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THE  
STATUTES OF PRACTICAL UTILITY

IN THE  
CIVIL ADMINISTRATION OF JUSTICE,  
IN UPPER CANADA,

FROM THE  
FIRST ACT PASSED IN UPPER CANADA TO THE COMMON LAW  
PROCEDURE ACTS, 1856;

CHRONOLOGICALLY ARRANGED,

AND

SHOWING SUCH AS HAVE BEEN ACTUALLY REPEALED OR OTHERWISE ABROGATED.

*With an Index.*

THE WHOLE INTENDED AS A CIRCUIT COMPANION.

EDITED BY  
ROBERT A. HARRISON, ESQ., B.C.L.,  
BARRISTER-AT-LAW.

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TORONTO:  
MACLEAR & CO., KING STREET EAST.  
1857.

RC

271.

## P R E F A C E.

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THE object of this publication may be stated in very few words. It is to furnish, in convenient form, all Statutes and parts of Statutes unrepealed and in force, akin to the Common Law Procedure Acts, 1856. Beyond this, the work has no claim upon the legal profession. It was undertaken at the pressing solicitation of many members of the profession.

The volume is one of "Practical Statutes:" by which is meant, such Statutes as especially relate to the practice of the Courts. Within these limits, the Editor has striven to confine his materials. He has done so, because a contrary course would have opened up a field so great as to swell this volume to a compass which would have rendered it inconvenient for the purposes intended.

In the prospectus issued, the profession were promised "a simple but complete compilation." This promise, consistently with the design of the work, has been, it is hoped fulfilled. The aim of the publishers was to produce a cheap, practical and useful book. Whether they have done so or not, it is for others to judge. In submitting the publication to the candour and discernment of the profession, the publishers

ask only that the design of the undertaking be not forgotten. Though the intention was to furnish a compilation of Practical Statutes such as already defined, there may be found in it a few Statutes not strictly coming within the meaning of the definition. Wherever there were Statutes of real intrinsic importance, but of small dimensions, though perhaps not relating exclusively to the practice of the Courts, the Editor has ventured to insert them. But upon the whole, the design of the compilation has been steadily kept in view, and the limits intended, as far as reasonable, observed. The extension of the limits in this respect is a loss to the publishers, but a gain to the profession.

The Insolvent Debtors' Act of 1845; the Extension Act of 1856; and the Repealing Act, of 1857, will be found in this publication. It has been deemed expedient to give these several Acts, because of the uncertain state in which the rights of persons affected by them must for some time remain.

It will be noticed, that the Statutes are brought together in chronological order; but with the aid of an Analytical Index, it is believed, the volume will be found as useful as if the subjects were classified in the body of the work.

The Editor desires in this place to acknowledge the assistance which he has received from a very useful little volume, intitled, "Table of the Provincial Statutes in force, or which have been in force, in Upper Canada;" prepared by order of the Legislative Assembly, by G. W. W. Wicksteed, Esq., Q. C., Law Clerk of the House, whose ability and accuracy are well known, both in Upper and in Lower Canada.

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## MEMORANDUM

*To be borne in mind when using this volume.*

- 1.—The Statutes from 32 Geo. III. to 3 Vic., inclusive, were passed by the Legislature of the late Province of Upper Canada, and apply exclusively to Upper Canada.
- 2.—Statutes since 3 Victoriae, were passed by the Legislature of Canada, and unless in terms restricted to Upper Canada, extend to the whole Province of Canada.
- 3.—“King’s Bench,” wherever used, must be understood to mean “Queen’s Bench,” (2 Vic. c. 1) and powers conferred upon the Queen’s Bench extend to the Common Pleas (12 Vic. c. 63).
- 4.—“District Courts,”—“Officers,” and other similar expressions, used in Statutes anterior to 12 Vic. c. 78, which abolished Districts and substituted Counties, must be taken to mean “County Courts,”—“Officers,” &c.



# STATUTES

OF

## PRACTICAL UTILITY IN THE CIVIL ADMINISTRATION OF JUSTICE

### IN UPPER CANADA.\*

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#### 32 GEO. III.—CHAP. I.

*An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled "An Act for making more effectual provision for the Government of the Province of Quebec, in North America," and to introduce the English Law as the Rule of Decision in all matters of Controversy, relative to Property and Civil Rights.*

[Passed 15th October, 1792.]

WHEREAS, by an Act passed in the fourteenth year of His present Majesty, intituled, "An Act for making more effectual provision for the "Government of the Province of Quebec, in North America," it was, among other things, provided, "that in all matters of controversy relative to Property and Civil Rights, resort should be had to the Laws of Canada, as the rule for the decision of the same," such provision being manifestly and avowedly intended for the accommodation of His Majesty's Canadian subjects: *And whereas*, since the passing of the Act

Preamble

Recital of  
Act 14 Geo.  
III. cap. 83.

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\* It may be mentioned here, that the old division of Upper Canada into Districts, for judicial and other purposes, has been abolished (12 Vic. cap. 78, s. 2), and that in reference thereto the following has been enacted: "That the Courts, Court-houses, and Gaols, heretofore called District Courts, Court-houses, and Gaols, shall from henceforth be called County Courts, Court-houses, and Gaols; \* \* \* \* \* and all and singular the office

The same repealed in so far as it constitutes the laws of Canada a rule of decision in matters of controversy, relative to property and civil rights.

aforesaid, that part of the late Province of Quebec now comprehended within the Province of Upper Canada, having become inhabited principally by British subjects, born and educated in countries where the English Laws were established, and who are unaccustomed to the Laws of Canada, it is inexpedient that the provision aforesaid, contained in the said Act of the fourteenth year of His present Majesty, should be continued in this Province—*Be it enacted, &c.*, That from and after the passing of this Act, the said provision contained in the said Act of the fourteenth year of His present Majesty, be, and the same is hereby repealed; and the authority of the said Laws of Canada, and every part thereof, as forming a rule of decision in all matters of controversy relative to property and civil rights, shall be annulled, made void and abolished, throughout this Province, and that the said Laws, nor any part thereof as such, shall be of any force or authority within the said Province, nor binding on any of the inhabitants thereof.

## II. [Previously existing rights saved.]

The laws of England to be henceforth the rule of decision.

III. *And be it, &c.*, That from and after the passing of this Act, 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.

## IV. [Ordinances of Quebec unrepealed.]

The rules of evidence to be regulated by those established in England.

V. *And be it, &c.*, That all matters relative to testimony and legal proof, in the investigation of fact, and the forms thereof, in the several Courts of Law and Equity within this

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and offices now appertaining to the said Districts shall henceforth belong and appertain to the said counties respectively; and whenever the said offices and officers have the title or denomination of offices or officers of or for the District, they shall henceforth have the title or denomination of offices or officers of or for the County; and all laws at present in force, or during the present session of Parliament made or to be made applicable to the said division of territory by the name of Districts, or the Courts, officers, or other institutions thereof, shall be applied to and have the same operation and effect upon the said Counties and their respective Courts, offices and other institutions, as Counties." (*Ib.* s. 3.)

Province, be regulated by the rules of evidence established in England.

VI. [Subsisting ecclesiastical dues, forms of procedure, jurisdiction of Courts, &c., preserved.]

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32 GEO. III.—CHAP. 2.

*An Act to establish Trials by Jury.*

[Passed 15th October 1792.]

WHEREAS the Trial by Jury has been long established and approved in our Mother Country, and is one of the chief benefits to be attained by a free Constitution: *Be it, &c.*, That from and after the first day of December, in this present year of our Lord one thousand seven hundred and ninety-two, all and every issue and issues of fact, which shall be joined in any action, real, personal, or mixed, and brought in any of His Majesty's Courts of Justice within this Province aforesaid, be tried and determined by the unanimous verdict of twelve Jurors, duly sworn for the trial of such issue or issues, *which Jurors shall be summoned and taken conformably to the law and custom of England.*

All issues of fact to be determined by the verdict of 12 jurors, conformably to the law and custom of England.

(See 13 & 14 Vic. c. 55.)

II. [Repealed by 13 & 14 Vic. cap. 55.]

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34 GEO. III.—CHAP. II.

*An Act to establish a Superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeal.*

[Passed 9th July, 1794.]

FOR the general and regular administration of justice throughout this Province, *be it enacted, &c.*, That there be constituted and established, and there is hereby constituted and established, a Court of Law, to be called and known by the name and style of *His Majesty's Court of King's Bench* for the Province of Upper Canada, which shall be a Court of record of original jurisdiction, and shall possess all such powers and authorities as by the Law of England are incident to a superior Court of

Preamble.

(See 12 Vic. c. 53, establishing common Pleas.)

civil and criminal jurisdiction; and may and shall hold plea in all and all manners of actions, causes, or suits, as well criminal as civil, real, personal, and mixed, arising, happening, or being within the said Province; and may and shall proceed in such actions, causes, or suits, by such process and course as shall tend, with justice and dispatch, to determine the same; and may and shall hear and determine all issues of law; and shall also hear, and by and with an inquest of good and lawful men, determine all issues of fact that may be joined in any such action, cause, or suit, as aforesaid, and judgment thereon give, and execution thereof award, in as full and ample a manner as can or may be done in His Majesty's Courts of King's Bench, Common Bench, or in matters which regard the King's revenue, by the Court of Exchequer in England; and that His Majesty's Chief Justice of this Province, together with two *Puisne Justices*, shall preside in the said Court, which Court shall be holden *in a place certain*, that is, in the city, town, or place where the Governor or Lieutenant Governor shall usually reside; and until such place be fixed, the said Court shall be holden at the last place of meeting of the Legislative Assembly.

Persons who shall preside therein, and place where the same shall be holden.

(Four—See 7 Wm. IV. c. 1) to (2 Wm. IV. c. 8. Act of Union, 3 & 4 Vic. c. 35, s. 14; 12 Vic. c. 63.)

II.	}	[Repealed by 2 Geo. IV., Sess. 2, Chap. 1.]
to XXXII.		
XXXIII.	}	[Repealed by 12 Vic., Chap. 63.]
to XXXVI.		
XXXVII.	}	[Repealed by 2 Geo. IV., Sess. 2, Chap. 1.]
XXXVIII.		

#### 41 GEO. III.—CHAP. XI.

*An Act to prevent the Acts of the Legislature from taking effect from a time prior to the passing thereof.*

[Passed 9th July, 1801.]

WHEREAS every Act of the Legislature of this Province in which the commencement thereof is not directed to be from a

Preamble.

specific time, doth commence from the first day of the Session in which such Act is passed: *And whereas* the same is liable to produce great and manifest injustice; for remedy thereof, *Be it, &c.*, That the Secretary of this Province shall endorse on every Act of the Legislature of this Province, which shall pass during the 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, where no other commencement shall be therein provided.

Date of Royal Assent to be endorsed by Secretary of the Province, from which day the Act shall commence.  
Endorsement to form part of such Acts.

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43 GEO. III.—CHAP. I.

*An Act to allow time for the Sale of Lands and Tenements by the Sheriff.*

[The Royal Assent promulgated by Proclamation, bearing date 4th January, 1803.

WHEREAS it is expedient, in the present circumstances of this Province, that some time should elapse after the issuing of Process of Execution against Lands and Tenements, before the Sheriff proceeds to expose the same to sale, *be it enacted, &c.*, That from and after the end of this present Session of Parliament, goods and chattels, lands and tenements, shall not be included in the same Writ of Execution, nor shall any such process issue against the lands and tenements until the return of the Process against the goods and chattels.

Preamble.  
(See British Statute, 5 Geo. II. c. 7.)

II. *And be it, &c.*, That the Writ against the lands and tenements shall not be made returnable in less than twelve months from the teste thereof, nor shall the Sheriff expose the same to sale, within less than twelve months from the day on which the Writ shall have been delivered to him.

(See C. L. P. A., 1856, s. 189.)

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49 GEO. III.—CHAP. IV.

*An Act for the more effectual preventing of Frivolous and Vexatious Suits and to authorise the levying of Poundage*

*upon Executions in certain Cases, and to regulate the Sales by Sheriffs and other Officers.*

[Passed 9th March, 1809.]

Preamble. BE IT ENACTED, &c., That in all actions to be brought in the Province of Upper Canada, from and after the passing of this Act, wherein the defendant or defendants shall be arrested and held to bail, and wherein the plaintiff or plaintiffs shall not recover the amount of the sum for which the defendant or defendants in such action shall have been so arrested and held to special bail, such defendant or defendants shall be entitled to costs of suit, to be taxed according to the custom of the Court, in which such action shall have been brought; provided it shall be made appear, to the satisfaction of the Court in which such action is brought, upon motion to be made in Court for that purpose, and upon hearing the parties by affidavit, that the plaintiff or plaintiffs in such action, had not any reasonable or probable cause for causing the defendant or defendants to be arrested and held to special bail, in such amount as aforesaid; and provided, that such Court shall thereupon, by rule or order of the same Court, direct that such costs shall be allowed to the defendant or defendants, and the plaintiff or plaintiffs shall, upon such rule or order being made as aforesaid, be disabled from taking out any execution for the sum recovered in any such action, unless the same shall exceed, and then in such sum only, as the same shall exceed the amount of the taxed costs of the defendant or defendants in such action, and in case the sum recovered in any such actions shall be less than the amount of the costs of the defendant or defendants to be taxed as aforesaid, that then the defendant or defendants shall be entitled, after deducting the sum of money recovered by the plaintiff or plaintiffs in such action, from the amount of his, her, or their costs, to be taxed as aforesaid, to take out execution for such costs in like manner as a defendant or defendants may now by law have execution for costs in other cases.

Circumstances under which defendant, when held to special bail, shall be entitled to costs of suit.

(See C. L. P. A., 1856, s. 23.)

II. *And be it, &c.*, That in all actions which shall be brought in the Province of Upper Canada after the passing of this Act, upon any judgment recovered, or which shall be

recovered, in any Court of the said Province, the plaintiff or plaintiffs in such action, on the judgment, shall not recover or be entitled to any costs of suit, unless the Court in which such action on the judgment shall be brought, or some Judge of the same Court shall otherwise order.

In actions on judgments, plaintiff not entitled to costs, unless by rule of Court.

III. }  
IV. } [Repealed by 2 Geo. IV., Sess. 2, Chap. 1.]

V. *And be it, &c.*, That no Sheriff or other officer, in any District of this Province, shall proceed to the sale of any effects, taken by virtue of any Writ of Execution, until public notice in writing thereof is given, at least eight days previous thereto, at the most public place in the Town or Township where such effects may have been taken in execution, and of the time and place where such effects are to be exposed to sale.

Eight days notice to be given of sale by sheriff.

(See C. L. P. A., 1856, s. 183.)

#### 57 GEO. III.—CHAP. 9.

*An Act to enable the Commissioners of Gaol Delivery, and Oyer and Terminer, to proceed, although the Court of King's Bench be sitting in the Home District, for which they are commissioned.*

[Passed 17th April, 1817.]

WHEREAS by construction of law, without special provision to the contrary, the meeting of the Court of King's Bench, in any District, supersedes all Commissions of Oyer and Terminer and Gaol Delivery: *And whereas* it may so happen that the business of the Spring Assize, in the Home District, may not be concluded before the first day of Easter Term; *Be it therefore enacted, &c.*, That when any Session of Oyer and Terminer and Gaol Delivery for the Home District, shall have been begun to be holden before the first day of any term, that the said Session shall be continued to be holden and the business thereof finally concluded, notwithstanding the sitting of His Majesty's Court of King's Bench within the said District; and that all trials and proceedings, as well as judgments, had at such Session, so continued to be holden, shall be good and effectual to all intents and purposes as if the said Session of the Court of King's Bench had not been.

Preamble.

When any Session of Oyer and Terminer and Gaol delivery for the Home District shall have been begun to be holden before the first day of any term, the said Session shall be continued to be holden and the business concluded, notwithstanding the sitting of the Court of King's Bench.

(See C. L. P. A., 1856, s. 152.)

## 2 GEO. IV.—SESS. 2.—CHAP. 1.

*An Act to repeal part of and amend the Laws in force respecting the practice of His Majesty's Court of King's Bench in this Province.*

[Passed 17th January, 1822.]

I. [Repeals Sec. 9 of 34 Geo. III., Chap. 1; the whole of 34 Geo. III., Chap. 3, excepting Sections 1, 33, 34, 35, and 36; Sec. 2 of 35 Geo. III., Chap. 4; the whole of 37 Geo. III., Chap. 4; 38 Geo. III., Cap. 4; the whole of 41 Geo. III., Chap. 9; Sections 3 and 4 of 49 Geo. III., Chap. 4; and the whole of 51 Geo. III., Chap. 3.]

II. [Repealed by 6 Geo. IV., Chap. 1.]

Court may  
adjourn from  
one return  
day to  
another.

III. *Provided always, and be it, &c.*, That when the Court shall have good reason to believe there will not be sufficient business to require their daily attendance throughout the Term, they may be at liberty to adjourn the Court on any return day to the next immediate return day.

IV. }  
to } [Repealed by 19 Vic., Chap. 43.]  
IX. }

Judges may  
order arrests  
in certain  
cases.

(See C. L. P.  
A., 1856,  
s. 23.)

X. *And be it, &c.*, That in all cases in which the cause of action shall be other than a debt certain, of which affidavits may be made as herein before mentioned, it shall and may be lawful to hold the defendant or defendants to bail, a Judge's order having been first obtained for that purpose, in such cases and in such manner as is provided by the law and practice of the Court of King's Bench in England.

Conditions of  
recogni-  
zances of  
bail;

(See 4 Wm.  
IV. c. 5; C.  
L. P. A., 1856,  
s. 24.)

XI. *And be it, &c.*, That each and every recognizance of bail to be taken in cases of personal arrest, as herein before mentioned, shall be, that if the defendant or defendants shall be condemned in the action at the suit of the plaintiff or plaintiffs, he, she, or they will satisfy the costs and condemnation money, or render himself, herself, or themselves, to the custody of the Sheriff of the District in which such action

shall be brought, or that the cognizors shall do so for such defendant or defendants.

XII. *And be it, &c.*, That whenever any bail in any action or suit now pending or hereafter to be brought in any District, shall be desirous of surrendering their principal in discharge of themselves, it shall and may be lawful for the Sheriff of such District, and he is hereby required to receive such principal into his custody at the gaol of his District, and to give such bail a certificate under his hand and seal of office, of such surrender, which certificate shall be a sufficient authority for any Judge of the Court in which such action shall be pending; and he is hereby required, on production thereof, to order an exoneretur to be entered on the bail-piece, in the same manner as if such principal had been surrendered in person before him at his chambers; for which certificate the said Sheriff shall receive the sum of five shillings, and no more.

Bail may surrender their principal to the Sheriffs of the respective District where defendants are held to bail, and Sheriffs to give certificates of surrender, and Judge to order an exoneretur on production thereof; (See 4 Wm. IV. c. 5.)

XIII. *And be it, &c.*, That if any defendant or defendants shall be taken or detained in custody in any District of this Province, on mesne process issuing out of any Court of Record in this Province, at the suit of any plaintiff or plaintiffs, and shall be detained or imprisoned thereon after the return of such process, it shall and may be lawful for such defendant or defendants, except in term time within the Home District of this Province, or District where the Court shall be holden, and upon due notice thereof given to the attorney of the plaintiff or plaintiffs in such process, to put in and justify bail before any of the Justices of the Court out of which such process shall have issued, or before any Commissioner duly appointed for taking bail in such Court; which Justice, or in case bail shall have been put in and justified before a Commissioner, any justice of the said Court, upon receipt of the said bail-piece and recognizance from such Commissioner, may, if he shall think fit, order a rule to issue for the allowance of such bail, and may further order such defendant or defendants to be discharged out of custody by writ of *supersedeas*, in the like manner as may be done by order of the Court in term time.

Defendants may put in special bail vacation; (See 4 Wm. IV. c. 5, s. 2.; 12 Vic. c. 63, s. 48.)

Rule for allowance thereof may be issued by a Judge.

## XIV. [Repealed by 19 Vic., Chap. 43.]

No further affidavit required in bailable action previous to suing out Ca. Ca. otherwise in actions not bailable;

(See 5 Wm. IV. c. 3, s. 2; C. L. P. A., 1856, s. 185.)

XV. *And be it &c.*, That in all cases in which the party has been held to special bail, it shall not be necessary to make or file any further or other affidavit before suing out a *capias ad satisfaciendum* upon the judgment obtained in the same action; and that in cases where the party has not been held to special bail, a writ of *capias ad satisfaciendum* may issue after judgment, upon an affidavit of the same form as is hereby required to be made for the purpose of suing out a *capias in mesne* process, or upon affidavit by the plaintiff, his servant, or agent, that he hath reason to believe that the defendant hath parted with his property, or made some secret and fraudulent conveyance thereof, in order to prevent its being taken in execution.

Issues joined in the Home District may be tried before any Judge;

(See 7 Wm. IV. c. 1, s. 8; C. L. P. A., 1856, s. 152.)

XVI. *And be it, &c.*, That upon all issues joined in the Court in any suit or action that shall arise or be triable in the Home District, or in the District where the Court shall be holden under any commission of Assize and Nisi Prius issued after the Terms of *Hilary* and *Trinity* respectively, and tested on the last day of each of those Terms, the Chief Justice, or any other Judge of the said Court, shall, as Judge of Assize and Nisi Prius for the said District, try all manner of issues joined in the said Court which ought to be tried by a Jury of the said District; and that the Chief Justice, or any other Judge of the said Court, shall, as Judge of Assize and Nisi Prius, issue his precept to the Sheriff of the said District, for the summoning of Jurors for the trying of all such issues as may be joined in the said Court, and arise and be triable in the said District, so that the same may be in no instance holden sooner than thirty days from the end of the *Hilary* and *Trinity* Terms respectively.

Chief Justice or other Judge to issue his precept to the sheriff to summon Jurors to try such issues, not less than 30 days after *Hilary* and *Trinity* Terms.

Commissions may be issued for the examination of witnesses.

XVII. *And be it, &c.*, That when the plaintiff or plaintiffs, defendant or defendants, in any action now pending, or hereafter to be brought, shall be desirous of procuring the testimony in such suit or suits of any aged or infirm person resident within the jurisdiction of His Majesty's Court of *King's*

*Bench* in this Province, or any person who is about to withdraw himself or herself beyond such jurisdiction, or who is residing without the limits of this Province, it shall and may be lawful to and for His Majesty's said Court, or for any Judge thereof in vacation, upon hearing the parties upon the motion of such plaintiff or plaintiffs, defendant or defendants, to issue one or more Commission or Commissions under the seal of the said Court, to one or more Commissioner or Commissioners, to take the examination of such person or persons respectively, due notice being given to the adverse party, to the end that he, she, or they may cause such witnesses to be cross-examined.

XVIII. *And be it, &c.*, That in cases of witnesses residing without the limits of this Province, such Commission or Commissions, with the examination of the witness or witnesses taken pursuant thereto, returned to the said Court with an affidavit of the due taking thereof thereto annexed, sworn before and certified by the Mayor or Chief Magistrate of the city or place where the same shall or may be taken, close under the hand and seal, or hands and seals of one or more of such Commissioners, shall be taken, *prima facie*, to have been duly executed and returned, and shall be received as evidence in the said cause: *Provided always*, That such examination or examinations shall not be read or given in evidence in the said cause, in case the deponent or deponents respectively shall be living within the jurisdiction of the said Court, and of sound mind, memory, and understanding, at the time such examination or examinations shall be offered to be given in evidence; *and provided* it is made appear to the Court before which such examination or examinations is or are put in, that the same has or have not been duly taken.

And when executed in a foreign country to be returned under the hands and seals of Commissioners.

Examination not to be read, if deponent is living within the jurisdiction of the Court at the time of trial, and of sound mind.

XIX. *And be it, &c.*, That it shall and may be lawful in any execution against the person, lands, or goods of any debtor or debtors, for the Sheriff to levy the poundage fees and the expense of the said execution, over and above the sum recovered by the judgment, together with the legal interest upon the amount so recovered from the time of entering the said judgment.

Poundage fees, expenses of execution, and interest to be levied.

(See 7 Wm. IV. c. 3, s. 32)

Sales of  
Lands to be  
advertised in  
the Upper  
Canada  
Gazette;

(See 43 Geo.  
III., c. 1.)  
C. L. P. A.,  
1850, s. 188.)

And in any  
Newspaper  
where land  
lies.

XX. *And whereas* it is expedient to provide for the more public and certain notification of sales of lands under execution, in order that all persons having claims thereto may be apprised thereof: *Be it, &c.*, That before the sale of any real estate be had upon any execution to be sued out after the passing of this Act, the Sheriff shall cause an advertisement to be inserted in the Upper Canada Gazette at least six times before such sale, specifying the particular property to be sold, the names of the plaintiff or plaintiffs, and defendant or defendants, and the time and place at which it is intended to proceed to the sale thereof; and the same shall also be advertised in any one public newspaper of the District in which the lands lie, or by notice put up in the office of the Clerk of the Peace, or on the door of the Court-house or place in which the Court of General Quarter Sessions for such District are usually holden, for three months before such sale: *Provided always, nevertheless*, that nothing herein contained shall be taken to prevent such adjournment of such sale to a future day.

Sheriffs not  
to trade as  
merchants  
or shop-  
keepers.

XXI. *And be it, &c.*, That from and after the first day of July next ensuing, it shall not be lawful for any Sheriff or his deputy, in any District of this Province, directly or indirectly, to trade, traffic, sell, or vend goods, wares, or merchandize, either by wholesale or retail, or keep a shop, or expose for sale any such goods, wares, or merchandize, or to maintain any action at law for the recovery of any debt, the amount, consideration, or account being for such goods, wares, or merchandizes, excepting always such as by the duties of his office he is legally commanded to do.

First and last  
days of all  
periods li-  
mited by this  
Act, and  
Rules of  
Court,  
inclusive.

XXII. *And be it, &c.*, That the first and last days of all periods of time limited by this Act, or hereafter to be limited by any rules or orders of Court for the regulation of practice, be inclusive.

(See 7 Wm.  
IV. c. 3, s. 1.)

XXIII. *And be it, &c.*, That the form of proceeding in the said Court, shall be by a course of pleading to issue in a most compendious manner, and that in all actions founded on

a common undertaking, the following form of a declaration may be adopted :

“ A. B. complains of C. D. late of—, for that whereas  
 “ the said C. D. on the—day of—, at—, was indebted  
 “ to the said A. B. in the sum of— [the consideration  
 “ advanced], and being so indebted, he, the said C. D. then  
 “ and there undertook, and faithfully promised the said A. B.  
 “ to pay him the said sum, when he, the said C. D. should be  
 “ requested ; and though since requested, doth now refuse so  
 “ to do, to the said A. B. his damage of £—, who therefore  
 “ brings his suit.”

Form of declaration.

(See C. L. P. A., 1856, s. 108.)

XXIV. *And be it, &c.*, That each and every of the Statutes of jeofails, and each and every of the Statutes of limitations, and each and every of the Statutes for the amendment of the Law, excepting those of mere local expediency, which from time to time have been provided and enacted respecting the Law of England, be adopted, and declared to be valid and effectual for the same purposes in this Province.

Statutes of jeofails, limitation and amendments, declared to be in force in this Province

(See C. L. P. A. 1856, ss. 34, 29i.)

XXV. And in order to discourage vexatious suits, and to prevent additional charges upon any defendant or defendants, who may be willing to pay the sum which he or they shall admit to be justly due: *Be it, &c.*, That in all cases where the sum demanded by any plaintiff or plaintiffs is a sum certain, or is capable of being ascertained by computation of numbers, it shall and may be lawful for any defendant or defendants to move that he or they may be at liberty to pay into Court such sum as he or they shall propose to pay in full discharge of the said demand ; whereupon the Court may order a rule to be drawn up to such effect, or in time of vacation such order may be made by a Judge of the Court, and in case the plaintiff shall be willing to accept and shall accept the same, together with all costs accruing to that time, to be taxed by the proper officer, the same shall be in full satisfaction of such his demand, and all further proceedings in the said action shall cease ; and to the end that every plaintiff or his attorney may know of such proceeding, the defendant or defendants shall and are hereby required to serve a copy of the rule, authorising

Defendant may pay money into Court;

(See 7 Wm. IV. c. 3, s. 13)

(See C. L. P. A., 1856, ss. 119, 120, 121.)

*such payment to be made, upon the plaintiff or his attorney, at the time filing his plea of the general issue to such plaintiff's declaration.*

Officer to receive one per cent on monies paid into Court.

XXVI. *Provided always*, That upon payment of money into Court, it shall and may be lawful for the officer receiving the same, to demand and take a sum not exceeding twenty shillings for every one hundred pounds so paid into Court, and at and after the same rate and proportion for every sum of money so paid; and also to demand and take the sum of one shilling for every receipt by him given on account of money so paid in as aforesaid.

XXVII. [Repealed by 7 Wm. IV. Chap. 1.]

Special Commissions may also be issued to try offenders;

(See 7 Wm. c. 1, s. 9; 8 Vic. c. 13; C. L. P. A., 1856, s. 152.)

XXVIII. *Provided always, and be it, &c.*, That nothing herein contained shall prevent, or be construed to prevent, the Governor, Lieutenant Governor, or person administering the government of this Province, from issuing a Special Commission or Commissions for the trial of one or more offender or offenders, upon extraordinary occasions, when he shall deem it requisite or expedient that such Commission should issue.

No Writ of Inquiry to issue, but damages to be ascertained as if parties had pleaded to issue.  
(See C. L. P. A., 1856, s. 141, *et seq.*)

XXIX. *And be it, &c.*, That no writ of inquiry shall issue to the Sheriff in cases where judgment shall have gone by default, but in all such cases the damages shall be ascertained at the same time and in like manner *as if the parties had pleaded to issue*, and that an entry thereof be made on the roll accordingly.

Jurors allowed 1s. 3d. each.

(See 13 & 14 Vic. c. 53.)

XXX. *And be it, &c.*, That every common juror shall be allowed the sum of one shilling and threepence in every cause in which he shall be sworn as a juror, to be paid by the plaintiff or his attorney, and to be accounted for in costs by the party charged with the payment thereof.

Sheriffs to return writs of Nisi Prius and attend the Judges on their Circuits.

XXXI. *And be it, &c.*, that the Sheriffs of the several Districts shall, and they are hereby required to make a return of all writs of Nisi Prius which shall be delivered to them, or their sufficient deputy, before the said Chief Justice, and every

other Judge who shall be assigned to execute such Commissions of Assize and Nisi Prius, and shall give their attendance upon the said Chief Justice and each other Justice, as well for the returning of such *tales de circumstantibus* as shall be prayed for the trial of such issues, as for the maintenance of good order in the King's Court, and for the doing and executing of all other things to the office of Sheriff in such case belonging and appertaining.

XXXII. *And be it, &c.*, That it shall and may be lawful for the Clerk of the Crown and Pleas to have, and he is hereby required to have in each and every District of this Province, *except the Ottawa*, an office, the duties of which shall be discharged by Deputy, in which actions in the said Court may be instituted, and all necessary proceedings *had before final judgment*, and a writ of *capias ad satisfaciendum* after such final judgment, may be issued in the same manner as the same may be done in the principal office of the said Clerk.

XXXIII. *Provided always, and be it, &c.*, That the precept and affidavit (where one shall be required), filed in the said District office, on issuing any *capias ad satisfaciendum*, shall be transmitted to the principal office within one month after the same shall have been filed, as aforesaid.

XXXIV. *And be it, &c.*, That whenever either the plaintiff or defendant in any suit hereafter to be instituted in any District, *except the Home District*, may think it necessary to produce to the Court the writ, declaration, plea, or any other proceedings which may have been filed in such cause, it shall and may be lawful for the said plaintiff or defendant to demand and receive from the Deputy Clerk of the Crown and Pleas in the District, a copy of such writ, declaration, plea, or other proceeding in the cause, certified by the said Clerk to be a true copy of the original, which copy shall be received by the Court in all cases in lieu of the original, and as a proof thereof.

XXXV. [Repealed by 19 Vic., Chap. 43.]

Eight days' notice of trial to be given in all cases, and four days' notice of countermand.

(See C. L. P. A., 1856, s. 146.)

XXXVI. *And be it, &c.*, That no indictment, information, or cause whatsoever, shall be tried at Nisi Prius, before any Judge or Justice of Assize or Nisi Prius in any District of this Province, unless notice of trial, in writing, has been given at least eight days before such intended trial; and in case any party or parties shall have given such notice of trial, as aforesaid, and shall not afterwards duly countermand the same in writing, at least four days before such intended trial, every such party shall, upon bringing such issue to trial, be obliged to pay unto the party or parties to whom such notice of trial shall have been given, as aforesaid, the like costs and charges as if such trial had not been countermanded.

Dilatory pleas may be argued before a Judge in vacation.

(See C. L. P. A., 1856, s. 101.)

XXXVII. *And be it, &c.*, That whenever the defendant in any action shall, in term time, plead any dilatory plea, in case such plea shall be a matter in law and not in fact, it shall and may be lawful to and for the plaintiff in the said action, to set down such plea for argument on the next day on which the said Court shall sit, or on any other day in the term, giving two days' notice thereof to the defendant or his Attorney; and in case such plea be filed in the time of vacation, or being filed in term time, the said plaintiff shall neglect so set down the same for argument as aforesaid, it shall and may be lawful to and for the said plaintiff to apply to any Judge of the said Court to hear and determine the issue joined thereon, in like manner as the same may now be done in open Court; and in case the said Judge shall give judgment for the plaintiff, he, the said Judge, shall, by an order under his hand, direct the said plea to be taken off the file, with costs to be taxed by the proper officer; and the said defendant shall, within four days from the date of such order, plead an issuable plea, and shall rejoin gratis, and shall be bound to go to trial at such time as he would have been bound to go to trial in case he had pleaded such issuable plea in the first instance, and not such dilatory plea.

Costs in civil suits to be

XXXVIII. *And be it, &c.*, That the allowance of costs to either party, plaintiff or defendant, in all civil suits and penal

actions, be regulated by the Statutes and usages which direct the payment of costs by the laws of England. regulated by the Laws of England.

XXXIX. *And be it, &c.*, That the *Chief Justice*, and other the Justices of the Court of *King's Bench*, for the time being, or any two of them, whereof the *Chief Justice*, for the time being, to be one, shall and may be one or more Commission or Commissions, under the seal of the said Court, from time to time as need shall require, empower what and as many persons as they shall think fit and necessary, in all the several Districts within this Province, to take and receive all and every such affidavit and affidavits as any person or persons shall be willing and desirous to make before any of the persons so empowered, in or concerning any cause, matter, or thing, depending or hereafter to be depending, or in anywise concerning any of the proceedings to be had in the said respective Courts; and that it shall and may be lawful for any Judge of Assize, and in his circuit to take and receive any affidavit or affidavits as any persons shall be willing and desirous to make before him, in or concerning any cause, matter, or thing depending or hereafter to be depending, or in any wise concerning any proceedings to be had in the said Court of *King's Bench*; which said affidavits, taken as aforesaid, shall be filed in the office of the said Court, and there be read and made use of in the said Courts to all intents and purposes as other affidavits taken in the said Courts ought to be; and that all and every affidavit and affidavits, taken as aforesaid, shall be of the same force as affidavits taken in the said Court shall and may be; and all and every person or persons forswearing him, her, or themselves, in such affidavits, shall incur and be liable unto the same pains and penalties as if such affidavit or affidavits had been made and taken in open Court: *Provided always*, that for the taking of every such affidavit, the person or persons so empowered, and taking the same, shall, for so doing, receive only the sum or fee of twelve pence, and no more. (See 2 Vic. c. 2; 12 Vic. c. 63, s. 48.)  
Commissioners to be appointed for taking affidavits.  
Penalties of perjury for false swearing;  
1s. for oath.

XL. *And be it, &c.*, That the *Chief Justice*, for the time being, and other the Justices of the said Court of *King's Bench*, or any two of them, whereof the said *Chief Justice*

Commissioners may be appointed for taking bail;

(See 4 Wm. c. 5.)

*shall be one*, shall or may be one or more Commission or Commissions, under the seal of the said Court, from time to time as need shall require, empower such and as many persons as they shall think fit and necessary in all and every recognizance or recognizances of bail or bails, as any person or persons shall be willing or desirous to acknowledge or make before any of the persons so empowered, in any action or suit depending, or hereafter to be depending in the said Court, in such manner and form, and by such recognizance or bail, as the Justices of the said Court may hercafter take, or may think fit, which said recognizance or recognizances of bail, or bail-piece, so taken as aforesaid, shall be filed in the office of the Clerk of the Crown in the District where the same shall be taken, together with an affidavit of the due taking the recognizance of such bail or bail-piece, by some credible person present at the taking thereof; which recognizance of bail or bail-piece, so taken and filed, shall be of the like effect as if the same were taken in open Court; for the taking of which recognizance or recognizances of bail or bail-piece, the person or persons so empowered shall receive only the sum or fee of two shillings, and no more: *Provided always, nevertheless*, that nothing herein contained shall extend to preclude any party from excepting to the bail in the manner and within the time prescribed by law.

Justices to make orders regulating the justifying of bail before Commissioners.

(See 4 Wm. IV. c. 5, s. 2.)

**XLI.** *And be it, &c.*, That the Justices, respectively, shall make such rules and orders for the justifying of such bails, and making of the same absolute, as to them shall seem meet, so as the cognizor or cognizors of such bail or bails be not compelled to appear in person in the said Court to justify him or themselves, but the same may and is hereby directed to be determined by affidavit or affidavits, duly taken before the said Commissioners, who are hereby empowered and required to take the same, and also, to be examined by the Justices upon oath touching the value of their respective estates.

Judges of assize may take bail.

**XLII.** *And be it, &c.*, That any Judge of Assize in his Circuit shall and may take and receive all and every such recognizance or recognizances of bail or bails, as any person shall be willing and desirous to make and acknowledge before him,

which being transmitted, in like manner as aforesaid, shall without oath be received in manner as aforesaid.

XLIII. *And be it, &c.*, That the several Acts and Ordinances of the Governor and Council of the late Province of Quebec, whereby the several Courts of Common Pleas in this Province were constituted, and from time to time continued, be and each and every of them are hereby repealed.

XLIV. *And be it, &c.*, That after twelve months from the passing of this Act, no Attorney of this Court being a merchant, or in any wise concerned by partnership, public or private, in the purchasing and vending of merchandize in the way of trade as a merchant, shall be permitted to practice in the said Court during the time he may be such merchant or so engaged, as aforesaid, nor until twelve months after he shall have ceased to be such merchant, or so engaged as aforesaid.

XLV. *And be it, &c.*, That from and after the first day of Easter term next, it shall and may be lawful to and for the said Court of King's Bench, and they are hereby required by order or rule, or orders or rules, to be pronounced by the said Court during the said term of Easter, or during any subsequent term or terms, from time to time, to ascertain, determine, declare, and adjudge, all and singular the fees which shall and may be taken, or be allowed to be taken, by any Clerk of the Crown, Counsel, Attorney, Sheriff, Officer, or other person, from or in respect of any business after the first day of Easter term, to be done or transacted in the Court of King's Bench, as well in civil causes as in criminal prosecutions, as in all matters and things, causes, and proceedings, which thereafter shall or may be depending in the said Court, which regards the King's revenue, or under any Commission of Oyer and Terminer and General Gaol Delivery, or under any Special Commission of Oyer and Terminer, any former law to the contrary notwithstanding.

XLVI. *And be it, &c.*, That nothing in this Act contained shall extend to annul any existing Commission or authority of

Ordinances  
of Quebec  
repealed.

No Attorney  
to trade as a  
shop keeper.

Judges to  
establish  
Fees to be  
taken by all  
officers of  
the Court.

(See New  
Rules, 1856.)

No Commis-  
sions or  
proceedings

to be hereby  
avoided.

any Officer or Commissioner heretofore appointed to any office which may require to be continued by the provisions of this Act, or to make void any proceedings now depending in the said Court of King's Bench, but that the said office shall be conducted, and the said proceedings be continued and carried on, according to the several conditions herein contained.

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11 GEORGE IV.—CHAP. 5.

*An Act to extend the Provisions of the Law of Set-off, and to prevent unnecessary and vexatious Law-Suits.*

[Passed 6th March, 1830.]

Preamble.

WHEREAS the provision for setting mutual debts, one against the other, is highly just and reasonable at all times, and ought to be extended so as to allow a defendant to recover the balance due to him: *Be it, &c.*, That if in any action to be hereafter commenced in His Majesty's Court of *King's Bench*, or in any of His Majesty's *District Courts* in this Province, the defendant having given notice of set-off, or pleaded the same according to law, shall on trial of said action prove a sum due to him, or if he be sued as executor or administrator, to the testator or intestate, from the plaintiff, or if the plaintiff sue as executor or administrator from the testator or intestate, greater than such plaintiff has proved due to him, or his testator, or intestate from such defendant, or his testator or his intestate, it shall and may be lawful for the jury to render a verdict for the defendant to the amount of the difference of their respective claims proved as aforesaid, and for every such defendant to enter up judgment for such sum, besides his costs and charges, and to have execution therefor.

Defendants having given notice of, or pleaded a set-off, may recover judgment for the amount proved by them beyond plaintiff's demand, and have execution therefor.

(12 Vic. c. 63)

II. [Similar powers to Courts of Request.]

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## 1 WILLIAM IV.—CHAP. 1.

*An Act to prevent a failure of Justice by reason of immaterial variances in certain Law Proceedings, and to require all Courts to take judicial notice of Private Acts of Parliament.*

[Passed 16th March, 1831.]

WHEREAS great expense is often incurred, and delay or Preamble.  
failure of justice takes place at trials, by reason of variances between writings produced in evidence, and the recital or setting forth thereof upon the record on which the trial is had, (C. L, P. A., 1856, s. 291.)  
in matters not material to the merits of the case, and such record cannot now in any case be amended at the trial, and in some cases cannot be amended at any time: *And whereas* great additional expense is often incurred by reason of the necessity of pleading specially private Acts of Parliament, which the several Courts of Justice cannot judicially notice unless they be so pleaded or given in evidence: *Be it, &c.*, That it shall and may be lawful for every Court of Record holding plea in civil actions; any Judge sitting at Nisi Prius, and any Court of Oyer and Terminer, and General Gaol Delivery in this Province, if such Court or Judge shall see fit so to do, to cause the record on which any trial may be pending before any such Court or Judge in any civil action, or in any indictment or information for any misdemeanor, when any variance shall appear between any matter in writing or in print produced in evidence, and the recital or setting forth thereof upon the record whereon the trial is pending, to be forthwith amended in such particular by some officer of the Court, on payment of such costs (if any) to the other party as such Court or Judge shall think reasonable, and thereupon the trial shall proceed as if no such variance had appeared; and in case such trial shall be had at Nisi Prius, the order for the amendment shall be indorsed on the postea and returned together with the record, and thereupon the papers, rolls, and other records of the Court, from which such record issued, shall be amended accordingly.

Variations may be amended in civil cases and in prosecutions for misdemeanors, at the discretion of the Court or Judge holding plea thereof.

Courts  
required to  
take judicial  
notice of  
private Acts  
of Parlia-  
ment.

II. *And be it, &c.*, That all Acts of the Provincial Parliament of this Province, whether the same shall be deemed public or private Acts, shall equally be taken notice of judicially by all Courts, Judges, Justices, and other persons whomsoever, without being specially pleaded; and that a copy of any such Act, printed by proper authority in this Province, shall be taken as sufficient evidence thereof, any law to the contrary notwithstanding.

2 WILLIAM IV.—CHAP. 6.

*An Act to provide for making Stock held in Companies having a joint transferable Stock, liable to the satisfaction of Debts.*

[Passed 28th January, 1832.]

Preamble.

Stock in  
corporate  
companies  
rendered  
liable to  
execution  
for debt

WHEREAS it is just and expedient that the Stock held by individuals, either in Banking institutions, or in other Companies lawfully created within this Province, and having a joint transferable Stock, should be subject to be taken and sold in satisfaction of debts, in the same manner as other personal property: *Be it, &c.*, That the Stock held by any person in any Bank, or in any Corporation or Company in this Province having a joint transferable Stock, shall be liable to be taken and sold in execution, in the same manner as other personal property of the debtor.

(See 12 Vic.  
c. 23.)

Stock to be  
transferred  
in the books  
of the  
corporation  
upon  
sheriff's  
certificate  
of sale.

II. *And be it, &c.*, That it shall and may be lawful for the Cashier of any such Bank, or for the proper officer of any other such Corporation or Company, upon the production of a certificate under the hand and seal of office of the Sheriff acting upon any execution, declaring to whom any Stock taken upon such execution shall have been sold by him, to transfer such Stock from the name of the original Stockholder to the name of the person or persons who may be named in such certificate as the purchaser or purchasers under such execution; and that such purchaser or purchasers shall from thenceforth be entitled to receive all dividends and profits arising from such stock, and shall in all other respects be considered in the place and stead of the former Stockholder.

## 3 WILLIAM IV.—CHAP. 7.

*An Act to facilitate legal remedies against Corporations.*

[Passed 13th February, 1833.]

WHEREAS it is expedient to facilitate legal proceedings against Preamble.  
Corporations: *Be it therefore enacted, &c.,* That all writs and (See C. L. P.  
process at law hereafter to be issued against any body or bodies A., 1856,  
corporate, in the commencement of any action, and all papers s. 33.)  
and proceedings, before final judgment in any such action, may  
be served on the *President, Presiding Officer, Cashier, Secre-* Process in  
*tary or Treasurer thereof,* in the same manner as upon any suits insti-  
individual defendant in his natural capacity, or on such other tuted  
person, or in such manner as the Court in which the action against cor-  
shall be brought may direct. porations,  
how to be  
served.

II. *And be it, &c.,* That when any writ or process against a  
body corporate, in the commencement of a suit, shall be Upon due  
returned duly served, and the service thereof duly proved as service of  
in other cases, the plaintiff may *enter an appearance for the* process,  
*defendant of course;* and that the plaintiff in any suit against plaintiff may  
a body corporate, in which an appearance shall be entered, as enter an  
aforesaid, or to which the defendant shall appear, may after appearance  
such appearance proceed in like manner as in cases of actions for defendant  
against natural persons, or in such other manner as the Court and proceed  
by general rule shall direct. thereon as in  
the cases of  
natural  
persons.  
(See C. L. P.  
A., 1856,  
s. 60.)

III. [Repealed by 7 William IV. Chap. 9, which makes Continuation  
this Act perpetual.] of this  
Act.

## 3 WILLIAM IV.—CHAP. 8.

*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.*

[Passed 13th February, 1833.]

WHEREAS from the tenure of the office of Sheriff in this Pro- Preamble.  
vince, and the nature of the security exacted for the due per-

On or before first August, all Sheriffs to enter into bonds to the King, with two sureties conditioned to account for all public monies received by them.

formance of its duties, sufficient indemnity is not afforded against damages that may arise from the misprisons or defaults of Sheriffs: *Be it therefore enacted, &c.*, That the Sheriff of each and every District of this Province shall, on or before the first day of August next after the passing of this Act, enter into a bond to His Majesty, His Heirs and Successors, in the penal sum of one thousand pounds, together with two sureties, to be approved of by the Inspector General of Public Accounts, in the sum of five hundred pounds each, with a condition that he shall well and faithfully account for and pay over all such monies as he shall receive for His Majesty, His Heirs and Successors; which bond and condition shall be in the form given in the Schedule to this Act annexed, marked A, or in words to the like effect.

Sheriffs to give security for the due performance of their duty in private suits, by entering into a covenant with sufficient sureties.

II. *And be it, &c.*, That the Sheriff of each and every District of this Province, shall also, on or before the same first day of August, provide either two or four sufficient persons who, together with himself, shall enter into a covenant under their seals, joint and several, according to the form given in the Schedule to this Act annexed, marked 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 or wilful misconduct of any such Sheriffs, respectively.

Sureties to be approved of by Justices in Sessions.

III. *And be it, &c.*, That such sureties shall not be accepted sufficient, unless a majority of the Justices of the Peace at a Court of General Quarter Sessions of the Peace for the District in which any such Sheriff is serving, shall ascertain and determine that they are good and sufficient, and unless a certificate shall be given in pursuance of such determination, under the hand and seal of the Chairman of such Quarter Sessions, declaring that the Court are satisfied that the persons named in the certificate are responsible persons to the full amount to which they are required to become surety; which certificate shall be produced and filed at the time of the delivering and filing of the said covenant as hereinafter provided.

Bond to be deposited with Inspector General.

IV. *And be it, &c.*, That the bond to his Majesty, required by this Act, shall be deposited with the Inspector General of

Public Accounts in this Province; and that the covenant required by this Act shall be made in duplicate, each part of which shall be marked duplicate, but shall be considered and received as original, one of which parts shall be filed in the office of the Secretary of the Province, and the other part thereof shall be filed in the office of the Clerk of the Peace of the District for which such Sheriff shall be appointed; for which filing the said Clerk of the Peace shall be entitled to demand and receive from the Sheriff the sum of two shillings and six pence, and no more.

Covenants to be executed in duplicate, one part to be filed with the Secretary of the Province, and the other with the Clerk of the Peace.

Fee to Clerk of the Peace.

V. *And be it, &c.*, That all and every person or persons shall be authorized to search and examine any such covenant, and shall and may demand and have from any Clerk of the Peace of any District of this Province a copy of such covenant as may be filed as aforesaid in pursuance of this Act; and it shall and may be lawful for such Clerk of the Peace to demand and receive for every such search and examination one shilling and three pence, and for every such copy five shillings, and no more.

Any person may examine covenant, and require a copy, upon payment of one shilling and three pence for the search, and five shillings for the copy.

VI. [Repealed by 4 & 5 Vic., Chap. 91, s. 12.]

VII. *And be it, &c.*, That at any time, and at all times hereafter, when the office of Sheriff of any District of this Province shall become vacant, it shall not be lawful for the Governor, Lieutenant Governor, or person administering the Government of this Province, to appoint any person to the said office of Sheriff until such person shall have given a bond with sureties, in the same manner and to the same tenor and effect as are by this Act required from the several persons now holding commissions and executing the said office of Sheriff.

No Sheriff to be appointed until bonds and covenants have been regularly given and filed according to this Act.

VIII. *And be it, &c.*, That no person shall hereafter be appointed to the office of Sheriff in any District who shall not be possessed of real estate in this Province of the actual value of seven hundred and fifty pounds, above incumbrances, and who shall not before he receives his commission file an affidavit to that effect in the office of the Secretary of this Province;

No person to be appointed Sheriff who shall not be possessed of real estate to the value of £750, ascertained by his own affidavit.

which affidavit shall be sworn before the Chairman of the Quarter Sessions of the District in open Sessions, who is hereby authorised and required to take the same.

In case of the death, absence or insolvency of any surety, new sureties to be given.

IX. *And be it, &c.*, That if any person who shall have become an obligor in any such bond, or surety in any such covenant, shall die, or shall become resident out of this Province, or shall become insolvent, the person holding such office of Sheriff, for whom the person so dying, leaving this Province, or becoming insolvent, shall have become such obligor or surety, shall, within four months after such death or departure, or after such insolvency shall be certified in the manner herein provided, give anew the like bond and security and in the same manner as hereinbefore required. *Provided always*, that nothing herein contained shall extend, or be construed to extend, to discharge all or any of the parties to such former bond or covenant from their liability, on account of any matter or thing which shall have been done or omitted before the renewal of the security as herein directed.

New security being given not to avoid former liability.

Sureties apprehensive of the insolvency of their principal may notify the Government thereof, whereupon new sureties may be required.

X. *And be it, &c.*, That if during the period for which any such covenant, as aforesaid, shall be given, the sureties executing the same, or any of them, shall apprehend that the Sheriff for whom such surety was given is insolvent, or has not property to the amount of seven hundred and fifty pounds, over and above all incumbrances and debts, and shall transmit to the Governor, Lieutenant Governor, or person administering the Government of this Province, an affidavit made by him to that effect, and sworn to before a Commissioner for taking affidavits in the Court of King's Bench, the Sheriff for whom the security was given shall be thereupon officially notified by the Secretary to his Excellency the Lieutenant Governor, or person administering the Government of this Province, that he must forthwith furnish new security in the manner pointed out by this Act, or must on affidavit deny that he is insolvent, or that he is worth less than the sum of seven hundred and fifty pounds, over and above all incumbrances and debts, and that if such requisition is not complied with within one month after the sitting of the

then ensuing Quarter Sessions of the District, he shall for that cause be removed from office.

XI. *And be it, &c.*, That when any new surety or sureties shall be given, either at the expiration of any stated period, or by way of substitution for any other surety within the period, the former surety shall only be discharged as to defaults or misfeasances suffered or committed after the perfecting of such new security, and not as to any previous defaults or misfeasances.

New sureties being given, not to discharge former defaults.

XII. *And be it, &c.*, That after the covenant required to be entered into by this Act shall have been sued upon, by any person having or alleging a claim upon the parties to the same, by reason of the default or misfeasance of the Sheriff, it shall, notwithstanding, be in the power of any person, or of the same person, to bring an action upon the same covenant for any other default or misfeasance, and such subsequent action shall not be barred by reason of any prior recovery, or of any judgment for the defendant rendered in a former action, or if any other action being depending upon the same covenant for any distinct cause of action.

Actions brought on Sheriff's covenant not to discharge subsequent actions brought on the same covenant for other causes.

XIII. *And be it, &c.*, That if any person or persons who shall or may have become such surety, shall have paid, or shall be liable to pay any sum or sums equal to the sum for which he or they shall have become security, the said bond or covenant shall as to such person or persons be taken and deemed to be discharged and satisfied, as to any claim or demand thereon beyond the amount of such payment or liability; and such Sheriff shall, within four months after such person or persons shall have become so discharged, give anew such securities as are required by the provisions of this Act

Any surety having paid the full amount for which he became liable, shall be thereby discharged, whereupon Sheriff shall procure another surety.

XIV. *And be it, &c.*, That if the amount of any damages recovered, which such security has been obliged to pay, is not equal to the amount for which he shall have become security, as aforesaid, then the Court shall, after deducting such sums therefrom, render judgment against such security, for

Provision if damages recovered against any surety, and paid, shall not be equal to the amount for which he

shall have become surety. any amount not exceeding the residue of the sum for which such security shall have become responsible as aforesaid.

**If covenant shall have become discharged, or sureties insolvent, Quarter Sessions may notify Sheriffs to furnish new sureties.** XV. *And be it, &c.*, That if it shall be made to appear by affidavit, or other sufficient proof, to the General Quarter Sessions of the Peace of any District, that any such covenant has been or may be discharged as aforesaid, or that the securities therein mentioned or any or either of them, have become insolvent, it shall and may be lawful for the said Quarter Sessions to give notice thereof to the Sheriff of such District, and such Sheriff shall, and he is hereby required, to give anew the like covenant as hereinbefore required by the provisions of this Act, within four months after such notice.

**Executions against Sheriffs and their sureties to be levied first on Sheriffs.** XVI. *And be it, &c.*, That upon the issuing of any writ of execution upon any judgment recovered on such covenant, the plaintiff in such suit, or his attorney, shall, by an indorsement on such writ, direct the Coroner to levy the amount thereof upon the goods and chattels of the Sheriff in the first place, and in default of goods and chattels of such Sheriff to satisfy the amount, then that the same, or the residue thereof, shall be made of the goods and chattels of the other defendants in such suit, and so in like manner with any writ which shall issue against the lands and tenements in any judgment upon such covenant as is required by this Act.

**Sheriffs liable to pay the costs of all rules upon them, unless the Court shall otherwise order.** XVII. *And be it, &c.*, That upon application for or granting of by any of the Courts of this Province any rule or rules upon any Sheriff for the return of any writ or writs, or for the performance of any other duty or matter relating to the said office of Sheriff, such Sheriff shall be liable to and pay to the party making such application or obtaining such rule or rules all taxable costs thereon, unless the Court shall otherwise order: *Provided always*, that if such application shall be made, or any such rule granted previous to the day next after which such return should have been made, or such duty or matter performed, the Sheriff against whom such application shall be made or such rule granted, shall not be liable for any costs or charges which may arise or occur upon the same: *And pro-*

vided also, that if upon such application for a rule or rules, it shall appear to the said Judge or Judges of the said Courts, respectively, that the same is frivolous or vexatious, the said Judge or Judges of the said Courts, respectively, may, upon discharging such application, order that all taxable costs and expenses for opposing the same, be paid to the said Sheriff.

In vexatious applications, costs may be awarded to the Sheriffs.

XVIII. *And be it, &c.*, That no Sheriff shall be entitled to any fees on any writ placed in his hands fifteen days before the return day mentioned therein, if he does not return the same to the attorney from whom he received it within four days after the return thereof, or enclose the same by post within that time to the attorney, unless delayed by an order in writing from the party, his attorney, or agent, placing the same in his hands.

Where Sheriffs not entitled to fees on writs placed in their hands fifteen days before the return.

XIX. [Repealed by 4 & 5 Vic. c. 91, s. 12.]

XX. *And be it, &c.*, That the covenant to be entered into with the Sheriffs of the several Districts, respectively, shall specify the following sums, as the extent to which the several parties thereto shall be considered as covenanting to afford indemnity, that is to say: The Sheriff of the Home District, one thousand pounds; two sureties five hundred pounds each, or four sureties two hundred and fifty pounds each. The Sheriff of the District of Niagara one thousand pounds; two sureties five hundred pounds each, or four sureties two hundred and fifty pounds each. The Sheriff of the District of Gore, one thousand pounds; two sureties five hundred pounds each, or four sureties two hundred and fifty pounds each. The Sheriff of the District of London, one thousand pounds: two sureties five hundred pounds each, or four sureties two hundred and fifty pounds each. The Sheriff of the Western District, five hundred pounds; two sureties two hundred and fifty pounds each, or four sureties one hundred and twenty-five pounds each. The Sheriff of the District of Newcastle, one thousand pounds; two sureties, five hundred pounds each, or four sureties two hundred and fifty pounds each. The Sheriff of the Midland District, one thousand pounds; two sureties five hundred

Sums to be specified in the different covenants for the several Districts.

pounds each, or four sureties two hundred and fifty pounds each. The Sheriff of the District of Johnstown, one thousand pounds; two sureties five hundred pounds each, or four sureties two hundred and fifty pounds each. The Sheriff of the District of Bathurst, five hundred pounds; two sureties two hundred and fifty pounds each, or four sureties one hundred and twenty-five pounds each. The Sheriff of the District of Ottawa, five hundred pounds; two sureties two hundred and fifty pounds each, or four sureties one-hundred and twenty-five pounds each. The Sheriff of the Eastern District, one thousand pounds; two sureties five hundred pounds each, or four sureties two hundred and fifty pounds each. And that the Sheriff of any new District hereafter to be formed shall give such security, himself in one thousand pounds, two sureties five hundred pounds each, or four sureties two hundred and fifty pounds each.

Nature of the liability of sureties.

XXI. *And be it, &c.*, That the persons entering into any such covenant as sureties, shall be held liable to indemnify against any omission or default of the Sheriff in not paying over monies received by him, and against damages sustained by the parties to any legal proceeding, in consequence of his wilful or negligent misconduct in his office; and that the Sheriff shall be joined in any action to be brought on the covenant against all or any of the sureties.

Notwithstanding any forfeiture of office, Sheriffs to continue in office until successor appointed.

XXII. *And be it, &c.*, That notwithstanding the Sheriff of any District may forfeit his office, and become liable to be removed therefrom, by reason of his failing to comply with the provisions of this Act, he shall nevertheless be continued in his office to all intents and purposes, and the liability of himself and of his securities shall remain until a new Sheriff shall be appointed and sworn in his stead.

Upon the death of any Sheriff, his Deputy shall continue to execute the office in his name, until the appoint-

XXIII. *And be it, &c.*, That when any Sheriff in this Province shall die, the Under Sheriff or Deputy Sheriff by him appointed shall nevertheless continue in his office, and shall execute the same, and all things belonging thereto, in the name of such deceased Sheriff, until another Sheriff be appointed for the same District and sworn into office; and the said Under

Sheriff or Deputy Sheriff shall be answerable for the execution of the said office in all things, and to all respects, intents and purposes whatsoever, during such interval, as the Sheriff so deceased would by law have been if he had been living; and the security given to the Sheriff so deceased by the said Under Sheriff, and his pledges, shall stand, remain, and be a security to the King, his Heirs and Successors, and to all persons whatsoever, for the Under Sheriff's due performance of his office during such interval.

ment of a  
successor.

Deputy Sheriff and his sureties to be responsible for the execution of the office in the interval.

### SCHEDULE A.

Know all men by these presents, that we, A. B., Sheriff of the District of —, C. D. of —, in the District of —, Esquire, and E. F., of —, in the District of —, are held and firmly bound to our Sovereign Lord the King, His Heirs and Successors, in the several sums following, that is to say: The said A. B. in the sum of one thousand pounds; the said C. D. in the sum of five hundred pounds: and the said E. F. in the sum of five hundred pounds: to be paid to our Sovereign Lord the King, His Heirs and Successors; for which payments to be well and truly made, we bind ourselves severally and respectively, and each of us his heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this — day of —, in the year of our Lord —.

Form of  
bond to the  
King.

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 his 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 Lord the King, His Heirs or Successors, from the date of this obligation until the — day of —, in the year of our Lord — (four years) then this obligation to be void, otherwise to remain in full force and virtue.

[L. S.]

[L. S.]

[L. S.]

Signed and delivered }  
in presence of }

## SCHEDULE B.

Form of  
covenant.

Know all men by these presents, that we, A. B., Sheriff of the District of—, C. D. of —, in the District of —, and E. F. of —, in the District of — (when four sureties are given, the names of the other two to be inserted in like manner,) do hereby jointly and severally, for ourselves, and for each of our heirs, executors and administrators, covenant and promise, that A. B., as Sheriff of the said District, shall well and duly pay over to the person or persons entitled to the same all such monies as he shall receive by virtue of his said office of Sheriff, from the date of this covenant to the expiration of four years thence next ensuing, and that neither he nor his deputy shall, within that period, wilfully misconduct himself in his said office, to the damage of any person being a party in any legal proceeding; nevertheless, it is hereby declared, that no greater sum shall be recovered under this covenant, against the several parties thereto, than as follows: that is to say:

Against the said A. B., in the whole —.

Against the said C. D. —.

Against the said E. F. —.

(If other sureties, add them in like manner.)

In witness whereof, we have to these presents set our hands and seals, this — day of —, in the year of our Lord —.

[L. S.]  
[L. S.]  
[L. S.]  
[L. S.]

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

## 4 WILLIAM IV.—CHAP. V.

*An Act to grant further relief to Bail in certain cases, and to regulate the manner of putting in and perfecting Bail in vacation.*

[Passed 6th March, 1834.]

Preamble.

WHEREAS it is necessary to afford further relief to Bail in certain cases; *Be it, &c.*, That the special Bail in any action

now pending, or which may be hereafter brought in any of the Courts of this Province, may surrender their principal to the Sheriff of any of the respective Districts in which he may be resident or found, and upon the production of the copy of the Bail-piece, certified by the Clerk of the Court in which the Bail shall have been entered, the Sheriff of any such District shall receive the defendant into custody, and shall give a certificate, under his seal of office of his being so surrendered into his custody, upon which certificate being produced, an exoneretur shall be entered upon the Bail-piece in the same manner as is now authorised by law in other cases, and upon notice of such surrender to the plaintiff or to his attorney, and upon such such exoneretur being so entered, the Bail in such case shall be discharged; *Provided always*, that nothing in this Act contained shall be taken to compel the plaintiffs in any such action or suit to change the venue or to conduct his suit in any manner different from that in which he would have been compelled had the render been made in the District in which the defendant had been arrested.

Bail may surrender their principal and be discharged;

Sheriff to give certificate of surrender:

Plaintiff not prejudiced in conduct of his suit.

II. *And be it, &c.*, That notwithstanding any thing contained in any law to the contrary, it shall and may be lawful after the passing of this act, for Bail to justify in vacation before a Judge of his Majesty's Court of *King's Bench*, whether the defendant be or be not in actual custody, and such Judge may make his rule or order for the allowance of such Bail: *Provided always nevertheless*, that this provision shall not take effect until after the end of the Term of sitting of the Court of King's Bench which shall commence next after the passing of this Act; and that it shall be competent for the Court of King's Bench in the said Term, and in any Term afterwards, to make such orders or rules as to them shall seem fit, respecting the manner of justifying and perfecting Bail, as aforesaid, and respecting the notices to be given previous thereto, the attendance of Bail before a Commissioner or before a Judge, and the affidavits or examinations to be required, or any other matter or thing which may to them appear expedient for carrying this proviso the most justly and conveniently into effect.

(See 12 Vic. c. 63, s. 9.)

Bail may justify before a Judge in vacation;

Commencement of Act, so far as relates to this provision;

Judges to frame rules of practice with regard to justifying.

New Rules.

(See N. R's. 66 et seq.)

III. *And be it, &c.*, That in case any defendant or defendants in any action now pending, or which may be hereafter brought in any of the District Courts in this Province, shall be surrendered by his Bail into the custody of the Sheriff of any District other than that in which such action shall have been instituted, it shall and may be lawful for the plaintiff or plaintiffs in any and every such action, after obtaining and entering up judgment, to procure a transcript of the judgment roll and proceedings, certified under the hand of the Judge of the Court wherein the same shall be obtained; and upon filing such transcript, so certified as aforesaid, in the office of the Clerk of the District Court of the District wherein such defendant or defendants shall be so surrendered into custody, to charge the said defendant or defendants in execution, and take all other necessary proceedings in like manner as if the suit had been originally instituted in such District Court: *Provided always*, that nothing in this Act contained shall be held to interfere or do away with the provision of any existing law for the removal of causes from inferior to superior Courts by writ of Certiorari, or otherwise.

When defendant surrendered in District other than that wherein action brought;

Transcript of Judgment roll may be filed in the Court of such District;

And defendant charged in execution therein;

Law regarding Certiorari not affected by this provision.

#### 4 WILLIAM IV.—CHAP. 7.

##### *An Act to facilitate the remedy by Replevin.*

[Passed 6th of March, 1834.]

Preamble.

(See 14 & 15 Vic. c. 64.)

Remedy by replevin same as by the law of England.

WHEREAS it is expedient to facilitate the remedy of replevin: *Be it, &c.*, That any person complaining of a *wrongful distress* in a case in which by the law of England replevin might be made, may, on filing a præcipe, obtain from the office of the Clerk of the Crown and Pleas in this Province, or from the office of any of his Deputies, a writ of replevin, which may be in the form given in the Schedule to this Act marked A.

II. *And be it, &c.*, That before the Sheriff shall proceed to replevy upon any such writ, he shall take pledges from the plaintiff according to the law of England in that behalf, and the bond to be entered into for that purpose may be in the form given in the Schedule to this Act annexed marked B;

Proceedings by Sheriff upon writ of replevin.

and the assignment thereof to be made to the defendant may be according to the form given in the same Schedule.

III. *And be it, &c.*, That upon the Sheriff making such return of the goods distrained having been eligned, as would warrant the issuing of a *capias* in *withernam* by the law of England, a writ of *capias* in *withernam* shall issue, upon the filing of such return, from the office of the Clerk of the Crown and Pleas in this Province, or from the office of any of his Deputies, which writ may be in the form given in the Schedule to this Act annexed marked C; and that before executing such writ the Sheriff shall take pledges according to the law of England in that behalf.

When *capias* in *withernam* may issue.

IV. *And be it, &c.*, That the Sheriff may make his warrant to any Bailiff or Bailiffs, jointly and severally, to execute either of the writs aforesaid to him directed, according to the law and custom of England in that behalf.

By whom, and how writs to be executed.

V. *And be it, &c.*, That upon the appearance of the defendant being entered in the office from whence any writ of *replevin* or *capias* in *withernam* shall issue, the plaintiff may declare, and may proceed in his action of *replevin* according to the law of England in that behalf.

Proceeding after appearance.

VI. *And be it, &c.*, That if the defendant shall not appear at the return of the writ, or within eight days thereafter, the plaintiff shall cause a notice to be put upon the door of the Court House of the District in which such writ shall have issued, according to the form in the Schedule to this Act annexed marked D; and that if at the expiration of twenty-one days after the said notice shall have been put up, as aforesaid, the defendant shall not have appeared, it shall be lawful for the plaintiff, upon filing an affidavit of the due publication of such notice, in manner aforesaid, to enter appearance for the defendant, and to proceed thereupon as if the defendant had appeared.

Notice in case of non-appearance by defendant.

VII. *And be it, &c.*, That when the value of the goods distrained shall not exceed the sum of fifteen pounds, and

When distress not exceeding fifteen pounds, writ may issue from District Court.

where the title to lands shall not come in question, the writ of replevin may issue from the District Court of any District in this Province within which the distress shall have been made, and such proceedings may be thereon had as shall be agreeable to the practice of the Court of King's Bench in this Province in actions of replevin.

Rules of practice and forms to be framed by the Court of King's Bench.

VIII. *And be it, &c.*, That the Court of King's Bench may by rule or rules from time to time make such provision for rendering the remedy of replevin easy and effectual as such Court may deem conducive to the ends of justice, as well by regulating the practice to be observed in actions of replevin, as by prescribing or changing the forms of writs and proceedings to be used in such actions, or for advancing the remedy by replevin; and that to that end the forms given to the several Schedules annexed to this Act, or any of them, may by rule of the said Court be modified and altered.

How far practice of Court of King's Bench in England to prevail.

IX. *Provided always, and be it, &c.*, That in the absence of any provision in this Act or in any rule of the Court of King's Bench to the contrary, the practice in England in cases of replevin shall be pursued, so far as the same can be applied to the jurisdiction having cognizance of the case, and to the circumstances of this Province.

#### SCHEDULE A.

— District, }  
to wit: } William the Fourth, by the Grace of God, &c.

To the Sheriff of —, Greeting:

Writ of replevin.

We command you, that without delay you cause to be replevied to A. B. his cattle, goods and chattles, which C. D. hath taken and unjustly detains, as it is said, in order that the said A. B. may have his just remedy in that behalf: and that you summon the said C. D. to appear before us, in our Court of King's Bench, at *York*, on the — day of — term, to answer to the said A. B. in a plea of taking and unjustly detaining his cattle, goods and chattels; and what you shall do in the premises make appear to us in our Court of King's

(See 14 & 15 Vic. c. 64, s. 1.)

Bench, at *York*, on the day and at the place aforesaid, and have there then this writ.

Witness the Honourable —, Chief Justice of our said Province, this — day of —, &c.

#### SCHEDULE B.

Know all men by these presents, that we, A. B., of — W. G. of —, and J. S. of —, are jointly and severally <sup>Replevin Bond.</sup> held and firmly bound to W. P., Esquire, Sheriff of the *District* of —, in the sum of —, of lawful money of Upper Canada, to be paid to the said Sheriff, or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made we bind ourselves, and each and every of us in the whole, our and each and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals.

Dated this — day of —, one thousand eight hundred and —.

The condition of this obligation is such, that if the above bounden A. B. do prosecute his suit with effect and without <sup>Condition.</sup> delay against C. D. for the taking and unjustly detaining his cattle, goods and chattels, to wit: (here set forth the cattle or goods distrained,) and do make a return of the said cattle, goods and chattels, if a return thereof shall be adjudged, that then this present obligation shall be void and of none effect, or else to be and remain in full force and virtue.

Sealed and delivered }  
in the presence of }

Know all men by these presents, that I, W. P., Esquire, Sheriff of the District of —, have at the request of the <sup>Assignment by Sheriff.</sup> within named C. D., the avowant (or person making cognizance) in this cause, assigned over this replevin bond unto him the

said C. D., pursuant to the Statute in such case made and provided.

In witness whereof I have hereunto set my hand and seal of office, this — day of —, one thousand eight hundred and —.

Sealed and delivered }  
in the presence of }

### SCHEDULE C.

— District, }  
to wit: } William the Fourth, by the Grace of God, &c.

To the Sheriff of —, Greeting :

Writ of  
capias in  
withernam.

Whereas we lately commanded you, that without delay you should cause to be replevied to A. B. his cattle, goods and chattels, to wit, &c., (setting out the cattle and goods), which C. D. had taken and unjustly detained, as it is said, according to our writ to you afore directed, and that you should make appear to us in our *Court of King's Bench at York*, on the — day of — term, what you should do in the premises; and you at that day returned to us that the cattle, goods and chattels, aforesaid, were eloigned by the said C. D. out of your bailiwick to places to you unknown, so that you could in no wise replevy the same to the said A. B.

Therefore, we command you, that you take in withernam the cattle, goods and chattels, of the said C. D. in your bailiwick, to the value of the cattle, goods and chattels, by him the said C. D. before taken, and deliver them to said A. B., to be kept by him until the said C. D. will deliver the aforesaid cattle, goods and chattels, to the said A. B.; and in what manner you shall have executed this our writ make appear to us on the — day of — term, in our *Court of King's Bench*, that we may cause to be further done thereupon what of right and according to the laws of our *Province of Upper Canada* we shall see meet to be done. We also command you, that if the said A. B. shall make you secure of prosecuting his claims, and of returning the cattle, goods and chattels aforesaid, if a return thereof shall be adjudged, then that you put by

gages and safe pledges the said C. D. that he be before us, at the time last aforesaid, to answer to the said A. B. of the taking and unjustly detaining of his cattle, goods and chattels, aforesaid, and have then there this writ.

Witness ———

#### SCHEDULE D.

Take notice, that unless A. B. who has distrained the cattle, goods and chattels of C. D., shall enter his appearance in an action brought against him on account of the said distress, the said A. B. will on and after the ——— day of ———, being twenty-one days exclusive after this notice was put up, enter appearance for him to the said action, and proceed therein as if the said C. D. had appeared.

Dated ———, A. B. in person (or by his attorney) E. F.

#### 5 WILLIAM IV.—CHAP. 1.

*An Act to prevent the unnecessary multiplication of Law Suits and increase of costs in actions on Notes, Bonds, Bills of Exchange, and other instruments.*

[Passed 16th April, 1835.]

WHEREAS it is expedient to make such alteration in the law as will prevent the necessity of bringing separate actions for sums not large in amount, against the several makers of a bond or other instrument, or against several persons liable to be sued upon a bill of exchange or promissory note, as maker, endorser, or acceptor: *Be it therefore enacted, &c.*, That after the first day of July next, after the passing of this Act, when several suits shall be brought on one bond, recognizance, promissory note, bill of exchange, or other instrument, which shall be made or entered into after the passing of this Act, or when several suits shall be brought against the maker and endorser of a note, or against the drawer, acceptor, or endorsers of a bill of exchange, there shall be collected or received from the defendant the costs taxed on one suit only, at the election of the plaintiff, and in the other suits the actual disbursements only shall be collected or received from the defendant; but

Preamble.

(See 3 Vic., c. 8.)

Costs recoverable in one suit only;

And disbursements in others.

Not to extend to interlocutory costs.

this provision shall not extend to any interlocutory costs in the progress of a cause.

II. *And be it, &c.*, That it shall be lawful for the holder of any bill of exchange or promissory note hereafter to be made, for a sum not exceeding *one hundred pounds*, instead of bringing separate suits against the drawers, makers, endorsers, and acceptors of such bill or note, to include all or any of the said parties to the bill or note in one action, and to proceed to judgment and execution in the same manner as though all the defendants were joint contractors.

Upon bills of exchange, &c. not exceeding £100, all the parties may be included in one action.

(See 13 & 14 Vic., c. 59.)

Defendants may plead separately.

III. *And be it, &c.*, That in any such action, any joint drawer or maker, endorser or acceptor, may plead in abatement the non-joinder of any joint drawer, maker, endorser, or acceptor, in the same manner as though this Act had not been passed; and no judgment to be rendered in pursuance of this Act shall be of any effect against a defendant not served with process.

IV. [Repealed by 3 Vic., Chap. 8.]

Judgment against one or more of the defendants;

[See 3 Vic., Ch. 8, Sec. 3.]

Defendant's costs.

V. *And be it, &c.*, That in any such action judgment may be rendered for the plaintiff against some one or more of the defendants, and also in favour of some one or more of the defendants against the plaintiff, according as the rights and liabilities of the respective parties shall appear, either upon confession, default, by pleading or on trial; and when judgment shall be rendered in favour of any defendant, he shall recover costs against the plaintiff in the same manner as though judgment had been rendered for all the defendants.

VI. }  
VII. } [Repealed by 3 Vic., Chap. 8.]

Rights of the parties as between each other to remain.

VIII. *And be it, &c.*, That the rights and responsibilities of the several parties to any such bill or note, as between each other, shall remain the same as though this Act had not been passed, saving only the rights of the plaintiff, so far as they may have been determined by the judgment.

IX. *And be it, &c.*, That in every suit brought pursuant to the provisions of this Act, any one or more of the defendants shall be entitled to the testimony of any co-defendant, as a witness in all those cases where the defendant or defendants calling the witness would have been entitled to his testimony had the suit been brought in the form heretofore used, and in no other case.

Defendants may be witnesses in certain cases.

X. [Repealed by 3 Vic., Chap. 8.]

XI. *And be it, &c.*, That when in any case an action shall be brought against more than one defendant under this Act, who must otherwise have been sued separately, and it shall happen that any one or more of the defendants shall die pending the suit, an action may nevertheless be brought against the executors or administrators of any such deceased defendant: *Provided* such defendant would have been liable to be sued separately, in case this Act had not been passed.

Defendant's executors liable to be sued.

XII. *Provided always nevertheless, and be it, &c.*, That this Act shall not apply in any case in which the sum expressed to be payable in or upon any such bond, recognizance, promissory note, bill of exchange or other instrument, shall exceed the sum of one hundred pounds, nor to any case where separate actions are brought in the District Court, against persons residing in several Districts.

This Act not to extend to notes for more than £100. (See 13 & 14 Vic., c. 59.)

Nor to actions in several Districts.

XIII. *And be it, &c.*, That when several defendants are included in one process, in pursuance of the provisions of this Act, and any one or more of them cannot be served with such process by reason that he or they is or are absent from the Province, or concealed within the same, then the action may proceed as against the other defendant or defendants without prejudice; and it shall be in the power of the plaintiff afterwards to sue such defendant or defendants separately who shall not have been served with process, and to recover costs as if this Act had not been passed,

Suits may proceed, tho' one or more defendants be absent.

XIV. [Repealed by 3 Vic., Chap. 8.]

## 7 WILLIAM IV.—CHAP. 1.

*An Act to increase the present number of Judges of His Majesty's Court of King's Bench in this Province; to alter the Terms for the sitting of the said Court; and for other purposes therein mentioned.*

[Passed 4th March, 1837.]

I. to }  
VI. } [Superseded by 12 Vic., c. 63.]

VII. [Repealed by 1 Vic., c. 15.]

VIII. [Superseded by 19 Vic., c. 43, ss. 152, 153.]

Provision in  
case Courts  
of Assize  
cannot be  
opened on  
the day  
appointed  
in Commis-  
sion.

IX. *And whereas* it may happen that from some unforeseen casualty it may be impracticable to open a Court of Assize and Nisi Prius, or of Oyer and Terminer or General Gaol Delivery, on the very day appointed in the Commission or Precept for the opening of the same, and it would be attended with great public inconvenience if such court could on that account not be opened until Juries were again summoned, and a new day appointed for holding such Court: *Be it further, &c.*, That whenever from illness of the Judge, or from unavoidable detention at the last Assize town, or from other casualty, it may happen that the Judge appointed to hold any Court of Assize and Nisi Prius, Oyer and Terminer or General Gaol Delivery, shall not arrive in time, or shall not be able to open such Court on the day appointed for that purpose, it shall and may be lawful for the Sheriff of the *District* in which such Court should be holden, or in his absence for his Deputy, after the hour of eight of the clock in the afternoon of such day, to adjourn by proclamation all and every the Courts which shall be 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 the Judge shall arrive to open such Court or Courts, or until he shall receive other direction from the Judge in that behalf.

Judges'  
travelling  
expenses to  
be allowed.

X. *And be it, &c.*, That from and out of the said rates and duties, there be granted to His said Majesty, His Heirs and Successors, a sufficient sum annually to enable His Majesty to

pay to the Judges of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery, the sum of twenty-five pounds for each time that they shall hold any such Court or Courts in any *District* of this Province, except the *Home District*, for the purpose of defraying their travelling expenses; and also a sum sufficient to enable His Majesty to pay the Clerks of Assize their usual and accustomed fees, for the duties performed by them as officers of the Courts of Oyer and Terminer and General Gaol Delivery; and also to pay the Sheriff of the Home District the sum of eleven shillings and eight pence per day, for attending the Terms of the Court of *King's Bench* at the seat of Government.

Fees of Clerks of Assize.

Sheriff of Home District to be paid for attending in Court of King's Bench during term.

### 7 WILLIAM IV.—CHAP. 3.

*An Act for the further Amendment of the Law, and the better advancement of Justice.*

[Passed 4th March, 1837.]

WHEREAS it would greatly contribute to the diminishing of expense in suits in the Court of *King's Bench*, if the pleadings therein were in some respects altered, and the questions to be tried by the Jury left less at large than they now are, according to the course and practice of pleading in several forms of action; but this cannot be conveniently done otherwise than by rules or orders of the Judges of the said Court, from time to time to be made, and doubts may arise as to the power of the said Judges to make such alterations without the authority of the Legislature: *Be it therefore enacted, &c.*, That the Judges of His Majesty's Court of *King's Bench* in this Province, or the majority of them, including the Chief Justice, shall and may, by any rule or order to be from time to time by them made, in term or vacation, at any time within five years from the time when this Act shall take effect, make such alterations in the mode of pleading in the said Court, and in the mode of entering and transcribing pleadings, judgments, and other proceedings in actions at law, and such regulations as to the payment of costs, and otherwise for carrying into

Preamble.

(See 12 Vic., c. 63.)

Judges of the King's Bench authorised to alter the mode of pleading by rule of Court.

And regulations as to the payment of costs;

Such rules to be laid before Parliament.

Rules not to have effect till six weeks after they shall have been laid before Parliament.

Afterwards to be binding on Court;

And on Courts of Appeal and Error;

Rules not to affect pleadings under Acts of Parliament.

effect the said alterations, as to them may seem expedient; and all such rules, orders, or regulations, shall be laid before both Houses of the Legislature, if they shall be then sitting, immediately upon the making of the same, or if the Legislature be not then sitting, then within five days after the next meeting thereof; and no such rule, order or regulation, shall have effect until six weeks after the same shall have been laid before both Houses of the Legislature; and any rule or order so made, shall, from and after such time aforesaid, be binding and obligatory on the said Court, and all other Courts of common law in this Province, to which the same shall be made expressly to extend, and on all Courts of Appeal or Courts of Error in this Province, into which the judgments of the said Courts, or any of them, shall be carried by appeal, or by any writ of error, and be of the like force and effect as if the provisions contained therein had been expressly enacted by the Legislature of this Province: *Provided always*, that no such rule or order shall have the effect of depriving any person of the power of pleading the general issue, and giving the special matter in evidence, in any case wherein he is now or hereafter shall be entitled to do so, by virtue of any Act of Parliament now or hereafter to be in force.

Executors of any person deceased [may maintain actions for injuries done to real estate in testator's life time.

Actions to be commenced within one year of the death of the party;

II. *And whereas* there is no remedy provided by law for injuries to the real estate of any person deceased, committed in his life time, nor for certain wrongs done by a person deceased in his life time to another, in respect of his property, real or personal; for remedy thereof, *Be it, &c.*, That an action of trespass, or trespass on the case, as the case may be, may be maintained by the executors or administrators of any person deceased, for any injury to the real estate of such person, committed in his life time, for which an action might have been maintained by such person, so as such injury shall have been committed within six calendar months before the death of such deceased person: *And provided*, such action shall be brought within one year after the death of such person; and the damages, when recovered, shall be part of the personal estate of such person: *And further*, that an action of trespass,

or trespass on the case, as the case may be, may be maintained against the executors or administrators of any person deceased, for any wrong committed by him in his life time to another, in respect of his property, real or personal, so as such injury shall have been committed within six calendar months before such person's death, and so as such action shall be brought within six calendar months after such executors or administrators shall have taken upon themselves the administration of the estate and effects of such person; and the damages to be recovered in such action shall be payable in like order of administration as the simple contract debts of such persons.

Damages recovered to be part of the personal estate; Actions against executors for wrongs committed by deceased. To be brought within six calendar months; Damages payable as simple contract debts.

III. *And be it, &c.*, That all actions of debt for rent, upon an indenture of demise; all actions of covenant or debt, upon any bond or other speciality; and all actions of debt, or scire facias upon any recognizance; and also all actions of debt upon any award, where the submission is not by speciality, or for an escape, or for money levied on any fieri facias; and all actions for penalties, damages, or sums of money given to the party grieved, by any Statute now or hereafter to be in force, that shall be sued or brought at any time after the passing of this Act, shall be commenced and sued within the time and limitation hereinafter expressed, and not after, that is to say: The said actions of debt for rent, upon an indenture of demise or covenant, or debt upon any bond or other speciality, actions of debt, or scire facias upon recognizance, within ten years after the passing of this Act, or within twenty years after the cause of such actions or suits, but not after; the said actions by the party grieved, one year after the passing of this Act, or within two years after the cause of such actions or suits, but not after; and the said other actions, within three years after the passing of this Act, or within six years after the cause of such actions or suits, but not after: *Provided*, that nothing herein contained shall extend to any action given by any Statute, where the time for bringing such action is or shall be by any Statute specially limited.

Limitations of time for commencement of particular actions;

Actions of debt on demise or covenant, bond or speciality, or scire facias;

Other actions.

IV. *And be it, &c.*, That if any person or persons that is or are, or shall be entitled to any such action or suit, or to

Provision in case of disabilities;

such scire facias, is or are, or shall be at the time of any such cause of action accruing, within the age of twenty-one years, femme covert, non compos mentis, without the limits of this Province, then such person or persons shall be at liberty to bring the same actions, so as they commence the same within such times after their coming to or being of full age, discover, of sound memory, or returned to this Province, as other persons having no such impediment should according to the provisions of this Act have done; and that if any person or persons, against whom there shall be any such cause of action, is or are, or shall be, at the time such cause of action accrued, without this Province, the person or persons entitled to any such cause of action shall be at liberty to bring the same against such person or persons within such times as are before limited, after the return of such person or persons to this Province: *Provided always*, that if any acknowledgment shall have been made, either by writing signed by the party liable, by virtue of such indenture, speciality or recognizance, or his agent, or by part payment, or part satisfaction, on account of any principal or interest being due thereon, it shall and may be lawful for the person or persons entitled to such actions, to bring his or their action for the money remaining unpaid and so acknowledged to be due, within twenty years after such acknowledgment by writing, or part payment, or part satisfaction, as aforesaid; or in case the person or persons entitled to such action shall, at the time of such acknowledgment, be under such disability, as aforesaid, or the party making such acknowledgment be, at the time of making the same, without this Province, then within twenty years after such disability shall have ceased, as aforesaid, or the party shall have returned to this Province, as the case may be; and the plaintiff or plaintiffs in any such action, on any indenture, speciality or recognizance, may, by way of replication, state such acknowledgment, and that such action was brought within the time aforesaid, in answer to a plea of this Statute.

In cases of written acknowledgment or part payment;

(See 13 & 14 Vic., c. 61.)

Acknowledgment may be pleaded in replication.

In case Judgment be reversed

V. *And be it, &c.*, That if in any of the said actions judgment be given for the plaintiff, and the same be reversed from

error in a Court of Error or Appeal, or if a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing for his plaint, writ or bill, or if in any of the said actions the defendant shall be outlawed, and shall reverse the outlawry, that in all such cases the party plaintiff, his executors or administrators, as the case shall require, may commence a new suit or action, from time to time, within a year after such judgment reversed, or such judgment given against the plaintiff, or outlawry reversed, and not after.

for error, &c. new action may be commenced within a year.

VI. *And be it, &c.*, That no plea in abatement for the non-joinder of any person as a co-defendant, shall be allowed in any Court of Common Law, unless it shall be stated in such plea that such person is resident within the jurisdiction of the Court, and unless the place of residence of such person shall be stated with convenient certainty in an affidavit verifying such plea.

Pleas in abatement for non-joinder, to state party's residence, and be verified by affidavit. (See C. L. P. A., 1856, ss. 67-76.)

VII. *And be it, &c.*, That in all cases in which, after such plea in abatement, the plaintiff shall, without having proceeded to trial upon an issue thereon, commence another action against the defendant or defendants, in the action in which such plea in abatement shall have been pleaded, and the person or persons named in such plea in abatement, as joint contractors, if it shall appear by the pleadings in such subsequent action, or on the evidence at the trial thereof, that all the original defendants are liable, but that one or more of the persons named in such plea in abatement, or any subsequent plea in abatement, are not liable as a contracting party or parties, the plaintiff shall nevertheless be entitled to judgment, or to a verdict and judgment, as the case may be, against the other defendant or defendants who shall appear to be liable: and every defendant who is not so liable shall have judgment, and shall be entitled to his costs as against the plaintiff, who shall be allowed the same as costs in the cause against the defendant or defendants who shall have so pleaded in abatement the non-joinder of such person: *Provided*, that any such defendant, who shall have so pleaded in abatement, shall be at liberty on the trial to adduce

Under plea in abatement, plaintiff may have judgment against defendants who are liable; Judgment and costs to defendants not liable. (See C. L. P. A., 1856, ss. 67-76.)

evidence of the liability of the defendants named by him in such plea in abatement.

Misnomer not to be pleaded in abatement, but to be amended at costs of plaintiff upon Judge's summons.

VIII. *And be it, &c.*, That no plea in abatement for misnomer shall be allowed in any personal action, but that in all cases in which a misnomer would, but for this Act, have been by law pleadable in abatement, in such actions the defendant shall be at liberty to cause the declaration to be amended, at the costs of the plaintiff, by inserting the right name, upon a Judge's summons founded on an affidavit of the right name; and in case such summons shall be discharged, the costs of such application shall be paid by the party applying, if the Judge shall think fit.

In affidavit to hold to bail, initial or contraction of Christian name, sufficient.

IX. *And be it, &c.*, That in all actions upon bills of exchange, or promissory notes, or other written instruments, any of the parties to which are designated by the initial letter or letters, or some contraction of the Christian, or first name or names, it shall be sufficient in every affidavit to hold to bail, and in the process or declaration to designate such person by the same initial letter or letters, or contraction of the Christian, or first name or names, instead of stating the Christian, or first name or names in full.

Wager of law disallowed.

X. *And be it, &c.*, That no wager of law shall be hereafter allowed.

Action of debt maintainable against executor, &c.

XI. *And be it, &c.*, That an action of debt on simple contract shall be maintainable in any Court of Common Law against any executor or administrator.

Court empowered to make rules for admission of documentary evidence.

XII. *And whereas* it is expedient to lessen the expense of the proof of written or printed documents, or copies thereof, on the trial of causes: *Be it, &c.*, That it shall and may be lawful for the Judges of His Majesty's Court of King's Bench in this Province, or the major part of them, as aforesaid, at any time within five years after this Act shall take effect, to make regulations by general rules or orders, from time to time, in term or in vacation, touching the voluntary admission, upon an application for that purpose, at a reasonable time before the

(See C. L. P. A., 1856, ss. 165-167.)

trial, of one party to the other, of all such written or printed documents, or copies of documents, as are intended to be offered in evidence on the said trial by the party requiring such admission, and touching the inspection thereof before such admission is made, and touching the costs which may be incurred by the proof of such documents or copies on the trial of the cause, in case of the omitting to apply for such admission, or the not producing of such documents or copies for the purpose of obtaining admission thereof, or of the refusal to make such admission, as the case may be, and as to the said Judges, or a majority of them, shall seem meet; and all such rules and orders shall be binding and obligatory in the said Court, and of the like force as if the provisions therein contained had been expressly enacted by Parliament.

XIII. *And be it, &c.*, That it shall be lawful for the defendant in all personal actions, (except actions for assault and battery; false imprisonment; *libel*; slander; malicious arrest or prosecution; criminal conversation or debauching of the plaintiff's daughter or servant,) by leave of any Court of Record where such action is pending, or of a Judge thereof, to pay into Court a sum of money by way of compensation or amends, in such manner and under such regulations as to the payment of costs and the form of pleading as the said Judges of His Majesty's Court of *King's Bench*, or a majority of them, as aforesaid, by any rules or order by them to be from time to time made, shall order and direct.

Defendant except in certain cases may pay amends into Court.

(See 13 & 14 Vic. c. 60.)

(C. L. P. A. 1856, ss. 119, 122.)

See 12 Vic. c. 63.)

XIV. *And whereas* unnecessary delay and expense is sometimes occasioned by the trial of local actions in the District where the cause of action has arisen: *be it, &c.*, that in any action depending in the Court of *King's Bench*, the venue in which is by law local, the Court or any Judge thereof may, on application of either party, order the issue to be tried or damages to be assessed in any other *District* than that in which the venue is laid, and for that purpose the said Court or a Judge thereof may order a suggestion to be entered on the record, that the trial may be more conveniently had or

Local actions may be tried in another District by suggestion on the record.

(See 12 Vic. c. 63.)

damages assessed in the *District* where the same is ordered to take place.

Courts of record may direct pleadings to be amended at the trial in certain actions;

(See C. L. P. A., 1856, s. 291.)

Upon such terms respecting costs as may seem reasonable.

XV. *And whereas* great expense is often incurred, and delay or failure of Justice takes place at trials, by reason of variances as to some particular or particulars between the proof and the record, or setting forth on the record on which the trial is had, of contracts, names, and other matters or circumstances not material to the merits of the case, and by the mis-statement of which the opposite party cannot have been prejudiced, and the same cannot in any case be amended at the trial, except where the variance is between any matter in writing or in print produced in evidence and the record: *And whereas* it is expedient to allow such amendments as hereinafter mentioned to be made on the trial of the cause, *be it, &c.*, that it shall be lawful for any Court of Record holding plea in civil actions, and for any Judge sitting at Nisi Prius, if such Court or Judge shall see fit so to do, to cause the record, writ, or document, on which any trial may be pending before any such Court or Judge in any civil action, or in any information in the nature of a *quo warranto*, or proceedings on a *mandamus*, when any variance shall appear between the proof and the recital or setting forth on the record, writ, or document, in which the trial is proceeding, of any contract, name or other matter, in any particular or particulars, in the judgment of such Court or Judge not material to the merits of the case, and by which the opposite party cannot have been prejudiced in the conduct of his action, prosecution, or defence, to be forthwith amended by some officer of the Court, or otherwise, both in the part of the pleadings where such variance occurs, and in every other part of the pleadings which it may become necessary to amend, on such terms as to payment of costs to the other party, or postponing the trial to be had before the same or another Jury, or both of payment of costs and postponement, as such Court or Judge shall think reasonable; and in case such variance shall be in some particular or particulars in the judgment of such Court or Judge not material to the merits of the case, but such as that the opposite party may

have been prejudiced thereby in the conduct of his action, prosecution or defence, then such Court or Judge shall have power to cause the same to be amended, upon payment of costs to the other party, and withdrawing the record or postponing the trial, as aforesaid, as such Court or Judge shall think reasonable; and after any such amendment the trial shall proceed (in case the same shall be proceeded with) in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury, and otherwise, as if no such variance had appeared; and in case such trial shall be had at Nisi Prius, the order for the amendment shall be endorsed on the postea, and returned together with the record; and thereupon such papers, rolls, and other records of the Court from which such record issued, as it may be necessary to amend, shall be amended accordingly, and the order for amendment shall be entered on the roll or other document upon which the trial shall be had: *Provided*, that it shall be lawful for any party who is dissatisfied with the decision of such Judge at Nisi Prius, respecting his allowance of any such amendment, to apply to the Court from which such record issued for a new trial upon that ground; and in case any such Court shall think such amendment improper, a new trial shall be granted accordingly, on such terms as the Court shall think fit, or the Court shall make such other order as to them may seem meet.

Or allow the record to be withdrawn;

After amendment the trial to proceed as though no such variance had appeared.

On trial at Nisi Prius, Order for amendment to be endorsed on the postea;

Rolls and records to be amended accordingly;

Party dissatisfied with the amendment may apply for new trial.

XVI. *And be it, &c.*, That the said Court or Judge shall and may, if they or he think fit, in all such cases of variance, instead of causing the record to be amended, as aforesaid, direct the jury to find the fact or facts according to the evidence, and thereupon such finding shall be stated on such record; and notwithstanding the finding on the issue joined, the Court from which the record issued shall, if they shall think the said variance immaterial to the merits of the case, and the mis-statement such as could not have prejudiced the opposite party in the conduct of the action or defence, give judgment according to the very right and justice of the case.

Instead of amendment the Judge may direct the Jury to find facts according to the evidence, and if variance be immaterial, Court may give judgment according to the merits.

After issue joined, the parties may agree upon a special case for the opinion of the Court.

(See C. L. P. A., 1856, ss. 77-83.)

XVII. *And be it, &c.*, That it shall be lawful for the parties in any action or information after issue joined, by consent and by order of any of the Judges of the Court in which the action is depending, to state the facts of the case, in the form of a special case, for the opinion of the Court, and to agree that a judgment shall be entered for the Plaintiff or Defendant by confession, or of *nolle prosequi*, immediately after the decision of the case or otherwise as the Court may think fit, and judgment shall be entered accordingly.

Interested witnesses may be examined;

See 16 Vic. c. 19.)

But the verdict or judgment not admissible for or against such witnesses.

XVIII. And in order to render the rejection of witnesses on the ground of interest less frequent; *be it, &c.*, that if any witness shall be objected to as incompetent, on the ground that the verdict or judgment in the action on which it shall be proposed to examine him would be admissible in evidence for or against him, such witness shall nevertheless be examined; but in that case a verdict or judgment in that action in favour of the party on whose behalf he shall have been examined shall not be admissible in evidence for him, or for any one claiming under him, nor shall a verdict or judgment against the party on whose behalf he shall have been examined be admissible in evidence against him, or any one claiming under him.

Names of interested witnesses to be endorsed on the record,

(See 16 Vic. c. 19.)

And the name of the party on whose behalf examined.

XIX. *And be it, &c.*, That the name of every witness objected to as incompetent, on the ground that such verdict or judgment would be admissible in evidence for or against him, shall at the trial be endorsed on the record on which the trial shall be had, together with the name of the party on whose behalf he was examined, by some officer of the Court, at the request of either party, and shall be afterwards entered on the record of the judgment, and such endorsement or entry shall be sufficient evidence that such witness was examined, in any subsequent proceeding on which the verdict or judgment shall be offered in evidence.

The Jury may allow interest on debts in certain cases.

XX. *And be it, &c.*, That upon all debts or sums certain, payable at a certain time, or otherwise, the jury on the trial of any issue, or on any assessment of damages, may, if they shall think fit, allow interest to the creditor from the time when

such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment; *Provided*, that interest shall be payable in all cases in which it is now payable by law, or in which it has been usual for a jury to allow interest.

XXI. *And be it, &c.*, That the Jury on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, give interest in the nature of damages over and above the value of the goods at the time of the conversion or seizure, in all actions of trover, or trespass de bonis asportatis, and over and above the money recoverable in all actions on policies of assurance made after the passing of this Act.

Interest in trover in nature of damages.

XXII. *And be it, &c.*, That if any person shall sue out any writ of error or appeal upon any judgment whatsoever, given in any Court in any action personal, and the Court of Error or Appeal shall give judgment for the defendant in error, then interest shall be allowed by the Court of Error or Appeal, for such time as execution has been delayed by such writ of error or appeal for the delaying thereof.

Interest when execution delayed by writ of error.

(See 12 Vic. c. 63, s. 37, et seq.)

XXIII. *And be it, &c.*, That in every action brought by any executor or administrator, in right of the testator or intestate, after the time this act shall go into effect, such executor or administrator shall, unless the Court in which such action is brought, or a Judge thereof, shall otherwise order, be liable to pay costs to the defendant in case of being non-suited, or a verdict passing against the plaintiff, and in all other cases in which he would be liable if the plaintiff were suing in his own right upon a cause of action accruing to himself, and the defendant shall have judgment for such costs, and they shall be recovered in like manner.

Payment of costs by executors and administrators.

XXIV. *And be it, &c.*, That when several persons shall be made defendants in any personal action, and any one of them

Defendants entitled to costs after a

nolle prosequi, unless the Judge shall certify.

shall have a nolle prosequi entered as to him or them, or upon the trial of such action shall have a verdict pass for him or them, every such person shall have judgment for and recover his reasonable costs, unless, in the case of a trial, the Judge before whom such cause shall be tried shall certify upon the record, under his hand, that there was a reasonable cause for making such person a defendant in such action.

Costs where nolle prosequi entered as to part of declaration.

XXV. *And be it, &c.*, That where any nolle prosequi shall have been entered upon any count, or as to part of any declaration, the defendant shall be entitled to and have judgment for his reasonable costs in that behalf.

Plaintiff allowed costs on scire facias, after judgment by default, &c.

(See C. L. P. A., 1856, s. 208, *et seq.*)

XXVI. *And be it, &c.*, That in all writs of scire facias, the plaintiff obtaining judgment on an award of execution, shall recover his costs of suit upon a judgment by default, as well as upon a judgment after plea pleaded, or demurrer joined; and that where judgment shall be given either for or against a plaintiff or demandant, or for or against a defendant or tenant, upon any demurrer joined in any action whatever, the party in whose favour such judgment shall be given shall also have judgment to recover his costs in that behalf.

Executors and administrators of a lessor may distrain for rent.

XXVII. *And be it, &c.*, That it shall be lawful for the executors or administrators of any lessor or landlord, to distrain upon the lands demised for any term, or at will, for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done in his lifetime.

Such arrearages of rent may be distrained for within six months after determination of the lease.

XXVIII. *And be it, &c.*, That such arrearages may be distrained for after the end or determination of such term, or lease at will, in the same manner as if such term or lease had not been ended or determined; *Provided*, that such distress be made within the space of six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears became due: *Provided also*, that all and every the powers and provisions in the several Statutes made relating to distresses for rent, shall be applicable to the distresses so made, as aforesaid.

XXIX. *And whereas* it is expedient to render references to arbitration more effectual: *Be it, &c.*, That the power and authority of any arbitrator or umpire appointed by, or in pursuance of any rule of Court, or Judges' order or orders of Nisi Prius, in any action now brought, or which shall be hereafter brought, or by or in pursuance of any submission to reference, containing an agreement that such submission shall be made a rule of his Majesty's Court of King's Bench, shall not be revocable by any party to such reference, without the leave of the Court by which such rule or order shall be made, or which shall be mentioned in such submission, or by leave of a Judge; and the arbitrator and umpire shall and may, and is hereby required to proceed with the reference notwithstanding any such revocation, and to make an award, although the person making such revocation shall not afterwards attend the reference; and that the Court, or any Judge thereof, may from time to time, enlarge the term for any such arbitrator making his award.

Submission to arbitration if agreed to be made a rule of Court, not revocable.

Without leave of Court;

Arbitrator to proceed with reference;

Court may enlarge time for making an award.

(See C. L. P. A., 1856, ss. 84-97.)

XXX. *And be it, &c.*, That when any reference shall have been made by any such rule or order, as aforesaid, or by any submission containing such agreement, as aforesaid, it shall be lawful for the Court by which such rule or order shall be made, or which shall be mentioned in such agreement, or for any Judge, by rule or order to be made for that purpose, to command the attendance and examination of any person to be named, or the production of any documents to be mentioned in such rule or order; and the disobedience of any such rule or order shall be deemed a contempt of Court, if, in addition to the service of such rule or order, an appointment of the time and place of attendance in obedience thereto, signed by one at least of the arbitrators, or by the umpire, before whom the attendance is required, shall also be served, either together with or after the service of such rule or order: *Provided always*, that every person whose attendance shall be so required shall be entitled to the like conduct money and payment of expenses, and for loss of time, as for and upon attendance at any trial: *Provided also*, that the application made to such

Witnesses may be compelled to attend arbitrators.

By order of the Court.

(See C. L. P. A., 1856, s. 87.)

On payment of their expenses.

Court or Judge for such rule or order shall set forth the place where such witness is residing at the time: *Provided also*, that no person shall be compelled to produce, under any such rule or order, any writing or other document that he would not be compelled to produce at a trial, or to attend at more than two consecutive days, to be named in such order.

Witnesses  
may be  
sworn upon  
arbitration:

XXXI. *And be it, &c.*, That when in any rule or order of reference, or in any submission to arbitration containing an agreement that the submission shall be made a rule of Court, it shall be ordered or agreed that the witnesses upon such reference shall be examined upon oath, it shall be lawful for the arbitrator or umpire, or for any one arbitrator, and he or they are hereby authorised and required to administer an oath to such witnesses, or take their affirmation in cases where affirmation is allowed by law instead of an oath; and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and may be prosecuted and punished accordingly.

False swear-  
ing to be  
deemed  
perjury.

XXXII. [Repealed by 9 Vic., c. 56.]

Writ of  
feri facias  
may issue  
without a  
testatum  
fi. fa.

(See C. L. P.  
A., 1856,  
s. 186.)

XXXIII. *And be it, &c.*, That it shall not be necessary after the time this Act shall take effect, to sue out process of execution into that district in which the venue in any action shall be laid, for the sole purpose of warranting the suing out process of execution into any other District; nor need any writ of execution be a testatum writ, merely because of its being directed to the Sheriff of any other District than that in which the venue may be laid; but it shall be lawful to sue out execution into any District of this Province, without regard to the venue having been laid in any other District: *Provided always*, that where it is now necessary to sue out process of execution against the person into any particular District, in order to charge bail, the same shall still continue to be necessary, notwithstanding any thing contained in this Act.

(See C. L. P.  
A., 1856,  
s. 192.)

Commence-  
ment of this  
Act.

XXXIV. *And be it, &c.*, That this Statute shall commence and take effect on the first day of June next after the passing thereof.

## 7 WILLIAM IV.—CHAP. 14.

*An Act to supply by a general law certain forms of enactment in common use, which may render it unnecessary to repeat the same in Acts to be hereafter passed.*

[Passed 4th March, 1837.]

WHEREAS it is expedient to prevent, by a general enactment, the necessity of repeating in different Statutes certain forms of expression, and certain clauses and provisions which are in their nature generally applicable to Statutes of a certain description, and which may therefore be conveniently provided for by a general law: *Be it, &c.*, That whenever in any Act of the Parliament of *this Province*, which shall be hereafter passed, the words "the Governor of this Province," or the words "the Lieutenant-Governor of this Province," shall be used, such words, without further addition, shall be construed to extend to and include the Governor, Lieutenant-Governor, or person Administering the Government of this Province for the time being.

Preamble.

(As to Statutes of Canada, see 12 Vic. c. 10.)

Legal signification to attach to the words "Governor of this Province," or the words "Lieutenant-Governor of this Province," when introduced into any Act.

II. *And be it, &c.*, That in any Act of the Parliament of this Province to be hereafter passed, the word "person" shall extend to a body politic or corporate, as well as to an individual; and every word importing the singular number only, shall extend and be applied to several persons or things, as well as to one person or thing; and every word importing the plural number shall extend and be applied to one person or thing, as well as to several persons or things; and every word importing the masculine gender only, shall extend and be applied to a female as well as to a male: *Provided always*, that those words and expressions occurring in this clause to which more than one meaning is to be attached, shall not have the different meanings given to them by this clause, in those cases in which there may be any thing in the subject or context repugnant to such construction, and in which such construction could not reasonably be supposed to have been intended.

To word "Person;"

(See 12 Vic. c. 10, s. 5. sub. s. 7 and 8.)

Word importing plural number:

Word importing masculine gender;

Proviso, that no construction to be given to words different from meaning expressly intended.

General powers granted to all corporations hereafter created.

(See 12 Vic. c. 10, s. 5. sub. s. 24.)]

Restrained as to extent of real estate to be held for use of corporation."

In case election of Directors of any corporation should not take place on day appointed by Act, corporation not on that account to be deemed to be dissolved.

Directors of corporations, or a major

XIV. *And be it, &c.*, That whenever by any Act of the Parliament of this Province hereafter to be passed, a corporation shall be created, to consist of individuals who may associate for the purpose of making or amending any highway or railroad, or any harbour, canal, or other navigable channel, or for carrying on any art or manufacture, or for carrying on the business of banking or of insurance, or for advancing any object of public utility, then and in every such case, unless it shall be otherwise provided in the Act, the persons composing such corporation and their successors, shall have continued succession, and by the name given to them in the Act shall be capable of contracting and being contracted with, of suing and being sued, pleading and being impleaded, answering and being answered unto, in all Courts and places whatsoever, in all manner of actions, suits complaints, matters, and causes whatsoever; and they and their successors may have a common seal, and may change and alter the same at their will and pleasure; and by their corporate name shall be in law capable of purchasing, taking, having and holding, to them and their successors, any estate, real, personal or mixed, to and for the use of such corporation, and of selling, letting or otherwise disposing of the same, for the benefit and on account of such corporation, from time to time as they shall deem necessary or expedient; *Provided always*, that the real estate which any such corporation shall be allowed to hold under the provisions of this Act, shall be only such as shall be necessary for carrying into effect the specific object of such corporation.

XV. *And be it, &c.*, That in case it shall at any time happen, that an election of directors of any such corporation shall not be made on any day, when pursuant to the Act in that behalf it ought to have been made, the corporation shall not for that cause be deemed to be dissolved, but that it shall be lawful on any day thereafter to make an election of directors, in such manner as shall be prescribed by the Act, or by the laws and ordinances of the said corporation.

XVI. *And be it, &c.*, That the directors for the time being of any such corporation, or a major part of them, shall have

power to make and subscribe such rules and regulations as to part of them, to have them shall seem needful and proper, touching the management power to and disposition of the stock, property, estate and effects of the make rules, &c. corporation, and touching the duty and conduct of the officers, clerks, and servants employed by the said company, and all such other matters as appertain to the business of the said company; and shall also have power to appoint as many officers, clerks, and servants, for carrying on the said business, and with such salaries and allowances as to them shall seem meet; *Provided*, that such rules and regulations be not repugnant to the laws of this Province.

XVII. *And be it, &c.*, That it shall not be lawful for any Corporations not to have such corporation, their agents, or servants, or any of them, power to enter (unless where it is expressly authorised by the Act creating such corporation) to enter upon, hold, use or enjoy, for any of the Crown, without purpose, any lands or grounds of or belonging to His Majesty, consent of Governor, His Heirs and Successors, without the license and consent of (See 12 Vic. the Governor, Lieutenant-Governor, or Person Administering c. 10, s. 5. sub. s. 25.) the Government of this Province, signified under his hand and seal.

XVIII. *And be it, &c.*, That it shall not be lawful for any Corporation not to carry on such corporation to carry on the business of banking, unless where carry on such power shall be expressly conferred by the Act creating banking, unless such corporation. specially authorised.

XIX. *And be it, &c.*, That when it shall not be otherwise provided in any Act to be hereafter passed, for any of the Actions brought against persons acting in pursuance of powers given to any corporation, to be brought within six months. purposes aforesaid, and whereby powers and authority are given to be exercised over the property, real or personal, or over the person of any individual, for the promoting and securing the objects intended to be advanced by the corporation created by any such Act, then if any action shall be brought against any person or persons, for anything done in pursuance, or in execution, of the powers and authorities given by such Act, such action shall be commenced within six calendar months next after the fact committed; or in case there shall be a continuation of damage, then within six calendar months after the

Defendants may give special matter in evidence under general issue.

doing or committing such damage shall cease, and not afterwards; and the defendant or defendants in such action may plead the general issue, and give such Act, and the special matter, in evidence at the trial.

Legislature to have power to make additions and alterations in any Act of Incorporation.

(See 12 Vic. c. 10, s. 5. sub. s. 26.)

XX. *And be it, &c.*, That notwithstanding the privileges that may be conferred by any Act hereafter to be passed, upon any corporation to be created for the purposes aforesaid, or any of them, the Legislature may, at any time thereafter, in their discretion, make such additions to the Act creating such corporations, or such alteration of any of its provisions, as they may think proper, for affording just protection to the public, or to any person or persons, body corporate or politic, in respect to their estate, property or rights, or any interest therein, or any advantage, privilege or convenience connected therewith, or in respect to any way, or right of way, public or private, that may be affected by any of the powers given to such corporation; and that unless it shall be otherwise provided in any Act that shall be passed for chartering any bank, it shall be in the discretion of the Legislature, at any time thereafter, to make such provisions, and impose such restrictions, with respect to the amount and description of notes which may be issued by such bank, as may to them appear expedient.

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## 1 VICTORIA, CHAP. 7.

*An Act to amend the law with respect to the liability of the legal Representatives of Joint Contractors, and of Defendants on Joint Judgments.*

[Passed 12th January, 1838.]

Preamble.

WHEREAS by the laws of this Province, if one or more of several defendants against whom a joint judgment shall have been entered, or if one or more of several joint contractors, obligors or partners, shall die, the representative of such defendant, joint contractor, or obligor or partner, is not liable under such judgment, contract, obligation or promise; for the remedy whereof, *Be it, &c.* That if any one or more of any

joint contractors, obligors or partners, shall die, it shall and may be lawful for the person interested in such contract, obligation or promise, entered into by such joint contractor, obligor or partner, to proceed by action against the representatives of such joint contractor, obligor or partner, in the same manner as if the said contract, obligation or promise, had been joint and several, notwithstanding there may be another person liable under such contract, obligation or promise, still living, and an action pending against such person.

II. *And be it, &c.*, That if any one or more of the defendants in any action, against which a joint judgment may have been entered in any Court of Record in this Province, shall die, it shall and may be lawful for the plaintiff or plaintiffs, the survivor or survivors of them, or the executor or administrator of such survivor, to proceed by writ of scire facias against the representatives of such defendant or defendants, respectively, so dying, notwithstanding there may be another defendant still living, and against whom the said judgment may be in force: *Provided always*, that nothing in this Act contained shall be construed to extend to authorise the collection of a greater sum than the debt or damages justly due, with interests and costs: *Provided always*, that the property and effects of stock holders in Chartered Banks, or the members of other incorporated Companies, shall not be rendered liable to a greater extent than they would have been if this Act had not been passed.

Representatives of deceased Joint Contractor made liable, notwithstanding the other Joint Contractor be living.

Proceeding by writ of Scire Facias against Representative of deceased Contractor authorised; (See C. L. P. A., 1856, s. 208, *et seq.*)

No greater sum to be collected than debt and damages justly due;

Limitation of liability of Stockholders in Chartered Banks, or Incorporated Companies.

## 2 VICTORIA.—CHAP. 1.

*An Act to regulate the name and style of the Court established under the authority of an Act of the Provincial Parliament, passed in the thirty-fourth year of the reign of King George the Third, intituled, "An Act to establish a Superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeal."*

[Passed 11th May, 1839.]

WHEREAS it is expedient and right, that the name and style of the Court established in this Province under the authority

Preamble.

Style of Court to be "King's or Queen's Bench," according to the reign of a male or female Sovereign.

of an Act of the Provincial Parliament, passed in the thirty-fourth year of the reign of His late Majesty King George the Third, intituled, "An Act to establish a Superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeal," should alter and vary according to the existing fact of the reigning Sovereign being male or female: *Be it, &c.*, That from and after the passing of this Act, the name and style of the said Court shall be, His Majesty's Court of King's Bench in and for the Province of Upper Canada, during the reign of any male Sovereign; and that the said name and style shall be, Her Majesty's Court of Queen's Bench in and for the Province of Upper Canada, during the reign of any female Sovereign, as the case may be, anything in the above-mentioned Act to the contrary thereof in anywise notwithstanding.

## II. [Pending suits not affected.]

### 2 VICTORIA.—CHAP. 2.

*An Act to alter and amend the law relating to the appointment of Commissioners of the Court of King's Bench, in the several Districts of this Province.*

[Passed 11th May, 1839.]

Preamble. WHEREAS it is expedient to alter and amend the law relating to the appointment of Commissioners for taking Recognizances of Bail, and Affidavits, in the several Districts of this Province, so as to authorise the Justices of Her Majesty's Court of *King's Bench*, in certain cases, to make such appointments, without the intervention of the Chief Justice; *Be it, &c.*, That in the event of the death of the Chief Justice, for the time being, or his absence from the Province, it shall and may be lawful for any two or more of the Puisne Justices of the said Court, to appoint Commissioners for taking Recognizances of Bail, and Affidavits, in the several Districts in this Province, in like manner as the said Chief Justice, and other the Justices of the said Court are now by law authorised to do, any thing contained in any former Act or Acts notwithstanding.

Puisne Judges empowered to appoint Commissioners in the absence of the Chief Justice.

(See 12 Vic., c. 63, s. 48.)

## 3 VICTORIA.—CHAP. 5.

*An Act to Provide for the continuation of Suits and Process, in cases of formation of new Districts.*

[Passed 10th February, 1840.]

WHEREAS in cases where new Districts have been erected by Acts of the Provincial Parliament, much inconvenience has been found to arise from the want of legal authority in the respective Sheriffs of the Districts, of which the new Districts formed a part, to continue to execute legal process already issued, and to execute process in suits already commenced: *Be it, &c.*, That all suits commenced in any of the District Courts of this Province, and all suits commenced in Her Majesty's Court of Queen's Bench, at the time of the division of any District of this Province, shall continue to final judgment and execution as if no such division had taken place; and all process, whether mesne or final, directed to the Sheriff of the District in which the suit shall have been commenced, shall be considered legal and regular, notwithstanding the erection of any new District; and the Sheriffs of the Districts to which such process shall have been or shall be addressed, shall have the execution of such process, and the custody of all persons and property taken or seized under the same, and shall be subject to the same liabilities respecting the same, as if no such new District had been erected, any thing in the several Acts for the erection of new Districts to the contrary thereof in any wise notwithstanding.

Preamble.

Recital of inconvenience to suits from the formation of new Districts.

(See 12 Vic, c. 78.)

All suits commenced at the time of dividing any District, to be carried on as if no such division had taken place.

Sheriffs to execute process, &c. as if such new District had not been formed.

II. *Provided always, and be it, &c.*, That nothing in this or any other Act contained shall extend, or be construed to extend, to prevent the Court of Queen's Bench, or a Judge thereof, from ordering the trial of any new cause pending, as aforesaid, to be had in such new District: *Provided also*, that the provisions of this Act shall extend to any case arising from any division of Districts which may hereafter take place.

Not to prevent trials being ordered to take place in the new District.

This Act to extend to Districts to be hereafter formed.

## 3 VICTORIA—CHAP. 8.

*An Act to make perpetual certain parts of an Act passed in the fifth year of the reign of His late Majesty King William the Fourth, intituled, "An Act to prevent the unnecessary multiplication of Law Suits, and increase of Costs in Actions on Notes, Bonds, Bills of Exchange and other Instruments," and for other purposes therein mentioned."*

[Passed 10th February, 1840.]

Preamble.

4th, 6th, 7th,  
10th & 14th  
sections, 5  
Wm. IV.,  
c. 1, repealed.

WHEREAS an Act passed in the fifth year of the reign of His late Majesty King William the Fourth, intituled, "An Act to prevent the unnecessary multiplication of law suits, and increase of costs in actions on notes, bonds, bills of exchange, and other instruments," is about to expire, and it is expedient to continue the said Act and make it permanent: *Be it, &c.*, That the fourth, sixth, seventh, tenth and fourteenth clauses of the said Act be and the same are hereby repealed.

Plaintiffs in  
actions  
against  
several  
parties to a  
bill or note,  
may declare  
in a given  
form.

II. *And be it, &c.*, That the plaintiff in any joint action against the drawers, makers, endorsers and acceptors, or any of them, of any bill of exchange or promissory note, may declare in the form contained in the Schedule hereunto annexed, upon such bill or note, varying the same according to the circumstances of the case.

Defendants  
may set off  
several  
demands,  
when of a  
particular  
description;

III. *And be it, &c.*, That in any such action the person sued shall be entitled to set-off against the said plaintiff any payment, claim or demand, whether joint or several, which in its nature and circumstances arises out of or is connected with the bill or promissory note, which is the subject of such joint action, or the consideration thereof, in the same manner and to the same extent as though such defendant had been sued in the form heretofore used; and if the jury shall allow any demand as a set off, and still find a balance in favour of the plaintiff, they shall state in the verdict the amount which they allow to each defendant as a set off against the plaintiff's demand.

IV. [Pending proceedings not affected.]

## SCHEDULES.

1. *On a Promissory Note.*

For that whereas the said —, (the maker of the note,) on the — day of —, at —, made his promissory note in writing, and thereby promised — (setting forth the note in the usual manner,) and the said —, (the first, second or other endorsers) afterwards duly endorsed the same, and the said —, (the last endorser) delivered the said note, so endorsed, to the said plaintiff, (aver presentment, notice, &c., where by law necessary in the particular case.) By reason whereof the said —, (all the defendants) became jointly and severally liable to pay to the said plaintiff the said sum of money in the said note specified, and being so liable, afterwards jointly and severally promised the said plaintiff to pay him the same. (Add the usual breach.)

(See C. L. P.  
A., 1856,  
Schedule B.  
No. 13.)

2. *On a Bill of Exchange.*

For that whereas the said —, (the drawer,) on the — day of —, at —, drew his certain bill of exchange, directed to —, (setting forth the bill according to its tenor and effect) the said —, (the drawee) afterwards duly accepted the same, and the said —, the first and other endorsers,) afterwards duly endorsed the said bill of exchange, and the said —, (the last endorser,) delivered the said bill, so endorsed, to the said plaintiff, (averment, presentment, protest, notice, &c., where by law necessary in the particular case.) By reason whereof the said —, (all the defendants) became jointly and severally liable to pay to the said plaintiff the said sum of money in the said bill specified, and being so liable, afterwards jointly and severally promised the said plaintiff to pay him the same. (Add the usual breach.)

(See C. L. P.  
A., 1856,  
Schedule B.  
Nos. 14 & 15.)

## 7 VICTORIA.—CHAP. IV.

*An Act to facilitate the proof of the Laws in Upper and Lower Canada, and to declare Protests of Notaries Public Evidence, in certain cases in Upper Canada.*

[Passed 9th December, 1843.]

**Preamble.** FOR the better and more effectual proof of the Statute Law of the Province of Canada, and of Upper and Lower Canada, previous to the Union of the said Provinces, in all Courts of Civil and Criminal Jurisdiction in every part of the said United Province; *Be it, &c.*, That the copy of the Statutes and Ordinances of the late Province of Lower Canada, printed and published by the printer duly authorized to print and publish the same by Her Majesty, or by any of her Royal predecessors, shall be received as conclusive evidence of the several Statutes made and enacted prior to the Union of the Provinces of Upper and Lower Canada, by the Legislature of the Province of Lower Canada, and of the tenor of such Statutes and Ordinances, in all suits, actions, or prosecutions respectively, commenced, instituted, or carried on, or to be commenced, instituted, or carried on in any Court of Civil or Criminal Jurisdiction, in that part of the Province of Canada called Upper Canada; and in like manner the copy of the Statutes of the late Province of Upper Canada, printed and published by the printer duly authorized by Her Majesty, or by any of her Royal predecessors, to print and publish the same, shall be received as conclusive evidence of the several Statutes made and enacted by the Legislature of the said Province of Upper Canada, prior to the union of the said Provinces of Upper and Lower Canada, and of the tenor of such Statutes in all suits, actions, or prosecutions respectively, commenced, instituted, or carried on, in any Court of Civil or Criminal Jurisdiction in that part of the Province of Canada called Lower Canada.

Copy of the Laws of Lower Canada printed by authority, to be evidence in Upper Canada.

Copy of the Laws of Upper Canada printed by authority, to be evidence in Lower Canada.

Certificates of Notaries to be presumptive evidence in

II. *And be it, &c.*, That any note memorandum, or certificate, made or to be made by one or more Notaries Public, either in Upper or in Lower Canada, in his own hand-writing,

or signed by him at the foot of, or embodied in any Protest, or in a regular Register of Official Acts kept by him, shall be presumptive evidence in that part of the Province of Canada formerly called Upper Canada, of the fact of any notice of non-acceptance or non-payment of any Promissory Note or Bill of Exchange having been sent or delivered, at the time and in the manner stated in such note, certificate, or memorandum.

III. *And be it, &c.*, That from and after the passing of this Act, the production of any Protest on any Promissory Note or Bill of Exchange, under the hand and seal of any one or more Notaries Public, either in Upper or in Lower Canada, in any Court in that part of this Province formerly called Upper Canada, shall be presumptive evidence of the making of such Protest.

certain cases  
in Upper  
Canada.

Production  
of Protest to  
be presump-  
tive evidence  
that a Pro-  
test was  
made.

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7 VICTORIA.—CHAP. XXX.

*An Act to enable Courts of Law in that part of this Province called Upper Canada, to give relief against adverse claims made upon persons having no interest in the subject of such claims.*

[Passed 9th December, 1843.]

WHEREAS it often happens that a person sued at Law in Upper Canada, for the recovery of money and goods, wherein he has no interest, and which are also claimed of him by some third party, has no means of relieving himself from such adverse claims but by a suit in Equity against the Plaintiff and such third party, usually called a Bill of Interpleader, which is attended with expense and delay: for remedy thereof,  
*Be it, &c.*, That upon application made by or on the behalf of any Defendant sued in Her Majesty's Court of *Queen's Bench* for that part of this Province called Upper Canada, or in any of Her Majesty's *District Courts* in that part of this Province, in any action of Assumpsit, Debt, Detinue, or Trover, such application being made after Declaration and before Plea, by Affidavit or otherwise, showing that such

Preamble.

(See 12 Vic.  
c. 63.)

When a De-  
fendant is  
sued in Up-  
per Canada,  
and has no  
interest in  
the suit, a  
third party  
being the  
party really  
interested,  
the Court, or  
a Judge  
thereof, may  
grant relief

by ordering such third party to contest the claim in the place of such Defendant, or in such other manner as it may think fit.

Defendant does not claim any interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same ; and that such Defendant does not in any manner collude with such third party, but is ready to bring into Court, or to pay or dispose of the subject matter of the action, in such manner as the Court (or any Judge thereof) may order or direct, it shall be lawful for the Court (or any Judge thereof) to make rules and orders calling upon such third party to appear, and to state the nature and particulars of his claim, and maintain and relinquish his claim ; and upon such rule or order to hear the allegations as well of such third party as of the Plaintiff, and in the meantime to stay the proceedings in such action, and finally to order such third party to make himself Defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues, and also to direct which of the parties shall be Plaintiff or Defendant on such trial, or, with the consent of the Plaintiff and such third party, their Counsel or Attorney, to dispose of the merits of their claims, and determine the same in a summary manner, and to make such other rules and orders therein, as to costs and all other matters, as may appear to be just and reasonable.

Judgment to be final, as to all parties to the suit.

II. *And be it, &c.*, That the Judgment in any such action or issue as may be directed by the Court or Judge, and the decision of the Court or Judge in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them.

If such third party fail to appear or to obey any order of the Court, he may be barred from ever prosecuting his claim ; and the Court may make such order as shall be right be-

III. *And be it, &c.*, That if such third party shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the Court or Judge to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original Defendant, his Executors, or Administrators ; saving, nevertheless, the right or claim of such third party against the

Plaintiff; and thereupon to make such order between such Defendant and the Plaintiff, as to costs and other matters, as may appear just and reasonable.

IV. *And be it, &c.*, That every order to be made in pursuance of this Act by a single Judge not sitting in open Court, shall be liable to be rescinded or altered by the Court, in like manner as other orders made by a single Judge.

tween the Plaintiff and Defendant.  
Any order of a single Judge may be set aside or altered by the Court.

V. *And be it, &c.*, That if upon application to a Judge in the first instance, or in any later stage of the proceedings, he shall think the matter more fit for the decision of the Court, it shall be lawful for him to refer the matter to the Court; and thereupon the Court shall and may hear and dispose of the same in the same manner as if the proceeding had originally commenced by rule of Court instead of the order of a Judge.

If the Judge applied to shall think it right to refer the matter to the Court, he may do so.

VI. And whereas difficulties sometimes arise in the execution of process against goods and chattels issued by or under the authority of the said Courts, by reason of claims made to such goods and chattels by persons not being the parties against whom such process has issued, whereby Sheriffs and other officers are exposed to the hazard and expense of actions, and it is reasonable to afford relief and protection in such cases to such Sheriffs and other officers; *Be it therefore, &c.*, That when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process, or to the proceeds or value thereof, it shall and may be lawful to and for the Court from which such process issued, upon application of such Sheriff or other officer, made before or after the return of such process, and as well before as after any action brought against such Sheriff or other officer, to call before them by rule of Court, as well the party issuing such process as the party making such claim, and thereupon to exercise for the adjustment of such claims, and the relief and protection of the Sheriff or other officer, all or any of the powers and authorities hereinbefore contained, and to make such rules and decisions as shall appear to be

Preamble.

Where claims shall be made by third parties to goods or chattels taken in execution, the Court may call the parties before them, and adjust such claims.

(See 9 Vic. c. 50, s. 4.)

Costs to be in the discretion of the Court. just, according to the circumstances of the case, and the costs of all such proceedings shall be in the discretion of the Court.

VII. *And be it, &c.*, That all rules, orders, matters, and decisions to be made and done in pursuance of this Act, except only the affidavits to be filed, may, together with the declaration in the cause (if any) be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a Judgment, except only as to becoming a charge on any lands, tenements, or hereditaments; and in case any costs shall not be paid within fifteen days after notice of the taxation and amount thereof, given to the party ordered to pay the same, his agent, or attorney, execution may issue for the same by *Fieri Facias* or *Capias ad Satisfaciendum* adapted to the case, together with the costs of such entry and of the execution; and such writ or writs may bear teste on the day of issuing the same, whether in term or vacation; and the Sheriff or other officer executing any such writ shall be entitled to the same fees, and no more, as upon any similar writ grounded upon a judgment of the Court: Provided always, nevertheless, that no such writ of *Capias ad Satisfaciendum* shall be sued out upon any such proceeding, except upon a similar affidavit to that required upon the ordinary judgments of such Courts respectively.

Rules, &c., made under this Act, to be entered on Record.

Decisions to have the effect of Judgments.

Exception.

Remedy for costs, if not paid.

Teste of writs.

Fees.

Proviso.

No *Capias ad Satisfaciendum* to issue except on usual affidavit.

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### 7 VICTORIA.—CHAP. XXXIII.

*An Act to render more summary the means of enforcing the Returns of Process by Sheriffs and Coroners, in that part of this Province called Upper Canada.*

[Passed 9th December, 1843.]

Preamble. WHEREAS it is expedient to facilitate and render more summary the means of enforcing the returns of process by Sheriffs and Coroners in that part of this Province called

Upper Canada; *Be it therefore, &c.*, That when any Sheriff or Coroner shall, at any time after the passing of this Act, fail to return any writ to him directed and delivered for execution, which shall have been issued out of Her Majesty's Court of *Queen's Bench* or any of the *District Courts*, within the time when he shall be ordered to return the same by any rule or order of the Court out of which such writ shall have been issued, then, and in every such case, it shall and may be lawful to and for a Judge of such Court to grant to the Plaintiff or Plaintiffs, Defendant or Defendants, in the cause in which such writ shall have been issued, a summons calling upon such Sheriff or Coroner to shew cause why a writ of attachment should not be issued against him; and that the same or any other Judge of the said Court shall have power, at the return of such summons, to discharge the said summons, or order a writ of attachment to be issued against such Sheriff or Coroner, or to limit a further period after which such writ of attachment shall be issued, unless a return be made in the meantime, or otherwise to order, as to such Judge shall seem proper under the circumstances.

When a Sheriff or Coroner shall neglect to return process, any Judge of the Court may issue a summons calling on him to shew cause why a writ of attachment should not issue against him.

(See 12 Vic., c. 63.)

Proceedings on such summons.

II. *And be it, &c.*, That if at the expiration of any further time which such Judge may limit by any order made at the return of such summons, such writ shall not have been returned, it shall and may be lawful to and for any Judge of the Court out of which such writ issued, in vacation, or for the Court in term, upon proof of the service of such order, and of the failure of such Sheriff or Coroner to return such writ, to order a writ of attachment to be forthwith issued against such Sheriff or Coroner.

On failure of the Sheriff or Coroner to comply with the order made after such summons, attachment to issue against him.

III. *And be it, &c.*, That writs of Habeas Corpus may in like manner be issued out of any of the said Courts under the order of a Judge, who shall have the same powers, authority, and discretion in issuing any such writ of Habeas Corpus, or in committing any such Sheriff or Coroner to close custody when brought before him upon such writ, or in admitting him to bail, and in all other proceedings which may be had or

Any Judge to have the same powers as the Court, under habeas corpus issued with regard to such Sheriff or Coroner.

taken thereupon, as are now possessed by the said Court of *Queen's Bench*, or any of the said District Courts.

Such writs of habeas corpus may be made returnable in vacation, and before whom.

IV. *And be it, &c.*, That all writs of attachment and Habeas Corpus issued against any Sheriff or Coroner, may be returnable on a day certain in vacation, which day shall be fixed by the order of the Judge or the Court under which the same shall be issued, and shall not be more than thirty days from the time of issuing such writ of attachment or Habeas Corpus; and that when any such writ shall be returnable in vacation, it shall be made returnable before the presiding Judge in Chambers, when the same is issued out of the said Court of *Queen's Bench* and when the same is issued out of any of the said District Courts, then before the Judge of the District Court out of which the same is issued.

(See 12 Vic. c. 63.)

Sheriff or Coroner not returning the process within a certain time after being so attached, to forfeit his office.

V. *And be it, &c.*, That any Sheriff or Coroner who shall not return any writ issued out of the said Court of *Queen's Bench* or any of the said District Courts, within the period of three calendar months after a writ of attachment for not returning the same shall be executed against him, shall forfeit his office; and if any Sheriff or Coroner, who shall not have returned any such writ within such period, shall continue after the expiration of such period to exercise the duties of his office without having been duly re-appointed to the same, he shall forfeit and pay the sum of one hundred pounds of lawful money of this Province to any person who shall sue for the same in any of Her Majesty's Courts of Record, having competent jurisdiction: Provided always, that such action shall be brought within the period of twelve calendar months after such forfeiture shall have been incurred.

(See 12 Vic. c. 63.)

Penalty if he shall continue to exercise it without being re-appointed.

Proviso.

Costs under this Act to be in the discretion of the Judge.

VI. *And be it, &c.*, That the cost of any proceedings under the authority of this Act to enforce the return of process, shall be in the discretion of the presiding Judge or of the Court, as the case may be, who may order them to be paid by the Sheriff or Coroner against whom the proceedings are had, or by either of the parties in the cause.

VII. *And be it, &c.*, That this Act shall not be construed Act not to interfere with existing remedies. to interfere with or take away any remedy which existed before the passing thereof.

## 8 VICTORIA, CHAP. 13.

*An Act to amend, consolidate, and reduce into one Act, the several Laws now in force, establishing or regulating the practice of District Courts in the several Districts of that part of this Province formerly Upper Canada.*

[Passed 17th March, 1845.]

WHEREAS it is necessary to make further provision for regulating the practice of the several *District Courts* in Canada West, and for extending the jurisdiction thereof: *Be it, &c.* Preamble.

[Repeals 58 Geo. III., c. 4; 2 Geo. IV., c. 2; 4 Will. IV., c. 6, ss. 2, 3, and 4; 5 Will. IV., c. 4; 4 & 5 Vic., c. 8; and 4 & 5 Vic., c. 3, s. 6.]

II. *And be it, &c.*, That there be established, in and for every District in Canada West, a Court of Law and of Record, to be known by the name and style of "*The District Court*" of each respective District, over each of which Courts one or more Judges to be appointed under the Great Seal of the Province (and who, as well as those Judges who are now appointed and who shall remain qualified, shall hold office *during good behaviour*) shall preside: Provided always, that it may be lawful for the Governor to remove any such Judge or Judges of the said Court, *upon a Joint Address of the Legislative Council and Legislative Assembly*, and there shall also be a Clerk, to be appointed in the same manner, who shall hold office during pleasure: Provided also, that no practising Attorney or articled Clerk shall discharge the duties of such office, under penalty of forfeiture of the same. District Courts established. (See 12 Vic. c. 78, s. 3; 16 Vic. c. 20.) Clerk to be appointed. No Attorney, &c., to be Clerk. (See 12 Vic. c. 66, s. 12.)

III. *And be it, &c.*, That each of the Judges of the said Courts shall be a Barrister at Law, and if appointed under this Act when it shall come into force, shall be of at least five years Judges to be Barristers.

standing, and shall reside within the District over the District Court whereof he or they respectively shall be appointed to preside; and that the first or Senior Judge of the District Court of any District, being also a Justice of the Peace therein, shall preside as Chairman at the General Quarter Sessions of the Peace for such District, unless in cases of absence from sickness or other unavoidable cause, when the Justices present shall elect another Chairman *pro tempore*: Provided always, that no Judge of any such District Court shall, directly or indirectly, practise or carry on or conduct any business in the profession or practice of the Law, while acting as such Judge, on pain of forfeiting his office, and subject to the further penalty of one hundred pounds, to be recovered by any person who shall sue for the same, by action of debt, bill, plaint, or information, in Her Majesty's Court of Queen's Bench for Upper Canada; one half of the said penalty to belong to the party suing, and the other to Her Majesty, Her Heirs or Successors.

To preside at  
Quarter  
Sessions.

Proviso.

No Judge to  
practise the  
law.

Penalty.

Distribution.

Judges to  
take an oath  
of office.

The oath.

IV. *And be it, &c.*, That every Judge so to be appointed, before he shall be qualified to act as such, shall take the following oath before some person to be appointed by the Governor of this Province to administer the same, that is to say: "I — do swear that I will truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts of Judge of the District Court of the District of —, and of the several Division Courts within the same, without fear, favour or malice; so help me God."

Amount of  
Jurisdiction  
of the said  
Courts.

(See 13 & 14  
Vic. c. 52;  
16 Vic. c. 119;  
16 Vic. c. 180,  
s. 9; 19 & 20  
Vic. c., 90, s.  
20.)

V. *And be it, &c.*, That the said Courts respectively, shall hold plea of all causes or suits relating to debt, covenant or contract, to the amount of *twenty-five pounds*, and in cases of contract, or debt on the common Counts where the amount is ascertained by the signature of the defendant to be *fifty pounds*, and also in all matters of tort, relating to personal chattels, where the damage shall not exceed *twenty pounds*, and where titles to land shall not be brought in question.

VI. [Repealed by 9 Vic., c. 7, s. 3.]

VII. }  
and } [Repealed by 12 Vic., c. 66, s. 1.]  
VIII. }

IX. *And be it, &c.*, That in all causes in the said District Courts, the time for pleading replying, rejoining and otherwise answering until the parties are at issue, shall be *four* days.

Time for pleading, &c. limited to four days. (Qy. See 19 & 20 Vic. c. 90, s. 2, adopting s. 112 of C. L. P. A., 1856.)

X. }  
to } inclusive. [Repealed by 19 & 20 Vic., c. 90.]  
XII. }

XIII. *And be it, &c.*, That no plea, replication or other pleading, whereby the title to any *land* or to any annual or other rent, duty or other custom or thing relating to, or issuing out of lands or tenements shall be brought in question, shall be received by any District Court, without an affidavit thereto annexed, that such plea, replication, or other pleading is not pleaded vexatiously, or for the mere purpose of excluding such Court from having jurisdiction, but that the same does contain matter which the deponent believes is necessary for the party pleading, to enable him to go into the merits of his case.

Affidavit to be annexed to any plea bringing the title to real estate into question (See 19 & 20 Vic. c. 90, s. 20.)

XIV. }  
to } inclusive. [Repealed by 19 & 20 Vic. c. 90.]  
XIX. }

XX. *And be it, &c.*, That the Judges or Clerks of the several District Courts respectively, and all Commissioners in the respective districts duly appointed for taking affidavits and special bail in the said Court of Queen's Bench, shall be and are hereby authorized to take all affidavits, as well as all recognizances of bail that may be required to be taken in the respective District Courts.

Who may take affidavits and recognizances.

XXI. *And be it, &c.*, That the Sheriff to whom any Writ of *Capias ad Respondendum* shall be directed, shall take bail thereon and assign the bail bond if required, in like manner as the law does or shall direct in cases where like process is issued from the said Court of Queen's Bench, and such assignment shall have the like validity and effect; and that

In what cases the Sheriff shall take bail and assign the bail-bond.

Action on the bond in the District Court, whatever be the amount. (See C. L. P. A., 1856, s. 305.)

whatever may be the penalty of the bail bond, an action thereon may be brought in the District Court from which the Writ of *Capias* issued, and proceeded in to final judgment and execution, as in other cases within the jurisdiction of such District Court.

XXII. }  
to  
XXIV. } inclusive. [Repealed by 19 & 20 Vic. c. 90.]

XXV. [Repealed by 12 Vic. c. 66.]

Prisoners may be admitted to bail in the same cases and manner as in the Queen's Bench. (See C. L. P. A., 1856, s. 24. Har. C. L. P. Acts.)

XXVI. *And be it, &c.*, That every prisoner arrested upon process issued out of any of the said District Courts, whether detained by the Sheriff or other officer upon the original arrest or upon the surrender by his bail, shall and may be admitted to bail in term time or vacation, upon the same terms and in the same manner as if he were a prisoner under the like circumstances in the said Court of Queen's Bench.

Bail may surrender their principal, and other proceedings may be had as in like cases in the Queen's Bench.

XXVII. *And be it, &c.*, That the bail, or either of them, in any suit in the said District Courts, may surrender their principal in like manner and upon the same terms as may be done now or hereafter in the said Court of Queen's Bench; and that the respective Judges in the said District Courts shall have power to grant the same remedies to the Plaintiff against the Sheriff or Sheriff's bail, or the bail to the action, respectively, and to afford relief to the Defendant, Sheriff or bail, in the like way and by the like proceedings as might now or hereafter be done in the said Court of Queen's Bench, had the action been instituted in that Court.

XXVIII. [Repealed by 19 & 20 Vic. c. 90.]

What notice of trial shall be given.

XXIX. *And be it, &c.*, That in all matters of fact to be tried by a jury, when issue be joined, six days notice of trial shall be given to the Defendant or his Attorney; and in all cases where judgment shall have been signed by default, six days notice of assessment shall likewise be given, which said

notice may be countermanded three days before the day appointed for trying such issue or taking such assessment.

XXX. *And be it, &c.*, That in all cases to be tried before the said Courts, and in all cases where damages are to be assessed, it shall be the duty of the Plaintiff to prepare and enter with the Clerk a record in the form of a *Nisi Prius* record, on or before the first day of the sitting of the said Courts, respectively. Plaintiff to make up a record in all cases to be tried, or where damages are to be assessed.

XXXI. }  
and } [Repealed by 19 & 20 Vic. c. 90.]  
XXXII. }

XXXIII. *And be it, &c.*, That the said District Courts may issue Writs of *Subpœna ad Testificandum* to enforce the attendance of witnesses residing within their respective jurisdiction; and also, Writs of *Subpœna duces tecum* to enforce the attendance of witnesses and the production of deeds and papers material to the party suing out the same, and may proceed against persons who, having been duly served with a *Subpœna*, shall disregard or disobey the same, in like manner and by the same mode of proceeding as is practised in the said Court of Queen's Bench. Writs of Subpœna may be issued and enforced as in the Queen's Bench.

XXXIV. *And be it, &c.*, That it shall and may be lawful for any Plaintiff or Defendant in any action now pending or hereafter to be brought, to sue out a Writ of *Subpœna* as often as occasion may require, from the office of the Clerk of the Crown, or any of his deputies in Canada West, to compel the attendance of any witness, resident out of the jurisdiction of the District Court in which such action shall be brought or pending, to give evidence at the trial of such action, and also writs of *Subpœna duces tecum* to enforce the attendance of witnesses and the production of deeds and papers material to the party suing out the same, which Writs of *Subpœna* shall be as effectual, and the person disobeying the same shall be liable to the same penalties, as if the action had been commenced and prosecuted in the said Court of Queen's Bench; and the said Court of Queen's Bench shall have The Queen's Bench may issue Subpœnas to compel the attendance at trial in a District Court, of Witnesses residing out of its jurisdiction.

power and authority to proceed against the person or persons disobeying such Writ of *Subpœna*, as if the same had been issued in a cause pending before the Court: Provided always, that every witness shall be entitled to the sum of five shillings for each day's necessary attendance, and five shillings for every twenty miles of travel: the sums paid to be costs in the cause.

Proviso.

Costs allowed to witnesses.

XXXV. [Repealed by 19 & 20 Vic. c. 90.]

XXXVI. *And be it, &c.*, That it shall and may be lawful for the defendant in any action to pay money into Court, in like manner as the same may be done in the said Court of Queen's Bench.

Defendant may pay money into Court. (C. L. P. A., 1856, ss. 119, 120.)

XXXVII. *And be it, &c.*, That the said District Courts may in term time, by rule or order set aside proceedings for irregularity, or stay the same until security be given for costs, in all matters within their jurisdiction, in like manner and to the same extent, as the said Court of Queen's Bench, or any Judge thereof, can or may do.

Proceedings may be set aside for irregularity, or stayed, as in Queen's Bench.

XXXVIII. *And be it, &c.*, That all and every the Statutes of Jeofails and of limitations and amendments, shall be of the same force in the said District Courts as in the said Court of Queen's Bench.

Statutes of Jeofails, &c. to apply to District Courts. (See C. L. P. A., 1856, ss. 37, 291.)

XXXIX. [Repealed by 19 & 20 Vic. c. 90.]

XL. And to the end that the trial of all issues to be joined in the said District Courts, as well as the assessment of damages upon judgment obtained by default or upon demurrer, may be had at the most convenient time and place: *Be it, &c.*, That it shall and may be lawful for the Judges of the said District Courts, respectively, to issue a Precept to the Sheriff of their respective Districts, and also, if required by either Plaintiff or Defendant in a suit where the Sheriff is the opposing party, to issue a Precept to any Coroner of their respective Districts, at least fourteen days before the week in which the General Quarter Sessions of the Peace are holden,

District Judges to issue Precepts for summoning Jurors to try issues, and assess damages; and at what time and place.

(See 13 & 14 Vic. c. 55, ss. 29, *et seq.*)

requiring him to summon, and he is hereby directed thereupon to summon, not less than thirty-six, nor more than forty-eight jurors, to be and appear at the time and place when and where the General Quarter Sessions are holden, on the same day on which such Sessions do generally commence to be holden, from whom a jury shall be taken for the trial of each issue or assessment of damages, in like manner as is practised in cases at *Nisi Prius*; and each juror sworn in any cause shall be entitled to receive the sum of *seven-pence half-penny, and no more.*

Compensation to Jurors.  
(See 14 & 15 Vic., c. 14.)

XLI. [Repealed by 19 & 20 Vic. c. 90.]

XLII. *And be it, &c.*, That it shall and may be lawful for the party in whose favour the verdict shall be rendered, or in cases where the plaintiff was non-suited at the trial, for the Defendant or his Attorney, to enter final judgment, on the third day of the term next after the rendering of such verdict, and thereupon to sue out execution.

When final judgment may be entered after verdict.  
(See C. L. P. A., 1856, s. 182.)

XLIII. *And be it, &c.*, That the said several District Courts may set aside verdicts or nonsuits, and grant new trials, and hear and in their discretion grant motions in arrest of judgment, in all cases within their jurisdiction, upon the like principles and grounds as prevail in the said Court of Queen's Bench upon similar applications: Provided always, that no motion for a new trial or nonsuit shall be entertained after the rising of the Court on the second day of the term next ensuing the rendering of the verdict or nonsuit in the cause, and that all rules moved in the said Court in term time under this or any other clause of this Act, shall be two day rules (where the same rules in the Court of Queen's Bench would be four day rules) and answerable or returnable on the third day inclusive, after service, and may be made absolute at the rising of the Court on that day, and in all cases not otherwise provided for herein, one half of the period allowed in the Court of Queen's Bench shall be allowed in the said District Courts, and upon all or any arguments in term time under this or any other clause of this Act, the Judge of the said Courts, respectively, may

District Courts may grant new trials, set aside verdicts, &c., on the same principles as in Queen's Bench.  
Proviso.  
All rules to be two day rules.  
One half of all periods allowed in Queen's Bench, to be allowed in District Courts.  
When judgment to be pronounced.  
(See 12 Vic. c. 66, s. 10; C. L. P. A., 1856, s. 168, et seq.)

pronounce judgment on the first Wednesday after term, or again postpone from that day until the ensuing term.

In what cases and on what conditions execution may be taken out in a district other than that in which the judgment was rendered.

XLIV. *And be it, &c.*, That it shall and may be lawful for the party recovering judgment in any suit or action brought in any of the said District Courts, on application to the Judge of the District Court of any other District than that in which such judgment was recovered, and upon producing and filing in the office of the District Court of such other District an exemplification of the judgment, together with an affidavit that such judgment or some part thereof remains unpaid and unsatisfied, to sue out execution in such other district, in the same manner as by law he could do in the district in which such judgment was rendered, and that the costs of obtaining such exemplification and execution shall be added to the amount directed to be levied by such execution.

XLV. }  
and } [Repealed by 19 & 20 Vic. c. 90.]  
XLVI. }

Court may order reference to arbitration as in Queen's Bench.

(See 19 & 20 Vic. c. 90, s. 10, *et seq.*; C. L. P. A., 1856, s. 88, *et seq.*)

XLVII. *And be it, &c.*, That it shall and may be lawful for the several Judges of the said District Courts, either at the sittings for trials or in term times, by consent of the parties, to order any cause to be referred to arbitration by rule of Court, which rule shall have the same effect, and shall be enforced by the same means, as if the same had been granted by the said Court of Queen's Bench in a cause depending in that Court; and the several Judges in the said District Courts shall have power to set aside any award made under such reference, under the same rules and regulations, upon the same terms and in like manner as is done by the Court of Queen's Bench.

District Courts to have the same power to enforce their regulations as the Queen's Bench.

XLVIII. *And be it, &c.*, That the said District Courts shall have and exercise the same powers to enforce their regulations, rules and directions as the said Court of Queen's Bench in Upper Canada now possesses, and may punish by fine or imprisonment, or either, for any wilful contempt or resistance of their regular process, rules or orders, provided that such fine shall in no case exceed twenty-five pounds currency, nor such imprisonment six calendar months.

XLIX. *And be it, &c.*, That it shall and may be lawful for the said District Courts to issue writs of *Fieri Facias* against goods and chattels, and against lands and tenements, and Writs of *Capias ad Satisfaciendum* upon all judgments entered in the said Courts, in the like cases, upon the same terms, and in the same order, as similar Writs are or may hereafter be issued by the said Court of Queen's Bench.

Certain Writs of execution may be issued as in Queen's Bench.

(See C. L. P. A., 1856, s. 182, *et seq.*)

L. *And be it, &c.*, That all recognizances of bail taken in any of the said District Courts may be entered of record in the Court in which the suit or action shall have been instituted; and that action of debt or *Scire Facias*, shall lie thereupon, as in similar cases in the said Court of Queen's Bench.

Recognizance of bail may be entered of record. (See 12 Vic. c. 66, s. 7; C. L. P. A., 1856, s. 206.)

LI. *And be it, &c.*, That in any action depending in Her Majesty's Court of Queen's Bench in Upper Canada, for any debt or demand in which the sum sought to be recovered, and indorsed on the copy of the original process served in such action, shall not exceed the sum of twenty-five pounds, and in any action in the said Court for any debt or demand in which the amount shall be ascertained by the signature of the Defendant or Defendants, it shall be lawful upon application by the Plaintiff or Plaintiffs for the said Court, or any Judge thereof, if such Court or Judge shall be satisfied that the trial will not involve any difficult question of fact or law, and the Court or any Judge thereof shall think fit so to do, to order and direct that the issue or issues joined shall be tried before the Judge of the District Court of the District wherein the *venue* in such action shall be laid; and for such purpose a Writ shall issue directed to such Judge, commanding him to try such issue at the first or second sittings of such District Court next after the issuing thereof, by a jury returned for the trial of issues joined in the said Court, and to return such Writ with the finding of the jury thereon endorsed, within ten days after the execution thereof; and such Judge shall proceed to try the issue or issues, and return upon payment of the fees lawfully due thereon; and if either party require the same, such Judge shall, on payment of the fees hereinafter set forth, report in writing, under his hand, his charge to the jury, together with

Court of Queen's Bench may send certain issues to be tried at the District Court of the District where the *venue* is laid.

Proceedings in such case.

Return.

A fuller report may be demanded

a copy of the evidence adduced, and of any other matter necessary for a full understanding of the case.

(See C. L. P. A., 1856, s. 146, *et seq.*)  
Notice of trial.  
Countermand.  
Consequences.

LII. *And be it, &c.*, That notice of trial and of countermand shall be given according to the practice of the said Court of Queen's Bench, and if the Plaintiff shall not proceed to try issue pursuant to such notice, or shall not countermand the same, *judgment as in case of nonsuit may be entered*, or other proceedings may be had thereon, pursuant to the practice of the said Court of Queen's Bench.

(See C. L. P. A., 1856, s. 151.)

Proceedings after the return of the verdict.

LIII. *And be it, &c.*, That at the expiration of six days next after the receipt and filing of the said Writ of Trial and of the return thereof in the Crown Office, costs shall be taxed, judgment signed, and execution issued, unless either party shall apply to stay proceedings as hereinafter mentioned; and the verdict of the jury on the trial of such issue or issues shall be as valid and of the like force as a verdict of a jury at *Nisi Prius*; and the Judge presiding at the trial of such issue or issues shall have the like power, with respect to amendment on such a trial and other proceedings and relief thereat, as are possessed in that behalf by the Judges at *Nisi Prius*.

Power of Judge as to amendment.

Part of the Act of U. C. 2 Geo. IV., 2nd sess. c. 1, s. 20, repealed as to assessment of damages in cases by default.

LIV. And whereas it would greatly tend to diminish the expense and to the more expeditious termination of suits, if the Judges of the said several District Courts in Canada West were authorised to execute Writs of Enquiry, to be issued from the said Court of Queen's Bench: *Be it, &c.*, That for and notwithstanding anything contained in the twenty-ninth section of a certain Act of the Parliament of Upper Canada, passed in the second year of the Reign of His late Majesty King George the Fourth, intituled, *An Act to Repeal part of and amend the laws now in force respecting the practice of His Majesty's Court of King's Bench in this Province*, as provides that in all cases where judgment shall have gone by default, the damages shall be ascertained at the same time, and in like manner as if the parties had pleaded to issue, it shall and may be lawful in every action or suit to be brought after this Act shall come into effect in Her Majesty's said Court of Queen's

Bench, in which judgment shall go by default or in which judgment shall be given for the Plaintiff on demurrer, and there shall be no issue of fact to be tried, and in which damages are required to be assessed, a Writ of Enquiry for the Plaintiff to issue, directed to the Judge of the District Court of the district in which the *venue* in such suit or action is laid; which Writ shall be executed at the first or second sittings of such District Court next after the issuing thereof, and six days' notice of the execution thereof shall be given to the Defendant or his Attorney; and the Judge of the District Court shall make due return of the said Writ within ten days after the execution thereof, upon payment of the fees lawfully due thereon, and if either party require the same, such Judge shall, on payment of the fee hereinafter set forth, report in writing under his hand, his charge to the jury, together with a copy of the evidence adduced and of any other matter necessary for a full understanding of the case; and the Plaintiff may within six days after the receipt and filing of the Writ of Enquiry and of the return thereof in the Crown Office, enter final judgment and issue execution thereon.

Writs of Enquiry may issue to the District Courts in such cases.

What return shall be made to such Writs.

When judgment may be entered after return.

LV. *Provided always, and be it, &c.*, That if either party shall object to any of the proceedings on the execution of any such Writ of Trial or Writ of Enquiry, and shall give the opposite party notice of his intention to apply to set the same aside within six days next after the day on which the verdict thereon was rendered, such party may, before the entry of final judgment, apply to the said Court of Queen's Bench in term time, or to a Judge thereof in vacation, for a rule to shew cause why such proceedings should not be set aside, which rule, if granted upon the order of a Judge in vacation, shall be returnable in the term next ensuing the application, and shall operate as a stay of proceedings in the mean time; and the said Court of Queen's Bench where any such rule is granted shall make such order thereon and grant such relief as the justice of the case may require: *Provided always*, that nothing herein contained shall be construed to affect the right of any party to apply to the said Court of Queen's Bench against any other proceeding in the said cause, or to restrain the Plaintiff from

How either party shall proceed if he wishes to set aside any proceeding under a Writ of Enquiry or of Trial.

Proviso.

Other rights of either party not to be affected.

obtaining a rule to compute principal and interest, in cases in which the same can now be lawfully done, unless the same shall be otherwise ordered by any rule of the said Court of Queen's Bench.

Queen's Bench to make rules of practice concerning proceedings on such Writs.

LVI. *And be it, &c.*, That the Judges of the said Court of Queen's Bench, shall have power to make all necessary rules and regulations for the practice to be observed as to such Writs of Trial or Writs of Enquiry, and the costs therein, not inconsistent with the provisions of the Act or otherwise provided for therein.

Parties dissatisfied with the decision of the District Judge on any point of law, may appeal to Queen's Bench on certain conditions.

Security to be given.

LVII. *And be it, &c.*, That if either party in a cause which shall be instituted in any of the said District Courts, shall be dissatisfied with the decision of the Judge upon any point of law arising upon the pleadings, or with the charge to the Jury, or the decision upon any motion for a nonsuit, or for a new trial, or in arrest of judgment, it shall and may be lawful for such party (upon giving bond to the opposite party, himself and two sureties in such sum as the said Judge of the District Court shall direct, which sureties shall also justify to such amount by affidavit, to be annexed to the bond in like manner as bail are required to justify) conditioned to abide by the decision to be made in the cause, and to pay all sums of money and costs, as well of the suit as of the appeal, as shall be taxed and awarded to the opposite party, which bond and affidavit of justification, and also an affidavit of the due execution thereof shall be produced to the Judge of the District Court at the time of making the application hereinafter mentioned, and shall remain in the custody of the Clerk of the said District Court until the opinion of the Court above shall be given, and shall then be delivered to the successful party, to require the Judge of the said District Court, to certify under his hand to the said Court of Queen's Bench, the pleadings in such cause and all motions, rules or orders that have been made, granted, or refused therein, together with his own charge, judgment or decision thereon, and the evidence, and all objections and exceptions thereto when any trial has been had; whereupon the same matter shall be set down for argument at the next

District Judge to certify the pleadings, &c., in Queen's Bench.

term of the said Court of Queen's Bench, which Court shall give such order or direction to the Court below, touching the judgment to be given in such matter as the law of the land shall require, and shall also award costs to either party in their discretion, which costs shall be certified to and form part of the judgment of the Court below; and upon receipt of such order, direction, and certificate, the Judge of the District Court shall forthwith proceed in accordance therewith.

Matter to be argued in the Queen's Bench. (See 12 Vic. c. 66, s. 11.) Queen's Bench to direct the Court below. Costs.

LVIII. *And be it, &c.*, That this Act shall come into and shall be in force and operation with regard to each of the said District Courts, respectively, upon, from and after the first day of the first term of each of the said Courts, which shall commence upon or after the first day of May next after the passing of this Act: Provided always, that all process, suits, causes and proceedings then pending in the several District Courts of Canada West, shall be executed and continued, and all further proceedings in such suits be carried on according to the provisions of this Act: Provided also, that Writs of Execution according to the established course of law may issue upon any judgment in any of the present District Courts which shall remain in the whole or in part unsatisfied at the time this Act shall come into operation.

When this Act shall come into force.

Proviso.

Continuance of pending suits.

Proviso.

Execution on judgments of present District Courts.

LIX. *And be it, &c.*, That in any suit to be brought in the said Court of Queen's Bench after this Act shall come into effect, which suit may be of the proper competence of the said District Courts, no more costs shall be taxed against the Defendant than would have been incurred in the District Court in carrying on the same action, unless the Judge who presides at the trial of such suit or action, shall certify in open Court, immediately after the verdict is recorded, that it was a fit cause to be withdrawn from the District Court, and to be commenced in the said Court of Queen's Bench: Provided also, that so much of the costs of the Defendant, to be taxed as between Client and Attorney, in any such suit wherein the Judge shall not certify as aforesaid, as shall exceed the costs of defence taxable, and which would have been incurred in the District Court in defending the same action, shall be set off

Costs in suits brought in Queen's Bench which might be brought in a District Court.

Proviso.

Extra costs paid by the Defendant may be allowed him and set off against costs of Plaintiff.

and allowed by the Master in entering judgment against the costs to be taxed for the Plaintiff and recoverable from the Defendant.

Receiver of Fees appointed. LX. *And be it, &c.*, That the Treasurer of each of the Districts in Canada West, shall be the Receiver of Fees of the District Court within his District.

Allowance to such Receiver. Judges how paid. Salary to be fixed from time to time by the Governor in Council. (See 19 & 20 Vic. c. 90,<sup>1</sup> s. 22.) LXI. *And be it, &c.*, That every such Treasurer shall be paid by a per centage of four pounds on every hundred pounds, and no more, of the gross produce of the Fees of the District Court; and that every Judge shall be paid by a certain salary in no case more than five hundred pounds, or less than two hundred and fifty pounds; and the Governor in Council shall fix the remuneration to be paid to the Judges respectively, having due regard as well to the population of the several Districts as the amount of fees received by the Treasurer of each District under this and the said last mentioned Act; and the remuneration of the Judges may be increased, or as vacancies shall occur, may be diminished by the same authority by which they were at first fixed.

Clerks to keep accounts of all process and proceedings mentioned in the Schedule. And shall receive the Fees for the Fee Fund. LXII. *And be it, &c.*, That the Clerk of each District Court shall keep an account of all Writs of *Capias ad Respondendum*, Executions, *Subpœnas*, Rules, Orders, and all other Writs and Process of the said Courts, and of all other papers and proceedings whatsoever, mentioned and included in the Schedule hereto annexed of Fees to be collected by such Clerk and paid over to the Fee Fund, and shall receive and take all Fees payable on every such Writ or other proceeding, and shall duly and regularly enter an account of all such Fees in a book to be kept by him for that purpose, which Book shall be open to all persons desirous of searching the same, on payment of one shilling and three pence for each search, and shall, from time to time, at such times as shall be directed and appointed by the Governor, submit his accounts to be audited or settled by the Judge of the District: Provided always, that no such fee shall be demanded or received for searching the Appearance and Plea Book only, or either of them.

Audit.

LXIII. *And be it, &c.*, That there shall be payable on every proceeding in the said District Courts the Fees which are set down for such proceedings respectively in the Schedule to this Act annexed; and a Table of such Fees shall be hung up in some conspicuous place in the office of the several Clerks of such District Courts.

Fees to be as  
in Schedule.

LXIV. *And be it, &c.*, That the Clerk of each and every such District Court shall, from time to time, as often as he shall be required so to do by the Treasurer of his District, deliver to him a full account in writing of the Fees received in such Court, applicable to the Fee Fund, under the authority of this Act; and the amount of the Fees received by the said Clerk for such purpose shall be paid over from time to time by him to the Treasurer, and at least once in every three months; and such amount or so much thereof as may be necessary, shall be applied by such Treasurer in payment of the salaries of the Judges of the said District Courts.

Clerk to  
account to  
the Treasurer  
and pay over  
monies to  
him.

LXV. *And be it, &c.*, That the Treasurer of every District shall, on or before the thirtieth day of June, and the thirty-first day of December, in every year, render to the Inspector General of Public Accounts of this Province, a true account in writing of all monies received and of monies disbursed by him on account of the Court, during the period comprised in such account, in such form and with such particulars as the said Inspector General shall from time to time require, and shall, within ten days after the rendering of every such account, pay over the amount of any surplus of such Fees to the Receiver General of this Province; and if default shall be made in such payment, the amount due by such Treasurer shall be deemed a speciality debt to Her Majesty.

Treasurer to  
account to  
Inspector  
General, and  
pay over any  
balance to  
Receiver  
General,  
twice a year

LXVI. *And be it, &c.*, That in case the amount of Fees received in any of the said District Courts shall not be sufficient to defray the disbursements required on account of the said Courts, during the periods comprised in the said account, it shall be lawful for the Governor of this Province, forthwith to issue his Warrant in favour of the Treasurer for

Governor  
may issue  
his warrant  
for any  
deficiency in  
the Fee  
Fund to pay  
the Judge's  
salary.

the amount which shall be required to make up the salaries of the said Judges, and the amount of such Warrant shall be charged upon the Consolidated Revenue Fund of this Province.

Treasurer's  
Accounts to  
be deemed  
public  
accounts.

LXVII. *And be it, &c.*, That the accounts to be kept by the several Treasurers on account of the said District Courts, shall be deemed Public Accounts, and shall be inquired into and audited, and be within any provisions of law now or hereafter to be in force for auditing Public Accounts.

Mode of  
enforcing  
the payment  
of monies not  
paid over by  
Treasurers  
and Clerks.

LXVIII. *And be it, &c.*, That if any person having resigned, or having been removed from the office of Treasurer of any District, or Clerk of any District Court, shall neglect, after twenty-one days' notice to such person, to account for and pay to the Treasurer of the District for the time being, or to such person as he shall appoint to receive the same, all such sums as shall remain in his hands, of monies received under the authority of this Act, it shall be lawful for such Treasurer for the time being, in his own proper name only, or by his name and description of office, to sue for and recover the same from such person with double costs of suit, in any Court of Record in this Province having competent jurisdiction, by action of debt, in which action it shall be sufficient for such Treasurer to declare as for money had and received to the use of such Treasurer for the purposes of this Act; and the Court in which such action shall be brought may, at the instance of either of the parties, refer the account in dispute in a summary manner, to be audited by an officer of the Court or other fit person, who shall have power to examine both Plaintiff and Defendant upon oath; and upon the report of the Referee, (unless either of the parties shall show good cause to the contrary,) the Court may make a rule either for the payment of such sum as upon the report shall appear to be due, or for staying the proceedings in the action, and upon such terms and conditions as to the Court shall appear reasonable, or the Court may order judgment to be entered up by confession, for such sum as upon the report shall appear to be due.

Form of  
Declaration  
in action. •

Account may  
be referred.

Order of the  
Court.

Judgment.

LXIX. *And be it, &c.*, That in case of the death of any person, during the time that he shall be holding the office of Treasurer or Clerk, or after he shall have resigned or been removed from such office, the Treasurer for the time being may, in his own proper name only, or by his name and description of office, sue for and recover from the Executors or Administrators of such person deceased, all such sums as shall have been remaining in his hands, of monies received under the authority of this Act, and by action of debt, in any Court of Record in this Province having competent jurisdiction, in which action it shall be competent for the Plaintiff to declare that the deceased was indebted to the Plaintiff for money had and received to his use for the purposes of this Act, whereby an action hath accrued to the Plaintiff to demand and have the same from such Executors or Administrators, and a like action may be brought against any Executors or Administrators of Executors or Administrators; and in all such actions the Defendant or Defendants may plead in like manner and avail themselves of the like matters in defence, as in any action founded upon simple contracts of the original Testator or Intestate, and the Court may refer the account in dispute to be audited by any officer or person, and may proceed upon the report of such Referee, in like manner as is hereinbefore mentioned.

Mode of proceeding for the recovery of money due by a Treasurer or Clerk from his executors or administrators.

LXX. *And be it, &c.*, That in all actions to be brought, as well as in all proceedings whatever to be instituted or carried on by any Treasurer by virtue of this Act, proof of his acting in the execution of the office of Treasurer, shall be sufficient evidence of his holding such office, unless the contrary shall be shown in evidence by the Defendants in such actions or the parties against whom such proceedings shall be instituted and carried on.

Plaintiffs acting as Treasurers to be prima facie evidence of his being such.

LXXI. *And be it, &c.*, That the Treasurers and Clerks who shall receive any monies in the execution of their duty, shall give security for such sum, and with as many sureties, and in such manner and form, as the Governor of this Province shall see reason to direct, for the performance of their several offices, and for the due payment of all monies received by them

Treasurers and Clerks to give Security.

Proviso.

under the provisions of this Act : Provided always that nothing in this Act contained shall extend or be construed to extend to make it necessary for any Treasurer, or the Clerk of any District Court, who has already given security according to the provisions of any existing law, to give new security, or to vacate or make void any such security, but that every such security shall enure to and continue in, and be of the same force and effect while such Treasurers or Clerks, respectively, shall remain in office, or until they shall give new security for the due performance of their several offices and for the due payment of all monies received by them, as if such existing securities had been respectively taken under the provisions of this Act.

Existing securities to remain valid.

LXXII.\* *And be it, &c.*, That nothing in this Act contained shall extend or be construed to extend to annul or make void any existing commission or appointment of Judges, duly qualified according to the requirements of this Act, or Clerks of any of the District Courts in any District in Canada West, but that the same shall continue and shall be a sufficient authority to the parties, respectively, holding the same, to discharge their respective functions under this Act ; and that nothing in this Act shall extend or be construed to extend to make the District Courts held under the provisions of this Act, new Courts, but that they shall be taken to be to all intents and purposes the same Courts, as if they had continued to be held under the provisions of the Acts hereby repealed.

Former Commissions of Judges duly qualified and of Clerks to remain valid.

Courts to be deemed the same Courts as if held under former Acts.

LXXIII. *And be it, &c.*, That each and every Clerk of any such District Court, shall hold his office in the Court House, or in the event of there being no room, then in such place as the Judge shall direct within the District town of his respective District, and shall keep such office open for the transaction of business pertaining to such office, on every day (Sundays and the legal Holidays excepted) from the hour of ten in the forenoon to the hour of three in the afternoon, and in firm time from the hour of nine of the clock in the forenoon to the hour of four of the clock in the afternoon.

Place and hours at and during which Clerks shall keep their Offices open.

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\* This and the two following sections are erroneously numbered in the printed Statutes.

LXXIV. *And be it, &c.*, That in construing this Act, the word "Governor" shall mean the Governor, Lieutenant-Governor, or person administering the Government of this Province; and the word "Person" shall be taken to comprehend a Body Politic or Corporate, as well as an individual; and that every word importing the singular number shall, when necessary to give full effect to the enactments herein contained, be deemed to extend and be applied to several persons or things as well as to one person or thing; and every word importing the masculine gender shall, when necessary, extend and be applied to a female as well as a male; and that the words "Canada West," shall be taken to mean that portion of the Province which formerly constituted the Province of Upper Canada.

Interpreta-  
tion clause.

LXXV. *And be it, &c.*, That Fees may be demanded and received for the writs, process, business and service in the conduct of suits, matters and things in said District Courts according to the Schedule subjoined by the several parties therein named; and that no other or greater Fee than is set down in the said Schedule shall be had, taken or received by any officer or person whatsoever for any business done by him in the said Courts; and that no Fee shall be taxed and allowed for any business other than such as is mentioned in the said Schedule; and that it shall be the duty of the Clerks of the said District Courts to tax costs, subject to an appeal therefrom, forthwith on any dispute arising at taxation, to the Judge of the said District Courts, respectively.

Fees to be  
those and  
those only  
set down in  
the Schedule.

LXXVI. And whereas, certain of the Judges of the District Courts are not Barristers at Law, and will be superseded and obliged to retire from their offices by the provisions of this Act, and it is just to make some provision for them: *Be it, &c.*, that where any person, now a Judge of a District Court, who is not a Barrister at Law, and is therefore superseded from his office in conformity with the provisions of this Act, shall have served in the office of such Judge for a period not less than ten years, he shall be entitled to and shall receive a pension of one hundred pounds per annum during his life;

Allowance  
to District  
Judges not  
being Bar-  
risters, and  
therefore  
superseded  
under this  
Act.

and where any such person as aforesaid shall have served in the office of Judge for a period of less than ten years, he shall be entitled and receive a gratuity of two hundred pounds, and that such several pensions and gratuities shall be paid by the Receiver General of this Province, in discharge of any Warrants to be issued by the Governor, and the amount of such Warrants shall be charged upon the consolidated Revenue Fund of the Province: Provided always, that if any person receiving such pension, shall hereafter be appointed to any office under the Government of this Province, the salary and emoluments whereof shall be equal to such pension, then and in such case, the said pension shall be diminished and reduced one half, and if the salary and emoluments of such office shall amount to double the sum of such pension, the same shall thenceforward cease and wholly determine.

Proviso.

If such person be afterwards appointed to another office.

#### SCHEDULE.

*Fees to be received by the Clerk and to belong to and be paid over to the Fee Fund.*

[Repealed by 19 & 20 Vic. c. 90, s. 23.]

#### *Fees to the Sheriff.*

Every Jury sworn, four Shillings.

(See 19 & 20,  
Vic. c. 19,  
s. 24.)

Every Process served, including Return, two shillings and six pence.

Every Declaration, Rule or other paper served, one shilling and three pence.

Every Execution received, one shilling and three pence.

Every Return of Execution, money made or party arrested, two shillings and six pence.

Every other Return of Execution, one shilling and three pence.

Milage, four pence per mile on all Writs executed.

Every Bail Bond taken, two shillings and six pence.

Every Assignment of Bail Bond, one shilling.

Poundage upon all monies actually made under *fi. fa.*, six pence in the pound.

*Fees to a Commissioner.*

- Taking Recognizance of Bail taken, one shilling and six pence.  
 Every Affidavit administered, one shilling.

*Fees to the Attorney.*

- Instructions to sue or defend, five shillings.  
 Copy of *Capias ad Respondendum*, one shilling.  
 Fee on every Writ of *Capias*, two shillings and six pence.  
 Drawing Declaration on Common Counts, five shillings.  
 Copy of every paper, half the amount allowed for the Original.  
 General Issue, Appearance, Interlocutory Judgment, Notice of set off, Cognovit, or entering final Judgment, each two shillings and six pence.  
 Special Pleadings after Declaration, each, five shillings.  
 Every Notice, including copy and service, two shillings and six pence.  
 Drawing Bill of Costs after Verdict, two shillings and six pence.  
 Drawing Bill of Costs, when no Verdict, one shilling.  
 Necessary Entries of Proceedings on the Judgment Roll, Record for Trial, Demurrer Book and other necessary Entries, per folio of one hundred words, six pence.  
 For every necessary Attendance, one shilling.  
 Brief and Fee on Assessment, or Writ of Enquiry, ten shillings.  
 Brief and Fee on a Trial, one pound ten shillings.  
 Fee on Argument for new Trial or on Demurrer, one pound.  
 Every Special motion in Term Time, five shillings.  
 Every Common Motion in Term, or Motion before the Judge in Chambers, two shillings and six pence.  
 Drawing Bail Piece, four shillings.  
 Drawing Recognizance of Bail, two shillings.  
 Drawing every Affidavit including Attendance, two shillings and six pence.  
 Fee on every execution, two shillings and six pence.  
 Special Declaration, ten shillings.  
 Drawing Bond on Appeal, ten shillings.

*Fees to the Crier.*

- Swearing the Jury, one shilling.  
 Calling the Cause, six pence.  
 Each Witness sworn, three pence.

*Fees to the Clerk.*

(See 19 & 20  
 Vic. c. 90,  
 s. 18.)

- Every Writ of *Capias ad Respondendum* and filing *Præcipe*,  
 one shilling and three pence.  
 Filing every separate Paper, four pence.  
 Taking Verdict, two shillings and six pence.  
 Taking any Affidavit, one shilling.  
 Taking any Recognizance of Bail, one Shilling and six pence.  
 Every Rule drawn up and signed by the Clerk, one shilling  
 and six-pence.  
 Every Rule of Reference, two shillings and six pence.  
 Every *Subpœna*, one shilling and three pence.  
 Every Search, six pence.  
 Entering every Judgment, one shilling and six pence.  
 Every Writ of Execution including filing *Præcipe*, two  
 shillings.  
 For each Quarterly Account rendered by him to the Treasurer,  
 to be paid by the Treasurer out of the Fee Fund, one pound.  
 For every other Account of Fees received, made and rendered  
 on a legal requisition, to be also paid out of the Fee Fund,  
 ten shillings.  
 Examining and filing Record, two shillings and six pence.
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## 8 VICTORIA.—CHAP. 48.

*An Act for the Relief of Insolvent Debtors in Upper Canada,  
and for other purposes therein mentioned.*

[Passed 29th of March, 1845.]

WHEREAS it is expedient to repeal a certain Act passed in the Preamble.  
Seventh year of the Reign of Her present Majesty, intituled,  
*An Act to abolish Imprisonment in Execution for Debt, and* (See 19 & 20  
*for other purposes therein mentioned,* and to protect from all Vic., c. 93.)  
process against the person, such persons as have become  
indebted without any fraud or gross or culpable negligence, so  
as nevertheless their estates may be duly distributed among  
their creditors: *Be it, &c.,* That the said above recited Act be,  
and the same is hereby repealed; and if any person not being  
a trader within the meaning of the Statute *now in force* Persons not  
relating to Bankrupts, or not having been such trader before entitled to  
the passing of the said Act, or if any person having been a the benefit of  
trader before the passing of the said Act, but excluded from the Bank-  
rupt Act may  
the operation thereof, or being such trader but owing debts apply for  
amounting in the whole to less than one hundred pounds, protection  
shall give notice according to the Schedule to this Act against pro-  
annexed, to one-fourth in number and value of his creditors, cess, which  
and shall cause the same notice to be inserted twice in the shall be  
Canada Gazette, and twice in some newspaper circulating granted  
within the *District* wherein he resides, he may present them on  
a petition for protection from Process to any Judge or *Commissioner in Bankruptcy* in the *District* wherein he may have resided twelve calendar months, which petition shall have annexed to it a full and true Schedule of his debts, with the names of his creditors and the date of contracting the debt, and the security (if any) given for the same, and also the nature and amount of his property, with the debts owing to him, with their dates and the names of his debtors, and the nature of the securities (if any) which he may have received for such debts, and which petition shall also set forth any proposal which he may have to make for the payment in whole or in part of his debts; and it shall thereupon be lawful for the said Judge or *Commissioner in Bankruptcy* to give, upon

Persons not entitled to the benefit of the Bankrupt Act may apply for protection against process, which shall be granted them on certain conditions.

(The 7 Vic. c. 10 here referred to has expired, except so far as continued by 19 & 20 Vic., c. 85.)

Property of the debtor to be vested in an Official Assignee.

the filing of such petition, a protection to the petitioner from all process whatever, either against his person or his property of any description, which protection shall continue in force, and all Process be stayed until the appearance of the petitioner as hereinafter provided; and upon the presentation of any such petition, all the estate and effects of the petitioner shall forthwith become vested in the Official Assignee who shall be nominated by the Judge or Commissioner acting in the matter of the said petition, and such Official Assignee shall and may forthwith take possession of so much thereof as can be reasonably obtained and possessed without suit; and the said Official Assignee shall hold and stand possessed of the same in the manner as Assignees hold and possess estates and effects under and by virtue of the Statutes relating to Bankruptcy.

Such petition for protection, shall be in the form of Schedule A, No. 2.

II. *And be it, &c.*, That every such petition for protection from Process shall be in the form specified in the Schedule hereunto annexed (A. No. 2) and such petition and the Schedule required to be annexed thereto shall be verified by an affidavit of the petitioner in the form specified in the Schedule hereunto annexed (A. No. 3) and such affidavit shall be sworn in the manner as affidavits in matters of Bankruptcy may be sworn by any law now in force relating to Bankrupts, and shall be annexed to such petition at the time of filing the same; and if such petition and affidavit shall not be in the form herein prescribed, such petition shall be dismissed.

Proviso: the protection not to prevent the party from being held to bail.

III. *Provided always, and be it, &c.*, That nothing herein contained shall be held or construed to hinder or prevent the said Insolvent from being arrested or held to bail, under the authority of any Judge's order for that purpose, in like manner as may now by law be done, notwithstanding any protection which may be granted under the authority of this Act.

Proceedings to be adopted by the Judge or Commissioner.

IV. *And be it, &c.*, That any Judge or Commissioner in Bankruptcy to whom any such petition shall be presented, shall make from time to time such order as he may think right, touching the notice of meetings and examination to be given to creditors, and the publication of such notice, and shall on

the day notified by any such notice proceed to examine upon oath the petitioner, and any creditor who may attend such examination, or any witness whom the petitioner or any creditor may call, and the said Judge or Commissioner may adjourn the examination from time to time; and the choice of the creditors' assignee shall take place at such sitting, or any adjournment thereof, and shall be made by the majority in number and value of the creditors who may attend, by themselves or their attorneys duly authorized by letters of attorney in that behalf before the Judge or Commissioner on such day, provided that the Judge or Commissioner shall have power to reject any person so chosen who shall appear to him unfit to be such Assignee as aforesaid, or to remove any Assignee; and upon such rejection or removal, a new choice of another assignee shall be made in like manner, and the said Judge or Commissioner shall have power to summon to be examined before him any debtor or debtors of such petitioner or any creditor of such petitioner, or any other person whose evidence may appear necessary for the purposes of the enquiry; and if it shall appear to the said Judge or Commissioner that the allegations in the petition and the matters in the Schedules are true, and that the debts of the petitioner were not contracted by any manner of fraud or breach of trust, or that there is any prosecution against the petitioner whereby he had been convicted of any offence, or without having at the time of becoming indebted reasonable assurance of being able to pay his debts, and that such debts were not contracted by reason of any judgment in any proceeding for breach of the Revenue Laws, or in any action of breach of promise of marriage, seduction, criminal conversation, libel, slander, assault and battery, malicious arrest, malicious suing out of *fiat* in Bankruptcy, or malicious trespass, and that the petitioner has made a full discovery of his estate, effects, debts and credits, and has not parted with any of his property since the presenting of his petition, it shall then be lawful for the said Judge or Commissioner to cause notice to be given, that, on a certain day to be named therein, he will proceed to make an order, unless cause be shewn to the contrary, which order shall

The Judge or Commissioner on being satisfied that the debts of the debtor were contracted without fraud, may issue a final order of protection.

(19 Vic. c. 93)

be called a final order, and shall be for the protection of the person of the petitioner from all Process, and for the vesting of his estate and effects in an Official Assignee to be named by such Judge or Commissioner, together with an Assignee to be chosen by the majority in number and value of the creditors who may attend before the Judge or Commissioner on such day, or for the carrying into effect such proposal as the petitioner shall have set forth in his petition: Provided that the consideration of such final order may be adjourned from time to time by the Judge or Commissioner without any further notice: Provided always, that it shall be lawful for the said Judge or Commissioner, if he shall think fit, to direct in such final order, some allowance to be made for the support of the petitioner out of his estate and effects.

Proviso, for adjournment

Proviso: allowance for support of debtor.

Final order shall operate as a discharge of all debts.

V. *And be it, &c.*, That as to any person who was a trader within the meaning of the said Act relating to Bankrupts before the passing thereof, and who is excluded from the operation, having before the passing thereof failed in his said business, under such circumstances, as in the event of such failure having taken place after the passing of the said Act relating to Bankrupts, he could have availed himself of the provisions thereof, such order to be called a final order as aforesaid, shall, in addition to its effect as stated in the next preceding clause, operate as a discharge of all debts due up to the day of his filing his petition under the provisions of this Act, as fully and completely and to the same extent as if such trader had obtained a certificate under the fifty-ninth clause of the said Act relating to Bankrupts.

Judge or Commissioner may renew order.

VI. *And be it, &c.*, That at the first examination of the petitioner it shall be lawful for the Judge or Commissioner to renew the order for protection, and to renew it from time to time until the final order for protection and distribution.

Judge or Commissioner may imprison, &c. debtor prevaricating.

VII. *And be it, &c.*, That it shall be lawful for the Judge or Commissioner, by Warrant under his hand and seal, to commit to prison any petitioner who shall appear to have prevaricated or made any false statement before him, for such

time as he shall think fit, not exceeding one calendar month ; and touching all persons other than the petitioner who shall be examined before him, or being lawfully summoned shall refuse or neglect to attend, the said Judge or Commissioner shall have the same powers in respect to commitment as he has by any law *now in force* relating to Bankrupts.

VIII. *And be it, &c.*, That from and after the issuing of the final order, the whole estate present and except in the case mentioned in the fifth section the future estate, as well real as personal, and all the effects, and all the credits of the petitioner shall become absolutely vested in the Official Assignee and Assignee chosen by the creditors, without any deed or conveyance, which Assignees shall hold the same as fully as if the petitioner had been made a Bankrupt, and they had been Assignees under the commission issued against him, and shall sue and be sued as if they had been Assignees under such commission ; and as often as any such assignee shall die, or be lawfully removed and a new Assignee duly appointed, all estate, real and personal, and such effects and credits as were or remain vested in such deceased or removed Assignee shall vest in the new Assignee, either alone or jointly with the existing Assignees, as the case may require, without any deed or conveyance for that purpose, and every such Assignee shall be deemed to be an officer of the Court in which such petition shall be filed, and shall be liable as such to the control thereof : Provided always, that the property of the petitioner shall in every case be possessed and received by the Official Assignee alone, save where it shall be otherwise ordered by the Judge or Commissioner : Provided also, that it shall be lawful for the Vice Chancellor of Upper Canada, from time to time to make such orders, rules and regulations for the security of the property of the petitioner as he may judge reasonable and proper : Provided always, that no other estate, real or personal, effects or credits of any such petitioner other than that of which he shall be possessed or entitled to at the date of the final order, shall be liable to or applicable in satisfaction of the debts mentioned in and discharged by the fourth section of this Act : Provided always, and be it enacted, that where,

Property and Credits of the Debtor to vest in the Assignees.

Power of Assignees.

Decease or removal of Assignee.

Proviso.

Proviso.

Proviso.

Proviso.

according to any law now in force, any conveyance or assignment of any real or personal property of a petitioner would require to be registered, enrolled, or recorded in any registry office of this Province, then in any such case such certificate of the appointment of an Assignee or Assignees as is provided by the fiftieth section of an Act passed in the seventh year of the Reign of Her present Majesty, intituled, *An Act to repeal an Ordinance of Lower Canada, intituled, "An Ordinance concerning Bankrupts and the administration or distribution of their estates and effects, and to make provision for the same object throughout the Province of Canada,"* shall be registered in the Registry Office or place wherein such conveyance or assignment as last aforesaid would require to be registered, enrolled, or recorded; and the registry hereby directed shall have the like effect to all intents and purposes as the Registry, enrolments or recording of such conveyance or assignment as last aforesaid would have had; and the title of any purchaser of any such property as last aforesaid for valuable consideration, who shall have duly registered, enrolled, or recorded his purchase deed previous to the Registry hereby directed, shall not be invalidated by reason of such appointment of an Assignee or Assignees as aforesaid, in the vesting of such property in him or them consequent thereupon, unless the certificate of such appointment shall be registered as aforesaid within two months from the date of such appointment.

Property acquired by the debtor after final order to be also vested in the Assignees.

IX. *And be it, &c.*, That the said Assignees shall be entitled, except in cases where a final discharge shall be authorized, to claim and demand from the said petitioner, at any time after the said final order, any estate and effects acquired by him at any time after such order shall have been made, and all such estate and effects, of what kind soever and wheresoever situate, shall be absolutely vested in such Assignees upon their filing a copy of their claim served upon the petitioner personally, or by leaving it at the place of residence mentioned in his notice of petition, and they shall hold the same in like manner as they held the estate and effects of the petitioner transferred by force of the final order, as herein

before provided: Provided always, that no Assignee of any insolvent shall be authorized by virtue of this Act to take possession of any estate or effects which the Insolvent shall have acquired or become possessed of after making the final order herein mentioned, except under the authority of an order of the Judge or Commissioner, made for that purpose, and then only to the extent and at the time and in the manner directed by such order, and after giving such notices and doing such acts, matters and things, as by the rules, orders and regulations, made under the authority of this Act, shall be required and directed in that behalf.

Proviso as to Insolvents.

X. *And be it, &c.*, That upon such petition being filed, the Judge or Commissioner shall possess the like power and authority touching the seizure of the property of such petitioner (except as herein otherwise directed,) and also to compel the attendance of and to examine such petitioner and his wife, and every person known or suspected to have any of the property of such petitioner in his possession, or who is supposed to be indebted to such petitioner, and any person whom the said Judge or Commissioner believes capable of giving any information concerning the person, trade, business or calling, dealings or property of such petitioner, or any information material to the full disclosure of the dealings of such petitioner, and to enforce both obedience to such examination and the production of books, deeds, papers, writings, and other documents, as by any law now in force relating to Bankrupts, or possessed by any Court authorized to act in the prosecution of *fiats* in Bankruptcy, touching the seizure of property and the examination of any Bankrupt or other person under a *fiat* in Bankruptcy.

Upon petition being filed, Judge or Commissioner may compel attendance of petitioner. &c.

XI. *And be it, &c.*, That any prisoner in execution, upon any judgment obtained in any action for the recovery of any debt, either not being a trader within the meaning of the Statute relating to Bankrupts, or being a trader within the meaning of the said Statute owing debts amounting on the whole to less than one hundred pounds, may be a petitioner for protection from process under this Act, and every such peti-

Any prisoner in execution, with certain exceptions may be a petitioner under this Act.

tioner, to whom an *interim* order for protection shall have been given, shall not only be protected from process as provided by this Act, but also from being detained in prison in execution upon any judgment obtained in any action for the recovery of any debt mentioned in his Schedule; and if any such petitioner, being a prisoner in execution, shall be detained in prison in execution upon any such judgment, it shall be lawful for the Judge or Commissioner to order any Officer who shall have such petitioner in custody by virtue of such execution, to discharge such petitioner out of custody as to such execution, without exacting any fee, and such Officer shall hereby be indemnified for so doing, and no Sheriff, Gaoler, or other person whatsoever, shall be liable to any action as for the escape of any such prisoner by reason of such his discharge; and such petitioner so discharged shall be protected by his *interim* order from all process for such time as the said Judge or Commissioner shall, by such *interim* order or any renewal thereof, think fit to appoint until the making of the final order for protection in the same manner as if such petitioner had not been a prisoner in execution: Provided always, that after the time allowed by any such *interim* order, or any renewal thereof (as the case may be,) shall have elapsed, such petitioner shall not by such discharge be protected from being again taken in execution upon such judgment, but such judgment shall remain in full force and effect, notwithstanding such discharge.

Proviso.

Whenever petitioner is a prisoner, Commissioner may summon such petitioner before him.

XII. *And be it, &c.*, That whenever any such petitioner is a prisoner under any Process, Attachment, Execution, Commitment or Sentence, and is not entitled to his discharge in manner aforesaid, the Commissioner may, by warrant under his hand, directed to the person in whose custody such petitioner is confined, cause such petitioner to be brought before him for examination, at any sitting of the Court, either public or private, and the expense of bringing such petitioner shall be paid out of his estate, and such person shall be indemnified by the Warrant of the Judge or Commissioner for bringing up such petitioner.

XIII. *And be it, &c.*, That if any petitioner, for protection from Process shall die after the filing of his petition, the Judge or Commissioner may proceed in the matter of such petition, for the discovery and distribution of his property, as he might have done if the petitioner were living.

In case of  
decease of  
petitioner,  
Judge may  
act as if he  
were living.

XIV. *And be it, &c.*, That the wearing apparel, bedding, and other necessaries of the petitioner and his family, and the working tools and implements of the petitioner, not exceeding in the whole the value of twenty pounds, may be excepted by the petitioner in his petition from the operation of this Act, and in such case shall be altogether excluded from the operation of this Act: Provided always, that such excepted articles, with the values thereof respectively to be ascertained and appraised, if the said Judge or Commissioner shall think fit, in such manner as he shall direct, be fully and truly described by the petitioner in the Schedule, but otherwise the exception thereof shall be of no force as to any part of the same.

Wearing  
apparel, &c.,  
to a certain  
amount, to  
be excluded  
from opera-  
tion of this  
Act.

XV. *And be it, &c.*, That until an Assignee shall be chosen by the Creditors of any petitioner for protection from Process, the Official Assignee nominated by the Judge or Commissioner upon the filing of the petition of such petitioner shall be enabled to act, and shall be deemed to be to all intents and purposes a sole Assignee of the property of such petitioner, and, if the said Judge or Commissioner shall so order, may sell or otherwise dispose of such property or any part thereof, and make such allowance out of the property of such petitioner for the support of himself and his family, as the said Judge or Commissioner shall direct; and the property vested in any Official Assignee alone or jointly with any Assignee chosen by creditors under this Act, shall not remain in such Official Assignee alone or jointly with such Assignee chosen by creditors, if such Official Assignee shall resign or be removed from his office, nor in the heirs, executors, or administrators of such Official Assignee, nor in the surviving Assignee alone, in case of the death of such Official Assignee, but all such property shall in every such case go to and be vested in the successor in office of such Official Assignee alone, or jointly

Until Assign-  
nee be  
chosen by  
Creditors of  
petitioner,  
Official  
Assignee  
shall be  
deemed sole  
Assignee of  
property of  
petitioner.

with the Assignee chosen by the creditors (if any), as the case may be; and whenever any such petitioner shall have been or shall be dismissed, all sales and dispositions of property and payments duly made, and all other acts theretofore done by any Assignee or any person or persons acting under his authority, or by any messenger or other person under the authority of the Judge or Commissioner, according to the provisions of this Act, shall be good and valid, but the property of the petitioner shall otherwise in such case revert to such petitioner: *Provided* however, that no action or suit shall be prosecuted or commenced against such Assignee, messenger, or other person or persons acting as aforesaid, except to recover any property of such petitioner detained after an Order made by the said Judge or Commissioner for the delivery thereof and the demand made thereupon.

Proviso.

All powers vested in petitioner shall be vested in Assignee.

XVI. *And be it, &c.*, That all powers vested in any petitioner for protection from Process whose estate shall under the provisions of this Act have been vested in an Assignee or Assignees, which such petitioner might legally execute for his own benefit, shall be hereby vested in such Assignee or Assignees, to be by such Assignee or Assignees executed for the benefit of the creditors of such petitioner, under this Act, in such manner as such petitioner might have executed the same.

When petitioner is entitled to a lease, &c., and the Assignee accepts the same, petitioner not liable after filing petition.

XVII, *And be it, &c.*, That in all cases in which such petitioner shall be entitled to any lease or agreement for a lease, and his Assignee or Assignees shall accept the same, and the benefit thereof, as part of such petitioner's property, the said petitioner shall not be liable to pay any rent accruing after the filing of his petition, nor be in any manner sued after such acceptance in respect of any subsequent non-observance or non-performance of the conditions, covenants, or agreements therein contained: *Provided*, that in all such cases as aforesaid it shall be lawful for the lessor, or person agreeing to make such lease, his heirs, executors, administrators, or assigns, if the said Assignee or Assignees shall decline, upon his or their being required so to do, to determine whether he or they will or will not accept such lease or agreement for a lease to

apply to the Judge or Commissioner, praying that he or they may either so accept the same or deliver up such lease or agreement for a lease and the possession of the premises demised or intended to be demised; and the Judge or Commissioner shall thereupon make such order as in all the circumstances of the case shall seem meet and just, and such order shall be binding on all parties.

XVIII. *And be it, &c.*, That it shall be lawful for the Assignee or Assignees of any such petitioner, and such Assignee or Assignees shall be hereby empowered to sue from time to time, as there may be occasion, in his or their own name or names for the recovery, obtaining, and enforcing of any property or rights of such petitioner, but in trust for the benefit of the creditors of such petitioner according to the provisions of this Act, and to give such discharge and discharges to any person or persons who shall be respectively indebted to such petitioner as may be requisite; and to make compositions with any debtors or accountants to such petitioner where the same shall appear necessary, and to take such reasonable part of any such debts as can upon such composition be gotten in full discharge of such debts and accounts, and to submit to arbitration any difference or dispute between such Assignee or Assignees, and any person or persons for or on account or by reason of any matter, cause, or thing, relating to the property of such petitioner: Proviso. Provided nevertheless, that no such composition or submission or arbitration shall be made, nor any suit in equity be commenced by any such Assignee or Assignees without the consent in writing of the major part in value of the creditors of such petitioner, who shall meet together pursuant to a notice of such meeting to be published at least fourteen days before such meeting in the Upper Canada Gazette, and also in some newspaper usually circulated in the neighbourhood of the place where such petitioner had his last usual residence before the filing of his petition, nor without the approbation of the said Judge or Commissioner.

XIX. *And be it, &c.*, That in all matters wherein creditors shall vote, or wherein the assent or dissent of creditors shall be In matters wherein creditors

vote, every creditor considered as such in respect of such amount only as upon an account fairly stated between the parties shall appear due.

exercised in pursuance of, or in carrying into effect this Act, every creditor shall be accounted such in respect of such amount only as upon an account fairly stated between the parties, after allowing the value of mortgaged property, and other such available securities and liens shall appear to be the balance due; and that all disputes arising in such matters, concerning any such amount, shall, upon application duly made in that behalf, be examined into by the said Judge or Commissioner, who shall have power to determine the same: Provided always, that the amount, in respect of which, any such creditor shall vote in any such matter shall not be conclusive of the amount of his or her debt, for any ulterior purposes in pursuance of the provisions of this Act.

If petitioner have any Government stocks, &c., Judge may order the same to be transferred to assignee.

XX. *And be it, &c.*, That if any such petitioner shall, at the time of filing his petition, or at any time before such petitioner shall become entitled to his final Order according to this Act, have any Government stocks, funds, or annuities, or any of the stock or shares of, or in any public company in Upper Canada, standing in his own name, in his own right, it shall be lawful for the said Judge or Commissioner, whenever he shall deem fit so to do, to order all persons whose act or conduct is thereto necessary, to transfer the same into the name of such Assignee or Assignees as aforesaid; and all such persons whose act or consent is so necessary, as aforesaid, shall be hereby indemnified for all things done or permitted, pursuant to such Order.

Death or resignation of Assignee not to interfere with any suit.

XXI. *And be it, &c.*, That whenever any Assignee shall die, resign, or be removed, or a new Assignee shall be duly appointed, no action at law or suit in equity shall be thereby abated, but the Court in which any action or suit is depending may, upon the suggestion of such death, resignation or removal and new appointment (if any) allow the name or names of the surviving or new Assignee to be substituted in the place of the former, and such action or suit shall be prosecuted in the name or names of the said surviving or new Assignee, in the same manner as if he had originally commenced the same.

XXII. *And be it, &c.*, That if any petitioner for protection from Process shall at the time of filing his petition, by the consent and permission of the true owner thereof, have in his possession, order or disposition, any goods or chattels whereof such petitioner was reputed owner, or whereof he had taken upon him the sale or disposition as owner, the same shall be deemed the property of such petitioner, so as to become vested in the Assignee or Assignees for the time being of the estate and effects of such petitioner.

If the petitioner have any property in his possession at the time of filing his petition, such property shall be deemed to be his, so as to become vested in Assignee.

XXIII. *And be it, &c.*, That no distress for rent made and levied, after the filing of any petition for protection from Process upon the goods or effects of the petitioner, shall be available for more than one year's rent accrued prior to the filing of such petition, but that the landlord, or party to whom the rent shall be due, shall and may be a creditor for the overplus of the rent due, and for which the distress shall not be available, and entitled to all the provisions made for creditors by this Act.

No distress for rent after filing petition shall be available for more than one year's rent accrued before filing petition.

XXIV. *Provided always, and it it, &c.*, That if any suit or action be brought against any petitioner for or in respect of any debt contracted before the date of filing his petition, it shall be a sufficient plea in bar of the said suit or action, that such petition was duly presented and a final Order for protection and distribution made by a Judge or Commissioner duly authorized, whereof the production of the Order signed by the Judge or Commissioner, with proof of his hand-writing, shall be sufficient evidence.

Proviso. Final Order may be pleaded in bar of suits against the debtor for debts contracted before his petition was filed.

XXV. *And be it, &c.*, That the like evidence of the appointment of Assignees shall be received as sufficient to prove such appointments, in all courts and places whatsoever, as is received by the laws now in force relating to Bankrupts, to prove such appointments.

What shall be evidence of the Assignees' appointment

XXVI. *And be it, &c.*, That it shall be lawful for any creditor or Official Assignee or other Assignee, at any time after the final Order shall have been made, except in the cases

Creditors or Assignees may in certain cases apply for the

removal  
of the pro-  
tection.

mentioned in the fifth Section of this Act, to give one month's notice to the petitioner, either by personal service, or if he cannot be found, by service at the place of his residence mentioned in his notice of petition, that such creditor intends to apply by motion to the said Judge or Commissioner, or in case of his death, resignation, or removal, to the Judge or Commissioner appointed to succeed him, that the final Order be rescinded, as far as relates to the protection of the petitioner's person from Process, and as far as relates to the effect of such Order in bar of suits and actions; and the said Judge or Commissioner

Power to the  
Judge or  
Commissioner  
to take  
evidence and  
to rescind  
the Order for  
protection if  
he see fit.

shall, upon hearing the matter of such motion and any evidence in support of it, and what the petitioner has to allege against it and any evidence against it, and upon examining the petitioner, if he shall desire to be examined, or if the Judge or Commissioner shall think fit, proceed to make such rescinding Order as is hereinbefore mentioned, if he sees reasons to believe that the petitioner had not, before the making of the Order sought to be rescinded, made a full disclosure of his estate, effects, and debts, or had, since the making of such Order, not given notice to the Assignees of any property after acquired by him; provided that on any such motion by a creditor, the Official and other Assignee shall be duly served with a month's notice to attend the said Judge or Commissioner; and provided further, that the notice of the hearing and motion shall be given twice in the Canada Gazette, and twice in the same paper in which the notice of the petition had been given, or in some other paper circulating in the same district; and provided always, that the said Judge or Commissioner, in case he shall refuse to make the rescinding Order, shall, if he think fit, order the petitioner's costs of the motion to be paid by the creditor making the motion, or by the Assignee chosen by the creditors, in case he shall make the motion, but not out of the petitioner's estate and effects.

Notice to be  
given.

Publication  
of the  
notice.

Proviso, as  
to costs.

Any Assign-  
ment or  
other Act  
made by  
petitioner  
before or

XXVII. *And be it, &c.*, That if the petitioner shall, before or after the filing of his petition, in contemplation of his becoming insolvent, or being in insolvent circumstances, voluntarily convey, assign, transfer, charge, deliver or make

over any estate, real or personal, security for money, bond, bill, note, money, goods or effects whatsoever, to any creditor or creditors or to any person or persons in trust for or to, or for the use, benefit or advantage of any creditor or creditors, or to any person who is or may be liable as surety for such petitioner, every such conveyance, assignment, transfer, charge, delivery and making over, shall be deemed fraudulent and void, as against any Assignee or Assignees of the estate and effect of such petitioner, appointed under the provisions of this Act : Provided always, that no such conveyance, assignment, transfer, charge, delivery or making over, shall be so deemed fraudulent and void, if made at any time prior to three Calendar months before the filing of the petition, and not with the view and intention by the party so conveying, assigning, transferring, charging, delivering or making over, of petitioning the Court for protection from Process.

after filing petition, shall be fraudulent and void.

Proviso.

XXVIII. *And be it, &c.*, That in all cases where where any petitioner, for protecting Process, whose estate shall have been vested in an Assignee or Assignees, under the provisions of this Act, shall have issued any Warrant of Attorney to confess judgment, or shall have given any *Cognovit actionem*, or Bill of Sale, whether for a valuable consideration or otherwise, no person shall, after the filing of the petition of such petitioner, avail himself of any execution, issued upon any judgment obtained or to be obtained upon such Warrant of Attorney or *Cognovit actionem*, either by seizure or sale of the property of such petitioner, or any part thereof, or sale of such property theretofore seized, or any part thereof, or avail himself of such Bill of Sale ; but that any person or persons to whom any sum or sums of money shall be due in respect of any such Warrant of Attorney or *Cognovit actionem*, or of such Bill of Sale, shall and may be a creditor or creditors for the same under this Act.

When petitioner shall have confessed judgment, no person to avail himself of any execution issued upon such confession and judgment.

But such person may be a creditor.

XXIX. *And be it, &c.*, That the final Order to be made under the provisions of this Act, shall protect the person of the petitioner from being taken or detained under any Process whatever in the cases hereinafter mentioned, that is to say : Final Order shall protect petitioner from being taken or detained.

Final Order to be in form specified in Schedule (A. No. 4.)

from all Process in respect of the several debts and sums of money due or claimed to be due, at the time of filing the petition from such petitioner, to the several persons named in the Schedule as creditors, or as claiming to be creditors for the same respectively, or for which such persons shall have given credit to such petitioner before the time of filing such petition, and which were not then payable, or in respect of the claims of any other persons not known to such petitioner at the time of making the final Order, who may be endorsees or holders of any negotiable securities set forth in such Schedule; Provided always, that every such final Order may be made without specifying therein any such debt or debts or sum or sums of money, or claims as aforesaid, and such final Order shall be in the form specified in Schedule (A. No. 4).

Judge or Commissioner may discharge petitioner who is a prisoner in execution at the time of filing petition.

XXX. *And be it, &c.*, That if any such petitioner, being a prisoner in execution at the time of filing his petition, shall be detained in prison for any debt or claim, in respect of which he is protected from Process by his final Order, it shall be lawful for the Judge or Commissioner to order any Officer who shall have such petitioner in custody by virtue of such execution, to discharge such petitioner without exacting any fee, and such Officer shall be hereby indemnified for so doing.

If petitioner's debts appear to have been contracted by fraud, &c. Judge shall not name day for final order; but if petitioner was a prisoner at the time of filing petition, he may be remanded to custody.

XXXI. *Provided always, and be it, &c.*, That if on the day for the first examination of the petitioner, or at any adjournment thereof, it shall appear to the Judge or Commissioner that the debts of the petitioner, or any of them, were contracted by any manner of fraud or breach of trust, or by any prosecution whereby he had been convicted of any offence, or without having at the time a reasonable or probable expectation of being able to pay such debt or debts, or that such debts, or any of them, were contracted by reason of any judgment in any proceeding for breach of the revenue laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious suing out a *fiat* of Bankruptcy, or malicious trespass, or that the petitioner has parted with any of his property since the presenting of his petition, the Judge or Commissioner shall not

be authorised in any such case to name any day for making such final Order, or to renew such *interim* Order; and in every such case wherein such petitioner shall have been a prisoner in execution, and discharged out of custody by order of the Judge or Commissioner under the provision herein in that behalf contained, such petitioner shall be remanded by an Order from the Judge or Commissioner to his former custody; but if none of the matters aforesaid shall so appear, and the Judge or Commissioner shall be satisfied that the petitioner has made a full discovery of his estate, effects, debts, and credits, it shall then be lawful for the Judge or Commissioner to cause notice to be given that on a certain day to be therein named, he will proceed to make such final Order, unless cause be shewn to the contrary.

XXXII. *And be it, &c.*, That every sum of money that shall be payable by way of annuity or otherwise, at any future time or times, by virtue of any bond, covenant, or other securities of any nature whatsoever, shall be deemed and taken to be debts within the meaning of this Act; provided always, that every person who would be a creditor of any petitioner for protection from Process for such sum or sums of money, if the same were presently due, shall be admissible as a creditor of such petitioner for the value and no more of such sum or sums of money so payable as aforesaid, which value the Judge or Commissioner authorized to act in the matter of the petition shall, upon application at any time made in that behalf, ascertain, regard being had to the original price given for such sum or sums of money, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the time of filing such petition; and such creditor shall be entitled in respect of such value to the benefit of all the provisions made for creditors by this Act, without prejudice, nevertheless, to the respective securities of such creditor, excepting as respects the effect of the final Order, which shall be obtained by such petitioner under the provisions of this Act.

XXXIII. *And be it, &c.*, That it shall be lawful for the Judge or Commissioner, at the time appointed for making the

Sums of money, payable by annuity, considered as debts within the meaning of this Act.

Consideration of final Order may

be adjourned *sine die*. final Order for protection from Process, or at any adjournment thereof, to adjourn the consideration of such final Order, *sine die*.

XXXIV. *And be it, &c.*, That if, for any of the causes in that behalf aforesaid, no day be named for making the final Order, or if the consideration of such final Order be adjourned *sine die*, or such final Order be refused, the Judge or Commissioner shall have the power, after the expiration of such time subsequent to the filing of the petition, as, having regard to all the circumstance of the insolvency and the conduct of the petitioner as an insolvent debtor, before and after his insolvency, the Judge or Commissioner shall think just, and after hearing the petitioner or any of his creditors, or his or their Counsel or Attorneys, to make an Order to protect the petitioner from being taken or detained under any Process whatever for or in respect of the several debts and sums of money due, or claimed to be due, at the time of filing his petition, from the said petitioner to the several persons named in his Schedule as creditors, or as claiming to be creditors, for the same respectively, or for which such persons should have given credit to the said petitioner before the time of filing his petition, and which were not then payable, and as to the claims of all other persons not known to the said petitioner at the time of making such Order, who may be endorsers or holders of any negotiable security set forth in the said Schedule.

XXXV. *And be it, &c.*, That if such petitioner shall be taken or detained under any Process whatever for any debt or claim in respect of which he is protected from Process, by such Order as last aforesaid, it shall be lawful for the Judge or Commissioner to order any Officer who shall have such petitioner so in custody to discharge such petitioner therefrom, without exacting any fee, and such Officer shall be hereby indemnified for so doing.

XXXVI. *And whereas* it may sometimes happen that a debt of, or claim upon, or balance due from a petitioner for protection from Process, may be specified in his Schedule so

If no day be named for final order, Judge or Commissioner shall make an order to protect petitioner from being detained or taken under any process.

If petitioner be taken under any process, Judge or Commissioner may discharge him from custody.

In certain cases, Judge may allow Schedule to be amended.

sworn to as aforesaid, at an amount which is not exactly the actual amount thereof, without any culpable negligence or fraud or evil intention on the part of the said petitioner; Be it enacted, That in such case the Judge or Commissioner shall allow the Schedule to be amended in that behalf; and in every case in which an amendment of the Schedule shall be allowed, to said petitioner shall be entitled to every benefit and protection of this Act; and the creditor in that behalf shall be entitled to all the benefits of all the provisions made for creditors by this Act, in respect of the actual amount of such debt, claim or balance, and neither more nor less than the same, to all intents and purposes, such error in the said Schedule notwithstanding.

XXXVII. *And be it, &c.*, That whenever, after an Audit, there shall appear to the Judge or Commissioner to be in the hands of the Official Assignee any balance wherewith a dividend may be made, proceedings shall be had forthwith, under the direction of the Judge or Commissioner, for making such dividend, and also, when it shall appear necessary, for correcting and ascertaining the list of creditors entitled to receive the same; and notice of any sitting of the Court ordered to be held for such ascertaining of debts, or for an Audit, or for declaring a dividend thereupon, or for all such purposes, shall be given for such time and in such manner as the Judge or Commissioner shall from time to time direct; and such dividend shall be made amongst the creditors of the petitioner, whose debts shall be admitted in his Schedule, sworn to by the petitioner, and amongst such other creditors (if any) who shall prove their debts in pursuance of any Order of the Judge or Commissioner, to be made in that behalf, in proportion to the amount of the debts so admitted, or so admitted and proved, as the case may be: provided always, that if the petitioner, or any creditor or assignee, shall object in whole or in part to any debt tendered to be so proved as aforesaid, or to any debt mentioned in the Schedule of the petitioner, or if any person whose demand is stated in such Schedule, but is not admitted therein, to the extent of such demand, shall claim to be admitted as a creditor to the extent of such demand or for

When there shall be any balance in the hands of Official Assignee, whereof a dividend may be made, proceedings shall be taken to make such dividend

Proviso.

Judge or Commissioner may cause creditors to prove their debts, whenever it may be expedient.

more thereof than is so admitted, the said objections and claims shall, upon application duly made, be examined into by the Judge or Commissioner, and the decision of the Judge or Commissioner thereupon shall be conclusive with respect to the title of such creditor or creditors, to his or their share of such dividend : provided always, that if in any case it shall appear expedient, it shall be lawful at any time for the Judge or Commissioner, by notice as may be directed in that behalf, to cause all or any of the creditors to prove their debts, in such manner as the Judge or Commissioner shall require, and to decide upon such debts and the right to receive dividends thereupon, and to do all things requisite thereto, as aforesaid.

If after 12 months from filing of petition any debts or property remain due to estate of petitioner, Assignees may sell the same.

XXXVIII. *And be it, &c.*, That if at the expiration of twelve calendar months from the filing of any petition for protection from Process, there shall remain any outstanding debts or other property, due or belonging to the estate of the petitioner, which cannot, in the opinion of the Judge or Commissioner, be collected and received without unreasonable or inconvenient delay, it shall be lawful for the Assignees, under the direction of the Judge or Commissioner, to sell and assign such debts and other property in such manner as shall be ordered by the Judge or Commissioner.

District Judge may make rules and orders in Bankruptcy.

XXXIX. *And be it, &c.*, That it shall be lawful for the Judge of the District Court in each and every District, together with any other Commissioner or Commissioners in Bankruptcy, in the District of which he is Judge, if there be any, from time to time to make such orders, rules and regulations as he or they shall think fit, for the better carrying this Act into execution, and particularly for regulating and appointing the duties of the Official Assignees and of the other Assignees, the auditing of their accounts, the collecting of the debts, and the realizing of the estate and effects of the petitioner, and the notification of the time of hearing petitions or motions in the Gazette or otherwise; which orders, rules and regulations shall upon being approved by the Court of Review in matters of Bankruptcy, be binding upon all persons whomsoever.

XL. *And be it, &c.*, That it shall and may be lawful for the said Judge or Commissioner, to enforce the performance of any order, rule or regulation, made in conformity to the next preceding clause, and in his discretion, to fine and imprison, or either, for any wilful non-observance of the same, and to compel the payment of any costs which he is authorized to order, by Attachment, in the same manner, and as fully as a Judge of the District Court may be acting as such Judge.

Judge may  
fine and  
imprison for  
non-observ-  
ance.

XLI. *And be it, &c.*, That it shall and may be lawful, for Her Majesty's Court of Queen's Bench, to regulate and establish a Table of Costs for any matter done under this Act.

Table of  
Costs.

XLII. *And be it, &c.*, That from and after the passing of this Act, it shall be lawful for the Judge or Commissioner authorized to act in the matter of any petition for protection from Process to direct remuneration to the Official Assignee for his services in the matter of such petitioner, but nevertheless so as such remuneration shall in no case exceed the rate of ten pounds per centum on the sum received as the proceeds of the property of the petitioner.

Remunera-  
tion of  
Official  
Assignee.

XLIII. *And be it, &c.*, That any petition for protection from Process and any proceeding in the matter of such petition purporting to be so signed by any such Judge or Commissioner as aforesaid, or a copy of such petition or other proceeding purporting to be so signed, shall, in all cases, be receivable in evidence of such proceedings having respectively taken place.

Petition  
receivable in  
evidence.

XLIV. [Repealed by 19 Vic., c. 43.]

XLV. *Provided always, and be it, &c.*, That the provisions of this Act and all the matters and things herein contained, shall be construed to apply, and be in force only in that part of this Province which was formerly Upper Canada.

Act limited  
to Upper  
Canada.

XLVI. *Provided always, and be it, &c.*, That this Act may be altered or repealed by any Act to be passed during the present session of Parliament.

May be  
altered

Duration of  
Act.]

XLVII. *And be it, &c.*, That this Act shall be and continue in force for two years from the passing thereof, and from thence to the end of the then next ensuing session of Parliament, and no longer.

[*Continued* by 10 & 11 Vic., c. 8; 11 Vic., c. 3; 12 Vic., c. 17; 13 & 14 Vic., c. 16; 14 & 15 Vic., c. 68; 16 Vic., c. 151; 18 Vic., c. 85; 19 & 20 Vic., c. 85.]

#### SCHEDULE.

(A. No. 1.)

I, A. B., at present, and for — months past, residing at —, in the Township of —, in the District of —, and being (here set forth the description of the Debtor and his profession or calling, if any) do hereby give notice that I intend to present a Petition to —, Commissioner in Bankruptcy for the District of —, praying to be examined touching my debts, estate, and effects, and to be protected from all Process, upon making a full disclosure and surrender of such estate and effects for payment of my just and lawful debts; and I hereby further give notice, that the time when the matter of the said Petition shall be heard is to be advertised in the Canada Gazette, and in the — newspaper, one month at the least after the date hereof. As witness my hand, this — day of — in the year —

(A No. 2.)

#### *Form of Petition for Protection from Process.*

To the Judge of the District Court of the District of —, or to A. B., Commissioner in Bankruptcy for the District of —.

The humble Petition of (insert at full length the name, address, and quality of the Petitioner, and also the trade or business, or (if more than one) the trades or businesses which he carries, or has carried on, during his twelve months' residence within the District of the Court) —

**SHEWETH :**

(See 19 & 20  
Vic., c. 93.)

That your Petitioner is not a trader within the meaning of the Statute now in force relating to Bankrupts (or was a trader and failed before the passing of the said Statute) or (if a trader and having failed since the passing of the said Statutes, strike

out the word "not," and add after word "Bankrupts" the words "but owing debts amounting in the whole to less than one hundred pounds.")

That your Petitioner has resided twelve calendar months within the District of this Honorable Court, that is to say, (insert the places and periods of residence.)

That your Petitioner has become indebted to divers creditors, whose names are inserted in the Schedule A, (or as the case may be) to this his Petition annexed, and that he is unable to pay his debts in full.

That your Petitioner has examined the said Schedule, and that such Schedule contains a full and true account of your Petitioner's debts and the claims against him, with the names of his creditors and claimants, and the dates of contracting the debts and claims severally, as nearly as such dates can be stated, the nature of the debts, claims, and securities, (if any) given for the same, and that there is reasonable ground in his belief for disputing so much of the debts as are thereby mentioned as disputed; and also a true account of the nature and amount of his property, and an inventory of the same, and of the debts owing to him, with their dates as nearly as such dates can be stated, and the names of his debtors, and the nature of the security (if any) which he has for such debts; and that the said Schedule also contains a balance sheet of so much wearing apparel, bedding, and other such necessaries of your of his receipts and expenditure as is required by this Honorable Court in that behalf, and doth fully and truly describe the Petitioner and his family, and his working tools and implements.

That your Petitioner has not parted with or changed any of his property (except for the necessary support of himself and his family, and the necessary expenses (not exceeding — pounds) of this his Petition, or in the ordinary course of trade) at any time within three months of the date of filing this his Petition, or at any time with a view to this Petition.

That your Petitioner is desirous that his estate should be administered under the protection and direction of this Honorable Court, and that he verily believes such estate is of the value of — pounds at the least, unencumbered, and beyond the value of his wearing apparel and other matter, which your Petitioner is authorized to except by law, and that the same is available for the benefit of his creditors.

That your Petitioner submits to this Honorable Court the proposal for the payment of his debts contained in the said Schedule. (Omit this paragraph if no special proposal.)

Your Petitioner is ready and willing to be examined from time to time touching his estate and effects, and make a full and true disclosure and discovery of the same.

Your Petitioner, therefore, prays such relief in the premises as, by the Statute now in force for the relief of Insolvent Debtors, may be adjudged by this Honorable Court.

And your Petitioner shall ever pray, &c. &c.

Signed by the said Petitioner, on the — day of —, 18—, in the presence of — Attorney or Agent in the matter of the said Petition:

(A. No. 3.)

*Affidavit verifying Petition and Schedule.*

A. B., of — the Petitioner named in the Petition hereunto annexed (if the Petitioner affirm, alter accordingly,) maketh oath and saith, that the several allegations in the said Petition, and the several matters contained in the Schedule hereunto annexed, are true.

Sworn, &c.

(A. No. 4.)

## FINAL ORDER FOR PROTECTION FROM PROCESS.

In the Insolvent Court for the *District of* ———

In the matter of the Petition of ——— of ——— of ——— in the ——— of ——— an Insolvent Debtor, and not being a trader within the meaning of the Statute now in force relating to Bankrupts (or being a trader, and having failed before the passing of the said Statute, or, and being a trader within the meaning of the Statute now in force relating to Bankrupts, and having failed since the passing of the said Statute, but owing debts amounting in the whole to less than one hundred pounds); Be it remembered that the said ——— having presented his Petition for protection from Process to this Honorable Court, and such Petition having been duly filed in Court, and the said Petitioner having duly appeared and been examined touching his debts, estate and effects; and it appearing that the said ——— by virtue of the Statutes in that case made and provided, is entitled to the protection of his person from being taken or detained under any Process whatever, in respect of the several debts and claims hereinafter mentioned, a final Order is hereby made to protect the person of the said ——— from being taken or detained under any Process whatever, in respect of the several debts or sums of money due or claimed to be due after the time of filing his Petition, from the said Petitioner to the several persons named in his Schedule as creditors or as claiming to be creditors, for the same respectively, or for which such persons shall have given credit to the said Petitioner before the time of filing his Petition, and which were not then payable and as to the claims of all other persons not known to the said Petitioner at the time of making this Order, who may be endorsees or holders of any negotiable security set forth in his said Schedule; and it is hereby directed, that the proposal of the said Petitioner, set forth in his Petition, for the payment of his debts, be carried into effect

in the following manner, that is to say: (here state particularly the manner in which the same is to be carried into effect.)

Given under my hand, this — of — 18—.

(Signed,)

Commissioner.

## 9 VICTORIA.—CHAP. 7.

*An Act to amend an Act passed during the last Session of this Parliament, intituled, An Act to amend, consolidate and reduce into one Act the several laws now in force, establishing or regulating the practice of District Courts in the several Districts of that part of this Province, formerly Upper Canada.*

[Passed 18th May, 1846.]

Preamble.

WHEREAS it is necessary to amend the Schedule to an Act passed during the last Session of this Parliament, and intituled, *An Act to amend, consolidate and reduce into one Act the several Laws now in force, establishing or regulating the practice of District Courts in the several Districts of that part of this Province, formerly Upper Canada: Be it, &c.,* That in addition to the Fees set down and authorized in and by the said Schedule and the said Act, as Fees to be received by the Clerk and to belong and be paid over to the Fee fund, the Fees mentioned in *Schedule A*, to this Act annexed, shall and may also be demanded and received by the Clerk, and shall belong to and be paid over to the Fee fund, and that the Clerk shall be entitled to the Fees mentioned in the *Schedule B*, to this Act annexed, in addition to those already provided.

Additional fees to the fee fund and to the Clerk.

(Schedule A, repealed by 19 & 20 Vic., c. 90, s. 23.)

Power of Judge in vacation extended.

II. *And be it, &c.,* That any Judge of a District Court shall, on motion to set aside any interlocutory Judgment, giving time to plead, and on application for security for costs, have the like power in vacation that he would have in term time.

III. *And be it, &c.*, That the sixth Section of the said Act shall be repealed, and that the said Courts respectively shall hold four terms in each year, which shall severally commence on the Monday in the week next but three preceding the week in which the General Quarter Sessions are respectively holden, and shall end on Saturday of the same week; and every day in term shall be a return day, and that the first and last days of all periods limited by the said Act, or by any rule or order of the said Courts, shall be inclusive.

IV. [Pending proceedings not affected.]

#### SCHEDULE A.

[Repealed by 19 & 20 Vic., c. 90, s. 23.]

#### SCHEDULE B.

Every Judgment entered, two shillings.

Taxing Costs, when no Judgment entered, one shilling and six pence.

#### 9 VICTORIA.—CHAP. 33.

*An Act to provide for the accommodation of the Courts of Superior Jurisdiction in Upper Canada.*

[Passed 9th June, 1846.]

WHEREAS it is necessary to make provision for the due accommodation of the Superior Courts of Law and Equity in Upper Canada: *Be it, &c.*, That there be granted to Her Majesty the sum of six thousand pounds, to be raised by Debentures in manner hereinafter mentioned, to enable Her Majesty to pay that sum to the Law Society of Upper Canada, so soon as that Society shall enter into a covenant to the satisfaction of the Governor in Council, to provide fit and proper accommodation for the Superior Courts of Law and Equity, for all time to come, at the seat of the said Society, without further charge and expense to this Province.

Preamble.

£6,000 granted to Her Majesty, to be raised by Debentures.

(See 18 Vic., c. 122.)

Governor may issue Debentures for the said sum, at six per cent.

II. *And be it, &c.*, That it shall and may be lawful for the Governor of this Province to authorize the issue of Debentures for the sum of six thousand pounds, in such form and for such separate sums as may be found convenient; such Debentures to be at a rate of interest not to exceed six per centum per annum, and redeemable within fifteen years.

III. [Penalty on persons counterfeiting Debentures.]

Certain sums to be levied on process, &c., for payment of Interest on Debentures.

IV. *And be it, &c.*, That for the purpose of paying the interest on such Debentures and liquidating the principal thereof, there be levied, imposed, and collected on the proceedings in Law and Equity, the sums set forth in that behalf in the Schedule to this Act annexed.

Certain Officers of Courts to collect sums imposed on Writs, &c., to render accounts thereof to Inspector General on oath.

V. *And be it, &c.*, That it shall be the duty of the Clerk of the Crown and Pleas and his several Deputies, and of the Registrar of the Court of Chancery, and of the Clerk of the Court of Appeals in that part of this Province called Upper Canada, severally to collect the sums imposed on the Writs, Process, and proceedings mentioned in the said Schedule, and to render half-yearly accounts of the same to the Inspector General of this Province duly verified on oath to be taken before any Judge or Justice of the Peace, and to pay the same at such times as shall be directed by the Governor in Council, to the account of or to the Receiver General; and that the officer rendering such account and making such payment, shall be entitled to charge and receive four per centum on the sums paid over by him.

VI. [A lot in Toronto to be sold for payment of Debentures.]

VII. [Calling in Debentures.]

VIII. [Accounts to be laid before Legislature.]

IX. [Accounting clause.]

Meaning of certain words.

X. *And be it, &c.*, That the words "Governor of the Province," or "Governor," whenever the same shall occur in this

Act, shall be construed to mean the Governor, Lieutenant Governor, or Person administering the Government of this Province.

## SCHEDULE.

## ON PROCEEDINGS IN THE QUEEN'S BENCH.

On every Writ of *Capias ad Respondendum, alias*, or *pluries*,—or of Summons *alias* or *pluries*,—and every other original Writ or Process, Writ of *Mandamus*, or other Prerogative Writ, one shilling and three-pence. (See C. L. P. A., 1856, s. 29.)

On passing every Record of *Nisi Prius*, one shilling and three-pence. (See *Ib.*, s. 154.)

On every Judgment entered, two shillings and six-pence.

## ON PROCEEDINGS IN EQUITY.

On filing every Bill, five shillings.

## ON PROCEEDINGS IN APPEAL.

On every Writ of Appeal from the Court of *Queen's Bench*, (12 Vic. 63.) or Chancery, five shillings.

## 9 VICTORIA.—CHAP. 36.

*An Act to amend an Act passed in the last Session of this Parliament, intituled, An Act to amend, consolidate, and reduce into one Act, the several Laws now in force establishing or regulating the practice of District Courts in the several Districts of that part of this Province formerly Upper Canadn.*

[Passed 9th June, 1846.]

WHEREAS it is expedient to amend the Act passed in the last Session of this Parliament, intituled, *An Act to amend, consolidate, and reduce into one Act, the several Laws now in force establishing or regulating the practice of District Courts in the several Districts of that part of this Province formerly Upper Canada*, so far as it relates to the Judges of the said

Preamble.  
8th Victoria,  
cap. 3. cited.

Judges of District Courts to hold their offices during pleasure.

several District Courts holding office during good behaviour, and also so far as it relates to its being lawful for the Governor to remove any such Judge or Judges of the said Courts, upon a joint Address of the Legislative Council and Legislative Assembly of this Province: *Be it, &c.*, That for and notwithstanding anything to the contrary in the second section, or in any other part of the said Act, the Judge or Judges of the said several District Courts shall hold their several offices during pleasure.

Governor may remove any Judge without Address from Parliament.  
Proviso.

II. *And be it, &c.*, That it shall and may be lawful for the Governor to remove any such Judge or Judges, without a joint Address of the Legislative Council and Legislative Assembly; Provided always, that in case of any removal of any such Judge or Judges, the cause and reason for such removal shall be submitted to the Legislative Council and Legislative Assembly at their first Session next after any such removal of any Judge or Judges of the said Court.

Provisions of 8 Victoria, chapter 13, contrary to this, repealed.

III. *And be it, &c.*, That every thing in the said Act contained, contrary or repugnant to the provisions of this Act, be and the same is hereby repealed.

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9 VICTORIA—CHAP. 56.

*An Act to regulate the Poundage to be received by Sheriffs on Executions, and for other purposes therein mentioned.*

[Passed 9th June, 1846.]

Preamble.

Act of U. C. 7 Will. IV., c. 3, cited.

Sec. 32 of the said Act repealed.

WHEREAS doubts have been raised as to the true intent and meaning of the thirty-second Section of the Act of the Legislature of the Province of Upper Canada, passed in the seventh year of the Reign of King William the Fourth, and intituled, *An Act for the further amendment of Law, and the better advancement of Justice*, and it is expedient to remove such doubts: *Be it, &c.*, That the Thirty-second Section of the said Act be and the same is hereby repealed.

In what cases and to what

II. *And whereas* in cases where Writs of Execution have been issued into several Districts, upon which writs property,

real or personal, may have been seized or advertised, which property has afterwards not been sold on account of satisfaction having been otherwise obtained, or from some other cause, it has been doubted whether a claim to poundage may not be advanced by the Sheriff of each of such Districts respectively, although no money has been actually levied by them under such writ: *Be it, &c.*, That where upon any such Writ of Execution sued out against the estate, real or personal of the Defendant or Defendants, no money shall be actually levied, no poundage shall be allowed to the Sheriff, but he shall be allowed his fees for the services which may be actually rendered by him; and it shall be in the power of the Court from whence such Execution shall have issued, or for any Judge thereof in vacation, to allow a reasonable charge to the Sheriff, for any service rendered in respect to such execution, for which no specific fee or allowance may be assigned in the table of costs.

amount  
poundage  
shall be  
allowed to  
Sheriffs.

III. *And be it, &c.*, That the Sheriff shall not be entitled to poundage on any execution against goods and chattels, (except in cases where the full amount shall be collected by him,) on a greater sum than the value of the property actually seized by him under any Writ of Execution, whatever be the sum mentioned or endorsed upon such writ.

Further  
limitation as  
to amount  
of poundage

IV. And whereas by an Act passed in the seventh year of the Reign of Her present Majesty, intituled, *An Act to enable Courts of Law in that part of this Province called Upper Canada, to give relief against adverse claims, made upon persons having no interest in the subject of such claims*, provision is made for the relief of Sheriffs and other officers concerned in the execution of Process issued out of Her Majesty's Court of *Queen's Bench* for Upper Canada, or out of any of Her Majesty's District Courts in that part of this Province, against goods and chattels, in cases of difficulty arising by reason of claims made to such goods and chattels by third parties, but such relief can only be given by Rule of Court: And whereas it is expedient that a single Judge should possess the power of giving relief in that respect: *Be it, &c.*, That it shall be lawful for any Judge of the said Court of *Queen's Bench* with respect

A single  
Judge may  
make the  
necessary  
order in  
cases under  
7 Vic. c. 30,  
arising out of  
adverse  
claims of  
third parties.

See 12 Vic.  
c. 63, s. 9.

to any such Process issued out of such Court, or for the Judge of any *District Court* with respect to process issued out of such *District Court*, to exercise such powers and authorities for the relief and protection of the Sheriff or other Officer, as may by virtue of the said last mentioned Act, be exercised by the said several Courts respectively, and to make such order therein as shall appear to be just; and the costs of such proceeding shall be in the discretion of such Judge.

Sheriff's costs, how paid in cases of adverse claims by third parties.

V. *And be it, &c.*, That when and so often that it shall happen that, in consequence of any adverse claim being made to any property seized or taken in execution by any Sheriff or other Officer, any Rule, Order or Summons shall or may be obtained by such Sheriff or other Officer under the provisions of the Act last above cited, and the Court or Judge by whom such Rule, Order or Summons may have been issued, or before whom the same may be returnable, shall direct an issue to be tried for the determination of such adverse claim, it shall and may be lawful for such Sheriff or other Officer, to tax the costs which he shall or may have incurred in consequence of such adverse claim, and to serve a copy of the *allocatur* of the same when taxed, upon each of the parties to the said issue, and the successful party upon the said issue shall tax such costs among his costs of the cause, and upon receipt of the same shall pay them over to such Sheriff or other Officer: Provided always, that if after the service of such *allocatur* of the costs, the party succeeding upon such issue, shall neglect or refuse to tax such costs among the costs of the cause, such Sheriff or other Officer may nevertheless obtain a Rule upon such successful party for the payment of the same; and provided also, that if any such proceeding shall be compromised between the parties thereto, such costs of the Sheriff or other Officer shall be paid by the party, plaintiff or defendant, by whom the execution was issued.

Proviso in case of refusal to pay.

Proviso in case of compromise between the parties.

Allowance may be made to Sheriff having property in custody

VI. *And be it, &c.*, That when after the seizure of any property in execution, an issue shall be directed under the provisions of the Act last above cited, and the property so seized shall remain in the custody of the Sheriff or other

Officer seizing the same, pending the trial of such issue, the Court from which such execution shall have issued, or any Judge thereof, in vacation, may make an order for the payment to such Sheriff or other Officer, of such sum for his trouble in and about the custody of such property, as such Court or Judge shall deem reasonable, and such Sheriff or other Officer shall have a lien upon the property for the payment of the same.

10 & 11 VICTORIA.—CHAP. 5.

*An Act for shortening the time of Prescription in certain cases, and for other purposes therein mentioned.*

[Passed 9th July, 1847]

WHEREAS, by the Law of Upper Canada, the title to matters that have been long enjoyed, is subject in some cases to be defeated by shewing the commencement of such enjoyment, to the great inconvenience of and injury to parties having had such long enjoyment: For remedy thereof, *Be it, &c.*, That no claim which may be lawfully made at the Common Law by custom, prescription or grant to any profit or benefit to be taken and enjoyed from or upon any land of Our Sovereign Lady the Queen, Her Heirs or Successors, or of any Ecclesiastical or Lay person or body corporate, except such matters or things as are herein specially provided for, and except rent and services, shall, where such profit or benefit shall have been actually taken and enjoyed by any person claiming right thereto, without interruption for the full period of thirty years, be defeated or destroyed by shewing only that such profit or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such profit or benefit shall have been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

pending the trial of such claims.

Preamble.

Certain claims not to be defeated by shewing only that the enjoyment began more than 30 years ago.

And if enjoyed for 60 years, they shall be indefeasible.

Exception.

Right of way  
or water not  
to be de-  
feated by  
shewing only  
that it begun  
more than 20  
years ago.

II. *And be it, &c.*, That no claim which may lawfully be made at the Common Law by custom, prescription or grant to any way or other easement, or to any water-course, or the use of any water to be enjoyed or derived upon, over or from any land or water of our said Lady the Queen, Her Heirs or Successors, or being the property of any Ecclesiastical or Lay person or body corporate when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by shewing only that such way or other matter was first enjoyed at any time prior to such period of twenty years, but nevertheless, such claim may be defeated in any other way by which the same is now liable to be defeated, and where such way or other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.

If enjoyed  
for 40 years,  
to be  
indefeasible.

Exception.

Access and  
use of light  
enjoyed for  
20 years to be  
indefeasible.

Exception.

III. *And be it, &c.*, That when the access and use of light to or for any dwelling-house, workshop, or other building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

How the  
terms shall  
be calcu-  
lated; and  
what acts  
only shall be  
an interrup-  
tion to the  
prescription.

IV. *And be it, &c.*, That each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate, shall have been or shall be brought into question; and that no act or other matter shall be deemed an interruption within the meaning of this Statute, unless the same shall have been, or shall be, submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorizing the same to be made.

V. *And be it, &c.*, That in all actions upon the case and other pleadings wherein the party claiming may now by law allege his right generally without averring the existence of such right from time immemorial, such general allegation shall still be deemed sufficient, and if the same shall be denied, all and every the matters in this Act mentioned and provided which shall be applicable to the case shall be admissible in evidence to sustain or rebut such allegation; and that in all pleadings to actions of trespass, and in all other pleadings wherein before the passing of this Act it would have been necessary to allege the right to have existed from time immemorial, it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed for and during such of the periods mentioned in this Act as may be applicable to the case, and without claiming in the name or right of the owner of the fee as is now usually done: and if the other party shall intend to rely on any proviso, exception, incapacity, disability, contract, agreement or other matter hereinbefore mentioned, or on any cause or matter of fact or of law, not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation.

What allegations by the party claiming shall be sufficient.

What proof admitted for or against such allegation.

Plea of sufficient term of enjoyment, substituted for time immemorial.

Matter of exception to the effect of such terms to be specially pleaded.

VI. *And be it, &c.*, That in the several cases mentioned in and provided for by this Act, no presumption shall be allowed or made in favor or support of any claim upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as may be applicable to the case and to the nature of the claim: Provided also, that the time during which any person otherwise capable of resisting any claim to any of the matters before mentioned shall have been or may be an infant, idiot, *non compos mentis*, *feme-covert*, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted until abated by the death of any party or parties thereto shall be

No presumption admissible on proof of enjoyment for a shorter period than that required for prescription.

Time during which a party could not act not to be computed against him.

excluded in the computation of the period hereinbefore mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible.

Terms of years, &c., excluded from computation, in certain cases.

VII. *Provided also, and be it, &c.*, That when any land or water upon, over or from which any such way or other convenient water-course or run of water shall have been or shall be enjoyed or derived, or shall be held under or by virtue of any term of life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned during the continuance of such term shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end, or sooner determination of such term, be resisted by any person entitled to any reversion expectant on the determination thereof.

Exception as to lands of the Crown not duly surveyed and laid out.

VIII. *Provided also, and be it, &c.*, That nothing in this Act shall extend to support or maintain or be construed to support or maintain any claim to any profit or benefit to be taken or enjoyed from or upon any land of Our Sovereign Lady the Queen, Her Heirs and Successors, or to any way or other easement, or to any water-course or the use of any water to be enjoyed or derived upon, over or from any land or water of Our said Lady the Queen, Her Heirs and Successors, unless such land, way, easement, so water-course, or other matter shall lie and be situate within the limits of some town or township, or other parcel or tract of land duly surveyed and laid out by proper authority.

IX. }  
to } [Relate exclusively to Real Property.]  
XI. }

Local extent and commencement of this Act.

XII. *And be it, &c.*, That this Act shall extend only to that part of the Province formerly Upper Canada, and shall commence and take effect on the first day of January now next ensuing.

## 10 &amp; 11 VICTORIA, CHAP. 6.

*An Act for compensating the Families of Persons killed by Accident, and for other purposes therein mentioned.*

[Passed 9th July, 1847.]

WHEREAS a person, who, by his wrongful act, neglect, or default, may have caused the death of another person, should be answerable in damages for the injury so caused by him: *Be it, &c.*, That whosoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in Law to Felony.

II. *And be it, &c.*, That every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the Executor or Administrator of the person deceased in Upper Canada, or of the personal representative, tutor, or curator, or of the heir of such person deceased in Lower Canada, and in every such action the Jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before mentioned parties in such shares as the Jury by their verdict shall find and direct.

III. *And be it, &c.*, That when the death of any person or persons shall be caused by any wound or injury received in a duel, which wound or injury shall or may have been inflicted by the use of any description of Fire Arms or other deadly weapon whatsoever, then and in such case the person inflicting

Preamble.

Action given to recover damages for the death of any person caused by any wrongful act, neglect or default.

For whose benefit and in whose name such action shall be brought.

What damages may be given.

Jury to direct the proportion in which the damages shall be divided.

An action shall lie on the part of the representative of a party killed in a duel, although no action could

have maintained by the party himself if he had been wounded only. such wound or injury, and all persons present aiding or abetting the parties in such duel as seconds or assistants therein shall and may be proceeded against under the provisions of this Act, notwithstanding no action for damages could have been brought by the said person or persons whose death shall or may have been so caused had death not ensued from the infliction of such wound or injury.

No more than one action to lie for the same cause. Limitation of time for bringing such action.

IV. *Provided always, and be it, &c.*, That not more than one action shall lie for and in respect of the same subject matter of complaint; and that every such action shall be commenced within twelve calendar months after the death of such deceased person.

Plaintiff to serve on the Defendant notice of certain particulars with the declaration.

V. *And be it, &c.*, That in every such action the Plaintiff on the record shall be required, together with the declaration, to deliver to the Defendant or his Attorney, a full particular of the person or persons for whom and on whose behalf such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

Interpretation clause.

VI. *And be it, &c.*, That the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject matter, that is to say: words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and the word "person" shall apply to bodies politic and corporate; the word "parent" shall include father and mother and grand-father and grand-mother and step-father and step-mother; and the word "child" shall include son and daughter and grand-son and grand-daughter and step-son and step-daughter.

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## 10 &amp; 11 VICTORIA.—CHAP. 10.

*An Act for the better protection of Merchants and others who may hereafter receive Assignments and enter into Contracts and Agreements in relation to Goods and Merchandize entrusted to Agents.*

[Passed 28th July, 1847.]

WHEREAS it is expedient to afford better protection to Merchants and others who may hereafter enter into Contracts or Agreements in relation to goods, wares and merchandize entrusted to Factors and Agents; and whereas advances on the security of goods and merchandize have become an usual and ordinary course of business, and it is advisable and necessary that reasonable and safe facilities should be afforded thereto: *Be it, &c.*, That from and after the passing of this Act it shall and may be lawful for any person to contract with any agent who shall thereafter be entrusted with the possession of any goods and merchandize or to whom the same may be consigned, for the purchase of any such goods or merchandize, and to receive the same of and pay for the same to such agent, and such contract and payment shall be binding upon and good against the owner of such goods and merchandize notwithstanding such person shall have notice that the person making and entering into such contract or on whose behalf such contract is made or entered into is only an Agent.

Preamble.

Contracts for the sale of goods made with agents entrusted with the possession thereof to be valid, although the purchaser may know the seller to be only an agent.

II. *And be it, &c.*, That any such agent who shall be entrusted with the possession of goods and merchandize or of the documents of title to goods and merchandize shall be deemed and taken to be owner of such goods and merchandize and documents for the purposes of such sale or contract of sale as in the first clause mentioned, and also so as to entitle the consignee of such goods and merchandize to a lien thereon in respect to any money or negotiable security advanced or given by such consignee to and for the use of such agent, or in respect of any money or negotiable security received by him to the use of such consignee in the like manner and to all intents and purposes, as if such person was the true owner of such goods and merchandize, and so far as to give validity to any

Agents to be deemed the owners of goods entrusted to them, for purpose mentioned in the section one, and so as to entitle a consignee thereof to a lien for monies, &c., advanced to the agent: and also so as to make valid contracts of pledge.

contract or agreement by way of pledge (*gage*), lien or security *bona fide* made by any person with such agent so entrusted as aforesaid, as well for any original loan, advance or payment made upon the security of such goods and merchandize or documents, as also for any further or continuing advance in respect thereof, and such contract or agreement shall be binding upon and good against the owner of such goods and merchandize, and all other persons interested therein, notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made is only an agent.

Contract's of  
pledge.  
Notice of  
ownership  
not to affect  
such con-  
tracts.

Case where  
the pledge or  
lien shall be  
in considera-  
tion of the  
delivery of  
other goods,  
&c., on  
which the  
party de-  
livering  
them hath a  
lien, pro-  
vided for.

Proviso as to  
amount of  
lien in such  
case.

Act not to  
extend to  
cases when  
the party  
advancing,  
&c., has  
notice that  
the agent  
has no  
power to  
pledge, or is

III. *And be it, &c.*, That where any such contract or agreement for pledge (*gage*), lien or security shall be made in consideration of the delivery or transfer to such agent of any other goods or merchandize or document of title or negotiable security, upon which the person so delivering up the same had at the time a valid and available lien and security for or in respect of a previous advance by virtue of some contract or agreement made with such agent, such contract and agreement, if *bona fide* on the part of the person with whom the same may be made, shall be deemed to be a contract made in consideration of an advance within the true intent and meaning of this Act, and shall be as valid and effectual to all intents and purposes and to the same extent as if the consideration for the same had been a *bona fide* present advance of money: Provided always, that the lien acquired under such last mentioned contract or agreement upon the goods or documents deposited in exchange, shall not exceed the value at the time of the goods and merchandize which, or the documents of title to which, or the negotiable security which shall be delivered up and exchanged.

IV. *Provided always, and be it, &c.*, That this Act and every matter and thing herein contained shall be deemed and construed to give validity to such contracts and agreements only as in this Act mentioned and to protect only such loans, advances and exchanges as shall be made *bona fide* and without notice that the agent making such contracts and

agreements as aforesaid has no authority to make the same or is acting *mala fide* in respect thereof against the owner of such goods and merchandize; and nothing herein contained shall be construed to extend to or protect any lien (*gage*) or pledge for or in respect of any antecedent debt owing from any agent to any person with or to whom such lien (*gage*) or pledge shall be given, nor to authorize any agent entrusted as aforesaid, in deviating from any express orders or authority received from the owner; but that for the purpose and to the intent of protecting all such *bona fide* loans, advances and exchanges as aforesaid, (though made with notice of such agent not being the owner, but without any notice of the agent's acting without authority,) and to no further or other intent shall the owner and all other persons interested in such goods and merchandize be bound.

V. *And be it, &c.*, That any bill of lading, warehouse-keeper's or wharfinger's receipt or order for delivery of goods, or any bill of inspection of pot or pearl ashes, or any other document used in the ordinary course of business, as proof of the possession or control of goods, or authorising or purporting to authorise either by endorsement or by delivery the possessor of such document to transfer or receive goods thereby represented, shall be deemed and taken to be a document of title within the meaning of this Act; and any agent entrusted as aforesaid and possessed of any such document of title, whether derived immediately from the owner of such goods and merchandize or obtained by reason of such agent's having been entrusted with the possession of the goods and merchandize or of any other document of title thereto, shall be deemed and taken to have been entrusted with the possession of the goods and merchandize represented by such document of title as aforesaid; and all contracts pledging or giving a lien upon such document of title as aforesaid shall be deemed and taken to be respectively pledges (*gages*) of and lien upon the goods and merchandize to which the same relates, and such agent shall be deemed to be possessor of such goods and merchandize or documents of title whether the same shall be in his actual custody or shall be held by any other person subject to his

acting *mala fide*.

Nor to antecedent debts of the agent, or to justify his acting against express instructions of the owner.

But the owner to be bound only to a certain extent.

What shall be deemed documents of title

Agent possessed of such document to be deemed in possession of the goods to which it relates.

Pledging of such documents to be a pledging of the goods.

Also contracts to deliver, &c., such goods or documents, if the same be afterwards received without notice of non-authority of Agent.

control or for him or on his behalf; and when any loan or advance shall be *bona fide* made to any agent entrusted with and in possession of any such goods and merchandize or documents of title as aforesaid on the faith of any contract or agreement in writing to consign, deposit, transfer or deliver such goods and merchandize or documents of title as aforesaid, and such goods and merchandize or documents of title shall actually be received by the person making such loan or advance, without notice that such agent was not authorised to make such pledge or security, every such loan or advance shall be deemed and taken to be a loan or advance upon the security of such goods and merchandize or documents of title, within the meaning of this Act, though such goods and merchandize or documents of title shall not actually be received by the person making such loan or advance till the period subsequent thereto: and any contract or agreement whether made direct with such agent as aforesaid or with any clerk or other person on his behalf shall be deemed a contract or agreement with such agent; and any payments made whether by money or bills of exchange or other negotiable security shall be deemed and taken to be an advance within the meaning of this Act; and an agent in possession as aforesaid of such goods and merchandize or documents shall be taken for the purposes of this Act to have been entrusted therewith by the owner thereof, unless the contrary can be shewn in evidence.

Contracts with the Clerk and with the Agent.

Payments in bills of exchange, &c.

Possession of Agent to be deemed with consent of owner, unless the contrary be shewn.

Act not to impair the responsibility of the Agent to his principal.

VI. *Provided always, and be it, &c.*, That nothing herein contained shall lessen, vary, alter, or affect the civil responsibility of an agent for any breach of duty or contract or non-fulfilment of his orders or authority, in respect of any such contract, agreement, lien, or pledge (*gage*) as aforesaid.

VII. [Agent guilty of misdemeanor in certain cases.]

Act not to impair the rights of the owner to redeem the goods, &c., pledged.

VIII. *Provided always, and be it, &c.*, That nothing herein contained shall prevent such owner as aforesaid from having the right to redeem such goods and merchandize or documents of title pledged as aforesaid, at any time before such goods and merchandize shall have been sold, upon repayment

of the amount of the lien thereon or restoration of the securities in respect of which such lien may exist, and upon payment or satisfaction to such agent, if by him required, of any sum of money for or in respect of which such agent would by law be entitled to retain the same goods, merchandize, or documents, or any of them, by way of lien as against such owner; or to prevent the said owner from recovering of and from such person with whom any such goods and merchandize or documents may have been pledged, or who shall have any such lien thereon as aforesaid, any balance or sum of money remaining in his hands as the produce of the sale of such goods and merchandize after deducting the amount of the lien of such person under such contract or agreement as aforesaid: *Provided* always, that in case of the bankruptcy of any such agent, the owner of the goods and merchandize which shall have been so redeemed by such owner as aforesaid shall, in respect of the sum paid by him on account of such Agent for such redemption, be held to have paid such sum for the use of such agent before his bankruptcy, or in case the goods and merchandize shall not be so redeemed, the owner shall be deemed a creditor of such agent for the value of the goods so pledged at the time of the pledge, and shall if he shall think fit, be entitled in either of such cases to prove for or set off the sum so paid or the value of such goods and merchandize as the case may be.

Or to prevent his recovering any balance from the party to whom they were pledged.

Proviso as to the case of the Bankruptcy of the Agent.

IX. *And be it, &c.*, That in construing this Act, the word "person" shall be taken to designate a body corporate or company as well as an individual; and that words in the singular number shall, when necessary to give effect to the intention of the said Act, import also the plural, and *vice versa*; and words used in the masculine gender shall, when required, be taken to apply to a female as well as a male; and that the words "goods and merchandize" shall be taken to include all personal property of whatever nature or kind soever, and the word "shipped" shall be taken to mean the carriage of goods, whether by land or by water.

Interpretation clause.

X. *Provided always, and be it, &c.*, That nothing herein contained shall be construed to give validity to, or in any wise

Act not to extend to things done

before the passing thereof. to affect any contract, agreement, lien, pledge, (*gage*) or other act, matter or thing made or done before the passing of this Act; Provided also, that nothing in this Act contained shall be held to destroy or diminish any other right recourse or remedy not contrary or repugnant to this Act which might be enforced according to the Laws of Upper or Lower Canada.

Nor to affect any right not inconsistent with this Act.

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12 VICTORIA.—CHAP. 10.

*An Act for putting a Legislative Interpretation upon certain terms used in Acts of Parliament, and for rendering it unnecessary to repeat certain provisions and expressions therein, and for ascertaining the date and commencement thereof, and for other purposes.*

[Passed 25th April, 1849.]

Preamble. WHEREAS it is desirable to avoid, by the establishment of some general rules for the interpretation of Acts of the Provincial Parliament, the continual repetition therein of words, phrases and clauses, which are rendered necessary solely by the want of such rules, and also to provide for the date and commencement of such Acts being known with certainty:

By what name this Act shall be known, and to what Acts it shall apply. *Be it, &c.,* 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 or in any future 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 or any provision thereof 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, although such express declaration may be inserted in some other Act or Acts of the same Session.

Date of Royal Assent, &c., to any Act to II. *And be it, &c.,* That the Clerk of the Legislative Council shall endorse on every Act of the Parliament of this

Province which shall pass during the present and every future Session thereof, immediately after the title of such Act, the day, month and year when the same shall have been by the Governor of this Province assented to in Her Majesty's name, or reserved for the signification of Her Majesty's pleasure thereon, and in the latter case he shall also endorse thereon the day, month and year when the Governor of this Province shall have signified either by speech or message to the Legislative Council and Assembly of this Province, or by Proclamation, that the same has been laid before Her Majesty in Council, and that Her Majesty has been pleased to assent to the same; and such indorsement shall be taken to be a part of this Act, and the date of such Assent or Signification, as the case may be, shall be the date of its commencement if no later commencement be therein provided.

be indorsed thereon, and to make part thereof, &c.

III. *And be it, &c.*, That any Act of the Parliament of this Province passed or to be passed during the present or during any future Session thereof, may be amended, altered or repealed by any Act to be passed in the same Session thereof; any law, usage or custom to the contrary notwithstanding.

Any Act may be amended during the same session.

IV. *And be it, &c.*, That the Governor, Lieutenant-Governor, or person administering the Government of this Province for the time being, and His Successors, shall be and He and they are hereby declared to be a Corporation sole; and all bonds, recognizances, and other instruments now by law required to be taken to Him in His public capacity, or which shall or may hereafter be required to be so taken, shall be taken to Him and His Successors by his name of office, and and shall and may be sued for and recovered by him and his Successors, the Governor, Lieutenant-Governor, or person administering the Government of this Province for the time being, by His or Their name of office as such; and the same shall not in any case go to or vest in the personal representatives of such Governor, Lieutenant-Governor, or person administering the Government of this Province during whose government thereof the same shall have been so taken.

Governor and His Successors in office to be a Corporation sole.

How certain expressions shall be construed. V. *And be it, &c.*, That in every Act of the Parliament of this Province, passed or to be passed as aforesaid :

Her Majesty, &c. *Firstly.* The words "Her Majesty," "the Queen," or "the Crown," shall mean Her Majesty, Her Heirs and Successors, Sovereigns of the United Kingdom of Great Britain and Ireland.

Governor, &c. *Secondly.* The words "Governor," "Governor of this Province," "Governor-General," or "Governor in Chief," shall mean the Governor, Lieutenant-Governor, or person administering the government of this Province for the time being.

Governor in Council. *Thirdly.* The words "Governor in Council," shall mean the Governor, Lieutenant-Governor, or person administering the government of this Province for the time being, acting by and with the advice of the Executive Council thereof.

Lower Canada. *Fourthly.* The words "Lower Canada," shall mean all that part of this Province which formerly constituted the Province of Lower Canada.

Upper Canada. *Fifthly.* The words "Upper Canada," shall mean all that part of this Province which formerly constituted the Province of Upper Canada.

Names of Countries, places, societies or things. *Sixthly.* The words "The United Kingdom," shall mean the United Kingdom of Great Britain and Ireland; and the words "the United States," shall mean the United States of America; and generally, the name commonly applied to any country, place, body, corporation, society, officer, functionary, person, party or thing, shall mean such country, place, body, corporation, society, officer, functionary, person, party, or thing, although such name be not the formal and extended designation thereof.

Singular number or masculine gender. *Seventhly.* Words imparting the singular number or the masculine gender only, shall include more persons, parties or things of the same kind than one, and females as well as males, and the converse.

*Eightly.* The word "person," shall include any body cor-<sup>Person.</sup>porate or politic, or party, and the heirs, executors, administrators or other legal representatives of such person, to whom the context can apply according to the law of that part of the Province to which such context shall extend.

*Ninthly.* The words "writing," "written," or any term of<sup>Writing.</sup> like import, shall include words printed, painted, engraved,<sup>Written.</sup> lithographed, or otherwise traced or copied.

*Tenthly.* The words "now" or "next" shall be construed<sup>Now—next</sup> as having reference to the time immediately before the com-<sup>—hereafter.</sup>mencement of the Session in which the Act shall have been presented for the Royal Assent.

*Eleventhly.* The word "month" shall mean a calendar month. <sup>Month.</sup>

*Twelfthly.* The word "holiday" shall include Sundays,<sup>Holiday.</sup> New Year's Day, the Epiphany, the Annunciation, Good Friday, the Ascension, *Corpus Christi*, St. Peter and St. Paul's Day, all Saints' Day, and Christmas Day,—and any day appointed by Proclamation for a General Fast or Thanksgiving.

*Thirteenthly.* The word "oath" shall be construed as<sup>Oath.</sup> 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<sup>Power to ad-</sup> and authority to administer the same and to certify its having<sup>minister.</sup> been made; and the wilful making of any false statement in any such oath or affirmation, shall be wilful and corrupt perjury,<sup>False state-</sup> and the wilful making of any false statement in any declaration<sup>ments to be</sup> required or authorised by any such Act as aforesaid, shall be a<sup>perjury.</sup> misdemeanor punishable as wilful and corrupt perjury.

*Fourteenthly.* The words "Registrar" or "Register" in any<sup>Registrar</sup> such Act, applying to the whole Province, shall mean and<sup>Register.</sup> include indifferently both Registrars in Lower Canada and Registers in Upper Canada, and their Deputies, respectively.

**Contraven-  
tion of Acts.** *Fifteenthly.* Any wilful contravention of any such act as aforesaid, which is not made any offence of some other kind, shall be a misdemeanor, and punishable accordingly.

**Contraven-  
tion to which  
a legal name  
is assigned.** *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 the manner in which such offence is by law punishable.

**Recovery and  
distribution  
of penalties  
and forfei-  
tures** *Seventeenthly.* Whenever any pecuniary penalty or any forfeiture is imposed for any contravention of any such Act as aforesaid, then if no other mode be prescribed for the recovery thereof, such penalty or forfeiture shall be recoverable with costs by civil action or proceeding at the suit of the Crown only, or of any private party suing as well for the Crown as for himself, in any form allowed in such case by the law of that part of the Province where it shall be brought, before any Court having jurisdiction to the amount of the penalty in cases of simple contract, upon the evidence of any one credible witness other than the Plaintiff or party interested; and if no other provision be made for the appropriation of such penalty or forfeiture, one half thereof shall belong to the Crown, and the other half shall belong to the private Plaintiff, if any there be, and if there be none, the whole shall belong to the Crown.

**Monies  
levied  
for the Crown  
to make part  
of Consoli-  
dated Reve-  
nue Fund.** *Eighteenthly.* Any duty, penalty, or sum of money, or the proceeds of any forfeiture, which shall by any such Act as aforesaid be given to the Crown, shall, if no other provision be made respecting it, form part of the Consolidated Revenue Fund of this Province, and be accounted for and otherwise dealt with accordingly.

**Monies ap-  
propriated, how  
payable and  
accounted  
for.** *Nineteenthly.* If any sum of the public money be by any such Act as aforesaid, appropriated for any purpose or directed to be paid by the Governor, then, if no other provision be made respecting it, such sum shall be payable under Warrant of the Governor directed to the Receiver General, out of the Consolidated Revenue Fund of this Province, and the due

application thereof shall be accounted for to Her Majesty, through the Lords Commissioners of the Treasury for the time being, in such manner and form as Her Majesty shall direct; and all persons entrusted with the expenditure of any such sum or any part thereof shall account for the same in such manner and form, with such vouchers, at such periods, and to such Officer as the Governor shall direct.

*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 Magistrate 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 or Functionary to do or to enforce the doing of any act or thing, all such powers 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 that 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.

*Twenty-secondly.* Words authorizing the appointment of any Public Officer or Functionary, or any Deputy, shall be construed to include the power of removing him, re-appointing him or appointing another in his stead, in the discretion of the authority in whom the power of appointment is vested.

**Public Officer to include his Successor or Deputy.** *Twenty-thirdly.* Words directing or empowering a Public Officer or Functionary to do any act or thing or otherwise applying to him by his name of Office, shall include his Successors in such Office, and his or their lawful Deputy.

**Words creating a corporation.** *Twenty-fourthly.* Words making any association or number of persons a corporate or body politic and corporate, shall be construed to vest in such corporation, power to sue and be sued, contract and be contracted with, by their corporate name, to have a common seal, and to alter or change the same at their pleasure, and to have perpetual succession, and power to acquire and hold personal property or moveables for the purposes for which the Corporation is constituted, and to alienate the same at pleasure; and also to vest in any majority of the members of the Corporation, the power to bind the others by their acts; and also to exempt the individual members of the Corporation from personal liability for its debts or obligations or acts, provided they do not contravene the provisions of the Act incorporating them; but it shall not be lawful for any Corporation to carry on the business of banking unless when such power shall be expressly conferred on them by the Act creating such Corporation.

**As to Banking.**

**Rights of the Crown saved.** *Twenty-fifthly.* No provision or enactment in any such Act, as aforesaid, shall affect or be construed to affect in any manner or way whatsoever, the rights of Her Majesty, Her Heirs or Successors, unless it be expressly stated therein that Her Majesty shall be bound thereby; nor the rights of any person or of any body politic, corporate or collegiate, such only excepted as are therein mentioned, unless such Act be a Public General Act.

**And of other parties.**

**Power to amend an Act.** *Twenty-sixthly.* Every such Act as aforesaid shall be so construed as to reserve to the Legislature the power of repealing or amending it, and of revoking, restricting, or modifying any power, privilege, or advantage thereby vested in or granted to any person or party, whenever such repeal, amendment, revocation, restriction, or modification shall be deemed by the Legislature to be required for the public good; and unless it

shall be otherwise expressly provided in any Act already passed And if it be a Bank Act. or to be passed for chartering any Bank, it shall be in the discretion of the Legislature at any time thereafter to make such provisions and impose such restrictions with respect to the amount and description of notes which may be issued by such Bank, as may to them appear expedient.

*Twenty-seventhly.* If any such Act as aforesaid be declared Public Act. to be a Public Act, such declaration shall be construed as an enactment that such Act shall be judicially noticed by all Judges, Justices of the Peace and others without being specially pleaded: and every such Act which shall not, either by its nature or by express provision, be a Public Act, shall be Private Act. deemed a Private Act, and shall be judicially noticed only when specially pleaded; and all copies of any such Acts, public or private, printed by the Queen's Printer, shall be evidence of Printed copies of Acts. such Acts and of their contents, and every copy purporting to be printed by the Queen's Printer shall be deemed to be so printed, unless the contrary be shewn.

*Twenty-eighthly.* The Preamble of every such Act as aforesaid shall be deemed a part thereof intended to assist in explaining the purport and object of the Act; and every such Act and every provision or enactment thereof, shall be deemed All Acts remedial. remedial, whether its immediate purport be to direct the doing of any thing which the Legislature may deem to be for the public good, or to prevent or punish the doing of any thing which it may deem contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment, according to their true intent, meaning and spirit.

*Twenty-ninthly.* Nothing in this Act shall be construed to exclude the application to any such Act as aforesaid, of any Application of Rules of construction inserted or not inserted in this Act Rule of Construction applicable thereto, and not inconsistent with this Act, or to exclude the application of any Rule of Construction in this Act to any Act passed in any Session before the present, if without this Act such Rule would have been applicable thereto.

Provisions applicable to words, &c., in this Act. *Thirtiethly.* The provisions of this Act shall apply to the construction thereof and of the words and expressions used therein.

This Act may be amended in this Session. VI. *And be it, &c.,* That this Act may be amended, altered or repealed by any Act to be passed in this present Session of Parliament.

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12 VICTORIA.—CHAP. 23.

*An Act to provide for the Seizure and Sale of Shares in the Capital Stock of Incorporated Companies.*

[Passed 30th May, 1849.]

Preamble. WHEREAS it is expedient to make better provision for the Seizure and Sale of Shares and Dividends of the Stockholders of all Incorporated Companies: *Be it, &c.,* That all Shares and Dividends of Stockholders in Incorporated Companies shall be held, considered, and adjudged to be personal property, and shall be liable as such to *bona fide* creditors for debts, and may be attached, seized and sold under Writs of Execution issued out of any of Her Majesty's Courts in this Province, in like manner as other personal property may be sold under execution; and that whenever any such shares shall have been sold under a Writ of Execution, the Sheriff, by whom such Writ shall have been executed, shall, within ten days after such sale, serve upon such Incorporated Company, at some place where service of process upon such Company may be made, an Attested Copy of such Writ of Execution, with his Certificate endorsed thereon, certifying to whom the sale of the said Shares under the said Writ of Execution has been by him made, and the person or persons who shall have purchased such Share or Shares so sold under such Writ of Execution; and the person or persons so purchasing shall thereafter be held and considered as Stockholder or Stockholders of the said Shares, and shall have the same rights, and be under the same obligations as if he or they had purchased the said Shares from the proprietors thereof, in such form as may be by law provided

Shares and Dividends of Stockholders in incorporated Companies held to be personal property and liable to be seized and sold under execution. Mode of proceeding to such sale, &c.

for the transfer of Stock in such Company; and it shall be the duty of the proper Officer of the Company to enter such sale as a transfer in the manner by law provided.

II. *And be it, &c.*, That it shall be the duty of the Sheriff to whom any such Writ of Execution, as aforesaid, shall be addressed, on being informed on behalf of the Plaintiff that the Defendant has Stock in any Incorporated Company, and that such Sheriff is required to seize such Stock, forthwith to serve a copy of such Writ on such Company, with a notice that all the Shares which the Defendant may have in the Stock of such Company are seized accordingly; and from the time of such service no transfer of such Stock by the Defendant shall be valid, unless or until the said seizure shall be discharged; and every such seizure, and any sale made under the same, shall include all Dividends, Premiums, Bonuses, or other pecuniary profits upon the Shares seized, which shall not after such notice as aforesaid, be paid by such Company to any party, except the party to whom the Shares shall be sold by the Sheriff, unless and until the seizure be discharged, on pain of paying the same twice.

Sheriff to serve a copy of the Writ on the Company, with notice of seizure.  
  
 Stock not to be transferred while under seizure and sale under seizure to include all Dividends, &c.

III. *Provided always, and be it, &c.*, That if the Company shall have more than one place where service of process may legally be made upon them, and there be some place where transfers of Stock may be notified to and entered by the Company so as to be valid as regards the Company, or where any Dividends or Profits as aforesaid, on Stock may be paid, other than the place where service of such notice shall have been made, such notice shall not affect any transfer or payment of Dividends or Profits duly made and entered at any such other place, so as to subject the Company to pay twice, or to affect the rights of any *bona fide* purchaser, until after the expiration of a period from the time of service sufficient for the transmission of notice of such service by Post from the place where it was made to such other place, which notice it shall be the business of the Company to transmit by Post to such other place.

Provision for the case of the Company having more than one place where service of process may legally be made upon them.

Shares declared to be personal property found by the Sheriff.

IV. *And be it, &c.*, That the Shares in the Stock of any Company shall be held to be personal property, found by the Sheriff in the place where notice of the seizure thereof shall be made as aforesaid.

Saving of all remedies at common law.

V. *And be it, &c.*, That nothing in this Act shall be construed to weaken the effect of any remedy which such Plaintiff, as aforesaid, might, without this Act, have had against any Shares of such Stock as aforesaid, by *saisie arret* attachment or otherwise, but on the contrary, the provisions of the three next preceding sections shall apply to such remedy in so far as they can be applied thereto.

What shall be deemed incorporated Companies.

VI. *And be it, &c.*, That all Corporations, established for purposes of trade or profit, or for the construction of any work, or for any purpose from which revenue is intended to be derived, shall be deemed Incorporated Companies for the purposes of this Act, although they be not called Companies in the Act or Charter incorporating them.

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12 VICTORIA.—CHAP. 35.

*An Act to repeal certain Acts therein mentioned, and to make better provision respecting the admission of Land Surveyors and the Survey of Lands in this Province.*

[Passed 30th May, 1849.]

As to cases in U. C. where from unskilful survey a party may have improved lands afterwards found to belong to his neighbour.

XLIX. *And be it, &c.*, That if any action of ejectment shall be brought against any person or persons, who, after any line or limit shall have been established according to this Act, in Upper Canada, shall be found, in consequence of unskilful survey, to have improved on lands not his, her, or their own, it shall and may be lawful for the Judge of Assize, before whom such action shall have been tried, to direct the Jury to assess such damages for the defendant or defendants for any loss he, she, or they may sustain in consequence of any improvement made before the commencement of such action, and also to assess the value of the land to be recovered; and if a verdict shall be found for the plaintiff or plaintiffs, no Writ of

Possession shall issue until such plaintiff or plaintiffs shall have tendered or paid the amount of such damages as aforesaid, or shall have offered to release the said land to the defendant, provided the said defendant shall pay or tender to the plaintiff the value of the land so assessed, before the fourth day of the ensuing term.

L. *And be it, &c.*, That from and after the passing of this Act, in all cases in which the Jury before whom any action of ejectment shall be tried in Upper Canada, shall assess damages for the defendant as provided in the next preceding section, for improvements made upon land not his own, in consequence of unskilful survey, and when it shall be satisfactorily made to appear that the defendant does not contest the plaintiff's action for any other purpose than to obtain the value of the improvements made upon the land previous to the alteration and establishing of the lines according to law, it shall and may be lawful for the Judge before whom such action shall be tried, to certify such fact upon the record, and thereupon the defendant shall be entitled to the costs of the defence, in the same manner as if the plaintiff had been non-suited on the trial, or a verdict rendered for the defendant; provided the defendant shall, at the time of entering into the *consent rule*, have given notice in writing to the *lessor or lessors of the plaintiff* in such ejectment, or to his Attorney named on the Writ or declaration of the amount claimed for such improvements, on payment of which amount the defendant or person in possession will surrender the possession to such *lessor or lessors*, and that the said defendant does not intend at the trial to contest the title of the *lessor or lessors of the plaintiff*; and if such notice shall on the trial be found not to have been given as aforesaid, or if the jury shall assess for the defendant a less amount than that claimed in the notice, or shall find that the defendant has refused to surrender possession of the land claimed, after tender shall have been made of the amount claimed, then in any of such cases the Judge shall not certify, and the defendant shall not be entitled to the costs of the defence, but shall pay costs to the plaintiff; any thing herein contained to the contrary not-

Plaintiff not to have costs in such cases from the time defendant offers to give up the lands on receiving the value of his improvements, stating the amount.

Unless the Jury shall assess the improvements at less than the sum demanded.

(See C. L. P. 1856, s. 220, et seq.)

Provido: that notwithstanding; Provided always, that upon the trial of any no proof of Plaintiff's such cause no evidence shall be required to be produced in Lessor's title be required. proof of the title of the lessor or lessors of the plaintiff.

## 12 VICTORIA.—CHAP. 63.

*An Act to make further provision for the Administration of Justice, by the establishment of an additional Superior Court of Common Law and also a Court of Error and Appeal, in Upper Canada, and for other purposes.*

[Passed 30th May, 1849.]

**Preamble.** WHEREAS the establishment of an additional Superior Court of Common Law jurisdiction would facilitate the satisfactory disposal of business, and would otherwise tend to promote the public advantage by affording the means of constituting an efficient Court of Appeal within Upper Canada: *Be it, &c.,* That there be constituted and established, and there is hereby constituted and established a Court of Common Law jurisdiction in that portion of this Province formerly called Upper Canada, which shall be called "The Court of Common Pleas," and the same Court shall be holden at the City of Toronto, and shall be and constitute a Court of Common Law, and shall together with every Judge thereof, have, use, and exercise all the rights, incidents, and privileges of a Court of Record, or a Judge of the Court of Record, and all other rights, incidents, and privileges, as fully to all intents and purposes as the same are used, exercised, and enjoyed by any of Her Majesty's Superior Courts of Common Law or Judges at Westminster.

Court of common pleas established in Upper Canada; Powers of the Court and Judges.

Court to consist of a Chief Justice and two Puisne Judges.

Who may be appointed.

II. *And be it, &c.,* That the said Court shall be presided over by a Chief Justice and two Puisne Justices, any one or more of whom, in the absence of the other or others of them may lawfully hold the said Court: And that it shall and may be lawful for Her Majesty to appoint by Letters Patent under the Great Seal of this Province, one person being a Barrister of at least ten years' standing in Upper Canada to be Chief Justice of the said Court, and two persons being Barristers of

not less than ten years' standing in Upper Canada to be Puisne Judges thereof, and from time to time to supply any vacancy in the number of the said Judges; and the Chief Justice of the said Court of Common Pleas shall have rank and precedence next to the Chancellor of Upper Canada, and the Puisne Judges of the Superior Courts of Common Law and Equity in Upper Canada shall have rank and precedence as between themselves according to seniority of appointment to their respective offices.

Rank and  
precedence of  
Judges.

III. And whereas in an Act of the Parliament of the late Province of Upper Canada, passed in the seventh year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to increase the present number of Judges of His Majesty's Court of King's Bench in this Province, to alter the terms of sitting of the said Court, and for other purposes therein mentioned*, it is recited, that an addition to the number of the Judges of the said Court had become indispensable owing to the great increase of population and the formation of new *Districts*; And whereas two additional Judges were appointed under the said Act: And whereas it appears that the business of the said Court of Queen's Bench may be effectually performed by a Chief Justice and two Puisne Judges, in consequence of the erection of the Court of Common Pleas hereby established and the erection of an efficient Court of Appeal as hereinafter provided: *Be it, &c.*, That notwithstanding any thing in the said last recited Act contained, the said Court of Queen's Bench shall from and after the passing of this Act, be presided over by a Chief Justice and two Puisne Justices; and it shall and may be lawful for Her Majesty to transfer such two of the Puisne Justices of the said Court of Queen's Bench as to Her Majesty may seem meet from the said Court of Queen's Bench to the said Court of Common Pleas, and by Letters Patent under the Great Seal of this Province to appoint such two Puisne Justices of the said Court of Queen's Bench to be Justices of the said Court of Common Pleas, to which appointment such two Justices of the said Court of Queen's Bench are hereby declared entitled.

Recital.

Act of U. C.  
7 W. 4, c. 1.

Court of Q.  
B. to consist  
hereafter of a  
Chief Justice  
and two  
Puisne  
Judges.

Two of the  
Puisne  
Judges of Q.  
B. to be  
transferred  
to the Court  
of C. P.

Tenure of office, and provision for removal on address of both Houses of the Legislature. **IV.** *And be it, &c.*, That the Judges to be appointed under this Act shall hold their offices during their good behaviour: Provided always, that it may be lawful for the Governor, Lieutenant-Governor, or person administering the Government of this Province, to remove any Judge or Judges of the said Court upon the address of both Houses of the Provincial Parliament; and in case any Judge so removed shall think himself aggrieved thereby, it shall and may be lawful for him within six months to appeal to Her Majesty in Her Privy Council, and such a motion shall not be final until determined by Her Majesty in Her Privy Council.

Appeal given

V. [Salaries of Justices of C. P.]

VI. [Annuity to Justices.]

Judges appointed under this Act to take an oath of office. **VII.** *And be it, &c.*, That every Judge to be appointed in pursuance of this Act, shall, previous to his executing the duties of his office, take the following oath :

The oath. “I, —, do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in (as Chief Justice *or* one of the Puisne Judges) of the Court of Common Pleas. So help me God.”

How administered. Which said oath shall be administered to the Chief Justice of the said Court before the Governor, Lieutenant-Governor, or person administering the Government of this Province in Council, and to the Puisne Judges of the said Court, in open Court, in presence of the Chief Justice thereof.

Recital. **VIII.** And whereas it is desirable that the jurisdiction, practice, and mode of proceeding of the said Court of Common Pleas should be similar to the jurisdiction, practice, and course of proceeding of the said Court of Queen’s Bench: *Be it, &c.*, That the said Court of Common Pleas may and shall hold plea in all and all manner of actions, causes, or suits, as well criminal as civil, arising, happening, or being within the said late Province of Upper Canada; and may and shall proceed in such

Jurisdiction and powers of and mode of proceeding the court in of C. P. to be the same as in the court of Q. B.

actions, causes, or suits, by such process and course as is now used, or is by this Act directed to be used in the said Court of Queen's Bench, save only that all Writs and proceedings shall be styled in the said Court of Common Pleas; and the said Court of Common Pleas may and shall hear and determine all matters of Law, and shall also hear and, by and with an inquest of good and lawful men, determine all issues of fact that may be joined in any such action, cause, or suit as aforesaid, and judgment thereon give, and execution thereof award, in as full and ample a manner as can or may be done in Her Majesty's said Court of Queen's Bench: And the same jurisdiction, powers, authorities, and privileges exercised and enjoyed by the said Court of Queen's Bench, or by the Judges thereof, shall be exercised and enjoyed by the said Court of Common Pleas, and by the Judges thereof respectively: And all laws, orders, and authorities touching the practice and manner of proceeding in the said Court of Queen's Bench, shall be in force and applicable to the said Court of Common Pleas until otherwise provided by rule of the said Court.

Juries.

Laws, orders, &c., applicable to Q. B. to apply to C. P. until it be otherwise provided.

IX. *And be it, &c.*, That the Chief Justices and Judges of the said Courts of Queen's Bench and Common Pleas shall sit in rotation, or otherwise, as they shall agree amongst themselves, and every Judge of either Court, to whatever Court he may belong, shall be, and he is accordingly hereby authorized to transact such business at Chambers or elsewhere, depending in either of such Courts, as may according to the course and practice of the said Courts be transacted by a single Judge: Provided always, that nothing herein contained shall be construed to deprive any party interested of the right to appeal to the full Court in which the matter brought before such single Judge may be depending, for the purpose of having the decision of such Judge rescinded or altered, as fully as such right is now enjoyed according to the practice of the Court of Queen's Bench.

Judges of the two courts to sit in rotation; provision as to things which may be done by a single Judge. Proviso: appeal to the full court saved.

X. And whereas by the said Act of the Legislature of the late Province of Upper Canada, passed in the seventh year of the Reign of His late Majesty King William the Fourth, inti-

Recital.

Act of U. C. 7  
W. IV. c. 1.

tuled, *An Act to increase the present number of Judges of His Majesty's Court of King's Bench in this Province; to alter the terms of sitting of the said Court, and for other purposes therein mentioned*, it was deemed expedient for the more convenient despatch of business to enable one of the Judges of the said Court of Queen's Bench to sit apart during term for the decision of certain matters therein specified; and whereas under the present arrangement the continuance of the said provision is inexpedient; *Be it, &c.*, That so much of the fifth clause of the said last recited Act as provides for the formation of a Practice Court is hereby repealed from the time that this Act takes effect.

Part of sec.  
5, of the said  
Act repealed.

Recital.

XI. And whereas it is expedient to alter the office of the Clerk of the Crown and Pleas in the said Court of Queen's Bench in Upper Canada, and to alter the manner of remunerating the said Clerk, and to place the said Office on the same footing as the Office of the Clerk of the Crown and Pleas in the said Court of Common Pleas hereby established; *Be it, &c.*, That it shall and may be lawful for Her Majesty, by Letters Patent under the Great Seal of this Province, to appoint a Clerk of the Crown and Pleas in the said Courts of Queen's Bench and Common Pleas, respectively, to hold Office during Her Majesty's pleasure, and from time to time to supply any vacancy in the said offices; and that it shall be lawful for each of the said Clerks of the Crown and Pleas, to appoint, subject to the approval of the Judges of their respective Courts, a Senior and Junior Clerk; and the said Clerks of the Crown and Pleas, with the like approval, may remove at pleasure any of the Clerks so appointed: And that the several Clerks of the County Courts in Upper Canada, shall be *ex-officio* Deputy Clerks of the Crown and Pleas in the said Courts of Queen's Bench and Common Pleas: Provided always, that the parties who at the time of the passing of this Act shall hold the offices of Deputy Clerks of the Crown in the several Districts shall continue to hold the same at the pleasure of the Crown, and that while so holding the same they shall respectively discharge the duties of Deputy Clerks of the Pleas for their several Districts and that they shall hold such Offices as Deputy Clerks of

A Clerk of  
the Crown  
and Pleas to  
be appointed  
in each  
Court.

Tenure of  
Office, &c.

Clerks to be  
appointed by  
them.

Clerks of  
county  
courts to be  
their  
deputies.

Proviso:  
present  
deputy-  
clerks of the  
Crown to re-  
main so dur-  
ing pleasure,  
and be also  
deputy-  
clerks of the  
pleas.

the Crown and Pleas subject to the provisions and receiving the remuneration mentioned in this Act.

XII. *And be it, &c.*, That the said Clerk of the Crown and Pleas in the said Court of Queen's Bench, and his Deputies shall perform the duties of their several Offices in the same manner and under the same regulations as the said Clerk of the Crown and Pleas and his Deputies in the said Court of Queen's Bench have heretofore performed the same, and that all sums and fees shall continue to be payable and receivable by the like persons as the same have heretofore been paid and received in respect of any matter in the said Court of Queen's Bench; and that the said Clerk of the Crown and Pleas in the said Court of Common Pleas and his Deputies shall respectively perform in the said Court the like duties as are performed by the Clerk of the Crown and Pleas and his Deputies in the said Court of Queen's Bench; and all orders, rules and regulations in force respecting the said Clerk of the Crown and Pleas of the said Court of Queen's Bench and his Deputies, and respecting the regulation of their several Offices, shall be in force and applicable to the said Clerk of the Crown and Pleas in the said Court of Common Pleas and his Deputies respectively, and that the like sums and fees payable and receivable in the said Court of Queen's Bench shall be payable and receivable by the like persons in the said Court of Common Pleas in respect of any matters in the said Court.

Duties of the said clerks of the Crown and Pleas.

In C. P.

Certain orders, rules, &c., of Q. B. to apply to the clerk of the crown and pleas in C. P.

Fees.

XIII. [Salaries to be paid to said Clerks.]

XIV. *And be it, &c.*, That neither the Clerk of the Crown and Pleas in the said Court of Queen's Bench, nor the said Clerk of the Crown and Pleas in the said Court of Common Pleas, nor any of their Deputies, shall be entitled to, or take for his own use or benefit, directly or indirectly, any fee or emolument whatsoever save the salary to which he shall be entitled by virtue of this Act; and that all the fees, dues, emoluments, perquisites and profits received by or on account of the said Clerks of the Crown and their Deputies, respectively, shall form part of the Consolidated Revenue Fund of this Province,

The said clerks and deputies to take no fee or emolument for themselves, except their salaries.

Fees, dues, &c. received by them to belong to the Province.

and shall be accounted for to Her Majesty, Her Heirs and Successors through the Lords Commissioners of Her Treasury for the time being, in such manner and form as Her Majesty, Her Heirs and Successors shall direct.

Accounts to be rendered quarterly by the said clerks.

XV. *And be it, &c.*, That the said Clerks of the Crown and Pleas, in each of the said Courts respectively, shall, on the four quarterly days hereinbefore mentioned, make up and render to the Inspector General of Public Accounts of this Province, a true Account in writing of all the fees, dues, emoluments, perquisites and profits received by or on account of the said Officers respectively, in such form and with such particulars as the said Inspector General shall from time to time require; which said Accounts shall be signed by the Officer rendering the same, and shall be declared before one of the Judges of the Court to which he belongs; and such Officers respectively shall, within ten days after the rendering of such Account pay over the amount of all such fees, dues, emoluments, perquisites and profits to the Receiver General of this Province, and if default shall be made in such payment, the amount due by the Officer making such default shall be deemed a specialty debt to Her Majesty.

How attested.

Money to be paid over.

Deputy-clerks to render accounts, &c., in like manner.

XVI. *And be it, &c.*, That the Clerks of the County Courts in Upper Canada, acting as the Deputies of the Clerks of the Crown and Pleas in the said several Courts of Queen's Bench and Common Pleas, shall make up and render to the Inspector General of this Province the like Accounts, in like manner, and at the same periods hereinbefore appointed for the said Clerks of the Crown and Pleas respectively, which said Accounts shall be signed by the Officer rendering the same, and shall be declared before the Judge, of the County Court to which he belongs; and every such Officer shall, within ten days after the rendering such Account, pay over the amount of all fees, dues, emoluments, perquisites and profits received by him as such Deputy Clerk of the Crown to the Receiver General of this Province, and if default shall be made in such payment, the amount due by the Officer making such default shall be deemed a specialty debt to Her Majesty.

How attested.

Money to be paid over.

XVII. [Special provision for case of C. C. Small.]

XVIII. [Statute 8 Vic., c. 14, repealed.]

XIX. *And be it, &c.*, That so soon as this Act shall come into force, the times and terms of sittings of the said Courts of Queen's Bench and Common Pleas in Upper Canada, shall be as follows, that is to say: Hilary Term shall begin on the first Monday in February and end on the Saturday of the ensuing week: Easter Term shall begin on the first Monday in June and end on the Saturday of the ensuing week; Trinity Term shall begin on the last Monday in August and end on the Saturday of the ensuing week; and Michaelmas Term shall begin on the third Monday in November and end on the Saturday of the ensuing week.

XX. }  
to } [Repealed by 19 Vic., c. 43.]  
XXVIII. }

XXIX. *And be it, &c.*, That it shall and may be lawful to and for the Judges of the said Courts and they are required from time to time to make all such general rules and orders for the effectual execution of this Act, and of the intention and object hereof, and for fixing the costs to be allowed for and in respect of the matters herein contained, and the performance thereof, as in their judgment shall be deemed necessary or proper, and for that purpose to meet as soon as conveniently may be after the passing hereof.

XXX. }  
and } [Repealed by 19 Vic., c. 43.]  
XXXI. }

XXXII. *And be it, &c.*, That it shall and may be lawful to and for the Judges of each of the Courts from time to time to make such rules and orders for the government and conduct of the Ministers and Officers of their respective Courts, in and relating to the distribution and performance of the duties and business to be done and performed in the execution of this Act, as such Judges may think fit and reasonable: Provided

Terms of  
Courts of Q.  
B. and C. P.  
appointed.

Judges to  
make rules  
for carrying  
this Act into  
effect.

Judges may  
make rules  
for the con-  
duct of the  
officers and  
ministers of  
their Courts.

Proviso.

always, that no additional charge be thereby imposed on the suitors.

XXXIII. }  
 and } [Repealed by 19 Vic., c. 43.]  
 XXXIV. }

Recital.

XXXV. *And whereas* it is expedient to authorize and require the Judges of the several County Courts in Upper Canada, to make orders in relation to certain matters of practice in cases depending in the Superior Courts of Common Law, which may be conveniently disposed of in the several Counties: *Be it, &c.*, That it shall and may be lawful for the plaintiff or defendant in any suit depending in the Superior Courts of Common Law in Upper Canada, to make application for time to plead, reply, or rejoin, for particulars of demand and set off, *and for summonses and orders to compute*, to the Judge of the County Court for the County in which the suit is brought, or the venue laid; and the Judge of such County Court is hereby authorized and required to hear and determine such applications and to grant such summonses, to impose such terms, and make such orders as are granted imposed and made in like cases by a Judge of the Superior Courts of Common Law sitting in Chambers; Provided always, that the provisions of this clause shall not apply to any suit wherein the venue is laid in the County of York, or in any suit wherein the Attorney for the defendant, or in case of two or more defendants where the Attorney for any one or more of them resides in a County different from that in which the Attorney for the Plaintiff, or if he prosecutes in person the Plaintiff, resides: Provided also, that either party interested may appeal from any such order to the Court in which the action is pending, or to one of the Judges of the Superior Courts at Chambers, and such Court or Judge may affirm, reverse or modify such order, or make such other order upon the subject matter of appeal, and the proceedings had thereon, and with or without costs, as to such Court or Judge may seem meet; Provided also, that nothing herein contained shall prevent any party from making any such application in

Judges of the County Courts to make orders as to certain matters in cases depending in Superior Courts.

(C. L. P. A., 1856, s. 141.)

Proviso as to suits in the County of York; or where the parties reside in different Counties, &c.

Proviso: Appeal allowed. Proviso as to application to Judge of the Superior Court.

the first instance, according to the practice of the Superior Courts of Common Law, instead of to the Judge of the County Court.

XXXVI. [Repealed by 19 Vic., c. 43.]

XXXVII. *And whereas* by an Act passed in the thirty-fourth year of the Reign of His late Majesty King George the Third, intituled, *An Act to establish a Superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeal*, a tribunal was established for determining all appeals from such judgments or sentences of His Majesty's Court of King's Bench thereby established, as might be lawfully brought before it; and whereas by an Act passed in the seventh year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to establish a Court of Chancery in this Province*, Appeals are permitted to the said Court of Appeals from the judgments and decrees of the said Court of Chancery; and whereas the appellate tribunal thus established has been found unsatisfactory: *Be it, &c.*, That the thirty-third, thirty-fourth, thirty-fifth and thirty-sixth clauses of the said Act in this clause first above recited, and the sixteenth and seventeenth clauses of the Act in this clause secondly above recited, be, and the same are hereby, from the time this Act takes effect, repealed.

Recital.

Act of U. C. 34 Geo. III., c. 2.

Act of U. C. 7 Wm. IV., c. 2.

Sec. 33, 34, 35 & 36 of 34 Geo. III., c. 2, and sec. 17 of 7 Wm. IV., c. 2, repealed.

XXXVIII. *And be it, &c.*, That there be constituted and established, and there is hereby constituted and established, a Court of Error and Appeal constituted. Court of Error and Appeal constituted. Court of Judicature in that part of this Province formerly called Upper-Canada, which shall be called the "Court of Error and Appeal."

XXXIX. *And be it, &c.*, That the said Court of Error and Appeal shall be composed of the Judges of the said Court of Queen's Bench, and the Judges of the said Court of Common Pleas, and the Judges of the said Court of Chancery, who shall sit together at a place certain, that is to say, at the City of Toronto; and the Chief Justice of the said Court of Queen's Bench, for the time being, shall preside in the said Court of

Of what Judges the said Court shall consist.

Place of sitting.

Who shall preside.

Error and Appeal, and in his absence the Judge of the said Court of Error and Appeal, entitled to precedence next after the Chief Justice of the said Court of Queen's Bench, who shall be present.

Jurisdiction  
of the said  
Court.

From what  
Courts  
appeal shall  
lie.

Proviso :  
Security in  
appeal from  
costs and  
damages.

Execution to  
be stayed by  
appeal.

Exceptions.

Further  
security in  
certain cases.

For paying  
the amount  
of judgment  
if affirmed,  
&c.

(See 18 Vic.,  
c. 122.)

For deliver-  
ing docu-  
ments or

XL. *And be it, &c.*, That the said Court of Error and Appeal shall have, hold, and exercise an appellate civil and criminal jurisdiction within and throughout Upper Canada, with full power and authority to hear and determine in due course of law, all matters which may lawfully be brought before it; and that an appeal shall lie to the said Court of Error and Appeal from all judgments of the said Courts of Queen's Bench and Common Pleas, and that an appeal shall lie to the said Court of Error and Appeal from all judgments, orders and decrees of the said Court of Chancery; Provided nevertheless, that no such appeal shall be allowed until the party appellant shall have given proper security to the extent of one hundred pounds, to the satisfaction of the Court from whose order, decree or judgment he is about to appeal, that he will effectually prosecute his appeal, and pay such costs and damages as shall be awarded in case the judgment or decree appealed from shall be affirmed; and that upon the perfecting such security, execution shall be stayed in the original cause, except in the cases hereinafter provided, that is to say :

*Firstly.* That where the appeal is from a judgment, order or decree directing the payment of money the perfecting the security hereinbefore provided shall not stay the execution of the judgment unless the party appellant shall have further given proper security to the satisfaction of the Court from whose judgment he is about to appeal, that if the judgment appealed from, or any part thereof be affirmed, the appellant will pay the amount directed to be paid by the judgment or the part of such amount as to which the judgment shall be affirmed if it be affirmed only in part, and all damages which shall be awarded against the appellant on the appeal.

*Secondly.* Provided always, That if the judgment or decree appealed from, direct the assignment or delivery of documents

or personal property, the execution of the judgment or decree shall not be stayed by the perfecting of the security hereinbefore firstly required, unless the things directed to be assigned or delivered be brought into Court or placed in the custody of such Officer or Receiver, as the Court shall appoint, or unless security be given to the satisfaction of the Court appealed from, and in such sum as that Court shall direct, that the Appellant will obey the order of the Appellate Court on the appeal.

*Thirdly.* Provided always, That if the judgment or decree appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or decree shall not be stayed by the appeal until the instrument shall have been executed and deposited with the proper Officer of the Court appealed from, to abide the judgment of the Appellate Court.

*Fourthly.* Provided always, That when the judgment or decree appealed from, directs the sale or delivery of possession of real property or chattels real, the execution of the same shall not be stayed unless proper security be entered into to the satisfaction of the Court appealed from, that during the possession of such property by the Appellant, he will not commit or suffer to be committed any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, the amount of which said security shall be fixed by the said Court.

*Fifthly.* Provided also, That when the judgment or decree is for the sale of property and the payment of a deficiency arising upon the sale, the security shall also provide for the payment of such deficiency.

XLI. And whereas the practice heretofore adopted in appeal is in many respects unsettled and inconvenient, and the costs in some matters of appeal excessive, and it is expedient that powers should be given to the Judges of the said Court of Appeal to make rules and regulations in respect of the same: *Be it, &c.*, That it shall be lawful for the said

Judges to make general rules and orders.

Judges of the Court of Appeal, at any time within two years from the time when this Act shall take effect, to make all such General Rules and Orders as to them may seem expedient for the purpose of adapting the said Court of Appeal to the circumstances of this Province, as well in regard to the Writs of Error or other Process by which Appeals should be commenced, the form and mode of suing out such Process, as in respect to the practice and proceedings of the said Court; and also to regulate the allowance and amount of costs, and from time to time to make other rules and orders, amending, altering or rescinding the same: Provided always, that no such rules or orders shall have the effect of altering the principles or rules of decision of the said Court, or any of them, or of abridging or affecting the right of any party to such remedy as before the passing of this Act might have been obtained in the Court of Appeal hereby abolished, but may in all respects extend the manner of obtaining such remedy by regulating the practice of the said Court in whatever way may to them seem expedient for better attaining the ends of justice; and all such Rules, Orders or Regulations shall be laid before both Houses of the Provincial Parliament, if then in Session, immediately upon the making of the same, or if the Parliament be not then in Session, then within five days after the meeting thereof; and no such Rule, Order or regulation shall have effect until six weeks after the same shall have been so laid before both Houses of the Legislature; and any rule or order so made, shall, from and after such time aforesaid, be binding and obligatory on the said Court, and all other Courts in the said Province of Upper Canada to which the same shall be made expressly to extend.

And regulate costs.

Proviso: to what such rules may or may not extend.

Rules confirmed by 13 & 14 Vic., Chap. 51.)

Rules to be laid before the Provincial Parliament.

When to have effect.

Present cases in appeal transferred to the said Court.

XLII. *And be it, &c.*, That all appeals which at the time of the passing of this Act, shall be depending in the said Court of Appeal hereby abolished, shall be by force of this Act, transferred with all the proceedings thereon to the said Court of Error and Appeal hereby established, there to be carried on and prosecuted and dealt with, and decided according to the practice of the said Court of Appeal, in the same manner in every respect as if such suits and matters had been

originally commenced in the said Court of Error and Appeal, hereby established.

XLIII. *And be it, &c.*, That the Registrar of the Court of Chancery in Upper Canada, shall *ex officio* be Clerk of the said Court of Error and Appeal, and that the like sums and fees payable and receivable in the said Court of Appeal hereby abolished, shall be payable and receivable by the like persons in the Court of Error and Appeal hereby established in respect of any matters in the said Court; but the said Clerk of the Court of Appeal shall not be entitled to take for his own use or benefit, directly or indirectly, any fee or emolument whatsoever, save the salary to which he shall be entitled as Registrar of the said Court of Chancery; and that all fees, dues, emoluments, perquisites and profits received by or on account of the said Registrar, as Clerk of the Court of Appeal, shall form part of the Consolidated Revenue Fund of this Province, and shall be accounted for to Her Majesty, Her Heirs and Successors, through the Lords Commissioners of Her Treasury, for the time being, in such manner and form as Her Majesty, Her Heirs and Successors shall appoint.

Registrar of the Court of Chancery to be clerk of the court of appeal.

Not to take fees for his own use, &c.,

Fees, &c., to belong to the Province.

XLIV. *And be it, &c.*, That the said Clerk of the Court of Error and Appeal shall, on the four quarterly days hereinbefore mentioned, make up and render to the Inspector General of Public Accounts in this Province, a true Account in writing, of all the fees, dues, emoluments, perquisites and profits received by or on account of the said office of Clerk of the Court of Error and Appeal, in such form, and with such particulars as the said Inspector General shall from time to time require; which said Accounts shall be signed by the said Clerk of the Court of Error and Appeal, and shall be declared before one of the Judges of the said Court; and the said Clerk of the Court of Error and Appeal shall, within ten days after the rendering of such Account, pay over the amount of all such dues, fees, emoluments, perquisites and profits, to the Receiver General of this Province, and if default shall be made in such payment, the amount due by the said Clerk of the Court of Error and Appeal shall be deemed a specialty debt to Her Majesty.

The clerk to account quarterly to the Inspector General.

Accounts how attested

He shall pay over all public moneys in his hands!

Who may  
practice in  
the Court of  
Appeal.

XLV. *And be it, &c.*, That every Attorney and Solicitor admitted to practice in the said Court of Queen's Bench, or in the said Court of Common Pleas, or in the Court of Chancery in Upper Canada, shall be permitted and have full power to practice in the said other Court or Courts, upon such Attorney or Solicitor being sworn in and enrolled as an Attorney or Solicitor of such other Court or Courts: and the said Courts are hereby authorized upon the production of his certificate of admission to swear in and enrol any such Attorney or Solicitor as aforesaid, and upon the payment of Five shillings: Provided always, that every Attorney and Solicitor already admitted to practice in the said Court of Queen's Bench or in the Court of Chancery in Upper Canada at the time this Act shall come into force, shall be entitled to have his name inserted on the roll of Attornies of the said Court of Common Pleas gratis, upon filing a written request for the same in the office of the Clerk of such Court, and all such Solicitors in Chancery, shall in like manner be entitled to have their names inserted on the roll of Attornies of the said Court of Queen's Bench on filing a like request.

Proviso as to  
Attornies,  
&c., now  
admitted.

Judgment to  
be final in  
certain cases,  
in others an  
appeal to lie  
to H. M. in  
Council.

XLVI. *And be it, &c.*, That the judgment of the said Court of Error and Appeal shall be final in all cases where the matter in controversy shall not exceed the sum or value of One thousand pounds, but in cases exceeding that amount, as well as in all cases where the matter in question shall relate to the taking of any annual or other rent, customary or other duty, or fee, or any other such like demand of a general and public nature affecting future rights, of what value or amount soever the same may be, an Appeal may lie to Her Majesty, in Her Privy Council: Provided always, that no such Appeal shall be allowed until the party appelland shall have given proper security to the extent of Five hundred pounds, to the satisfaction of the Court from whose order he is about to appeal, that he will effectually prosecute the appeal and pay such costs and damages as shall be awarded in case the judgment or decree appealed from shall be affirmed, and that upon the perfecting such security, execution shall be stayed in the original cause: Provided always, that the provisions of the first, second, third,

Proviso:  
Security to  
be given on  
such appeal.

Proviso:

fourth and fifth Provisos in the Fortieth Clause of this Act contained, shall be in force and apply to the Appeal hereby granted, and the completion of the security hereby required shall not have the effect of staying execution in the original cause, in the different cases excepted out of the said Fortieth Clause, unless the provisions in the said Provisos contained shall have been complied with.

Certain provisions of section 40 of this Act, to apply to such appeal.

XLVII. *And be it, &c.*, That in all cases where appeals now lie or shall be hereafter appointed to lie from any District or County Courts to the Court of Queen's Bench, such appeals shall and may at the option of the appellant be appealed to and prosecuted in like manner in the said Court of Common Pleas.

As to appeals from district or county courts.

XLVIII. *And be it, &c.*, That the Court of Common Pleas shall have power to appoint Commissioners for taking affidavits and recognizances of Bail in the said Court of Common Pleas in the like manner as is now done by the Court of Queen's Bench, and with the like powers, and all such Commissioners appointed or to be appointed by either Court shall have full power to act in matters depending in the other to all intents as if such Commissioner had been appointed thereby, and in all matters depending in the District Courts, and in all other matters whatsoever. And that any affidavit sworn before or recognizance of Bail taken by any such Commissioner appointed under the authority of this Act shall be as valid and effectual as if taken before a Commissioner for taking affidavits in the Court of Queen's Bench in any District in Upper Canada.

Court of C. P. may appoint commissioners for taking affidavits, &c.; their powers.

XLIX. *And be it, &c.*, That this Act may be amended, altered or repealed, during the present Session.

Act may be amended this session.

L. *And be it, &c.*, That this Act shall come into force on the first day of January next, or at such earlier day as shall be appointed for that purpose by Proclamation under the Great Seal of this Province.

Commencement of this Act.

[Schedule superseded by C. L. P. A., 1856.]

## 12 VICTORIA—CHAP. 66.

*An Act to amend and extend the provisions of the Act of this Province, intituled, An Act to amend, consolidate and reduce into one Act the several laws now in force, establishing or regulating the practice of the District Courts in the several Districts of that part of this Province formerly Upper Canada.*

[Passed 30th May, 1849.]

Preamble. WHEREAS it is advisable to make further provision regulating the practice of the several District Courts in Upper Canada :  
 Sections 7 and 8 and 25 of 8 Vic. c. 13 repealed. *Be it, &c.*, That the seventh, eighth, and twenty-fifth clauses of 8 Victoria, Chapter 13, be, and the same are hereby repealed: Provided always, that the repeal of the said seventh, eighth and twenty-fifth clauses shall not in any wise affect or invalidate any act, proceeding, matter or thing whatever that may have heretofore been had, issued, made, done or entered into, but the same shall be and remain as valid and effectual to all intents and purposes as if this Act had not been passed.

II. }  
 to } [Repealed by 19 & 20 Vic., c. 90.]  
 IV. }

Recital of doubts. ↓

Attorneys and Members of the Legislative Council or Assembly may be sued in the same manner as other persons.

V. *And whereas* doubts have arisen respecting the jurisdiction of the said Courts in actions against Attorneys and Members of the Legislative Assembly and Legislative Council of this Province, and the mode of proceeding in such actions therein : *Be it, &c.*, that from and after the passing of this Act, it shall be lawful for any person or party having a cause of action within the jurisdiction of the said *District Courts* against an Attorney or Attorneys of the said Court of Queen's Bench, or any Member of the Legislative Assembly or of the Legislative Council of this Province, to commence and prosecute to Judgment and Execution any action for the recovery thereof in the said *District Courts* without filing a bill, and in the same manner and by the like process as against any other Defendant, any custom or privilege to the contrary notwith-

standing ; and if in any such action the Defendant shall plead any privilege in abatement thereto, the Plaintiff shall and may be at liberty to treat such plea as a nullity and to sign judgment as for a want of a plea : Provided that nothing in this Act contained shall subject any person to arrest who by reason of any privilege, usage or otherwise, may now by law be exempt therefrom.

Proviso as to exemptions from arrest.

VI. *And be it, &c.*, That the several Judges of the said District Courts shall have and may exercise the like power in vacation to issue summonses and make orders in all matters of practice arising in suits in the same Courts respectively, as are exercised in vacation by the Judges of the Court of Queen's Bench in Upper Canada in matters of practice arising in the said last mentioned Court.

Certain powers conferred on the District Judges in vacation.

VII. *And be it, &c.*, That it was and is the intention and true meaning of the fiftieth section of the Act aforesaid, that all recognizances of bail taken in any of the said District Courts might and may be entered of record in the Court in which the suit shall have been or shall be instituted, and that action of debt or *scire facias* should and shall lie thereupon in the said District Courts as in similar cases in the Court of Queen's Bench, whatever may have been or shall be the amount recovered or for which the bail therein mentioned may have been or shall be liable.

True intent of section 50. of the amended Act declared, as to recognizances of bail.

VIII. *And whereas* doubts have arisen whether the stating and claiming of the different sums in the several counts of a declaration upon causes of action within the jurisdiction of the District Courts, amounting in the aggregate to a sum beyond the jurisdiction thereof, is not demurrable, notwithstanding the damages at the conclusion are laid at a sum within the jurisdiction, and it is desirable that such a course of proceeding should be declared legal : *Be it, &c.*, that although the sums mentioned or claimed in the different Counts of any declaration heretofore or hereafter to be filed in the said Courts shall or may in the aggregate exceed the jurisdiction of the said District Courts, yet that no such declaration or any

Doubts recited.

Demurrer. &c., not allowed because the total of the sums mentioned in different Courts exceeds the jurisdiction of the Court.

subsequent pleading, on that ground, shall be subject to any objection either by demurrer or otherwise: Provided that in any such declaration, the damages laid at the conclusion thereof shall not exceed the jurisdiction of the said Courts:

Provido. Provided also, and it is hereby further enacted, that no declaration or pleading after declaration shall be filed or delivered in any action in the said *District Courts*, between the first day of July and the twenty-first day of August, in each and every year: and Provided further, that the party shall in every defended case be entitled to the same number of days, after the said twenty-first day of August, to plead or answer any pleading filed or delivered before the first day of July, to which he would have been entitled after the day last aforesaid if this Act had not been passed.

What form of *venire* it shall be sufficient to enter upon the Record.

IX. *And be it, &c.*, That from and after the passing of this Act, it shall not be necessary in any case, in the said *District Courts*, to enter any other *venire* than the following upon the record, that is to say: Therefore the Sheriff (*or* Coroner, *as the case may be*) is (*or are*) commanded that he (*or they*) cause to come before — Esquire, Judge of our said Court, at the next sitting thereof for trials and assessments, at the Court House in —, in the said District, on *Tuesday*, the — day of —, in the year of our Lord one thousand eight hundred and —, a Jury to try the said issue, (*or assess the damages, as the case may be*). Provided, that when there are issues in law and also in fact, or upon any assessment of damages, the above *venire* may be altered and adapted to the particular case.

Provido.

Certain additional powers conferred on the *District Judges*, in addition to those in sec. 43 of the amended Act.

X. *And be it, &c.*, That in addition to the powers conferred upon the said *District Courts* by the forty third Section of the said hereinbefore mentioned Act, it shall be lawful for the said Courts to entertain applications and at their discretion to make orders for Judgment *non obstante veredicto*, according to the course and practice of the said Court of Queen's Bench, and that an appeal under the provisions of the fifty-seventh section of the aforesaid Act may be had to the said Court of Queen's Bench from the said *District Courts* upon any

(See C. L. P. A., 1856, s. 217, *et seq*)

decision or motion for Judgment *non obstante veredicto*, and also for the reception of improper evidence or the improper rejection of evidence, upon which shall be allowed the same costs and charges as are allowed for any other proceeding under the fifty-seventh section.

XI. *And be it, &c.*, That in case any party shall be desirous of appealing against the decision of the Judge upon any matter provided for in the fifty-seventh section of the said Act, it shall be the duty of the Judge, at the request of the party intending to appeal, his Attorney or Counsel, to stay the proceedings for any time not exceeding four days, so as to afford the party appealing, time to execute and perfect the Bond required by the said section.

XII. *And be it, &c.*, That from and after the passing of this Act, each and every Clerk of any such *District* Court, and the Deputy Clerk of the Crown in each *District*, shall hold his office in the Court House, or in some other convenient place within the *District* Town of his respective *District*, and shall keep such office open for the transaction of business pertaining to such office on every day (Sundays and the legal holy-days excepted) from the hour of ten in the forenoon to the hour of three in the afternoon, and in term time from the hour of nine of the clock in the morning to the hour of four of the clock in the afternoon; and that no British subject, whatever his profession, calling or employment, shall in future be deemed disqualified to hold the office of Clerk of the *District* Court or Deputy Clerk of the Crown in Upper Canada; any law or enactment heretofore made to the contrary thereof notwithstanding.

#### SCHEDULE A.

##### *Writ of Summons.*

VICTORIA, &c.

To C. D., of. —, in the County of —, Greeting: (See C. L. P.

We command you (*or as before or often we have commanded you*) that within eight days after the service of this Writ on you, inclusive of the day of such service, you do cause an ap-

Appeal  
under  
section 57.

Suspension  
of Proceed-  
ings on  
notice of  
intention to  
appeal.

Clerks of  
District  
Courts and  
Deputy  
Clerks of the  
Crown to  
keep their  
offices at  
certain  
places, and  
open at  
certain  
hours.

Any British  
Subject may  
be such  
Clerk.

A., 1856,  
s. 16, and  
Form No. 1,  
in Sch. A to  
that Act.)

pearance to be entered for you in Our *District* Court of the District of —, at —, in an action on promises (or as the case may be) at the suit of A. B. And take notice that in default of so doing the said A. B. may cause an appearance to be entered for you, and to proceed thereon to judgment and execution.

Witness (*name of Judge*) at (*place where Court sits*) this  
— day of

*Clerk's name.*

*Memorandum to be subscribed on the Writ.*

(See C. L. P.  
A., 1854, s.  
23.)

N. B.—This is to be served within *three* calendar months from the date thereof, including the day of such date, and not afterwards.

12 VICTORIA.—CHAP. 73.

*An Act to provide for the Sale under Executions, of the interest of Mortgagors in Real Estate in Upper Canada.*

[Passed 30th May, 1849.]

Preamble.

The interest  
of a mortga-  
gor may be  
taken in ex-  
ecution.

WHEREAS it is expedient to provide by law, that the interest of Mortgagors and their Equity of Redemption, in Real Estate, may be sold upon Executions against lands and tenements in Upper Canada: *Be it, &c.*, That from and after the passing of this Act, it shall and may be lawful, upon any Writ of *Fieri Facias* lawfully issued against the lands and tenements in Upper Canada of any person or persons who, or any of whom, may be a Mortgagor of Real Estate in the *District* to the Sheriff or other Officer of which such Writ is directed, to seize or take in execution, sell and convey, (in like manner as any other Real Estate might be seized or taken in execution, sold and conveyed,) all the legal and equitable estate, right, title, interest and property, and the Equity of Redemption of such Mortgagor in any lands and tenements in such *District*.

Effect of  
seizure and  
of the sale  
and convey-  
ance to be

II. *And be it, &c.*, That the effect of such seizure or taking in execution, sale and conveyance, shall be to transfer to and vest in the purchaser or purchasers, and the heirs and assigns

of such purchaser or purchasers, all the legal and equitable estate, right, title, interest and property, and the Equity of Redemption of such Mortgagor, in the lands or tenements so seized or taken in execution, sold and conveyed at the time of placing such Writ in the hands of the Sheriff or other Officer to whom the same is directed as well as at the time of such sale and to give to and vest in such purchaser or purchasers, and the heirs and assigns of such purchaser or purchasers, the same advantages, benefits, rights, privileges and powers as such Mortgagor could or would have had, enjoyed or exercised if such sale had not taken place; and that such purchaser or purchasers of the interest of such Mortgagor, or the heirs or assigns of such purchaser or purchasers may pay, remove or satisfy, or cause or procure to be paid, removed or satisfied any mortgage or mortgages, charge or charges, or lien or liens, which at the time of such sale lawfully or equitably existed upon the lands or tenements so sold, in like manner as such Mortgagor or Mortgagors against whom such Writ of *Fieri Facias* was issued, might, or could pay, remove or satisfy such mortgage or mortgages, charge or charges, or lien or liens; and that upon such payment, removal and satisfaction thereof being effected by such purchaser or purchasers, or the heirs and assigns of such purchaser or purchasers, such purchaser or purchasers and the heirs and assigns of such purchaser or purchasers, shall take, have, hold, possess and enjoy the same estate, right, title, interest, property, benefit and advantage which such Mortgagor or Mortgagors against whom such Writ of *Fieri Facias* was issued, might or would have taken, had, held, possessed and enjoyed in case such payment, removal or satisfaction had been effected by such Mortgagor or Mortgagors, and on payment of the mortgage money to the Mortgagor by the purchaser, the Mortgagor, his heirs, or assigns shall, if required, give to such purchaser or the heirs or assigns of such purchaser, at his or their cost and charges, a certificate of payment or satisfaction of such mortgage or of the performance of the condition of the same, which may be in the form and to the effect of the Schedule to this Act marked A, and which certificate shall be of the like effect, and shall be acted upon

made under it by the Sheriff: obligations of the purchaser, &c.

Rights of the purchaser. Purchaser paying mortgage money entitled to a certificate of satisfaction, &c.

by Registrars and others, to the same extent as if the same had been given to the Mortgagor, his heirs, executors, administrators or assigns.

Mortgagee may purchase the lands mortgaged to him

III. *And be it, &c.*, That any Mortgagee or Mortgagees of the lands and tenements so sold, or of any part thereof, or the heirs or assigns of such Mortgagee or Mortgagees, (being, or not being, Plaintiff or Plaintiffs, Defendant or Defendants in the Judgment whereon the Writ of *Fieri Facias* on which such sale shall take place, was issued) may be the purchaser or purchasers at such sale, and shall and may take, have, hold, possess and enjoy the same estate, title, property, benefits, advantages, rights, privileges and powers as such purchaser or purchasers as any other purchaser or purchasers not interested in the lands or tenements so sold, as Mortgagee or Mortgagees:

Proviso: he shall release the mortgage debt.

Provided always, that if the Mortgagee of the said premises shall become the purchaser thereof, he shall, give to the Mortgagor a lease of the debt, for the payment of which the mortgage may be given: and if any other person shall become such purchaser, and the Mortgagee shall enforce payment against the Mortgagor of the debt to secure which the mortgage was given, then such purchaser shall be compelled to repay the said debt and interest to the Mortgagor, and in default of such payment, within one calendar month after the same is demanded, the Mortgagor may sue such person in any Court of competent jurisdiction, and recover the amount of such debt and interest, in an action either of debt or assumpsit for money had and received, and until the said debt and interest, if recovered from or paid by the said Mortgagor after such sale, shall be repaid to him, the same shall be a charge upon the premises so mortgaged and sold.

Provision if any other person be the purchaser.

Interpretation clause.

IV. *And be it, &c.*, That where words occur in this Act, importing the singular number or the masculine gender only, they shall be understood to include more than one person, matter or thing of the same kind, as well as one person, matter or thing, and females as well as males, unless it be otherwise expressly provided; and when it would be consistent and reconcilable with the intent and meaning of this Act, wherever any

person is described, it shall be held to apply to such person, his heirs, executors, administrators or assigns; and this Act shall extend to Upper Canada only: and all other words, terms or phrases shall receive such fair and liberal construction as shall be best adapted to carry out this Act according to its true intent and meaning.

## SCHEDULE A

*Above referred to.*

The Registrar of the County of — I, A. B. of — do certify that C. D. of — who hath become the purchaser of the interest of E. F. of — hath satisfied all money due upon a certain Mortgage made by the said E. F. to me bearing date the — day of —, one thousand eight hundred and —, and registered at — of the clock in the forenoon, (as the case may be) of the — day of — in the same year (or as the case may be) and that such Mortgage is therefore discharged. As witness my hand, this — day of — 18 .

(Signed,) A. B.

E. H. of  
G. H. of

} Witnesses.  
\_\_\_\_\_

## 12 VICTORIA.—CHAP. 74.

*An Act requiring Mortgages of Personal Property in Upper Canada to be filed.*

[Passed 30th May, 1849.]

*Be it, &c.*, That every Mortgage or Conveyance intended to operate as a Mortgage of Goods and Chattels made after the passing of this Act, in Upper Canada, which shall not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the Mortgage or Conveyance or a true copy thereof, together with an affidavit of a witness thereto sworn before a Commissioner of the Queen's Bench, of the due execution of the Mortgage or Conveyance, or of the due execution of the Mortgage or Conveyance of which the

Mortgages of personal property in Upper Canada made after the passing of this Act to be void, unless filed as herein directed.

(See 13 & 14 Vic., c. 62)

copy to be filed purports to be a copy, shall be filed as directed in the succeeding section of this Act.

Such Mortgages to be filed in office of Clerk of County Court.

II. *And be it, &c.*, That the instruments mentioned in the preceding section shall be filed in the Office of the Clerk of the *District* Court of the *District* where the mortgagor therein, if a resident in Upper Canada, shall reside at the time of the execution thereof, and if not a resident, then in the Office of the Clerk of the *District* Court of the *District* where the property so mortgaged shall be at the time of the execution of such instrument; and such Clerks are hereby required to file all such instruments aforesaid presented to them respectively for that purpose, and to endorse thereon the time of receiving the same, and shall deposit the same in their respective Offices to be kept there for the inspection of all persons interested.

And open to inspection.

Copy of mortgage to be filed again one year after first filing.

III. *And be it, &c.*, That every Mortgage or copy thereof filed in pursuance of this Act, shall cease to be valid as against the creditors of the person making the same or against subsequent purchasers or mortgagees in good faith after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of the said term of one year, a true copy of such Mortgage, together with a statement exhibiting the interest of the mortgagee in the property thereby claimed by virtue thereof, shall be again filed in the Office of the Clerk of the said *District* Court.

Copies of mortgages filed, with certificate of Clerk, to be evidence of such filing.

IV. *And be it, &c.*, That a copy of any such original instrument or of any copy thereof so filed as aforesaid, including any statement made in pursuance of this Act, certified by the Clerk in whose Office the same shall be filed, shall be received in evidence, but only of the fact that such instrument or copy and instrument was received and filed according to the endorsement of the Clerk thereon and of no other fact; and in all cases the original endorsement by the Clerk made in pursuance of this Act upon such instrument or copy, shall be received in evidence only of the facts stated in such endorsement.

Clerks of the said Courts to number

V. *And be it, &c.*, That the Clerks of the Courts aforesaid shall respectively number every such instrument or copy which

shall be filed in their Offices, and shall enter in books, to be provided by them, alphabetically, the names of all the parties to such instruments, with the number endorsed thereon opposite to each name, which entry shall be repeated alphabetically under the name of every party thereto.

VI. *And be it, &c.*, That this Act shall not apply to Mortgages of vessels registered under the provisions of an Act passed in the eight year of Her Majesty's Reign, and intituled, *An Act to secure the right of property in British Plantation Vessels navigating the inland waters of this Province, and not registered under the Act of the Imperial Parliament of the United Kingdom, passed in the third and fourth years of the Reign of His late Majesty King William the Fourth, intituled, An Act for the registering of 'British Vessels,' and to facilitate transfers of the same, and to prevent the fraudulent assignment of any property in such Vessels.*

This Act not to apply to mortgages of vessels registered under 8 Vic, c. 5.

VII. *And be it, &c.*, That for services under this Act, the Clerks aforesaid shall be entitled to receive the following fees: for filing each instrument and affidavit, and entering the same in a book as aforesaid, one shilling and three pence; for searching for each paper, six pence; and for copies of any documents filed under this Act, six pence for every hundred words.

Fees allowed to Clerks for registering mortgages.

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## 12 VICTORIA—CHAP 77.

*An Act to authorize the Judges of the Superior Courts of Record in Upper Canada to appoint Commissioners for taking affidavits in Lower Canada.*

[Passed 30th May, 1849.]

WHEREAS it is desirable that the Judges of the Superior Courts of Record in Upper Canada, should have power to appoint Commissioners for taking Affidavits in Lower Canada:

*Be it, &c.*, That it shall and may be lawful for the Chief Justice and any one of the Justices of the Court of *Queen's Bench* in Upper Canada for the time being, or in the event of

Preamble.

(See 12 Vic. c. 63, s. 8.)

the death or absence from the Province of the Chief Justice for the time being, for any two of the Justices of the said Court for the time being, by one or more commission or commissions under the seal of the said Court, from time to time to empower what and as many persons as they shall think fit and necessary in Lower Canada, to take and receive all and every such affidavit or affidavits as any person or persons shall be willing and desirous to make before any of the persons so empowered, in or concerning any cause, matter or thing depending, or hereafter to be depending, or in any wise concerning any of the proceedings to be had in the said Court of Queen's Bench, or in any other Court of Law of Record in Upper Canada; which said affidavits taken as aforesaid shall be filed in the Office of the said Courts respectively, and there be read and made use of in the said Courts respectively, to all intents and purposes as other affidavits taken in the said Courts respectively ought to be; and that all and every affidavit and affidavits taken as aforesaid, shall be of the same force as affidavits taken in the said Courts respectively shall and may be.

Commissioners may be appointed in Lower Canada for receiving affidavits to be used in the Court in Upper Canada

Effect of affidavits taken before such commissioners.

Proof of execution of deeds, &c., may be made before such commissioners.

II. *And be it, &c.*, That proof of the execution of any deed, will or probate thereof, or memorial of the same in Lower Canada, may be made before any of the Commissioners to be appointed under the authority of this Act, in the same manner as such proof may now by law be made before the Chief Justice or Judge of any Court of Queen's Bench in Lower Canada, and all Registers of Counties in Upper Canada shall enregister such deeds, wills, probates and memorials upon the execution thereof being so proven.

Commissioners may in like manner be appointed for the Court of Common Pleas.

Their powers.

III. *And be it, &c.*, That the Chief Justice and Justices of the Court of Common Pleas in Upper Canada shall have the same power and authority to appoint such Commissioners as are hereby given to the Chief Justice and Justices of the Court of Queen's Bench and the Commissioners to be so appointed by the said Chief Justice and other Justices of the Court of Common Pleas shall have the same power and authority, and the affidavits made before them shall have the

same force and effect in all respects as those made before any of the Commissioners to be appointed by the said Chief Justice and other Justices of the Court of Queen's Bench.

IV. *And be it, &c.*, That all and every person or persons forswearing him, her or themselves in any affidavit or affidavits to be made before any of the said Commissioners appointed or to be appointed under the authority of this Act, shall incur and be liable under the same pains and penalties as if such affidavit or affidavits had been made and taken in open Court. Punishment of persons swearing falsely.

12 VICTORIA.—CHAP. 78.

*An Act for abolishing the Territorial Division of Upper Canada into Districts, and for providing for temporary Unions of Counties for Judicial and other purposes, and for the future Dissolutions of such Unions, as the increase of wealth and population may require.*

[Passed 30th May 1849.]

WHEREAS by reason of the sub-division of Districts in that part of this Province called Upper Canada, the boundaries thereof have, in many cases, become identical with the boundaries of Counties, and there being no longer any sufficient reason for continuing such territorial division in that part of the Province, it is expedient to abolish the same, and, following in this particular the Mother Country, to retain only the name of Connty as a territorial division for Judicial as well as all other purposes, providing at the same time for temporary Unions of Counties for judicial and other purposes, and the future dissolution of such Unions as the increase of wealth and population may from time require: *Be it, &c.*, That this Act shall come into and be in operation upon, from, and after the first day of January, in the year of our Lord, one thousand eight hundred and fifty. Preamble. (See 14 & 15 Vic. c. 5, s. 2.) Commencement of this Act.

I. ABOLITION OF DISTRICT DIVISIONS.

II. *And be it, &c.*, That the division of that part of this Province called upper Canada, into Districts for judicial and other purposes, shall be and the same is hereby abolished. Districts abolished.

District  
Courts, &c.,  
to become  
County  
Courts, &c.

III. *And be it, &c.*, That the Courts, Court Houses and Gaols, heretofore called District Courts, Court Houses and Gaols, shall from henceforth be called County Courts, Court Houses and Gaols, and the District Grammar Schools, County Grammar Schools, and all and singular the Offices and Officers now appertaining to the said Districts shall henceforth belong and appertain to the said Counties respectively, and whenever the said Offices or Officers have the title or denomination of Offices or Officers, of or for the District, they shall henceforth have the title or denomination of Offices or Officers of or for the County; and all laws at present in force, or during the present Session of Parliament made or to be made applicable to the said division of territory by the name of Districts, or the Courts, Offices or other Institutions thereof, shall be applied to and have the same operation and effect upon the said Counties and their respective Courts, Offices and other Institutions, as Counties.

Laws appli-  
cable to  
Districts to  
apply to  
Counties.

Courts of  
Assize, &c.,  
to be held  
in and for  
Counties.

IV. *And be it, &c.*, That the Courts of Assize and Nisi Prius, and Oyer and Terminer, Gaol Delivery, Sessions of the Peace and District Courts, shall be held in and for the said Counties, as such Courts are now held for the different districts in Upper Canada, and that the name County shall be used in designating such Courts, and also in all legal proceedings where the name District is now, or by any Act passed or to be passed during the present Session of Parliament, shall be used.

## II. UNIONS OF COUNTIES FOR JUDICIAL AND OTHER PURPOSES.

Mode of  
describing  
any United  
County in  
laying a  
venue.

VII. *And be it, &c.*, That in laying the Venue in any judicial proceeding in which the same may be necessary in any County which may be so united to any other County, or Counties as hereinbefore provided, the same shall be laid in such County by name describing it, as one of the United Counties of — and — (naming them), and for the trial of any issue, or for the assessment of damages, in the course of any such judicial proceeding, when such issue shall be tried or such damages assessed by Jury, the Jury shall be summoned from the body of the United Counties, as if the same were one County.

VIII. *And be it, &c.*, That during the continuance of any such Unions of Counties, all Laws now existing and applicable to Districts, and all Laws hereafter to be made, whether during the present or any future Session of Parliament, and applicable to Counties generally in relation to any matter whatsoever, except only Representation in the Provincial Parliament, and Registration of Titles, shall, to all intents and purposes whatsoever, apply to every such Union of Counties, as if such Union formed but one County.

Laws relative to Districts to apply to Unions of Counties.

13 & 14 VICTORIA.—CHAP. 19.

*An Act to facilitate the admission of evidence of foreign Judgments, and certain official and other documents.*

[Passed 24th July, 1850.]

WHEREAS it would greatly diminish the expense of legal proceedings, and prove highly beneficial to the advancement of justice, if certain foreign judgments, official and public documents, and documents, by-laws, rules, regulations and proceedings, and entries in Registers and other books of Corporations, were admitted in evidence without the particularity now required by law: *Be it, &c.*, That from and after the passing of this Act, any judgment, decree or other judicial proceeding, recovered, made, had or taken in any of the Superior Courts of Law, Equity or Bankruptcy in England, Ireland or Scotland, or in any Court of Record in Lower Canada, or in any Court of Record of the United States, or of any State of the United States of America, shall and may be proved in any suit, action, or proceeding, either at Law or Equity in Upper Canada, in which proof of any such judgment, decree or judicial proceeding shall be necessary or required, by an exemplification of the same under the seal of the said Courts respectively, without any proof of the authenticity of such seal, or other proof whatever, in the same manner as any judgment, decree, or similar judicial proceeding of any of the Superior Courts of Common Law or Equity in Upper Canada is proved by an exemplification thereof in any judicial or other proceeding in the said last mentioned Courts respectively.

Preamble.

Judgments, &c., of certain Courts out of U. C. may be proved by exemplification.

Instruments passed before Notaries in Lower Canada, may be proved by Notarial copy.

II. *And be it, &c.*, That any Notarial copy of any Notarial Act or Instrument in writing made in Lower Canada, before a Notary or Notaries, and filed, enrolled or enregistered by such Notary or Notaries, shall be receivable in evidence in any judicial or other proceeding either at law or equity in Upper Canada, in the place and stead of the original, and shall have the same force and effect as the original would have if produced and proved in any such proceeding: Provided always, that at such Notarial copy may be rebutted or set aside by proof that there is no such original or that the Notarial copy is not a true copy of the original in some material particular, or that the original is not an instrument of such nature as may by the law of Lower Canada be taken before a Notary or Notaries, or be filed, enrolled or enregistered by a Notary or Notaries in Lower Canada.

Proviso:  
Such proof  
liable to be  
rebutted.

Judgments, &c., of certain Courts in U. C. how proved in L. C.

III. *And be it, &c.*, That any judgment, decree, or other judicial proceeding of any Court of Record in Upper Canada, shall and may be proved in any suit, action or proceeding, in any Court in Lower Canada, by the production of an exemplification of such judgment, decree or other judicial proceeding, under the Seal of any such Court of Record, without any proof of the authenticity of such Seal, or other proof whatever.

Attested copies of Official Documents, By-laws, &c., receivable in evidence.

IV. *And be it, &c.*, That a copy of any official or public document in this Province, purporting to be certified under the hand of the proper officer or person in whose custody such official or public document shall or may be placed, or a copy of any document, by-law, rule, regulation or proceeding, or a copy of any entry in any Register or other book of any Corporation, created or to be created by charter or statute in this Province, purporting to be certified under the seal of such Corporation, and the hand of the Presiding Officer or Secretary thereof shall be receivable in evidence of any particular, in any court of justice, or before any legal tribunal, or the Legislative Council or Assembly, or any Committee thereof respectively, or in any judicial proceeding, without any proof of the seal of such Corporation, or of the signature or of the official character of the person or persons appearing to have signed the same,

and without any further proof thereof in every case in which the original record could have been received in evidence.

V. *And be it, &c.*, That all Courts, Judges, Justices, Masters in Chancery, Masters of Courts, Clerks of Courts, Prothonotaries, Commissioners Judicially acting, and other judicial officers in this Province, shall henceforth take judicial notice of the signature of any of the Judges of the Superior, Circuit, or County Courts of Law or Equity in Upper or Lower Canada, provided such signature be appended or attached to any decree, order, certificate, affidavit or other judicial or official document.

Judicial notice of the signature of the Judges and Officers of certain Courts.

VI. [Punishment for forgery.]

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13 & 14 VICTORIA.—CHAP. 51.

*An Act to affirm and give effect to certain Rules and Regulations made by the Judges of Her Majesty's Court of Error and Appeal for Upper Canada, and for other purposes relating to the powers of Judges of the Courts of Law and Equity in that part of the Province, and the practice and decisions of certain of those Courts.*

[Passed 10th August, 1850.]

WHEREAS the Judges of Her Majesty's Court of Error and Appeal for Upper Canada have, under 12 Vic. c. 63, made certain rules, orders and regulations respecting the practice of the said Court, and the costs to be allowed in the same, and the same have been laid before both Houses of the Provincial Parliament in the present Session thereof, being the Session during which such rules, orders and regulations were made: And whereas by the said Act it is provided, that no such rule, order or regulation shall have effect until six weeks after the same shall have been laid before both Houses of the Legislature; to remove therefore all doubts as to the force and effect of such rules, orders and regulations, in case Parliament should be prorogued before the expiration of the said term of six weeks, *Be it, &c.*, That the said rules, orders and regulations, so made by the said

Preamble.

Rules to have effect after six weeks from 5th July, 1850.

Judges, shall have the like effect from the expiration of six weeks from the fifth day of July in the present year, as if the Provincial Parliament had remained in Session until after the expiration of that period.

II. [Judges made Visitors of Law Societies.]

Judges of Superior Courts of Law at Toronto may sit apart during Term for certain purposes.

III. *And be it, &c.*, That any time wherein Her Majesty's Superior Courts of Common Law at Toronto, may by law sit in Banc. it shall and may be lawful for any one Judge of either of such Courts to sit in Banc. apart from his brethren, either while they are actually so sitting, or while their sittings within such time shall be suspended or adjourned; and every such Judge so sitting apart in Banc. as aforesaid, shall have all the same powers and authority as belong to, or may hereafter be vested in either of such Courts touching or concerning, or in any way relating to the business of adding or justifying bail, discharging insolvent debtors, administering oaths and hearings and determining matters on motion, and making rules and orders in causes and business depending in either of the said Courts, in the same manner and with the same force, validity and effect, as might be done by the Court in which such causes or business shall be respectively depending.

Who shall be clerk to Judge sitting apart.

IV. *And be it, &c.*, That the Clerk of the Judges' Chambers at Osgoode Hall, shall perform the duties of Clerk of such Court, so far as such duties apply to the business transacted before such Judge so sitting apart in Banc. as aforesaid.

Judges of either Court at Chambers may dispose of business depending in the other Court.

V. *And be it, &c.*, That it shall be lawful for any of the Judges of either of Her Majesty's said Superior Courts of Common Law at Toronto sitting at Chambers, to hear, determine and dispose of any business depending in the Court of which he is not a member, as fully and effectually to all intents and purposes whatsoever, as if he were a Judge of such Court: subject always, nevertheless, to such proceedings by the Court in which the same shall be pending, for the reversing, setting aside, or confirming what may be so done by such Judge in the same manner in the like cases, and to the like extent as if

the same had been so done by one of the Judges of the Court in which the same shall be so pending as aforesaid at his Chambers.

VI. }  
to } Inclusive, [Repealed by 18 Vic., c. 128.]  
XI. }

13 & 14 VICTORIA.—CHAP. 52.

*An Act to alter and Amend the Act regulating the practice of the County Courts in Upper Canada, and to extend the jurisdiction thereof.*

[Passed 10th August, 1850.]

WHEREAS it is expedient to alter and amend the Act regu-  
lating the Practice of the several County Courts in Upper  
Canada, and to extend the Jurisdiction thereof: *Be it, &c,*  
That for and notwithstanding any thing contained in the fifth  
sec. of 8 Vic. c. 13, the said County Courts respectively shall  
hold plea of all causes or suits relating to *debt, covenant, or*  
*contract*, to the amount of fifty pounds; and in cases of debt or  
contract, where the amount is ascertained by the signature of  
the defendant, to one hundred pounds, and also in all matters of  
tort relating to personal chattels, where the damages shall not  
exceed the sum of thirty pounds, and where the title to land  
shall not be brought in question: Provided always, that any  
plaintiff having a cause of action within the jurisdiction of the  
County Court, may institute and carry on such action in either  
of Her Majesty's Superior Courts of Common Law in Upper  
Canada, and proceed to judgment and execution therein, but  
such plaintiff or defendant, and all persons and officers entitled  
to costs and fees therein, shall only be allowed and recover the  
usual costs and disbursements which would be allowable in  
case the said action had been instituted and carried on in the  
County Court; any thing in the fifty-ninth section of the Act  
above cited to the contrary notwithstanding: Provided that in  
order to designate the proceedings in any such action, as being  
one also cognizable by the County Courts, all the papers and  
proceedings filed, issued or used in the said Superior Courts,  
shall be endorsed with the words "Inferior Jurisdiction," in

Preamble.

Jurisdiction  
of County  
Courts raised  
8 Vic. c. 13.

(See 19 & 20  
Vic. c. 90,  
s. 20.)

Proviso: Su-  
perior Law  
Courts to  
have concu-  
rent jurisdic-  
tion with  
County  
Courts.

(See 19 & 20  
Vic. c. 91.)

As to costs.  
Proviso: pa-  
pers must be  
specially en-  
dorsed, &c.

order to regulate the costs, fees, and disbursements therein, of all persons entitled to make or receive any charge therefor.

Summons,  
&c., may be  
served in  
in any  
County in  
Upper Can-  
ada.

II. *And be it, &c.*, That all writs of summons sued out of, and all declarations or other pleadings filed in any action or proceeding in any County Court, or notices required to be served in such action or proceeding, may be served in any County in Upper Canada, and the defendant shall appear and plead thereto within the periods respectively limited and required by law, in the same manner as if such defendant had been served with such summons, declaration, notice or other proceeding in the County in which such suit was instituted, and all subsequent proceedings in the cause shall be carried on thereafter to final judgment and execution, according to the practice of the County Courts.

Writs  
against  
goods or  
lands, &c.,  
may be  
issued into  
any County  
in Upper Ca-  
nada, &c.

III. *And be it, &c.*, That writs of subpoena and writs of execution against goods and chattels, lands and tenements, and also all process against the person when authorized by law, and all rules on the Sheriff and other rules, Judges' orders and proceedings may be issued from the County Court in which any judgment has already been or hereafter may be entered up, or action brought into any other County in Upper Canada and served and executed there, and all such writs, rules, orders and proceedings shall be of equal force and effect, and as binding as if the same had issued from the Court or by the Judge of the County to or into which they shall be so issued, and all subsequent proceedings thereupon shall be carried on in the Court in which the judgment shall have been entered up or action brought.

IV. [Repealed by 19 & 20 Vic. c. 90.]

Judges of  
County  
Courts may  
grant sum-  
monses and  
make orders  
to compute.  
(See C. L. P.  
A., 1856,  
s. 141.)

V. *And be it, &c.*, That every Judge of a County Court in Upper Canada, in all cases in which the suit is brought or venue laid in his County, may grant *summonses and make orders to compute* in all suits depending in the Superior Courts of Common Law in Upper Canada, in the same manner and in the like cases as the Judges of the said Superior Courts sitting

in Chambers may now do, whether the defendants in such suits reside within his County or not.

VI. [Commencement of Act 1st January, 1851.]

13 & 14 VICTORIA.—CHAP. 53.

*An Act to amend and consolidate the several Acts now in force, regulating the Practice of Division Courts in Upper Canada, and to extend the jurisdiction thereof.*

[Passed 10th August, 1850.]

LXXVIII. *And be it, &c.*, That in case any action shall be prosecuted after the commencement of this Act, in any County or Superior Court of Record, for any cause which might have been entered in a Division Court under this Act, and the Plaintiff shall obtain judgment for a sum not exceeding the respective sums to which the jurisdiction of a Division Court is by this Act limited, no more costs shall be taxed against the Defendant than would have been incurred in the Division Court in carrying on the same action, unless the Judge who presides at the trial of such action shall certify in open Court immediately after the verdict is recorded, that it was a fit cause to be withdrawn from the Division Court, and to be commenced in such County or Superior Court; provided also that so much of the costs of the Defendant to be taxed as between Attorney and Client in any such suit wherein the Judge shall not certify as aforesaid, as shall exceed the costs of defence, taxable and which would have been incurred in the Division Court in defending the same action, shall be set off and allowed by the taxing officer, on entering judgment, against the costs to be taxed for the plaintiff and recoverable from the defendant, who shall be entitled to execution, with the costs thereof, against the plaintiff, when the amount of the costs so set off shall exceed the plaintiff's verdict and taxable costs: And provided also, that no execution on such suit shall issue against lands, unless the amount of such judgment shall equal the sum for which execution against lands are authorized by this Act.

As to costs where a plaintiff shall bring in a Superior Court, an action which ought to have been brought in a Division Court provided for.

Proviso.

In certain cases suits may be removed by *certiorari*.

LXXXV. *And be it, &c.*, That any suit brought in any Division Court holden under this Act may be removed or removeable from the said Court into Her Majesty's Court of Queen's Bench, or Court of Common Pleas in Upper Canada, by any writ of *certiorari*, provided the debt or damage claimed shall amount to ten pounds and upwards, and provided leave be obtained of one of the Judges of the said Court of Queen's Bench, or Court of Common Pleas, in cases which shall appear to the said Judge fit to be tried in either of the said Superior Courts, and not otherwise, and upon such terms as to payment of costs or such other terms as he shall think fit.

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CAP. LV.

*An Act for the consolidation and amendment of the Laws relative to Jurors, Juries and Inquests in that part of this Province called Upper Canada.*

[Passed 10th August, 1850.]

VI.—JURY PROCESS.

Precepts to be issued, and by whom.

XXIX. *And be it, &c.*, That the Judges, Justices and others to whom the holding of any Sittings or Sessions of Assize, *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County Court, shall by law belong, or some one or more of such Judges, Justices or others shall for that purpose issue precepts to the Sheriff or other proper Officer or Minister for the return of a competent number of Grand Jurors, where such shall be requisite for such Sittings or Sessions, and of a competent number of Petit Jurors for the trial of such issues of fact in cases criminal or civil as it may be competent to such Petit Juries to try at such Sittings or Sessions according to law.

When precepts shall be issued, and to whom directed.

XXX. *And be it, &c.*, That the several precepts for the return of Panels of Grand and Petit Jurors for any Sittings or Sessions of Assize, *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County Court, shall be issued to the Sheriff or other Officer or Minister to whom the return of such precepts shall belong, as soon as conveniently

may be after the Commission, or other day upon which the Jurors to be returned, upon such precepts, are to be summoned to attend, shall, or may be known, and where such day is fixed by law, then as soon as conveniently may be after the close of the last preceding Sittings or Sessions of the same Court: Proviso: When County Court and Q. S. sit at the same time. Provided always, that it shall and may be lawful for the Sheriff to return the same panels to the precepts, for the return of panels of Petit Jurors for the Sittings or Sessions of the Peace, and for the Sittings or Sessions of the County Court, in all cases where the day for holding such respective Sittings or Sessions shall be the same.

XXXI. *And be it, &c.*, That every Writ of *venire facias juratores*, where such Writ may by law be necessary for the trial of any issue whatsoever, whether civil or criminal, or on any penal Statute, in any of the Courts of Upper Canada herebefore mentioned, shall direct the Sheriff or other Officer or Minister to whom the same shall be directed, to return twelve good and lawful men of the body of his Bailiwick, qualified according to law, and the rest of the Writ shall proceed in the accustomed form. And that every precept to be issued for the return of Jurors for Sittings or Sessions of Assize, *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County Court, shall in like manner direct the Sheriff or other Officer or Minister to whom the same may be directed, to return a competent number of good and lawful men of the body of his Bailiwick, qualified according to law, and shall not require the same to be returned from any Hundred or Township, or from any particular *venue* within such Bailiwick, and that the want of Hundredors shall be no cause of challenge; any law, custom or usage to the contrary notwithstanding. Writs of venire facias: their form. And of precepts.

XXXII. *And be it, &c.*, That except in trials at Bar, the Writ of *venire facias juratores*, where such Writ may by Law be necessary, may be tested on the day on which the same shall issue, and be made returnable on any day in Term or vacation, and that except in trials at Bar, the Writ of *distinguis juratores* and *habeas corpora* may be tested either on the Date of testa and return of jury process

return day of the *venire* or on any subsequent day in Term or vacation; as well after as before or on the Commission day of the Assizes at which the causes in which they may be sued out shall be intended to be tried, and all such process may be sued out of the office of the Deputy Clerk of the Crown and Pleas in the County, as well as out of the principal office at Toronto.

What must be inserted in writs of *habeas corpora*, &c.

XXXIII. *And be it, &c.*, That in any Writ of *habeas corpora juratorum* or *distringas* subsequent to and founded upon any Writ of *venire facias juratores*, it shall not be requisite to insert the names of all the Jurors contained in such panel, but it shall be sufficient to insert in the mandatory part of such Writs respectively—"the bodies of the several persons in the panel to this Writ annexed, named," or words of the like import, and to annex to such Writs respectively, panels containing the same names as were returned on the panel to such *venire facias* with their places of abode and additions.

Actual writ of *venire facias* may be dispensed with.

XXXIV. *And be it, &c.*, That for the trial of issues in cases whether criminal or civil which shall in course come on for trial at any Sittings or Sessions of Assize, *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County Court, it shall not be necessary actually to sue out any Writ of *venire facias juratores* or other Jury process, but the award of such process by the Court and the entry of such award where necessary on the Roll, together with the return of a panel of Jurors upon the general precept issued for such Sittings or Sessions, and the trial of such issues respectively, by a Jury taken from such general Panel in the manner hereinafter provided, shall be sufficient and shall be as valid and effectual in law to all intents and purposes whatsoever, as if such *venire facias juratores*, or other process had been actually and regularly sued out in each case, and the names of the Jurors who shall have so tried such issues, respectively, had been regularly returned upon such Jury process, respectively: Provided always nevertheless, firstly, that nothing in this section contained shall extend or be construed to extend to any issue, to be tried at Bar, or by a Special Jury, or by a Jury

Proviso: as to jurors *de medietate*.

*de medietate lingue* or *de ventre inspiciendo* in a case in which a view shall have been granted, as hereinafter mentioned: And provided also, secondly, that every Jury of which some of the Jurors shall have been regularly taken from such general Panel, shall, notwithstanding its being completed by the award of a *tales de circumstantibus*, be deemed where such *tales de circumstantibus* shall have been regularly awarded according to law, to be taken from such general Panel for the purposes of this section. And provided also, thirdly, that to every *venire facias* directed to any Sheriff in any case in which a view shall have been granted, and which *venire facias* shall not be endorsed for the return of a Special Jury thereon, such Sheriff shall return the same Jurors as those whose names are inserted in the panel returned upon the general precept for the Sittings or Sessions at which such cause is to be tried.

Proviso as to  
*tales*.

Proviso:  
Where a  
view is  
granted.

XXXV. *And be it, &c.*, That if any Plaintiff or Defendant or any Defendant in *Quare impedit* or *Replevin* shall in any cause which shall be at issue, sue out any Writ of *Venire Facias* upon which any Writ of *Habeas Corpora* or *distringas* with a *Nisi Prius*, shall issue in order to the trial of the said issue at the Assizes or Sessions of *Nisi Prius*, and shall not proceed to trial at the first Assizes or Sessions of *Nisi Prius*, after the teste of such Writ of *Habeas Corpora* or *distringas*, then and in every such case, (except when a view by Jurors shall be directed as hereinafter mentioned, (such Plaintiff, Demandant or Defendant, whenever he shall think fit to try the said issue at any other Assizes or Sessions of *Nisi Prius*, shall sue forth a new Writ of *Venire Facias*, commanding the Sheriff or other Minister to return anew, twelve good and lawful men of the body of the Bailiwick qualified according to Law, and the rest of the Writ shall proceed in the accustomed manner, which Writ being duly returned, a Writ of *Habeas Corpora* or *distringas* with a *Nisi Prius* shall issue thereupon, upon which such Plaintiff, Demandant or Defendant, shall and may proceed to trial, as lawfully and effectually to all intents and purposes, as if no former Writ of *Venire Facias* had been prosecuted in that cause, and so *toties quoties*

As to cases  
where the  
plaintiff, &c.  
shall not  
proceed to  
trial.

New *venire*.

When defendant, &c., may bring on trial by proviso.

as the case shall require; And if any Defendant or Tenant shall in any cause which shall be at issue be minded to bring to trial any issue joined against him when by the practice of the Court he may do so by Proviso, he shall or may of the issuable Term next preceding such intended trial to be had at the next Assizes or Sessions of *Nisi Prius*, sue out a *Venire Facias* in the form aforesaid by Proviso, and prosecute the same by Writ of *Habeas Corpora* or *distringas* with a *Nisi Prius*, as lawfully and effectually to all intents and purposes as if no former Writ of *Venire* had been sued out, or returned in that cause and so *toties quoties* as the matter may require.

VII.—DRAWING JURY AT TRIAL.

Clause substituted for Section 36.

Ballots for drafting Petit Jurors, how to be made.

XXXVI. For this section, 16 Vic, c. 120, s. 6, is substituted:—“*And be it, &c.*, That the name of each man who shall be summoned and empannelled as a Petit Juror upon the general Precept for any Sittings or Sessions of Assize, *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace or County Court, with his place of abode and addition, shall be written distinctly on a piece of parchment, card or paper, such pieces of parchment, card or paper being all as nearly as reasonably may be of the form and size following, viz:—

DAVID BOOTHE,  
of Lot No. 11, in the 7 Con. of Albion,  
MERCHANT.

To be placed in an urn or box of a certain description.

and shall be delivered to the Clerk of Assize, Marshal or other Clerk of such Court by the Sheriff, and shall, by the direction and care of such Sheriff, be put together in a box or urn to be provided for that purpose, and when any issue shall be brought on to be tried by the Jurors returned upon such

general Precept, such Clerk of Assize, Marshal or other Clerk of such Court, shall, in open Court, cause such box or urn to be shaken so as sufficiently to mix such pieces of parchment, card, or paper, and then draw out twelve of the said parchments, cards or papers one after another, (causing the said box or urn to be shaken after the drawing of each name) and if any of the men whose names shall be so drawn shall not appear, or shall be challenged and set aside, then such further number until twelve men be drawn, who shall appear, and after all just causes of challenge allowed, shall remain as fair and indifferent, and the said twelve men so first drawn and appearing and approved as indifferent, their names being noted in the Minute Book of such Clerk of Assize, Marshal or other Clerk of such Court, and they being sworn, shall be the Jury to try the issue, and the names of the men so drawn and sworn shall be kept apart by themselves until such Jury shall have given in their verdict, and the same shall be recorded, or until such Jury shall by consent of the parties, or by leave of the Court, be discharged, and then the same names shall be returned to the box or urn, there to be kept with the other names remaining at that time undrawn, and so *toties quoties* as long as any issue remains to be tried."

XXXVII. *And be it, &c.*, That if any issue shall be brought on to be tried at any of the said Sittings or Sessions before the Jury in any other issue shall have brought in their verdict, or being discharged, it shall be lawful for the Court to order twelve of the residue of the said Parchments, Cards or Papers not containing the names of any of the Jurors who shall not have so brought in their verdict or been discharged, to be drawn in the manner last aforesaid, for the trial of the issue which shall be so brought on to be tried.

XXXVIII. *And be it, &c.*, That notwithstanding the two last preceding Sections, where no objection shall be made on the part of the Queen, or any other party, it shall be lawful for the Court to try any issue with the same Jury that shall have previously tried, or been drawn to try any other issue without their names being returned to the box or urn, and re-

Mode of drawing the same.

Jurors who have not brought in verdict, not to be included in any ballot.

By consent, the same jury may try several causes.

drawn or to order the name or names of any man or men in such Jury, whom both parties may consent to withdraw or who may be justly challenged or excused by the Court to be set aside, and another name or other names, to be drawn from the box or urn, and to try the issue with the residue of such original Jury, and with such man or men, whose name or names shall be so drawn, and who shall appear and be approved as indifferent, and so *toties quoties* as long as any issue remains to be tried.

## VIII.—SPECIAL JURIES.

Either party may demand a special jury, except in cases of treason or felony.

XXXIX. *And be it, &c.*, That it shall be in the power of Her Majesty, or any prosecutor, Relator, Plaintiff, or Defendant, and of any Defendant or Tenant in any case whatsoever, whether civil or criminal or on any Penal Statute, excepting only on Indictment for Treason or Felony, to have the issues joined in any such cases and triable by a Jury, tried by a Special Jury to be struck as hereinafter provided upon suing out the necessary Jury Process for that purpose, and procuring such Special Jury to be struck and duly summoned for the day on which the trial of such case is to be had, and every Jury so struck shall be the Jury returned for the Trial of such issue: Provided always, that in the event of a new Trial being ordered in any such case after a verdict of any such Jury, the *venire facias juratores* shall set forth the names of the Jurors who sat on the first trial of such cause, or in the event of more trials than one having been previously had, the names of all Jurors who shall have sat upon any of such trials. And none of the Jurors who shall have so sat on any such former trial shall be returned, or sit as Jurors upon any subsequent trial of the same cause.

Proviso: in case of a new trial.

*Venire Facias* for special jury, how sued out and endorsed.

XL. *And be it, &c.*, That in every such case the party desiring such Special Jury to be struck, whether an actor in such cause or not, shall have a right in person, or by his Attorney or Agent, to sue out a Writ of *venire facias juratores* for that purpose, and every such Writ before it shall be delivered to the Sheriff or other Officer or Minister to whom it shall be directed, shall be indorsed with a direction to such

Sheriff or other Officer or Minister requiring him to return a Special Jury on the same, and every such Sheriff or other Officer or Minister upon receipt of any such *venire facias*, so endorsed as aforesaid, shall, by a Memorandum in writing upon such Writ, appoint some convenient day and hour for striking such Special Jury, the day and hour to be so fixed for such purpose being sufficiently distant to enable the party suing out the said *venire* to give the necessary notice to the opposite party, as hereinafter provided.

XLI. *And be it, &c.*, That in any such case the party, his Attorney or Agent suing out such *venire facias*, shall give notice in writing to the opposite party, his Attorney or Agent, that he had sued out a *venire facias* in such case for the purpose of having a Special Jury struck therein, and of the day and hour appointed by the Sheriff or other Officer or Minister for striking the same, which notice shall be served on such last mentioned party, his Attorney or Agent, at least four days before the day so appointed, and an Affidavit or Affirmation of such service, or an admission in writing under the hand of the Attorney or Agent on whom it may have been served, shall be produced to such Sheriff or other Officer or Minister at the time appointed for striking such Special Jury, and in default thereof the said Sheriff or other Officer or Minister shall not proceed to strike such Special Jury upon such Appointment.

Notice to be given to the other party of the time when the Jury is to be struck.

XLII. *And be it, &c.*, That every Special Jury to be struck under the authority of the thirty-ninth section of this Act, shall, except as hereinafter provided, consist solely of persons whose name shall appear on either the Roll of Grand Jurors for the Superior Courts or on the Roll of Grand Jurors for the Inferior Courts for the year in which the Writ of *venire facias* upon which such Jury shall be struck is returnable, and the same shall be struck in the manner hereinafter provided.

Special Juries to be taken only from rolls of Grand Jurors.

XLIII. *And be it, &c.*, That every such Special Jury shall be struck in the following manner, that is to say: the Sheriff having furnished himself with a set of Ballots or pieces of parchment, card or paper, of as uniform and convenient size as

Mode of Balloting for a Special Jury.

reasonably may be, and containing the same number of Ballots as there are numbers on the respective Grand Jurors' Rolls from which the said Special Jury is to be struck, and upon which ballots shall be printed or written, the whole of the number of such Grand Jurors' Rolls allowing one number to each ballot, and distinguishing each number by the letters S. C. or I. C. according as it shall belong to the Roll of Grand Jurors for the Superior Courts, or to the Roll of Grand Jurors for the Inferior Courts, shall, at the office of the Clerk of the Peace, at the time appointed for such purpose as aforesaid, in the presence of all the parties in the case and of the Attorneys and Agents (if they respectively choose to attend, or if the said parties, their Attorneys or Agents, all or any of them do not attend, then upon such proof as is hereinbefore provided of the service of the notice of striking such Special Jury in their absence,) put all the said Ballots in a box or urn, to be by him provided for that purpose, and after having caused the said box or urn to be shaken so as sufficiently to mix the said Ballots, shall draw out of the said box or urn forty of the said numbers, one after another, and shall, as each number is drawn, refer to the corresponding number in the Grand Jurors' Roll, to which such Ballot shall belong, and read aloud the name to which such number is appended in the said Roll. And if at the time of so reading any such name, either party, or his Attorney or Agent, shall object that the man whose name shall be so drawn is in any manner incapacitated from serving on the said Jury, and shall also then and there prove the same to the satisfaction of such Sheriff, such name shall be set aside, and the said Sheriff shall instead thereof draw out of the said box or urn another number, and shall in like manner refer to the corresponding number in the Grand Jurors' Roll, to which such Ballot shall belong, and read aloud the name to which such number is appended in the said Roll. Which name may be in like manner set aside, and other numbers and names shall in every such case be restored to, according to the mode of proceeding hereinbefore described, for the purpose of supplying names in the places of those set aside, until the whole number of forty names not liable to be set aside shall be com-

As to Jurors  
&c., objected  
to, and  
objection  
proved.

pleted. And if in any case it shall so happen that the whole number of forty names cannot be obtained from the said Grand Jurors' Rolls, in such case the said Sheriff shall in like manner ballot such a number of names from the Grand Jurors' Rolls in the Jurors' Book of the nearest year for which there shall be a Jurors' Book or certified copy thereof, in the office of the said Clerk of the Peace, in addition to those already taken from the first mentioned Grand Jurors' Rolls, as shall be required to make up the full number of forty names. And the said Sheriff shall thereupon make out a list of the forty names, together with their respective places of abode and additions, from which List, after a reasonable time allowed in the discretion of such Sheriff for enquiry, and consideration respecting the same, each party, his Attorney or Agent shall strike out twelve names, such names being so struck out by such parties one by one alternately, the party suing out such *venire facias* commencing. And the Sheriff shall thereupon return upon such *venire facias*, and summon or cause to be summoned thereon the sixteen persons whose names shall remain on such List to appear on the day appointed for the trial of such cause. And from such sixteen persons, or so many of them as shall appear in obedience to such summons, shall be taken by ballot in the manner hereinbefore by the thirty-sixth section of this Act prescribed for the drawing of Petit Jurors from the General Panel therein mentioned, a Special Jury for the trial of such cause.

Provision if  
forty names  
cannot be  
obtained  
from the  
rolls.

List of  
Jurors to be  
made out;  
each party to  
strike out  
twelve.

Remaining  
sixteen to be  
summoned,  
and Jury  
taken from  
them.

XLIV. *And be it, &c.*, That if either of the parties in such cause shall neglect to attend either in person or by Attorney or Agent at the striking of such Special Jury, the Sheriff, upon production of such affidavit, affirmation or admission of service of such notice as aforesaid, and after waiting at least half an hour for such absent party, shall, if requested by the other party, his Attorney or Agent, proceed to strike such Special Jury, and in case of the continued absence of such first mentioned party, shall on his behalf strike out of the said List the twelve names to be by such party struck out of such list as aforesaid.

Sheriff may  
strike in  
place of  
party failing  
to attend.

Superior  
Courts may  
order cases  
of certain  
kinds to be  
tried by  
a Jury of  
men con-  
versant with  
the subject.

XLV. *And be it, &c.*, That it shall and may be lawful for either of Her Majesty's Superior Courts of Common Law at Toronto, in Term time, or any Judge thereof in Vacation, in suits between Merchant and Merchant, or Trader and Trader, or Merchant and Trader, involving one or more questions of mercantile consideration, and in suits between Manufacturer and Manufacturer, or Mechanic and Mechanic, or Manufacturer and Mechanic involving one or more questions of Mechanical or scientific consideration, and in suits between any of the former and any of the latter involving one or more of any of such questions without the consent of parties; and in suits between any other persons involving one or more questions of scientific consideration, with the consent of the parties to such last mentioned suits, to order and direct any such cause to be tried by a Special Jury of men belonging to the appropriate kind or kinds of business as aforesaid, or of scientific men respectively, as the case may be: Provided always that every such Rule not made with the consent of parties, shall be made only upon a rule to shew cause or summons upon which the adverse party shall have had the usual opportunity of being heard as in other cases.

And in cer-  
tain other  
cases by  
consent of  
parties.

Such *extra*  
Special  
Juries shall  
be struck by  
elisors.

XLVI. *And be it, &c.*, That in every Rule for striking any such Special Jury as is provided for in the last preceding section of this Act, it shall be ordered that such Special Jury shall be struck, and the names of such Special Jury certified to the Sheriff by three Elisors to be appointed in writing by endorsement upon such Rule, one by the Plaintiff in such cause, his Attorney or Agent, another by the Defendant, his Attorney or Agent, and the third by the Clerk of the Crown and Pleas of the Court in which the cause shall be pending, or in case of such Elisors disagreeing then by the majority of such Elisors, all three being present, and that the Sheriff shall return and summon upon the *venire facias* in such cause, such persons as such Elisors, or the majority of them, shall certify to him as having been struck as Special Jurors for the trial of the same. And the indorsement to return a Special Jury on the *venire facias* in every such cause, shall direct

Indorsement  
on *venire*

the Sheriff to return a Special Jury of men of the appropriate kind or kinds of business as aforesaid, or of scientific men, as the case may be, pursuant to such certificate as he may receive from the Elisors (naming them), or a majority of them in that behalf appointed by such Rule.

XLVII. *And be it, &c.*, That every such Special Jury as is provided for by the forty-fifth section of this Act, shall be struck in the following manner, that is to say: the three Elisors or a majority of them, upon the delivery to them of a copy of the Rule for such Special Jury, and of the *venire facias* for the return of such Jury, shall, at the request of either of the parties in such cause, make an appointment in writing of a day, hour and place for striking such Special Jury as by the forty-third section of this Act is provided with respect to other Special Juries. And upon notice of such appointment being served upon the opposite party, and such service proved as in the same section is provided with respect to such other special Juries, the said Elisors shall, at the time and place so appointed and after waiting the time prescribed by the said forty-third section, proceed to make a list of the names and additions of all such persons whose names shall appear on any of the Jurors' Rolls for the year in which such *venire facias* is returnable, who shall in their judgment come within the description of persons required to be struck on such Jury according to the exigency of such Rule. And if there shall not be forty of such persons to be found upon such Rolls or either of them, then the said Elisors, or the majority of them, if they shall know of a sufficient number of persons answering such description within the county, or union of counties, whether such persons shall be otherwise qualified and liable to serve, or exempt from serving as Jurors or not, provided they be not persons disqualified from any of the causes set forth in the tenth section of this Act, or either of them, shall add the names and additions of a sufficient number of such persons to such list to complete the same to forty names. And if there shall be the names of more than forty of such persons on such Rolls, the said Elisors, or the majority of them, from the

Mode of striking such Jury by elisors.

Elisors to attend.

If there be not forty proper persons on the rolls.

If there be more than forty such.

names of all persons on such Rolls who shall answer such description, shall, in the manner prescribed by the forty-third section of this Act, for the striking other Special Juries, select forty of such names. And the list of such forty names being thus completed, the same shall be reduced in the same manner as hereinbefore by the said forty-third section is provided with respect to such other Special Juries. And the said Elisors shall thereupon give a certificate to each of the parties to such suit, their Attorney or Agent, certifying the names and additions of the sixteen persons whose names shall remain upon such list; and the Sheriff or other Officer or Minister to whom such *venire facias* shall be directed, shall, upon receipt of either of such certificates, return and summon such sixteen persons upon such *venire facias* accordingly, and from these sixteen persons so returned, shall be selected a jury to try such cause, in the same way and under and subject to the like restrictions as by the said forty-third section of this Act is enacted with respect to other Special Juries; Provided always, that every such person so struck on any such Special Jury shall be liable to serve on the same although exempted from serving upon Juries by the general provisions of the fifth, sixth and seventh sections of this Act as hereinbefore provided.

Reducing List.

Elisors to certify sixteen Jurors; who shall be summoned accordingly.

And Jury taken from them.

XLVIII. *And be it, &c.*, That nothing herein contained shall be construed to prevent the same Special Jury, however nominated, from being summoned and returned, to try any number of causes so as the parties in every such cause or their Attorneys shall have signified their assent in writing to the Sheriff or other Officer or Minister to whom the return of Juries in such cases shall belong, to the nomination and return of such Special Jury for the trial of their respective causes: Provided always, that it shall be lawful for the Court at which he shall be summoned to attend, if it shall so think fit, upon the application of any man who shall have served upon one or more Special Juries at any Assizes or Sessions of *Nisi Prius*, to discharge such man from serving upon any other Special Jury during the same Assizes or Session of *Nisi Prius*.

Same special Jury may by consent try any number of causes.

Proviso; in favour of Jurors having served once.

As to fees and costs of trial by

XLIX. *And be it, &c.*, That the party who shall sue out a *venire facias* for a Special Jury in any cause, shall pay the

fees for striking such Special Jury, the fees of the Jurors and all the expenses occasioned by the trial of the cause by such Special Jury, and shall not have any further or other allowance for the same upon taxation of costs, than such party would be entitled to, in case the cause had been tried by a Common Jury, unless the Judge before whom the cause is tried, shall, immediately after the verdict in open Court, or afterwards upon a Summons at Chambers, certify under his hand that the same was a cause proper to be tried by a Special Jury.

IX.—VIEWS, JURIES DE MEDIETATE LINGUÆ AND INQUEST.

L. *And be it, &c.*, That when in any case either Civil or Criminal, or on any Penal Statute depending in either of Her Majesty's Superior Courts of Common Law at Toronto, it shall appear to such Court or to any Judge thereof in vacation, that it will be proper and necessary that some of the Jurors who are to try the issues in such case, should have the view of the place in question, in order to their better understanding the evidence that may be given upon the trial of such issues; in every such case, such Court, or any Judge thereof in vacation, may order a Rule to be drawn up containing the usual terms, and also requiring, if such Court or Judge shall so think fit, the party applying for the view to deposit in the hands of the Sheriff a sum of money to be named in the Rule, for payment of the expenses of the view and commanding Special Writs of *venire facias* and *distringas* to issue, by which the Sheriff or other Officer or Minister, to whom the said Writs shall be directed, shall be commanded to have six or more of the Jurors named in such Writs, or in the Panels thereunto annexed, (who shall be mutually consented to by the parties, or if they cannot agree, shall be drawn by ballot from such Panel as hereinafter provided,) at the place in question, some convenient time before the trial, who then and there shall have the place in question shewn to them by two persons in the said Writs named, to be appointed by the Court or Judge; and the said Sheriff or other Officer or Minister, who is to execute any such writ, shall, by a Special return upon the same, certify that the view hath been had according to the command of the same, and shall specify the names of the viewers.

Special  
Jury.

Superior  
Courts may  
grant views  
when they  
shall think  
them necessary—con-  
ditions, &c.

Certificate  
of view.

How viewers shall be chosen, if not agreed upon by the parties.

LI. *And be it, &c.*, That when the parties in any such case shall not agree as to the Jurors to be nominated to take such view, such viewers shall, by the Sheriff or other Officer or Minister, to whom the *venire facias juratores* in such case shall be directed, be drawn by ballot from the Panel returned upon such *venire facias*, at some time and place to be appointed by such Sheriff or other Officer or Minister for that purpose, in the like manner as by the thirty-sixth section of this Act is provided for drawing Juries from the general Panel at *Nisi Prius*: Provided always nevertheless, that no such Sheriff or other Officer or Minister shall proceed to draw such reviewers from such Panel without having first given at least forty-eight hours' notice in writing to the respective parties in such suit, of the day, hour and place of such drawing.

Viewers to be the first sworn on the Jury.

LII. *And be it, &c.*, That when a view shall have been allowed in any case, those men who shall have had the view, or such of them as shall appear upon the Jury to try the issue, shall be first sworn, and so many only shall be added to the viewers who shall appear, as shall after all defaults and challenges, allowed, make up a full Jury of twelve.

Right of alien to be tried by jury *de medietate linguae* saved.

LIII. *And be it, &c.*, That nothing herein contained shall extend or be construed to extend to any Jury of matrons or any Writ *de ventre inspiciendo*, or to deprive any alien not naturalized, indicted or impeached of any felony or misdemeanor, of the right of being tried by a Jury, *de medietate linguae*, but that on the prayer of every such alien so indicted or impeached, the Sheriff shall by command of the Court return for one half of the Jury a competent number of aliens, if so many there be in the Town or place where the trial is had, and if not then so many aliens as shall be found in the same town or place if any, and that no such alien Juror shall be liable to be challenged for want of any qualification required by this Act, but every such alien may be challenged for any other cause in like manner as if he were qualified by this Act.

What persons only may be

LIV. *And be it, &c.*, That no man shall be liable to be summoned or impanelled to serve as a Juror in any County,

City or Town in Upper Canada, upon any inquest or inquiry <sup>sumoned as Jurors on inquests.</sup> to be taken or made before any Sheriff or Coroner, by virtue of any writ of inquiry, or by or before any Commissioners appointed under the Great Seal of the Province, or the Seal of any Court in Upper Canada, having general jurisdiction throughout the same, or having general jurisdiction throughout any County of the same, or throughout any City or Town and the liberties or precincts thereof within the same, unless the name of such person shall appear upon one or other of the Jurors' Rolls, for the year in which such person shall be called upon to serve on such inquest or inquiry: Provided always, <sup>Proviso as to certain Inquests.</sup> that nothing herein contained shall extend to or be construed to extend to any inquest to be taken by or before any Coroner of any County, Union of Counties, City or Town, by virtue of his office, or to any inquest or inquiry to be taken or made by or before any Sheriff, High Bailiff or Coroner of any County, Union of Counties, City or Town, but that the Coroners, Sheriffs and High Bailiffs aforesaid, in all such Counties, Unions of Counties, Cities and Towns respectively, when acting otherwise than under a writ of enquiry, shall and may respectively take and make all inquests and inquiries by Jurors of the same description as they have been used and accustomed to do before the passing of this Act.

#### X.—CHALLENGES.

LV. *And be it, &c.*, That if any man shall be returned as a Juror for the trial of any issue in any cause civil or criminal, <sup>Want of qualification to be cause.</sup> or on any Penal Statute in any of the Courts hereinbefore mentioned, who shall not be qualified according to this Act, the want of such qualification shall be a good cause of challenge, and he shall be discharged upon such challenge, if the Court shall be satisfied of the fact; Provided always, that <sup>Proviso as to Special Jurors.</sup> nothing herein contained shall extend in any wise to any Special Juror.

LVI. *And be it, &c.*, That if any man returned as a Juror <sup>Want of freehold, not a cause.</sup> for the trial of any such issue, shall be qualified in other respects according to this Act, the want of freehold shall not on such trial in any case civil or criminal, or on any Penal

Statute, be accepted as a good cause of challenge either by the Crown or by the party, nor as cause for discharging the man so returned upon his own application; any law, custom or usage to the contrary notwithstanding.

Want of a knight, no cause.

LVII. *And be it, &c.*, That no challenge shall be taken to any Panel of Jurors for want of a Knight's being returned on such Panel, nor any array quashed by reason of any such challenge; any law, custom or usage to the contrary notwithstanding.

Peremptory challenge limited.

LVIII. *And be it, &c.*, That no person arraigned for murder or felony shall be admitted to any peremptory challenge above the number of twenty, and that the defendants arraigned for any misdemeanor, if they, or such of them as may be tried together, shall unite in such challenge, may challenge peremptorily without assigning any cause for the same, any two of the Jurors who may be called upon to serve on such trial.

Crown to challenge for cause only.

LIX. *And be it, &c.*, That in cases in which the Queen shall be a party, those who sue for the Queen shall not be allowed a challenge to any Juror who may be called to serve upon the Jury in any such case, except for cause to be assigned, tried and disposed of according to the custom of the Court.

Peremptory challenge in civil cases.

LX. *And be it, &c.*, That in all civil cases, and cases upon any Penal Statute, each party, the plaintiff or plaintiffs, demandant or demandants, on one side, and the defendant or defendants, tenant or tenants, on the other, may each challenge peremptorily without assigning any cause for the same, any two of the Jurors who may be called upon to serve on the trial of any such cause; Provided always nevertheless, that the Juror so challenged shall not be a Special Juror, struck upon such Jury according to the provisions in this Act contained for the striking of Special Juries.

Proviso; as to Special Jurors.

#### XI.—SUMMONING JURORS.

Time during which jurors must be

LXI. *And be it, &c.*, That the summons of every man to serve on Grand Juries and on Petit Juries, not being Special

Juries, in any of the Courts aforesaid, shall be made by the proper officer, eight days at the least before the day on which the Juror is to attend, by delivering to the man to be summoned, or in case he shall be absent from the usual place of his abode, by leaving with some grown person there inhabiting, a note in writing under the hand of the Sheriff or other proper Officer, containing the substance of such summons, and the summons of every man to serve on Special Juries in any of the Courts aforesaid shall be made by the like person and in the like manner as aforesaid, three days at the least before the day on which the Special Juror is to attend; which last mentioned day may be any day after the commission day of the Assizes at which the cause is to be tried as well as such commission day, and the Judges of the different Courts may by any general rule to be made by them according to law for that purpose, make such regulations as they may deem expedient for regulating the time and manner of bringing on such Special Jury trial at *Nisi Prius*.

LXII. *And be it, &c.*, That the summons of every man to serve upon any Inquest or Inquiry, before any Sheriff or Coroner, or before any Commissioners appointed under the Great Seal of this Province or under the Seal of either of Her Majesty's Superior Courts of Common Law at Toronto, or to serve as a talesman upon any Jury either for the trial of an issue, or assessment of damages, in any of the Courts aforesaid, and of any matron to serve on a Jury *de venire inspiciendo*, shall notwithstanding any thing in this Act contained, be made by the proper officer in the manner heretofore used and accustomed in such cases respectively, as if this Act had not been passed.

Jurors on inquest, &c., and matrons *de ventre*, to be summoned as before.

## 13 &amp; 14 VICTORIA.—CHAP. 58.

*An Act to alter the Practice of the Law in actions of Dower, in Upper Canada.*

[Passed 10th August, 1850.]

Preamble.

WHEREAS it is expedient and necessary to alter the Practice of the Law for the recovery of Dower, and to give a more easy and less expensive remedy for the recovery thereof, than now exists in Upper Canada: *Be it, &c.*, That from and after the passing of this Act, the action of Dower at Law shall be commenced by filing a declaration or plaint (in the form heretofore used) in the Office of the Clerks of the Crown, or Common Pleas, or of any Deputy Clerk of the Crown or Common Pleas, in any County where the action is brought: Provided always, that any action of Dower shall be brought in the County or United Counties wherein the lands or tenements of which Dower is sought to be recovered in such action are situate, and that the declaration may be served on the tenant of the freehold in any part of Upper Canada, either within or without the limits of the County or United Counties in which the action is brought.

How actions of Dower shall be commenced

Proviso: Where the action shall be brought, &amp;c.

Copy of declaration, &amp;c., to be served on tenant, and how.

II. *And be it, &c.*, That a copy of such declaration and of the notice to this Act annexed (marked Schedule A) may be served by any literate person personally, within one year from the filing thereof, on the tenant of the freehold, if within the jurisdiction of the Court, and if not, then upon the tenant of the land of which Dower is demanded, and if such tenant do not plead agreeably to the notice, the demandant therein, upon affidavit of the due service of such declaration, and notice being made and filed, shall be entitled to proceed thereon as in personal actions.

If the land be vacant, and tenant cannot be personally served.

III. *And be it, &c.*, That if the land of which Dower is demanded is vacant, and the tenant of the freehold cannot be personally served with declaration as hereinbefore provided, then and in such case, service may be made as in actions of ejectment: Provided always, that such service when not personal upon the tenant, shall be allowed by the Court or a

Judge thereof, and after filing such declaration and affidavit of service, and the order or rule of allowance thereof, the demandant may after the time for pleading has expired proceed thereon, as if personal service had been effected.

IV. *And be it, &c.*, That whenever the tenant of the land shall not be personally served with declaration and the demandant shall proceed to the trial of the right of Dower in the land, the said demandant before the entry of any verdict in favor of such right shall prove the marriage *seisin* and death of the husband in the same manner as if the tenant had pleaded, traversing such marriage *seisin* and death of the husband.

What must be proved if tenant be not personally served.

V. *And be it, &c.*, That costs shall be allowed to the demandant in all cases, whether damages be recoverable or not, in the same manner as costs are now allowed to a plaintiff or defendant in personal actions; provided it shall be made appear on the trial that a demand in writing had been made of the Dower claimed from the tenant one month before action brought, the action to be brought within a year from demand as aforesaid; provided also, that the tenant shall not make it appear on the trial, that he or she offered to assign the Dower demanded before action brought.

Costs allowed to demandant.

Proviso.

VI. *And be it, &c.*, That every tenant to whom any declaration or plaint in Dower shall be delivered, shall forthwith give notice thereof to his Landlord, or to the Servant, Attorney, Agent, Bailiff or Receiver of his Landlord, under the penalty of forfeiting three years improved or rack rent of the premises so demised, holden, or in the possession of such tenant to the person of whom he holds, to be recovered by action of debt to be brought in any of Her Majesty's Courts of Record in this Province: Provided always, that a recovery had against a mere occupier of the land, and without notice to the *Terre Tenant* shall have no greater effect than a recovery in ejectment would have had for the quantity of land assigned as Dower in such recovery.

Tenant served to give notice to his landlord.

Penalty for not doing so.

Proviso.

## SCHEDULE A.

In the Queen's Bench, Common Pleas, &c.,

A. B. who was (or is, as the case may be) the widow of  
C. D. deceased, demandant, and E. F. tenant.

Take notice, that a declaration of which the annexed is a true copy, was this day filed in the Office of the Clerk (or Deputy, as the case may be) at — in the County of — (or United Counties of — as the case may be) and unless you plead thereto within twenty days from the service hereof, judgment will be signed against you by default, and subsequent proceedings and execution thereof follow thereon, according to law.

Dated the — day of — 18 — J. K., Attorney, &c., residing at — in the County of — (or United Counties of — as the case may be)

To E. F. of the Town of — (as the case may be) the above tenant.

## 13 &amp; 14 VICTORIA.—CHAP. 59.

*An Act to amend an Act passed in the fifth year of the Reign of His late Majesty King William the Fourth, intituled, An Act to prevent the unnecessary multiplication of Law-suits, and increase of costs in actions on Notes, Bonds, Bills of Exchange and other Instruments.*

[Passed 24th July, 1850.]

Preamble.

WHEREAS it is expedient to extend the provisions of an Act of the Parliament of Upper Canada, passed in the fifth year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to prevent the unnecessary multiplication of Law-suits, and increase of costs in actions on Notes, Bonds, Bills of Exchange and other instruments: Be it, &c.,* That from and after the passing of this Act, so much of the second and twelfth sections of the said recited Act as prevents the application of the said Act and all or any of the provisions thereof, as to Promissory Notes, Bonds, Bills of Exchange, Recognizances or other Instruments wherein or whereby the

Part of Sections 2 and 12 of the Act of U. C. 5 W. IV. c. 1, repealed.

sum expressed to be payable exceeds the sum of one hundred pounds, be and the same is hereby repealed.

II. *And be it, &c.*, That this Act shall not apply to any action or suit on any Bond, Promissory Note, Bill of Exchange or other Instrument wherein or whereby the sum expressed to be payable shall exceed the sum of one hundred pounds, which shall have been commenced or brought by mesne process having been issued therein before the passing of this Act, but any such action or suit may be conducted to judgment and execution as if this Act had not been passed.

Repeal not to affect suits now commenced.

13 & 14 VICTORIA.—CHAP. 60.

*An Act to amend the Law relating to Slander and Libel.*

[Passed 24th July, 1850.]

WHEREAS it is expedient and necessary to alter and amend the Law relating to Slander and Libel: *Be it, &c.*, That from and after the passing of this Act, it shall and may be lawful on the trial of any action, indictment or information, for the making or publishing any libel, on the plea of not guilty pleaded, that the jury sworn to try that issue may give a general verdict of guilty or not guilty upon the whole matter put in issue in such action, or upon such indictment or information, and shall not be required or directed by the Court or Judge before whom such action, indictment or information shall be tried, to find the defendant guilty merely on the proof of publication by such defendant of the paper charged to be a libel, and of the sense ascribed to the same in such action, indictment or information: Provided always, that the Court or Judge before whom such trial shall be had, shall, according to their or his discretion, give their or his opinion and directions to the jury on the matter in issue, as in other cases. And provided also, that the jury may on such issue find a special verdict, if they shall think fit so to do, and that the defendant, if found guilty, may move in arrest of judgment on such ground and in such manner, as he might have done before the passing of this Act.

Preamble.

Jury not to be directed to return a verdict of guilty on the mere proof of the publication, and of the sense ascribed.

Proviso.

Proviso.

Defendant may prove in mitigation that he offered a written apology.

II. *And be it, &c.*, That in any action for defamation it shall be lawful for the defendant, when he has pleaded not guilty only, or has suffered judgment by default, or judgment has been given against him on demurrer, to give in evidence in mitigation of damages, that he made or offered a written or printed apology to the plaintiff for such defamation, before the commencement of the action or as soon afterwards as he had an opportunity of doing so, in case the action shall have been commenced before there was an opportunity of making or offering such apology.

Defendant may plead that the libel was inserted without malice, or gross negligence, and that he offered to publish an apology.

III. *And be it, &c.*, That in an action for libel contained in any public newspaper or other periodical publication, it shall be competent for the defendant to plead that such libel was inserted in such newspaper or other periodical publication, without actual malice, and without gross negligence, and that before the commencement of the action or at the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication a full apology for the said libel, or if the newspaper or periodical publication in which the said libel appeared should be ordinarily published at intervals exceeding one week, had offered to publish the said apology in any newspaper or periodical publication to be selected by the plaintiff in such action; and that any defendant shall, upon filing such plea, be at liberty to pay into Court a sum of money by way of amends for the injury sustained by the publication of such libel, and such payment into Court shall be of the same effect, and be available to the same extent and in the same manner, and be subject to the same rules and regulations as to payment of costs, and the form of pleading, except so far as regards the additional facts hereinbefore required to be pleaded by such defendant, as if actions for libel had not been excepted from the personal actions in which it is lawful to pay money into Court under an Act of the Parliament of Upper Canada, passed in the Session held in the seventh year of the Reign of His late Majesty, intituled, *An Act for the further amendment of the Law and the better advancement of Justice*, and that to such plea to such action it shall be competent to

And may pay money into Court as amends.

Notwithstanding exception in Act of U. C. W. 4, c. 3.

the plaintiff to reply generally, denying the whole of such plea. Reply to such plea may be general.

IV. *And be it, &c.*, That if any person shall publish or threaten to publish any libel upon any other person, or shall directly or indirectly threaten to print or publish, or shall directly or indirectly propose to abstain from printing or publishing, or shall directly or indirectly offer to prevent the printing or publishing, of any matter or thing touching or concerning any other person, with intent to extort any money or security for money, or any valuable thing, from such or any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust, every such offender on being convicted thereof, shall be liable to be fined any sum not exceeding One Hundred Pounds, and imprisoned in the Common Gaol for a period not exceeding two years. Punishment for extorting money by threatening to publish or promising to prevent the publication of a libel.

V. *And be it, &c.*, That if any person shall maliciously publish any defamatory libel, knowing the same to be false, every such person, being convicted thereof shall be liable to a fine of not more than Fifty Pounds, and to be imprisoned in the Common Gaol for a period not exceeding one year. Punishment for publishing a libel knowing it to be false.

VI. *And be it, &c.*, That if any person shall maliciously publish any defamatory libel, every such person, being convicted thereof, shall be liable to fine and imprisonment, or both, as the Court may award, so as such fine do not exceed the sum of Twenty-five Pounds, nor such imprisonment the period of six calendar months. Punishment for publishing any libel.

VII. *And be it, &c.*, That on the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that such matters charged should be published; and that to entitle the defendant to give evidence of the truth of such matters charged as a defence to such indictment or information, it shall be necessary for the defendant, in pleading to the said indictment or inform- Truth being pleaded may be inquired into, but shall not be a defence, except in certain cases.

ation, to allege the truth of the said matters charged in the manner now required in pleading a justification to an action for defamation, and further to allege that it was for the public benefit that the said matters charged should be published, to which plea the prosecutor shall be at liberty to reply generally, denying the whole thereof: And that if after such plea the defendant shall be convicted on such indictment or information, it shall be competent to the Court in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the said plea, and by the evidence given to prove or disprove the same: Provided always, that the truth of the matters charged in the alleged libel complained of by such indictment or information shall in no case be inquired into without such plea of justification: Provided also, that in addition to such plea, it shall be competent for the defendant to plead not guilty, and that no defence shall be taken away or prejudiced under the plea of not guilty, which the defendant can now make under such plea to any indictment or information for a defamatory libel.

Reply may  
be general.

As to aggra-  
vation or  
mitigation of  
offence by  
such plea.

Proviso.

Proviso.

In certain  
cases defend-  
ant may  
prove publi-  
cation  
without his  
authority,  
&c.

VIII. *And be it, &c.*, That whenever upon the trial of any indictment or information for the publication of a libel, under the plea of not guilty, evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent or knowledge, and that the said publication did not arise from want of due care or caution on his part.

Private  
prosecutor, if  
successful, is  
entitled to  
costs, and so  
of Defendant.

IX. *And be it, &c.*, That in the case of any indictment or information by a private prosecutor for the publication of any defamatory libel, if judgment be given against the defendant, he shall be liable for the costs sustained by the prosecutor by reason of such indictment or information; and if judgment be given for the defendant, he shall be entitled to recover from such prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs so to be recovered by the prosecutor or defendant respectively, to be taxed by the

Clerks of the Courts of Queen's Bench or Common Pleas in Toronto, or their respective Deputies in the counties where such trial shall be had, at the option of the party in whose favor such costs are to be taxed; such costs to be recoverable by Writ of Attachment on the order of any Judge of the Superior Courts of Common Law, or of any Judge of the County Court in the county in which such indictment or information shall have been tried, and all proceedings for the recovery of such costs shall be entitled in the Court of Oyer and Terminer for the County in which such trial has been had and such Writ of Attachment shall be returnable in either of the Superior Courts of Common Law as in other cases of Attachment, and on its return, such proceedings shall be had thereon as may now be had in any case of Attachment for non-payment of costs, pursuant to any order or rule of either of the said Superior Courts.

How recoverable.

Proceedings for recovery, how entitled.

X. *And be it, &c.*, That this Act shall be in force in Upper Canada only.

Act to apply to U. C. only.

13 & 14 VICTORIA.—CHAP. 61.

*An Act for rendering a Written Memorandum necessary to the validity of certain Promises and Engagements.*

[Passed 24th July, 1850.]

WHEREAS by an Act passed in England in the twenty-first year of the reign of King James the First, it was among other things enacted, that all actions of account and upon the case, other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract without specialty, and all actions of debt for arrearages of rent, should be commenced within six years after the cause of such action or suit, and not after; And whereas questions have arisen upon the proof of acknowledgments and promises to take the cases in such actions out of the operation of the said Statute: *Be it, &c.*, That in all actions on simple contract or debt of the nature hereinbefore mentioned, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or

Preamble.

English Act 21 James I, c. 16, recited

Written memorandum required to take the case out of Statute.

continuing contract whereby to take any case out of the operation of the said Act, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby; and that where there shall be two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor or adminis-

Case of two or more joint contractors, &c.

trator, shall lose the benefit of the said Act so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them, or by reason of any payment of any principal or interest made by any other or others of them; Provided

Proviso:

Where Plaintiff may be barred as to one or more Defendants, but not as to all.

always, that in actions commenced against two or more such joint contractors, executors or administrators, if it shall appear at the trial or otherwise that the plaintiff, though barred by the said recited Act or this Act, as to one or more of such joint contractors, or executors or administrators, shall nevertheless be entitled to recover against any other or others of the defendants, by virtue of a new acknowledgment, promise or payment as aforesaid, judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff.

As to non-joinder of Defendants who have good defence under the said Act and this Act.

II. *And be it, &c.*, That if upon any plea in abatement in any of the said actions for the non-joinder of any person or persons, who, it is alleged, ought to be sued jointly, it shall appear at the trial or otherwise, that the action could not, by reason of the said recited Act or this Act, or of either of them, be maintained against the other person or persons named in such plea, or any of them, the finding and judgment on such plea, shall be against the party pleading the same; and if after the pleading of such plea, the plaintiff, instead of proceeding in the said action, shall abandon or discontinue the same, and commence a new action against the defendant or defendants pleading such plea and the person or persons named therein, as jointly liable with such defendant or defendants, and it shall appear upon the trial or pleadings in such new action that such action could not, by reason of the said recited Act or this Act,

As to costs in new action, the first being discontinued on such plea.

be maintained against the person or persons named in the said plea in abatement and joined in the said new action, but against the original defendant or defendants alone, the plaintiff shall thereupon be entitled to recover against the original defendant or defendants, in the said new action, as well the costs of the original action so abandoned or discontinued on such plea in abatement, as the costs awarded to such other defendant or defendants so joined in the said action by reason of the pleadings of such plea, in addition to the debt or damages and costs recoverable against the said original defendant or defendants, and the said other defendant or defendants so joined in the said new action, and not liable therein, shall recover his or their costs against the plaintiff.

III. *And be it, &c.*, That no indorsement or memorandum of any payment written or made after the time appointed for this Act to take effect, upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of the said Statute. Indorsement &c., made by the payee, not to take a note, &c. out of the Statute.

IV. *And be it, &c.*, That the said recited Act and this Act, shall be deemed and taken to apply to the case of any debt on simple contract, or of the nature hereinbefore mentioned, alleged by way of set-off on the part of any defendant, either by plea, notice or otherwise. Statute to apply to set-off.

V. *And be it, &c.*, That no action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age, of any promise or simple contract made during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith. As to ratification of promise made during non-age.

VI. *And be it, &c.*, That no action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other party. As to representation regarding the character credit, &c. of a third party.

person, to the intent or purpose that such other person may obtain money, goods or credit thereupon, unless such representation or assurance be made in writing signed by the party to be charged therewith.

Statute of  
Frauds  
extended to  
contracts for  
goods to be  
delivered at  
a future  
time, &c.

VII. *And be it, &c.*, That the seventeenth section of an Act passed in England in the twenty-ninth year of the Reign of King Charles the Second, intituled, *An Act for the prevention of Frauds and Perjuries*, shall extend to all contracts for the sale of goods of the value of Ten Pounds currency, and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

Extent of  
Act.  
Commence-  
ment.

VIII. *And be it, &c.*, That this Act shall extend to Upper Canada alone, and shall take effect and commence on the First day of January, one thousand eight hundred and fifty-two.

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13 & 14 VICTORIA—CHAP 62.

*An Act to alter and amend the Act requiring Mortgages of Personal Property in Upper Canada to be filed.*

[Passed 24th July, 1850.]

Preamble,

WHEREAS the Law now in force in Upper Canada requiring Mortgages of Personal Property to be filed requires amendment, so as to require that every sale of goods and chattels which shall not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the things sold, shall be in writing; and so as to require that a copy thereof be filed in the same manner as a mortgage or conveyance by the said Act is required to be filed; and so as to require an affidavit that the mortgages and conveyances mentioned in the said Act, and the bills of sale in writing mentioned in this Act, are *bona fide* and just and not for the purpose of protecting such goods and chattels in the possession

of the mortgagee, or bargainee against the creditors of the mortgagor or bargainer: *Be it, &c.*, That the first Section of the Act passed in the twelfth year of Her Majesty's Reign, intituled, *An Act requiring Mortgages of Personal Property in Upper Canada to be filed*, be and the same is hereby amended by adding to the end thereof, as follows: "And that 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 the said Act; and that the mortgages and conveyances mentioned in the said Act and the writing or conveyance mentioned in this Act, shall be accompanied with an affidavit of the mortgagee or bargainee of such goods, sworn before a Commissioner of the Queen's Bench or Common Pleas, to the effect,—in the case of a mortgage, that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the said mortgage, that it was executed in good faith and for the express purpose of securing the payment of the money so justly due, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor,—and in case of an absolute sale, that the sale is *bona fide* and for good consideration (setting it forth) and not for the purpose of holding or enabling the bargainee to hold the goods mentioned therein against the creditors of the bargainer; otherwise such mortgage or sale shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith."

Sect. 1, of 12  
Vict. c. 74,  
amended.

The amend-  
ment as to  
sales of goods  
not immedi-  
ately  
delivered.

Affidavit  
required.

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13 & 14 VICTORIA.—CHAP. 75.

*An Act for the Protection of Mill-owners in Upper Canada.*

[Passed 24th July, 1850.]

WHEREAS it often happens that persons purchase Crown Lands and Clergy Reserves in Upper Canada from the Crown, which, at the time of the purchase, and of the issuing of the patent therefor, were in the whole or in part overflowed by the waters

Preamble.

Grantee of Crown not to recover damages for injury caused to lands by dam erected before patent issued in certain cases.

of some mill stream, in consequence of the erection and continuation of Mill Dams thereon: And whereas it often happens that such persons, at the time they purchase such Lands, are well aware of their being so overflowed, and have in consequence thereof obtained a reduction or allowance in the price paid for the same, but, nevertheless, obtain Patents for the whole of such Lots, and afterwards bring actions against the proprietors or occupiers of the Mills for the use of which such Dams have been erected: For remedy thereof, *Be it, &c*, That when in any action hereafter to be brought against the proprietor or occupier of any Mill, for the overflowing of, or injury to any Land, caused by the erection or continuation of any Dam for the purposes of such Mill, it shall appear that such overflowing or other injury was caused by the erection or continuation of a Dam which was built before the purchase by, and grant thereof to the Grantee of the Crown of such Land, and that such purchaser obtained a reduction in the price of such Land, or was otherwise indemnified in consequence of its being so overflowed or otherwise injured, then, the Jury on the trial of any such cause may take such facts into their consideration, and if they think it just and equitable, may, in consequence thereof, find a verdict for the Defendant in any suit so to be brought.

Defendant may plead the general issue, &c.

II. *And be it, &c.*, That in any such action, it shall and may be lawful for the Defendant to plead the general issue, and under such plea, on entering a note of this Act in the margin thereof, to avail himself of this Act and of the matters of defence herein given.

Extent of Act.

III. *And be it, &c.*, That this Act shall extend to Upper Canada only.

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## 14 &amp; 15 VICTORIA.—CHAP. 14.

*An Act to provide for the payment of Petit Jurors in Upper Canada.*

[Passed 2nd August, 1851.]

XIV. And to prevent unnecessary delay and expense, *Be it, &c.*, That every Court or Judge sitting for the trial of causes by Jury, may, in the discretion of such Court or Judge, peremptorily order the records to be entered, and the business of the Court to be proceeded with, on the first day of the sitting of the Court; any usage to the contrary notwithstanding.

Be Court may order records to be entered, &c. on first day of sitting.

(See C. L. P. A., 1850, s. 155.)

## 14 &amp; 15 VICTORIA.—CHAP. 64.

*An Act to amend and extend the Law relating to the remedy by Replevin in Upper Canada.*

[Passed 30th August, 1851.]

WHEREAS it is expedient to amend and extend the remedy by Replevin in Upper Canada: *Be it, &c.*, That whenever any goods, chattels, deeds, bonds, debentures, promissory notes, bills of exchange, books of account, papers, writings, valuable securities or other personal property or effects have been, or shall be wrongfully distrained, or otherwise wrongfully taken, or have been or shall be wrongfully detained, the owner, or person, or corporation, who by law can now maintain an action of trespass or trover for personal property, shall have and may bring an action of Replevin for the recovery of such goods, chattels, or other personal property aforesaid, and for the recovery of the damages sustained by reason of such unlawful caption and detention, or of such unlawful detention, in like manner as actions are now by law brought and maintained by any person complaining of an unlawful distress; and the Writ of Replevin to be issued in any such case or action hereafter to be brought, shall be framed, according to the circumstances of each case, and tested in the name of the senior Judge of the Court out of which the same shall issue, and on the day of the month and year in which it shall issue, and be returnable

Preamble.

Action of Replevin to lie in certain cases where actions of trover or trespass now lie.

Writ may be in a certain form.

on the eighth day after the service of a copy thereof on the defendant, or if he cannot be found, by leaving such copy at his usual and last place of abode, with his wife, or some other grown person being a member of his household, or of the house wherein he resided as aforesaid, and may be in the following form :

The Form.	County or United Counties of  ( <i>as the case may be.</i> )	}	Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.
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To the Sheriff of (*here insert name of County or United Counties*)—Greeting :

We command you that, without delay, you cause to be replevied to (A. B.) his goods, chattels and personal property following, that is to say: (*here set out the description of property as in the affidavit filed,*) which the said (A. B.) alleges to be of the value of —, and which (C. D.) hath taken and unjustly detains, (*or unjustly detains, as the case may be,*) as it is said, in order that the said (A. B.) may have his just remedy in that behalf: And that you summon the said (C. D.) to appear before us in our Court of Queen's Bench, (*or Court of Common Pleas.*) at Toronto, (*or our County Court,*) at — in and for the County, (*or United Counties, as the case may be,*) within eight days after service of a copy of this Writ upon the said (C. D.) to answer to the said (A. B.) in a Plea of taking and unjustly detaining (*or unjustly detaining, as the case may be,*) his goods, chattels and personal property aforesaid. And what you shall do in the premises, make appear to us in our said Court on the day and at the place aforesaid; And have there and then this Writ.

Witness—of our said Court, at—this—day of—  
A. D. 18—.

(*Signature of Clerk.*)

This Writ is to continue in force for three months from the *teste* thereof, and no longer.

*Provided always*, That the Sheriff shall not serve a copy of the said Writ of Replevin on the defendant, until he shall have replevied the property therein mentioned, or until he shall have replevied some part thereof, and cannot replevy the residue, by reason of the same having been eloined out of his bailiwick, by the defendant, or by reason of the same not being in the possession of the defendant, or of any person for him. Proviso.

II. *And be it, &c.*, That before any Writ of Replevin shall issue for the recovery of any such goods, chattels, or other personal property, the person claiming the same, his servant or agent, shall make an affidavit that such person claiming as aforesaid, is the owner of the property claimed, which shall be described in such affidavit, or that he is lawfully entitled to the possession thereof, and shall state the value thereof to the best of the deponent's belief, which affidavit shall and may be sworn before a Judge of one of the Superior Courts of Record in Upper Canada, the Judge of the County Court, or a Commissioner for taking affidavits in Her Majesty's Court of Queen's Bench or Common Pleas in Upper Canada, or a Commissioner duly appointed under the Act passed in the twelfth year of Her Majesty's Reign, intituled, *An Act to authorize the Judges of the Superior Courts of Record in Upper Canada to appoint Commissioners for taking affidavits in Lower Canada*, and shall be entitled in the Court in which such action of Replevin may be brought, and filed therein, to be kept among the papers in the cause. Affidavit to be taken before the Writ issues.

III. *And be it, &c.*, That when the party or parties, defendant in any such suit of Replevin, shall have been duly served with a copy of the Writ of Replevin issued in any such suit, and if he, she or they do not enter their appearance in such suit, at the return of such Writ of Replevin, the plaintiff or plaintiffs in such action may, after filing such Writ, with an affidavit of the service thereof having been made on the defendant in manner before mentioned and directed, enter a common appearance for such defendant, and proceed thereon as if such defendant had appeared. Defendant not appearing, plaintiff may file appearance for him, and proceed.

Condition and amount of the Bond to be taken by the Sheriff.

IV. *And be it, &c.*, That the condition of the Bond to be taken by the Sheriff executing any such Writ of Replevin, and prescribed by the Act of the late Province of Upper Canada, passed in the fourth year of the Reign of His late Majesty King William the Fourth, chapter seven, intituled, *An Act to facilitate the remedy by Replevin*, may be altered in the wording thereof so as to correspond with the Writ in any such action to be brought; and the said Bond shall be taken for treble the amount of the value of the property to be replevied as sworn to in the affidavit filed by or on behalf of the claimant or plaintiff, and stated in such Writ of Replevin.

Where the action may be brought.

V. *And be it, &c.*, That whenever an action of Replevin shall be brought for the recovery of goods, chattels or other personal property aforesaid, distrained for any cause, it shall be laid and brought in the County or United Counties in which the distress was made, and not elsewhere, and in other cases, the action shall or may be laid and brought in any County or United Counties.

What the Sheriff shall state in his return.

VI. *And be it, &c.*, That the Sheriff shall return the Writ at or before the return day thereof, and shall annex thereto, and transmit therewith, the names of the persons who were sureties in the Bond taken by him from the plaintiff, with their places of residence and additions, together with the date of such Bond, and the name or names of the witnesses thereto, and shall state in his return the number, quantity and quality of the articles or property replevied thereunder, and if the Sheriff shall have replevied only a portion of the property and effects in said Writ mentioned and set forth, and cannot replevy the residue by reason of the same having been eloiigned out of his bailiwick by the Defendant, or by reason of the same not being in the possession of the Defendant, or of any other person for him, that then he shall state in his said return the articles of property which he cannot replevy, and the reason therefor.

As to pleadings, &c. in such action.

VII. *And be it, &c.*, That the Plaintiff and Defendant to any such action or suit shall declare, avow, reply, rejoin and

otherwise plead to issue, and have and take all subsequent proceedings to trial and judgment within the same time as is in other personal actions, and in case of default or neglect so to do, shall be liable to the like judgment of discontinuance, *non pros.*, or non-suit, as in other personal actions.

(Sec C. L. P. A., 1856, ss. 287 to 290.)

VIII. *And be it, &c.*, That where the original taking of the goods, chattels, or other personal property, is not complained of, but the action is founded on a wrongful detention thereof, the declaration shall conform to the Writ, and may be the same as in an action of detinue, and where the action is founded upon a wrongful taking and detention of the property aforesaid, it shall not be necessary for the Plaintiff to state in his declaration a place certain within the city, town, township or village as that where the property was taken; provided always, that if the Defendant, in any such action last aforesaid, justifies or avows the right to take or distrain any such goods, chattels, or other property aforesaid, in or upon any place or premises, in respect of which the same would be liable to forfeiture, distress for rent, damage, feasant, custom, rate or duty, by reason of any law, usage or custom now existing and in force, such Defendant shall state in such plea of justification or avowry a place certain within the city, town, township or village within the county, as that where such property was so distrained or taken.

Declaration to be made to suit the case, &c.

Proviso: if the defendant avows and justifies.

IX. *And be it, &c.*, That the Defendant shall be entitled to the same pleas in abatement or bar as heretofore, and may plead as many matters in defence as he shall think necessary, and which would by law constitute a legal defence, if such action were an action of trespass, when the taking be complained of, or were an action of detinue when the detention only be complained of.

What pleas and matters of defence the defendant shall have.

X. *And be it, &c.*, That the property to be replevied, or any part thereof, be secured or concealed in any dwelling house or other building or enclosure of the Defendant, or of any other person holding the same for him, and if the Sheriff shall have publicly demanded from the owner and occupant of the premises

Sheriff may in certain cases break open any house, &c., in which the goods replevied are.

deliverance thereof, and if the same be not delivered to him within twenty-four hours after such demand made, he may or shall, if necessary, break open such house, building or enclosure for the purpose of replevying such property or any part thereof, and shall make replevin according to the Writ aforesaid, and that if the property to be replevied or any part thereof be concealed either about the person or the premises of the Defendant or any other person holding the same for him, and if the Sheriff shall have demanded from the Defendant, or such other person aforesaid, deliverance thereof, he shall and may, if necessary, search and examine the person and premises of the Defendant, or of such other person aforesaid, for the purpose of replevying such property or any part thereof, and shall make replevin according to the Writ aforesaid.

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14 & 15 VICTORIA.—CHAP. 118.

*An Act to authorize and require the several Deputy Clerks of the Crown to perform the duties of Clerks of Assize in their respective Counties in Upper Canada, except as therein mentioned.*

[Passed 30th August, 1851.]

Preamble. *Be it, &c.*, That from and after the passing of this Act, the Deputy Clerks of the Crown in the several Counties or Unions of Counties in Upper Canada, shall *ex-officio* be and act as Clerks of Assize and Marshals at the Courts of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery, to be holden in their respective Counties or Unions of Counties, and shall have all the powers and perform all the functions incident to the same, as such Clerks of Assize and Marshals, and it shall be the duty of the said Deputy Clerks of the Crown, respectively, immediately after each sitting of such Courts to forward to the Clerk of the Crown and Pleas at Toronto, every Recognizance, Indictment, Paper or Proceeding in any criminal matter in their custody as such Officers respectively, and to the Clerk of the Judges' Chambers at Toronto, every Record, Exhibit and Proceeding which shall be required by either party or his or her Attorney or Agent, for the pur-

From the passing of this Act, the Deputy Clerks of the Crown, in Counties, &c. in U. Canada to be Clerks of Assize, &c.

Papers to be forwarded by them in certain cases, and to whom

pose of moving for new trial or otherwise, upon receiving notice to that effect, together with the usual and proper Returns as such Clerks of Assize and Marshals, by post; and it shall be the duty of such Clerk of the Judges' Chambers to deliver to the Clerk of the particular Court in which the cause is pending, every Record or other Paper in his custody, when required, for the purpose of motions for new trials or otherwise: Provided always, that the notice to be given, shall in all cases be served on the Deputy Clerk of the Crown, in time for the Record or Proceeding required to be sent, to reach Toronto by regular course of mail, on or before the last day for moving against the verdict or non suit.

Clerk of the Judges' chambers to deliver records, &c., when required, and to whom.

Proviso: as to notice to be given.

II. *And be it, &c.*, That the said Deputy Clerks of the Crown shall, after the time for the moving of new trials has expired, deliver to the Attorney of the party entitled to the Postea, any Record in their custody upon getting a receipt for the same, but that they shall not deliver to any party any Exhibit filed without a Judge's order to that effect.

When and how Deputy Clerks shall deliver record or exhibits to attorney or parties.

III. *And be it, &c.*, That the sum of Five Shillings shall be hereafter paid to the said Deputy Clerks of the Crown, as the fee upon each Record entered, which sum, and no more, shall be paid, whether the cause be tried or not, and that the said fees shall be by them accounted for, paid over and applied under the provisions of the Act passed in the ninth year of Her Majesty's Reign, and intituled, *An Act to provide for the accommodation of the Courts of Superior Jurisdiction in Upper Canada*, as part of the fund thereby created: Provided always, that the said Deputy Clerks shall respectively be allowed to retain out of such fee a sum equal to One Pound for each day's attendance as such Clerks of Assize.

Fee to Deputy Clerks of the Crown.

Shall account for the same, &c.

9 v. c. 33.

Proviso: as to allowance to said Dy. Clerks for attendance.

IV. *And be it, &c.*, That after verdict or non-suit, the Attorney of the party entitled to the Postea in the cause shall prepare the same.

Attorney entitled to postea, to prepare the same.

V. *And be it, &c.*, That no charge whatever shall be made by the said Clerks of Assize or Marshals upon any criminal trial

No charge to be made by the said Clerk, in certain cases.

or proceeding in any Court, at which they may act as such Clerks of Assize and Marshals respectively.

Postage to be paid by party.

VI. *And be it, &c.*, That the party requiring any Record, Exhibit or other Paper to be sent to the Clerk of the Judges' Chamber shall, with the notice, pay the postages incident to the transmission of the Record, Exhibit or Paper required by him.

Clerks to pay postage in a certain case, and take credit for the same.

VII. *And be it, &c.*, That the Deputy Clerks of the Crown shall pay the postage on the transmission of Indictments and other Proceedings in criminal cases, and take credit for such postages in accounting for the fees received under this Act, or fees in any other manner received by them, in case the fees under this Act shall not be sufficient for that purpose.

Case of the Marshal and Clerk of Assize for the County of York provided for.

VIII. And whereas William Alexander Campbell has, for twenty-six years now last past, held the office of Marshal and Clerk of Assize for the County of York: *Be it, &c.*, That from and after the passing of this Act the said William Alexander Campbell shall continue to be the Marshal and Clerk of Assize for the County of York, and shall hold office during good behaviour, and be removeable by the Judges of the Superior Courts of Common Law, or a majority of them, and shall act as Marshal and Clerk of Assize at the Courts of Assize and Nisi Prius, and Oyer and Terminer and General Gaol Delivery for the said County of York, and shall receive as such Marshal and Clerk of Assize, the salary of Three Hundred Pounds per annum, which shall be charged upon the fund in this Act mentioned, and as Marshal and Clerk of Assize for the said County of York, shall be subject to all the provisions relating to Records, Exhibits and other Documents in this Act mentioned, and in the event of the death or removal from his said office of the said William Alexander Campbell, the Clerk of the Crown and Pleas for the time being, or his Deputy, in the said County of York, shall act as such Marshal and Clerk of Assize for the said County of York, and have all the powers and exercise all the functions that are had and exercised by the Clerks of Assize by law and under this Act.

IX. *And be it, &c.*, That the Marshal and Clerk of Assize of the County of York shall take and receive the same fees <sup>As to his fees.</sup> only as are taken by the other Marshals and Clerks of Assize under this Act, and such fees shall be accounted for, paid over and applied in the same manner as the other fees taken under the authority of this Act.

X. *And be it, &c.*, That the several Clerks of Assize appointed under this Act shall issue the Precepts to the several Sheriffs of Counties in the same manner and with the same effect as such Precepts are now issued by law, by any Marshal or Clerk of Assize. <sup>As to Precepts to be issued by Clerks appointed under this Act.</sup>

XI. *And be it, &c.*, That this Act shall not come into force until the first day of January next. <sup>When this Act shall come into force.</sup>

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16 VICTORIA.—CHAP. 19.

*An Act to repeal the Acts therein mentioned, and to improve the Law of Evidence in Upper Canada.*

[Passed 10th November, 1852.]

WHEREAS the inquiry after truth in Courts of Justice is often obstructed by incapacities created by Laws, and it is desirable that full information as to the facts in issue, both in Criminal and in Civil cases, should be laid before the persons who are appointed to decide upon them, and that such persons should exercise their judgment on the credit of the witnesses adduced and on the truth of their testimony: *Be it, &c.*, That no person offered as a witness shall hereafter be excluded by reason of incapacity from Crime or interest, from giving evidence, either in person or by deposition, according to the practice of the Court, on the trial of any Issue joined, or of any Matter or Question, or on any Inquiry arising in any Suit, Action or Proceeding, Civil or Criminal, in any Court, or before any Judge, Jury, Sheriff, Coroner, Magistrate, Officer or Person having by Law or by consent of parties authority to hear, receive and examine evidence, but that every person so offered, may and shall be admitted and compellable to give

Preamble.

Persons offered as witnesses not to be excluded for certain causes.

Evidence on Oath, or solemn affirmation in those cases wherein affirmation is by Law receivable, notwithstanding that such person may or shall have an interest in the matter in question or in the event of the trial of any Issue, Matter, Question or Inquiry, or of the Suit, Action or Proceeding in which he is offered as a witness, and notwithstanding that such person offered as a witness may have been previously convicted of any crime or offence: Provided that this Act shall not render competent or authorize or permit any party to any suit or proceeding, individually named in the Record, or any Plaintiff, Lessor of the Plaintiff or Tenant of premises sought to be recovered in Ejectment, or the Landlord or other person in whose right any defendant in *replevin* may make cognizance, or any person in whose immediate or individual behalf any Action may be brought or defended either wholly or in part, or the husband or wife of such persons respectively, to be called as a witness on behalf of such party, but such party may in any Civil proceeding be called and examined as a witness in any suit or action at the instance of the opposite party: Provided always, that the wife of the party to any suit or proceeding named in the Record, shall not be liable to be examined as a witness by or at the instance of the opposite party.

Proviso: parties to suits not to be witnesses: unless called as such by the opposite party.

A party to any civil suit may be summoned as a witness by the opposite party: and how: Penalty on such party not attending.

(As to Div. Courts, see 16 Vic. c. 177, s. 22 & 23.)

II. *And be it, &c.*, That whenever any party in such proceeding shall desire to call the opposite party as a witness, he shall either subpoena such party or give to him or his Attorney at least eight days' notice of the intention to examine him as a witness in the cause, and if such party shall not attend on such notice or Subpoena, such non-attendance shall be taken as an admission *pro confesso* against him in any such Suit or Action, unless otherwise ordered by the Court or Judge, in which or before whom such examination is pending, and a general finding or Judgment may be had against such party thereon, or the Plaintiff may be non-suit or the proceedings in such Action or such Suit, may be postponed by such Court or Judge, on such terms as such Court or Judge shall see fit to impose.

Commission when the party to be

III. *And be it, &c.*, That whenever a party to any such suit or action is resident out of Upper Canada, it shall be law-

ful for the Court in which such suit or action is brought, or any Judge in Chambers, at the instance of the opposite party, to issue a Commission for the examination of such party in the same manner as a Commission may be issued from any of the Superior Courts for the Examination of Witnesses; and if such party shall refuse to attend before such Commissioners, such refusal, proved by affidavit or otherwise, to the satisfaction of a Judge of the Court in which the suit is had, shall authorize a verdict or judgment to pass against such party, or he shall become non-suit: Provided that no such Commission shall be issued unless the party requiring such Commission shall state under oath, by affidavit, the facts intended to be proved before such Commission, and then the said Judge after being satisfied that such Commission is applied for in good faith, and not for purposes of delay, may issue such Commission.

*Proviso.*

IV. *And be it, &c.*, That nothing herein contained shall render any person, who, in any proceeding, is charged with the Commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, or shall, in any such proceeding, render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband, or shall, in any civil proceeding, render any person compellable to answer any question tending to criminate himself or herself, or to subject him or her to any prosecution for any penalty.

*Party charged with a criminal offence not to give evidence for or against himself, &c.*

V. *And be it, &c.*, That whenever any person has died or shall hereafter die in any of Her Majesty's possessions out of Upper Canada, having made a will sufficient to pass real estate in Upper Canada, and whereby any such estate shall be devised, charged or affected, and such Will shall have been duly proved in any Court having the proof and issuing probate of wills in any of such possessions, and shall remained filed in such Court, the production of the Probate of such Will or a certificate of the Judge, Registrar or Clerk of such Court, that the original is filed and remains in such Court, and purports to have been executed before two witnesses, shall be sufficient

*Probate of Will of a person dying out of U. C. but in Her Majesty's possessions, may be received in evidence.*

*prima facie* evidence in any Court of Law or Equity in Upper Canada, in any proceeding concerning such Real Estate, of such Will and the contents thereof, and of the same having been executed so as to pass Real Estate, without the production of the original Will : Provided always, that notice of the intention to use such Probate or Certificate in the place of the original Will, shall be given to the opposite party in any such proceeding one month before the same shall be so used : And provided also, that such Probate or Certificate shall not be used if, upon cause shewn before any such Court of Law or Equity, or any Judge thereof, such Court or Judge shall find any reason to doubt the sufficiency of the execution of such Will to pass such Real Estate as aforesaid, and shall make a rule or order disallowing the production of such Probate.

Proviso : notice to be given.

Proviso : if the Judge see cause to doubt sufficiency of execution.

Certificate to the *prima facie* evidence of facts therein stated.

VI. *And be it, &c.*, That the production of the certificate in the next preceding section mentioned, shall be sufficient *prima facie* evidence of the facts therein stated, and of the authority of the Judge, Registrar or Clerk, without any proof of his appointment, authority or signature.

Probate of Will receivable in evidence.

VII. *And be it, &c.*, That whenever in any suit or action pending or hereafter to be brought, in either of Her Majesty's Superior Courts of Law or Equity in Upper Canada, any party is desirous of proving the Execution of the Will of any person, who at the time it shall be necessary to give such proof, may be dead, the production of the Probate of such Will or of Letters of Administration with the Will annexed, shall be received and taken as *prima facie* evidence of the due execution of such will and of the contents thereof, in the same manner as if the original Will had been produced, and the execution thereof proven by the subscribing witnesses thereto ; subject, nevertheless, to the provisos hereinbefore in the fifth section of this Act contained, as to notice to the opposite party of the intention to use such Probate or Letters in place of the original Will, and to any order that may be made by the Judge or Court disallowing the production of the same as therein mentioned.

VIII. *And be it, &c.*, That whenever any action or other legal proceeding shall henceforth be pending in any of the Superior Courts, or in any County Court in Upper Canada, such Court and each of the Judges thereof, in vacation, may respectively, on application made for such purpose by either of the litigants, compel the opposite party to allow the party making the application, to inspect all documents in the custody or under the control of such opposite party relating to such action or other legal proceeding, and if necessary, to take examined copies of the same, in all cases in which previous to the passing of this Act, a discovery might have been obtained by filing a Bill, or by any other proceeding in a Court of Equity, at the instance of the party so making application as aforesaid to the said Court or Judge: Provided also that such application may be made to and granted by a Judge of a County Court in suits depending in the said Superior Courts, in the same manner and under such circumstances as is provided for similar applications in the said Courts, by the thirty-fifth section of the Act 12 Vic. c. 63.

Judge may compel a party to allow opposite party to inspect documents, &c.

(See C. L. P. A., 1856, s. 176)

Proviso.

IX. *And be it, &c.*, That whenever any book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, and no Statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence in any Court of Justice, or before any person now or hereafter having by law or by consent of parties, authority to hear, receive and examine evidence, provided it be proven to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the Officer to whose custody the original is entrusted, and which Officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding six pence for every folio of one hundred words.

Copies of books or documents to be evidence in certain cases.

Officer having charge thereof, to give certified copies.

X. *And be it, &c.*, That if any Officer authorised or required by this Act, or by any law or usage now in force in Upper Canada, to furnish any certified copies or extracts, shall wil-

Punishment of Officers giving false certificates.

fully certify any document as being a true copy or extract, knowing that the same is not a true copy or extract, as the case may be, he shall be guilty of a misdemeanor, and be liable upon conviction to imprisonment for any term not exceeding Eighteen months.

Punishment of persons forging documents, &c., or using them knowing them to be forged.

XI. *And be it, &c.*, That if any person shall forge any seal, stamp or signature of any document in this Act mentioned or referred to, or shall tender in evidence any such document with a false or counterfeit seal, stamp or signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to imprisonment in the Provincial Penitentiary for any term not exceeding ten years, or to imprisonment in any Goal or House of Correction with hard labour, for any term not exceeding one year or less than two months. And whenever any such document shall have been admitted in evidence by virtue of this Act, the Court or the person who shall have admitted the same, may, at the request of any party against whom the same is admitted in evidence, direct that the same shall be impounded and be kept in the custody of some Officer of the Court or other proper person, for such period and subject to such conditions as to the said Court or person shall seem meet; and every person who shall be charged with committing any felony under this Act may be dealt with, indicted and tried, and if convicted, sentenced, and his offence may be laid and charged to have been committed in the County or place in which he shall be apprehended or be in custody; and every accessory before or after the fact of any such offence, may be dealt with, indicted and tried, and if convicted, sentenced, and his offence laid to have been committed in any County or place in which the principal offender may be tried.

Document may be impounded on request of party against whom it may have been sued.

When offenders may be tried.

Certain allegation not necessary in setting out legal proceedings.

XII. *And be it, &c.*, That whenever in any legal proceedings whatever, legal proceedings may be set out, it shall not be necessary to specify that any particular person or persons who acted as Jurors had made affirmation instead of oath, but it may be stated that they served as Jurymen, in the same man-

ner as if no Act had passed for enabling persons to serve as Jurymen without oath.

XIII. *And be it, &c.*, That the Act passed in the twelfth year of Her Majesty's Reign, and intituled, *An Act to improve the Law of Evidence in Upper Canada*, and the Act passed in the Session held in the fourteenth and fifteenth years of Her Majesty's Reign, and intituled, *An Act to amend an Act passed in the twelfth year of Her Majesty's Reign*, intituled, *An Act to improve the Law of Evidence in Upper Canada*, shall be and are hereby repealed: Provided always, that all things lawfully done under the said Acts or either of them, shall remain as valid and effectual to all intents and purposes whatsoever as if the said Acts respectively were not repealed, and the said Acts shall be held and construed to extend to all actions commenced between the thirtieth day of August, in the year of our Lord one thousand eight hundred and fifty-one, and the passing hereof.

XIV. *And be it, &c.*, That this Act shall apply only to Upper Canada, except in so far only as herein otherwise expressly provided.

16 VICTORIA.—CHAP. 20.

*An Act to remove doubts as to the powers of the Junior Judges of County Courts in Upper Canada.*

[10th November, 1852.]

WHEREAS from the increase of the population and business in many of the Counties in Upper Canada it hath become or may hereafter become necessary to appoint more than one Judge of the County Court in such Counties respectively, and doubts have arisen as to the powers of the Junior Judges of such County Courts, which doubts it is expedient to remove: *Be it, &c.*, That whenever more than one Judge of the County Court shall be appointed for any County in Upper Canada, under the 8 Victoriae, chapter 13, or any Act or Acts amending the same, the Judge of such Court, whose commission shall be of the oldest date, shall be known as the Judge

Act 12 V. c. 70, and

14 & 15 V. c. 66 repealed.

Proviso.

Extent of Act

Preamble.

Junior Judge of a County Court appointed under 8 V. c. 13 to have power to hold Division Courts.

of the County Court of such County, and any other Judge of the same Court shall be known as the Junior Judge thereof, and that the Junior Judge of any such Court in Upper Canada shall have full power and authority to hold and preside over all or any of the Division Courts in the County for which he shall have been appointed such Judge, and shall have, as regards any such Division Courts, the same duties, powers and authorities as the Judge of the same County Court, and generally that any Junior Judge of any County Court shall have, discharge, use and exercise, as regards any such Division Courts or the business thereof, the same duties, powers and authorities as are now or hereafter may by law be imposed upon or given to any Judge of a County or Division Court in Upper Canada: Provided always, and be it, &c., That nothing herein contained shall prevent or excuse the Judge of the County Court from presiding at any of the Division Courts within his County, when the public interest require it, although a Junior Judge may have been appointed for such County.

Proviso.

In case of illness &c., of the Judge, the Junior Judge may act for him.

II. *And be it, &c.*, That in case of the illness or unavoidable absence of the Judge of any County Court in Upper Canada, it shall be the duty of the Junior Judge of such Court to hold the County Court, with the same powers as the Judge of such Court, and he shall and may, during such illness or absence, have, use and exercise all other the powers vested in, and do all other acts and things which are by law required of or allowed to be done by the Judge of a County Court in Upper Canada within his County: but such Junior Judge shall not preside as Chairman of the Quarter Sessions of the Peace for the County for which he is appointed such Junior Judge.

Interpretation.

III. *And be it, &c.*, That the word "County" in this Act shall include any Union of Counties for judicial purposes.

## 16 VICTORIA.—CHAP. 80.

*An Act to modify the Usury Laws.*

[Assented to 24th March, 1853.]

WHEREAS it is expedient to abolish all prohibitions and penalties on the lending of money at any rate of interest whatsoever, and to enforce to a certain extent, and no further, all contracts to pay interest on money lent, and to amend and simplify the laws relating to the loan of money at interest: *Be it, &c.*, That the fifth section of the Ordinance made and passed by the Governor and Legislative Council of the Province of Quebec, in the seventeenth year of the Reign of His late Majesty King George the Third, intituled, *An Ordinance for ascertaining damages on protested Bills of Exchange, and fixing the rate of interest in the Province of Quebec*; and the sixth section of the Act of the Parliament of the Province of Upper Canada, passed in the fifty-first year of His said late Majesty's Reign, intituled, *An Act to repeal an Ordinance of the Province of Quebec, passed in the seventeenth year of His Majesty's Reign, intituled, "An Ordinance for ascertaining damages on protested Bills of Exchange, and fixing the rate of interest in the Province of Quebec;"* also to ascertain damages on protested Bills of Exchange, and fixing the rate of interest in this Province, be, and the same are hereby repealed.

Preamble.

Sect. 5 of Ordinance of Quebec, 17 Geo. III., c. 3, and s. 6 Act of Upper Canada 51 Geo. III. c. 9. repealed

II. *And be it, &c.*, That no contract to be hereafter made in any part of this Province, for the loan or forbearance of money or money's worth, at any rate of interest whatsoever, and no payment in pursuance of such contract, shall make any party to such contract or payment liable to any loss, forfeiture, penalty or proceeding, civil or criminal, for usury: any Law or Statute to the contrary notwithstanding.

Penalties for for usury abolished.

III. *Provided always nevertheless, and be it, &c.*, That every such contract and every security for the same shall be void so far, and so far only, as relates to any excess of interest thereby made payable above the rate of Six Pounds for the

Contracts and securities to be void as regards excess of interest above six per cent.

forbearance of One Hundred Pounds for a year, and the said rate of six per cent interest, or such lower rate of interest as may have been agreed upon, shall be allowed and recovered in all cases where it is the agreement of the parties that interest shall be paid.

Act not to  
apply to  
Banks, &c.

IV. *And be it, &c.*, That nothing in this Act shall be construed to apply to any Bank or Banking Institution or to any Insurance Company, or to any Corporation or Association of persons heretofore authorised by law to lend or borrow money at a rate of interest higher than six per centum per annum.

16 VICTORIA.—CHAP. 119.

*An Act to confer Equity Jurisdiction upon the several County Courts in Upper Canada, and for other purposes therein mentioned.*

[Assented to 23rd May, 1853.]

Preamble.

WHEREAS it is expedient to extend the jurisdiction of the several County Courts in Upper Canada to certain matters cognizable in the Court of Chancery of Upper Canada: *Be it, &c.*, That the jurisdiction of the said County Courts respectively shall extend to the several matters hereinafter enumerated, and that the said County Courts respectively shall possess the like power and authority in respect of the matters hereinafter enumerated as by law is now possessed by the Courts of Chancery of Upper Canada.

County  
Courts to  
have  
Equity Juris-  
diction in  
certain mat-  
ters.

To what  
cases the  
Equity Juris-  
diction of  
County  
Court shall  
extend.

II. *And be it, &c.*, That it shall be lawful to and for any person seeking equitable relief, to enter (personally or by Attorney) a claim against any person from whom such relief is sought, with the Clerk of the County Court of the County within which such last mentioned person resides, in any of the following cases, that is to say:

Partnership  
accounts.

1. A person entitled to an account of the dealings and transactions of a partnership (the joint stock or capital not having been over two hundred pounds,) dissolved or expired, seeking such account.

2. A creditor upon the estate of any deceased person, such Debts of deceased persons. creditor seeking payment of his debt (not exceeding fifty pounds) out of the deceased's assets (not exceeding two hundred pounds).

3. A legatee under the will of any deceased person, such Legatees. legatee seeking payment or delivery of his legacy (not exceeding fifty pounds in amount or value) out of such deceased person's personal assets (not exceeding two hundred pounds).

4. A residuary legatee, or one of the residuary legatees of Residuary Legatees. any such deceased person seeking an account of the residue and payment or appropriation of his share therein (the estate not exceeding two hundred pounds).

5. An executor or administrator of any such deceased person Administration of personals. seeking to have the personal estate (not exceeding two hundred pounds) of such deceased person, administered under the direction of the Judge of the County Court for the County within which such executor or administrator resides.

6. A legal or equitable mortgagee whose mortgage is created Foreclosure of Mortgages. by some instrument in writing, or judgment creditor having duly registered his judgment, or person entitled to a lien for security for a debt, seeking foreclosure or sale or otherwise to enforce his security, where the sum claimed as due does not exceed fifty pounds.

7. A person entitled to redeem any legal or equitable mortgage or any charge or lien seeking to redeem the same, where Redemption of Mortgages. the sum actually remaining due does not exceed fifty pounds.

8. Any person seeking equitable relief for, upon or by reason Equitable relief generally of any act, matter or thing whatsoever, where the subject matter involved does not exceed the sum of fifty pounds.

9. Injunctions to restrain the committing of waste or trespass to property by unlawfully cutting, destroying or removing Injunctions to restrain commission of waste. trees or timber, may be granted by the Judge of any County Court, which injunctions shall only remain in force for a period of one month unless sooner dissolved on an application to the

Proviso. Court of Chancery; Provided always, that the power to grant such injunction shall not authorize the prosecuting of the suit in the County Court, but the injunction may be extended and the suit further prosecuted to judgment or otherwise in the Superior Court, in the like manner as if the same had originated in that Court.

Form of Claim. III. *And be it, &c.*, That such claim in the several cases enumerated above, may be similar in principle to the form set forth in Schedule A to this Act.

Proceedings on the filing of claim. IV. *And be it, &c.*, That upon entering such claim with the Clerk of a County Court, the same shall be numbered and filed by such Clerk according to the order in which it shall be entered, and thereupon a summons, briefly stating the nature of the claim and bearing the number of the claim on the margin thereof, shall be issued under the Seal of the Court, requiring the person against whom such claim is made, on some day in the next ensuing term of such County Court, or (upon Special Order of the Judge of the County Court,) on a day to be therein named, to appear before the Judge of the said Court, to show cause, if he can, why such relief as is claimed by the Plaintiff should not be had, or why such Order as shall be just with reference to the claim shall not be made.

Form of Writ of Summons. V. *And be it, &c.*, That such Writ of Summons may be in the form or to the effect in that behalf set forth in Schedule B to this Act, with such variations as circumstances may require, and shall be sealed with the Seal of the Court from which it issues, and that, when necessary, *alias* and *pluries* Writs may be issued.

Copy of Writ and Claim to be served. VI. *And be it, &c.*, That a copy of the said Writ of Summons, to which shall be attached a certified copy of the Plaintiff's claim so entered as aforesaid, shall be served on the Defendant ten days at least before the day appointed in the said Writ of Summons for showing cause.

Hearing on Claim: evidence, exams. VII. *And be it, &c.*, That at the time appointed for showing cause as aforesaid, the Defendant shall appear personally or by

Attorney, and show cause, if he can, (and if necessary by Affidavit) why such relief as is claimed by the Plaintiff should not be had against him; and each party may, on giving five clear days' notice in writing prior to any hearing, of his intention so to do, examine the other party upon the matters relating to such claim; and the Judge, on hearing the claim, and what the Plaintiff alleges in support thereof, and such other evidence, whether oral or written or by Affidavit, as he may produce in that behalf, and what may be alleged on the part of the Defendant, and such evidence whether oral or written or by affidavit as he may produce in that behalf, or on production of an affidavit, that the Writ of Summons and copy of claim aforesaid have been duly and personally served on such Defendant, may, if he shall think fit, make an Order granting or refusing the relief claimed, or directing any accounts or inquiries to be taken or made, (such accounts or enquiries to be taken or made before the Judge if he shall deem such course proper or expedient, or before the Clerk of such Court, at days or times to be appointed by the Judge for that purpose,) or may direct such other proceedings to be had for the purpose of ascertaining the plaintiff's title to the relief claimed, or make such other Order as according to the nature and circumstances of the case shall seem to be just and proper; and further, the Judge may direct such persons or classes of persons, as he may think necessary or fit, to be summoned or ordered to appear as parties to such claim, or on any proceedings with reference to any account or inquiries directed to be taken or made, or otherwise; and all oral evidence given by any person before such Judge relating to such claim, shall be upon the oath of the person giving the same, to be administered by or before said Judge; and further, in default of the appearance of either of the parties, the said Judge may make such Order as to the payment of costs by the party in default, as to him may seem meet.

ination of parties, &c.,

Order to be made.

Oral evidence to be on oath

Defaults.

VIII. *And be it, &c.*, That the said Judge of the County Court shall be the sole Judge in all actions brought in the said County Courts respectively under the Jurisdiction given by this Act, and shall determine in a summary manner all questions of

County Judge to be the sole Judge.

Unless a Jury be applied for to try the facts: as it may be.

law or equity as well as of fact arising therein, unless the said Judge shall think it proper to have any fact or facts controverted in the action tried by a jury, or either party shall apply to have such facts tried by a Jury; and upon order made allowing a trial by Jury, such trial shall take place at the then next ensuing Sitings of such County Court, and be conducted in the same manner as other trials by Jury in the said Court are conducted, and the Judge may, unless a new trial be moved for within ten days after verdict rendered, proceed to make such Order and Decree on the verdict of such Jury as according to the nature and circumstances of the case shall seem just and proper.

New trial.

Rules of decision to be as in Chancery.

IX. *And be it, &c.*, That the Rules of decision in the said County Court respectively, in respect to the matters aforesaid, shall be the same as govern the said Court of Chancery, (when not otherwise provided for by or under the authority of this Act) so far as the same may be held to be applicable to a Court of Summary Jurisdiction. And the said County Courts respectively shall possess full power and authority to enforce and compel obedience to their Orders, Judgments and Decrees, in respect to all and singular the matters hereinbefore and hereinafter set forth and contained; and that all Sheriffs, Gaolers, Coroners, Constables and other Peace Officers, shall be aiding, assisting and obeying the said County Courts respectively, in the exercise of their jurisdiction, when required by any County Court so to do.

Certain powers vested in the Court.

X. *And be it, &c.*, That the Judge of the said County Court may at any time, in furtherance of justice and on such terms as he may think proper, amend such claim so filed as aforesaid, and any and every proceeding relating thereto, by adding or striking out the name of any party, or a mistake in any other respect, or by inserting other allegations material to the case, or by conforming such claim or proceeding to the facts proved, where the amendments shall not change substantially the form of the action, and may also in any stage of the proceedings disregard any error or defect which shall not affect the substantial rights of the adverse party, and may make any

Judge may amend the claim in furtherance of justice.

Order for granting time to the Plaintiff or Defendant to proceed in the prosecution or defence of his suit that to such Judge may seem necessary for the ends of justice.

XI. *And be it, &c.*, That every Order by the Judge of the County Court, made upon the hearing of any such claim as aforesaid, or in respect to such claim and suit, or in respect to the matters hereinbefore or hereinafter mentioned, may be enforced in the same manner as any Judgment or any Order of a County Court is or may be enforced in the said County Court, under the existing provisions of law in relation to the said Courts, so far as such provisions are applicable, or in such other manner as may be prescribed by Rules to be made in the manner hereinafter mentioned.

How orders may be enforced.

XII. *And be it, &c.*, That the Judge before or upon any hearing or trial, or upon taking any accounts or making any inquiries, shall have the same powers and authority to order the parties to produce books, papers and writings as is possessed by the Court of Chancery, and may cause advertisements for Creditors and next of kin, or other unascertained persons, and the representatives of such as may be dead, to be published in the usual forms or otherwise, as the circumstances may require, and in such advertisements, appoint a time within which such persons are to come in and prove their claims, and within which time, unless they so come in, they are to be excluded from the benefit of the Order.

Judge to have the same power as Court of Chancery to order production of books, advertisements, &c.

XIII. *And be it, &c.*, That no Order, Direction, Verdict, Decree or Judgment, or other proceeding made concerning any of the matters aforesaid, shall be reversed, quashed or vacated for want of form.

No order, &c. to be quashed for want of form.

XIV. *And be it, &c.*, That every Summons, (except the Summons at the commencement of the action), Order, Notice or other proceeding, shall be served ten days at least before the day on which the same is returnable, or the action thereunder intended, except where otherwise directed by the said Judge.

Summons when to be served.

**Costs.** XV. *And be it, &c.*, That the costs in every action or proceeding brought or had under the authority of this Act in the said County Courts respectively, shall be paid by or apportioned between the parties in such manner as the Judge shall think fit, and that in default of any special directions the costs shall abide the event of the action or proceeding.

**Affidavits.** XVI. *And be it, &c.*, That all affidavits to be used in the said County Courts respectively may be sworn before any Judge or Clerk of the said Courts, or before any Commissioner for taking affidavits in the Superior Courts at Toronto.

**Claims may in certain cases be removed into Chancery.** XVII. *And be it, &c.*, That any claim as aforesaid entered in a County Court under the provisions of this Act, shall be removeable by either party into the Court of Chancery by Order of the said Court, to be obtained on a summary application by motion or petition supported by affidavit, of which reasonable notice shall be given to the opposite party, and the said Order shall be made on such terms as to payment of costs, giving security in respect to the relief claimed and costs, or upon such other terms as to the said Court of Chancery shall seem reasonable, just and proper; but no claim shall be so removed as aforesaid, unless the said Court of Chancery shall be of opinion that the same is of such a nature as to render it proper that the same should be withdrawn from the jurisdiction of the said County Court, and disposed of in the said Court of Chancery.

**Appeal given to Chancery.** XVIII. *And be it, &c.*, That either party may appeal to the said Court of Chancery against any Order or Decree made by the Judge in any County Court under the provisions of this Act; and the said Court of Chancery shall make such Order thereupon in respect to costs and otherwise, or for referring back the same matter to the Judge before whom the same has been first heard, as shall be just and proper; Provided always, **Proviso.** That before the County Court Judge shall be called on to certify the said Order or other matter appealed against to the said Court of Chancery, the party appealing shall enter into a recognizance, with sufficient bail to the satisfaction of the said

Judge, to pay the sum decreed in case no relief shall be had on such appeal, or to obey the said Order, (or as the case may be), and that when the party appealing appears by Attorney, an affidavit shall be made by such Attorney, that the appeal is not intended for delay as he believes, and that there is in his opinion probable cause for reversing the Order or Decree against which the appeal is made; and the said Court of Chancery shall specially make the necessary regulations for the practice to be observed in proceedings under this and the next preceding section.

XIX. And in order that procedure under this Act may be fully traced out, and from time to time be improved and rendered as simple, speedy and cheap as may be—*Be it, &c.*, That it shall be the duty of the Judges of the said Court of Chancery, and they are hereby authorized and empowered to frame such General Rules and Orders and all such forms as to them shall seem expedient, for and concerning the practice and proceedings in the said County Courts in relation to the powers conferred on such Courts by this Act, and for the execution of the Orders and Process under this Act, and in relation to any of the provisions thereof as to which there may arise doubts; and from time to time to alter and amend such Rules, Orders and Forms, and also the forms and mode of procedure prescribed by this Act: and such Rules, and Orders and Forms as shall be made and framed by the said Judges or any two of them, (of whom the Chancellor of Upper Canada shall be one,) shall from and after a day to be named therein, be in force in every County Court in Upper Canada, and shall be of the same force and effect as if the same had been embodied in this or some other Act of Parliament.

XX. *And be it, &c.*, That there shall be payable on every proceeding for equitable relief or other proceeding under this Act in the said County Courts respectively, the fees which are set down for such proceeding respectively in the Schedule to this Act marked C, and that the Clerks of the said County Courts respectively, shall keep a separate account of such fees, and shall render an account to the Receiver General of fees in

How to be  
accounted  
for, &c.

his County, and shall pay over the amount of such fees to such Receiver General, under the same liabilities, securities and conditions, and to be accounted for in like manner as the present General Fee Fund of the County, and that the several provisions of the 8 Vic c. 13, in relation to the receiving, accounting for and paying over fees, and in relation to the responsibilities and duties of County Treasurer and Clerks, shall apply to the fees under this Act as fully as if the said provisions were herein contained and re-enacted.

Other Fees.

XXI. *And be it, &c.*, That there shall be payable to the Clerk of every County Court, and to the Sheriff of every County respectively, the fees which are set down for such proceedings respectively in the Schedule to this Act annexed marked D, and that the scale of costs to be paid to Attorneys and Counsel in the said County Courts, as between party and party, for proceedings under this Act, shall be according to Schedule E to this Act annexed.

No costs to  
Plaintiff pro-  
ceeding in  
Chancery  
instead of  
under this  
Act.

XXII. *And be it, &c.*, That if any action or proceeding be commenced in the said Court of Chancery after this Act shall come into force, for any cause or claim which might have been entered in a County Court under this Act, no costs shall be taxed against the Defendant in such action or proceeding, and the Defendant, if he shall succeed in his action, shall be entitled of right to a Decree against the Plaintiff for his costs, as between Attorney and Client, unless the said Court of Chancery shall be of opinion that it was a fit cause or claim to be withdrawn from a County Court and entered in the said Court of Chancery.

Exception.

This Act  
incorporated  
with other  
County  
Court Acts.

XXIII. *And be it, &c.*, That this Act, and the several Acts of Parliament now in force relating to County Courts, or affecting in any way their powers or practice, shall be read and construed as one Act, as if the several provisions therein contained, not inconsistent with the provision of this Act, or inapplicable, to an equitable jurisdiction, were repeated and re-enacted in this Act.

XXIV. *And be it, &c.*, That in construing this Act and the Schedules thereto, the following words shall have the several meanings hereby assigned to them over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction, viz: the words "person" or "party" shall be understood to mean a body politic or corporate as well as an individual, and every word importing the singular number, shall, when necessary to give full effect to the enactments herein contained, be understood to mean several persons or things as well as one person or thing; and every word importing the masculine gender shall, when necessary, be understood to mean a female as well as a male; and the word "affidavit" shall include affirmation, and the word "legacy" shall include an annuity and a specific as well as a pecuniary legacy; the word "legatee" shall include a person interested in a legacy; and the words "residuary legatee" shall include a person interested in the residue; and the word "County" shall include any two or more Counties united for judicial purposes.

Interpretation clause.

Person.

Singular number.

Gender.

Affidavit.

Legacy.

Legatee, &amp;c.

County.

XXV. *And be it, &c.*, That in citing this Act in other Acts of Parliament, and in legal instruments and other proceedings, it shall be sufficient to use the expression, "The County Courts Equity Extension Act.

Short Title of this Act.

XXVI. *And be it, &c.*, That this Act shall commence and take effect on the Thirty-first day of December next after the passing hereof.

Commencement of Act.

#### SCHEDULE A.

In the County Court of the County of —

A. B., of the Township of — in the said County, states, from the — day of — down to the — day of — he, and C. D., of the Township of — in the said County, carried on the business of — in co-partnership, under certain articles of co-partnership dated the — day of — and made between the said A. B. and the said C. D., on the — day of — (or under a verbal agreement, &c., as the case may be), that the said co-partnership was dissolved (or expired, as the case

may be), on the — day of — yet that the said C. D. refuses to account with the said A. B. concerning the dealings and transactions thereof. The said A. B. claims relief in the premises, and that an account of the partnership dealings and transactions between the said A. B. and C. D., may be taken, and the affairs and business of the said Co-partnership wound up and settled under the direction of the said Court, and such further relief given as may be just and proper. And the said A. B. requests that a Writ of Summons be issued from the Court, according to the Statute in that behalf, requiring the said C. D. to appear on the — day of — before the Judge of the Court, to show cause, if he can, why the relief claimed by the said A. B. should not be had, and such Order in the premises made as may be just.

Dated the — day of — A. B., in person. (*Or* A. B. by J. P., one, &c.)

#### SCHEDULE B.

Victoria, &c.,

(County of — )

To C. D. of

GREETING :

[L. S.] You are hereby summoned to appear either in person or by Attorney before His Honor the Judge of the County Court of the County of — on the — day of —, at twelve o'clock noon, at the Court House in the town of — to answer the complaint of A. B. of the, &c. — who has filed a claim against you in this Court for an account of the dealings and transactions respecting a partnership between you and the said A. B. now expired, (*or* as the case may be, stating briefly the nature of the claim) a certified copy of which claim is hereunto attached, and you are required then and there to show cause, if you can, why such relief as is claimed by the said A. B. should not be had, or why such Order as shall be just, with reference to the claim, shall not be made.

Witness, — Esquire, Judge of the County Court of the County of — at —, this — day of —

## SCHEDULE C.

*Fees to be received by the Clerk and to belong and to be paid over to the Fee Fund.*

Every claim filed One Shilling and Three Pence; Every Writ of Summons, or other Writ under the Seal of the Court, One Shilling and Three Pence; every Order or application for Order, One Shilling and Three Pence; every Hearing, Five Shillings, to be increased in the discretion of the Judge to a sum not exceeding Ten Shillings; every Oath administered in Court, One shilling; every Certificate under Seal of Court, One Shilling and Three Pence; every Sitting in taking an account, or other Sittings, Five Shillings.

## SCHEDULE D.

*Fees to the Clerk.*

Receiving and filing Claim, Four Pence; every Writ of Summons, or other Writ, One Shilling; filing every separate paper, Three Pence; preparing Order, One Shilling and Four Pence per folio for every folio over three; taking any Affidavit other than oath in open Court, One Shilling; every Search, Six Pence; recording every final Order or Decree, One Shilling; other Orders, Six Pence; every Certificate not exceeding three folios, One Shilling; every Special Writ, Writ of Execution or other Special Document, Eight Pence per folio; taxing costs, One Shilling; every attendance on reference, Five Shillings: every Verdict taken, Two Shillings and Six Pence.

*Fees to the Sheriff.*

Every Summons or Order Served, including Return, Two Shillings and Six Pence; every Jury sworn, Two Shillings and Six Pence; every Execution or Judgment Order received, One Shilling and Three Pence; return thereof, money made or party arrested, One Shilling and Three Pence; necessary mileage actually travelled, Four Pence per mile; and for other services, a sum to be fixed by Order of the Judge not exceeding the present allowance by Statute for similar services.

## SCHEDULE E.

*Attorney and Solicitor.*

Instructions to sue or defend, Two Shillings and Six Pence; Drawing Claim, Two Shillings and Six Pence; Fee on every Writ or Order, One Shilling and Three Pence; Common Affidavits One Shilling; Common Notice or Appointment, One Shilling; Every necessary Attendance, Six Pence; Special Affidavits and other Special Documents, Eight Pence per folio; Fee on Common Motions, One Shilling and Three Pence; Copy of every paper when necessary, half the amount allowed for the Original; Bill of Costs, One Shilling; Postages actually paid.

*Counsel.*

Fee on Special Applications, Arguments, Hearings, &c, Ten Shillings, to be increased at the discretion of the Judge to Twenty-five Shillings.

## 16 VICTORIA.—CHAP. 175.

*An Act to provide for the more equal distribution of business in, and to improve the practice of the Superior Courts of Common Law in Upper Canada, and for other purposes therein mentioned.*

[Assented to 14th June, 1853.]

I. }  
to } inclusive. Repealed by 19 Vic. c. 43.  
XIII. }

On what days  
and during  
what hours  
Sheriffs in U.  
C. shall keep  
their offices  
open.

XIV. *And be it, &c.,* That the Sheriff of each County or United Counties in Upper Canada, shall keep his office open each day, except Sunday, Christmas Day, Good Friday, and the Birth-day of the Sovereign, from ten o'clock in the forenoon until four o'clock in the afternoon, and during all that time the said Sheriff, his Deputy or some Clerk competent to do business for him, shall be present to transact the business of the office; and that upon the delivery of any Writ of Sum-

mons at the said office to be served by the Sheriff, he, his Deputy or Clerk, shall endorse thereon the time it was so delivered, and in case such Summons shall not be fully and completely served within ten days after such delivery, then the Plaintiff, his Attorney or Agent, shall be entitled to receive back the said Writ, and such Sheriff, Deputy Sheriff or Clerk, shall endorse thereupon the time of such re-delivery of such Writ, and in the taxation of cost, the costs of the mileage and service of such Writ by any literate person afterwards, shall be allowed as if the same had been served by the Sheriff or his officer; and if such Sheriff shall neglect or refuse to return any such Writ after the expiration of the said ten days, the Plaintiff shall be at liberty to issue a Duplicate, Alias or other Writ on the *Præcipe* already filed, and the costs of the first or other writ not returned as aforesaid shall and may be charged against and recovered from the said Sheriff by the Plaintiff or his Attorney.

Date of their delivery to Sheriff to be endorsed on Writs: proceedings if they are not served within a certain time.

Penalty for not delivering a Writ as hereby required.

XV. [Repealed by 19 Vic., c. 43.]

XVI. *And be it, &c.*, That in the event of any Clerk of Assize being absent, or being prevented by illness or other cause from performing his duties as such Clerk, the presiding Judge of Assize may authorize some person to act as Clerk of Assize; Provided that if such Clerk so absent or prevented from performing his duties as aforesaid, be not a Clerk of a County Court, the Clerk of the County Court, of the County or United Counties, as the case may be (except the United Counties of York, *Ontario* and Peel,) may perform the duties of Clerk of Assize, and such County Clerk, or other person so substituted, shall be entitled to receive the remuneration payable for the performance of such duties.

In case of absence of Clerk of Assize a substitute to act

County Court Clerk may act: exception.

Remuneration.

XVII. *And be it, &c.*, That in addition to the duties authorized and required to be performed by the Judges of the County Courts in Upper Canada, by the thirty-fifth section of the Act of the Parliament of this Province, passed in the twelfth year of Her Majesty's Reign, and chaptered amongst the Public Acts of the Session as chapter sixty-three, the said Judges are hereby authorized and required to hear and deter-

Judges of County Courts may hear applications and grant summonses for certain purposes: in addition to their duties under 12 V. c. 63, s. 35.

N. R., No.

mine applications, and to grant Summonses and Orders for the payment of moneys into Court, for the allowance of Bail and security for Costs, and also Summonses and Orders for the admission of documents in evidence under the *twenty-eighth Rule of the Rules, Orders and Regulations referred to in the Act of the Parliament of this Province, passed in the sixth year of Her Majesty's Reign, and chaptered amongst the public general Acts as Chapter nineteen*, in suits depending in the Superior Courts of Common Law in Upper Canada; subject to the same provisions, restrictions and right of appeal as other applications made under the said thirty-fifth Section of the Act in this Section first above mentioned.

Sect. 10 of 14  
& 15 V. c. 118,  
suspended,  
while W. A.  
Campbell  
holds certain  
offices.

XVIII. *And be it, &c.*, That the tenth Section of the Act of the Parliament of this Province, passed in the Session held in the fourteenth and fifteenth years of Her Majesty's Reign, and chaptered amongst the public general Acts of the Session in which the same was passed, as chapter one hundred and eighteen, in so far as the same relates to certain duties to be discharged under the said section by the several Clerks of Assize in Upper Canada, shall be and is hereby suspended, so long as William Alexander Cambell shall continue to hold the Office of Marshal and Clerk of Assize for the County of York.

Certain  
duti-s im-  
posed on W.  
A. Campbell  
while he  
holds the  
said offices.

XIX. *And be it, &c.*, That William Alexander Campbell, so long as he shall continue to be the Marshal and Clerk of Assize of the County of York, shall procure from the Judges of the Superior Courts the several precepts for the return of Panels of Grand and Petit Jurors for any Sittings or Sessions of Assize, Nisi Prius, Oyer and Terminer, and Gaol Delivery, and transmit the same to the several Sheriffs or other Officers to whom the return of such precepts shall severally belong, as soon as conveniently may be after the commission, or other day upon which the Jurors to be returned upon such precepts are to be summoned to attend, shall or may be known, and where such day is fixed by law, then as soon as conveniently may be after the close of the last preceding sittings of the same Courts; and for preparing, procuring and transmitting

each precept, he shall be entitled to receive Five Shillings, payable out of the Fee Fund.

XX. *And be it, &c.*, That from and after the passing of this Act, no Attorney or Solicitor, nor any Executor, Administrator, or Assignee of any Attorney or Solicitor in Upper Canada, shall commence or maintain any action or suit for the recovery of any fees, charges or disbursements, for any business done by such Attorney or Solicitor, until the expiration of one month after such Attorney or Solicitor, or the Executor, Administrator or Assignee of such Attorney or Solicitor, shall have been delivered unto the party to be charged therewith, or sent by the Post to or left for him at his counting-house, office of business, dwelling-house, or last known place of abode, a Bill of such fees, charges and disbursements, and which Bill shall either be subscribed with the proper hand of such Attorney or Solicitor, (or, in the case of partnership, by any of the partners, either with his own name, or with the name or style of such partnership), or of the Executor, Administrator, or Assignee of such Attorney or Solicitor, or be enclosed in or accompanied by a letter subscribed in like manner, referring to such Bill; and upon the application of the party chargeable by such Bill within such month, it shall be lawful for any of the Superior Courts of Law or Equity, or any Judge of either of them, or any Judge of a County Court in Upper Canada, and they are hereby respectively required, to refer such Bill, and the demand of such Attorney or Solicitor, Executor, Administrator or Assignee, thereupon to be taxed and settled by the proper officer of any of the Courts in which any of the business charged for in such Bill may have been done, without any money being brought into Court; and the Court or Judge making such reference shall restrain such Attorney or Solicitor, or Executor, Administrator or Assignee of such Attorney or Solicitor, from commencing any action or suit touching such demand pending such reference; and in case no such application as aforesaid shall be made within such month as aforesaid, then it shall be lawful for such reference to be made as aforesaid, either upon the application of the Attorney or Solicitor, or the Executor, Administrator, or Assignee of such Attorney

No action for an Attorney's or Solicitor's Bill, to be commenced until the expiration of one month after a copy shall have been sent to the party charged. Party charged may have the Bill referred for taxation. No suit to be brought on it pending such reference.

The Attorney &c. may apply for such reference after a certain time.

No suit to be brought pending such reference.

or Solicitor, whose Bill may have been so as aforesaid delivered, sent, or left, or upon the application of the party chargeable by such Bill, with such directions and subject to such conditions as the Court or Judge making such reference shall think proper; and such Court or Judge may restrain such Attorney or Solicitor, or the Executor, Administrator or Assignee of such Attorney or Solicitor, from commencing or prosecuting any action or suit touching such demand pending such reference, upon such terms as shall be thought proper: Provided always, that no such reference, as aforesaid, shall be directed upon an application made by the party chargeable with such Bill after a verdict shall have been obtained or a Writ of Inquiry executed in any action for the recovery of the demand of such Attorney or Solicitor, or Executor, Administrator or Assignee of such Attorney or Solicitor, or after the expiration of twelve months after such Bill shall have been delivered, sent or left as aforesaid, except under special circumstances, to be proved to the satisfaction of the Court or Judge to whom the application for such reference shall be made; and upon every such reference, if either the Attorney or Solicitor, or Executor, Administrator, or Assignee of the Attorney or Solicitor, whose Bill shall have been delivered, sent, or left, or the party chargeable with such Bill having due notice, shall refuse or neglect to attend such taxation, the Officer to whom such reference shall be made may proceed to tax and settle such Bill and demand *ex parte*; and in case any such reference as aforesaid shall be made upon the application of the party chargeable with such Bill, or upon the application of such Attorney or Solicitor, or the Executor, Administrator, or Assignee of such Attorney or Solicitor, and the party chargeable with such Bill shall attend upon such taxation, the costs of such reference shall, except as hereinafter provided for, be paid according to the event of such taxation, that is to say: if such Bill when taxed be less by a sixth part than the Bill delivered, sent, or left, then such Attorney or Solicitor, or Executor, Administrator, or Assignee of such Attorney or Solicitor, shall pay such costs; and if such Bill when taxed shall not be less by a sixth part than the Bill delivered, sent, or left, then the party

Proviso:  
such refer-  
ence not to  
be made in  
certain cases.

Exceptions.

Taxation  
may be *ex*  
*parte* if  
either party  
fail to attend

Costs of refer-  
ence how  
paid.

chargeable with such Bill, making such application or so attending, shall pay such costs; and every order to be made for such reference as aforesaid, shall direct the Officer to whom such reference shall be made, to tax such costs of such reference to be so paid as aforesaid, and to certify what, upon such reference, shall be found to be due to or from such Attorney or Solicitor, or Executor, Administrator, or Assignee of such Attorney or Solicitor in respect of such Bill and demand, and of the costs of such reference, if payable: Provided also, that such Officer shall in all cases be at liberty to certify specially any circumstances relating to such Bill or taxation, and the Court or Judge shall be at liberty to make thereupon any such Order as such Court or Judge may think right respecting the payment of the costs of such taxation: Provided also, that where such reference as aforesaid shall be made when the same is not authorized to be made except under special circumstances, as hereinbefore provided, then the said Court or Judge shall be at liberty, if it shall be thought fit, to give any special directions relative to the costs of such reference: Provided also, that it shall be lawful for the said respective Courts and Judges, in the same cases in which they are respectively authorized to refer a Bill which has been so as aforesaid delivered, sent or left, to make such Order for the delivery by any Attorney or Solicitor, or the Executors, Administrator, or Assignee of any Attorney or Solicitor, of such Bill as aforesaid, and for the delivery up of deeds, documents or papers in his possession, custody or power, or otherwise touching the same, in the same manner as has heretofore been done as regards such Attorney or Solicitor, by such Courts or Judge respectively, where any such business had been transacted in the Courts in which such Order was made: Provided also, that it shall not in any case be necessary in the first instance for such Attorney or Solicitor, or the Executor, Administrator or Assignee of such Attorney or Solicitor, in proving a compliance with this Act, to prove the contents of the Bill he may have delivered, sent or left, but it shall be sufficient to prove that a Bill of fees, charges or disbursements subscribed in the manner aforesaid, or enclosed in or accompanied by such letter as afore-

Proviso:  
Taxing of-  
ficer may cer-  
tify special  
circum-  
stances.

Proviso:  
Special direc-  
tions as to  
costs may be  
made in cer-  
tain cases.

Proviso: or-  
der may be  
made in like  
manner for  
delivery of  
Deeds, &c.

Proviso: in  
the first in-  
stance con-  
tents of the  
Bill need not  
be proved,  
&c.

Proviso :  
Judge may  
give leave to  
commence  
an action  
when Defen-  
dant is about  
to leave U. C.

said, was delivered, sent or left in manner aforesaid; but nevertheless it shall be competent for the other party to shew that the Bill so delivered, sent or left was not such a Bill as constituted a *bona fide* compliance with this Act: Provided also, that it shall be lawful for any Judge of the Superior Courts of Law or Equity or a County Judge, to authorize an Attorney or Solicitor to commence an action or suit for the recovery of his fees, charges or disbursements against the party chargeable therewith, although one month shall not have expired from the delivery of a Bill as aforesaid, on proof to the satisfaction of the said Judge that there is probable cause for believing that such party is about to quit Upper Canada.

Provision  
where a  
party other  
than the  
party first  
chargeable,  
shall become  
liable to pay  
any Bill.

XXI. *And be it, &c.*, That where any person not the party chargeable with any such Bill within the meaning of the provisions hereinbefore contained, shall be liable to pay or shall have paid such Bill either to the Attorney or Solicitor, his Executor, Administrator or Assignee, or to the party chargeable with such Bill as aforesaid, it shall be lawful for such person his Executor, Administrator or Assignee, to make such application for a reference for the taxation and settlement of such Bill as the party chargeable therewith might himself make, and the same reference and order shall be made thereupon, and the same course pursued in all respects, as if such application was made by the party so chargeable with such Bill as aforesaid: Provided always, that in case such application is made when, under the provisions herein contained, a reference is not authorized to be made except under special circumstances, it shall be lawful for the Court or Judge to whom such application shall be made, to take into consideration any additional special circumstances applicable to the person making such application, although such circumstances might not be applicable to the party so chargeable with the said Bill as aforesaid, if he was the party making the application.

Proviso :  
when appli-  
cation is  
made in  
cases where  
reference is  
not autho-  
rized except  
under special  
circum-  
stances.

Judge may  
order d-li-  
very of a  
copy of the  
Bill to the  
party not  
originally  
chargeable.

XXII. *And be it, &c.*, That for the purpose of any such reference upon the application of the person not being the party chargeable within the meaning of the last preceding Section, or of a party interested as aforesaid, it shall be lawful for such

Court or Judge to order any such Attorney or Solicitor, or the Executor, Administrator or Assignee of any such Attorney or Solicitor, to deliver to the party making such application a copy of such Bill, upon payment of the costs of such copy: Provided Proviso. always, that no Bill which shall have been previously taxed and settled shall be again referred, unless under special circumstances, the Court or Judge to whom such application is made shall think fit to direct a retaxation thereof.

XXIII. *And be it, &c.*, That the payment of any such Bill Payment of Bill not to preclude reference, if special circumstances require it. as aforesaid, shall in no case preclude the Court or Judge to whom application shall be made, from referring such Bill for taxation, if the special circumstances of the case shall in the opinion of such Court or Judge appear to require the same, upon such terms and conditions and subject to such directions as to such Court or Judge shall seem right; Provided Proviso. the application for such reference be made within twelve calendar months after payment.

XXIV. *And be it, &c.*, That in all cases in which such Taxing Officer may require the assistance of an officer of any other Court. Bill shall have been referred to be taxed and settled, the Officer to whom such reference is made, shall be at liberty to request the proper Officer of any other Court having such an Officer, to assist him in taxing and settling any part of such Bill, and such officer so requested, shall thereupon proceed to tax and settle the same, and shall have the same powers, and Fees. may receive the same fees in respect thereof, as upon a reference to him by the Court of which he is such officer, and shall return the same, with his opinion, thereon, to the Officer who shall have so requested him to tax and settle the same.

XXV. *And be it, &c.*, That all applications made under the foregoing provisions to refer any such Bill as aforesaid to be taxed or settled, and for the delivery of such Bill, and for the delivering up of deeds, documents and papers, shall be made in the matter of such Attorney or Solicitor; and upon the taxation and settlement of any such Bill, the certificate of the Officer by whom such Bill shall be taxed shall (unless set aside or altered by order of a Judge, Decree or Rule of Court,) Applications under foregoing provisions how entitled. Certificate of taxing officer to be conclusive, unless set aside.

be final and conclusive as to the amount thereof, and payment of the amount certified to be due and directed to be paid may be enforced according to the course of the Court in which such reference shall be made.

XXVI. }  
to } inclusive. Repealed by 19 & 20 Vic. c. 43.  
XXIX. }

Commence-  
ment of Act.

XXX. *And be it, &c.*, That this Act shall come into force and take effect upon, from and after the first day of July, one thousand eight hundred and fifty-three, and not before.

16 VICTORIA.—CHAP. 180.

*An Act to protect Justices of the Peace in Upper Canada from Vexatious Actions.*

[Assented to 14th June, 1853.]

Preamble.

WHEREAS it is expedient to protect Justices of the Peace in Upper Canada in the execution of their duty: *Be it, &c.*, 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 a verdict shall be given for the Defendant.

Actions for things done within jurisdiction of the Justice to be on the case as for a tort. Malice and want of probable cause must be alleged and proved.

Actions when the Justice shall have exceeded his jurisdiction may lie without such allegation.

II. *And be it, &c.*, 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.

But not for an act done under a Conviction or Order until the same be quashed.

Nor for an act done under a Warrant to compel appearance, if a Summons were previously served and not obeyed.

III. *And be it, &c.*, That where a Conviction or Order shall be made by one or more Justices of the Peace, and a Warrant of distress or of commitment shall be granted thereon by some other Justice of the Peace *bona 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.

If one Justice make a Conviction, &c., and another grant a Warrant, action must be against the former.

IV. *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

If a Justice refuse to do any act, either of the Superior Courts of Common Law or a County

Judge may order him to do it, and no act on shall then lie against him for doing it.

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: *Be it, &c.*, 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 show cause why such act should not be done; and if after due service of such rule good cause shall not be shown 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.

After Conviction, &c. confirmed on appeal, no Action to lie for an act done under a Warrant upon it.

V. *And be it, &c.*, 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 so granted such Warrant, for anything which may have been done under the same, by reason of any defect in such Conviction or Order.

If an Action be brought contrary to this Act, Judge may set aside the proceedings.

VI. *And be it, &c.* 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 affi-

davit of facts, to set aside the proceedings in such Action, with or without costs, as to him shall seem meet.

VII. *And be it, &c.*, That no Action shall be brought against any Justice of the Peace for anything 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. Limitation of Action.

VIII. *And be it, &c.*, 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. Notice of Action to be given, and how.

IX. *And be it, &c.* 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 anything 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 Venue how to be laid.

Defendant may plead the General Issue and give the special matter, &c., in evidence.

Proviso. Action not to be brought in County or Division Court if the Justice object.

Proviso.  
County  
Courts to  
hold plea of  
actions  
against J. P.  
up to £30.

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 anything 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.

Tender and  
payment of  
money into  
Court, by  
Justice.

X. *And be it, &c.*, 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 sum 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 nonsuit, 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.

If the Jury  
think the  
Plaintiff en-  
titled to no  
greater da-  
mages, they  
shall give  
a verdict  
for the De-  
fendant.

If the Plain-  
tiff accepts  
the money.

XI. *And be it, &c.*, 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.

If Plaintiff fail to prove certain things, he shall be nonsuited, or verdict given for the Defendant.

XII. *And be it, &c.*, 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.

Damages limited in certain cases.

XIII. *And be it, &c.*, That if the Plaintiff in any such Action shall recover a verdict, or 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

What costs shall be allowed to either party.

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.

Commencement of this Act.

XIV. *And be it, &c.*, 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

Inconsistent enactments repealed.

XV. *And be it, &c.*, 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.

14 & 15 V. c. 54, as far as regards U. C.

Act to apply to persons protected by repealed Acts, &c.

XVI. *And be it, &c.*, 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.

Extent of Act. Interpretation.

XVII. *And be it, &c.*, 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.

## 18 VICTORIA.—CHAP. 9.

*An Act to enable the Superior Courts of Law and Equity to issue process to compel the attendance of Witnesses out of their jurisdiction, and to give effect to the service of such process in any part of Canada.*

[Assented to 18th December, 1854.]

WHEREAS great inconvenience arises in the administration of justice from the want of a power in the Superior Courts of Law and Equity to compel the attendance of witnesses resident in one jurisdiction of Canada at a trial or *enquete* in another jurisdiction, and the examination of such witnesses by commission is not in all cases a sufficient remedy for such inconvenience: *Be it, &c.*, as follows:

I. If in any action or suit now or at any time hereafter depending in any of Her Majesty's Superior Courts of Law or Equity in Canada, it shall appear to the Court in which such action is pending, or if such Court is not sitting, to any Judge of any such Courts, that it is proper to compel the personal attendance at any trial or *enquete* or examination of witnesses of any witness who may not be within the jurisdiction of the Court in which such action or suit is pending, it shall be lawful for such Court or Judge, if in their or his discretion it shall so seem fit, to order that a writ called a writ of *subpœna ad testificandum* or of *subpœna duces tecum* shall issue in special form, commanding such witness to attend such trial or *enquete* or examination of witnesses wherever he shall be in Canada; and the service of any such writ or process in any part of Canada, shall be as valid and effectual to all intents and purposes as if the same had been served within the jurisdiction of the Court from which it issues, according to the practice of such Court; Provided always that no such writ shall be issued in any case in which an action is now pending or shall be hereafter, or has been already brought for the same cause of action, in that section of the Province, whether Upper or Lower Canada respectively, within which such witness or witnesses may reside.

Preamble.

Witnesses may be summoned from any part of Canada to attend the Superior Courts in Civil Cases in either section of the Province. and how.

Proviso.

Special Order  
to be made.

II. Every such writ shall have at the foot or in the margin thereof, a statement or notice that the same is issued by the special order of the Court or Judge making such order, and no such writ shall issue without such special order.

Punishment  
of persons  
not attend-  
ing in  
obedience to  
such sum-  
mons.

III. In case any person so served shall not appear according to the exigency of such writ or process, it shall be lawful for the Court out of which the same issued, upon proof made of the service thereof, and of such default, to the satisfaction of such Court, to transmit a certificate of such default, under the Seal of the same Court, to any of Her Majesty's Superior Courts of Law or Equity in that part of Canada in which the person so served shall reside, being out of the jurisdiction of the said Court so transmitting such certificate, and the said Court to which such certificate is so sent, shall and may hereupon proceed against and punish such person so having made default, in like manner as they might have done if such person had neglected or refused to appear to a writ of subpoena or other similar process issued out of such last mentioned Court: Provided always that no such certificate of default shall be transmitted by any Court, nor shall any person be punished for neglect or refusal to attend any trial or *enquete* or examination of witnesses, in obedience to any such subpoena or other similar process, unless it shall be made to appear to the Court transmitting and also to the Court receiving such certificate, that a reasonable and sufficient sum of money, according to the rate per diem and per mile allowed to witnesses by the law and practice of the Superior Courts of Law within the jurisdiction of which such person shall be found, to defray the expenses of coming and attending to give evidence and of returning from giving such evidence, had been tendered to such person at the time when such writ of subpoena, or other similar process, was served upon such person: And provided also, that the service of such writs of subpoena or other similar process in Lower Canada, shall be proved by the certificate of a Bailiff within the jurisdiction where the service is made, under his oath of office, and such service in Upper Canada by the affidavit of service endorsed on or annexed to such writ by the person or persons serving the same.

Proviso:

Reasonable  
expenses  
must have  
been ten-  
dered.

Proviso:  
Proof of  
service how  
made.

IV. The costs of the attendance of any such witness shall not be taxed against the adverse party to such suit, beyond the amount that would have been allowed on a commission *rogatoire* or to examine witnesses, unless the Court or Judge before whom such trial or *enquete* or examination of witnesses is had, shall so order.

Costs of attendance, how taxable.

V. The several provisions of this Act shall apply to the summoning of witnesses residing within the jurisdiction of the Circuit Court held at any one place, to attend at any trial or *enquete* before the Circuit Court at any other place in Lower Canada.

Act to apply to cases in Circuit Court for Lower Canada.

VI. Nothing herein contained shall alter or affect the power of any such Courts to issue a commission for the examination of witnesses out of their jurisdiction, in any cases in which, notwithstanding this Act, they shall think fit to issue such commission.

Act not to affect power to examine by commission.

VII. Nothing herein contained shall alter or affect the admissibility of any evidence at any trial or proceeding, where such evidence is now by law receivable on the ground of any witness being beyond the jurisdiction of the Court, but the admissibility of all such evidence shall be determined as if this Act had not been passed.

Act not to affect admissibility of evidence.

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18 VICTORIA.—CHAP. 122.

*An Act to extend and continue the Act intituled, An Act to provide for the accommodation of the Courts of Superior Jurisdiction in Upper Canada, and for other purposes.*

[Assented to 19th May, 1855.]

WHEREAS the Law Society of Upper Canada in consideration of the sum of six thousand pounds to them paid or to be paid in pursuance of the Act, intituled, *An Act to provide for the accommodation of the Courts of Superior Jurisdiction in Upper Canada*, did on the twentieth day of June, one thousand eight hundred and forty-six, covenant with our Sovereign Lady the Queen, to provide suitable accommodation for the

Preamble.

9 Vic. c. 33.

Superior Courts of Law and Equity in Upper Canada at the seat of the said Society, for all time to come; And whereas for the purpose of carrying out the said arrangements, a tax or levy on certain proceedings in the Superior Courts of Law and Equity, and the Court of Appeal of Upper Canada, was authorized under and by virtue of the said recited Act; and whereas the Law Society of Upper Canada have in pursuance of the said arrangements made the necessary alterations and additions at Osgoode Hall in the City of Toronto, for the use of the said Courts; and whereas the said Society have by their Petition, dated Hilary Term, 1852, represented, that in order to adapt their new building appropriately in its outward appearance to those already erected and to make adequate internal arrangements for the purposes intended, they were obliged to lay out and expend a much larger sum of money than was originally contemplated, and that consequently they now find themselves involved in a debt of four thousand pounds; And whereas since the date of the covenant so entered into by the Law Society as aforesaid, the Legislature has increased the number of the Superior Court in Upper Canada, and thus occasioned the necessity for further accommodation and additional expenditure; And whereas it is expedient to assist the said Law Society in discharging the said debt of four thousand pounds, and it is further expedient to provide increased accommodation for the Superior Courts in Upper Canada, and in order to accomplish the same it is necessary to extend and continue the provisions of the said recited Act until the debt of the Law Society, and all costs of the said alterations and further accommodation shall have been discharged and paid: *Be it, &c.*, as follows:

Debentures  
for £10,000  
may be  
issued

I. For the purposes aforesaid, it shall and may be lawful for the Governor of this Province to authorize the issue of debentures for the sum of ten thousand pounds, in such form and in such sums as may be found convenient; such debentures to be at a rate of interest not to exceed six per cent. per annum and redeemable within twenty years.

II. For the purpose of paying the interest on such debentures and liquidating the principal thereof, there shall be levied, imposed and collected on the proceedings in Law and Equity in Upper Canada, the sums set forth in that behalf in the Schedule to the said recited Act, and law proceedings shall be subject to the said levy, whether had in the Court of Queen's Bench or in the Court of Common Pleas.

Payment of interest and principal provided for.

III. All the provisions of the said recited Act, so far as the same may be applicable, are hereby extended to the debentures to be issued under the authority of this Act, and to all matters relative to the said debentures, and to the sum to be thereby raised, in as full and ample a manner to all intents and purposes, as if the said sum of ten thousand pounds to be raised under the authority of this Act, had formed part of the sum to be raised under the provisions of the said recited Act.

Act 9 V. c. 33 to apply to Debentures under this Act.

IV. The Interpretation Act shall apply to this Act.

Interpretation.

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18 VICTORIA.—CHAP. 128.

*An Act to amend and consolidate the Acts relating to the appointment of Reporters to the several Courts of Law and Equity in Upper Canada, and to repeal certain Acts therein mentioned.*

[Assented to 30th May, 1855.]

WHEREAS it is expedient to repeal several Acts and parts of Acts relating to the appointment of Reporters of Her Majesty's several Courts of Law and Equity in Upper Canada, and to amend and consolidate the provisions of the same: *Be it, &c.*, as follows:

Preamble.

I. The Act of the Parliament of the late Province of Upper Canada, passed in the fourth year of the reign of His late Majesty, King George the Fourth, chapter three, and intituled, *An Act providing for the publication of Reports of the decisions of His Majesty's Court of King's Bench in this Province*, and also, the first, second, third, fourth, fifth, sixth and seventh

Act of U. C. 4 G. 4, c. 3.

Sections of the Act of the said Province, passed in third year of the reign of Her present Majesty, chaptered two, and intituled, *An Act for the better regulation of the Office of Reporter to the Court of Queen's Bench in this Province*, and also the Act of the Parliament of this Province, passed in the eighth year of Her Majesty's reign, chaptered thirty-nine, and intituled, *An Act to authorize the appointment of a Reporter in the Court of Chancery*, the Act of the Parliament of this Province, passed in the twelfth year of Her Majesty's reign, chaptered sixty-five and intituled, *An Act to increase the Salary of the Reporter of the Court of Chancery in Upper Canada*, and also the sixth, seventh, eight, ninth, tenth and eleventh Sections of the Act 13 & 14 Vic. cap. 51, shall be and the same are hereby repealed.

Part of Act of U. C. 3 V. c. 2.

8 V. c. 39.

12 V. c. 65,

and part of 13 & 14 V. c. 51, repealed.

Law Society of U. C. in Convocation to appoint Reporters.

II. It shall and may be lawful for the Law Society of Upper Canada in Convocation, by Instruments under the seal of the Society, to appoint some fit and proper person and persons to be Reporters respectively of each of Her Majesty's three Superior Courts of Law and Equity in Upper Canada, that is to say, one for the Court of Queen's Bench, one for the Court of Chancery, and one for the Court of Common Pleas, such Reporters to be severally amenable to the said Society in Convocation for the correct and faithful discharge of their respective duties, and to be subject to such rules and regulations for the discharge of the duties of their respective offices, including the printing and publishing of their reports, as already have been made, or as shall or may from time to time hereafter be made for that purpose by the said Society in Convocation, with the approbation of the Judges of Her Majesty's three Superior Courts of Law and Equity for Upper Canada, as visitors of the said Society, passed and approved according to the usual course practised in respect of other general rules of the said Society, with power to the said Society in Convocation from time to time to remove any of such Reporters, and to appoint another in his place; Provided always, that no person shall be eligible to the office of Reporter of any of the said Courts other than the members of the said Society of the degree of Barrister at

Proviso.

Law, and that no appointment to or removal from any of the said offices shall take place without the assent of the Judges of the particular Court to which such person shall be appointed Reporter, or to which he shall belong, signified to the said Society in writing under the hands of such Judges upon report made to them by the said Society in convocation, of the purposed appointment or removal of such person.

III. It shall be the duty of each of such Reporters respectively, to report as well the substance of such of the oral decisions of the Court to which he shall belong as shall be of general importance, as also to report such decisions as may be delivered in writing, and it shall further be his duty, without any unnecessary delay, to cause such reports to be fairly entered in a book and to submit the same for inspection of the Judges of such Court, which reports after due examination and correction shall be signed by such Judges respectively or such of them as shall not be prevented by absence or sickness from doing so.

What shall be reported.

Judges to examine reports.

IV. It shall be lawful for the said Law Society of Upper Canada in Convocation, by any rule or rules already made or from time to time hereafter to be made with such approbation as aforesaid, according to the usual course of the said Society, to make it part of the duty of the Reporters to the said two Courts of Common Law jointly, or of either of such Common Law Reporters separately, to act as Reporter of the decisions of the several Judges of such Courts of Common Law when sitting in Banc. apart from their brethren for the disposal of such matters relating to the business of the said Courts as may be so disposed of according to Law, or when sitting at Chambers, and in and by any such rule or rules so made or to be made as aforesaid, to regulate and direct the manner in which the reports of such last mentioned decisions shall be made, entered and submitted for correction and approval of the individual Judges who may have pronounced the same, and afterwards printed and published, as the said Society is by this Act empowered to do with respect to the decisions of such Common Law Courts in Banc. generally.

Provision may be made for reporting the decisions of the Judges sitting separately.

Provision  
may be made  
for reporting  
the decisions  
of the Court  
of Error and  
Appeal.

V. It shall be lawful for the said Law Society of Upper Canada in Convocation, by any rule or rules already made or from time to time hereafter to be made with such approbation as aforesaid according to the usual course of such Society, to make it part of the duty of the said three Reporters jointly or or of any two of such Reporters jointly or of any one of such Reporters separately, to act as Reporter of the decisions of Her Majesty's Court of Error and Appeal for Upper Canada, or to make it the duty of each of such Reporters separately to act as Reporter of such of the decisions of the said Court of Error and Appeal as shall have been pronounced by such Court on Writs or Petitions of Error or Appeal from the particular Court below of which such Reporter shall be the appointed Reporter as aforesaid, and by any such rule or rules so made or to be made as aforesaid, to regulate and direct the manner in which the reports of such last mentioned decisions shall be made, entered and submitted for correction and approval, and afterwards printed and published, as the said Society is by this Act empowered to do with respect to the decisions of Her Majesty's said three Superior Courts of Law and Equity for Upper Canada, as aforesaid.

Printing and  
publishing of  
reports.

VI. Each of such Reporters shall be at liberty to print and publish such his Reports or a digest thereof, and it shall be his duty so to do whenever thereto required by the said Law Society in Convocation, when the same shall be done in such manner as the said Society by any general rule or rules made and approved as aforesaid already has directed, or from time to time hereafter shall or may direct in that behalf as aforesaid; Provided always, nevertheless, that the profits to arise from the publication of such Reports shall belong to each of such Reporters respectively.

Proviso.

Salary of  
Reporters.

VII. The Salary of each of such Reporters shall not exceed the sum of One Hundred and Fifty Pounds per annum, and shall or may be fixed at or varied within that amount, as the said Society in Convocation, with such approbation as aforesaid, shall or may from time to time think just and proper.

VIII. For the purpose of providing such Salaries, it shall and may be lawful for the said Law Society in Convocation, by any rule or rules made or to be made by them with such approbation as aforesaid, to appoint such sum as they may think proper, not exceeding the sum of One Pound Five Shillings in respect of each Court, to be paid to the Treasurer of the said Society annually, by every Attorney of either of the said Courts of Queen's Bench and Common Pleas practising therein, and by every Solicitor of the said Court of Chancery practising therein; and in case of persons being as well Solicitors of the said Court of Chancery as also Attorneys of both of such first mentioned Courts or either of them, it shall and may be lawful for the said Society as they shall think fit, to appoint one sum of money to be paid by every such person annually as such Attorney or as such Solicitor and Attorney.

How the money requisite to pay such salaries may be raised.

IX. And whereas it would tend not only to the greater convenience of the gentlemen practising in the said Courts, but also to the more easy and certain detection of such persons as shall so practise without having taken out the certificate heretofore issued by the officers of the different Courts, upon the production to them respectively of the receipt of the Treasurer of the said Society for the said sum of money so appointed by the said Society as aforesaid, if such certificates were issued from the same office where such money is required to be paid as aforesaid: *Be it, &c.*, that such certificate shall hereafter be issued by the Secretary of the said Law Society instead of the officers of such Courts, for which purpose such Secretary shall be annually furnished with such certificates in blank by the respective Clerks of the Crown and Pleas and Registrar of such Courts respectively, as hereinafter more particularly provided; Provided always, nevertheless, that no such certificate shall be so issued or delivered to any such Attorney or Solicitor, being at the time a member of the said Law Society of Upper Canada of what standing or degree soever, who shall at the time of such payment of the said certificate fee, as hereinafter provided, be indebted to the said Society for any term fee, or other fee or due payable to the said Society, until all such last

Recital.

Certificates to be issued by the Secretary of the Law Society.

Proviso.

mentioned fees and dues shall have been fully paid and satisfied to the Treasurer of the said Society as well as the said sum of money so appointed to be paid in respect of such certificate as aforesaid.

Certificates to be issued yearly in Michaelmas Term, upon payment of the fees therefor.

X. Every Attorney practising in either of the said Courts of Queen's Bench or Common Pleas, and every Solicitor practising in the said Court of Chancery, shall annually, in Michaelmas Term in each year, pay to the Treasurer of the Law Society of Upper Canada such sum of money as already has been or hereafter shall be in that behalf appointed as aforesaid, and thereupon the Secretary of the said Society shall fill up, issue, and deliver to such Attorney or Solicitor one or more of the certificates with which he shall have been so furnished in blank as aforesaid, of such Attorney or Solicitor being an Attorney or Solicitor of such Court, respectively.

Clerks of Courts to furnish the Secretary of the Law Society with Copies of the Rolls of Attorneys, &c., of such Courts.

XI. The Clerks of the Crown and Pleas of Her Majesty's Courts of Queen's Bench and Common Pleas at Toronto, and the Registrar of the Court of Chancery there, shall as soon as conveniently may be after the passing of this Act, prepare and deliver to the Secretary of the said Society, a copy certified under their respective hands and the seals of such Courts respectively, of the Rolls of Attorneys and Solicitors of their respective Courts, as the same stood on the last day of the Vacation after Trinity Term in the year of our Lord one thousand eight hundred and fifty-four, and shall hereafter annually on or before the last day of the Vacation after Trinity Term in each year, prepare and deliver to such Secretary or leave for him at his office in Osgoode Hall, a copy certified as aforesaid of all entries on such Rolls made on or before that day and subsequently to the last return made by them respectively to the said Secretary according to the provisions of this Act.

Secretary to enter such Rolls.

XII. The Secretary of the Law Society of Upper Canada shall enter all such certified copies of Rolls in a book to be kept in his office for that purpose, adding to each name a number by which the same may be the more readily referred to on the same, so that the names on each copy of Roll when so entered

shall be numbered from one forward in the whole series of numbers belonging to such Roll respectively.

XIII. Whenever any Attorney or Solicitor of any of the said Courts shall be struck off the Roll of Attorneys or Solicitors of such Court, the Clerk of the Crown and Pleas or Registrar of such Court shall certify the same under his hand and the seal of such Court to the Secretary of the said Society, stating whether the same had been so struck off at the request of such Attorney or Solicitor or otherwise, and such Secretary shall thereupon attach such certificate to the certified copy of Roll on which the name of such person stands, and shall in the book so to be kept in his office as aforesaid, make a note or memorandum near or opposite to the name of such party, of his having been so struck off such Roll as aforesaid.

Certificate of striking off Attorneys, &c., to be furnished

XIV. The Clerks of the Crown and Pleas of Her Majesty's Courts of Queen's Bench and Common Pleas at Toronto, and the Registrar of the Court of Chancery there, shall annually on or before the last day of Trinity Vacation in each year, furnish to the Secretary of the Law Society of Upper Canada, as many blank Attorneys' and Solicitors' certificates as there shall be Attorneys or Solicitors then standing on the Rolls of such Court respectively, which certificate shall bear date of the last said day in Trinity Vacation in such year.

Blank certificates to be furnished to the Secretary.

XV. The Secretary of the said Society, when he shall issue any of such certificates to any Attorney or Solicitor as aforesaid shall in the margin thereof, under his hand, note the day of the actual issue of such certificate to the Attorney or Solicitor taking out the same, and shall at the commencement of every new year, destroy all blank certificates of the previous year then remaining with him unissued.

Memorandum of issue of certificates, &c.

XVI. The Secretary of the said Society shall, in a second book to be kept in his office for that purpose, enter all the names on the copies of Rolls to be so transmitted to him as aforesaid, alphabetically arranged, with a reference to the numbers of each name on the Roll or Rolls on which the same

Alphabetical lists of Attorneys, &c., to be kept and posted up.

shall stand; and shall moreover, annually on or before the first day of February in each year, put up in his office and also in the offices of each of the Clerks of the Crown and Pleas and Registrar in Chancery, respectively, an alphabetical list certified by him, under his hand, of all such Attorneys and Solicitors as shall have taken out their certificates for the then current year, which said list so to be put up in his office as aforesaid, he shall, from time to time, amend by the addition of the name or names of such Attorneys and Solicitors as may from time to time take out their certificates at a subsequent period of such year, adding a note of the date when such last mentioned certificates were respectively taken out as aforesaid.

Penalties on Attorneys, &c., not taking out certificates in due time.

XVII. If any Attorney or Solicitor shall omit to take out such annual certificate within the time aforesaid, he shall not be entitled thereto until he shall have paid to the Treasurer of the Law Society of Upper Canada, as well the sum that shall have been and shall be so appointed as aforesaid, together with any dues or fees that he, if a Member of the said Society, shall be indebted to them as aforesaid, and also the additional sum hereinafter mentioned by way of penalty, in respect of each of such Courts, that is to say, if he shall not take out such certificate until after the last day of Hilary Term in any such year, the further sum of ten shillings, if not until after the last day of Easter Term in any such year, the further sum of fifteen shillings, and if not until after the last day in Trinity Term in any such year, the further sum of twenty shillings.

Penalty for practising without certificate.

XVIII. If any Attorney or Solicitor shall practise in any of the said Courts of Queen's Bench, Chancery, or Common Pleas, respectively, without such certificate, he shall forfeit the sum of ten pounds, to be recovered by information, in either of the said Courts of Queen's Bench or Common Pleas, and to be paid into the hands of the Treasurer of the said Society for the uses thereof.

Exceptions as to persons admitted after Mi-

XIX. Nothing herein contained shall extend to require any person admitted as an Attorney or Solicitor of any of the said Courts during Michaelmas Term, or during the vacation after

the same in any year, to take out any such certificate in <sup>Michaelmas</sup> respect of such admission before the Michaelmas Term next <sup>Term in any</sup> year. following such admission.

XX. The Clerks of the Crown and Pleas of the said Courts <sup>Clerks of</sup> of Queen's Bench and Common Pleas and the Registrar of the <sup>the Courts</sup> said Court of Chancery shall, and also the Deputies of such <sup>to make out</sup> officers in the country shall, at the commencement of each <sup>yearly lists</sup> calendar year, make out a list of the names of all such Attor- <sup>of persons</sup> neys and Solicitors as by the papers of proceedings filed, taken <sup>appearing to</sup> or had in their respective offices during the preceding year, <sup>have prac-</sup> ending with the thirty-first day of December of the same, shall <sup>tised during</sup> appear to have practised as such Attorney or Solicitor at any <sup>the then</sup> time during the same, which lists, certified under the respec- <sup>last year.</sup> tive hands, such Clerks and Registrar and their respective Deputies shall, on or before the first day of Hilary Term in the year next to that for which they shall be made up, deliver or hand to the Secretary of the Law Society of Upper Canada at Osgoode Hall.

XXI. Nothing herein contained shall extend to vacate the <sup>Office of</sup> Office of any of the present Reporters of the said three Courts, <sup>present</sup> but any such Reporter shall continue to hold his Office, subject <sup>Reporters?</sup> to removal as herein provided, and to all the other provisions <sup>not vacated</sup> of this Act, as well as to the Rules and Regulations of the <sup>by this Act.</sup> said Society, made or to be made under or according to the same.

XXII. Notwithstanding the Repeal of the several Acts and <sup>Present</sup> parts of Acts in the first Section of this Act mentioned, any <sup>certificates</sup> certificate fee that shall have been paid, and any certificate <sup>to remain</sup> that shall have been taken out for the year commencing in the <sup>valid, &c.</sup> year one thousand eight hundred and fifty-four, in accordance with the provisions of the said Acts and parts of Acts so hereby repealed, shall avail to the benefit of the Attorney or Solicitor who shall have paid and taken out the same respectively, for the year commencing with the first day of Michaelmas Term, in the year of our Lord, one thousand eight hundred and fifty-four, as if such payment had been made and such

certificate taken out in Michaelmas Term in that year, under and according to the provisions of this Act.

19 VICTORIA.—CHAP. 88.

*An Act to authorize the Judges of the Superior Court for Lower Canada to appoint Commissioners for taking Affidavits in Upper Canada.*

[Assented to 1st July, 1856.]

**Preamble.** WHEREAS it is desirable that the Judges of the Superior Court for Lower Canada, should have power to appoint Commissioners for taking Affidavits in Upper Canada: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Certain Judges in L. C. may appoint Commissioners to take affidavits in U. C., to be used in the Courts in L. C.

Filing and effect of such affidavits.

I. It shall be lawful for the Chief Justice and any one of the Justices of the Superior Court for Lower Canada for the time being, or in the event of the death or absence from the Province of the Chief Justice for the time being, for any two of the Justices of the said Court for the time being, by one or more commission or commissions under the seal of the said Court, from time to time to empower as many persons as they shall think fit and necessary in Upper Canada, to take and receive all and every such affidavit or affidavits as any person or persons shall be willing or desirous to make before any of the persons so empowered, in or concerning any cause, matter or thing depending, or hereafter to be depending, or in any wise concerning any of the proceedings to be had in the said Court, or in any other Court of Law of Record in Lower Canada; which said affidavits taken as aforesaid shall be filed in the Office of the said Courts respectively, in the District or Circuit to which the subject matter of such affidavit may relate and be made use of in the said Courts respectively, to all intents and purposes as other affidavits taken in the said Courts respectively ought to be; and every affidavit taken as aforesaid, shall be of the same force as an affidavit taken in the said Courts respectively shall and may be.

II. Proof of the execution of any deed, will or probate thereof or memorial of the same in Upper Canada, may, for purposes of registration in Lower Canada, be made before any of the Commissioners to be appointed under the authority of this Act, in the same manner as such proof may now by law be made in Lower Canada.

Such Commissioners may receive proof of execution of Deed, &c., to be used in L. C.

## 19 &amp; 20 VICTORIA.—CHAP. 91.

*An Act to amend the Act to alter and amend the Act regulating the practice of the County Courts in Upper Canada, and to extend the jurisdiction thereof.*

[Assented to 1st July, 1856.]

WHEREAS the large number of cases usually entered for trial at the Assizes for the United Counties of York and Peel render it difficult to provide for the despatch of business as at present conducted: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Preamble.

I. From and after the passing of this Act, no plaintiff having a cause of action within the jurisdiction of the County Court in said United Counties, (or in the County of York if separated from the County of Peel,) shall institute or carry on such action in either of the Superior Courts of Common Law in Upper Canada, under the provisions of the Act passed in the Session held in the thirteenth and fourteenth years of Her Majesty's Reign, intituled, *An Act to alter and amend the Act regulating the practice of the County Courts in Upper Canada, and to extend the jurisdiction thereof*, or under any other Act or authority whatsoever, unless such plaintiff shall, before issuing the first process in such action, obtain the *fiat* of one of the Judges of either of such Superior Courts, allowing the plaintiff to bring such action in one of such Superior Courts, on proof, by affidavit, to the satisfaction of such Judge, that some important question of law or evidence is likely to arise in such action, rendering it advisable to have such action

Cases within the jurisdiction of the County Court of York or Peel not to be brought in the Superior Courts, unless upon Judge's fiat founded on affidavit.

tried in such Superior Court, in which case such suit may be brought in the same manner as to costs and otherwise, as provided by said last mentioned Act.

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19 VICTORIA.—CHAP. 93.

*An Act to extend the provisions of the Insolvent Debtors' Act of Upper Canada, and for the relief of a certain class of persons therein mentioned.*

[Assented to 1st July, 1856.]

Preamble. WHEREAS there are many persons who, having been Traders in Upper Canada, within the meaning of the Bankrupt Act, (passed in the seventh year of the Reign of Her Majesty, chapter ten), either before or since the expiration thereof, have been unable to avail themselves of its benefits; And whereas these persons, from having been such Traders, are precluded from the benefit of the Insolvent Debtors' Act, (passed in the eighth year of the Reign of Her Majesty, chapter forty-eight); And whereas it is expedient to relieve such persons on their making a full surrender of their property for the benefit of their creditors: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Repealed by  
20 Vic. c. 1.  
*Appendix.*

Certain  
Traders to  
have the  
benefit of  
8-V. c. 48.

I. All such Traders coming within the description above in the preamble to this Act set forth, shall be entitled to avail themselves of the benefit of the Act of this Province, passed in the eighth year of the reign of Her Majesty, and intituled, *An Act for the relief of Insolvent Debtors in Upper Canada; and for other purposes therein mentioned*, on their taking the steps and proceedings therein set forth for obtaining their discharge.

Effect of the  
final order  
with respect  
to such  
Traders,

II. As to such persons, the order called the Final Order in the said last mentioned Act, shall, in addition to its effect as set forth in the fourth section of the said Act, operate as a discharge of all debts or liabilities, due or contracted up to the time of the presentment of the petition under the first section

of the said Act, in each case respectively, as fully and completely, and to the same extent, as if such Trader had obtained a certificate under the fifty-ninth section of the said Act relating to Bankrupts.

III. Provided always, that this Act shall apply only to <sup>Act limited</sup> <sub>to U. C.</sub>  
Upper Canada.



## APPENDIX.

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20 VICTORIA.—CHAP. 1.

*An Act to repeal the Act of one thousand eight hundred and fifty-six, intituled, "An Act to extend the provisions of the Insolvent Debtors' Act of Upper Canada, and for the relief of a certain class of persons therein mentioned."*

[Assented to 31st March, 1857.]

WHEREAS it has been found that the Act passed in the Session of one thousand eight hundred and fifty-six, chapter ninety-three, and intituled, *An Act to extend the provisions of the Insolvent Debtors' Act of Upper Canada, and for the relief of a certain class of persons therein mentioned*, has operated prejudicially to the Mercantile interests of the Province, it is therefore expedient to repeal the same: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

I. The Act mentioned in the Preamble to this Act is here-<sup>19 Vic. c.</sup> by repealed: Provided always, that any Trader within the <sup>cap. 93 re-</sup> meaning of the Act hereby repealed, who shall have presented <sup>pealed.</sup> his Petition under the provisions thereof, but who shall not have obtained a final order thereon, by reason of the passing of this Act, shall be entitled to the possession of his estate, or such parts thereof, as may then be in the possession of the Official Assignee; and that the several Judges of the County Courts shall, on the application of such party, issue their order for the re-delivery of such Petitioner's estate. <sup>Proviso.</sup>



# I N D E X.

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