gaol for a term not exceeding thirty days, and pay a fine to her Majesty not exceeding £20. § 4. Any person unlawfully cutting down or removing any timber or trees, or quarrying or removing stone or other materials aforesaid, shall be liable to pay a fine not exceeding £20, and in default be committed for a period not exceeding three months. § 5. Commissioners may order timber cut down or stone quarried, but not removed, to be seized and sold according to instructions from the Lieutenant-Governor. § 6. May summon witnesses. § 7. Moneys and fines collected under this act to be paid to the Receiver-General for the benefit of the Indians. § 8. The accused party to be first summoned. § 9. Sheriffs and gaolers bound to execute commissioners' warrants. § 10. Commissioners entitled to the same protection as justices of the peace. § 11. Appeal to the Vice-Chancellor.

By 13 & 14 V., c. 74, § 1. No purchase or contract for the sale of land, made of or with Indians, shall be valid, unless under government authority. § 2. Any person without such authority or consent, who shall purchase or lease any lands from Indians, or make any contract with them for or concerning any such lands, or shall in any manner give, sell, demise or convey or otherwise dispose of any such lands or any interest therein, or offer to do so, or shall enter on or take possession of or settle on any such lands, under colour of any right or interest in consequence of any such purchase or contract, unless with such consent as aforesaid, shall be deemed guilty of a *misdemeanor*, and, on conviction, liable to a fine of £200, and further fine and punishment, at the discretion of the court.

§ 9. Commissioners appointed under this act, and superintendents to be justices of the peace within the county where resident or employed. § 10. None but Indians or those intermarried with them to reside on Indian lands: and if any person or persons other than Indians or those intermarried with them, shall, without license of the said commissioners, settle, reside upon or occupy any such lands, roads or allowances for roads, it shall be the duty of the commissioners upon complaint made, and due proof, to issue their or his warrant, directed to the sheriff of the county, commanding him to remove such settlers. The above and the next following provision to extend to such Indian lands

only as the Governor by proclamation shall designate. § 11. If any person so removed shall return and settle, the commissioner shall by warrant to the sheriff command him or them to be arrested and committed to the common gaol, for a period not exceeding 30 days. § 12. Any person without license cutting any timber on such Indian lands, or removing any stone or soil, shall forfeit and pay £5 for every tree, and for every sapling, shrub, underwood or timber under the value of 5s., the sum of one pound; if over 5s., then the sum of £5; and for removing any stone or soil £5; to be imposed and recovered by the commissioners by distress and sale of the goods of the party fined, or the said commissioners may without proceeding by distress and sale, upon the non-payment of the fine, order the party to be imprisoned in the common gaol for a period not exceeding *thirty* days, when the fine shall not exceed £5, or *three* calendar months when it does. § 13. If the offenders' names are unknown, they may be described in any order, warrant, &c., in any manner by which he, she or they may be capable of being identified. § 14. Sheriffs and gaolers, &c., bound to obey process from the commissioners, and to aid and assist on requisition.

INDICTMENT.

(a) The venue must appear in the margin, and be laid in the county where the offence was committed. The exceptions to this rule are provided for by the 4 & 5 V., c. 24, § 40, which enacts that where any felony or misdemeanor shall be committed on the boundary or boundaries of two or more districts or counties, or within the distance of five hundred yards of any such boundary or boundaries, or shall be begun in one district or county and completed in another, the same may be tried in any of the said districts or counties, as if wholly committed therein. § 41. Offences committed on any person or in respect of any property in or upon any coach, waggon, cart or other carriage employed in any journey, or on board any vessel employed in any voyage or journey upon any navigable river, canal or inland navigation, may be prosecuted in any district or county which shall have been passed in the course of such journey or voyage; and where the side, centre or other part of any such river, canal or navigation shall constitute the boundary of any two districts or counties, such prosecution may be had in either of such districts or counties.

Every indictment must have a precise and sufficient certainty, otherwise the defendant may demur, move in arrest

(a) See also Criminal Law Amendment Act, 18 V., c. 92.

of judgment, or bring a writ of error (*a*).—*R. v. Mason*, 2 *T. R.* 581. It should state the facts, circumstances, and intent with which the act is committed, with the time and place, without any repugnancy, or uncertainty, and in terms direct and positive. No part of the indictment must contain any abbreviation, or express any number or date in figures.—² *Hale*, 170; 4 *G. II.*, c. 26; 6 *G. II.*, c. 6. The only exception is the case of forgery, libel, and sending a threatening letter, in either of these cases a fac-simile (*b*) of the instrument.—*R. v. Mason*, 1 *East.* 180. The christian and surname of the defendant must be stated, with his addition, state and degree, and the place where he is known. If it be doubtful which of two names is his real surname, he may be described with an *alias dictus*, as *George Jackson*, otherwise called *George Johnson*. Where the prisoner's name is not known, and he refuses to discover it, he may be then described as a person whose name is to the jurors unknown, but who is personally brought before the jurors by the keeper of the prisoner.—*Russ. & Ry.* The addition should be given after the first name, and not after the *alias dictus*.—² *Inst.* 699; though this defect is cured by the defendant pleading to the indictment.—¹ *Leach*, 420.

In indictments for felony, if the property be stolen out of possession of a *bailee*, it may be described as the property either of the bailor or bailee—² *Hale*, 181; therefore goods entrusted to a carrier, a tailor, or a laundress, may be laid as the property of the person to whom they are so entrusted or of the real owner, at the option of the prosecutor.—² *Hale*, 181; ¹ *Leach*, 356.

Clothes or other necessaries furnished by a father to his child may be laid to be the property of the father, if the child be of tender age—² *East. P. C.* 654; but where the child is old enough to acquire property, they must then be laid to be the property of the child; where the goods are stolen from a married woman they must be laid to be the property of her husband; and the goods of a deceased person must be laid as the property of his executor or administrator; of a corporation, as the property of the corporation in their corporate name.—² *East. P. C.* 1059.

And by 4 & 5 *V.*, c. 24, § 42, in indictments it shall be sufficient to state partnership property to belong to one or more of the partners. § 43. And with respect to any church or place of religious worship, bridge, or other public building, canal, &c., or any subdivision thereof, it shall not be

(*a*) But see *post* Criminal Law Amendment Act, 18 *V.*, c. 92.

(*b*) Unnecessary now under the above statute.

necessary to state the same as the property of any person. § 44. Property under turnpike trusts may be laid as the property of the trustees or commissioners, without naming them.

By 4 & 5 V., c. 25, § 68, offenders may be indicted where the property shall be found, although stolen elsewhere, and so with regard to receivers.

Where the party injured is unknown, or does not come forward, he may be described as "a certain person to the jurors unknown."—2 *Hale*, 181; but if it appear in evidence that his name is known, the defendant will be acquitted.—2 *East. P. C.* 651, 781.

The time stated should be a day certain, that is, the day of the month and year upon which the act is alleged to have been committed; the year of the king's reign is usually stated, but the year of our Lord is equally good. A mistake in the day and year will not in general vitiate the indictment—1 *Salk.* 287; but upon some occasions the time is material, as in the case of murder, when the indictment must lay the time of the death within a year and a day of the mortal stroke.—*Fost.* 249; 4 *Bl. Com.* 306. So in an indictment for bigamy, it is necessary to state, with correctness, the time of the second marriage and to aver that the first wife was alive at the time; the dates of all instruments must likewise be truly stated, the place at which the alleged offence was committed must also be stated; but though the place should be laid with certainty in statement, it is not necessary to be laid according to the truth, and a variance in this respect will not be material, provided the place proved be within the district, except where the place stated is matter of local description, as in describing the situation of a house in the case of *burglary* or *arson*.

An indictment for stopping up the king's highway must shew what particular part was stopped up.—*Show.* 389. In larceny of written instruments it is sufficient to describe them in a general manner, as "one bank note for the payment of £5, and of the value of £5."—2 *East. P. C.* 602, 777. And in an indictment for embezzling *several* bank notes, it is sufficient to describe them as "nine bank notes, for the payment of divers sums of money, amounting in the whole to £9," without specifying the amount of each particular note. (a)—*R. v. Johnson*, 3 *M. & S.* 589.

With respect to personal chattels, they must be described with certainty and by the names usually appropriated to them, and the number and value of each species or kinds of

(a) But now by 18 V., c. 92, § , it is sufficient to describe a bank note as "money" without any specific description.

goods, as "one watch of the value of 20s., or one sheep of the price of 20s.;" if "twenty wethers and ewes" were stated the indictment would be bad for uncertainty, as it should specify how many of each.—2 *Hale*, 182, 183. Where any *live* animal is mentioned in an indictment, and it turns out to have been *dead* when stolen, the defendant must be acquitted.—*R. v. Holloway*, 1 *C. & P.* 128; *R. v. Edwards*, *R. & R.* 497. Money is described as so many pieces of the current gold or silver coin of this province, called sovereigns or shillings, as the case may be. A variance in the number of articles or in their value is immaterial, if the value proved be sufficient to constitute the offence in law; so if there be ten different species of goods enumerated, and the prosecutor prove a larceny of any one or more of a sufficient value, it will support the indictment, though he fail in his proof of the rest.

The indictment is bad for uncertainty, if it charge the defendant in the disjunctive with one or the other of two offences—as that he murdered, *or* caused to be murdered; that he forged, *or* caused to be forged.—2 *Haw.*, c. 25, § 58. Or if it charge him in the disjunctive—as that, being the servant *or* deputy of A. B., he embezzled certain property.—2 *Rd. Rep.* 263.

The indictment must not in any one *count* charge the defendant with having committed two or more offences; but it seems that a defendant may be indicted for the battery of two or more persons in the same count, if committed at the same time.—2 *Burr.* 994. The court will, in general, upon application, quash an indictment for duplicity; but it seems doubtful whether it can be taken advantage of in arrest of judgment, or by writ of error.

Where one part of the indictment is repugnant to another, the whole is void—as, when the indictment charges the prisoner with forging a bond, by which J. S. was *bound*; for this fact would be impossible, if the instrument were *forged*.—2 *Haw.*, c. 25, § 62.

But in all cases where any fact or circumstance is stated in an indictment, which is not a necessary ingredient in the offence, it may be rejected as surplusage, and need not be proved; and if there be any defect in the mode of stating such matter, it will not vitiate the indictment.—4 *Co.* 41 a; 5 *Co.* 121; *R. v. Howarthe*, 3 *Str.* 26.

All indictments for offences at common law must conclude, "against the peace of our said lady the Queen," [or the late king,] as the case may be; and an indictment for an offence at common law concluding "against the *form of the statute*," would be bad.

Where a statute creates an offence, or makes an offence at common law one of a higher nature—as where a misdemeanor is made felony—the indictment must conclude “against the form of the statute.”

Where several persons actually join in the commission of the same felony, they may be indicted either *jointly* or *separately*.—2 *Hale.*, 173. But where the offence is in its nature several and distinct, each defendant must then be indicted separately.

The consequence of a misjoinder of several defendants is, that application may be made to the court to quash the indictment.—*R. v. Kingston*, 8 *East.* 41.

The same defendant, also, ought not to be charged with different felonies, in different counts of an indictment—as a *murder* in one count, and a *simple larceny* in another; or a burglary, in the house of A. in one count, and a burglary in the house of B. in another. In the first case the objection is fatal on arrest of judgment, or in error, because the judgment is different for the two offences. In the last case, if the objection is made before the defendant has pleaded, or the jury are charged, the judge may in his discretion quash the indictment; and though it be not made till after the jury are charged, the prosecutor may still be put to his election for which offence he will proceed. But this last misjoinder is no ground to arrest the judgment, the offence being of the same species, and for which the judgment is precisely the same.

The *same* felony, however, may be charged in different ways in several counts, in order to meet the facts of the case as they may come out in evidence—thus: if it be doubtful whether the house in which a burglary is committed belongs to A. or B., it may be stated in one count to be the house of A., and in another count the house of B.; and the like in an indictment for a larceny of goods, where it is doubtful whose property they are.—2 *B. & P.* 508. And by 4 & 5 V., c. 25, § 40, distinct acts of embezzlement may be charged in the same indictment.

In misdemeanors, it is no objection to an indictment, that it contains several charges, provided the judgment is the same.—3 *T. R.* 98, 106; 8 *East.* 46; 2 *Burr.* 984; *R. v. Jones*, 2 *Camp.* 131.

By the 4 & 5 V., c. 24, § 45, no indictment shall abate by reason of any dilatory plea, but may be amended instantly. § 46. Indictments not to be vitiated after verdict, or otherwise, for omission of the words “as appears by the record,” or of the words “with force and arms,” “against the peace,”

nor for the insertion of the words "against the form of the statute," instead of "statutes," or vice versa: nor for the wrong designation of any party mentioned in the indictment; nor for omitting to state the time when offence committed, in any case where the time is not of the essence of the offence, nor for stating the time imperfectly; nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, nor for defect in the anterior proceedings.

And by the 12 V. c. 21, § 1, in an indictment for stealing, a count may be inserted for receiving, and vice versa; and the prosecutor shall not be put to his election, but the jury may find a verdict on either count; and if an indictment be preferred against two or more persons, the jury may find all or any of such persons guilty, either of stealing or receiving; or find one or more guilty of stealing, and the other or others of receiving. § 2. The Court of Queen's Bench, or of Oyer and Terminer and General Gaol Delivery, may cause an indictment to be amended in respect of any variance between a written or printed matter produced in evidence, and the recital thereof in the indictment.

See also 10 & 11 V. c. 9, § 19; 18 V., c. 92, § 7, 8—subject, *Forgery*; 12 V. c. 20, § 3—subject, *Arson*.

By the Criminal Law Amendment Act, 18 V., c. 92, various provisions are made on the subject of indictments. Under § 1, the court may order any indictment to be amended upon trial, when any variance appears between the statement in the indictment and the evidence not material to the merits of the case, and the amendment is not prejudicial to the defendant. § 5. Indictments except in cases of high-treason and murder need not be on *parchment*. § 6. In indictments for murder or manslaughter, the particular manner in which the death was caused need not be stated. § 7. In indictments for forging, uttering, stealing, embezzling, destroying or concealing, or obtaining by false pretences, any instrument, a copy or fac simile thereof need not be set out. § 8. And so for engraving or making any instrument, matter, or thing, or using or having the unlawful possession of any plate or other material upon which the same has been engraved. § 9. And in all other cases, a general designation without a fac simile copy will be sufficient. § 10. In indictments for forging, &c., it shall be sufficient to allege "intent to defraud," without naming any particular person. § 12. And in any indictment for obtaining or attempting to obtain property by false pretences, it shall be sufficient to state that the defendant did so by false pretences,

without stating further particulars. § 18. Any number of accessories to any felony, or receiving, may be charged with the substantive felony, notwithstanding the principal felon shall not be included in the indictment. § 20. In any indictment relating to money or bank notes, it shall be sufficient to describe both as "money." § 21. In indictments for perjury it shall be sufficient to set forth the substance of the offence, by what court, or before whom the oath, &c., was taken, without setting forth the whole document. § 24. No venue need be stated in the body of an indictment. § 25. Matters unnecessary to be proved need not be averred. § 26. Every objection to an indictment for any formal defects shall be by demurrer, or motion to quash, before the jury are sworn: and the court, if it think proper, may immediately order the indictment to be amended. § 46. Provides that indictments may be in the forms annexed to the act. The forms given are for "simple larceny," "false pretences," "embezzlement," "stealing money," "murder," "manslaughter," "perjury," "subornation of perjury."

Of the Finding by the Grand Jury.

The names of all witnesses who are to be examined before the grand jury, should be indorsed on the bill of indictment, and formerly it was necessary that the witnesses should be previously sworn by the officer of the court. But now by 20 V., c. 4, witnesses need not be sworn in open court, but may be sworn before the grand jury, their names being first endorsed on the bill of indictment. The evidence is gone through by the grand jury in the order in which the names of the witnesses appear on the back of the bill; and if a majority of the grand jury, consisting of twelve at least, agree in thinking that there is sufficient evidence to put the defendant on his trial, they endorse on the bill of indictment "*a true bill*;" but if the majority think there is not sufficient evidence, or if the majority (if a number less than twelve) should even think there is, then the words "*no bill*" are endorsed. The bill of indictment is then returned publicly into court by the foreman of the grand jury; and if the indictment is found (for it is previously in law only termed a bill), the prisoner is arraigned in due course and put upon his trial.

The grand jury may insist upon the same strictness of proof as is required on the trial, though it is not usual to do so, nor to weigh the evidence with that degree of scrutiny with which it is afterwards sifted by the judge and jury. They are to

hear evidence only on behalf of the prosecution; for the finding of an indictment is merely in the nature of an inquiry or accusation, which is afterwards to be tried and determined: and their duty in this respect, is solely to enquire upon their oaths, whether there be sufficient cause to call upon the party to answer it; they are therefore not to try the prisoner, but merely to determine whether the evidence *against* him is of such a nature as to render necessary a more formal investigation into the fact of his innocence or his guilt; but they ought, nevertheless, to be thoroughly persuaded of the truth of the indictment, as far as their evidence goes, and not to rest satisfied merely with remote probabilities, a doctrine that Blackstone rightly observes might be applied to very oppressive purposes.—4 *Bl. Com.* 303.

Where there is only one count in the indictment, the grand jury cannot find “*a true bill*” as to part, and “*not a true bill*” as to the other part; for they ought to find the whole or nothing.—1 *Haw. c.* 64, § 40; 2 *Id. c.* 25, § 2. But where the indictment contains two counts, as one for a riot, and one for an assault, they may then return “*a true bill*” as to one count, and *ignoramus* as to the other.—*R. v. Fieldhouse, Cowp.* 335. But where the evidence bears upon all the counts, and the offence is only stated in a *different form*, it is better to find the whole bill, than to elect one count and ignore the others, since it is possible that the prosecution upon trial might fail upon the one so elected, and might have succeeded upon one of those ignored. When a bill is thrown out by the grand jury, it cannot again be preferred to the same jury during the same assizes or sessions; but it may be preferred at the next assizes or sessions, if the prosecutor is not prevented by any lapse of time limited for the prosecution. It is improper to prefer two bills at the same time for the same offence, before the grand jury, that is to say, one bill treating the offence as a felony, and the other as a misdemeanor: but after a bill for felony has been returned “*no bill*” by the grand jury, it would not be improper, if the facts warranted such a course, to prefer another bill before the same grand jury, for a misdemeanor; as for instance, if a bill of indictment be preferred for rape, and *ignored*, another may very properly, and perhaps successfully, be preferred for the misdemeanor, viz., an assault with intent to commit a rape.

Of granting a Copy of the Indictment.

In cases of high treason, the prisoner is, by virtue of the 7 Anne, c. 21, entitled to a copy of the indictment, with a list of the witnesses and jurors, ten days before the trial.

And by *6 W. IV., c. 44, § 2, the prisoner is entitled to a copy of the indictment whether for felony, or misdemeanor, on payment of certain charges, viz., 9d. per folio of 100 words.

INDICTABLE OFFENCES.

All felonies and misdemeanors, whether at common law or by statute, are indictable offences, and as such triable at the sessions or the assizes according to the enormity of the offence. All felonies, such as murder, manslaughter, rape, burglary, arson and the like can only be tried at the assizes. But simple larcenies and misdemeanors (perjury excepted) may be tried at the sessions, or in the recorder's court of any city where the offence is committed.

With respect to the forms and mode of procedure upon indictable offences, see "*Indictable Offences*," under the head of "*Justices of the Peace*."

INDIGENT DEBTORS.

*By 11 G. IV., c. 4, it is enacted, that it shall not be lawful for the sheriff or other officer to seize in execution the necessary wearing apparel of the debtor or debtors, or his, her or their family; nor the bed or bedding in actual use by the family.

By 20 V., c. 57, § 23, a similar provision is made, with the addition of "one stove and cooking utensils, also tools and implements of trade to the value of £15.

By the 19 V., c. 43, § 308, the wearing apparel of any debtor *in execution*, and that of his family, their beds and bedding, household utensils to the value of £10 in the whole, and his tools and implements of trade to the like amount, are protected from *subsequent* execution.

INDUSTRIAL FARMS.

By 12 V., c. 81, § 139, the municipal corporation of any town or city is authorised to purchase and hold landed property beyond the limits of such municipality, for the purpose of an industrial farm for such town or city; which farm, with all the buildings, &c., shall, with regard to jurisdiction only, be deemed and taken to be within such limits and jurisdiction. § 140. And the mayor, recorder, police magistrate, or any two aldermen or justices of the peace for only such town or city, may commit to hard labour at, or send to such industrial farm, under such regulations as shall be established, any description of persons as may, by the by-laws of such town or city, be declared expedient or necessary.

INFANTS.

An infant (or minor) in law, is any one who is under the age of 21 years. But with respect to criminal offences, the law considers the age of 14 years the age of discretion, and that any one above that age has a sufficient knowledge of right and wrong to be criminally answerable for his actions. An infant under 14, is presumed by law to be incapable of committing a rape.—1 *Wale*, 630. With respect to the competency of an infant to be a witness, the old rule was, that none could be admitted under 9 years of age; but a more reasonable rule has since been adopted; and it is now settled that their admissibility depends on the understanding of the child, and the notion it has of the danger and impiety of falsehood, and that this must be collected from the child's answers to questions propounded by the court.—1 *East. P. C.* 442: 1 *Wale*, 302.

By 12 V., c. 72, the real estate of any infant may be sold by order of the Court of Chancery.

By 18 V., c. 126, § 1, any of the superior courts of law or equity, or any judge thereof upon the petition of the mother of any infant, in the sole custody or control of the father, or of any person by his authority, or of any guardian may make order for the access of the petitioner to such infant, at such times and under such regulations as such court or judge shall think convenient and just; and if such infant be under the age of *twelve* years, to make order for the delivery of such infant to the petitioner, to remain in her care and custody until such infant shall attain that age, subject to such regulations as the court or judge shall direct; and also to make order for the maintenance of such infant by the father, or out of the infant's estate, as such court or judge shall think just and reasonable. § 4. No such order to be made in favour of any mother against whom adultery shall be established by judgment in an action for criminal conversation at the suit of her husband.

See also *ante* title "*Guardians.*"

INFORMATION.

An information, in its confined sense, is a complaint exhibited before one or more justices of the peace, upon oath or otherwise, which the defendant is summoned to answer, or upon which a warrant issues to apprehend him: in its more enlarged and comprehensive sense, it is an accusation or complaint exhibited against a person for some criminal offence, either against the king or against a private person,

which, from its enormity, the public good requires to be immediately restrained; and it differs only from an indictment in this particular, viz., that the latter is an accusation founded on the oath of twelve men, whereas, an information is only an allegation of the officer who exhibits it.

Informations at the suit of the king are filed by the attorney general, *ex-officio*, and without any previous application to the court for a rule to file the same, and these are properly the king's own suits. But in those at the relation of private persons, the king is only the nominal prosecutor, and none such could be filed without a rule on the person complained of, to shew cause to the contrary; which rule is never granted but upon motion made in open court, and an affidavit of the facts in relation to the charge of complaint.

When justices of the peace act uprightly, though they mistake the law, the court will not grant an information against them—1 *T. R.* 653; but the party will be left to the ordinary remedy by indictment or action; nor for an improper conviction, unless the party complaining make an exculpatory affidavit, denying the charge.—3 *T. R.* 388.

Information will be granted against a justice, for convicting a person without a previous summons.—*Str.*, 677.

A criminal information may be moved for against magistrates, for misconduct in their office, in the second term after offence committed, there being no assize intervening—13 *E. R.* 270; but the application must be made sufficiently early in the second term to give the defendants an opportunity of shewing cause against it in the same term.—13 *E.* 322. And the court will grant a rule *nisi* for a criminal information against a justice, for malpractices *during the term*; but not for misconduct before the term.—7 *T. R.* 80.

Compounding informations, on penal statutes, is an offence punishable by 18 Eliz. c. 5, which enacts, that any person informing under pretence of any penal law, who shall make any composition without leave of the court, or take any money or promise from the defendant to excuse him, shall forfeit £10, and shall stand two hours in the pillory, and be disabled in future to sue on any popular or penal statute.—2 *Haw.*, *P. C. c.* 26.

By the *Summary Convictions Act* 16 V., c. 178, § 6, it is enacted that in all cases of complaint upon which a justice or justices make an order for the payment of money or otherwise, such complaint shall be in writing and *on oath*, unless otherwise enacted by any statute upon which complaint is framed.

§ 7. Any variance between the information and evidence

as to the place or act charged shall not be material, provided the offence is proved to have been committed within the jurisdiction of the justice; and if any variance between the information and evidence shall appear to the justice present and acting at the hearing to be such that the party charged may have been deceived or misled, he may adjourn the hearing upon such terms as he may think fit, and in the meantime commit or bail the defendant.

§ 9. Every complaint upon which a justice shall be authorised by law to make an order, and every information for every offence punishable by summary conviction (unless except by some particular act) shall be laid on *oath*; and in all cases where the justice or justices receiving the same shall issue a warrant in the first instance against the defendant: and in every case where a warrant shall be issued in the first instance, the matter of such information shall be substantiated by the *oath* or affirmation of the informant, or by some witness or witnesses on his behalf before any such warrant shall be issued: and shall be for *one matter of complaint* only and not for two or more matters of complaint, and for one offence only, and not two or more offences, and such complaint or information may be made by the complainant in person, or by his counsel or attorney.

§ 10. In all cases where no time is limited for making such complaint in the act relating thereto, it shall be made within *six calendar months* after the offence committed.

§ 25. In all cases of summary proceedings before justices out of sessions *one* justice may receive the information and grant the summons or warrant to appear before two or more justices where required by the statute: and issue summons to witnesses to appear and give evidence in like manner. (a)

For a general form of information upon oath, see titles "*Summary Conviction*" "*Indictable Offences*."

INNS AND INN-KEEPERS.

Detaining Goods for the Reckoning.

It is said an inn-keeper may detain the horse of any guest for his feed, till payment.—*Bac. Abr. Inns*. But a horse committed to an inn-keeper, may be detained only for his own meat, and not for the meat of his guest, or of any other horse.—*Ib.*; *Bulst.* 207. An inkeeper that detains a horse for his meat cannot use him.—*Bac. Abr. Inns*.

(a) The like provision is contained in the *2 W. IV., c. 4, § 2.

Goods of a Guest Stolen out of an Inn.

An innkeeper is answerable for those things which are stolen within the inn, though not delivered to him to keep, and though he was not acquainted that the guests brought the goods to the inn; for it shall be intended to be through his negligence, or occasioned by the fault of him or his servants.—8 *Co.*, *Caley's case*. So, if he puts a horse to pasture without the direction of his guest, and the horse is stolen, he must make satisfaction; but otherwise, if with his direction.—*Ib.* In like manner, if an inn-keeper bids his guest take the key of his chamber and lock the door, and tells him that he will not take charge of the goods, yet if they are stolen, he shall be answerable, because he is charged by law for all things which come to his inn, and he cannot discharge himself by such or the like words.—*Dalt.* c. 56. A person is a guest who merely leaves his horse at an inn, as much as if he had stayed himself, because the horse must be fed, by which the inn-keeper has gain; otherwise, if he had left a trunk or a dead thing.—1 *Salk.* 388.

Granting of Licenses.

By the imperial act 14 G. III., c. 88, intituled, "An Act for establishing a fund towards further defraying the charges of the administration of justice and support of the civil government within the provinces of Quebec, in North America," it was amongst other things enacted, that from and after the 5th day of April, 1775, a duty of £1 16s. sterling should be paid for every license granted by the Governor, Lieutenant-Governor, or Commander-in-Chief of said province to any person for keeping a house or other place of public entertainment, or for retailing wine, brandy, rum or other spirituous liquors within the said province.

By 12 V., c. 81, § 31, the municipality of each township is authorised to make by-laws for "regulating inns, taverns, *ale-houses* and all other places for public entertainment within their jurisdiction, and to limit the number of them;" and in all cases where there exists no other provision by law for licensing such houses, to provide for the proper licensing the same at such rates as to the corporation of such township may seem expedient; the proceeds of such licenses, in cases not otherwise appropriated by law, to form part of the public funds of such township, and be disposed of as such corporation may consider advisable.

By 13 & 14 V., c. 65, which recites that it is "expedient to vest in the municipal authorities the power of fixing the number of taverns, beer-shops and houses of public entertain-

ment, and prescribing the conditions on which *licenses* shall be obtained, and the duties paid thereon over and above that imposed by the Imperial Act 14 Geo. III., c. 88," it is enacted by § 1, that so much of the acts therein mentioned (including the *6 W. IV., c. 4), or of any other law in force in Upper Canada as vests in any justices of the peace the power of granting certificates for licenses to keep inns or houses of public entertainment, or of making rules for the conduct of such inn-keepers, or repealing such rules, or fixing the duties for such license, or repealing or altering any duty or sum so fixed, as may be inconsistent with any provision of this act, which is to be acted upon before the *first* day of *March* next (1851), shall be repealed, and the remaining provisions of said acts and license duties payable under them, shall remain in force (if not inconsistent with this act) until the first day of *March* next, after which they shall be repealed, except §§ 7, 8, *6 W. IV., c. 4, (which relate to sale of wines, &c., on board steamboats); and by § 4 the municipality of each township or incorporated village, the town council of incorporated towns, and the common council of each city in Upper Canada are authorised at any time after the passing of this act to make by-laws—1, for limiting the number of inns or houses of public entertainment in such township, village, town or city, for which licenses shall be issued, to be in force after the *last* of February, 1851, or for prohibiting licenses for any house in their respective municipalities, and for fixing the terms and conditions which shall be previously complied with, the description of house and accommodation, and the security to be given for observing by-laws, *and the sum* to be paid for such license over and above the imperial duty; for regulating such inns and houses of public entertainment, and for imposing penalties for contravention of by-laws; for *similar* purposes with respect to *ale* and *beer-houses*, and other houses for the reception and entertainment of the public, where fermented or other manufactured liquors are sold to be drunk therein.

§ 5. (a) At the annual election of councillors in the several townships, incorporated villages and towns and cities in Upper Canada, there shall be elected by the same electors in each township (not divided into wards) or incorporated village *three* inspectors of houses of public entertainment, and in each ward of any township, divided into wards, or of any such town or city, *one* such inspector; and such inspectors

(a) But see *post*—20 V., c. 70, which amends this clause, and authorises the municipal council to appoint inspectors.

shall be subject, as other municipal officers, to any by-laws of the municipality touching their duties or remuneration, the security they shall give, and other like matters, and vacancies in the office of inspector shall be filled in like manner as in the office of councillor. § 6. It shall be the duty of such inspectors to see that the by-laws of the municipality are complied with, as regards the persons to whom licenses to keep houses of public entertainment and to retail spirituous liquors are to be issued, and for this purpose the said inspectors shall, after such previous visits and examinations as they may think proper, meet at such time, in each year, before the first day of March, and at such place as they shall think meet, or at such time and place before such day as the council of the municipality shall have appointed by by-law, for the purpose of determining what persons have, under the by-laws in that behalf, qualified themselves to obtain such licenses, and to give certificates to such persons, which shall state the sum payable by such persons respectively for such licenses under the by-laws of the municipality; and upon the production of such certificate and payment of the said sum and of the duty imposed by the said imperial act to the proper revenue inspector, he shall issue licenses to such persons respectively for the purposes aforesaid, which shall be in force from the date thereof until the last day of February in the then next year, and no such license shall be issued in favour of any person unless he shall produce such certificate as aforesaid; provided always, that if the number of persons who shall have complied with the requirements of the by-laws made in that behalf shall be greater than the number of persons to whom licenses may be issued under such by-laws, the inspectors shall determine (subject to any by-laws passed for their guidance in this behalf) to which of such persons licenses may be granted with most advantage to the public. § 7. That the said inspectors shall perform similar duties with regard to inns, ale and beer-houses, victualling-houses, ordinaries and eating-houses, and other establishments of like nature, which by the by-laws of the municipality shall require licenses, and such duties shall be performed in such manner as shall be directed by such by-laws, and such licenses shall be issued at such times, for such periods, and by such officer as shall be directed by such by-laws; and any provision of law vesting in any other functionary any power hereby vested in the inspectors aforesaid, or otherwise inconsistent with this act, is hereby repealed. § 7. Majority of inspectors to exercise all the powers of such inspectors, with

power to adjourn any meeting from day to day, or to any future day; and in case of equality of votes upon any question, the mayor or town-reeve, in his absence the functionary performing his duties, to have a casting vote, until other provisions made by by-laws. § 9. Nothing in this act contained to prevent the Governor in council from appointing any municipal officer or other person to issue licenses for houses of public entertainment and retailing spirituous liquors therein, in any municipality, if he shall think proper to appoint such officer or person to perform that duty instead of the revenue inspector.

By 14 & 15 V., c. 120, (explaining and amending the last act.) § 2. Municipalities are declared to have authority under this act to make by-laws for preventing the keeping of inns, &c., by persons not duly licensed, and for imposing penalties for contravention. § 4. Such penalties to be recoverable under the 7 sec. *6 W. IV., c. 4.

By 13 & 14 V., c. 27, where any person shall come to his death while in a state of intoxication or drunkenness from liquor drunk in any inn or tavern, with the permission or sufferance of the keeper thereof, by committing suicide, or by drowning, or perishing from cold, or any other accident, such inn or tavern keeper shall be guilty of a *misdemeanor* and liable to a fine not less than £25 nor exceeding £100, and imprisonment not less than two, nor more than six months. The fine to be paid to the legal representatives of the deceased.

By 16 V., c. 184, § 5, enacted that all sums of money payable for licenses to keep houses of public entertainment, or other licenses, under by-laws made by the municipal council of municipalities in Upper Canada under the authority of the 13 & 14 V., c. 65, and any sum payable on such licenses under the imperial act 14 G. III., c. 88, shall be payable to and collected and received by such municipal officers as the council of such municipalities respectively shall appoint to receive the same, and such licenses shall be issued by such municipal officers as the said council shall appoint respectively to issue the same: and any license to keep a house of public entertainment and to retail wines and spirituous liquors therein, issued in the manner and form, and by the municipal officer prescribed and appointed by by-law of the municipality in which the same shall be granted, shall be taken and held to be a license for the purpose of the said imperial act, and the duty imposed by the said act shall be payable thereon.

See also "*Inspectors of Taverns,*" "*Spirituous Liquors.*"

INOCULATION.

By 16 V., c. 170, § 1, enacted that any person who shall produce or attempt to produce by inoculation with variolous matter or by wilful exposure to variolous matter, or to any matter, or thing impregnated with variolous matter, or wilfully by any other means whatsoever the disease of small pox in any person in this province shall be liable to be proceeded against summarily before any *two* justices, and upon conviction be imprisoned for any term not exceeding one year.

§ 2. Any licensed medical practitioner convicted of an offence against this act, shall forfeit his license, and be liable to the same penalty as unqualified practitioners in the event of his practising: provided always, that after the term of imprisonment, such party may be again licensed by the Governor.

INSANE DESTITUTE.

*By 11 G. IV., c. 20, § 2, the grand jury of the Home District, at the next ensuing quarter sessions, are authorised to make a presentment to the court of the sum to be allowed for maintenance and support of insane persons in the Home District, expended previously to such quarter sessions: also, such sums as they may think necessary for maintaining insane destitute persons for the year next ending said sessions; such presentment to be made yearly, and a detailed account of expenditure for the year previous laid before the grand jury.

§ 3. The same to be paid by the treasurer of the district, by warrant from the chairman of the quarter sessions. This act was extended to all the districts by *3 W. IV., c. 45.

Both are temporary acts, and are continued by 20 V., c. 16.

INSANE CRIMINALS.

By 14 & 15 V., c. 83, § 1, upon the acquittal of any person on the ground of insanity, the jury shall find specially whether the party was insane at the time of committing the offence, and whether acquitted by them on that ground. In such case the court shall order such person to be kept in strict custody, until her Majesty's pleasure be known: and the Governor may give such order for his safe custody as he shall think fit. § 2. If any person indicted shall be insane,

and upon arraignment be found so by a jury lawfully empannelled for that purpose, or if upon trial, such person shall appear to the jury to be insane, the court may order such finding to be recorded, and the party kept in strict custody until her Majesty's pleasure be known. And if any

person be brought up before the court to be discharged for want of prosecution, and shall appear to be insane, the court may order a jury to be empannelled to try the sanity of such person. And if the jury find such person to be insane, the court may order him to be kept in strict custody until her Majesty's pleasure be known. And in all cases of such insanity the Governor may give direction for the safe custody of such person.

§ 4. If any person, while imprisoned under any sentence of death, transportation, or imprisonment, or under a charge of any offence, or for not finding bail for good behaviour, or to keep the peace, or to answer a criminal charge, or in consequence of any summary conviction, or order by any justice or justices, or under any other than civil process, shall appear to be insane, it shall be lawful for any two justices of the peace of the locality, of whom the chairman of the quarter sessions shall be one, to inquire with the aid of two physicians or surgeons as to the insanity of such person; and if it shall be clearly certified by such justices and physicians or surgeons that such person is insane, it shall be lawful for the Governor to direct by warrant, that such person shall be removed to such public lunatic asylum, or other receptacle for insane persons, as he may judge proper: and he shall remain under confinement there, or in some other public lunatic asylum, or other proper receptacle, until it be certified to the Governor through the provincial secretary by two physicians or surgeons that he has become of sound mind, whereupon the Governor may order the removal of such person back to the prison from whence he had been taken, or if the period of his imprisonment shall have expired, then to be discharged.

§ 7. Directs in what way provision shall be made for the maintenance and care of persons mentioned in the first and second sections.

See also "*Criminal Lunatic Asylum*," "*Lunatics Dangerous*."

INSOLVENT DEBTORS.

By 19 V., c. 43, § 295, any debtor in close custody upon *mesne process*, or in execution or upon an attachment or other process, making oath, that he is unable to find security, (for the limits) or bail (if on *mesne process*), and is not worth £5, the court may order the plaintiff to pay to such debtor on the third Monday after service of the order and on each Monday afterwards so long as he shall be detained in prison, the sum of *ten shillings*: and in default of payment such

debtor will be entitled to his discharge. But the plaintiff may file interrogatories against such debtor for the discovery of property, and until fully answered the court may order such weekly allowance to be suspended.

§ 300. Any debtor in close custody, *in execution*, for three successive calendar months, and making oath that he is not worth £5 exclusive of his necessary wearing apparel, and that of his family, their beds and bedding and ordinary household utensils, not exceeding in the whole the value of £10, and that he has fully answered all interrogatories filed, &c., shall be, by rule or order, discharged from custody, upon such terms with respect to assignment of any assumed rights to property as the court or judge may require; but if it shall appear that the debt for which such debtor is confined was contracted by any manner of fraud, or breach of trust, or that he is confined upon a judgment in any action for breach of promise of marriage, seduction, criminal conversation, libel or slander, the court or judge may order the applicant to be recommitted for any period not exceeding *twelve calendar months*, and then to be discharged.

See also "*Gaol Limits*," "*Indigent Debtors*."

INSPECTORS OF GAOLS AND HOSPITALS, &c.

By 20 V., c. 28, § 14, the Governor is authorised to appoint five fit persons to be inspectors of all public asylums, hospitals, common gaols and other prisons in this province. § 15. Meetings of the board provided for. § 16. The said inspectors shall have and perform all the powers and duties now vested in the inspectors of the provincial penitentiary; and in the commissioners of the provincial lunatic asylum. § 19. Inspectors, singly or together, shall visit and inspect every gaol, house of correction and prison, or place kept or used for the confinement of persons in any part of the province other than the provincial penitentiary, as often as may be required by the Governor, and at least twice in the year; and every inspector, singly making such inspection, shall report the state of every place of confinement so visited by him to the Board of Inspectors. § 20. Gaols hereafter erected to be built according to a plan approved by the inspectors, and sanctioned by the Governor, and without this, the same shall not be deemed in law the gaol of the district or county. § 21. Inspectors to report to the Governor on the improvements required in gaols erected. § 22. Certain matters to be taken into consideration by the inspectors in determining upon the plan of any gaol to be erected. § 23. Provision made for securing the requisite

improvements in county gaols. § 24. County councils authorised to raise money for making such improvements. § 27. Inspectors to frame rules and regulations for the government of common gaols to be submitted to the Governor for his approval. § 32. Inspectors also required to visit and report to the Governor once in the year at the least, on the state and management of every private lunatic asylum. § 33. Also asylums for idiots, or for the deaf, dumb, or blind. § 34. And all hospitals twice in the year at the least. § 35. And hospitals or other benevolent institutions supported in part by public money. § 36. Inspectors to make their annual report on or before the 10th of February.

INSPECTORS OF TAVERNS.

(a) By 13 & 14 V., c. 65, § 5, three inspectors of houses of public entertainment are to be appointed at the annual election of councillors in each township (not divided into wards) or incorporated village; and in each ward of any township divided into wards, or of any such town or city, one such inspector; § 6, whose duty it shall be to see that the by-laws of the municipality are complied with, as regards the persons to whom licenses to keep houses of public entertainment, and to retail spirituous liquors, are to be issued; and, after due inquiry, to give certificates to such persons respectively for such licenses; and upon the production of such certificate, and payment of the said sum and of the duties imposed by the said imperial act, to the proper revenue inspector, he shall issue licenses to such persons respectively, which shall be in force from the date thereof until the last of February in the next year; and no such license shall be issued in favour of such person unless he shall produce such certificate as aforesaid.

By 20 V., c. 70, § 1, after the present year (1857) so much of the 13 & 14 V. c. 65, as empowers the municipal electors to elect inspectors shall be repealed, and it shall be lawful for the council of each municipality to appoint annually one or more fit and proper persons to be such inspectors who shall hold office during the year for which the council shall have been elected, and any vacancy occurring during the said year shall be filled as aforesaid by the said council for the remainder of the period. § 2. It shall be lawful for the municipalities by by-law to fix and define the duties, powers and privileges of the inspectors, the remuneration they shall receive, and the security to be given by them for the efficient discharge of the duties of their office.

(a) See next statute 20 V., c. 70, vesting the appointment of inspectors in the council.

Such by-laws not being contrary to the laws of Upper Canada. § 3. The person or persons to be appointed inspectors shall possess the same property qualification as is now required for councillors of the municipality.

See also, titles "*Inns and Innkeepers*," "*Intemperance*," "*Shopkeepers*."

INTEMPERANCE.

By the 13 & 14 V., c. 27, it is enacted as follows:—

Death by Intoxication.—§ 6. When any person shall have drunk spirituous liquors in any inn or tavern, with the permission or sufferance of the keeper thereof, and shall, while in a state of intoxication or drunkenness, arising out of the use of such spirituous liquors, come to his death by committing suicide, or by drowning, perishing from cold, or any other accident, such keeper of any such inn or tavern shall be guilty of a *misdemeanor*, and being convicted thereof, after having been indicted and tried for such offence in due course of law, shall be liable to be imprisoned in the common gaol of the county in which such offence shall have been committed for a period not less than two, and not more than six months, and pay a penalty of not less than £25 nor more than £100, to be paid to the heirs, legal representatives or surviving relatives of the deceased, as the court may consider most in need or deserving of the same.

Temperance Hotels.—§ 7. Whenever any person shall adduce proof of his honesty and good moral character, by a certificate under the hands of four municipal electors of his locality, and shall be seised of real or personal property to the value of £100, such person shall be entitled to receive from the municipal council for his locality a license to keep a temperance hotel for the reception of travellers; and for such license shall pay to the said council a sum not exceeding 75s. nor less than 20s.; provided that no person so licensed shall sell or give, or cause to be sold or given to drink, any spirituous or malt liquor, under a penalty of £10 for every offence: and any person convicted of retailing intoxicating liquors without license, or of keeping a disorderly house, or of selling intoxicating liquors on Sundays and holidays, shall for every such offence incur a penalty of £10.

Offences, how punished.—§ 8. Offences against this act shall be summarily disposed of by one or more justices of the peace, on the evidence of one credible witness; and every party found guilty shall in default of immediate payment of the fine be imprisoned under warrant of such justice until

payment of such fine, and of the costs incurred for the recovery thereof. § 10. No person not licensed to keep a temperance hotel, or as an apothecary, shall vend or retail any description of liquor known as a temperance drink—such as spruce beer, sarsaparilla, raspberry vinegar, ginger beer, essence or juice of lemons or of oranges, or lemonade—under a penalty of £10 for every such offence.

Tavern Lists, &c.—§ 11. A list of the licensed taverns and temperance hotels shall be transmitted yearly by the officer by whom the licenses have been issued, to the clerk of the peace of the county, which shall be published in at least one newspaper of the county or district in *Lower Canada*; and a proper sign shall be hung up at each of the said taverns or temperance houses, for the information of travellers; and any person, not licensed, who shall hang up or place near his house any sign which may induce travellers to think that he has a license, shall thereby incur a penalty of £5.

Witnesses.—§ 12. Any person may be a competent witness under this act, although he be related, allied or of kin to, or in the service of, any party who may bring a complaint, or who may be complained against for any infringement of this act; and if any witness, legally summoned to appear, shall refuse or neglect so to do without reasonable cause, he shall incur a penalty of £5; and any person endeavouring to prevent any witness from appearing to give evidence, shall incur a penalty of £20.

Punishment of Drunkards.—§ 13. If it shall be within the personal knowledge of any magistrate, or on a complaint upon oath made by any one before such magistrate, that any person shall have been seen in a state of intoxication in any public place whatsoever, or in any place in which such intoxicated person shall be exposed to public view, such magistrate shall cause such person to be brought before him, and place him in custody until he shall have recovered his reason; and the person so found intoxicated shall incur and pay a penalty of not less than 5s. nor more than 25s. for his said offence, together with the costs of suit, the expenses of arresting the person so found intoxicated, and of keeping him in safe custody; and in default of payment shall be imprisoned in the house of correction or other place of confinement for a space of time not exceeding one month.

Distillers, &c.—§ 14. It shall not be lawful for any distiller, merchant or trader, who shall not have a tavern license, to sell intoxicating liquors in less quantities than one gallon, except wine, which may be sold by the bottle; and

such liquor when sold shall be taken away from the premises of such merchant or trader within twenty-four hours after the purchase thereof: provided always, that when any person shall produce a certificate from a physician, a priest, or a minister of religion, stating that such a person really requires it as a remedy, then in such case only it shall be lawful for such merchant or trader to sell to such person any quantity he shall require.

Inspectors' Visits.—§ 17. The inspector of revenue, or his deputy, in every revenue district, shall visit twice in every year all breweries, distilleries and stores in which intoxicating liquors are sold in their respective revenue districts, in order to examine whether the said liquors are adulterated; and on information by any such revenue inspector or his deputy, before any justice of the peace, that any such liquor is adulterated, the party in whose possession such adulterated liquor shall be found, shall be compelled to pay a penalty of not less than £10; and the said inspector or his deputy shall spill the said liquor. The said inspector or his deputy shall also twice in every year visit the taverns and *temperance hotels* within their respective districts, in order to ascertain whether every thing is carried on according to law therein; and the proprietors and keepers of such breweries, distilleries, taverns, stores and temperance hotels, refusing admission to the inspector or his deputy, shall be liable, on conviction on the oath of the inspector or his deputy, to a penalty of £5, and shall make a report thereof to the municipal council; and the said inspector or his deputy shall be entitled to receive from the owner of any such distillery, brewery, store, tavern or temperance hotel, the sum of 5s. for every certificate; and it shall be lawful for the said inspector or his deputy to visit any house in which it shall be suspected that spirituous liquors are retailed without a license; and if they find any adulterated liquors therein they shall spill the same, and on the information of any such inspector or his deputy, any such person in whose possession such adulterated liquors shall be found, shall be condemned to pay a penalty of £5.

Pleadings.—§ 18. All justices of the peace before whom any trial shall be had under this act, shall take down minutes in writing of the proceedings and evidence at such trial, in case an appeal shall be brought from any judgment rendered by them. § 19. If on the evidence of one credible witness it shall appear that any party accused of any offence under this act intends to abscond, a warrant shall be issued

by any such justice for the immediate arrest of such party, who shall give two good sufficient sureties in £50 each for his appearance at his trial, or be imprisoned until such trial shall be disposed of.

Penalties.—§ 20. One-half of the penalties under this act shall go to the prosecutor, and the other half to the municipality; or if no municipality, then to the treasurer of the school trustees or school commissioners of the locality, for the support of common schools and purchase of books.

§ 23. This act to take effect upon and after the 5th April, 1851.

INTERPRETATION ACT.

By 12 V., c. 10, § 1 enacted, that this act shall be known, cited and referred to as *The Interpretation Act*, and that each provision thereof shall extend and apply to each act passed in this present session of the provincial parliament, except in so far as any such provision shall be inconsistent with the intent and object of such act, or the interpretation which such provision would give to any word, expression or clause, shall be inconsistent with the context; and except in so far as this act shall in any such act be declared not applicable thereto: nor shall the omission in any act of a declaration that this act shall apply thereto, be construed to prevent its so applying.

§ 5. Enacts amongst other provisions, that in every act of the parliament of this province, passed or to be passed, as aforesaid,

Ninthly—The words “writing,” “written,” or any term of like import, shall include words printed, painted, engraved, lithographed, or otherwise traced or copied.

Eleventhly—The word “month” shall mean a calendar month.

Fifteenthly—Any wilful contravention of any such act as aforesaid, which is not made any offence of some other kind, shall be made a *misdemeanor*, and punishable accordingly.

Sixteenthly—Whenever any wilful contravention of any such act shall be made an offence of any particular kind or name, the person guilty of such contravention shall on conviction thereof, be punishable in like manner in which such offence is by law punishable.

Twentiethly—The word “magistrate” shall mean a justice of the peace; the words “two justices” shall mean two or more justices of the peace assembled, or acting together; and if any thing be directed to be done by or before a magi-

strate or a justice of the peace, or other public functionary or officer, it shall be done by or before one whose jurisdiction or powers extend to the place where such thing is to be done: and whenever power is given to any person, officer, functionary to do, or to enforce the doing of any act or thing, all such power shall be understood to be also given as shall be necessary to enable such person, officer or functionary to do, or enforce the doing of such act or thing.

Twenty-firstly—If in any such act as aforesaid, any party be directed to be imprisoned or committed to prison, such imprisonment or committal shall, if no other place be mentioned, be in or to the common gaol of the locality in which the order for such imprisonment shall be made, or if there be no common gaol there, then in or to the common gaol which shall be nearest to such locality; and it shall be lawful for the keeper of any such common gaol to receive such person, and him safely to keep and detain in such common gaol under his custody, until discharged in due course of law, or bailed, in cases in which bail may by law be taken.

NOTE—The above extracts are given as those which appear more particularly to relate to the administration of criminal justice, and may serve to elucidate such doubtful words or expressions as justices of the peace in the course of their duties may in the reading of the statutes frequently meet with. The act contains many more “interpretations” of words and expressions in relation to other matters, the perusal of which will well repay the reader for his time and trouble.

JOINT STOCK COMPANIES.

By 13 & 14 V., c. 28, any *five* or more persons may form a company for the purpose of carrying on any kind of manufacturing, shipbuilding, mining, mechanical or chemical business, for a term not exceeding *fifty* years, upon complying with the requisitions of this act. § 11. Stockholders to be liable for the debts of the company only to the amount of their shares, *save and except* by § 17, the stockholders shall be jointly and severally liable for debts due the labourers, servants and apprentices of such company; but no stockholder shall be liable in this or any case for any debt *not payable* within one year, nor unless suit brought within the year; nor shall any person ceasing to be a stockholder be liable for any debt unless sued for within *two* years after he shall have ceased to be a stockholder, nor until execution issued against the company and *nulla bona* returned.

JURISDICTION.

*By 59 G. III., c. 10, it is enacted, that all crimes and offences committed in any tract of country, or parts of this

province, not being within the limits of any described county or township, may be inquired of, and tried within any district of this province, and may and shall be laid and charged to have been committed within the jurisdiction of the court which shall try the same; and such court may proceed to trial, judgment and execution, or other punishment, as if such crime had been committed within the district. § 2. When such part of the province shall be formed into counties or townships, such offences then shall be tried in the district in which such county or township shall be comprehended.

See also titles "*Indictment*," "*Lakes and Rivers*," "*Unorganised Tracts*."

JURY.

By stat. 14 G. III., c. 83, § 11 (which was passed in 1774 and while Upper Canada formed a part of the province of Quebec), it was enacted that the criminal law of England should continue to be administered and observed as law in the province of Quebec, both in regard to the offence as well as the method of prosecution and trial; and subsequently, by a statute of the province of Upper Canada, the *40 G. III., c. 1, the criminal law of England, as it stood on the 17th September, 1792, was also declared to be the criminal law of this province, but without affecting the provisions of the above statute of the 14 G. III., c. 83.

By *32 G. III., c. 1, the trial by jury is also directed to be used in all civil causes.

Sir W. Blackstone says, the trial by jury, or the country *per patriam* is also that trial by the peers of every Englishman, which, as the grand bulwark of his liberties, is secured to him by the great charter.—4 *Bl. Com.* 349. And again, that the founders of the English law have, with excellent forecast, contrived that no man should be called to answer to the king for any capital crime, unless upon the preparatory accusation of twelve or more of his fellow-subjects, the *grand jury*, and that the truth of every accusation, whether preferred in the shape of indictment, information or appeal, should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbours, indifferently chosen and superior to all suspicion.—*Ib.*

Act for the Regulation of Juries.

By 13 & 14 V., c. 55, intituled "An Act for the consolidation and amendment of the laws relative to jurors, juries and

inquests in Upper Canada," various provisions are made, of which the following is an abridgement:—

Qualification of Jurors.—§ 1. Every man 21 years of age (not infirm or decrepit), assessed as mentioned in the act, shall be liable to serve on grand and petit juries. § 4. Three-fourths of the assessed inhabitants are to be copied from the assessment roll of the township, &c., commencing with the person rated at the highest amount and proceeding successively to the person rated at the lowest amount, until the names of three-fourths of the persons assessed shall have been copied from the roll, and the amount for which the last of such persons shall be assessed shall be the qualification for a juror.

Exemptions.—§ 5. All persons upwards of 60 years of age—government clerks—clerks and servants in public departments—judges—sheriffs—coroners—clergymen of whatever denomination—members of the law society—barristers—students—attorneys—solicitors and proctors actually practising—officers of courts of justice—physicians, surgeons and apothecaries—officers in the army and navy on full pay—pilots and seamen—officers of the post office, customs and excise—sheriffs' officers and constables—county, township, city, town and village treasurers, clerks and town clerks—professors, masters and teachers of any university, &c., and officers and servants of any such establishment—all corporate officers—(excepting justices of the peace)—millers and firemen. § 6. *And from serving on petit juries:*—Members of parliament—wardens and members of county councils—mayors—town-reeves and deputy town-reeves—justices of the peace and members or officers of any corporation.

§ 7. Jurors drawn and serving the year preceding shall also be exempt, if two complete jury lists can be made up without, and with one year's additional exemption for each jury list made up over two.

Selection and distribution of Juries.—§ 11. The mayor or town-reeve, the city, town, village or township clerk and assessors, shall be, *ex-officio*, selectors, and assemble annually on the (a) [1st] day of September for the purpose of selecting juries; § 15, and make duplicate reports, one to be deposited with the clerk of the peace and the other with the town clerk.

Jurors' Book.—§§ 16, 17. The clerk of the peace, between the 15th September and [31st] (b) October annually, shall

(a) As amended by 14 & 15 V., c. 65.

(b) As amended by the same act.

transcribe the names of jurors so selected into the jurors' book into four rolls, to be called—1. Roll of grand jurors to serve in superior courts. 2. Roll of grand jurors to serve in inferior courts. 3. Roll of petit jurors for superior courts. 4. Roll of petit jurors for inferior courts.

Balloting Jury Lists.—§ 18. The clerk of the peace shall prepare for each roll a distinct set of ballots; § 19, and on the first day of the sessions annually next after the [31st] (a) day of October, he shall publicly in court deliver to the chairman the jurors' book for the then next year, and the four parcels of ballots, together with the jurors' books for so many of the next preceding years as may be required, and make oath of their accuracy, whereupon the court shall determine upon balloting a full, two-thirds, or half jury list, composed of the following members:—

	Full list.	Two-thirds list.	Half list.	
Grand Jurors	48	38	24	} Superior Courts.
Petit Jurors	144	96	72	
Grand Jurors	96	64	48	} Inferior Courts.
Petit Jurors	288	216	144	

§ 20. The justices shall then (or at an adjourned sitting) proceed to ballot the jurors in the form prescribed by the act, beginning with grand jurors for the superior courts; and if the party balloted be not exempt, nor any cause shewn by him, or by his counsel or attorney, his name shall be inserted in the minute book of the court, after which the names balloted, alphabetically arranged, shall by the clerk of the peace be copied into the jurors' book with the title of "the grand jury list."

§ 21. The other jury lists to be balloted in like manner. § 22. Such lists to be certified and deposited in the office of the clerk of the peace. § 23. Repealed by 16 V., c. 120, § 4, which provides that the clerk of the peace shall on or before the 31st December, deposit a correct copy of such jurors' book in the office of the clerk of the crown and pleas of the Court of Queen's Bench at Toronto, and it also provides for the loss of original jurors' books by fire or other accident by the admission of certified duplicates.

Drafting Panels from Jury Lists.—§ 25. The sheriff shall give notice by public advertisement in his office and on the doors of the court-house, of the time he will attend at the office of the clerk of the peace to draft such panel; at which time he shall publicly draft such panel in the presence of the clerk of the peace and any two justices, and of any other person or persons who may desire to attend; eight days pre-

(a) As amended by 14 & 15 V., c. 65.

vious notice to be given. § 26. The heading to the panels and jury lists to be prepared by the sheriff. § 27 is repealed by 16 V., c. 120, § 5, and the following clause substituted. It prescribes the manner in which the *drafting* by ballots is to be made; after the names are drafted, such names, with place of residence and addition of the parties arranged alphabetically, shall, by the sheriff or other officer, be transcribed and numbered; and the panel so alphabetically arranged and numbered, with a short statement of the writ, the date and place of drafting, the name of the officers and justices present, or at least two of them, shall be entered in the jurors' book and attested by the sheriff, clerk of the peace, and justices, or at least two of them; and the sheriff shall upon his return of the *venire facias* annex a panel thereto containing the names, places of abode and additions of the persons so drafted, and shall transmit one copy to the clerk of the peace, and another to the clerk of the Crown and pleas of the Queen's Bench at Toronto, to be open for public inspection. § 28. The number of petit jurors not to be less than 48 nor more than 72 in any case unless by direction of the judge.

Jury Process.—§ 29. Precepts are to be issued by the judges of the respective courts for the return of a competent number of grand and petit jurors. §§ 30, 31, 32, 33, 35, relate to particular forms of jury process.

Drawing Jury at the Trial.—§ 36, is repealed by 16 V., c. 120, § 6, and the following substituted, viz., the jurors' names, places of abode, and addition shall be distinctly written on pieces of parchment, card, or paper, of a certain form or size and delivered to the clerk of assize, marshal, or other clerk of the court by the sheriff, and by his directions and care put together in a box or urn, and upon the trial of any issue, such clerk of assize, marshal, or other clerk, shall, in open court, cause such box or urn to be shaken so as to mix such pieces of parchment, card, or paper; and *twelve* are to be drawn out, the box or urn being shaken after drawing each name; and in case of absence or challenge, others are to be drawn out until the number is completed. The jury are then to be sworn and kept apart by themselves until their verdict is rendered, or they are discharged by consent of parties or leave of the court, and then the same names are to be returned to the box or urn.

Special Juries provided for by § 39 and subsequent clauses down to § 53, inclusive.

(a) *Challenges.*—§ 55. Want of qualification to be a sufficient

(a) See also 14 & 15 V., c. 65, § 8.

ground; § 56, but not want of freehold alone; § 57, nor want of a knight on the panel, nor any array quashed therefor. § 58. Persons arraigned for *murder* not admitted to challenge above the number of *twenty*; and defendants arraigned for *misdeemeanor*, if tried together, may unite in challenge of *two* jurors. (a) § 59. Cause to be assigned if the challenge be made on the part of the Crown. § 60. In all civil cases, either party may challenge *two* jurors without assigning cause, not being special jurors.

Summoning Jurors.—§ 61. Grand and petit jurors to be summoned *eight* days before hand, by note in writing, under the hand of the sheriff or proper officer, delivered to the party, or, in case of absence, left at his usual place of abode; and in case of *special jurors* three days' notice to be sufficient.

Penalties.—§ 63, authorises the court to set such fine for non-attendance of jurors as it may think fit, unless reasonable cause be shewn. § 64. *Viewers* neglecting to attend to be subject to a penalty of £5 and upwards, as the court shall think fit. § 65. The sheriff, upon writs of inquiry, &c., may impose a fine not exceeding £5 on absent jurors (unless reasonable cause be shewn), recoverable, as other fines of court, by *estreat*. § 66. The sheriff returning any man on a jury not drawn upon the panel; or clerk of assize, &c., wilfully recording the appearance of any person summoned who did not appear, to be subject to such fine as the court shall think proper. § 67. Any sheriff or other officer taking any reward to excuse jurors; or any bailiff, &c., summoning any person not specified in the warrant, or not the full time required by law, shall be liable to such fine as the court may think proper. § 68. Any sheriff or other officer making any alteration in the rolls, lists or panels (except in compliance with this act), or neglecting to prepare the jurors' book and ballots, or omitting to return the same to the court, or to perform any other duty required by this act, or doing any thing inconsistent with this act, shall for every such offence forfeit £50, recoverable in any court of competent jurisdiction. § 69. (b) Any clerk of the crown, or deputy, making any alteration in the rolls, lists or panels, or wilfully certifying as true any copy of any jurors' book not being true, shall, for every offence, forfeit £50, recoverable in any court of competent jurisdiction. § 70. Any assessor neglecting to complete his assessment roll and return the

(a) This clause is repealed, or intended to be repealed by 16 V., c. 120, and amendments made by § 7; but is erroneously described in the act as § 69 instead of 59.

(b) See note above.

same to the clerk of the township, &c., on or before the 1st September, shall forfeit £50; § 71, and any municipal officer having, at the time of the annual meeting of the selectors of jurors, in his charge or custody the assessment roll or rolls of such city, town, village or township, who shall neglect to perform the duties required in § 11 as regards the production of the same, shall forfeit £25, recoverable in any court of competent jurisdiction. § 72. Any selector wilfully making a false report, or taking reward, or neglecting to make report and deposit the same in the proper office on or before the 15th September, shall forfeit a sum not exceeding £20 nor less than £5, at the discretion of the justice before whom he shall be convicted. § 73. Any clerk of the peace omitting to perform any duty required in §§ 18, 19, 20, 21, 22, 23, or doing any thing contrary thereto, he or his deputy so offending shall forfeit £50. § 74. All fines imposed under this act by any of the courts of law, shall be levied and applied in like manner as any other fines imposed by such courts; and all other penalties imposed by this act (for which no other remedy is given), shall, on conviction before any justice within his jurisdiction, be levied, unless forthwith paid, by distress and sale, by warrant under the hand and seal of such justice, who is hereby empowered to hear and examine witnesses on oath or affirmation, and to mitigate the penalty to the extent of one moiety, if he shall see fit; and all penalties, the application whereof is not herein particularly directed, shall be paid to the complainant; and for want of sufficient distress the offender shall be committed by warrant under the hand and seal of such justice, to the common gaol or house of correction for such term not exceeding six calendar months, as such justice shall think proper, unless penalty sooner paid.

Application of Provisions.—§ 75. (a) In every city where there shall be established a recorder's court, or any other court, civil or criminal, having local jurisdiction, and wherein jurors shall be required, the clerk of such court shall annually prepare the jurors' book for such city; and the recorder, chairman or presiding member of such court, and the clerk of such court, shall respectively perform the duties in respect of such books, ballots and jury lists, as herein before prescribed to the quarter sessions and the officers thereof; and all other duties by this act prescribed to the sheriffs, shall, as respects grand and petit juries, be performed by the bailiff or other officer as aforesaid, with the like form of proceeding. § 76. The like powers and duties imposed by this act on

(a) Amended by 14 & 15 V., c. 65, as to towns hereafter becoming cities.

justices are also to devolve on aldermen of cities. § 77. The duties of sheriffs and high bailiffs, clerks of the peace and clerks of recorders' courts, may be performed by deputies. § 78, (a) prescribes the duties of coroners upon writs of *venire facias*. § 79. The directions in this act respecting precepts for grand jurors' panel at the assizes, shall be observed and followed with respect to the general quarter sessions and recorders' courts. § 80. Similar provision made respecting petit jurors. § 81, (b) relates to the table of fees to be taken under this act. § 82. In case of no sittings or sessions after the 1st October in any county or city at which the jury lists are hereby required to be made from the jurors' books, the Governor may by warrant fix a day for such purpose. § 83. As to the oath of the clerk of the peace in certain cases. § 84. Former powers of superior courts continued with respect to issuing any writ or precept, or making any award or order for the return of a jury for the trial of any issue, or for the amending or enlarging the panel of jurors, &c. § 85. Justices of assize may, if they think fit, direct the sheriff to summon and empanel such number of jurors, not exceeding 144, [and by 14 & 15 V., c. 65, 288, for the county of York, or any union of such county,] as they may think fit to serve indiscriminately on the criminal and civil side. § 86, provides for *tales-men* in default of jurors. § 87. Indemnity to the sheriff for empannelling jurors not qualified. § 88. The sheriff is to note the non-attendance of jurors on the jury list. § 89. Jurors attending shall be entitled to a certificate from the sheriff of attendance on payment of 1s. § 90. The high bailiffs of cities are also to note on the jury list the non-attendance of jurors. § 91. Jurors attending entitled to a certificate from the high bailiff on payment of 1s. § 92. Relates to attaints and inquests. § 93. Embracery punishable as heretofore. § 94. Affirmation in lieu of oaths may be made by certain parties. § 95. Verdicts not to be impeached by non-compliance with any of the directions in this act. § 96. This act not to affect the power of any court or judge in regard to trials by jury, jury process, juries or jurors, except as repealed or altered by this act. § 97. Repeals former acts mentioned in schedule C, § 98. (c)

Grand Jury.

By 14 & 15 V., c. 66, § 1, in case *twelve* grand jurors

(a) Amended by 14 & 15 V., c. 65.

(b) Repealed by 16 V., c. 120, 19 & 20 V., c. 92, and a new tariff fixed.

(c) This and the remaining sections, to § 101 inclusive, are repealed by 14 & 15 V., c. 65, § 2.

summoned do not appear, the court on request of the crown counsel, may command the sheriff to supply the deficiency by *tales-men* present and duly qualified.

Payment of Petit Jurors.

By 14 & 15 V., c. 14, § 1, every petit juryman actually attending any of the courts of assize and nisi prius, oyer and terminer, general gaol delivery, general quarter sessions of the peace, or county courts in Upper Canada, shall be entitled to *five shillings* per day, for every day he shall actually attend such court, and *six pence* per mile for every mile he shall necessarily travel from his place of residence to the said court, or such other sum as the county council shall by by-law from time to time fix and determine. The distance to be ascertained by the declaration of the sheriff's bailiff summoning such juror, or by the declaration of the juror himself; any juror making a false declaration shall forfeit his right to travelling expenses and attendance at court. § 2. A pay list to be made by the sheriff in the form set forth by the schedule, and he is to attend or cause some officer to attend at the opening of the court each morning the court shall sit for the trial of causes by jury, and upon the jurors being called over, shall check and mark the word "present" or "absent," as the case may be, in the proper column of such list, opposite the name of every juror, and on the last day of the sitting of such court, shall certify and return to the treasurer of the county the said pay list. § 3. The treasurer to pay every juror the sum so appearing due to him on such list. § 4. The sheriff to receive a certain allowance for such pay list. § 5. The marshal or clerk of assize, the clerk of the county court, or clerk of the peace, as the case may be, at the opening of the court, and before any other business is proceeded with, shall call over the names of the petit jurors, that the sheriff, or his officer, may check who are present or absent. § 6. Jurors not appearing when so called, shall not be entitled to any pay for that day, and be subject to such fine as to the court shall seem meet. § 7. The sum of 15s. to be paid to the clerk of assize, and 7s. 6d. to the clerk of the county court, on every record entered for trial or assessment, to be forthwith paid over to the treasurer, and form part of the jurors' fund. § 8. In all criminal cases in which by law the party prosecuting, or prosecuted shall be liable to pay the costs of the prosecution, the officer of the court shall charge and receive from such party 15s. over and above other liabilities, to form part of the jurors' fund, and be paid over, as above. § 9. All fines and penalties imposed upon and

levied in the several counties in Upper Canada, not payable to the Receiver-General, and all fines upon jurors for non-attendance, shall be paid to the county treasurer, and form part of the jurors' fund. § 10. County councils authorised to raise and appropriate such sums of money, as in their judgment shall be sufficient to pay the jurors according to the terms of this act, in case the sums appropriated by this act shall not be sufficient. § 11. County councils are also authorised by by-law, in their discretion, to provide for the payment of grand jurors. § 12. The foregoing provisions not to be in force or apply to any county, until the county council of such county, desirous of availing themselves thereof, shall appropriate such a sum of money as will, in their judgment, with the moneys applicable under this act, form a fund sufficient to pay jurors under the provisions aforesaid, or any deficiency that may occur. § 13. The treasurer of the county, in which a jury fund shall be so provided, shall give notice thereof to the sheriff, who shall thereupon perform the duties imposed upon him under this act. § 14. The court or judge may order records to be entered, and the business of the court proceeded with, on the first day of the sitting of the court.

Of Challenges.

Challenges are of two kinds, viz., either to the *array*, which must be in writing; or the *polls*, which may be verbal, and may be made either on the part of the king, (*i. e.* the prosecutor,) or of the prisoner.—4 *Bl. Com.* 352. A challenge to the array is an exception to the whole panel in which the jury are arrayed. There are two descriptions of causes of challenge to the array, viz., *principal causes* of challenge, and causes of challenge to *favour*. The following are principal causes of challenge to the array, viz., if the sheriff, or other officer, be of kindred to the plaintiff or defendant; if any one or more of the jury be returned at the nomination of either party; if the plaintiff or defendant have an action of battery against the sheriff, or the sheriff against either party; so, if either party have an action of debt against the sheriff; but otherwise, if the sheriff have an action of debt against either party; or if the sheriff have parcel of the land depending upon the same title; or if the sheriff, or his bailiff which returned the jury, be under the distress of either party; or if he be counsel, attorney, officer or servant, of either party; gossip, or arbitrator in the same matter, and treated thereof.—1 *Inst.* 156. A challenge to the *array* for favour, arises from matter fit to be left to the

conscience and discretion of the triers, under the particular circumstances of each individual case. Thus, it is said, that if one of the jurors returned be a tenant to the sheriff; or if there be a family connexion between one of the jurors and the sheriff, this may be ground of challenge to the array for favour: that is, matter to be left to the triers to decide whether it indicates such partiality as should avoid the array.—3 *Bl. Com.* 359.

Challenges to the *polls* are challenges of individual jurymen, and are either peremptory or for cause; peremptory challenges are at the mere will of the party, without any reason given.—*Co. Lit.* 156. In cases of treason or felony, the prisoner by the common law might peremptorily challenge 35, but by stat. 22 H. VIII., c. 14, § 6, the number was reduced to 20, in petit treason, murder and felony; and in case of high treason and misprision of treason, it was taken away by stat. 33 H. VIII., c. 23, but revived by stat. 1 & 2 P. & M., c. 10.

*By 3 W. IV., c. 4, and 4 & 5 V., c. 24, § 16, every peremptory challenge by any person indicted for treason or felony, beyond the number by law allowed, shall be void, and the trial may proceed, as if no such challenge had been made.

In cases of *misdeemeanor*, there is no right, at common law, to peremptory challenge, but it is usual for the officer to abstain from calling any reasonable number of names objected to by either party, taking care to leave enough to form a jury.—*Dickenson Q. S.* p. 344. (a)

A challenge to the *polls*, or of individual jurymen, is like a challenge to the array, a principal challenge, or a challenge to the favour. The grounds of principal challenge are—1. The rank of the party, as being a peer of the realm. 2. For some personal incapacity, as if a jurymen be an alien or a minor. 3. On account of some palpable ground of bias, as if the juror be of the blood or kindred of either party; or under his power or influence; (b) as tenant or servant; or of counsel with him—4 *Bl. Com.* 361; or if he has declared his opinion beforehand *Haw. b. 2, c. 43, § 29*; or has indicted the party for the same cause—*Lamb*, 554; or been upon a former jury upon the same matter, though between other persons: or arbitrator, unless indifferently chosen by either party; or action pending between the juror and either of the parties; or bribing a juror.—1 *Inst.* 157. 4. On account of

(a) But now by stat. 13 & 14 V., c. 55, (jury act) § 58, a defendant on trial for *misdeemeanor* may challenge two jurors,

(b) Religious persuasion not a ground of challenge.—See 16 V., c. 120, § 8.

some crime or misdemeanor affecting the juror's character, as a conviction of treason, felony or perjury; or if he be outlawed; or hath been attainted of false verdict; præmunire; or forgery: but it seems that none of the above cited challenges are principal ones, but only to the favour, unless the record of the outlawry, judgment or conviction, be produced, if it be a record of another court; or the term be shewn, if it be a record of the same court.—3 *Bl. Com.* 363.

As to challenges for suspicion of favour, although a juror has not given apparent marks of partiality, yet there may be sufficient reason to suspect he may be more favourable to one side than the other, and this is the reason for a challenge to the favour. The causes of favour are infinite, and in these inducements to suspicion of favour, the question is, "whether the juryman be indifferent as he stands unsworn," for a juryman ought to be perfectly impartial to either side.—*Co. Lit.* 157. (b).

As the challenge to the *array* must be before any of the jury are sworn, so challenge to the *polls* must be before the particular jurors are sworn.—*Bull N. P.* 307. After a challenge to the array, the party may challenge the polls; but after a challenge to the polls there can be no challenge to the array; and he who has more than one cause of challenge against a juror, must take them all at once: but if he challenge a juror, and the cause be found insufficient, he may, nevertheless, afterwards challenge him peremptorily, for perhaps the very challenge may create a prejudice in the mind of the juror so challenged.—3 *Bl. Com.* 363.

A principal cause of challenge being grounded on a manifest presumption of partiality, if it be found true, it unquestionably sets aside the array without any other trial than its being made out to the satisfaction of the court before which the same is returned. But a challenge to the favour, when the partiality is not apparent, must be left to the discretion of the triers.—*Co. Lit.* 158. (a). If the array be challenged, it lies in the discretion of the court to determine *how* it shall be tried;—sometimes it is done by two attorneys, sometimes by two coroners; and sometimes by two of the jury; with this difference—that if the challenge be for kindred in the sheriff, it is most fit to be tried by two of the jurors returned; if the challenge be on account of partiality—then by any other two assigned thereunto by the court.—2 *Hale*, 275. When a challenge is made to the array, for favour, the prosecutor may either confess it or plead to it;—if he plead, the judges assign triers to try the array, who seldom exceed two; who being chosen and sworn, the clerk of the peace declares

to them the challenge, and concludes to them thus—"and so the charge is, to inquire whether it be an impartial array or a favourable one"; and if they affirm it, the clerk enters underneath the challenge, "*affirmatur*"; but if the triers find it favourable, then thus—"calumnia vera," or words to that effect.

As to challenges to the polls,—if a juror be challenged before any juror be sworn, two triers are appointed by the court; and if he be found indifferent, and sworn, he and the two triers shall try the next challenge; and if he be tried, and found indifferent, then the two first triers shall be discharged; and the two jurors tried, and found indifferent, shall try the rest. But if the prosecutor challenge ten, and the prisoner one, and the twelfth be sworn, then he that remains shall have added to him one chosen by the prosecutor, and another by the prisoner, and they three shall try the challenge; and if six be sworn, and the rest challenged, the court may assign any two of the six sworn, to try the challenges.—2 *Hale*, 275. The truth of the matter alleged, as cause of challenge, must be made out by witnesses to the satisfaction of the triers; also, the juror challenged, may, on a *voir dire*, be asked such questions as do not tend to his disgrace; but a juror may not be asked any questions as tend to discover matters of infamy or shame.—*Salk.* 183. Nor may a juror be asked whether he has expressed an opinion hostile to the party challenging.—*R. v. Edmonds*, 4 *B. & A.* 471.

JUSTICES OF THE PEACE.

The Queen's Majesty is, by her office and dignity royal, the principal conservator of the peace within all her dominions; and may give authority to any other to see the peace kept, and to punish such as break it; hence it is usually called the Queen's peace. Justices of the peace are appointed by the Queen's special commission under the great seal, which appoints them all jointly and separately to keep the peace, and any two or more of them to enquire of and determine felonies and other misdemeanors.

Nature of the Office.

The office of a justice of the peace is partly ministerial, and partly judicial. His ministerial duties extend to the investigation of such criminal charges as are brought before him and are properly the subjects of indictment at the sessions or assizes; also to the bailment or commitment of prisoners, according to the nature of the offence, and the rules prescribed by law. In all such cases a justice of the peace is the

ministerial officer by or through whom the party accused is compelled to appear and stand his trial before the proper tribunal. In matters of minor importance he is also invested by various statutes with a judicial authority, and may himself proceed to adjudication in a summary way. His decision is, however, in all cases open to appeal, unless the right of appeal be expressly taken away by the particular statute under which he may be acting. His judgment is termed a "conviction," and the manner of proceeding in such cases is defined by the provincial statute 16 V., c. 178, the particulars of which will be found under the head of "*Summary Conviction.*"

No individual of the community is capable of rendering more valuable service to the state than a "justice of the peace," whether considered in relation to his ministerial or his judicial duties. He is the connecting link between the law as a mere passive enactment, and the enforcement of its provisions; the mainspring in fact by which the law is put in motion and made subservient to the ends of justice. He is emphatically a conservator of the peace, and without his rule and oversight the community at large would be continually exposed to acts of violence and outrage. The peaceable and well-disposed confide in his presence: in his neighbourhood offenders pause before the commission of the crime meditated, and are no doubt often times deterred from doing that which but for the proximity of a vigilant magistrate they might otherwise be tempted to do.

It is important that those selected to fill the office of justices of the peace should be duly qualified; that they should be in fact, in the words of the statute 6 V., c. 3, "the most sufficient persons dwelling in the said districts." This statute contains the following provision with respect to their property qualification:—

Qualification. (a).

By 6 V., c. 3, § 1, it is enacted, that all justices of the peace to be appointed in the several districts of this province shall be the most sufficient persons dwelling in the said districts. § 2. No attorney, solicitor, or proctor, shall be a justice of the peace while so practising. § 3. After the 1st January, 1843, no person shall be a justice, or act as such, who shall not have in his actual possession, to his own use, a real

(a) By 19 & 20 V., c. 46, upon the issue of any new commission, justices are not required to renew the oath of qualification, unless they shall in the meantime have parted with the estate upon which they had so qualified.

estate, either in free or common soccage, or *en fief*, or *en rōture*, or *en franc aleu*, in absolute property or for life, or by *emphyteose* or lease for one or more lives, or originally created for a term not less than twenty-one years, or by usufructuary possession for his life in lands, tenements, or other immoveable property, lying and being in this province, of or above the value of £300 currency, over and above all incumbrances, or who shall not, before the 1st day of January, 1843, or before he takes upon himself to act as a justice of the peace, take and subscribe the following oath, before some one justice of the peace for the district where he intends to act :

I, A. B. do swear, that I truly and *bona fide* have, to and for my own proper use and benefit, such an estate (*specifying the nature of such estate, whether land, if land, designating the same by its local description, rents, or any thing else*), as doth qualify me to act as justice of the peace for the district of _____, according to the true intent and meaning of an act of the provincial parliament, made in the sixth year of the reign of her Majesty Queen Victoria, and intituled, *An Act for the qualification of Justices of the Peace*; and that the same is lying and being (or issuing out of lands, or tenements or hereditaments, situate) within the township, parish or seigniority of _____, (or in the several townships, parishes, or seigniorities of _____,) *or as the case may be*). So help me God.

A certificate of which oath having been so taken shall be forthwith deposited by the said justice, who shall have taken the same, at the office of the clerk of the peace, to be filed among the records of the sessions. § 4. The clerk of the peace shall, upon demand, deliver copies of such oath to any person on payment of *one shilling*, which copy shall be evidence at law. § 5. Any justice acting without taking and subscribing said oath, or without being qualified according to the act, shall for every offence forfeit £25, one moiety to her Majesty, and the other to the informer; to be recovered, with full costs, in any court of competent jurisdiction in the district, and in such action the proof of qualification shall be upon the *defendant*. § 6. If any defendant shall intend to insist upon any lands, tenements or real estate, not mentioned in the oath, as constituting the whole or any part of his qualification to act as a justice at the time of the alleged offence, he shall, at or before the time of pleading, deliver to the plaintiff, or his attorney, notice in writing, specifying such lands, tenements or real estate, and the township or place, and the county or counties where situate, and the plaintiff may thereupon, with

leave of the court, discontinue such action, on payment of the defendant's costs. § 7. Provided that, upon trial, no other lands or real estate than such as are mentioned in such oath or notice, shall be insisted upon by the defendant. § 8. When the property mentioned in the oath or notice shall be liable to incumbrances, together with other lands, the property mentioned in the oath or notice shall be deemed liable only so far as the other lands are not sufficient to pay the same. § 9. When the qualification consists of *rent*, it shall be sufficient to specify so much of the property, out of which such rent is issuing, as shall be sufficient to secure such rent. § 10. In case the plaintiff shall discontinue such action, other than as aforesaid, or judgment be given against him, the defendant shall recover *treble* costs. § 11. After action brought and due notice given, the court may stay proceedings in any subsequent action for any *prior* offence: provided such first action be prosecuted with effect. § 12. The court may require the plaintiff to declare upon oath that such action has been brought by him without fraud, and not for the purpose of protecting the defendant from any other action; and if not made to the satisfaction of the court, the action shall be dismissed with costs. § 13. False statements in any oath under this act to be treated as wilful and corrupt perjury. § 14. Actions to be commenced within *six calendar months* after the fact. § 15. Exemptions from the act: the members of her Majesty's Legislative Council, Executive Council, judges of the King's Bench or Queen's Bench, vice-chancellor, provincial judges of the inferior districts of St. Francis, Gaspe, or any district judge, her Majesty's attorney-general, solicitor-general, advocate-general, and any Queen's counsel. § 16. Sheriffs and coroners disqualified from acting as justices *pro tem*. § 17. Fines and penalties, payable to her Majesty under this act, to remain at the disposal of the *provincial parliament*, for the use of the province.

By 9 V., c. 41, § 1, the Governor in council is authorised to appoint justices of the peace in remote parts of the province, not being within the constituted limits of any district; and such justices need not be stated residents, nor possess any property qualification. § 2. And may hold and exercise all the powers (but subject to the laws in force) regarding the office of justice of the peace. § 3. Commitments made by them to be to the nearest common gaol. § 4. And appeals against their decisions to the nearest general quarter sessions, at any time within six calendar months.

Form of the Commission of the Peace.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, &c.

To (the names of the justices being here inserted), esquires, greeting: KNOW YE, that we have assigned you, jointly and severally, and every one of you, our justices, to keep the peace in our county of , and to keep, and cause to be kept, all ordinances and statutes for the good of the peace, and for the preservation of the same, and for the quiet rule and government of our people, made in all and singular their articles in our said county, according to the force, form and effect of the same; and to chastise and punish all persons that offend against the form of those ordinances and statutes; and to cause to come before you, or any one of you, all those who to any one or more of our people concerning their bodies, or the firing of their houses, having used threats, to find security for the peace or their good behaviour towards us and our people; and if they shall refuse to find such security, then them in our prisons, until they shall find such security, to cause to be safely kept. We have also assigned you, and every two or more of you, our justices, to enquire more fully the truth, by the oaths of the good and lawful men of the county aforesaid, by whom the truth of the matter may be better known, of all and all manner of felonies, poisonings, trespasses, forestallings, regratings, engrossings and extortions whatsoever; of all and singular the crimes and offences of which the justices of the peace may and ought lawfully to enquire, by whomsoever, and after what manner soever, in the said county, had done or perpetrated, or which hereafter shall there happen to be done or attempted. And also, of all those who in the aforesaid county, in companies, against our peace in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride. And also, of all those who shall have lain in wait, or hereafter shall presume to lie in wait, to maim, or cut, or kill our people. And also, of all victuallers, and all and singular other persons who in the abuse of weights and measures, or in selling victuals, against the form of the ordinances and statutes, or any one of them, therefore made for the common benefit of our province of Canada, and our people thereof, have offended or attempted, or hereafter shall presume, in our said county, to offend or attempt. And also of the sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers who, in the execution of their offices about the premises, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been, or hereafter shall happen to be careless, remiss or negligent, in our said county; and of all and singular articles and circumstances, and all other things whatsoever that concern the premises, or any of them, by whomsoever, and after what

manner soever, in our aforesaid county, done or perpetrated, or which shall hereafter happen to be done or attempted in what manner soever. And to inspect all indictments whatsoever before you or any of you taken or to be taken, or before others, late our justices of the peace in our aforesaid county made or taken and not yet determined; and to make and continue process thereupon against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted, until they can be taken, surrender themselves, or be outlawed. And to hear and determine all and singular the felonies, poisonings, trespasses, forestallings, regratings, engrossings, extortions, unlawful assemblies and indictments, aforesaid and all and singular other the premises according to the laws and statutes of our said province of Canada, or form of the ordinances and statutes aforesaid, it has been accustomed or ought to be done to chastise and punish: *provided always*, that if a case of difficulty upon a determination of any of the premises before you, or any two or more of you, should happen to arise, then let judgment in nowise be given before you or any two or more of you unless in the presence of one of our justices of our court of our bench, or one of our justices appointed to hold the assizes in the said county; and therefore we command you, and every of you, that to keeping the peace, ordinances, and statutes, and all and singular other the premises, you diligently apply yourselves, and that at certain days and places which you, or any such two or more of you as is aforesaid, shall appoint for the purposes, into the premises you make enquiries, all and singular the premises you hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains according to the law and custom of Canada; saving to us our amerancements and other things thereupon belonging. And we command, by the tenor of these presents, our sheriff of our said county, that at certain days and places which you, or any such two or more of you, shall make known unto him, he cause to come before you, or any such two or more of you as is aforesaid, such and so many good and lawful men of his county, by whom the truth of the matter in the premises shall be better known and inquired into.

In testimony, &c.

The commission is determinable,—first—By the demise of the Crown, that is, (by the 1 Anne, c. 8) in six months afterwards. Secondly—By express writ under the great seal.—*Lamb* 67. Thirdly—By writ of *supersedeas*, but this does not totally destroy it, as it may be revived again by another writ, called a *procedendo*. Fourthly—By a new commission, which virtually, though silently, discharges all the former justices that are not included in it, for two commissions cannot subsist at once: and lastly (by 1 Mar. *Sess.* 2, c. 8), by accession to the office of sheriff; and according

to some opinions, also, by succeeding to the office of coroner.—*Dalt. c. 3,—1 Bl. Com. p. 353.*

Oath of Office. (BURN.)

Ye shall swear, that as justices of the peace, in the county of _____, in all articles in the Queen's commission to you directed, you shall do equal right to the poor and to the rich, after your cunning, wit, and power, and after the laws and customs of the province of Canada, and statutes thereof made; and ye shall not be of counsel of any quarrel hanging before you; and that ye hold your sessions after the form of the statutes made; and the issues, fines, and ameriaments, that shall happen to be made, and all forfeitures which shall fall before you, ye shall cause to be entered without any concealment, (or embezzelling) and truly send them to the Queen's exchequer; ye shall not let, for gift or other cause, but well and truly you shall do your office of justice of the peace in that behalf; and that you take nothing for your office of justice of the peace to be done, but of the Queen, and fees accustomed, and costs limited by statute; and ye shall not direct, nor cause to be directed, any warrant (*by you to be made*) to the parties, but ye shall direct them to the bailiffs of the said county, or other the Queen's officers or ministers, or other indifferent persons, to do execution thereof.—So help you God.

Of their Power, Duty, and Office.

First—The commission empowers them to conserve the peace. Second—It empowers any two, or more, to hear and determine all felonies and other offences mentioned in the commission. His jurisdiction is confined to the county for which he is commissioned. It seems, however, that recognizances and informations, voluntarily taken before him, in any place, are good.—*2 Haw., c. 8, § 28.* But a justice has no jurisdiction, either over the offence or the offender, when the one is committed, and the other abiding, in another county. There are cases, however, where the presence of an offender within the county gives the justice authority, arising out of the necessity of preserving the peace, to proceed against the party offending. Thus, if a man commit a felony in one county and goes into another county, a justice of such other county may take his examination, and the information against him, in that county, and may commit him, and bind over the witnesses to give evidence at the trial; and in short, proceed in all respects as if the offence had been committed within his jurisdiction.—*2 Hale, 51.*

By the recent statutes relating to "Summary Convictions" and "Indictable Offences," 16 V., c. 178, 179, a party against whom a warrant has been issued escaping and going

into another jurisdiction, whether in Upper or Lower Canada, may there be arrested and conveyed back before the justice or justices issuing the warrant. The provisions contained in these statutes are more fully detailed under their respective titles above referred to.

By statute 1 & 2 P. & M., c. 13, in cases of *manslaughter* and *felony*, justices of the peace are directed to take the *examination* merely, of the prisoner, and certify the same at the next gaol delivery; since which enactment, it has been usual for the justices, in all cases of *great moment*, to commit the prisoner for trial at the next assizes, or gaol delivery; and only in smaller matters—as in cases of petit larceny, and offences *not capital*, to bind over to the quarter sessions.—2 *Hale*, 46. But now by *7 W. IV., c. 4, § 2, the courts of *general quarter sessions* are empowered to try every case of *simple larceny* and *accessories* to larceny, except the chairman be not a barrister; in which case, the larceny to be tried must not exceed in value £20. By a subsequent statute, the 8 V., c. 13, § 3, the senior judge of the district court being also a justice of the peace for such district, shall preside as chairman at the quarter sessions. The commission also admonishes them, in all cases of difficulty, to let judgment in nowise be given thereon, unless in the presence of *one of the judges* appointed to hold the assizes for the district. It may be further observed, that the offences of *murder* and *manslaughter* are not mentioned in the commission; from which circumstance it may be inferred, that justices of the peace (in sessions) could never claim jurisdiction over these offences.—*Fitz & Straund*, 9 *H. IV.*, 24 *Coron.* 457. Where a matter of right or title to property comes in question, justices of the peace have then no jurisdiction.—*R. v. Barnaby*, 3 *Salk.* 217; 2 *Ld. R.* 900. A justice ought not to act in any case in which he himself is interested, but should cause the party to be convened or carried before some other justice, or desire the aid of some other justice who is present.—*Dalt.* 173. And in all cases where a justice is empowered to hear and determine a matter out of sessions, he should make a *record* in writing, under his hand, of all the matters and proofs; and all convictions should be returned by him to the sessions.—*Dalt. c.* 115; 2 *T. R.* 385.

By 4 & 5 V., c. 12, § 1, justices of the peace are required to make a return of convictions for fines and penalties to the next general quarter sessions, and of the receipt and application of the moneys, (§ 2) under the penalty of £20.

The Official Duties of a Justice of the Peace.

These duties extend to indictable offences, as well as those of minor importance, which by statutory law may be disposed of judicially by summary conviction (a), such as assault and trespass, or the infringement of some statutory enactments imposing a fine or penalty for the offence committed. There are some cases, however, of larceny, which may now also be disposed of summarily. Where the value of the property stolen does not exceed *five shillings*, the recorder of any city may, under the recent statute 20 V., c. 27, convict and sentence the offender to imprisonment, with or without hard labour, for a period not exceeding *three months*; and by § 3, where the property stolen *exceeds* the value of five shillings, and the recorder is of opinion it is a case that may be disposed of in a summary way, he is authorised to do so, and to sentence the offender to imprisonment, with or without hard labour, for any term not exceeding *six calendar months*.—§ 5. And where any person is charged before any justice or justices with any offence mentioned in this act, and in the opinion of such justice or justices the case may be a proper one to be disposed of by a recorder, or by a police magistrate, such justice or justices may, if he or they see fit, remand the accused for further examination before the recorder, or nearest police magistrate in like manner as under the 16 V., c. 179, § 13. And so juvenile offenders whose age does not exceed sixteen years, may under the 20 V., c. 29, in cases of simple larceny, upon conviction, upon confession or proof before two or more justices in open court be committed to the common gaol, or house of correction within the jurisdiction of such justices, with or without hard labour, for any term not exceeding *three calendar months*, or, in their discretion, forfeit and pay a sum not exceeding £5. But if such justices shall be of opinion that the charge is a fit subject for prosecution by indictment, or the party charged shall object to summary trial under this act, then they shall deal with the case as if this act had not been passed.

These statutes will be found more fully detailed under their respective titles of "*Larceny*" and "*Juvenile Offenders*," and are here incidentally noticed in order that the attention of justices may be drawn to them.

We have now to consider the course of proceeding with regard to indictable offences.

All felonies, and misdemeanors are strictly speaking indictable offences.

(a) See title "*Summary Conviction*."

Felonies comprise as well the highest order of offences such as murder, manslaughter, burglary, arson, robbery, forgery and the like, as also cases of simple larceny, such as the commission of a bare theft unattended by any other aggravation of the crime; all which, as such, are indictable offences; misdemeanors, are offences of a lesser degree than felony. Every attempt to commit a felony is a misdemeanor, and so is any incitement or solicitation to commit a crime a misdemeanor; as where the offender incited and solicited a servant to steal his master's property; the servant was honest, and informed his master, and no theft was committed. But the instigator was indicted for the misdemeanor and convicted. Lord Kenyon observing that the bare solicitation of a crime was a misdemeanor, *R. v. Higgins*, 2 East. 5; so parties guilty of any public nuisance, such as obstructing a public highway and the like may be indicted for a misdemeanor; and the publication of a defamatory libel is a misdemeanor. More upon this subject will be found under the head of misdemeanor, to which the reader is referred.

The course of procedure for indictable offences is provided for by statute, 16 V., c. 179, as follows:

Indictable Offences.

Complaint.—§ 1. That in all cases where a charge or complaint (A) is made before any one or more of her Majesty's justices of the peace for any territorial division of Upper Canada, that any person has committed, or is suspected to have committed, any treason, felony or other indictable misdemeanor or offence within the limits of the jurisdiction of such justice or justices of the peace, or that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere out of the jurisdiction of such justice or justices, is residing or being, or is suspected to reside or be within the limits of the jurisdiction of such justice or justices, then, and in every such case, if the person so charged or complained against shall not then be in custody, it shall be lawful for such justice or justices of the peace to issue his or their warrant (B) to apprehend such person, and to cause him to be brought before such justice or justices, or any other justice or justices for the same territorial division, to answer such charge or complaint and to be dealt with according to law: provided always, that in all cases it shall be lawful for such justice or justices to whom such charge or complaint shall be preferred, if he or they shall so think fit, instead of issuing in the first instance his or their warrant to apprehend the

person so charged or complained against, to issue his or their summons (C) directed to such person, requiring him to appear before the said justice or justices, at the time and place to be therein mentioned, or before such other justice or justices of the same territorial division as may then be there, and if, after being served with such summons in manner hereinafter mentioned, he shall fail to appear at such time and place, in obedience to such summons, then, and in every such case, the said justice or justices, or any other justice or justices of the peace, for the same territorial division, may issue his or their warrant (D) to apprehend such person so charged or complained against, and cause such person to be brought before him or them, or before some other justice or justices of the peace for the same territorial division, to answer to the said charge or complaint, or to be further dealt with according to law: provided nevertheless, that nothing herein contained shall prevent any justice or justices of the peace from issuing the warrant hereinbefore first mentioned, at any time before or after the time mentioned in such summons for the appearance of the accused party.

Indictment—Warrant thereon.—§ 2. That when any indictment shall be found by the grand jury in any court of oyer and terminer or general gaol delivery, or in any court of general quarter sessions of the peace, against any person who shall then be at large, and whether such person shall be bound by any recognizance to appear to answer to any such charge or not, the person who shall act as marshal at such court of oyer and terminer or gaol delivery, or as clerk of the peace at such sessions at which the said indictment shall be found, shall, at any time afterwards after the end of the sessions of oyer and terminer or gaol delivery, or sessions of the peace, at which such indictment shall have been found, upon application of the prosecutor, or of any person on his behalf, and on payment of a fee of one shilling, if such person shall not have already appeared and pleaded to such indictment, grant unto such prosecutor or person a certificate (F) of such indictment having been found; and upon production of such certificate to any justice or justices of the peace for the county or united counties in which the offence shall in such indictment be alleged to have been committed, or in which the person indicted in and by such indictment shall reside or be, or be supposed or suspected to reside or be, it shall be lawful for such justice or justices, and he or they are hereby required to issue his or their warrant (G) to apprehend such person so indicted, and to cause him to be brought before such justice or justices or any other justice or

justices for the same district, to be dealt with according to law: and afterwards if such person be thereupon apprehended and brought before any such justice or justices, such justice or justices, upon its being proved upon oath or affirmation before him or them, that the person so apprehended is the same person who is charged and named in such indictment, shall without further inquiry or examination, commit (H) him for trial, or admit him to bail in manner hereinafter mentioned; or if such person so indicted shall be confined in any gaol or prison for any other offence than that charged in the said indictment at the time of such application and production of such certificate to such justice or justices as aforesaid, it shall be lawful for such justice or justices, and he or they are hereby required, upon its being proved before him or them upon oath or affirmation, that the person so indicted and the person so confined in prison are one and the same person, to issue his or their warrant (I), directed to the gaoler or keeper of the gaol or prison in which the person so indicted shall then be confined as aforesaid, commanding him to detain such person in his custody, until, by her Majesty's writ of *Habeas Corpus*, he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall be otherwise removed or discharged out of his custody by due course of law: provided always, that nothing herein contained shall prevent or be construed to prevent the issuing or execution of bench warrants, whenever any court of competent jurisdiction may think proper to order the issuing of any such warrant.

Warrant on Sunday.—§ 3. That it shall be lawful for any justice or justices of the peace to grant or issue any warrant as aforesaid, or any search warrant on a Sunday as well as on any other day.

Information and complaint—Search Warrant, &c.—§ 4. That in all cases when a charge or complaint for any indictable offence shall be made before such justice or justices aforesaid, if it be intended to issue a warrant in the first instance against such party or parties so charged, an information and complaint thereof (A) in writing, on the oath or affirmation of the informant, or of some witness or witnesses in that behalf, shall be laid before such justice or justices: provided always, that in those cases only when it is intended to issue a summons instead of a warrant in the first instance, and where it is so specially provided in some act of parliament, it shall not be necessary that such information and complaint shall be in writing, or be sworn to or affirmed in manner aforesaid; but in every such case so provided for in

some act of parliament as aforesaid, such information and complaint may be by *parol* merely, and without any oath or affirmation whatsoever to support or substantiate the same: provided also, that no objection shall be taken or allowed to any such information or complaint for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution, before the justice or justices who shall take the examination of the witnesses on that behalf as hereinafter mentioned; and if any credible witness shall prove upon oath (E 1) before a justice of the peace, that there is reasonable cause to suspect that any property whatsoever, on or with respect to which any larceny or felony shall have been committed, is in any dwelling-house, out-house, garden, yard, croft or other place or places, the justice may grant a warrant (E 2) to search such dwelling-house, garden, yard, croft or other place or places, for such property.

Summons or Warrant on Information.—§ 5. That upon such information and complaint being so laid as aforesaid, the justice or justices receiving the same may, if he or they shall think fit, issue his or their summons or warrant respectively as hereinbefore directed, to cause the person charged as aforesaid to be and appear before him or them, or any justice or justices of the peace for the same territorial division, to be dealt with according to law: and every summons (C) shall be directed to the party so charged in and by such information, and shall state shortly the matter of such information, and shall require the party to whom it is directed to be and appear at a certain time and place therein mentioned, before the justice who shall issue such summons, or before such other justice or justices of the peace for the same territorial division as may then be there, to answer to the same charge, and to be further dealt with according to law; and every such summons shall be served by a constable or other peace officer upon the person to whom it is so directed, by delivering the same to the party personally, or, if he cannot conveniently be met with, then by leaving the same for him with some person at his last or most usual place of abode; and the constable or other peace officer who shall have served the same in manner aforesaid, shall attend at the time and place, and before the justice or justices in the said summons mentioned, to depose, if necessary, to the service of such summons; and if the person so served shall not be and appear before such justice or justices, at the time and place mentioned in such summons, in obedience to the same, then it shall be lawful for such justice or justices, to

issue his or their warrant (D) for apprehending the party so summoned, and bringing him before such justice or justices, or before some other justice or justices for the same territorial division, to answer the charge in the said information and complaint mentioned, and to be further dealt with according to law: provided always, that no objection shall be taken or allowed to any such summons or warrant for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecutor before the justice or justices who shall take the examination of the witnesses in that behalf as hereinafter mentioned; but if any such variance shall appear to such justice or justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such justice or justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and, in the meantime, to remand the party so charged, or admit him to bail in manner hereinafter mentioned.

Warrant—Form of, &c.—§ 6. That every warrant (B) hereafter to be issued by any justice or justices of the peace to apprehend any person charged with any indictable offence, shall be under the hand and seal, or hands and seals, of the justice or justices issuing the same, and may be directed to all or any of the constables or other peace officers of the district within which the same is to be executed, or to such constable and all other constables or peace officers in the territorial division within which the justice or justices issuing the same has or have jurisdiction, or generally to all the constables or peace officers within the last-mentioned territorial division; and it shall state shortly the offence on which it is founded, and shall name and otherwise describe the offender; and it shall order the person or persons to whom it is directed to apprehend the offender, and bring him before the justice or justices issuing such warrant, or before some other justice or justices of the peace for the same territorial division, to answer to the charge contained in the said information, and to be further dealt with according to law; and it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in force until it shall be executed; and such warrant may be executed by apprehending the offender at any place within the territorial division within which the justice or justices issuing the same shall have jurisdiction, or, in case of pursuit, at any place in the next adjoining territorial division, and within *seven miles of the border* of such first mentioned territorial division, without having such warrant

backed, as hereinafter mentioned; and in all cases where such warrant shall be directed to all constables or other peace officers within the territorial division within which such justice or justices shall have jurisdiction, it shall be lawful for any constable or other peace officer for any place within such territorial division to execute the said warrant at any place within the jurisdiction for which the said justice or justices shall have acted when he or they granted such warrant, in like manner as if such warrant were directed specially to such constable by name, and notwithstanding the place within which such warrant shall be executed shall not be within the place for which he shall be constable or peace officer: provided always, that no objection shall be taken or allowed to any such warrant for any defect therein, in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution, before the justice or justices who shall take the examination of the witnesses in that behalf as hereinafter mentioned; but if any such variance shall appear to any such justice or justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such justice or justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or to admit him to bail in manner hereinafter mentioned.

Backing Warrant.—§ 7. That if the person against whom any such warrant shall be issued, as aforesaid, shall not be found within the jurisdiction of the justice or justices by whom the same shall be issued, or if he shall escape, go into, reside, or be, or be supposed or suspected to be in any place within this province, whether in Upper or in Lower Canada, out of the jurisdiction of the justice or justices issuing such warrant, it shall and may be lawful for any justice of the peace within the jurisdiction of whom such person shall so escape or go, or in which he shall reside or be, or be supposed or suspected to be, upon proof alone being made on oath of the hand-writing of the justice issuing the same, and without any security being given, to make an endorsement (K) on such warrant signed with his name, authorising the execution of such within the jurisdiction of the justice making such endorsement, and which endorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, and also to all constables and other peace officers of the territorial division where such warrant shall be so endorsed, to execute the same in such other territorial division, and to carry the

person against whom such warrant shall have issued, when apprehended, before the justice or justices of the peace who first issued the warrant, or before some other justice or justices of the peace for the same territorial division, or before some justice or justices of the territorial division where the offence in the said warrant mentioned appears therein to have been committed: provided always, that if the prosecutor or any of the witnesses upon the part of the prosecution shall then be in the territorial division where such person shall have been so apprehended, the constable, or other person or persons who shall have so apprehended such person, may, if so directed by the justice backing such warrant, take and convey him before the justice who shall have so backed the said warrant, or before some other justice or justices for the same territorial division; and the said justice or justices may thereupon take the examination of such prosecutor or witnesses, and proceed in every respect in manner hereinafter directed with respect to persons charged before a justice or justices of the peace, with an offence alleged to have been committed in another territorial division than that in which such persons have been apprehended.

Summoning Witnesses.—§ 8. That if it shall be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence for the prosecution, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of witnesses against the accused, such justice may, and is hereby required to issue his summons (L 1) to such person under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons, before the said justice, or before such other justice or justices of the peace for the same territorial division as shall then be there, to testify what he shall know concerning the charge made against such accused party; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or with some person for him at his last or most usual place of abode) it shall be lawful for such justice or justices before whom such person should have appeared, to issue a warrant (L 2) under his or their hands and seals, to bring and have such person, at a time and place to be therein mentioned, before the justice who issued the said summons, or before

such other justice or justices of the peace for the same territorial division as shall then be there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same; or if such justice shall be satisfied by evidence upon oath or affirmation that it is probable that such person will not attend to give evidence unless compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant (L 3) in the first instance, and which, if necessary, may be backed as aforesaid, and if on the appearance of such person so summoned before the said last mentioned justice or justices, either in obedience to the said summons or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without giving any just excuse for such refusal, any justice of the peace then present, and having there jurisdiction, may, by warrant (L 4) under his hand and seal, commit the person so refusing to the common gaol of the county where such person so refusing shall then be, there to remain and be imprisoned for any time not exceeding ten days, unless he shall in the meantime consent to be examined and to answer concerning the premises.

Examination in presence of the accused.—§ 9. That in all cases where any person shall appear or be brought before any or justice or justices of the peace charged with any indictable offence, whether committed in this province or upon the high seas, or on land beyond the seas, or whether such person appear voluntarily upon summons or have been apprehended, with or without warrant, or be in custody for the same or any other offence, such justice or justices before he or they shall commit such accused person to prison for trial, or before he or they shall admit him to bail, shall in the presence of such accused person, who shall be at liberty to put questions to any witness produced against him, take the statement (M) or oath or affirmation of those who shall know the facts and circumstances of the case, and shall put the same in writing, and such depositions shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same; and the justice or justices before whom any such witness shall appear to be examined as afore-

said, shall, before such witness is examined, administer to such witness the usual oath or affirmation, which such justice or justices shall have full power and authority to do; and if, upon the trial of the person so accused as first aforesaid, it shall be proved upon oath or affirmation of any credible witness, that any person whose deposition shall have been taken as aforesaid is dead, or is so ill as not to be able to travel, and if also it be proved that such deposition was taken in the presence of the person so accused, and that he or his counsel or attorney, had a full opportunity of cross-examining the witness, then if such deposition purports to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution without further proof thereof, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same.

§ 10. *Statement of the Accused Party.*—That after the examinations of all the witnesses on the part of the prosecution as aforesaid shall have been completed, the justice of the peace, or one of the justices by or before whom such examination shall have been so completed as aforesaid, shall, without requiring the attendance of witnesses, read or cause to be read to the accused the depositions taken against him, and shall say to him these words, or words to the like effect: "Having heard the evidence, do you wish to say any thing in answer to the charge? You are not obliged to say any thing unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial." And whatever the prisoner shall then say in answer thereto shall be taken down in writing (N) and read over to him, and shall be signed by the said justice or justices, and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned; and afterwards, upon the trial of the said accused person, the same may, if necessary, be given in evidence against him without further proof thereof, unless it shall be proved that the justice or justices purporting to sign the same did not in fact sign the same: provided always, that the said justice or justices, before such accused person shall make any statement, shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to him to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evidence against him upon his trial, notwithstanding such promise or

threat : provided nevertheless, that nothing herein contained or enacted shall prevent the prosecutor, in any case, from giving in evidence any admission or confession, or other statement of the person accused or charged, made at any time, which by law would be admissible as evidence against such person.

Place of Examination.—§ 11. That the room or building in which such justice or justices shall take such examination and statement as aforesaid, *shall not be deemed an open court* for that purpose ; and it shall be lawful for such justice or justices, in his or their discretion, to order that no person shall have access to, or be or remain in such room or building without the consent or permission of such justice or justices, if it appear to him or them that the ends of justice will be best answered by so doing.

Recognizances of Witnesses.—§ 12. That it shall be lawful for any such justice or justices before whom any such witness shall be examined as aforesaid, to bind by recognizance (O 1) the prosecutor, and every such witness, to appear at the next court of competent criminal jurisdiction at which the accused is to be tried, then and there to prosecute, or prosecute and give evidence, or to give evidence, as the case may be, against the party accused, which said recognizance shall particularly specify the profession, art, mystery or trade of every such person entering into or acknowledging the same, together with his christian and surname, and the township or place of his residence, or if his residence be in a city, town or borough, the recognizance shall also particularly specify the name of the city, town or borough, and when convenient so to do, of the street and the number (if any) of the house in which he resides, and whether he is owner or tenant thereof, or lodger therein ; and the said recognizance, being duly acknowledged by the person so entering into the same, shall be subscribed by the justice or justices before whom the same shall be acknowledged, and a notice (O 2) thereof, signed by the said justice or justices, shall at the same time be given to the person bound thereby ; and the several recognizances so taken, together with the written information (if any), the depositions, the statement of the accused, and the recognizance of bail (if any) in every such case shall be delivered by the said justice or justices, or he or they shall cause the same to be delivered to the proper officer of the court in which the trial is to be had, before or at the opening of the court on the first day of the sitting thereof, or at such other time as the judge, justice or person who is to preside at such court at the said trial shall order and appoint : provided always, that if any such witness shall

refuse or enter into or acknowledge such recognizance as aforesaid it shall be lawful for the justice or justices of the peace by his or their warrant (P 1) to commit him to the common gaol for the county in which the accused party is to be tried, there to be imprisoned and safely kept until after the trial of such accused party, unless in the meantime such witness shall duly enter into such recognizance as aforesaid before some one justice of the peace for the territorial division in which such gaol shall be situate: provided nevertheless, that if afterwards, for want of sufficient evidence in that behalf, or other cause, the justice or justices before whom such accused party shall have been brought shall not commit him or hold him to bail for the offence with which he is charged, it shall be lawful for such justice or justices, or for any other justice or justices for the same territorial division, by his or their order (P 2) in that behalf, to order and direct the keeper of such common gaol where such witness shall be so in custody, to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly.

Remanding the Accused.—§ 13. That if from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination of the witnesses for any time, it shall be lawful to and for the justice or justices before whom the accused shall appear or be brought, by his or their warrant (Q 1) from time to time to remand the party accused for such time as by such justice or justices in their discretion shall be deemed reasonable, not exceeding eight clear days at any one time, to the common gaol or house of correction or other prison, lock-up house, or place of security in the territorial division for which such justice or justices shall then be acting; or if the remand be for a time not exceeding three clear days, it shall be lawful for such justice or justices *verbally* to order the constable, or other person in whose custody such party accused may then be, or any constable or person to be named by the said justice or justices in that behalf, to continue or keep such party accused in his custody, and to bring him before the same or such other justice or justices as shall be there acting at the time appointed for continuing such examination: provided always, that any such justice or justices may order such accused party to be brought before him or them, or before any other justice or justices of the peace for the same territorial division, at any time before the expiration of the time for which such party shall be remanded, and the gaoler or officer in whose custody he shall then be, shall duly obey

such order: provided also, that instead of detaining the said accused party in custody during the period for which such accused party shall be so remanded, any one justice of the peace before whom such party shall so appear or be brought as aforesaid, may (a) discharge him, upon his entering into a recognizance (Q 2, 3,) with or without a surety or sureties, at the discretion of such justice, conditioned for his appearance at the time and place appointed for the continuance of such examination; and if such accused party shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice, or any other justice of the peace who may then and there be present, upon certifying (Q 4) upon the back of the recognizance the non-appearance of such accused party, may transmit such recognizance to the clerk of the peace for the territorial division within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said accused party.

Where Offence Committed in another jurisdiction.—§ 14. And whereas it often happens that a person is charged before a justice of the peace with an offence alleged to have been committed in another territorial division than that in which such person has been apprehended, or in which such justice has jurisdiction, and it is necessary to make provision as to the manner of taking the examination of the witnesses, and of committing the party accused, or admitting him to bail in such a case. Be it therefore enacted, that whenever a person shall appear or be brought before a justice or justices of the peace in the territorial division wherein such justice or justices shall have jurisdiction, charged with an offence alleged to have been committed by him within any territorial division wherein such justice or justices shall not have jurisdiction, it shall be lawful for such justice or justices, and he or they are hereby required to examine such witnesses, and receive such evidence in proof of the said charge as shall be produced before him or them within his or their jurisdiction; and if, in his or their opinion, such testimony and evidence shall be sufficient proof of the charge made against such accused party, such justice or justices shall thereupon commit him to the common gaol for the county where the offence is alleged to have been committed, or shall admit him to bail as hereinafter mentioned, and shall bind over the prosecutor

(a) The word *may* evidently confers a discretionary power on the justice in such cases, and if exercised, it should be with due precaution, and only upon ample and sufficient bail being given for the re-appearance of the accused in cases of serious importance.

(if he have appeared before him or them) and the witnesses, by recognizance accordingly as hereinbefore mentioned; but if such testimony and evidence shall not, in the opinion of such justice or justices be sufficient to put the accused party upon his trial for the offence with which he is so charged, then such justice or justices shall bind over such witness or witnesses as he shall have examined by recognizance to give evidence as hereinbefore is mentioned; and such justice or justices shall, by warrant (R 1) under his or their hand and seal, or hands and seals, order the said accused party to be taken before some justice or justices of the peace in and for the territorial division where the offence is alleged to have been committed, and shall at the same time deliver up the information and complaint, and also the depositions and recognizances so taken by him or them to the constable who shall have the execution of such last mentioned warrant, to be by him delivered to the justice or justices before whom he shall take the accused, in obedience to the said warrant, and which said depositions and recognizances shall be deemed to be taken in the case, and shall be treated to all intents and purposes as if they had been taken by or before the said last mentioned justice or justices, and shall, together with such depositions and recognizances as such last mentioned justice or justices shall take in the matter of such charge against the said accused party, be transmitted to the clerk of the court or other proper officer where the said accused party is to be tried, in the manner, and at the time hereinbefore mentioned, if such accused party shall be committed for trial upon the said charge, or shall be admitted to bail; and in case such accused party shall be taken before the justice or justices last aforesaid, by virtue of the said last mentioned warrant, the constable, or other person or persons to whom the said warrant shall have been directed, and who shall have conveyed such accused party before such last mentioned justice or justices, shall be entitled to be paid his costs and expenses of conveying the said accused party before the said justice or justices; and upon the said constable or other person producing the said accused party before such justice or justices, and delivering him into the custody of such person as the said justice or justices shall direct or name in that behalf, and upon the said constable delivering to the said justice or justices the warrant, information, (if any), depositions and recognizances aforesaid, and proving by oath the hand-writing of the justice or justices who shall have subscribed the same, such justice or justices before whom the said accused party is produced shall thereupon furnish such constable with a receipt or certificate (R 2)

of his or their having received from him the body of the said accused party, together with the said warrant, information, (if any), depositions and recognizances, and of his having proved to him or them, upon oath, the hand-writing of the justice who shall have issued the said warrant; and the said constable, on producing such receipt or certificate to the sheriff or high bailiff, if he shall have been employed by such officer, and if not, then to the treasurer of the county in which such accused party was apprehended, will be entitled to be paid all his reasonable charges, costs and expenses of conveying such accused party into such other county or territorial division, and returning from the same.

Bail.—§ 15. That when any person shall appear before any justice of the peace charged with a *felony* or suspicion of felony, and the evidence adduced shall in the opinion of such justice be sufficient to put such accused party on his trial as hereinafter mentioned, but shall *not furnish such a strong presumption of guilt* as to warrant his committal for trial, it shall and may be lawful for such justice *jointly with some other justice* of the peace to admit such person to bail upon his procuring and producing such surety or sureties as in the opinion of such two justices will be sufficient to ensure the appearance of such person so charged, at the time and place when and where he is to be tried for such offence; and thereupon such two justices shall take the recognizance (S. 1, 2.) of the said accused person and his surety or sureties, conditioned for the appearance of such accused person at the time and place of trial, and that he will then surrender and take his trial and not depart the court without leave: provided firstly, that when the offence committed or suspected to have been committed is a *misdemeanor*, *any one justice may admit to bail* in manner aforesaid; and such justice or justices may at their discretion require that such bail should justify on oath as to their sufficiency, which oath the said justice or justices is and are hereby authorised to administer, and in default of such person procuring sufficient bail, then such justice or justices may commit him to prison, there to be kept until delivered according to law; provided secondly, and it is hereby declared and enacted, that in all cases of felony, where the party accused shall be finally committed as hereinafter provided, it shall be lawful for any county judge who may be also a justice of the peace for the county within the limits of which such accused party is confined, in his discretion, on application made to him for that purpose, to order such accused party or person to be admitted to bail on entering into recognizance with sufficient sure-

ties for such an amount, before two justices of the peace, as the said judge shall direct, and thereupon such justices shall issue a warrant of deliverance (S. 3.) as hereinafter provided, and shall attach thereto the order of the judge directing the admitting of such party to bail; provided lastly, that no justice or justices of the peace, or county judge, shall admit any person to bail accused of treason or murder, nor shall any such person be admitted to bail, except by order of her Majesty's Court of Queen's Bench or of Common Pleas, or one of the judges thereof in vacation, and nothing herein contained, shall prevent such last mentioned judges admitting any person accused of misdemeanor or felony to bail when they may think it right to do so.

Warrant of Deliverance.—§ 16. That in all cases where a justice or justices of the peace shall admit to bail any person who shall then be in any prison charged with the offence for which he shall be so admitted to bail, such justice or justices shall send to or cause to be lodged with the keeper of such prison, a warrant of deliverance (S. 3.) under his or their hand and seal, or hands and seals, requiring the said keeper to discharge the person so admitted to bail if he be detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with such keeper, he shall forthwith obey the same.

Discharge or Commitment.—§ 17. That when all the evidence offered upon the part of the prosecution against the accused party shall have been heard, if the justice or justices of the peace then present shall be of opinion that *it is not sufficient* to put such accused party upon his trial for any indictable offence, such justice or justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry; but if in the opinion of such justice or justices such evidence is sufficient to put the accused party upon his trial for an indictable offence, although it may not raise such a strong presumption of guilt as would induce such justice or justices to commit the accused for trial without bail, or if the offence with which the party is accused be a misdemeanor, then such justice shall admit the party to bail as hereinbefore provided; but if the offence be a *felony*, and the evidence given be such as to raise a strong presumption of guilt, then such justice or justices shall by his or their warrant (T. 1.) commit him to the common gaol for the territorial division to which he may now by law be committed, or in the case of an indictable offence committed on the high seas, or on land beyond the sea, to the common gaol of the territorial division within which

such justice or justices shall have jurisdiction, to be there safely kept until he shall thence be delivered by due course of law.

Conveyance to Gaol.—§ 18. That the constable or any of the constables, or other persons to whom any warrant of commitment shall be directed, authorised by this or any other act, shall convey such accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with such warrant, to the gaoler, keeper or governor of such gaol or prison, who shall thereupon give such constable or other person so delivering such prisoner into his custody a receipt (T. 2.) for such prisoner, setting forth the state and condition in which such prisoner was when he was delivered into the custody of such gaoler, keeper or governor.

Copies of Depositions.—§ 19. That at any time after all the examinations aforesaid shall have been completed, and before the first day of the sessions, or other first sitting of the court at which any person so committed to prison or admitted to bail as aforesaid is to be tried, such person may require and shall be entitled to have, from the officer or person having the custody of the same, copies of the depositions on which he shall have been committed or bailed, on payment of a reasonable sum for the same, not exceeding the rate of three pence for each folio of one hundred words.

Forms—valid.—§ 20. That the several forms in the schedule to this act contained, or forms to the like effect, shall be good, valid and sufficient in law.

Police or Stipendiary Magistrate, &c.—§ 21. That any inspector and superintendent of police, police magistrate or stipendiary magistrate, appointed for any territorial division, shall have full power to do alone whatever is authorised by this act to be done by any two or more justices of the peace, and that the several forms in the schedule to this act annexed, may be varied so far as it may be necessary to render them applicable to such inspector and superintendent of police, police magistrate or stipendiary magistrate aforesaid.

Repeal of other Acts.—§ 22. That from and after the day on which this act shall commence to take effect, all other act or acts or parts of acts which are contrary to or inconsistent with the provisions of this act, shall be and the same are hereby repealed.

Act to apply to Upper Canada only.—§ 23. That this act shall apply only to Upper Canada, except in so far as any provision thereof is expressly extended to Lower Canada, or to any act to be done there.

Commencement of the Act.—§ 24. That this act shall commence and have force and effect upon, from and after the first day of July, one thousand eight hundred and fifty-three, and not before.

SCHEDULES.

(A.)

Information and Complaint for an Indictable Offence.

PROVINCE OF CANADA : } The information and complaint of C.
 (County or united } D. of _____, (yeoman),
 counties, or as the } taken this _____ day of _____,
 case may be,) of } _____ in the year of our Lord
 before the undersigned, (one) of her Majesty's justices of the
 peace in and for the said (county, or as the case may be) of
 _____, who saith that (&c., stating the offence).

Sworn before (me), the day and year first above mentioned,
 at _____

J. S.

(B.)

Warrant to Apprehend a Person charged with an Indictable Offence.

PROVINCE OF CANADA : } To all or any of the constables or other
 (County or united } peace officers in the (county or
 county, or as the } united counties, or as the case may
 case may be,) of } be,) of _____,

Whereas A. B., of _____, (labourer), hath this day
 been charged upon oath before the undersigned, (one) of her
 Majesty's justices of the peace, in and for the said (county or
 united counties, or as the case may be,) of _____, for that
 he, on _____, at _____, did (&c. stating shortly the
 offence). These are therefore to command you, in her Majesty's
 name, forthwith to apprehend the said A. B., and to bring him
 before (me) or some other of her Majesty's justices of the
 peace in and for the said (county or united counties, or as the
 case may be,) of _____, to answer unto the said charge,
 and to be further dealt with according to law.

Given under (my) hand and seal, this _____ day of
 _____, at _____, in the (county, &c.) aforesaid.

J. S. [L.s.]

(C.)

Summons to a Person charged with an Indictable Offence.

PROVINCE OF CANADA : } To A.B. of _____, (labourer).
 (County or united } Whereas you have this day been
 counties, or as the } charged before the undersigned (one)
 case may be,) of } of her Majesty's justices of the peace in and for the said
 of her Majesty's justices of the peace in and for the said
 (county or united counties, or as the case may be,) of _____

Justices of the Peace.

for that you on _____, at _____, (*&c.*, stating shortly the offence). These are therefore to command you, in her Majesty's name, to be and appear before (*me*) on _____, at _____ o'clock in the (*fore*) noon, at _____, or before such other justice or justices of the peace for the same (*county or united counties, or as the case may be,*) of _____, as may then be there, to answer to the said charge, and to be further dealt with according to law.

Given under (*my*) hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the (*county &c.*) aforesaid.
J. S. [L.s.]

(D 1.)

Warrant when the Summons is Disobeyed.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be,*) of _____ } To all or any of the constables or other peace officers in the said (*county or united counties, or as the case may be*) of _____ :

Whereas on the _____ day of _____ (*instant or last past*) A. B. of the _____, was charged before (*me or us,*) the undersigned, (*or name the magistrate or magistrates, or as the case may be*) (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, as the case may be,*) of _____, for that (*&c.*, as in the summons). And whereas (*I, he, the said justice of the peace, we, or they, the said justices of the peace*) then issued (*my, our, his or their*) summons to the said A. B., commanding him in her Majesty's name, to be and appear before (*me*) on _____, at _____ o'clock in the (*fore*) noon, at _____, or before such other justice or justices of the peace as should then be there, to answer to the said charge, and to be further dealt with according to law. And whereas the said A. B. hath neglected to be or appear at the time and place appointed in and by the said summons, although it hath now been proved to (*me*) upon oath, that the said summons was duly served upon the said A. B. These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*) of _____, to answer the said charge, and be further dealt with according to law.

Given under (*my*) hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the (*county*) of _____ aforesaid.
J. S. [L.s.]

(E 1.)

Information to obtain a Search Warrant.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of _____ } The information of A. B. of the _____, in the said (*county, &c.*) (*yeoman*), taken this _____ day of _____, in _____,

the year of our Lord _____, before me, W. S., Esquire, one of her Majesty's justices of the peace, in and for the (county or united counties, or as the case may be) of _____, who saith that on the _____ day of _____, (*insert description of articles stolen,*) of the goods and chattels of deponent, were feloniously stolen, taken and carried away, from and out of the (*dwelling-house, &c.*) of this deponent, at the (*township, &c.*) aforesaid, by (some person or persons unknown, or name the person,) and that he hath just and reasonable cause to suspect, and doth suspect that the said goods and chattels, or some part of them, are concealed in the (*dwelling-house, &c., of C. D.*) of _____ in the said (county) (*here add the causes of suspicion, whatever they may be.*) Wherefore, (*he*) prays that a search warrant may be granted to him to search (*the dwelling-house, &c.*) of the said C. D. as aforesaid, for the said goods and chattels so feloniously stolen, taken and carried away as aforesaid.

Sworn before me the day and year first above mentioned, at _____ in the said (county) of _____.

W. S., J. P.

(E 2.)

Search Warrant.

PROVINCE OF CANADA :

(County or united counties, or as the case may be,) of _____ } To all or any of the constables, or other peace officers, in the (county or united counties, or as the case may be) of _____ :

Whereas A. B., of the _____, of _____, in the said (county, &c.,) hath this day made oath before me the undersigned, one of her Majesty's justices of the peace, in and for the said (county, or united counties, or as the case may be,) of _____, that on the _____ day of _____ (*copy information as far as place of supposed concealment ;*) These are therefore in the name of our sovereign lady the Queen, to authorise and require you, and each and every of you, with necessary and proper assistance, to enter in the day time into the said (*dwelling house, &c.,* of the said, &c.,) and there diligently search for the said goods and chattels, and if the same or any part thereof shall be found upon such search, that you bring the goods so found, and also the body of the said C. D. before me, or some other justice of the peace, in and for the said (county or united counties, or as the case may be) of _____ to be disposed of and dealt with according to law.

Given under my hand and seal, at _____, in the said (county, &c.,) this _____ day of _____, in the year of our Lord, one thousand eight hundred and _____

W. S., J. P. (*Seal.*)

(F.)

Certificate of Indictment being found.

I hereby certify that at a court of (oyer and terminer, or gen-

eral gaol delivery, or general sessions of the peace) holden in and for the (county or united counties, or as the case may be,) of , at , in the said (county, &c.,) on , a bill of indictment was found by the grand jury against A. B., therein described as A. B., late of , (labourer,) for that he (&c., stating shortly the offence,) and that the said A. B. hath not appeared or pleaded to the said indictment.

Dated this , day of one thousand eight hundred and

Z. X.

Clerk of the crown or deputy clerk of the crown for the (county or united counties, as the case may be,)

or

Clerk of the peace of and for the said (county or united counties, as the case may be.)

(G.)

Warrant to Apprehend a Person Indicted.

PROVINCE OF CANADA :

(County or united } To all or any of the constables, or other
counties, or as the } peace officers, in the said (county or
ease may be,) of } united counties, or as the case may be) of

Whereas it hath been duly certified by J. D., clerk of the crown of (name the court) (or E. G., deputy clerk of the crown, or clerk of the peace, as the case may be) in and for the (county or united counties, or as the case may be) of that (&c., stating the certificate). These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (me), or some other justice or justices of the peace in and for the said (county or united counties, or as the case may be), to be dealt with according to law.

Given under my hand and seal, this day of in the year of our Lord , at , in the (county, &c.,) aforesaid.

J. S. [L. S.]

(H.)

Warrant of Commitment of a Person Indicted.

PROVINCE OF CANADA :

(County or united } To all or any of the constables, or other
counties, or as the } peace officers in the said (county,
case may be,) of } &c.,) of and to the keeper of the
common gaol at , in the said (county or united counties, or
as the case may be) of

Whereas by a warrant under the hand and seal of (one), of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be,) of (a) [under

(a) The words within the brackets [] are in the form given, but they seem to be a mere repetition of the words preceding.

hand and seal] , dated the day of , after reciting that it had been certified by J. D. (&c., as in the certificate,) () the said justice of the peace commanded all or any of the constables, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*him*) the said justice of the peace in and for the said (*county or united counties, or as the case may be*) of or before some other justice or justices in and for the said (*county or united counties, as the case may be,*) to be dealt with according to law; and whereas the said A. B. hath been apprehended under and by virtue of the said warrant, and being now brought before (*me*) it is hereupon duly proved to (*me*) upon oath that the said A. B. is the same person who is named and charged by , in the said indictment. These are therefore to command you the said constables and peace officers, or any of you, in her Majesty's name, forthwith to take and convey the said A. B. to the said common gaol at , in the said (*county or united counties, as the case may be*) of , and there to deliver him to the keeper thereof, together with this precept; and (I) hereby command you the said keeper to receive the said A. B. into your custody in the said gaol, and him there safely keep until he shall thence be delivered by due course of law.

Given under (*my*) hand and seal, this day of , in the year, of our Lord , at , in the (*county, &c.*) aforesaid .

J. S. [L.S.]

(I.)

Warrant to Detain a Person Indicted, who is already in custody for another offence.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } To the keeper of the common gaol at
 } in the said (*county or united counties, as the case may be*) of

Whereas it hath been duly certified by J. D., clerk of the crown of (*name the court*) or deputy clerk of the crown, or clerk of the peace of and for the (*county or united counties, as the case may be*) of that (&c. stating the certificate). And whereas (*I am*) informed that the said A. B. is in your custody in the said common gaol at aforesaid, charged with some offence, or other matter; and it being now duly proved upon oath before (*me*) that the said A. B. so indicted as aforesaid, and the said A. B. in your custody as aforesaid are one and the same person. These are therefore to command you, in her Majesty's name, to detain the said A. B. in your custody in the common gaol aforesaid, until by her Majesty's writ of *Habeas Corpus* he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Justices of the Peace.

Given under (my) hand and seal, this day of , in
the (county, &c.,) aforesaid.

J. S. [L.s.]

(K)

Endorsement in Backing a Warrant.

PROVINCE OF CANADA :

(County or united } Whereas proof upon oath hath this day
counties, or as the } been made before me, one of her
case may be) of } Majesty's justices of the peace in and
for the said (county or united counties, as the case may be) of ,
that the name of J. S., to the within warrant subscribed, is of
the hand writing of the justice of the peace within mentioned;
I do therefore authorise W. T. who bringeth me this warrant,
and all other persons to whom this warrant was originally
directed, or by whom it may be lawfully executed, and also all
constables and other peace officers of the said (county or united
counties, or as the case may be) of , to execute the same
within the said last mentioned (county or united counties, or as
the case may be).

Given under my hand, this day of , in the year
of our Lord , at , in the (county, &c.,) aforesaid.

J. L.

(L 1.)

Summons to a Witness.

PROVINCE OF CANADA :

(County or united } To E. F. of , (labourer).
counties, or as the } Whereas information hath been laid
case may be) of } before the undersigned, one of her
Majesty's justices of the peace in and for the said (county or
united counties, or as the case may be) of , that A. B. (&c.,
as in the summons or warrant against the accused), and it
hath been made to appear to me upon (oath), that you
are likely to give material evidence for (prosecution). These
are therefore to require you to be and to appear before
me on next, at o'clock in the (fore) noon, at ,
or before such other justice or justices of the peace for the same
(county or united counties, or as the case may be) of , as may
then be there, to testify what you shall know concerning the
said charge so made against the said A. B. as aforesaid. Herein
fail not.

Given under my hand and seal, this day of in
the year of our Lord , at , in the (county, &c.,) aforesaid.

J. S. [L.s.]

(L. 2.)

Warrant when a Witness has not Obeyed a Summons.

PROVINCE OF CANADA :

(County or united } To all or any of the constables, or other
counties, or as the } peace officers, in the said (county or
case may be) of } united counties, or as the case may be)
of .

Whereas information having been laid before (one) of her Majesty's justices of the peace, in and for the said (county, &c.) of , that A. B., (&c., as in the summons). And it having been made to appear to (me) upon oath, that E. F. of , (labourer,) was likely to give material evidence for the prosecution, (I) did duly issue (my) summons to the said E. F., requiring him to be and appear before (me) on , at , or before such other justice or justices of the peace for the same (county or united counties, as the case may be) as might then be there, to testify what he should know respecting the said charge so made against the said A. B. as aforesaid. And whereas proof hath this day been made upon oath before (me) of such summons having been duly served upon the said E. F. And whereas the said E. F. hath neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect. These are therefore to command you to bring and have the said E. F. before (me) on at o'clock in the (fore) noon, at , or before such other justice or justices of the peace for the same (county or united counties, or as the case may be) as may then be there, to testify what he shall know concerning the said charges so made against the said A. B. as aforesaid.

Given under (my) hand and seal, this day of , in the (county, &c.) aforesaid.

J. S. [L.S.]

(L 3.)

Warrant for a Witness in the First Instance.

PROVINCE OF CANADA:

(County or united } To all or any of the constables or peace
counties, or as the } officers in the said (counties or united
case may be) of } counties, or as the case may be) of .

Whereas information has been laid before the undersigned, (one) of her Majesty's justices of the peace, in and for the said (county or united counties, or as the case may be) of , that (&c., as in the summons); and it having been made to appear to (me) upon oath, that E. F. of , (labourer), is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence unless compelled to do so. These are therefore to command you to bring and have the said E. F. before (me) on , at o'clock in the (fore) noon, at , or before such other justice or justices of the peace for the same (counties or united counties, or as the case may be) as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal, this day of in the year of our Lord , at in the (county, &c.) aforesaid.

J. S. [L.S.]

(L 4.)

Warrant of Commitment of a Witness for Refusing to be Sworn, or to give Evidence.

PROVINCE OF CANADA :

(County or united } To all or any of the constables or other
counties, or as the } peace officers in the (county or united
case may be) of } counties, or as the case may be) of
and to the keeper of the common gaol at , in the said
(county or united counties, or as the case may be) of :

Whereas A. B. was lately charged before , (one) of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be) of , for that (&c., as in the summons). And it having been made to appear to (me) upon oath that E. F. of , was likely to give material evidence for the prosecution, (I) duly issued (my) summons to the said E. F. requiring him to be and appear before me on , at , or before such other justice or justices of the peace for the same (county or united counties, or as the case may be) as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid. And the said E. F. now appearing before (me) (or being brought before (me) by virtue of a warrant in that behalf, to testify as aforesaid,) and being required to make oath or affirmation as a witness in that behalf, hath now refused so to do, (or being duly sworn as a witness doth now refuse to answer certain questions concerning the premises which are now here put to him, and more particularly the following)

without offering any just excuse for such refusal. These are therefore to command you, the said constables, peace officers, or any one of you, to take the said E. F. and him safely convey to the common gaol at , in the (county, &c.) aforesaid, and there to deliver him to the keeper thereof, together with this precept; and (I) do hereby command you, the said keeper of the said common gaol to receive the said E. F. into your custody in the said common gaol, and him there safely keep for the space of days, for his said contempt, unless he shall in the meantime consent to be examined, and to answer concerning the premises; and for your so doing, this shall be your sufficient warrant.

Given under (my) hand and seal this day of in the year of our Lord , at , in the (county, &c.) aforesaid.

J. S. [L. s.]

(M.)

Depositions of Witnesses.

PROVINCE OF CANADA :

(County or united } The examination of C. W. of ,
counties, or as the } (farmer,) and E. F. of (labourer,)
case may be) of } taken on (oath) this day of

, in the year of our Lord , at , in the (county, or as the case may be) aforesaid, before the undersigned, (one) of her Majesty's justices of the peace for the said (county or united counties, as the case may be), in the presence and hearing of A. B. who is charged this day before (me) for that he, the said, A. B. at , (&c. describing the offence as in a warrant of commitment.)

This deponent, C. D. upon his (oath) saith as follows: (&c., stating the depositions of the witness as nearly as possible in the words he uses. When his deposition is completed, let him sign it.)

And this deponent, E. F. upon his (oath) saith as follows: (&c.)

The above depositions of C. D. and E. F. were taken and (sworn) before me, at on the day and year first above mentioned.

J. S.

(N.)

Statement of the Accused.

PROVINCE OF CANADA :

(County or united } A. B. stands charged before the under-
counties, or as the } signed, (one) of her Majesty's justices of
case may be,) of } the peace, in and for the (county or united
counties, or as the case may be) aforesaid, this day of
in the year of our Lord , for that the said A.
B., on , at , (&c., as in the caption of
the depositions). And the said charge being read to the said
A. B., and the witnesses for the prosecution, C. D. and E. F.
being severally examined in his presence, the said A. B. is
now addressed by me as follows: "Having heard the evidence,
do you wish to say any thing in answer to the charge? You are
not obliged to say any thing, unless you desire to do so; but
whatever you say will be taken down in writing, and may be
given in evidence against you at your trial." Whereupon the
said A. B. saith as follows: (Here state whatever the prisoner
may say, and in his very words as nearly as possible. Get him to
sign it if he will.)

A. B.

Taken before me, at , the day and year first mentioned.

J.S.

(O 1.)

Recognizance to Prosecute or give Evidence.

PROVINCE OF CANADA :

(County or united } Be it remembered, that on the
counties, or as the } day of in the year of our Lord
case may be,) of } , C. D., of , in the
of , in the (township) of , in the said (county) of
, (farmer,) (or C. D., of No. 2, street, , in the

town or city of _____, surgeon, of which said house he is tenant,) personally came before me, one of her Majesty's justices of the peace in and for the said (county or counties, or as the case may be) of _____, and acknowledged himself to owe to our sovereign lady the Queen the sum of _____, of good and lawful current money of this province, to be made and levied of his goods and chattels, lands and tenements, to the use of our said lady the Queen, her heirs and successors, if he the said C. D. shall fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at _____ before me. J. S.

Condition to Prosecute.

The condition of the within (or above) written recognizance is such, that whereas one A. B. was this day charged before me, J. S., justice of the peace within mentioned, for that (&c., as in the caption of the depositions;) if, therefore, he, the said C. D. shall appear at the next court of oyer and terminer or general gaol delivery, (or at the next court of general or quarter sessions of the peace,) to be holden in and for the (county or united counties, or as the case may be) of _____,* and there prefer or cause to be preferred a bill of indictment for the offence aforesaid, against the said A. B., and there also duly prosecute such indictment, then the said recognizance to be void, or else to stand in full force and virtue.

Condition to Prosecute and give Evidence.

(Same as the last form, to the asterisk,* and then thus:—"And there prefer or cause to be preferred a bill of indictment against the said A. B. for the offence aforesaid, and duly prosecute such indictment, and give evidence thereon, as well to the jurors who shall then enquire into the said offence, as also to them who shall pass upon the trial of the said A. B., then the said recognizance to be void, or else to stand in full force and virtue."

Condition to give Evidence.

(Same as the last form but one, to the asterisk,* and then thus:) "And there give such evidence as he knoweth upon a bill of indictment to be then and there preferred against the said A. B., for the offence aforesaid, as well to the jurors who shall there enquire of the said offence, as also to the jurors who shall pass upon the trial of the said A. B., if the said bill shall be found a true bill, then the said recognizance to be void, otherwise to remain in full force and virtue."

(O 2.)

Notice of the said Recognizance to be given to the Prosecutor and his Witness.

PROVINCE OF CANADA :

(County or united } Take notice that you, C. D., of _____,
counties, or as the } are bound in the sum of _____ to ap-
case may be) of } pear at the next court of oyer and

terminer and general gaol delivery, (or at the next court of general quarter sessions of the peace, in and for the (county or united counties, or as the case may be) of _____, to be holden at _____, in the said (county, &c.,) and then and there (prosecute and) give evidence against A. B., and unless you then appear there, (prosecute) and give evidence accordingly, the recognizance entered into by you will be forthwith levied on you.

Dated this _____ day of _____, one thousand eight hundred and _____

J. S.

(P 1.)

Commitment of a Witness for refusing to enter into the Recognizance.

PROVINCE OF CANADA :

(County or united } To all or any of the constables or other
counties, or as the } peace officers in the said (county or
case may be) of } &c.,) of _____, and to the keeper of
the common gaol of the said (county or united counties, or as the
case may be) at _____, in the said (county, or as the ease may be)
of _____

Whereas A. B. was lately charged before the undersigned, (or name of justice of the peace,) (one) of her Majesty's justices of the peace in and for the said (county, or &c.,) of _____, for that (&c., as in the summons to the witness), and it having been made to appear to (me) upon oath that E. F., of _____, was likely to give material evidence for the prosecution, (I) duly issued (my) summons to the said E. F., requiring him to be and appear before (me) on _____, at _____ or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before (me) (or being brought before (me) by virtue of a warrant in that behalf to testify as aforesaid,) hath been now examined before (me) touching the premises, but being by (me) required to enter into a recognizance conditioned to give evidence against the said A. B., hath now refused so to do; these are therefore to command you the said constables or peace officers, or any of you, to take the said E. F. and him safely to convey to the common gaol at _____, in the (county, &c.,) aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said common gaol to receive the said E. F., into your custody in the said common gaol, there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime the said E. F. shall duly enter into such recognizance as aforesaid, in the sum of _____ before some one justice of the peace for the said county or united counties, or as the case may be,) conditioned in the usual form to appear at the next court of (oyer and ter-

miner, or general gaol delivery, or general quarter sessions of the peace), to be holden in and for the said (*county or united counties, or as the case may be,*) of _____, and there to give evidence before the grand jury upon any bill of indictment which may then and there be preferred against the said A. B. for the offence aforesaid, and also to give evidence upon the trial of the said A. B. for the said offence, if a true bill should be found against him for the same.

Given under my hand and seal, this _____, day of _____, in the year of our Lord _____, at _____ in the (*county, &c.,*) of _____ aforesaid.

J. S. [L. s.]

(P. 2.)

Subsequent Order to Discharge the Witness.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of _____ } To the keeper of the common gaol, at _____ in the (*county*) of _____ aforesaid. Whereas by (*my*) order dated the day of _____ (*instant*), reciting that A. B. was lately before then charged before (*me*) for a certain offence therein mentioned, and that E. F. having appeared before (*me*), and being examined as a witness for the prosecution in that behalf, refused to enter into a recognizance to give evidence against the said A. B., and I therefore thereby committed the said E. F. to your custody, and required you safely to keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid. And whereas for want of sufficient evidence against the said A. B., the said A. B. has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E. F. should be detained longer in your custody. These are therefore to order and direct you the said keeper to discharge the said E. F. out of your custody, as to the said commitment, and suffer him to go at large.

Given under my hand and seal this _____ day of _____, in the year of our Lord _____, at _____, in the (*county, &c.,*) of _____ aforesaid.

J. S. [L. s.]

(Q. 1.)

Warrant Remanding a Prisoner.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of _____ } To all or any of the constables or other peace officers in the said (*county or united counties, or as the case may be*) of _____, and to the keeper of the (*common gaol or lock-up house*) at _____, in the said (*county, &c.,*) of _____.

Whereas A. B. was this day charged before the undersigned

(one) of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be) of , for that (&c., as in the warrant to apprehend,) and it appears to (me) to be necessary to remand the said A. B. These are therefore to command you the said constables or peace officers, or any of you, in her Majesty's name, forthwith to convey the said A. B. to the (common gaol or lock-up house), at , in the said (county, &c.) and there to deliver him to the keeper thereof, together with this precept; and I hereby command you the said keeper to receive the said A. B. into your custody in the said (common gaol or lock-up house), and there safely keep him until the day of (instant), when I hereby command you to have him at , at o'clock in the (fore) noon of the same day before (me) or before some other justice or justices of the peace for the said (county or united counties, or as the case may be) as may then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal, this day of , in the year of our Lord, , at , in the (county, &c.,) of aforesaid.

J. S. [L.S.]

(Q. 2.)

Recognizance of Bail instead of Remand, on an Adjournment of Examination.

PROVINCE OF CANADA :

(County or united } Be it remembered, that on the
counties, or as the } day of , in the year of our Lord
case may be) of } , A. B. of (labourer), L.
M. of , (grocer), and N. O. of , (butcher), personally
came before me, (one) of her Majesty's justices of the peace,
for the said (county or united counties, as the case may be), and
severally acknowledged themselves to owe to our lady the
Queen the several sums following, that is to say; the said A.
B. the sum of , and the said L. M. and N. O. the sum of
, each, of good and lawful current money of this province,
to be made and levied of their several goods and chattels, lands
and tenements respectively, to the use of our said lady the
Queen, her heirs and successors, if he the said A. B. fail in the
condition endorsed.

Taken and acknowledged the day and year first above mentioned, at before me.

J. S.

CONDITION.

The condition of the within written recognizance is such, that whereas the within bounden A. B. was this day (or, on last past) charged before me for that (&c. as in the warrant): and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the day

Justices of the Peace.

of (instant); if therefore the said A. B. shall appear before me on the said day of (instant), at o'clock in the forenoon, or before such other justice or justices of the peace for the said (county or united counties) of as the case may be) as may then be there, to answer (further) to the said charge, and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

(Q. 3.)

Notice of Recognizance to be given to the Accused and his Sureties.

PROVINCE OF CANADA :

County or united } Take notice that you A. B. of , are
counties, or as the } bound in the sum of , and your
case may be) of } sureties L. M. and N. O. in the sum
of each, that you A. B. appear before me J. S., one of
her Majesty's justices of the peace for the (county or united
counties, or as the case may be) of , on , the
day of (instant,) at o'clock in the (fore) noon, at
or before such other justice or justices of the same (county or
united counties, or as the case may be) as may be then there,
to answer (further) to the charge made against you by
C. D., and to be further dealt with according to law; and un-
less you A. B. personally appear accordingly, the recognizance
entered into by yourself and sureties will be forthwith levied
on you and them.

Dated this day of , one thousand eight hun-
dred and .

J. S.

(Q. 4.)

Certificate of Non-appearance to be endorsed on the recognizance.

I hereby certify that the said A. B. hath not appeared at the time and place, in the above condition mentioned, but therein hath made default, by reason whereof the within written recognizance is forfeited.

J. S.

(R. 1.)

Warrant to Convey the Accused before a justice of the county in which the offence was committed.

PROVINCE OF CANADA :

(County or united } To all or any of the constables, or other
counties, or as the } peace officers, in the said (county or
case may be) of } united counties, or as the case may be)
of .

Whereas A. B. of (labourer), hath this day been

charged before the undersigned (*one*) of her Majesty's justices of the peace, in and for the (*county or united counties, or as the case may be*) of _____, for that (*&c. as in the warrant to apprehend*). And whereas (*I*) have taken the deposition of C. D. a witness examined by (*me*) in this behalf, but inasmuch as (*I*) am informed that the principal witnesses to prove the said offence against the said A. B. reside in the (*county or united counties, as the case may be*) of _____ where the said offence is alleged to have been committed; these are therefore to command you, in her Majesty's name, forthwith to take and convey the said A. B. to the said (*county or united counties, or as the case may be*) of _____ and there carry him before some justice or justices of the peace in and for that (*county or counties, as the case may be*) and near unto the (*township of* _____) where the offence is alleged to have been committed, to answer further to the said charge before him or them, and to be further dealt with according to law; and (*I*) hereby further command you to deliver to the said justice or justices the information in this behalf, and also the deposition of C. D. now given into your possession for that purpose, together with this precept.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the (*county, &c.*) of aforesaid.

J. S. [L.S.]

(R 2.)

Receipt to be given to the Constable by the Justice for the County in which the offence was committed.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of _____ } I, J. P. one of her Majesty's justices of the peace for the (*county, &c.*) of _____, hereby certify that W. T., constable or peace officer, of the (*county or united counties, as the case may be*) of _____, has on this _____ day of _____, one thousand eight hundred and _____, by virtue of and in obedience to a warrant of J. S., Esquire, one of her Majesty's justices of the peace in and for the (*county or united counties, or as the case may be*) of _____ produced before me, one A. B. charged before the said J. S. with having (*&c. stating shortly the offence,*) and delivered him into the custody of _____ by my direction, to answer to the said charge, and further to be dealt with according to law, and has also delivered unto me the said warrant, together with the information (*if any*) in that behalf, and the deposition (*s*) of C. D. (*and of* _____) in the said warrant mentioned, and that he has also proved to me upon oath, the hand-writing of the said J. S. subscribed to the same.

Dated the day and year first mentioned, at _____ in the said (*county, &c.*) of _____

J. P.

(S 1.)

Recognizance of Bail.

PROVINCE OF CANADA :

(*County or united } Be it remembered, that on the day*
counties, or as the } of in the year of our Lord
case may be) of } A. B. of , (labourer,) L. M. of
, (grocer,) and N. O. of , (butcher,) personally came
 before (*us*) the undersigned, two of her Majesty's justices of
 the peace for the said (*county or united counties, or as the case*
may be.) and severally acknowledged themselves to owe to our
 lady the Queen, the several sums following, that is to say: the
 said A. B. the sum of , and the said L. M. and N. O. the
 sum of , each, of good and lawful current money of this
 province, to be made and levied of their several goods and
 chattels, lands and tenements respectively, to the use of our
 said lady the Queen, her heirs and successors, if he the said
 A. B. fail in the condition endorsed.

Taken and acknowledged the day and year first above men-
 tioned, at before us.

J. S.

J. N.

Condition.

The condition of the within written recognizance is such,
 that whereas the said A. B. was this day charged before (*us*),
 the justices within mentioned for that (*&c. as in the warrant*).
 If therefore the said A. B. will appear at the next court of oyer
 and terminer *or* general gaol delivery (*or* court of general
 quarter sessions of the peace) to be holden in and for the
 (*county or united counties, or as the case may be*) of , and
 there surrender himself into the custody of the keeper of the
 (*common gaol or lock-up house*) there, and plead to such indict-
 ment as may be found against him by the grand jury, for and in
 respect to the charge aforesaid, and take his trial upon the same,
 and not depart the said court without leave, then the said re-
 cognizance to be void, or else to stand in full force and virtue.

(S 2.)

*Notice of the said Recognizance to be given to the Accused
and his Bail.*

Take notice that you A. B., of , are bound in the sum
 of , and your sureties (*L. M. and N. O.*) in the sum of
 , each, that you A. B. appear (*&c. as in the condition of the*
recognizance,) and not depart the said court without leave; and
 unless you the said A. B., personally appear and plead, and
 take your trial accordingly, the recognizance entered into by
 you and your sureties shall be forthwith levied on you and
 them.

Dated this day of , one thousand eight hundred
 and J. S.

(S 3.)

Warrant of Deliverance, on Bail being given for a Prisoner already Committed.

PROVINCE OF CANADA :

(County or united } To the keeper of the common gaol of the
counties, or as the } (county or united counties, or as the case
case may be) of } may be) at , in the said (county or
united counties, or as the case may be) of

Whereas A. B., late of , (labourer) hath before (us,) (two) of her Majesty's justices of the peace in and for the said (counties or united counties, or as the case may be) of , entered into his own recognizance, and found sufficient sureties for his appearance at the next court of oyer and terminer or general gaol delivery (or court of general quarter sessions of the peace) to be holden in and for the (county or united counties, or as the case may be) of , to answer our sovereign lady the Queen, for that (&c., as in the commitment), for which he was taken and committed to your said common gaol. These are therefore to command you, in her said Majesty's name, that if the said A. B. do remain in your custody in the said common gaol for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals, this day of ,
in the year of our Lord , at , in the (county, &c.)
J. S. [L.S.]
J. N. [L.S.]

(T. 1.)

Warrant of Commitment.

PROVINCE OF CANADA :

(County or united } To all or any of the constables, or
counties, or as the } other peace officers, in the (county or
case may be) of } united counties, or as the case may be)
of , and to the keeper of the common gaol of the (county
or united counties, or as the case may be) at , in the said
(county, &c.) of .

Whereas A. B. was this day charged before (me) J. S. (one) of her Majesty's justices of the peace in and for the said (county, or united counties, or as the case may be) of , on the oath of C. D., of (farmer,) and others, for that, (&c., stating shortly the offence); these are therefore to command you the said constables or peace officers, or any of you, to take the said A. B., and him safely to convey to the common gaol at aforesaid, and there deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said common gaol to receive the said A. B. into your custody in the said common gaol, and there safely to keep him until he shall be thence delivered by due course of law.

of an attorney or other legal adviser, either for the prisoner or prosecutor: it cannot in either case be claimed as a matter of right, (a) as information might thereby be obtained and conveyed which would defeat the course of justice. In the case, however, of a trial on summary conviction, before a magistrate, there is a difference; in the latter case, it is reasonable that a party upon his trial should have professional assistance; and by a late statute 16 V., c. 178, § 11, this is expressly provided for, and the same privilege is extended to complainants.

Contempt.

It seems that a magistrate may commit a party for a contempt, who makes use of scandalous and insulting language to him whilst in the execution of his office; but as such a commitment is by way of punishment, it must be made by warrant, in writing—*Mayhew v. Locke*, 7; *Taunt.* 63; 2 *Marsh.* 377; *R. v. Revel*, 1 *Str.* 420; and must not be a general one “till the party is discharged by due course of law,” but must be for a time certain.—*R. v. James*, 5 *B. & A.* 894. The better course for a magistrate to adopt in such cases is, first, to require the offender to find sureties for his good behaviour, and in default of his doing so, then to commit him until the next quarter sessions, unless he sooner find such sureties, and enter also into his own recognizance for his good behaviour.—*R. v. Langley*, 2 *Ld. R.* 10; 30 *per Holt. C. J.*

See also title “Contempt,” page 200.

Administering Oath.

A justice of the peace is empowered, in all matters properly brought before him in his judicial character, or by particular statutes, to administer an oath; but it is very questionable how far he is justifiable in taking a voluntary affidavit, in any *extra judicial* matter, as is now too frequently the practice upon every petty occasion; for it is more than possible that by such idle oaths, a man may frequently in *foro conscientiae* incur the guilt, and at the same time evade the penalties of perjury.—4 *Bl. Com.* 137. Lord Coke, indeed, says, that it is a high contempt to administer an oath not warranted by law, and that the offence is punishable by fine and imprisonment—3 *Inst.* 166; and in a case, Lord Kenyon said, that “he did not know but a magistrate subjected himself to a criminal information for taking a voluntary *extra-judicial* oath.”—*Wm. Prec.* 14; 3 *Burns J.*, 588.

(a) See page 458, § 11.

Of their Liability, Indemnity, Protection.

First.—As every person ought to be heard in his own defence before he is convicted, if a justice, therefore, in the case of a summary conviction, proceed against a party without previously summoning him to appear, it is such a misdemeanor as will render him liable to a criminal information.—1 *Salk* 181. If a justice also will not, on complaint to him made, execute the duties of his office as a magistrate, or is guilty of any wilful misconduct, the party grieved may not only move for an information, but may also apply to put him out of the commission.—*Crompt.* 7; 2 *Atk.* 2; 1 *T. R.* 692; 7 *T. R.* 374. Where a justice, however, refuses to proceed in any matter which he is authorised or required to do by act of parliament, and his refusal does not arise from any corrupt or improper motive, the proper course for the party complaining is to move for a *mandamus* to compel him to proceed.—*R. v. Todd*, 1 *Str.* 530. But as cases may and do frequently arise in which a justice of the peace may well doubt whether he has power to act, and therefore declines acting for fear of incurring personal risk or responsibility, the 4th sec. of the 16 V., c. 180, has been framed with the express view of meeting such emergencies. It (as will be seen on reference to the statute, § 4) enables the party requiring the act to be done to apply to either of the superior courts of common law or to a judge of the county court, for a rule on such justice to shew cause why such act should not be done, which rule, when made absolute, will justify such justice in acting, so that no action can be afterwards legally brought against him for having done the act required. Where a criminal information is applied for against a magistrate, the question for the court is not whether the act done be found on investigation to be strictly right or not, but whether it proceeded from any unjust, oppressive or corrupt motive, or from mistake or error only: in the latter case, the court will not grant an information, but leave the party complaining to his remedy by action or indictment; for it must be a case of clear and apparent partiality, or wilful misbehaviour, to induce the court to proceed by information against a magistrate.—*R. v. Barron*, 3 *B. & A.* 432; 1 *Burr.* 556; 2 *Burr.* 1162. The party complaining, also, must make a prompt application to the court, otherwise this proceeding will not be entertained: thus, where the facts complained of against a magistrate took place twelve months before hand, an information was refused.—*R. v. Bishop*, 5 *B. & A.* 612. Neither is a justice liable to be punished both ways—that is,

criminally and civilly; for before the court will grant an information, they will require the party to relinquish his *civil* action, if any such is commenced—*R. v. Fielding*, 2 *Burr.* 719.; and so in the case of an indictment, the attorney-general, on application, will grant a *nolle prosequi*, if it appear to him a prosecutor is determined to carry on a *civil* action at the same time.—*Id.* When a justice is convicted on an information, he must appear in person to receive judgment.—*R. v. Harwood*, 2 *Str.* 1088; 3 *Burr.* 1716, 1786. A justice of the peace, however, is upon all occasions strongly protected by the law in the just execution of his office; for, though the judgment be wrong, yet if his intention is pure, the Court of King's Bench will never interfere by way of punishment.—*R. v. Young*, 1 *Burr.* 556; *R. v. Cox*, 2 *Burr.* 785. Nor will the court even grant a *mandamus* against him, to command him to do what *may* render him liable to an action.—*R. v. Dayrell*, 1 *B. & C.* 485. Where a magistrate, however, in committing a party for further examination, commits him for an *unreasonable* length of time, this has been lately determined to be altogether a void commitment, and to render him liable to an action of trespass.—*Davis v. Capper*, *K. B. Mich. T.* 1289.

Calling a justice of the peace "rascal, villain, and a liar," when spoken of him as a justice, are *actionable*, as well as *indictable*.—2 *Str.* 617, 1168; 2 *Ld. R.* 1396; *R. v. Revil*, 1 *Str.* 420.

Vexatious Actions against.

By 16 V., c. 180, entitled "An Act to protect Justices of the Peace in Upper Canada from Vexatious Actions," reciting that it is expedient to protect justices of the peace in Upper Canada in the execution of their duty: it is therefore enacted, that every action hereafter to be brought against any justice of the peace in Upper Canada for any act done by him in the execution of his duty as such justice, with respect to any matter within his jurisdiction as such justice, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done maliciously and without reasonable and probable cause; and if at the trial of any such action, upon the general issue being pleaded, the plaintiff shall fail to prove such allegation, he shall be nonsuit, or verdict shall be given for the defendant.

§ 2. That for any act done by a justice of the peace in a matter of which by law he has not jurisdiction, or in which he shall have exceeded his jurisdiction, any person injured thereby, or by any act done under any conviction

or order made, or warrant issued by such justice in any such matter, may maintain an action against such justice in the same form and in the same case as he might have done before the passing of this act, without making any allegation in his declaration that the act complained of was done maliciously and without reasonable and probable cause: provided nevertheless, that no such action shall be brought for any thing done under such conviction or order until after such conviction or order shall have been quashed, either upon appeal or upon application to one of the superior courts of common law for Upper Canada; nor shall any such action be brought for any thing done under any such warrant which shall have been issued by such justice to procure the appearance of such party, and which shall have been followed by a conviction or order in the same matter, until after such conviction or order shall have been so quashed as aforesaid; or if such last mentioned warrant shall not have been followed by any such conviction or order, or if it be a warrant upon an information for an alleged indictable offence, nevertheless if a summons were issued previously to such warrant, and such summons were served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and he did not appear according to the exigency of such summons, in such case no such action shall be maintained against such justice for any thing done under such warrant.

§ 3. That where a conviction or order shall be made by one or more justice or justices of the peace, and a warrant of distress or of commitment shall be granted thereon by some other justice of the peace *bonâ fide* and without collusion, no action shall be brought against the justice who so granted such warrant by reason of any defect in such conviction or order, or for any want of jurisdiction in the justice or justices who made the same, but the action (if any) shall be brought against the justice or justices who made such conviction or order.

§ 4. And whereas it would conduce to the advancement of justice, and render more effective and certain the performance of the duties of justices, and give them protection in the performance of the same, if some simple means, not attended with much expense, were devised by which the legality of any act to be done by such justice might be considered and adjudged by a court of competent jurisdiction, and such justice enabled and directed to perform it without risk of any action or other proceeding being brought or had against

him : it is therefore enacted, that in all cases where a justice or justices of the peace shall refuse to do any act relating to the duties of his or their office as such justice or justices, it shall be lawful for the party requiring such act to be done to apply to either of the superior courts of common law in Upper Canada, or to the judge of the county court of the county or united counties in which such justice or justices may reside, upon an affidavit of the facts, for a rule calling upon such justice or justices, and also the party to be affected by such act, to shew cause why such act should not be done : and if after due service of such rule good cause shall not be shewn against it, the said court may make the same absolute, with or without or upon payment of costs, as to them shall seem meet ; and the said justice or justices upon being served with such rule absolute shall obey the same, and shall do the act required ; and no action or proceeding whatsoever shall be commenced or prosecuted against such justice or justices, for having obeyed such rule and done such act so thereby required as aforesaid.

§ 5. That in all cases where a warrant of distress or warrant of commitment shall be granted by a justice of the peace upon any conviction or order which, either before or after the granting of such warrant, shall have been or shall be confirmed upon appeal, no action shall be brought against such justice who granted such warrant, for any thing which may have been done under the same, by reason of any defect in such conviction or order.

§ 6. That in all cases where by this act it is enacted that no action shall be brought under particular circumstances, if any such action shall be brought, it shall be lawful for a judge of the court in which the same shall be brought, upon application of the defendant, and upon an affidavit of facts, to set aside the proceedings in such action, with or without costs, as to him shall seem meet.

§ 7. That no action shall be brought against any justice of the peace for any thing done by him in the execution of his office, unless the same be commenced within *six calendar months* next after the act complained of shall have been committed.

§ 8. That no such action shall be commenced against any such justice of the peace until one calendar month at least after a notice in writing of such intended action shall have been delivered to him, or left for him at his usual place of abode, by the party intending to commence such action, or by his attorney or agent, in which said notice the cause of action, and the court in which the same is intended to be

brought, shall be clearly and explicitly stated; and upon the back thereof shall be endorsed the name and place of abode of the party so intending to sue, and also the name and place of abode or of business of the said attorney or agent, if such notice have been served by such attorney or agent.

§ 9. That in every such action the venue shall be laid in the county where the act complained of was committed, or in actions in county or division courts the action must be brought in the county or division within which the act complained of was committed or the defendant resides, and the defendant shall be allowed to plead the general issue therein, and to give any special matter of defence, excuse or justification in evidence under such plea, at the trial of such action: provided always, that no action shall be brought in any such county or division court against a justice of the peace for any thing done by him in the execution of his office, if such justice shall object thereto; and if within six days after being served with a notice of any such action, such justice or his attorney or agent, shall give a written notice to the plaintiff in such action that he objects to being sued in such county or division court for such cause of action, no proceedings afterwards shall be had in such county or division court in any such action, but it shall not be necessary to give another notice of action in order to sue such justice in any other court; provided secondly, and it is hereby declared and enacted, that the several county courts in Upper Canada shall have jurisdiction and shall hold plea in all suits or actions to be brought against justices of the peace for any thing done or pretended to be done by them in the execution of their office, when the damages claimed shall not exceed the sum of thirty pounds.

§ 10. That in every such case after notice of action shall be so given as aforesaid, and before such action shall be commenced, such justice to whom such notice shall be given may tender to the party complaining, or to his attorney or agent, such sum of money as he may think fit as amends for the injury complained of in such notice; and after such action shall have been commenced, and at any time before issue joined therein, such defendant, if he have not made such tender, or in addition to such tender, shall be at liberty to pay into court such sum of money as he may think fit, and which said tender and payment of money into court, or either of them, may afterwards be given in evidence by the defendant at the trial under the general issue aforesaid; and if the jury at the trial shall be of opinion that the plaintiff is not entitled to damages beyond the sums so tendered or paid

into court, then they shall give a verdict for the defendant, and the plaintiff shall not be at liberty to elect to be nonsuited, and the sum of money, if any, so paid into court, or so much thereof as shall be sufficient to pay or satisfy the defendant's costs in that behalf, shall thereupon be paid out of court to him, and the residue, if any, shall be paid to the plaintiff; or if, where money is so paid into court in any such action, the plaintiff shall elect to accept the same in satisfaction of his damages in the said action, he may obtain from any judge of the court in which such action shall be brought, an order that such money shall be paid out of court to him, and that the defendant shall pay him his costs to be taxed, and thereupon the said action shall be determined, and such order shall be a bar to any other action for the same cause.

§ 11. That if at the trial of any such action the plaintiff shall not prove that such action was brought within the time hereinbefore limited in that behalf, or that such notice as aforesaid was given one calendar month before such action was commenced, or if he shall not prove the cause of action stated in such notice, or if he shall not prove that such cause of action arose in the county or place laid as venue in the margin of the declaration, or (when such plaintiff shall sue in the county or division court) within the county or united counties for which such court is holden, then and in every such case such plaintiff shall be nonsuit, or the jury shall give a verdict for the defendant.

§ 12. That in all cases where the plaintiff in any such action shall be entitled to recover, and he shall prove the levying or payment of any penalty or sum of money, under any conviction or order as parcel of the damages he seeks to recover, or if he prove that he was imprisoned under such conviction or order, and shall seek to recover damages for any such imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of two pence as damages for such imprisonment, or any costs of suit whatsoever, if it shall be proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was so ordered to pay.

§ 13. That if the plaintiff in any such action shall recover a verdict, and the defendant shall allow judgment to pass against him by default, such plaintiff shall be entitled to costs in such manner as if this act had not been passed; or if in

such case it be stated in the declaration, or in the summons and particulars in the division court, if he sue in that court, that the act complained of was done maliciously and without reasonable and probable cause, the plaintiff, if he recover a verdict for any damages, or if the defendant allow judgment to pass against him by default, shall be entitled to his full costs of suit to be taxed as between attorney and client; and in every action against a justice of the peace for any thing done by him in the execution of his office, the defendant, if he obtain judgment upon verdict or otherwise, shall in all cases be entitled to his full costs in that behalf, to be taxed as between attorney and client.

§ 14. That this act shall commence and take effect on the first day of July, in the year of our Lord one thousand eight hundred and fifty-three.

§ 14. That from and after the time this act shall so commence and take effect as aforesaid, the following statutes so far as relates to actions against justices of the peace shall be and shall be deemed and taken to be repealed in so far as regards Upper Canada, that is to say, so much of an act of the parliament of this province made and passed in the session thereof held in the fourteenth and fifteenth years of her Majesty's reign, intituled, *An Act to amend and consolidate the Laws affording protection to Magistrates and others in the performance of public duties*, and all other act or acts or parts of acts which are inconsistent with the provisions of this act; save and except so much of the said acts as repeal any other acts or parts of acts, and also except as to proceedings then pending, to which the same or any of them may be applicable.

§ 16. That this act shall apply for the protection of all persons for any thing done in the execution of their office, in all cases in which, by the provisions of any act or acts of parliament, the several statutes or parts of statutes by this act repealed would have been applicable if this act had not been passed.

§ 17. That this act shall apply to Upper Canada only; and that the word "county" in this act shall include unions of counties for judicial purposes.

Justice's Fees.

By 14 & 15 V., c. 119, the following fees and no more are authorised to be taken by justices of the peace, or by their clerks:

§ 2. For information and warrant for apprehension,
 or for an information and summons for assault,
 trespass or other misdemeanor..... 0 2 6

For each copy of summons to be served on defendant or defendants	0 0 6
For a <i>subpœna</i> , only one on each side is to be charged for in each case which may contain any number of names; and if the justice of the case shall require it, additional <i>subpœnas</i> shall be issued without charge.....	0 0 6
For every recognizance, only one to be charged in each case	0 1 3
For every certificate of recognizance under the act of Upper Canada, *7 W. IV., c. 10.....	0 1 3
For information and warrant for surety of the peace or good behaviour, to be paid by complainant	0 2 6
For warrant of commitment for default of surety to keep the peace or good behaviour, to be paid by complainant	0 2 6
§ 3. In all cases of Conviction where the Fees are not expressly prescribed by any statute other than the statute hereinbefore repealed, *4 W. IV., c. 17.	
For information and warrant for apprehension, or for information and summons for service.....	0 2 6
For every copy of summons to be served upon defendant or defendants	0 0 6
For every <i>subpœna</i> to a witness (as provided in the 2nd § of this act)	0 0 6
For hearing and determining the case	0 2 6
For warrant to levy penalty	0 1 3
For making up every record of conviction when the same is ordered to be returned to the sessions, or on <i>certiorari</i>	0 5 0
Provided always, that in all such cases as admit of summary proceedings before a justice of the peace, and wherein no higher penalty than £5 can be imposed, for the conviction <i>there shall be only charged</i>	0 2 6
And for the warrant to levy the penalty	0 1 3
And in all cases where persons are <i>subpœnaed</i> to give evidence before justices in case of assault, trespass or misdemeanor, such witness shall be entitled, in the discretion of the magistrate, to receive for every day's attendance when the distance travelled in coming to and returning from such adjudication does not exceed <i>ten</i> miles.....	0 2 6
And for each mile above <i>ten</i>	0 0 3
Every bill of costs when demanded to be made out in detail	0 0 6
Copy of any other paper connected with any trial, and the minutes of the same if demanded, every folio of 100 words.....	0 0 6

Justices of the Peace.

§ 6. This act not to authorise justices claiming fees of any description connected with cases above the degree of *misde-meanor* (a); nor shall witnesses in such cases be allowed any thing for their attendance or travel, except under the order of the court, before which the trial of the case shall be heard.

Commitment for Insulting a Justice of the Peace in the execution of his office.

PROVINCE OF CANADA :

County of _____, } To all or any of the constables or peace
to wit: } officers in the said county of _____, and
to the keeper of the common gaol of the said county of _____,
at _____, in the said county of _____.

Whereas A. B. being personally present this day at _____, before me, J. C., Esq., one of her Majesty's justices of the peace in and for the county of _____, to answer and make his defence to a certain information before exhibited against him [*state the offence,*] and being so personally present before me, hath this day been guilty of divers gross insults and contemptuous behaviour to me the said justice, then being in the actual execution of my office as such justice of the peace as aforesaid [by accusing me of partiality and injustice in the execution of my office [*or as the case may be.*]] And whereas the said A. B., in consequence of such his insolent and contemptuous behaviour, is now here, by me, the said justice, required to find sureties for his good behaviour—that is to say, two sufficient sureties to become bound with him in a recognizance in the sum of _____ each, conditioned for the personal appearance of the said A. B. at the next general quarter sessions of the peace to be holden in and for the said county, and that in the meantime he should be of good behaviour; but the said A. B. hath refused to find sureties and to become bound in such recognizance as aforesaid: these are therefore to command you the said constables and peace officers, or any of you, to take the said A. B. and him safely to convey to the common gaol of the said county at _____, in the said county, and there deliver him to the keeper thereof together with this my warrant, and I hereby command you, the said keeper, to receive the said A. B. into your custody in the said common gaol, and him there safely to keep until he find such sureties and enter into such recognizance as aforesaid, or be from thence otherwise delivered in due course of law. Given under my hand and seal this _____ day of _____, in the year of our Lord 185 _____, at _____ in the county of _____ aforesaid.

Commitment for a Time certain.

PROVINCE OF CANADA :

County of _____, } To all or any of the constables or peace
to wit: } officers in the said county of _____ and to the
keeper of the common gaol of the said county of _____ at _____.

(a) No fees are allowed to justice in cases of felony.

Whereas A. B. stands convicted before me (or us) one (or two) of her Majesty's justices of the peace for the said county of upon my (or our) view of insolent and contemptuous behaviour towards me (or us) the said justice (or justices) this day of 185 , and in my (or our) presence while being and acting in the due execution of my office as such justice of the peace, as aforesaid (or our respective offices of justices of the peace as aforesaid), and obstructing me (or us) in the due execution of the same, against the peace of our said lady the Queen. These are therefore to require and command you the said constables or any of you, forthwith to apprehend, take and convey the said A. B. to the common gaol (a) of the said county of at in the said county, and to deliver him to the keeper thereof together with this warrant: and you the said keeper are hereby commanded by me (or us) the said justice (or justices) to receive and detain the said A. B. in your custody in the said common gaol, for the space of (six hours, or such other reasonable time as the justice, or justices may see fit), from the time of delivery of the said A. B. into your custody under this warrant, and for his offence aforesaid, whereof he stands convicted as aforesaid. Given under my hand and seal, &c.

Notice of Motion for leave to file a Criminal Information against a Justice.

To C. A., Esquire, one of her Majesty's justices of the peace in and for the county of .

Take notice, that I shall move her Majesty's Court of Queen's Bench, at Toronto, on the day of next term, or so soon after as counsel can be heard, for leave to file a criminal information against you in the crown office there for misconduct in your office of justice of the peace, in illegally and without any reasonable or probable cause whatsoever, causing me to be apprehended, on the day of last, and to be committed to the common gaol at in the said county, and there to be detained for a long space of time, to wit, for the space of days, on a supposed charge of .

Dated, &c.

Yours, &c.

A. B.

JUVENILE OFFENDERS.

Act for the more speedy Trial and Punishment of—20
V., c. 29. (b)

§ 1. Every person who shall subsequently to the passing of this act be charged with having committed, or having attempted to commit, or with having been an aider, abettor, counsellor, or procurer in the commission of any offence now,

(a) Or the offender may be committed to the lock-up house, under the 10 & 11 V., c. 41, but not exceeding 24 hours, see title "Lock-up House."

(b) This act is general, and relates to both sections of the province.

or hereafter by law deemed simple larceny, or punishable as such and whose age at the period of committing such offence, shall not, in the opinion of the justice or justices before whom brought, exceed the age of *sixteen years*, shall, upon conviction, upon confession or proof before two or more justices in open court, be committed to the common gaol or house of correction within the jurisdiction of such justices, there to be imprisoned with or without hard labour, for any term not exceeding *three calendar months*, or in the discretion of such justices shall forfeit and pay such sum not exceeding £5 as they shall adjudge: *provided* that if such justices upon the hearing, shall deem the offence not proved, or that it is inexpedient to inflict any punishment, they shall dismiss the party charged on finding surety or sureties for future good behaviour, or without such sureties, and then make out and deliver to the party charged, a certificate under their hand of such dismissal, in the form or to the effect in the schedule: provided also, that if the justices shall be of opinion, before the party charged shall have made his or her defence, that the charge is a fit subject for prosecution by indictment, or if the party charged upon being called upon to answer the charge, shall object to summary trial under this act, such justices instead of adjudicating shall deal with the case as if this act had not passed.

§ 2. The justices before whom any person shall be charged and proceeded against under this act before such person shall be asked whether he or she has any cause to shew why he or she should not be convicted, shall say to the person charged these words, or words to the like effect: "We shall have to hear what you wish to say in answer to the charge against you; but if you wish to be tried by a jury, you must object now to our deciding upon it at once," and if such person, or a parent or guardian of such person, shall then object, such person shall be dealt with as if this act had not been passed.

§ 3. Any two or more justices of the peace [for any district in Lower Canada] or for any city, county, or union of counties in Upper Canada sitting in open court, before whom any such person charged with any offence punishable under this act shall be brought or appear, are hereby authorised to hear and determine the case under the provisions of this act: provided always, that [the recorder or inspector and superintendent of police, of either of the cities of Quebec, or Montreal, the sheriff of any district in Lower Canada, other than the districts of Quebec and Montreal, any deputy sheriff in the district of Gaspé] any judge of a county court in Upper

Canada, being a justice of the peace, any recorder of a city in Upper Canada being a justice of the peace, any police magistrate in Upper Canada sitting in open court, and any stipendary magistrate in Upper Canada sitting in open court, and having by law the power to do acts usually required to be done by two or more justices of the peace, shall and may within their respective jurisdictions hear and determine every charge under this act, and exercise all the powers herein contained as fully as two or more justices of the peace can or may do by virtue of this act.

§ 4. Relates exclusively to Lower Canada.

§ 5. A certificate of dismissal, or a conviction under this act shall be a release from all further proceedings for the same cause.

§ 6. Where any person whose age is alleged not to exceed *sixteen* years shall be charged with any such offence on the oath of a credible witness, before any justice of the peace, such justice may issue his summons or warrant to summons or to apprehend the person so charged, to appear before any two justices of the peace, at a time and a place to be named in such summons or warrant.

§ 7. Any justice. or justices if he or they think fit, may remand for further examination or for trial, or suffer to go at large upon his or her finding sufficient surety or sureties, any such person charged as aforesaid; and every such surety shall be bound by recognizance, to be conditioned for the appearance of the party before the same or some other justice or justices for further examination, or for trial before two or more justices of the peace as aforesaid; or for trial at some superior criminal court, as the case may be; and every such recognizance may be enlarged from time to time by any such justice or justices to such further time as he or they shall appoint. Every such recognizance which shall not be enlarged shall be discharged without fee or reward when the party shall have appeared according to the condition thereof.

§ 8. Every fine imposed under this act shall be paid to the justices imposing the same, or to the clerk of the recorder's court, clerk of the county court, or clerk of the peace, as the case may be, and by him paid over to the county treasurer for county purposes if the same have been imposed in Upper Canada.

§ 9. It shall be lawful for any justice by summons to require the attendance of any person as a witness upon the hearing of any case before two justices under the authority of this act at a time and place to be named in such summons;

and may bind by recognizance all persons whom he may consider necessary to be examined touching the matter of such charge, to attend at the time and place to be appointed by him, and then and there to give evidence upon the hearing of such charge : and in case any person so summoned or required or bound as aforesaid, shall neglect or refuse to attend, then upon proof of his having been duly summoned as hereinafter mentioned or bound by recognizance as aforesaid, it shall be lawful for either of the justices before whom such person ought to have attended to issue a warrant to compel his appearance as a witness.

§ 10. The summons may be served by delivering a copy thereof to the party, or to some inmate at his usual place of abode.

§ 11. The justices before whom any person shall be summarily convicted of any such offence as aforesaid, may cause the conviction to be drawn up in the form set forth in the schedule ; or in any other form of words to the same effect.

§ 12. No such conviction shall be quashed for want of form, or removed by *certiorari* into any superior court ; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

§ 13. Such conviction and recognizances to be forthwith transmitted to the clerk of the peace for the city, county or union of counties, wherein the offence was committed ; and said clerk of the peace shall transmit to the provincial secretary a *quarterly* return of the names, offences and punishments, mentioned in the convictions, with such other particulars as may from time to time be required.

§ 14. No conviction under this act shall be attended with *forfeiture*, and whenever any person shall be deemed guilty under this act it shall be lawful for the presiding justices to order restitution of the property in question to the owner or his representatives : and if not forthcoming, the same justices, whether they award punishment or dismiss the complaint, may inquire into and ascertain the value thereof in money, and if they think proper, order payment of such money to the owner, by the party convicted, either at one time, or by instalments, at such periods as the court may deem reasonable ; and the party shall be liable to be sued for the same as a debt, with costs.

15. Whenever any justices of the peace shall adjudge any offender to forfeit and pay a pecuniary penalty under this act, and such penalty shall not be forthwith paid, it shall be

lawful for such justices, if they shall deem it expedient, to appoint some future day for payment, and to order the offender to be detained in safe custody until the day so appointed, unless such offender shall give security to the satisfaction of such justices for his or her appearance on such day; such security to be taken by way of recognizance or otherwise, at their discretion: and if at the time appointed such penalty shall not be paid, it shall be lawful for the same or any other justices of the peace, by warrant under their hands and seals, to commit the offender to the common gaol or house of correction within their jurisdiction, for any time not exceeding *three* months, reckoned from the day of adjudication: such imprisonment to cease on payment of the penalty.

16. Justices of the peace, before whom the party shall be tried, are authorised at their discretion to order payment to the prosecutor and witnesses of such sums of money as to them shall seem reasonable, sufficient to reimburse the expenses they shall severally have incurred in attending before them, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time, and to order payment to the constables and other peace officers for the apprehension and detention of any offender; and although no conviction shall actually take place, such justices may order all or any of the payments aforesaid when they shall be of opinion that the parties acted *bona fide*; and all such expenses shall be ascertained and certified under the hands of such justices; provided that the costs to be paid as aforesaid do not in any case exceed *forty shillings*.

§ 17. Such orders for payment of expenses to be forthwith made out and delivered by said justices or one of them, or by the clerk of the recorder's court, county court, or clerk of the peace (as the case may be) unto such prosecutor or person upon payment of *one shilling* fee and no more to such clerk, and shall be made upon the officer to whom fines imposed by this act are required to be paid over in the (district) city, county or union in which the offence was committed, who is required to pay the same upon sight.

§ 18. Actions against any person for any thing done in pursuance of this act shall be laid and tried in the (district or circuit in Lower Canada) or in the county or union of counties in Upper Canada, where the fact was committed, and be commenced within *three months* after, and notice in writing of such action shall be given to the defendant *one month* at the least before action: the defendant may plead the general issue and give this act and special matter in evi-

dence, and no plaintiff shall recover, if tender of sufficient amends shall have been made before action, or if a sufficient sum paid into court; and if verdict for the defendant, or plaintiff become nonsuit, &c., the defendant shall recover full costs.

See also "*Reformatory Prison.*"

KIDNAPPING.

Is the forcible abduction or stealing away of a man, woman or child, from their own country, and sending them into another—4 *Bl. Com.*, p. 219; and is punishable at common law with fine, imprisonment and pillory—*Ib.*; and also by statute 11 & 12 Wm. III., c. 7, though principally intended against pirates, it is enacted "that if any captain of a merchant vessel shall (during his being abroad) force any person on shore, or wilfully leave him behind, or refuse to bring home all such men as he carried out, if able and desirous to return, he shall suffer three months' imprisonment." Upon this subject the learned commentator on *Blackstone* (*Christian*) has this note: where a child is stolen for the sake of its clothes, it is the same species of felony as if the clothes were stolen without the child; but, without referring it to that class of offences, stealing a child from its parents is an act so shocking and horrid, that it would be considered the highest misdemeanor, punishable by fine, imprisonment and to be a misdemeanor to steal a dead body from a grave. A pillory, upon the same principle on which it was decided special provision, however, is now made against this offence, by 4 & 5 Vic., c. 27, § 21, for which see title "*Child Stealing,*" p. 145.

KING'S BENCH, OR QUEEN'S BENCH.

The jurisdiction of this court is very high and transcendent. It keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined there, or prohibit their progress in the court below. It superintends all civil corporations; it commands magistrates and others to do what their duty requires, in every case where there is no specific remedy; it protects the liberty of the subject by speedy and summary interposition, and is empowered to find redress in every matter of inquiry.—2 *Haw. c.* 3, § 3. It takes cognizance both of civil and criminal causes. On the crown side, its jurisdiction extends to all manner of offences, from high treason down to the most trivial misdemeanor, or breach of the peace, and it may award process into any part of the province. Into this court, also,

indictments from all inferior courts may be removed, by writ of certiorari, and tried either at the bar, or by writ of *nisi prius*, at the assizes for the county out of which the indictment is brought.

In most cases of misdemeanor, it is in the discretion of the Court of King's Bench, to inflict such fine and imprisonment, and even infamous punishment (not prohibited by statute) on offenders, as the nature of the crime requires; and the court may commit to any prison in the district.—2 *Haw. c.* 5, § 5.

The Court of King's Bench, in this province, was created and established by statute 34 G. III., c. 2, and the change of style of the court to the "Queen's Bench," was effected by the *2 V., c. 1.

KING'S EVIDENCE.

Is obtained by the admission of an accomplice against his fellows upon an implied confidence, which the judges of gaol delivery have usually countenanced and adopted, that if such accomplice makes a full and complete discovery of that and of all other felonies, to which he is examined by the magistrate, and afterwards gives his evidence without prevarication or fraud, he shall not himself be prosecuted.—4 *Bl. Com.* 331. The discretionary power, however, thus exercised by justices of the peace, is founded in practice only, and cannot control the authority of the court of gaol delivery, and exempt the accomplice, at all events, from being prosecuted; for a motion must be made to a judge for leave to admit an accomplice to be a witness, though the judge, unless he should see some particular reason to the contrary, will prefer the one to whom this encouragement has been held out by the justice of the peace.—*Ibid.* Such admission to be a witness, does not *entitle* the accomplice to a pardon of right, but amounts merely to a promise of a recommendation to mercy, upon condition, that the accomplice makes a full and fair disclosure of all the circumstances of the crime for which the other prisoners are tried, and in which he has been concerned in concert with them: upon failure, on his part, of this condition, he forfeits all claims to protection.—*R. v. Rudd, Cowp.* 331; 1 *Leach*, 115. Thus, where upon a trial before *Buller, J.*, at York (England), the accomplice (who was admitted a witness) denied in his evidence, all that he had before confessed, upon which the prisoner was acquitted—the judge ordered an indictment to be preferred against the accomplice for the same crime; and upon his previous confession, and other circumstances, he was convicted and executed.—4 *Bl. Com.* 331,

note 6. And the claim of an accomplice does not extend beyond *those offences* in which he has been connected with the prisoner, and concerning which he has previously undergone an examination.—*R. v. Duce*, 1 *Chetw.*; *Burn.* 212.

Until the trial, the accomplice so to be admitted as king's evidence, will, of course, be kept in custody, as well as the principal.

See also further on this subject, title "*Approvers*" ante p. 42.

KING'S STORES.

By 33 El., c. 4, 22 C. II., c. 5, if any person having the charge or custody of any of the King's armour, ordnance, ammunition, shot, powder, or habiliments of war, or of any victuals provided for victualling the army, shall for lucre or gain embezzle, purloin, or convey away the same, to the value of 20s., or shall feloniously steal or embezzle any of her Majesty's sails, cordage, or any other of her Majesty's naval stores, to the value of 20s., he shall, (on prosecution within a year) be adjudged guilty of felony.

By 9 & 10 W. III., c. 41, 17 G. II., c. 40, § 10, 11, no person, other than persons authorised, by contracting with her Majesty's officers, shall make any stores of war or naval stores, with the Queen's mark, that is cordage of three inches and upwards, with a white thread laid the contrary way; or any canvas with a blue streak in the middle; or any other stores with the broad arrow, on pain of forfeiting the same, and £100, with costs, (on conviction at the assizes or sessions), half to the Queen and half to the informer.

By 9 & 10 W. III., c. 41, any such person, in whose custody such goods or stores, so marked, (or any timber, thick stuff, or plank, marked with the broad arrow, 9 G. I., c. 8, § 3,) shall be found shall forfeit the same and £200, with costs, in like manner, and be imprisoned till paid, unless he shall upon trial produce a certificate from the principal officers of the navy, expressing the quantity and on what occasion he came by them.

By 9 G. I., c. 8, § 4, the court may mitigate the penalty, and as they see cause, commit the offender to gaol till payment, or may punish him corporally by public whipping, or hard labour for six months, or a less time.

By 12 G. III., c. 24, § 1, if any person within this realm, or in any of the islands, countries, forts, or places thereunto belonging, shall wilfully and maliciously set on fire, burn or destroy, (or aid therein) any of her Majesty's ships of war, whether on float, or building in any dock-yard, rope-yard,

victualling office or buildings, belonging thereto, or any military or naval stores therein deposited, he shall be adjudged guilty of felony.

The provisions of this act are by the *3 W. IV., c. 3, confirmed, in relation to this province.

LANDLORD AND TENANT.

Distress for Rent in Arrear.

First.—Distress for rent must be for rent in arrear; therefore it may not be made on the same day on which the rent becomes due; for if the rent is paid in any part of that day whilst a man can see to count money the payment is good.

Second.—It must not be after tender of payment.—*Inst.* 107.

Third.—Persons having rent in arrear upon any lease determined, may distrain for such arrears after the determination of the lease, in the same manner as if it had not been determined; provided that such distress be made within six calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due.—8 *An. c.* 14, § 6, 7 (a). Before the statute of the 17 C. II., c. 7, in case a distress was too little, where sufficient distress was to be had, a man could not distrain again, be the demand never so great. But now, by said statute, in all cases where the value of the cattle distrained shall not be found to be of the amount distrained for, the party to whom such arrears were due, his executors or administrators, may distrain again for the residue. § 4. So, in like manner, where the distress is made by virtue of the warrant of a justice of the peace, in nature of an execution: and the distinction appears to be this,—where a person hath an entire duty, he shall not split the entire sum, and distrain for part of it at one time, and for part of it at another time; and so *toties quoties* for several times, for that is great oppression; but if a man seizeth for the *whole* sum that is due to him, and only *mistakes* the value of the goods seized, there is no reason why he should not complete his execution, by making a further seizure.—*Burrow, Mansfield*, 589; 3 *Bl. Com.* 12. If any distress and sale shall be made for rent in arrear and due, when none is in truth due, the owner shall recover double value, with full costs.—2 *W. & M.*, sess. 1, c. 5, § 5.

Distresses must be proportionate to the thing distrained

(a) A similar provision in *7 W. IV., c. 3, § 28.

for. By the statute of Marlbrige, 52 Hen. III, c. 4, if any man takes a great or unreasonable distress for rent-arriere, he shall be heavily amerced for the same. As if the landlord distrains two oxen for twelve-pence rent; the taking of *both* is an unreasonable distress; but if there were no other distress nearer to the value to be found, he might reasonably have distrained *one* of them. The remedy for excessive distress is by a special action on the statute of Marlbridge, for an action of trespass is not maintainable upon this account, it being no injury at common law.—3 *Bl. Com.* 12.

What Goods may be Distrained, and what not.

Distress for rent must be of a thing whereof a valuable property is in some body; and therefore dogs, bucks, does, conies, and the like, that are *feræ naturæ*, cannot be distrained.—1 *Inst.* 47. Although it be of valuable property, as a horse, yet, if when a man or woman is riding on him, or an axe in a man's hand, cutting of wood, and the like, they are for that time privileged, and cannot be distrained.—1 *Inst.* 47. And it hath been held, that the horses joined to a cart, with a man upon it, cannot be distrained for rent (although they may for damage feasant), but both cart and horses may, if the man be not upon the cart.—*Vent.* 36. Valuable things shall not be distrained for rent if brought to the premises for the benefit and maintenance of trades, which by consequence are for the commonwealth, and are there by the authority of law, as the horse in a smith's shop; nor the cattle or goods of a guest at an inn; nor the materials in a weaver's shop for making cloth; nor cloth or garments in a tailor's shop: nor sacks of corn or meal in a mill; nor any thing distrained for damage feasant; for it is in the custody of the law and the like.—1 *Inst.* 47; 2 *Burr.* 1498. But a chariot or horses standing at livery are not exempt.—*Ib.* Beasts belonging to the plough shall not be distrained (which is the ancient common law of England, for no man shall be distrained by the utensils or instruments of his trade or profession, as the axe of the carpenter, or the books of a scholar), while goods or other beasts may be distrained.—1 *Inst.* 47. But this rule holds only in distresses for rent in arrear, and the like; but doth not extend to cases where a distress is given in the nature of an execution, by any particular statute, as for poor rates, and the like.—3 *Salk.* 136; 1 *Burr.* 579; *Ld. Raym.* 384. Implements of trade may be distrained when they are not in actual use and no other sufficient distress can be found on the premises.—*Co. Litt.* 47, (a) 4 *T. R.* 565; 6 *Price.*

Rep. 3; 2 *Chitty's R.* 167. Furnaces, cauldrons or other things fixed to the freehold, or the doors or windows of a house, or the like, cannot be distrained.—1 *Inst.* 47. Things for which a replevin will not lie, so as to be known again, as money out of a bag, cannot be distrained.—2 *Bac. Abr.* 109. But money in a bag sealed, may be distrained, for that the bag sealed may be known again. By the 2 W. & M. sess. 1, c. 5, § 3, persons having rent in arrear, on any demise, lease or contract, may seize and secure any sheaves or cocks of corn, or corn loose, or in the straw, or hay being in any barn or granary, or upon any hovel, stack or rick, or otherwise, upon any part of the land charged with rent, and may lock up or detain the same, in the place where found, in the nature of a distress, so as the same be not removed, to the damage of the owner, out of the place where found and seized, but kept there (as impounded) till replevied or sold. Also by the 11 Geo. II., ch. 19, § 8, the landlord may take and seize corn, grass, hops, roots, fruits, pulses or other products growing, as a distress; and the same may cut, gather, make, cure, carry, and lay up, when ripe, in the barns or other proper place, on the premises; and if there shall be no barn or proper place on the premises, then in any other barn or proper place which he shall procure so near as may be to the premises; the appraisement whereof shall be taken when cut, gathered, cured, and made, and not before. And notice of the place where the goods so distrained shall be lodged, shall in one week after the lodging thereof be given to the tenant or left at the last place of his abode. § 9. And generally, whatever goods and chattels the landlord finds upon the premises, whether they in fact belong to the tenant or a stranger, are distrainable by him for rent, (with the exceptions in favour of trade) above specified; for otherwise a door would be opened to infinite frauds upon the landlord; and the stranger hath his remedy over by action on the case against the tenant, if by the tenant's default the goods are distrained.—3 *Blackstone*, 8. With regard to a stranger's beasts, if they are put in by consent of the owner of the beasts they are distrainable immediately afterwards for rent-arriere by the landlord; so also if the stranger's cattle break the fences, and commit a trespass by coming on the land, they are distrainable immediately by the lessor for his tenant's rent. But if the lands were not sufficiently fenced so as to keep out cattle, the landlord cannot distrain them, till they have been *levant* and *couchant* on the land; that is, have been long enough there to have lain down, and rose up to feed; which in general is held to be one night

at least: and then the law presumes that the owner may have notice whether his cattle have strayed, and it is his own negligence not to have taken them away: yet if the lessor of his tenant were bound to repair the fences, and did not, and thereby the cattle escaped into their grounds, without the negligence or default of the owner, in that case, though the cattle may have been *levant* and *couchant*, yet they are not distrainable for rent, till actual notice is given to the owner that they are there and he neglects to remove them: for the law will not suffer the landlord to take advantage of his own, or his tenant's wrong.—3 *Bl. Com.* 8, 9. But cattle put into a field by a drover with the consent of the occupier to graze only one night on their way to a fair or market, are not liable to distress for rent.—2 *Vern.* 130.

Goods of a principal in the hands of a factor are privileged from distress, being for the benefit of trade.—6 *Moore Rep.* 243, so goods landed at a wharf, and consigned to a broker as agent of the consignor, for sale, and placed by the broker in the wharfinger's warehouse as they were brought there in the course of trade.—1 *Bing.* 283. So goods carried to be weighed, even at a private house, if in the way of trade, are exempt: so is a horse that has carried corn to a mill to be ground.—*Cro. Eliz.* 548, 596. Goods in possession of a carrier are also exempt, and this though the carrier was not a public one.—1 *Salk.* 249. But horses or cattle sent to agist (or pasture) may be immediately distrained by the landlord for rent in arrear, and the owner must seek his remedy by action against the tenant. The principle of this rule extends to public livery stables, to which if horses and carriages are sent to stand, they are distrainable by the landlord.—3 *Burr.* 1498. So upon the same principle the goods of lodgers, or any other person on the premises, are liable to be distrained; and to exempt goods being at an inn, they must be within the very precincts of the inn, and not on other premises at a distance belonging to it.—*Barnes*, 472.

A rent may not be distrained for in the night, but in the day time.—1 *Inst.* 142. For before sunrise or after sunset no man may distrain but for damage feasant.—*Mirroure*, c. 2, § 26.

Distress how to be Demeaned.

When the distress is thus taken, the next consideration is the disposal of it; for which purpose the things distrained must, in the first place, be carried to some pound, and there impounded by the taker. But in their way thither they may be *rescued* by the owner in case the distress was taken with-

out cause or contrary to law, as if no rent be due; if they were taken upon the highway, or the like, in these cases the tenant may lawfully make rescue. But if they be once impounded, even though taken without any cause, the owner may not break the pound and take them out, for they are in the custody of the law.—3 *Bl. Com.* 12; *Co. Litt.* 160, 161. But the ordinary and most usual course of treating a distress when made, is that provided for by the following statute.

By 11 Geo. II., c. 19, any person distraining may impound or otherwise secure the distress of what kind soever it be, in such place or in such part of the premises as shall be most convenient; and may appraise and sell the same as any person before might have done off the premises.—§ 10.

Cattle distrained may not be worked or used, unless for the owner's benefit, as a cow milked, or the like—*Cro. Jac.* 148; and if the distress be lost by the act of God, as if the distress dies in the pound without any default in the distrainer, in such case he may distrain again.—1 *Salk.* 248.

By statute 2 W. & M., sess. 1, c. 5, where any goods shall be distrained for rent, and the tenant or owner shall not, within five days after such distress, and notice thereof left at the premises, replevy the same, the person distraining, with the sheriff, under sheriff, or constable of the peace, shall cause the goods distrained to be appraised by two sworn appraisers (whom such sheriff or constable shall swear), to appraise the same truly, and after such appraisement, the same shall be sold for the best price that can be got, for satisfaction for the rent and charges of the distress, appraisement and sale; leaving the overplus (if any) with the sheriff or constable, for the owner's use. The five days are reckoned inclusive of the day of sale; as if the goods are distrained on the 1st, they must not be sold before the 6th.—1 *H. Bla.* 13. But by consent of the tenant the landlord may continue in possession longer than the five days without incurring any liability.—7 *Price*, 690.

Replevin.

Where the tenant disputes the validity of the distress, his remedy is by action of replevin. The tenant may replevy the goods seized at any time within the five days, or at any time before the sale.—5 *Taunt.* 451; *Marsh*, 135. The party intending to replevy sues out a writ of *replevin*. If the distress exceed £15, the writ is sued out from the Queen's Bench (or Common Pleas); if not exceeding £15 then from the county court.—*4 *W. IV.*, c. 7, § 7. The writ is directed to the sheriff, commanding him to replevy the goods to the

plaintiff, and to summons the defendant (the landlord). The statute requires that before the sheriff shall proceed to replevy he shall take pledges from the plaintiff by bond (with sureties), in the form prescribed, conditioned for the prosecution of the action, and the return of the goods, if such return be adjudged. The statute 11 G. II., c. 19, requires that the sheriff shall take bond, with two sureties, in double the value of the goods distrained. The sheriff on receiving such security, is then immediately, by his officers, to cause the chattels distrained to be restored to the party distrained upon, and the action of replevin proceeds in the ordinary way of other actions.

Fraudulent removal of Goods, &c.

By 11 G. II., c. 19, § 1, if any tenant for life, years, at will, sufferance, or otherwise, shall fraudulently, or clandestinely, convey off the premises his goods or chattels, to prevent the landlord from distraining, such landlord, or any person by him lawfully empowered, may, in thirty days next after such conveying away, seize the same wherever they shall be found, and dispose of them in such manner as if they had been distrained on the premises. § 2. But no landlord shall distrain any goods sold *bonâ fide*, and for a valuable consideration, before such seizure made, to any person not privy to such fraud. § 3. And if any tenant shall so fraudulently remove and convey away his goods or chattels, or if any person or persons shall wilfully and knowingly aid or assist him in such fraudulent conveying away or carrying off any part of his goods or chattels, or in concealing the same, any person so offending shall forfeit to the landlord *double the value* of such goods, to be recovered in any court of record. § 4. But if the goods and chattels so fraudulently carried off or concealed shall not exceed the value of £50, the landlord or his agent may exhibit a complaint in writing before *two* justices of the peace of the same county or division, residing near the place where such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed; who may summon the parties concerned, examine the fact, and all proper witnesses, upon oath (or if a Quaker, upon affirmation), and in a summary way determine whether such person or persons be guilty of the offence with which he or they are charged; and to enquire in like manner of the value of such goods and chattels, and upon full proof of the offence, by order under their hands and seals, the said justices shall adjudge the offender or

offenders to pay *double the value* of the said goods and chattels to such landlord, his bailiff, servant or agent, at such time as the said justices shall appoint; and if the offender or offenders, having notice of such order, shall refuse or neglect so to do, they shall, by their warrant, levy the same by distress; and for want of such distress, may commit the offender or offenders to the house of correction, there to be kept to hard labour, without bail or mainprise, for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied. § 5. Persons aggrieved by order of such justices may appeal to the next general quarter sessions, who may give costs to either party. § 6. And where the party appealing shall enter into recognizance, with one or two sureties, in double the sum so ordered to be paid, with condition to appear at such sessions, the order of the justices shall not be executed against him in the mean time. § 7. Where any goods or chattels, fraudulently or clandestinely conveyed or carried away, shall be put, placed or kept in any house, barn, stable, out-house, yard, close, or place locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall be lawful for the landlord, or his steward, bailiff, receiver, or other person or persons empowered, to take and seize, as a distress for rent, such goods and chattels (first calling to his assistance the constable, headborough, or other peace officer of the district, &c.); and in case of a dwelling-house (oath being first made before a justice of the peace of a reasonable ground to suspect that such goods or chattels are therein), in the day time, to break open and enter into such house, barn, stable, out-house, yard, close or place, and to take and seize such goods and chattels for the said arrears of rent, as he might have done if they had been in any other place.

Notice to Quit.

If the tenancy be from year to year, six months notice to quit by the landlord or the tenant is requisite to put an end to the tenancy. The notice cannot be given at any time of the year, but must be given six months clear before the end of the current year of the tenancy. If the tenancy be by the quarter, month, or week, corresponding notice must be given; that is, three months, one month, or one week, as the case may be, such notice transpiring at the end of the quarter, month, or week, of the original holding. In the case of a tenancy for a time certain, that is, if the tenant take the premises for one year certain, and not by the year, or from

year to year, notice to quit is not necessary, but the landlord is entitled to his possession at the expiration of the year; and so likewise where the tenancy be for a time certain for a shorter period than a year.

Case of Tenant Holding Over.

By 4 G. II., c. 28, if any tenant for life, or years, or other person who shall come into possession by, from, or under him, shall wilfully hold over any lands after the determination of such term, and after demand made, and notice in writing given for delivering the possession thereof, he shall, for the time he shall so hold over, pay double the yearly value, to be recovered by action of *debt* in any court of record.—§ 1.

By 11 G. II., c. 19, § 18, if any tenant shall give notice of his intention to quit the premises at a time mentioned in such notice, and shall not accordingly deliver up possession at the time in such notice contained, he, his executors or administrators, shall from thenceforward pay *double rent*, to be recovered in like manner as the single rent.

*By 4 W. IV., c. 1, it shall be lawful for any landlord, whose tenant shall, after the expiration of any tenancy (by parol or writing) wrongfully refuse, upon demand made in writing, to go out of possession, to apply to the Court of King's Bench in term, or to a judge in vacation, upon affidavit, who shall order a writ to issue for summoning a jury of twelve men, before the commissioner named to determine the matter; and if in favour of the landlord, a writ of possession shall be issued.

Deserting the Premises.

By 11 G. II., c. 19, § 16, if any tenant at rack-rent, or where the rent reserved shall be full *three-fourths* of the yearly value of the demised premises, who shall be in arrear for *one year's rent*, shall desert the premises and leave the same uncultivated or unoccupied, so as no sufficient distress can be had, two justices (having no interest in the premises) may at the request of the landlord go upon and view the same, and affix on the most notorious part of the premises notice in writing what day (at the distance of *fourteen* days at the least) they will return to take a second view, and if on such *second view*, the tenant shall not appear and pay the rent, or there shall not be sufficient distress on the premises, then the justices may put the landlord into possession, and the lease as to such demise shall from thence be void. § 17. But the tenant may ap-

peal to the next justice or justices of assize, who may award costs to either party.

Rent how far Recoverable by Executors.

By 32 H. VIII., c. 37, it is enacted that the executors and administrators of any person to whom any such rent shall be due and not paid at the time of his death, may distrain upon the premises, so long as they shall continue in the possession of such tenant, or of any other person claiming under him.

See also *7 W. IV., c. 3, § 17.

Costs.

*By the 1 V., c. 16, § 1, no person whatsoever making any distress either for rent or for any penalty imposed by the laws of this province, when the sum demanded shall not exceed the sum of £20, for and in respect of such rent or penalty, nor any person whatsoever employed in any manner in making such distress, or doing any act whatsoever in the course of such distress, or for carrying the same into effect, shall have, take or receive, out of the produce of the goods or chattels distrained upon and sold, or from the tenant or other person distrained, or from the landlord, or from any other person whatsoever, any other or more costs and charges for and in respect of such distress, or any matter or thing done therein, than such as are fixed and set forth in the schedule annexed, and no person shall make any charge for any thing mentioned in the schedule not really done.

§ 2. Any person offending herein may be summoned by any one justice upon the complaint of the party aggrieved, and if it shall appear to such justice that the person or persons complained of shall have levied, taken or received, or had other and greater costs and charges than mentioned in the schedule, or made any charge for any thing mentioned in the schedule not really done, such justice shall order and adjudge *treble the amount* of the moneys so unlawfully taken to be paid, by the person or persons so having acted, to the complainant, together with full costs; and in case of non-payment, such justice shall issue his warrant to levy the same by distress and sale of the goods and chattels of the offender, and in case of insufficient distress, such justice shall by warrant under his hand commit the party to the common gaol, there to remain until such order or judgment be satisfied. § 3. Such justice may summon and examine witnesses on oath touching such complaint or the defence against it; and in case of non-attendance, without lawful

excuse, or refusal to be examined, such person shall forfeit a sum not exceeding 40s., to be enforced by distress or commitment in like manner as aforesaid, except as regards the form of the order as hereinafter provided. § 4. Any party preferring an unfounded complaint shall be adjudged to pay costs not exceeding 20s. to the defendant, to be enforced in manner aforesaid: *provided always*, that no order or judgment be made against the landlord, unless such landlord shall have personally levied such distress; and *provided further*, that no person aggrieved by any such distress, or any proceedings had in the course thereof, or by any costs or charges levied in respect of the same, shall be barred from any legal remedy, excepting so far as any complaint to be preferred by this act shall have been determined, and such order and judgment may be given in evidence under the plea of the *general issue*. § 5. Such orders and judgments on such complaints shall be made in the form in the schedule annexed, and may be proved before any court by proof of the signature of the justice, and such orders as regards witnesses shall be made in such form as to such justice shall seem fit and convenient. § 6. Every broker, constable, bailiff or other person who shall make and levy any distress, shall give a copy of his charges and of all the costs and charges of any distress whatsoever signed by him to the person or persons on whose goods and chattels any distress shall be levied, although the rent or penalty demanded shall exceed £20.

SCHEDULE.

Form of the Order and Judgment of the Justice before whom complaint is preferred, when the Order and Judgment is for the Complainant.

In the matter of complaint of A. B. against C. D., for the breach of the provisions of an act passed in the year of the reign of her Majesty Queen Victoria, intituled, "An Act," [insert the title of this act], I, E. F., a justice of the peace in and for the , do order and adjudge, that the said C. D. shall pay to A. B. the sum of , as a compensation and satisfaction for unlawful charges and costs levied and taken from the said A. B. under a distress for [as the case may be], and the further sum of for costs in this complaint.

(Signed) E. F.

Form of the Order and Judgment of the Justice, when he dismisses the complaint as unfounded, with or without costs, as the case may be.

In the matter of complaint of A. B. against C. D. for the

breach of the provisions of an act passed in the year of the reign of her Majesty Queen Victoria, intituled, "An Act," [insert the title of this act] I, E. F., a justice of the peace in and for the , do order and adjudge that the complaint of the said A. B. is unfounded, [if costs are given], and I do further order and adjudge, that the said A. B. shall pay unto the said C. D. the sum of .

(Signed) E. F.

Schedule of Costs and Charges on Distresses for small Rents and Penalties.

- Levying distresses under £10—5s.
- Man keeping possession, per diem—3s. 9d.
- Appraisement, whether by one appraiser or more—4d. in the pound on the value of the goods.
- If any printed advertisement—not to exceed in all 5s.
- Catalogues, sale and commission, and delivery of goods—1s. in the pound on the net produce of the sale.

By the 4 & 5 V., c. 25, § 37, the stealing of any chattel or fixture by the tenant is made felony, for which see title "Larceny."

Form of Notice to Quit.

SIR,—I hereby (as agent of Mr. Nokes, your landlord, on his behalf,) give you notice to quit and deliver up possession of the [house, lands, and premises, with the appurtenances] situate at , in the county, which you hold of [him] as tenant thereof, on the day of next, or at the expiration of the current year of your tenancy, which shall expire next after the end of one-half year from the date of this notice. Dated the day of , 1855.

JAMES NOKES.

Warrant to Distrain.

To Mr. A. B., my bailiff, greeting: Distrain, the goods and chattels of Joseph Stiles, in the house he now dwells in, [or "upon the farm he now occupies," as the case may be], situate at , in the county of , for £22 10s. 6d., being the amount of [one year's] rent due to me for the same, on the day of , last; and for your so doing this shall be your sufficient warrant and authority. Dated this day of 185 .

JOHN NOKES.

Inventory of Goods Distrained.

An inventory of the several goods and chattels distrained by me, whose name is hereunder written, the day of , in the year , in the houses, out-houses, and lands of A. T., in , by the authority, and on the behalf of A. L., of , for pounds arrears of rent due to him, the said A. L.

day of _____ in the year of our Lord one thousand eight hundred and _____, who saith that A. O. of _____, is justly and truly indebted to this informant in the sum of _____ for arrears of rent for a [house and lot situate at _____] due to this informant by the said A. O. on the _____ day of _____, and that the said A. O. hath fraudulently and clandestinely conveyed and carried away, or caused to be so conveyed or carried away, certain goods and chattels of him the said A. O. from the said [house and lot] after the said arrears had so become due; in order to prevent the said goods and chattels from being seized and distrained by this informant for the said arrears of rent, and that the said goods and chattels are, as this informant hath good cause to suspect, and doth suspect and verily believe, put, placed, or kept, in the dwelling house, barn, stable, out-house, yard, close, or other place, of _____ at _____ locked up, fastened or otherwise secured, so as to prevent the said goods and chattels from being taken and seized by this informant as a distress for such arrears of rent as aforesaid; wherefore the said A. J. prayeth our warrant in the premises.

Taken and sworn at _____ the _____ day of _____ before _____ A. J.

Warrant upon the preceding Complaint and Oath.

PROVINCE OF CANADA :

County of _____, } To all or any of the constables or other
to wit. } peace officers in the said county.

Whereas A. J. of _____, yeoman, hath this _____ day of _____ exhibited his complaint, and made oath before us the undersigned, two of her Majesty's justices of the peace for the said county, that A. O. of _____ has fraudulently and clandestinely conveyed and carried away or caused to be so conveyed and carried away, certain goods and chattels of him the said A. O., from a certain house and lot, situate at _____, to prevent the said A. J. from distraining the said goods and chattels for £ _____ arrears of rent due to the said A. J. for the said _____, and that the said goods and chattels are, as the said A. J. hath good cause to suspect, and doth suspect and verily believe, put, placed or kept in the dwelling-house, barn, stable, out-house, yard, close or other place of _____ at _____, locked up, fastened, or otherwise secured, so as to prevent the said goods and chattels from being taken and seized by the said A. J. as a distress for such arrears of rent, as aforesaid. These are therefore to command you, and each and every of you, to aid and assist the said A. J., his steward, bailiff, receiver or other persons empowered by him to take and seize, as such distress for rent, as aforesaid, the said goods and chattels, in the day-time to break open and enter into the said dwelling-house, barn, stable, out-house, yard, close or other place of the said _____ at _____, and to take and seize the said goods and chattels for the said arrears of rent, according to law.

Given under our hands and seals at _____, the _____ day of _____.

*Information and Complaint under the 11 G. II., c. 19, of
Tenant having deserted the Premises.*

PROVINCE OF CANADA :

County of , } The information and complaint of A. B.,
 to wit. } of , in the said county, taken this day
 of , 185 , who saith that he the said A. B. did, in and by
 a certain indenture bearing date the day of in the year
 of our Lord 185 (or, by written or verbal agreement, *as the
 case may be*), demise unto A. S., of in the county aforesaid
 a certain messuage (or other premises, *as the case may be*),
 situate and being at , in the county aforesaid, at rack rent
 (or three-fourths of the yearly value); that is to say, at the
 yearly rent of , payable quarterly (*if so*), on the day
 of &c.; and that the said A. B. further complaineth, that
 on the day of now last past there was in arrear and due
 unto him the said A. B., from the said A. S., the tenant of the
 said demised premises, one whole year's rent thereof, and that
 he the said A. S. hath deserted the said demised premises, and
 left the same uncultivated and unoccupied, so as no sufficient
 distress can be had to countervail the said arrears of rent, and
 that the said arrears of rent have been duly demanded accord-
 ing to law. Wherefore the said A. B. doth request J. C. and
 S. R., esquires, two of her Majesty's justices of the peace for
 the said county, to go and view the said demised premises, and
 affix on the most notorious part thereof a notice in writing,
 what day they will return and take a second view thereof, and
 that a remedy may be given to the said A. B. according to the
 form of the statute in that case made and provided.

Taken before us, the said justices, the day of 185 .

Notice to be affixed on the Premises being deserted. (Burn.)

Mr. Abraham Sutcliff :

Take notice, that upon the complaint of A. B., of , yeo-
 man, made unto us, J. C. and S. R., esquires, two of her
 Majesty's justices of the peace for the county of , that you
 the said A. S. have deserted the messuage and tenement, situate,
 lying and being at , unto you demised, at rack-rent, by him
 the said A. B., and that there is in arrear and due from you the
 said A. S., unto him the said A. B., one whole year's rent for
 the said demised premises, and that you have left the said
 premises uncultivated and unoccupied, so that no sufficient dis-
 tress can be had to countervail the said arrears of rent: we
 the said justices (having no interest, nor either of us having
 any interest in the said demised premises), on the said com-
 plaint as aforesaid, and at the request of him the said A. B.,
 have this day come upon and viewed the said demised premises,
 and do find the said complaint to be true; and on the day
 of this present month of we will return to take a second
 view thereof, and if upon such second view you or some person

on your behalf shall not appear and pay the said rent in arrear, or there shall not be sufficient distress on the said premises, then we the said justices, will put him the said A. B. into the possession of the said demised premises, according to the form of the statute in such case made and provided. In witness whereof we have hereunto set our hands and seals, and have caused this notice to be affixed on the outdoor of the dwelling house, the same being the most notorious part of the said premises, this day of , in the year of our Lord 185 .

Record of putting the Landlord into Possession.

PROVINCE OF CANADA :

County of , } Be it remembered, that on the day of
to wit. } in the year of the reign of our
sovereign lady Victoria, at in the said county, of A. B.,
of complaineth unto us J. C. & S. R., esquires, two of her
Majesty's justices of our said lady the Queen assigned to keep
the peace within the said county, and also to hear and determine
divers felonies, trespasses, and other misdemeanors, in the said
county committed, that he the said A. B. did demise, at rackrent,
unto A. S. of yeoman, a certain messuage, tenement, or dwell-
ing-house, lying and being at aforesaid; and that on the said
day of in the year aforesaid, there was in arrear and due unto
him the said A. B. from him the said A. S. tenant of the said
demised premises, one whole year's rent thereof, and that he
the said A. S. had deserted the said premises and left the same
uncultivated and unoccupied, so as no sufficient distress could
be had to countervail the said arrears of rent, whereupon the
said A. B. then and there, to wit, on the said day of in
the year aforesaid, at aforesaid, in the county aforesaid,
requested of us, so as aforesaid being justices, that a due remedy
should be provided to him in this behalf, according to the form
of the statute in that case made, which complaint and request
by us the aforesaid justices being heard, we the said J. C. &
S. R., justices aforesaid (having no interest in the said demised
premises), on the said day of in the year aforesaid,
at aforesaid, did personally go and view the said demised
premises, and then and there upon our own proper view, did
find the said complaint to be true, and did then and there affix
on the most notorious part of the said premises, to wit, upon
the out-door of the dwelling-house aforesaid, a notice in writing,
under our hands and seals, that we, the said justices, on the
day of the same month of in the year aforesaid, would
return to take a second view thereof, upon which said day
of in the year aforesaid, we, the said justices, do now
return and take a second view of the premises aforesaid, and
there upon our own proper view do find, that he the said A. S.
doth not appear, nor doth any person on his behalf appear and
pay the said rent in arrear, and that there is no sufficient distress
upon the premises aforesaid, nor upon any part thereof, to

countervail the said arrears of rent; therefore we, the said justices, at aforesaid, on the day of in the year aforesaid, do put the said A. B. into the possession of the said demised premises, according to the form of the statute aforesaid. In witness whereof, we, the said justices, unto this record do set our seals, at aforesaid, in the county aforesaid, on the said day of in the year of our Lord 185 .

LAKES AND RIVERS.

By *2 W. IV., c. 2, § 1, it is enacted that the lakes, rivers and waters of this province (Upper Canada) which are not comprehended within the defined limits of any town, township or county shall be taken as parts of that district within which the exterior side lines of which any such lake, river or other water, would lie and be if such exterior side lines were produced in that direction to the utmost limits of this province.

§ 2. That all crimes and offences committed in or upon any of the said waters may be enquired of and tried within any district lying adjacent to such waters, and may be laid and charged to have been committed within the jurisdiction of the court which shall try the same: and such court may proceed thereon to trial, judgment and execution, or other punishment for such crime or offence, as if the same had been really committed within the district where such trial may be had.

LAND SURVEYORS.

By the 12 V., c. 35, § 2, penalty for practising without being duly licensed repealed by 18 V., c. 83. § 3 to 10 contain provisions for qualification and admission. § 11. Chainbearers to be sworn to act justly and exactly, and to render a true account to the surveyor, and not to be related to any of the parties interested within the fourth degree—viz., of cousin german; such oath to be administered by the surveyor. § 12. Standard measures to be kept by the commissioner of crown lands. (a) § 13. Surveyor to have a standard measure of length, stamped or otherwise certified by the commissioner of crown lands or his deputy for this purpose, under the penalty of forfeiture of license; and shall, previously to any survey, verify the length of his chains and instruments by such standard. § 14. Any person molesting any surveyor in the discharge of his duty shall be deemed guilty of *misdemeanor*, and punishable by fine or imprisonment, or both, in any court of competent jurisdiction: such imprison-

(a) But see next statute 14 & 15 V., c. 4.

ment not to exceed two months, nor fine to exceed £5. And any surveyor in the performance of his duties is authorised to pass over, measure along and ascertain the bearings of any township line, concession, or range line, or other governing line or side-line: and for such purpose to pass over the lands of any person, doing no actual injury. § 15. Surveyors to keep regular journals and field notes, and furnish copies to parties interested, upon payment of 5s. for each copy, if not exceeding 400 words, and 6d. for every additional 100 words. § 16. A surveyor may administer oaths to persons he may examine upon any survey. § 17. Such evidence to be reduced to writing and signed by the party; or, if unable to write, acknowledged by him to be correct before *two* witnesses, who shall sign the same with such surveyor; and such evidence shall, and, with any document or plan prepared and sworn to as correct before a justice of the peace by any surveyor with reference to any survey by him performed, may be filed and kept in the registry office, for production in evidence in any court of law or equity, upon payment to the registrar of 1s. 3d. for filing the same.

By 14 & 15 V., c. 4, § 2, a board of examiners to be appointed at Quebec and Toronto. (a) § 3. Notice to be given by applicants for admissions. § 4. Oath of allegiance to be deposited in the registry office of the county of York. § 5. Indentures or article of applicants must be filed with the secretary of the board within two months after the date thereof. § 8. The standard measures of length to be deposited with the secretary of the board at Toronto, who shall examine, test, and stamp standard measures of length for surveyors bringing the same for examination. Fee 2s. 6d.

By 18 V., c. 83, § 2 & 40, and § 8 of 12 V., c. 11 & 35 repealed. § 2. None but persons duly authorised under this act to practise as land surveyors, unless previously authorised by the laws then in force. § 4. No person shall be admitted as an apprentice without having previously passed an examination before the board of examiners, or one of the members of such board, or some surveyors deputed by the board as to his knowledge of certain branches of mathematics. § 6. Any surveyor summoned to attend as a witness upon any trial, and giving evidence in his judicial capacity, entitled to 20s. per diem of attendance, besides travelling expenses.

See also title "*Boundary Lines*," p. 103.

(a) Amended by 19 & 20 V., c. 13.

LARCENY.

Larceny is the felonious and fraudulent taking and carrying away by any person of the mere personal goods and chattels of another.—1 *Haw.* 89.

Until lately there were two degrees of larceny—1. *Grand larceny*—which signified the stealing of any goods or chattels above the value of *twenty shillings* sterling.—*Ordinance of Quebec*, 29, *G. III.*, c. 3.—And 2. *Petit larceny*—which included those cases where the property stolen was under the value of *twenty shillings*.—*Ib.* But now, by the 4 & 5 *V.*, c. 25, § 2, the distinction between grand larceny and petit larceny is abolished; and every larceny, whatever may be the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects as grand larceny was before the commencement of this act. § 2. And every person convicted of simple larceny, or of any felony punishable by this act like simple larceny, shall (except in cases hereinafter otherwise provided for) be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

See also *post* title "*Punishment.*"

Of Larceny in General.

Trespass.—As every larceny includes a trespass, a party who is not guilty of a trespass in taking the goods, cannot be guilty of felony, at *common law*, in carrying them away.—1 *Haw.*, c. 33, § 1. Thus, where goods are delivered by the owner to another, upon a trust, (a) or on account of the owner, the possessor cannot be guilty of felony in converting them to his own use, unless by some distinct act of taking; as, by severing part of the goods from the rest, with intent to convert them to his own use; he thereby determines the privity of the bailment, and the special property thereby conferred upon him.—*Ibid.*; 1 *Haw.*, 504. But a bare charge of goods, such as that which a servant has over the goods of his master; or of a mere liberty to make use of a thing for a particular purpose (such as a traveller at an inn has with respect to the furniture,) does not prevent the party from being guilty of felony, if he take or convert the goods to his own use; in both cases the law presumes the property to be still in the possession of its owner.—1 *Hale*, 506.

(a) But see 4 & 5 *V.*, c. 25, § 39, as to embezzlement by clerks or servants, and 10 & 11 *V.*, c. 10, § 7, as to agents entrusted with the sale of goods.

Felonious taking.—There must be a felonious taking, as well as a *severance*, to complete the felony; but the least removal of the thing from its place is sufficient, as where a guest at an inn took off the sheets from his bed with an intent to steal them, but was apprehended in the hall, the larceny was held to be complete; and so, where a man had taken a horse in a field, and while leading him away was apprehended: and again where a man took plate out of a chest, with intent to steal it, and after laying it on the floor was detected before he could move it further, the felony in either case was held to be complete.—3 *Inst.* 109 *R. v. Simpson, Kel.* 31.

Severance.—But where some goods in a shop were tied to a string, fastened by one end to the counter, and a thief took up the goods and carried them towards the door, as far as the string would permit, and was then stopped, this was held to be *no felony*, as there was no actual *severance* of the property.

Where the felony is once completed, the offence is not purged by returning the goods, as where a robber, on finding little in a purse, restores it to the owner.—3 *Inst.* 69.

Felonious Intent.—There must also be a felonious intent, and the usual and most direct evidence of this is, where the party takes the goods *clandestinely*, or shortly after the taking, such goods are found *concealed* in his possession, or where he *falsely denies* either the taking or the possession; but where a man takes a plough from a field, and after ploughing his own land returns it to the place whence he took it, telling the owner that he had used the same, it would be wrong to impute a felonious intent.

Recent Possession.—With respect to the recent possession of the property, it may be laid down as a general rule, that where the stolen goods are found in the possession of another man, *shortly after* the theft or robbery, it is incumbent on him to prove how he came by them, otherwise the presumption is that he obtained them feloniously, and this presumption is strengthened by proving that the prisoner was seen near the spot from which the goods were taken about the time of the felony, and by his conduct and demeanor at the time the goods are found in his possession.—2 *East. P. C.* 656.

Identity.—The identity of the goods should in general be satisfactorily proved, by marks or otherwise; but where a man is seen coming out of a barn, upon whom corn is found, of the same kind with that missed from the barn, this is strong presumptive evidence of guilt.—*Ib.* 657.

Claim of Right.—Where the taking of the goods is under a claim of right, this negatives the *animus furandi*, or felonious intent.—*Ib.* 659.

Finding.—If a party finding property know the owner of it, and instead of restoring it converts it to his own use, this will be felony.—*Per Lawrence*, 2 *Russ.* 102. So where a gentleman left a trunk in a hackney-coach, which had been taken from his *own door*, and the coachman kept it and embezzled the contents, this was held to be felony, as he must have known where he took up the gentleman and ought to have returned the trunk.—*R. v. Lamb*, 2 *East*, P. C. 664. So where the purchaser of a bureau found 700 guineas deposited in a secret drawer therein, which he embezzled, this was said by *Lord Eldon* (after consulting some of the judges) to be felony; and that if a pocket-book containing bank notes were left in the pocket of a coat sent to be mended, and the tailor took the notes, such a taking was clearly felonious.—*Cartwright v. Green*, 8 *Ves.* 405. But in all cases of finding, where it appears that the party *bona fide* endeavoured to discover the owner, a felonious intent cannot be presumed.

Fraud.—Where fraud is used to obtain the possession of property, the party therein is as much guilty of felony as if he had taken it from the owner—thus, where A., having a design to steal B.'s horse, which was impounded on a distress, enters a plaint of replevin and (thereby getting it delivered to him) runs away with it, this is felony.—1 *Hale*, 504, 507. But when the owner of property is induced by fraudulent pretences to give the prisoner *credit* for the goods, this is held not to be larceny but a *cheat*, for which the law has provided an especial remedy, (see *ante* title "*Cheat*"); and so where a party obtained the delivery of a horse, which was exhibited in a fair for sale, by contracting to buy it and to pay for it immediately, but when it was delivered to him he rode off and never returned, it was held that this was no felony, but a complete sale and delivery upon *credit*, in which the owner had parted with the property as well as the possession.—*R. v. Harvey*, 1 *Leach*, 467. But where a man came to Smithfield market to sell a horse, and a jockey coming there to buy a horse, the owner delivered his horse to the jockey to try his paces in the market-place, and the jockey rode off with the horse, this was adjudged to be felony, inasmuch as the possession only and not the *property* of the owner in the horse had been parted with.—*Kel.* 82.

Pretence of Exchange.—Where a prisoner offered to acco-

modate the prosecutor with gold for bank notes, upon which the prosecutor put down a number of notes, which the prisoner took up and went away, promising to return immediately with the gold, but never came back, this was held to be larceny if the jury believed that the prisoner intended to run away with the notes and not to return with the gold.—*R. v. Oliver, cit. 4 Taunt, 247.*

Delivery by a Servant.—Where a prisoner ordered a pair of candlesticks from a silversmith to be sent to his lodgings, whither they were sent with a bill by a servant, who was directed to *bring back the money*, but who was sent back by the prisoner under some pretence, when the latter ran away with the candlesticks; this was held to be felony, *no credit* having been given by the owner, and the servant having no legal power to part with the goods till paid for them.

Bailment.—Where the possession of the goods is acquired under a bailment of them from the owner, for a special purpose, and the bailee tortiously converts them to his own use, before the bailment is determined, the offence will not amount to larceny; as where a tailor has cloth delivered to him to make clothes of; or where plate is delivered to a goldsmith to work or to weigh; or a friend is entrusted with property to keep for the owner's use.—*2 East. P. C. 693.* When the possession of goods however is *fraudulently* obtained in the first instance, or where the contract of bailment is subsequently determined or broken by some wrongful act of the bailee, then a wrongful conversion of the goods will amount to larceny.

And first—respecting Possession obtained Fraudulently by the Bailee.

The prisoner hired a horse of the prosecutor, on pretence of taking a ride into the country and returning in the evening, but in truth with intent to steal it, and evidencing such felonious intent by immediately selling the horse after possession of it was delivered to him; this was held to be felony.—*R. v. Pear, 2 Leach, 212; 2 East, P. C. 689.* So, where a prisoner hired a chaise at 5s. a-day, saying he should want it for three weeks or a month, as he was going a tour round the north, and no tidings were obtained of him till twelve months afterwards, but no account was ever given of the chaise up to that moment, the presumption being against the prisoner, the jury found him guilty.—*R. v. Semple, 1 Leach, 420; 2 East. P. C. 691.* In all these cases the question of the *real intention* of the prisoner at the time of the hiring is for the consideration of the jury,

and if they find that the original taking of the thing hired was with a felonious intent to steal it, the offence will be *larceny*, although the contract of hiring may not be for any precise and definite time.

But where a prisoner hired a horse for a particular purpose, without any *felonious intention* at the time, and he wrongfully sold the horse after that purpose was executed, it was held that this tortious conversion did *not* constitute a *new taking* in law, so as to make him guilty of larceny.—*R. v. Banks, Russ. & Ry.* 441. All such cases of *hiring*, therefore, will now depend upon the question whether the hiring was *bonâ fide*, or whether it was only a pretence to get possession of the horse, in order that the party might have a better opportunity of stealing it. So, where the prosecutor's house being on fire, the prisoner in his presence and under his observation removed some of his goods (as the jury expressly found) without an evil intention, though the next morning, upon the prosecutor applying to her, she denied that she had any of the things belonging to him; the prosecutor, however, upon obtaining a search warrant, not only found his property in her house, but most of the articles were artfully concealed in various ways, yet upon this special finding of the jury, that the intention to steal the goods came upon the prisoner *after* she had taken them, the judges were of opinion that the transaction was not a *felony*, but merely a *breach of trust*.—*R. v. Leigh*, 2 *East. P. C.* 604; 1 *Leach*, 411, note (a).

Larceny by Servants.—Where a servant is entrusted with goods by his master, no legal *possession* is transferred to the servant, who has but a bare charge, the possession of the servant being the possession of the master, the servant may therefore commit larceny by a fraudulent conversion of the goods to his own use.—*R. v. Bass*, 1 *Leach*, 251, 523, 524.

Banker's Clerks.—So if a bankers' clerk be sent to the money drawer for a special purpose, or if he be sent to bring money generally out of the drawer, and at the same time he take the opportunity of purloining money for his own use, this is felony.—*R. v. Murray*, 1 *Haw. c.* 33, § 7; 2 *East. P. C.* 683; 1 *Leach*, 344.

By Carriers.—But although in cases of bailment no larceny can in general be committed of the goods before the regular completion of the contract of bailment, yet there are some tortious acts which determine the privity of it, and amount in law to a new taking from the possession of the owner. This principle furnishes the well known distinction in the *Carrier's* case, which, as has been justly observed,

stands more upon positive law than upon sound reasoning—*East. P. C.* 659; for it certainly does seem a strange departure from good sense and reason to hold, that if a man delivers goods to a carrier to carry to a certain place, and he steal the *whole* of them, it is no felony; but that if he open a bale or trunk, and only steal *some* of the goods it then becomes a felony.—13 *Ed. IV.*, 9, 6. A position involving so great a contradiction, and one which has excited the surprise of so many learned persons, may well be startling to a common understanding; it is thus noticed by Lord Chief Justice Kelyng, who was certainly no mean authority in criminal law:—"I marvel at the case put, 13 *Ed. IV.*, 9, 6, that if a carrier have a tun of wine delivered to him, to carry to such a place, and he never carry it but sell it, all this is no felony; but if he draw part of it, this is felony. I do not see why the disposal of the whole should not be a felony also."—*Kel.* 83.

The arguments in support of the above distinction appear to be these:—there can be no larceny without a trespass; the carrier (having lawful possession of the goods entrusted him to carry) cannot therefore commit a trespass in taking them until that lawful possession is determined; this lawful possession can only be determined either by the natural termination of the contract of bailment, or by some tortious act of the carrier, which rescinds it; and the only tortious acts to determine this possession are, the breaking open a package or a severance of part of the commodity from the rest.

By Millers.—So, if a miller steal *part* of the meal produced by the corn delivered to him to grind, this being taken out from the rest, is felony.—2 *East. P. C.* 698.

Fraudulent Wagers.—A man is frequently swindled out of his money by fraudulent bets and wagers, upon a preconcerted plan to defraud him, when it becomes a material question (as in all other cases of delivery) whether the *property*, or only the *possession* of the money, or other thing, is parted with; in the first case, the offence is held not to amount to larceny, as there is no felonious taking, but in the last it is otherwise, if the possession be gained *animo furandi*. Thus, where several sharpers inveigled the prosecutor to bet with them at *hiding under the hat*, and after suffering him to win at first, contrived to strip him of a large sum of his money on the event of a bet, it was held, that though this was found by the jury to be a preconcerted scheme to get his money, yet it was no felonious taking, as he parted with his property under the idea that it had been

fairly won.—*R. v. Nicholson*, 2 *Leach*, 610: 2 *East. P. C.* 699.

Card playing.—But where the prisoners decoyed the prosecutor into a public house, and there introduced the game of cutting cards, and the prosecutor having pulled out some money, but not playing on his own account, one of the sharpers prevailed upon him to cut the cards for him, and then, under pretence that the prosecutor had cut the cards for himself, and had lost, another of them swept his money off the table and went away with it; this was decided to be one of those cases that should be left to a jury to determine *quo animo* the money was obtained, and which would be *felony* if they found that the money was obtained upon a preconcerted plan to steal it.—*R. v. Homer*, 1 *Leach*, 270; *Cald.* 295.

Ring dropping.—So, where the delivery is by way of pledge or security, the *property* remains in the owner, and *larceny* may be committed of it, if the delivery were obtained fraudulently, and with intent to steal; as, where the prisoner and some accomplices being in company with the prosecutor, one of them stooped down and pretended to find a valuable ring, upon which they promised the prosecutor that he should have his share of the value of it, and by that means prevailed on him to deposit his money and watch, and the ring proved to be of little or no value; this was held to be *larceny*, as the possession was obtained by fraud, and the property not altered.—*R. v. Patch*, 2 *East. P. C.* 678; 1 *Leach* 238. In like manner where several act in concert all will be guilty of the felony. Thus, where three sharpers pretended that prosecutor could not bet £100, when being provoked by the challenge, he produced that sum in notes, which one of them took to count, and then handed to another, who, with the third, pretended to gamble for them; when the first mentioned thief beckoned the prosecutor out of the room, and the other two decamped with the money, and all three afterwards shared it; this was held *larceny* in all three.—*R. v. Stanley, Russ and Ry.* 305.

Of what things Larceny may be committed.

Every description of personal property (with the exception hereinafter noticed) may be the subject of *larceny*; such as money, goods, wearing apparel, cattle, and the like. If the personal goods savour any thing of the realty (or freehold), it cannot be *larceny*; therefore it is no *larceny*, but a bare trespass, to steal corn or grass growing, or apples on a tree; but it is *larceny* to take them being severed from the free-

hold, as wood cut, grass in cocks, stones dug out of the quarry; and this, whether they are severed by the owner or even by the thief himself, if he sever them at one time, and then come at another and take them.—1 *Haw.* 93; 1 *H. H.* 510.

Also, the goods ought to have some worth in themselves, and not to derive their whole value from the relation they bear to some other thing, which cannot be stolen, as paper or parchment, on which are written assurances concerning lands, or obligations, or covenants, or other securities for a debt or *chose* in action.—1 *Haw.* 93. (a) The goods ought also not to be of a base nature, as dogs, cats, bears, foxes, monkeys, ferrets, and the like; which, howsoever they may be valued by the owner, shall never be so highly regarded by law, that for their sakes a man shall die.—1 *Haw.* 93.

Property unknown.—There may be a felony in taking goods, the owner whereof is unknown; in which case, the king shall have the goods, and the offender shall be indicted for taking the goods of a person unknown.—1 *Haw.* 94.

Stealing Securities.—By 4 & 5 V., c. 25, § 5, if any person shall steal any tally, order or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of this province or of the United Kingdom of Great Britain and Ireland, or of any British colony, or of any foreign state or colony, or in any fund of any body corporate, company or society, or to any deposit in any savings bank, or shall steal any debenture, deed, bond, bill, note, warrant, order or other security whatsoever for money or for payment of moneys, whether of this province or of Great Britain, (b) or of any British colony, or any foreign state or colony, or shall steal any warrant or order for the delivery or transfer of any goods or valuable thing, every such offender shall be deemed guilty of a felony in the same degree and punishable in the same manner as if he had stolen any chattel of like value.

Stealing from Vessels.—§ 21. If any person shall steal any goods or merchandize in any vessel, barge or boat, in any port of entry or discharge upon any navigable river or canal, or in any creek belonging to or communicating therewith, or shall steal any goods or merchandize from any dock, wharf or quay adjacent thereto, being convicted thereof, he shall be liable to any of the punishments which the court may award, as in said act is mentioned.

(a) But note the late statute 4 & 5 V., c. 25, as to stealing securities.

(b) Ireland omitted.

Stealing Records.—§ 25. If any person shall steal, or shall for any fraudulent purpose take from its place of deposit, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure or destroy any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order or warrant of attorney, or any original document whatsoever of or belonging to any court of justice, or relating to any matter, civil or criminal, begun, depending or terminated in any such court, or any bill, answer, interrogatory, deposition, affidavit, order or decree, or any original document whatsoever of or belonging to any court, or relating to any cause or matter begun, depending or terminated in any such court, or any notarial minute, or the original of any other authentic act, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary, for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or both, as the court shall award; and it shall not be necessary to allege in the indictment that the article stolen was the property of any person, or of any value.

Stealing Wills.—§ 26. If any person shall either, during the life of the testator or testatrix, or after his or her death, steal, or for any fraudulent purpose destroy or conceal, any will, codicil, or other testamentary instrument, whether relating to real or personal estate, or both, such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to any of the punishments which the court may award, as before mentioned; and it shall not be necessary to allege in the indictment that the same was the property of any person, or of any value.

Stealing Title Deeds.—§ 27. If any person shall steal any original paper or parchment, written or printed, or partly written and partly printed, being evidence of the title to any real estate, such offender shall be deemed guilty of a misdemeanor, and being convicted thereof, shall be liable to any of the punishments which the court may award, as before mentioned; and in the indictment, it shall be sufficient to allege the thing stolen to be evidence of title, or of part of the title, of the person or persons having a present interest, legal or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof; and it shall not be necessary to allege value.

§ 28. Nothing in this act contained shall prevent, lessen or impeach any remedy at law or in equity which any party aggrieved might or would have if this act had not been passed; but the conviction of such offender shall not be evidence in any action at law or suit in equity against him, nor shall such offender be convicted by any disclosure made by him on oath upon compulsory process in any action or suit at law or in equity, or before commissioners of bankrupt.

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

Stealing by Tenants.—§ 37. If any person shall steal any chattel or fixture let to be used by him or her in or with any house, or with any house or lodging, whether the contract shall have been entered into by him or her, or by her husband, or by any person on behalf of him or her or her husband, every such offender shall be guilty of felony; and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and in every case of stealing any such chattel the indictment may be preferred in the common form as for larceny; and in every such case of stealing any fixture, the indictment may be preferred as if the offender were not a tenant or lodger, and the property laid in the name of the owner or person letting to hire.

Stealing by Clerks or Servants.—§ 38. If any clerk or servant shall steal any chattel, money or valuable security belonging to or in the possession or power of his master, every such offender, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary, for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Restitution.—§ 49. If any person guilty of such felony or misdemeanor as aforesaid, in stealing, taking, obtaining or converting, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for any offence by or on the behalf of the owner of the property, or his heir, curator, executor or administrator, and convicted thereof, in such case the property shall be *restored* to the owner or his representative; and the court before whom any such person shall be so convicted shall have power to award, from time to time, writs of restitution for the same property, or to order the restitution thereof in a summary manner: *provided always*, that if it shall appear before any award or order made that any valuable security shall have been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bonâ fide* taken or received by transfer or delivery by some person or body corporate for a just and valuable consideration, without any notice, or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained or converted, as aforesaid, in such case the court shall not award or order restitution of such property.

Apprehension without Warrant.—§ 55. Any person found committing any offence punishable either upon indictment or summary conviction, by virtue of this act, may be immediately apprehended, without a warrant, by any peace officer, or by the owner of the property on or with respect to which the offence shall be committed, or by the servant of any person authorised by such owner, and forthwith taken before some neighbouring justice, to be dealt with according to law.

See also *post* title “*Search Warrant.*”

Trial.—§ 68. If any person having stolen or otherwise taken away any chattel, money, valuable security or other property whatsoever, the stealing or unlawfully taking whereof is made punishable by indictment by any of the provisions of this act, in any part of her Majesty’s dominions, shall afterwards have the same property in his possession in any part of this province, he may be dealt with, indicted, tried and punished for such offence under this act, in that part of this province where he shall so have such property, in the same manner as if he had actually stolen it or unlawfully taken it in that part; and if any person in that part of this province shall receive or have any chattel, money, valuable security or other property whatsoever, which shall have been stolen or otherwise unlawfully taken in any other part

of her Majesty's dominions, such person knowing the said property to have been stolen or otherwise unlawfully taken, he may be dealt with, indicted, tried and punished for such offence in that part of this province where he shall so receive or have the stolen property, in the same manner as if it had been originally stolen or unlawfully taken in that part of this province as aforesaid.

Of Larceny from the Person.

If the goods are taken from a man's person, the offence then receives a further degree of guilt; and if it be attended with putting him in *fear*, it is called robbery.

See title "*Robbery.*"

Summary Conviction for Larceny.

By 20 V., c. 27, § 1, (a) it is enacted that where any person is charged before the recorder of any city with having committed simple larceny, the value of the property alleged to have been stolen not exceeding *five shillings*, or with having attempted to commit larceny from the person, or simple larceny, it shall be lawful for such recorder to hear and determine the case in a summary way; and upon confession or proof, such recorder may convict and commit the offender to the common gaol or house of correction to be imprisoned, with or without hard labour, for any period not exceeding three months. But if the person charged refuse to have the case so tried, or if it appear to such recorder that the offence is one which, owing to a previous conviction, is by law a felony, or if the recorder be of opinion that the charge is, from any other circumstances, fit for prosecution by indictment, then he shall deal with the case as if this act had not been passed: provided, that if upon hearing the charge the recorder shall be of opinion that circumstances in the case render it inexpedient to inflict any punishment, he may then dismiss the person charged without proceeding to a conviction. The conviction or certificate of dismissal may be in the forms A. and B. in the schedule to this act.

§ 2. Where the recorder proposes to dispose of the case summarily after the examination of all the witnesses for the prosecution, he shall state to such person the substance of the charge, and say to him these words, or words to the like effect, "Do you consent that the charge against you shall be tried by me, or do you desire that it shall be sent for trial by a jury at the (*naming the court at which it would be*

(a) This act is a general one, and applies to both Upper and Lower Canada.

soonest tried), and if the defendant consent to a summary trial, then the recorder shall reduce the charge into writing and read the same to him, and ask him whether he is "guilty" or "not guilty;" and if he say "guilty," shall proceed to pass sentence according to the provisions of this act; and if he say "not guilty," the recorder shall enquire if he has any defence, and if he say that he has, the recorder shall hear the defence, and dispose of the case summarily.

§ 3. Where any person is charged before any recorder with simple larceny (the property alleged to have been stolen *exceeding* in value five shillings) or stealing from the person, or larceny as a clerk or servant, and the evidence taken is in the opinion of the recorder sufficient to put the party on his trial; the recorder, if the case appear to him to be one that may be properly disposed of in a summary way, and adequately punished under this act, shall reduce the charge into writing, and shall read it to the defendant, and then ask him whether he is guilty or not of such charge. If he say "guilty," the recorder shall cause a plea of guilty to be entered on the proceedings, and shall convict him of such offence, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any term not exceeding *six calendar months*. Such conviction may be in the form C in the schedule, or to the like effect: provided always that such recorder, before he asks the party whether he is guilty or not, shall explain to him that he is not obliged to plead or answer, and that if he do not he will be committed for trial.

§ 4. In every case of summary proceeding under this act the accused shall be allowed to defend by counsel or attorney.

§ 5. Where any person is charged before any justice or justices with any offence mentioned in this act, and in the opinion of such justice or justices the case may be a proper one to be disposed of by a recorder, or by [an inspector and superintendent of the police,] or a police magistrate, as hereinafter provided under this act, such justice or justices may, if he or they see fit, remand him for further examination before the recorder, or before [the inspector and superintendent of the police of the nearest city,] or before the nearest police magistrate, in like manner as a justice or justices are authorised to remand a party accused under 14 & 15 V., c. 96, § 13, (a) or under the 16 V., c. 197, § 13. Provided that no such remand shall be from Upper to Lower Canada, or *vice versa*, and provided that the party so

(a) This act applies only to Lower Canada.

remanded before the recorder of any city may be examined and dealt with by the [inspector and superintendent] or police magistrate of the same city, and any person remanded for further examination before the latter, may be examined and dealt with by the former (*i. e.*, the recorder).

§ 6. If the party be suffered to go at large upon recognizance as authorised under the last-mentioned acts conditioned for his appearance before a recorder under the next preceding section of this act, and do not appear accordingly, the recorder before whom he ought to have appeared shall certify (under his hand) on the back of the recognizance, to the clerk of the peace of the county or unions (in Upper Canada) the fact of non-appearance, and such recognizance shall be proceeded upon in like manner as other recognizances.

§ 7. Convictions and other proceedings under this act to be returned to the next quarter sessions.

§ 8. Restitution of the stolen property may be ordered by the recorder in cases authorising restitution.

§ 9. Recorder's court to be an open public court. § 10. The provisions of the 16 V. c. 178, (*Summary Convictions Act*.) shall not be considered as applying to any proceeding under this act. § 11. Conviction by recorder to have the same effect as a conviction upon indictment, save that of *forfeiture*. § 12. Proceedings under this act to be a bar to further proceedings. § 13. Convictions not to be quashed for want of form. § 14. (The inspector and superintendent of police for the cities of Quebec and Montreal), and the police magistrate for any city in Upper Canada, sitting in open court, may respectively, in the case of persons charged before them, do all acts by this act authorised to be done by recorders, and all the provisions of this act referring to recorders and recorder's courts, and the clerks of the recorder's courts, shall be read and construed, also as referring to such inspectors and superintendents, police magistrates and their courts and clerks respectively.

§ 15. This act not to affect the provisions of any act of this session for the more speedy trial and punishment of juvenile offenders.

§ 16. Interpretation clause.

FORM A.

Conviction.

to wit. } Be it remembered that on the day of
 being charged before me the undersigned in the year of our Lord , at , A. B.
 of the said city,

and consenting to my deciding upon the charge summarily, is convicted before me, for that he the said A. B., &c., (*stating the offence, and the time and place when and where committed*); and I adjudge the said A. B. for his said offence to be imprisoned in the _____, and there kept to hard labour, for the space of _____

Given under my hand and seal, the day and year first above-mentioned at _____ aforesaid.

J. S. [L. S.]

FORM B.

Certificate of Dismissal.

to wit. } I, the undersigned _____, of the city of _____, certify that on the _____ day of _____ in the year of our Lord _____, at _____ aforesaid, A. B. being charged before me, and consenting to my deciding upon the charge summarily, for that he the said A. B., &c., (*stating the offence charged, and the time and place when and where alleged to have been committed*), I did, having summarily adjudicated thereon, dismiss the said charge.

Given under my hand and seal, this _____ day of _____, at _____ aforesaid.

J. S. [L. S.]

FORM C.

Conviction upon a Plea of Guilty.

to wit. } Be it remembered that on the _____ day of _____ in the year of our Lord _____ at _____, A. B. being charged before me the undersigned _____ of the said city, for that he the said A. B. &c., (*stating the offence charged, and the time and place when and where alleged to have been committed*), and pleading guilty of such charge, he is thereupon convicted before me of the said offence; and I adjudge him the said A. B. for his said offence to be imprisoned in the _____ (and there to be kept to hard labour) for the space of _____

Given under my hand and seal the day and year first above-mentioned at _____ aforesaid.

J. S. [L. S.]

Form of Indictment for Simple Larceny—18 V., c. 92.

County of _____ } The jurors for our Lady the Queen upon their to wit. } oath present that A. B. on the _____ day of _____ in the year of our Lord one thousand eight hundred and _____ at _____ in the county of _____ did feloniously steal (*a gold watch of C. D.*)

Form of Indictment for Stealing Money—18 V., c. 92.

County of _____ } The jurors for our Lady the Queen upon their to wit. } oath present that on the _____ day of _____ in the year of our Lord one thousand eight hundred and _____ A. B. at _____, in the county of _____, did feloniously steal a certain sum of money, to wit to the amount of _____ pounds, the property of one C. D.

LAW.

*By 32 G. III., c. 1, § 3, it is enacted that in all matters of controversy relative to property and civil rights, resort shall be had to the laws of England as the rule for the decision of the same. § 6. But that nothing in this act shall introduce any of the laws of England respecting the maintenance of the poor, or respecting bankrupts.

LEGISLATIVE ASSEMBLY.

For its constitution, &c., see titles "*Constitution*," "*Parliamentary Representation*" and "*Elections*."

Members' Indemnity for Expenses.

By 12 V. c. 33, § 1, there shall be allowed to each member of the Legislative Assembly attending at any such session 20s. for each day's attendance thereat, and 6d. for each mile of the distance between the place of residence of such member, and the place at which the session shall be held. § 2. To be paid by the clerk of the Assembly, on such member signing a declaration, to be kept by the said clerk, and stating the number of days' attendance, and the number of miles of distance for which such member is entitled to an allowance, and the amount of such allowance; and that each day on which the member shall have attended any sitting of the Legislative Assembly, or of any committee thereof, and each day during the session on which there shall have been no sitting of the Legislative Assembly, or on which he shall have been prevented by sickness from attending any sitting, but on which he shall in either case have been in the place where the session is held, shall be reckoned as a day of attendance at such session. § 3. The necessary funds to be advanced to the clerk of the Legislative Assembly out of any unappropriated part of the consolidated revenue fund of the province. § 4. To be accounted for by the clerk in the same manner as moneys advanced to him for contingent expenses.

Speaker.

By 19 V., c. 41, whenever the speaker shall, from illness or other cause, find it necessary to leave the chair during any part of the sittings on any day, it shall be lawful for him to call upon any member to take the chair and to act as speaker during the remainder of such day, unless the speaker shall himself resume the chair before the close of the sittings for that day.

LEGISLATIVE COUNCIL.

See "*Parliamentary Representation*."

LIBEL.

A libel has been usually defined to be any scandal *written* or *printed*, or otherwise expressed by symbols—*Lamb.* 64; and taken in its largest sense, signifies any *writing* or *printed* paper, picture, or the like, of an immoral or illegal tendency; and in a more limited sense, a malicious defamation of any person, either living or dead, made public either by printing, writing, signs or pictures, in order to provoke to wrath, or expose him to public hatred, contempt and ridicule.—4 *Bl. Com.* 150. But words *spoken*, however malicious and untrue, and actionable at law, will not amount to libel.

1. *Of Libels which affect the Public in general.*

All publications blaspheming the Almighty, or turning the Christian religion into ridicule; all publications tending to vitiate and corrupt the minds and morals of the people; any attempt made to degrade and vilify the constitution, and tending to circulate discontent among the members of the community and stir up insurrection; any writing or printed matter tending to vilify or disgrace the king, to lessen him in the esteem of his subjects, weaken the government, or raise jealousies between him and his people—are more or less of a libellous tendency. So, any publication reflecting in an improper manner upon either house of parliament, is a libel at common law. To hold up the king's government to contempt and hatred, is also punishable as a libel.—*R. v. Tuchin, Holt's Rep.* 424. And any publication tending to degrade and defame the sovereign or ruler of a foreign state upon terms of amity with this country, is a libel at common law.

2. *Of Libels on Private Individuals.*

Not only charges of a flagrant nature are libellous, but also those which place an individual in an ignominious light, and bring him into hatred, contempt or ridicule, on the ground that all such libels have a direct tendency to a breach of the peace.—4 *Bl. Com.* 150. General imputations, also, on a body of men, though no individuals are pointed out, are indictable.—2 *Barnard*, 138, 166. And a malicious defamation of a *deceased* person, if published with intent to vilify his memory and injure his posterity, is indictable as a libel.—*R. v. Topham*, 4 *T. R.* 126. Any scandal likewise expressed by indirect means is a libel, as well as that which is expressed in direct terms: thus, to fix up a gallows against a person's door conveys a meaning as obvious

to common sense as that which is expressed by writing or printing.—1 *Haw.*, c. 73, § 2, 3. So a defamatory writing expressed by the *initials* only of a person's name, is as complete as if the whole name had been expressed.—1 *Haw.*, c. 73, § 5.

By 13 & 14 V., c. 60, § 1, upon the trial of any indictment for libel, the jury may give a general verdict of "guilty," or "not guilty," upon the whole matter in issue, without being required to find the defendant guilty merely on the proof of publication, and may also find a special verdict if they think fit; and the defendant may move in arrest of judgment, on such ground and in such manner as he might have done before this act. § 2. In an action for defamation the defendant may give in evidence in mitigation of damages, that he made or offered a written apology before the commencement of such action. § 3. Or defendant may plead in an action for libel, that the same was inserted in the newspaper without actual malice, and without gross negligence, and that before the commencement of such action, or at the earliest opportunity afterwards, he inserted in such newspaper a full apology, or had offered to publish such apology in any newspaper to be selected by the plaintiff; with liberty also to pay into court a sum of money by way of amends. § 4. If any person shall publish, or threaten to publish, any libel, or shall directly or indirectly propose to abstain from or offer to prevent the printing or publishing of any matter or thing touching or concerning any person, with intent to extort any money or security for money, or any valuable thing from such person, or with intent to induce any person to confer or procure for any person any appointment, office of profit or trust, every such person, upon conviction, shall be liable to be fined any sum not exceeding £100, and to be imprisoned in the common gaol not exceeding *two* years. § 5. If any person shall maliciously publish any defamatory libel, *knowing the same to be false*, he shall, on conviction, be liable to a fine not more than £50, and to be imprisoned in the common gaol not exceeding one year. § 6. If any person shall maliciously publish any defamatory libel, such person shall upon conviction be liable to fine *and* imprisonment *or both* (a), as the court may award; such fine not to exceed £25, nor imprisonment six calendar months. § 7. On the trial of any indictment for a defamatory libel, the defendant may plead in defence the truth of the matters charged,

(a) So in the act.

alleging that it was for the *public benefit* that the same should be published; but the defendant shall not be allowed to plead "not guilty," in addition to such special plea. § 8. Under the plea of "not guilty," it shall be competent to the defendant to prove that such publication was made without his authority, consent or knowledge, and that such publication did not arise from want of due care or caution on his part. § 9. In case of any indictment for libel by a private prosecutor, if judgment be given against the defendant he shall be liable to the prosecutor's costs, and *vice versa* the prosecutor shall be liable to the prosecutor's costs; such costs to be taxed by the clerk of the Court of Queen's Bench or Common Pleas, or their deputies, where the trial is had, and recoverable by *attachment* on the order of any judge of the superior court, or of the county court where the indictment was tried.

3. *Of the Publication.*

No one is punishable for a libel unless he actually publish it to the world. Reading a libel in the presence of another, without any previous knowledge of its libellous qualities, does not amount to publication; but if a man, *knowingly*, lends or shows it to another, or repeats it in the presence of others, this is a publication.—1 *Haw.*, c. 73; and not only he who publishes the libel himself, but also he who procures another to publish it, is guilty of the publication.—1 *Haw.*, c. 73, § 10. So, the sale of a book in a bookseller's shop by his shopman, is *prima facie* evidence of publication by the master.—1 *Barnard*, 306.

4. *Of the Punishment.*

The punishment for libel is fine or imprisonment, or both. In matters of libel, justices of the peace have an original jurisdiction: and a party charged with the publication of a libel may be held to bail by a justice of the peace to appear at the sessions or assizes.—*Butt. v. Conant*, 1 *Brod. & B.* 548.

Information against a Party for Libel.

County of _____, } The information and complaint of A. B.
to wit. } of _____ in the county of _____ taken on oath,
this _____ day of _____ 18____, before J. P., Esq., one of her
Majesty's justices of the peace for the said county. The said
informant saith, that in a certain printed book (or newspaper)
printed and published at _____ in the said county, by one G. M.,
and called [*here set out the name or title of the book or paper*] the
following libellous allegation is contained, of and concerning
this informant, [*here insert the libellous passage literatim*] and the

Line Fences and Water Courses. 537

same informant saith, that he hath been informed, and verily believes the said book, &c., containing the aforesaid libellous matter, was printed and published by the said G. M., with a view to injure, vilify, and defame, this informant, and to bring him into public hatred, ridicule and contempt; wherefore he prayeth a warrant against the said G. M., and that he may be further dealt with according to law.

Sworn before me.

Recognizance to Appear at the Sessions.

To be taken in the usual form.] The condition of this recognizance is such, that if the said G. M. shall and do personally appear at the next general quarter sessions of the peace [or assizes and general gaol delivery] to be holden in and for the said county, and then and there answer to a bill of indictment to be preferred against him, the said G. M., for a libel on one A. B. of in the said county , and not depart the court without leave, then this recognizance to be void.

Acknowledged before, &c.

Indictment for a Libel. (Archbold.)

County of , } The jurors for our lady the Queen upon their
to wit. } oath present, that J. S., late of the township
of , in the county of , schoolmaster, contriving, and
unlawfully, wickedly and maliciously intending to hurt, injure,
vilify and prejudice one J. N., and to deprive him of his good
name, fame, credit and reputation, and to bring him into great
contempt, scandal, infamy and disgrace, on the day of
in the year of the reign of our sovereign lady Victoria, with
force and arms, at the township aforesaid, in the county afore-
said, unlawfully, wickedly and maliciously did write and pub-
lish, and cause and procure to be written and published, a
certain false, scandalous and malicious libel, in the form of a
letter directed to the said J. N. [*or if the publication were in any
other manner, omit the words 'in the form,' &c.*] containing divers
false, scandalous, and malicious matters and things, of and
concerning the said J. N., and of and concerning, &c., [*here
insert such of the subjects of the libel as it may be necessary to refer
to by the inuendoes, in setting out the libel*] according to the tenor
and effect following, that is to say, *here set out the libel, together
with such inuendoes as may be necessary to render it intelligible.*]
to the great damage, scandal and disgrace of the said J. N., to
the evil example of all others in the like case offending, and
against the peace of our lady the Queen, her crown and dignity.

LINE FENCES AND WATER COURSES.

By stat. 8 V., c. 20, § 1, (a) the inhabitant freeholders

(a) This section has been repealed by 12 V., c. 80; and by 12 V., c. 81, the appointment of *fence viewers* is vested in the municipal council of the township.

and householders of every township, at their annual township meeting, may choose not less than three nor more than twelve fit and proper persons for *fence viewers*, who are declared to be township officers, and shall make the same declaration and be liable to the penalties as other township officers. § 2. Each of the parties occupying adjoining tracts of land shall keep up, make and repair a fair and just proportion of the division or line fence between their several tracts, which line fence shall be made on the line dividing such tracts, and equally on either side thereof; and in case of dispute as to the commencement or extent of such line fence, the same shall be submitted to the determination and award of *three* fence viewers, who shall, upon being notified by either party, attend at the time and place stated in such notice, and being satisfied that the other party has been duly notified, proceed to examine the premises; and such fence viewers, or any two of them, shall determine any dispute in the matter between the parties, and their award shall be binding as far as concerns the making or repairing such fence; and from thenceforth the occupiers shall respectively make and repair and keep in repair the part assigned in such award to each occupier, which award shall be in writing and signed by the fence viewers or a majority of them, and filed with the town clerk, and a copy given to each party if required. In case of any material change in the improvement and occupation of adjacent lots, another award may be obtained in like manner; but if the fence viewers shall find such subsequent award unnecessary, the cost of the reference shall be paid by the party applying. § 3. Any party in the occupation of any tract neglecting or refusing to make or repair an equal or just proportion of the fence for a period of *thirty* days after demand in writing from the other party, or after the award of the fence viewers, or if the party making the demand shall for such period neglect to make or repair his proportion, either party, after completing his own proportion, may make or repair in a substantial manner, and of good sound materials, the proportion of the other party, and may recover from him the value, not exceeding 2s. 6d. per rod. (a) Any fence adopted at the last township meeting to be deemed a lawful fence; and if none adopted, the fence viewers are to decide what they consider a lawful fence. § 4. Any party interested may apply to a justice for a summons to *three* fence viewers to attend and view the fence and appraise the same; and also for a

(a) But see 18 V., c. 137, as to increased price.

summons to the other party, requiring him to attend and shew cause why the party claiming payment should not recover. § 5. Such fence viewers, upon being *personally* served *four* days previously with such summons, and any two of them being present, and having examined the fence and received evidence (to be given under oath if required), shall determine whether the plaintiff is entitled to recover any and what sum from the defendant; and where the extent of such line fence has not been determined by the award of fence viewers, the said fence viewers, or any two of them, shall determine the same; such determination to be final, and report made in writing under their hands to the justice issuing the summons; and in cases where the plaintiff is entitled to recover, the fence viewers shall state what distance of fence they have determined the defendant should have made or repaired; and the fence viewers, if required, shall give a copy of such determination to either party before making such report. § 6. Such justice may issue summons for the attendance of witnesses before such fence viewers, who may administer the following oath:

You do solemnly swear that you will true answer make to such questions as may be asked of you by either of the fence viewers now present, touching the matters which they are now to examine and determine. So help you God.

Any person swearing falsely shall be guilty of perjury. § 7. The said justice shall transmit the determination of the fence viewers to the clerk of the division court, and a certified copy to the town clerk to be recorded; and thereupon the clerk of the division court shall issue an execution against the goods and chattels of the defendant for the sum determined upon by the fence viewers, with costs, as hereinafter provided; such execution not to be issued until *forty* days after the determination. § 8. If any party shall cease to occupy or improve his land, or shall lay the enclosure, before under improvement, in common, such party shall not take away any part of the division fence, provided the other party will allow and pay therefor so much as the fence viewers, or a majority of them, shall in writing determine to be the reasonable value thereof; and wherever any lands unimproved and in common shall be afterwards enclosed or improved, the occupier shall pay a fair or just proportion of the division fence, the value to be ascertained and set forth in writing by *three* fence viewers in case the parties shall not agree, and the amount may be recovered in the same manner as hereinafter provided. § 9. In no case shall any person take away any part of a division or line fence

adjoining to the next enclosure improved or occupied, unless the occupier of such adjoining lands refuse, after demand in writing, to pay for the same; nor without giving at least *twelve months'* previous notice. § 10. Water fences to be made in equal parts unless otherwise agreed; and in case either party shall neglect or refuse to pay his share, similar proceedings to be had as respecting other fences. § 11. Where lands belong to, or are occupied by different persons bounded upon or divided by any brook, pond or creek not of itself a sufficient fence, in case of disagreement, the same may be submitted to *three* fence viewers, as before provided; and if in their opinion the same is not a sufficient barrier, and that it is impracticable to fence at the true boundary line, they shall determine how, or on which side thereof, the fence shall be set up, or whether partly on one side and partly on the other; and if either party shall refuse or neglect to maintain his part of the fence, the same may be done as in other cases, and the costs and charges recovered from the delinquent party. § 12. Ditches or water courses for draining swamp or miry lands are to be made by the parties interested, in just proportions; and in case of dispute as to the part, width, depth or extent, the same is to be referred to three fence viewers, in the same manner as other disputes respecting fences; and such fence viewers shall divide or apportion such ditch or water course among the parties in a just and equitable proportion, according to their respective interests, in opening such ditch or water course, and shall decide upon the time to be allowed each party for opening his share; and the award of such fence viewers shall be made in the same manner and have the same effect as in case of division or line fences. § 13. If it shall appear that any owner or occupier be not sufficiently interested in the opening of such ditch or water course to make him a party, and at the same time it should be necessary that such ditch or water course should be continued across his land, they may award accordingly; and the other party may lawfully open such ditch or water course across such land at his own expense, without being a trespasser. § 14. On neglect of any party, upon demand in writing, to open or make and keep open his share awarded by such fence viewers as aforesaid within the time allowed by them, either of the other parties may, after completing his own share, open the share of the party neglecting, and shall be entitled to recover from such other party no more than 2s. per rod, in the same manner as provided for line fences. § 15. Road allowances in the rear

of any lot not travelled or required to be used by the public, may be lawfully enclosed as against any private party: provided that such possession shall cease upon order made by two justices, directed to the township officer, requiring him to open the same. § 16. The following fees to be taken under the act.

To the Justices of the Peace.

For summons to fence viewers	1s. 3d.
For <i>subpœna</i> , which may contain three names.....	1s. 3d.
For transmitting copy of fence viewers' determination to division court and to township clerk.....	1s. 3d.

To the Fence Viewers.

Per day each.....	5s. 0d.
If less than half a day employed.....	2s. 6d.

To the Bailiff or Constable employed.

For serving summons or subpœna.....	1s. 0d.
Mileage—per mile.....	4d.

To Witnesses.

Per day each	2s. 6d.
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§ 17. The above fees to be included in any execution to be issued, upon the party making oath before the clerk of the division court of the same having been paid. § 19. The former statute *4 W. IV., c. 12, repealed.

By 18 V., c. 137, so much of the 8 V., c. 20, as limits the cost of making the fence to 2s. 6d. per rod is repealed, and the amount is to be determined by the fence viewers.

LOCK-UP HOUSES.

By 10 & 11 Vic., c. 41, § 3, district councils are authorised to establish a lock-up house in any town or village containing not less than 100 adult inhabitants, and not being distant less than ten miles from the district town; to be placed in charge of a constable, to be specially appointed by the magistrates in general quarter sessions; such constable to be a resident in such town or village, and one of the constables of the township; said justices may allow such salary or fees as they think proper. § 5 provides, that it shall be lawful for any justice of the peace residing at or near any town or village where such lock-up house may be established, or nearer to the same than the district town, to authorise by written order the confinement or detention therein of any person charged on oath with any criminal offence, until such person may be fully examined and committed for trial to the

common goal, or dismissed (as the case may be), so that such confinement do not exceed *two* days; also all persons found in the streets or highways in a state of intoxication, or convicted of unlawfully desecrating the Sabbath; and generally all persons convicted on view of such justice, or on the oath of one or more witnesses, of any offence cognizant by law, so that such detention or confinement in the last mentioned cases do not exceed twenty-four hours, and to authorise the detention therein of any person committed to the gaol, until such person can be conveyed to gaol. § 6. The expense of conveying any prisoner to, and detaining him or her in such lock-up house, is to be defrayed in the same manner as the expense of conveying such prisoner to and keeping him or her in the common gaol.

By 12 V., c. 80, §§ 1, 2 and 4 of the above act are repealed, and §§ 5 & 6 are retained. § 3. Seems to be superseded by the subsequent act 13 & 14 V., c. 64.

By 12 V. c. 81, § 60, the municipal council of any incorporated village are authorised to make by-laws for (amongst other things) establishing, maintaining and regulating lock-up houses.

By 13 & 14 V., c. 64, § 10, it shall be lawful for the municipal council of any county or union of counties to establish a lock-up house in any town, incorporated village or police village within their jurisdiction, and to establish and provide for such salary or fees to be paid to the constable placed in charge thereof as they may deem just and reasonable, and to direct the payment of such salary out of the county funds: and every such lock-up house shall be placed in charge of a constable, to be specially appointed for that purpose by the magistrates of such county, at any general quarter sessions of the peace. Such constable shall be resident in such town or village, and be one of the constables of such town or of the township in which such village shall be situated. Provided that nothing herein contained shall affect any lock-up house established under the laws heretofore in force, but the same shall be and continue a lock-up house within the meaning of this section, although not in any such town or incorporated or police village: and that parties summarily convicted under the petty trespass act, *4 W. IV., c. 4, may, in the discretion of the committing magistrate or magistrates, be committed to the nearest lock-up house in the county in which the conviction took place, instead of the common gaol.

LORD'S DAY.

By statute 8 V., c. 45, § 3, any merchant, tradesman,

artificer, mechanic, workman, labourer or other person, selling or offering for sale, or purchasing any goods, &c., or *real estate*, on the Lord's day, commonly called *Sunday*, or exercising any wordly labour or calling on that day; or any person tippling or allowing tippling in any inn or tavern, &c., or being intoxicated, or brawling or using profane language in the public streets, or attending any political meeting on that day; or playing at skittles, ball, foot-ball, racket, or any noisy game, or gambling, or racing on foot or horseback or in carriages, or fishing or hunting, or shooting any deer or other game, or setting any net or trap (except in defence of property) for any wolf, beast or bird of prey; or bathing in any exposed place of public worship or private residence, on the Lord's day—shall, upon conviction before a justice, upon the oath of one or more witnesses, pay a fine not exceeding £10, nor less than 5s.

§ 4. Proceedings to be by summons, and *ex parte* in case of non-appearance and proof of service of summons; or the justice may issue his warrant against the offender, and upon the party being brought up or appearing, the justice may proceed to hear and determine the case, or at once commit the offender to safe custody until the morrow or some other day, according to circumstances, until the case is disposed of.

§ 5. Conviction to be in the following form:

Form of Conviction.

Be it remembered, that on the day of , in the year of our Lord , at , in the county of (or district, riding or division, *as the case may be*), A. B. of , is convicted before me, C. D., one of her Majesty's justices of the peace for the said county (or district, riding or division, *as the case may be*). for that he the said A. B. did (*specify the offence, and the time and place when and where the same was committed, as the case may be*); and I, the said C. D., adjudge the said A. B. for his offence to pay (immediately, or on or before the day of) the sum of , and also the sum of for costs; and in default of payment of the said sums respectively, to be imprisoned in the common gaol of the said county (or district, riding or division *as the case may be*) for the space of months, unless the said sums shall sooner be paid; and I direct that the said sum of (*the penalty*) shall be paid as follows: that is to say, one moiety thereof to the party charging the offence, and the other moiety to the treasurer of the district, to be by him, the said treasurer, applied according to the provisions of the act [*insert the title of this act*]. Given under my hand and seal, the day and year first above mentioned.

C. D., J. P. [L. S.]

§ 6. Conviction not to be quashed for want of form.

§ 7. Penalties and costs to be levied by distress and sale; and in case of insufficient distress, the offender may be committed to the common gaol for any term not exceeding *three* calendar months, unless such fine and costs be sooner paid.

§ 8. Prosecutions to be within one calendar month. § 9. Appeal allowed to the general quarter sessions. 10. Convictions to be forwarded to the sessions. § 11. Actions against any person acting in the execution of this act to be commenced within *three* calendar months, and one calendar month's previous notice in writing to be given; the general issue may be pleaded, with tender of amends, and full costs to defendant in case of decision in his favour. § 12. Half the penalty to go to the informer, and the other half to the district. § This act to be a public act. § 14. Not to extend to Lower Canada, or to Indians.

By 7 V., c. 14, § 2, all persons going to, or returning from divine service on any Sunday or obligatory holiday with their own carriages, horses, or beasts of draught, as shall also their families and servants with such carriages, &c., pass *toll free* through any turnpike, or toll gate on any turnpike road in this province. By 16 V., c. 179, § 3, search warrants and other warrants may be issued on a Sunday.

By the Municipal Act, 12 V., c. 81, the municipal authorities in incorporated villages, towns and cities are authorised to make by-laws for enforcing the due observance of the Sabbath.

LOTTERIES.

By 19 V., c. 49, § 1, if any person shall, after the passing of this act, make, print, advertise or publish, or cause or procure to be made, printed, advertised, or published, any proposal, scheme, or plan for advancing, lending, giving, selling, or in any way disposing of any property, either real or personal, by lots, cards, tickets, or any mode of chance whatever, or shall sell, barter, exchange, or otherwise dispose of, or cause or procure, or aid or assist, the sale, barter, exchange, or other disposal of, or offer for sale, barter or exchange any lot, card, ticket, or other means or device, for advancing, lending, giving, selling, or otherwise disposing of any property, real or personal, by lots, tickets, or any mode of chance whatever, such person shall, upon conviction thereof, before any mayor, alderman, or other justice of the peace, upon the oath of any one or more credible witnesses, or upon confession thereof, forfeit and lose the sum of £5, for each and every such offence, together with costs, to be levied by distress and sale of the offender's goods, by warrant under

the hand and seal of any such mayor, alderman, or other justice of the peace, of the city, town, county or place where such offence shall be committed, which said forfeiture shall be applied half to the informer, and the other half shall be paid to the treasurer or chamberlain of the municipality in which such offence shall be committed. § 2. Any person buying, bartering, exchanging, taking or receiving any such lot, card, ticket, or other device as aforesaid, shall, upon conviction thereof, in like manner as above mentioned, forfeit and lose the sum of £5 for each offence, to be recovered and applied as aforesaid. § 3. Any sale, loan, gift, barter or exchange of any real or personal property, by any lottery, ticket, card, or other mode of chance whatever, depending upon, or to be determined by chance or lot, shall be void to all intents and purposes whatsoever, and all such real or personal property so sold, lent, given, bartered or exchanged, shall be forfeited to such person as shall sue for the same by action, bill or information in any court of record in this province; provided always that no such forfeiture shall affect any right or title to such real or personal property acquired by any *bonâ fide* purchaser for valuable consideration, without notice. § 4. If any person so convicted by any mayor, alderman or other justice as aforesaid, shall not have sufficient goods and chattels whereon to levy the penalties authorised by this act, or shall not immediately pay the said penalties, or give security for the same, such mayor, alderman or justice, convicting such person, shall commit such person to the common gaol of the county or district in which such offence was committed, for a period not exceeding three calendar months, or until such fine and costs are paid. § 5. The provisions of this act shall extend to the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and to the sale or offer for sale of any ticket, chance or share in any such lottery, or to the advertisement for sale of such ticket, chance or share. § 6. Interpretation of the terms "personal property" and "real property" and what shall be included therein. § 7. Appeal against convictions as in other cases. § 8. This act not to extend to the division of property held by joint tenants or tenants in common. § 9. Act to take effect on the first day of January, 1857.

LUNATIC ASYLUM, PROVINCIAL.

By the 16 V., c. 188, § 2, the provincial lunatic asylum in Toronto, with all the property real and personal, and all the effects belonging to it is vested in the Crown. § 4. Its

financial affairs to be managed by a "Bursar," to be appointed by the governor. § 4. Who shall also appoint a medical superintendent who shall reside in the asylum, and shall direct and control the medical and moral treatment of the patients, hire and discharge keepers and servants, watch over the internal management and maintain the discipline and due observance of the by-laws of the institution, report the condition thereof to the visiting commissioners, at each visit, and annually to the Governor, and to each house of parliament within ten days after the opening of each session. § 6. The Governor authorised to appoint at least four times a year a commission of not less than four persons, two only to be resident in Toronto, whose duty shall be to examine and report on the manner in which the institution is conducted, and to examine and forward to the Governor, with their observations thereon, the reports made to them by the medical superintendent and bursar; and further to frame such *by-laws* as may seem advisable for the peace, welfare, and good government of the institution, which by-laws shall have effect when the Governor shall have signified his assent thereto. The commissioners to keep an exact record of all their proceedings. § 7. No person shall be received into the institution without a certificate from *three* medical licentiates, signed and verified by the reeve of the township, or incorporated village, or the mayor of the city, or incorporated town from which the lunatic may have been sent, and in the absence of the reeve or mayor, by the deputy, or other person who shall for the time being be authorised to act in the place of the reeve or mayor, which certificate shall state that the subscribing medical licentiates at the same time, and in the presence of each other, examined the patient, and after due inquiry into all necessary facts relating to his case, found him to be a lunatic; and such certificate shall be sufficient authority to any person to convey the lunatic to the said asylum, and to the authorities there to detain him as long as he shall continue insane. § 8. When any lunatic sent to the asylum shall be under twenty-one years of age, having a father or mother able to pay for his maintenance, or a guardian or committee, it shall be the duty of the bursar and medical superintendent to send a copy of the certificate mentioned in the last section, attested under their hands, to such father, mother, guardian, or committee, with a certificate of the admission of such lunatic, and of the amount payable per quarter to the asylum. § 9. Such amount to be demanded quarterly in January, April, July, and October, by the bursar and medical superintendent from the father, mother,

guardian, or committee, and in case of non-payment said bursar may apply to the county court judge upon affidavits, and upon a rule to shew cause, being satisfied that the father or mother of the lunatic is able to pay for his maintenance, or such guardian or committee is in possession of property of the lunatic, the bursar shall be entitled to an order for the amount, and costs, and a writ of execution may issue thereon, or the judge may, if he thinks fit, direct an issue to be tried before a jury previous thereto. § 10. If such lunatic be possessed of property and have no guardian or committee, and if such property, in the opinion of the bursar, be more than sufficient to maintain the family, (if any) of such lunatic, it shall be lawful for the bursar to take possession of the same, or a sufficient part, with full power to manage and appropriate, take or recover possession of, lease, mortgage, *sell* and convey all or any part in the name of the lunatic, or as his committee under this act, as fully as if such lunatic could or might do, if of full age, and *compos mentis*. Proviso, that before any sale the bursar shall report the case and terms of sale to the county court judge where the property is situate, for his approval, and such bursar shall be accountable and subject to the same responsibility as any trustee, guardian or committee would be. § 11. In case of disputed right to property the county court judge may cause an inquisition to be held to determine such right. § 12. The Governor authorised to fix salaries of medical superintendent not exceeding £500, and bursar not exceeding £300, and commissioners not exceeding 25s. per diem, payable out of any funds appropriated for the support of the said asylum.

By 20 V., c. 28, § 14, the Governor is authorised to appoint five fit persons to be inspectors of all public asylums, hospitals, common gaols, and other prisons in this province. § 15. Meetings of the board provided for. § 16. The said inspectors shall have and perform all the powers and duties vested in, or to be performed by the inspectors of the provincial penitentiary; and by the commissioners of the provincial lunatic asylum under the 16 V., c. 188. § 17. From and immediately after the first appointment of inspectors under this act, the powers and duties of the commissioners under the above mentioned act relating to the lunatic asylum shall cease, and the medical superintendent and bursar shall make their annual reports to the said inspectors.

LUNATIC ASYLUM—PRIVATE.

By 14 & 15 V., c. 84, § 1, justices of the peace of any county in general quarter sessions are authorised to license

any person to keep a house for the reception of lunatics: three or more justices to be annually appointed with one physician or more as visitors, who shall at their first meeting take the oath of office prescribed. § 2. Vacancies to be supplied by the justices in sessions. § 3. A list of such visitors within *fourteen* days from their appointment to be published by the clerk of the peace, and sent to the Governor within *three* days after appointment, under a penalty of £2 10s. for every default. § 4. The clerk of the peace, or some other person, to be appointed by the justices in sessions, to be clerk to the visitors, who shall summon such visitors as the justices in sessions shall appoint: every such meeting to be held privately, and so that no proprietor, superintendent, or person interested or employed in or about any house to be visited shall have notice of such intended visitation; clerk to take a certain oath of office; and the name of such clerk within *fourteen* days after his appointment to be published by the clerk of the peace, and within *three* days communicated to the Governor, under a penalty not exceeding £2 10s.: clerk to be allowed such salary as the justices shall direct. § 5. Visitors' clerk may have an assistant who shall also take the oath of office prescribed. § 6. No person shall act as a visitor, or clerk, or assistant-clerk, or act in granting licenses, who shall within one year next preceding be directly or indirectly interested in any such licensed house: and no physician, being a visitor, shall sign any certificate for the admission of any patient, or professionally attend upon any patient in any such licensed house or hospital, unless directed to visit such patient by the person upon whose order he has been received into such house or hospital, or by the provincial secretary, chancellor, or vice-chancellors, committee, or by a judge of the superior court: any visitor, clerk, or assistant-clerk becoming interested, after his appointment, shall be disqualified to act, and if continuing to act shall be guilty of a misdemeanor; and if any physician, being a visitor, shall sign any certificate for admission, or shall professionally attend any such patient (except as aforesaid) he shall forfeit for each offence £50. § 7. Any person desiring to have a house licensed for the reception of lunatics shall give notice to the clerk of the peace *fourteen* clear days before the sessions, with the name of any proposed superintendent accompanied by a plan of such house, and a statement of the number of patients proposed to be received; and whether for male or female patients, or both. § 8. The license not to extend to more than one house. § 9. No alteration to be made in the house without notice and consent

in writing of *two* visitors. § 10. Any person wilfully giving an untrue or incorrect notice, plan, or statement, or description to be guilty of a misdemeanor. § 11. Clerk of the peace to send a copy to the provincial secretary of any such license granted within *fourteen* days afterwards, under a penalty not exceeding £20. § 12. Provision for renewal of licenses. § 13. License to be under the hands and seals of three or more justices, the chairman being one, and in the form in the schedule to the act; and shall be granted for a period not exceeding *thirteen* months. § 14. Persons obtaining licenses to give security in £100, with two sureties in £50 each, or one surety in £100. § 15. Rates to be charged for such licences, viz., 10s. for every proposed patient, but not less than £15 in the whole. § 16. Moneys derived from licenses to be applied in payment of clerk's salary, and other expenses. § 17. Annual account of receipts and payments signed by two visitors at the least to be laid by the clerk of the peace before the sessions. § 18. In case of incapacity of the persons licensed by sickness or otherwise, or in case of death, such license may be transferred by *three* justices indorsing the same to the superintendent, or to such person as such justices shall approve. § 19. Provision for the transfer of patients to a new building in certain events. Description of such new building, with plans, &c., to be first given. § 20. The Governor authorised to revoke any license upon the recommendation of a majority of the justices in sessions. § 21. No person to be received into any such licensed house as a lunatic, boarder or lodger, without an order under the hand of some person according to the form, and particulars required in schedule B.; nor without the medical certificates according to the form in schedule C. of *two* physicians (not partners), nor brothers, nor father and son, each of whom shall separately have examined the patient not more than *seven* clear days previous to his reception into the house, and shall have signed and dated the same on the day of examination: any person receiving or detaining any person as aforesaid without such order and medical certificates, and any physician who shall knowingly sign any such, which shall untruly state any of the particulars shall be guilty of a misdemeanor. § 22. The physician signing shall also specify the facts upon which he has formed his opinion that the person is a lunatic or insane person, idiot, or person of unsound mind.

§ 23. No person shall receive to board or lodge in any house not licensed under this act, or take charge of any insane person, without first having obtained the medical certi-

ificates required by this act for admission into a licensed house: and every person who shall so receive any such insane person to board or lodge, &c., shall within *three* calendar months transmit to the clerk of the visitors of the district, a copy of such medical certificates, sealed and endorsed "private return," and annually on the 1st of January, or within *seven* days after transmit to such clerk, a certificate signed by ten physicians describing the then actual state of mind of such insane person to be endorsed "private return," and every person who shall fail herein shall be guilty of a misdemeanor.

§ 24. Under special circumstances a patient may be received into such licensed house, upon such order as aforesaid, with the certificate of *one* physician only, provided that such order state the special circumstances which may have prevented the examination of the party by *two* physicians. But in such case, such certificate shall be signed by some other physician, not connected with the house, who shall have specially examined the party within *three* days after admission; and any person, who shall have received a patient upon the certificate of *one* physician only, permitting him to remain beyond *three* days without such further certificate shall be guilty of misdemeanor.

§ 25. No physician interested in, or a regular professional attendant on a licensed house, shall sign any certificate for reception: nor shall any physician related to or connected with the party signing the order for admission, sign any certificate for reception. The offender in any such case to be guilty of misdemeanor.

§ 26. Every proprietor or superintendent receiving a lunatic into a licensed house shall within *two* days make an entry thereof in the "book of admissions" according to the form in schedule D., under a penalty not exceeding £2 10s. Any person knowingly making an untrue entry of particulars to be guilty of misdemeanor.

§ 27. The form of mental disorder of the patient to be entered in the book of admissions by the medical attendant within *seven* days after admission, under a penalty not exceeding £2 10s.

§ 28. Proprietor or superintendent after *two* clear days, and before the expiration of *seven* days from the admission of any patient, shall transmit a copy of the order and medical certificates, and a notice and statement as in schedule E., to the visitors' clerk, and in case of neglect shall be guilty of misdemeanor.

§ 29. In case of the escape of any patient the proprietor or superintendent shall within *two* clear days next after transmit a notice thereof to the visitors' clerk, stating the christian and surname of the patient, and his or her state of mind, and the circumstances connected with such escape; and the like

notice if the patient shall have been brought back, and when brought back, and the circumstances, and whether with or without a fresh order and certificate, under the penalty of £10. § 30. An entry to be made by the proprietor or superintendent within two clear days after the removal, discharge or death of any patient according to the form in schedule F., and he shall also within the same two days transmit a written notice thereof, and the cause of the death, removal or discharge of such patient, if known, to the visitors' clerk according to the form in schedule G., and in case of default or untrue statement, such proprietor or superintendent shall be guilty of misdemeanor. § 31. In case of the death of any patient in the house, a statement of the cause, with the name of the person present, shall be drawn up and signed by the medical attendant of the house, and a copy duly certified by the proprietor or superintendent transmitted to the nearest coroner, and to the visitors' clerk, and to the person who signed the order for such patient's confinement, within forty-eight hours after his death, under a penalty not exceeding £50. § 32. Any superintendent, officer, nurse, attendant, servant or other person employed, in any way abusing or ill treating, or wilfully neglecting any patient shall be guilty of misdemeanor; and in the event of the release of any person who shall consider himself to have been unjustly confined, a copy of the order and certificates upon which he was confined shall, at his request, be furnished to him or his attorney by the visitors' clerk without fee or reward. And it shall be lawful for the Governor to direct the prosecution on the part of the Crown of any person concerned in the unlawful taking of any of her Majesty's subjects as an insane patient, or any person concerned in the neglect or ill-treatment of any patient. § 33. In every house licensed for 100 patients there shall be a physician resident as superintendent or medical attendant, and every house licensed for less than 100, and more than 50, (in case such house shall not be kept by or have a resident physician), shall be visited daily by a physician; and every house licensed for less than 50 patients (in case the same shall not be kept by a resident physician), shall be visited *twice* in every week by a physician; provided always, that it shall be lawful for the visitors to direct such house to be visited by a physician at any other time or times, not oftener than once a day. § 34. When any house is licensed for less than *eleven* patients, any two of the visitors may permit such house to be visited by a physician at greater intervals, but not greater than once in every two weeks. § 35. Every visiting physician shall once in every

week (or when distant intervals are permitted, then on every visit), enter and sign in the "medical visitation book," a report shewing the date thereof, the number, sex and state of health of all the patients, the christian and surname of every patient under restraint, or in seclusion, or under medical treatment since the date of the last report, the condition of the house, and every death, injury and act of violence affecting any patient since the last report, according to the form in schedule H., under the penalty of £20, and any untrue statement in such report to be a misdemeanor. § 36. The mental state and bodily condition and medical treatment of each patient to be entered by the resident or attendant physician in the "case book," copies of such entries to be furnished to the visitors if required, under a penalty for neglect not exceeding £10. § 37. Every licensed house shall be visited by *two* at least of the visitors (one a physician) four times at the least in every year, at such times as the justices shall direct; and such visitors may and shall inspect every part of the house and ground, &c., appurtenant, and see every patient, and enquire if any under restraint, and why, and inspect the order and certificates for reception, and enter a minute in the "visitors' book" of the then condition of the house and of the patients, and the number under restraint, and any irregularity in the order or certificates, and whether previous suggestions (if any) have been attended to, and any observations they may deem proper. § 38. The proprietor or superintendent shall shew to the visitors every part of the house and every patient. And every proprietor or superintendent who shall conceal or attempt to conceal, or refuse or neglect to shew any part of such house, or any part of the ground or appurtenances, or any person detained therein to the visitors or any person authorised to visit and inspect the same, shall be guilty of misdemeanor. § 39. Visitors to enquire where divine service is performed therein, and to what number of patients; and whether any system of coercion has been adopted and the result thereof, and as to the classification of patients, and to make such other enquiries as they may think expedient. Any proprietor or superintendent not giving full and true answers, to be guilty of misdemeanor; § 40. The proprietor or superintendent shall lay before the visitors a list of all the patients in the house, and the books required by this act to be kept, and all orders and certificates since the last visitation, and the license then in force, and all such other orders, certificates and documents relating to any of the patients as they shall require. § 41. A copy of the plan given to the justices on the application

for a license, to be hung up in some conspicuous part of the house, also a copy of this act bound up in the "visitors' book," and the visitors shall enter therein the result of their inspections and enquiries, with such observations as they shall think proper: there shall also be kept in such house a "patients' book," and the visitors shall enter therein their observations respecting the state of mind or body of any patient. § 42. The proprietor or superintendent shall, within *three* days after every such visit, transmit a true copy of the entries made by the visitors in the "visitors' book," the "patients' book," and the "medical visitation book" to the visitors' clerk, to be laid before the justices on application for the renewal of the license, under a penalty of not exceeding £10. § 43. Any two visitors may inspect the premises by night, as they shall think fit. § 44. Patients are to be removed or discharged by order in writing, signed by the party signing the order for admission. § 45. And in case of his incapacity, or absence, or death, the nearest of kin of the patient may give direction for his discharge or removal. § 46. Patient not to be discharged or removed if certified to be dangerous and unfit to be at large, without consent of the visitors. § 47. Any two of the visitors (one being a physician) may make special visits, and after two such visits, if it appear to them the patient is detained without sufficient cause, may order his discharge. § 48. Such order to be signed by them, but not until they have examined the medical attendant as to his opinion, in case he shall tender it: and if the visitors shall discharge such patient, and such medical attendant shall furnish them with his reasons in writing against such discharge, they shall forthwith transmit such statement to the visitors' clerk. § 49. Not less than seven days to intervene between the first and second of such special visits. § 50. Powers of discharge not to extend to criminals. § 51. Information to be furnished upon enquiry as to any particular patient confined in the house. § 52. Any one of the visitors may give an order for the admission to any patient of any friend or relative (or of any medical or other person whom they may desire to see such patient), and any proprietor or superintendent refusing admission in such case, shall for every such refusal forfeit not exceeding £20. § 63. The proprietor or superintendent, with the consent in writing of two visitors, may send or take, under proper control, any patient to any specified place, for the benefit of his health. § 54. When any patient shall be removed temporarily into any new house, and shall escape and be re-taken within fourteen days, the certificates relating

to the original order for his admission shall remain in force. § 55. Proprietors may plead the order for admission of any patient in bar to certain legal proceedings. § 56. Visitors may summon and examine witnesses upon oath; any witness refusing, without lawful excuse, to incur a penalty not exceeding £50, recoverable before any one justice. § 57. Witnesses to be paid their expenses. § 58. Pecuniary penalties under this act recoverable before any two justices, and the summons may be issued by one. The justices may, if they think fit, reduce any penalty to any sum not less than one-fourth, and may levy the amount, with costs, by distress and sale of the goods and chattels of the offender, and any two such justices may order the person convicted to be kept in custody until the return of such warrant, unless the offender shall give security for his appearance within seven days, and in default of distress, such justices may commit the offender to the common gaol or house of correction for any term not exceeding *three* months, unless penalty and costs sooner paid. Penalties, when recovered, to be paid to the clerk of the peace, and accounted for as hereinbefore directed with respect to license moneys. § 59. Conviction to be in the form prescribed in the act, or to the same effect. § 60. Appeal given to the quarter sessions. § 61. Actions against any person for any thing done in pursuance of this act, to be brought within *twelve* months. § 62. The visitors' clerk, on their order, may prosecute for penalties, and no other person shall prosecute without order of the visitors, or consent of her Majesty's attorney or solicitor-general. § 63. Transmission of any notice, statement or other document required by this act through the post-office, or left at the office of the clerk of the peace, to be deemed sufficient, and a bar to proceedings for omission. § 64. Costs and expenses incurred by or under the order of any visitors, to be paid by the clerk of the peace, and included in his accounts. § 65. Interpretation clause. § 66. This act not to extend to the provincial asylum at Toronto, or the asylum at Beauport, near Quebec.

By 20 V., c. 28, § 32, inspectors of gaols, &c., under this act, are required to visit and report to the Governor, once in the year at least, upon the state and management of every private lunatic asylum, with power to the Governor to suspend or revoke any license granted for the same.

LUNATICS DANGEROUS.

By 14 & 15 V., c. 83, § 3, and for the better prevention of crimes by "persons insane," it is enacted that if any person

shall be discovered and apprehended under circumstance that denote derangement of mind, and a purpose of committing some crime for which, if committed, he would be liable to be indicted, and any of her Majesty's justices of the peace before whom such person may be brought shall think fit to issue a warrant for committing him or her as a *dangerous person* suspected to be insane, such cause of commitment being plainly expressed in the warrant, the person so committed shall not be bailed except by two justices of the peace, one being the justice who has issued such warrant, or by the court of general quarter sessions, or by one of the judges of her Majesty's superior courts of law or equity at Toronto.

§ 5. And whereas there are sometimes persons who by lunacy or otherwise are furiously mad, or so disordered in their senses as to endanger their own persons or property, or the persons or property of others if permitted to go at large. Be it therefore enacted that it shall be lawful for any two or more justices residing in any city, town, village, township, parish or place where such lunatic or mad person shall be found (of whom the chairman of the quarter sessions shall be one) by warrant under their hands and seals directed to the constable of any such city, town, village, township, parish or place, or some of them, to cause such person to be apprehended and kept safely locked up in some secure place within the district or county, as such justices shall direct or appoint, if the last legal settlement of such person shall be in any parish, town or place within such district or county; and if such settlement shall not be there, then to the place of his or her last legal settlement, and shall be locked up by warrant of two justices of the district or county to which such person is so sent, of whom the chairman of the quarter sessions shall be one in manner aforesaid, and the reasonable charges of removing, keeping and curing such lunatic, shall be paid by order of two or more justices directing the treasurer of the municipality where any goods, chattels, lands or tenements of such lunatic shall be to seize and sell so much of the goods and chattels, or receive so much of the rents as will be necessary to pay the same, and to account for the same to the next quarter sessions. But if such lunatic has not an estate more than sufficient to maintain his or her family, then such charge shall be paid by the municipality to which such person belongs by order of two justices directed to the treasurer.

MACHINERY.

By 1 Vic., c. 18, § 1, it is enacted that the owners of all steam boats, steam cars, and steam carriages, mills, and other

buildings, where machinery is, or may hereafter be used, shall erect, or cause to be erected, good substantial guards round the machinery of such steam boats, &c., so as to prevent passengers and other persons from coming in contact with such machinery. § 2. It is enacted, that it shall be the duty of the collector of customs of any port to enter steam boats, &c., to examine the guards of the machinery, and if not properly erected so as to secure the safety of persons when the machinery is in operation, the said collector or his deputy shall notify the same to the master or person in charge, and direct him to make the necessary and substantial guards. § 3. It shall be the duty of every justice of the peace, within the district in which he shall reside and usually act as a justice to enter into or upon all buildings wherein machinery is used, or shall hereafter be erected, and examine the same; and if upon such examination, the guards about such machinery shall be found insufficient, such justice shall notify the same to the owner or occupier of such building, and direct the necessary guards to be erected. § 4. In case the master or person in charge of any steam boat, &c., or the owner or occupier of any building wherein machinery is or shall be erected, shall neglect or refuse to comply with the directions of such collector, or justice, and being thereof convicted before one or more justices, he shall forfeit and pay for every such offence any sum not exceeding *one pound*, and in default of payment, with the reasonable costs of conviction, such offender shall be sent to the common gaol of the district within which such offence shall have been committed for any period not exceeding thirty days. § 5. If, upon inspection by the collector or justice, of any steam boat, or building, &c., the guards are found safe and substantial, such collector or justice shall deliver to the person in charge, and to the proprietor of such building, a certificate to that effect, which shall be a good protection for six calendar months, *provided* such safeguards shall be kept in good repair.

By 4 & 5 V., c. 26, § 5, if any person shall unlawfully and maliciously cut, break, destroy, or damage with intent to destroy or render useless, any threshing machine, or any machine or engine, whether fixed or moveable, prepared for or employed in any manufacture whatever (except the manufacture of silk, woollen, linen, or cotton goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any frame work, knitted piece, stocking, hose, or lace), every such offender shall be guilty of felony, and being convicted thereof, shall

be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or in any other prison or place of confinement for any term not exceeding two years.

MAINTENANCE.

Maintenance is an unlawful taking in hand or upholding of quarrels or suits, to the disturbance or hindrance of common right; and is not only *malum prohibitum* both by the common law and by statute, but is also accounted *malum in se*, as having a manifest tendency to oppression by encouraging and assisting persons to persist in harrassing their neighbours with suits, which perhaps they would not venture to prosecute of their own accord. It is punishable at common law, by *fine* and *imprisonment*; and by the 32 H. III., c. 9, with a forfeiture of £10. A court of record, also, may commit a man for an act of maintenance done in the face of the court, as for a contempt.—2 *Inst.* 212. 1 *Haw.* c. 83, § 36. There are some acts of maintenance which under certain circumstances, are justifiable. A father, a son, or an heir apparent to a party; or the husband of an heiress apparent, may lawfully lay out money for the party to prosecute his suit. Few prosecutions are, however, now instituted for maintenance; for more persons than one are generally implicated in this offence, and then the common practice is, to indict them for *conspiracy*.

MALICIOUS INJURY.

Malicious Injury to the Person.

Poisoning or Wounding.—By 4 & 5 V., c. 27, § 6, whosoever shall administer or cause to be taken by any person any poison or other destructive thing, or shall stab, cut, or wound any person, or shall by any means whatsoever cause to any person any wilful injury dangerous to life, with intent in any of the cases aforesaid, to *commit murder*, shall be guilty of felony, and being convicted thereof shall suffer death.

Attempt to Murder.—§ 10. Whosoever shall attempt to administer to any person any poison or other destructive thing, or shall shoot at any person, or shall by drawing a trigger or in any other manner attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent in any of the cases aforesaid to commit the crime of murder, shall, although no bodily injury shall be effected, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial

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

Shooting, Cutting and Maiming.—§ 11. Whoever shall unlawfully and maliciously shoot at any person, or shall draw a trigger or in any other manner attempt to discharge any kind of loaded arms at any person, or shall stab, cut or wound any person with intent, in any of the cases aforesaid, to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

By 18 V., c. 92, (criminal law amendment act), § 30, if any person shall unlawfully and maliciously inflict upon any other person, either with or without any weapon or instruments, any grievous bodily harm; or unlawfully and maliciously cut, stab, or wound any person, any such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned, with hard labour, in any gaol or prison for any term not exceeding two years, or in the provincial penitentiary for any term not less than two, nor more than five years.

§ 31. If upon the trial of any indictment for any felony (except murder or manslaughter) where the indictment shall allege that the defendant did cut, stab, or wound any person, the jury shall be satisfied that the defendant is guilty of the cutting, stabbing or wounding charged in the indictment, but shall not be satisfied of the felony; then the jury may acquit of the felony and find the defendant guilty of *unlawfully* cutting, stabbing or wounding, and thereupon such defendant shall be liable to be punished as in the 30 §.

With respect to the crime of stabbing, cutting or wounding, it may not be unimportant to remark upon its *classification* as an offence. If committed with an intent to *murder* it is a capital offence, punishable with death. If with the intent only of maiming, disfiguring, or disabling a party, then, although a felony, it is punishable with less severity. But where the offence is committed without any manifest felonious or criminal intent, as where it is done in the heat of passion, and without pre-

meditation or design, it is punishable under the statute 18 V., c. 92, as a *misdemeanor* only. It is difficult to conceive any case of stabbing or cutting that would not in the eye of the law be deemed both unlawful and malicious; and it is an offence so utterly abhorrent to all true British feeling and spirit that we may well indulge the hope of its seldom occurring in this province.

Explosive or Corrosive Matter.—By 4 & 5 V., c. 27, § 12, whosoever shall unlawfully and maliciously send or deliver to, or cause to be taken or received by any person, any explosive substance, or any other dangerous or noxious thing, or shall cast or throw upon or otherwise apply to any person any corrosive fluid or other destructive matter, with intent, in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, and whereby, in any of the cases aforesaid, any person shall be burnt, maimed, disfigured or disabled, or receive some other grievous bodily harm, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, or in any other prison or place of confinement for any term not exceeding two years.

Miscarriage.—§ 13. Whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labor in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Malicious Injury to Property.

By the 4 & 5 V., c. 26, § 15, if any person shall unlawfully and maliciously break down or otherwise destroy the dam of any fish-pond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully or maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish therein, or shall unlawfully and maliciously break

down or otherwise destroy the dam of any mill-pond, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be punished accordingly.

§ 17. Unlawfully and maliciously setting fire to agricultural produce, is made felony.—(See title “*Arson.*”) § 18. If any person shall unlawfully or maliciously cut or otherwise destroy any hop binds growing on poles in any plantation of hops, every such offender shall be guilty of felony, and being convicted thereof shall be liable to be imprisoned for any term not exceeding two years.

By the 4 & 5 V., c. 26. § 24, if any person shall wilfully or maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no remedy or punishment is hereinbefore provided, every such person, being convicted thereof before a justice of the peace, shall forfeit and pay such sum of money as shall appear to such justice to be a reasonable compensation for the damage, injury or spoil so committed, not exceeding the sum of £5, which sum of money shall, in case of private property, be paid to the party aggrieved, except where such party shall have been examined in proof of the offence, and in such, and in the case of property of a public nature, or wherein any public right is concerned, the money shall be applied in such manner as every penalty imposed by a justice of the peace under this act is hereinafter directed to be applied: *provided always*, that nothing herein contained shall extend to any case where the party trespassing acted under the fair and reasonable supposition that he had a right to do the act complained of.

See also title “*Explosive Substance*” and “*Summary Conviction.*”

MANDAMUS.

A writ of *mandamus* is a command issuing in the king's name from the Court of King's Bench, and directed to any person, corporation, or inferior court of judicature, within the king's dominions, requiring them to do some *particular* thing therein specified, which appertains to their office or duty. This writ is principally used to enforce a civil or municipal right, but it issues also to the judges of any inferior court, commanding them to do justice according to the power of their office, whenever the same is delayed. It is grounded on a suggestion (by the oath of the party injured) of his own right, and of the denial of justice in the court below; whereupon, in order more fully to satisfy the court

that there is a probable ground for such interposition, a rule is made (except in some general cases, where the probable ground is manifest) directing the party complained of to shew cause why a writ of *mandamus* should not issue; and if he shews no sufficient cause, the writ itself is issued at first in the alternative—either to do thus, or signify some reason to the contrary; to which a return or answer must be made at a certain day: and if the inferior judge, or other person to whom the writ is directed, returns or signifies an insufficient reason, then there issues, in the second place, a *peremptory mandamus*, to do the thing absolutely, to which no other return will be admitted but a certain perfect obedience and due execution of the writ. If the inferior judge or other person makes no return, or fails in his respect and obedience, he is punishable for his contempt by attachment; but if at the first he returns a sufficient cause, although it should be false in fact, the Court of King's Bench will not try the truth of the facts upon affidavit, but will for the present believe him, and proceed no further on the *mandamus*. But then, the party injured may have an action against him for his false return, and (if found to be false by the jury) shall recover damages equivalent to the injury sustained, together with a *peremptory mandamus* to the defendant to do his duty.—3 *Bl. Com.* 111.

A *mandamus* to the quarter sessions will be granted, to compel them to hear and decide an appeal which they refuse to hear on the ground of a mistaken notion of law, or an unreasonable rule as to their own practice.—*R. v. Wiltshire*, 10 *East.* 404.

Where a person had been convicted before justices of the peace and fined, and on an appeal to the quarter sessions the justices there admitted more evidence than had been heard on the conviction, and the accused party was acquitted; but, on receiving the opinion of the attorney-general that the additional evidence should not have been admitted, the justices in session confirmed the conviction, and ordered it to be recorded, but took no notice of the acquittal; the court made absolute a rule for a *mandamus* commanding them to enter the acquittal.—*Rex v. Justices of Bathurst*, *D. Mich.* 6 *W. IV.*, *Cameron's D.* p. 49.

A *mandamus* never issues except to admit or restore some person to an ascertained right.—*Barnhart v. Justices H. D.* *Easter* 7 *W. IV.*, *Ib.*

Upon a *mandamus nisi* to justices in session, they should return the recorded proceedings had before them, and not

collateral matters not embraced in the entries of the court.—*Ib.* p. 71.

MANSLAUGHTER

Is at common law, *felony*; and is defined to be such killing of a man as happens on a sudden quarrel, or in the commission of an unlawful act, without any *deliberate* intention of doing any mischief at all.—1 *Haw.*, 76.

By the 4 & 5 V., c. 27, § 7, every person convicted of manslaughter shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for life, or for any term not less than seven years, or be imprisoned in any other prison or place of confinement for any term not exceeding two years, or to pay such fine as the court shall award.

See also *ante* title "*Homicide*," p. 393.

Form of Indictment for Manslaughter.—18 V., c. 92.

County of } The jurors for our lady the Queen, upon their
to wit. } oath present that A. B., on the day of
 } in the year of our Lord one thousand eight hundred and
 } at in the county of did feloniously kill and slay
one C. D.

NOTE.—The indictment must be on *parchment*.—See 16 V., c. 92, § 5.

MANUFACTURES.

By the 4 & 5 V., c. 26, § 4, if any person shall unlawfully and maliciously cut, break or destroy, or damage with intent to destroy, or to render useless, any goods or articles of silk, woollen, linen or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any frame-work, knitted piece, stocking, hose or lace, being in the loom or frame, or on any machine or engine, or on the racks or tenters, or in any stage, process or progress of manufacture, or shall unlawfully or maliciously cut, break or destroy, or render useless, any warp or shute of silk, woollen, linen or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any loom, frame, machine, engine, rack, tackle or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles, or shall by force enter into any house, shop, building or place, with intent to commit any of the offences aforefaid; every such offender shall be guilty of felony, and being convicted thereof; shall

be liable, at the discretion of the court, to be imprisoned, at hard labour, in the provincial penitentiary, for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

MARRIAGES.

*By 33 G. III., c. 5, certain marriages previously contracted, are declared to be valid, and provision is made for preserving the testimony of such marriages within three years from the date of this act. § 3. And until there shall be five ministers or parsons of the church of England, doing duty in their parishes or places of residence in any one district, parties desirous of intermarrying, and neither living within eighteen miles of any parson or minister (a), may apply to a neighbouring justice, who may cause to be affixed, in some public place within each of the townships or parishes wherein the parties reside, the following notice, (fee *one shilling*):—

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

And if no valid objection shall have been made for three intervening Sundays, the magistrate may solemnize the marriage, according to the form of the church of England, and give the parties the following certificate (fee *one shilling*):

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

(a) It is scarcely conceivable that such a case can now arise in any part of Canada, and it is only in such event that a justice of the peace would be justified in performing the ceremony, or that the marriage itself would be legal. The act, however, is still in force, should parties be inclined to run the risk.

Which certificate shall be signed by the parties, and two or more persons present at the marriage. The clerk of the peace, upon application, is required to register the said certificate (fee 2s.); and such register, or an attested copy (fee 2s.), shall be sufficient evidence in courts of law. § 5. The power of justices to solemnize marriages shall determine so soon as there shall be five parsons or ministers resident in any one district; and any justice of the peace pretending to perform the ceremony afterwards, shall forfeit £20, one moiety to the province, and the other to the informer; and such pretended marriage shall be void.

*By 38 G. III., c. 4, § 1, it shall be lawful for the minister or clergyman of any congregation or religious community of persons, professing to be members of the church of Scotland, or Lutherans, or Calvinists, who shall be authorised in manner directed by this act, to celebrate the ceremony of matrimony according to the rites of such church or religious community, between any two persons (not under legal disqualification), and one of whom shall have been a member of such congregation of religious community at least six months before such marriage. § 2. No person shall be deemed a minister or clergyman within the meaning of this act, who shall not have been regularly ordained according to the rites and forms of such congregation or religious community, and unless he shall have appeared before the justices assembled in quarter sessions in the district where he shall reside, when not less than six magistrates besides the chairman shall be present, and shall have then with him at least seven respectable persons, members of such congregation or community, who shall declare him to be their minister or clergyman; and unless he shall have proofs of his ordination or appointment; and shall then and there take the oath of allegiance—when the majority of the magistrates then present may, if they think expedient, grant him a certificate in the form prescribed by the act. § 6. All marriages which may have been celebrated since the passing of *33 G. III., c. 5, by any person who shall obtain such certificate as aforesaid, between any two persons (one being a member of such congregations,) shall be deemed good and valid.

By the *59 G. III., c. 15, a further period of three years is given to persons neglecting to avail themselves of the benefit of the *33 G. III., c. 5, for preserving the testimony of their marriage.

*By 2 G. IV., c. 11, if any person, minister or clergyman, legally authorised to solemnise marriage, shall knowingly or

wilfully solemnise marriage without publication of banns, unless license of marriage be first had and obtained from some person duly authorised to grant the same; or if any justice of the peace shall knowingly solemnise marriage contrary to law; or if any person not having authority by law to solemnise marriage, shall marry any person within the same, such offender shall be guilty of a misdemeanor. Such offence not to be cognizable at the quarter sessions; and no prosecution to be commenced after two years. § 2. In all prosecutions under this act, the proof of *legal authority* shall lie upon the defendant.

*By 11 G. IV., c. 36, entitled "An Act to make valid certain marriages heretofore contracted, and to provide for the future solemnization of marriage in this province," it is enacted—§ 1. That marriages of persons (not under any canonical disqualification) publicly contracted in this province (U. C.) before any justice of the peace, magistrate, or commanding officer of a port, or before any minister or clergyman, before the passing of this act, shall be confirmed and made valid. § 2 provides for preserving testimony of such marriages at any time within *six* years, in the manner prescribed; in case of subsequent marriage, the former marriage, if illegal, not to be valid by this act. § 3. It shall be lawful for any clergyman or minister of any church, society, congregation, or religious community of persons, professing to be members of the church of Scotland, Lutheran, Presbyterians, Congregationalists, Baptists, Independents, Methodists, Menonists, Tunkers, or Moravians, who shall be authorised in manner hereinafter mentioned to solemnise the ceremony of marriage within this province between two persons, neither of whom shall be under any legal disqualification to contract matrimony. § 2. No person shall be deemed a clergyman or minister of such church, society, congregation, or religious community, who shall not have been regularly ordained, constituted or appointed according to the rites and forms of such church, society, congregation or religious community; nor unless he shall be a subject of her Majesty, and shall appear before the justices, in sessions of the district, and produce proof of his ordination, constitution, or appointment, and shall then and there take the oath of allegiance; and thereupon, if it shall appear to the majority of the justices then present that he has been regularly ordained, &c., they are hereby authorised and required to grant him a certificate in the form following:

Be it remembered, that at the general quarter sessions of the peace holden at _____ in and for the district of _____, on the

day of _____, in the year of our Lord _____, before A. B. and others, Esquires, justices of our sovereign lady the Queen, assigned to keep the peace in the said district, came C. D. of _____ who professes to be a minister or clergyman of the church, society, congregation, or religious community, [as the case may be] it appeared to a majority of the justices that he the said C. D. was duly ordained, constituted or appointed [as the case may be] a minister or clergyman of the said church, society, congregation, or religious community.

G. H. *Clerk of the peace*

E. P. *Chairman.*

For which certificate, the clerk of the peace shall be entitled to 5s. § 5. No such minister shall at any time celebrate marriage unless banns of marriage be published with an audible voice in the church or chapel or place of worship, three several Sundays, in some intermediate part of the service, or before it began, or immediately after it ended, together with the number of times of publication; or unless a marriage license shall have been obtained from the Governor. § 6. Every minister, or clergyman, or justice of the peace, authorised by this act to celebrate marriage, shall, if required, give to the party a certificate; and also, once in every twelve months' return a certified list (a) of all marriages by him solemnised, to the clerk of the peace, within that period, or since his last return, specifying the names of the parties married, the witnesses, and whether solemnised by license or banns; and shall pay to the clerk of the peace the sum of 2s. 6d. to record the same, who shall record the same in the register or book required by law to be kept by him, of marriages; and such register, or a certified copy, shall be considered, in case of death or absence of the witnesses, as sufficient evidence thereof; and any minister, clergyman, or justice of the peace, neglecting to make such return, shall forfeit £40, to be recovered by action of debt in the court of Queen's Bench, one moiety to the informer and the other to the province.

By 8 V., c. 34, all the powers, privileges and advantages by the *11 G. IV., c. 36, conferred upon or vested in any clergyman or minister of any of the denominations mentioned in the third section of the said act, are conferred upon and vested in any clergyman or minister of the denomination called *The Evangelical Association*, subject to the like penalties.

(a) By the 12 V., c. 90, § 1, these returns are dispensed with, while the *Census Act* 10 & 11 V., c. 14, remains in force, which act requires a registry to be kept by ministers of religion of "baptisms, marriages and deaths," within their cure, and belonging to their congregations, such registry to be forwarded quarterly to the clerk of the peace; but now under the 12 V., c. 90, once a year only.

By 10 & 11 V., c. 18, the like powers are conferred upon and vested in *any clergyman or minister of any religious denomination of Christians whatever*, on the same conditions and restrictions and subject to all the penalties imposed by *11 G. IV., c. 36, for the contravention of any of the provisions thereof. § 2. No clergyman or minister of any of the denominations referred to in the third section of *11 G. IV., c. 36, or of those to whom this act refers, shall be entitled to the benefit of said acts, unless he be a British subject, and shall have taken the oath or affirmation of allegiance before the registrar of the county, and shall at the same time produce to such registrar evidence of his being a recognised clergyman of the denomination to which he professes to belong. § 4. This act not to affect the authority to celebrate marriage *now* vested in any person under the provisions of *11 G. IV., c. 36.

By 20 V., c. 66, "*Act to amend the law relative to the solemnization of matrimony in Upper Canada*," § 1, ministers and clergymen of every religious denomination in Upper Canada, duly ordained or appointed according to the rites and ceremonies of the churches or denominations to which they shall belong, and resident in Upper Canada, may solemnize the ceremony of matrimony, according to its rites, ceremonies and usages of such churches and denominations. § 2. Ministers marrying shall give a certificate if required. § 3. Ministers to enter every such marriage in a book with particulars as per schedule to the act: and make a yearly return on or before the first day of Febeuary, of such marriages, to the registrar of the county, who shall file and record such list in a book to be kept for that purpose, under the penalty of one pound for every day such clergyman or minister shall neglect to make such return, recoverable before any magistrate of the county with costs, to be applied as fines now inflicted under the summary convictions acts. § 4. Provision made in case of the death or removal of ministers before making such annual return. § 5. Any person not being a clergyman or minister of a religious denomination existing in Upper Canada, who shall solemnize or pretend to solemnize matrimony under this act, or who shall falsely personate any clergyman or minister for the purpose of officiating at any such ceremony, shall be guilty of misdemeanor, and liable for every offence to be imprisoned in the penitentiary for a period not exceeding two years, or to such other punishment by fine or imprisonment, or both, as the court shall deem meet. § 6. And any person procuring, aiding or abetting such pretended minister shall be guilty of misdemeanor, and liable to the same punishment.

§ 7. Marriages solemnized by Quakers according to the right usages and customs of their society to be deemed valid.
 § 10. All inconsistent acts repealed.

MARRIED WOMEN.

By *59 G. III., c. 3, any married woman above the age of 21 years, with the knowledge and consent of, and by any deed or deeds jointly with her husband, may alien and convey her real estate to such uses as to her and her husband shall seem meet. § 2. Provided, that such married woman, if resident in Upper Canada, shall appear before a judge, or other person mentioned and described in the *43 G. III., c. 5 (repealed by *1 W. IV., c. 2), or being a resident of Great Britain, or any colony belonging to the crown of Great Britain, shall appear before the mayor or chief magistrate of any city, borough or town corporate in Great Britain or Ireland, or the chief justice, or any of the judges of the supreme court in any such colony, and be examined by such officer touching her consent, and shall freely and voluntarily consent. § 3. Such mayor or chief magistrate, &c., may thereupon cause a certificate to be endorsed on the deed, stating the day on which such examination was made, and signed by such mayor, &c. And by § 4, all such examinations and certificate, &c., must be made within twelve months after the execution of the deed. § 5. And the seal of the city, borough or town corporate must be affixed.

By the *2 G. IV., c. 14, it shall be lawful for any married woman, having such real estate, to appear before the quarter sessions in the district in which she may be resident, or in cases where the party resides out of the province, then before the general quarter sessions of any district, within twelve months from the execution of the deed, to make such acknowledgment; and the chairman may certify in like manner as by the Court of King's Bench, or any judge thereof.

By the *1 W. IV., c. 2, reciting that the laws now in force were insufficient, and unnecessarily exposed purchasers to risk, from the chance of married women dying, or retracting consent after execution of the deed; it is enacted, that it shall be lawful for any such married woman, above 21 years of age, to alien and convey her real estate jointly with her husband; provided that the deed be executed in the presence of one of the judges of the King's Bench, or a judge of the district court, or of a judge of the surrogate court of the district where such married woman shall reside; or of two justices for such district, (a) who shall examine such married woman apart

(a) By 14 & 15 V., c. 115, § 3, where the party is resident or shall happen to be when the deed is executed.

from her husband respecting her free and voluntary consent; and shall on the day of the execution of such deed endorse the following certificate on the deed, or to the like effect.

That on the day mentioned in the certificate, such married woman did appear before him, or them (*as the case may be*), at the place to be named in the said certificate, and being examined by him, or them (*as the case may be*), apart from her husband, did appear to give her consent to depart with her estate in the deed mentioned freely and voluntarily, and without any coercion on the part of her husband, or of any other person or persons whatsoever.

§ 2. And when any married woman shall reside out of the province, the deed may be executed by her in the presence of a judge of the King's Bench; or of the district or surrogate court; or of two justices in any district, whose certificate shall be effectual; and it shall not be necessary for any such judge or justices to attest the deed. § 3. And where married women have heretofore conveyed their estates, but no certificate has been obtained, such certificate may nevertheless be obtained notwithstanding the twelve months have expired.

§ 5. The sum of five shillings to be paid for such certificate.

By *2 V., c. 6, § 3, if any married woman shall join with her husband in any deed of conveyance, wherein a release of dower is contained, it shall not be necessary to acknowledge the same before any court, judge, or justice of the peace, but such execution shall be deemed a valid bar of dower. § 4. And all previous acknowledgments before any competent authority shall be deemed a valid bar of dower, although the wife may not have joined in the execution of the deed.

By 9 V., c. 11, a married woman, with the concurrence of her husband, may convey her *entailed* property.

By 14 & 15 V., c. 115, a deed of conveyance by a married woman resident in a foreign country not owing allegiance to Great Britain, may be executed before the chief executive officer of state, British consul, or a judge of any court of record.

And see titles "*Dower*," "*Wife*."

MASTER AND SERVANT.

By the 10 & 11 V., c. 23, § 1, it is enacted as follows, viz.: that from and after the passing of this act, all agreements or bargains between masters and servants or labourers, for the performance of any duties or service of whatsoever nature, whether such agreement be verbal or written, shall, upon due proof, be binding on each party for the due fulfilment thereof; provided that such verbal agreement shall not

exceed one year. § 2. After any such agreement entered into, any person having thereby engaged to perform any service or work, and who shall during the period of such engagement, and after the commencement of such employment, refuse to go to work, or who shall, without permission or discharge, leave the employ of the party whom he was engage to serve, or who shall refuse to obey the lawful commands of the person under whose direction such services are to be performed, or who shall neglect the service or injure the property of such employer, shall, upon the complaint of such employer or any person in charge under him, be liable to punishment for every such offence, in the manner hereinafter provided. § 3. If any tavern-keeper, boarding-house keeper or other person shall induce or persuade any servants or labourers to confederate for demanding extravagant or high wages, and prevent their hiring them, upon due proof of the offence such tavern-keeper shall forfeit his license in addition to any fine, and such boarding-house keeper or other person shall be subject to fine or imprisonment, as hereinafter provided. § 4 enacts that the wearing apparel of any servant or labourer shall not be kept by any tavern-keeper or boarding-house keeper in pledge for any expense incurred to any greater amount than £1 10s. currency, on the payment or tender of which sum, or of any larger sum due, such wearing apparel shall be immediately given up, whatever be the amount due by such servant or labourer: provided always, that this shall not apply to other property of such servant or labourer. § 5. Any one or more justices of the peace may receive the complaint, upon oath, of parties complaining of any contravention of the preceding provisions of this act, and cause all parties concerned to appear before him or them, and to hear and determine the same in a summary and expeditious manner, and to punish parties found guilty of the offence alleged by fine or imprisonment, allowing such costs as may be legal and just; and all fines imposed by this act shall be paid to the treasurer of the district, town or city in which such conviction may be had, to be applied to the general uses of such district, town or city respectively: provided always, that no fine shall be imposed exceeding £5; and no imprisonment shall exceed one month, nor less than one day. § 6. In every case of a summary conviction under this act, where the penalty shall not be paid either immediately after conviction or within such period as the justice shall at the time of conviction appoint, it shall be lawful for the convicting justice to commit the offender to the common gaol of the district where conviction had, there to be imprisoned for the

time limited by such conviction. § 7. Any person offending against the provisions of this act may be prosecuted, convicted and punished in any district where found. § 8. Any one or more such justices, upon the oath of any such servant or labourer, against his master or employer, concerning any misusage, refusal of necessary provisions, cruelty, ill-treatment or nonpayment of wages, may summon such master or employer to appear before him or them at a reasonable time to be stated in such summons; and he or they, or some other justice or justices, shall, upon proof on oath of the personal service of such summons, examine into the matter of such complaint, whether such master or employer shall appear or not; and upon due proof of the cause of such complaint, he or they may discharge such servant or labourer from his service or employment, and direct the payment to him of any wages found to be due, not exceeding £10, and make such order for payment thereof as shall seem just, with costs; and in case of nonpayment for the space of twenty-one days after such order made, such justice or justices may issue his or their warrants of distress for levying such wages, costs and distress. § 9. Any party aggrieved may appeal to the quarter sessions holden not less than twelve days after conviction, upon giving notice in writing to the complainant of such appeal within three days after conviction and seven clear days before such sessions, and he shall, in case of conviction, either remain in custody until the sessions, or enter into recognizance, with two sufficient sureties, before a justice of the peace, and in the case of such order shall enter into a like recognizance personally to appear at the said sessions, and try such appeal, and abide the judgment of the court, and pay such costs as shall by the court be awarded; and upon such notice being given, and recognizance entered into, the justice before whom the same shall be entered into shall liberate such person if in custody: and the sessions shall hear and determine such appeal, and make such order therein, with or without costs, to either party, as to the court shall seem meet: and in case of the dismissal of the appeal, or affirmance of the conviction or order, shall order or adjudge the offender to be punished according to the conviction; or enforce the order for payment of wages, or of dismissal from service, and to pay such costs as shall be awarded, and shall be awarded, and shall if necessary issue process for carrying such judgment into effect. § 10. Interpretation clause: the word "party" to include any person or persons, body or bodies politic or corporate; and all words importing the singular number or masculine gender, shall include several

persons, matters or things of the same kind, as well as one person, &c., and females as well as males.

By 18 V., c. 136, the above act 10 & 11 V., c. 23, is extended to journeymen or skilled labourers in any trade, calling, craft or employment and to their masters. § 2. And shall apply to engagements entered into for the performance of any service or work, and to the parties thereto, whether the same may have actually been entered upon or not.

MECHANICS' INSTITUTE.

By 14 & 15 V., c. 86, § 1, any number of persons not less than ten having subscribed, or holding not less than £25 in money or money's worth, may make and sign a declaration in duplicate of their intention to establish a library association or mechanics' institute. § 2. And on complying with the formalities required, shall be a body corporate and politic, and hold real estate for the use of such corporation not exceeding the yearly value of £100. § 3. Affairs of the corporation to be managed by the directors or trustees to be appointed, as in the act directed. § 4. A president, librarian, and other officers to be appointed at their annual meeting. § 5. Trustees to remain in office until successors appointed. § 6. Corporation authorised to make by-laws imposing fines not exceeding one pound on any member contravening the same. § 7. Such corporation may, if provided in the declaration, be at the same time a mechanics' institute and library association. § 8. Shares may be made transferable in certain cases. § 9. Dissolution of such corporation provided for.

By 19 V., c. 51, any such corporation situate in any village or town having 3000 inhabitants or more, may hold real estate, not exceeding in annual value, £500; and in any town or city not exceeding that number, may hold real estate not exceeding in annual value £250.

MILITIA.

By 18 V., c. 77, § 1, all former acts are repealed. § 2. The Governor-General or public administrator shall, by virtue of his office, be commander-in-chief of the provincial militia. § 3. The militia to be divided into two classes, sedentary and active.

Sedentary Militia.

§ 4. Shall consist of all the male inhabitants of the province of the age of 18 or upwards and under 60, not exempted or disqualified by law. § 5. The sedentary militia to be

divided into two classes, service men and reserve men. The *service men* to be 18 years of age and under 40, and the *reserve men* 40 years and upwards, but under 60 years of age. § 6. In time of peace, no actual service or drill shall be required of the sedentary militia, but they shall be carefully enrolled from time to time. The service men, not exempt from muster, shall assemble annually for muster at such place and hour as the commanding officer of each battalion shall direct. The muster day in Upper Canada being the Queen's birth-day, or if that day shall fall on a Sunday, then the day after. § 7. The following persons only between 18 and 60, shall be exempt from enrolment and from actual service :

The judges of the superior courts of law or equity—the judge of the court of vice-admiralty—the judges of the county courts—the clergy and ministers of all denominations—the professors in any college or university, and all teachers in religious orders—the warden, keepers and guards of the provincial penitentiary.

And the following, though enrolled, shall be exempt from attending muster and from actual service at any time, except in case of war, invasion or insurrection:—the reserve men—the members of the Executive and Legislative Councils—the members of the Legislative Assembly—the officers of the said councils and assembly respectively—the attorneys and solicitors general—the provincial and assistant secretaries—all civil officers who shall have been appointed to any civil office in this province under the great seal—all persons lawfully authorised to practise physic or surgery—all advocates, barristers, solicitors and attorneys—notaries in Lower Canada—half-pay and retired officers of her Majesty's army or navy—postmasters and mail carriers—sea-faring men actually employed in their calling—masters of public and common schools actually engaged in teaching—ferry-men—one miller for each run of stones in every grist-mill—keepers of public toll-gates—lock masters and labourers employed in attending to locks and bridges on public canals—the engine-drivers, conductors and switchmen connected with the several railways actually in use—members of fire companies and of hook and ladder companies—gaolers—constables and officers of courts of justice, not being such solely by virtue of their being non-commissioned officers of militia—students attending seminaries, colleges, schools and academies, who have been attending such at least six months previous to the time of claiming exemption—all persons disabled by bodily infirmities—Qua-

kers, Menonists and Tunkers, and other religious denominations who, from the doctrines of their religion, shall be averse to bearing arms, and shall refuse. Claim of exemption to be filed, with affidavit sworn before a magistrate, at least one month before hand, with the commanding officer of the company.

§ 8. *Service men* to be divided into two classes, viz., first class and second class service men. The first class to consist of unmarried men and widowers without children: and the second class of married men and widowers with children.

§ 9. In case of war, invasion or insurrection, those taken for actual service shall be, 1st, volunteers from the service men; 2nd, then the first class service men; 3rd, and then the second class. § 10. The commander-in-chief authorised to divide the province into eighteen military districts, nine in Upper Canada and nine in Lower Canada. § 11. Also to divide such military districts into regimental divisions and battalion divisions, by names or numbers. § 12. All the battalions in any regimental division to form the regiment thereof. § 13. A colonel to be appointed to each military district, and a lieutenant-colonel to each battalion, and such number of majors and staff officers as may be deemed necessary. § 14. Company divisions to be formed of not less than 50, nor more than 75. § 15. Existing militia divisions to continue till altered. § 16. Each company to have a captain, lieutenant, ensign, three serjeants and three corporals. § 17. Enrolment in each company division to be made by the captain with the assistance of the officers and non-commissioned officers, by actual enquiry at each house in the division. § 18. Militia men not so enrolled, bound to give in their names, &c., to the commanding officer of the company within twenty days. § 19. A certified copy of the roll to be transmitted within twenty days after the annual muster day, to the commanding officer of the battalion, and by him, within forty days, to the assistant adjutant general of the district, and transmitted to head quarters. § 20. Company rolls to be corrected from time to time, and assessors and others bound to furnish information required, and militia man bound to notify his commanding officer of any change of residence.

Active or Volunteer Militia Companies.

§ 21. How to be formed: not to exceed in the whole 16 troops of cavalry, *seven* field batteries of artillery, *five* foot companies of artillery, and *fifty* companies of riflemen: total not to exceed 5,000 officers and men. § 22. Volunteer

troop of cavalry, company of foot artillery, or riflemen, to consist of a captain, lieutenant, cornet, second lieutenant or ensign, three serjeants, three corporals, a trumpeter or bugler, and not exceeding 43 privates, except rifle companies, which may number from 43 to 75. Each field battery of artillery to consist of a captain, two first lieutenants, a second lieutenant, a serjeant-major, three serjeants, three corporals, three bombardiers, a trumpeter, a farrier, 59 gunners and drivers, including wheelers, &c., 56 horses, exclusive of officers' horses, and four spare horses when in actual service.

§ 23. A volunteer marine company to be formed at Kingston, Cobourg, Toronto, Hamilton, Port Stanley, Dunnville and Oakville, each to consist of a captain, a lieutenant and 50 men: and a commodore appointed to command the whole.

§ 24. How to be armed and drilled. § 25. Volunteer companies of engineers, with officers, to be formed. § 26. All volunteer companies may be formed or disbanded by authority of the commander-in-chief. § 27. Arms and accoutrements to be furnished to the volunteer companies at the expense of the province; security to be taken for their safe keeping, &c. § 28. To be repaired at the cost of the province. § 29. To be kept in armouries, or such other place as shall be provided. § 30. Commissioned officers to furnish their own arms and accoutrements. § 31. Arms, accoutrements and horses to be exempt from seizure in execution. Horses not to be disposed of without leave. § 32. Volunteer militia companies to be drilled at such time and place in each year as the commander-in-chief shall appoint: the volunteer field batteries to be drilled twenty days, ten of which shall be continuous, and the other volunteer corps once in each year during *ten* continuous days. § 33. Code of instructions for drill to be drawn up under the direction of the commander-in-chief. § 34. The pay of the officers and men during drill to be as follows:

Captains, per diem.....	£0	10	6
Lieutenants, "	0	7	6
Second do., Cornets or Ensigns	0	6	6
Non-commissioned Officers and Privates.....	0	5	0

and a further sum of 5s. per diem for each horse present and used for such drill. § 35. Volunteer companies may be called out for drill (without pay) according to the articles of engagement or regulation. § 36. Ammunition for practice or drill to be provided. § 37. Serjeant-major of a volunteer field battery of artillery to be paid £50 per annum: and competent persons appointed to drill the other volunteer

companies, at 7s. 6d. per diem while so employed. § 38. Volunteer companies may be called out in aid of the civil power in case of riot or other emergency, and shall, when so employed, receive the above rate of pay from the municipality, and 2s. 6d. per diem *extra*, with proper lodging. § 39. To be called out upon requisition in writing by the mayor, warden or other head of the municipality, or any *two* magistrates, and to obey such instructions as shall be lawfully given by any magistrate in regard to the mode of quelling such riot: the officers and men so called out to be special constables *pro. tem.* § 40. Volunteer companies exempt *pro. tem.* from serving as jurors or constables: and after *seven years'* service, exemption to be permanent. § 41. No non-commissioned officer or man of any volunteer company shall leave without giving *one month's notice* in writing to the commanding officer thereof: nor leave contrary to the engagement contained in any articles of engagement signed by him. § 42. Field officers to inspect volunteer companies and report the state of the corps to the Governor.

General Provisions.

§ 43. All commissions to be granted by the commander-in-chief, *during pleasure.* § 44. Non-commissioned officers to be appointed by the commander of the battalion except in volunteer companies, where they shall be appointed by the captain. § 45. Officers of the militia to be British subjects by birth or naturalization, having taken the oath of allegiance. § 46. Existing commissions to continue until cancelled: and no person shall be bound to serve in a *lower grade* unless he has resigned his commission, or has been reduced: and persons who have been non-commissioned officers in his Majesty's army, not bound to serve in the militia in any lower grade. § 47. An adjutant-general of militia and two deputies, one for Upper and one for Lower Canada, to be appointed; their rank and pay to be, adjutant-general, £750 per annum; deputy adjutant-general, £500 per annum. § 48. An assistant adjutant-general, with rank of major, to be appointed for each military district. § 49. His pay to be £30 per annum. § 50. Assistant quarter master-general to be appointed for each military district and his duties. § 51. All contraventions of this act and of regulations or orders lawfully made or given under it, when the militia or that portion of it to which the offender belongs is not called out for actual service, shall be punishable by penalties to be imposed by one or more justices in a summary way, as hereinafter provided, and court martials shall not be held.

Calling out the Militia.

§ 52. Authority for, vested in the commander-in-chief, whenever he shall think it advisable by reason of war, invasion, or insurrection, or imminent danger of it. § 53. The like power vested in colonels, lieutenant-colonels of battalions, upon any sudden emergency of the same nature, until the pleasure of the commander-in-chief be known. § 54. Militia men bound to obey all such orders, and march to any place within or without the division, as ordered. § 55. Volunteer companies of local divisions to be included. § 56. When the whole militia are called out, all the volunteer companies shall be included. § 57. Sedentary militia men called out for *actual* service to attend with arms, accoutrements, and provisions. § 58. When the whole not required for actual service, a certain number may be directed by the commander-in-chief to be furnished, over and above the volunteer companies, which shall always be the first taken for actual service. § 59. The number furnished to be drafted. § 60. No militia man drafted for actual service to be exempt unless he shall pay a penalty of £10, or provide an approved substitute. § 61. No man drafted and unfit from bodily infirmity shall be taken for service. § 62. If a greater number required than the whole of the first class, the residue to be taken from the second class. § 63. The militia so drafted shall be embodied into companies and battalions, and commanded by such officers as the commander-in-chief shall think proper. § 64. Volunteer companies called out for service, may be embodied into battalions. § 65. The militia so drafted, shall serve for *one year* unless sooner disbanded, and may then be replaced by other drafts, and shall not be liable to serve again, until the others in the same class have been taken. But the volunteer companies shall serve for the time engaged, not being less than *five years*, subject to be determined on such month's notice as aforesaid: provided that no volunteer shall leave such service, either with or without notice, at any time when the militia are called out, unless regularly discharged, or having served out the full time. § 66. The militia so called out may be marched to any part of the province, or *any place without*, but continuous therewith, where the enemy may be, and from which an attack may be apprehended. § 67. The militia so called out to be subject to the articles of war, and to the act for punishing mutiny and desertion, except that no militia man shall be subject to corporal punishment, other than death or imprisonment for any contravention of such laws; and except

also, that the commander-in-chief may direct that any of its provisions shall not apply to the militia. § 68. The militia so called out shall be commanded by the officer highest in rank then present, or the *senior* of two or more of equal rank. Officers of the regulars to be reckoned senior to militia officers, and colonels appointed by commission signed by the commander of her Majesty's regular forces in Canada, shall command colonels of militia, whatever the date of their commissions. § 59. No militia officer or militiaman shall be sentenced to death by any court martial except for mutiny or desertion to the enemy, or traitorously delivering up to the enemy any garrison, fortress, post or guard, or traitorous correspondence with the enemy. And no sentence shall be carried into effect until approved by the commander-in-chief. § 70. No officer of the regulars shall sit on any militia court martial.

Armament of Sedentary Militia.

§ 71. Arms, &c., to be kept in armouries at Quebec, Three Rivers, Rivière-du-loup (below), Sorel, St. John's, Montreal, the City of Ottawa, Prescott, Kingston, Peterborough, Toronto, Guelph, Hamilton, London, Chatham. § 72. Armouries may be erected. § 73. Commander in chief to appoint the person in charge at a rate not exceeding £75 per annum. § 74. The arms to be delivered out as the commander-in-chief shall appoint. § 75. In certain cases may be kept by the militia men, on giving a receipt for their safe keeping and delivery to any officer authorised to demand them.

Billeting and Cantoning Troops and Militia, &c., when on actual service.

§ 76. Householdiers required to furnish house-room, fire, cooking utensils and candles, and in case of emergency, the officer in command may direct any officer or non-commissioned officer, or other person, after having obtained a warrant from a justice, to impress such horses, carriages, or oxen, as the service may require, to be paid for at the usual rate. § 77. When the troops (regulars as well as militia) are on a march, the officer in command shall require a justice of the peace to billet, who shall accordingly billet the same in such manner as may be most commodious to the inhabitants. § 78. No officer shall be obliged to pay for his lodging where billeted; but householdiers shall be entitled to receive from government 6d. a day for each non-commissioned officer, drummer and private

of infantry ; and for each cavalry soldier and horse 1s .3d. per diem ; billets to be paid and settled every four days. § 79. Quartering and billeting troops in cantonment. § 80. Complaints of persons aggrieved to be decided by two or more justices. § 81. No justice of the peace holding military office to billet or quarter troops. § 82. No billet to be given on any convent or nunnery of any religious order of females. § 83. Any justice, when the troops are in cantonment may, on requisition from the officer in command, issue his warrant for furnishing carriages, horses, or oxen, or impressing the same ; but not to proceed more than thirty miles in cases where they can be replaced, and the same to be paid for at the usual rate of hire. § 84. Provision for the conveyance of troops in cases of emergency by railway or by water.

Penalties.

§ 85. Any officer of militia neglecting to transmit any roll or return required by this act, or wilfully making any false statement therein, to incur for each offence a penalty of.....£10 0 0

§ 86. Any officer or non-commissioned officer refusing or neglecting to assist his commanding officer in making any such roll or return, or neglecting to assist in obtaining information, to incur for each offence a penalty of..... 5 0 0

§ 87. Any militia man, or other person refusing or neglecting to give any notice or information necessary for making or correcting the roll of any company registered by this act, at reasonable hours, to incur for each offence a penalty of..... 2 10 0

§ 88. Any militia officer or man (not exempt) neglecting to attend muster or obey any lawful order at or concerning muster, shall incur for each a penalty of not more than..... 1 5 0

§ 89. Any person who shall interrupt or hinder any militia at drill, or trespass on the bounds set out, shall for each offence incur a penalty of (and may be taken into custody and detained by any person by order of the commanding officer until such drill be over)..... 1 5 0

§ 80. Any officer, non-commissioned officer, or militia man disobeying any lawful order of his superior officer, or guilty of violent or disorderly behaviour towards such officer, then for each offence shall incur a penalty of 1 5 0

§ 91. Any officer, non-commissioned officer or militia man neglecting to keep any arms or accoutrements entrusted to him in proper order, or who shall appear at drill, parade or on any other occasion with the same out of order, or unserviceable or deficient in any respect, shall for each offence incur a penalty of £1 0 0

§ 92. Any officer, non-commissioned officer, or man of any volunteer company of cavalry or field artillery who shall without the consent of the commanding officer of such company sell or dispose of any horse which shall have been drilled for the purposes of such company, or which he shall have undertaken to furnish, and have been approved of by such commanding officer, shall for each offence incur a penalty of..... 5 0 0

§ 93. Any person who shall unlawfully dispose of or remove any arms, accoutrements or other articles belonging to the crown, or refuse to deliver the same up when lawfully required, or shall have the same in possession, except for lawful cause, the proof of which shall be upon him, shall for each offence incur a penalty of, (besides being liable to indictment for any greater offence, and any person so charged may be arrested by order of the magistrate before whom complaint is made upon affidavit shewing that such person is about to leave the province, carrying any such arms, accoutrements or articles with him)..... 5 0 0

§ 94. Any officer or man of a volunteer militia company, when such company shall be lawfully called upon to aid the civil power, refusing or neglecting to go out with such company, or to obey any lawful order of his superior officer, or of any magistrate, shall for each offence incur a penalty of 5 0 0

§ 95. Any inhabitant householder refusing to receive any trooper or militia billeted upon him to furnish them lodging and articles required by the act, shall for each offence incur a penalty of..... 2 0 0

§ 96. Any person lawfully required, refusing to furnish any carriage, horse or ox for the conveyance of any trooper or militia, shall incur a penalty of... 2 0 0

§ 97. Any person lawfully required, refusing to furnish any car or engine, boat or other craft, for the conveyance of troops or militia, shall incur a penalty of... 5 0 0

§ 98. Any person who shall wilfully contravene any enactment of this act, when no other penalty is imposed, shall incur for each offence a penalty of... 5 0 0

§ 99. All penalties under this act or under any regulations, orders or articles of agreement, lawfully made or entered into, under it, shall be recoverable with costs on the evidence of one credible witness on complaint or information before *one* justice of the peace if the amount do not exceed £5, and before *two* justices, if the amount exceeds that sum : and to the recovery of such penalties all the provisions of any act or acts then in force, relative to the performance of the duties of justices of the peace out of sessions with respect to summary conviction and orders shall apply in so far as it may not be inconsistent with this act : and any officer, non-commissioned officer or private of any volunteer militia company shall be a competent witness in such case.

§ 100. No prosecution against an officer of militia for any penalty under this act shall be brought except on the complaint of the adjutant-general, and no prosecution against any non-commissioned officer or private of the sedentary militia shall be brought except on the complaint of the commanding officer or adjutant of the battalion, or captain of the company : and no prosecution against any private or non-commissioned officer of volunteer company shall be brought except on complaint of the captain or commanding officer thereof. But the adjutant general may authorise any officer of militia to make such complaint in his name.

§ 101. Prosecutions not to be commenced after six months, unless for unlawfully buying, selling, or having in possession arms or accoutrements delivered to the militia.

§ 102. Penalties, when recovered, if the offender belong to the active or volunteer militia, shall be paid over to the officer commanding the company, for the purposes thereof, and accounted for by him to the adjutant-general ; and if belonging to the sedentary militia, the same shall be paid over to the assistant adjutant-general, who shall account for and pay it over to the receiver-general for the use of the province.

Miscellaneous provisions.

§ 103. Orders and notices under this act need not be in writing, unless herein provided for, and parties bound to obey.

104. All general orders of militia, or other militia orders issued through or by the adjutant-general, shall be held sufficiently notified by their insertion in the *Canada Gazette*.

105. Orders made by the commanding officer of a militia, regimental, or battalion division, shall be held sufficiently notified by their insertion in some newspaper published in the

division, or if none, then in some neighbouring division, and by posting a copy on the door of the church, or of some court-house, mill, or other public place, in each company's division.

§ 6. The production of a commission or appointment warrant, or order in writing, made according to this act shall be *prima facie* evidence thereof.

§ 107. Every bond to the crown, entered into under the authority of this act, or according to any general order, or regulations made under it, for the purpose of securing the payment of any money, or the performance of any duty required by this act, entered into before any judge or justice of the peace or officer herein authorised to take the same, shall be authorised to take the same, shall be valid, and may be restricted or enforced accordingly. § 108. Moneys which any person or corporation shall be liable under this act to pay or repay to the crown, or which shall be equivalent to the damages done to any arms or other property of the crown used for militia purposes, shall be a debt due to the crown, and recoverable accordingly.

§ 109. Actions against persons for any thing done in pursuance of this act not to be commenced after the end of *six months*, nor until one calendar month's notice in writing of the action and cause thereof shall have been given to the defendant. The defendant may plead the general issue, and give this act and special matter in evidence: amends may be tendered or paid into court.

§ 110. If verdict pass for the defendant or the plaintiff become nonsuited, &c., the defendant shall recover full costs as between attorney and client; and if verdict is given for the plaintiff he shall not have costs unless the judge certify his approbation.

§ 111. All moneys required to defray expenses authorised by this act, to be paid out of the consolidated revenue; but not until first approved of by resolution of the legislative assembly in the annual estimates.

§ 112. Detailed accounts to be laid before parliament.

§ 113. Accounting clause with the Lords of the Treasury.

§ 114. Interpretation clause. § 115. Act to come into operation on the 1st of July, 1855, and to be in force *three years* and until the end of the session.

By 19 & 20 V., 44, § 1, provision made for increasing the number of military districts. § 2. For the formation of corps of unpaid volunteers. § 3. For dispensing with the annual general muster by the commander-in-chief, if he shall see fit. § 4. For the appointment of militia surgeons. § 5. In case

the muster day shall fall on a Sunday, the next day substituted. § 6. Oath of allegiance not required to be taken by officers unless aliens by birth. § 7. Explaining sec. 46 of the 18 V., c., 77, as to battalions found embodied.

MILL-DAMS.

*By 9 G. IV., c. 4, every owner or occupier of any mill-dam legally erected, or where lumber is usually brought down the stream on which such mill-dam is erected, or where salmon or pickerel abound therein, in this province, who shall neglect to construct and erect a good and sufficient apron to his or their dam, as hereinbefore set forth, shall, for such offence, yearly, and every year, forfeit and pay £25; one moiety of which shall go to the Queen, for the use of the province, and the other to the party who shall sue in any court of record.

§ 2. Every such apron shall be erected and constructed in the following manner, viz., such apron shall not be less than eighteen feet wide, by an inclined plane of twenty-four feet eight inches, to a perpendicular of six feet, and so, in proportion to the height, where the width of the stream will admit; and where the stream or dam is less than fifteen feet wide, the whole dam shall be aproned in like manner, and with the same inclined plane.

By the 4 & 5 V., c. 26, § 15, if any person shall unlawfully and maliciously break down or otherwise destroy the dam of any mill-pond, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be punished accordingly.

By 12 V., c. 87, § 1, aprons or slides to mill-dams shall be altered or constructed so as to afford depth of water sufficient to admit of the passage of saw logs, lumber and timber, such as are usually floated down such streams or rivers whereon mill-dams are erected: but proprietors may construct a wastegate, or put up brackets and slash-boards across any such apron to prevent unnecessary waste of water, where not required to pass or float any craft, lumber or saw logs over such apron; but not until such craft, &c., shall have gained the main channel of the stream: provided also that no person shall be required to build such aprons or slides on small streams, unless required for rafting or floating down lumber and saw logs. § 2. No apron to any mill-dam on the river *Otonabee* to be less than thirty-two feet wide by an inclined plane of five feet to a perpendicular of *one* foot, and side pieces of at least *one* foot in height shall be fixed on the outsides of every such apron. § 3. Any owner or occupier of any dam neglecting to comply with this act, shall pay a

penalty of 10s. a day, to be recovered before any *two* justices of the district, on the oath of two or more witnesses, and levied by distress and sale of the offender's goods. § 4. Damages to any apron to be repaired as soon as the state of the stream will permit; and on failure, the owner or occupier shall be liable to the penalty aforesaid. § 5. It shall be lawful for all persons to float saw logs and other timber, rafts and craft, down all streams in Upper Canada during the spring, summer and autumn freshets. Persons so using such stream are not to alter, injure or destroy any dam or other useful erection across any such stream: provided there shall be a convenient apron, slides, gate, lock, or opening in any such dam, or other structure made for the passage of saw logs and other timber, rafts and crafts, floated down as aforesaid.

MILLERS.

*By 32 G. III., c. 7, no miller shall demand, take or receive more than a twelfth share or part for grinding and bolting of grain, under a penalty of £10 Quebec currency; one moiety to the King and the other to the person that shall sue for the same in any court of record. § 3. No miller shall be answerable for the loss of any bag of grain or flour, unless the initials of the christian and surname of the owner be marked thereon, and such mark of distinction previously known to the said owner or occupier, or his servant attending the mill.

See also, title "*Flour and Meal.*"

MILLS.

By 8 V., c. 47, § 4, fishing in any river or creek by torchlight within one hundred yards of any mill is prohibited. § 6. Under a penalty not exceeding £10, and for every subsequent offence £5, with costs, to be levied by distress and sale, and in default of payment, commitment to the common gaol, not exceeding thirty days, unless sooner paid, and recoverable before any one or more justices.

By 13 V., c. 75, in any action to be brought against the proprietor or occupier of any mill, for the overflowing or injury to any land caused by the erection or continuation of any dam for the purposes of such mill, built before the purchase by, and grant of such land to the grantee of the crown, if it shall appear that such purchaser obtained the land at a reduced price, or was otherwise indemnified in consequence thereof, then the jury may take the same into consideration,

and if they think it just and equitable, may find a verdict for the defendant.

See also title "*Machinery*."

MISDEMEANOR.

The word misdemeanor, in its usual acceptation, is applied to all those crimes and offences for which the law has not provided a particular name; and they may be punished according to the degree of offence, by fine or imprisonment, or both.

—3 *Burns' Just. tit. Misdemeanor; Russel on Cr. and Misd.*

43. A misdemeanor is, in truth, any crime less than a felony; and the word is generally used in contradistinction to felony; misdemeanors comprehend all indictable offences which do not amount to felony.—4 *Bl. Com.* 5, note 2. All disturbances of the peace, oppressions, misbehaviour by public officers, and all other misdemeanors whatsoever, of a public evil example, against the common law, may be indicted.—2 *Haw. P. C.* 25, § 4. And whatever openly outrages decency, and is injurious to public morals, is a misdemeanor at common law.—4 *Bl. Com.* 65, (n) *Ed.* And wherever a statute *forbids* the doing of a thing, the doing of it wilfully, although without any corrupt motive, is indictable as a misdemeanor.—*R. v. Sainsbury*, 4 *T. R.* 457. So, if a statute *enjoin* an act to be done, without pointing out any mode of punishment, an indictment will lie for disobeying the injunction of the legislature.—*R. v. Davis, Say*, 133. Where a statute making a new offence only inflicts a forfeiture, and specifies the remedy, an indictment will not lie.—*R. v. Wright 1 Burr.* 543. The true rule is stated to be this: where the offence was punishable by a common law proceeding before the passing of a statute which prescribes a particular remedy, by a summary proceeding, then either method may be pursued, as the particular remedy is *cumulative*, and does not exclude the common law punishment; but where the statute creates a new offence, by prohibiting and making unlawful any thing which was lawful before, and appoints a particular remedy against such new offence by a particular method of proceeding, such must be pursued, and no other.—*Russ. Cr. Misd.* 49.

Every attempt to commit a felony is at common law a misdemeanor; (a) and, in general, an attempt to commit a misdemeanor is an offence of the same nature.—*R. v. Scofield, Cald.* 397. So also, an incitement or solicitation to commit a crime, is a misdemeanor; as in the case of one Higgins,

(a) But by several recent statutes the attempt to commit certain felonies, is declared to be in itself a felony.

who was indicted for having incited and solicited a servant to steal his master's property. The servant was honest, and informed his master, and no theft was committed: Higgins was found guilty, and sentenced by the court to two years' imprisonment, and to stand once in the pillory: Lord Kenyon observing, that the bare solicitation to commit a crime was a misdemeanor, though the crime was not committed.—*R. v. Higgins*, 2 *East*. 5.

By 12 V., c. 10, § 5, any wilful contravention of an act of parliament is declared to be a misdemeanor, unless made some other offence—*art*, 15.

*By 6 W. IV., c. 44, persons indicted for misdemeanor are entitled to a copy of the indictment on payment of damages.

By 4 & 5 V., c. 24, § 3, the duties of justices of the peace on charges of misdemeanor are prescribed, (but are further defined by the late statute 16 V., c. 179, the particulars of which will be found under the head of "*Indictable Offences*.") No traverse shall be allowed upon trial except on special cause shewn. § 22. And no misdemeanor (except perjury) shall render a party incompetent as a witness after punishment endured.

Misdemeanor is aailable offence, and by 16 V., c. 179, one justice of the peace may take bail in such cases.

By 18 V., c. 92, § 13, persons indicted for felony or misdemeanor, may be found guilty of the *attempt* only, and punished accordingly. § 15. And if upon the trial for misdemeanor the facts proved amount to a felony, the party shall not by reason thereof be entitled to an acquittal, nor afterwards indicted for the felony, unless the court shall order the jury to be discharged, and direct an indictment for the felony.

By 20 V., c. 62, § 1, defendants, upon any indictment found or removed into the Queen's Bench or Common Pleas, shall not be permitted to *imparle* to a following term, but shall plead or demur thereto in four days after appearance, otherwise judgment. But the court, on cause shewn, may grant further time. § 2. No person prosecuted shall be entitled to traverse or postpone the trial of any indictment found against him at any session of the peace, session of oyer and terminer, or gaol delivery, except the court shall be of opinion that the defendant ought to be allowed a further time for defence, and then the court may adjourn such trial to the next subsequent session, upon such terms as to bail, or otherwise, as to the court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly. § 3. In crown prosecutions for misdemeanor, if not brought to

trial within twelve months after plea of "not guilty," the court may order the trial unless a *nolle prosequi* be entered.

See also "*Indictment*,"—"Trial."

MISPRISION OF FELONY.

Misprision of felony is the concealing of a felony which a man knows, but never consented to; for if he consented, he is either a principal or accessory in the felony, and consequently guilty of misprision of felony, and more.—1 *H. H.* 374. The punishment for misprision of felony in a common person, is fine and imprisonment; in an officer, as sheriff or bailiff of liberties, imprisonment for a year, and ransom at the king's pleasure, by the stat. 3 *Edw. I.*, c. 9. If any person will save himself from the crime of misprision of felony, he must discover the offence to a magistrate, with all the speed he can.—3 *Inst.* 140.

MONEY.

See title "*Coin*."

MURDER.

What constitutes the crime of murder will be found under the head of "*Homicide*," ante page 393.

By 4 & 5 *V.*, c. 27, § 3, every person convicted of murder, or of being accessory before the fact to murder, shall suffer death as a felon: and every accessory after the fact to murder, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. § 4. Sentence of death may be pronounced after conviction for murder in the same manner, and the court before which the conviction may be had shall have the same power in all respects as after conviction for other capital offences. (a) § 5. Every person convicted of murder shall, after judgment, be confined in some safe place within the prison, apart from all other prisoners, and shall be fed with bread and water only and with no other food or liquor, except in case of receiving the sacrament, or in case of any sickness or wound, in which case the surgeon of the prison may order other necessaries to be administered; and no person but the gaoler and his servants, and the chaplain and

(a) But by the late statute 20 *V.*, c. 61, giving appeal in criminal cases, no sentence of death in any capital felony shall be passed to take effect until the expiration of the term next succeeding the sitting of the court at which such sentence shall be passed.—See also title "*Appeal*."

surgeon of the prison shall have access to any such convict without the permission in writing of the court or judge before whom such convict shall have been tried, or of the sheriff or his deputy. § 6. Persons charged with murder or manslaughter may be tried in the district, county, or place in which the assault was inflicted.

Form of Indictment for Murder, 18 V., c. 92.

County of } The jurors for our lady the Queen, upon their
to wit. } oath present that A. B. on the day of
in the year of our Lord one thousand eight hundred and
at , in the county of , did feloniously, wilfully and of
his malice aforethought, kill and murder one C. D.

NOTE—The indictment must be on *parchment*, see 16 V., 92, § 5.

See also titles "*Homicide*," "*Punishment*."

MUTE.

By 4 & 5 V., c. 25, § 15, if any person being arraigned upon any indictment for treason or felony shall stand mute of malice, or will not answer directly to the indictment, it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of "not guilty," on behalf of such person, which shall have the same effect as if such person had pleaded the same.

NAVIGATION—INLAND.

*By 7 W. IV., c. 22, § 1, all steamboats, schooners, vessels and rafts, that shall be navigated upon the lakes and rivers of this province, and the British channel of the Saint Lawrence river, between the port of Kingston and the eastern boundary of the province (*of Upper Canada*) shall have affixed one or more light or lights on the bow or some conspicuous place of such steamboat, &c., during every night such vessel shall be navigating the said lakes, rivers and channel. § 2. The night to extend from one hour after sunset to one hour before sunrise. § 3. Every steamboat or vessel carrying passengers shall be provided with a good and sufficient *gang board* or gang boards, with substantial hand rails; and the master thereof shall, on stopping at any wharf or landing place, cause the same to be firmly secured to the vessel, wharf, or landing place, for the safe and convenient transit of passengers; and shall cause good and sufficient lights to be affixed to such gangways (in the night time); and the owners and occupiers of every such wharf or landing place shall also (in the night time) cause to be shewn conspicuously on

such wharf or landing place, and at every angle and turn thereof a good and sufficient light. § 4. All vessels navigating as aforesaid shall take the *starboard* or right hand side of every channel in proceeding up or down the said lakes, rivers, or channel, so as to enable all vessels meeting each other to pass in safety: and when any two vessels are trying to *windward*, and there may be a doubt which vessel should pass to windward, the vessel being on the *starboard tack* shall keep her wind, and the vessel on the *larboard tack* shall bear up, or go to *leeward*. § 6. All steamboats, schooners, vessels, or rafts, which shall be at anchor in the night time, the master or person in charge shall cause a good and sufficient light to be shewn in some part of her rigging, or in some other conspicuous place of the said boat, &c., lying at anchor as aforesaid. § 7. Any person commanding or having the charge of any steamboat, schooner, or other vessel navigating the said lakes, river or channel, or any or either of them, offending against the provisions of this act shall be liable to a penalty of £5, to be recovered on conviction of such offence upon the oath of one credible witness before any *two* justices of the peace; and in default of payment of such penalty, together with the costs and charges of, and incident to the conviction, it shall be lawful for such justices to commit the offender to the gaol of the county or district wherein such conviction shall be made for any period not exceeding *thirty* days, in the discretion of such justices. § 8. Owners of steamboats and other vessels to be also liable for all damages sustained from any accident arising from the non-compliance of the provisions of this act, to be recovered by trial at law before the Court of King's Bench.

By 14 & 15 V., c. 126, (in amendment of the above act), further provisions are made requiring steamboats while navigating the waters of Upper Canada to carry during the night certain lights, as follows, viz., when *under weigh*, a *white* light on flag staff aft, a *bright white* light on the foremast head, a *green* light on the starboard bow, a *red* light on the port bow, to be fitted with inboard screens. When *at anchor*, a common *bright light* at foremast head.

Schooners and *other sailing vessels* to carry lights on the pawl-bit or knight-head, as follows: when sailing before the wind, a *pale* light; when sailing on the starboard tack, a *red* light; when sailing on the larboard tack, a *green* light; when at anchor, a *pale* light in the foremast rigging.

Sailing vessels running before the wind, or with the wind free, and making a steamers light dead a-head, shall pass on

the starboard side ; but if to avoid jibing their mainsail, or for any other good reason, they shall pass to the larboard side, then shall shew their *green* light, indicating that they are on the larboard tack, when the steamer will pass under the vessels' stern.

In case of two sailing vessels approaching one-another on opposite tacks, the vessel on the starboard tack shall keep the wind, and the one on the larboard tack, keep away, always when tacking ship at night shifting the light.

A vessel in *distress* shall shew both the *red* and *green* lights. § 2. Every such steamboat, schooner or vessel, to be provided with a fog-horn, or a bell of a weight not less than twenty pounds, under the penalty in the 7th section of said recited act, (*viz.*, £5), to be sounded or rung at regular intervals of not less than *five minutes*, with an intermission of *two minutes* during the time that any such steamboat, schooner, or vessel shall be in a *fog*. § 4. Inspectors to be appointed by the Governor to inspect steamboats and machinery, &c. § 5. The inspector of the hull to give a certificate of inspection, fee for £2 10s. § 6. And the inspector of the machinery also to give certificate, fee for £2 10s. § 7. The hull to be inspected once in twelve months, and the boilers and machinery once every six months, under the penalty of £100 on the master or owner. § 8. Steam vessels to have a *steam-gauge* open to the view of all passengers, and others on board, and on the vessel stopping for any purpose, the safety valve to be opened, under the penalty of £50, and if the master shall allow the pressure of steam to exceed that limited by the certificate ; or shall alter or conceal such steam-gauge so as to prevent the real pressure of steam from being seen and ascertained by any passenger, he shall incur a penalty of £50. § 9. Steamboats exceeding 200 tons, to be provided with two long boats or yawls, to carry at least twenty persons each. If exceeding 200 tons not less than three long boats or yawls, of the same dimensions, under the penalty of £50. § 10. Steamboats also to carry fire engines with proper hose, under the like penalty of £50. § 11. If any damage shall be sustained by any person or property, in consequence of the non-observance of any of the provisions of this act, in the absence of proof to the contrary, it shall be deemed to have been caused by the wilful default of the master or person in charge. § 12. All penalties imposed by this act may be sued for in the name of her Majesty in any court of competent jurisdiction, and one half of the penalty shall be paid to the informer.

By 16 V., c. 167 (amending 14 & 15 V., c. 126), § 1,

one of the boats provided for by the 9th section of said act to be a *life boat* capable of sustaining inside and outside fifty persons. § 2. Steamers also to carry life preservers, fire-buckets, and axes. § 3. To provide for means of escape to the upper deck in case of fire or other accident. § 5. The Governor in council may limit the number of passengers to be carried. § 6. Penalty of £50 to be incurred for contravening any of the provisions of this act.

By 20 V., c. 34, further provision is made for the security of the lives of passengers on board of steam vessels.

See title "*Steam Vessels.*"

NUISANCE.

Nuisances are of two kinds—*public* and *private*. A public, or common nuisance, is an offence against the public, either by doing a thing which leads to the annoyance of all the Queen's subjects, or by neglecting to do a thing which the common good requires—1 *Haw. c.* 75, § 1; and is an indictable offence.

A private nuisance, is any thing done to the hurt or annoyance of the lands, tenements or hereditaments of another, as by building a house so near to a neighbour's as to stop his lights, or shoot the rain-water upon his house.—3 *Bl. Com.* 216. This is not an indictable offence, but only the subject of a civil action, in which the party may recover damages for the injury.

At the same time, if a private individual sustain a special grievance, arising out of the common injury, he has a right of action for the particular damage occasioned to him, notwithstanding the nuisance may affect all the Queen's subjects. 3 *Bl. Com.* 219.

What is a Public Nuisance.

The offending qualities of a nuisance are, in general, smell, noise, danger or obstruction; and the existence of it as a *public* nuisance, depends on the number of persons annoyed by it.—1 *Burr.* 337. All trades and manufactures which are set up in a town, and occasion inconvenience to the whole neighbourhood, or which are carried on so near a *public highway* as to cause the same inconvenience or danger to persons lawfully passing along it, may be indicted as public nuisances. But where a person sets up a noxious trade remote from human habitations and public roads, and new houses are afterwards built, and new roads constructed near it, the party, in such a case, is not guilty of nuisance; for the public cannot, by their own act of *coming* to settle in the neighbourhood make that a nuisance which was not so before, on the principle

of "*volenti non fit injuria*."—*R. v. Cross*, 2 C. & P. 483. Yet, if the trade afterwards become more noxious, he may be indicted for the additional nuisance.—*R. v. Watts*, M. & S. 281. To constitute a nuisance proceeding from a noxious trade, it is not necessary, as Lord Mansfield has observed, that the smell should be *unwholesome*; it was enough if it rendered the enjoyment of life and property *uncomfortable*.—*R. v. White*, 1 Burr. 333. To make *candles* in a town, by boiling *stinking stuff* which annoys the whole neighbourhood with stench, is a common nuisance.—*Matthews v. Curry*, 3 Mod. 137; 1 Haw. c. 75, § 10. So if a *brew-house*, or a *glass-house*, cannot be carried on without greatly annoying the neighbourhood, it may be indicted as a nuisance.—2 Haw. c. 75, § 10. The keeping of hogs in a town is not only a nuisance by statute (2 W. & M. sess. 2, c. 3, § 20), but also at common law.—*R. v. Wigg*, 2 Ld. R. 1163. So also, to steep stinking skins in water near a highway, and also near several dwelling-houses, by which the air is corrupted, is the subject of an indictment.—*R. v. Vappineau*, 1 Str. 686. Making great noises in the night with a *speaking-trumpet*, to the disturbance of the neighbourhood, has been also decided to be a nuisance.—*R. v. Smith*, 1 Str. 764. So, to keep dogs, which make a noise in the night, seems to be an indictable offence.—2 Chit. Crim. L. 647. This, however, must be understood only where a whole neighbourhood is disturbed by them, otherwise it will only be a *private* nuisance; for where the noise made by a *tinman*, in carrying on his trade, only affected the inhabitants of three houses, and it appeared that by shutting the windows the noise was in a great measure prevented, it was held that the indictment could not be supported, as the annoyance was, if any thing, a *private* nuisance.—*Rex v. Lyod*, 4 Esp. 200. All disorderly inns or ale-houses, bawdy-houses, and gaming-houses, are also public nuisance.—1 Haw. c. 75, § 4; 2 Bl. Com. 167. So, whatever outrages *decency*, and is injurious to public morals, is a common nuisance, and indictable as a misdemeanor.—1 Haw. c. 5, § 4; 4 Bl. Com. 65, n. Any thing, also, which is productive of imminent danger, or which causes *reasonable terror* to the inhabitants of a neighbourhood, may be considered as a public nuisance. Thus, to erect *gunpowder mills*, or magazines, in or near to a town, or to put on board of a ship a quantity of gunpowder, without giving notice, is indictable as a nuisance.—*R. v. Williams*, 4 Burn, 758.

By 9 & 10 W. III., c. 7, making, selling or exposing to sale, any *fireworks*, or throwing or firing them into any public street or highway, is declared to be a common nuisance.

So, to let a fierce *mastiff* or *bull-dog*, that is used to bite people, go about unmuzzled, to the danger and terror of the neighbourhood, is also a common nuisance; and the owner may be indicted for suffering him to go at large.—4 *Burn's J.* 578. So, for a person affected with an infectious disorder to go or be carried about in the highways and other public places, is an indictable offence. Accordingly, where the defendant was in the habit of carrying her child, while infected with the *small-pox*, along a highway, and near to houses, this was held to be a common nuisance, and indictable as such.—*R. v. Vantandillo*, 4 *M. & S.* 73. So, where a surgeon and apothecary was indicted for *inoculating* children with the small-pox, and while they were sick of it, unlawfully and injuriously causing them to be carried along the public street, it was objected that the defendant in this case was, by profession, a person qualified to inoculate with this disease, and that the causing the children to be carried along the street was no more than his directing his patients to attend him for advice, instead of visiting them, or prescribing what he might deem essential to their recovery—air and exercise; it was held that though *inoculation* may be practised lawfully and innocently, (a) yet it must be done under such safeguards as not to endanger the public health; and that the defendant, in this case, was clearly guilty of an indictable offence.—*R. v. Burnett*, 4 *M. & S.* 272. It is also a public nuisance for any common dealer in provisions to sell *unwholesome* food, or to mix noxious ingredients in any thing made and supplied for the food of man. With respect to nuisances by obstruction in highways and rivers, see *ante* title "*Highways*," p. 376.

Of the Remedy, by Abatement and Indictment.

Any one may pull down, or otherwise destroy, a common nuisance; as a new gate or fence erected across a highway. 1 *Haw. c.* 75, § 12. But if there is no pressing necessity for the exercise of this immediate remedy in abating the nuisance, the better way, in order to prevent a breach of the peace, is to proceed against the party, by indictment or presentment. No length of time will legalize a public nuisance.—7 *East.* 199. The punishment imposed by the law upon a person convicted of a nuisance, is *fine* and *imprisonment*; but as the removal of the nuisance is of course the object of the prosecution, the court will adapt the judgment to the circumstances of the case. If the nuisance, therefore, be continued,

(a) Inoculation for small pox is now prohibited by statute 16 V., c. 170. See title "*Inoculation*."

the judgment of the court may be, that the defendant shall remove it at his cost—1 *Haw. c. 75*, § 14; or the court may suspend their judgment, upon the defendant entering into recognizance to appear at an adjourned or subsequent sessions, when, if it shall appear to the court satisfactorily that the nuisance has been abated, the court may impose a nominal fine only; but if the contrary shall appear to be the case, the court may then pronounce its judgment, of fine and imprisonment, or either, according to the circumstances of the case.

The municipal act 12 V., c. 81, authorises the municipalities of incorporated villages, towns and cities to make by-laws for the abating and removing all public nuisances within their respective localities.

By 5 W. & M. c. 11, § 3, if an indictment for a nuisance be removed into the King's Bench, and the defendant be convicted, the court may give reasonable costs to the prosecutor.

Indictment for carrying on an Offensive Trade. (Archbold.)

County of , } The jurors for our lady the Queen, upon their
to wit. } oath present that J. S., late of the township
of in the county of , labourer, on the day of
in the year of the reign of our sovereign lady Victoria, with
force and arms, at the township aforesaid, in the county aforesaid, near unto divers public streets, being the Queen's common highway, and also near unto the dwelling-houses of divers liege subjects of our said lady the Queen, there situate and being, unlawfully and injuriously did (make, erect and set up, and cause and procure to be made, erected, and set up, a certain furnace and boiler, for the purpose of boiling tripe and other entrails and offals of beasts; and that the said J. S. on the day and year aforesaid, and on divers other days and times, () between that day and the day of the taking of this inquisition, at the township aforesaid, in the county aforesaid, unlawfully and injuriously did boil, and cause and procure to be boiled in the said boiler, divers large quantities of tripe, and other entrails and offals of beasts), by reason of which said premises, divers noisome, offensive, and unwholesome smokes, smells and stenches, during the time aforesaid, were from thence emitted and issued, so that the air then and there was, and yet is, greatly filled and impregnated with the said smokes, smells, and stenches, and was and is corrupted, offensive, uncomfortable and unwholesome, to the great damage and common nuisance of all the liege subjects of our said lady the Queen there inhabiting, being and residing, and going, returning, and passing through the said streets and highways, and against the peace of our lady the Queen, her crown and dignity.

Second Count, for Continuing the Nuisance.

And the jurors aforesaid upon their oath aforesaid, do further present, that the said J. S. on the said day of in the year aforesaid, and from that day until the day of the taking of this inquisition, with force and arms, at the township aforesaid, in the county aforesaid, (a certain other furnace and boiler, for the purpose of boiling tripe and other entrails, and offals of beasts, before that time made, erected, and set up, by certain persons, to the jurors aforesaid unknown, unlawfully and injuriously did continue; and that the said J. S. on the said day of in the year last aforesaid, and on divers other days and times) &c., as in the first count from the () to the end.

OATH—AFFIRMATION.

An oath taken on the common prayer book, containing the epistles and gospels, is good.—2 *Keb.* 314.

The stat. 15 G. III., c. 39, gives authority to justices to administer oaths where penalties are to be levied, or distresses made in pursuance of acts of parliament.

A Jew should be sworn on the old testament—2 *Keb.* 314; and they are allowed to put on their hats when sworn.—2 *Str.* 821. A Mahommedan on the Koran—2 *Str.* 1104; and a Gentoo, according to the custom of his religion.—1 *Atk.* 21. It is immaterial what the particular opinions of persons are professing Christianity, as far as regards the taking of an oath; it is only necessary that they believe the sanctity of an oath, the existence of a Deity, and a future state of rewards and punishments.—*Peake, R.* 11. But a person having no idea of a God, or a future state of retribution, cannot be admitted to take an oath.—*Leach*, 482.

*By 49 G. III., c. 6, Menonists and Tunkers are allowed to make affirmation instead of oath, in like cases as Quakers.

*By 10 G. IV. c. 1, § 1, Quakers, Menonists and Moravians, are permitted to affirm in criminal cases, making a certain declaration in the form given in the act, previous to such affirmation. § 2. Perjury may be assigned on affirmation so made, if wilfully false.

By the General Interpretation Act, 12 V., c. 10, § 5, art. 13, the word "oath" shall be construed as meaning a solemn affirmation, whenever the context shall be applied to any person and case by whom and in which a solemn affirmation may be made instead of an oath; and in every case where an oath or affirmation is directed to be made before any person or officer, such person or officer shall have full power and authority to administer the same, and to certify its having been made; and the wilful making of any false

statement in any such oath or affirmation shall be wilful and corrupt perjury, and the wilful making of any false statement in any declaration required or authorised by any such act as aforesaid shall be a misdemeanor, punishable as wilful and corrupt perjury.

OATHS OF OFFICE.

By 13 & 14 V., c. 18, § 1, the former act, *3 W. IV., c. 12, is repealed. § 2 enacts that, after the passing of this act it shall not be necessary for any person appointed to any office in this province, civil or military, or the mayor, or other officer, or member of any corporation therein, or for any person admitted as a barrister, advocate, notary public, attorney, solicitor, or proctor, to make any declaration or subscription, or to take or subscribe any other oath than the following, viz :

I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance, to Her Majesty Queen Victoria, (*or the reigning sovereign for the time being*), as lawful sovereign of the United Kingdom of Great Britain and Ireland, and of this province, dependent on and belonging to the said kingdom; and that I will defend her to the utmost of my power, against all traitorous conspiracies or attempts whatever, which shall be made against her person, crown or dignity; and that I will do my utmost endeavour to disclose and make known to her Majesty, her heirs or successors, all treasons or traitorous conspiracies and attempts which I shall know to be against her or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or power whatsoever to the contrary. So help me God.

And also such oath for the faithful performance of the office, profession or calling, as heretofore or hereafter shall be required.

§ 4. Such oaths to be taken within the period, and in the manner and subject to the liabilities and penalties for omission, as is now by law provided. § 5. Affirmation allowed, as in civil cases, instead of oath. § 6. It shall not be necessary for any person, for the purpose of qualifying himself to hold office, or for any other temporal purpose, to take or receive the sacrament of the Lord's Supper, according to the rites of the Church of England.

OFFICER.

If a *public officer* neglects a duty incumbent on him, either by common law, or by statute, he is indictable for his offence;

being considered as amenable to the law for every part of his conduct, and liable to punishment for not faithfully discharging it.—*R. v. Wyatt*, 1 *Salk.* 380; *Anon.* 6 *Mod.* 66; *R. v. Bambridge*, 1 *Haw. c.* 66, § 1, *Note.*

ORDERS OF MAGISTRATES.

Where a justice of the peace has power to make an order, and direct it to an inferior ministerial officer, if such officer disobey it, and there is no particular remedy prescribed to punish his disobedience, it is an *indictable* offence—*R. v. Davis*, *Say.* 163; 1 *Bott.* 388: and *a fortiori* the disobedience of an order of sessions, or of an order made by two justices, is indictable; and this too, whether there be another remedy or not; for the prosecutor has his option either to adopt that remedy, or proceed by indictment at common law.—*R. v. Robinson*, 2 *Burr.* 799. If the order is made upon several persons, they must be all personally served with it, before they can be indicted for disobeying it. It is no defence to a party, for total disobedience of an order, that when the order was served upon him, he was not able to perform what was required of him, for he is bound to obey an order as much as lies in his power, and is not justified in utterly disregarding it.—*Deacon's C. L.*

ORPHAN CHILDREN.

*By 39 G. III., c. 3, it is enacted, that when the father or mother of any infant shall die, or shall abandon their infant child or children, the town-wardens of any township where such child or children shall be, with the approbation and consent of two justices, may bind such child or children as apprentices, until the age of twenty-one years in case of males, and eighteen years in case of females; and the indenture under their hands and seals, and countersigned by two justices, shall be valid in law. § 2. The like power is given to the mother, when the father abandons his children. § 3. But when the relations of any such orphan or abandoned children, are able and willing to support and bring them up, the town-wardens are not to apprentice them: and by § 4, a further exception is made, where the child has attained the age of fourteen years, in such case he shall not be apprenticed without his consent thereto.

See also title "*Guardians*," "*Apprentices*."

OUTLAWRY.

*By 55 G. III., c. 2, § 2, the several courts of quarter sessions in the several districts in this province, are declared to be in

the place and stead of the sheriffs' county courts in England, so far as respects any outlawry. § 3. The process upon every indictment shall be a *capias* from the court where the indictment is found, to bring the person indicted into court; and if not taken during the sitting of the court, then to bring him before some justice, to be dealt with according to law, which said *capias* shall be made returnable in the Court of King's Bench, on the first day of term next after the sitting of the said court before which such indictment shall have been found; and if the sheriff shall return *non est inventus*, then an *alias* shall issue from the King's Bench, tested the first day of term, if in vacation, returnable before the Court of King's Bench on the first day of the next term. § 4. And if to the said writ the sheriff shall return *non est inventus*, then, upon motion in court, or before a judge, in vacation, a writ of *exigent* shall issue, tested on the first day of term, or on the last day of the preceding term, if in vacation, directed to the same sheriff, returnable on the first day of the fifth term from that in which the same was awarded, and in the form required, (vide act). § 5. The sheriff shall, at three successive general quarter sessions, before the return of the said writ, in open court, immediately after the commission of the peace shall be read, make proclamation of the persons named in the *exigent* requiring them to render to the indictment. § 6. And if the persons so demanded do not appear, the sheriff shall endorse upon the said writ of *exigent* the following return:—

Form of Return.

By virtue of the within writ, to me directed, at the court of general quarter sessions of the peace, held at in and for the district of on the day of in the year within written, the within named A. B. was a first time demanded, and did not appear: and at the court of general quarter sessions of the peace, held at aforesaid, for the district aforesaid, on the day of in the year aforesaid (*or as it may be*) the said A. B. was a second time demanded, and did not appear: and at the court of general quarter sessions of the peace, held at aforesaid, (*or as the case may be*) the said A. B. was a third time demanded, and did not appear, therefore the said A. B. according to the law of this province, is outlawed.

C. D., Sheriff.

§ 7. In all cases wherein any writ of *exigent* shall be awarded against any person described in the indictment, as being lately conversant in any other district, a writ of proclamation shall be awarded with the same teste and return as

the writ of *exigent*, directed to the sheriff of such district, in the form prescribed (*vide act*), and the sheriff of such district shall, at three successive courts of general quarter sessions, before the return of the said writ, in open court, the first day of the court, make proclamation according to the said writ.

§ 8. And shall return the same in the following form:—

By virtue of the within writ to me directed, I caused the within named A. B. to be proclaimed three several days, according to the effect of the within mentioned statute, as it is within commanded me.

The answer of C. D., sheriff.

§ 9. After the return of the *exigent* and proclamation, the person or persons against whom the same shall have issued, shall, in default of appearance, incur the same disabilities, and the like process shall be thereupon had as in cases of outlawry by the criminal law of England as it stood on the 17th day of September, 1792. § 11. The continuance of this act limited to two years, and made perpetual by *2 V., c. 7.

*By 3 W. IV., c. 3, any person, accessories as well as principals, indicted for any capital offence, shall be liable to the same punishment, whether convicted by verdict or confession, or shall be outlawed upon indictment.

PARDON.

A pardon is a work of mercy extended towards a criminal, whereby the Queen, either before his attainder, conviction or sentence, or afterwards, forgives him for the crime which he has committed, and remits any punishment, pain or penalty, which he has thereby incurred.—2 *Inst.* 233.

By 27 H. VIII., c. 24, it is enacted, that the king shall have the whole and sole power and authority thereof, united and knit to the imperial crown of this realm, as of good right and equity it appertaineth. The power of pardoning offences is thus inseparably incident to, and inherent in the crown; and is entrusted to the sovereign, upon a special confidence that he will spare those only whose case (could it have been foreseen) the law itself would have excepted out of its general rules, which the wisdom of man cannot make so perfect as to suit every particular case.—1 *Shaw*, 284; *Haw.* c. 37, § 8. But besides a special pardon granted by the King's charter, there may be a *general* pardon or act of grace, passed by the legislature; but in this instance also, proceeding from the king, for the pardon of certain crimes, committed before a certain period named in the act. Such was the act of grace of 20 G. II., c. 52. But these acts of general pardon have now, for

a long time, been discontinued; the special pardon, therefore, proceeding from the king's peculiar grace and favour, is that with which we have now alone to deal. The king may pardon all offences against the crown or the subject, with some few exceptions. These are—First, *The sending any subject of the realm a prisoner into any parts beyond the seas*; which in order to preserve the liberty of the subject, is, by the *habeas corpus* act (31 Car. II., c. 2, § 12) made a *premunire*, and unpardonable, even by the king. And see *ante* title "Kidnapping." Neither can the king pardon a *common nuisance*, while it remains unredressed, or so as to prevent its abatement. Nevertheless, where a man is convicted, and fined for a nuisance, the king may, after judgment, remit the fine.—2 *Haw. c. 37*, § 33. Upon the same principle, the king cannot pardon an offence against a *penal statute* after the information brought; for the informer has then acquired a private property in his share of the penalty.—3 *Inst.* 338; 4 *Bl. Com.* 398. There is also another restriction of a peculiar nature, that affects the prerogative of pardoning; and that is in the case of parliamentary impeachments, wherein the king's pardon cannot be *pleaded* to any such impeachment, so as to impede inquiry, and stop the prosecution of great and notorious offenders.—12 & 13 W. III., c. 2. This statute, however, does not restrain the king from pardoning the offender after conviction on impeachment.—4 *Bl. Com.* 399. A pardon is not effectual unless it is under the great seal; for a warrant under the privy seal, or sign manual, though sufficient to admit the party to bail, is not of itself a complete irrevocable pardon.—6 *Str.* 166. (a) It is also a general rule, that wherever it may be reasonably presumed that the king has been deceived, the pardon is void. Therefore, any suppression of truth, or suggestion of falsehood, in a charter of pardon, will vitiate the whole, for the king was misinformed.—3 *Inst.* 238; 2 *Haw. c. 37*, § 8. And this is in conformity with the statute of 27 Ed. III., c. 2, which directs that in every charter of the pardon of felony, the suggestion, and the name of him that maketh the suggestion, shall be comprised; and if it be found untrue, the charter shall be disallowed. *General words* have a very imperfect effect in pardons; thus, a pardon of all "*felonies*" will not pardon a *conviction* or attainder of felony; but the conviction, or attainder must be particularly mentioned; and if the party is convicted by verdict, the pardon must recite the indictment and conviction.—2 *Haw. c. 37*, § 8.

(a) But see *contra* 4 & 5 V., c. 24, § 48.

The statute 13 R. II., st. 2, c. 1, enacts, that no pardon for *treason, murder, or rape*, shall be allowed, unless the offence be particularly specified therein; and particularly in *murder*, that it shall be expressed whether it was committed by lying in wait, assault, or *malice prepense*; upon which Sir Edward Coke observes, that it was not the intention of the parliament that the king should ever pardon murder under these circumstances, and therefore they prudently laid the pardon under this restriction, because they did not conceive it possible that the king would ever excuse an offence by name which was attended with such high aggravations.—3 *Inst.* 236. And it is remarkable enough, says Sir W. Blackstone, that there is no precedent of a pardon in the register for any other homicide than that which happens *se defendendo*, or *per infortunium*; to which two species the king's pardon was expressly confined by the statute of 2 Ed. III., c. 2, and 14 Ed. III., c. 15, which declare that no pardon of homicide shall be granted, but only where the king may do it by the *oath of his crown*; that is to say, where a man slayeth another in his own defence, or by misfortune. But the above statute (Ric. II.) enlarges, by implication, the royal power, provided the king is not deceived in the intended object of his mercy; and, therefore, pardons of murder were always granted with a *non obstante* of the statute of Richard II. till the time of the revolution, when the doctrine of *non obstante* ceasing, it was doubted whether murder could be pardoned generally; but it was determined by the Court of King's Bench, that the king may pardon on indictment of murder, as well as a subject might have discharged an appeal for that offence.—*Salk.* 499; 4 *Bl. Com.* 401.

A pardon may also be *conditional*; that is, the king may extend his mercy on what terms he pleases, and consequently, may annex to his pardon any condition that he thinks fit, whether precedent or subsequent, on the performance whereof the validity of the pardon will depend.—2 *Haw.* c. 37, § 45. A general pardon by act of parliament containing no exceptions, is more beneficial in one respect than by the King's charter, inasmuch as a man is not bound to plead it; but the court must *ex-officio* take notice of it; neither can he lose the benefit of it by his own *laches* or negligence, as he may of the King's pardon.—*Fost.* 43, 2, *Haw.* c. 37, § 61. But if any persons are excepted out of an act of general pardon, no one can then take the benefit of it without specially pleading it; and he must shew in his plea that he is not one of the persons excepted.—*Ib.* 60. But the king's pardon must, in all cases, be specially pleaded, and produced in court *under seal*; and

this, too, at a proper time; for if a man is indicted, and has a pardon in his pocket, and he does not plead it when arraigned, he puts himself upon his trial by pleading the general issue, he thereby waives the benefit of the pardon, and cannot afterwards resort to it.—2 *Haw. c. 37*, § 59, 67.

By 5 & 6 W. & M., c. 13, when a pardon is pleaded by any criminal, the judges have a discretionary power to bind him to his good behaviour, with two sureties, for any term not exceeding seven years.

The effect of a free pardon by the King, is to make the offender in all respects a new man; to acquit him of all corporal penalties and forfeitures annexed to that offence for which he obtains the pardon; and not so much to restore his former, as to give him a new credit and capacity. But nothing can restore or purify the blood when once corrupted, which is the consequence of the attainder of *treason* or *murder*, if the pardon be not allowed till after the attainder, but the high and transcendent power of parliament; yet, if a person so attainted receives the king's pardon, and afterwards has a son, that son may be heir to his father; because the father being a new man may transmit new inheritable blood; though had the son been born before the pardon, he could never have inherited at all, nor can he inherit if he has an elder brother living, born before the attainder; for in that case the land will escheat *pro defectu hæredis*.—1 *Hale*, 358; 4 *Bl. Com.* 402. By stat. *3 W. IV., c. 5, corruption of blood is taken away, except in cases of high treason; and it shall be lawful for every person or persons, to whom the right or interest to, or in any lands, after the death of any such offender, should or might have appertained, if no such attainder had been, to enter into the same.

By 4 & 5 Vic., c. 24, § 48, a pardon under the royal sign manual, or by warrant under the hand and seal at arms of any governor, &c., shall have the effect of a free or conditional pardon (as the case may be), under the great seal; but shall not mitigate the punishment for any subsequent offence.

PARTY PROCESSIONS.

The act 7 V., c. 6, relating to party processions has been repealed by 14 & 15 V., c. 50.

PATENT RIGHTS.

By 12 V., c. 22, (entitled an act to consolidate and amend the laws of patents for inventions in this province,) § 1, recites the Lower Canada act 6 W. 4, c. 74, and U. C. act

*7 G. IV, c. 5, (a) and that it was expedient to assimilate the provisions of the law in this respect, and to amend and modify the said acts, and to extend advantages and privileges of patent rights hereinafter to be granted, and to make the same co-extensive with the province of Canada. It therefore enacts that any person a subject of her Majesty and resident in this province having discovered or invented any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement, or any art, machine, manufacture or composition of matter, or the principle thereof, the same not being known or used in this province by others before his or their discovery or invention thereof, and not at the time of the application for a patent thereof in public use or on sale in this province with his consent or allowance as the inventor or discover thereof, and desiring to obtain an exclusive property therein, may make application by petition in the manner provided in the said recited acts to the Governor, or administrator of the government, who shall on due proceedings being had as by the said acts directed grant such patent, which shall be good and available to the said grantor, his heirs, &c., for the period of *fourteen* years from the granting of the same, and upon the assignment of the same previous to such grant, for the same period after such assignment shall have been recorded in the office of the secretary of the province. § 2. In actions for damages for the infringement of any patent right, the defendant shall be liable to treble costs. No patent shall be void by reason of previous discovery in a foreign country; and the court may award costs (although the plaintiff may fail in his action) as may appear just and equitable. § 3. The right to a patent shall devolve on the legal representative, in case of the inventor's decease before patent granted. § 4. Interfering applications to be settled by arbitration: a patent taken out in a foreign country to be no bar. § 4. Patent assignable at law. § 6. May be issued to the assignee of the inventor: and in all cases hereafter, duplicate drawings are to be furnished (when the case will admit), one to be deposited with the provincial secretary, and the other annexed to the patent, with a copy of the specification. § 7. A new patent may be issued in case of error, inadvertency, accident or mistake, or surrender of the former by the patentee. § 8. If, through mistake, &c., the specification be too broad, and prior discovery exist as to part, the patentee may file a disclaimer as to such part, with the secretary of the province ;

(a) Since repealed by 14 & 15 V., c. 79.

and the patent shall remain good as to the residue. § 9. Claims made for additions to existing patents shall be subject to revision as original applications. § 10 contains provision as to patents returned for correction. § 11. Patents may be extended for a further period of seven years, on application to the board, to be composed as the act directs. § 12. Any person having purchased, constructed, invented or discovered, any invention prior to application for the patent, shall have the right to vend the same; and no patent shall be invalid unless proof given of the abandonment of such invention to the public, or that such prior use had existed for more than one year. § 13. Provision made for granting patents for works of art. § 14. A solemn declaration may be substituted for the oath required to be taken by *7 G. IV., c. 5, in matters of patents, to the effect of the requirements of the said oath, except in suits at law; and if the applicant be a non-resident, such declaration shall be made before any British minister, plenipotentiary, consul or agent, or any notary public of the country where the party is resident. § 15. Counterfeiting the name of the patentee to be a misdemeanor punishable by fine or imprisonment in the common gaol of the district, or both at the discretion of the court; fine not to exceed £50, nor imprisonment to exceed three months. § 16. The date of the patent shall be stamped on the articles by the patentee or assignee; and in case of neglect, he shall be deemed to have committed a misdemeanor and liable as in § 15. § 17. Patents fraudulently or surreptitiously obtained, or issued improvidently, or upon false suggestion, may be repealed by *scire facias*. § 18. Patents to extend throughout Canada; but not to extend to inventions of foreign countries, or prevent free importation. § 19. Former provisions inconsistent with this act to be repealed. § 21. Interpretation clause.

By 14 & 15 V., c. 79, § 1, a party holding a patent for an invention extending to one section of the province may obtain the extension thereof to the other section subject to the right of parties using or vending the same before such application for extension is made, without liability to the patentee. § 2 recites that it is expedient to repeal the L. C. act, 6 W. IV., c. 34, and U. C., *7 G. IV., c. 5, and to consolidate the provisions thereof as applicable to the whole province. Said last-mentioned acts are thereby repealed, but letters patent granted under the same shall remain in force as if such acts had not been repealed, but subject to the provisions of this act, and the act cited in the preamble, 12 V., c. 24. § 3. Letters patent to be hereafter granted shall recite

briefly the substance of the petition upon which they are granted, and shall contain a short description of the invention or discovery referring for a further description to the specification, and shall grant to the petitioner, his assigns and legal representatives, for the period of *fourteen* years, from the granting of the same, the full and exclusive right and liberty of making, constructing, using and vending to others the said invention or discovery. § 4. The patentee of any improvement shall not be at liberty to vend the original invention, but the improvement only: nor shall the first inventor be at liberty to use such improvement. § 5. Every inventor before he can receive a patent, shall make a solemn declaration that he verily believes he is the true inventor or discoverer, and shall deliver a written description or specification of his invention or improvement in full, clear and exact terms, and in the case of any machine he shall fully explain the principle and the several modes in which he has contemplated the application of that principle or character by which it may be distinguished from other inventions: to be accompanied with drawings and written references made in duplicate, when the nature of the case admits of such, or with a specimen of ingredients, or of the composition of matter sufficient in quantity for the purpose of experiment; which description or specification signed by himself and attested by two witnesses shall be filed in the office of the secretary of the province, (a) with a model of the invention if required. § 6. Patents assignable at law. § 7. Remedy for infringement of patent to be by action at law, with *treble* costs. § 8. If on the trial of any action it shall appear that the specification does not contain the whole truth, or that it contains more than is necessary, (such concealment or addition being with fraudulent intent,) or that the invention was not originally discovered by the patentee, but had been in use in some public work, or that he had surreptitiously obtained a patent for the invention or discovery of another person, judgment shall be rendered for the defendant with costs, and the patent declared void. § 9. Interfering applications for a patent to be referred to three arbitrators, one to be chosen by each of the applicants, and the *third* by the secretary of the province. § 10. A fee of £5 to be paid on presenting the petition, which shall be in full. § 11. Enacts that the privileges of this act shall extend to and include any subject of her Majesty being an inhabitant of this province who shall in his or her travels in any foreign country have

(a) With the minister of the bureau of agriculture under 20 V., c. 32, § 4.

discovered and be desirous of introducing into this province any new and useful art, machine, manufacture or composition of matter, &c.: except inventions used in the United States of America, or in any part of her Majesty's dominions in Europe or America, which may be imported into this province by any person or persons for sale, use or otherwise. § 12. The party desirous of introducing any such foreign invention, to make a solemn declaration that he or she believes himself or herself to be the first introducer or publisher of the same in this province, and that he discovered a knowledge thereof while on his travels in some foreign country not being one of the United States of America or any of her Majesty's dominions in Europe or America. § 13. All the provisions in the act cited in the preamble (12 V., c. 24) shall apply to patents issued under this act as fully and effectually as to patents issued under either of the repealed acts (*6 W. IV., c. 34; *7 G. IV., c. 5,) and the said act shall, with regard to patents to be issued hereafter, be construed as if this act were referred to in the said act, whenever reference is therein made to the said repealed acts; and the provisions of this act relative to matters subsequent to the issuing of any letters patent, shall apply as well to letters patent issued under the acts hereby repealed, as to letters patent issuing after the passing hereof: provided that the words "or the principle thereof" in the first section of the act cited in the preamble (12 V., c. 24) shall be repealed.

By 20 V., c. 32, § 4, the minister of the bureau of agriculture shall receive all applications, drawings, descriptions, specifications and models for or relating to patents for inventions, and shall keep the records thereof: and all acts now in force relating to patents for inventions, and which direct any thing to be done by or through the provincial secretary shall be held to have directed the same to be done by or through the said minister.

By 20 V., c. 33, § 1, patents issued between the union of the provinces and the 12 V., c. 24, are permitted to extend to the whole of the province.

PARLIAMENTARY REPRESENTATION.

Legislative Council.

By provincial statute 19 & 20 V., c. 140, *reserved and royal assent given 24th June, 1856 (a)*, it is enacted § 1, the 'Legislative Council' shall hereafter be composed of the present members thereof, and of forty-eight members to be

(a) Proclaimed in "Canada Gazette," 14th July, 1856.

elected as hereinafter provided; and to this end the province shall be divided into forty-eight electoral divisions, twenty-four in Upper Canada, and twenty-four in Lower Canada, in the manner set forth in schedule A. § 2. The present councillors to continue to hold their seats as heretofore, subject to the conditions contained in the imp. act 3 & 4 V., c. 35, § 3. The elective members shall be elected for eight years. § 4. No person shall be eligible or shall sit or vote as a legislative councillor unless he be a British subject by birth or naturalization, resident in Canada, of the full age of *thirty years*, and be legally or equitably seized as of freehold, for his own use and benefit of lands or tenements held in *feif, franc-aleu* or *roture* in this province, of the value of £2000 currency over and above all debts, charges and ducs, nor unless his residence, or his lands or tenements as aforesaid, to the value aforesaid, be within the limits of the electoral division for which he shall seek to be, or shall have been elected. § 5. No person shall be elected a legislative councillor who is a public defaulter, or shall have been convicted of felony or of any infamous crime. § 6. No member of one house shall be elected a member of the other. § 7. The seat of an elective legislative councillor shall be forfeited in any of the following cases: if he be a public defaulter, or become a bankrupt, or insolvent, or take the benefit of any law whatsoever in relation to insolvent debtors, or be convicted of felony, or of any infamous crime, or shall cease to hold a property qualification required by section 4. § 8. Upon or before the first day of September next following the day on which this act shall receive the royal assent, the Governor shall issue writs for the election of *twelve* legislative councillors to represent the twelve electoral divisions *first* entitled to return members to the legislative council as hereinafter provided; and the said writs shall be transmitted to the returning officers by the clerk of the crown in Chancery, and be returnable on the first Tuesday of November following; and in every *second* year thereafter, writs for the periodical elections shall be issued on or before the first day of September, and returnable the first Tuesday of November. § 9. The writs of election shall be in the form of schedule B. § 10. The Governor shall appoint the returning officers for the electoral divisions, from among those persons who might by law be returning officers at election of members of the Legislative Assembly for places within the limits of such divisions. § 11. The returning officer for any electoral division shall fix a place as nearly as may be in the centre of such division, for the nomination of candidates, and the proclamation of the candidate elected.

§ 12. The electors of legislative councillors shall, as regards their qualification, be the same as those of the Legislative Assembly, and shall vote at the places at which they ordinarily vote at the election of the latter: the boundaries and extent of the electoral divisions are defined by schedule A. § 13. The laws relating to the election of members of the Legislative Assembly, as regards the qualification of electors; the issue and return of writs of election; returning officers; the powers and duties of returning officers and of deputy returning officers, and of election and poll clerks; the prevention or punishment of offences committed at elections or with respect to elections; to controverted elections, and to all matters connected with or incidental to elections, shall, except where such laws may be inconsistent with this act, apply in analogous cases to elections of legislative councillors. § 14. Every candidate for election to the Legislative Council shall, if thereunto required by another candidate, or by an elector, or by the returning officer, make in person a written declaration in the form of schedule C.; and the provisions of the election laws which, prior to the passing of this act, related to the declaration of qualification of candidates for election to the Legislative Assembly, shall, with the exception of the amount of property qualification, apply in a precisely similar manner to the declaration of qualification of the candidate for election to the Legislative Council. § 15. The period for which the legislative councillors shall serve shall commence on the day of the return of the writs, and shall end upon the day next preceding the return day of the writs for the election of their successors. § 16. Every legislative councillor shall, before taking his seat, take the oath in schedule D, before the clerk of the said council. § 17. The order in which the electoral divisions shall be entitled to return members to the Legislative Council shall be determined by lot, as soon as possible after the commencement of this act, in the manner provided in schedule E, and shall forthwith be made known by proclamation. § 18. For the purpose of such determination by lot, the electoral divisions shall be united in groups of four each, as in schedule F. § 19. Periodical elections of legislative councillors to represent the several electoral divisions shall take place in the order determined by lot, and made known by proclamation as aforesaid; the twelve electoral divisions named in the list of the "first drawing," being those first entitled to return members to the said council, and so on. § 20. An elective councillor may resign his seat in the same manner and under the same circumstances as a member of the legislative assembly; and he may hold his

seat until the day next preceding that of the return of the writ of election of his successor. In case of his resigning or going out at the expiration of the period for which he is elected, he may be re-elected subject to the conditions contained in this act. § 21. Elective legislative councillors shall, under the same circumstances as members of the Legislative Assembly, be subject to the laws for securing the independence of the Legislative Assembly of this province. § 22. The acceptance by a councillor of the office of the speaker of the Legislative Council, shall not, however, vacate his seat. § 23. In case of accidental vacancy provided for by sections 20 & 21, the Speaker of the Legislative Council, the Legislative Council and the several members thereof shall have the same powers and duties as the Speaker of the Legislative Assembly, the Legislative Assembly and the members thereof, and the writs shall be made returnable within fifty days at furthest from the issue thereof. § 24. An accidental vacancy of the seat for any electoral division happening within the three months next before the regular periodical vacancy of such seat, shall not be filled until the time appointed for filling such periodical vacancy. § 25. In case of any accidental vacancy of the seat for any electoral division, not provided for by the next preceding section, the period of service of the councillor elected to fill such vacancy shall be that at which his predecessor would regularly have gone out. § 26. The Speaker of the Legislative Council shall, as heretofore, be appointed by the Governor, and shall be selected from amongst the members of the said council. § 27. The councillor who shall be speaker at the time of the passing of this act shall continue to be so until he be replaced by another. § 28. Each general election of members of the Legislative Assembly shall make a new parliament as heretofore.

LOWER CANADA.

SCHEDULE A.

Limits of Electoral Divisions.

Gulf.—The counties of Gaspé, Bonaventure and Rimouski.

Grandville.—The counties of Temiscouata and Kamouraska, the parishes of St. Roch des Aulnets and St. Jean, Port Joli, and the prolongation thereof in a straight line to the province line in the county of L'Islet.

De la Durantaye.—The remainder of the county of L'Islet, the counties of Montgomery and Bellechasse and the Parishes of St. Joseph, St. Henri, and Notre Dame de la Victorie, in the county of Levi.

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- Lauzon.*—The remainder of the county of Levi, the counties of Dorchester and Beauce.
- Kennebec.*—The counties of Lotbinière, Megantic and Arthabaska.
- De la Vallière.*—The counties of Nicolet and Yamaska, the Townships of Wendover, Grantham and that part of Upton which lies in the county of Drummond.
- Wellington.*—The remainder of the county of Drummond, the county of Richmond, the town of Sherbrooke, the counties of Wolfe, Compton and Stanstead.
- Sauvel.*—The counties of Richelieu and Bagot, the Parishes of St. Denis, La Présentation, St. Barnabé, and St. Jude in the county of St. Hyacinthe.
- Bedford.*—The counties of Missisquoi, Brome and Shefford.
- Rougemont.*—The remainder of the county of St. Hyacinthe, the counties of Rouville and Iberville.
- Montarville.*—The counties of Verchères, Chambly and Laprairie.
- De Lorimier.*—The counties of St. John's and Napierville; St. Jean Chrysostôme and Russeltown in the county of Chateaugay; Hemmingford in the county of Huntingdon.
- The Laurentides.*—The counties of Chicoutimi, Charlevoix, Saguenay and Montmorency, the Seignory of Beauport, the parish of Charlesbourg, the townships of Stoneham and Tewkesbury, in the county of Quebec.
- La Salle.*—The remainder of the county of Quebec, the county of Portneuf, and all that part of the Banlieu of Quebec which lies within the parish of Notre Dame de Quebec.
- Stadacona.*—The remainder of the city and *Banlieu* of Quebec.
- Shawinigan.*—The counties of Champlain and St. Maurice, the town of Three Rivers, the parishes of *River du Loup*, St. Léon, St. Paulin, and the township of Hunterstown and its augmentation, in the county of Maskinongé.
- De Lanaudière.*—The remainder of the county of Maskinongé, the counties of Berthier and Joliette, with the exception of the parish of St. Paul, the township of Kildare and its augmentation, and the township of Cathcart.
- Repentigny.*—The parish of St. Paul, the township of Kildare and its augmentation and the township of Cathcart in the county of Joliette, the counties of L'Assomption and Montcalm.
- Mille Isles.*—The counties of Terrebonne and Two Mountains.
- Inkerman.*—The counties of Argenteuil, Ottawa, and Pontiac.
- Alma.*—The Parishes of Long Point, *Pointe aux Trembles*, *River des Prairies*, *Sault aux Recollets*, in the county of Hochelaga, and that part of the Parish of Montreal which lies to the east of the prolongation of St. Denis Street; the

county of Laval, that part of the city of Montreal which lies to the east of Bonsecours and St. Denis Streets, and their prolongation.

Victoria.—The remainder of the city of Montreal exclusive of the parish.

Rigaud.—The remainder of the parish of Montreal and the counties of Jacques Cartier, Vaudreuil and Soulanges.

De Salaberry.—The remainder of the county of Chateauguay, the remainder of the county of Huntingdon, and the county of Beauharnois.

UPPER CANADA.

Western.—The counties of Essex and Kent.

St. Clair.—The county of Lambton and the West Riding of Middlesex.

Malahide.—The East and West Ridings of Elgin, the East Riding of Middlesex and the city of London.

Tecumseth.—The counties of Huron and Perth.

Saugeen.—The counties of Bruce and Grey and the North Riding of Simcoe.

Brock.—The North and South Ridings of Wellington and the North Riding of Waterloo.

Gore.—The South Riding of Waterloo and the North Riding of Oxford.

Thames.—The South Riding of Oxford and the county of Norfolk.

Erie.—The East and West Ridings of Brant and the county of Haldimand.

Niagara.—The counties of Lincoln and Welland and the town of Niagara.

Burlington.—The North and South Ridings of Wentworth and the city of Hamilton.

Home.—The counties of Halton and Peel.

Midland.—The North Riding of York and the South Riding of Simcoe.

York.—The city of Toronto and the township of York.

King's.—The East and West Ridings of York (except the township of York) and the South Riding of Ontario.

Queen's.—The North Riding of Ontario, the county of Victoria and the West Riding of Durham.

Newcastle.—The East Riding of Durham and the East and West Ridings of Northumberland.

Trent.—The counties of Peterborough, the North Riding of Hastings and the county of Lennox.

Quinté.—The South Riding of Hastings and the county of Prince Edward.

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Cataraque.—The counties of Addington and Frontenac and the city of Kingston.

Bathurst.—The South Riding of Leeds and the North and South Ridings of Lanark.

Rideau.—The counties of Renfrew and Carleton and the city of Ottawa.

St. Lawrence.—The town of Brockville and township of Elizabethtown, the South Riding of Grenville, the North Riding of Leeds and Grenville and the county of Dundas.

Eastern.—The counties of Stormont, Prescott, Russell, Glengarry, and the town and township of Cornwall.

SCHEDULE B.

PROVINCE OF CANADA :

Victoria, by the Grace of God, of the united kingdom of Great Britain and Ireland, Queen, defender of the faith.

To the returning officer of _____, greeting :

Whereas _____ . We therefore command you, firmly enjoining that having first made proclamation in the said electoral division of _____, immediately after the receipt of this our writ, and thereby notified (giving not less than eight days' notice thereof,) a day and place for electing a legislative councillor to serve for the said electoral division of _____, in our Legislative Council, you cause on the same day and place a legislative councillor, the most fit and discreet, to be freely and indifferently chosen to represent the said electoral division of _____ in our Legislative Council, by those who shall be present at the day of election to be fixed by such proclamation as aforesaid, and the name of such legislative councillor so chosen, in certain indentures between you and those who shall be present at such election (whether the person so chosen shall be present or absent) you cause to be inserted, and cause the said person so chosen as aforesaid to come to the said Legislative Council, so that the said legislative councillor have full and sufficient power for himself and commonalty of the said electoral division of _____, severally from them to do and consent to those things which then and there by the favour of God shall happen to be ordained by the common council of our said province, upon the said affairs, so that for default of such powers, or through improvident election of such legislative councillor the said affairs remain not undone in anywise.

And we will not that any minister of the churches of England or Scotland, or a minister, priest, ecclesiastic, or teacher, either according to the rites of the church of Rome, or under any other form or profession of religious faith or worship, by any means be chosen ; and that you certify forthwith unto us, into our Chancery at the city of _____, the said election so made, distinctly and openly, under your seal, and the seals of those who

shall be present at such election, sending unto us one part of the said indentures annexed to these presents, together with this our writ.

In testimony whereof we have caused these our letters to be made patent, and the great seal of our said province of Canada to be hereunto affixed.

Witness,

At our government house, at the city of _____, in our said province of Canada, the _____ day of _____ in the year of our Lord, one thousand eight hundred and _____ and in the year of our reign.

By command—A. B., Clerk of the Crown in Chancery.

SCHEDULE C.

Declaration of Qualification.—I, A. B., declare and testify that I am of the full age of thirty years; that I am a British subject, and that I am a resident in (*here insert name of electoral division in which candidate resides,*) that I am duly seized at law (or in equity) as of freehold for my own use and benefit, of the following lands (or tenements), held in free and common soccage, (or duly seized and possessed for my own use and benefit of lands (or tenements) held *en fief*, or *en roture*, or *en franc aleu* (as the case may be.) that is to say, of (*here insert a correct and clear description of the lands or tenements*), I declare to be of the full value of two thousand pounds currency, over and above all rents, mortgages, charges, and incumbrances charged upon, or due or payable out of, or affecting the same; and I further declare that I have not collusively or colourably obtained a title to, or become possessed of the said lands (or tenements) or any part thereof, for the purpose of qualifying or enabling me to be returned as a member of the legislative council of this province.

SCHEDULE D.

Oath of Allegiance.

I, A. B., do solemnly promise and swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Province of Canada dependent on, and belonging to the said United Kingdom; and that I will defend her to the utmost of my power against all traitorous conspiracies and attempts whatever, which shall be made against her person, crown and dignity; and that I will do my utmost endeavour to disclose and make known to her Majesty, her heirs and successors, all treasons and traitorous conspiracies and traitorous attempts which I shall know to be against her or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or persons whatever to the contrary:—So help me God.

SCHEDULE E.*Drawing by Lot.*

1. The Speaker of the Legislative Council shall cause to be placed before the Governor in council twelve boxes marked respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12.

2. The names of the forty eight electoral divisions shall be plainly written separately upon a like number of pieces of paper of the same shape and size.

3. The clerk of the Legislative Council shall place these papers in the boxes, having first shewn them, and then folded them so as to conceal the writing.

4. He shall place in each box the names of the electoral divisions which form the group in schedule F., corresponding in number to such box.

5. Having shaken the boxes, he shall four several times withdraw one piece of paper from each box in succession, unfold each piece of paper in turn as it is withdrawn, exhibit it, and declare aloud and write down on a list the name written thereon.

6. Four lists of names of electoral divisions shall in this way be made by the clerk of the Legislative Council on four separate pieces of paper previously headed respectively "First Drawing," "Second Drawing," "Third Drawing," and "Fourth Drawing": in each of which lists there will be twelve names.

7. These lists shall be then and there authenticated by the signatures of the executive councillors present, and the counter signature of the clerk of the Legislative Council, and shall remain of record in the office of the Executive Council.

8. The result of the drawing shall be embodied in a minute of council and communicated without delay to the Governor.

SCHEDULE F.*Groups of Electoral Divisions—Lower Canada.*

Group 1.—Gulf, Grandville, De la Durantaye, and Lauzon.

Group 2.—The Laurentides, La Salle, Stadacona and Shawinigan.

Group 3.—Kennebec, De la Vallière, Wellington and Saurel.

Group 4.—De Lanaudière, Repentigny, Mille Isles and Inkerman.

Group 5.—Bedford, Rougemont, Montarville, and De Lormier.

Group 6.—Alma, Victoria, Rigaud, and De Salaberry.

Upper Canada.

Group 7.—Western, St. Clair, Malahide, and Tecumseth.

Group 8.—Saugeen, Brock, Gore and Thames.

Group 9.—Erie, Niagara, Burlington, and Home.

Group 10.—Midland, York, King's and Queen's.

Group 11.—Newcastle, Trent, Quinté and Catarague.

Group 12.—Bathurst, St. Lawrence, Rideau and Eastern.

HOUSE OF ASSEMBLY.

Electoral Divisions.

By 16 V., c. 152, entitled an act to enlarge the representation of the people of this province in parliament, it is enacted that from and after the end of this present parliament, the counties, ridings, cities and towns, and seignories of counties hereinafter mentioned shall be the subdivisions of the province upon which the representation of the people thereof shall be based, viz. :

Lower Canada,

Counties and electoral divisions in, viz. :

Gaspé, Bonaventure, Rimouski, Temiscouata, Kamouraska, L'Islet, Montmagny, Bellechasse, Lévis, Dorchester, Beauce, Megantic, Lotbinière, Chicoutimi, Tadoussac, Saguenay, Montmorency, Quebec, (county of,) Quebec, (city of,) Portneuf, Champlain, Three Rivers, (town of,) St. Maurice, Maskinongé, Nicolet, Yamaska, Berthier, Joliette, Montcalm, L'Assomption; Terrebone, Two Mountains, Argenteuil, Ottawa, Pontiac, Drummond, Arthabaska, Sherbrook, Wolfe, Sherbrooke, (town of), Compton, Stanstead, Shefford, Missisquoi, (East Riding), Missisquoi (West Riding), Richelieu, St. Hyacinthe, Rouville, Bagot, Iberville, Verchères, Chambly, Laprairie, St. John's, Napierville, Chateaugai, Beauharnois, Huntingdon, Soulanges, Vaudreuil, Laval, Montreal, (East Riding), Montreal, (West Riding), Montreal, (city of.)

See 18 V., c. 76, changing the names of some of these counties, and altering the boundaries of others.

Upper Canada.

§ 2. The several counties, cities and towns in Upper Canada shall be bounded, for the purposes of this act, as they now are for the purpose of representation, (a) except as herein provided : and that, for the purposes of this act, each of said counties shall include all the towns and villages within the limits thereof, except such of the said towns as are specially excepted, or hereby declared electoral divisions.

2. The *Counties of Huron and Bruce*, and the *Counties of Lenox & Addington*, shall be respectively united, for the purpose of representation ; and each such union of two counties shall form an electoral division.

3. The following counties shall be divided into Ridings, and each form an electoral division :

4. *The County of York—Three Ridings.*

The North Riding shall consist of the townships of King,

(a) See title "*Counties*," p. 248.

Whitchurch, Georgina, East Gwillimbury and North Gwillimbury.

The East Riding, of the townships of Markham, Scarborough, and that portion of the township of York lying east of Yonge-street, and the village of Yorkville.

The West Riding, of the townships of Etobicoke, Vaughan, and that portion of the township of York lying west of Yonge-street.

5. *The County of Middlesex—Two Ridings.*

The East Riding shall consist of the townships of West Nissouri, North Dorchester, Westminster and London.

The West Riding, of the townships of Mosa, Ekfrid, Caradoc, Metcalfe, Adelaide, Williams, Lobo and Delaware.

6. *The County of Oxford—Two Ridings.*

The North Riding shall consist of the townships of East Nissouri, East Zorra, West Zorra, Blandford, Blenheim, and the town of Woodstock.

The South Riding, of the Townships of North Oxford, West Oxford, East Oxford, Norwich and Dereham.

7. *The County of Hastings.—Two Ridings.*

The North Riding shall consist of the townships of Lake, Tudor, Grimsthorpe, Marmora, Madoc, Elzevir, Rawdon, Huntingdon and Hereford.

The South Riding, of the townships of Sidney, Thurlow, Tyendinaga, the village of Trenton, and the town of Belleville.

8. *The County of Durham—Two Ridings.*

The East Riding shall consist of the townships of Cavan, Manvers, Hope, and the town of Port Hope.

The West Riding, of the townships of Clarke, Darlington and Cartwright.

9. *The County of Northumberland—Two Ridings.*

The East Riding shall consist of the townships of Cramahe, Brighton, Murray, Seymour and Percy.

The West Riding, of the townships of Hamilton, Haldimand, Alnwick, Louth, Monaghan, and the town of Cobourg.

10. *The County of Ontario—Two Ridings.*

The North Riding shall consist of the townships of Reach, Uxbridge, Brock, Scott, Thora, Mara, Rama and Scugog.

The South Riding, of the townships of Whitby, Pickering, and the village of Oshawa.

11. *The County of Wentworth—Two Ridings.*

The North Riding shall consist of the townships of Beverley,

Flamborough East, Flamborough West, and the town of Dundas.

The South Riding, of the township of Saltfleet, Binbrook, Glanford, Barton and Ancaster.

12. *The County of Lanark—Two Ridings.*

The North Riding shall consist of the townships of Sherbrooke North, Dalhousie, Lanark, Ramsay, Lavant, Darling and Pakenham.

The South Riding of the townships of Montague, Elmsley North, Burgess North, Sherbrooke South, Beckwith, Drummond, and the town of Perth.

13. *The County of Simcoe—Two Ridings.*

The North Riding shall consist of the townships of Nottawasaga, Sunnidale, Vespra, Flos, Oro, Medonte, Orillia, Tiny, Tay, Machedash, and the town of Barrie.

The South Riding, of the townships of West Gwillimbury, Tecumseth, Innisfil, Essa, Adjala, Tosorontio, Mulmur and Mono.

14. *The Counties of Leeds and Grenville—Three Ridings.*

The North Riding of Leeds and Grenville shall consist of the townships of Kitley, Elmsley, WOLFORD, Oxford and South Gower.

The South Riding of Leeds, of the townships of Yonge, Escott. Front of Leeds and Lansdowne, Rear of Leeds and Lansdowne, South Crosby, North Crosby, Bastard and Burgess.

The South Riding of Grenville, of the townships of Edwardsburg and Augusta, and the town of Prescott.

15. *The County of Wellington—Two Ridings.*

The South Riding shall consist of the town and township of Guelph, and the townships of Puslinch, Eramosa and Erin.

The North Riding of the townships of Nichol, Garafraxa, Pilkington, Peel, Arthur, Maryborough, Amaranth, Luther and Minto.

16. *The County of Waterloo—Two Ridings.*

The North Riding shall consist of the townships of North Waterloo, (including the town of Berlin) Woolwich and Wellesley.

The South Riding shall consist of the villages of Galt and Preston and the townships of South Waterloo, North Dumfries and Wilmot.

The present *township of Waterloo* being divided for the purposes of representation only into two townships of North Waterloo and South Waterloo. *North Waterloo* to consist of

that part of the present township of Waterloo lying within the following limits, viz., commencing at the south-west angle of lot No. 46, in said township, then easterly along the southerly limits of said lot, and of lots Nos. 47, 48, 50, 51, and 53, and the prolongation thereof to the middle of the Grand River; thence along the middle of said river against the stream to the prolongation of the limit between lots Nos. 113 and 114, and along the prolongation of the limit between said lots No. 113 and 114, and along the limits between the said lots Nos. 113 and 114, northerly and easterly to the westerly limits of lot No. 107, thence along the westerly limits of said lot No. 107, northerly to the northerly limits thereof, thence along the northerly limits of said lot 107, and of lots Nos. 106, 84, and 96 easterly to the easterly boundary of said township, thence along the easterly, northerly and westerly boundaries of said township, in a northerly, westerly, and southerly direction to the place of beginning.

South Waterloo to consist of all the remaining part of said present township of Waterloo.

17. *County of Brant—Two Ridings.*

The East Riding shall consist of the townships of South Dumfries, Onondaga, East Brantford and the village of Paris.

The West Riding of the townships of Burford, Oakland, Tuscarora, West Brantford, and the town of Brantford.

The present township of Brantford being divided for the purposes of representation only into the township of East Brantford and West Brantford.

East Brantford to consist of all that portion of the present township which lies on the east side of the Grand River.

West Brantford to consist of all the remainder of said present township.

18. *County of Elgin—Two Ridings.*

The East Riding shall consist of the townships of Bayham, Malahide, Yarmouth, South Dorchester, and the village of St. Thomas.

The West Riding shall consist of the townships of Southwold, Dunwich and Aldborough.

19. Each of the other counties in Upper Canada, viz., the counties of Carleton, Dundas, Essex, Frontenac, Glengarry, Grey, Haldimand, Halton, Kent, Lambton, Lincoln, Norfolk, Peterborough, Peel, Perth, Prescott, Prince Edward, Renfrew, Russell, Stormont, Victoria and Welland shall form an electoral division.

20. The townships of Gloucester and Osgoode for the purpose of representation only to be detached from the county of Carleton and attached to the county of Russell.

21. *The City of Toronto* shall form an electoral division.

22. *The City of Kingston* ditto.

23. *The City of Hamilton* do.

24. *The township of Brockville* shall form an electoral division, and for the purpose of representation only shall include in addition to its present limits, the whole of the township of Elizabethtown, which shall for that purpose be detached from the county of Leeds.

25. *The town of Niagara* shall form an electoral division, and for the purpose of representation only shall include the whole of the township of Niagara, which shall for that purpose be detached from the county of Lincoln.

26. *The town of Cornwall* shall form an electoral division, and for the purpose of representation only shall include in addition to its present limits the whole township of Cornwall, which shall be detached from the county of Stormont.

27. *The town of London* shall form an electoral division.

28. *The town of Bytown* do.

GENERAL PROVISIONS.

Lower Canada Representation.

§ 3. The counties of Gaspè, Bonaventure, Rimouski, Temiscouata, Kamouraska, L'Islet, Montmagny, Bellechasse, Lévis, Dorchester, Beauce, Megantic, Lotbinière, Saguenay, Montmorency, Quebec, Portneuf, Champlain, St. Maurice, Maskinongé, Nicolet, Yamaska, Berthier, Joliette, Montcalm, L'Assomption, Terrebonne, Two Mountains, Argenteuil, Ottawa, Pontiac, Compton, Stanstead, Shefford, Richelieu, St. Hyacinthe, Rouville, Bagot, Iberville, Verchères, Chambly, Laprarie, St. John's, Napierville, Chateaugai, Beauharnois, Huntingdon, Soulanges, Vaudreuil, and Laval shall be represented each by *one member* in the legislative assembly. The united counties of Chicoutimi and Tadoussac, by one member. The united counties of Drummond and Arthabarka by one member. The united counties of Sherbrocke and Wolfe, by one member. The East Riding and the West Riding of the county of Missisquoi, and the Hochelaga Riding, and Jacques Cartier Riding of the county of Montreal, each by *one member*. The cities of Quebec and Montreal, each by *three members*. The town of Three Rivers, and the town of Sherbrooke each by *one member*—(total 65 members.)

Upper Canada Representation.

The city of Toronto by two members; and each of the other electoral divisions by one member—(total 65 members.)

Qualification of Voters.

§ 4. The qualifications of voters shall be those now fixed

by law, except as otherwise ordered by this act, or by any subsequent act. Provided that the several cities and towns entitled to representation under this act shall not form for electoral purposes part of the counties in which they lie; and that no one shall have the right to vote at any election of any of the counties or ridings upon lands or tenements or lots of ground lying within the limits of said cities or towns; and where any parish, or part of a parish, township, or part of a township by this act, made part of any city or town for the purpose of representation, the qualification of electors shall be the same as those of county electors. § 5. Any township or part of a township in Upper Canada, by this act made part of a town for the purpose of representation, shall upon the election of a member be dealt with (except as aforesaid as to qualification) as if it were a ward of such town, and if a poll be demanded and granted, a deputy returning officer shall be appointed for such township, or part of a township, and proceedings had as if it were a ward, except that the town clerk of such township, or in case of his absence, or incapacity, &c., the assessor or collector shall be appointed deputy returning officer therefor: and whenever any township in Upper Canada is, by this act, divided into two townships for the purpose of representation, then the town clerk of the municipal township so divided, shall be appointed deputy returning officer for that one of the representation townships which is first mentioned in this act, and the assessor or collector for the other; and if more than one person who may be by law appointed deputy returning officer, then the returning officer may appoint either; and if no person who ought to be appointed, or the person who ought to be appointed be absent, or incapacitated the returning officer may appoint whom he thinks proper.

Separate Polls.

§ 6. In Upper Canada separate polls shall be held for each incorporated village or town, not divided into wards, and for each ward in every incorporated town divided into wards, and the returning officer for the county or riding shall appoint a deputy returning officer for each such village, town, or ward. Provided, that in incorporated villages and towns not divided into wards the provisions of law relative to townships shall apply as regards the person to be appointed returning officer, and the clerk of the village, or town, or the assessor or collector, or other person, as the case may require, shall be appointed accordingly. But in towns divided into wards any person may be appointed deputy returning officer for any ward therein. Provided that nothing in this act shall affect

the qualification of voters in any such incorporated village or town, save only that in towns divided into wards they shall vote in that ward in which the property voted upon shall be wholly or partly situate, and not in any other.

Returning Officers.

§ 7. In each of the counties in Upper Canada, by this act divided into ridings, the high-sheriff or registrar of deeds, who, without this act would under the second section of the 14 & 15 V., c. 108, be the returning officer for such county, shall be the returning officer for the riding thereof first mentioned in the act; and where there shall be a high sheriff who is returning officer for the riding first named as aforesaid, the registrar of deeds for the county shall be *ex-officio* the returning officer for the riding secondly named; subject always to the provisions of the 2nd and 3rd sections of the act last cited in cases where there shall be more than one person who may under the 2nd section of said act, and of this act, be *ex-officio* the returning officer for the same place, or where writs of election shall issue at the same time, or so nearly at the same time that the one shall not be returnable before the other or others shall issue, for several places for which the same person would be *ex-officio* returning officer; or when there shall be no returning officer *ex-officio*, or the person who is such shall be absent or incapacitated. Provided always, that the high-sheriff of the united counties of Leeds and Grenville shall be *ex officio* returning officer for the north riding of Leeds and Grenville, the registrar of deeds for the county of Leeds, *ex officio* returning officer for the south riding of Leeds; and the registrar of deeds for the county of Grenville, *ex officio* returning officer for the south riding of Grenville.

§ 8. Provision for the appointment of returning officers in Lower Canada, in certain cases.

§ 9. All augmentations or gores of seignories, parishes, towns, villages, or reserves for the same, not specially mentioned in this act, shall be considered as forming part of the county in which the principal portion of such locality, or in the immediate vicinity of which such town, village, or reserve shall be situate, unless the same shall, under this act, or the act 14 & 15 V., c. 5, form part of some other county or electoral division. And any place mentioned in this act as constituting a parish, township, or village, shall, with its acknowledged limits, be so represented for all the purposes of this act, although not by law incorporated. § 10. Repeals all inconsistent enactments. § 11. Repeals the provisions of the present election

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law for holding, in certain cases, more than two days polling in the townships of Waterloo and Wilmot. § 12. This act to have force and effect from and after the end of the present provincial parliament.

INDEPENDENCE OF PARLIAMENT.

By 20 V., c. 22, § 1, former acts 7 V., 65, and 18 V., c. 86 are repealed.

Functionaries—Disqualification of as Voters.

§ 2. The chancellor and vice-chancellors of Upper Canada; the chief justice and judges of the Court of Queen's Bench, *Lower Canada*. The chief justices and judges of the Courts of Queen's Bench and Common Pleas *Upper Canada*, and of the superior court *Lower Canada*. The judge of the court of vice-admiralty *Lower Canada*. The judge of any court of escheats, all county and circuit judges; all commissioners of bankrupts; the official principal of the court of probate, *Upper Canada*; and the surrogates of the several courts of probate in the same; all recorders of cities; all officers of the customs; all clerks of the peace, registrars, sheriffs, deputy sheriffs, deputy clerks of the crown, and agents for the sale of crown lands, and all officers employed in the collection of any duties payable to her Majesty, in the nature of duties of excise, shall be *disqualified and incompetent to vote at any election* of a member of the Legislative Council, or of the Legislative Assembly. And any such disqualified person so voting shall forfeit £500, to be recovered by any person that shall sue for the same, by action of debt, bill, plaint or information, in any court of competent jurisdiction, and his vote shall be null and void.

Disqualification of Members.

§ 3. Except as hereinafter provided, no person accepting or holding any office, commission or employment, permanent or temporary, at the nomination of the crown in this province, to which an annual salary, or any fee, allowance or emolument or profit of any kind or amount whatever from the crown is attached, shall be eligible as a member of the Legislative Council, or Legislative Assembly, nor shall he sit, or vote in the Legislative Assembly, or in the Legislative Council, as an elected member thereof, during the time he holds such office, occupation, or employment.

Exceptions.

Any member of the executive council; the receiver-general; inspector-general; secretary of the province; commissioner of crown lands; attorney-general, solicitor-general, commis-

sioner of public works; president of committees of the Executive Council; minister of agriculture, or postmaster-general, provided he be elected while holding such office, and not otherwise disqualified. § 2. Any officer in her majesty's army or navy, or any officer in the militia, or militiamen (except officers on the staff of the militia, receiving permanent salaries), unless otherwise disqualified. § 3. Any commissioner for temporary purposes, appointed before the passing of this act, and not otherwise disqualified; or any counsel retained by the crown in any case or matter now pending in the courts of law, and not otherwise disqualified from sitting or voting in either house during the present parliament.

Government Contracts.

§ 4. No person then holding or enjoying, undertaking or executing, directly or indirectly, alone or with any other, by himself or by the interposition of any trustee, or third party, any contract or agreement with her Majesty, or with any public officer or department, with respect to the public service of the province, or under which any public money of the province is to be paid for any service, work, matter or thing, shall be eligible as a member of the Legislative Council or Assembly, nor shall he sit or vote therein as an elected member thereof.

Penalty.

§ 5. If any such disqualified person shall nevertheless be elected, his election shall be void; and if he shall presume to sit or vote, he shall forfeit £500 for every day on which he shall have so sat or voted, recoverable as above.

Acceptance of Office, &c.

§ 6. If any member of the Legislative Council, or Assembly, shall, by accepting any office, or becoming party to any contract or agreement, be disqualified under the foregoing provisions to continue to sit or vote, his election shall thereby become void, and his seat vacated, and a writ shall forthwith issue for a new election; but he may be re-elected, if eligible under the first proviso to section 3 of this act. § 7. Provided always that whenever any person holding the office of receiver-general, inspector-general, secretary of the province, commissioner of crown lands, attorney-general, solicitor-general, commissioner of public works, speaker of the Legislative Council, president of committees of the Executive Council, minister of agriculture, or postmaster-general, and being at the same time a member of the Legislative Assembly, or an elected member of the Legislative Council, shall resign his office, and within one month after

his resignation accept any other of the said offices, he shall not thereby vacate his seat.

Resignation.

§ 8. Any member of the Legislative Council or Assembly may voluntarily resign and vacate his seat, as hereinafter provided. § 9. Any such member wishing to resign his seat may do so by giving, in his place, notice of his intention to resign it, in which case, and immediately after such notice shall be entered by the clerk on the journals of the house, the speaker may address his warrant to the clerk of the crown in chancery, for the issue of a writ for the election of a new member; or such member may address to the speaker a declaration of his intention to resign his seat, in writing, under his hand and seal, before two witnesses; which declaration may be so made or delivered, either during a session, or in the interval between two sessions; and the speaker may, upon receiving such declaration, forthwith address his warrant to the clerk of the crown in chancery, for the issue of a writ for the election of a new member. § 10. Provided always, that no member shall tender his resignation while his election is lawfully contested, nor until after the time during which it may by law be contested on other grounds than bribery and corruption. § 11. If any member of either house shall wish to resign his seat in the interval between two sessions, and there be then no speaker of the house to which he belongs; or if such member be himself the speaker, he may address to any two members the declaration before mentioned of his intention to resign; and such two members shall forthwith address their warrant to the clerk of the crown in chancery for the issue of a new writ, and such writ shall issue accordingly.

Vacancies.

§ 12. If any vacancy shall happen in either house by the death of any member, or by his accepting office, the speaker, on being informed of such vacancy by any member of such house, in his place, or by notice in writing under the hands and seals of any two members, shall forthwith address his warrant to the clerk of the crown in chancery for the issue of a new writ; and if when such vacancy shall happen, or at any time thereafter before the speaker's warrant shall have issued, there be no speaker in the house, or the speaker be absent from the province, or if the member whose seat is vacated be himself the speaker, then any two members may address their warrant to the clerk of the crown in chancery for the issue of a new writ. § 13. Notice of any vacancy by the warrant of the speaker, or of two members, as before provided, shall be held to be the notice mentioned in the 24 §

of the imperial act 3 & 4 V., c. 35, (*Union Act.*) § 14. A warrant may issue for a new writ for the election of a member of the Legislative Assembly to fill up any vacancy arising subsequently to a general election, and before the first meeting of parliament, by reason of the death or acceptance of office of any member: provided that the election to be held under such writ shall not affect the rights of any person entitled to contest the previous election; and the report of any election committee appointed to try such previous election, shall determine the validity of such new election. § 15. The foregoing enactments shall be subject to the provision in the 24 § of the act of 1856, for changing the constitution of the Legislative Council; and an accidental vacancy of the seat in said council for any electoral division, happening within the three months next before the regular periodical vacancy of such seat, shall not be filled up until the time appointed. Provided also, that nothing herein contained shall repeal or affect the provisions of the 22 § of said act, and the acceptance of the office of speaker of the Legislative Council, by an elected member thereof, shall not vacate his seat.

PENALTIES.

See "*Fines—Forfeitures.*"

PENITENTIARY.

*By the 3 Wm. IV., c. 43, the sum of £12,500 was granted by the provincial parliament for the erection of a penitentiary in this province, to be vested in his Majesty.

By 14 & 15 V., c. § 1, the former act 9 V., c. 4 is repealed. § 2. The purposes of the penitentiary defined to be for the confinement and reformation of persons male and female, lawfully convicted of crime, and sentenced to confinement therein for a term not less than *two* years: and whenever any offender shall be punishable by imprisonment, such imprisonment shall, if it be for *two* years, or any longer term, be in the provincial penitentiary: including offenders convicted by any military or militia court martial, or military authority under any mutiny act. § 3. The property to remain vested in the crown, under the custody of the warden and his successors. § 4. The warden bound to receive all convicts legally certified: and where sentence of death shall be passed upon any person, and her Majesty's pardon extended to such person on condition of imprisonment in the penitentiary for life, or any term of years, such pardon shall have the same effect as the judgment of a competent court legally sentencing such person to such imprisonment. § 5. Convicts in the

penitentiary to be clothed at the expence of the penitentiary, in garments of coarse, but comfortable materials, and fed on wholesome food, and kept constantly at hard labour for the benefit of the penitentiary, daily, except Sundays, Good Friday and Christmas day, in such manner as the warden shall deem most advantageous for the public, consistently with the welfare of each convict: except always such convicts as shall be confined in *solitude* for misconduct, or shall be incapable of labouring by reason of sickness or bodily infirmity: provided always that any convict of the Roman Catholic persuasion shall not be obliged to labour on certain obligatory holidays of the church therein named; each prisoner to be kept singly in a cell at night, and during the day when unemployed, except in cases of sickness; and when congregated in the workshops and other places of labour, shall be kept as far separate as possible, and allowed as little intercourse as the nature of their employment will permit, and all conversation forbidden not absolutely required in carrying on the work being done at the moment. § 6. Limits of the penitentiary defined, and the warden shall not permit any convict to go beyond the same at any time for any purpose, except with the inspector's permission on any specific work outside the limits, but upon the ground attached to the penitentiary, under rules and regulations. § 7. Provision made for additional improvements for carrying on the "separate" or "solitary" system of discipline. § 8. Contracts on account of the penitentiary to be entered into by the warden. § 9. The penitentiary to be governed by two inspectors to be appointed by the Governor-General; § 10, their duties to be 1st, to make rules and regulations for the conduct, management, discipline and police of the penitentiary; 2nd, to consider and determine the terms on which agreements shall be entered into by the warden with parties contracting for convict labour, and also with parties contracting to supply articles for the use of the penitentiary. 4th. To consider and determine the system of secular education, the place and time of the moral and religious training of the convicts, subject to the approval of the chaplains. 5th. To consider and determine what acts of the convicts shall be held punishable offences, and the punishments. 6th. The number of overseers, keepers and guards, and their duties. 7th. To prescribe the articles of food and clothing, the quantities and quality thereof to be supplied to the convicts. 8th. To attend to repairs and alterations in the penitentiary. 9th. To examine and enquire into its government, discipline and police; the conduct of its affairs; the financial and commercial affairs of the institution; the fulfil-

ment of contracts; administration of its finances; quality and sufficiency of the food; that offences are wisely and humanely punished, and order and cleanliness prevail.

§ 11. Further powers given to the inspectors, viz. :—1. Admission at all times to the institution, and to the vouchers, books, and records thereof. 2. To investigate the conduct of its officers. To summon witnesses; and every witness duly summoned neglecting to appear shall, upon conviction before one justice of the peace, (not being an inspector), incur a penalty not exceeding £5, with costs, to be levied by distress and sale, and in default of distress, commitment to the common gaol for any term not exceeding one month, unless sooner paid. 3. To require reports from the warden in relation to any matter connected with the penitentiary.

§ 12. Said inspectors to visit the penitentiary jointly, as often as they see fit, and at least four times a year, in February, May, August, and November, for *seven* consecutive days at each such joint visit. And in the event of the death or unavoidable absence of any one inspector, from any quarterly visit and meeting of the board, the warden shall act in his stead; but not so to act at two consecutive meetings of the board. 2. One of the inspectors to make monthly visits of not less than *two* days, for the inspection of its affairs. 3. Regular minutes of all such visits are to be kept by the inspectors, and entered by the clerk of the penitentiary in a book, and the decisions recorded therein, when signed by the two inspectors, shall be conclusive, and nothing which is not so recorded shall have such authority: and the warden shall have access to such minute-book at all times, and guide himself thereby. The inspectors shall keep a memorandum-book, entering therein individually any remarks, on the state of the prison, or on the conduct of any officer, or any suggestions he may deem advisable for the better conduct of the institution. 4. The inspectors shall draw up a code of rules and regulations for the government of the prison, which shall be printed and placed within access of every officer; a book of record also to be kept of any amendments or additions to such rules and regulations, and any instructions or admonitions they may find it necessary to communicate to the warden, chaplains, physician, deputy warden, or clerk, to be accessible to such officers, and a similar book of record for the guidance of the remaining officers of the prison. 5. The inspectors, at each monthly visit, shall examine the cash, and credit transactions of the institution for the month previous, and administer the oath required to be taken by the warden and clerk verifying each month's

Penitentiary.

accounts. 6. To inspect, at each monthly visit, every cell; and they shall jointly do so at each quarterly meeting. 7. Inspectors, at their quarterly meetings, shall require from the warden a statement and balance-sheet of the affairs of the institution, and examine and certify the same. 8. At their November quarterly meeting to appoint *two* qualified persons to value the property, real and personal, according to an inventory to be furnished by the warden; the valutors to be sworn to their valuation before any justice of the peace for the united counties of Frontenac, Lennox and Addington. 9. To require from the warden, chaplains and physician, and from any other officer they may think fit, an annual report of their several departments, to be made up to the 31st day of December. 10. The inspectors shall make their annual report to the Governor on or before the 10th February in each year, comprising the details prescribed.

§ 13. Besides inspectors, the officers of the penitentiary shall consist of one warden, one Protestant chaplain, one Roman Catholic chaplain, one physician, one deputy-warden, and one clerk, to be appointed by the Governor: also, the following officers: one schoolmaster, one storekeeper, one clerk of the kitchen, one matron, one assistant-matron, and the requisite number of overseers, keepers, and guards; the schoolmaster, storekeeper, clerk of the kitchen, matron, assistant matron, and overseers, to be appointed by the inspectors, and the keepers and guards by the warden, with the consent in writing of the inspectors.

§ 14. The board of inspectors authorised to suspend summarily, any of the officers appointed by the Governor, for misconduct, of which they shall at once notify the government; and in case of the death or absence, &c., of the warden, the inspectors, or one of them, shall sit in his room until a successor appointed, or the warden resume his duties. The warden authorised to suspend summarily, for misconduct, any of the subordinate officers aforesaid, until he shall make the inspectors acquainted.

§ 15. The warden to be the chief executive officer of the penitentiary, and in all cases not provided for by any rule or regulation, may act in such manner as he may deem most advisable, and he with the two inspectors shall be *ex-officio*, justices of the peace for each and every district, county and city throughout the province.

The duty of the warden shall be, 1st. To reside in the establishment, and visit every apartment and prisoner in it at least once a day. 2nd. To have in charge the health, conduct, and safe keeping of the prisoners, and to exercise

over the whole establishment a close supervision and personal direction. 3. To designate the employment of each convict. 4th. To see that justice, kindness, and morality prevail; that no unnecessary severity is practised; and that sick convicts have proper medical attendance and food. 5th. To see that the officers under him are careful and diligent in the discharge of their duties. 6. To make all purchases, sales, and contracts under the advice and instructions of the board of inspectors, and to superintend the industrial pursuits of the prison. 7th. To keep fully, faithfully, correctly, and regularly, all such books, records and accounts as the inspectors shall direct. 8th. To keep a daily journal of the proceedings in the prison, in which he shall enter all remarkable occurrences, noting therein any infraction of the rules, or any negligence or misconduct of any officer; any escape, or attempt made by any convict; any well founded complaint of bad or insufficient food, want of clothing, or cruel or unjust treatment, made by any convict, &c., and such journal shall at all times be open to the inspectors. 9th. To admit the inspectors at all times to every part of the prison; to make provincial and other reports required by the act, or by the inspectors. 10th. To receive and keep a register of convicts immediately on their admission, with the date of their conviction, &c., and when and how discharged: an inventory of the clothes and property of the convict at his reception, the same to be preserved and restored on the discharge of such convict. It shall also be the duty of the warden to read to each convict on his admission, the laws of the prison in regard to escapes, or attempts, and as to rebellion or disorderly conduct. 11th. To be present at least three times each week in the dining hall at breakfast and dinner of the convicts, and at the distribution of supper rations. To superintend the convicts at divine service; and to pass through the prison at night to satisfy himself that all is safe, and the guard for the night properly set.

§ 16. The deputy-warden shall be the principal assistant and representative of the warden in his absence, not exceeding *two* days: and further, 1st. To be present always at the opening and close of the prison, and at all usual times and religious services; and at all times in the absence of the warden, night or day, for a longer or shorter period. 2nd. To have a constant care and superintendence under the warden, of the internal affairs of the prison; to see that the subordinate officers perform their duties, and that order and cleanliness are maintained; also, to enforce and maintain the police and discipline, rules and regulations of the institution.

3rd. To visit frequently during the day the shops, yards, cells, and other apartments; to see that the overseers keep their men diligently employed; and that the guard are vigilant and active, reporting to the warden directly and promptly any neglect of duty, impropriety or misconduct of any officer. 4th. To attend to the clothing of the convicts, to see their rations properly cooked and served; and morning and night ascertain whether any convict is missing before he dismisses the officers, or gives the safety signal.

§ 17. The duties of chaplains shall be each—1st, to devote his whole time to the religious instruction and moral improvement of the prisoners; 2nd—to maintain public religious services morning and evening; to celebrate divine service *twice* every Sunday, and have the care of a Sabbath school for the religious instruction of convicts; 3rd—to see that every convict under his charge is furnished with a Bible; 4th—to visit and converse with the convicts at all reasonable times in the cells, or in his private room, or in the hospital, and administer to them such instructions as may be calculated to promote their spiritual welfare, moral reformation and due subordination; 5th—to guard against encouraging the convicts making unnecessary complaints; 6th—to take charge of the library, and select proper books; 7th—to visit the sick daily; 8th—to report annually to the inspectors, or oftener when required, the fruits of his labours; 9th—to keep a register containing the history of each convict under his charge, the extent of his education, his habits and disposition, and the crime of which he was convicted, &c.

§ 18. The duty of the physician shall be 1st, to attend daily at the penitentiary at a stated hour, and in case of emergency as often as may be necessary; 2nd—to keep a register of the sick, and their diseases: also a prescription book, and a register of deceased convicts, stating their names, ages, time and cause of death, &c. 3rd—to exercise a general surveillance over the cleanliness and ventilation of the prison, and the diet of the convicts. 4th—to make a yearly report, or oftener if required, to the inspectors; 5th—to examine convicts on their admission, and note their bodily defects, &c.

§ 19. The duty of the clerk of the penitentiary shall be 1st—to keep all the books, records and accounts; 2nd—to attend during business hours; 3rd—to take bills for all supplies and materials purchased, and for all services rendered to the establishment, and enter the same in a book; 4th—to act as clerk to the board of inspectors; 5th—to pay all debts due by the institution and take receipts in duplicate. All payments to be by *cheque* on the bank, signed by the warden and clerk.

§ 20. Schoolmaster, his duties. § 21. Storekeeper, his duties. § 22. Clerk of the kitchen, his duties. § 23. For every twenty-five convicts there shall be a master tradesman to be known as the "overseer," whose duty shall be to instruct the convicts, keep an account of all materials expended by him and of the labour performed in gross, &c.; and the said overseers shall maintain strict silence in their several gangs, and insist on the performance of a reasonable quantity of work by each convict, maintain subordination, and report to the warden any infraction of rules, &c.

§ 24. That for every fifty convicts there shall be a "keeper," who shall have the charge and management of such gang so far as regards discipline and the application of the convicts to their work: he shall see silence maintained, and a sufficient amount of work done: that the rules of the prison are observed by contractors: that the work done under contract is good and sufficient: to remain with their gangs during working hours, unless specially relieved by the warden, &c.

§ 25. A certain number (not exceeding thirty) of guards to be employed in the safe-keeping of the prisoners, and in the maintainance of order and discipline.

§ 26. Officers' salaries to be as follows:

	£	s.	d.
The Inspectors a sum not exceeding each.....	400	0	0
The Warden (with free house and fuel) a sum not exceeding.....	500	0	0
The Chaplains a sum not exceeding each.....	250	0	0
The Physician a sum not exceeding.....	200	0	0
The Deputy-warden " "	200	0	0
The Clerk " "	175	0	0
The Schoolmaster " "	150	0	0
The Storekeeper " "	125	0	0
The Clerk of the kitchen a sum not exceeding.....	125	0	0
The Matron " "	75	0	0
The Assistant Matron a sum not exceeding.....	50	0	0
The Overseers a sum not exceeding each	112	10	0
The Keepers " " " "	90	0	0
The Guards " " " "	65	0	0

And no officer employed (excepting the inspectors and physician) shall carry on any other trade or profession, nor take any emolument except his salary, nor receive, buy from, or sell to any convict any article, nor be directly or indirectly interested in any contract, nor employ any convict; and all such officers shall be exempt, *pro tem.*, from serving as jurymen, militia men, or municipal officers.

§ 27. The warden and clerk to give security: also the store-keeper, and clerk of the kitchen; and shall also take and subscribe the oath of office prescribed. § 28. Inspectors authorised to employ an architect and master-builder. § 29. Plans to be prepared by the inspectors for dwelling-houses of the officers, and when completed the officers to reside therein, and the rent deducted from their salaries. § 30. Three persons to be appointed as a board of visitors by the Governor, who shall have admission at any time during business hours one day each week, to see that discipline is maintained and humanely administered: and said visitors, or any two of them, shall be at liberty to speak to any of the convicts: and in the event of their observing any irregularity or injustice prejudicial to the higher objects of the institution, they shall, in their discretion, represent the same to the warden, or the inspectors, or to the provincial secretary: and the visitors shall have the power of granting orders for the admission of persons to view the penitentiary. § 31. Expenses of the penitentiary to be paid out of the public revenue. § 32. Provisions therefor to be supplied by contract. § 33. Any controversy with the warden, on account of any claim or demand, may be referred to arbitration. § 34. Books of account, registers, letters, &c., relating to the affairs of the penitentiary, to be public property. § 35. No raft, craft, boat, or vessel of any description, shall be allowed to moor or anchor within *three hundred* feet of the shore or wharf bounding the lands of the penitentiary, without permission of the warden, under a penalty of £5, recoverable before a justice of the peace, and levied by distress and sale of the offender's goods, and in default of payment, with the costs thereon, or of sufficient distress, the offender shall be imprisoned, at the discretion of such justice, for any period not exceeding *two* calendar months. § 5. No spirituous or fermented liquors shall be sold within the penitentiary, nor brought in for the use of any officer except the warden; and any person giving any spirituous or fermented liquors, tobacco, snuff, or cigars, to any convict, or conveying the same, shall forfeit £10 to the warden, for the use of the prison, to be recovered in any court of competent jurisdiction. § 37. No person shall, without the consent of the warden, bring into or convey out of the penitentiary any letter, or other article, to or from a convict; nor shall any officer or other person employed therein write any letter on behalf of any convict. Whosoever shall violate either of these provisions shall be deemed guilty of a *misdemeanor*, and liable to fine and imprisonment. § 38. The following persons shall have

authority to visit the penitentiary at their pleasure, viz.: the Governor, the members of the Executive Council, the members of the legislature, the judges of the several courts, and Queen's counsel; but no other person, except by permission of the warden or visitors. § 39. Upon the death of any convict, it shall be the duty of the inspectors, warden, chaplains, physician, or deputy-warden, if they or any of them shall have reason to believe that death arose from any other than ordinary sickness, to call upon the coroner to hold an inquest in the prison; and it shall be the duty of the warden to cause the body of any convict dying in the penitentiary to be decently interred, unless the body be previously claimed and taken away by friends or relatives. (a) § 40. No punishments or privations shall be awarded except by the warden, or other officer acting for the time in his room. A book of record shall be kept of complaints against convicts, the punishment awarded, the date of infliction, with the signature of the officer making the complaint, and of the officer who inflicted the sentence, and no punishment shall be inflicted until the day after the offence: corporal punishment to be inflicted in *extreme cases* only, and not more than 75 lashes for any one offence, and not until the physician shall certify as to the bodily fitness of the convict; nor shall any such infliction be carried out except in the presence of the warden and physician, nor in any case upon any *female* convict. § 41. Inspectors to draw up a form of questions to be put to each convict on his discharge. § 42. No convict to be discharged on a *Sunday*, but on the day previous, when the sentence expires on that day; nor if such convict be labouring under any grievous illness, unless at the request of such convict: and each convict, on his discharge, to be furnished with necessary clothing, and a sum not exceeding £5, as the warden may deem proper. § 43. No prisoner shall be compelled to leave during the winter months of November, December, January, February and March, but shall be allowed to remain, under the same discipline and control, until the first day of April. § 44. The female prisoners to be kept separate and secluded from the males, and under the charge of the matron and assistant matron, subject to the rules and regulations of the prison, as far as applicable. § 45. Inspectors may prepare a separate system of discipline for the employment of military convicts. § 46. Insane convicts to be removed to the asylum at Toronto, and in case of their recovery to be remanded to the penitentiary for the remain-

(a) See 20 V., c. 28, § 30, as to bodies unclaimed.

der of the term. § 47. This act to remain in force *three* years, and from thence to the end of the next session of parliament.

It was continued by the 20 V. c. 16., to the 1st January, 1858, and to the end of the next session afterwards.

By 20 V., c. 28, § 14, the Governor is authorised to appoint five fit persons to be inspectors of all public asylums, hospitals, common gaols, and other prisons in this province. § 16. Who shall have and perform all the powers and duties of inspectors of the provincial penitentiary, under the act relating thereto. § 17. And from and immediately after the first appointment of inspectors under this act, the powers and duties of inspectors under the said act relating to the penitentiary shall cease.

PERJURY.

Perjury, (from the latin, *perjurium*) is the crime of *wilful false swearing* to any matter of fact *material* to the issue or point in question, when a *lawful* oath is administered to the party in some *judicial* proceeding.—3 *Inst.* 174; 1 *Haw. c.* 69, § 1; 1 *T. R.* 69. And it is an offence at common law.

Subornation of perjury, is the offence of procuring another to take such a false oath as constitutes perjury in the principal, and is an offence under various statutes.

It has been settled that *justices of the peace* have no jurisdiction over perjury at *common law*.—2 *Haw. c.* 8, § 38; *Salk.* 406; 2 *Stra.* 1088. But under the statute of *Elizabeth*, they have; this statute, however, only relates to the crime of *subornation*, and from the difficulty attending prosecutions under it, is now seldom resorted to.

1. Perjury at Common Law.

The perjury must be wilful, that is, the false oath must be taken deliberately and advisedly; for, if it originated more from the weakness than the perverseness of the party; as, if it be occasioned by surprise or inadvertency, or a mistake of the true meaning of the question; it will not then amount to voluntary and corrupt perjury.—1 *Haw.* 69, § 2. It has been said, that no oath shall amount to perjury, unless the fact deposed to be sworn *absolutely* and *directly*; but this doctrine is now exploded, and the crime of perjury, it is agreed, may be committed by a man who swears that he *believes* that to be true which he *must know* to be false.—*R. v. Pedley*, 1 *Leach*, 237; *Miller's case*, 3 *Wils.* 427; 2 *Bl. Rep.* 811. The oath must be *false*; upon which head it has been observed, that it is not material whether the fact which is sworn to be

in itself true or false; for however the thing sworn may happen to prove agreeable to truth, yet if it were not *known to be so*, at the time by him who swears to it, his offence is altogether as great as if it had been false. This position cannot be denied, as constituting perjury, viz.—when a witness wilfully swears that he knows a thing to be true, which at the same time he knows nothing of; and thus impudently endeavours to induce those before whom he swears to proceed upon the credit of a deposition which any stranger might make as well as he.—1 *Haw. c. 69, § 5 per Lawrence, J., 6 T. R. 637; R. v. Edwards, 2 Russ. 518, note (e.)* All *false oaths* taken before those who are in any ways intrusted with the administration of justice, in relation to any matter legally pending before them, are properly perjuries. Therefore all persons are indictable who wilfully forswear themselves in any *judicial proceeding*, depending before a court of law or equity, or any other court, whether the proceedings therein be recorded or not; where an affidavit is falsely made of any matters *material* in a cause, the party making it is indictable for perjury, although the affidavit is never used to found any subsequent proceedings upon.—*R. v. White, 1 M. 271, R. v. Hailey, Ry. & M. 94; 1 C. & P. 258*; and so is a false oath before a justice of the peace, in any proceeding within the jurisdiction of the justice, in which he is authorised by law to administer an oath.—1 *Haw. c. 69, § 3*, or before a commissioner of the court of K. B., duly authorised; but in all private transactions between man and man, no oath whatsoever, however false it may be, is punishable as perjury in a criminal prosecution; such as a false oath taken by one upon making a bargain, that the thing sold is his own. Neither is the breach of a *promissory oath* within the legal definition of perjury. Therefore, no public officer who neglects to perform the duties of his office, which he has previously sworn faithfully to discharge (however punishable he may be for a misdemeanor, and aggravated as his offence may be by the violation of his oath) is indictable for perjury.—2 *Haw. c. 69, § 3*. Neither can a juror, who gives a verdict contrary to evidence, be prosecuted for perjury.—1 *Haw. c. 69, § 5*. The oath must be taken before some court or person *legally authorised* to administer an oath; for no other whatsoever, which is taken before persons not legally authorised, or competent to administer an oath, can amount to *perjury* in the eye of the law.—1 *Haw. c. 69, § 4*. The thing sworn must be *material* to the point in question; for if it be wholly foreign from the purpose, or altogether immaterial, not tending to aggravate or extenuate the dam-

ages, nor likely to induce the jury to give a readier credit to the substantial part of the evidence, it cannot then amount to perjury; because it is in such case, merely idle and insignificant; as if, upon a trial, in which the question was, whether A. was *compos* or not, a witness unnecessarily and impertinently describes a journey which he took to see the party, and happens to swear falsely in relation to some of the circumstances of the journey.—1 *Haw. c.* 69, § 8. But if the false oath has any tendency to prove or disprove the matter in issue, however circumstantially; so as if the party wilfully mistakes the colour of a man's coat, or speaks falsely to the credit of another witness, it will in like manner amount to perjury—*Rex. v. Griebe*, 12 *Mod.* 142; *R. v. Muscot*, 10 *Mod.* 195. With respect to *subornation* of perjury, if the person incited to take a false oath do not actually take it, the person by whom he was so incited is not guilty of *subornation of perjury*; but he is, nevertheless, liable to be punished as for a gross misdemeanor, in attempting to pervert the course of justice.—1 *Haw. c.* 69, § 10.

2. Of the Offence by Statute.

By 5 *Eliz.*, c. 9 (made perpetual by 29 *Eliz.*, c. 5, § 2, and 21 *Jac.* 1, c. 28, § 8), it is enacted by § 3, that every person who shall unlawfully and corruptly procure any witness to commit any wilful and corrupt perjury, in any matter or cause depending in suit and variance, shall forfeit £40; or (by § 4) if he has not goods to that amount, shall suffer imprisonment for half a year, and stand upon the *pillory* for one hour, in some market town next adjoining to the place where the offence was committed. By § 5, no person so convicted can afterwards be received as a witness in any court of record, until the judgment be reversed. By § 6, any person either by subornation, unlawful procurement, sinister persuasion, or by means of any others, or by his own act, consent or agreement, committing wilful and corrupt perjury, shall, upon conviction, forfeit £20, and be imprisoned six months, and his oath not afterwards received in any court, until judgment be reversed: or if the offender has not goods, shall be set in the pillory, and have both his ears nailed, and be discredited and disabled for ever to be sworn in any court of record, until judgment shall be reversed. By § 9, the judges of any court where the perjury is committed, and the justice of assize and gaol delivery, and the justices of the peace, at their quarter sessions, may enquire of, hear and determine all offences against the act. And by § 13, the act is not to restrain the authority of any

other judge having absolute power to punish perjury before the making the statute, so that he set not upon the offender less punishment than is contained in the act.

The above statute of Elizabeth did not alter the nature of the offence at *common law*, but merely enlarged the punishment. It is, however, seldom resorted to in the present day, on account of the difficulty of convicting under it; for, in the first place it has been held not to apply to any case unless it can be shewn that there is a *party grieved* by the perjury, and that the perjury also was committed in a matter relating to the proof of what was in issue.—3 *Salk.* 270. Nor can a witness who gives false evidence for the crown be indicted under it; for which a reason is given in the report that does not appear to be a very sound one—namely, because an indictment being *the suit of the king*, he cannot punish his own witness, who swears for him.—*Price's case, Cro. Jac.* 120.

The statute also extends to no other perjury than that of a witness; therefore, perjury committed in an answer to a bill in chancery, or in swearing the peace against another, cannot be prosecuted under the statute.—1 *Haw., c.* 69, § 20.

A false *affidavit* has been held not to be within the statute. 1 *Roll.* 79; 2 *Roll. ab.* 77; 3 *Keb.* 345; 3 *Salk.* 269. But this appears to be too general a proposition; for if the affidavit be of a nature that either of the parties in variance be grieved, hindered or molested in respect of their cause, by reason of the perjury, the offence then seems to be within the meaning as well as within the letter of the statute.—1 *Haw., c.* 69 § 21.

3. Of other Statutes relating to the offence.

By the 23 G. II., c. 11, which professes to be passed for the laudable purpose of facilitating prosecutions for perjury, it is enacted by § 3, that any judge of assize or *nisi prius*, or general gaol delivery, while the court is sitting, or within 24 hours afterwards, may direct any person (examined as a witness upon any trial before him) to be prosecuted for the said offence of perjury, in case there should appear to him reasonable cause for so doing, and to assign the prosecutor counsel, without fee or reward; and such prosecution shall not be subjected to any fees of court, &c.

By 7 & 8 W. III., c. 34; 8 G. I., c. 46; and 22 G. II., c. 46, the false *affirmation* or *declaration* of any of the people called Quakers, is declared to incur the penalties of perjury; and so by several provincial statutes.—*49 G. III., c. 6; *10 G. IV., c. 1, &c.; 12 V., c. 10.

By 12 G. I., c. 29, § 4, if any person convicted of per-

jury, forgery, or common barratry, shall practise as an attorney, solicitor or agent, the judges of the court shall examine the matter in a summary way, in open court, and may sentence the offender to be transported for seven years.

4. *Of the Indictment.*

An indictment for perjury at *common law*, cannot be preferred at the quarter sessions; for, by the common law, the sessions have no jurisdiction of perjury; though it seems they have jurisdiction over it under the 5 Elizabeth, c. 9.—2 *Haw.*, c. 8 § 38. But as prosecutions under the statute are much more difficult than those at *common law*, and are seldom adopted, even in the courts above, they are of course still less in use at the sessions.

Besides the proceedings by indictment, the court before which any glaring offence of perjury is committed, has also the power to punish the offender in a summary way, as for a contempt.

5. *Of the Punishment.*

Perjury is punishable at common law with fine, imprisonment and pillory (*a*), at the discretion of the court; and by statute 2 G. II., c. 25, § 2 (made perpetual by 9 G. II., c. 18), the judge may order the party to be transported, or to be imprisoned and kept to hard labour in the house of correction, for a term not exceeding seven years. The false affirmation of a Quaker is punishable in the same manner.—22 G. II., c. 46, § 36; and of other sectarians, such as Menonists, Tunkers, &c., by the *49 G. III., c. 6; *10 G. IV. c. 1.

Subornation of perjury is punishable by £40 fine, six months' imprisonment, and the pillory.—5 *Eliz.*, c. 9.

Indictment for Perjury—18 V., c. 92.

County of } The jurors for our Lady the Queen upon their
to wit: } oath present that heretofore to wit at the
assizes holden for the county of , on the day of , in
the year of our Lord one thousand eight hundred and , ,
before , one of the justices of our Lady the Queen, a certain
issue between one E. F., and one G. H. in a certain action of
covenant was tried, upon which trial A. B. appeared as a witness for and on behalf of the said E. F., and was then and there duly sworn before the said , and did then and there upon his oath aforesaid falsely, wilfully, and corruptly depose and swear in substance and to the effect following, that he saw the said G. H. duly execute the deed on which the said action was brought, which fact was material to the said issue, whereas

(a) Pillory abolished by 4 & 5 V., c. 24, § 21.

in truth the said A. B. did not see the G. H. execute the said deed, and the said deed was not executed by the said G. H., and the said A. B. did thereby commit wilful and corrupt perjury.

Indictment for Subornation of Perjury—18 V., c. 92.

County of } *Same as last form to the end, and then proceed :*
 to wit : } And the jurors further present that before
 the committing of the said offence by the said A. B. to wit, on
 the day of , in the year of our Lord one thousand eight
 hundred and , C. D., unlawfully, wilfully and corruptly
 did cause and procure the said A. B. to do and commit the
 said offence in manner and form aforesaid.

PHYSIC AND SURGERY.

*By 8. G. IV., c. 3, it is enacted, that the practice of physic, surgery or midwifery, for hire, gain or hope of reward, by any person not duly licensed, or not being actually employed as a physician or surgeon in his Majesty's naval or military service, shall be a *misdemeanor*; and that upon the trial of any person charged with such misdemeanor, the proof of license, or the right to practise, shall lie upon the defendant. But no prosecution shall be commenced after one year from the offence committed; and no person convicted shall be imprisoned for more than six months, or fined above £25.

Indictment for practising without being duly qualified.

County of } The jurors for our lady the Queen, upon their
 to wit : } oath present, that A. A., late of the town-
 ship of , in the county of , being a person of
 a wicked mind and disposition, unlawfully, wickedly, and
 injuriously minding and intending to impose upon and deceive
 divers liege subjects of our lady the Queen, under the false
 colour and pretence that he the said A. A. was well skilled in
 the art, calling, profession and practice of physic, surgery and
 midwifery, and that he was of sufficient knowledge and ability
 to undertake and practise the said profession or calling, and
 to execute and perform the duties of such art, profession
 and calling; and also unlawfully, wickedly and injuriously,
 going about, and causing and procuring himself, the said A. A.
 to be engaged, retained and employed, by divers liege subjects
 of our said lady the Queen, in attempting to heal them of
 divers maladies, sores and diseases, wherewith the said liege
 subjects were affected, and in the delivery of pregnant women,
 for large sums of money to be paid to him the said A. A. for
 such his pretended skill in the said art, practice, profession or
 calling of a physican, surgeon and midwife, on the first day of

May in the year of the reign of our sovereign lady Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland, Queen, defender of the faith, with force and arms, at the township of aforesaid, in the county aforesaid, unlawfully, wickedly and injuriously, did set up and practise the said art, profession and calling of a physician, surgeon and midwife, and from thence hitherto hath practised physic, surgery and midwifery, at the township aforesaid, in the county aforesaid, for gain, hire and hope of reward, he the said A. A. then and there not being a member of the medical board of that part of this province formerly the province of Upper Canada, and not being licensed by any governor, lieutenant-governor, or person administering the government therein, to practise physic, surgery or midwifery, in the same, and not being actually employed as a physician, or surgeon in her Majesty's naval or military service, contrary to the form of the statute in such case made and provided, to the evil example of all others in the like case offending, and against the peace of our said lady the Queen, her crown and dignity. And the jurors aforesaid, do further present, that the said A. A. afterwards, to wit, on the first day of July, in the year of the reign aforesaid, with force and arms, at the township aforesaid, in the county aforesaid, unlawfully, wickedly and injuriously, did set up and practise the art, profession and calling, of a physician and surgeon, and from the said first day of July, in the year aforesaid, to the first day of March, in the year of the reign aforesaid, did practise physic and surgery, for hire, gain and hope of reward, he the said A. A. then and there not being a member of such medical board as aforesaid, and not being licensed to practise physic or surgery in that part of this province formerly Upper Canada aforesaid, and not being actually employed as a physician or surgeon in her Majesty's military or naval service, contrary to the form of the statute in such case made and provided, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lady the Queen, her crown and dignity.

PILLORY.

By the 4 & 5 Vic., c. 24. § 31, the punishment of the pillory is abolished.

PIRACY.

What acts amount to Piracy.

When subjects of the same state commit robbery upon each other upon the high seas, such acts of violence and depredation amount to piracy. And the same, if the subjects of different states, connected by ties of amity and friendship, commit robbery upon one another.—4 *Inst.* 154. But where states

are at open war with each other, the plundering of an enemy is then not an act of piracy, but a mere act of hostility and lawful capture. So, if persons making a capture at sea do so by authority of any foreign prince or state, this also cannot be considered piracy. Thus, even a capture by authority of the marauding states of Algiers, Tunis, or Tripoli, cannot be treated as piracy.—*Grot.* 2, c. 18, § 2; *Sir L. Jenk*, 790. Formerly, indeed, no subjects of the British empire were deemed pirates if they acted under the commission of any foreign power; but by the 11 & 12 Wm. III., c. 7, (which was levelled against commissions granted by *James II.* after his abdication), it is enacted that if any natural-born subjects or denizens of this kingdom shall commit any piracy or robbery, or any act of hostility against others of his Majesty's subjects or states, on pretence of authority from any person whatsoever, the offenders shall be deemed to be *pirates*, felons and robbers; and being convicted under that act, or the 28 Hen. VIII., c. 15, shall suffer capital punishment. In addition to this statute, the 18 Geo. II., c. 30, enacts that all natural-born subjects or denizens, who during any war shall commit any hostility upon the sea, or in any haven, river, creek or place, where the admiral has jurisdiction, against his majesty's subjects, by virtue or under colour of any commission from any of the king's enemies, or shall be otherwise adherent or giving aid or comfort to his Majesty's enemies upon the sea, or where the admiralty has jurisdiction, may be tried as *pirates*, felons and robbers, in the court of admiralty, on shipboard, or on land; and being convicted, shall *suffer death*, &c., as under the last statute.

By § 9 of the above statute of 11 & 12 Wm. III., c. 7, if any commander or master of any ship, or any seaman or mariner shall, in any place where the admiral has jurisdiction, betray his trust, and turn pirate, enemy or rebel, and piratically and feloniously run away with his or their ship, or any barge, boat, ordnance, ammunition, goods or merchandize; or yield them up voluntarily to any pirate; or shall bring any seducing message from any pirate, enemy or rebel; or consult, combine, or confederate with, or attempt or endeavour to corrupt any commander, master, officer or mariner, to yield up or run away with any ship, goods or merchandize, or to turn pirate; or if any person shall lay violent hands on his commander, whereby to hinder him from fighting in defence of his ship and goods; or shall confine his master; or make, or endeavour to make, a revolt in the ship, he shall be adjudged, deemed, and taken to be a pirate, felon and robber, and being convicted, shall suffer accordingly.

By 8 Geo. I., c. 24, § 1, (made perpetual by 2 Geo. II., c. 28, § 7), if any commander or master of any ship, or any other person, shall anywise trade with any pirate, by truck, barter, exchange, or in any other manner; or shall furnish any pirate with any supplies of any kind; or shall *fit out* any vessel to trade with, or shall supply or correspond with any pirate, every such offender shall be deemed and adjudged guilty of piracy, and shall suffer death.

Of Accessories.

Piracy being no felony by the common law, nor made so generally by any statute, the accessories to the offence were only triable by civil law, if their offence was committed on the sea; but if on the land, they were not triable at all till the 11 & 12 Wm. III., c. 7. By § 10 of this statute, it is enacted, that every person who shall knowingly or willingly set forth any pirate, or aid and assist in any piracy, he shall be deemed an accessory. And after any piracy shall be committed, every person who shall receive, entertain or conceal any such pirate, shall likewise be deemed an accessory. And all such accessories shall be tried after the course of the common law, according to the statute 28 Hen. VIII., as principals, and not otherwise, and shall *suffer death* and loss of land accordingly as such principals. But by 3 Geo. I., c. 24, all persons who by statute 11 & 12 Wm. III., are only deemed accessories, are by this statute declared to be *principals*, and shall and may be dealt with accordingly.

Of the Indictment, Trial and Judgment.

The indictment must allege the fact to have been committed on the *high seas*, within the jurisdiction of the *admiralty*, and lay it to be done *feloniously* and *piratically*. If it turn out that the goods were taken any where within the body of a county, the admiralty can have no jurisdiction to inquire into the offence. So, on the other hand, if goods were taken at sea and afterwards brought on shore, the offender cannot be indicted as for larceny in that county into which they were carried, because the original felony was no taking whereof the common law takes cognizance.—3 *Inst.* 113; 1 *Haw.*, c. 37, § 10.

By 28 Hen. VIII., c. 15, § 1, all treasons, felonies, robberies, murders and confederacies, committed in or upon the sea, or in any haven, river, creek or place, where the admiral has, or pretends to have power, authority or jurisdiction, shall be tried by commissioners of *oyer* and *terminer*, in such shires and places as shall be limited by the king's commission, in the same manner as if such offences had been com-

mitted on the land; and by § 3, the offender is excluded from the benefit of clergy. But notwithstanding this statute, the admiralty can claim no jurisdiction where the haven, river or creek, is within the body of a county; for in that case, the offence was always cognizable at common law: and all rivers are within the jurisdiction of the common law, until they flow past the furthest point of land next the sea.

In order to spare the expense and delay of bringing offenders from remote places to be tried in England, the 11 & 12 Wm. III., c. 7, § 1, provided that the courts of admiralty abroad might be authorised to try piracies, felonies and robberies, upon the sea; but as this act did not include treason, misdemeanors and other offences, the 46 Geo. III., c. 54, enacts that all treasons, piracies, felonies, robberies, murders, conspiracies and other offences, of what nature or kind soever, committed upon the sea, or in any place where the admiral has jurisdiction, may be tried (according to the course of the common law of this realm used for offences committed upon the land) in her Majesty's colonies, under the great seal. And all persons convicted of such offence shall be liable to the same punishment as persons would be if tried within this realm under the 28 Hen. VIII.

POISON.

Sir W. Blackstone in his commentaries, 4th vol., page 196, says, of all species of deaths, the most detestable is that of poison; because it can, of all others, be the least prevented either by manhood or forethought, and therefore by the statute 22 H. VIII., c. it was made treason, and a more grievous and lingering kind of death was inflicted on it than the common law allowed, namely, boiling to death; but this act did not live long, being repealed by 1 E. VI., c. 12. This extraordinary punishment seems to have been adopted by the legislature from the peculiar circumstances of the crime which gave rise to it; for the preamble of the statute informs us, that John Roose, a cook, had been lately convicted of throwing poison into a large pot of broth prepared for the Bishop of Rochester's family, and for the poor of the parish; and the said John Roose was by a retrospective clause of the same statute, ordered to be boiled to death.—*Ib. note* (26.) Lord Coke mentions several instances of persons suffering this horrid punishment.—3 *Inst.* 48.

If a physician or surgeon gives his patient a potion or plaister to cure him, which contrary to expectation kills him, this is neither murder nor manslaughter, but misadventure. But it hath been holden that if he was

not a *regular* physician or surgeon who administers the medicine, or performs the operation, it is manslaughter at the least.—*Mirr. c. 4*, § 16. *Britt. c. 5*; 4 *Inst.* 251. Yet Sir Matthew Hale very justly questions the law of this determination.—1 *H. P. C.* 430. And if one intends to do another a felony, and undesignedly kills a man, this is also murder. Thus, if one shoots at A. and misses *him*, but kills B., this is murder, because of the previous felonious intent. The same is the case where one lays poison for A.; and B., against whom the poisoner had no malicious intent, takes it, and it kills him, this is likewise murder. 1 *H. P. C.*, 466. So also if one gives a woman with child a medicine to procure abortion, and it operates so violently as to kill the woman, this is murder in the person who gave it.—*Ib.* 429.

Our own statute law contains the following provisions with regard to poison :

By 4 & 5 V., c. 27, § 9, administering poison or causing the same to be administered with intention to commit murder, is made felony, and punishable by *death*.

§ 13. If with intent to procure abortion, it is then felony and punishable at the discretion of the court, by imprisonment in the provincial penitentiary for life, or any term not less than seven years, or in any other place of confinement not exceeding two years.

By 12 V., c. 60, no person shall use any *strychnine* or other poison, as a means of killing any wild animal, or place any such poison, whether concealed in food or otherwise, in any place where it may be found by any such wild animal, under the penalty of £10, and if not forthwith paid upon conviction, imprisonment not exceeding three months, or until penalty and costs paid.

§ 2. No apothecary, chemist, druggist, vender of medicines, or other person shall sell or deliver any arsenic, corrosive sublimate, strychnine or other poison, mineral or vegetable, simple or composite, commonly known as deadly poison, or which being incautiously or secretly administered may cause immediate death, to any person who shall not then produce and deliver a certificate or note from some *justice of the peace*, physician, priest or minister of religion resident in the locality, addressed to such apothecary, &c., and mentioning the name, residence, calling or profession of the person requiring the same, under the penalty of £10, and if not forthwith paid upon conviction, commitment for a period not exceeding three months, or until penalty and costs paid.

§ 3. Such penalties to be recoverable before any one justice of the peace, on the oath of any one or more credible witnesses other than the prosecutor : prosecution to be commenced within six months ; and one moiety of the penalty to go to the prosecutor and the other to the public uses of the province. § 4 limits the operation of the act to Lower Canada.

By 14 & 15 V., c. 61, § 5, the above act 12 V., c. 60, is amended by omitting the words "justice of the peace" in the second section, and the 4 § is repealed ; and the act as amended is to extend to Upper Canada as well as Lower Canada.

See also *ante* "Cholorform," p. 140.

POLICE VILLAGES.

By the municipal act 12 V., c. 81, § 42, the municipal council of any county is authorised by by-law, upon the petition of any number of the inhabitants of any unincorporated village or hamlet, situate in such county, or for the municipal councils of any two or more counties, upon any such petition from the inhabitants of any incorporated village or hamlet, situate partly within one of such counties, and partly within another or other of them, to define the limits within which, in respect to such village or hamlet, there is, in the opinion of such municipal council or councils, a resident population sufficient to make it expedient that the provisions of this act, for the regulation and police of unincorporated villages should be applied to such village or hamlet, and every such by-law shall fix the place in such village or hamlet for holding the first election of police trustees, the person who shall preside thereat, and the hour of meeting. § 43. Until such village be incorporated it shall be lawful for the resident freeholders and householders, on the second monday in January next after three calendar months from the passing of such by-law, and annually on that day afterwards, to assemble at the time and place appointed, and elect from among themselves *three* police trustees for such village, who, or any two of them by a memorandum in writing under their hands, to be filed with the township clerk, shall within a reasonable time after such election nominate and appoint one of their number to be the inspecting trustee. § 44. The collector is required to deliver to the person presiding at such meeting a copy of his roll, comprising the names of the resident freeholders and householders of such village, and their assessment on the roll, and to verify the same by affidavit (or affirmation) endorsed

thereon, to be sworn (or affirmed) before any justice of the peace for the county; and the persons whose names are entered on such roll, and are resident in the village at the time of such election shall be entitled to vote thereat. But no person shall be elected a police trustee who has not been entered on the roll for rateable property to the value of £100 in his own right or in the right of his wife. § 45. Trustees of the preceding year or any two of them, may appoint a person to preside at the next annual meeting. § 46. In case of his absence (one hour) the majority of the meeting may appoint a person to preside, and the election is to proceed. § 47. In case of vacancy among the police trustees the remaining trustees may appoint another in his place. § 48. Police trustees neglecting duties of office to forfeit 20s., § 49, to be sued for within ten days afterwards. § 50. All penalties incurred under the regulations of the police by the next succeeding section, to be sued for by the inspecting trustee, or in his absence, or being the party complained against, by some other of such trustees, before any one justice, having jurisdiction within five miles of the village, or else, before any other justice in such village, by information in a summary way, upon the oath of one or more witnesses. Penalties to be levied by distress and sale, and applied to the repairs and improvements of the streets and lanes of such village. § 51. Police trustees to enforce within the limits of such village the following regulations, viz. :

1. *A Ladder* on the roof to every chimney of a house, more than one story in height; and another from the ground to the roof, under the penalty of 5s. for every neglect, and 10s. per week upon the proprietor.

2. *Two buckets* for water in case of fire, to be kept by every householder, under penalty of 5s. for each.

3. *Ovens and Furnaces* of any baker, hatter, brewer, manufacturer of pot and pearl ashes, or any other person, to be connected with a stone or brick chimney, three feet higher than the building, or any building within one chain, under a penalty not exceeding 10s., and 15s. a week during neglect.

4. *Stove-pipes* to have six inches between the pipe and partition or floor, or nearest wood work, and the pipe inserted into a chimney with ten inches between the stove and any wood work or lathed partition, under a penalty of 10s.

5. Entering any mill, barn, outhouse, or stable, with a *lighted candle* or lamp, not well enclosed in a lantern, or with a lighted pipe or cigar, or carrying fire not properly secured into such barn, &c., penalty 5s. for every offence.

6. *Lighting a fire* in any wooden house or outhouse, except

in brick or stone chimney, or in a stove—penalty 5s. for each offence.

7. *Carrying fire* through any street, lane, yard, garden or place, except in a copper, iron or tin vessel—penalty 2s. 6d., and for every subsequent offence, 5s.

8. *Putting hay, straw or fodder* in any dwelling-house, 5s. for the first offence—10s. per week until removed.

9. *Gunpowder* for sale to be kept in boxes of copper, tin or lead, under a penalty of 20s. for first offence, and 40s. for every subsequent offence.

10. *Selling gunpowder* at night—penalty 40s. first offence, 60s. for every subsequent offence.

11. Depositing *ashes or cinders* (pot and pearl ashes excepted) in any wooden vessel, not lined with sheet-iron, tin or copper; for every offence, 5s.

12. Depositing quick or unslacked *lime* in any building, in contact with wood work—for every offence 5s., and 10s. per diem until removed.

13. *Lighting fires* in any street, lane, or public place—penalty 5s.

14. *Erecting furnace* for making charcoal of wood—penalty 20s.

15. Throwing *filth, rubbish, or ordure* into any street, lane or public places—penalty, 2s. 6d., and 5s. every week until removed.

POLICE OFFICE.

By the Municipal Act, 12 V. c. 81, § 69, it is enacted that there shall be in each incorporated town a police-office, at which it shall be the duty of the police magistrate, or the mayor, in case of his absence or sickness, to attend daily, or at such times and for such periods as shall be necessary for the disposal of business (excepting Sunday, Christmas-day, Good Friday, or any day appointed by proclamation for a public fast or thanksgiving) unless in case of urgent necessity; and it shall be lawful for any justice of the peace having jurisdiction within the town, at the request of the mayor, to sit for such mayor at such police-office. § 70. Such police magistrate to be appointed by the Crown during pleasure; and every such police magistrate to be *ex-officio* a justice of the peace for the town, and for the county within or on the borders of which such town shall lie, and shall receive a salary of not less than £100 per annum, payable quarterly, out of the municipal funds of such town. Such police magistrate not to be appointed until the corporation shall have communicated to the Governor-General, through the Provincial Secretary, that such officer was required. § 71. Such police magistrate shall have the power of suspending from office any chief constable or constable of the town for any period

in his discretion, immediately afterwards reporting the same, with the cause thereof, if he deem such chief constable or constable deserving of dismissal for the cause of such suspension, to the town council, who shall in their discretion dismiss such officer, or restore him to office after the period of suspension shall have expired; and during the period of such suspension such police magistrate may appoint a substitute. § 72. All offences against the by-laws of any town, and all penalties for refusal to accept or be sworn into office in such town, and all other offences, over which one or more justices of the peace have jurisdiction within such town, may be prosecuted and sued for, tried and recovered before the police magistrate of such town, either acting alone or assisted by one or more justices of the peace for such town, as the case may require; and such police magistrate shall be *ex-officio* a justice of the peace for such town. § 73. Clerks of the town councils to be clerks of the police offices, and receive the same emoluments as appertain to clerks of justices of the peace, unless by act of the town councils another officer be appointed.

By 16 V., c. 178, § 28, a police magistrate is authorised to do whatever may be done by *two* justices. A similar provision will be found in 16 V., c. 179, § 21.

POSSE COMITATUS.

The *posse comitatus*, or power of the county, includes the aid and attendance of every person above fifteen years of age under the degree of peer, except ecclesiastical persons, and such as labour under any infirmity. It may be raised by the sheriff, or justices of the peace, where a riot is committed, where a forcible entry is made, or where there is any force or rescue contrary to the commands of the king's writ, or in opposition to the execution of justice. Persons refusing to assist in this service, when legally required, may be fined and imprisoned. The statutes relating to the *posse comitatus* are the 17 R. II., c. 8; 13 Hen. IV. c. 7, and the 2 Hen. V., c. 8; and see 2 *Inst.* 198; 3 *Inst.* 161.

POST-OFFICE.

By *3 W. IV., c. 4, which determines the number of cases in which capital punishment shall be inflicted, it is enacted, that if any person shall rob any person carrying or conveying, or having charge of his Majesty's mail in any part of this province, of any letter or letters, packet or packets, bag or mail of letters, every such offender being convicted thereof shall suffer *death* as a felon. § 12. And accessories before the fact, shall also suffer death.

By 13 & 14 V., c. 17, intituled, "An act to provide for the transfer of the management of the inland posts to the provincial government, and for the regulation of the said department," it is enacted by § 1, that this act shall come into force, at and from the time the royal assent thereto shall be proclaimed in this province, or at such subsequent time as by order of her Majesty in council shall be fixed. § 2. The inland posts and post communications in this province, so far as is consistent with the imperial acts now in force, shall be exclusively under provincial management and control; and the revenue arising therefrom shall form part of the provincial revenue. § 3. All post offices, and postal divisions, stations, districts and establishments, and all commissions or appointments of any officers or persons employed shall continue and remain, subject to the provisions hereinafter made, as well as all bonds and contracts by, with, or to any such officers, and contracts for conveyance of the mails, &c. § 4. Except the provincial postmaster-general, no officer appointed or continued under this act shall receive more than £400 per annum (a) in salary or emoluments, and the provincial postmaster-general's salary shall not exceed £750 per annum. § 5. The provincial postmaster-general to be appointed by letters patent, and other officers by letter from the proper officer, communicating the Governor's pleasure; and nothing in this act shall prevent the provincial postmaster from sitting and acting as a member of the Legislative Assembly. § 6. All privileges, powers and authority now vested by any provincial act in her Majesty's deputy postmaster-general, with regard to services to be required from any railroad company, respecting the conveyance of the mail, &c., shall be vested in the provincial postmaster-general. § 7. Mails in future not to be carried across ferries *gratis*, but such service shall be fixed by contract, or arbitration. § 8. Provincial postage on letters and packets (not being newspapers or printed pamphlets, magazines or books, entitled to pass at a lower rate) shall not exceed the rate of 3d. currency per half ounce for any distance within this province, any fraction of a half ounce being chargeable as a half ounce. No *transit* postage shall be charged on any letter or packet passing through this province to any other colony in British North America, unless the sender choose to *pre-pay* it; nor on any letter or packet from any such colony if *pre-paid* there. *Two-pence* sterling the half ounce shall remain as the rate in

(a) Extended to £500 per annum by 18 V., c. 79.

operation, as regards letters by *British mails*, to be extended to countries having postal conventions with the United Kingdom, unless her Majesty's government in the United Kingdom shall see fit to alter this rate, to be changed to 3d. currency. The pre-payment of provincial postage shall be optional. No privilege of franking shall be allowed as regards provincial postage. *Provincial stamps* for the pre-payment of postage may be prepared under the order of the Governor in council; which stamps shall be evidence of pre-payment. The provincial postage on newspapers, pamphlets and printed books, to remain as it now is, until altered by regulation under this act; and subject to the foregoing provisions, the Governor in council shall have full power and authority to make orders and regulations respecting the post office department as defined in the act.

§ 9. Any person who shall collect, send, convey, or deliver or undertake to convey, or deliver any letter within this province, or who shall have in his possession any letter for the purpose of conveying or delivering it, otherwise than in conformity with this act, shall, for each letter, incur a penalty of £5, with the following exceptions:—1. Letters sent by a private friend, in his way, journey or travel, provided such letters be delivered by such friend to the party addressed. 2. Letters sent by a messenger on purpose, concerning the private affairs of the sender or receiver. 3. Commissions or returns thereof; and affidavits, or writs, process, or proceedings, or returns thereof, issuing out a court of justice. 4. Letters addressed to a place out of the province and sent by *sea*, and by a private vessel. 5. Letters lawfully brought into this province and immediately posted at the nearest post-office. 6. Letters of merchants, owners of vessels of merchandize, or of the cargo or loading therein, sent by such vessel of merchandize, or by any person employed by such owners for the carriage of such letters, according to their respective addresses, and delivered to the person addressed, without pay, hire, reward, advantage or profit, for so doing. 7. Letters concerning goods or merchandize, sent by common known carriers, to be delivered with the goods to which such letters relate, without hire, reward, profit or advantage, for receiving or delivering them: *provided*, that nothing herein contained shall authorise any person to collect any such excepted letters for the purposes aforesaid.

§ 10. Any letters conveyed, received, collected, sent or delivered in contravention of this act, may be seized by any person or any officer of the provincial post-office, or revenue,

and taken to the nearest post-office. § 11. Postage on letters (if not pre-paid) shall be payable by the party to whom addressed; and if refused, or the party addressed cannot be found, then such postage shall be recoverable from the sender. § 12. No postmaster shall be bound to give *change*, but the exact amount of postage on any letter or package shall be tendered or paid in current coin, or provincial postage stamps. § 13. Subject to this act and instructions from the Governor, the postmaster-general shall have power to open and close post-offices and mail routes, suspend any postmaster or officer, or servant of the department until the Governor's pleasure be known, and appoint a person in his stead; to enter into and enforce contracts for conveyance of the mail; and to make rules and orders for the management of the department; and sue for penalties. The like powers to be exercised by his deputies. § 14. Soldiers' and seamen's letters to be subject to certain postage, to be fixed by the Governor in council. § 15. The postmaster-general not to be liable to any party for the loss of any letter or packet sent by post.

§ 16. *Offences punishable as Felonies.*

1. To steal, embezzle, secrete, or destroy any post letter, shall be felony, punishable in the discretion of the court by imprisonment in the provincial penitentiary, for not less than *three* nor more than *fourteen* years; unless such post letter shall contain any chattel, money or valuable security, in which case the offence shall be punishable by imprisonment in the penitentiary for life.

2. To steal from or out of a post letter any chattel, money or valuable security, shall be felony, punishable by imprisonment in the said penitentiary for life.

3. To steal a post letter bag, or a post letter from a post letter bag, or a post letter from any post-office, or from any office of the provincial post-office, or from a mail, or to stop a mail with intent to rob or search the same, shall be felony, punishable by imprisonment in the said penitentiary for life.

4. To open unlawfully any post letter bag, or unlawfully to take any letter out of such bag, shall be felony, punishable by imprisonment in the penitentiary for fourteen years.

5. To receive any post letter, or post letter bag, or any chattel, money or valuable security, the stealing, taking, secreting, or embezzling whereof is hereby made felony, knowing the same to have been feloniously stolen, taken, secreted or embezzled, shall be felony, punishable by imprisonment in the

penitentiary for *fourteen* years, and the offender may be indicted and convicted, either as accessory after the fact or for a substantive felony.

6. To forge, counterfeit or imitate any postage stamp, issued or sued under the authority of this act, or under the authority of the imperial government, of any British North American province, or any foreign country, or knowingly to use any such forged, counterfeited or imitated stamp, or to engrave, cut, sink, or make any plate, die, or other thing, whereby to forge, counterfeit, or imitate such stamp, or any part or portion thereof, except by permission in writing of the postmaster-general, or some officer or person who under this act may lawfully grant such permission, or to have possession of any such plate, die, or other thing as aforesaid, without such permission as aforesaid, or to forge, counterfeit or unlawfully imitate, use or affix to, or upon any letter or packet, any stamp, signature, initials or other mark or sign, purporting that such letter or packet ought to pass free of postage, or at a lower rate of postage, or that the postage thereon had been paid, shall be felony, punishable by imprisonment in the penitentiary for life.

Offences punishable as Misdemeanors.

1. To open unlawfully, or wilfully to keep, secrete, delay or detain, or procure, or suffer to be unlawfully opened, kept, secreted or detained, any post letter bag, or any post letter, whether the same come into the possession of the offender by finding or otherwise howsoever, or after payment or tender of the postage thereon (if payable to the party having possession of the same), to neglect or refuse to deliver up any post letter to the person addressed or legally entitled thereto, shall be a misdemeanor.

2. To steal, or for any purpose to embezzle, secrete, destroy, wilfully detain or delay, any printed form or proceeding, newspaper, printed paper or book sent by post, shall be a misdemeanor.

3. To obstruct or wilfully delay the passing or progress of any mail or of any carriage or vessel, horse, animal or carriage employed in conveying any mail on any public highway, river, canal or water communication in this province, shall be a misdemeanor.

4. To cut, tear up, or wilfully to damage or destroy any post letter bags, shall be a misdemeanor.

5. It shall be a misdemeanor for any mail carrier or any person employed to carry any mail, post letter bag or post letters, to be guilty of any act of drunkenness, negligence, or misconduct, whereby the safety or punctual delivery of

such mail, post letter bag or post letters shall be endangered; or, contrary to this act or any regulation made under it, to collect, receive or deliver any letter or packet, or to neglect to use due care and diligence to convey the mail, post letter bag, or post letter, at the rate of speed appointed therefor by the regulations then in force or the contract under which he acts.

6. It shall be a misdemeanor for any toll-gate keeper to refuse or neglect *forthwith upon demand* to allow any mail or any carriage, horse or animal employed in conveying the same, to pass through such toll-gate, whether on the pretence of the nonpayment of any toll, or any other: *provided* that nothing herein shall affect the right of any officer or person travelling with any mail, to pass *toll free* through any toll-gate; but in any case where such officer or person would now pass toll free, any officer or person travelling with a mail after the passing of this act, shall, in like manner, pass toll free, but not otherwise or elsewhere, unless it be otherwise provided by competent authority: but in any case he shall not be detained on pretence of demanding such toll, but the same, if due and not paid, shall be recoverable in the usual course of law from the party liable.

7. Any wilful contravention of any regulation lawfully made under this act shall be a misdemeanor, if declared so by such regulation.

8. To solicit or endeavour to procure any person to commit any act hereby made or declared a felony or misdemeanor, shall be a misdemeanor; and every such misdemeanor shall be punishable by fine or imprisonment, or both, in the discretion of the court; and every principal in the second degree, and every accessory before or after the fact to any such felony as aforesaid, shall be guilty of felony, and punishable as the principal in the first degree; and every person who shall aid, abet, counsel, or procure the commission of any such misdemeanor as aforesaid, shall be guilty of misdemeanor, and punishable as a principal offender; and any imprisonment awarded under this act shall be in the penitentiary, if for a term of or exceeding two years: and if the imprisonment awarded be for a less term, it may be with or without hard labour in the discretion of the court.

§ 17. Offences under this act may be dealt with, indicted, tried and punished, and charged to have been committed in the locality where committed, or where the offender shall be apprehended, or be in custody. § 18. In indictments, the property of such post letter, letter bag, post letter, packet, chattel, money, or valuable security sent by post, shall be laid in the provincial postmaster-general. § 19. Certain provisions of the 10 & 11 V., c. 31, extended to officers of the provincial post office. § 20. The provincial postmaster-

general may compromise and compound any action, suit, or information commenced by his authority, for recovering any penalties under this act, on such terms and conditions as he shall think proper. § 21. All mere pecuniary penalties imposed by this act, shall be recoverable with costs in any court having jurisdiction to the amount, and shall belong to the Crown, saving the power of the Governor in council to allow any part or the whole to the informer. But all such penalties shall be sued for within one year after being incurred; and if the penalty do not exceed £10, it may be recovered before any one justice of the peace, in a summary manner, and if not paid may be levied by distress under warrant of such justice; and if exceeding £10, the offender may be indicted for a misdemeanor (instead of being sued for the penalties), and if convicted, punished by fine, or imprisonment, or both, in the discretion of the court. § 22. Penalties may be recovered on the oath of one credible witness. § 22. In any action against any postmaster, &c., a statement of the account of such postmaster, shewing the balance, and certified as correct by the accountant of the post office, shall be evidence, and judgment shall be given for double the amount. § 24. Interpretation clause.

By 14 & 15 V., c. 71, so much of the 13 & 14 V., c. 17, as may be inconsistent with this act is repealed. § 2. Provides for the mode of advertising for tenders for mail service. § 3. Additional compensation to mail carriers limited. § 4. The lowest tender to be accepted. § 5. Abstracts of all the tenders to be recorded by the postmaster-general in a book. § 6. Any person employed in the post-office department becoming interested in any mail contract or acting as agent for any contractor, shall be dismissed. § 7. Tenders to be accompanied by a written guarantee. § 8. Contracts for less than £50 per annum may at the discretion of the postmaster be submitted to public competition, or concluded by private agreement. § 9. Contracts not to be made with persons who have combined to keep back tenders. § 10. Unclaimed letters to be advertised in a local newspaper. § 11. The postmaster authorised to contract with any railroad company for conveying the mail either with or without advertising. § 12. Annual reports to be made by the postmaster-general to the Governor for the purpose of being laid before parliament, of the finances of the department, and other matters. § 13. Post routes not yielding one fourth of the expense of its establishment within three years shall be discontinued. § 14. Authority to establish branch post-offices in any city or place requiring such accommodation. § 15.

Authority for establishing a *penny post* delivery for letters in any city, and $\frac{1}{2}$ penny for newspapers. § 16. Three inspectors of post-offices to be appointed and their duties defined. § 17. Insufficient stamps on letters to be disregarded, and the full postage charged. § 18. No allowance to be made to any clerk or officer for extra services. § 19. Postmasters upon their appointment to give bond with approved security for the faithful discharge of their duties. § 20. Postmasters neglecting to render accounts and pay over the balance due at the end of every *three months* to be sued: and all suits to be instituted in the name of the postmaster-general. § 21. Any postmaster neglecting to render his accounts for one month after the time prescribed, shall forfeit double the value of the postages at the same office in any equal portion of time. § 22. Postmaster of Quebec, Montreal, Kingston, Toronto and Hamilton, to render quarterly accounts to the postmaster-general under oath of all emoluments received for boxes or pigeon holes, or other receptacles for letters or papers, and of all emoluments from branch post-offices: and if exceeding £400 per annum, the excess shall be paid to the postmaster-general for the use of the department, and no postmaster shall, under any pretence, have or retain in the aggregate, more than £400 per annum, including salary, commissions, boxes, and other emoluments. § 23. If any officer of, or connected with the post office department, shall convert to his own use, or shall use by way of investment in any kind of property or merchandise, or shall loan with or without interest, any of the public moneys entrusted to him for safe keeping, transfer disbursements, or any other purpose, every such act shall be deemed an embezzlement, and declared to be a felony; and the neglect or refusal to pay over any public moneys in his hands, or to transfer or disburse any such moneys promptly on the requirement of the postmaster-general, shall be *prima facie* evidence of such conversion; and all persons advising or knowingly and willingly participating in such embezzlement, upon conviction, shall for every such offence forfeit and pay to her Majesty a fine equal to the amount embezzled, and shall suffer imprisonment for a term not less than three months, and not more than seven years.

By 16 V., c. 8, § 1, all former provisions in 13 & 14 V., c. 17, and 14 & 15 V., c. 71, inconsistent with this act are repealed. § 2. In what cases only contracts for carrying the mail need be advertised at the seat of government. § 2. Proceedings when the postmaster-general shall deem the

lowest tender excessive. § 3. Conditions on which United States mails may be carried through Canada. § 5. Such mails to be deemed her Majesty's mails as regards the punishment of offences committed in respect thereof. § 6. Stealing, purloining, embezzling, or obtaining by false pretences, or unlawfully making, forging, or counterfeiting any key to any lock in use by the post office department, or any of the mails or mail bags; or having in possession any such mail key or lock with intent unlawfully to use, sell, or otherwise dispose of the same, to be deemed felony, punishable by imprisonment in the penitentiary for a period not exceeding seven years. § 7. Postmasters allowed to be mail contractors. § 8. Letters suspected to contain contraband goods may be detained, and proceedings thereon. § 9. No mail stage shall be exempt from toll on any road or bridge unless provided for in the act or charter, excepting existing contracts, unless there be more than four passengers.

By 18 V., c. 79, § 2, so much of the 4th § of the post-office act (13 & 14 V., c. 17) as limits the postmaster's salary to £400 per annum, is repealed, and enlarged to £500 per annum. § 3. So much of the 16th § of the 14 & 15 V., c. 71, as limits the *number* of inspectors, is repealed. § 4. All letters and mailable matter addressed to or sent by the Governor, or by any public department, shall be postage free, under such regulations as may be directed by the Governor in council. § 6. All public documents and printed papers may be sent by the speaker, or chief clerk aforesaid, to any member of either house during the recess, free of postage. § 7. And such members may also, during the recess, send postage free all papers furnished by order of either branch of the legislature.

By 20 V., c. 25, §§ 1 and 5 of 18 V., c. 79 are repealed. § 2. Newspapers printed and published within this province, and addressed from the office of publication, shall be transmitted postage free to any other post office in Canada, or to the united kingdom or any British colony, or to France. § 7. Certain other periodicals to pass free. § 6. Letters and other mailable matter addressed to, or sent by the speaker or chief clerk of the Legislative Council, or Legislative Assembly, or to or by any members at the seat of government during the ten days before parliament, to be postage free. § 7. Postmaster-general's reports to be made up to what time. § 8. Postmasters, &c., to account and pay over at such intervals as the postmaster-general shall think fit. § 9. Annual report to contain certain particulars as to money orders.

POT AND PEARL ASHES.

By 18 V., c. 11, § 1, the former act 6 V., c. 6, is repealed.

§ 2. Description of barrels in which only ashes shall be inspected not to exceed 32 inches in length by 22 inches in diameter on either head, nor less than 30 inches in length by 20 inches in diameter on either head, and the chime thereof not to exceed one inch; and every manufacturer shall be bound to mark in legible characters on the end of each barrel before each is filled the exact weight thereof. § 3. Licenses existing previous to the 1st of January, 1855, to be cancelled.

§ 4. Boards of trade at Quebec, Montreal, Toronto and Kingston and municipal authorities in other places to appoint a board of examiners of applicants for the office of inspector. Board of examiners in Quebec and Montreal to consist of five persons, and other places three fit, proper, and skilful persons resident in the place or vicinity; such examiners before acting to take an oath of office as prescribed in the act. § 5. The mayor of Quebec, Montreal, Toronto and Kingston for the time being, and chief municipal officer of any other place authorised to appoint an inspector or joint-inspector for the said cities and places. Inspectors to undergo examination before the board as to fitness, character, and capacity, and not to be appointed unless approved and recommended by such board; nor in any place where shall be a board of trade, except on the requisition of such board. Inspectors before acting to furnish two sufficient sureties of £500 each, if for Montreal, and £250 each for other places.

§ 6. Bond of suretyship to be kept at the office of the clerk of the corporation. § 7. Board of examiners authorised to require the attendance upon such examination of two or more skilled persons in the manufacture of ashes, who may, in the presence of the board, question the applicant as to his knowledge in the matter. § 8. Persons appointed inspectors to take a certain oath of office prescribed in the act before acting. § 9. Present inspectors and assistants to retire on 1st of January, 1855. § 10. Mode of inspecting, classifying and marking ashes as *first sort*, *second sort*, and *third sort*, and their qualities defined. Inspector to weigh each barrel and mark on the branded head with *black* the weight thereof, including tare, and the weight of the tare under the same, and he shall brand the same in plain letters and figures on each barrel containing ashes of the first quality the words *first sort*; of the second quality the words *second sort*; and of the third quality the words *third sort*, together with the words *pot ash*, *pearl ash*, as the case may be, with his own name and the place of inspection; he shall collect the crustings

(if any) of each separate lot, and deduct the value from the inspection charges to be paid by the proprietor of such lot, or deliver them to him. He shall mark the word *unbranded* No. 1, 2, 3, 4, 5, according to its strength, on every barrel so adulterated with stone, sand, lime, salt, or any other improper substance, so as not to admit of its being classified as *first*, *second*, or *third*, and he shall also make and deliver a separate weigh-note or bill of each quality whenever required by the owner or his agent. § 11. Inspectors (except in Montreal) to provide convenient premises for storage and inspection, to keep the barrels in some dry place safe from weather and floods, and under a tight roof, and if in sheds enclosed on every side; and every inspector violating this provision shall forfeit and pay to the owner 10s. for every barrel not stored as aforesaid besides actual damages sustained by such owner. § 12. Inspector for Montreal to provide stores and insure ashes against fire. § 13. Inspectors to receive certain rates of remuneration for their services. § 14. Inspectors at Montreal and Quebec to appoint assistants and clerks; assistants to give security. § 15. And be removed at pleasure. § 16. Vacancies at Montreal to be supplied by the mayor of the city. § 17. Any inspector or assistant while in office directly or indirectly concerned in the buying or selling of any pot or pearl ashes, or participating in any transaction or profit arising therefrom, (further than the fees or emoluments under this act,) or who shall permit any cooper or other person by him employed to retain or keep any pot or pearl ashes, or who shall brand any barrel or barrels of ashes of any description or size other than is prescribed in the act, or who shall date any weigh note or bill of inspection differently from the time when the ashes were actually inspected, or who shall deliver out of his possession any such note or bill of inspection without any date, or who shall not conform to the provisions of this act shall, upon being legally convicted, for every such offence incur a forfeiture and penalty of not exceeding £100, and be for ever disqualified from exercising such office; and any inspector, or assistant, or clerk, or other persons who shall make or cause to be made any fraudulent bill of ashes shall be guilty of felony, and shall, upon conviction, be confined at hard labour in the penitentiary for any term not exceeding seven years.

§ 18. Any inspector, or his assistant, not being then employed on duty, refusing on application on lawful days, between sunrise and sunset, to receive any ashes, or who shall neglect or delay to proceed in such examination and inspection, for the space of two hours after such application so

made to him shall, for each offence, forfeit £5 to the use of the person so delayed. § 19. If any person shall counterfeit any of the aforesaid brand-marks of the inspector, or shall impress or brand the same, knowing the same to be counterfeit, on any barrel or barrels of pot or pearl ashes, or any other mark or marks purporting to be the mark or marks of the inspector, or of any manufacturer of pot and pearl ashes, either with the proper marking tools of such inspector or manufacturer, or with counterfeit representations thereof, or who shall empty any barrel or barrels of pot or pearl ashes, branded as aforesaid by an inspector or manufacturer, in order to put therein other pot or pearl ashes for sale or exportation, without first cutting out the said brand-marks, or shall fraudulently pack therein any other substance than the pot or pearl ashes packed in the same by the inspector or manufacturer: and if any person in the employ of any inspector or manufacturer shall hire or loan out the marks of his employer to any person whatsoever, or shall connive at or be privy to any fraudulent evasion of the provisions of this act, such person or persons shall for every such offence, forfeit and incur a penalty of £50.

§ 20. If any dispute shall arise between any inspector or assistant inspector and the proprietor of any pot or pearl ashes with regard to the quality thereof, then, upon application to any one of her majesty's justices of the peace for the district, such justice shall issue a summons to three persons of skill and integrity, one to be named by the inspector, another by the proprietor or possessor, and the third by the justice, requiring them to examine and inspect the same, and report their opinion on the quality and condition thereof under oath, (to be administered by such justice), and their determination, (or that of a majority,) shall be final, and the inspector or his assistant shall brand each and every barrel of the qualities directed by such determination, according to the provisions of this act; and if the opinion of the inspector be confirmed, the reasonable costs of such re-examination, to be ascertained and awarded by such justice, shall be paid by the proprietor or possessor of the ashes, if otherwise, by the inspector.

§ 21. Nothing herein contained shall be construed to prevent any person from exporting pot and pearl ashes without inspection, provided that on one end of the barrel there shall be neatly and legibly branded or marked the name and address of the manufacturer or packer, the weight and tare of the barrel, and the quality of ashes contained in it; but any person who shall export any pot or pearl ashes not so marked as aforesaid; or shall wilfully mark any such barrel falsely, shall thereby incur a penalty of £5. § 22. All

finer, penalties and forfeitures imposed by this act, not exceeding £10, (a) shall be recoverable by the inspectors, their assistants, or any other person suing for the same in a summary way before any court of competent jurisdiction, and shall, on failure of payment, be levied by execution, as in the case of debt: and one moiety of such fines, when recovered, shall (except when otherwise provided) be paid to the treasurer of the city or place where such action shall be instituted, for the use of the locality; and the other moiety shall belong to the prosecutor. § 23. Limitation of actions. § 24. Act to commence 1st January, 1855..

By 18 V., c. 95, §. 1, the words "or packer," in the 21 § of the last mentioned act is repealed. § 2. Any person not being duly authorised under the said act who shall in any manner whatsoever assume the title or office of inspector of pot or pearl ashes, shall exercise any of the duties of such inspector, or shall issue any bill, certificate or declaration establishing or purporting to establish the quality of any pot or pearl ashes shall, for every such offence, incur a penalty of £5, recoverable in like manner as prescribed by the 22 § of said act, or by summary conviction before any justice of the peace, who, in default of immediate payment, may issue a distress warrant, or commit the offender to the common gaol until such penalty be paid. § 3. All the provisions of said act shall apply to this act in so far as they are not inconsistent with the provisions hereof.

POUND BREACH.

Pound breach is the forcibly breaking the pound, in which cattle or goods have been put after being lawfully distrained, for the purpose of rescuing them. It has been doubted whether this is an indictable offence, when unaccompanied by a breach of the peace.—4 *Leon.* 12; 3 *Burr.* 1791, 1731. But as pound breach is considered a greater offence at common law than even a rescue of the goods distrained, and is no doubt an injury and insult to public justice, it seems to be equally indictable as such at common law.—*Mirror*, c. 2, § 26; 2 *Chit.* c. 4, 204, note (b). It is well observed, however, that the civil remedy given by the statute of 2 W. & M. c. 5, § 4, will, in most cases of a pound breach, or a rescue of goods distrained for rent, be found the most desirable mode of proceeding, where the offenders are responsible persons.—1 *Russ.* 363. For under the provisions of that sta-

(a) The act does not seem to provide any specific remedy for the recovery of penalties above £10.

tute, the party grieved may, in a special action on the case, recover treble damages and costs against the offenders, or against the owner of the goods, if they come to his use.—
See Bradley on Distresses, 282; 6 Bac. Ab. Rescue, C.

The punishment, upon a conviction or indictment for pound breach, is fine or imprisonment, or both.

Indictment for Breaking Pound. (CHITTY.)

County of , } The jurors, &c., that on, &c., at, &c., one J.
 to wit. } C. took and distrained one mare and two
 colts, of the cattle of one J. S., late of the township aforesaid,
 in the county aforesaid, yeoman, of the price of twenty pounds,
 in and upon a certain close or parcel of land, of him the said J.
 C., situate and being at, &c., aforesaid, wrongfully feeding and
 depasturing upon the grass growing in and upon the said close
 and parcel of land and doing damage to him, the said J. C.
 there, as a distress for the damage then and there done and
 doing by the said cattle, and the said mare and colts so taken
 and distrained, as aforesaid, he, the said J. C., on the same
 day and year aforesaid, at, &c., aforesaid in the common pound
 of the said township of in the county aforesaid, impounded
 and kept, and detained the same in the said common pound
 there, as a distress, for the cause aforesaid: and the jurors,
 &c., do further present, that the said mare and colts, being so
 impounded, and remaining in the said common pound there,
 as a distress, for the cause aforesaid, the said J. S, on &c.,
 aforesaid, with force and arms, at, &c., aforesaid, the said com-
 mon pound, broke and entered, and the said mare and colts
 from and out of the same, without the license, and against the
 will of the said J. C., and without any satisfaction having been
 made to the said J. C. for the damage done by the said mare
 and colts, as aforesaid, unlawfully did rescue, take, lead and
 drive away, in contempt of our lady the Queen and her laws,
 to the evil and pernicious example of all others in the like case
 offending, and against the peace of our said lady the Queen,
 her crown and dignity.

POUND KEEPERS.

By 12 V., c. 81, § 31, the municipal corporation of each township is empowered to make by-laws for (amongst other things) the appointment, under the corporate seal, of a sufficient number of pound-keepers and other officers, with power to displace them and appoint others, and add to or diminish the number of them, as the corporation shall see fit; also, for regulating and prescribing their duties, and the penalties to be incurred on their making default; and for settling the remuneration to township officers; and for inflicting reasonable penalties for refusing to serve office.

Pound-keepers' Duties by Statute.

It is enacted by 1 V., c. 21 (the whole of which is repealed by 12 V., c. 80, excepting sections 32, 33, 34 and 35, which are expressly saved from the operation of this act, by schedule B.), § 32, that pound-keepers appointed under this act are to provide themselves with sufficient yards or enclosures for the safe keeping of animals impounded; and pound-keepers are required to impound all animals unlawfully running at large, trespassing and doing damage, that may be delivered to them by any person resident within their division, and shall furnish the same with necessary food and drink; and if after 48 hours such animals shall not be claimed and redeemed by the owner paying the pound-keeper his lawful demand and charges, and the amount of damages awarded as hereinafter provided, he shall cause a notice in writing to be affixed in three public places in the township, for at least fifteen days, giving a description of the animals, and stating the time and place of sale; and if the owner does not redeem the same within the time, by paying the pound-keeper's fees, to be regulated from time to time by the town wardens, who shall furnish a copy or schedule to the township clerk for the information of the pound-keepers, and the charges and damages awarded to the person impounding the same, said pound-keepers shall sell the same to the highest bidder, and shall, after deducting his own legal charges, and damages awarded to the impounder, return the overplus to the owner: *provided*, that if no person claim such animals within three months after public notice and sale as aforesaid, such overplus shall be paid to the township clerk, to be expended in the improvement of the roads and bridges of the township.

§ 33. If any ox, horse or cow shall be impounded, and not claimed within fifteen days, and the owner not known to the pound-keeper, he shall not sell the same at the time stated in such notice, but shall postpone the sale for forty days, when the pound-keeper shall sell the same and dispose of the proceeds as before mentioned: *provided*, that the owner may at any time before such sale redeem the same by paying demands as aforesaid.

§ 34. Person impounding cattle shall within twenty-four hours state in writing to the pound-keeper his demands against the owner for damages; and if the owner shall tender to the pound-keeper the full sum which shall or may be awarded as damages, with the costs then incurred, he shall not be liable to any costs afterwards, but the same shall be borne by the party claiming excessive damages.

§ 35. In case the owner shall object to the amount of damages claimed, the pound-keeper shall, within forty-eight hours after impounding, notify three disinterested resident freeholders or householders, farmers in the township, to appraise the damages, and also to judge of the sufficiency of the fence enclosing the ground where such animals were found doing damage; and such freeholders or householders, or any two of them, shall, within twenty-four hours after notice, view such fence and determine whether the same is a lawful fence, and if so, appraise the damage done, and deliver their award in writing, signed with their names, to the pound-keeper, within twenty-four hours after being so notified. Any person neglecting or refusing to attend to examine such damage after being notified, shall be liable to a penalty of 5s., to be recovered and applied as other fines imposed by this act for refusing to pay statute labour: *provided*, that the owner of any animals *not* permitted to run at large shall be liable for any damage done, notwithstanding the fence was not of the height required.

By 20 V., c. 31, (the act to prevent cruelty to animals,) it is enacted by § 2, that any person who shall impound or confine any horse, horned cattle, sheep, pigs, or other cattle or poultry in any common pound, open pound, or close pound, or in any inclosed place (and it shall be lawful for any person to confine any cattle, poultry or other animals in any inclosed place when found trespassing where the common pound of the city, town, township or place wherein the distraining occurs is not secure) shall find, provide and supply such horse or cattle, animal or poultry so impounded or confined daily with good and sufficient food, water, shelter and nourishment for so long a time as such horse or other cattle, animal, or poultry shall remain and continue so impounded or confined as aforesaid; and every such person who shall so find, provide, and supply every such horse or other cattle, animal, or poultry with such daily food, water, shelter and nourishment as aforesaid shall and may recover from the owner or owners of such cattle, animal or poultry, the value of the food and nourishment so supplied to such cattle as aforesaid, together with a reasonable allowance for his time, trouble, and attendance in and about impounding and taking care of such cattle, &c., by proceeding before any justice of the peace within whose jurisdiction the same shall have been so impounded and supplied with food in like manner as any penalty or forfeiture, or damage may be recovered under this act, and which value, loss of time, trouble and attendance such justice is empowered to ascertain, determine and

enforce; and every person who shall have supplied such food, shelter, and nourishment, time and trouble as aforesaid shall be at liberty, if he shall so think fit, instead of proceeding for the value thereof as aforesaid, after the expiration of not less than *four* clear days from the time of impounding the same, to sell any such pig or poultry, and after the expiration of not less than *eight* clear days from the time of impounding to sell any horse or other cattle or other animal, openly in or near the place where impounded or confined, or openly at any public market, street, or other public place, after giving three days' public written or printed notice thereof by affixing such notice upon the door of the nearest school house, or of the nearest church, chapel, or other public place in the city, town, village, township or place wherein the distress was made, for the most money that can be got for the same, and to apply the money in discharge of the value of such food and nourishment, loss of time, &c., and the expenses of animals or poultry, and of such sale or incidental thereto; as well as the damage done by the same to the property of the person distraining (such damage not to exceed £5 in any case, rendering the overplus, if any, to such owners.) But no such sale shall be lawful unless the party claiming to sell, shall first make oath in writing before the said justice, that the notices of sale as above mentioned were duly affixed, to the satisfaction of such justice.

§ 3. In case any such person or pound-keeper shall refuse or neglect to find, provide and supply such daily good and sufficient food, water, shelter and nourishment to such cattle, he and they shall for every day he shall so refuse or neglect forfeit and pay a sum not less than *five shillings*, nor more than twenty shillings, which shall be recoverable before any one justice of the peace in like manner as any penalty, forfeiture, damage or injury, as hereinafter mentioned.

§ 17. Nothing in this act contained shall be held to repeal any by-laws made which may be construed to have reference to any of the provisions, matters and things contained in this act by any municipal council under the provisions of the municipal laws of this province, excepting in so far as the same may be at variance with the provisions of this act; but such by-laws so made shall remain and continue in full force.

§ 18. The 2nd and 3rd sections of this act shall apply to Upper Canada only.

See further under title "*Cruelty to Animals.*"

PRÆMUNIRE.

The offence of *præmunire* was so called from the words of

the writ issued preparatory to the prosecution thereof, "*præmunire facias A. B. quod tunc sit coram nobis*," &c., the word being a barbarous corruption in the law Latin of the word *præmoneri*. This writ commanded that the defendant should be forewarned to appear to answer the contempt with which he stood charged. It took its origin from the exorbitant power claimed and exercised in England by the Pope, which, even in the former days of bigotry and blind zeal, was too heavy for our ancestors to bear; the words *præmunire facias* being thus used to command a citation of the party, have denominated in common speech, not only the writ, but the offence itself, of maintaining the papal power, by the name of *præmunire*: and this was originally ranked as an offence immediately against the king, because it consisted in introducing a foreign power into the land, and creating an *imperium in imperio*, by paying that obedience to papal process which constitutionally belonged to the king alone.—4 *Bl. Com.* 103.

By statute 16 Rich II., c. 5, which is usually called the statute of *præmunire*, and is generally referred to by all subsequent statutes—it is enacted, that whosoever procures at Rome, or elsewhere, any translations, processes, excommunications, bulls, instruments or other things, which touch the king, against him, his crown and realm, and all persons aiding therein, shall be put out of the king's protection, their lands and goods be forfeited to the king's use, and they shall be attached by their bodies to answer to the king and his crown; a process of *præmunire facias* shall be made out against them, as in other cases of provisors.

By these, says Sir W. Blackstone, the usurped civil power of the bishop of Rome was pretty well broken down, as his usurped religious power was, in about a century afterwards—the spirit of the nation being so much raised against foreigners, that in the reign of H. V. the alien priories, or abbeys, for foreign monks, were suppressed, and their lands given to the crown, and no further attempts were afterwards made in support of these foreign jurisdictions.—4 *Bl. Com.* 112.

After the Reformation, the penalties of *præmunire* were extended to mere papal abuses. Thus, by 24 H. VIII., c. 12, and by 25 H. VIII., c. 19, 21, to appeal to Rome from any of the king's courts; to sue to Rome for any license or dispensation; or to obey any process from thence, are made liable to the pains of *præmunire*.

By 5 Eliz. c. 1, to refuse the oath of supremacy, incurs the pains of *præmunire*: and to defend the pope's jurisdiction in this realm, is also a *præmunire* for the first offence, and high treason for the second.

Thus far the penalties of *præmunire* seem to have kept within the proper bounds of their original institution, namely, the depressing the power of the pope; but being pains of no inconsiderable consequence, it has been thought fit to apply them to other heinous offences, some of which bear more, and some less relation to this original offence, and some no relation at all.—4 *Bl. Com.* 116. By 13 Car. II., c. 1, it is also declared a *præmunire* to assert maliciously and advisedly, by speaking or writing, that both or either of the houses of parliament have a legislative authority without the king. By the Habeas Corpus Act 31 Car. II., c. 2, it is made a *præmunire* and incapable of the king's pardon, to send any subject of this realm to parts beyond seas. By 7 & 8 W. III., c. 24, serjeants, counsellors, proctors, attorneys, and all officers of courts, practising without having taken the oath of allegiance and supremacy, and without having subscribed the declaration against popery, are guilty of *præmunire*, whether the oaths be tendered or not. But these provisions are now modified by provincial statute.

See *ante* title, "Oaths of Office."

By 6 Anne, c. 7, to assert that any person, other than according to the acts of settlement and union, hath any right to the throne of these kingdoms; or that the king and parliament cannot make laws to limit the descent of the crown, is likewise declared a *præmunire*.

Numerous as the statutes are on this subject, prosecutions for this offence have been seldom instituted.

PRESCRIPTION.

By 10 & 11 V., c. 5, § 1, claims at common law or by prescription to real estate, of *thirty* years' standing without interruption, shall not be defeated by shewing that such title *first* began at any time prior to such thirty years; and after *sixty* years, such title shall be indefeasible. § 2. And so the right to any watercourse shall not be defeated after *twenty* years' possession, by showing commencement prior thereto; and after *forty* years', such title shall be indefeasible. § 3. 20 years' uninterrupted use of any *light* to any dwelling-house, work-shop, or other building, shall give an absolute right thereto, unless held under some deed or writing.

PRESENTMENT.

A presentment *generally* taken is a very comprehensive term, including not only *presentments*, properly so called, but also all inquisitions of office, and indictments by a grand jury. But a presentment, as commonly understood, is the

notice taken by a grand jury of any offence from their own knowledge or observation, without any bill of indictment laid before them at the suit of the king; as the presentment of a nuisance, a libel, and the like; upon which the officer of the court must afterwards frame an indictment, before the party presented can be put to answer for it.—2 *Inst.* 739.

See further on this subject, *ante* title, “*Grand Jury.*”

PRISON BREAKING.

Prison breaking is the offence of a party, who is in legal custody upon any charge, effecting his own escape by force. This, by the common law, was anciently accounted *felony*, for whatever cause, criminal or civil, the party was lawfully imprisoned. But by 1 E. II., stat. 2, it is declared that none that should from thenceforth break prison should have judgment of life or member for breaking of prison only; except the cause for which he was taken and imprisoned required such a judgment if he had been convicted thereupon, according to the law and custom of the realm; therefore, although to break prison and escape, when lawfully committed for any *treason* or *felony*, still remains felony as at common law, the breaking of prison when lawfully confined upon an inferior charge, is punishable only as a high misdemeanor, by fine and imprisonment.—4 *Bl. Com.* 130.

In whatever place a prisoner is restrained of his liberty under a lawful arrest for a supposed crime, whether it be in the stocks or the street, or in the common gaol, or the house of a constable, or private person, such place is properly a prison within the meaning of the statute.—2 *Inst.* 589; 2 *Haw. c.* 18, § 4.

But if no felony whatever has been committed, and the party is merely in custody on a *mittimus*, without being indicted, then he is not guilty within the statute, by breaking the prison, his imprisonment being, in this instance, unjustifiable.

There must be an actual, and not merely a constructive breaking, to make the offence felony; therefore, if through the negligence of the gaoler, the prison doors are left open, and the party escapes without using any kind of force or violence, he is only guilty of a misdemeanor.—2 *Inst.* 590; 1 *Hale*, 611. The breaking must be by the prisoner himself, or by his procurement; for if other persons, without his privity or consent, break the prison, and he escape through the breach so made, he cannot be indicted for the breaking, but only for the escape.—2 *Haw. c.* 18, § 12; 2 *Inst.* 590; 1 *Hale*, 611.

PRISONER.

If the gaoler keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler, by the common law; and this is the cause, that if a prisoner die in gaol, the coroner ought to hold an inquest.—3 *Inst.* 91.

Money found upon a prisoner when he is apprehended, will, in general, be directed to be restored to him before trial, if it appear by the depositions that it is in no way material to the charge on which he is tried.—*R. v Barnett*, 3 *C. & P.*, 600.

By 4 & 5 V., c. 24, § 9, all prisoners tried for felonies shall be admitted after the close of the case for the prosecution to make full answer and defence thereto by counsel, or by attorney, in the courts where attorneys practise as counsel.

§ 11. When the attendance of any person confined in any gaol or prison in this province, or upon the limits thereof, shall be required in any court of assize and *nisi prius*, or oyer and terminer or general gaol delivery, or other court, it shall be lawful for the court before whom such prisoner shall be required to attend, in its discretion, to make order upon the sheriff, gaoler, or other person having the custody of such prisoner, to deliver such prisoner to the person named in such order to receive him, which person shall thereupon instantly convey such prisoner to the place where the court issuing such order shall be sitting, there to receive and obey such further order as to the said court shall seem meet: *provided always*, that no prisoner confined for any debt or damages in any civil suit shall be thereby removed out of the district where he shall be confined.

§ 12. All persons held to bail, or committed to prison for any offence against the law, shall be entitled to require and have on demand (from the person who shall have the lawful custody thereof, and who is hereby required to deliver the same), copies of the examinations of witnesses, respectively, upon whose depositions they have been so held to bail, or committed to prison, on payment of a reasonable sum for the same, not exceeding three pence for each folio of one hundred words: *provided always*, that if such demand shall not be made before the day appointed for the commencement of the assize or sessions at which the trial is to take place, such person shall not be entitled to have any copy of such examination of witnesses, unless the judge, or other person to preside at such trial, shall be of opinion that such copy may be made and delivered without delay or inconvenience to such trial;

but it shall, nevertheless, be competent for such judge or other person so to preside at such trial, if he shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged.

§ 13. All persons under trial shall be entitled, at the time of their trial, to inspect, without fee or reward, all depositions (or copies thereof) which have been taken against them, and returned into the court before which such trial shall be had.

See also titles "*Commitment*," "*Indictable Offences*," "*Summary Conviction*."

PRIZE FIGHTING.

All persons present at, and countenancing a prize fight are guilty in law of a misdemeanor. And when such a fight is expected to take place, a magistrate ought to cause the intended combatants to be brought before him, and compel them to find sureties to keep the peace till the assizes or sessions: and if they refuse to do so, he should then commit them till they comply with such requisition.—*R. v. Billingham*, 2 C. & P. 234.

PROBATE.

Of the office and duty of Executor.

An executor, before the will be proved, may seize and take into his hands any of the goods of the testator. He may pay debts, receive debts, make acquittances and releases of debts due to the testator. Also, an executor may, before probate, sell or give away any of the goods or chattels of the testator: and in general, an executor is a complete executor before probate, to all purposes but bringing of actions.—1 *Salk.* 301; *Went. Off. Ex.* 34, 35; *Lovelass on Wills*, 258, 259.

The executor may, in convenient time after the testator's death, enter into the house descended to the heir, for the removing and taking away of goods, so as the door be open, or at least the key be in the door: but he cannot justify the breaking open the door of any chamber to take goods there; but only may take those in the rooms which be open.—*Lovelass on Wills*, 260.

Of the office and duties of an Administrator.

An administrator cannot act before letters of administration are granted to him.—*Lovelass on Wills*. By stat. 31 Edw. III. c. 11, 21 H. VIII. c. 5, § 3, in case any person shall die intestate, or the executors refuse to prove the testament, administration shall be granted to the widow or next of kin, or to both, taking surety for true administration.

By 22 & 23 Car. II., c. 10, made perpetual by 1 Jac. 2, c. 17, it is enacted, that the surplusage of an intestate's estate shall be distributed:—one-third to the wife of the intestate, the residue amongst his children and such as legally represent them, if any be dead, other than children (not heirs at law), who shall have any estate by settlement of the intestate in his lifetime, equal to the other shares. Children, other than heirs at law, advanced by settlements, or portions not equal to other shares, shall have so much of the surplusage as shall make the estate of all to be equal. But the heir at law shall have an equal part in the distribution with the other children, without any consideration of the value of the land which he hath by descent or otherwise from the intestate.—§ 4.

If there be no children, nor legal representatives of them, one moiety shall be allotted to the wife, the residue equally to the next of kindred to the intestate, in equal degree, and and those who represent them.—§ 5.

No representation shall be admitted among collaterals, after brothers' and sisters' children; and if there be no wife, all shall be distributed among the children; and if no child, to the next of kin to the intestate in equal degree, and their representatives.—§ 6.

No such distribution shall be made till one year after the intestate's death, and every one to whom any share shall be allotted, shall give bond with sureties in the said courts, that if debts afterwards appear, he shall refund his ratable part thereof, and of the administrator's charges.—§ 7.

A brother or sister of the half blood shall have an equal share with those of the whole blood.—*Com. Dig. Adm. (H.)*

If none of the kindred will take out administration, a creditor may, by custom, do it.—*Lovelass on Wills*, p. 7.

Of the Will.

No witnesses are absolutely necessary to render valid a will of merely personal property: but with respect to a will of real or *landed property*, until lately, *three* witnesses were necessary; and now by the *4 W. IV., c. 1, § 51, *two* witnesses are sufficient.

Probate of the Will, how granted, &c.

*By statute 33 G. III., c. 8, a court is constituted and established for the granting of probates of wills, and committing letters of administration of the goods of persons dying intestate, to be called the Court of Probate of the province of Upper Canada: the Governor to preside therein and pronounce

judgment in all suits that may be brought before him, with power to call in an assessor or assessors to act with him, and from time to time to appoint an official principal, registrar, and other necessary officers. By § 2, the Governor is authorised to institute, by commission, under the great seal, in every district, a court for granting probates of wills and letters of administration of persons having personal estate within such district, to be called the surrogate court of the Eastern district; the surrogate court of the Midland district; the surrogate court of the Home district; and the surrogate court of the Western district; and also to appoint from time to time, a surrogate to preside as judge in each of the said courts, and a registrar, and such other officers as may be necessary; and each of the said courts shall have full power to issue process and hold cognizance of all matters relative to the granting of probates of wills and letters of administration, and to grant the same within their respective districts, except as hereinafter mentioned. § 3. In cases where the deceased shall have goods, chattels, or credits, to the amount of £5, in any other district than the one in which he died; or when any person shall die possessed of goods to the value of £5, in two or more districts, the probate or letters of administration shall be granted by the court of probate only. By § 6, every will duly proved shall be kept among the records of said court; and a transcript thereof duly authenticated under seal of the court, shall be taken and received as the regular probate of such will, in all her Majesty's courts within this province. By § 7, no nuncupative will shall be good where the estate thereby bequeathed shall exceed £30, that is not proved by three witnesses, at the least, present at the making thereof; nor unless the testator bid the persons present bear witness; nor unless made at the last sickness of the deceased, and in his dwelling-house, or where he had been resident ten days before making such will, except when such person was taken sick being from home, and died before he returned. § 8. After six months from the speaking of such testamentary words, no nuncupative will shall be good, except the substance thereof were committed to writing within six days after the making of such will. § 9. No probate shall be granted till fourteen days after the death of the testator; nor shall any nuncupative will be at any time received, unless the widow or next of kin have been cited. § 10. Nor until due proof be made before the said judge or surrogate, that such person is dead, and died intestate. § 15. In cases where administration shall be granted with the will annexed, such letters shall

express that such will shall be observed and performed, and for such purpose the administrator shall enter into bond with two or more sufficient sureties. § 17. The court of probate and court of surrogate respectively, shall hold four sittings or terms for hearing and determining actions, suits, and causes, &c.: the first term from the first Monday in *January* to the Saturday following, inclusive; the second term from the last Monday in *March* to the Saturday following, inclusive; the third term from the first Monday in *June* to the Saturday following, inclusive; and the fourth term, from the last Monday in *September* to the Saturday following, inclusive. § 18. The following fees may be taken:

Fees to be taken by the Official Principal and Surrogate.

OFFICIAL PRINCIPAL AND SURROGATE.	REGISTRAR.					
For seal to the probate of a will, to letters of administration with the will annexed, and to letters of administration, where the property devolving is under £300	£0	16	0	0	6	8
From £300 to £1000.....	1	0	0	0	6	8
When above £2,000.....	2	0	0	0	6	8
For seal of the court to any writing or instrument.....	0	13	4	0	3	4
For receiving caveat.....	0	6	8	0	0	0
For filing the same.....	0	0	0	0	3	4
For receiving inventory.....	0	6	8	0	0	0
For filing the same.....	0	0	0	0	3	4
For citation.....	0	3	4	0	1	0
For collating will.....	0	0	0	0	6	8
For drawing bond and attesting execution	0	0	0	0	6	8
For searching register, each year.....	0	0	0	0	1	0
For office copy, each page 18 lines, six words in each.....	0	0	0	0	1	0

APPARATOR OR MESSENGER.

For service of citation.....	£0	2	0
For travelling each mile.....	0	0	4

Letters of Administration, how granted, &c.

By the same statute, *33 G. III., c. 8, § 11, when application is made for letters of administration by any person not entitled as next of kin to the intestate, the court, before granting the same, shall issue a citation to the next of kin, summoning him or her to shew cause against the same, and in case the next of kin should happen to be absent from the province, the court may then grant administration *pro tem.* to the next of kin in the province. § 12. The judge or surrogate, upon granting letters of administration, shall take

sufficient bonds from the party, with two sureties, in the name of the Governor, according to the form prescribed.

Form of the condition of the Bond.

“The condition of this obligation is such, that if the within bounden A. B. administrator of all and singular the goods, chattels, and credits of C. D., deceased, do make or cause to be made, true and perfect inventory of all and singular the goods chattels and credits of the said deceased, which have or shall come into the hands, possession or knowledge of him, the said A. B., or into the hands and possession of any other person or persons for him, and the same so made, do exhibit or cause to be exhibited into the registry of court, on or before the day of next ensuing, and the same goods chattels and credits, and all other the goods, chattels and credits of the said deceased, at the time of his (*or her*) death, which at any time after shall come into the hands and possession of the said A. B., or into the hands and possession of any other person or persons for him, do well and truly administer according to law, and further do make or cause to be made, a true and just account of his said administration, at or before the day of and all the rest and residue of the said goods, chattels and credits, which shall be found remaining upon the said administrator's account, the same being first examined and allowed by the judge of the court for the time being, shall deliver and pay unto such person or persons respectively, as the said judge by his decree or sentence, conformably to the provisions in a certain act of parliament intituled, “an act for the better settling intestate estates,” and passed in the twenty-second and twenty-third years of the reign of Charles II., and also in a certain act passed in the first year of king James II., contained. shall limit and appoint, and if it shall hereafter appear that any last will or testament was made by the deceased, and the executor or executors therein named do exhibit the same unto the said court, making request to have it allowed and approved accordingly, if the said A. B. within bounden, being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue.”

§ 13. It shall be lawful for the said judge of probate and surrogate courts respectively to call by citation such administrators to account, and to order and make just and equal distribution of what remains clear, after all debts, funeral and just expenses of every sort first allowed, according to the provisions of the said statutes (22, 23, C. II., & 1 J. II.) But no such distribution shall be made until one year after the intestate's death, and every one participating in such

distribution shall give bond to refund in case any debt shall afterwards appear. § 16. An appeal shall be from the surrogate court to the court of probate, if made within fifteen days after the judgment appealed from, and security given for prosecuting such appeal.

Of the Payment of Debts, &c.

In payment of debts, the executor or administrator must observe the rules of priority; otherwise on deficiency of assets, if he pays those of lower degree first, he may answer those of a higher out of his own estate.—2 *Bl. Com.* 511. *First*: the executor, &c., may pay all funeral charges and the expense of taking out letters of administration.—*Ibid.* *Secondly*. Debts due to the king, on record or speciality. *Thirdly*. Debts of record are to be paid, viz. : judgments, (docketted according to the stat. W. & M. c. 20), and of two judgments, he who first sues execution must be preferred; but before, it is at the election of the executor or administrator to pay which he pleases first.—2 *Bl. Com.* 465, 511; *Treat of Eq.* 112. *Fourthly*. Debts by specialty or special contract, such as are due by deed or special instrument under seal, covenant, deed of sale, lease reserving rent, or by bond or obligation.—2 *Bl. Com.* 465, 511; and rent in arrear is equal to a debt by specialty.—3 *Bl. Com.* 347. *Lastly*. Debts by simple contract, such as notes of hand, and debts of an ordinary description, not under seal, and these the executor is bound to pay as far as he hath assets, and if no suit be commenced against him, he may pay one creditor in equal degree his whole debt, though he has nothing left for the rest.—2 *Bl. Com.* 512. As to debts of record, the executor is bound to take notice of these at his peril; but as to debts due by bond or other specialties, an executor may pay a debt on simple contract before a specialty, if he hath no notice of such speciality: for otherwise, it might be in the power of the obligee to ruin the executor, by keeping the bond in his pocket, until the executor shall have paid away all the assets in discharging simple contract debts.—2 *New Abr.* 435. In payment of bonds and other obligations after due notice, it seems that the executor may (in like manner as respecting debts of record), pay which creditors he thinks fit first, although the other creditors are without remedy if there be no assets; unless the day of payment in one obligation is expired, and the day of payment in the other is yet to come, in which case, the former is to be first satisfied; or unless there be a suit commenced. But an executor may confess judgment on one obligation, and plead that to an

action brought on another; and if there be two actions brought on two several obligations, he that obtains judgment first must be first satisfied.—*Lovelass on Wills*, 73, 74, 75. An executor or administrator, if a creditor also, may pay himself the whole of his demand, to the exclusion of all other creditors of the same degree; but he cannot retain his own debt in prejudice to those of a higher degree; neither shall one executor be allowed to retain his own debt in prejudice to that of his co-executor, in equal degree; but both shall be discharged in proportion.—3 *Bl. Com.* 18.

PROVIDENT SOCIETIES.

By 13 & 14 V., c. 32, § 1, it is enacted that it shall be lawful for any number of persons to unite for the purpose of making provision by means of contributions, subscriptions, donations, or otherwise, against the several contingencies of sickness, unavoidable misfortune, or death, and for relieving the widows and orphan children of deceased members; and the members and officers of such societies may from time to time establish branches thereof, so long as the same be confined exclusively to the objects herein set forth. § 2. Such societies may nominate and appoint proper persons as trustees, treasurers, secretaries, or other officers; and may meet together from time to time to make, alter or rescind, or frame by-laws, rules or regulations, provided the same are not repugnant to the laws of this province, or directed to the furtherance of any political or seditious object. § 3. Such societies may, in the name of such presiding or other officer thereof, acquire and take by purchase, donation, devise or otherwise, and hold for the rest of the members, and according to the rules and regulations aforesaid, all and every kind of personal property, and also real property in the province of Canada, not exceeding *five acres*, and to sell and alienate the same, whether acquired before or after the act, and to purchase other real estate, not exceeding the quantity aforesaid: and each of such societies shall have a common seal, and succession and corporate powers; § 4, and may require and take securities from their officers. § 5. And if any officer, secretary, treasurer, trustee or member, shall obtain undue possession of, misappropriate, embezzle or withhold from another member, officers, or other persons entitled to demand and receive the same, the whole or any portion of the funds, moneys or other property of such society, and shall continue to withhold such property after due demand made by any member or officer duly appointed on behalf of the society, every such offender shall be guilty of a misdemeanor,

and upon conviction liable, at the discretion of the court, to imprisonment at hard labour in the penitentiary for any term not exceeding three years, or imprisonment in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or both, as the court shall award. § 6. The printed or written rules of such societies, and the appointment of any officer, or enrolment of any member, certified under the hand of the presiding officer for the time being, and the seal of such society, and the books, minutes and other documents relative to any portion of the matter in question, shall be evidence before any court of civil or criminal jurisdiction. § 7. Members of such societies not to be liable individually for the debts of such societies. § 8. This act to be a public act.

PROVINCIAL PARLIAMENT.

By 7 Vic., c. 3, it is provided and enacted, that no provincial parliament summoned or called by the sovereign shall determine or be dissolved by the demise of the crown, but the same may continue, and may meet, convene and sit, proceed and act, notwithstanding such demise.

PROVINCIAL REVENUE.

By 8 V., c. 4, intituled "*An Act to provide for the management of the customs and of matters relative to the collection of the provincial revenue,*" § 3, the Governor in council is authorised to determine what officers or persons it may be necessary to employ in collecting, managing or accounting for the provincial revenue. § 12. Such officers are required to take an oath of office (in the form given) before such officer as the Governor shall appoint. § 13. Any revenue officer taking or receiving any fee or reward from any person (not being an officer or person legally authorised to pay or allow the same) on account of any thing done by him in any way relating to his office (except such as he shall receive by order or with the permission of the Governor in council), shall on proof be dismissed from his office or employment; and if any person (not being an officer duly authorised to pay or allow the same) shall give, offer, or promise any such fee or reward, such offender shall incur the penalty of £100, which shall be recoverable before any court of competent jurisdiction.

§ 15. Any person wilfully making any false statement in any such examination (in revenue matters) upon oath or in any solemn affirmation or declaration substituted as aforesaid,

whether such oath shall have been required by this act, or by any other act relating to the revenue, shall be deemed guilty of wilful and corrupt perjury, or a *misdeemeanor* punishable in the same manner as wilful and corrupt perjury, and be punished accordingly.

§ 16. All books, papers, accounts and documents of what kind soever kept by, or used, or received into the possession of any revenue officer, by virtue of his employment, as such shall be deemed chattels belonging to her Majesty; and all moneys or valuable securities received or taken into his possession by virtue of his employment, shall be deemed moneys and valuable securities belonging to her Majesty; and if any such officer or person shall at any time fraudulently embezzle any such chattel, money, or valuable security (and any refusal or failure to pay over or deliver up any such chattel, money, or valuable security to any officer or person duly authorised to demand the same shall be a fraudulent embezzlement), he shall be deemed to have *feloniously* stolen the same, and may be indicted and proceeded against, and being convicted thereof, shall be liable to be punished in the same manner as any servant who having fraudulently embezzled any chattel, money, or valuable security received or taken into his possession, by virtue of his employment for or account of his master, and being deemed in law to be feloniously stolen, the same may be indicted, proceeded against, and punished.

PROVISIONS.

Selling unwholsome provisions is an indictable offence at common law, and so is the forestalling, engrossing or regrating of provisions, whereby the price is enhanced. See further on this subject, title "*Forestalling.*"

PUBLIC HEALTH.

By the *5 Wm. IV. c. 10, intituled "*An act to promote the public health, and to guard against infectious diseases in this province,*" the Lieutenant-Governor, by and with the advice of the executive council, may appoint three or more persons in each town to act as health officers. § 2. Any two of them may, in the day time, enter upon the premises of persons resident within the limits of the town, &c., and examine the same, and order the proprietor or occupant to cleanse the same, and remove whatsoever shall be found there dangerous to public health; and in case of refusal or neglect, said health officers may, with the assistance of the constables and peace officers, and such other persons as they may think fit, enter on the pre-

mises and remove the same. § 3. The lieutenant-governor and executive council, may also make rules and regulations concerning the entry and departure of boats and vessels, at the different ports or other places, and the cargoes and passengers.

§ 4. Any person disobeying or resisting any lawful order of the health officers, or any two of them, or wilfully violating any rule or regulation, or obstructing the officers in the execution of their duty, on conviction before two justices, where such offender shall reside, shall forfeit and pay not less than 20s., nor more than £20, to be levied by seizure and sale of the offender's goods by warrant of the convicting justices, to be paid to the receiver-general, for the use of the province. § 5. This act to remain in force one year, and to the end of the next session. § 6. In all cases in which diseases of a malignant and fatal character shall be discovered to exist in any dwelling-house, &c., situate in any unhealthy situation, or be in a neglected and filthy state, or inhabited by too many persons, the board of health, or a majority, may, at the expense of the board, compel the inhabitants to remove therefrom, and place them in sheds or tents, or other good shelter, in some more salubrious situation, until the cleansing and purification of such dwelling-house, &c., has been effected. This act to relate to all houses and out houses situate within one mile of any city, town or village. This statute was made perpetual by the *2 Vic. c. 21.

By the 12 V., c. 8, § 1, this act to come into force by proclamation in case of any formidable epidemic, &c. § 2. The 1, 2, 6, § of the 5 *W. IV., c. 10, to be suspended whilst such proclamation is in force. § 3. After issuing proclamation the Governor is authorised to appoint a "central board of health." § 4. Local boards of health, of not less than three persons, to be appointed by the municipal councils, and in case of neglect the Governor may appoint such local boards. § 5. Central board may issue regulations for prevention or mitigation of disease, and require the local boards to see to the execution of the same; and may authorise the removal of patients from their dwellings in cases of disease of a malignant and fatal character, and placing them in sheds or tents, or other good shelter, until measures can be taken for the cleansing and disinfection of such dwellings. § 6. Members of local boards to be called health officers, and may enter and inspect any suspected dwelling-house, &c.; and in case of the owner or occupier's refusal to obey regulations, such health officers may, with the aid of the civil power, enter upon such premises and enforce such regulations. § 7. Expense of central

board to be defrayed by the province; and of local boards by their respective localities. § Regulations of central board to be sanctioned by the Governor and published in the Gazette. § 9. Local by-laws on the subject of health to be suspended, whilst the regulations under this act remain in force. § 10. Any person offering any obstruction to any one acting under the authority of this act, or who shall neglect or refuse to comply with the said regulations, shall be liable to a penalty not exceeding £5 for every offence, to be recovered before any *two* justices, and levied by distress and sale by the same justices, or any other justices; and in default of distress the offender to be committed to the common gaol or house of correction, for a period not exceeding fourteen days, unless the amount be sooner paid. § 11. No writ of certiorari to be allowed. § 12. Interpretation clause.

By the general municipal act 12 V., c. 81, § 60, municipalities are authorised to make by-laws for providing for health, and against the spreading of contagious or infectious diseases; for regulating the interment of the dead; keeping bills of mortality. Imposing penalties on physicians, sextons and others for default; for providing one or more public cemeteries, and laying out and regulating any. § 157. Members of municipal corporations to be health officers under the *5 W. IV., c. 10, or any future act for the like purposes.

PUBLIC LANDS.

By 2 V., c. 15, entitled "An Act for the protection of the Lands of the Crown in this province from trespass and injury," § 1, commissioners to be appointed to enquire concerning trespass. § 2. On finding parties illegally in possession to give notice to intruders to remove within *thirty* days; and in default of removal such commissioners may by warrant directed to the sheriff cause such parties to be ejected. § 3. And in case of their resuming possession the commissioners are authorised to commit offenders to the common gaol for a term not exceeding *thirty* days, and to pay a fine to her Majesty not exceeding £20. § 4. The commissioners or any two of them upon investigation finding any person charged with cutting down or removing any timber or trees, or for having quarried upon or removed any stone or other materials from the lands, guilty thereof, may order and direct the offender to pay a fine to her Majesty not exceeding £20, and in default of payment that he be committed to the common gaol for a period not exceeding three months. § 5. Timber, &c., cut but not removed may be seized and sold.

§ 6. Commissioners authorised to summon witnesses. § 7. Fines, how to be appropriated. § 8. Before the investigation of any charge under this act the parties to be summoned, and in default of appearance the commissioners may proceed *ex parte*. § 9. Sheriffs and other officers bound to execute warrants of the commissioners. § 10. Commissioners entitled to the same privileges and protection in respect of any action or suit against them as justices of the peace. § 11. Appeal against any judgment of the commissioners to be made to the Court of Chancery, and the decision of the court to be final.

By 12 V., c. 9, § 1, the provisions of the above act to extend to all lands in Upper Canada whether surveyed or unsurveyed, for which no grant, lease, ticket either of location or purchase, or letter of license of occupation has been issued, or whether usually known as crown reserves, clergy reserves, school lands, or Indian lands, or by or under any other denomination. § 2. In case of doubt as to the legality of any possession the commissioners are authorised to give the parties notice to quit as in the first mentioned act, and any person disobeying such notice may be removed by warrant of the commissioners, or one of them, directed to the sheriff. § 3. *Personal* service of such notice or of the summons to be issued under the said act not requisite, but sufficient if delivered to the wife, or some grown-up person on the premises; at the same time putting up a duplicate notice in some conspicuous place on the premises, or when no grown-up person found on the premises, then by posting duplicate notices in four conspicuous places on the premises. § 4. In case of resumption after removal the sheriff is required to make a special return of the warrant of removal to the Court of Queen's Bench, upon which the court may issue "writs of removal" as often as necessary for the protection of the premises. § 5. Such writs may be superseded upon sufficient cause shewn. § 6. Convictions by the commissioners may be removed by certiorari into the same Court of Queen's Bench, and proceedings there had for the satisfaction of any fine thereby imposed. § 7. Commissioners authorised to commit parties for contempt when engaged in the execution of their office.

By 16 V., c. 159, entitled "An Act to amend the law for the sale and the settlement of the public lands," certain former acts 4 & 5 V., c. 100, and 12 V., c. 31, are repealed. § 2. Except as hereinafter provided, provided no *free grant* of public land shall be made to any person. § 3 provides for the settlement of any claims arising out of the repealed

acts. § 4. The Governor in council authorised to fix the price per acre of public lands. § 5. No agent for the sale of public lands shall purchase any he may be appointed to sell. § 6. Licenses of occupation in the first instance may be granted giving to the occupant certain rights. § 7. The commissioner of crown lands to keep a register of assignments of claims, and thereupon the patent may issue to the assignee. § 8. The like privilege extended to claims already registered. § 9. Free grants may be made to settlers in the vicinity of any new public roads under such regulations as may be made by the Governor in council. Such grants not to exceed 100 acres. § 10. Lands may be set apart for markets, gaols, and other public purposes not exceeding *ten* acres each. § 11. Licenses of occupation may be revoked in case of fraud or violation of any of its conditions. § 12. Settlers in such case may be dispossessed by order in council. § 13. The Crown may resume lands when the claim has become forfeited. § 14. A certain sum not exceeding one-fifth of the proceeds of school lands may be reserved and expended for public improvements within the county under the direction of the Governor in council. § 15. This act may be extended to Indian lands by order of the council. § 16. A list of crown, school and clergy lands for sale to be published. § 17. The Governor authorised to appoint agents for sale. § 18. Erroneous patents may be cancelled and correct ones issued when there is no adverse claim. § 19. In case of a double grant an equivalent may be granted to the loser. § 20. Free grants may be made for deficiencies arising from any false survey. § 21. Court of Chancery in Upper Canada may avoid patents issued in error. § 22. Affidavits required under this act may be made before the judge or clerk of any county court or any justice of the peace, or any commissioner for taking affidavits, or agent of the commissioner of crown lands. § 23. The commissioner of crown lands and agents under him may be required to give security. § 24. Crown land commissioner to transmit yearly to county registers lists of lands sold, &c. § 25. The Governor in council authorised to make orders for carrying this act into effect. § 26. Proof may be required by the commissioners in case of application for patent by the representatives of any deceased locatee. § 27. Clergy reserve lots may be re-sold or re-leased on failure by the original party to fulfil the conditions. § 28. Land scrip may be received in payment up to the 1st of July, 1854. § 29. Licenses of occupation heretofore granted to remain in force. § 30. The interpretation act to apply to this act.

Cutting Timber on.

By 12 V., c. 30, § 1, the commissioner of crown lands is authorised to grant licenses for. § 2. Form of the license, and its legal effect. § 3. The party licensed to make a return upon oath of the timber cut. § 4. Timber liable to dues may be followed, seized and detained until paid. § 5. The giving of bonds or notes not to affect the lien on the timber. § 6. Provision for sale of the timber seized for dues. § 7. Any person cutting without license to forfeit 15s. per tree, to be recovered with costs at the suit and in the name of the commissioner or resident agent in any court of competent jurisdiction. § 8. Timber alleged to be unlawfully cut may, upon affidavit of one or more persons made before a justice of the peace, be seized by the commissioner, officer or agent in her Majesty's name wherever found, and secured until a competent decision obtained. § 9. The seizing officer may command assistance, and if any person or persons whatsoever shall, under any pretence, either by actual assault, force or violence, or by threat of such assault, force or violence in any way resist, oppose, molest or obstruct any officer or person acting in his aid or assistance, such offender upon conviction shall be adjudged guilty of felony and punished accordingly. § 10. Any person or persons taking or conveying away any timber seized or detained under this act as subject to forfeiture, before the same shall have been declared by competent authority to have been seized without due cause, such person or persons shall be deemed to have stolen such timber, being the property of her Majesty, and to be guilty of felony, and liable to punishment accordingly. § 11. Timber seized under this act to be condemned if not claimed within one month. § 12. Any wilful false oath under this act to be deemed perjury. § 13. Parties maliciously cutting or loosening booms, or breaking up or cutting boom rafts or cribs, shall be guilty of a misdemeanor, punishable with fine and imprisonment of not less than six months.

PUBLIC MEETINGS.

By 7 V., c. 7, reciting, whereas it is the undoubted right of her Majesty's subjects to meet together in a peaceable and orderly manner, not only when required to do so, in compliance with the express direction of law, but at such other times as they may deem it expedient so to meet, for the consideration and discussion of matters of public interest, &c., it is enacted by § 1, that all public meetings of the inhabitants, or of any particular class of the inhabitants of any

district, county, riding, city, town, township, ward or parish in this province, required by law, or summoned or called as provided by the fourth section; § 2, and all such public meetings called by the high sheriff, or by the mayor, or other chief municipal officer of any city or town, as provided by the 5th §, upon the requisition of any *twelve* or more of the freeholders, citizens or burgesses of such district, county, riding, town, &c., having a right to vote for members in parliament for such locality; and all such meetings called by any *two* or more justices resident in any such locality, upon a like requisition of *twelve* or more of such freeholders, citizens or burgesses. § 3. And all public meetings declared to be such by any *two* justices, as prescribed by the 6th §, shall be public meetings within the meaning of this act. § 4. In every notice or summons for calling any such public meeting, as in the first §, there shall be a notice that such meeting will be within the protection of this act, such notice to be in the form or to the effect set forth in schedule A. § 5. The notice to be issued by the sheriff, mayor or chief municipal officer of any city or town, or by two or more justices, as in the second §, shall be issued at least *three* days before such meeting, and shall set forth the names of the requisitionists, or of a competent number of them, &c.; such notice to be in the form or to the effect set forth in schedule B. § 6. Upon information on oath before any justice of the peace, that any public meeting, not being of the description mentioned in the first § of this act, or called under the second §, is appointed to be held at any place within his jurisdiction, and that there is reason to believe that great numbers of persons will be present at such meeting, it shall be lawful for any two justices of the locality to give notice of such meeting, and to declare the same and all persons attending, within the protection of this act; such notice to be in form or to the effect set forth in schedule C. § 7. It shall be the duty of every sheriff, mayor, justice or other person, calling any public meeting under the second §, to give public notice thereof, as extensively as he reasonably may, by posting and distributing throughout the locality a competent number of printed or written copies of the notice calling the same. § 8. The justices who shall declare any public meeting to be under the protection of this act, as in the 3rd §, shall give notice thereof, by causing printed or written copies of the notice or declaration issued by them, to be posted and distributed throughout the locality. § 9. The sheriff, mayor, justice, or other person calling such meeting, or declaring the same to be a public meeting within the act, under the 3rd

§, is required to attend such meeting and continue thereat, or near the place appointed until the same shall have dispersed, and afford assistance in preserving the peace. § 10. The chairman at such meeting shall commence the proceedings by causing the summons, or notice, or declaration to be publicly read. § 11 authorises the chairman at such meeting to cause by oral direction, any person attempting to disturb the meeting, to be removed to such a distance as may effectually prevent interruption, and by an instrument under his hand, on his own view, to adjudge any offender guilty of interruption, or disturbance, upon which conviction it shall be lawful for any justice, by warrant under his hand, forthwith to commit such person to the common gaol of the district, or to any other place of temporary confinement that such justice may appoint, for any period not exceeding *forty-eight* hours, and until the lawful costs of the constable and gaoler shall be paid. § 12. The chairman at any such public meeting may command the assistance of all justices, constables and other persons, to aid and assist him in preserving the peace. § 13. Special constables to be sworn in upon the written application of the chairman to any justice attending the meeting. § 14. Any person between the age of eighteen and sixty, refusing to be sworn, upon being required by any justice, without lawful excuse, shall be guilty of a *misdemeanor*, and it shall be lawful for such justice thereupon to record the refusal of such person, and to adjudge him to pay a fine of not more than 40s., to be levied as other fines imposed by summary proceedings before justices, or such person may be proceeded against by indictment. § 15. Any justice of the locality where such meeting shall be appointed to be held, may demand, have and take from any person attending such meeting, or on his way to attend the same, any offensive weapon, such as fire-arms, swords, staves, bludgeons or the like, which any such person shall have in his possession; and in case of refusal, the offender shall be guilty of a *misdemeanor*, and such justice may record such refusal, and adjudge him to pay a fine of not more than 40s., to be levied as aforesaid; but no such conviction shall interfere with the power of such justice, or any other justice, to *disarm* such person without his consent, and against his will, by such force as shall be necessary. § 16. Weapons of the value of 5s. or upwards, peaceably and quietly delivered up, shall be returned by such justice to the party on the day next after such meeting, and not before, unless destroyed or lost by unavoidable accident. § 17. Any person convicted of a battery during the day of the meeting, within *two miles* of the place, shall

be punishable by a fine of not more than £25, and imprisonment for not more than three calendar months, or either, in the discretion of the court pronouncing sentence. § 18. Excepting civil authorities, it shall not be lawful for any person to come, during any part of the day of meeting, within two miles of the place *armed* with any offensive weapon; and any person offending herein shall be guilty of a misdemeanor, punishable by fine not exceeding £25, and imprisonment not exceeding three calendar months, or both, at the discretion of the court. § 19. Any person lying in wait for any person returning from any such public meeting with intent to assault, or by abusive language, opprobrious epithets, or other offensive demeanor, to provoke such person or those who may accompany him to a breach of the peace, shall be guilty of a misdemeanor, punishable by fine, not exceeding £50, and imprisonment not exceeding six calendar months, or both, at the discretion of the court. § 20. Actions for any thing done under this act to be brought within twelve months.

For the schedules and forms, see the act.

PUBLIC OFFICERS.

By 4 & 5 V. c. 91, after reciting that it was highly expedient that provision should be made for preventing any negligence, omission, or irregularity in giving due securities by all persons employed in situations of public trust, and concerned in the distribution or expenditure of public money, who are required to give security for public moneys coming to their hands, and for ascertaining the death of any surety or sureties of any such person, it is enacted by § 1, that persons hereafter appointed to offices of public trust shall give security in such sum, and with such sureties as the Governor or principal officers of the department in question shall approve. § 2. Persons now in office also required to give security. § 3. Bonds to be registered with the registrar of the province; § 4, who shall keep separate entries. § 5. Officers neglecting to give such security to forfeit their offices. § 6. In case of death, bankruptcy, or insolvency, or residence out of the province of any surety, the principal shall give notice to the chief secretary of the province, or to the principal officer of the department, upon pain of forfeiting one-fourth of the sum; and neglecting to give other security shall forfeit his appointment. § 7. Where the neglect has not been wilful, the Governor may extend the time for giving such new security. § 8. Period limited for registering bonds to be estimated from the time of the exe-

cution by the last party. § 9. Irregularity in bonds not to vacate the same. § 10. Bonds to be registered notwithstanding the period elapsed. § 11. Act to apply to existing bonds. § 12. The 16th and 19th clauses of *3 W. IV., c. 8, relating to sheriffs, repealed. § 13. Uniform practice established throughout the province. § 14. Duplicate bonds entered into by officers in Lower Canada to be deposited as soon as certain ordinances take effect. § 15. Statement of bonds to be laid before the legislature within fifteen days after the opening of every session. § 16. This act not to extend to municipal offices. § 17. Interpretation clause.

By 7 V., c. 8, it is enacted that it shall not be necessary to issue new commissions at the commencement of a new reign, but that a proclamation continuing all public officers and functionaries in office shall be sufficient, upon their taking the oath of allegiance as soon thereafter as may be before the proper officer.

By 14 & 15 V., c. 80, sureties for any public officer may relieve themselves from responsibility by giving notice to their principal and the secretary of the province, and such principal shall find sureties within one month or forfeit his appointment; and by 16 V., c. 87, no office shall be avoided for non-compliance with the provisions of 4 & 5 V., c. 91, until declared so by the Governor.

See also "*Oath of Office.*"

PUBLIC WORKS.

The 9th V., c. 37, entitled "An Act to amend the law constituting the Board of Works," repeals the third and all subsequent sections of 4 & 5 V., c. 38, and authorises the Governor to appoint a chief commissioner and assistant commissioner, to be styled "commissioners of public works;" also a secretary, engineer, superintendent and other officers. § 7. The commissioner to have the management and control of constructing, maintaining and repairing all canals, harbours, roads or parts of roads, bridges, slides and other public works throughout the province, or buildings constructed or maintained at the public expense out of the provincial funds. § 19. The Governor in council to make regulations for the maintenance and use of such works, and for ascertaining and collecting the tolls, dues and rates thereon, and imposing fines not exceeding in any case £50 for any one offence; and to provide for the non-passing or detention, at the risk of the owner, of vessels, carriages, animals or goods, on which tolls are to be paid, or regulations complied with, or for injury done to such public works, or any fine that may have

been incurred and remain unpaid; such regulations to be published in the *Official Gazette*. § 19. Officers and soldiers on duty to pass *toll-free*. § 20. All penalties imposed by this act, or any regulation under the authority thereof, shall be recoverable, with costs, before any justice of the peace for the district in which the offence shall be committed, upon proof by confession, or the oath of any one credible witness; and if not forthwith paid, may be levied by distress and sale of the goods and chattels of the offender, by warrant, under the hand and seal of such justice; and in default of payment or insufficient distress, such justice may, by warrant under his hand and seal, commit the offender to the common gaol of the district for such term, not exceeding *thirty* days, as he may direct, unless such penalty be sooner paid; and the penalties recovered shall belong to her Majesty, for the public uses of the province, and be paid over and accounted for accordingly: *provided*, that in respect to tolls on timber passing any slide, and to penalties for violating regulations, or for non-payment of tolls, the same may be enforced by and before any justice of the peace within any district in which such timber may happen to be at the time of application to such justice. § 21. Tolls to be paid over to the receiver-general at intervals not exceeding *one month*. § 23. The public works in schedule A. and the materials for the same, shall be vested in her Majesty, and be under the control of the commissioners; and other works may from time to time be so declared by proclamation: *provided*, that if any district council shall pass any by-law, securing, to the satisfaction of the government, the payment of the interest on any sum of money expended on any public road in any such district, and for which interest the province is liable, it shall be lawful for the Governor in council, by proclamation, to transfer such road to the district, which shall be vested in such district from the date of the proclamation; and the council shall have power to make by-laws for the management of such road, imposition and collection of tolls, and imposition and levying of penalties for violation of the by-laws, and the tolls thereof. § 24. The Governor in council authorised to appoint three arbitrators for each section of the province, to determine the compensation to owners of land assumed for public works; their decision to be subject to the jurisdiction of the superior courts of law or equity. § 25. The Governor authorised to refer any unsettled claim for damages to such arbitrators. § 26. This act not to effect any prior proceedings at law or in equity. § 27. Arbitrators to be sworn in

the form prescribed. § 28. To have full power to summon witnesses and swear them; witnesses not attending shall be liable to a penalty of not less than £1, nor more than £5, recoverable before any one justice, and levied by distress and sale of the goods of the offender.

SCHEDULE A.

PUBLIC WORKS VESTED IN THE CROWN BY THIS ACT.

Navigations, Canals, and Slides.

The Welland Canal and feeder, together with the portion of the Grand River from Cayuga Bridge to its mouth; the Welland River, from Port Robinson to its mouth, and the cut at the Chippawa; all such portions of the Saint Lawrence navigation from Kingston to the port of Montreal, as have been or shall be improved at the expense of the province; the lock and dam at St. Anne's; the Scugog River navigation, and the navigation therewith—viz., from the head of the Lake Scugog to Fenelon Falls, and from thence to Mud Lake, and Buckhorn Rapids, by Sturgeon, Pigeon and Buckhorn Lakes (hydraulic privileges being specially reserved to owners); that portion of the Otonabee River between Peterborough and Rice Lake, with the lock and dam at Whitler's Rapids; the Rice Lake and the River Trent from thence to its mouth, including the locks, dams and slides between those points; all such portions of the Ottawa River, from Bytown upwards, as have been or shall be improved at the expense of the province; the lock and other improvements on the River Richelieu; the Madawaska River, from the head of the Ragged Chute to the Chats Lake.

Harbours, Lake Erie.

Rondeau Harbour, including the piers, breakwater and inner basin; Port Stanley Harbour and inner basin; Port Burwell, do.; Port Dover, do.; Port Maitland, do.; Port Colborne, do.

Lake Ontario.

Port Dalhousie Harbour; Burlington Bay Canal; Windsor Harbour.

Roads.

The main provincial road from Quebec to Sandwich; the main road from Queenston to Hamilton; the Port Hope and Rice Lake road; the Windsor, Scugog and Narrows Bridge road; the Hamilton and Port Dover road; the London and Port Stanley road. Except the Montreal and Quebec Turnpike Trusts, and such portions of the said roads respectively as may lie within the limits of any incorporated city or town, or as shall from time to time be exempted by proclamation, issued by order of the Governor in council, from the operations of this

act, which portions shall, during the period of such exemption, remain subject to the same authorities and provisions of law as if this act had not been passed; the tolls collected under this act upon each road being applicable to the improvement of the road, and the extension of the improved portion thereof; and the debt due by any commissioners, district, or public body, on that portion of any road which shall be under the control of the commissioners of the public works, being thereafter payable out of the provincial funds.

Bridges.

Chaudiere bridge, near Quebec; the Cap Rouge bridge; the St. Ann De la Perade bridge; the Batiscan bridge; the St. Maurice bridge; the Union, Suspension, and other bridges over the Ottawa river, between Bytown and Hull; the Trent bridge at the mouth of the River Trent; the bridge at the narrows of Lake Simcoe; the Dunnville bridge; the Caledonia bridge; the Brantford bridge; the Paris bridge; the Delaware bridge; the Chatham bridge; and all other canals, locks, dams, slides, bridges, roads, or other public works of a like nature, constructed or to be constructed, repaired or improved, at the expense of the province.

Maximum Tolls.

See the Act, Schedule B., 1, 2, 3, 4, 5, 6.

By 10 & 11 Vic., c. 24, § 7, notwithstanding Schedule B. 4, in 9 Vic., c. 37 (*relating to the maximum rate of tolls on public roads*), the Governor in council is authorised, on report of the commissioners, to place the toll-gates on the said roads, in that schedule mentioned, at such places and distances from each other as shall appear to him advisable and requisite; and to vary the schedule in all or any of the particulars, so as the rates of toll shall not be increased beyond the amount in the said schedule mentioned, on each time of passing any toll-gate or gates, and to notify the same in the *Official Gazette*. § 8. Tolls at the several toll-gates may be farmed or leased. § 9. Timber passing slides may be detained until tolls are paid.

By 12 Vic., c. 4, § 1, schedules of maximum tolls annexed to 9 Vic., c. 37, are repealed—§ 2, and the schedules to this act are substituted instead thereof, and to have the same effect as if the schedules to this act had been annexed to the former act [9 Vic. c. 37]. § 5. The public road from Dundas to Waterloo is vested in the crown, and placed under the control of the commissioners.

By 12 V., c. 5, § 12, the Governor in council is authorised to enter into arrangements with any of the municipal or

district councils, or other local corporations or authorities (a), or with any company in Lower or Upper Canada, *incorporated* for the purpose of constructing or holding such works, or works of a like nature in the same section of the province, for the transfer to them of any of the public roads, harbours, bridges or public buildings, which it may be found more convenient to place under the management of such local authorities or companies; and on the completion of such arrangements, to *grant* for ever, or for any term of years, all or any such roads, harbours, bridges or public buildings, to the district or municipal council or other local authority or company with whom such arrangement may have been made. §13. Such grant to be effected by order in council; and nothing in this act, or in any order in council, shall exempt any person from punishment or penalty imposed by any act or law, or under the authority of any act or law, for any offence relative to any public work or works; but so much of any such penalty as would otherwise belong to the crown shall (if so provided in the order in council) belong to the *grantee* under such order; otherwise, it shall belong to the crown.

By 13 & 14 V., c. 13, the commissioners are authorised to assume lands in the neighbourhood of any public work, with the like powers conferred by 9 V., c. 37.

By 13 & 14 V., c. 14, intituled "An Act to extend the acts for the formation of companies for constructing roads and other works, to companies formed for the purpose of acquiring public works of like nature," after reciting that it was expedient to extend the benefit of the acts hereinafter mentioned to companies to be formed for the purpose of *acquiring* and holding public works or property, under the provisions of the act authorising the transfer of such works or property to any such company, or to other parties therein designated, it is enacted by § 1—that, subject to the provisions of this act, the 12 V. c. 56 (*which relates to Lower Canada*), and the act 12 V., c. 84 (b) (*which relates to Upper Canada*), shall be and are hereby extended, and shall apply to any company *to be* formed for the purpose of *acquiring* for ever, or for any term of years, any of the public roads, harbours, bridges or public buildings, which may be lawfully

(a) The 14 & 15 V., c. 57, § 1, removes doubts existing whether under the 12 V., c. 5, municipalities could acquire any such public works if situate beyond their limits.

(b) The 12 V., c. 84, has been repealed by 16 V., c. 190, saving all companies incorporated under the same, which shall in future be subject to the provisions of said act 16 V., c. 190. But the latter act contains no provision for *acquiring* public works hereafter.

transferred to any such company under the act 12 V., c. 5, or for the purpose of so acquiring and of improving or extending any such public work, as fully and effectually as if such purpose were expressly enumerated in the said acts *firstly* and *secondly* mentioned: provided always, that notwithstanding any thing in either of the said acts, no company to be formed under this act shall be liable to be opposed or prevented from acquiring such works, or from using and working the same, by any municipal council or other party, nor shall the company be bound to make any report respecting such work, to any municipal authority; nor shall such municipal authority, or the Crown, have the right of taking such work at the end of any term of years; but the provisions of the said acts respectively, as to such opposition and prevention, or to such report, or to the taking of the works or property of the company by any municipal authority, or by the Crown, shall apply only to the *extension* of the same beyond the local limits of the work when transferred to the company; nor shall any of the provisions of the said acts which shall be inconsistent with any lawful provision or condition in any order in council legally made under the act *thirdly* mentioned, or with the rights transferred by the same, apply to the company to which such order in council shall relate; but nothing herein contained shall prevent the reservation in any such order of the power of taking any such work, with or without any such extension, and by the Crown, or any municipal authority, on the terms and conditions therein to be expressed: provided always, that § 35 of the *first* cited act, and § 37 of the act *secondly* cited, shall apply to roads, bridges and other works transferred to any company, and to the company to whom the same shall have been transferred in relation to such roads, bridges and works. § 2. The tolls to be taken by any such company on any such public work, not being a road, shall not be regulated by the provisions of the acts *firstly* and *secondly* mentioned, but by 12 V., c. 4, unless some *lower maximum* be fixed by order in council, transferring the work to the company; and the tolls to be levied on any road, or any extension of such public works, shall be regulated by the acts *firstly* and *secondly* mentioned, in the absence of any special provision for lower rates in the order in council aforesaid. § 5. No road, bridge or public work, shall be transferred to any company without the reservation power on the part of the government to resume the same at any time after the expiration of a period which shall not exceed *ten* years, on the conditions to be embodied in the order in council; and no such road or public work shall be

leased to any company for more than ten years, nor sold or leased unless security be given for an amount equal to ten per cent. of the actual value in case of sale, or estimated value in case of lease; and in every instance one of the conditions of sale or lease shall be that such work shall be kept in thorough repair, to be decided on by the engineer of the Board of Works.

By 14 & 15 V., c. 37, entitled an act to remove doubts as to municipal corporate bodies acquiring public works without the limits of such municipalities, such doubts are, by § 1, removed. But the remainder of this act is repealed by 16 V., c. 190.

§ 6. Enacts that every such local corporate body or authority shall keep every such road in good and sufficient repair, and upon default thereof, shall and may be indicted at any court of general quarter sessions of the peace, or other court of superior jurisdiction of any county or union of counties, within or along the boundary of which such road shall be out of repair, and upon being convicted, the court before which such conviction shall be had, shall direct such local corporate body or authority to make the necessary repairs, for the want of which such prosecution shall have been commenced, within such time as to the court shall seem reasonable; and that in case such repairs shall not be completed within such time, the county council of the locality within or along the limits of which the road may be situate in part or wholly, shall and may cause the necessary repairs to be made, and the amount expended on such repairs, together with *twenty-five* per cent. increase thereon, shall and may be recovered from the corporate body or authority owning the road and so neglecting to make such repairs, by action of debt in any court of competent jurisdiction.

Riots at Public Works.

By 8 V., c. 6, § 1, this act to come in force, in any locality where public works are being carried on, upon the Governor's proclamation, and to cease upon the like proclamation. § 2. While this act shall be in force, no person employed upon any canal or other public work, shall have in his possession or under his care any gun, blunderbuss, pistol or other fire-arm, or any stock, lock, barrel or any other part of such gun, &c., or any bullets, sword, sword-blade, bayonet, pike, pike-head, spear, spear-head, dirk, dagger or other instrument for cutting or stabbing, or other arms, ammunition or weapon of war, under a penalty of not less than 10s., nor more than 20s. for every such weapon found in his possession. § 3. Within the time appointed in such proclama-

tion, every person so employed shall bring and deliver up to some magistrate or commissioner, every such weapon as aforesaid, taking a receipt for the same. § 4. Such weapons to be returned when the act shall cease to be in force. § 5. Weapons unlawfully kept may be seized by any justice, commissioner, constable or other peace officer and forfeited to her Majesty. § 6. Concealment of any such weapons to be subject to a penalty of not less than £10, nor more than £25. § 7. Any justice or commissioner may, on the oath of a credible witness that he believes any such weapon is in the possession of any party contrary to this act, issue a warrant to search for and seize the same: and in case admission to any such house or place cannot be obtained within a reasonable time after demand, such constable or peace officer, and person in his aid, may enter the same by force, by day or by night, and seize such weapon: and unless the party do, within four days, prove to the satisfaction of such justice or commissioner that the weapon so seized was not in his possession or in his house contrary to the true spirit of this act, the same shall be forfeited to her Majesty. § 8. Persons carrying weapons within the limits or locality, when this act shall be in force, may be arrested and detained and committed for trial for a misdemeanor, unless he shall give sufficient bail for his appearance. § 9. Monthly returns to be made of all weapons delivered up. § 10. Weapons forfeited to be sold and the proceeds paid over to the receiver-general. § 11. Limitation of actions. § 12. Penalties under this act may be prosecuted for and recovered before any two justices of the locality, who may, on complaint on oath, issue their warrant for bringing the offender before them, and if convicted on the oath of one witness other than the informer, or by his own confession, the justices shall impose such penalty. § 13. The Governor authorised to raise a mounted police force for better carrying this act into effect. § 14. Officers to be appointed by the Governor, and to be justices of the peace where the act shall be in force. § 15. The mounted police force to be declared to be constables. § 16. Expenses of carrying this act into effect to be defrayed by the Board of Works. § 18. Act to continue in force two years.

By 14 & 15 V., c. 76, § 1, the above act may be extended to places where works have been undertaken by private companies, but to cease on proclamation.

The original act was continued by several acts, and lastly, by the 20 V., c. 16, to the 1st January, 1858, and to the end of the next session of the legislature.

PUBLIC WORSHIP.

By 4 & 5 V., c. 27, § 31, if any person shall wilfully disturb, interrupt or disquiet any assemblage of people met for religious worship, by profane discourse, by rude and indecent behaviour, or by making a noise, either within the place of worship, or so near it as to disturb the order and solemnity of the meeting, such person shall, upon conviction before any justice of the peace, on oath of one or more credible witnesses, forfeit and pay any sum not exceeding £5 as such justice shall think fit; § 32, to be levied with the costs within the period specified for payment thereof, at the time of conviction by the justice before whom such conviction may have taken place, and in default thereof, the offender shall be committed for any term not exceeding one month, unless the costs and fine shall be sooner paid. § 38. Appeal lies to the sessions.

PUNISHMENT.

Under the 4 & 5 V., c. 24.

Felony.—§ 34. Every person convicted of any felony, not punishable with death, shall be punished in the manner prescribed by the statute or statutes specially relating to such felony; and that any person convicted of any felony for which no punishment hath been or hereafter may be specially provided, shall be deemed to be punishable under this act, and shall be liable at the discretion of the court to be imprisoned at hard labour in the provincial penitentiary for any term not less than *seven* (a) years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

(b) *Transportation.*—§ 25. If any person sentenced or ordered, or hereafter to be sentenced, or ordered to be transported, or who shall have agreed, or shall agree, to transport or banish himself, or herself, on certain conditions, either for life or for any number of years, shall be afterwards at large, within any part of this province, contrary to such sentence, order, or agreement, without some lawful cause, before the expiration of his or her term of transportation or banishment, every such offender shall be guilty of felony, and shall be transported beyond the seas for his or her natural life, and previously to transportation shall be imprisoned for any term not exceeding four years; and every such offender may be

(a) See 6 V., c. 5, § 2, which enables the court in its discretion to reduce the period to three years.

(b) See also same statute, § 4, which substitutes imprisonment in the penitentiary for transportation.

tried either in the district, county or place where such offender shall be found at large, or at the district, county, or place in or at which sentence or order of transportation or banishment was passed or made. § 26. In any indictment or information against any offender for being at large in this province, contrary to the provisions of this act, or of any other act hereafter to be in force in this province, it shall be sufficient to allege the sentence or order of transportation or banishment of such offender, without alleging any indictment, information, trial, conviction, judgment, or other proceeding, or any pardon or intention of mercy, or signification thereof, of or against, or in any manner relating to such offender. § 27. The clerk of the court or other officer having the custody of the records of the court, where any such sentence or order of transportation or banishment shall have been passed or made, or his deputy, shall, at the request of any person, on behalf of her Majesty, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of any indictment, information and conviction of such offender, and of the sentence or order for his or her transportation or banishment (not taking for the same more than the sum of five shillings); which certificate shall be sufficient evidence of the conviction and sentence, or order for the transportation or banishment of such offender; and every such certificate shall be received in evidence upon proof of the signature of the person signing the same.

Imprisonment.—§ 28. Where any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of the term of such imprisonment, or of such imprisonment with hard labor, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet. § 29. Whenever sentence shall be passed for felony on a person already imprisoned under sentence for another crime, it shall be lawful for the court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment, to which such person shall have been previously sentenced, although the aggregate term of imprisonment may exceed the term for which such punishment could be otherwise awarded.

Second conviction.—§ 30. If any person shall be convicted of any felony not punishable with death, committed after a

previous conviction for felony, such person shall, on such subsequent conviction, be liable, at the discretion of the court, to be imprisoned at hard labor in the provincial penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years; and in any indictment for any such felony, committed after a previous conviction for felony, it shall be sufficient to state that the offender was at a certain time and place convicted of felony without otherwise describing the previous felony, and a certificate, containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony, purporting to be signed by the clerk of the court, or other officer having the custody of the records of the court, where the offender was first convicted, or by the deputy of such clerk or officer, for which certificate a fee of five shillings and no more shall be demanded or taken, shall upon proof of the identity of the person of the offender be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same; and if any such clerk, officer or deputy shall utter any false certificate of any indictment and conviction for a previous felony, or of any sentence or order of transportation or banishment, or if any person other than such clerk, officer or deputy, shall sign any such certificate as such clerk, officer or deputy, or shall utter any such certificate with a false or counterfeit signature thereto, every such offender shall be guilty of felony, and being lawfully convicted, shall be liable at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary, for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Pillory abolished.—§31. That from and after the commencement of this act, judgment shall not be given and awarded against any person or persons convicted of any offence that such person or persons do stand in the pillory, any law, statute, or usage to the contrary notwithstanding; provided that nothing herein contained shall extend, or be construed to extend, in any manner to change, alter, or affect any punishment whatever which may now be by law inflicted, in respect of any offence, excepting only the punishment of the pillory.

Commencement of Imprisonment.—That the period of imprisonment in the provincial penitentiary in pursuance of any sentence passed under this act, or under any other act relating to the punishment of offences by confinement and imprisonment in the provincial penitentiary, shall be held to

commence from the period of passing such sentence, whether the convict upon whom such sentence shall be passed shall be removed to the said provincial penitentiary forthwith, or be detained in custody in any other prison or place of confinement previously to such removal.

Under the 4 and 5 V., c. 25.

Simple Larceny.—§ 3. Any person convicted of simple larceny, or felony punishable as simple larceny, shall (except as otherwise provided) be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, (a) or to be imprisoned in any prison or place of confinement for any term not exceeding two years.

Felony or Misdemeanor.—§ 4. Any person being convicted of felony or misdemeanor punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned and kept to hard labour in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court shall seem meet.

The punishment for specific offences mentioned in this act has been already stated under the various titles embracing such offences.

Under the 4 & 5 V., c. 26.

Malicious Injury to Property.—The punishment for the several classes of offence enumerated in this act will be found under their respective titles.

Imprisonment with Hard Labour.—§ 27. Any person convicted of any indictable offence under this act for which imprisonment may be awarded, the court may sentence the offenders to be imprisoned, or to be imprisoned and kept to hard labour in the common gaol or house of correction; and may also direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, in the discretion of the court.

Under the 4 & 5 V., c. 27.

Administering Poison.—§ 9. Whosoever shall administer or cause to be taken by any person, any poison or other de-

(a) But see 6 V., c. 5, § 2, which enables the court in its discretion to reduce the period to three years.

destructive thing, or shall stab, cut or wound any person, or shall by any means whatsoever cause to any person any bodily injury dangerous to life, with intent to commit murder, shall be guilty of felony, and being convicted thereof shall suffer death.

Attempt to Murder.—§ 10. Whosoever shall attempt to administer to any person any poison or other destructive thing, or shall shoot at any person, or shall by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent to commit the crime of murder, shall, although no bodily injury shall be effected, be guilty of felony; and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, (a) or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Cutting and Maiming.—§ 11. Whosoever shall unlawfully and maliciously shoot at any person, or shall by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall stab, cut or wound any person, with intent in any of the cases aforesaid to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with the intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, (a) or to be imprisoned in any other place of confinement for any term not exceeding two years.

Using Explosive or Corrosive Matter.—§ 12. Whosoever shall unlawfully and maliciously send or deliver to, or cause to be taken, or received by any person, any explosive substance, or any other dangerous or noxious thing, or shall cast or throw upon or otherwise apply to any person, any corrosive fluid, or other destructive matter, with intent to burn, maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, and whereby any person shall be burnt, maimed, disfigured or disabled, or receive some other grievous bodily harm, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, (a) or to be imprisoned in any other

(a) See note (a) page 697.

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

Abortion.—§ 13. Whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, (a) or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Homicide.—§ 27. No punishment shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony.

Accessories.—§ 35. Every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act, shall, on conviction, be liable to be imprisoned for any term not exceeding two years.

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

Assault.—§ 37. On the trial of any person for any of the offences hereinbefore mentioned, for any felony whatever, where the crime charged shall include an assault against the person, it shall be lawful for the jury to acquit of the felony, and to find a verdict of guilty of assault against the person indicted, if the evidence shall warrant such finding; and when such verdict shall be found, the court shall have power to imprison the person so found guilty of an assault, for any term not exceeding three years.

Military.—§ 38. Provided always, and be it enacted, that nothing herein contained shall alter or affect any of the laws relating to the government of her Majesty's land or naval forces.

(a) See note (a) page 697.

Pardon.—§ 39. It shall be lawful for the Queen's Majesty, and for the Governor, Lieutenant-Governor, or person administering the government of the province, to extend the royal mercy to any person imprisoned by virtue of this act, although he shall be imprisoned for non-payment of money to some party other than the Crown.

By the 6 V., c. 5, § 1, after reciting that it was expedient to enable the courts before whom offenders might be convicted in certain cases better to proportion the punishment to the guilt of the offence, it is enacted, that so much of the 4 & 5 V., cc. 24, 25, 26 & 27 (or of any other law), as is inconsistent with this, shall be repealed. § 2. That for every offence for which by any of the above-mentioned acts the offender is liable to imprisonment in the provincial penitentiary, but may instead thereof be imprisoned in any prison for any term not exceeding *two* years, the offender may, if convicted, be punished, in the discretion of the court, by imprisonment in the provincial penitentiary for any term not less than *three* years, and not exceeding the longest term for which such offender might have been so imprisoned if this act had not been passed, or by imprisonment in any other prison or place of confinement for any term not exceeding two years, in the manner prescribed by such act: provided, that this act shall not prevent such offender from being punished by imprisonment in the provincial penitentiary for life, if he might have been so punished if this act had not been passed. § 3. That for every offence for which by any of the said acts the offender might be punished by imprisonment for such term exceeding two years, such imprisonment, if awarded for a longer term than two years, shall be in the provincial penitentiary. § 4. That for every offence for which by any of the said acts, or by any other act or law, the offender might, if this act had not been passed, have been punished by transportation beyond seas, such offender may, if convicted after the passing of this act, be punished by imprisonment in the provincial penitentiary for any term for which he might have been transported if this act had not been passed, or by imprisonment for life, if without this act he might have been punished by transportation for life.

By 14 & 15 V., c. 2, § 2, it is enacted that whenever any offender convicted after this act (the Penitentiary Act) shall come into effect, shall be punishable by imprisonment, such imprisonment shall, if it be for two years, or any longer term, be in the provincial penitentiary, any thing in the 6 V., c. 5, or any other act to the contrary notwithstanding: provided that nothing herein contained shall prevent the reception and imprisonment in the said penitentiary of any prisoner

sentenced for any period of time by any military or militia court martial, or military authority under any military act.

QUAKERS.

*By 49 G. III., c. 6, it is enacted that every Menonist or Tunker, in cases in which an oath is required by law, or upon any lawful occasion wherein the affirmation or declaration of a Quaker will by law be admitted, shall be and is hereby permitted to make his or her affirmation or declaration in the same manner and form as a Quaker by the laws now in force is required to do, having first made the following affirmation or declaration :

"I, A. B., do solemnly, sincerely, and truly affirm and declare, that I am one of the Society of Tunkers or Menonists." [as the case may be.]

Which affirmation or declaration shall be of the same force and effect in all courts of justice, and other places where by law an oath is required, as if such Menonist or Tunker had taken an oath in the usual form; and all persons authorised to administer an oath, may administer such affirmation or declaration. § 2. Any person making a false affirmation or declaration, shall incur the pains and penalties of perjury. § 3. No Menonist or Quaker shall by virtue of this act be qualified to serve on juries (a) in criminal cases, or hold or enjoy any office under government. By *10 G. IV., c. 1, Quakers, Menonists, Tunkers and Moravians are admitted to *give evidence*, in criminal cases, upon making an affirmation in the following form in lieu of an oath :

"I, A. B., do solemnly, sincerely, and truly declare, that I am one of the Society called Quakers, Menonists, Unitas Fratrum, or Moravians" [as the case may be.]

And any person convicted of a false affirmation, shall incur the pains and penalties of perjury; but such persons shall not be permitted to serve on juries in criminal cases.

By the Militia Act, 18 V., c. 77, § 7, all persons having certificates from the society of Quakers, Menonists, and Tunkers, or any inhabitant of this province of any religious denomination otherwise subject to military duty in time of peace, but who from the doctrine of his religion shall be averse to bearing arms, and shall refuse personal military service, shall be exempt therefrom.

(a) The 10 G. IV., c. 1, § 3, contained a similar provision against their serving on juries in criminal cases. But it was repealed by the 14 & 15 V., c. 65, § 2. The 49 G. III., c. 6, does not appear to have been expressly repealed, but is no doubt in effect superseded as to juries by the "Jury" Act, 13 & 14 V., c. 55.

RAILWAYS.

By the 12 V., c. 28, railroad companies when required by the postmaster-general, the commander of H. M. forces, or person having the command or superintendence of the police force, shall carry the mail, naval or military forces, or militia, artillery, ammunition or other stores, policemen, constables and others travelling on her Majesty's service, and place any electric telegraph belonging to them at the disposal of her Majesty's government or such officers as aforesaid; such services to be performed upon such terms as the parties may agree, and in case of difference, to be fixed by the Governor in council.

By 12 V., c. 29, the Governor in council is authorised to guarantee the interest on loans to any company chartered by the legislature for the construction of a line of railway not less than 75 miles in extent, on condition that the interest shall not exceed six per cent.; that the sum on which interest shall be so guaranteed shall not be greater than that expended by the company before the guarantee given, and shall be sufficient to complete their road; no such guarantee to be given until one-half of the entire line of road shall have been completed; that such interest be the first charge on the tolls, and no dividend declared till such interest paid; that so long as any part of the principal on which interest is guaranteed by the province remains unpaid, no dividend shall be paid to the stockholders until a sum equal to *three* per cent. on the amount so remaining unpaid shall have been set aside from the surplus profits and paid over to the receiver general under the provisions contained in this act, as a sinking fund, and that the province shall have the first mortgage or lien upon the road, tolls and property of the company.

By the General Consolidation Act, 14 & 15 V., c. 51, the preamble of which states "that it is expedient to establish a general and uniform system for the construction and management of the railways *hereafter* to be undertaken in Canada." Be it therefore enacted, &c.

[The first eleven sections relate to matters connected with the construction of railways and corporate powers, &c. The following only are noticed as being of more general public interest.]

Highways and Bridges.

§ 12. That the highways and bridges shall be regulated as follows: *Firstly*. The railway shall not be carried along any existing highway, but merely cross the same in the line of the railway, unless leave be obtained from the proper municipal authority therefor, and no obstruction of such highway

with the works shall be made without turning the highway, so as to leave an open and good passage for carriages, and on completion of the works, replacing the highway under a penalty of not less than £10 for any contravention: but in either case the rail itself, provided it does not rise above or sink below the surface of the road more than one inch, shall not be deemed an obstruction.

Secondly. No part of the railway which shall cross any highway without being carried over by a bridge, or under by a tunnel, shall rise above or sink below the level of the highway more than one inch; and the railway may be carried across or above any highway within the limits aforesaid.

Thirdly. The space of the arch of any bridge erected for carrying the railway over or across any highway shall at all times be and be continued of the open and clear breadth and space under such arch of not less than twenty feet, and of height from the surface of such highway to the centre of such arch of not less than twelve feet, and the descent under such bridge shall not exceed one foot in twenty feet.

Fourthly. The ascent of all bridges erected to carry any highway over any railway shall not be more than one foot in twenty feet increase over the natural ascent of the highway; and a good and sufficient fence shall be made on each side of every bridge, which fence shall not be less than four feet above the surface of the bridge.

Fifthly. Signboards stretching across the highway crossed at a level by any railway shall be erected and kept up at each crossing at such height as to leave sixteen feet from the highway to the lower edge of the sign board, and having the words, "Railway Crossing," painted on each side of the signboard, and in letters not less than six inches in length; and for every neglect to comply with the requirements of this section, a penalty not exceeding £10 shall be incurred.

Fences.

§ 13. *Firstly.* Fences shall be erected and maintained on each side of the railway of the height and strength of an ordinary division fence, with openings or gates or bars therein, and farm crossings of the road for the use of the proprietors of the lands adjoining the railway; and also cattle-guards at all road crossings suitable and sufficient to prevent cattle and animals from getting on the railway; and until such fences and cattle-guards shall be duly made, the company shall be liable for all damages which shall be done by their trains or engines to cattle, (a) horses,

(a) But see 20 V., c. 12, § 16, which prohibits cattle running at large upon any highway within half a mile of any railway crossing.

or other animals on the railway; and after the fences or guards shall be duly made, and while they are maintained, no such liability shall accrue for any such damage unless negligently or wilfully done; and if any person shall ride, lead or drive any horse or any other animal upon such railway, and within the fences and guards, other than the farm crossings without the consent of the company, he shall for every such offence forfeit a sum not exceeding £10, and shall also pay all damages which shall be sustained thereby to the party aggrieved; and no other person than those connected with or employed by the railway shall walk along the track thereof except where the same shall be laid across or along a highway.

Secondly. Within six months after any lands shall be taken for the use of the railway, and if thereunto required by the proprietors of the adjoining lands respectively, but not otherwise, the lands shall be by the company divided and separated, and kept constantly divided and separated from the lands or grounds adjoining thereto, with a sufficient post or rail, hedge, ditch, bank or other fence sufficient to keep off hogs, sheep, and cattle, to be set and made on the lands so taken, and which the company shall at their own cost and charges from time to time maintain, support, and keep in sufficient repair.

Tolls.

§ 14. That tolls shall be established as follows, viz :

Firstly. Tolls shall be fixed and regulated by the by-laws of the company, (a) or by the directors, if authorised by the by-laws, or by the shareholders at any general meeting: and in case of non-payment, may be sued for and recovered in any competent court, or the agents or servants of the company may seize the goods and detain the same until payment; and if not paid within *six weeks*, the company shall have power to sell the whole or any part, and out of such sale, retain the tolls payable, and all charges and expenses of such detention and sale, rendering the surplus, if any, to the person entitled thereto: and if any goods shall remain in the possession of the company unclaimed for the space of *twelve months*, the company, on giving public notice by advertisement for six weeks in the *Canada Gazette*, and in such other papers as they may deem necessary, may sell the

(a) By 10 & 11 V., c. 63, § 14, all by-laws imposing tolls are to be subject to the approval of the Governor in council, whenever power to amend the act of incorporation has been reserved in it. See also 12 V., c. 28, § 2, directing that all future acts shall be construed as containing such reservation.

same by public auction, and out of the proceeds, pay such tolls and all reasonable charges for storing, advertising and selling; the balance to be kept by the company for a further period of three months, to be paid over to the party entitled thereto; and in default of claim to be then paid over to the receiver-general for the use of the province until claimed. Tolls may by by-laws be lowered, reduced, and raised when deemed necessary: provided that the same tolls shall be payable at the same time, and under the same circumstances upon all goods and persons, so that no undue advantage, privilege, or monopoly may be afforded to any person or class of persons.

Secondly. In all cases, a fraction in the distance shall be considered as a whole mile; and for a fraction of a ton in weight a portion of the tolls shall be taken according to the number of quarters of a ton contained therein, and a fraction of a quarter of a ton shall be considered as a whole quarter.

Thirdly. A printed board or paper exhibiting all the tolls payable, and particularising the price or sum of money to be charged or taken for the carriage of any matter or thing, shall be stuck up in the office, and in all places where the tolls are to be collected, and in every passenger car, in some conspicuous place.

Fourthly. No tolls shall be levied or taken until approved of by the Governor in council, nor until two weeks after two weekly publications in the "Canada Gazette," of the by-law and order in council.

Fifthly. Every by-law fixing such tolls shall be subject to revision by the Governor in council: and after an order in council reducing such tolls, the tolls mentioned in such order shall be substituted for those mentioned in such by-law.

§§ 15, 16 & 17, contain provisions for general meetings—the election of directors—shares and their transfer.

§ 18, authorises municipalities to subscribe for any number of shares, or lend or guarantee the payment of any sum of money borrowed by the company from any corporation or person, or indorse or guarantee the payment of any debenture to be issued by the company for the money by them borrowed, with power to assess and levy from time to time upon the whole rateable property of the municipality a sufficient sum for them to discharge the debt or engagement so contracted, and for the like purpose to issue debentures for not less than £5 currency.

Secondly. Any such debenture issued, indorsed or guaranteed, shall be valid if signed or indorsed and countersigned by such officer or person and in such manner as shall be

directed by any by-law of such corporation, and the corporation seal thereto not necessary.

Thirdly. No municipal corporation shall subscribe for stock or incur any debt or liability under this act, unless a by-law to that effect shall have been duly made and adopted with the consent first had of a majority of the qualified electors of the municipality, to be ascertained in such manner as shall be determined by such by-law after public advertisement thereof containing a copy of such proposed by-law inserted at least *four* times in each newspaper printed within the limits of the municipality, or if none printed therein, then in some one or more newspapers printed in the nearest city or town thereto and circulated therein, and also put up in at least *four* of the most public places in each municipality.

Fourthly. The mayor, warden, or reeve being the head of such municipal corporation, subscribing for or holding stock in the company to the amount of £500 or upwards, shall be *ex officio* a director of the company, in addition to the number of directors authorised by the special act.

Shareholders' Liability.

§ 19. *Firstly.* Each shareholder shall be liable individually to the auditors of the company to an amount equal to the amount of his unpaid stock, but not until an execution against the company shall be returned unsatisfied.

Secondly. The original stock may be increased to any amount, but sanctioned by a vote of at least two-thirds of the stockholders.

Thirdly. The funds of the company shall not be employed in the purchase of any stock in their own or any other company.

Actions for Indemnity.—Fines and Penalties.

§ 20. And be it enacted, that:

Firstly. All suits for indemnity for any damage by reason of the railway, shall be instituted within six calendar months, and if there shall be continuation of the damage, then within six calendar months next after the doing or committing such damage shall cease, and not afterwards.

Secondly. All persons by any means, or in any manner or way whatsoever obstructing or interrupting the free use of the railway, or the carriages, vessels, engines or other works incidental or relative thereto, or connected therewith, shall for every such offence be deemed guilty of a misdemeanor, and on conviction thereof punished by imprisonment in the common gaol of the district or county where the conviction shall take place, or in the provincial penitentiary for a term not exceeding five years.

Thirdly. All persons wilfully and maliciously, and to the prejudice of the railway, breaking, throwing down, damaging or destroying the same, or any part thereof, or any of the buildings, stations, depots, wharves, vessels, fixtures, machinery, or other works or devices incidental and relative thereto, or connected therewith, or doing any other wilful hurt or mischief, or wilfully or maliciously obstructing or interrupting the free use of the railway, vessels or works, or obstructing, hindering, or preventing the carrying on, completing, supporting and maintaining the railway, vessels or works, shall be adjudged guilty of a misdemeanor, unless the offence committed shall under some other act or law amount to a felony, in which case such person shall be deemed guilty of a felony, and the offenders shall be punished in like manner as persons guilty of misdemeanor or felony, (as the case may be) are directed to be punished by the laws in force.

Fourthly. All fines and forfeitures imposed by this act, or the special act, (a) or which shall be lawfully imposed by any by-law, the levying and recovering of which are not particularly herein directed, shall upon proof of the offence before any one or more justices of the peace of the locality, either by the confession of parties, or by the oath or affirmation of any one credible witness to be administered without fee or reward, be levied by distress and sale of the offender's goods and chattels by warrant under the hand and seal, or hands and seals of such justice or justices. And all fines and forfeitures, and penalties, not otherwise directed, shall be paid to the treasurer of the company for the use thereof; and for the want of sufficient distress, the offender shall be sent to the common gaol for the county or district, where convicted, there to remain without bail for such term not exceeding one month as such justice or justices shall think proper, unless such penalty and all expenses shall be sooner paid: but every such person may, within *four* calendar months after conviction, appeal against the same to the quarter sessions.

Fifthly. All contraventions of this act, or of the special act, by the company, or by any other party for which no punishment or penalty is herein provided, shall be a misdemeanor, and punishable accordingly.

Sixthly. All by-laws, rules and orders regularly made shall be put in writing and signed by the chairman or person presiding at the meeting, and shall be kept in the office of the company; and a printed copy of so much as may relate to or affect any party other than the members or servants of the company, shall be affixed openly in all and every passenger car, and in all places for collection of tolls.

(a) See act of Incorporation.

Seventhly. Copies of the minutes at any general or special meeting to be *prima facie* evidence.

Working of the Railway.

§ 21. And be it enacted, that :

Firstly. Every servant of the company in a passenger train, or at stations, shall wear upon his hat or cap a *badge* indicating his office, and he shall not, without such badge, be entitled to demand or receive from any passenger, any fare or any ticket, or exercise any of the powers of his office, nor meddle or interfere with any passenger, or his baggage or property.

Secondly. The trains shall start and run at regular hours, to be fixed by public notice, and shall furnish sufficient accommodation for passengers and goods.

Thirdly. Checks shall be affixed by an agent or servant to every parcel of baggage having a handle, loop or fixture of any kind thereupon ; and a duplicate of such check shall be given to the passenger ; and if such check be refused on demand the company shall pay to such passenger the sum of £2, to be recovered in a civil action ; and no fare or toll shall be collected from such passenger, and if he shall have paid his fare, it shall be refunded by the conductor ; and any passenger producing such check may himself be a witness in any suit brought by him against the company, to prove the value of his baggage not delivered to him.

Fourthly. The baggage, freight, merchandize or lumber cars shall not be placed in rear of the passenger cars, and if any be so placed, the officer or agent directing, or knowingly suffering such arrangement, and the conductors of the train shall be deemed guilty of a misdemeanor, and punished accordingly.

Fifthly. Every locomotive engine shall be furnished with a bell of at least 30lbs. weight, or a steam whistle, which shall be rung or sounded at the distance of at least 80 rods from where the railway shall cross any highway, and be kept ringing or sounded at short intervals, until the engine shall have crossed such highway, under a penalty of £2 for every neglect, to be paid by the company, who shall also be liable for all damages by reason of such neglect.

Sixthly. Passengers refusing to pay their fare, may, by the conductor of the train and servants of the company, be, with their baggage, put out of the cars, using no unnecessary force, at any usual stopping place, or near any dwelling house, as the conductor shall elect, first stopping the train.

Seventhly. All persons in charge of a locomotive engine, or acting as the conductor of a car or train of cars, who shall

be intoxicated on the railway, shall be deemed guilty of a misdemeanor.

Eighthly. Any passenger injured while on the platform of a car, or on any baggage, wood, or freight car, in violation of the printed regulations, posted up at the time in a conspicuous place, inside of the passengers' car, shall have no claim for such injury, provided sufficient room was furnished at the time.

General Provisions.

§ 22. Enacted, 1. That the company shall not be bound to see to the execution of trusts. 2. Provision for carrying the mail, troops and military stores. 3. Account of names and residence of shareholders to be kept. 4. Map, &c., of the railway to be filed in the office of the board of works. 5. Annual account of the affairs of the company to be laid before parliament. 6. Provision for the forfeiture of a railway charter if the work not completed within ten years. 7. The legislature authorised to reduce the tolls. 8. The carriage of combustible goods prohibited. 9. Forging of any debenture or *coupon*, or uttering the same knowingly, or being accessory before or after the fact to be deemed *felony*. 10. The company bound to make and keep in repair all fences, roads, and water courses, &c., in Lower Canada. 11. Every special act to be a public act. 12. Power for the legislature to annul or dissolve any corporation formed under this act. 13. Saving of all crown rights. 14. Interpretation clause.

By 16 V., c. 169, § 1, if any person shall wilfully and maliciously displace or remove any railway switch or rail of any railroad, or break down, rip up, injure or destroy any railroad track or railroad bridge, or fence of any railroad or any portion thereof, or place any obstruction whatsoever on any such rail or railroad track or bridge, with intent thereby to injure any person or property passing over or along such railroad, or to endanger human life, every such offender shall be guilty of misdemeanor, and be punished by imprisonment, with hard labor, in the common gaol of the territorial division where the offence was committed, for any period not exceeding one year; and if in consequence of such act done, any person so passing over and along such railroad shall suffer bodily harm, or any property be injured, the same shall be an aggravation of the offence and render such offence a *felony*, and subject the offender to punishment by imprisonment in the penitentiary for not less than one year, nor more than two years, in the discretion of the court. § 2. If any person shall wilfully and maliciously displace or remove any railway switch or rail of any railroad, or shall

break down, rip up, injure or destroy any railroad track or railroad bridge, or fence of any railroad, or any portion thereof, or place any obstruction whatever on any such rail or railroad track or bridge, or shall do or cause to be done any act whatever whereby any engine, machine or structure, or any matter or thing appertaining thereto, shall be stopped, obstructed, impaired, weakened, injured or destroyed, with intent thereby to injure any person or property passing over or along such railroad, and if in consequence thereof any person be killed, or his life be lost, the offender shall be deemed guilty of manslaughter, and punished by imprisonment in the penitentiary for any period not more than ten years nor less than four. § 3. If any person shall wilfully and maliciously do or cause to be done any act whatever whereby any building, fence, construction or work of any railroad, or any engine, machine or structure of any such railroad, or any matter or thing appertaining to the same shall be stopped, obstructed, impaired, weakened, injured or destroyed, the offender shall be guilty of a misdemeanor, and punished by imprisonment with hard labor, not exceeding one year in the common gaol of the territorial division in which the offence was committed or tried. § 6. In all cases where railroads pass any draw or swing bridge over any navigable river, canal or stream, the trains shall in every case be stopped at least *three minutes*, to ascertain from the bridge tender that the said bridge is closed and in perfect order for passing, and in default of so stopping the company shall be liable to a penalty of £100.

§ 7. The cleared ground adjoining any railway and belonging thereto, shall be laid down with grass or turf, and thistles and other noxious weeds thereon destroyed; and any railway company failing to comply with this section within *twenty* days after notice from the chief officer of the municipality, shall incur a penalty of 10s., for the use of the municipality, for each day of such neglect; and it shall be lawful for such chief officer to cause the same to be done, and for the municipality to recover the expense and charges and the said penalties, with costs of suit in any civil court of competent jurisdiction. § 8. Provision prescribing the terms on which railway companies may assume lands of the crown on the line of railroad, and the conditions on which the company may carry their railway across any canal, rivers or navigable waters. § 9. Railway companies authorised to construct branch railways on certain conditions.

By 19 & 20 V., c. 11, § 1, any wilful or negligent contravention by any officer, servant or person employed by any company, of any by-law or regulation thereof, whereby any

injury to person or property shall be incurred or subjected, shall be a misdemeanor, punishable, on conviction, by fine or imprisonment. § 2. And if no injury actually done, then by a penalty not exceeding 30 days' pay, nor less than 15, recoverable with costs before any one justice. § 3. The company authorised to impose penalties on its officers and servants, of not less than 30 days' pay, for contravention of any such by-law.

Malicious Obstruction.—By 18 V., c. 92, § 32, if any person shall wilfully and maliciously put, cast or throw upon or across any railway, any wood, stone or other matter or thing, or shall wilfully and maliciously take up, remove or displace any rail, sleeper or other matter or thing belonging to any railway, or shall wilfully and maliciously turn, move or divert any point or other machinery belonging to any railway, or shall wilfully and maliciously make or shew, hide or remove, or omit to make or shew any signal or light upon or near any railway, or shall wilfully and maliciously do or cause to be done, or omit or neglect, or cause to be omitted or neglected any other matter or thing, with intent to obstruct, upset, overthrow, injure or destroy any engine, tender, carriage or truck using such railway, or to endanger the safety of any person travelling or being upon such railway, any such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned in the provincial penitentiary for any term not less than three nor more than seven years.

Casting or throwing against any Carriage, Tender, &c.
—§ 33. If any person shall wilfully and maliciously cast, throw, or cause to fall or strike against, into or upon any carriage, engine, tender or truck used upon any railway, any wood, stone or other matter or thing, with intent to endanger the safety of any person being in or upon such carriage, engine, tender or truck, every such offender, being convicted thereof, shall be guilty of felony, and shall be liable, at the discretion of the court, to be imprisoned in the provincial penitentiary for any term not less than three nor more than seven years.

Stealing Railway Tickets.—§ 36. Any person who shall steal any ticket or order for any free or paid passage on any railway, or on any steam or other vessel, shall be deemed guilty of felony, and on conviction thereof shall, in the discretion of the court before whom such offender shall be tried, be liable to imprisonment in any common gaol or prison, for any period not exceeding two years, with or without hard labour.

Forging the same.—§ 37. Any person who shall know-

ingly forge or utter, knowing the same to be forged, any such ticket or order, as in the next preceding section mentioned, with intent to defraud any other person, shall be deemed guilty of felony, and on conviction thereof shall, in the discretion of the court before whom such offender is tried, be liable to imprisonment in the provincial penitentiary for a period not exceeding three years.

Obtaining Passage by False Tickets.—§ 38. Any person who shall by means of any false ticket or order, fraudulently and wilfully obtain or attempt to obtain any passage on any railway or in any steam or other vessel, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall, in the discretion of the court before whom such offender is tried, be liable to imprisonment in any common gaol or prison, with or without hard labor, for any period not exceeding six months.

Arrest of Offenders.—§ 40. It shall be lawful for any person whatsoever to apprehend any person who shall be found committing any offence against the provisions of this act, and to convey him or deliver him to some constable or other person in order to his being conveyed as soon as conveniently may be, before a justice of the peace, to be dealt with according to law.

Assaulting party arresting.—§ 41. Is by this clause made a misdemeanor, and the offender liable to be imprisoned, with or without hard labor, for any term not exceeding two years.

By 20 V., c. 35, the words "openings, gates or bars," in § 13 of 14 & 15 V., c. 51, to include sliding gates, commonly called hurdle gates.

Accidents on Railways.

By 20 V., c. 12, (Act for the better prevention of accidents on railways,) § 1, the board of railway commissioners under 14 & 15 V., c. 73, to discharge the duties prescribed by this act. § 2. Inspectors (not exceeding three) to be appointed by the Governor, whose duties shall be from time to time to inspect railways, with power to use railway telegraphs for the purpose of communicating with railway officials; any operator refusing to obey orders, to forfeit for each offence £10. § 3. Any person wilfully obstructing an inspector in the execution of his duty, on conviction before a justice, to forfeit and pay for each offence £10, and in default of payment, to be imprisoned for any period not exceeding three calendar months. § 4. No railway to be opened until notice given to the board of commissioners. § 5. Under the penalty of £50 for every day, until such notice given

and expired. § 6. Railway commissioners, upon the report of the inspector against the opening of the road as dangerous, may, with the sanction of the Governor in council, order the postponement of such opening; and if opened contrary to such order, the company to forfeit £50 a day. § 7. The Governor, upon the report of the board, may authorise and require the company to construct and fix permanent bridges, or substitute such bridges in the place of swing, draw or moveable bridges: under the penalty of £50 a day for using such swing, draw or moveable bridges. § 8. Any bridge, tunnel, locomotive or carriage condemned by the inspectors must be made sufficient by the company. § 9. If, in the opinion of any such railway inspector, it shall be dangerous that trains or vehicles should pass over any particular railway, or any portion of a railway, until alterations, substitutions or repairs shall have been made thereon, or that any particular car, carriage or locomotive should be run or used, it shall be lawful for the inspector forthwith to forbid the running of any train or vehicle over any such railway or portion of railway, or the running or using of any such car, carriage or locomotive, by notice in writing to the president, managing director, secretary or superintendent of the company; and the inspector shall forthwith report the same to the board of commissioners, who, with the sanction of the Governor in council, may either confirm, modify or disallow such act or order of the inspector. And the said board of commissioners may, with the sanction of the Governor in council, limit the number of times or rate of speed of running of trains or vehicles upon such railway or portion of railway, until such alterations or repairs, as they may think sufficient, shall have been made; and for every act of non-compliance therewith, the company shall forfeit to her Majesty the sum of £500. § 10. The company to use the best apparatus for communicating between conductors and engine drivers, and for stopping or disconnecting cars, and for securely fixing seats in cars: and shall make proper by-laws and regulations for the conduct of their officers; under the penalty of £50 for every day's default herein. § 11. Certain powers vested in railway commissioners with respect to any railway not already commenced, crossing public highways on a level. § 12. Foot passengers to use the foot bridge, if provided for that purpose, at level crossings. § 13. In case of any serious accident, attended with serious personal injury to or upon any railway, notice thereof required to be given by the company to the board of commissioners within 48 hours, under the penalty of £50. § 14. Returns of accidents on railways to be made within ten days after the first days of

January and July every year, by the company, to the board of commissioners, under oath: also of existing by-laws, rules and regulations. And if not made within the times prescribed, the company shall forfeit £25 for every day's neglect. § 15. Provisions of the 19 & 20 V., c. 11, to apply to the contravention of any order or notice of the commissioners by officers and servants of the company. § 16. No horses, sheep or swine or other cattle shall be permitted to be at large upon any highway within half a mile of the intersection of any highway with any railway or grade, unless in charge of some person to prevent their loitering or stopping on such highway at such intersection: all such cattle so found at large may be impounded by any person finding the same, in the nearest pound to the place, and there detained, subject to the like regulations as to the care and disposal thereof as cattle impounded for distress on private property: and no person whose cattle shall be killed by any train at such point of intersection shall have any action against any railway company in respect thereof. § 17. No inspection under this act shall relieve the company from any general liability or responsibility. § 18. All crossings at every road and farm to be sufficiently fenced on both sides. § 19. Railway inspection fund provided for. § 20. Recovery of penalties.

RAPE.

Of Rape in General.

Rape signifies the carnal knowledge of a woman forcibly and against her will, and above the age of ten years, and was felony at common law.—2 *Inst.* 180. But by statute 3 Edw. I., c. 13, it was made only a misdemeanor. Afterwards, by stat. 13 Edw. I., c. 34, it was made felony again; and by stat. 18 Eliz., c. 7, § 1, was made capital.

By § 4 of the latter statute, it is also enacted, that if any person shall unlawfully and carnally know and abuse any woman child under the age of *ten* years, every such unlawful and carnal knowledge shall be felony. In which case the consent or non-consent is immaterial; as by reason of her tender years, she is incapable of judgment and discretion.—4 *Bl.* 212.

The offence of rape is no way mitigated by shewing that the woman at last yielded to the violence, if such her consent was forced, by fear of death or of duress—1 *Haw.* 108. Nor is it any excuse that the woman is a common prostitute; for she is still under the protection of the law, and may not be enforced.—1 *Haw.* 108—nor that she consented after the fact—*Ibid.* It is said by Mr. Dalton, that if

a woman, at the time of the supposed rape, do conceive with child, by the ravisher, this is no rape; for (he says) a woman cannot conceive, except she doth consent. But Hawkins observes, that this opinion seems very questionable; not only because the previous violence is no way extenuated by such a subsequent consent, but also because, if it were necessary to shew that the woman did not conceive, the offender could not be tried until such time as it might appear whether she did or did not; and likewise, because the philosophy of the notion may be very well doubted of.—1 *Haw.* 108. And L. Hale says, this opinion in Dalton seems to be no law.—1 *H. H.* 731.

Evidence in Rape.

Lord Coke, defining carnal knowledge, says, there must be *penetratio*—that is, *rem in re.*; but the least penetration maketh it carnal knowledge.—3 *Inst.* 59, 60; *East. P. C.* 437. There must be an *emissio seminis*; (a) therefore in Hill's case, where the jury found the prisoner guilty, but said they did not find the emission [for, from interruption, it appeared probable that that was not effected], a great majority of the judges held that both penetration and emission were necessary, but thought that the fact should be left to the jury.—*Hill's case, P. C.* 439. From Hill's case it appears that the fact of penetration is *prima facie* evidence of emission: so, where the prisoner remained on the body of a woman as long as he pleased, without interruption, this was held sufficient evidence to be left to a jury, of an actual rape—*Harmwood's case, E. P. C.* 440; *S. P. Kelly's case, Bodmin, 1815, coram* Chambre. Where the woman was dead, the evidence of other persons and her own depositions (which contained no mention of emission), were held sufficient to convict the prisoners; and that the jury might collect the fact of emission from other evidence.—*Fleming and Windham's case, 2 Leach, 855.*

The party ravished may give evidence on oath, and is in law a competent witness; but the credibility of her testimony, and how far forth she is to be believed, must be left to the jury, and is more or less credible, according to the circumstances of facts that occur in the testimony.—1 *H. H.* 632. For instance, if the witness be of good fame; if she *presently* discovered the offence and made pursuit after the offender; shewed circumstances and signs of the injury; if the place where the offence was committed was *remote* from habitation; if the offender *fled* for it: these and the like are

(a) Not necessary under the 4 & 5 V., c. 27.

concurring evidences to give greater probability to her testimony, when proved by others as well as herself.—1 *H. H.* 633. On the other hand if she concealed the injury for any length of time after she had the opportunity to complain; if the place where the offence was alleged to have been committed were *near* to inhabitants, or a thoroughfare for passengers, and she made no outcry when the offence was perpetrated, so that she might have been heard by others; or if a man prove himself to have been in another place, or in other company, at the time she charges him with the fact; or if she is wrong in the description of the place, or swears the fact to have been done in a place where it was impossible the man could have access to her at that time—as, if the room was locked up, and the key in custody of another person: these and the like circumstances carry a strong presumption that the testimony is false or feigned.—1 *H. H.* 633.

Upon the whole, rape, it is true, is a most detestable crime, and therefore ought severely and impartially to be punished with death; but it must be remembered that it is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, though never so innocent: therefore, a wise jury will be cautious upon trials of this nature, that they be not so much transported with indignation at the heinousness of the offence as to be overhastily carried to the conviction of the person accused thereof, by the confident testimony, sometimes of malicious and false witnesses.—1 *H. H.* 635, 636.

A male infant, under the age of fourteen years, is presumed by law to be incapable to commit a rape, and therefore, it seems, cannot be found guilty of it.—4 *Bl.* 212; 1 *Hal. P. C.* 631.

Punishment for Rape.

By the 4 & 5 *V.*, c. 27, § 16, every person convicted of the crime of rape, shall suffer death as a felon. § 17. If any person shall unlawfully and carnally know and abuse any girl under the age of ten years, every such offender shall be guilty of felony, and being convicted thereof shall suffer death as a felon; and if any person shall unlawfully and carnally know and abuse any girl, being above the age of ten years and under the age of twelve years, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned for such term as the court shall award. In cases of rape, carnal knowledge shall be deemed complete upon proof of penetration only.

By the 6 *V.*, c 5, § 5, where any person shall be convicted of any assault with intent to commit rape, the court may sen-

tence the offender to be imprisoned at hard labour in the provincial penitentiary for any term not exceeding three years, or imprisoned in any other prison for any term not exceeding *two* years.

See also title "*Punishment.*"

RECEIVERS OF STOLEN GOODS.

Felony.—By 4 & 5 V., c. 25, § 46, if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing or taking whereof shall amount to felony either at common law or by virtue of this act, such person knowing the same to have been feloniously stolen or taken, every such receiver shall be guilty of felony, and may be indicted and convicted either as an accessory after the fact, or for a substantive felony; and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and every such receiver, howsoever convicted, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or imprisoned in any other prison or place of confinement for any term not exceeding two years (*a*); provided always that no person, however tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence.

Misdemeanor.—§ 47. If any person shall receive any chattel, money, valuable security or other property whatsoever, the stealing, taking, obtaining or converting whereof is made an indictable misdemeanor by this act, such person knowing the same to have been unlawfully stolen, taken, obtained or converted, every such receiver shall be guilty of a misdemeanor, or may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been convicted thereof, or shall or shall not be amenable to justice; and every such receiver shall on conviction be liable at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for any other term not less than seven years, (*a*) or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Trial.—§ 48. If any person shall receive any chattel, money, valuable security or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained or converted, every such person, whether charged as an accessory after the fact to the felony,

(a) See 6 V., c. 5, § 2, which enables the court in its discretion to reduce the period to three years.

or with a substantive felony, or with a misdemeanor only, may be dealt with, tried and punished in any district, county or place in which he shall have or shall have had any such property in his possession, or in any district, county or place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the district, county or place where he actually received such property.

Taking Rewards.—§ 50. Every person who shall corruptly take any money or reward, directly or indirectly under pretence or on account of helping any person to any chattel, money, valuable security or other property whatsoever, which shall by any felony or misdemeanor have been stolen, taken, obtained or converted as aforesaid, shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, (a) or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Advertising Rewards.—§ 51. If any person shall publicly advertise a reward for the return of any property whatsoever which shall have been stolen or lost, and shall in such advertisement use any words purporting that no question will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property, or shall promise to offer in such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of a loan upon any property stolen or lost the money so paid or advanced, or any other sum of money or reward for the return of such property, or if any person shall print or publish any such advertisement in any of the above cases, every such person shall forfeit the sum of £20 for every such offence to any person who will sue for the same by action of debt, to be recovered with full costs of suit.

Second Offence.—§ 52. Where the stealing or taking of any property whatsoever, is by this act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall, on conviction thereof before a justice of the peace, be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture or punish-

(a) See note (a) page 717.

ment to which persons guilty of a first, second, or subsequent offence of stealing such property is by this act made liable.

By 18 V., c. 92, § 17, if upon the trial of two or more persons for jointly receiving any property, it shall be proved that one or more of such persons *separately* received any part of such property, it shall be lawful for the jury to convict upon such indictment such of the said persons as shall be proved to have received any part of such property.

REEVE.

See "*Town Reeve.*"

RECIPROCITY.*Free Trade.*

By 18 V., c. 1, § 1, it is enacted that whenever the Governor shall by proclamation declare that the treaty with the United States (5th June, 1854), has taken effect according to the terms thereof, the articles enumerated in the schedule, being the growth and produce of the United States, shall be admitted into this province free of duty, so long as the said treaty shall remain in force; except that if at any time the United States shall under the terms of the treaty suspend the operation of the third article thereof, so far as this province is affected thereby, then the Governor may, if he see fit, declare such suspension by proclamation, after which the exemption from duty shall cease, while such suspension shall continue, but the Governor may again, whenever such such suspension shall cease, declare the same by proclamation from and after which such exemption shall again take effect.

SCHEDULE.

Grain, flour and bread stuffs of all kinds; animals of all kinds; fish; smoked and salted meats; cotton, wool, seeds and vegetables; undried fruits, dried fruits; fish of all kinds; products of fish, and of all other creatures living in the waters; poultry; eggs; hides, furs, skins or tails undressed; stone or marble in its crude or unwrought state; slate; butter, cheese; tallow, lard, horns, manures; ores of metals of all kinds; coal; pitch; tar, turpentine, ashes; timber and lumber of all kinds; round, hewed, sawed, unmanufactured in whole or in part; firewood; plants, shrubs and trees; pelts, wool; fish oil; rice, broom corn, and bark; gypsum, ground or unground; hewn or wrought, or unwrought burr or grindstones; dye-stuffs; flax, hemp and tow unmanufactured; manufactured tobacco; rags.

RECOGNIZANCE.

A recognizance is an obligation of record entered into be-

fore some magistrate or magistrates, duly authorised, with condition to appear at the sessions or assizes, or to keep the peace, &c. If a person refuse to give recognizance, he may be committed.—*Dalt. c. 168.* A recognizance must be made to the king; it must contain the names, places of residence, and additions of the principals and sureties, and the penalty in which they are bound: the parties need not sign it; it becomes a matter of record as soon as taken and acknowledged, although not made up by the justice, and only entered in his book.—*Dalt. c. 168.* Recognizances taken for the peace must be certified to the next sessions, that the party may be called, and if they do not appear they will be estreated; and by stat. *3 W. IV., c. 3, (a) recognizances taken in felony or misdemeanor must be delivered to the public prosecutor before, or at the opening of the court. § 2. Or such justices may be fined. § 5. When a charge is made before a magistrate, he may bind over the party making the charge to prosecute and give evidence, and also all who can give material evidence; and, on their refusal, may commit them. A married woman is incapable of entering into a recognizance; but if she altogether refuse to appear at the sessions and to find sureties for such appearance, when such appearance is essential to the conviction of the offender, she may be committed. The proper course where a married woman is a material witness, is to bind over her husband or other competent person, as surety for her appearance.—*Dickenson, Q. S. 74*; also infants (that is, persons under 21 years of age), who cannot legally bind themselves, and must procure others to be bound for them, and in default thereof may be committed.—*Chitty's C. L. p. 91.* The usual manner of taking a recognizance, is by calling the parties by name.

For the form of recognizances to prosecute—appear and answer—or to give evidence, &c., see “*Justices of the Peace*,” page 473, 474.

The justice should demand of each party “*if he is content*,” and upon their answering that he is so, the recognizance is complete, and the defendant is at liberty to depart.

If the condition of recognizance is not complied with, it is estreated by the court; but during the sitting of the court, upon the party exhibiting a satisfactory affidavit of any sufficient reason for non-compliance with the terms, it has been the invariable practice of the court, on motion being made for that purpose, to take off the estreat, upon such terms as the

(a) See also 16 V., c. 179, § 12, title “*Justices of the Peace*,” p. 458.

court may require, such as entering into new recognizance, &c.—*Dickenson, Q. S. p. 668.*

See also title "*Estreat,*" *ante p. 311.*

RECORDER'S COURT.

By 12 V., c. 81, § 93, it is enacted, that besides a police officer and police magistrate, as provided with respect to incorporated towns, and which shall have the like duties and powers in all respects in such city and the liberties thereof as is hereinbefore (in the act) provided with respect to the police officers and magistrates for incorporated towns, there shall moreover be a court of record in each of the cities incorporated under this act, to be called the Recorder's Court of such city, and wherein the recorder for the time being shall preside, assisted by one or more of the aldermen of such city, or in the absence of the recorder from sickness, or other causes, or where there shall be no recorder, the mayor or one of the aldermen of such city to be elected by the aldermen from among themselves, shall preside; and such court shall in all cases possess the like powers, and have the like jurisdiction as to crimes, offences and misdemeanors committed in such city and the liberties thereof, as the court of quarter sessions of the peace now have or hereafter may have by law in Upper Canada, as to the crimes, offences and misdemeanors committed within their local jurisdiction, as well as in all those matters of civil concern not belonging to the ordinary jurisdiction of a court of justice, as have been or may hereafter be by law vested in such courts of quarter sessions of the peace. § 94. (a) Such recorder's court to hold four sessions in each year, viz.:—on the *first* Monday in January, April, July, and October. § 95. Inhabitants of the cities to be exempt from serving on juries at any other than the city courts, and the courts of assize and *nisi prius*, oyer and terminer and general gaol delivery for the county. § 96. The grand juries of such recorder's courts shall consist of twenty-four persons, to be summoned by the high bailiff under precepts signed by the recorders, or aldermen elected to sit for such recorders, in the same manner as grand juries of the quarter sessions. § 97. Not less than thirty-six nor more than sixty petit jurors to be in like manner summoned. § 98. Such persons only, residing in the cities or liberties thereof, shall compose such juries, as are at present, or hereafter may be liable to be summoned as grand or petit jurors in any court of Upper Canada. § 99. Such grand juries shall

(a) As amended by 16 V., c. 181, § 20.

have all the power and authority over the offences committed in the said cities and liberties thereof, which grand juries for the general quarter sessions now have or hereafter may have. § 100. The like process and proceedings now had in the quarter sessions in criminal cases shall and may be used in the recorders' courts when exercising criminal jurisdiction, and the like power to take recognizances, and all other powers and duties incidental to such jurisdiction, and which the quarter sessions now or hereafter may possess, by law, together with the powers granted by this act, are hereby vested in the said recorders' courts, as far as regards any offences, crimes and misdemeanors, arising or committed within such cities and liberties. § 101. Upon the acquittal of any defendant, the court may, if satisfied there was a reasonable and probable cause for the prosecution, order the costs thereof to be taxed and paid out of the city funds. § 102. Every such recorder shall have the power of suspending from office any high bailiff, chief constable, or constable of the city for any period in his discretion, reporting the same with the cause thereof to the common council of the city, who shall thereupon, in their discretion, dismiss such high bailiff, &c., or direct that he be restored to the duties of his office after the period of such suspension shall have expired; and the recorder is empowered to appoint some other fit and proper person as high bailiff, &c., during such suspension. § 103. Clerks of common council to be clerks of the recorders' courts, and receive the same emoluments as now appertain to the clerks of the peace. The recorders for cities shall be barristers of Upper Canada of at least five years standing, and shall be appointed by the Crown during pleasure; and every such recorder shall be *ex officio* a justice of the peace in and for the city and liberties, and shall receive a salary of not less than £250 per annum, payable quarterly out of the city funds. But no recorder to be appointed until after a communication from the corporation of such city to the Governor-General through the Provincial Secretary, that such an officer was required. § 105. The offices of recorder and police magistrate may upon the suggestion of the corporation, be united in the same person; and in such case, the person holding such offices shall not be entitled to any other salary than provided for the office of recorder.

REFORMATORY PRISONS.

By 20 V., c. 28, § 1, the Governor is authorised to cause to be erected or provided two buildings, one in Lower

Canada, and one in Upper Canada, to be used as prisons for the confinement and reformation of such offenders as are hereinafter specified. § 5. So soon as the said buildings shall be declared by proclamation to be reformatory prisons as aforesaid, it shall be lawful for any court of criminal jurisdiction in this province, in its discretion, to sentence any person, male or female, whose age at the time of trial shall not in the opinion of the court exceed 21 years, and who shall have been convicted before such court of any offence now punishable, or which may be made punishable by imprisonment in the provincial penitentiary, to be imprisoned in one of the said reformatory prisons instead thereof. Provided that in no case shall the sentence be less than six calendar months, nor more than five years in such reformatory prison: and when the imprisonment is fixed by law to be more than five years, it shall be in the penitentiary. § 6. Whenever, after such reformatory prisons shall be declared by proclamation as aforesaid, any person under the age of 16 years shall be convicted of any offence punishable by law on summary conviction, and shall be thereupon sentenced and committed to prison in any common gaol, it shall be lawful for any judge of any of the superior courts of Upper Canada, and for any judge of any county court (in any case occurring within his county), to examine and enquire into the circumstances of such case and conviction, and to direct such offender to be sent either forthwith or at the expiration of his sentence to the reformatory prison aforesaid, to be there detained for a period of not less than six months and not exceeding two years, and such offender shall be liable to be detained accordingly. Provided that no offender shall be directed to be so sent and detained as aforesaid unless the sentence of imprisonment to the common gaol shall be for fourteen days at the least. Provided also that the Governor may at any time order such offender to be discharged from such reformatory prison. § 7. Juvenile offenders may be removed from the penitentiary to reformatory prison, § 8 and transferred from one reformatory prison to another. § 9. Incurrible offenders in the reformatory prison may be removed to the penitentiary for the remainder of the term of imprisonment. § 10. The warden of a reformatory prison shall have and perform the same powers and duties with respect thereto, as are vested in the warden of the provincial penitentiary, except in so far as altered by this act. § 11. Inspectors empowered to frame rules for the government and regulation of the said reformatory prisons, and for the discipline of the offenders, subject to the approval of the Governor. § 12. A farm not

exceeding 200 acres may be attached to such reformatory prison.

REGISTRY OFFICE.

By the 9 V., c. 34, all former acts are repealed; § 2, without affecting the validity of proceedings under the same. § 3. A registry office to be kept in each county in Upper Canada. Appointments thereto to be under the great seal of the province. § 4. Registrar to be resident and keep an office at the place named in the commission. § 5. May appoint a deputy. § 6. After the confirmation of lands to any person by grant from the Crown, a memorial of all deeds and conveyances, and of all wills and devises, whereby any lands may be in anywise affected in law or equity may, at the election of the party concerned, be registered as hereinafter directed; and every deed and conveyance that shall at any time after any memorial is so registered be made and executed, of the lands comprised in any such memorial, shall be adjudged fraudulent and void against any subsequent purchaser, or mortgagee for valuable consideration, unless such memorial be registered, as by this act directed before the registering of the memorial of the deed under which such subsequent purchaser or mortgagee shall claim; and every devise by will, of lands mentioned in any memorial registered as aforesaid, after the registering of such memorial, shall be adjudged fraudulent and void against a subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such will be registered in manner hereinafter directed; and a memorial of any further mortgage (legal or equitable) to a first mortgagee, shall, in like manner, be registered before it can prevail against a second mortgagee. § 7. Every memorial shall be in writing, and in case of deeds, shall be under the hand and seal of some, or one of the grantors or grantees, his or their heirs, executors or administrators, guardians or trustees, attested by *two* witnesses, *one* whereof shall be one of the witnesses to the deed; which witness shall upon oath (except as otherwise provided) before the registrar or his deputy, or before any justice of the Court of Queen's Bench, district court, or any commissioner of the Queen's Bench, prove the signing and sealing of such memorial, and the execution of the deed; and in case of wills, the memorial shall be under the hand and seal of some or one of the devisees, his or their heirs, executors or administrators, guardians or trustees, attested by *two* witnesses, *one* whereof shall, upon oath, before either of the parties aforesaid, prove the signing and sealing of such memorial and a certificate

thereof shall be endorsed on such memorial. § 8. Every memorial shall contain the day of the month and the year when such deed or will bears date, and the names and additions of all the parties to such deed or will, or the devisor or testatrix of such will (as mentioned or set forth in such deed or will), and of all the witnesses to such deed or will, and the places of their abode, and shall express or mention the lands contained in such deed or will, and the names of all the townships or parishes within the county where any such lands are lying, that are given, granted, or any way affected by such deed or will, in such manner as the same are mentioned in such deed or will or to the same effect; and such deed or will (or probate of the same) shall be produced to the registrar or his deputy at the time of entering such memorial, who shall endorse a certificate on every deed, will or probate, and therein mention the day, hour, and time on which such memorial is entered registered; expressing also in what book, page and number, the same is entered; and the registrar or his deputy shall sign the said certificate when so endorsed, which certificate shall be taken and allowed as evidence in all courts of record. § 9. *Providing for the evidence upon which memorials of deeds &c., executed within the limits of Upper Canada shall be registered, is repealed by 16 V., c. 187, § 6, and other provision made.*

§ 10. Memorials of any such deed or will executed or published without the limits of Upper Canada, shall be registered upon production to the registrar of an affidavit (or declaration in writing, in cases where by law a declaration is substituted for an affidavit), sworn before the mayor or chief magistrate, of any city, borough or town corporate in Great Britain or Ireland, under the common seal of such city, &c., or before the chief justice or judge of any court of Queen's Bench in Lower Canada, or of the supreme court of any colony of Great Britain; or before the mayor of any city, borough, or town corporate in any foreign country; or any consul or vice-consul of her Majesty resident therein, wherein one of the witnesses to the deed or will, shall have sworn to the execution of the same as hereinbefore provided, and the place were executed; and in place of wills, one of the witnesses thereto shall have sworn to the making and publishing of said will: but no such memorial shall be registered unless the deed, conveyance, will or probate, to which such memorial shall relate, shall be identified as that referred to in such affidavit, by a certificate thereof under the hand of such judge or commissioner, &c., before whom taken, to be en-

dorsed on such deed, &c. § 11. In case of the death or residence abroad of the witness to any deed or will, proof may be made by the grantee, &c., before the justices in general quarter sessions in any district, of the execution of such instrument, and upon a certificate signed by the chairman and witnessed by the clerk of the peace, that the majority of the magistrates assembled were satisfied therewith, such deed or instrument may be recorded. § 12. Wills or probates recorded within twelve months after the death of the testator, to be valid and effectual against subsequent purchasers. 13. Judgments at law may be registered, and bind lands in the same way as judgments *docquetted* in England. § 14. Deeds of bargain and sale to be valid without enrolment, § 15. Registry office to be open from *ten* in the forenoon until *three* in the afternoon, for the disposal of business. § 16. Regulating the registrar's fees is repealed by 16 V., c. 187, and other fees substituted. § 17. Any person forging any certificate under this act, or any affidavit, or any memorial, shall be liable to the pains and penalties of the 5 *Eliz.* c. 14. § 18. This act not to extend to leases for 21 years in possession. § 19. Fire proof offices and vaults to be kept. § 20. Registrar removing from the county or becoming incapable, to be removed from office. § 21. Any registrar guilty of any undue or fraudulent practice to forfeit office, and liable to pay *treble* damages with full costs of suit. § 22. Secretary of the province to provide register book for each township, reputed township, city and town. § 23. When any registered judgment or mortgage is satisfied the registrar or his deputy, on receiving a certificate in form A. in respect to mortgages duly proved by the oath of a subscribing witness, in the same manner as hereinbefore provided for the proof of deeds, from the person entitled to such mortgage, or the attorney of such person; and in case of judgments, on receiving a *satisfaction piece* under the seal of the court, shall write the word "discharged," and affix his name in the margin of the register, which shall be deemed a discharge thereof. § 24. Such certificates when registered shall operate as a release of such mortgage, and re-conveyance of the mortgaged premises. § 25. Registrar to take an oath of office. § 26. Deputies to be also sworn. § 27. Not compelled to register any deed till fees paid. § 28. Recognizance to be void at the end of twelve months after death or surrender of office, in case of no misbehaviour. § 29. Seal of a corporation to be sufficient evidence to justify registration. § 30. Governor may remove the registry office to the chief town. § 31. Surveyor-general to furnish registrar with a list of all persons to whom patents

have issued within their counties, and with plans or maps of towns and townships, within twelve calendar months after application by any registrar. § 32. Provision in case of division of counties. § 33. Where a corporation or company shall sub-divide any land into town lots, it shall be lawful for such company to lodge a plan or map of the same in the registry office. § 34. Certain counties united for the purposes of registration. § 35. Interpretation clause.

Schedule A.

To the Registrar of the County of
I, A. B., of , do certify that C. D. of , hath satisfied all money due upon a certain mortgage, made by the said C. D. to me, bearing date the day of , one thousand eight hundred and , and registered at of the clock in the forenoon, of the day of following, and that such mortgage is therefore discharged.

E. F. of , }
G. H. of , } Witnesses. (Signed) A. B.

By 10 & 11 V., c. 16, doubts entertained respecting the meaning of § 24 of last recited act referred to and explained.

By 12 V., c. 35, § 42, the original owner of lands forming the site of any town or village mentioned in the next preceding section, or his agent, is required to deposit in the registry office a correct plan or map thereof, certified by some land surveyor, and by the original owner or his legal representative, within one year after the passing of this act, under the penalty of £2 10s., and the like sum every year after for such neglect, to be collected and applied in like manner as penalties under 8 V., c. 58. § 43. The registrar is required to record the same, charging the same fees as in respect of any other document; and to keep a separate book for the registering title deeds of lands situate in such town or village.

By 12 V., c. 77, § 2, proof of the execution of any deed, will, or probate, or memorial of the same, in Lower Canada, may be made before any of the commissioners to be appointed under this act, and registrars of counties are required to register the same accordingly.

By 13 & 14 V., c. 63, § 2, a judgment entered up against any person in any court of record in Upper Canada, after the 1st January, 1851, shall operate as a *charge* on defendant's lands within the county where such certificate shall be duly registered, and for any estate or interest whatever at law or in equity therein. § 3. After the first January, 1851, every

deed, devise or other conveyance from any original grantee of the Crown, shall be adjudged fraudulent and void against a subsequent purchaser or judgment-creditor who shall have registered his judgment, unless such deed, devise, or conveyance be registered before such subsequent deed, &c. 8. The registry of any deed, &c., shall in *equity* constitute *notice* thereof.

By 16 V., c. 187, § 1, when any city, town, township, or place theretofore making part of any county in and for which a separate registry office is or shall be kept, has been, or shall be detached therefrom and attached to another county for which a separate registry office shall be kept, the registry books for such city, &c., shall be delivered to the registrar of the county to which the same shall be attached. § 2. Statements to be furnished by the registrar of a county to the registrar of such new county, under § 32 of 9 V., c. 34, to be accompanied by an index and certificate. § 3. Register books to be hereafter provided by the county. § 4. Each county entitled to return a member to have a registry office. § 5. When a deed, will or other instrument shall embrace different lots or parcels of land situate in different localities in the same county, one memorial only need be filed: and only one certificate of registration charged. § 6, repeals § 9 of 9 V., c. 34, and provides that a memorial of any such deeds, conveyances, wills or probate, made and executed or published in any place within Upper Canada, other than the county where the lands lie, shall be entered and registered upon affidavit sworn before one of the judges of the superior courts, or a judge of the county court, or commissioner, wherein one of the witnesses shall swear to the execution of the same as also of the memorial and the place where executed: and in case of wills, one of the witnesses to the memorial of such will or probate, shall swear to the execution of such memorial. § 7. Memorials of letters of attorney under which any deed or conveyance shall be executed may be registered in the same manner, and upon the same evidence, as other memorials. § 8. Registrars fees to be as follows, and no more, viz:—

£ s. D.

For drawing affidavit of execution of instrument and memorial brought to be registered, if done by registrar or his deputy including swearing and all certificates thereof	0	2	6
For recording every deed, conveyance, will, power of attorney, or agreement including all necessary entries and certificates	0	6	3

But in case such entries and certificates exceed 500 words then for every additional 100 words....	0	0	8
For registering certificate of judgment.....	0	2	6
Satisfaction thereof.....	0	2	6
For entering certificate of payment of mortgage money, including all entries and certificates thereof	0	2	6
Drawing affidavit of the execution thereof, including the swearing of the witness when done by registrar or his deputy	0	2	6
For searching records relating to the title of any lot or parcel, not exceeding four references	0	1	3
And for every additional four distinct references	0	1	3
And so in proportion for every number of searches made.			
For a general search not exceeding	0	10	0
For every extract furnished by the registrar, including certificate	0	1	3
If exceeding 100 words, for every additional 100 words	0	0	9

§ 9. Registrars to keep books of receipts of fees and make detailed returns thereof to the legislature.

§ 13. The following to be fixed holidays in the registry office, viz: Christmas Day, New Year's Day, Good Friday, Ash Wednesday, Easter Monday, and the Queen's Birth Day.

By 18 V., c. 127, § 1, no judgment shall be a charge on lands until registered. § 3. The filing of any bill in Chancery not to be notice until a certificate thereof be registered. § 4. Decrees of foreclosure to be registered. § 5. Memorials of deeds, &c., executed out of Upper Canada may be registered on affidavit sworn before any judge of the superior courts of Upper or Lower Canada, or before the judge of any county court in Upper Canada, or circuit court in Lower Canada, or a commissioner in Upper or Lower Canada, or the registrar of the county where the lands lie, or his deputy. § 6. Registrars required to deliver original memorials to the registrar of counties to which any city, town, or township may be attached. Default herein to be a misdemeanor, punishable by fine, and forfeiture of office. § 7. Fee for registering certificate of a suit in equity 2s. 6d. Registering certificate of decree 5s.

By 20 V., c. 57, § 19, registered judgments shall cease to charge lands after three years, unless before the expiration of that period such judgment shall be re-registered.

RELIGION.

The Christian religion, according to high authority, is part and parcel of the law of England. To reproach or blaspheme

it, therefore, is to speak in subversion of the law; and to say that religion is a cheat, manifests plainly a wish and endeavour to dissolve all those obligations whereby civil society is preserved, and is held to be an indictable offence at common law.—*R. v. Taylor, vintr.* 293; 3 *Keb.* 607. By 1 E. VI., c. 1, and 1 Eliz. c. 1, it is enacted, that whosoever shall revile the sacrament of the Lord's supper, shall be punished by fine and imprisonment. And by 1 E., c. 2, § 4, if any minister shall speak any thing in derogation of the book of common prayer, he shall be liable to heavy penalties. Also by § 9 of the last statute, if any person shall, in plays, songs, or other open words, speak any thing in derogation, depraving or despising of said book, or shall forcibly prevent the reading of it by any clergyman, or compel or cause him to read any other service in its stead, the offender shall for the first offence forfeit 100 marks; for the second, 400; and for the third all his goods and chattels, and moreover be liable to imprisonment for life. And by 3 Jac. 1. c. 21, if any person shall use the name of the Holy Trinity profanely or jestingly in any stage plays, interlude, or show, he shall be liable to a *quæ tam* penalty of £10. By 9 & 10 W. III., c. 32, it is enacted, that if any person educated in, or having made profession of the Christian religion, shall by writing, printing, teaching or advised speaking, deny the Christian religion to be true, or the holy scriptures to be of divine authority, he shall, for the first offence, be rendered incapable to hold any office or place of trust; and for the second, be rendered incapable of bringing any action; being guardian, executor, legatee or purchaser of lands; and shall suffer three years' imprisonment without bail. But if within four months after the first conviction, the offender appear in open court and publicly renounce his error, he shall be discharged that once from all disabilities. The provisions of this statute have been held to be cumulative, and therefore do not prevent the offender from being indicted at common law.—*R. v. Carlisle*, 3 *B. & A.* 171. By 14 G. III., c. 83, § 5, it is enacted, that his Majesty's subjects, professing the religion of the Church of Rome of and in the province of Quebec, may enjoy the free exercise of their said religion, subject to the king's supremacy, declared and established by the 1 Eliz. over all the dominions and countries belonging to the imperial crown of this realm: and that the clergy of the said church may hold, receive, and enjoy, their accustomed dues and rights, with respect to such persons only as should profess the said religion. And by § 7, the following oath shall be taken by persons professing the said religion in place of the oath re-

quired by the statute of Elizabeth, or any other oaths substituted by any other act in place thereof.

I, A. B., do promise and swear, that I will be faithful and bear true allegiance to his Majesty King George, and him will defend to the utmost of my power against all traitorous conspiracies and attempts whatsoever which shall be made against his person, crown, and dignity, and I will do my utmost endeavor to disclose and make known to his Majesty, his heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against him or any of them; and all this do I swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any power or person whomsoever to the contrary, so help me God.

And every such person refusing to take the said oath shall incur the pains and penalties, forfeitures, disabilities, and incapacities of the 1st of Eliz. *By 31 G. III., c. 31, § 36, it is enacted, that in all future grants of land from the Crown there shall be a specification of lands of the like quality in value to one-seventh for the support of a protestant clergy. (a) And by *1 W. IV., c. 28, after noticing that doubts had been suggested that the tithe of the produce of land might still be legally demanded by the incumbent, it is enacted that no tithe shall be claimed or received by any ecclesiastical parson, rector, or vicar, of the protestant church within this province.

RELIGIOUS SOCIETIES.

*By the 9 Geo. IV., c. 2, § 1, after reciting, whereas various religious societies of various denominations of Christians find difficulty in securing the title of land requisite for the site of a church, meeting-house, or chapel, or burying ground, for want of a corporate capacity to take and hold the same in perpetual succession; and whereas it is expedient to provide some safe and adequate relief in such cases, it is enacted, that whenever any religious congregation or society of Presbyterians, Lutherans, Calvinists, Methodists, Congregationalists, Independents, Anabaptists, Quakers, Menonists, Tunkers, or Moravians, shall have an occasion to take a conveyance of land for any of the uses aforesaid, it shall and may be lawful for them to appoint trustees, to whom and their successors, to be appointed in such manner as shall be specified in the deed, the land requisite for all or any of the purposes aforesaid may be conveyed; and such trustees and

(a) The Clergy Reserves are now, by 18 V., c. 2, *secularised*, and the proceeds applicable to municipal purposes.

their successors, in perpetual succession, by the name expressed in such deed, shall be capable of taking, holding and possessing such land, and of commencing and maintaining any action or actions in law or equity for the protection thereof, and of their right thereto. § 2. The land to be so held not to exceed five acres for any one congregation. § 3. And such trustees shall, within twelve months after the execution of such deed, cause the same to be registered in the office of the registrar of the county in which the land lies. § 4. And all conveyances made before the passing of this act, for any of the purposes aforesaid, shall be valid; provided such conveyance shall have been already registered, or shall be registered within twelve months after the passing of this act.

*By 3 V. c. 73, reciting, whereas it is expedient to allow the several Christian denominations recognised by the statutes of this province to hold lands for the support of public worship and the propagation of christian knowledge, it is enacted, that so much of the *9 G. IV., c. 2, as limits the powers of the several denominations mentioned in the said act, to the quantity of five acres, and to the purposes for which lands shall be held, shall be repealed. § 2. The several religious societies mentioned in the said recited act shall and are hereby authorised to hold lands in the manner specified in the said act, for the support of public worship and the propagation of christian knowlege, as well as for the purposes mentioned in the said act, any thing in the statutes of *mortmain* to the contrary notwithstanding. § 3. The rights and privileges aforesaid to extend also to the Roman Catholic church.

By 8 V., c. 15, § 1, it is enacted that whenever any religious society or congregation of Christians in Upper Canada shall have occasion to take a conveyance of land, for the site of a church, chapel, meeting-house, burial-ground, or residence for their minister, it shall be lawful for them to appoint trustees, to whom and to whose successors, to be appointed in such manner as shall be specified in the deed of conveyance, the land requisite for any of the purposes aforesaid may be conveyed; and such trustees and their successors in perpetual succession shall be capable of taking, holding and possessing such land, and of commencing, maintaining and defending actions for the protection thereof, the statutes of *mortmain* or any other law to the contrary notwithstanding. § 2. Provided that such trustees shall within twelve months after the execution of such deed, cause the same to be registered.

And by 12 V., c. 91, it is enacted that all deeds heretofore executed for any of the purposes of either of said acts, (9 G. IV., c. 2, 8 V., c. 15), shall be valid if registered within twelve months (a) after the passing of this act, except in case of prior registrations, which are not to be affected. §

2. Trustees of any of the religious societies or congregations to which said acts are applicable, are authorised from time to time, upon the express consent of the conference, synod or body having the direction of the temporal affairs thereof, by deed under their hand and seal of office (which seal each body of trustees is hereby empowered to have and make, and from time to time to alter) to lease, mortgage, sell and convey, or exchange such of the lands held by them, in such portions, and in such manner as from time to time may be deemed necessary; and the trustees' receipt for the purchase money shall be an absolute discharge to the purchaser: provided that the moneys arising from such sale or mortgage be applied to the purchase of other lands to be held by the trustees for like purposes, or improvement of the same or other lands held by them upon the like trusts; and provided that no land acquired by free gift shall be sold without the consent of the grantor or his representatives.

And by 12 V., c. 92, entitled "*An Act to enable the trustees of churches and parsonages, and other trusts, belonging to the Wesleyan Methodist Church in Canada, more conveniently to manage and dispose of their estates, and for the purposes therein mentioned;*" it is enacted that it shall be lawful for the trustees for the time being, of each of the religious congregations of the Wesleyan Methodist Church in Canada, and the said trustees of each respective congregation are as such trustees thereby authorised from time to time, upon the express consent of the conference of the said Wesleyan Methodist Church first had therefor by deed under their hand and seal of office, (which seal each body of trustees is thereby empowered to have and make, and from time to time to alter,) to lease, mortgage, sell, convey or exchange, such of the lands and tenements held, or to be held by any of the respective trustees, in such portions and in such manner as from time to time may be deemed by the trustees thereof necessary and useful, for the purposes connected with the particular trust, subject nevertheless to the conference aforesaid; and the receipt of the trustees shall be an absolute discharge to the purchaser: *provided always*, that the moneys arising from the sale or mortgage of lands so acquired, shall

(a) Extended by 16 V., c. 126, for a further period of 12 months.

be applied by the trustees to the purchase of other lands, to be held by them for the like purposes and trusts, or to the improvement of the same or other lands held by them upon the like trusts; and *provided* that no lands acquired by the trustees by *free gift* for special purposes, shall be sold by the trustees without the consent of the grantor or his legal representatives.

By 18 V., c. 119, the grantees in any letters patent, or trustees appointed pursuant thereto, and other trustees holding lands for any religious body, are empowered to demise or lease any such lands for any term not exceeding 21 years, and to covenant for renewal of such lease.

§ 4. Land not to be leased without the consent of a majority of the congregation present at a meeting called for the purpose; nor any lands necessary for the site of a church or place of worship, or other buildings, or for a burial ground for such congregation.

§ 5. Any land not required to be retained may be sold on giving public notice of such intended sale, and subject to the sanction of the Court of Chancery.

RELIGIOUS WORSHIP.

See title "*Public Worship*."

RESCUE

Is defined by 4 *Bl. Com.* p. 131, to be the forcibly and knowingly freeing another from arrest and imprisonment; and it is generally the same offence in a stranger so rescuing as it would have been in a gaoler voluntarily suffering an escape; but here, as upon voluntary escapes, the principal must be first attainted or receive judgment before the rescuer can be punished; for by possibility there may have been no offence committed—1 *Hale's P. C.*, 607; nevertheless, as the rescue is in contempt of some legal process, the offender may be committed and punished for a misdemeanor, according to the degree of his offence. To hinder a person who has committed felony from being arrested is a misdemeanor only; but if rescued after the arrest, and the arrest was for felony, the rescuer is a felon; if for treason, a traitor; and if for a trespass, punishable—*Hale Pl.* 116; 3 *Haw. c.* 21; *Russ. & Ry. C. C. B.* 458; but it seems necessary that the rescuer should have knowledge of the criminal offence, if the party be in custody of a private person, but not necessary if in custody of an officer.—2 *Hale*, 606.

*By 3 W. IV., c. 3, the rescue of any person convicted of, or committed for murder, is made felony, and is punishable by *death*.

RESTITUTION OF STOLEN GOODS.

By the common law there was no restitution of stolen goods, but it being considered that the party prosecuting the offender by indictment deserved to have his goods restored, it was enacted by the statute 21 H. VIII., c. 11, that if any felon do rob or take away any man's money or goods, and thereof be indicted and arraigned and found guilty, or otherwise attainted by reason of evidence given by the party robbed, or owner of the money or goods, or by any other, by their procurement; then the party robbed, or owner of the goods, shall be restored to such his money or goods; and the justice may award a writ of restitution.

The writ of restitution has fallen into disuse; but upon production of the goods at the trial, the court will order them to be restored to the owner; and if not restored, he may maintain an action of trover for them, after conviction, notwithstanding they may have been sold to the person claiming in *market overt*.—1 *Hale*, 543; 6 *Kel.* 48; 2 *Inst.* 714. Although this may seem hard upon the buyer, yet the rule of law is that "*spoliatus debet ante omnia restituti*," especially when he has used all diligence in his power to convict the felon; and as the case is reduced to this hard necessity, that either the owner or the buyer must suffer, the law prefers the right of the owner, who has done a meritorious act by pursuing a felon to condign punishment, to the right of the buyer, whose merit is only negative, that he has been guilty of no unfair transaction.—4 *Bl. Com.* 363. However, by 31 Eliz. c. 12, where a horse is stolen and sold in open market, according to the provisions of this act, the owner can only be entitled to it again upon payment of the buyer's costs.

See further on this subject, *ante* title "*Horses*," p. 396.

If the thief sell the goods and be taken with the money which he sold them for, and the goods cannot be heard of, it has been questioned whether the prosecutor shall have the money.—*W. Jones*, 148; 2 *East. P. C.* 789. But the better opinion seems to be where it is clearly ascertained that the money is the produce of the goods stolen, that the prosecutor would be then entitled to it, within the equity of the above statute.—*Hamberrie's case*, *Cro. Eliz.* 661; *Harris's case*, *Noy*, 128; 1 *Hale*, 542; 2 *East. P. C.* 789.

Restitution, however, can only be had from the person in possession of the goods at the time of, or after the felon's attainer. Therefore, if a party purchase them *bona fide*, in *market overt*, and sell them again before conviction, no action

will in this case lie against him for the value, though notice were even given him not to sell.—*Horwood v. Smith*, 2 R. 653. But the necessity of prosecuting and convicting or attainting the felon, in order to have restitution, is only when the property is changed by some intermediate act, as when they have been sold in *market overt*. For otherwise the owner may, at common law, peaceably retake his goods wherever he finds them, without any writ of restitution.—*Kel.* 48; 2 *Haw. c.* 25. And now by 4 & 5 V., c. 25, § 49, restitution shall be made, except in certain cases, for which see title "*Larceny*," p. 528.

RIOT, ROUT, &c.

A riot is the forcibly doing an unlawful thing, by three or more persons assembled together for that purpose. By the common law, peace officers may suppress a riot, and may command all other persons to assist them.—1 *Haw. c.* 65, § 11. A *rout* is where three or more meet together to do some unlawful act upon a common quarrel, as forcibly breaking down fences upon a right claimed of common or way, and making some advances towards it, but without actually executing it.—*Ibid.* An unlawful assembly is where three or more assemble themselves together, with intent to do an unlawful act, as to pull down enclosures, &c., but part without doing it, or making any motion towards it.—*Ibid.* A riot at *common law* is a misdemeanor only, punishable by fine and imprisonment.—1 *Haw. c.* 65, § 12. But under particular circumstances, which will be seen hereafter, it is in some cases, by statute, made felony.

Riot at Common Law (Misdemeanor).

If the riotous assembly meet for a public purpose;—as to redress a general grievance; to pull down *all* enclosures; or to reform religion; or with a determination to resist the king's forces, if legally called in to keep the peace;—their proceedings then may amount to overt acts of high treason, by levying war against the king.—1 *Bl. Com.* 147.

To constitute a riot, there must be some circumstances of actual force or violence, or at least of an apparent tendency thereto, which are calculated to strike terror among the people, such as the show of offensive weapons, threatening speeches, or turbulent gestures. But it is not necessary that personal violence should have been actually committed.—1 *Haw. c.* 65, § 5; *Clifford & Brandon*, 2 *Camp.* 369. Nor will it amount to a riot if the object is to do a lawful act, as to remove a nuisance.—1 *Haw. c.* 65, § 8; *R. v. Soley*, 11

Mod. 117; 5 *Burn's J. Riot*, § 1. Where a person on seeing others actually engaged in a riot joins himself to them and assists them, he is as much a rioter as if he had at first assembled with them for the same purpose.—1 *Haw. c.* 65, § 3. And whosoever encourages, or promotes, or takes part in a riot, whether by words, signs or gestures, or by wearing the badge, or ensign of the rioters, is himself to be considered a rioter; for in this case, all are principals.—2 *Camp.* 370; 4 *Burr.* 2073; 1 *Hale*, 463.

To incite persons to assemble in a riotous manner, appears to be an indictable offence.—*Cro. Cir. Comp.* 420; 8 *Ed. II.*, *Chit. C. L.* 506. Women are punishable as rioters; but infants, "under the age of discretion, are not.—1 *Haw.*, c. 65, § 14. Where an infant is indictable, he may appear by attorney.—*R. v. Turner*, 2 *Ld. R.* 1284.

Thus much for a riot at *Common Law*.

Riot by Statute (Felony).

The statute 1 G. I., st. 2, c. 5, § 1, commonly called the *Riot Act*, enacts that if any persons to the number of twelve or more, being unlawfully, riotously and tumultuously assembled together, to the disturbance of the public peace; and being required or commanded by any justice of the peace, or the sheriff of the county, or his under-sheriff, or by the mayor, bailiff, or other head officer, or justice of the peace of any city or town corporate, where such assembly shall be, by proclamation made in the King's name (in the form directed by the second section of this act) to disperse themselves, and peaceably to depart to their habitations or to their lawful business, shall, to the number of twelve or more (notwithstanding such proclamation made), unlawfully, riotously and tumultuously, remain or continue together by the space of one hour after such command or request made by proclamation, the parties so remaining shall be guilty of felony, and shall suffer death. By § 2, the justice (or person authorised as above), shall, among the said rioters, or as near to them as he can lawfully come, with a loud voice command, or cause to be commanded, silence to be, while proclamation is making; and after that, shall openly and with a loud voice make or cause to be made, proclamation, in these words, or like in effect:—

Our sovereign lord the King (a) chargeth and commandeth all persons being assembled to disperse themselves, and peaceably to depart to their habitations or to their lawful business,

(a) Lady the Queen.

upon the pains contained in the act made in the first year of the reign of King George, for preventing tumults and riotous assemblies. God save the King. (a)

By § 3, those assembled, and not dispersing within an hour, may be seized; and if they make resistance, the persons killing them shall be indemnified. § 4. And if any persons unlawfully, riotously, and tumultuously assembled, shall unlawfully and with force, demolish or pull down, or *begin* to demolish or pull down, any church, chapel, or any building for religious worship, certified and registered according to the statute of the 1 W. & M., or any dwelling-house, barn, stable, or other out-house, they shall suffer death, without benefit of clergy. § 5. And if any person shall, with force and arms, wilfully oppose, hinder, or hurt any person that shall begin to go to make the proclamation, whereby the same shall not be made, he shall be guilty of felony; and also every person so unlawfully, riotously, and tumultuously assembled, to the number of *twelve* or more, to whom proclamation should or ought to have been made if the same had not been hindered, shall likewise, in case they, or any of them, to the number of twelve, or more, shall continue together, and not disperse themselves within one hour after such let or hinderance so made, shall be guilty of felony. § 8. Prosecutions under this act must be commenced within twelve months.

*By 3 W. IV., c. 3, (the Riot Act, 1 G. I.,) is confirmed in its relation to this province; and it is enacted, that the provisions in the fourth clause of the same act shall apply and extend to all churches and chapels or places for religious worship in this province, notwithstanding the same, or any of them, shall not be *certified or registered* as provided in the said act.

By 4 & 5 V., c. 26, § 6, if any persons riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force, demolish, pull down, or destroy, or begin to demolish, pull down, or destroy, any church, chapel, or meeting-house, for the exercise of any mode or form of religious worship, or any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop oast, barn, or granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or any branch thereof, every such offender shall be guilty of felony and

shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

See also title "*Public Works, Riot at.*"

Indictment for a Riot and Assault. (Archbold.)

County of) The jurors for our lady the Queen, upon their
to wit.) oath present, that J. S., late of the township
of , in the county of , labourer, J. R., late of the same.
carpenter, E. W., late of the same, yeoman, together with divers
other evil disposed persons, to the number of , and now to
the jurors aforesaid unknown, on the day of , in the
year of the reign of our sovereign lady Victoria, with force and
arms, at the township aforesaid, in the county aforesaid, unlaw-
fully, riotously and routously did assemble and gather together,
to disturb the peace of our said lady the Queen. and being so
then and there assembled and gathered together, in and upon
one A. the wife of J. N., in the peace of God and of our lady
the Queen, then and there being, unlawfully, riotously and
routously did make an assault, and her the said A. then and
there unlawfully, riotously and routously did beat, wound, and
ill-treat, so that her life was greatly despaired of, and other
wrongs to the said A. then and there unlawfully, riotously and
routously did: in contempt of our said lady the Queen and
her laws, to the evil example of all others in the like case
offending, and against the peace of our lady the Queen, her
crown and dignity.—(Add also another count for a common
assault.)

Indictment for a Riot and Tumult.

Commencement as in the last form, &c.] with force and arms,
to wit, with sticks, staves and other offensive weapons, at the
township aforesaid, in the county aforesaid, unlawfully, riot-
ously, and routously did assemble and gather together, to dis-
turb the peace of our said lady the Queen; and being so as-
sembled and gathered together, armed as last aforesaid, did
then and there unlawfully, riotously, and routously make a great
noise, riot and disturbance, and did then and there remain and
continue armed as last aforesaid, making such noise, riot and
disturbance for the space of an hour and more, then next follow-
ing, to the great disturbance and terror, not only of the liege
subjects of our lady the Queen there being and residing, but of
all other the liege subjects of our lady the Queen then passing
and repassing in and along the Queen's common highway there,
in contempt of our said lady the Queen and her laws, to the
evil example of all others in the like case offending, and against
the peace of our lady the Queen, her crown and dignity.

RIVERS AND NAVIGATION.

A navigable river is, with respect to the right of the public to pass along it for the conveyance of themselves or their goods and merchandizes, in the nature of a public highway.—1 *Haw. c.* 76, § 1; 3 *Com. Dig.* 23. A nuisance occasioned to a public river by obstruction, is indictable on the same principle as a similar nuisance to a highway. Thus, the *laying of timber* in a public river, whereby the passage of vessels is obstructed, is as much a nuisance as laying logs in a highway.—5 *Bac. Ab. nuisance* (A.)

By 7 V., c. 36, § 1, any person who shall throw into any river, rivulet, or water-course, or any owner or occupier of a mill who shall suffer or permit to be thrown any slabs, bark, waste stuff, or other refuse of any saw-mill, except saw-dust, or any stumps, roots, or waste timber, or leached ashes, and shall allow the same to remain in such river or rivulet, or water course, shall thereby incur a penalty not exceeding £5 currency, and not less than one shilling for each day during which such obstruction shall remain, over and above all damages which may arise therefrom, to be recovered in a summary way before any one or more justices of the peace in the manner provided by 4 & 5 V., c. 26.

§ 2. The amount levied in no case to exceed £5 and costs.

§ 3. One-third of the penalty to go to the informer, and the other two-thirds to the township; and in case of damages to private property, such damages to be paid to the aggrieved party, when not examined as a witness. § 4. In default of sufficient distress, the offender to be committed to the common gaol until the fine or damages and costs be paid, but not exceeding thirty days.

By the 10 & 11 V., c. 20, entitled "An Act to amend, explain and continue the last mentioned act, 7 V., c. 36," any person who shall throw into any river, rivulet or water-course, or any owner or occupier of a mill who shall suffer or permit to be thrown, any slabs, bark, waste stuff, or refuse of any saw-mill (except saw-dust) or any stumps, roots, shrubs, tan-bark or waste-wood, timber or leached ashes; or any person who shall fell, or cause to be felled in or across any river, rivulet, or watercourse, any timber, or growing or standing tree or trees, and shall allow the same to remain, shall thereby incur a penalty not exceeding £5, nor less than 1s. every day such obstruction shall remain; to be recovered with costs before any one or more justices, in the manner provided by the 4 & 5 V., c. 26. This act not to extend to any dam, river or bridge, or to any tree cut down

or felled across any such river, &c., as a means of passage. This act to remain in force for four years from the passing thereof (25th July, 1847), and until the end of the next session.

By 14 & 15 V., c. 123, the above acts shall not extend to the river St. Lawrence, nor to the river Ottawa, nor to any river or rivulet wherein salmon or pickerel, black bass or perch, do not abound.

The 7 V., c. 36, is only a temporary act, but it has been continued, as amended by the 10 & 11 V., c. 20, and the 14 & 15 V., c. 123. By the 20 V., c. 16, to the 1st January, 1858, and till the end of the then next ensuing session of parliament.

ROAD ALLOWANCES.

By 8 V. c. 20, § 15, any party in possession of any part of an allowance for road in the rear of his lot, enclosed by a lawful fence, not travelled or required by the public, by reason of any other road being used in lieu thereof, or because the same has not been opened, shall be deemed legally possessed, as against any other private party. Such possession to cease upon an order of any two justices directed to the proper township officer requiring him to open the same.

By 20 V. c. 69, § 1, so much of the 187th § of the municipal act 12 V., c. 81, (as amended) as prevents municipalities from passing by-laws for stopping up original allowances for roads or selling the same, is repealed. § 2. Authorises the municipalities of townships to make by-laws for stopping up and selling any original allowance for road or any part thereof, provided that such by-law be confirmed by a by-law of the county council. § 3. County councils authorised to make similar by-laws respecting road allowances under their control and not being on the limits of any village, town or city therein. § 4. Road allowances to be offered for sale in the first place to the parties owning adjoining lands. § 5. Where new roads have been opened for which no compensation has been paid, the municipalities are required, on the report of their surveyor that such new road is sufficient, to convey the original road allowance to the party through whose land such new road shall run. § 6. Roads deemed useless may be sold. § 7. Roads not to be closed up so as prevent access to adjoining lands. § 8. By-laws for stopping up or sale of any original allowance not to be passed until one month's notice thereof, given in at least six public places in the vicinity, and in one local newspaper for three weeks.

ROBBERY.

Robbery signifies a larceny from the person, committed openly and violently; and may be defined to be, the felonious and forcible taking of goods or money of any value from the person of another, or in his presence, against his will, by violence, or putting him in fear.—4 *Bl. Com.* 243; 2 *East. P. C.* 797.

Of the Felonious taking.

The gist of the offence being the force and terror used by the offender, the value of the property stolen is quite immaterial; for a penny as well as a pound, forcibly taken or extorted, constitutes in law a robbery.—3 *Inst.* 69; 1 *Hale*, 532; 1 *Haw. c.* 34, § 16; 4 *Bl. Com.* 243. The taking also must be such as to give the robber a possession of the property stolen; therefore, if a man having his purse fastened to his girdle, be assaulted by a thief, and the thief, in order the more readily to take the purse, cut the girdle, and the purse thereby fall to the ground, this is no taking so as to amount to robbery, for the thief never had the purse in his possession; but, if he had taken it up from the ground, though but for one moment, and afterwards let it fall in the struggle, this would then have been a sufficient taking, the purse having been once in his possession.—3 *Inst.* 69. And when once the offence of robbery is completed it cannot be purged by a re-delivery. There may be a taking in law however, as well as a taking in fact, which will amount to robbery. Thus, if upon A. assaulting B. and bidding him deliver his purse, B. refuse to do so, and then A. pray B. to give or lend him money, and B. does so accordingly under the influence of fear, the taking will be complete.—1 *Hale*, 533. So, when thieves, finding no property on a man, force him by menace of death to fetch them money, which he delivers to them while the fear of the menace continues upon him, and they receive it, this is a sufficient taking in law.—*Id.* 3 *Inst.* 68. The taking, however, need not be immediately from the person, it is enough if it be *in his presence*. Thus, if A. upon being attacked by a robber throws his purse or his cloak into a bush, or lets his hat fall while he is endeavouring to escape, and the thief takes either of these things up and carries it away, such a taking being done in the presence of A., will amount to robbery—3 *Inst.* 68; 1 *Hale*, 533; 1 *Haw.* 34, § 6; but no stealing will amount to robbery unless done in the presence of the owner.—*R. v. Grey*, 2 *East. P. C.* 708.

What Violence or Fear is necessary.

The principle of robbery being violence, some degree of force is therefore necessary to constitute the offence; but there may be a constructive as well as an actual force, for where such terror is impressed on the mind as not to leave the party a free agent, and in order to get rid of that terror he delivers his money, this is a sufficient force in law; and where actual violence is used there need not be actual fear, for the law will presume it.—*Donally's case*, 2 *East. P. C.* 727. With respect to the degree of violence, where there is no putting in fear, the amount of force used in such cases must be something more than a sudden taking or snatching, for unless some greater force is used by the thief to overpower or prevent resistance, or there is some resistance or actual struggle on the part of the owner to retain his property, this will not amount to a robbery, being divested of both its main ingredients of the crime, *corporal violence and terror*.—*R. v. Macaulay*, 1 *Leach*, 287; *R. v. Baker*, *Id.* 290; *R. v. Robins*, *Id.* 290, (note A.); *R. v. Steward*, 2 *East. P. C.* 702; but if any injury be done to the person, or there is any struggle of the owner to retain his property, then it is robbery. As, where a lady's ear-ring was pulled so violently from her ear that the ear was torn through and made to bleed and she was otherwise much hurt—*R. v. Lapier*, 1 *Leach*, 320; and so where the prisoner pulled the prosecutor's watch from his fob, which being fastened by a steel chain round his neck, the thief with two jerks broke the steel chain in order to get the watch, for the prisoner in this case had to overcome the resistance made by the steel chain, and used actual force for that purpose.—*R. v. Mason*, *R. & Ry.* 419. The violence used also will not the less amount to robbery, because it is accompanied by some specious pretence of law or justice; thus, where the prosecutor was carrying his cheeses along the highway and was stopped by the prisoner, who insisted on seizing them for want of a permit, which was found to be a mere pretence, no permit being necessary, and on some altercation they agreed to go before a magistrate to determine the matter, when other persons, who were riotously assembled and in confederacy with the prisoner, carried away the goods in the absence of the prosecutor, this was held to be robbery, and the seizure of the cart and goods by the prisoner was sufficient to constitute the offence.—*Merriman v. Hundred of Chippenham*, 2 *East. P. C.* 709. With respect to a constructive violence by *putting in fear*, it matters not whether

the fear excited is of injury to the *person*, the *property* or the *character* of the party robbed; as if a person with a drawn sword or other circumstances of terror, indicating a felonious intent, beg alms of another, who gives it to him through mistrust and misapprehension, this pretence of asking charity will not prevent the offence from being considered as robbery.—4 *Bl. Com.* 244; 2 *East P. C.* 711. The degree of fear need not be the extremest state of alarm and terror, but only such a reasonable apprehension of danger as may induce a man, for his own safety, to part with his property. So, where a man is compelled through fear to part with his money, in order to prevent his *house* or *property* from being burnt or destroyed, this will be a sufficient putting in fear to make the offence of those who take his money amount to the crime of robbery; so, where a person is induced to part with his money through fear, upon the threat of another to accuse him of an unnatural offence or any other crime, whereby his character or reputation may be injured, extorting money under a threat of this description will amount to the crime of robbery, whether the party threatened has been guilty of the crime or not (a).—*R. v. Gardiner*, 1 *C. & P.* 79.

By 4 & 5 V., c. 25, § 6, whosoever shall rob any person, and at the time of or immediately before or immediately after such robbery shall stab, cut or wound any person, shall be guilty of felony, and being convicted thereof shall suffer death. § 9. Whosoever shall rob any person, or shall steal any chattel, money or valuable security from the person of another, shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for any term not exceeding fourteen years nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Robbing the Mail.

By the 13 & 14 V., c. 17, § 16, is made felony and punishable by imprisonment in the penitentiary *for life*.

See also title "*Post Office*."

Of Principals and Accessories.

With respect to persons aiding and abetting in a robbery, the same rules are applicable as in every case of principal and accessory. Thus, where several persons come to rob a man, and they are all *present* whilst one of them takes his

(a) See also title "*Extortion*," p. 320; and the statute 4 & 5 V., c. 25, § 8, on this subject.

money, they are all guilty of robbery. So, if three persons come to commit a robbery, and one stand sentinel at the corner of a field, or watch if any one should approach, while the others commit the robbery, this will be a robbery in the third also, though he stood at a distance from them and not within view—1 *Hale*, 534, 537; but though several come out with a common design to rob in the highway, yet if one of the party (before any robbery takes place) entirely leaves them and goes another way, rendering them no manner of assistance, either at the time or after the commission of a robbery by the others, he cannot then be said to be guilty, either as principal or accessory.—*R. v. Hyde*, 1 *Hale*, 537.

See also *ante* title "Accessories."

Of Assaults with Intent to Rob.

By 4 & 5 V., c. 25, § 7, whosoever shall, being armed with any offensive weapon or instrument, rob or assault with intent to rob any person, or shall rob any person, and at the time, or immediately before or immediately after such robbery, shall beat, strike, or use any other personal violence to any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, or be imprisoned in any other prison or place of confinement for any term not exceeding two years. § 10. Whosoever shall assault any person with intent to rob, shall be guilty of felony, and being convicted (save and except in cases where a greater punishment is provided under this act) be liable to be imprisoned for three years.

SABBATH.

See "*Lord's Day*."

SACRILEGE.

Sacrilege (*sacrilegium*) is, at common law, the robbery of a church, or a felonious taking out of a holy place things consecrated to pious purposes; as the vessels, goods or ornaments of the church—3 *Cro.* 153; but to steal any thing belonging to private persons in a church is *larceny*, and not sacrilege. Sacrilege was originally punished with greater severity than other robberies by our law: for it denied the benefit of clergy to a person convicted of this offence, which was formerly granted to all other felons.—2 *Inst.* 250; 23 *H. VIII.*, c. 1, § 3; 1 *Ed. VI.*, c. 12, § 10.

But now, by 4 & 5 V., c. 25, § 13, if any person shall

break and enter any church or chapel, and steal therein any chattel, or having stolen any chattel, money or valuable security, in any church or chapel, shall break out of the same, such offender being convicted shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

SALMON.

See "*Fish.*"

SEARCH-WARRANT.

It seems that formerly it was not unusual for justices to grant general warrants to search all suspected places for stolen goods: yet such practice is generally condemned by the best authorities; and Lord Hale, in his pleas of the crown, says a general warrant to search for felons or stolen goods is not good—*H. Pl.* 93; likewise, upon a *bare surmise* a justice cannot legally grant a warrant to break any man's house to search for a felon or stolen goods.—*4 Inst.* 177; but in case of a complaint, and oath made, of goods stolen, and that the complainant suspects the goods are in a certain house or place, and shews the ground of his suspicion, the justice may grant a warrant to search in those suspected places mentioned in his warrant, and to attach the goods and the party in whose custody they are found, and bring them before him, or some other justice, to give an account how he came by them; and further, to abide such order as to law doth appertain.—*2 H. H.* 113, 150. But in cases not merely of probable suspicion, but of positive proof, it is right to execute the warrant in the *night time*, lest the offenders and goods also be gone before morning—*Barl. Search W.*; such warrant must be directed to the *constable*, or a peace officer, and not to any private person; though the complainant may aid and assist, because he knows the goods.—*2 H. H.* 150. Whether the stolen goods are in a suspected house or not, the officer and his assistants, in the day time, may enter, the doors being open, to make search, and it is justifiable by this warrant.—*2 H. H.* 151. If the door be shut, and upon demand it be refused to be opened by them within, if the stolen goods are in the house, the officer may break open the door.—*1 H. H.* 151. If the goods be not in the house, yet it seems the officer is excused that breaks open the door to search, because he searched by warrant, and could not know whether the goods were there till search made; but it seems

the party that made the suggestion is punishable in such case ; for as to him the breaking of the door is *in eventu* lawful or unlawful—to wit, lawful if the goods are there ; unlawful if not there.—2 *H. H.* 151. On the return of the warrant, if it appear the goods were not stolen, they are to be restored to the possessor ; if it appear they were stolen, they are not to be delivered to the proprietor, but deposited in the hands of the constable ; to the end that the party robbed may proceed, by indicting and convicting the offender, to have restitution.—2 *H. H.* 151. As touching the *party* that had the custody of the goods ; if they were not stolen, then he is to be discharged ; if stolen, but not by him, but by another, that sold or delivered them to him, if it appear that he was ignorant that they were stolen, he may be discharged as an offender, and bound over to give evidence as a witness against him that stole them ; if it appear that he knew they were stolen, he must be committed, or bound over to answer the felony.—2 *H. H.* 152.

By 4 & 5 V., c. 25, § 55, if any credible witness shall prove upon oath before a justice of the peace, that there is reasonable cause to suspect that any property whatsoever on or with respect to which any *such* (*a*) offence shall have been committed, is in any dwelling-house, out-house, garden, yard, croft, or other place or places, the justice may grant a warrant to search such dwelling-house for such property, as in the case of stolen goods ; and any person to whom any property shall be offered to be sold, pawned or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorised, and if in his power is required, to apprehend, and forthwith to convey before a justice of the peace, the party so offering the same, together with such property, to be dealt with according to law.

By 16 V., c. 179, § 3, search warrants may be issued on a Sunday.

SEDITION.

Sedition is understood to comprise within its meaning all offences against the Queen and the government, which are not capital, and do not amount to the crime of high treason. It includes all offences of like tendency with treason, but without any such direct intent or overt act of the party formed or executed as to bring it within the more serious offence. All contempts against the Queen and her government, and

(*a*) See title "*Larceny*."

riotous assemblies for political purposes, may be ranked under the head of sedition; though it has been held, that when the object of the riot is to redress a general grievance, as to pull down *all* enclosures, or to reform religion, or the like, it may then amount to an overt act of high treason; being in the nature of a levying of war against the Queen. And in general, it may suffice to remark, that all contemptuous, indecent or malicious observations, upon the person of the Queen or her government, whether by writing or speaking, or by tokens calculated to lessen her in the esteem of her subjects, to weaken her government, or raise jealousies of her amongst the people, will fall under the head of sedition; as well as all direct or indirect acts or threats, tending to overcome her measures, or disturb the course of her government, not amounting to overt acts of treason. All these attempts are highly criminal at common law, and punishable with fine and imprisonment.—4 *Bl. Com.* 147; 1 *Haw. c.* 65, § 6; 1 *E. P. C.* 76.

SERVANTS.

A servant may be discharged at a moment's warning for immorality, or gross misconduct—*R. v. Brampton, Cald*; or for wilful disobedience of orders.—*Spain v. Amott*, 2 *Star. Rep.* 256. And if a servant of his own accord go away before his time expires, he runs the risk of losing all his wages—*Dalt. c.* 58, *p.* 141; and when discharged for misconduct, will be entitled only to wages due at the time of his discharge.—3 *Esp.* 235. If a servant, however, not having been guilty of any misconduct, be discharged without warning, he is entitled in such case, if hired by the month, to a month's wages above those that may be due.—2 *Sel. N. P.* 1032.

See also title "*Master and Servant.*"

SESSIONS.

The sessions of the peace is a court of record, holden before two or more justices, for the execution of their general authority, given them by the commission of the peace, as well as by certain statutes.—*Lamb.* 349; *Dalt.* 456. There must also be two justices (at the least) present in order to adjourn the sessions legally; and two justices also, to hold an adjournment.—*Rex. v. Westington*, 2 *Bolt.* 733; 1 *Blk. Com.* 354, *n.* When the sessions is adjourned, the style of the court ought to run thus: "at such a session, held by adjournment:" but the original meeting of the sessions should be first set forth; and then it should be stated that the sessions were

“continued from thence to such further time by adjournment.”—2 *Str.* 832, 865.—*R. v. Walker, Sess. Cas.* 21.

Any two justices may direct their precept under their *teste* to the sheriff, for the summons of the sessions—2 *Haw.* 41; and such precept should bear date fifteen days before the return, and ought forthwith to be delivered to the sheriff, to the end he may have sufficient time to proclaim the sessions, to summon and return the juries, and to warn all officers and others that have business there to attend.—*Nels. Introduct.* 35, 4 *Burn's Justice*, 6 *Ed.* 198.

Those who are bound to appear at the sessions, besides the justices of the peace, are—1. The *Custos Rotulorum*, or his sufficient deputy, who is the clerk of the peace, for the *Custos Rotulorum* has the custody of the rolls or records of the county. 2. The sheriff, either by himself or his deputy; it being his deputy to return jurors, receive fines, and execute process. 3. All coroners, whose duty is to summon jurors, and execute process upon the default or neglect of the sheriff, or in case of his absence, or having an interest in the matter before the court. 4. The constables of the several townships within the county, and all other officers to whom any warrant has been directed, in order to make a return thereof. 5. The keeper of the gaol, who is bound to bring up the prisoners, and to receive such as may be committed. 6. All persons returned as jurors by the sheriff, by virtue of the above mentioned precept. 7. All persons bound by recognizance to appear to answer, or to prosecute and give evidence.—*Dalt. c.* 185; 4 *Burn*, 6 *Ed.* 199.

By 22 G. II., c. 46, § 12, no person shall act as *solicitor*, *attorney* or *agent* at the sessions, unless he is admitted and enrolled according to law, under the penalty of £50. And by § 14, *clerks of the peace*, *under-sheriffs*, and their respective *deputies*, are prohibited under the like penalty from practising at the sessions.

Of the Jurisdiction of the Sessions.

1. The jurisdiction of the sessions, by 34 Ed. III, c. 1, extended to the trying and determining all *felonies* and *trespasses* whatsoever. But now they ought not to try any greater offence than that of *simple larceny*, their commission providing, that if any case of difficulty arises they shall not proceed to judgment, but in the presence of one of the justices of the Court of Queen's Bench, or one of the judges of assize. Consequently, *murders*, *burglaries*, and other capital *felonies*, are reserved for a more solemn investigation at the assizes. The sessions have no commission of *gaol delivery*;

neither have they any jurisdiction over *forgery* or *perjury* at common law; *R. v. Gibbs*, 1 *East* 473. *R. v. Yarrington*, 1 *Salk.* 406; *R. v. Bainton*, 2 *Str.* 1088; 2 *Haw. c. 8* § 38: nor over any *new created* offence, as usury; unless express jurisdiction is given to them by the statute creating the offence.—*R. v. Smith*, 2 *Ld. R.* 1144; 1 *Bl. Rep.* 369; 2 *Salk.* 680. The general words in the commission of the peace, including *all trespasses*, this comprehends not only direct breaches of the peace, but also such offences as have a tendency thereto; and on this ground, *conspiracies* and *libels*, or any *illegal solicitations, attempts, or endeavours* to commit crimes, have been holden to be cognizable by the sessions.—*R. v. Higgins*, 2 *East. R.* 23; *R. v. Summers*, 3 *Salk.* 194; *R. v. Rispal*, 3 *Burr.* 1320; 1 *Bl.* 369. The sessions have, like every other court, the power to fine for a contempt committed in the face of the court.—*R. v. Davison*, 4 *B. & A.* 334. But they cannot award an attachment for a contempt in disobeying any of their orders, the ordinary and proper method being by *indictment*.—*R. v. Bartlett*, 2 *Sess. Cas.* 176; *R. v. Robinson*, 2 *Burr.* 800; *R. v. Kingdon*, 3 *East.* 41; 4 *Burn's J.* 204, *Ed.* 16. The sessions have also power to fine jurors for non-attendance at the court, upon proof of their having been duly summoned, 13 & 14 *V.*, c. 55, § 63; also to commit to gaol any person guilty of contemptuous or disrespectful conduct in the presence of the court. But the sessions have no power to amerce any justice for his non-attendance at the sessions, as the judges of assize may for the absence of any such justice at the gaol delivery.—2 *Haw.* 41, 42. Nor are justices punishable for what they do in sessions—*Stam.* 173—unless there be some manifest act of oppression, or wilful abuse of power.—2 *Barnardist*, 249, 250.

Justices in quarter sessions may also make rules and regulations for the gaols, which, when approved of by a judge of the Court of King's Bench, shall be in force—*32 *G. III.*, c. 8, § 16 (*a*); and fix the salary of the gaoler, which shall be in lieu of all fees.—*Ib.* § 17; appoint the high constable and other constables in the April sessions (*b*)—*33 *G. III.*, c. 2, § 10; grant certificates authorising the clergy of different congregations to solemnize matrimony—*11 *G. IV.*, c. 36; (*c*) may grant certificates in case of the death of witnesses to deeds, of the due execution thereof, in order to their registry—9

(a) But see late statute 20 *V.*, c. 70, conferring this power on inspectors of gaols.

(b) But now March, under the 20 *V.*, c. 58.

(c) See late act 20 *V.*, c. 66, and *ante* title "Marriages," p. 557.

V., c. 34. § 3; cannot take cognizance of illegal marriages.
—*2 G. IV., c. 11.

*By 47 G. III., c. 11, § 2, when any person shall be convicted of an assault or misdemeanor before the sessions, he shall pay the costs of any prosecution and conviction to be allowed and taxed by the court; and when the defendant shall be acquitted, the prosecutor, unless it shall appear there were reasonable grounds for prosecution, to be certified by the chairman, shall pay the defendant's taxed costs. The defendant's costs upon a presentment, if the defendant be acquitted, shall be paid out of the district treasury.

*By 7 W. IV., c. 4, § 2, the courts of general quarter sessions of the peace in the several districts of this province shall have power to try every case of simple larceny, and also to try all accessories to such larceny: *provided always*, that unless the justice presiding in any such court shall be a barrister duly admitted to practise at the bar in this province, then it shall not be lawful for such court to try any case of larceny, when the goods charged to have been stolen shall exceed in value the sum of £20. § 3. No court whose jurisdiction in cases of larceny is extended by this act, shall have power to sentence a person convicted of larceny to be transported for any period, or to be banished for a longer period than seven years, or to be imprisoned in a common gaol for a longer period than eight months, or to be imprisoned and kept to hard labour in any penitentiary or house of correction for a longer period than two years. § 4. It shall be lawful for any court having jurisdiction in cases of larceny, if they shall think fit, to sentence any person convicted thereof to be banished from the province for any number of years not exceeding seven, to commence from the expiration of the term for which the same person may upon the same conviction be sentenced to be imprisoned in the common gaol, or imprisoned and kept at hard labour in a penitentiary or house of correction. § 5. The court may, in its discretion, leave cases of simple larceny to be tried at the next court of oyer and terminer, and general gaol delivery, if by reason of the difficulty or importance of the case it shall appear to them proper so to do. § 6. If upon the trial of any case of larceny in which the value of the goods stolen shall be stated in the indictment at a sum not exceeding £20, it shall appear in evidence that the value of such goods was in reality greater than £20, such trial may nevertheless proceed, and no legal exception to the jurisdiction of the court shall lie on that account; but the provision of this act restraining such court to cases where the value of the goods shall not exceed £20,

shall be deemed and taken merely to be a direction to such court, but shall not be construed to affect their legal jurisdiction.

* By 7 W. IV., c. 6, § 2, no court of general quarter sessions of the peace, or court having the like jurisdiction, shall have the power to sentence any person convicted before them to be imprisoned in the penitentiary for a longer period than two years.

Fees.

By 8 V., c. 38, justices in quarter sessions are authorised to frame a table of fees for services by sheriff, coroner, or clerk of the peace, constable and crier, to be laid before the judges for their approval.

§ 4. Any officer demanding or receiving any greater fees shall for every such offence forfeit £10, to any person suing for the same in any court of competent jurisdiction.

Costs.

By the same statute, § 3, when any person shall be convicted before any court of quarter sessions of any assault or battery, or other misdemeanor, such person or persons shall pay such costs as shall be allowed and taxed by the court, but when any defendant shall be acquitted the costs of the prosecution shall be paid out of the district funds. In cases of felony the costs shall be paid out of the district funds whether the party be acquitted or convicted.

Periods for holding the Session.

By 20 V., c. 58, § 16, the periods fixed are the second Tuesday in March, June, September, and December; and the said courts may, at their sittings in the month of March in each year, nominate and appoint a high constable, and a sufficient number of persons to serve the office of constable for their several counties.

Chairman of Quarter Sessions.

By 8 V., c. 13, § 3, the senior judge of the district court shall preside as chairman at the general quarter sessions, and in case of his absence from sickness or other unavoidable causes, the justices present shall elect another chairman *pro tem*.

The Proceedings at a General Quarter Sessions.

The court having assembled, the session is then usually proclaimed by a bailiff, in the following terms:

“Oyez! Oyez! Oyez! the Queen’s justices do strictly charge all manner of persons to keep silence while the Queen’s commission of the peace for this county is openly read, upon pain of imprisonment.”

(By 18 V., c. 92, § 39, the commission of the peace need not be read.)

The clerk of the peace then calls upon the sheriff thus: “Sheriff of the county, return the precept to you delivered;” which the sheriff does accordingly.

Then the grand jury are called in order, every one by his name. The foreman, by himself, lays his hand on the book, and the clerk of the peace administers to him the following oath:

“Sir,—You, as foreman of this grand inquest, for the body of this county, shall diligently enquire and true presentment make of all such matters and things as shall be given you in charge. The Queen’s counsel, your fellows’, and your own, you shall keep secret: and you shall present no one for envy, hatred or malice; neither shall you leave any one unrepresented for fear, favour or affection, or hope of reward; but you shall present all things truly, as they come to your knowledge according to the best of your understanding. So help you God.”

The rest of the grand jury by “three” at a time, in order, are sworn in the following manner:

“The same oath which your foreman hath taken on his part, you and every of you shall well and truly observe and keep on your part. So help you God.”

The clerk of the peace then calls over their names thus:

“Gentlemen of the grand jury, answer to your names, and say *sworn* if you are sworn.”

The chairman then delivers his charge to the grand jury.

The bailiff is then sworn to attend the grand jury, thus:

“You shall swear that you will diligently attend the grand inquest during the present sessions, and carefully deliver to them all such bills of indictment or other things as shall be sent to them by the court, without alteration. So help you God.”

By 8 V., c. 8, the claims of persons claiming under the “Heir and Devisee Act,” shall be proclaimed by the crier, at the sessions next after the notice given, immediately after the charge to the grand jury.

The prosecutors and bail are then called in the following manner (if need be) by the crier:

“A. B. come forth and prosecute, and give evidence against C. D., or you will forfeit your recognizance.”

Calling persons out upon Bail.

“A. B. of the township of _____, come forth and save you and your bail, or you will forfeit your recognizance.”

Calling Bail to bring forth Principals.

“C. D. and E. F. (*with their additions*) bring forth the body of A. B. whom you have undertaken to appear here this day, or you will forfeit your recognizance.”

Oath of Witness on Indictment before Grand Jury. (a)

“The evidence you shall give to the grand inquest upon this bill of indictment against A. B. for larceny shall be in truth, the whole truth, and nothing but the truth. So help you God.”

If the witness be a Quaker, his evidence is admissible under the *10 G. IV., c. 1, upon making the following affirmation, in lieu of oath:

“I, A. B. do solemnly, sincerely and truly declare, that I am one of the society called Quakers, [Menonists, Tunkers, Unitas Fratrum, or Moravians,” *as the case may be.*]

Upon the return of the grand jury [into court with any bills of indictment, the clerk of the peace calls them severally by their names, and says, “Gentlemen, have you agreed upon any bills?”

Upon the foreman presenting the same, the clerk of the peace addresses the grand jury as follows:

“You are content the court shall amend matter of form, altering no matter of substance without your privity, in those bills you have found.”

The grand jury signify their assent and return to their business again—viz., to examine other bills.

Then the court proceeds to arraign such prisoners as are indicted, in the manner following:

The clerk of the peace says, “A. B., hold up your hand: you stand indicted by the name of A. B., late of _____, for that you,” so reads the indictment through, and then asks the prisoner “Are you guilty or not guilty?” If he says “not guilty,” then the clerk of the peace enquires if he be ready for his trial.

The clerk of the peace then proceeds to call the petit jury, thus:

“You good men that are impannelled to try the issue joined

(a) By the late statute 20 V., c. 4, the grand jury may swear the witnesses themselves.

between our sovereign lady the Queen and the prisoner at the bar, answer to your names, upon pain and peril that shall fall thereon."

When the jurors have appeared, then the clerk of the peace calls to the bar the prisoners that are to be tried by the jury, and says thus :

"These good men that you shall now hear called are those that are to pass between our sovereign lady the Queen and you, if therefore you [or any of you] will challenge them, or any of them, you must challenge them as they come to the book to be sworn, before they are sworn, and you shall be heard."

Then the clerk of the peace calls the jury to be sworn, in cases of felony, one by one, thus :

"You shall well and truly try and true deliverance make between our sovereign lady the Queen and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to the evidence. So help you God."

But in cases of misdemeanor, the jury may be sworn three at one time, thus :

"You shall well and truly try the issue joined between our sovereign lady the Queen and the defendant, and a true verdict give according to the evidence. So help you God."

The clerk of the peace then calls over the jury, and says, "Gentlemen, answer to your names and say 'sworn,' if you are sworn."

The prisoner being at the bar, the clerk of the peace then proceeds to read the indictment, thus :

"A. B. stands indicted by the name of A. B." &c., reading the whole of the indictment as he did upon the arraignment, then says, "upon this indictment the defendant (*or the prisoner at the bar, as the case may be*) hath been arraigned, and upon his arraignment hath pleaded not guilty, your duty therefore is to inquire whether he be guilty or not guilty, and to hearken to the evidence."

And then the court proceeds to examine the witnesses upon oath, as well for the Queen as for the prisoner.

Oath of Witnesses.

"The evidence you shall give to the court and jury sworn, between our sovereign lady the Queen and the defendant (*or the prisoner at the bar, as the case may be*), shall be the truth, the whole truth, and nothing but the truth. So help you God."

Upon the evidence being closed for the prosecution, the prisoner's counsel, in cases of felony as well as misdemeanor, may address the jury and call witnesses. If the prisoner

have no counsel, he should be asked by the chairman if he have any thing to say in his defence, or any questions to ask. Upon the case being closed, the chairman sums up the evidence to the jury, commenting upon it as he proceeds, shewing the consistency or inconsistency of any part of it, and the bearing it has upon the guilt or innocence of the prisoner. The chairman then desires the jury to retire and consider their verdict. Upon the jury retiring to consider their verdict, the following oath is administered to the bailiff:

“You swear you will keep every person of this jury together in some private and convenient place, without meat, drink, lodging or fire (candle excepted); you shall not suffer any person to speak to them or any of them, neither shall you speak to them yourself, unless it be to ask them whether they are agreed upon their verdict, without leave of the court. So help you God.”

When the jury return, their names are called over by the clerk of the peace, who says, “Gentlemen, are you agreed on your verdict?—how say you, is the defendant (or prisoner, as the case may be) guilty or not guilty?”

The verdict is then endorsed by the clerk of the peace, on the indictment, and signed by the chairman, which being done, the former addressing the jury, says, “Gentlemen, hearken to the verdict as the court records it. You find the defendant (or prisoner) guilty,” (or not guilty, according to the verdict.)

Should the defendant, however, upon being arraigned, be permitted to traverse to the next sessions, he may be admitted to bail, as follows:

“A. B. (principal) you acknowledge to owe to our sovereign lady the Queen the sum of (£ , whatever sum the court may approve), and you, C. D. and E. F. (sureties) severally acknowledge to owe to our said lady the Queen the respective sums of (£) and (£), to be respectively levied of your goods and chattels, lands and tenements, to her Majesty’s use, by way of recognizance, upon condition that you (A. B.) shall appear at the next general quarter sessions of the peace, to be holden for this county, to try your traverse upon this indictment, to which you have now pleaded not guilty, and not depart the court without leave of the court. How say you, A. B., C. D. and E. F., are you content?”

If a juror be taken ill during a trial, another juror may, (with the consent of the prisoner), be sworn and added to the other eleven, and the evidence re-delivered to the jury.—*Joyce’s case cor. Lord Keeper, Leach, 621, n.* But even without the consent of the prisoner, the court may, under

such circumstances, discharge the jury and charge a fresh jury with the prisoner. But the prisoner must be again allowed his challenge to each of the eleven former jurymen. —*R. v. Edwards*, 4 *Taunt.* 309.

Trial of a Traverse.

The proceedings upon a traverse are the same as in an original trial, except that the defendant is not arraigned nor called upon to plead, this having been already done at the former sessions.

The jury are to be sworn and indictment read as before directed.

Oath of a Jury on a Traverse.

“You shall well and truly try the issue of this traverse between our sovereign lady the Queen and the defendant, and a true verdict give according to the evidence. So help you God.”

Oath of Witnesses on a Traverse.

“The evidence you shall give to the court and jury sworn, touching the issue of this traverse, shall be the truth, the whole truth, and nothing but the truth. So help you God.”

In discharging the defendant's recognizance for default of the prosecutor appearing, (which ought not to be done till the close of the session), proclamation is made thus :

“Oyez! Oyez! Oyez! If any can say ought why the defendant, (naming him) should any longer be bound, let them come forth and they shall be heard, otherwise the court does discharge him, paying his fees.”

The court cannot commit for non-payment of fees: for if there is right, there is a remedy; and *indebitatus assumpsit*, will lie if the fee is certain, if uncertain, *quantum meruit*.—*L. Ray*, 703.

When there are no more bills to be laid before the grand jury, and they have finished all other business before them, it is usual for the court to inform them that there is no other business to come before them, and that they are therefore discharged.

The court having disposed of the business, then adjourn.

The clerk of the peace, during the sitting of the court, enters a minute of all proceedings, commencing with the day of the session, and before whom the same is held, inserting the names of the grand jurors and petit jurors, and every other minute particular attending the proceedings throughout.

Precept to Summon the Session. [BURN.]

County of } J. P. and K. P. esquires, justices of our sove-
to wit. } reign lady the Queen, assigned to keep the
peace in the county aforesaid, and also to hear and determine
divers felonies, trespasses and other misdemeanors committed
in the said county; to the sheriff of the county of , greet-
ing; On the part of our sovereign lady the Queen, we com-
mand you, that you omit not by reason of any liberty within
your county, but that you cause to come before us and other
our fellow justices assigned to keep the peace in the said
county, and also to hear and determine divers felonies, tres-
passes and other misdemeanors, in the said county committed,
on the day of , now next ensuing, at the hour of
ten in the forenoon of the same day, at in the said county,
 good and lawful men, of the body of your county,
then and there to enquire, present, do and perform, all and
singular such things, which on the behalf of our sovereign lady
the Queen, shall be enjoined on them; also, that you make
known to all coroners, keepers of gaols and houses of correc-
tion, high constables, and bailiffs of liberties within the county
aforesaid, that they be then and there, to do and fulfil such things
which by reason of their offices, shall be to be done: moreover,
that you cause to be proclaimed through the said county, in
proper places, the aforesaid sessions of the peace, to be holden
at the day and place aforesaid; and do you be then there, to
do and execute those things which belong to your office; and
have you then there, as well the names of jurors, coroners,
keepers of gaols and of houses of correction, high constables
and bailiffs aforesaid, as also this precept.

Given under our hands and seals, at in the county afore-
said, the day of in the year of the reign of , &c.

The Style of the Sessions. [BURN.]

County of , } The general quarter sessions of the peace,
to wit. } holden at , in and for the said county,
on the day , in the year of the reign of our sove-
reign lady Victoria, of Great Britain and Ireland, Queen, de-
fender of the faith, and so forth, before J. P. and K. P. esquires,
and others, justices of our said sovereign lady the Queen as-
signed to keep the peace in the said county, and also to hear
and determine divers felonies, trespasses and other misdemea-
nors in the said county committed, and so forth.

Subpœna to give Evidence.

Victoria, by the grace of God of the United Kingdom of
Great Britain and Ireland, Queen, defender of the faith; to A.
B., C. D., &c., greeting; We command you, and every of you,
that all business being laid aside, and all excuses ceasing, you
do in your proper persons appear before our justices assigned

to keep our peace in the county of , and also to hear and determine divers felonies, trespasses and other misdemeanors, in our said county committed, at the general quarter sessions of the peace to be holden at , in and for the said county, on the day of now next ensuing, at the hour of o'clock in the forenoon of the same day, to testify the truth, and give evidence before the grand inquest as well as the court, touching a bill of indictment to be preferred against A. O. in a case of larceny, [trespass and assault, or any other cognizable offence,] and this you, and every of you, are in no wise to omit, under the penalty of pounds for you and every of you. Witness, J. P., esquire, the day of .

A Subpœna Ticket for a Witness.

Mr. A. W. By virtue of a writ of subpœna to you and others directed and herewith shewn unto you, you are required personally to be and appear at the next general quarter sessions of the peace to be holden at , in and for the county of , to testify the truth, and give evidence before the grand inquest as well as the court, touching a bill of indictment to be preferred against A. O. in a case of larceny, [*trespass and assault, &c., as the case may be,*] and herein you are not to fail, upon pain of pounds. Dated the day of , in the year of our Lord .

SHERIFF.

The sheriff is an officer of very great antiquity, his name being derived from the Saxon word *scirgerefa*, signifying the *reeve bailiff*, or officer of the shire. He is called in Latin *vice-comes*, as being the deputy of the *earl* or *comes*, to whom the custody of the shires in England is said to have been committed at the first division of the kingdom into counties: but, though the sheriff be called *vice-comes*, yet he is entirely independent of the earl; the king, by his letters patent, committing *custodium comitatus* to the sheriff, and to him alone.—1 *Bl. Com.* 339; 5 *Burn.* 230.

In this province, the sheriff is appointed by letters patent under the great seal, and holds his office during pleasure.

In his ministerial capacity the sheriff is bound to execute all process issuing from the king's courts of justice. In the commencement of civil causes he is to serve the writ, to arrest, and to take bail: when the cause comes on for trial he must summon and return the jury; when it is determined, he must see the judgment of the court carried into execution. In criminal matters he also arrests and imprisons; he returns the jury; he has the custody of the delinquent; and he is bound to execute the sentence of the court, even if it extend to death itself; and it is no ex-

cuse to the sheriff to return that he^d could not execute any process because of resistance, for he may take with him in every case of need the power of the county, to enforce obedience to the king's writs or other process of law.—13 *Ed. I.* stat. 1, c. 39. He is also compelled to execute the warrant of a justice of the peace, if upon any extraordinary occasion it should be directed to him—though magistrates' warrants are, in practice, usually directed to constables, and other inferior officers; but he need not go in person to execute, but may authorise another to do so.—2 *Haw.* c. 13, § 29. He is also bound to attend the sessions of the peace, there to return his precepts; to take charge of the prisoners; to receive fines for the king, and the like.—2 *Haw.* c. 8, § 45. And for any default in executing the writs or precepts of the sessions he is punishable by the justices in sessions as for a contempt. *Id.* c. 22, § 2.

The sheriff has also the keeping of the gaols, and is answerable for all escapes suffered by the gaolers, to the king, if it be a criminal matter; or, in a civil cause, to the party injured; and by provincial statute *32 *Geo. III.*, c. 8, he has the appointment and removal of the gaoler.

As the *King's bailiff*, it is the business of the sheriff to preserve the rights of the king within his bailwick.—*Fortescue*, c. 24. He must seize to the king's use, all lands devolved to the crown by *attainder* or *escheat*.—1 *Bl. Com.* 344.

By 3 *G. I.*, c. 15, § 17, a sheriff guilty of extortion forfeits, to the party grieved, treble damages, and double the sum extorted, and also £200.

When a new sheriff is appointed and sworn, his predecessor (or in case of his decease, his under sheriff) sets over by indenture all the prisoners severally by their names, together with all the writs, wherein must be comprehended all the actions which the old sheriff had against every prisoner; and till the delivery of the prisoners to the new sheriff they remain in custody of the old sheriff.—*Wood, Inst.* 6, 1, c. 7.

*By the 3 *W. IV.*, c. 8, entitled, "An Act to make certain regulations relating to the office of sheriff in this province, and to require the several sheriffs of this province, to give security for the due fulfilment of the duties of their office," it is enacted by § 1, that the sheriff of each district shall enter into a bond to his Majesty, in the penal sum of £1000, together with two sureties to be approved by the inspector-general of public accounts, in £500 each, for the payment of all moneys due to the crown; which bond shall be in the

form given in schedule A. or in words to the like effect. § 2. The sheriff of every district shall provide two or four sufficient sureties, who, with himself, shall enter into a covenant under seal, joint and several, according to the form in schedule B., or in words to the same effect; which covenant shall be available to, and may be sued upon by, any person suffering damages by the default of any such sheriff. § 3. Such sureties shall be approved of by the justices in sessions, and a certificate thereof given by the chairman. § 4. The bond to his Majesty shall be deposited with the inspector-general, and the covenant shall be made in duplicate, one of which shall be deposited with the secretary of the province, and the other filed with the clerk of the peace. § 5. Any person may examine such covenant, and have a copy, on payment of 1s. 3d. for the examination, and 5s. for the copy to the clerk of the peace. § 6. (a) That such bond and the covenant shall be renewed every four years, either with the same or other sufficient sureties, to be certified as aforesaid. § 7. Whenever the office of sheriff shall become vacant, his successor shall not be appointed until he has first filed the requisite covenant and bond, with sureties. § 8. And no person shall be appointed sheriff who shall not be possessed of real estate in this province of the actual value of £750 above incumbrances; and shall, before he receives his commission, file an affidavit of the fact, in the office of the secretary, to be sworn before the chairman of the quarter sessions. § 9. In cases of death, absence from the province, or insolvency of any surety, new securities shall be given. § 10. The sureties, apprehensive of the solvency of their principal, may notify the same to the Lieutenant-Governor by affidavit to that effect, sworn before a commissioner of the King's Bench, and thereupon the sheriff shall be notified by the secretary to furnish new security, or on affidavit deny that he is insolvent, or worth less than £750 over and above all incumbrances; and if such requisition be not complied with within one month after the sitting of the then quarter sessions of the district, he shall be removed from office. § 11. When any new sureties shall be given, the former sureties shall not be discharged from any defaults previous thereto. § 12. Actions brought on the sheriff's covenant, shall not bar other actions on the same covenant for other causes. § 13. Any surety, having paid the full amount for which he became liable, shall be thereby discharged; and the sheriff shall, within four months, give new securities. § 14. If the damages recovered and

(a) The 6th and 19th clauses of this act have been repealed by the 4 & 5 V., c. 91.

paid by any surety is not equal to the amount for which he is bound, judgment may be obtained against him for any residue.

§ 15. Upon proof by affidavit, or otherwise, to the general quarter sessions, that any security has been discharged, or is insolvent, it shall be lawful for the sessions to notify the sheriff thereof, and such sheriff shall renew the covenant within four months after such notice.

§ 16. Executions against the sheriff and his sureties shall be first levied upon the sheriff.

§ 17. The sheriff shall be liable to pay the costs of all rules upon him, unless the court shall order otherwise; but in vexatious applications the court may award costs to the sheriff.

§ 18. The sheriff shall not be entitled to any fees on any writ placed in his hands fifteen days before the return day, if he does not return the same to the attorney within four days after such return, or enclose the same by post within that time, to such attorney.

§ 19. (a) Any sheriff neglecting to give the required security shall be removed from office.

§ 20. The covenants to be entered into by the sheriffs of the several districts, shall specify the following sums, as the extent thereof, viz.:—sheriffs of the Home district, district of Niagara, district of Gore, district of London, district of Newcastle, Midland district, district of Johnstown, Eastern district, in the sum of £1000 each, and two sureties in £500 each, or four sureties in £250 each; and the sheriff of the Western district, district of Bathurst, district of Ottawa, in the sum of £500 each, and two sureties into £250 each, or four sureties in £125 each; and that the sheriff of any new district hereafter to be formed, shall give security, himself in £1000, and two sureties in £500 each, or four securities in £250 each.

§ 21. The sureties entering into any such covenant shall be held liable for any omission or default of the sheriff, in not paying over moneys received by him; and for damages sustained by the parties to any legal proceeding, in consequence of wilful or negligent misconduct in office, the sheriff shall be joined in any action against the sureties.

§ 22. Notwithstanding any forfeiture of office, the sheriff shall be continued in office until the appointment of his successor, subject to his prior liabilities.

§ 23. Upon the death of any sheriff, the deputy sheriff shall continue to execute the office in his name until the appointment of a successor; and such deputy sheriff shall be held responsible, as the sheriff deceased would have been; and the deceased sheriff's sureties shall also stand as a security for such under-sheriff.

See also "*Public Officers.*"

(a) See note (a) page 761.

SCHEDULE A.

Form of Bond to the Queen.

Know all men by these presents, that we, A. B. sheriff of the county of _____, C. D. of _____, in the county of _____, esquire, and E. F. of _____, in the county of _____, are held and firmly bound to our sovereign lady the Queen, her heirs and successors, in the several sums following, that is to say: A. B. in the sum of one thousand pounds; the said C. D. in the sum of five hundred pounds; and the said E. F. in the sum of five hundred pounds; to be paid to our sovereign lady the Queen, her heirs and successors, for which payments to be well and truly made, we bind ourselves severally and respectively, and each of us, our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this _____ day of _____, in the year of our Lord _____.

The condition of this obligation is such, that if the above bounden A. B., his executors, or administrators, shall well and faithfully account for, and pay over to her Majesty's receiver general of this province, or to such person as may be authorised to receive the same, all such sum and sums of money as he shall receive as such sheriff as aforesaid, for our said lady the Queen, her heirs or successors, from the date of this obligation until the _____ day of _____, in the year of our Lord _____ (four years), then this obligation to be void, otherwise to remain in full force and virtue.

[L.S.]
[L.S.]
[L.S.]

Signed, sealed, and delivered in in the presence of _____.

SCHEDULE B.

Form of Covenant.

Know all men by these presents, that we, A. B., sheriff of the county of _____, C. D. of _____, in the county of _____, and E. F. of _____, in the county of _____, (when four sureties are given, the names of the other two to be inserted in like manner), do hereby jointly and severally, for ourselves, and for each of our heirs, executors and administrators, covenant and promise, that A. B. as sheriff of the said county shall well and duly pay over to the person or persons entitled to the same, all such moneys as he shall receive by virtue of his said office of sheriff, from the date of this covenant to the expiration of four years thence next ensuing, and that he nor his deputy shall, within that period, wilfully misconduct himself in his said office, to the damage of any person being a party in any legal proceeding, nevertheless, it is hereby declared, that no greater sum shall be recovered under this covenant, against the several parties thereto, then as follows, that is to say:

Against the said A. B., in the whole .

Against the said C. D .

Against the said E. F .

(If other sureties, add them in like manner).

In witness whereof, we have to these presents set our hands
and seals, this day of , in the year of our Lord

[L. S.]

[L. S.]

[L. S.]

[L. S.]

Signed, sealed and delivered, in the presence of .

SHIPS.

By the 4 & 5 V., c. 26, § 7, whosoever shall unlawfully and maliciously set fire to, cast away or in anywise destroy any ship or vessel, either with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of felony, and being convicted thereof shall suffer death. § 8. Whosoever shall unlawfully exhibit any false light or signal, with intent to bring any ship or vessel into danger, or shall unlawfully and maliciously do any thing to the immediate loss or destruction of any ship or vessel in distress, shall be guilty of felony, and being convicted thereof shall suffer death. § 9. Whosoever shall unlawfully and maliciously set fire to, or in anywise destroy any ship or vessel, whether the same be completed or in an unfinished state; or shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or on any goods on board the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any other term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

By the 10 and 11 V., c. 4, § 6, any *attempt* to damage or destroy any *vessel* by explosive substance is made felony, and punishable by imprisonment in the provincial penitentiary for not more than seven, nor less than three years; or in the common gaol for not exceeding two years.

See also "*Steam-Vessels.—Vessels.—Wreck.*"

SHOP-KEEPERS.

See "*Spirituous Liquors.*"

SOLDIERS.

By statute 2 & 3 Anne, intituled, "An Act for punishing mutiny, desertion, and false musters, and for better payment of the army, and their quarters," &c., it is enacted, that if any officer or soldier in her Majesty's army shall, either upon land, out of England, or upon sea, hold correspondence with any rebel or enemy of her Majesty, or give them advice or intelligence, either by letters, messages, signs or tokens, or any manner of way whatsoever, or shall treat with such rebels or enemies, or enter into any condition with them, without her Majesty's license, or license of the general, lieutenant-general or chief commander, then every such person so offending shall be deemed and adjudged to be guilty of high treason, and suffer such pains and penalties as in case of high treason.

*By 3 W. IV., c. 3, intituled 'An Act to reduce the number of cases in which capital punishment may be inflicted,' &c. it is enacted by § 14, that nothing in this act shall affect any of the provisions of the 2 & 3 Anne.

See also "*Deserters*"

SPIRITUOUS LIQUORS.

By 16, V., c. 184, (repealing all former statutes for selling spirituous liquors by license) it is enacted by § 2, that the municipal council of any township, incorporated village, or town, or city in Upper Canada shall have full power and authority to make by-laws for all or any of the purposes following, viz.: (amongst others).

§ 2. For regulating and governing all shopkeepers, storekeepers and others selling wine, brandy, or other spirituous liquors, ale or beer, by retail in places other than houses or places of public entertainment, and for requiring any such person to take out a license from any municipal officer to be designated in such by-law before it shall be lawful for him to sell any wine, brandy, or other spirituous liquor, ale or beer, as aforesaid, within such municipality, and for fixing the sum which shall be payable for each such license, and the time during which it shall be in force, or for *limiting* the number of persons to whom, and the houses or places for which such licenses shall be granted within the municipality, or for preventing absolutely the sale of wine or brandy, or other spirituous liquors, ale or beer, or any of them by retail within the municipality, and for making such further enactments as may be deemed necessary for giving full effect to any such by-law; *and for imposing penalties for the contravention thereof*: provided always that the selling of any

wine, brandy or other spirituous liquors, ale or beer, in the original packages in which the same were received from the importer or manufacturer, and not containing less than *five gallons* or *one dozen bottles* shall not be held to be a selling by retail within the meaning of this act.

§ 4. That any by-law made under the authority of this act may be repealed, altered or amended by the municipal council by which it shall have been made; saving always that no person shall be required to take out a new license for any purpose during the time for which a license shall have been granted to him for the same purpose, or to pay any additional sum upon such license during such time; no penalty to be imposed by any by-law to be made under the authority of this act, shall exceed the amount to which municipal councils may impose penalties under the Municipal Corporations Acts of Upper Canada; and the penalties imposed by by-laws under this act shall be recoverable and applicable in the manner provided by the said acts, with regard to penalties imposed by by-laws under the authority thereof: all sums of money levied under by-laws made under this act shall form part of the general funds of the municipality in which they shall be levied, and they shall be levied and collected by such municipal officers as shall be appointed for the purpose: provided always, that no by-law made under the authority of this act, which shall be intended absolutely to prevent the sale of wine, brandy or other spirituous liquor, ale or beer, within any municipality at any place other than a house of public entertainment, or shall require the payment of a greater sum than *ten pounds* per annum for any license to sell the same, or to exercise any other calling or to do any other thing for which a license may be required under this act, nor any by-law to be made after the passing of this act under the authority of the 13 & 14 V., c. 65, shall have force or effect unless before the final passing thereof, it shall have been adopted and approved by a majority of the qualified municipal electors of the municipality, (to be ascertained in such manner as shall be determined by a by-law to be previously passed for that purpose,) after public notice, containing a copy of the proposed by-law, shall have been inserted at least *four times* in each newspaper printed within the limits of the municipality, or if none be printed therein, then in some one or more newspaper or newspapers printed in the city or town nearest to such municipality and circulated therein, and also posted up in at least four of the most public places in such municipality.

For the recovery of penalties see title "*By-laws.*"

See also "*Inns and Innkeepers.*"

STANDARD MEASURE.

*By 4 G. IV., c. 16, § 1, the *32 G. III., c. 3, is repealed.
 § 2. An appropriation of £75 sterling is made for obtaining a complete set of weights and measures according to the standard in England; the same to remain in charge of the provincial secretary; § 3, who shall furnish each district with a true standard of durable materials, when requested, and at the cost of the district.

By 16 V., c. 193, § 2, it is enacted, that after the passing of this act the following rates shall be the standard weight, which in all cases shall be allowed to be equal to the Winchester bushel, viz.:—

Wheat.....	Sixty pounds.
Indian Corn.....	Fifty-six pounds.
Rye.....	Fifty-six pounds.
Peas.....	Sixty pounds.
Barley.....	Forty-eight pounds.
Oats.....	Thirty-four pounds.
Beans.....	Sixty pounds.
Clover seed.....	Sixty pounds.
Buckwheat.....	Forty-eight pounds.
Timothy seed.....	Forty-eight pounds.

Provided always, that the effect of any contract made before the passing of this act, shall not be varied by anything herein contained. § 2. Upon any sale or delivery of any description of grain or pulse, in this act mentioned, which shall be hereafter made, and in every contract for the sale and delivery of any such grain, pulse or seeds, the bushel, shall be taken and intended to mean the *weight* of a bushel, as regulated by this act, and not a bushel in measure, or according to any greater or less weight, unless the contrary shall be agreed upon by the parties.

See also "*Weights and Measures.*"

STATUTE LABOUR.

By 12 V., c. 81, § 31, township municipalities are empowered to make by-laws to enable landholders to compound for statute labour for any term not exceeding *five* years, at any rate not exceeding [*five shillings by the late statute 20 V., c. 6*] for each day's labour; and for enforcing the performance of statute or road labour, or payment of commutation money therefor; and for imposing and collecting penalties and fines not exceeding in any case £5 currency, and reasonable punishment by imprisonment, not exceeding twenty days for the breach of any such by-laws. § 219. All acts

and parts of acts and provisions of law of the parliament of this province, or of the late province of Upper Canada; and all acts, by-laws, rules and regulations thereupon passed by any township meeting, district council, board of police, town or city council in Upper Canada, in force in Upper Canada immediately before the time when this act shall come into force (1st January, 1850), in so far as the same may be inconsistent with or contradictory to the provisions of this act, or which may make any provisions in any manner provided for by this act, other than such as is hereby made in such matter, shall be and they are hereby repealed.

By the General Assessment Act, 16 V., c. 182, § 35, every male inhabitant of any city, incorporated town or village, of the age of 21, and under 60, not otherwise assessed or exempted by law, or if assessed, his taxes do not amount to ten shillings currency, shall, instead of statute labour, be taxed yearly *ten* shillings, to be levied and collected as other local taxes. And no such person shall be exempt from the tax herein made by reason of his producing a certificate that he has performed statute labour elsewhere, unless he was actually domiciled out of the limits of the city, town or village at the time he so performed statute labour. § 36. And every male inhabitant of any township between the ages aforesaid, shall be liable to *two* days' statute labour on the roads and highways in such township; and every party on the assessment roll shall, if the property be assessed

At not more than £50,.....	beliable to	2 days' labour.
At more than... 50, but not more than £100	to	3 do.
At more than... 100, but not more than 150	to	4 do.
At more than... 150, but not more than 200	to	5 do.
At more than... 200, but not more than 300	to	6 do.
At more than... 300, but not more than 400	to	7 do.
At more than... 400, but not more than 500	to	8 do.
At more than... 500, but not more than 600	to	9 do.
At more than... 600, but not more than 800	to	10 do.
At more than... 800, but not more than 1000	to	12 do.

And for every £200 above £1000, *one* day; unless the municipality of such township shall direct by by-law a sum of money to be paid in commutation of such labour: provided, that the municipality may by by-law reduce or increase the number of days' labour at their discretion. § 37. If the collector shall not be able to collect such tax, he shall levy the same by distress and sale of the goods and chattels of the party in default as other taxes, and if there be no distress sufficient to satisfy the sum due, it shall be lawful for the head of any such municipality, or any justice of the

peace of the locality, upon complaint that such party appears upon the collector's roll to be rated for such sum, that the same has been duly demanded and the party has neglected to pay the same, and that no sufficient distress can be found, to issue a warrant under his hand and seal and to commit the party to the common gaol of the county for any time not exceeding six days, unless the amount and costs be sooner paid. § 38. Non-residents' statute labour to be commuted at 2s. 6d. per diem (a) and collected as other taxes.

STEAM VESSELS.

By 20 V., c. 34, § 1, inspectors appointed under the 14 & 15 V., c. 126, or under this act, are required to examine and see that suitable and safe provisions are made throughout such vessels to guard against loss or danger from fire, and no certificate shall be granted if the provisions of this act are not complied with, or if any combustible material shall be placed at less than 18 inches distant from such heated metal or other substance likely to cause ignition, unless a column of air or water intervenes sufficient at all times to prevent ignition, and when wood is so exposed to ignition, as an additional preventive it shall be shielded by some incombustible material, so as to leave the air to circulate freely between such material and the wood. § 2. Every steam vessel carrying passengers shall have not less than 3 double acting forcing pumps to be kept in order and ready at all times for immediate use. § 3. Inspectors may examine the boilers of every steamer whenever they see fit (and once a year at the least) and subject the same to hydrostatic test, the pressure not to exceed 150 pounds to the square inch; the owner providing the apparatus. § 4. Rules to be observing in testing boilers; no safety valve to be loaded beyond the pressure allowed by certificate. § 5. The foregoing sections to come into force on the 1st April, 1858. § 6. Inspector may examine steamer, and if he considers such vessel unsafe he shall report to the Governor, who may by order direct that such vessel shall not be used until so permitted by the inspector, and any vessel run contrary thereto shall be liable to forfeiture and seizure by the collector of customs. § 7. Inspectors may ask all proper questions of the steamer's owners, officers or engineers, or other persons in charge concerning the same, or any accident that may have happened; any such person refusing to answer, or answering falsely, or preventing inspection or obstructing the inspector shall be subject to a penalty of £10, recoverable before any justice.

(a) But may be increased to 5s. under said statute 20 V., c. 6.

§ 8. Inspectors are to see that the safety valves are sufficient and in good working order. § 9. Steam-gauges to be open to the view of all the passengers, and constructed as the inspector shall direct. § 10. The master to report within 48 hours after any defect or injury to the boiler or machinery, to one of the inspectors, under the penalty of £50 for every case of omission.

See also title "*Railways*," and the statute therein referred to, 18 V., c. 92, which contains provisions against stealing and forging tickets, or orders for any free passage on railways, steam or other vessels.

STILLS.

See "*Distillers*."

SUMMARY CONVICTION.

The "*Petty Trespass Act*," *4 W. IV., c. 4, seems to be entirely superseded (although not expressly repealed) by the several statutes 4 & 5 V., cc. 25, 26, 27, which comprise upon an enlarged scale and in a more distinct form, the offences intended to be comprised in the *4 W. IV., c. 4.

The following is a brief summary of these statutes. *Under the 4 & 5 V., c. 24*, no penalties are imposed recoverable upon summary conviction. But § 10 provides that in all cases of summary conviction, persons accused shall be admitted to make their full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney.

Under the 4 & 5 V., c. 25.

By this statute, § 23, having unlawful possession of wrecked property; (a) § 24, or offering same for sale; § 30, stealing any dog, beast, or bird, not being the subject of larceny at common law; (b) § 31, stealing, cutting, breaking, rooting up, or otherwise destroying or damaging, with intent to steal any tree, sapling, or shrub, or any underwood; (c) § 32, or any live or dead fence, or any post, pale, or rail set up as a fence, or any stile or gate; (d) § 34, stealing, damaging, or destroying with intent to steal, any tree, sapling, shrub, bush, plant, root, fruit or vegetable production, in any garden, orchard, nursery ground, hot-house, green-house, or conservatory, (e) renders the offender or offenders liable to certain penalties, to be enforced by summary prosecution. The following is a brief summary of these statutes: § 55. Any person found committing any offence punishable by indictment, or

(a) See title "*Wreck*."

(b) See title "*Dogs*."

(c) See title "*Trees*."

(d) See title "*Fences*."

(e) See title "*Vegetables*."

summary conviction under this act, may be immediately apprehended, *without a warrant*, by any peace officer, or by the *owner of the property* on or with respect to which the offence shall be committed, or by the *servant* of any person authorised by such owner, and forthwith taken before some neighbouring justice, to be dealt with according to law. § 56. The prosecution of any offence punishable on summary conviction under this act, shall be commenced within *three calendar months* after the commission of the offence, and not otherwise; and the evidence of the party aggrieved shall be admitted in proof of the offence. § 57. Offenders under this act, being charged on oath of a credible witness, to be summoned by any justice, and in default of appearance (upon proof of due service of summons by delivering the same to him personally, or by leaving same at his usual place of abode) such justice may determine the case *ex parte*, or issue his warrant for apprehending such person, and bringing him before himself or some other justice or justices; or the justice may, if he think, fit, issue such warrant without any previous summons (unless otherwise specially directed,) and the justice or justices before whom the party shall appear, or be brought, shall hear and determine the case. § 58. Forfeitures to be paid to the owners of property stolen or injured (the value to be assessed by the convicting justices,) except where the party aggrieved shall have been examined as a witness, and in that case, or where the aggrieved party is unknown, such sum to be applied as a *penalty*: *provided*, that when several offenders are each adjudged to pay the amount, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders, and the residue shall be applied in the same manner as any penalty imposed by a justice of the peace is hereinbefore directed to be applied. § 59. If the amount (a) with costs shall not be paid upon conviction, or within such period as shall be appointed, it shall be lawful for the convicting justice or justices (unless where otherwise specially directed), to commit the offender to the common gaol or house of correction, to be imprisoned only, or imprisoned and *kept at hard labour*, according to the discretion of the justice or justices, for any term not exceeding *two calendar months*, where the amount with costs shall not exceed £5, and for any term not exceeding *six calendar months*, where the amount with costs shall exceed £5, and not exceed

(a) The 14 & 15 V., 119, § 4, authorises the amount being levied by distress, or to proceed by committal.

£10, unless sooner paid. § 60. In case of a *first* conviction, the justice may discharge the offender, upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by such justice or justices. § 61. The Governor empowered to pardon any person imprisoned under this act. § 62. Conviction and punishment under this act to be a bar to any other proceedings. § 63. Form of conviction to be as follows:—

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

§ 64. One justice may receive the original information, and issue the summons or warrant to appear before two or more justices; and after examination upon oath, and adjudication by any such two justices, the subsequent proceedings respecting the penalty, fine, imprisonment, costs, or other matter relating to the offence, may be enforced by either of the said justices, or by any other justice of the same district, county, city, town, or place; and when the original complaint or information shall be made to any justice different from the

convicting justices, the form of conviction shall be made conformable. § 65. When the conviction (a) shall exceed £5, or the imprisonment *one* calendar month, or the conviction shall take place before one justice only, the defendant may appeal to the next quarter sessions which shall be holden not less than twelve days after the day of conviction, upon giving to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within *three* days after the conviction, and seven clear days before the sessions; and shall either remain in custody until the sessions, or enter into recognizance with two sufficient sureties, before a justice of the peace, conditioned to appear at the sessions, and try such appeal, and abide the judgment of the court thereupon, and pay such costs as shall be awarded by the court; and on such being given, and recognizance entered into, the justices shall liberate such person if in custody; and the sessions shall hear and determine such appeal, and make such order, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or affirmance of the conviction, the court shall adjudge the offender to be punished according to the conviction, and pay such costs, if any, as shall be awarded; and shall, if necessary, issue process to enforce such judgment. § 66. Every justice before whom conviction shall be had under this act, shall transmit such conviction to the next general quarter sessions, to be kept among the records; and upon any prosecution for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove such former conviction. Prosecutions against any person acting under this act to be commenced within six calendar months, and notice in writing of such action, and of the cause thereof, to be given to the defendant one calendar month before commencement; defendant may plead the general issue, and give this act and special matter in evidence. Usual provisions as to costs. § 69. All fines, &c., imposed by this act to be current money of this province. § 70. All former acts repugnant to this act repealed.

Under the statute 4 & 5 Vic., c. 26.

By § 20 of this statute, maliciously destroying or damaging any tree, sapling or shrub, or any underwood, wheresoever

(a) The 13 & 14 V., c. 54, now gives the right to appeal in all cases. See title "Appeal" as to time, &c.

the same may be respectively growing, to the value of *one shilling*; (a) § 21, or maliciously destroying, or damaging with intent to destroy, any plant, root, fruit or vegetable in any garden, &c.; (b) § 22, or any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or dyeing, &c.; (c) § 23, or maliciously throwing down, or destroying, &c., any fence, or any wall, style or gate; (d) § 24, or wilfully or maliciously committing any damage, or injury, or spoil, to or upon any real or personal property whatsoever for which no previous remedy (e) is provided, also subjects the offender to the particular penalties mentioned, upon summary conviction. § 25. Every punishment and forfeiture by this act imposed on any person maliciously committing any offence, whether punishable by indictment or upon summary conviction, shall equally apply and be enforced, whether the offence be committed from malice conceived against the owner of the property or otherwise. § 28. Any person found committing any offence punishable by indictment or summary conviction, may be immediately apprehended, *without a warrant*, by any peace officer, or by the owner of the property injured, or his servant, or any person authorised by him, and forthwith taken before some neighboring justice, to be dealt with according to law. § 29. Prosecutions by summary conviction under this act to be commenced within *three calendar* months after the offence committed, and not otherwise; and the evidence of the party aggrieved, shall be admitted in proof of the offence. § 30. Offenders charged on the oath of a credible witness to be summoned by any justice; and in default of appearance (upon proof of due service of summons, by personal delivery, or by leaving the same at the offender's usual place of abode), such justice may determine the case *ex parte*, or issue his warrant for the apprehending such person and bringing him before himself or some other justice; or the justice may, if he think proper, issue such warrant without any previous summons (unless otherwise specially directed); and the justice before whom the party shall appear or be brought shall hear and determine the case. § 31. Any person who shall aid, abet, counsel, or procure the commission of any offence punishable by summary conviction under this act, shall, on conviction before a justice of the peace, be liable for every such offence of aiding, &c., to the same forfeiture and punishment as the principal offender. § 32. Forfeiture for

(a) See title "Trees."

(b) (c) See title "Gardens."

(d) See title "Fences."

(e) See title "Malicious Injury."

the amount of injury done (to be assessed by the convicting justice) to be paid to the party aggrieved if known, except where such party shall have been examined in proof of the offence; and in that case, or where the party aggrieved is unknown, the same to be applied as a penalty; and every sum imposed as a penalty, whether in addition to such amount or otherwise, shall be paid to the convicting justice: *provided*, that where several offenders are each adjudged to pay the amount, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders, and the residue shall be applied in the same manner as any penalty is by law directed to be applied. § 33. If the amount, (a) with costs, shall not be paid upon conviction, or within such period as shall be appointed, it shall be lawful for the convicting justice (unless where otherwise specially directed) to commit the offender to the common gaol or house of correction, to be imprisoned *only*, or imprisoned and *kept at hard labour*, according to the discretion of the justice, for any term not exceeding *two* calendar months, where the amount, with costs, shall not exceed £5; and for any term not exceeding *four* calendar months, where the amount, with costs, shall be more than £5, and not exceed £10; and for any term not exceeding *six* calendar months, where the amount, with costs, shall exceed £10, unless sooner paid. § 34. In case of a *first* conviction, the justice may discharge the offender, upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as shall be ascertained by such justice. § 35. The Governor empowered to pardon any person imprisoned under this act. § 36. Conviction and punishment under this act to be a bar to any other proceedings. § 37. Form of conviction to be as follows:

“Be it remembered that on the day of , in the year of our Lord , at , in the district [or city, &c. as the case may be] A. O. is convicted before me, J. P., one of her Majesty’s justices of the peace for the said district [or city, &c.] for that he the said A. O. did (*specify the offence, and the time and place when and where the same was committed, as the case may be*) and I the said J. P. adjudge the said A. O. for his said offence, to be imprisoned in the (or to be imprisoned in the , and there kept to hard labour) for the space of , (or) I adjudge the said A. O. for his said offence to forfeit and pay (*here state the penalty actually imposed, or state the penalty and also the amount of the injury done, as the case may be*) and

(a) The 14 & 15 V., c. 119, § 4, authorises the amount being levied by distress, or to proceed by committal.

also to pay the sum of for costs, and in default of immediate payment of the said sums, to be imprisoned in the (or, to be imprisoned in the and there kept to hard labour) for the space of , unless the said sums shall be sooner paid; (or, and I order that the said sums shall be paid by the said A. O. on or before the day of) and I direct that the said sum of [*i. e. the penalty only*] shall be paid to me the convicting justice, and that the said sum of [*i. e. the sum for the amount of the injury done*] shall be paid to C. D. [*the party aggrieved, unless he is unknown, or has been examined in proof of the offence, in which case state that fact and dispose of the whole like a penalty as before*]; and I order that the said sum of for costs, shall be paid to (*the complainant*),

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

§ 38. Where the conviction (*a*) shall exceed £5, or the imprisonment one calendar month, or the conviction shall take place before *one* justice only, the defendant may appeal to the next general quarter sessions which shall be holden not less than *twelve* days after the day of conviction, upon giving to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within *three* days after such conviction, and seven clear days at the least before the sessions, and shall either remain in custody until the sessions, or enter into a recognizance, with two sufficient sureties, before a justice conditioned personally to appear at the sessions and try such appeal, and abide the judgment of the court thereupon, and pay such costs as shall be awarded by the court; and on such being given, and recognizance entered into, the justice shall liberate such person if in custody: and the sessions shall hear and determine such appeal, and make such order, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or affirmance of the conviction, shall adjudge the offender to be punished according to the conviction, and pay such costs as shall be awarded; and shall, if necessary, issue process to enforce such judgment. § 39. Every justice before whom any conviction shall be had under this act, shall transmit such conviction to the next general quarter sessions, to be kept among the records; and upon any prosecution for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove such former conviction. § 40. Prosecu-

(*a*) The right to appeal is now general in all cases under the 13 & 14 V., c. 54.—See title “Appeal” as to time, &c.

tions against any person acting under this act to be commenced within six calendar months, and notice in writing of such action, and the cause thereof, to be given to the defendant one calendar month before commencement. Defendant may plead the general issue, and give this act and special matter in evidence. Usual provision as to costs. § 41. All fines imposed by this act to be current money of this province.

Under the 4 & 5 V., c. 27.

By this statute, § 26, assaulting any seaman to prevent him from working at or exercising his lawful trade or business, or any person to hinder him from buying or selling grain in any market or other place, or any person having the care or charge of the same; (a) § 27, committing any *common assault* or battery on any person; (b) § 31, or disturbing religious worship, (c) renders the offender or offenders liable to certain penalties on summary conviction. § 32. In default of payment of any fine imposed under this act, together with the costs, within the period specified at the time of conviction, the amount to be levied by distress, and in default of distress the offender may be committed to the common gaol for any term not exceeding one month, unless the fine and costs are sooner paid. § 33. The party convicted may appeal to the next general quarter sessions on giving to the other party notice in writing within *three* days (d) after such conviction, and seven days before the sessions, and remaining in custody, or entering into recognizance with two sufficient surties, before a justice of the peace, to appear and try such appeal and abide the judgment of the court. § 34. The court authorised to empanel a jury to try the matter: *provided*, that such court shall not in any case adjudge the payment of a fine exceeding £5, in addition to the costs, or to order imprisonment exceeding one month. § 40. One justice of the peace may hear and determine offences punishable by summary conviction under this act. § 41. Prosecutions to be commenced within three calendar months. § 42. Form of conviction.

Be it remembered that on the day of in the year of our Lord , at in the county of (*or riding, division, district, city, &c., as the case may be,*) A. O., is convicted before me (*naming the justice,*) one of her Majesty's justices

(a) See title "Assault," page 59.

(b) See same title page 60.

(c) See title "Public Worship."

(d) See title "Appeal," as to the time, &c., under 13 & 14 V., c. 54.

Summary Conviction.

of the peace for the said county, (or riding, &c.,) for that he the said A. O., did (specify the offence, and the time and place when and where the same was committed, as the case may be,) and I the said justice adjudge the said A. O., for his said offence, to be imprisoned in the (or to be imprisoned in the and there kept at hard labour) for the space of , (or I adjudge the said A. O. for his said offence to forfeit and pay the sum of) (here state the amount of the fine imposed,) and also to pay the sum of for costs; and in default of immediate payment of the said sums, to be imprisoned in the for the space of unless the said sums shall be sooner paid; (or and I order that the said sums shall be paid by the said A. O. on or before the day of) and I direct that the said sum of (i.e., the amount of the fine) shall be paid to of aforesaid, in which the said offence was committed, to be by him applied according to the directions of the statute in that case made and provided; (or as the case may be,) and I order that the said sum of for costs shall be paid to C. D., (the party aggrieved). Given under my hand, the day and year first above mentioned

By 14 & 15 V., c. 119, § 4, it is enacted that in all cases of summary conviction before any one or two justices of the peace, under the provisions of the 4 & 5 V., chs. 25, 26, 27, it shall be lawful for such justice or justices, in his or their discretion, to issue his or their warrant to levy by distress and sale of the offender's goods and chattels, the amount of fine and costs imposed, and in default of the same being levied or made, the offender or offenders may be committed to the common gaol or house of correction for the period and in the manner prescribed by the above-mentioned statutes, or to proceed, as heretofore, by committal for default of payment, instead of issuing such distress warrant. § 5. In all cases where costs are payable by parties who have failed in prosecuting with effect, it shall be lawful for the justice or justices before whom complaint made, in his or their discretion, to issue his or their warrant to levy by distress and sale of the goods and chattels of such person so failing to prosecute, such costs as shall be determined by the justice or justices to be payable by him or them.

Proceedings upon Summary Conviction under the 16 V., c. 178.

Whereas it would conduce much to the improvement of the administration of justice within that part of this province called Upper Canada, so far as respects summary convictions and orders to be made by her Majesty's justices of the peace therein, if the several statutes and parts of statutes relating

to the duties of such justices in respect of such summary convictions and orders were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by positive enactment: be it therefore enacted, &c.

Summons.—§ 1. That in all cases where an information shall be laid before one or more of Her Majesty's justices of the peace for any territorial division in Upper Canada, that any person has committed or is suspected to have committed any offence or act within the jurisdiction of such justice or justices of the peace, for which he is liable by law upon a summary conviction for the same before a justice or justices of the peace, to be imprisoned or fined or otherwise punished; and also in all cases where a complaint shall be made to any such justice or justices, upon which he or they have or shall have authority by law to make any order for the payment of money or otherwise, then in every such case it shall be lawful for such justice or justices of the peace to issue his or their summons (A), directed to such person, stating shortly the matter of such information or complaint, and requiring him to appear at a certain time and place, before the same justice or justices, or before some other justice or justices for the same territorial division as shall then be there, to answer to the said information or complaint, and to be further dealt with according to law; and every such summons shall be served by a constable or other peace officer, or other person to whom the same shall be delivered, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him, at his last or most usual place of abode; and the constable, peace officer, or person who shall serve the same in manner aforesaid, shall attend at the time and place, and before the justices in the said summons mentioned, to depose if necessary, to the service of the said summons: provided always, that nothing herein mentioned shall oblige any justice or justices of the peace to issue any such summons in any case where the application for any order of justices is by law to be made *ex parte*: provided also, that no objection shall be taken or allowed to any information, complaint or summons, for any alleged *fact* (a) therein, in substance or in form, or for any variance between such information, complaint or summons, and the evidence adduced on the part of the informant or complainant as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so summoned

(a) *Quære*, "defect?"

and appearing has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day.

Warrant.—§ 2. That if the person so served with a summons as aforesaid shall not be and appear before the justice or justices at the time and place mentioned in such summons, and it shall be made to appear to such justice or justices, by oath or affirmation, that such summons was so served what shall be deemed by such justice or justices to be a reasonable time before the time therein appointed for appearing to the same, then it shall be lawful for such justice or justices, if he or they shall think fit, upon oath or affirmation being made before him or them, substantiating the matter of such information or complaint to his or their satisfaction, to issue his or their warrant (B) to apprehend the party so summoned, and to bring him before the same justice or justices, or before some other justice or justices of the peace in and for the same territorial division, to answer to the said information or complaint, and to be further dealt with according to law; or upon such information being laid as aforesaid for any offence punishable on conviction, the justice or justices before whom such information shall have been laid may, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information to his or their satisfaction, instead of issuing such summons as aforesaid, issue in the first instance his or their warrant (C) for apprehending the person against whom such information shall have been so laid, and bringing him before the same justice or justices, or before some other justice or justices of the peace in and for the same territorial division, to answer to the said information, and to be further dealt with according to law; or if where a summons shall be so issued as aforesaid, and upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then and in every such case, if it be proved upon oath or affirmation to the justice or justices then present, that such summons was duly served upon such party a reasonable time before the time so appointed for his appearance as aforesaid, it shall be lawful for such justice or justices of the peace to proceed *ex parte* to the hearing of such information or complaint, and to adjudicate thereon, as fully and effectually to all intents and purposes as if such party had personally appeared before him or them in obedience to the said summons.

Form of Warrant, and Backing.—§ 3. That every such warrant to apprehend a defendant, that he may answer to such information or complaint as aforesaid, shall be under the hand and seal, or hands and seals of the justice or justices issuing the same, and may be directed to all or any of the constables or other peace officers of the territorial division within which the same is to be executed, or to such constable and all other constables within the territorial division within which the justice or justices issuing such warrant hath jurisdiction, or generally to all constables within such last mentioned territorial division; and it shall state shortly the matter of the information or complaint on which it is founded, and shall name or otherwise describe the person against whom it has been issued, and it shall order the constable or other peace officer to whom it is directed, to apprehend the said defendant, and to bring him before one or more justice or justices of the peace, as the case may require, of the same territorial division, to answer to the said information or complaint, and to be further dealt with according to law; and that it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in full force until it shall be executed; and such warrant may be executed by apprehending the defendant at any place within the territorial division within which the justices issuing the same shall have jurisdiction, or, in case of fresh pursuit, at any place in the next adjoining territorial division, within seven miles of the border of such first mentioned territorial division without having such warrant backed as hereinafter mentioned; and in all cases in which such warrant shall be directed to all constables or peace officers within the territorial division within which the justice or justices issuing the same shall have jurisdiction, it shall be lawful for any constable or peace officer for any place within the limits of the jurisdiction for which such justice or justices shall have acted when he or they granted such warrant, to execute such warrant in like manner as if such warrant were directed especially to such constable by name, and notwithstanding that the place in which such warrant shall be executed, shall not be within the place for which he shall be such constable or peace officer; and if the person against whom any such warrant has been issued be not found within the jurisdiction of the justice or justices by whom it was issued, or if he shall escape, go into, reside or be, or be supposed or suspected to be in any place within this province, whether in Upper or Lower Canada, out of the jurisdiction of the justice or justices issuing the warrant, any justice of the peace within whose

jurisdiction such person shall be or be suspected to be as aforesaid, upon proof alone upon oath of the hand-writing of the justice or justices issuing the warrant, may make an endorsement upon it, signed with his name, authorising the execution of the warrant within his jurisdiction; and such endorsement shall be sufficient authority to the person bringing the warrant, and to all other persons to whom it was originally directed, and to all constables or other peace officers of the territorial division where the endorsement is made, to execute the same in any place within the jurisdiction of the justice of the peace endorsing the same, and to carry the offender, when apprehended, before the justice or justices who first issued the warrant, or some other justice having the same jurisdiction; provided always, that no objection shall be taken or allowed to any such warrant to apprehend a defendant, so issued upon any such information or complaint as aforesaid under or by virtue of this act, for any alleged defect therein in substance or in form, or for any between it and the evidence adduced on the part of the informant or complainant as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing, to be such that the party so apprehended under such warrant has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit (D.) the said defendant, to the common gaol, or any other prison, lock-up house, or place of security within the territorial division, or place within which the said justice or justices may be acting, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance (E.), with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned: provided always, that in all cases where a defendant shall be discharged upon recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice, who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) upon the back of the said recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the territorial division within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

Description of Property.—§ 4. That in any information or complaint or proceedings thereon, in which it shall be necessary to state the ownership of any property belonging to or in the possession of partners, joint tenants, parceners or tenants in common, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another or others, as the case may be; and whenever in any information or complaint, or the proceedings thereon, it shall be necessary to mention, for any purpose whatsoever, any partners, joint partners, parceners or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and whenever in any such information or complaint, or the proceedings thereon, it shall be necessary to describe the ownership of any work or building made, maintained or repaired at the expense of any territorial division, or of any materials for the making, altering or repairing the same, they may be therein described as the property of the inhabitants of such territorial division respectively.

Aiders and Abettors.—§ 5. That every person who shall aid, abet, counsel or procure the commission of any offence which is or hereafter shall be punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable, on conviction, to the same forfeiture and punishment as such principal offender is or shall be by law liable, and may be proceeded against and convicted either in the territorial division or place where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling or procuring may have been committed.

Summoning Witnesses.—§ 6. That if it shall be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence on behalf of the prosecutor, or complainant or defendant, and will not voluntarily be and appear as a witness at the time and place appointed for the hearing of such information or complaint, such justice may, and is hereby required to issue his summons (G. 1.) to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons, before the said justice, or before such other justice or justices of the peace for the same territorial division as shall then be there, to testify what he shall know concerning the said information or complaint; and if any person so summoned shall neglect or refuse to appear at the

time and place appointed by the said summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode) it shall be lawful for the justice or justices before whom such person should have appeared, to issue a warrant (G. 2.) under his or their hands and seals, to bring and have such person, at a time and place to be therein mentioned, before the justice who issued the said summons, or before such other justice or justices of the peace for the same territorial division as shall be then there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same; or if such justice shall be satisfied, by evidence upon oath or affirmation, that it is probable that such person will not attend to give evidence without being compelled so to do, then instead of issuing such summons it shall be lawful for him to issue his warrant (G. 3.) in the first instance, and which, if necessary, may be backed as aforesaid; and if on the appearance of such person so summoned before the said last mentioned justice or justices, either in obedience to such summons or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or having taken such oath or affirmation shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any justice of the peace then present, and having jurisdiction, may, by warrant (G. 4.) under his hand and seal, commit the person so refusing to the common gaol for the territorial division where such person refusing shall then be, there to remain and be imprisoned for any time not exceeding ten days, unless he shall, in the meantime, consent to be examined and to answer concerning the premises.

Complaint in Writing—§ 7. That in all cases of complaint upon which a justice or justices of the peace may make an order for the payment of money or otherwise, such complaint shall be in writing, and on oath, unless it shall be enacted or provided to the contrary by some particular act of parliament upon which such complaint shall be framed.

Variance—§ 8. That in all cases of informations for any offences or acts punishable upon summary conviction, any variance between such information and the evidence adduced

in support thereof as to the time at which such offence or act shall be alleged to have been committed, shall not be deemed material if it be proved that such information was in fact laid within the time limited by law for laying the same; and any variance between the said information and the evidence adduced in support thereof, as to the place in which the offence or act shall have been alleged to have been committed, shall not be deemed material, provided the offence or act be proved to have been committed within the jurisdiction of the justice or justices by whom such information shall be heard and determined; and if any such variance, or any variance in any other respect between such information and the evidence adduced in support thereof, shall appear to the justice or justices present and acting at the hearing, to be such that the party charged by such information has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit (D.) the said defendant to the common gaol or other prison, lock-up house or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance (E.) with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned: provided always, that in all cases where a defendant shall be discharged upon recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any other justice or justices who may then be there present, upon certifying (F.) upon the back of the said recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the territorial division within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

Complaint on Oath—§ 9. That every such complaint upon which a justice or justices of the peace is, or are or shall be authorised by law to make an order, and that every information for any offence or act punishable upon summary conviction, (unless some particular act of parliament shall otherwise permit), shall respectively be made or laid on oath or affirmation as to the truth thereof, and in all cases of informations where the justice or justices receiving the same shall

thereupon issue his or their warrant in the first instance, to apprehend the defendant as aforesaid; and in every case where the justice or justices shall issue his or their warrant in the first instance, the matter of such information shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such warrant shall be issued, and every complaint shall be for one matter of complaint only, and not for two or more matters of complaint, and every such information shall be for one offence only, and not for two or more offences, and every such complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney, or other person authorised in that behalf.

Limitation of Time—§ 10. That in all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information, in the act or acts of parliament relating to such particular case, such complaint shall be made, and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose.

Hearing—§ 11. That every such complaint or information shall be heard, tried, determined or adjudged by one or two or more justice or justices of the peace, as shall be directed by the act or acts of parliament upon which such complaint or information shall be framed, or such other act or acts of parliament as there may be in that behalf; and if there be no such direction in any such act of parliament, then such complaint or information may be heard, tried, determined and adjudged by any one justice for the territorial division, where the matter of such information or complaint shall have arisen; and the room or place in which such justice or justices shall sit to hear and try any such complaint or information, shall be deemed an open and public court to which the public generally may have access, so far as the same can conveniently contain them; and the party against whom such complaint is made or information laid, shall be admitted to make his full answer and defence thereto and to have the witnesses examined and cross-examined by counsel or attorney on his behalf; and every complainant or informant in any such case shall be at liberty to conduct such complaint or information respectively, and to have the witnesses examined by counsel or attorney on his behalf.

Non-appearance by Defendant.—§ 12. That if at the day and place appointed in and by the summons aforesaid for hearing and determining such complaint or information, the

defendant against whom the same shall have been made or laid, shall not appear when called, the constable or other person who shall have served him with the summons in that behalf, shall then declare upon oath in what manner he served the said summons; and if it appear to the satisfaction of the justice or justices that he duly served the said summons, in that case such justice or justices may proceed to hear and determine the case in the absence of such defendant, or the said justice or justices, upon the non-appearance of such defendant as aforesaid, may, if he or they think fit, issue his or their warrant in manner hereinbefore directed, and shall adjourn the hearing of such complaint or information until the said defendant shall be apprehended; and when such defendant shall afterwards be apprehended under such warrant he shall be brought before the same justice or justices, or some other justice or justices of the peace for the same territorial division, who shall thereupon, either by his or their warrant (H.) commit such defendant to the common gaol or other prison, lock-up house or place of security, or if he or they think fit, verbally to the custody of the constable or other person who shall have apprehended him, or to such other safe custody as he or they shall deem fit, and order the said defendant to be brought up at a certain time and place before such justice or justices of the peace as shall then be there, of which said order the complainant or informant shall have due notice; or if upon the day, and at the place so appointed as aforesaid, such defendant shall appear voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the said justice or justices by virtue of any warrant, then, if the said complainant or informant having had due notice as aforesaid, do not appear by himself, his counsel or attorney, the said justice or justices shall dismiss such complaint or information, unless for some reason he or they shall think proper to adjourn the hearing of the same until some other day, upon such terms as he or they shall think fit, in which case such justice or justices may commit (D.) the defendant in the meantime to the common gaol or other prison, lock-up house or place of security, or to such other custody as such justice or justices shall think fit, or may discharge him upon his entering into a recognizance (E.) with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned; and if such defendant shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice who shall have

taken the said recognizance, or any justices who may then be there present, upon certifying (F.) on the back of the recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace for the territorial division in which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant; but if both parties appear, either personally or by their respective counsel or attorneys, before the justice or justices who are to hear and determine such complaint or information, then the said justice or justices shall proceed to hear and determine the same.

Proceedings.—§ 13. That when such defendant shall be present at such hearing, the substance of the information or complaint shall be stated to him, and he shall be asked if he have any cause to shew why he should not be convicted, or why an order should not be made against him, as the case may be; and if he thereupon admit the truth of the information or complaint, and shew no cause or no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, then the justice or justices present at the said hearing, shall convict him, or make an order against him accordingly; but if he do not admit the truth of such information or complaint as aforesaid, then the said justice or justices shall proceed to hear the prosecutor or complainant and such witnesses as he may examine, and such other evidence as he may adduce in support of his information or complaint respectively, and also to hear the defendant and such witnesses as he may examine, and such other evidence as he may adduce in his defence, and also to hear such witnesses as the prosecutor or complainant may examine in reply, if such defendant shall have examined any witnesses or given any evidence other than to his the defendant's general character; but the prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply as aforesaid; and the said justice or justices, having heard what each party shall have to say as aforesaid, and the witnesses and evidence so adduced, shall consider the whole matter, and determine the same, and shall convict and make an order against the defendant; a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction (I 1, 3) or order (K. 1, 3) shall afterwards be

drawn up by the said justice or justices in proper form, under his or their hand and seal, or hands and seals, and he or they shall cause the same to be lodged with the clerk of the peace, to be by him filed among the records of the general quarter sessions of the peace; or if the said justice or justices shall dismiss such information or complaint, it shall be lawful for such justice or justices, when required so to do, to make an order of dismissal of the same (L), and shall give the defendant on that behalf a certificate thereof (M), which said certificate afterwards upon being produced, without further proof, shall be a bar to any subsequent information or complaint for the same matters respectively, against the same party: provided always, that if the information or complaint in any such case shall negative any exemption, exception, proviso or condition in the statute on which the same shall be framed, it shall not be necessary for the prosecutor or complainant in that behalf to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same.

Evidence.—§ 14. That every prosecutor of any such information, not having any pecuniary interest in the result of the same, and every complainant in any such complaint as aforesaid, whatever his interest may be in the result of the same, shall be a competent witness to support such information or complaint respectively, and every such witness at any such hearing as aforesaid, shall be examined upon oath or affirmation, and the justice or justices before whom any such witness shall appear for the purpose of being so examined, shall have full power and authority to administer to every such witness the usual oath or affirmation.

Adjournment.—§ 15. That before or during such hearing of any such information or complaint, it shall be lawful for any one justice, or for the justices present, in their discretion, to adjourn the hearing of the same to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties, or of their respective attorneys or agents then present, and in the meantime the said justice or justices may suffer the defendant to go at large, or may commit (D) him to the common gaol or other prison, lock-up house or other place of security within the territorial division for which such justice or justices shall then be acting, or to such other safe custody as the said justice or justices shall think fit, or may discharge such defendant upon his recognizance (E), with or without sureties, at the discretion of such justice or justices, conditioned for his appearance at

the time and place to which such hearing or further hearing shall be adjourned; and if, at the time or place to which such hearing or further hearing shall be so adjourned, either or both of the parties shall not appear personally or by his or their counsel or attorneys respectively, before the said justice or justices, or such other justice or justices as shall then be there, it shall be lawful for the justice or justices then there present to proceed to such hearing or further hearing as if such party or parties were present; or if the prosecutor or complainant do not appear, the said justice or justices may dismiss the said information or complaint with or without costs as to such justices shall seem fit: provided always, that in all cases when a defendant shall be discharged upon his recognizance as aforesaid, and shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice or justices who shall have taken the said recognizance, or any other justice or justices who may then be there present, upon certifying (F) on the back of the recognizance, the non-appearance of such accused party, may transmit such recognizance to the clerk of the peace for the territorial division in which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

Form of Conviction.—§ 16. That in all cases of conviction where no particular form of such conviction is or shall be given by the statute creating the offence or regulating the prosecution for the same, and in all cases of conviction upon statutes hitherto passed, whether any particular form of conviction have been therein given or not, it shall be lawful for the justice or justices who shall convict, to draw up his or their conviction, on parchment or on paper, in such one of the forms of conviction (I 1, 3,) in the schedule of this act contained, as shall be applicable to such case, or to the like effect; and when an order shall be made, and no particular form of order is or shall be given by the statute giving authority to make such order, and in all cases of orders to be made under the authority of any statutes hitherto passed, whether any particular form of order shall therein be given or not, it shall be lawful for the justice or justices by whom such order is to be made, to draw up the same in such one of the forms of orders (K 1, 3) in the schedule of this act contained, as may be applicable to such case, or to the like effect; and in all cases when by an act of parliament authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying any

order of a justice or justices, the defendant shall be served with a copy of the minute of such order before any warrant of commitment or of distress shall issue in that behalf, and such order or minute shall not form any part of such warrant of commitment or of distress.

Costs.—§ 17. That in all cases of summary conviction or of orders made by a justice or justices of the peace, it shall be lawful for the justice or justices making the same, in his or their discretion, to award and order in and by such conviction or order that the defendant shall pay to the prosecutor or complainant respectively such costs as to the said justice or justices shall seem reasonable in that behalf, and not inconsistent with the fees established by law to be taken on proceedings had by and before justices of the peace under the act passed in the session held in the fourteenth and fifteenth years of her Majesty's reign, and intitled, *An Act to establish an uniform rate of Fees to be received by justices of the peace in Upper Canada, and to repeal the act of Upper Canada passed in the fourth year of the reign of King William the Fourth, chapter seventeen*, or with the provisions of any other act or law in force in Upper Canada regulating fees or costs in proceedings before justices of the peace; and in cases where such justice or justices, instead of convicting or making an order as aforesaid, shall dismiss the information or complaint, it shall be lawful for him or them in his or their discretion in and by his or their order of dismissal, to award and order that the prosecutor or complainant, respectively, shall pay to the defendant such costs as to the said justice or justices shall seem reasonable and according to law as aforesaid; and the sums so allowed for costs shall in all cases be specified in such conviction or order, or order of dismissal as aforesaid, and the same shall be recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by such conviction or order is to be recoverable, and in cases where there is no such penalty or sums of money to be thereby recovered, then such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of such distress, by imprisonment, with or without hard labor, for any time not exceeding one calendar month, unless such costs shall be sooner paid.

Warrant of Distress.—§ 18. That where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorizing such conviction or order, such penalty, compensation, or sum of money is to be levied upon

the goods and chattels of the defendant, by distress and sale thereof, and also in cases where, by the statute in that behalf, no mode of raising or levying such penalty, compensation or sum of money, or of enforcing the payment of the same, is stated or provided, it shall be lawful for the justice or any one of the justices making such conviction or order, or for any justice of the peace for the same territorial division, to issue his warrant of distress (N 1, 2) for the purpose of levying the same, which said warrant of distress shall be in writing, under the hand and seal of the justice making the same; and if, after delivery of such warrant of distress to the constable or constables to whom the same have been directed to be executed, sufficient distress shall not be found within the limits of the jurisdiction of the justice granting such warrant, then upon proof alone being made upon oath of the hand-writing of the justice granting such warrant, before any justice of any territorial division, such justice of such territorial division shall thereupon make an endorsement (N. 3) on such warrant, signed with his hand, authorising the execution of such warrant within the limits of his jurisdiction, by virtue of which said warrant and endorsement the penalty or sum aforesaid and costs, or so much thereof as may not have been before levied or paid, shall and may be levied by the person bringing such warrant, or by the person or persons to whom such warrant was originally directed, or by any constable or other peace officer of such last mentioned territorial division, by distress and sale of the goods and chattels of the defendant in such other territorial division: provided always, that whenever it shall appear to any justice of the peace to whom application shall be made for any such warrant of distress as aforesaid, that the issuing thereof would be ruinous to the defendant and his family, or whenever it shall appear to the said justice, by the confession of the defendant or otherwise, that he hath no goods and chattels whereof to levy such distress, then and in every such case it shall be lawful for such justice, if he shall deem it fit, instead of issuing such warrant of distress, to commit such person to the common gaol, or lock-up house within the territorial division within which such justice or justices shall then be acting, there to be imprisoned with or without hard labour, for such time and in such manner as by law such defendant might be so committed, in case such warrant of distress had issued and no goods or chattels had been found whereon to levy such penalty or sum and costs aforesaid.

Liberation of Defendant—§ 19. That in all cases where a

justice of the peace shall issue any such warrant of distress, it shall be lawful for him to suffer the defendant to go at large, or verbally, or by a written warrant in that behalf, to order the defendant to be kept and detained in safe custody, until return shall be made to such warrant of distress, unless such defendant shall give sufficient security, by recognizance or otherwise, to the satisfaction of such justice, for his appearance before him at the time and place appointed for the return of such warrant of distress, or before such other justice or justices for the same territorial division as may then be there: provided always, that in all cases where a defendant shall give security by recognizance as aforesaid, and shall not afterwards appear at the time and place in the said recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) on the back of the recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the territorial division within which the offence shall be laid to have been committed, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

Commitment in default of distress.—§ 20. That if at the time and place appointed for the return of any such warrant of distress, the constable who shall have had execution of the same, shall return (N. 4) that he could find no goods or chattels, or no sufficient goods or chattels whereon he could levy the sum or sums therein mentioned, together with the costs of, or occasioned by, the levy of the same, it shall be lawful for the justice of the peace before whom the same shall be returned, to issue his warrant of commitment (N. 5) under his hand and seal, directed to the same or any other constable, reciting the conviction or order shortly, the issuing of the warrant of distress and return thereto, and requiring such constable to convey such defendant or other person to the common gaol or lock-up house within the territorial division for which such justice shall then be acting, and there to deliver him to the keeper thereof, and requiring such keeper to receive the defendant into such gaol, or lock-up house, and there to imprison him, or to imprison him and keep him to hard labour, in such manner and for such time as shall have been directed and appointed by the statute on which the conviction or order mentioned in such warrant of distress was founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs

and charges of the commitment and conveying of the defendant to prison, if such justice shall think fit so to order (the amount thereof being ascertained and mentioned in such commitment) shall be sooner paid.

Imprisonment.—§ 21. That where a justice or justices of the peace shall, upon such information or complaint as aforesaid adjudge the defendant to be imprisoned, and such defendant shall then be in prison undergoing imprisonment upon conviction for any other offence, the warrant of conviction for such subsequent offence shall, in every case, be forthwith delivered to the gaoler or other officer to whom the same shall be directed, and it shall be lawful for the justice or justices issuing the same, if he or they shall think fit, to award an order therein and thereby, that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which such defendant shall have been previously adjudged or sentenced.

Dismissal of Complaint.—§ 22. That when any information or complaint shall be dismissed with costs as aforesaid, the sum which shall be awarded for costs in the order for dismissal, may be levied by distress (Q 1) on the goods and chattels of the prosecutor or complainant in the manner aforesaid; and in default of distress or payment, such prosecutor or complainant may be committed (Q 2) to the common gaol or other prison or lock-up house in manner aforesaid, for any time not exceeding one calendar month, unless such sum, and all costs and charges of the distress, and of the commitment and conveying of such prosecutor or complainant to prison (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

Proceedings after Appeal.—§ 23. That after an appeal against any such conviction or order as aforesaid shall be decided, if the same shall be decided in favour of the respondent, the justice or justices who made such conviction or order, or any other justice of the peace for the same territorial division, may issue such warrant of distress or commitment as aforesaid for execution of the same, as if no such appeal had been brought, and if upon any such appeal the court of general or quarter sessions shall order either party to pay costs, such order shall direct such costs to be paid to the clerk of the peace of such court, to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid; and if the same shall not be paid within the time so limited, and the party ordered to pay the same shall not be bound by any recognizance conditioned to pay such costs, such clerk of the peace on application of the party

entitled to such costs, or of any person on his behalf, and on payment of a fee of one shilling, shall grant to the party so applying a certificate (R) that such costs have not been paid, and upon production of such certificate to any justice or justices of the peace for the same territorial division, it shall be lawful for him or them to enforce the payment of such costs by warrant of distress (S 1) in manner aforesaid, and in default of distress he or they may commit (S 2) the party against whom such warrant shall have issued, in manner hereinbefore mentioned, for any time not exceeding two calendar months, unless the amount of such costs and all costs and charges of the distress, and also the costs of the commitment and conveying of the said party to prison, if such justice or justices shall think fit so to order, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

Payment of Penalty.—§ 24. That in all cases where a warrant of distress shall issue as aforesaid against any person, and such person shall pay or tender to the constable having the execution of the same the sum or sums in such warrant mentioned, together with the amount of the expenses of such distress up to the time of such payment or tender, such constable shall cease to execute the same; and in all cases in which any person shall be imprisoned as aforesaid for non-payment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison in which he shall be so imprisoned, the sum in the warrant of commitment mentioned, together with the amount of the costs, charges and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge such person if he be in his custody for no other matter.

Information, &c., before one Justice.—§ 25. That in all cases of summary proceedings before a justice or justices of the peace out of sessions, upon any information or complaint as aforesaid, it shall be lawful for one justice to receive such information or complaint, and to grant a summons or warrant thereon, and to issue his summons or warrant to compel the attendance of any witnesses, and to do all other acts and matters which may be necessary, preliminary to the hearing, even in cases where by the statute in that behalf such information and complaint must be heard and determined by two or more justices, and after the case shall have been so heard and determined, one justice may issue all warrants of distress or commitment thereon; and it shall not be necessary that the justice who so acts before or after such hearing, shall be the justice or one of the justices by whom the said case shall

be heard and determined: provided always, that in all cases where by statute it is or shall be required that any such information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices may be present and acting together during the whole of the hearing and determination of the case.

Appeal.—§ 26. And whereas doubts may exist whether under the provisions of the act passed in the session of parliament held in the thirteenth and fourteenth years of her Majesty's reign, chaptered fifty-four, and intituled, *An Act to extend the rights of Appeals in certain cases in Upper Canada*, appeals will lie from conviction and decisions under by-laws of municipal councils: be it therefore enacted, that in all cases of complaints against any person for committing any offence against any by-law of any municipal corporation in Upper Canada, all decisions, convictions and orders made by any justice of the peace, or by any person by law authorised to act in that capacity, shall be subject to an appeal in the manner and subject to the provisions prescribed in the above recited act.

Forms.—§ 27. That the several forms in the schedule to this act contained, or forms to the like effect, shall be deemed good, valid and sufficient in law.

Police Magistrate.—§ 28. That any one inspector and superintendent of police, police magistrate or stipendiary magistrate, appointed or to be appointed for any city, borough, town, territorial division or place, and sitting at a police court or other place appointed in that behalf, shall have full power to do alone whatever is authorised by this act to be done by two or more justices of the peace; and that the several forms hereinafter mentioned may be varied so far as it may be necessary to render them applicable to the police courts aforesaid, or to the court or other place of sitting of such stipendiary magistrate.

Police Court.—§ 29. That any inspector and superintendent of police, police magistrate or stipendiary magistrate as aforesaid at any police court or other place appointed in that behalf, shall have such and like powers and authority to preserve order in the said court during the holding thereof, and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any courts of law in this province, or by the judges thereof respectively, during the sittings thereof.

Powers.—§ 30. That the said inspectors and superintendents of police, police magistrates or stipendiary magistrates,

in all cases where any resistance shall be offered to the execution of any summons, warrant of execution or other process issued by them, shall be hereby empowered to enforce the due execution of the same by the means provided by the laws of Upper Canada for enforcing the execution of the process of other courts in like cases.

Acts Repealed.—§ 31. That from and after the day on which this act shall commence and take effect, all other acts or parts of acts contrary to or inconsistent with the provisions of this act, shall be and the same are hereby repealed.

Interpretation.—§ 32. That the word "county," wherever it occurs in this act, shall include any union of counties for judicial purposes, and the words "territorial division" shall include any union of two or more territorial divisions.

Act to apply to U. C. only.—§ 33. That this act shall apply only to Upper Canada, except in so far as any provision thereof is expressly extended to Lower Canada, or to any act to be done there.

Meaning of the word Prison.—§ 34. That whenever the word "prison" occurs in this act, it shall be held to mean any place where parties charged with offences against the law, are usually kept and detained in custody.

Commencement of Act.—§ 35. That this act shall commence and have force and effect upon, from and after the first day of July one thousand eight hundred and fifty-three, and not before.

SCHEDULES.

Summons to the defendant on an information or complaint.

(A.)

PROVINCE OF CANADA :

(County or united counties, or } To A. B. of (labourer):
 as the case may be) of } Whereas information hath this
 day been laid (or complaint hath this day been made) before
 the undersigned, (one) of her Majesty's justices of the peace in
 and for the said (county or united counties, city, town, &c., as the
 case may be) of , for that you (here state shortly the matter
 of the information or complaint): these are therefore to command
 you in her Majesty's name, to be and appear on at
 o'clock in the forenoon, at , before me or such justices of
 the peace for the said (county or united counties, as the case may
 be) as may then be there, to answer to the said information (or
 complaint), and to be further dealt with according to law.

Given under (my) hand and seal, this day of in the
 year of our Lord , at in the (county, or as the case
 may be) aforesaid.

J. S. [L.S.]

Summary Conviction.

(B.)

Warrant when the Summons is Disobeyed.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } To all or any of the constables
(*county or united counties, or as the case may be*) of } or other peace officers in the

Whereas on last past, information was laid (*or complaint was made*) before , (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*) of , for that A. B. (&c., *as in the summons*): and whereas (I) the said justice of the peace then issued (*my*) summons unto the said A. B. commanding him in her Majesty's name, to be and appear on , at o'clock in the forenoon, at , before (*me*) or such justices of the peace as might then be there, to answer unto the said information (*or complaint*) and to be further dealt with according to law; and whereas the said A. B. hath neglected to be and appear at the time and place appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons hath been duly served upon the said A. B.; these are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (*me*) or some one or more of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*) to answer to the said information (*or complaint*), and to be further dealt with according to law.

Given under my hand and seal, this day of , in the year of our Lord at , in the (*county, or as the case may be*) aforesaid.

J. S. [L. s.]

(C.)

Warrant in the first instance.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } To all or any of the constables
said (*county or united counties, or as the case may be*) of } or other peace officers in the

Whereas information hath this day been laid before the undersigned, (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, as the case may be*) of , for that A. B. (*here state shortly the matter of information*); and oath being now made before (*me*) substantiating the matter of such information: these are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some one or more of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be,*) to answer to the said information, and to be further dealt with according to law.

Given under my hand and seal, this day of ,
 in the year of our Lord , at , in the (county, or as
the case may be) aforesaid.

J. S. [L. s.]

(D.)

*Warrant of Committal for Safe Custody during an Adjournment
 of the Hearing.*

PROVINCE OF CANADA :

{ *County or united counties, or* } To all and any of the constables
as the case may be of } or peace officers in the (county
or united counties, or as the case may be) of , and to
 the keeper of the (*common gaol or lock-up-house*) at .

Whereas on last past, information was laid (*or complaint
 made*) before , (one) of her Majesty's justices of the peace
 in and for the said (*county or united counties, or as the case
 may be*) of , for that (*&c., as in the summons*); and
 whereas the hearing the same is adjourned to the day of
 (*instant*), at o'clock in the (*fore*) noon, at , and it
 is necessary that the said A. B. should in the meantime be
 kept in safe custody: these are therefore to command you,
 or any one of the said constables or peace officers, in her
 Majesty's name, forthwith to convey the said A. B. to the
 (*common gaol or lock-up house,*) at , and there deliver him
 into the custody of the keeper thereof, together with this
 precept: and I hereby require you, the said keeper, to receive
 the said A. B. into your custody in the said (*common gaol or
 lock-up house*) and there safely keep him until the day of
 , (*instant*) when you are hereby required to convey and
 have him, the said A. B., at the time and place to which the
 said hearing is so adjourned as aforesaid, before such justices
 of the peace for the said (*county or united counties, as the case
 may be*) as may then be there, to answer further to the said
 information (*or complaint,*) and to be further dealt with accord-
 ing to law.

Given under my hand and seal, this day of in the
 year of our Lord , at , in the (county, or as the case may
may be) aforesaid.

J. S. [L. s.]

(E.).

*Recognizance for the Appearance of the Defendant when the case
 is Adjourned, or not at once Proceeded with.*

PROVINCE OF CANADA :

{ *County or united counties, or* } Be it remembered, that on
as the case may be of } , A. B. of , (*labourer*),
 and J. M. of , (*grocer*), and O. P. of , (*yeoman,*) per-
 sonally came and appeared before the undersigned, (one) of
 her Majesty's justices of the peace in and for the said (*county*

Summary Conviction.

or *united counties, or as the case may be*) of _____, and acknowledged themselves to owe to our sovereign lady the Queen the several sums following, that is to say: the said A. B. the sum of _____, and the said L. M. and O. P. the sum of _____, each, of good and lawful current money of this province, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said A. B. shall fail in the condition endorsed (*or hereunder written*).

Taken and acknowledged the day and year first above mentioned at _____ before me.

(J. S. [L. s.]

The condition of the within, (*or the above*) written recognizance is such that if the said A. B. shall personally appear on the _____ day of _____, (*instant*), at _____ o'clock in the (*forenoon*), at _____, before me or such justices of the peace for the said (*county or united counties, or as the case may be*) as may then be there, to answer further to the information (*or complaint*) of C. D. exhibited against the said A. B. and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

Notice of such Recognizance to be Given to the Defendant and his Sureties.

Take notice, that you, A. B., are bound in the sum of _____ and you, L. M. and O. P., in the sum of _____ each, that you A. B., appear personally on _____ at _____ o'clock in the (*fore*) noon at _____, before me or such justices of the peace for the (*county or united counties, or as the case may be*) of _____ as shall then be there, to answer further to a certain information (*or complaint*) of C. D. the further hearing of which was adjourned to the said time and place, and unless you appear accordingly, the recognizance entered into by you, A. B., and by L. M. and O. P. as your sureties, will forthwith be levied on you and them.

Dated this _____ day of _____, one thousand eight hundred and _____

J. S. [L. s.]

(F.)

Certificate of Non-appearance to be Endorsed on the Defendant's Recognizance.

I hereby certify, that the said A. B. hath not appeared at the time and place in the said condition mentioned, but therein hath made default, by reason whereof the within written recognizance is forfeited.

J. S. [L. s.]

(G. 1.)

Summons to a Witness.

PROVINCE OF CANADA :

(County or united counties, as } To E. F. of , in the
the case may be,) of } said (county or united counties,
or as the case may be) of

Whereas information was laid (or complaint was made) before (one) of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be) of , for that (&c., as in the summons,) and it hath been made to appear to me upon (oath) that you are likely to give material evidence on behalf of the (prosecutor or complainant, or defendant) in this behalf; these are therefore to require you to be and appear on , at o'clock in the (fore) noon, at before me or such justices of the peace for the said (county or united counties, as the case may be) as may then be there, to testify what you shall know concerning the matter of the said information (or complaint.)

Given under my hand and seal, this day of in the year of our Lord , at in the (county, or as the case may be) aforesaid. J. S. [L. s.]

(G. 2.)

Warrant where a Witness has not obeyed a Summons.

PROVINCE OF CANADA :

(County or united counties, as } To all or any of the constables
the case may be) of } and other peace officers in
the said (county or united counties, or as the case may be) of :

Whereas information was laid (or complaint was made) before (one) of her Majesty's justices of the peace, in and for the said (county or united counties, or as the case may be,) of for that (&c., as in the summons,) and it having been made to appear to (me) upon oath, that E. F., of , in the said (county or united counties, or as the case may be) (labourer) was likely to give material evidence on behalf of the (prosecutor,) (I) did duly issue (my) summons to the said E. F., requiring him to be and appear on , at o'clock in the (fore) noon of the same day, at, before me or such justice or justices of the peace for the said (county or united counties, or as the case may be) as might then be there, to testify what he should know concerning the said A. B., or the matter of the said information (or complaint): and whereas proof hath this day been made before me, upon oath, of such summons having been duly served upon the said E. F.; and whereas the said E. F. hath neglected to appear at the time and place appointed by the said summons, and no just excuse hath been offered for such neglect; these are therefore to command you to take the said E. F., and to bring and have him on , at

o'clock in the noon, at before me or such justice or justices of the peace for the said (*county or united counties, or as the case may be*), as may then be there to testify what he shall know concerning the said information (*or complaint*.)

Given under my hand and seal, this day of , in the year of our Lord , at in the (*county, or as the case may be*) aforesaid.

J. S. [L. s.]

(G. 3.)

Warrant for a Witness in the First Instance.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } To all or any of the constables
} or other peace officers, in
the said (*county or united counties, or as the case may be*) of :

Whereas information was laid (*or complaint was made*) before the undersigned (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*) of , for that (&c., *as in the summons*), and it being made to appear before me on oath that E. F., of (*labourer*), is likely to give material evidence on behalf of the (*prosecutor*) in this matter, and it is probable that the said E. F. will not attend to give evidence without being compelled so to do; these are therefore to command you to bring and have the said E. F. before me, on , at o'clock in the (*fore*) noon, at , or before me or such other justice or justices of the peace for the said (*county or united counties or as the case may be*) as may then be there, to testify what he shall know concerning the matter of the said information (*or complaint*.)

Given under my hand and seal, this day of , in the year of our Lord, . at , in the (*county, or as the case may be*) aforesaid.

J. S. [L. s.]

(G. 4.)

Commitment of a Witness for Refusing to be Sworn or Give Evidence.

PROVINCE OF CANADA :

County or united counties, or as the case may be), of } To all or any of the constables, or
} other peace officers in the said
(*county or united counties, or as the case may be*) of and to
the keeper of the common gaol of the said (*county or united
counties, as the case may be*) at ; whereas information
was laid (*or complaint was made*) before (*me*) (*one*) of her
Majesty's justices of the peace in and for the said (*county or
united counties, or as the case may be*) of , for that (&c.,
as in the summons), and one E. F., now appearing before me
such justice as aforesaid, on , at , and being required

by me to make oath or affirmation as a witness in that behalf, hath now refused so to do, (or being now here duly sworn as a witness in the matter of the said information (or complaint) doth refuse to answer a certain question concerning the premises which is now here put to him, and more particularly the following question, (*here insert the exact words of the question*), without offering any just excuse for such his refusal. These are therefore to command you, or any one of the said constables or peace officers to take the said E. F., and him safely to convey to the common gaol at aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the common gaol to receive the said E. F. into your custody in the said common gaol and there imprison him for such his contempt for the space of days, unless he shall in the meantime consent to be examined and to answer concerning the premises, and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of in the year of our Lord , at , in the (*county, or as the case may be*) aforesaid.

J. S. [L. s.]

(H.)

Warrant to Remand a Defendant when Apprehended.

PROVINCE OF CANADA :

(*County or united counties or as the case may be*), of } To all or any of the constables,
 said (*county or united counties, or as the case may be*) of } or other peace officers in the
 the keeper of the (*common gaol or lock-up house*) at .
 Whereas complaint was made (*or information*) was laid before
 (*one*) of her Majesty's justices of the peace in and for the
 (*county or united counties, or as the case may be*) of , for
 that (&c., *as in the summons or warrant*); and whereas the
 said A. B. hath been apprehended under and by virtue of a
 warrant, upon such information (*or complaint*) and is now
 brought before me as such justice as aforesaid; these are
 therefore to command you, or any one of the said constables, or
 peace officers, in her Majesty's name forthwith to convey the
 said A. B. to the (*common gaol or lock-up house*) at , and
 there to deliver him to the said keeper thereof, together with
 this precept; and I do hereby command you the said keeper to
 receive the said A. B. into your custody in the said (*common
 gaol or lock-up house*) and there safely keep him until
 next, the day of (*instant*), when you are hereby com-
 manded to convey and have him at , at o'clock in the
 noon of the same day, before me, or such justice or justices
 of the peace of the said (*county or united counties, or as the
 case may be*) as may then be there, to answer to the said infor-
 mation (*or complaint*), and to be further dealt with according
 to law.

Summary Conviction.

Given under my hand seal, this day of in the year of
our Lord , at , in the (*county, or as the case may be*)
aforesaid. J. S. [L. s.]

(I. 1.)

*Conviction for a Penalty to be Levied by Distress, and Default of
Sufficient Distress, by Imprisonment.*

PROVINCE OF CANADA :

(*County or united counties, or* } Be it remembered, that on the
as the case may be) of } day of , in the year of our
Lord , at , in the said (*county or united counties, or as
the case may be*), A. B. is convicted before the undersigned,
(*one*) of her Majesty's justices of the peace for the said (*county
or united counties, or as the case may be*) for that he the said
A. B., (&c., *stating the offence, and the time and place when
and where committed*), and I adjudge the said A. B. for his
said offence to forfeit and pay the sum of (*stating the
penalty, and also the compensation, if any*) to be paid and ap-
plied according to law, and also to pay to the said C. D. the
sum of , for his costs in this behalf; and if the several sums
be not paid forthwith or on or before the of next, *I
order that the same be levied by distress and sale of the goods
and chattels of the said A. B., and in default of sufficient dis-
tress, *I adjudge the said A. B. to be imprisoned in the common
gaol of the said (*county or united counties, or as the case may be*)
at in the said county of (*there to be kept to hard
labour*) for the space of , unless the said several sums and
all costs and charges of the said distress (*and of the commitment
and conveying of the said A. B. to the said gaol*) shall be sooner
paid.

Given under my hand and seal, the day and year first above
mentioned, at in the (*county or united counties, or as the
case may be*) aforesaid. J. S. [L. s.]

*Or, when the issuing of a distress warrant would be ruin-
ous to the defendant or his family, or it appears that he has
no goods whereon to levy a distress, then, instead of the words
between the asterisks ** say, "then inasmuch as it hath now
been made to appear to me (that the issuing of a warrant of
distress in this behalf would be ruinous to the said A. B. or
his family," or, "that the said A. B. hath no goods or chat-
tels whereon to levy the said sums by distress)," I adjudge,
&c., (*as above, to the end.*)

(I. 2.)

*Conviction for a Penalty, and in default of Payment, Imprison-
ment.*

PROVINCE OF CANADA :

(*County or united counties, or* } Be it remembered, that on the
or as the case may be) of } day of , in the year of

our Lord , at , in the said (*county or united countries, or as the case may be*), A. B. is convicted before the undersigned, (*one*) of her Majesty's justices of the peace for the said (*county or united countries, or as the case may be*), for that he the said A. B. (&c., *stating the offence, and the time and place when and where it was committed*), and I adjudge the said A. B. for his said offence to forfeit and pay the sum of (*stating the penalty and the compensation, if any*), to be paid and applied according to law; and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums be not paid forthwith (*or, on or before next*), I adjudge the said A. B. to be imprisoned in the common gaol of the said (*county or united countries, or as the case may be*), at in the said county of (*and there to be kept at hard labour*) for the space of , unless the said sums and the costs and charges of conveying the said A. B. to the said common gaol, shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at in the (*county, or as the case may be*) aforesaid.

J. S. [L. s.]

(I. 3.)

Conviction when the Punishment is by Imprisonment, &c.

PROVINCE OF CANADA :

(*County or united countries, or as the case may be*) of } Be it remembered, that on the
our Lord , in the said (*county or united countries, or as the case may be*) A. B. is convicted before the undersigned (*one*)
of her Majesty's justices of the peace in and for the said (*county or united countries, or as the case may be*) for that he
the said A. B. (&c., *stating the offence, and the time and place when and where it was committed*); and I adjudge the said A. B. for his said offence to be imprisoned in the common gaol of
the said (*county or united countries, or as the case may be*), at
in the county of (*and there to be kept at hard labour*)
for the space of ; and I also adjudge the said A. B. to pay
to the said C. D. the sum of for his costs in this behalf, and
if the said sum for costs be not paid forthwith, (*or on or before next*), then * I order that the said sum be levied by distress
and sale of the goods and chattels of the said A. B. ; and in default of sufficient distress in that behalf, * I adjudge the said
A. B. to be imprisoned in the said common gaol, (*and there kept at hard labour*) for the space of , to commence at and
from the term (*a*) of his imprisonment aforesaid, unless the said
sum for costs shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned at in the (*county or united countries, or as the case may be*) aforesaid.

J. S. [L. s.]

(a) *Quære*.—The beginning or end of such term? The end is probably intended.

* Or, when the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks **, say, "inasmuch as it hath now been made to appear to me (that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," or, "that the said A. B. hath no goods or chattels whereon to levy the said sum for costs by distress)," I adjudge, &c.

(K. 1.)

Order for Payment of Money to be Levied by Distress, and in default of Distress, Imprisonment.

PROVINCE OF CANADA :

(County or united counties, or } Be it remembered, that on
as the case may be) of } complaint was made before the undersigned, (one) of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be) of } for that (stating the facts entitling the complainant to the order, with the time and place when and where they occurred), and now at this day, to wit, on at }, the parties aforesaid appear before me the said justice, (or the said C. D. appears before me the said justice,) but the said A. B. although duly called doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. hath been duly served with the summons in this behalf, which required him to be and appear here on this day before me or such justice or justices of the peace for the said (county or united counties, or as the case may be) as should now be here, to answer the said complaint, and to be further dealt with according to law ; and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of } forthwith, (or on or before next, or as the statute may require), and also to pay to the said C. D. the sum of } for his costs in this behalf; and if the said several sums be not paid forthwith (or on or before next) then *I hereby order that the same be levied by distress, and sale of the goods and chattels of the said A. B. and in default of sufficient distress in that behalf *I adjudge the said A. B. to be imprisoned in the common gaol of the said (county or united counties, or as the case may be) at } in the said county of, (and there kept to hard labour) for the space of } unless the said several sums and all costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said common gaol,) shall be sooner paid.

Given under my hand and seal, this } day of }, in the year of our Lord, } at } in the (county, or as the case may be) aforesaid.

J. S. [L. S.]

Or, when the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears he has no goods whereon to levy a distress, then, instead of the words between the astericks * * say, "inasmuch as it hath now been made to appear to me (that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," or, "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress)," I adjudge, &c.

(K 2.)

Order for Payment of Money, and in default of Payment, Imprisonment.

PROVINCE OF CANADA :

(County or united counties, or } Be it remembered, That on
 as the case may be) of } complaint was made before the
 undersigned (one) of her Majesty's justices of the peace in and
 for the said (county or united counties, or as the case may be) of
 for that (&c., stating the facts entitling the complainant to the order,
 with the time and place when and where they occurred), and now at
 this day, to wit, on , at the parties aforesaid appear before
 me the said justice, (or the said C. D. appears before me the said
 justice,) but the said A. B. although duly called doth not appear
 by himself, his counsel or attorney, and it is now satisfactorily
 proved to me on oath that the said A. B. has been duly served
 with the summons in this behalf, requiring him to be and appear
 here on this day before me or such justices of the peace for the
 said (county or united counties, or as the case may be) as should
 now be here, to answer the said complaint, and be further dealt
 with according to law; and now having heard the matter of
 the said complaint, I do adjudge the said A. B. to pay to the
 said C. D. the sum of , forthwith, (or on or before
 next, or as the statute may require), and also to pay to the said
 C. D. the sum of for his costs in this behalf; and if the
 said several sums be not paid forthwith (or on or before
 next,) then I adjudge the said A. B. to be imprisoned in the
 common gaol of the said (county or united counties, or as the
 case may be) at in the said county of (there to be
 kept at hard labour) for the space of , unless the said
 several sums (and costs and charges of commitment and convey-
 ing the said A. B. to the said common gaol) shall be sooner paid.
 Given under my hand and seal, this day of , in
 the year of our Lord , at in the (county, or as the
 case may be) aforesaid. J. S. [L. s.]

(K. 3.)

Order for any other matter where the Disobeying of it is punishable with Imprisonment.

PROVINCE OF CANADA :

(County or united counties, or } Be it remembered, that on
 or as the case may be) of } complaint was made before

Summary Conviction.

the undersigned, (one) of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be,) of _____, for that (stating the facts entitling the complainant to the order, with the time and place where and when they occurred,) and now at this day, to wit, on _____ at _____, the parties aforesaid appear before me the said justice (or the said C. D. appears before me the said justice), but, the said A. B. although duly called doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me upon oath that the said A. B. has been duly served with the summons in this behalf, which required him to be and appear here this day before me or such justice or justices of the peace for the said (county or united counties, or as the case may be,) as should now be here, to answer to the said complaint, and to be further dealt with according to law, and now having heard the matter of the said complaint, I do therefore adjudge the said A. B. to (here state the matter required to be done,) and if upon a copy of the minute of this order being served upon the said A. B., either personally or by leaving the same for him at his last or most usual place of abode, he shall neglect or refuse to obey the same, in that case I adjudge the said A. B. for such his disobedience to be imprisoned in the common gaol of the said (county or united counties, or as the case may be,) at _____ in the said county of _____ (there to be kept at hard labour) for the space of _____ (unless the said order be sooner obeyed, (if the statute authorise this); and I also adjudge the said A. B. to pay to the said C. D. the sum of _____ for his costs in this behalf, and if the said sum for costs be not paid forthwith, (or, on or before _____ next,) I order the same to be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf, I adjudge the said A. B. to be imprisoned in the common gaol, (there to be kept at hard labour) for the space of _____ to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____ in the (county, or as the case may be) aforesaid.

J. S. [L. s.]

(L.)

Order of Dismissal of an Information or Complaint.

PROVINCE OF CANADA:

County or united counties, or } Be it remembered, that on
as the case may be), of } information was laid (or com-
plaint was made) before the undersigned, (one) of her Majesty's
justices of the peace in and for the said (county or united
counties, or as the case may be) of _____, for that (&c., as in the
summons to the defendant), and now at this day, to wit, on

at _____, both the said parties appear before me in order that I should hear and determine the said information (*or complaint*), (*or the said A. B. appeareth before me,*) but the said C. D. although duly called doth not appear, whereupon the matter of the said information (*or complaint*) being by me duly considered, (it manifestly appears to me that the said information (*or complaint*) is not proved,* (and I do therefore dismiss the same,) and do adjudge that the said C. D. do pay to the said A. B. the sum of _____ for his costs incurred by him in his defence in this behalf: and if the said sum for costs be not paid forthwith, (*or on or before* _____,) I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the common gaol of the said (*county or united counties, or as the case may be,*) at _____ in the said county of _____ (*and there to be kept at hard labour*) for the space of _____ unless the said sum for costs and charges of the said distress (*and of the commitment of the said C. D. to the said common gaol,*) shall be sooner paid.

Given under my hand and seal, this _____ day of _____, in the year of Lord _____, in the (*county, or as the case may be*) aforesaid.

[J. S. [L. s.]

* *If the Informant or Complainant do not appear, these words may be omitted.*

(M.)

Certificate of Dismissal.

I hereby certify that an information (*or complaint*) preferred by C. D. against A. B. for that (*or as in the summons,*) was this day considered by me, one of her Majesty's justices of the peace in and for the (*county or united counties, or as the case may be*) of _____, and was by me dismissed (*with costs.*)

Dated this _____ day of _____, one thousand eight hundred and _____

[J. S.] [L. s.]

(N. 1.)

Warrant of Distress upon a Conviction for a Penalty.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of _____ } To all or any of the constables, or other peace officers in the said (*county or united counties, or as the case may be*) of _____ :

Whereas A. B., late of _____, (*labourer,*) was on this day (*or on last past*) duly convicted before _____, (*one*) of her Majesty's justices of the peace, in and for the said (*county or united counties, or as the case may be*) of _____, for that (*stating the offence as in the conviction,*) and it was thereby adjudged that the said A. B. should for such his offence forfeit

and pay, (&c., as in the conviction,) and should also pay to the said C. D. the sum of for his costs in that behalf; and it was thereby ordered that if the said several sums should not be paid (*forthwith*) the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was thereby also adjudged that the said A. B. in default of sufficient distress, should be imprisoned in the common gaol of the said (*county or united counties, or as the case may be,*) at in the said county of , (*and there to be kept at hard labour*) for the space of , unless the said several sums and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said common gaol, should be sooner paid; and whereas the said A. B. being so convicted as aforesaid and being (*now*) required to pay the said sums of and hath not paid the same or any part thereof, but therein hath made default; these are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the distress, shall not be paid, then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto me (*the convicting justice or one of the convicting justices*) that I may pay and apply the same as by law is directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress can be found, then, that you certify the same unto me, to the end that such further proceedings may be had thereon as to law doth appertain.

Given under my hand and seal, this day of in the year of our Lord , at in the (*county, or as the case may be*) aforesaid.

J. S. [L. s.]

(N. 2.)

Warrant of Distress upon an Order for the Payment of Money.

PROVINCE OF CANADA :

(*County or united counties, or } To all or any of the constables,
as the case may be*) of } or other peace officers, in the
said (*county or united counties, or as the case may be*) of :

Whereas on last past, a complaint was made before (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*), for that (&c., as in the order,) and afterwards, to wit, on , at , the said parties appeared before (*as in the order,*) and thereupon having considered the matter of the said complaint, the said A. B. was adjudged (*to pay to the said C. D. the sum of on or before then next,*) and also to pay to the said C. D. the sum of for his costs in that behalf; and it was ordered that if the said several sums should not be paid on or

before the said then next, the same should be levied by distress and sale of the goods and chattels of the said A. B. ; and it was adjudged that in default of sufficient distress in that behalf, the said A. B. should be imprisoned in the common gaol of the said (*county or united counties, or as the case may be,*) at in the said county of (*and there kept at hard labour,*) for the space of , unless the said several sums and all costs and charges of the distress (*and of the commitment and conveying of the said A. B. to the said common gaol*) should be the sooner paid; and * whereas the time in and by the said order appointed for the payment of the said several sums of and hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default; these are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B. ; and if within the space of days after the making of such distress, the said last mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto me, (*or some other of the convicting justices, as the case may be*) that I (*or he*) may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said A. B. ; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein, as to law doth appertain.

Given under my hand and seal, this day of in the year of our Lord , at in the (*county, or as the case may be*) aforesaid.

J. S. [L. s.]

(N. 3.)

Endorsement in Backing a Warrant of Distress.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } Whereas proof upon oath hath
me, one of her Majesty's justices of the peace in and for the } this day been made before
said (*county or united counties, or as the case may be,*) that the }
name of J. S. to the within warrant subscribed, is of the hand- }
writing of the justice of the peace within mentioned, I do }
therefore authorise U. T. who bringeth me this warrant, }
and all persons to whom this warrant was originally directed, }
or by whom the same may be lawfully executed, and also }
all constables and other peace officers in the said (*county }
or united counties, or as the case may be,*) of to execute }
the same within the said (*county or united counties, or as the }
case may be*) of }

Given under my hand, this day of , one thousand
eight hundred and O. K.

Summary Conviction.

(N. 4.)

Constable's return to a Warrant of Distress.

I, W. T., constable of _____, in the (county or united counties, or as the case may be) of _____, hereby certify to J. S., Esq., one of her Majesty's justices of the peace for the (county or united counties, or as the case may be) that by virtue of this warrant, I have made diligent search for the goods and chattels of the within mentioned A. B., and that I can find no sufficient goods or chattels of the said A. B. whereon to levy the sums within mentioned.

Witness my hand, this _____ day of _____ one thousand eight hundred and _____

W. T.

(N. 5.)

Warrant of Commitment for want of Distress.

To all or any of the constables and other peace officers, in the (county or united counties, or as the case may be,) of _____, and to the keeper of the common gaol of the said (county or united counties, or as the case may be,) of _____ at _____, in the said county of _____

Whereas (&c., as in either of the foregoing distress warrants N. 1, 2, to the asterisk *, and then thus): And whereas afterwards, on the _____ day of _____, in the year aforesaid, I, the said justice, issued a warrant to all or any of the constables or other peace officers of the (county or united counties, or as the case may be,) of _____ commanding them, or any of them, to levy the said sums of _____ and _____ by distress and sale of the goods and chattels of the said A. B.: And whereas it appears to me, as well by the return to the said warrant of distress, by the constable who had the execution of the same, as otherwise, that the said constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found; these are therefore to command you, the said constables or peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol at _____, aforesaid, and there deliver him to the said keeper, together with this precept; and I do hereby command you, the said keeper of the said common gaol to receive the said A. B. into your custody, in the said common gaol, there to imprison him, (and keep him at hard labour) for the space of _____, unless the said several sums, and all the costs and charges of the said distress, (and of the commitment and conveying of the said A. B. to the said common gaol) amounting to the further sum of _____, shall be sooner paid unto you the said keeper; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this _____ day of _____,

in the year of our Lord _____, at _____ in the (county, or
as the case may be,) aforesaid.

J. S. [L. s.]

(O. 1.)

*Warrant of Commitment upon a Conviction for a Penalty in the
first instance.*

PROVINCE OF CANADA :

(County or united counties, or } To all or any of the constables
as the case may be) of } and other peace officers in
the said (county or united counties, or as the case may be) of
, and to the keeper of the common gaol of the said
(county or united counties, or as the case may be) of
at _____ in the said county of _____.

Whereas A. B., late of _____ (labourer,) was on this day convicted before the undersigned (one) of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be) for that (stating the offence as in the conviction), and it was thereby adjudged that the said A. B. for his offence should forfeit and pay the sum of _____ (&c., as in the conviction,) and should pay to the said C. D. the sum of _____

for his costs in that behalf; and it was thereby further adjudged that if the said several sums should not be paid (forthwith) the said A. B. should be imprisoned in the common gaol of the said (county or united counties, or as the case may be) at _____ in the said county of _____ (and there kept at hard labour) for the space of _____, unless the said several sums (and the costs and charges of conveying the said A. B. to the said common gaol) should be sooner paid; and

whereas the time in and by the said conviction appointed for the payment of the said several sums hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default. These are therefore to command you, the said constables or peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol at _____ aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said common gaol to receive the said A. B. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the space of _____, unless the said several sums (and costs and charges of carrying him to the said common gaol, amounting to the further sum of _____), shall be sooner paid; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this _____ day of _____, in the (county, or as the case may be) aforesaid.

J. S. [L. s.] .

(O 2.)

Warrant of Commitment on an Order in the first instance.

PROVINCE OF CANADA :

(County or united counties, or } To all or any of the constables
 as the case may be) of } and other peace officers in
 the said (county or united counties, or as the case may be) of
 , and to the keeper of the common gaol of the (county or
 united counties, or as the case may be) of at in the
 said county of

Whereas on last past, complaint was made before the undersigned (one) of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be) of for that (&c., as in the order) and afterwards, to wit, on the day of , at , the parties appeared before me the said justice (or as it may be in the order) and thereupon having considered the matter of the said complaint, I adjudged the said A. B. to pay to the said C. D. the sum of , on or before the day of then next, and also to pay to the said C. D. the sum of for his costs in that behalf; and I also thereby adjudged that if the said several sums should not be paid on or before the day of then next, the said A. B. should be imprisoned in the common gaol of the (county or united counties, or as the case may be) of at in the said county of (and there be kept at hard labour) for the space of , unless the said several sums (and the costs and charges of conveying the said A. B. to the said common gaol, as the case may be) should be sooner paid; and whereas the time in and by the said order appointed for the payment of the said several sums of money hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default; these are therefore to command you, the said constables and peace officers, or any of you, to take the said A. B. and him safely convey to the said common gaol, at aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the space of , unless the said several sums (and the costs and charges of conveying him to the said common gaol, amounting to the further sum of ,) shall be sooner paid unto you the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year of our Lord at , in the (county, or as the case way be) aforesaid.

J. S. [L. s.]

(Q. 1.)

Warrant of Distress for Costs upon an Order for Dismissal of an Information and Complaint.

PROVINCE OF CANADA :

(County or united counties, or } To all or any of the constables,
as the case may be) of } or other peace officers in the
said (county or united counties, or as the case may be) of .

Whereas on last past, information was laid (or complaint was made) before (one) of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be) of for that (&c., as in the order of dismissal,) and afterwards, to wit, on at , both parties appearing before in order that (I) should hear and determine the same, and the several proofs adduced to (me) in that behalf being by (me) duly heard and considered, and it manifestly appearing to (me) that the said information (or complaint) was not proved, (I) therefore dismissed the same, and adjudged that the said C. D. should pay to the said A. B. the sum of for his costs incurred by him in his defence in that behalf; and (I) ordered that if the said sum for costs should not be paid (forthwith) the same should be levied on the goods and chattels of the said C. D., and (I) adjudged that in default of sufficient distress in that behalf the said C. D. should be imprisoned in the common gaol of the said (county or united counties, or as the case may be) of at in the said county of (and there kept at hard labour) for the space of , unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said common gaol should be sooner paid; * and whereas the said C. D. being now required to pay to the said A. B. the said sum for costs, hath not paid the same, or any part thereof, but therein made default; these are therefore to command you in her Majesty's name, forthwith to make distress of the goods and chattels of the said C. D., and if within the space of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, then that you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to me (the justice who made such order or dismissal as the case may be) that (I) may pay and apply the same as by law directed, and may render the overplus (if any,) on demand to the said C. D., and if no such distress can be found, then that you certify the same unto me, (or to any other justice of the peace for the same) (county or united counties, or as the case may be) to the end that such proceedings may be had therein as to law doth appertain.

Given under my hand and seal, this day of , in the

year of our Lord , at , in the (county or as the case may be) aforesaid.

J. S. [L. s.]

(Q 2.)

Warrant of Commitment for want of Distress in the last case.

PROVINCE OF CANADA :

(County or united counties, or } To all or any of the constables,
as the case may be) of } or peace officers, in the said
(county or united counties, or as the case may be) of , and to
the keeper of the common gaol of the said (county or united
counties, or as the case may be) of , at in the said
county of

Whereas (&c., as in the form, to the asterisk,* and then thus:)
and whereas afterwards, on the day of , in the year
aforesaid, I, the said justice, issued a warrant to all or any of
the constables or other peace officers of the said (county or
united counties, or as the case may be) commanding them, or any
of them, to levy the said sum of for costs, by distress and
sale of the goods and chattels of the said C. D. And whereas it
appears to me as well by the return to the said warrant of
distress of the constable (or peace officer) charged with the
execution of the same, as otherwise, that the said constable
hath made diligent search for the goods and chattels of the said
C. D., but that no sufficient distress whereon to levy the sum
above mentioned could be found. These are therefore to com-
mand you, the said constables and peace officers, or any one of
you, to take the said C. D. and him safely convey to the com-
mon gaol of the said (county or united counties as the case may be),
at aforesaid, and there deliver him to the keeper thereof
together with this precept; and I hereby command you, the
said keeper of the said common gaol to receive the said C. D.
into your custody in the common gaol, there to imprison him
(and keep him at hard labour) for the space of (unless the said
sum, and all the costs and charges of the said distress) and of
the commitment and conveying of the said C. D. to the said common
gaol, amounting to the further sum of ,) shall be sooner paid
up unto you the said keeper; and for your so doing, this shall
be your sufficient warrant.

Given under my hand and seal, this day of in the
year of our Lord , at , in the (county or as the case may
be) aforesaid.

J. S. [L. s.]

(R.)

Certificate of Clerk of the peace that the costs of an appeal are not paid.

Office of the clerk of the peace for the (county or united coun-
ties, or as the case may be) of

Title of the Appeal.

I hereby certify, that at a court of general quarter sessions of the peace holden at _____, in and for the said (*county or united counties, or as the case may be*) on _____ last past, an appeal by A. B. against a conviction (*or order*) of J. S. Esquire, one of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be*), came on to be tried, and was there heard and determined, and the said court of general quarter sessions thereupon ordered that the said conviction (*or order*) should be confirmed (*or quashed,*) and that the said (*appellant*) should pay to the said (*respondent*) the sum of _____ for costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the clerk of the peace of the said (*county or united counties, or as the case may be*) on or before the _____ day of _____ instant, to be by him handed over to the said (*respondent*), and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order

Dated the _____ day of _____, one thousand eight hundred and _____
G. H.
Clerk of the Peace.

(S. 1.)

Warrant of Distress for Costs of Appeal against a Conviction or Order.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of _____ } To all or any of the constables,
the said (*county or united counties, or as the case may be*) of _____ : } or other peace officers, in

Whereas (*&c., as in the warrants of distress, N 1, 2, ante, and to the end of the statement of the conviction or order, and then thus*): And whereas the said A. B. appealed to the court of general quarter sessions of the peace for the said (*county or united counties, or as the case may be*) against the said conviction or order, in which appeal the said A. B. was the appellant, and the said C. D. (*or J. S., esquire, the justice of the peace who made the said conviction or order*) was the respondent, and which said appeal came on to be tried and was heard and determined at the last general quarter sessions of the peace for the said (*county or united counties, or as the case may be*) holden at _____, on _____, and the said court of general quarter sessions thereupon ordered that the said conviction (*or order*) should be confirmed (*or quashed,*) and that the said (*appellant*) should pay to pay to the said (*respondent*) the sum of _____ for his costs incurred by him in the said appeal, which said sum was to be paid to the clerk of the peace of the said (*county or united counties, or as the case may be*) on or before the _____ day of _____ one thousand eight hundred _____, to be by him handed over to the said (C. D.); and whereas the clerk of the peace of the

said (*county or united counties, or as the case may be*) hath on the day of instant, duly certified that the said sum for costs had not been paid;* these are therefore to command you in her Majesty's name, forthwith to make distress of the goods and chattels of the said (A. B.) and if within the space of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to the clerk of the peace for the said (*county or united counties, or as the case may be*) of , that he may pay and apply the same as by law directed; and if no such distress can be found, then that you certify the same unto me or any other justice of the peace for the same (*county or united counties, or as the case may be*) to the end that such proceedings may be had therein as to law doth appertain.

Given under my hand and seal, this day of , in the year of our Lord , at , in the (*county, or as the case may be*) aforesaid.

O. K. [L. s.]

(S. 2.)

Warrant of Commitment for want of Distress in the last case.

PROVINCE OF CANADA :

(*County or united counties, or as the case may be*) of } To all or any of the constables,
 } or other peace officers, in the
 said (*county or united counties, or as the case may be*) of , and
 to the keeper of the common gaol of the said (*county or united
 counties, or as the case may be*) of , at , in the said county
 of

Whereas (g.c., as in the last form, to the asterisk *, and then thus): And whereas, afterwards, on the day of , in the year aforesaid, I, the undersigned, issued a warrant to all or any of the constables and other peace officers in the said (*county or united counties, or as the case may be*) of , commanding them, or any of them, to levy the said sum of , for costs, by distress and sale of the goods and chattels of the said A. B.; and whereas it appears to me, as well by the return to the said warrant of distress of the constable (*or peace officer*), who was charged with the execution of the same, as otherwise, that the said constable hath made diligent search for the goods and chattels of the said (A. B.), but that no sufficient distress whereon to levy the said sum above mentioned could be found; these are therefore to command you, the said constables or peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol of the said (*county or united counties*) of (*as the case may be,*) at , aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said

common gaol to receive the said A. B. into your custody in the said common gaol, there to imprison him (*and keep him at hard labour*) for the space of , unless the said sum and all costs and charges of the said distress (*and of the commitment and conveying of the said A. B. to the said common gaol, amounting to the further sum of*) shall be sooner paid unto you, the said keeper; and for so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year of our Lord , at , in the (county, or as the case may be) aforesaid.

O. K. [L. s.]

(T.)

General Form of Information on Oath.

PROVINCE OF CANADA:

(County or united counties, or } The information (or complaint)
as the case may be), of } of C. D., of the township of
in the said (county or united counties, or as the case may be) of
(labourer) (If preferred by an attorney or agent, say:) "by
D. E., his duly authorised agent (or attorney), in this behalf,
taken upon oath, before me, the undersigned, one of her
Majesty's justices of the peace, in and for the said (county or
united counties, or as the case may be) of , at N., in the said
(county, or as the case may be) of , this day of in the year
our Lord, one thousand eight hundred and , who saith*
that (he hath just cause to suspect and believe, and doth sus-
pect and believe that) A. B., of the (township) of , in the
said (county, or as the case may be) of (within the space
of ,) (the time within which the information or complaint
must be laid,) last past, to wit, on the day of instant, at
the township of , in the (county, or as the case may be) afore-
said, did (here set out the offence, &c.) contrary to the form of
the statute in such case made and provided.

C. D. (or D. E.)

Taken and sworn before me, the day and year and at the place above mentioned.

Form of Order of Dismissal of an Information or Complaint.

PROVINCE OF CANADA:

(County or united counties, or } Be it remembered, that on ,
as the case may be), of } information was laid (or com-
plaint was made) before the undersigned, (one) of her Majesty's
justices of the peace in and for the said (county or united coun-
ties, or as the case may be) of for that (&c., as in the sum-
mons to the defendant,) and now at this day, to wit, on , at
, * both the said parties appear before me in order that I
should hear and determine the said information (or complaint),
(or the said A. B. appeareth before me, but the said C. D.,

*If at an adjournment, insert here: "To which day the hearing of this case hath been duly adjourned, of which the said C. D. had due notice."

although duly called, doth not appear); whereupon the matter of the said information (*or complaint*) being by me duly considered (it manifestly appears to me that the said information, *or complaint* is not proved, and (†) I do therefore dismiss the same,) and do adjudge that the said C. D. do pay to the said A. B. the sum of for his costs incurred by him in his defence in this behalf; and if the said sum for costs be not paid forthwith, (*or on or before*), I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the common gaol of the said (*county or united counties, or as the case may be*) of at in the said county of (*and there kept at hard labour*) for the space of , unless the said sum for costs, and all costs and charges of the said distress (*and of the commitment and conveying of the said C. D. to the said common gaol*) shall be sooner paid.

Given under my hand and seal, this day of , in the year of our lord, , at in the (*county, or as the case may be*) aforesaid.

J. S. [L. s.]

†If the informant or complainant do not appear, these words may be omitted.

Form of Certificate of Dismissal.

I hereby certify, that an information (*or complaint*) preferred by O. D. against A. B. for that (*&c., as in the summons*) was this day considered by me, one of her Majesty's justices of the peace in and for the (*county or united counties, or as the case may be*) of , and was by me dismissed (*with costs*).

Dated this day of , one thousand eight hundred and .

J. S.

General Form of Notice of Appeal Against a Conviction.

To C. D. of &c., and (*the names and additions of the parties to whom the notice of appeal is required to be given.*)

Take notice, that I, the undersigned A. B., of, &c., do intend to enter and prosecute an appeal at the next general quarter sessions of the peace, to be holden at , in and for the (*county or united counties, or as the case may be,*) of , against a certain conviction (*or order*) bearing date on or about the day of instant, and made by (*you*) C. D., Esquire, (*one*) of her Majesty's justices of the peace for the said (*county or united counties, or as the case may be,*) of , whereby I, the said A. B., was convicted of having *or* was ordered to pay , (*here state the offence as in the conviction, information or summons, or the amount adjudged to be paid, as in the order, as correctly as possible*): and further, take notice that the grounds of my appeal are, first, that I am not guilty of the said offence;

secondly, that the formal conviction drawn up and returned to the sessions is not in law sufficient to support the said conviction of me the said A. B., (*together with any other grounds, care being taken that all are stated, as the appellant will be precluded from going into any other than those stated.*)

Dated this day of one thousand eight hundred and
A. B.

MEM.—*If this notice be given by several defendants, or by an attorney, it can easily be adapted.*

Form of Recognizance to Try the Appeal, &c.

Be it remembered, that on , A. B., of (*labourer,*) and L. M., of (*grocer,*) and N. O., of (*yeoman,*) personally came before the undersigned, (*one*) of her Majesty's justices of the peace in and for the said (*county or united counties, or as the case may be,*) of , and severally acknowledged themselves to owe to our sovereign lady the Queen, the several sums following, that is to say, the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said A. B. shall fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at , before me.

J. S.

The condition of the within written recognizance is such, that if the said A. B. shall, at the (*next*) general quarter sessions of the peace, to be holden at , on the day of next, in and for the said (*county or united counties, or as the case may be,*) of , enter and prosecute an appeal against a certain conviction bearing date the day of instant, and made by me the said justice, whereby he the said A. B. was convicted, for that he the said A. B. did on the day of , at the township of , in the said (*county or united counties, or as the case may be,*) of (*here set out the offence as stated in the conviction;*) and further, that if the said A. B. shall abide by and duly perform the order of the court to be made upon the trial of such appeal, then the said recognizance to be void, or else to remain in full force and virtue.

Form of Notice of such Recognizance to be given to the Defendant (Appellant) and his Surety.

Take notice, that you, A. B., are bound in the sum of pounds, and you, L. M. and N. O. in the sum of each, that you the said A. B. at the next general quarter sessions of the peace to be holden at , in and for the said (*county or united counties, or as the case may be*) of , enter and prosecute an

appeal against a conviction dated the day of (*instant*), whereby you, A. B., were convicted of (*stating offence shortly*), and abide by and perform the order of the court to be made upon the trial of such appeal; and unless you prosecute such appeal accordingly, the recognizance entered into by you will forthwith be levied on you.

Dated this day of one thousand eight hundred and

SURETIES.

Complaint by the Party Threatened for Sureties for the Peace.

Proceed as in the form (F.) to the asterisk, then:* did, on the day of (*instant, or last past as the case may be*), threaten the said C. D. in the words or to the effect following, that is to say, (*set them out, with the circumstances under which they were used*): and that from the above and other threats used by the said A. B. towards the said C. D., he the said C. D. is afraid that the said A. B. will do him some bodily injury, and therefore prays that the said A. B. may be required to find sufficient sureties to keep the peace and be of good behaviour towards him the said C. D.; and the said C. D. also saith that he doth not make this complaint against nor require such sureties from the said A. B. from any malice or ill-will, but merely for the preservation of his person from injury.

Form of Recognizance for the Sessions.

Be it remembered, that on the day of , in the year of our Lord , A. B., of (*labourer*), L. M., of (*grocer*), and N. O., of , (*butcher*), personally came before (*us*), the undersigned, (*two*) of her Majesty's justices of the peace for the said (*county or united counties, or as the case may be*), of and severally acknowledged themselves to owe to our lady the Queen the several sums following, that is to say: the said A. B. the sum of , and the said L. M. and N. O. the sum of each, of good and lawful money of Canada, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said A. B. fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at , before us.

J. S.

J. T.

The condition of the within written recognizance is such that if the within bounden A. B. (of, &c.) shall appear at the next court of general quarter sessions of the peace to be holden in and for the said (*county or united counties, or as the case may be*) of , to do and receive what shall be then and there enjoined him by the court, and in the meantime shall keep the peace and be of good behaviour towards her Majesty and all her liege

people, and especially towards C. D. (of, &c.) for the term of now next ensuing, then the said recognizance to be void, or else to stand in full force and virtue.

Form of Commitment in Default of Sureties.

PROVINCE OF CANADA:

(County or united counties, or } To the constable of the in
as the case may be) of } the county of (one of the
united counties of or as the case may be) and to the keeper of
the common gaol of the said county (or united counties, as the
case may be) at , in the said county (or in the county of :

Whereas on the day of , instant, complaint on oath was made before the undersigned (or J. L., Esquire,) (one) of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be) of , by C. D. of the township of in the said (county, or as the case may be) (labourer,) that A. B. of, &c., on the day of . at the township of , aforesaid, did threaten (&c., follow to end of complaint, as in form above, in the past tense, then): And whereas the said A. B. was this day brought and appeared before the said justice (or J. S., Esquire,) one of her Majesty's justices of the peace in and for the said (county or united counties, or as the case may be) of , to answer the said complaint: and *having been required by me to enter into his own recognizance in the sum of with two sufficient sureties in the sum of each, as well for his appearance at the next general quarter sessions of the peace, to be held in and for the said (county or united counties, or as the case may be) of , to do what shall be then and there enjoined him by the court, as also in the meantime to keep the peace and be of good behaviour towards her Majesty and all her liege people, and especially towards the said C. D., hath refused and neglected, and still refuses and neglects to find such sureties; these are therefore to command you the said constable of the township of , to take the said A. B., and him safely to convey to the (common gaol) at aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said (common gaol) to receive the said A. B. into your custody, in the said (common gaol,) there to imprison him* until the said next general sessions of the peace, unless he in the meantime find sufficient sureties as well for his appearance at the said sessions, as in the meantime to keep the peace as aforesaid.

Given under my hand and seal, this day of , in the year of our Lord , at , in the (county, or as the case may be) aforesaid.

J. S. [L.s.]

SUMMONS.

A summons is the usual process issued by justices to pro-

cure the attendance of a person accused, where the offence is between party and party, and not of an aggravated nature; but where the offence is of a higher nature, as felony, breach of the peace, &c., and in cases where the king is a party, it may be proper to issue a warrant in the first instance. In petty assaults, though justices are authorised to issue a warrant on complaint on oath of the party, yet a summons is more advisable, as in many cases it is found that there is little or no pretence for the accusation.—*Paley*, 18. A summons may be either directed to the party, or to a constable, requiring him to summon the party—*Paley*, 18; and it may be issued by *one* justice in matters of complaint to be heard before *two* justices (see *2 W. IV., c. 4, and 16 V., c. 178, § 25). Where the summons is directed to the constable, or a third person, a *copy* of it plainly and legibly written on paper, should be served personally (*a*) upon the party accused; if directed to the party himself, the *original* should be served, and a copy of it kept by the party serving it. It should be personally served upon the party accused, unless where personal service (*a*) is expressly dispensed with by statute.—*Arch. Con.* 97. The justice should fix the time of day when the party should attend; for though the accused is bound (if the summons is to attend a petty sessions) to wait until the magistrate can attend to the complaint, yet it is reasonable to appoint a time *when* the complaint can probably be heard.—*Toone*, 858. If the complaint is on oath, it should be so stated in the summons—*Toone*, 858; but an information for a penalty need not be on oath, unless the statute requires it.—8 *T. R.* 508. Where a particular form of notice or summons is required by a statute that must be strictly pursued.—*Paley*, 18. Where the defendant, after being duly served with the summons, neglects to appear before the magistrate, he may be in that case convicted in his absence.—*R. v. Simpson*, 1 *Str.* 44; 10 *Mod.* 248, 341, 370; but proof should previously be given of the service of the summons.—*Paley*, 21. And see the “Summary Convictions Act,” 16 V., 178, § 12. In a case where a defendant was convicted without a previous summons, the Court of King’s Bench granted a criminal information against the justice.—*R. v. Venables*, *Ld. R.* 1407. The defendant should be allowed a reasonable time for his appearance, for a summons to appear *imme-*

(a) Personal service dispensed with by the Summary Conviction Act, 16 V., c. 178, § 1, leaving the same with a person, at the defendant’s last or usual place of abode will be sufficient. It should be with some grown up person, and not a mere child nor a stranger, but a resident or inmate.

diately, or upon the *same day*, would be bad, unless cured by the defendant's appearance.—*R. v. Mallison*, *Burr.* 681; *R. v. Johnson*, 1 *Str.* 261.

For the form of a Summons see "*Summary Conviction.*"

SUNDAY.

See "*Lord's Day.*"

SURETY FOR GOOD BEHAVIOUR.

A man may be compelled to find sureties of the peace, both for the good behaviour and for the peace; and yet the good behaviour includeth the peace, and he that is bound to the good behaviour, is therein also bound to the peace.—*Dalt.*, c. 122. The authority under which a justice of the peace may require surety for the good behaviour, is founded upon the statute 34 Ed. 3. c. 1; and the commission of the peace. No one ought to be bound to the good behaviour for any rash, quarrelsome, or unmannerly words, unless they either tend to a breach of the peace, or to scandalise the government, by abusing those who are intrusted by it with the administration of justice, or to deter an officer from doing his duty; and therefore, it seems that he who barely calls another "rogue," or "rascal," "liar," or "drunkard," ought not for such cause to be bound to the good behaviour. However, says Mr. Hawkins, I cannot find any certain or precise rules for the direction of the magistrate in this respect, and therefore am inclined to think that he has a discretionary power to take such surety of all those who he shall have just cause to suspect to be dangerous, quarrelsome, or scandalous; as of those who sleep in the day and go abroad in the night; and of such as keep suspicious company; and of such as are generally suspected to be robbers, and the like; and of eavesdroppers; and of common drunkards; and all other persons whose misbehaviour may reasonably be intended to bring them within the meaning of the statute; as persons of evil fame, who being described by an expression of so great a latitude, seem in a great measure to be left to the judgment of the magistrate. But if he commit one for want of sureties, he must shew the cause with sufficient certainty.—1 *Haw.* 132.

Mr. Dalton (who wrote towards the latter end of the reign of king James the first,) in order to determine the same with some kind of certainty, has inserted the following, as instances in which sureties for the good behaviour may be granted, viz:

Against, 1. Rioters. 2. Barrators. 3. Common quarrellers and common breakers of the peace. 4. Such as lie in wait to rob; or shall be suspected to lie in wait to rob; or shall assault or attempt to rob another; or shall put passengers in fear or peril; or shall be generally suspected to be robbers on the highway. 5. Such as are like to commit murder, homicide, or other grievance to any of the king's subjects in their bodies. 6. Such as shall practise to poison another; one instance of which may be the poisoning of their food; thus Mr. Dalton granted a warrant for the good behaviour against one who had bought ratsbane, and mingled it with corn, and then cast it amongst his neighbours' fowls, whereby most of them died. 7. Such as in the presence of the justice shall misbehave himself in some outrageous manner of force or fraud. 8. Such as are greatly defamed for resorting to houses suspected to maintain adultery, or incontinency. 9. Maintainers of houses commonly suspected to be houses of common bawdry. 10. Common whoremongers and common whores. 11. Night-walkers, that shall eaves-drop men's houses; or shall cast men's gates, carts, or the like, into ponds; or commit other outrages or misdemeanors in the night; or shall be suspected to be pilferers, or otherwise like to disturb the peace; or that be persons of ill behaviour, or of evil fame or report generally; or that shall keep company with such, or with any other suspicious persons in the night. 12. Suspected persons who live idly, and yet fare well, or are well apparelled, having nothing whereon to live, unless, upon examination, they shall give a good account of such their living. 13. Common gamesters. 14. Such as raise hue-and-cry without cause. 15. Libellers. 15. Putative father of a bastard.* 17. Such as persuade or procure the putative father of a bastard child to run away. 18. Such as abuse a justice's warrant, or shall abuse him, or the constable in executing his office. Nay, it seemeth, he says, that he who shall use words of contempt, or contrary to good manners, against a justice of the peace, though it be not at such a time as he is executing his office, yet he shall be bound to his good behaviour. 19. Such as charge another before a justice with felony, riot, or forcible entry, and yet will not prosecute or give evidence. 20. In general, whatsoever act or thing is in itself a misbehaviour.—*Dalt.*, c. 124. To which may be added—21. Forcibly entry.—1 *Haw.* 124, 22. The author of any writing full of obscene ribaldry.

*There being no poor-laws in this province, an offender of this sort would not, probably, be liable.

—1 *Haw.* 195. 23. For striking a person in the presence of the justices.—*Crom.* 124. 24. For threatening so as to deter witnesses from attending a court of justice.—*Ib.* 125.

For what it shall be forfeited.

Mr. Hawkins says, it has been laid down as a general rule that whatever will be a good cause to bind a man to his good behaviour, will forfeit a recognizance for it; but this has since been denied, and indeed seems to be by no means maintainable; because the statute, in ordering persons of *evil fame* to be bound in this manner, seems in many places chiefly to regard the prevention of that mischief, which they may justly be suspected to be likely to do; and in that respect requires them to secure the public from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them or not; and it would be extremely hard in such cases to make persons forfeit their recognizance who may yet justly be compelled to give one, as those who keep suspicious company; or those who spend much money idly, without having any visible means of getting it honestly; or those who lie under a general suspicion of being rogues and the like.—1 *Haw.* 132, 133. However, it seems that such a recognizance shall not only be forfeited for such actual breaches of the peace, for which a recognizance for the peace may be forfeited, but also for some others for which such a recognizance cannot be forfeited; as for going round with great numbers to the terror of the people, or speaking with words tending to sedition; and also, for all such actual misbehaviours which are intended to be prevented by such recognizance, but not for barely giving cause of suspicion of what perhaps may never happen.—1 *Haw.* 133.

For the forms requisite under this title, see “Articles of the Peace,” the forms in which may be easily adapted in any case that may arise under this head, observing throughout to confine the subject matter to “surety of the good behaviour,” omitting the words “surety of the peace.”

SURVEYORS.

See “*Highways*,” “*Land Surveyors*”

SWEARING.

By stat. 19 G. II., c. 21, the following penalties are imposed on offenders who shall profanely curse or swear, and be convicted thereof on confession, or oath of one witness, before one justice, viz. : every day-labourer, common soldier

or common seaman, *one shilling*; every other person under the degree of a gentleman, *two shillings*; and every person of or above the degree of a gentleman, *five shillings*; and for a second offence after conviction, *double*; and for every subsequent offence after conviction, *treble*; which said penalties shall go to the poor of the parish. (a) If such person shall curse or swear in the presence and hearing of a justice, he shall convict him without any other proof.

And by provincial statute 12 V., c. 81, power is given to the municipal authorities incorporated under that act to make by-laws for, amongst other things enumerated, preventing vice, drunkenness, *profane swearing*, obscene language, and any other species of immorality and indecency in the other public places.

TAVERN LICENSES.

See "*Inns and Innkeepers.*"

TELEGRAPH.

By 13 & 14 V., c. 31, if any person shall wilfully or maliciously cut, break, or injure any instrument, cap, wire, post or other erection, used for or by any line of electro-magnetic telegraph, now or hereafter to be in operation in this province; or in any manner impede or obstruct the action and operation of such line; such person shall be punishable by imprisonment for not less than five days, nor more than thirty days, or by fine not exceeding £10, or by both, according to the discretion of the presiding magistrate: and any justice of the peace in any parish, village, city, town or county where the offence was committed, or in which the offender may be found, shall have jurisdiction, and the proceedings be in a summary way; and the fine, if not forthwith paid, may be levied with costs of prosecution by warrant of distress against the offender's goods and chattels; or such offender may (in the discretion of the magistrate), whether imprisonment be or be not part of the sentence, be imprisoned for a period not exceeding thirty days in addition to and after the expiration of any other imprisonment making part of his sentence, unless such fine and all expenses of prosecution be sooner paid; and all such fines shall belong to the aggrieved and complaining party.

By 16 V., c. 10 (act to provide for the incorporation of telegraph companies), § 1, such association shall consist of not

(a) See "*Fines and Forfeitures,*" as to the application.

less than three persons. § 2. Certificate to be signed by them, specifying—1. The name of the association. 2. The capital of stock. 3. Period of commencement and termination. 4. A copy of the articles of association: such certificate to be acknowledged before a notary, and filed in the office of the Provincial Secretary. § 3. Upon such provisions being complied with the association to be incorporated. § 4. May purchase and hold property. § 5. Power to construct intended line. § 6. Any person who shall wilfully and maliciously injure, molest or destroy any of the said lines, posts, piers or abutments, or the material or property belonging thereto, or in any way disturb the working of the said lines of telegraph, shall on conviction be deemed guilty of a misdemeanor, and be punished by a fine not exceeding £10 or imprisonment not exceeding one month, or both at the discretion of the court. § 7. Increase of capital, provision for. § 8. Debts not to exceed one-half of the capital stock. § 9. Existing companies may avail themselves of this act. § 10. Duties of the company in transmitting despatches. § 11. Any operator divulging the contents of a private despatch shall be deemed guilty of a misdemeanor, and on conviction liable to a fine not exceeding £25, or to imprisonment not exceeding three months, or both in the discretion of the court. § 12. The government may at any time assume temporary possession of the line, and operators shall obey orders under the penalty of £25. § 13. The government may also at any time assume the entire property after two months' notice. § 14. Compensation for, how settled. § 14. Municipal corporations and joint stock companies authorised to take stock in telegraph companies.

THEFTBOTE.

Theftbote (from the Saxon *theft* and *bote*, boot or amends) is, where one not only knows of a felony, but takes his goods again, or other amends not to prosecute.—1 *Haw.* 125.

See also "*Compounding Felony.*"

THREATS.

If one man threaten another, to deter him from doing some lawful act, or to compel him to do some unlawful one, or with intent to extort money from him, or obtain any other benefit (whether real or imaginary) to the person who makes use of the threat; this has always been considered a misdemeanor at common law. Thus, to threaten a plaintiff for suing a defendant, or a counsellor or attorney for being employed against any party in a suit; a juror for his verdict; or a

gaoler, or other ministerial officer, for keeping a prisoner in custody and properly executing his duty, are offences for which the party may be indicted and punished by fine or imprisonment.—2 *Inst.* 141; 4 *Bl. Com.* 126; 2 *Chit. C. L.* 149.

With respect to *threats* of personal violence, or any other threats by which a man is put in fear, and by means of the 4 & 5 V., c. 25, § 8, contains the following enactment: which money or other property is actually extorted from him, —whosoever shall accuse, or threaten to accuse, any person of the abominable crime of buggery, committed either with mankind or with beast, or any assault with intent to commit the said abominable crime, or any attempt or endeavour to commit the said abominable crime, or of making or offering any solicitation, persuasion, promise or threat, to any person whereby to move or induce such person to commit or permit the said abominable crime, with a view to extort, and shall by intimidating such person by such accusation or threat, extort or gain from such person any property, shall be guilty of felony, and being convicted shall be liable at the discretion of the court to be imprisoned at hard labour in the provincial penitentiary for life, or any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

§ 11. Whosoever shall with menaces, or by force, demand any chattel, money or valuable security of any person, with intent to steal the same, shall be guilty of felony, and being convicted shall be liable to be imprisoned for any term not exceeding three years.

§ 12. If any person shall knowingly send or deliver any letter or writing, demanding of any person with menaces and without any reasonable or probable cause, any chattel, money or valuable security; or if any person shall accuse, or threaten to accuse, or shall knowingly send or deliver any letter or writing, accusing or threatening to accuse any person of any crime punishable by law with death or transportation, or of any assault with intent to commit rape, with a view to extort from such person any chattel, money or valuable security; every such offender shall be guilty of felony, and being convicted shall be liable at the discretion of the court to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. § 17. Whosoever shall steal any chattel, money or valuable security in any dwelling-house, and shall, by any menace or threat, put any one being therein in bodily fear, shall be guilty of felony,

and being convicted shall be liable to be imprisoned at hard labour in the provincial penitentiary for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

TIMBER RAFTS.

By 12 V., c. 30, s. 13, parties maliciously cutting or loosening booms, or breaking up or casting loose rafts or cribs shall be guilty of a misdemeanor punishable with fine and imprisonment of not less than six months.

TOLLS.

By 7 V., c. 14, § 1, vehicles laden solely with manure brought from any city or incorporated town in Upper Canada, and employed to carry the same into the country for the purposes of agriculture, and the horse or horses, or other beasts of draught drawing such vehicle shall pass *toll free* through any turnpike-gate, or toll-gate, or any turnpike road within *twenty* miles of any such city or town, as well in going as in returning if empty; and whether such turnpike road and the tolls belong to the province or to any local or municipal authority, or body of trustees or commissioners for local purposes, or to any incorporated or unincorporated company, or any other body, person or persons. § 2. All persons going to or returning from divine service on any *Sunday* or *obligatory* holiday with their own carriages, &c., shall, as also their families, &c., pass *toll free*. § 3. No vehicle, laden or unladen, horses or cattle, belonging to the proprietor of any lands divided by such turnpike road, shall be liable to toll on passing through such gate (at whatever distance from any city or town) for the sole purpose of going from one part of his lands to another: provided the same do not proceed more than half a mile along such road either in going or in returning, for farming or domestic purposes only. § 4. This act not to extend to any toll-bridge vested in any party other than the crown.

By 16 V., c. 190 (Joint Stock Company Consolidation Road Act), any farmer residing on the line of any road opposite to and adjoining his farm, when going to or returning from his work on such farm shall pass *toll free*.—§ 39.

See also "*Highways*," "*Public Works*."

TOWN REEVE.

By the general Municipal Act 12 V., c. 81, § 109 (as

amended by 16 V., c. 181, § 22), town reeves and deputy town reeves shall be justices of the peace within their localities.

TRAINING.

*By 1 V., c. 11, § 1, it is enacted that all meetings and assemblies of persons for the purpose of training or drilling themselves, or of being trained or drilled to the use of arms, or for the purpose of practising military exercises, movements or evolutions, without any lawful authority for so doing, shall be and the same are hereby prohibited, as dangerous to the peace; and every person present or attending any such meeting for the purpose of training and drilling any other person or persons to the use of arms, or the practice of military exercise, movement or evolution, or who shall train or drill any other person or persons to the use of arms, or to the practice of military exercise, movements or evolutions, or who shall aid or assist therein, being legally convicted thereof, shall be liable to be confined in the public penitentiary of this province for any term not exceeding two years, or to be punished by fine and imprisonment in any of the common gaols in this province for a period not exceeding two years, at the discretion of the court; and every person who shall attend or be present at any such meeting or assembly, for the purpose of being, or who shall at any such meeting or assembly be trained or drilled to the use of arms or the practice of military exercise, movements or evolutions, being legally convicted thereof, shall be liable to be punished by fine and imprisonment, not exceeding two years, at the discretion of the court. § 2. It shall be lawful for any justice of the peace, constable or peace officer, or for any person acting in their aid or assistance, to disperse any such unlawful meeting or assembly, and to arrest and detain any person present at or aiding, assisting or abetting any such assembly or meeting as aforesaid; and it shall be lawful for the justice of the peace who shall arrest any such person, or before whom any person so arrested shall be brought, to commit such person for trial, unless such person shall give bail for his appearance at the next assizes, to answer to any indictment which may be preferred against him for any offence against this act. § 3. This act not to prevent any prosecution by indictment or otherwise, for any thing that shall be an offence within the meaning of this act, and which might have been so prosecuted if this act had not been made, unless the offender shall have been convicted or acquitted under this act. § 4, 5, 6, expired. § 7. Justices in any

district shall have concurrent jurisdiction as justices of the peace with the justices of any other district, in all cases as to the carrying into execution the provisions of this act, and to all matters relating to the preservation of the public peace.

§ 8. Actions against justices, &c., for any thing done under this act, to be commenced within six months. § 9. The Governor may declare by proclamation this act to be no longer in force in any particular district therein specified. § 10. Prosecutions under this act to be commenced within six calendar months.

TRANSPORTATION.

*By 40 G. III., c. 1, § 5, it is enacted, that when any person shall be convicted of any crime for which he shall be liable by law to be transported, the court, instead of the sentence of transportation, shall order and adjudge that such person be banished from this province for and during the same number of years or term for which he or she would be liable by law to be transported, and do remove himself or herself therefrom within a space of time to be fixed by the court, being not less than two days, nor more than eight, including the day of sentence. And any person found at large in any part of the province without some lawful excuse, after the time for banishment and before the expiration of the term, shall suffer death, as in cases of felony.

The punishment of *death* for this offence was abolished by *3 W. IV., c. 3, and the offence was punishable as any other felony not of a *capital* nature.

*By 7 W. IV., c. 7, § 1, it is enacted, that it shall be lawful after the passing of this act to sentence offenders to transportation, not only in such cases where by any law now in force or hereafter to be passed, it is expressly provided that such offenders may be transported, but also in every case in which by the provisions of the act passed in the *40 G. III., c. 1, the person convicted would be liable to be banished from this province: *provided*, that no such offender shall, under the authority of this act, be sentenced to be transported except by such court, and in such cases, and for such term of time as the same offender might, according to the said act, be banished from this province: and nothing in this act shall be construed to take away or affect the power of sentencing offenders to be banished, according to the act hereinbefore recited, when it shall appear proper to pass such sentence. § 2. All the provisions now in force which are contained in the said act *40 G. III., c. 1, respecting persons returning to

this province before the expiration of the period for which they have been banished, or have consented to be banished according to the terms of any conditional pardon, shall equally extend to any person returning from transportation. § 3. That the sentence in cases of transportation shall be that the offender shall be transported for a time to be mentioned in such sentence, or for life, where that may be lawful and shall in the opinion of the court appear proper, to such place as the Governor, or person administering the government of this province, by and with the advice of the executive council thereof, shall appoint. § 4. The Governor, with the advice of the executive council, is to determine, upon reference to his Majesty's government in England, to what foreign possession convicts shall be transported from this province. § 5. Convicts to be removed to the sea-port or place for transportation by judge's warrant, and if any person shall rescue or assist any convict to escape, such offence shall be punishable in the same manner as if such convict had, at the time it was committed, been confined in a gaol or prison in the custody of the sheriff or gaoler after sentence. § 6. Imprisonment after sentence to be reckoned as part of the term of transportation. § 8. In case of any difficulty occurring which may prevent the transportation of any convict, such convict may be detained in prison for the remainder of his sentence, unless pardoned, in which case banishment may be made a condition for the residue of the time.

By 4 & 5 V., c. 24, § 25, any person returning from transportation or banishment shall be *transported* for life, and imprisoned previous thereto.

By 6 V., c. 5, § 4, any offender liable to be punished by transportation may if convicted after this act be punished by imprisonment in the provincial penitentiary for the like term.

TRAVELLERS.

By 18 V., c. 138, § 1, the 16 V., c. 189, and all other acts inconsistent with this are repealed. § 2. All persons proceeding, going or travelling upon any highway in Upper Canada in charge of any vehicle drawn by one or more horses or other animal or animals, shall, when meeting any other vehicle drawn by one or more horse or horses or other animal or animals, turn out to the right from the centre of the road, allowing to such vehicle so met one-half of the road; and if by reason of the extreme weight of the load on either of such vehicles the driver thereof shall find it im-

practicable so to turn out, he shall immediately stop, and if necessary for the safety of the other vehicle and when required so to do, he shall assist the person or persons in charge thereof to pass without damage. § 3. Every person proceeding, going or travelling on any highway as aforesaid or on horseback when overtaken by any vehicle or horseman travelling at greater speed, shall quietly turn out to the right and allow the said vehicle or horseman to pass; and in the case of one vehicle being overtaken by another, if by reason of the extreme weight of the load on the vehicle so overtaken the driver thereof shall find it impracticable so to turn out, he shall immediately stop, and if necessary for the safety of the other vehicle and when required so to do, shall assist the person or persons in charge thereof to pass without damage. § 4. Every person in charge of any vehicle on any highway aforesaid, or of any horse or other animal used as the means of conveyance, who shall through drunkenness be unable to ride or drive the same with safety to her Majesty's subjects, shall upon conviction thereof be liable to the penalties imposed by this act. § 5. All racing or furious driving upon any highway in Upper Canada shall be unlawful, and the person or persons so racing or furiously driving, or shouting, or using blasphemous or indecent language, shall on conviction thereof be liable to the penalties imposed by this act. § 6. Any person or persons riding or driving any vehicle, horse or other beast of burden over any bridge above the length of thirty feet at any pace faster than a walk shall be liable to the penalties imposed by this act: provided always, that a notice of the regulation hereby imposed shall first be conspicuously placed on such bridge. § 7. Every person travelling on any highway aforesaid with any sled or cariole drawn by one or more horses or mule or mules, shall have at least two bells attached to the harness of such horse or horses or mule or mules. § 8. For any contravention of any of the preceding sections of this act duly proved upon the oath of any credible witness before any justice of the peace having jurisdiction within the county where the offence shall have been committed the offender shall incur a penalty of not less than five shillings nor more than five pounds, in the discretion of the said justice, with costs to be levied by distress and sale of the goods and chattels of the offender; and in default of payment and distress the offender shall be imprisoned in the common gaol of the county for a period not less than one day and not more than twenty days, at the discretion of the convicting justice: provided always, that the said fine and imprisonment shall be no bar to the recovery of damages by

the injured party before any court of competent jurisdiction. § 9. All fines collected under this act shall be paid to the treasurer or chamberlain of the township, village, town or city where the offences for which they were imposed were committed, to be applied to the general purposes of the same. § 10. All convictions under this act shall be subject to appeal.

TRAVERSE.

By 20 V. c. 62, § 2, no person prosecuted shall be entitled to traverse or postpone the trial of any indictment found against him at any sessions of the peace, session of oyer and terminer, or session of gaol delivery: provided always, that if the court upon the application of the person so indicted, or otherwise, shall be of opinion that the defendant or defendants ought to be allowed a further time either to prepare for his or their defence, or otherwise, such court may adjourn the bail to the next subsequent session upon such terms as to bail or otherwise, as to such court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly, and without entering into fresh recognizances.

TREASON.

Treason, according to Lord *Coke*, is derived from *trahir*, to betray; and *trahison*, by contraction, treason, is the betraying itself.—3 *Inst.* 4. Treason, generally spoken, is intended not of petit treason, but of high treason only.—1 *H. H.* 316.

Of High Treason.

By the statute of the 25 Ed. III. st. 5, c. 2, which Lord *Hale* calls a sacred act, and Lord *Coke* an excellent act, and the king who made it a *blessed* king, and the parliament a *blessed* parliament, all treasons which had been uncertain before, were settled; which act, by the 1 Mar. sess. 1, c. 1, is reinforced, and again made the only standard of treason; and all statutes, between the said statutes of 25 Ed. III. and 1 Mar., which made any offence high or petit treason, or misprision of treason, are abrogated, so that no offence is at this day to be esteemed high treason, unless it be either declared to be such by the said statute of the 25 E. III., or made such by some statute since the 1 Mar.

The 25 Ed. III., is as follows:—"Whereas divers opinions have been before this time, in what case treason shall be laid, and in what not, the king at the request of the Lords and Commons, hath made a declaration in the manner as hereinafter followeth—that is to say: when a man doth

compass or imagine the death of our lord the king, or of our lady his queen, or of their eldest son and heir; or if a man do violate the king's companion (that is, his wife.—3 *Inst.* 9), or the king's eldest daughter, unmarried; or the wife of the king's eldest son and heir; or if a man do levy war against our lord the king in his realm; or be adherent to the king's enemies in his realm, giving them aid and comfort in the realm and elsewhere, and thereof be (proveablement, proveably) attainted of open deed by the people of their condition; and if a man counterfeit the king's great or privy seal, or his money; and if a man bring false money into the realm, counterfeit to the money of England, knowing the same to be false; and if a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize; and all other justices assigned to hear and determine, being in their places doing their offices."

And by the statute 1 Mar. sess. 1, c. 1 (which Lord Hale calls another excellent law), "no act, deed or offence, being by act of parliament made treason, by words, writing, ciphering, deeds, or otherwise, whatsoever, shall be adjudged to be treason, but only such as be declared by the said statute of the 25 Ed. III." And this, he says, at one blow laid flat all the numerous treasons at any time enacted since the 25 Ed. III.—1 *H. H.* 308.

Lord Coke (3 *Inst.* 14, 140) seems to be of opinion, upon the said act of the 25 Ed. III., that *bare words* are not a sufficient *overt act* or *open deed*, whereby to convict a person of treason; but they are misprision of treason only. So also Lord Hale seems to think that words, unless put into writing, are not regularly an overt act.—1 *H. H.* 111, 118. But Mr. Hawkins argues the contrary; and amongst other reasons for his opinion, he observes that to charge a man with speaking treason is unquestionably actionable, which could not be if no words could amount to treason. Also, that as in the case of felony, he who by command or persuasion induceth another to commit felony, is an accessory in felony, so he who does the same in treason is a principal traitor (there being no accessories in treason, but all being principals): and yet such person doth not act but by words.—1 *Haw.*, 39. And it has been the constant practice, ever since the revolution at least (1688), where a person, by treasonable discourses, hath manifested a desire to murder or depose the king, to convict him upon such evidence. And in Lowick's case, Holt, C. J., declared that *express words* were not necessary to convict a man of high treason; but if, from the tenor of his discourse, the jury is satisfied he was

engaged in a design against the king's life, this is sufficient to convict the prisoner.—*Read. Treat.* 147.

Offences in relation to the coin, in England, are made treason by many statutes, but are scarcely applicable to this province.

The different treasons relating to the papists, or persons exercising the Roman Catholic religion, namely, that created by 5 Eliz., c. 1, of defending the Pope's jurisdiction in this realm; that created by the 27 Eliz., c. 2, of a popish priest tarrying three days in England without taking the oaths; that created by the 3 Jac. 1., c. 4, of any natural-born subject being reconciled to the See of Rome—have long become obsolete, and seem indeed to be now virtually repealed by the 31 G. III., c. 32.

But there is one kind of treason declared by the 23 Eliz., c. 1, that is distinct from any treason of the last description, although the statute was made ostensibly against maintaining the authority of the See of Rome. By § 2, it is enacted, that all persons who shall pretend to have power, or shall by any means put in practice to absolve, persuade, or withdraw any subject from his natural obedience to her Majesty, or to promise any obedience to the See of Rome, or of any other prince, state or potentate; or shall do any overt act to that intent or purpose, shall be guilty of high treason. So by the 3 Jac. 1., c. 4, § 22, if any person shall, either upon the seas or beyond the seas, or in any other place within the dominions of his Majesty, his heirs and successors, put in practice to absolve, persuade, or withdraw, any of the subjects of the king, or of his heirs or successors of the realm of England, from their natural obedience to his Majesty, his heirs or successors, or to move them, or any of them, to promise obedience to any prince, state or potentate—every such person shall suffer as in cases of high treason. And by § 3, the like penalty attaches to any one being willingly so absolved or withdrawn from his allegiance, or who shall promise obedience to any such prince, state or potentate.

In high treason there are no accessories, but all are principals, and therefore whatever act or consent will make a man accessory to a felony before the act done, the same will make him a principal in case of high treason.—3 *Inst.* 9, 21.

By 7 W. III., c. 3, no person shall be prosecuted for high treason but within three years after the offence committed, except in the case of designing to assassinate the king's person. And by the 31 C. II., c. 2, persons committed for high treason shall be indicted the next term, or next assize, otherwise they shall be let to bail, unless it appear to the court, upon oath, that the witnesses for the king could not

be produced in that time; and in such case, they shall be indicted the second term or assize, or else discharged.

By 7 Anne, c. 21, § 11, persons indicted for high treason, or misprision of treason shall have a copy of the indictment, and lists of the jurors and witnesses, delivered to them ten days before the trial; and by 7 W. III., c. 3, shall have two such counsel as they shall desire assigned to them by the court, who shall have access to them at reasonable times.

The judgment for high treason (not relating to the coin) formerly was, that the offender should be carried back to the place from whence he came, and from thence to be drawn to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out and burnt before his face, and his head cut off, and his body divided into four quarters, and his head and quarters disposed of at the king's pleasure—2 *Haw.*, 443; but now, by *3 W. IV., c. 4, the sentence is, that "such person shall be drawn on a hurdle to the place of execution, and be there hanged by the neck until such person be dead, and that afterwards, the body of such person shall be dissected and anatomised."

In the said judgment is implied forfeiture of lands and goods to the King; loss of dower; and corruption of blood.—3 *Inst.* 211. But after the death of the Pretender (and of his issue), no attainder for treason shall disinherit or prejudice any heir or other person, other than the offender, during his life.—7 *An. c.* 21, § 10; 17 *G. II. c.* 39, § 3.

By 4 & 5 V., c. 24, § 18, the jury impannelled to try any person for treason, or felony, shall not be charged to inquire concerning his lands, tenements or goods, nor whether he fled for such treason or felony.

Petit Treason.

Is where a servant slayeth his master, or a wife her husband, and is distinguishable from high treason in this way; high treason can only be committed against the King, petit treason against the King's subjects.—3 *Inst.* 20.

By *3 W. IV., c. 3, the punishment for petit treason is the same as in cases of murder. See also 4 & 5 V. c. 27, § 2.

Misprision of Treason.

Misprision cometh of the French word *mespris*, which properly signifieth neglect or contempt; and misprision of treason in legal understanding, signifieth when one knoweth of any treason, though no party or consentor to it, yet conceals it, and doth not reveal it in convenient time.—3 *Inst.* 36; 1 *H. H.* 371. The judgment of misprision of treason is, to be im-

prisoned during life, to forfeit his goods for ever, and the profits of his lands during his life.—3 *Inst.* 36. Every man, therefore, that knoweth a treason, ought with all speed to reveal it to the King, his privy council, or other magistrate.—*H. Pl.* 127. But it seemeth that misprision of petit treason is not subject to the judgment of misprision of high treason, but only is punishable by fine and imprisonment, as in the case of misprision of felony.—1 *H. H.* 375.

TREES—SAPLINGS—SHRUBS.

By stat. 4 & 5 V., c. 25, § 31, if any person shall steal, or shall cut, break, root up, or otherwise destroy or damage *with intent to steal*, the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be respectively growing—the stealing of such article or articles, or the injury done being to the amount of a shilling at the least—every such offender, being convicted before a justice of the peace, shall for every such offence forfeit and pay over and above the value of the article or articles stolen, or the amount of the injury done, such a sum of money, not exceeding £5, as to the justice shall seem meet.

By stat. 4 & 5 V., c. 26, § 19, if any person shall unlawfully and *maliciously* cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling or shrub, or any underwood respectively growing in any such park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling-house, every such offender shall be guilty of a *misdemeanor*, and being convicted thereof shall be punished accordingly; and if any person shall unlawfully and maliciously cut, break, root up, or otherwise destroy or damage the whole or any part of any tree, sapling or shrub, or any underwood respectively growing elsewhere than in any of the situations hereinbefore mentioned, every such offender (in case the amount of the injury done shall exceed one pound) shall be guilty of a *misdemeanor*, and being convicted thereof shall be punished accordingly. § 20. If any person shall unlawfully and *maliciously* cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be respectively growing, the injury done being to the amount of *one shilling* at the least, every such offender being convicted thereof before a justice of the peace shall forfeit and pay over and above the amount of the injury done, such sum of money, not exceeding £1, as to the justices shall seem meet.

See also "*Felling Trees.*"

TRIAL.

By 18 V., c. 92, § 1, whenever on the trial of any indictment for any felony or misdemeanor there shall appear to be any variance between the statement in such indictment and the evidence in names, dates, places, or other matters not material to the merits of the cause, and by the mistatement whereof the person on trial cannot be prejudiced in his defence on such merits, it shall be lawful for the court to order such indictment to be amended according to the proof by some officer of the court or other persons on such terms as to postponing the trial before the same or another jury as the court shall think reasonable: and after such amendment the trial shall proceed in all respects and with the same consequences as to the liability of witnesses to be indicted for perjury and otherwise as if no such variance had occurred: and in case such trial shall be had at *nisi prius*, the order for amendment shall be indorsed on the indictment and returned therewith; and in all other cases the amendment shall be endorsed on or filed with the indictment, and returned among the proper records of the court: provided always that when such trial shall be had before a second jury the crown and defendant shall be entitled to the same challenges as before the first jury were sworn.

§ 13. If on the trial of any person charged with felony or misdemeanor the evidence be incomplete and shew an attempt only to commit the same, the jury may find the defendant not guilty of the principal offence, but guilty of the attempt, and defendant shall be punished accordingly.

§ 14. If on a trial for larceny it shall appear that the property has been obtained by fraud, not amounting to larceny, then the jury may acquit for the larceny and find the defendant guilty of obtaining such property by false pretences, and he shall be punished accordingly.

§ 15. If on a trial for misdemeanor it shall appear that the facts amount to felony, the defendant shall not be acquitted of such misdemeanor: and no person tried for such misdemeanor shall be afterwards prosecuted for the felony, unless the court shall think fit in its discretion to discharge the jury, and direct the party to be indicted for the felony.

§ 16. If upon the trial of any clerk or servant for embezzlement the facts proved amount to larceny, the jury may return as their verdict "not guilty" of the embezzlement, but "guilty" of simple larceny, or of larceny as a clerk or servant, and thereupon the party shall be punished accordingly; and if upon a trial for larceny the facts proved amount to

embezzlement, the jury may return their verdict accordingly, and the party shall be punished for the embezzlement.

§ 17. If upon the trial of two or more persons for jointly receiving any property, it shall be proved that one or more received the same, the jury may convict the actual receivers only.

§ 19. If on the trial of any indictment for larceny, it shall appear the property was stolen at different times, the prosecutor shall not be required to elect upon which he will proceed, unless there be more than three takings, or that more than six months elapsed between the first and last of such takings; and in either such case the prosecutor shall then elect to proceed for such number of takings, not exceeding three, as appears to have taken place within six calendar months from the first to the last of such takings.

TURNPIKES.

By 4 & 5 V., c. 26, § 14, if any person shall unlawfully and maliciously throw down, level or otherwise destroy, in whole or in part, any turnpike gate, or any wall, chain, rail, post, bar or other fence belonging to any turnpike gate, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any act or acts, ordinance or ordinances relating thereto, in force in this province; or any house, building, or weighing engine, erected for the better collection, ascertainment or security of any such toll, every such offender shall be guilty of a *misdemeanor*, and being convicted thereof shall be punished accordingly.

See also "*Highways.*"

UNORGANISED TRACTS.

By the *59 G. III., c. 10, § 1, it is provided that all crimes and offences committed in any of the tracts of country or parts of this province (Upper Canada), not being within the limits of any described county or township may be inquired of and tried within any district of this province, and may be laid and charged to have been committed within the jurisdiction of the court which shall try the same.

By the 9 V., c. 41, § 1, the Governor is authorised to appoint justices of the peace in all such remote parts of the province, and it shall not be necessary for such justices to possess any property qualification under the 6 V., c. 3, or any other acts. § 3. Such justices shall cause offenders to be committed to the nearest common gaol. § 4. And appeals to the quarter sessions where by law allowed, shall be to the nearest court of general quarter sessions.

By 16 V., c. 176, the Governor is authorised to form a provisional judicial district out of certain unorganised tracts adjacent to lakes Superior and Huron, and to authorise the holding of judicial courts (civil and criminal) therein, and appoint judges. The acts and laws now in force with respect to the holding of courts of quarter sessions, county courts and division courts, and appointment of judicial officers to apply to such provisional districts. Justices of the peace therein to have the same powers therein as justices of the peace in Upper Canada had in districts before the passing of the 4 & 5 V., c. 10. But nothing in this act is to effect the *59 G. III., c. 10. By § 9, it is enacted that any person inciting Indians or half breeds frequenting or residing in such tracts, to the disturbance of the public peace, or to the commission of any indictable offence, shall be guilty of *felony*, and upon conviction, be sentenced to imprisonment for not more than *five* years, nor less than two years in the provincial penitentiary, and may be committed to any common gaol in Upper Canada. § 10. Such buildings as may be provided by the commissioners of public works, shall, under the direction of the Governor, be the court houses and gaols of such provisional districts. § 11. And the sheriff of such district may summon any of the inhabitants as jurors.

By the 20 V., c. 60, § 1, the Governor is authorised to erect such unorganised tracts, and all other parts of Canada not included within the settled limits of any county or district into temporary judicial districts, and to divide each into two or more divisions. § 3. And appoint a stipendiary magistrate for each district—§ 5, who shall be *ex officio* a justice of the peace therein—§ 6, and have the power to appoint constables. § 8. Temporary gaols to be provided therein, but offenders to be committed for trial, as heretofore, to the gaol of the proper county in this province. The act also provides for the constitution of a civil court and the disposal of civil matters between party and party.

USURY.

Usury is the offence of extorting an unreasonable rate of interest for the loan of money, beyond what is allowed by law, and from what is said in the books, it appears that usury was originally considered as an offence at common law.—2 *Roll.* 800; 3 *Inst.* 151, 152; 6 *Com. Dig.*; *Usury (A.) Anon. Hardr.* 410. The rate of legal interest in this province is 6 per cent. by the *51 G. III. c. 9, § 6; which also enacts, that all bonds, contracts and assurances whatsoever, whereby a greater rate of interest shall be reserved

and taken, shall be utterly void; and every person who shall either directly or indirectly take, accept, and receive a higher interest, shall forfeit and lose for every such offence treble of the value of the moneys, wares, merchandizes and other things lent or bargained for, to be recovered by action of debt in the Court of King's Bench in this province; a moiety of such forfeiture to the use of the province, and the other moiety to the informer.

By 16 V., c. 80, § 1, the 6th section of the above act is repealed. § 2. Penalties for usury abolished. § 3. Contracts and securities to be void only as regards any excess of interest above six per cent. § 4. This act not to extend to banking institutions, insurance companies, or to associations heretofore authorised to borrow or lend money at a higher rate of interest.

VAGRANTS.

1. *Idle and Disorderly Persons.*

By 7 J. c. 4, idle and disorderly persons shall be sent to the house of correction; and by 17 G. II. c. 5, idle and disorderly person are thus described *inter alia*:—1. All persons who, not having wherewith to maintain themselves, live idle without employment, and refuse to work for the usual and common wages given to other labourers in the like work in the parishes or places where they are. 2. All persons going about from door to door, or placing themselves in streets, highways, or passages, to beg or gather alms in the parishes or places where they dwell—all these shall be deemed idle and disorderly persons. And it shall be lawful for one justice to commit such offenders (being convicted thereof before him, by his own view, or confession, or oath of one witness) to the house of correction, to be kept to hard labour, not exceeding one month. And any person may apprehend, and carry before a justice, any such persons going about from door to door, or placing themselves in streets, highways, or passages, to beg alms in the parishes or place where they dwell, and if they shall resist or escape from the person apprehending them, they shall be punished as rogues and vagabonds.

2. *Rogues and Vagabonds.*

By 17 G. II., c. 5, the following persons shall be deemed rogues and vagabonds:—1. All persons going about as patent gatherers, or gatherers of alms, under pretences of loss by fire, or other casualty. 2. Persons going about as collectors for prisons, gaols or hospitals. 3. Fencers. 4. Bear-

wards. 5. Common players, not authorised by law. 6. Minstrels. 7. Jugglers. 8. Gypsies. 9. Or pretending to have skill in physiognomy, palmistry, or like crafty science, or to tell fortunes. 10. Or using any subtle craft to deceive and impose on any of his Majesty's subjects. 11. Or playing or betting at any unlawful games or plays. 12. All persons wandering abroad, and lodging in ale-houses, barns, out-houses, or in the open air, not giving a good account of themselves. 13. All persons wandering abroad and begging, pretending to be soldiers, mariners, or seafaring men. 14. Or pretending to go to work in harvest. 15. And all other persons wandering abroad and begging, shall be deemed rogues and vagabonds.

Incorrigible Rogues are thus described by 17 G. II. c. 5.

1. All end-gatherers offending against the statute of 13 G., c. 23, being convicted of such offence. 2. All persons apprehended as rogues and vagabonds, and escaping from the persons who apprehend them. 3. All rogues or vagabonds who shall break or escape out of any house of correction, before the expiration of the term for which they were committed or ordered to be confined by this act. 4. All persons who, after having been punished as rogues and vagabonds, and discharged, shall again commit any of the said offences: all these shall be deemed incorrigible rogues.

4. *Apprehending Rogues.*

If any person shall be found offending against this act, the constable shall apprehend him, and convey, or cause him to be conveyed, to a justice of the peace—17 G. II., c. 5, § 5, under the penalty of 10s. for such refusal.—*Ib.* And any other person may apprehend and carry him to the constable, or to a justice.

5. *Punishment.*

And such justice shall order such person so apprehended to be publicly whipped by the constable, or shall order him to be sent to the house of correction (or common gaol—27 G. III., c. 11) till the next sessions, or for any less time, as such justice shall think proper.—17 G. II., c. 5, § 7. And if committed till the sessions, and the justices at such sessions shall, on examination of the case, adjudge such person to be a rogue or a vagabond, or an incorrigible rogue, they may order such rogue or vagabond to be detained in the house of correction for any further time, not exceeding six months; and such incorrigible rogue, for any further time not exceeding two years, nor less than six months, and during his con

finement to be whipped in such a manner, and at such times and places as they shall think fit. And if such incorrigible rogue, so ordered by the sessions to be detained in the house of correction, shall break out, or make his escape, or shall offend again in like manner, he shall be guilty of felony, and be transported for seven years.—17 G. II., c. 5, § 7, 8, 9. And by 13 and 14 C. II., c. 12, the justices in session may transport such rogues, vagabonds, and sturdy beggars, as shall be duly convicted and adjudged to be incorrigible.—§ 23.

6. *Penalty for Lodging Vagrants.*

If any person shall knowingly permit any rogue, vagabond, or incorrigible rogue, to lodge or take shelter in his house, barn, or other out-house or building, and shall not apprehend and carry him before a justice, or give notice to the constable to do so, he shall forfeit not exceeding 40s., nor less than 10s., upon conviction before one justice, half to the informer, and half to the poor, by distress and sale.—17 G. II., c. 5, § 23.

6. *General Penalty for hindering the execution of the Vagrant Act.*

If any constables or other officer, or governor of any house of correction, shall be defective in his duty; or if any person shall hinder the execution of this act, or shall rescue any person apprehended, or aid therein, he shall, on conviction before one justice, forfeit not exceeding £5, nor less than 10s., and in default, be committed to the house of correction, with hard labour, not exceeding two months.—17 G. II., c. 5, § 22.

VEGETABLES.

By 4 & 5 V., c. 25, § 34, if any person shall steal, or shall destroy, or damage with intent to steal, any tree, sapling, shrub, bush, plant, root, fruit or vegetable production, growing in any garden, orchard, nursery-ground, hot-house, greenhouse, or conservatory, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money, not exceeding £5, as to the justice shall seem meet; and if any person so convicted shall afterwards commit any of the said offences, such offender shall be deemed guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny. § 35. If any person shall steal, or shall destroy or damage with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, or for dyeing, or for or in the course of any manufac-

ture, and growing in any land open or enclosed, not being a garden or nursery ground, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay, over and above the value of the article or articles stolen, or the amount of the injury done, such sum of money not exceeding 20s. as to the justice shall seem meet; and in default of payment thereof, together with the costs if ordered, shall be committed to the house of correction for any term not exceeding one calendar month, unless payment be sooner made.

By 10 & 11 V., c. 4, § 7, the attempt to set fire to any stock to any vegetable produce of such kind, and with such intent, that if any offence was complete the offender would be guilty of felony, &c., is made felony and punishable accordingly.

For forms of proceeding see title "*Summary Conviction.*"

VESSELS.

By 4 & 5 V., c. 25, § 21, if any person shall steal any goods or merchandise in any vessel, barge or boat of any description whatsoever, in any port of entry or discharge, or upon any navigable river or canal, or in any creek belonging to or communicating therewith, or from any dock, wharf, or quay adjacent, such offender shall upon conviction be liable to any of the punishments which the court may award, as set forth in the act.

See also "*Navigation,*" "*Wreck.*"

WAREHOUSE.

By 4 & 5 c. 25, § 20, if any person shall break and enter any shop, warehouse, or counting house and steal therein any chattel, money, or valuable security, every such offender being convicted thereof shall be liable to any of the punishments which the court may award, as therein mentioned.

See title "*Punishment.*"

WAREHOUSE-MAN.

By 12 V., c. 12, § 1, any warehouse-man, forwarder, carrier, agent or clerk, giving a false receipt, with intent to defraud, shall be guilty of a misdemeanor.

See further "*False Receipts.*"

WARRANT.

A warrant is a precept under the hand and seal of a magistrate or other public functionary, directed to some officer, either to arrest an offender or to seize or distrain upon his goods, to be dealt with respectively in either case according to law. A warrant can only be executed by some one or

more of the persons to whom it is directed, unless indeed it be directed to the sheriff, who may either by parol or by precept in writing, authorise an officer, sworn and known, to execute it, but the sheriff cannot empower any other person without a precept in writing.—1 *Haw. c.* 60, § 11. If the warrant direct the officer to cause the party complained of to come before some justice of the peace, to find surety for keeping the peace, the officer before he makes any arrest, ought first to require the party to go with him, and find sureties according to the purport of the warrant, and if he refuses, the officer may carry him by force before the magistrate, or confine him in some gaol till he can be conveniently brought before the magistrate.—*Ibid.* If the warrant specially direct that the party shall be brought before the justice who issued it, the officer ought not to carry him before any other; but if the warrant be general, to bring him before any justice, the officer has then the election to bring him before any justice he pleases, and may carry him to prison for refusing to obey the warrant.—*Ibid.*

By 16 V., c. 179, § 3, any warrant or search warrant may be granted or issued on a Sunday as well as on any other day.

In what cases, and in what form a warrant may be granted for the apprehension of a party, see "*Arrest*," titles "*Justices of the Peace*."

For what cause, and in what form a warrant of commitment may be issued, see title "*Commitment*."

And see further, "*Distress*," "*Search Warrant*," and "*Habeas Corpus*."

WEIGHTS AND MEASURES.

By the *4 G. IV., c. 16, the secretary shall furnish each district with a true standard.

§ 6. And all store-keepers, shop-keepers, millers, distillers, butchers, bakers, hucksters, and other trading persons, who shall have in their possession any weights or measures, whereby they sell or buy articles, other than such as have been examined and stamped as aforesaid, shall, upon being convicted before any one justice, on the oath of one witness, forfeit £2 for every offence, to be levied with reasonable costs, by distress and sale, and in default the offender shall be committed to the common gaol for any term not exceeding one month. The other sections of this act are repealed by the 12 V., c. 85.

* By the 3 V., c. 17, § 3, information of the inspector upon oath to be *prima facie* evidence for a conviction.

By 12 V., c. 85, § 2, the inspectors of licenses (a) are to be also inspectors of weights and measures within their respective districts; § 3, and to stamp, if found true, all weights and measures submitted to them; § 4. to attend for that purpose at such times and places as the magistrates in quarter sessions shall appoint; and every storekeeper, shopkeeper, miller, distiller, butcher, baker, huckster, or other trading person, wharfinger or forwarder, who shall two months after the appointment of an inspector therefor, use any weight or measure not duly stamped according to law, or which shall be found light or otherwise unjust, shall, on conviction, forfeit not more than £5, nor less than £2, to be recovered under the next section, and every such light or unjust weight or measure so used, shall, on being discovered by any such inspector, be seized, and on conviction of the offender be forfeited and broken up by the inspector. § 5. It shall be lawful for every such inspector at all reasonable times, to enter any shop, store, warehouse, stall, yard, or place whatsoever within his division, where any commodity shall be bought, sold or exchanged, weighed, exposed, or kept for sale, or weighed or for conveyance or carriage, and there to examine all weights, measures, steelyards, or other weighing machines, and to compare and try the same with the copies of the standard weights or measures provided by law; and if any shall be found unstamped or light, or otherwise unjust, the same shall be liable to be seized and forfeited, and the person in possession of the same shall, on conviction, forfeit a sum not exceeding £2 for the first, and £5 for every subsequent offence, to be recovered with reasonable costs before any justice of the the peace on the oath of the inspector, or any other credible witness, and if not forthwith paid, to be levied by distress and sale, and in default of distress the offender shall be committed to the common gaol of the district for any term not exceeding one month; penalties under this act to belong to the crown, and be paid to the inspector, to be accounted for with other public moneys; and any person who shall have in possession a steelyard or other weighing machine, found on examination to be incorrect or unjust, or shall neglect or refuse to produce for examination when required all weights, measures, steelyards, or other weighing machines in his possession, or shall obstruct or hinder such examination, shall be liable to a like penalty, to be recovered and applied as aforesaid; but no such penalty

(a) Repealed by 18 V., c. 135, and the municipal council authorised to appoint inspectors.

shall be incurred until two months at least after a standard of weights and measures shall have been received by the inspector. § 6. Forging or counterfeiting any stamp or mark used for stamping or making weights or measures, to be a misdemeanor, and the offender liable to fine and imprisonment not to exceed three calendar months; and if any person shall knowingly sell, alter, dispose of, or expose to sale, any weight or measure, with such forged stamp or mark thereon, shall for every such offence forfeit, on conviction, a sum not exceeding £10, nor less than 40s.; and the same shall be forfeited and broken up by the inspector. § 7. If any inspector shall stamp or mark any weight or measure, not duly compared and verified by the standard weights and measures, or shall be guilty of any breach of duty under this act, he shall forfeit on conviction a sum not exceeding £5, to be recovered as aforesaid. § 8. Inspector's fee for every weight or measure marked or stamped, to be 6d. and no more. § 9. In cases of more than one inspector for the district, standard weights and measures to be lodged with such inspector as the magistrate in quarter sessions may direct. § 10. Inspectors to give one month's notice in a newspaper from time to time, and at least once a year, of the days and places to be appointed by the magistrates in quarter sessions, when he will attend to examine weights and measures. § 11. Former inspectors to hand over to the inspectors under this act all and every standard weight and measure, balance, stamp, brand, and other machine, or copy thereof in their custody, under a penalty of £5, to be recovered as aforesaid. § 12. Whenever any municipal body shall appoint an inspector for any city, town, or incorporated village, such inspector may apply to the inspector under the provisions of this act, for the district, &c., within which such city, &c., shall be situate, to adjust a copy of any of the standard weights and measures for the use of such inspector, and upon producing to such inspector such weights and measures as shall be required for such city, &c., it shall be the duty of such inspector carefully to compare and adjust, and to seal, stamp, or mark the same as provided by law, for the like fees as in other cases; and thereupon the powers, duty, and liabilities of the inspectors appointed under this act shall cease, as to such city, &c., and devolve upon the inspector thereof. § 12. In case of removal from office, resignation or removal from the place, such inspector to deliver over to his successor in office all beams, stamps, and standard weights and measures in his possession; and in case of death his representatives to do so; and in case of neglect or refusal, in addition to the penalties hereinbefore

provided, such successor may maintain an action on the case against the party or parties, and recover double the value of such standards, with double costs of suit; one moiety to the plaintiff, the other to be applied in supplying such standards as may be required. § 14. Appeal given in cases where penalty inflicted shall exceed 40s. to the next general quarter sessions, holden not less than twelve days after conviction, in like manner as provided with regard to appeals, by the 33 and 34 §§ of the 4 and 5 V., c. 26.

WIFE.

The wife of a man (in legal language a *feme covert*) is so much favoured in law on account of the matrimonial subjection due from her to her husband, that if she commit theft, or even a burglary, by his coercion, or merely in his company (when the law presumes a coercion), she is held to be exempt from punishment; being considered as acting in either of these instances by compulsion, and not of her own free will. This doctrine, Sir William Blackstone observes, is at least a thousand years old, being to be found among the laws of king Ina, the West Saxon.—4 *Bl. Com.* 28. The presumption of coercion, does not amount to more than a *prima facie* presumption of law, and therefore if it appear in evidence that the wife was not drawn to the offence by the husband, but that she was in fact the principal instigator of it, or was acting herself as a free and independent agent, she is in this case guilty as well as the husband. If the wife also procure her husband to commit the offence, she is then an accessory before the fact, in the same manner as if she had been sole.—1 *Hale*, 516; 2 *Haw.*, 29, § 34.

There are also some exceptions to the impunity of the wife in committing crimes, even though acting under the coercion of her husband, by reason of the heinousness of the offence committed. Thus, in treason, no plea of *coverture* shall excuse the wife.—4 *Bl. Com.* 29. In murder also, and offences of the like description, which are prohibited by the law of nature, and are *mala in se*, the wife is held a responsible agent notwithstanding the coercion of her husband.

In inferior misdemeanors, there is also another exception as to the responsibility of the wife, for she may be indicted and punished *with* her husband for keeping a *brothel*; this being considered to be an offence touching the domestic economy of the *house*, in which the wife has necessarily a principal share, and of that description, moreover, which the law presumes to be generally conducted by the intrigues of the female sex.—1 *Haw.*, c. 1, § 12. But a prosecution for a

conspiracy is not maintainable against husband and wife only, because they are esteemed but one person in law; and in order to support an indictment for conspiracy there must be a conspiring between *two* persons at the least.—1 *Haw.*, c. 72, § 8. In all cases, however, where the wife offends *alone*, without the company or coercion of her husband, she is then as much responsible for her offence as any *feme sole*.—4 *Bl. Com.* 29. And whenever she commits an offence in the absence of her husband, it will be no excuse that she committed it by his order.—*R. v. Morris, R. & R.* 270. If a woman receives stolen goods into her house, knowing them to be so, or lock them up in her chest or chamber, without the knowledge of her husband, she alone may be indicted. But if the ignorance of the husband is not satisfactorily proved, as by his continued absence from home, or by other circumstances, the law will, in most cases, impute the receiving to him, and not to the wife.—*Dalt. c.* 357, p. 353. Although the husband may be indicted as an accessory for receiving by the wife, knowing her to have committed a felony, yet the wife shall not be deemed an accessory for receiving by her husband. Neither is the wife affected by receiving jointly with her husband a *third person*, who has committed felony; except in case of treason. But if she alone, in the absence of her husband, and without his knowledge, knowingly receive a felon, she may then be indicted as an accessory, and not the husband.—1 *Hale*, 47, 621; 1 *Haw.*, c. 1, § 10. A wife cannot be convicted of felony in stealing her husband's goods. But if the wife take the goods of her husband and deliver them to B., who elopes with her and the goods, as her *adulterer*, this will then be felony in B.—*Dalt. c.* 10, *Pl.* 268; *R. v. Tolfree, Ry. & M.* 243. Husband and wife being but one person in law, and their interest absolutely the same, they cannot give evidence for the benefit of each other.—*Gilb. Ev.* 119; not even by the consent of the other party.—*Cas. Temp. Hard.* 264; neither can they be witnesses against each other,—1 *Phil.* 84; except in cases of personal injury to the wife, when she is, on the principle of humanity and justice as well as necessity, admitted as a witness against her husband; as where the husband is indicted for shooting at her, or attempting to poison her, or for assaulting and beating her.—1 *Str.* 633, *B. N. P.* 287; *R. v. Whitehouse*, 2 *Russ.* 606; *R. v. Jagger, Ib.* But in these cases, the wife ought only to be admitted to prove facts which cannot be proved by any other witness.—*Per Holrogd, J.*, 2 *Russ.* 606. So her dying declarations are admissible against him, in the case of murder.—*R. v. Woodcock*, 1 *Leach.* 500; *R. v. John, Ib.* 504, *n.*

(a). So the wife is always permitted to swear the peace against her husband.—*Id.* Finally, it seems to be allowed that in all cases where a wife is a competent witness against her husband, she is also an admissible witness for him.—*R. v. Perry, cit. in R. v. Serjeant, 1 Ry. & M. 354.* And the same rules of necessity which admit the wife to give evidence against her husband, will also permit the husband to be a witness against the wife, in cases of personal injury,—such as murder, assault, and surety of the peace where any violence is threatened by the wife against the husband. There is a foolish notion prevalent with the lower orders in England, that if a man sell his wife with a halter round her neck, in *market overt*, this operates as a divorce, “*a vinculo matrimonii*,” and that both buyer and seller may lawfully make such a bargain. Such a brutal act is, however, grossly illegal, and indictable at common law as a misdemeanor.

WILLS.

See “*Registry Office.*”

WINES.

See “*Spirituuous Liquors.*”

WITNESSES.

Witnesses may be compelled to give their evidence in criminal cases by recognizance or subpoena. If a witness examined before a justice refuses to be bound over, the justice may commit him—2 *Hale*, 284. And where a *married woman* refused to undertake to appear at the trial, or to find sureties for her appearance, the magistrate was held justified in committing her.—3 *M. & S.* 1. But though a person may be committed for not entering into recognizance to prosecute and give evidence, yet the party shall not be committed for his inability to find a person to join in such recognizance to prosecute and give evidence; his own recognizance is all that can or ought to be required.—*Arch. Com.* 12. If the witness, after being served with a *subpoena*, neglect to appear, an application may be made in the Court of King's Bench for an attachment against him.—*R. v. Ring*, 8 *T. R.* 585; 1 *Star. Ev.* 119. A witness, whether bound over or subpoenaed, or attending voluntarily for the *bona fide* purpose of giving evidence, is privileged from arrest, *eundo, redeundo et morando*, if no more than a necessary time is occupied by him upon either of those occasion.—1 *H. B.* 636; 2 *Bl.* 1113. In allowing witnesses time sufficient for these purposes, the courts are always disposed to be liberal.—1 *Phil. Ev.* 4. If a witness, under such circumstances,

be arrested, the court out of which the *subpœna* issued, or the judge of the court in which the cause has been tried, will, upon application, order him to be discharged; but this privilege of a witness does not extend to arrest by his bail, for the purpose of surrender; for he is supposed to be in their custody even while he is attending as a witness.—*Exp. Lyne*, 3. *Star. Rep.* 132.

*By stat. 3 Wm. IV. c. 2 § 8, it is enacted, that when the attendance of any person in gaol or upon the limits, shall be required in court, at the assizes, the court shall and may in its discretion, order the sheriff, gaoler, or other person having the custody of such prisoner, to deliver him to the person named in such order to receive him, which person shall thereupon instantly convey such prisoner to the place where the court issuing such order shall be sitting, to receive and obey such further order as to the said court shall seem meet, provided that no prisoner for debt or damages be removed out of the district.

By 4 & 5 V., c. 24, c. 22, any person convicted of misdemeanor (except perjury) after sentence endured may be a competent witness.

By 9 V., c. 35, witnesses in criminal cases may be summoned by *subpœna* from any part of the province.

To dissuade or endeavour to dissuade a witness from giving evidence against a person indicted, is an offence at common law, though the persuasion should not succeed, and for which the party may be indicted as for a misdemeanor.—1 *Haw. P. C.*, c. 21, § 15; *R. v. Lawley*, 2 *Str.* 904.

Payment of the Expenses of Witnesses.

In civil cases a witness is not bound to attend unless his reasonable expenses be previously tendered to him, but in criminal cases he is bound to attend unconditionally.—2 *Haw.*, c. 46, § 173.

By 14 & 15 V., c. 119, in all cases of summary proceedings where persons are *subpœnaed* to give evidence before justices in cases of assault, trespass, or misdemeanor, such witness shall be entitled, in the discretion of the magistrate, to receive at the rate of two shillings and six pence for every day's attendance, where the distance travelled in coming to and returning from such adjudication does not exceed ten miles; and *three* pence for each mile above ten. § 6. In all cases above the degree of misdemeanor witnesses shall not be allowed any thing for their attendance or travel, except under the order of the court before which the trial shall be had.

By 20 Vic. c. 29 (act for the Summary Trial of Juvenile Offenders), § 16, justices of the peace before whom the party

shall be tried, may order payment to the prosecutor and witnesses of their reasonable expenses.

See title "*Juvenile Offenders*," p. 497.

For the mode of procuring the attendance of witnesses upon any examination or hearing, see "*Indictable Offences*," "*Summary Conviction*."

Form of an Indictment for dissuading a Witness to give evidence.

(CHITTY.)

County of , } The jurors, &c. That on, &c., a certain
to wit. } writ of our lady the Queen, called a *subpcena*
ad testificandum, had been and was duly issued and tested, by
and in the names of C. D. of &c. at &c. the same day and year
aforesaid, the said C. D. then and there being *custos rotulorum*,
in and for the same county, which said writ was directed to E.
F. and G. H. by which said writ our said lady the Queen com-
manded, &c. (*recite the writ*). And the jurors, &c., do further
present that a copy of the said writ was on, &c. at &c. duly
served on the said J. K. who then and there had notice to
appear and give evidence according to the exigency of such
writ, and that the evidence of the said J. K. at the time of
issuing the said writ, and from thence until and upon the said,
&c. therein mentioned, was material and necessary to have
been given before the said grand jury, on the said bill of indict-
ment so to be preferred against the said A. B. as aforesaid ;
and that at the sessions of the peace, holden by adjournment
at aforesaid, in and for the said county, on, &c. aforesaid,
such bill of indictment was preferred against the said A. B. to
and before a certain grand jury, then and there assembled in
that behalf. And the jurors, &c. do further present that A. B.,
late of, &c., being an evil disposed person, and contriving and
intending to obstruct and impede the due course of justice on,
&c., unlawfully and unjustly dissuaded, hindered, and pre-
vented, the said J. K. from appearing before the said justices
at the said sessions of the peace, holden as aforesaid, to testify
the truth and give evidence before the said grand jury, on the
said bill of indictment so preferred against the said A. B. as
aforesaid ; (and the said A. B. in consequence thereof, did not
so appear and give evidence according to the exigency of the
said writ,) to the great obstruction, hindrance, and delay of
public justice, in contempt, &c. to the evil, &c. and against the
peace, &c. And the jurors aforesaid, upon their oath aforesaid,
do further present, that on the said, &c., a certain other writ of
our said lady the Queen had duly issued, directed to the said
E. F. and G. H., by which said last mentioned writ our said
lady the Queen commanded the said E. F. and G. H. that, &c.
(*recite the writ*). And the jurors, &c. do further present, that
the evidence of the said J. K. at the time of issuing the said
last mentioned writ, and from thence until and upon the said,
&c. therein mentioned, was material and necessary to have
been given before the said grand jury, in the said bill of in-

dictment, to be preferred against the said A. B. as aforesaid. And the jurors, &c., do further present, that the said A. B. being an evil disposed person, &c. (*same as first count saying, "endeavoured to dissuade," &c. and omitting the allegation between the brackets.*)

WOLVES.

By *6 W. IV., c. 29, the *49 G. III., c. 3, is repealed. § 2. Any person who shall produce the head of a wolf with the ears on before any justice of the peace, acting for any district in this province, and shall make oath or affirmation, as the case may be, or otherwise prove to the satisfaction of the justice that the wolf was killed within that district, or within one mile of an actual settlement in the district, shall be entitled to receive of the treasurer of the district the sum of £1 10s. as a bounty for the same. § 4. The justice before whom the head of the wolf shall be produced having first cut off the ears thereof, shall give the person a certificate that the fact has been proved to his satisfaction, which certificate shall authorise the person holding the same to demand and receive from the treasurer the said bounty, § 4, who shall pay the same on presenting such certificate, provided the funds of the district in hand shall enable him, otherwise out of the first moneys which shall come into his hands. § 5. Annual expenses for building a court-house and gaol, and keeping the same in repair, the fees of the clerk of the peace, and salary of the gaoler, the maintenance of prisoners, and wages of members of Assembly, *to be first paid.* § 6. When the funds of the district are insufficient, such certificate shall be a lawful tender towards any district rate or assessment, wherein such wolf shall have been destroyed. § 7. This act to be in force for *four* years.

Continued by different statutes and lastly by 20 V., c. 16.

WOMEN.

If a woman, quick with child, be condemned either for treason or felony, she may allege her being with child, in order to get the execution respited, and thereupon the sheriff shall be commanded to take her into a private room and impanel a jury of matrons, to try and examine whether she be quick with child or not; and if they find her quick with child, the execution shall be respited till her delivery. But a woman cannot demand such respite of execution by reason of her being quick with child more than once.—2 *Haw.* 464.

See also "*Abduction,*" "*Rape.*"

WOOD.

By 4 & 5 V., c. 25, § 33, if the whole or any part of any

tree, sapling or shrub, or any underwood, or any live or dead fence, or any post, pale, rail or stile, or gate, or any part thereof, being of the value of two shillings at the least, shall by virtue of a search warrant, to be granted as in the said act is mentioned, be found in the possession of any person, or on the premises of any person with his knowledge; and such person being carried before a justice of the peace, shall not satisfy the justice that he came lawfully by the same, he shall on conviction by the justice, forfeit and pay over and above the value of the article or articles so found, any sum not exceeding £2. § 55. Any person found committing any offence punishable by this act, either upon indictment or *summary conviction*, may be immediately apprehended without a warrant by any peace officer, or by the owner of the property, or by the servant of any person authorised by such owner, and forthwith taken before some neighbouring justice, to be dealt with according to law; and if any credible witness shall prove on oath before a justice that there is reasonable cause to suspect that any property whatsoever, with respect to which any such offence shall have been committed, is in any dwelling-house, outhouse, garden, yard, croft or other place or places, the justice may grant a search warrant, as in the case of stolen goods.

WORKMEN.

By stat. 2 & 3 Ed. VI., c. 15, § 1, if any artificers, workmen, or labourers do conspire, covenant or promise together, or make any oaths, that they shall not make or do their works but at a certain price or rate; or shall not enterprise or take upon them to finish that another hath begun; or shall do but a certain work in a day; or shall not work but at certain hours and times;—that then every person so conspiring, covenanting, swearing or offending, being lawfully convicted thereof, by witness, confession or otherwise, shall forfeit, for the first offence, £10 to the King, if he have sufficient to pay the same, and do also pay the same within six days next after his conviction; or else shall suffer for the same offence twenty days' imprisonment, and shall have only bread and water for his sustenance: and for the second offence, shall forfeit £20 to the King, if he have sufficient to pay the same, and also do pay the same within six days next after his conviction; or else shall suffer for the second offence punishment of the pillory; (a) and for the third offence, shall forfeit £40 to the King, if he have sufficient to pay the

(a) Punishment of the pillory abolished by 4 & 5 V., c. 24, § 31.

same, and also do pay the same within six days next after his conviction, or else shall sit on the pillory and lose one of his ears; and also shall, at all times after that, be taken as a man infamous, and his sayings, depositions on oath, not to be credited at any time, in matter of judgment. § 3. Justices of the assize, justices of the peace, &c., at all and every their sessions and courts, shall have full power and authority to inquire, hear and determine all and singular such offences committed against this statute, and to punish, or cause to be punished, the offenders, according to the statute. Any one workman may refuse to work, till he is paid the price he pleases to fix upon his *own* labour; but if *two* or more enter into an engagement of this kind, they are guilty of a *conspiracy*, and may be prosecuted by an indictment, or an information.—4 *Bl. Com.* p. 160.

By 4 & 5 V., c. 27, § 25 in case of any assault committed in pursuance of any conspiracy to raise the rate of wages, the courts may sentence the offender to be imprisoned for any term not exceeding two years, and may also (if it shall so think fit) fine the offender, and require him to find sureties for keeping the peace.

See also titles "*Conspiracy*," and "*Master and Servant*."

WRECK.

By 4 & 5 V., c. 25, § 22, whosoever shall plunder or steal any part of any ship or vessel which shall be in distress or wrecked, stranded or cast on shore, or any goods, merchandize or articles of any kind belonging to such ship or vessel, and be convicted thereof, shall be liable at the discretion of the court to be imprisoned at hard labor in the provincial penitentiary for any term not exceeding fourteen years nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. § 23. If any goods, merchandize or other articles, belonging to any ship or vessel in distress or wrecked, stranded or cast on shore, as aforesaid, shall, by virtue of a search warrant to be granted as hereinafter mentioned, be found in the possession of any person, or on the premises of any person with his knowledge, and such person being carried before a justice of the peace shall not satisfy the justice that he came lawfully by the same, then the same shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof; and the offender on conviction before the justice, shall forfeit and pay such sum of money not exceeding £20, as to the justice shall seem meet. § 24. If any person shall offer or expose for sale any merchandise,

or other articles which shall have been unlawfully taken, or reasonably suspected so to have been, from any ship or vessel in distress or wrecked, stranded or cast on shore, as aforesaid, in any such case any person to whom the same shall be offered for sale, or any officer of the customs or peace officer, may lawfully seize the same, and shall with all convenient speed carry the same, or give notice of such seizure, to some justice of the peace; and if the person who shall have offered the same for sale, being duly summoned by such justice, shall not appear and satisfy the justice that he came lawfully thereby, then the same shall be forthwith delivered over by order of the justice to the rightful owner thereof, upon payment of a reasonable reward (to be ascertained by the justice) to the person who seized the same; and the offender upon conviction shall pay not exceeding £20, as to the justice shall seem meet.

By statute 4 & 5 V., c. 26, § 8, whosoever shall unlawfully exhibit any false light or signal with intent to bring any ship or vessel into danger, or shall unlawfully and maliciously do any thing to the immediate loss or destruction of any ship or vessel in distress shall be guilty of felony, and being convicted thereof shall suffer death. § 10. Whosoever shall by force prevent or impede any person endeavouring to save his life from any ship or vessel which shall be in distress or wrecked, stranded or cast on shore (whether he shall be on board or shall have quitted the same) shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be imprisoned at hard labour in the provincial penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. § 11. Whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded or cast on shore, or any goods, merchandize, or article of any kind belonging to such ship or vessel, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

By stat. 4 & 5 V., c. 27, § 24, if any person shall assault, and strike, or wound any magistrate, officer, or other person whatsoever, lawfully authorised, on account of the exercise of his duty, in or concerning the preservation of any vessel in distress, or of any vessel, goods or effects, wrecked,

stranded or cast on shore, or lying under water, every such offender being convicted thereof shall be liable to be imprisoned at hard labour in the provincial penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

For proceedings to recover penalties under 4 & 5 V., c. 25, see title "*Summary Conviction.*"

PAWNBROKERS.

By the 14 & 15 V., c. 82, § 1, pawnbrokers are required to take out a license annually under the penalty of £50. § 2. A duty of £15 thereon to be paid to the collector of customs. The subsequent clauses of the act contain provisions for regulating the mode of carrying on the business, the rates of profits to be taken, the giving of notes or duplicates for the articles pawned or pledged. The arrest of parties offering goods in pawn not giving a good account of themselves—their committal to gaol by a justice—the granting of a search warrant to the owner of goods suspected to be unlawfully pawned, &c. ; and by § 24, such justice may compel any pawnbroker to produce his books and vouchers, and if he neglects or refuses to produce the same in a true and perfect state, he shall be liable to a fine not exceeding £10 nor less than £5. § 27. But no fees shall be taken by any justice for any warrant or summons issued under the act. For the remaining provisions the act itself may be referred to.

treasurer. § 33. Associations to hold an annual fair or exhibition to be open to all competitors from any part of the province. The directors to hold an annual meeting during the week of the exhibition, and at such meeting shall elect a president and vice-presidents, and appoint the place for holding the next meeting and exhibition, and may make rules and regulations for the management thereof, appoint a local committee at the place of such exhibition and prescribe their powers and duties. § 34. The Board of Agriculture in conjunction with the president and vice-presidents of the Board of Arts and Manufactures, or any persons named by the board in their place shall be the council of the association, with full powers: and all grants of money, subscriptions, or other funds appropriated for the use of the association (except money collected by or granted to any local committee for the local expenses of the exhibition), shall be received by and expended under the direction of the said board as such council, and the secretaries of the said board and of the Board of Arts and Manufactures, shall be *ex officio* joint secretaries of the association. § 35. All contracts and legal proceedings of the association shall be had with the Board of Agriculture, so constituted as such council in its corporate capacity. § 36. Municipalities authorised to grant money or land in aid of the association, or of any Agricultural or Horticultural Society, or Mechanics' Institute within the municipality.

AGRICULTURAL SOCIETIES IN UPPER CANADA.

County or Electoral Division Societies.

§ 37. An Agricultural Society may be organised in each electoral division whenever fifty persons shall become members thereof by signing a declaration in the form A annexed to the act and each paying not less than five shillings annually to the funds of the society, a true copy of such declaration (within one month after the money has been so paid), to be transmitted to the Board of Agriculture. § 38. The object of such societies, and of the township or branch societies in connexion therewith shall be to encourage improvement in agriculture or horticulture, by holding meetings for discussing and for hearing lectures on husbandry, by promoting the circulation of agricultural periodicals, importing seeds, plants and animals of new and valuable kinds, by offering prizes for essays on questions of scientific enquiry relating to agriculture or horticulture, manufactures, and works of Art, and by awarding premiums for excellence in raising or

introducing stock, the invention or improvement of agricultural implements and machines, the production of grain, vegetables, plants, flowers and fruits, &c. The funds not to be expended otherwise, and the directors empowered to make by-laws. § 39. Annual meeting to be held on the third week in January for the election of a president and vice-president, a secretary and treasurer, and not more than seven directors. § 40. Presidents of township Agricultural Societies, and of Mechanics' Institutes receiving government aid, and of Boards of Trade (or any other person appointed by such society, institute or board, in the place of such president), within the county, to be in addition to those before named, *ex officio* directors of the county society. Provided that such township society and Mechanics' Institute shall have contributed £2 10s. annually to the funds of the county society. § 41. Meetings of the officers and directors to be held pursuant to adjournment, or called by written notice to, and by authority of the president, or senior vice-president in his absence, at least one week before the day appointed. Five to be a quorum. § 42. Said officers and directors to prepare and present at the annual meeting a report of their proceedings during the year, and to contain certain statements, also a detailed statement of receipts and disbursements; a true copy of such report certified by the president or secretary to be sent to the Board of Agriculture on or before the first day of April following. § 43. County societies to receive reports of township or branch societies and transmit them to the Board of Agriculture with appropriate remarks. § 44. Officers and directors to answer queries and afford such information from time to time to the Board of Agriculture as may be required, touching the interests or condition of agriculture in such county, and generally to act as far as practicable upon the recommendations of said board.

TOWNSHIP SOCIETIES.

§ 45. A township or branch Agricultural Society may be organised in each township in Upper Canada, or in any two or more townships together whenever a sufficient number of persons, not less than *twenty-five*, shall become members by signing a declaration in the form of schedule A, and subscribing not less than £10 annually to the funds thereof. A true copy of such declaration certified by the president or vice-president of such society, to be forthwith transmitted to the county society. § 46. Such societies to hold their annual meetings in the second week in January, and elect a president, vice-president, secretary and treasurer, and not less than three

nor more than nine directors. § 47. Said officers and directors to prepare and present to their annual meeting a report of their proceedings during the year in the same manner as county societies, and transmit a certified copy to the secretary of the county society in time for their annual meeting in February.

HORTICULTURAL SOCIETIES.

§ 44. Any number of persons, not less than *twenty five* may form themselves into a Horticultural Society for any city, town, village, township or parish, or union of two or more thereof, in Upper or Lower Canada, by signing a declaration in the form of schedule A, with necessary alterations as to name, and subscribing not less than £10 annually to the funds thereof. § 49. Declaration to be in duplicate, one part to be written and signed on the first page or pages of a book to be kept by the society for recording its proceedings during the first year; and the other part written and signed on paper or parchment to be sent by post to the Minister of Agriculture, who shall cause a notice thereof to be inserted in the Canada Gazette. § 50. After insertion in the Gazette, such society to be a body corporate and politic, with power to hold and alienate property. § 51. And power to make by-laws for prescribing the mode of admission of new members and election of officers and regulation of affairs. § 52. To hold annual meeting in the first week in February and at such other time as may be provided for by its by-laws: and at such annual meeting to elect a president, vice-president, a secretary and treasurer, and not less than three nor more than nine directors. § 53. Said officers and directors to prepare and present to the annual meeting a report of their proceedings during the year as directed for county Agricultural Societies, but with reference to Horticulture only.

GENERAL PROVISIONS.

§ 54. The exhibition of the county society shall be held whenever the majority of the directors, or of a quorum, shall think fit, giving public notice thereof. It shall be lawful for two or more county and township societies, by agreement between the directors, or a majority, in each society to unite their funds for the erection of suitable buildings, for exhibiting articles of produce, manufactures or works of art, or for animal or extra shows, ploughing matches, or for any other purpose likely to promote agriculture, horticulture, arts or manufactures, with power to hold or alienate land, &c. § 55. Whenever the president and secretary of the Board of

Agriculture shall certify to the Minister of Agriculture that any county society has sent to the board reports and statements as required by the act, and that the treasurer or other officer of such society has transmitted to said board an affidavit in the form of schedule B, sworn before a justice, stating the amount subscribed for that year, and paid to the treasurer of the county society by the members thereof, and by the township societies, it shall be lawful for the Governor to issue his warrant in favour of such county society for a sum, out of any unappropriated moneys in the hands of the Receiver General, equal to three times the amount appearing by such affidavit to be in the hands of the treasurer: provided that no grant shall be made unless £25 be first subscribed and paid to the treasurer; and provided, that the whole amount granted to any such Electoral Division Society shall not exceed £200 per annum, save and except that each of the counties of Lennox and Addington, Huron and Bruce, separately shall be entitled to receive a sum not exceeding £200, on the conditions specified in this act: and that the counties of Prince Edward, Welland, Haldimand, Grey, Holton, Kent, Carleton, Essex, Lambton, Lincoln, Norfolk, Peel and Perth shall be entitled to a sum not exceeding £250 per annum, and on the conditions aforesaid. § 56. The electoral divisions designated in 16 V., c. 152, as Nos. 21, 22, 23, 24, 25, 26, 27, 28, shall each be entitled to receive a sum not exceeding £100 for the encouragement of horticulture, agriculture, manufactures and works of art within their respective limits: provided that a full equivalent for the sum to be so paid by the government be subscribed and paid to the treasurer of a society to be formed within such electoral division in the same manner as county agricultural societies under § 36 of this act, to be called "the Society for the Upper Canada Electoral Division No. 21," (or as the case may be.) § 57. Township or branch societies duly organised and sending a report of its proceedings to the county society, entitled to a share of the grant to the county society in proportion to the amount subscribed by members and deposited with the treasurer of the county society on or before the 1st May in each year, as compared with the amounts deposited by other township or branch societies. And the sum so deposited shall be repaid along with its share of the public grant when received by the county society. Provided that *three fifths* and no more of the public grant shall be subject to division among township or branch societies: and that the declaration mentioned in § 45 shall be deemed a sufficient report for the first year in which any township or branch society may have been

organised, and that no such township or branch societies shall thus receive more than three times the amount so deposited, and provided that no member of a township society shall by virtue of his subscription thereto be admitted as a member of the county society. § 58. The Board of Agriculture to receive and pay over to the county societies the public grants. The said board retaining for the use of the Agricultural Association *one-tenth* part of all such grants. § 59. Any treasurer or officer making any false affidavit or return shall forfeit £10 for every offence, and be liable to prosecution for perjury. § 60. County societies duly organised to be bodies corporate, with power to hold land as a site for fairs and exhibitions, or for a school farm, and to sell, lease or dispose of the same: and any township or branch society duly organised may at any regular meeting adopt a resolution for incorporation, and upon filing the same with the Secretary of the Board of Agriculture, be thenceforth a body corporate with the like powers as county societies. § 61. Provision, authorising county or township societies to purchase land for a school farm for the instruction of pupils in the science and practice of agriculture, not exceeding 100 acres. § 62. Interpretation clause, the word "county" to mean Electoral Division, except where inconsistent; and the words "Electoral Division" shall mean a division for the purposes of representation. § 63. Provides for the apportionment of property between Electoral Divisions which originally belonged to the county society of which any such Electoral Division formed a part. § 64. The provisions of this act to extend to any new counties or new Electoral Divisions hereafter to be formed in Upper Canada, but no such new Electoral Division shall be entitled to more than £200. § 65. Provides for the first meeting for the formation of Electoral Division Societies under this act. Such meeting to be called by the warden of the county in the third week in January, and all subsequent annual meetings to be called and held as provided in § 39 of this act.

SCHEDULE A.

We whose names are subscribed hereto, agree to form ourselves into a society under the provisions of the act of the legislature (*title and date of this act*) to be called the "county (township or branch, as the case may be) Agricultural Society of the county of _____," (or township of _____); and we hereby severally agree to pay to the treasurer yearly, while we continue members of the society (any member being at liberty to retire therefrom upon giving notice in writing to the secretary, at any

Agricultural Societies.

time before the annual meeting, of his wish so to do) the sums opposite our respective names, and we further agree to conform to the rules and by-laws of the said society.

NAMES.	£	s.	d.

SCHEDULE B.

County of , } I A. B., of the township of treasurer
to wit. } of the county Agricultural Society, of
make oath and say, that the sum of has been paid into my
hands, since the first day of February last, by the township
Agricultural Societies of the said county, as and for the mem-
bers' subscription for this year; and that the sum of has
been paid into my hands, as subscriptions for this year, by
members of the said county society; and that the said sums,
making in the whole the sum of , now remain in my hands
ready to be disposed of according to law.

Sworn to before me, this }
day of A.D. 185 . }

A. B.

C. D.,
Justice of the Peace for the County of

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