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No. 35.

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

B I L L .

An Act further to amend the Judicature
Acts of Lower Canada.

Received and read 1st time, Friday, 9th April,
1858.

Second reading, Tuesday, 13th April, 1858.

Hon. Mr. Atty. Genl. **CARTIER.**

S. Derbshire & G. Desbarats, Queen's Printer.

An Act further to amend the Judicature Acts of Lower Canada.

WHEREAS it is desirable further to amend the Laws in force in Lower Canada, relative to the Administration of Justice : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Procedure—Enquête and Hearing.

I. Whenever any party to a case then pending in the Superior Court is desirous that such case be heard on the merits as soon as the evidence is closed, such party may at the same time inscribe the case for the adduction of evidence and for final hearing on the merits, and it shall accordingly be so heard as soon as the witnesses present have been heard and notes of their evidence taken, unless the Court deems it conducive to justice to adjourn the case in consequence of the absence of a material witness or other evidence : And the inscription of any such case may be made for any named day during term, or for such days in term, or for such *enquête* days, as hereinafter provided.

Inscription for *enquête* and hearing at the same time.

Days for *Enquêtes*, &c.

II. A majority of the Judges of the Superior Court residing in the District of Quebec or in that of Montreal,—or any Judge of the said Court when in any other District,—may, by any Rule of Practice to be by them or him from time to time made, and promulgated by any Judge sitting in term in the same District, appoint special days in term for the adduction of evidence and final hearing on the merits at the same time, in cases before the Court in such District ;—And any such Rule may be repealed or altered by any subsequent Rule made and promulgated in like manner :

Rules of practice may be made appointing days for such purpose.

And whenever such special days in term are so appointed in any District, no case shall be there inscribed for the adduction of evidence and final hearing on the merits at the same time, on any other day in term : and cases so inscribed shall on such days have precedence over other cases or business before the Court inscribed or fixed for such days, except only cases taken *en délibéré* and in which judgment is to be rendered.

Effect of such rules.

III. A majority of the Judges of the Superior Court residing in the District of Quebec or in that of Montreal, or any Judge of the said Court when in any other District,—may, by

Special days may be appointed for

the said purpose from among the *enquête* days.

any Rule of Practice to be by them or him from time to time made and promulgated by any one Judge sitting in term in the same District, appoint special days among those then appointed as *enquête* days, to be the days for which cases may be inscribed for the adduction of evidence and final hearing on the merits at the same time,—and any such Rule may be repealed or altered by any subsequent Rule made and promulgated in like manner :—And whenever such special days among the *enquête* days are so appointed in any District, cases may be inscribed for the adduction of evidence and final hearing on the merits at the same time, on such days, as if they were special days in term appointed for such purpose under the next preceding section, and the Judge presiding may adjudicate upon such cases and exercise all judiciary powers with respect to them, as if sitting in term ;—And any case inscribed for any such special day as aforesaid, if not terminated or adjudicated upon on such day, may be adjourned to any of the subsequent days so appointed as aforesaid from among the *enquête* days, or to any day in term, or to any day in term appointed for the adduction of evidence in and final hearing of cases at the same time.

When judgment may be rendered in cases so inscribed.

IV. If any case inscribed for the adduction of evidence and final hearing on the merits at the same time, on any of the days appointed as aforesaid from among the *enquête* days, is taken *en délibéré*, judgment may be rendered therein on any other of such days, or on any day in term :—And if any case inscribed for the adduction of evidence and final hearing on the merits on any of the special days in term appointed for that purpose by any Rule of Practice, is taken *en délibéré*, judgment may be rendered therein on any day in term, or on any of the special days appointed from among the *enquête* days, for the adduction of evidence and final hearing of cases at the same time.

Cases inscribed to have precedence on certain days.

V. Any case inscribed for the adduction of evidence and final hearing on the merits at the same time, on any of the special days appointed as aforesaid from among the *enquête* days, shall have precedence over any case inscribed or fixed for *enquête* only on such day, but not over any case taken *en délibéré* and in which judgment is then to be rendered.

By consent *enquête* may be taken as before the Act of 1857.

VI. With the consent in writing of all the parties to any case in the Superior Court, the *Enquête* and evidence therein may be taken in the manner in use before the coming into force of the Lower Canada Judicature Act of 1857, notwithstanding any thing to the contrary in that Act, subject to such additional costs and fees as may from time to time be fixed by any tariff ; But in all cases in the said Court in which such consent in writing is not given, the *Enquête* shall be taken in the manner prescribed by the said Act.

Proviso: as to additional costs.

Certain powers of Judges at *enquêtes*.

VII. Any Judge of the said Court presiding at *Enquête* in term or out of term, either in the said Court or in the Circuit

Court, shall have the same power to fine witnesses for non-attendance and to commit for contempt, as when sitting in term.

VIII The taxation of any witness in the Superior or in the Circuit Court, shall stand as a judgment in his favour for the amount of such taxation, against the party on whose behalf he was summoned; And if such sum be not paid, execution may issue accordingly at the expiration of the delay allowed for the issue of execution on judgments in the same Court, such delay being reckoned from the date of the taxation.

Taxation of witness to stand as a judgment in his favour.

IX. Whenever in any case in the Superior Court or Circuit Court, the subject matter of litigation or any material question incident thereto is such that it ought to be referred to and investigated by *Experts*, the Court or the Judge presiding at the *Enquête* may, upon the motion of any of the parties, order an *Expertise* according to law, before the adduction of evidence; And Court or the Judge presiding at the *Enquête* in any case in either of the said Courts, may order an *expertise ex officio*, either before any evidence is adduced or at any time during the *Enquête*, if in his opinion the subject matter of litigation or any material question incident thereto, is one which according to law ought to be referred to and investigated by *Experts*.

Expertise may be ordered by consent,—or *ex officio* in certain cases.

Judgments in Vacation, in certain cases.

X. If any plaintiff desires to obtain judgment in vacation in any case in the Superior Court, or in any appealable case in the Circuit Court or any non-appealable case therein returnable in vacation, in which the defendant shall have made default or in which for any other reason the plaintiff shall be entitled to proceed *ex parte*, then provided the demand in such case be founded,—

In default or *ex parte* cases, judgment may be obtained in vacation.

1st.—On any *Acte Authentique*, or—

If the action be founded on certain grounds.

2dly.—On any bill of exchange or promissory note, *cédule*, check, note or promise, or other act or private agreement in writing enumerated in section eighty-seven of the Lower Canada Judicature Act of 1857, or—

3rdly.—On any account stated in detail between trader and trader, or between trader and non-trader, or between non-traders for goods sold and delivered, or for any article or thing sold and delivered, or for money lent, or—

4thly.—On any verbal and specific agreement, by which any party shall have promised to pay a sum of money certain,—

Such plaintiff may forthwith inscribe the case for judgment in vacation,—and the Prothonotary if it be a case in the Superior Court, or the Clerk if it be a case in the Circuit

Inscription;—and rendering of judgment.

Court, shall thereupon draw up a judgment accordingly for the amount claimed by the plaintiff, and appearing to be due by any such *acte authentique*, account or agreement as aforesaid whereon the demand is founded,--which judgment shall be held to be the judgment of the Court and shall be recorded and executed accordingly, subject to the provisions hereinafter made :

Affidavit required and to what effect, and by whom.

But no plaintiff in any such case, either in the Superior or in the Circuit Court, founded upon an account stated or upon a verbal agreement, shall be entitled to inscribe the same for judgment as aforesaid, unless such plaintiff do at the time of so inscribing the case, file an affidavit in the form of the Schedule A or B (as the case may be) to this Act, wherein such plaintiff or one of the Plaintiffs (if there be more than one,) or some other credible person cognizant of the fact, (whether competent or not as a witness in the case,) shall swear that the amount demanded is due by the defendant to the plaintiff;--the affidavit of one person that the whole amount is due to his knowledge shall be sufficient, but several affidavits of several persons, each of whom shall swear that a certain part of such amount is due to his knowledge, shall also be sufficient, provided the total amount of the sums so sworn to be equal to that for which judgment is prayed :--

May be made by more than one person in certain cases.

Before whom to be made.

Any affidavit under this section may be made before a Judge of the Superior Court, or before the Prothonotary or Clerk of the Superior or Circuit Court at the place where the case is pending, or before any Commissioner for receiving affidavits to be used in the Superior or Circuit Court.

Judgment to be served on defendant.

XI. Every judgment recorded under the next preceding section shall be served upon the defendant personally or at his domicile, by a Bailiff of the Superior Court, and the Bailiff's return of such service shall be filed and remain of record as part of the proceedings in the case;--and the Prothonotary or Clerk of the Court shall enter and register as part of the said proceedings, the date at which such return shall be filed.

Opposition may be filed to any such judgment.

XII. The defendant in any such case may contest the judgment (*se pourvoir contre le jugement*) recorded as aforesaid, by opposition or *simple requête afin d'opposition*, to be filed in the office of the Prothonotary or Clerk of the Court in which the judgment was rendered, within the periods hereinafter limited respectively, that is to say :

And within what delay.

If the place where such service is made be not more than five leagues from that where the judgment was rendered, then--

Within ten days after the service of the judgment, if the case be in the Superior Court, and--

Within five days after the service of the judgment, if the case be in the Circuit Court,---

And if the place where the service is made be more than five leagues from that where the judgment was rendered, then an additional delay of one day shall be allowed in either Court, for each additional five leagues.

Such opposition or *simple requête afin d'opposition* shall, on pain of nullity contain all the grounds (*moyens*) of opposition intended to be urged in support thereof, or against the judgment or the action in which it was rendered, and an election of domicile by the opposant within one mile of the place where the sittings of the Court are held;---and all the exhibits intended to be used in support of such opposition, shall be filed with it.

What the opposition must state.

Any fact alleged by the Plaintiff and not expressly and specially denied by the opposant, shall be deemed to be confessed and acknowledged by him; and the Plaintiff shall be bound to prove in due course of law such facts and such only as being alleged by him are expressly and specially denied by the opposant.

Opposant must expressly deny all averments which he intends to contest.

XIII. No such opposition shall be received by the Prothonotary or Clerk, unless it be accompanied with an affidavit of the opposant (or one of the opposants if there are more than one,) or of some other credible person, that the facts stated in the opposition are true to the personal knowledge of the deponent,--- nor unless the opposant shall deposit with the Prothonotary or Clerk, a sum sufficient to pay the costs (or proportion of the costs) incurred by the plaintiff after the return of the suit up to judgment, including the costs of the service thereof, which costs shall be paid to the plaintiff by the Prothonotary or Clerk as soon as they have been taxed, without regard to the issue of the case : Any affidavit under this section may be in the form of Schedule C to this Act, and may be made before a Judge of the Superior Court, or before the Prothonotary or Clerk of the Superior or Circuit Court at the place where the opposition is to be filed, or before any Commissioner empowered to receive affidavits to be used in the Superior or Circuit Court.

Affidavit must be filed with the opposition and certain costs deposited.

Before whom affidavit to be made.

XIV. No such opposition or *requête* shall be received by the Prothonotary or Clerk, unless a copy thereof for the plaintiff be delivered to him at the same time, which copy he shall deliver to the plaintiff or his Attorney on demand; but one copy only need be so filed, although the party plaintiff should consist of two or more persons.

Copy of opposition to be filed for plaintiff.

XV. The opposition and all proceedings thereon shall be filed and registered as part of the proceedings in the original suit, and the plaintiff shall be deemed to appear to such opposition or *requête* in the same manner as he has appeared in the original suit, without any new appearance.

Opposition to be part of proceedings in the suit, &c.

Delays for
pleading to
opposition, &c.

XVI. The delays for pleading, answering and replying as regards such opposition, and the manner and time of foreclosing and proceeding in every matter incident thereto, shall, if the case be in the Superior Court, be the same as in an action in that Court,--if the case be an appealable one in the Circuit Court, they shall be the same as in an action in any such case,--and if the case be a non-appealable one in the said Court returnable in vacation, they shall be the same as in an action in such case :--the delay to plead to any such opposition shall reckon from the expiration of the delay allowed for filing the opposition ;--A tariff of fees on such oppositions or proceedings incident thereto, may be made from time to time in like manner as in other cases, but until such tariff is made, the tariff applicable to the action to which the opposition relates, shall be applicable to proceedings incident to such opposition.

Fees on such
oppositions.

Execution.
If no opposi-
tion is main-
tained.

XVII. If no opposition be filed at the Office of the Prothonotary or Clerk, within the delay allowed for that purpose, the facts as alleged in the action or demand, shall be deemed to be acknowledged and confessed by the defendant, and duly proved, and the Judgment recorded shall become executory after the expiration of the delay allowed by law for the issuing of execution in the Court in which the Judgment was rendered, reckoning such delay from the service of such Judgment.

If the opposi-
tion is main-
tained.

XVIII. If any such opposition be maintained by reason of any irregularity in the proceedings on the part of the Plaintiff in his action, the Court may, in maintaining such opposition with costs, condemn the Plaintiff to such further costs, not exceeding those deposited by the opposant on filing his opposition, as the Court in its discretion may see fit.

As to opposi-
tions in the
Magdalen
Islands.

XIX. Any such opposition filed in the Circuit Court in the Circuit of the Magdalen Islands, to any Judgment rendered in any case by default or *ex parte* for an amount exceeding Fifty Pounds, shall, as regards pleading, answering and replying and the delays therefor, and as to all proceedings incident to such opposition, be considered as an appealable case in the Circuit Court.

Opposition
may be filed
before service
of the judg-
ment.

XX. Any defendant may, before the service of the judgment recorded against him, file such opposition as aforesaid with his exhibits in support thereof, in the office of the Prothonotary or Clerk of the proper Court, and deposit therewith the costs to be refunded to the plaintiff, with the copy of the opposition for him; but such defendant shall, in that case, give notice to the plaintiff of the day on which the opposition has been filed,--and the delay for pleading shall be reckoned from the service of such notice.

Notice--
delays.

Plaintiff may
renounce his

XXI. Any plaintiff having obtained any such judgment may renounce the same at any time before the service thereof,--and

upon his renunciation, which shall be filed of record, he shall become entitled to proceed in the case in the manner provided with respect to cases by default or *ex parte* as if such judgment had never been rendered; and the costs of such judgment shall be borne by him.

judgment and proceed by default as usual.

XXII. No such judgment shall be recorded against any absent defendant who shall have been notified to appear by advertisement in the public newspapers.

Not to affect absentees called in by advertisement.

XXIII. The delay for appealing in any case in which judgment may have been recorded as aforesaid by default, and in which an appeal may lie, shall be reckoned from the expiration of the time allowed for filing an opposition to such judgment.

Delay for appeal in such cases.

XXIV. In any such case in which an appeal shall be brought,---

Special provisions with regard to appeals in such cases.

1. It shall not be allowed as a valid ground of appeal, that the amount for which judgment was given was not proved to be due, according to the rules of law concerning evidence,--and---

2. If in any such case the action was founded on an *Acte authentique*, the amount for which the judgment was given, shall be held to have been proved to be due, if it could have been due under such *Acte*, and---

3. If in any such case, the action was founded on a Bill of Exchange, Promissory Note, *Cedule*, check, note or promise, or other *private* act, or agreement in writing, such Bill, Note, check, *cédule*, act or agreement in writing, and every signature and writing to or upon the same, shall be deemed genuine without proof thereof,--and any protest, notice or service thereof, if any be alleged by the Plaintiff, shall be presumed to have been regular and valid, and the costs thereof (if any are claimed) shall be presumed to be due and proved;

4. If in any such case the action was founded upon a detailed account or on a verbal agreement, the amount claimed shall be presumed to have been duly proved by the affidavit of the plaintiff or other person that such amount was due from the defendant to the plaintiff, filed of record as hereinbefore provided.

XXV. The hypothec arising from any such judgment as aforesaid, shall be reckoned from the time when the return of the service of such judgment on the defendant shall be filed in the office of the Prothonotary or Clerk of the proper Court, who shall register such return as part of the proceedings in the case;

Hypothec under such judgments from what time to be reckoned.

Registration of such judgment, &c.

And in order to enable the plaintiff to have such judgment registered in the proper Registry Office, the said Prothonotary or Clerk, in addition to the usual certificate on the copy of the judgment that it is a true copy thereof, shall, if required 5
append thereto a further certificate of the date of which such judgment was served on the defendant and of that at which the return of the service was filed at his office: And any copy of such judgment with such additional certificate shall be registered by the Registrar to whom it shall be presented for that purpose. 10

Registration of judgment in favour of defendant, on opposition.

XXVI. In case any such Judgment so registered shall be wholly or partially set aside, upon any such opposition as aforesaid, the opposant shall be entitled to have the judgment to that effect on his opposition registered for the purpose of wholly or partially cancelling the registration of the former 15
judgment recorded against him.

Plaintiff not bound to proceed under this Act.

XXVII. The foregoing provisions shall not deprive any Plaintiff of the right to proceed to judgment in the usual manner, in any case by default or *ex parte*, if he shall think fit so to do, instead of adopting the proceedings mentioned in the said provisions. 20

Non-appealable cases.

Every day to be a return day.

XXVIII. Every day in term or in vacation, not being a Sunday or Holiday, shall be a return day in non-appealable cases in the Circuit Court.

No change as to non-appealable cases returnable in term.

XXIX. Except only in the Circuit of the Magdalen Islands, as 25
to which special provision is made in this Act and in the Lower Canada Judicature Act of 1857,—every such non-appealable case in which the Writ of Summons is made returnable in term, shall be dealt with and continue to be dealt with in the manner provided as to such cases by the Lower Canada Judicature 30
Act of 1849.

Except in Magdalen Islands.

As to non-appealable cases returnable in vacation.

XXX. In every such non-appealable case in which the Writ of Summons is made returnable in vacation, the defendant may, on the return day or on the next following juridical day, file his appearance personally or by Attorney,—the pleadings 35
shall be in writing but in a summary form, and the delay for pleading shall be five clear days from the time allowed for such appearance: there shall be a like delay of five clear days for answering, to be reckoned from the expiration of the delay allowed for pleading,—and there shall be also a like delay of 40
five clear days for replying, to be reckoned from the expiration of the time allowed for answering:—

Delay for pleading, &c.

Proviso: as to foreclosure.

Provided always, that no demand of any plea, answer or reply shall be necessary in any such case, in order to foreclose the

party entitled to file the same ; but the party entitled to file any plea, answer or reply shall be foreclosed from filing the same by the mere lapse of the delay allowed him for filing it.

XXXI. In every such case, issue shall be held to be joined by the pleadings filed within the delay allowed for filing the same respectively. Joinder of issue.

XXXII. In any such case, no *Exception à la forme, Exception déclinatoire, Exception dilatoire*, or other preliminary plea, shall be received, unless the same be filed within four days from the day of the return of the Writ, or of the filing of the pleading to which such preliminary exception or pleading is opposed ; and the delay within which any party must afterwards file his plea or pleas to the action or merits, shall be reckoned from the day of the date of the interlocutory judgment on the preliminary plea, or the withdrawal of the same :-- Preliminary pleas when to be filed.

Delays for other pleas.

Provided always, that the plaintiff may, before answering any such preliminary plea, demand of the defendant his plea or pleas to the action or merits, and if such last mentioned plea or pleas be not filed on or before the fifth juridical day after such demand, such defendant shall without any *Acte* of foreclosure become foreclosed from thereafter filing any plea to the action or merits, and there shall then be no issue raised between the plaintiff and defendant except on such preliminary plea or pleas, with regard to which the provisions of the seventy-third section of the said Lower Canada Judicature Act of 1857, shall apply in so far as they may be consistent with this Act. Plaintiff may demand plea to the action, &c., before answering preliminary plea.

Sect. 73 of 20 V. c. 44, to apply, &c.

XXXIII. As soon as issue is joined in any such case, any party thereto may inscribe it for the adduction of evidence and final hearing on the merits at the same time on any subsequent day in term, provided notice of such inscription be given to the opposite party, at least three days before the day for which the case is so inscribed, or such other number of days as may, from time to time, be fixed by any rule of practice to be made in that behalf, in the Districts of Quebec and Montreal, by the majority of the Judges residing therein respectively, and promulgated by any one of them sitting in Term, and in any other District by any Judge of the Superior Court in such District. Inscription for *enquête* and hearing : Notice thereof.

XXXIV. If the defendant in any such case do not appear, or having appeared do not, within the delay above limited, file any plea, the case shall be dealt with as a non-appealable case by default returnable in term, and the plaintiff may proceed therein in the manner prescribed with regard to a non-appealable case by default when returned in term ; but the plaintiff may inscribe any such case, as by default, for the adduction of evidence and final hearing on the merits at the If the defendant do not appear or plead in proper time : plaintiff may proceed by default, &c.

same time on any day in term, without giving notice to the defendant or opposite party.

Defendant may confess judgment, under sects. 83 and 84 of 20 V. c. 44.

Proviso.

XXXV. If in any such case returned in vacation, the defendant desires to confess judgment, he may do so in the manner and to the effect provided as to appealable cases in the Circuit Court by the eighty-third and eighty-fourth sections of the Lower Canada Judicature Act of 1849; Provided that in non-appealable cases returned in term, the defendant may confess judgment orally in open Court in the manner and to the effect provided by the said sections of the said Act of 1849.

Fees and costs in such cases.

XXXVI. Any tariff of fees and costs made before or after the passing of this Act, for non-appealable cases in which pleadings in writing have been ordered by the Court, shall apply to contested non appealable cases returned in vacation, in any Circuit where such tariff is in force.

Magdalen Islands.

Every day a return day.

XXXVII. For any case over which the Circuit Court in the Circuit of the Magdalen Islands has jurisdiction, every day in term or in vacation, not being a Sunday or Holiday, shall be a return day.

Proceedings in non-appealable cases returnable in vacation :—

And in other cases so returnable.

But if returnable in term, s. 127 of 20 V. c. 44, to apply.

XXXVIII. In any non-appealable case in the said last mentioned Circuit made returnable in vacation, the mode of proceeding shall be as hereinabove provided with respect to non-appealable case returnable in vacation; and in any other or appealable case over which the Circuit Court has jurisdiction in the said Circuit, the proceedings shall, if such case be returned in vacation, be the same as in an appealable case in Circuit Court in any other Circuit, returned in vacation;—but if such case be returned in term, the mode of proceeding therein shall be as provided by the one hundred and twenty-seventh section of the Lower Canada Judicature Act of 1857, in so far as the provisions of that section are not inconsistent with this Act.

In appeals from judgments by default, s. 129 of 20 V. c. 44, to apply.

XXXIX. In any case in which an appeal may lie from a judgment by default, recorded by the Clerk of the Circuit of the Magdalen Islands, under the provision hereinafter made as to certain classes of cases,—the proceedings in appeal shall be as provided by the one hundred and twenty-ninth section of the said Lower Canada Judicature Act of 1857, with respect to appeals from judgments rendered by the Circuit Court in the Circuit of the Magdalen Islands,—except that the first day on which the case in appeal from any judgment so recorded by default may be heard in the Court of Queen's Bench, shall be the juridical day in term next after the expiration of ninety days from the end of the delay allowed to file an opposition (as hereinbefore provided), to such judgment, if such delay expires on or after the

Exceptions.

first day of the Spring Term in the said Circuit, and before the first day of the Autumn Term therein,—and the first juridical day in term after the first day of June next after the expiration of the said delay for filing such opposition, if such delay expires 5 on or after the first day of the Autumn Term in the said Circuit, and before the first day of the Spring Term therein.

Procedure generally.

XL. In the absence of any Judge of the Superior Court at the *Chef-lieu* of any District in vacation, the Prothonotary of the said Court in and for such District, may, in cases of 10 evident necessity, and when by delay in the performance or exercise thereof, a right might otherwise be lost or a wrong sustained, perform and exercise at such *Chef-lieu* any ministerial or judicial act or function which any Judge of the said Court might perform or exercise in vacation. But any order or 15 judgment made or rendered by any Prothonotary under this section, shall be subject to revision by the Court, at its next sitting in such District, or by any Judge of the Court present at the *chef-lieu* before such sitting, provided the party requiring such revision do, on or before the third juridical day after the 20 making or rendering of such order or judgment, file with the Prothonotary an exception thereto stating the grounds on which it is founded; and the execution of such order or judgment shall in all cases be suspended until the time for filing such exception has expired, and if an exception be filed the sus- 25 pension shall continue until the decision of the Judge after such revision as aforesaid.

Prothonotary may act for Judge in cases not admitting delay.

His orders, &c., subject to revision, and in what manner.

XLI. It shall not be necessary for the Judges of the Superior Court to affix their official signatures to Writs of Execution from the Superior Court, or to indorse the same, but the signa- 30 ture of the Prothonotary to any such Writ shall be sufficient; nor shall it be necessary that the said Judges should sign Bonds of security in appeal or other Bonds, in any case, or should number or authenticate (*parapher*) Registers of Baptism, Marriages or Burials, in Lower Canada, but the said security 35 Bonds or any other Bond or recognizance, may be received, acknowledged, and taken by the Prothonotary of the district in which such Bonds shall be required to be given, and be received by and acknowledged before him in the same manner and to the same legal effect as by any of the said 40 Judges; and the said Registers may be presented to and numbered and authenticated (*parapher*) by the Prothonotary of the district with the same legal effect as by any of the said Judges; any law, ordinance, statute, or custom to the contrary notwithstanding;—and all and every person now by law required 45 to present and keep such Registers shall continue to be subject to all the requirements and penalties of the law in that respect as fully as if this enactment in this section had not been made: But nothing herein shall be construed to prevent any such Judge 50

Judges relieved from certain routine duties.

Proviso.

Judges may act if they see fit. from numbering or authenticating any such Register, or receiving any such Bond as aforesaid, if he shall think fit so to do, with the same effect as before the passing of this Act.

Bonds, &c., in Circuit Court, before whom they may be taken. XLII. Any Bond of security in appeal or any other Bond or recognizance whatever required in any case in the Circuit Court, may be received, acknowledged and taken either before a Judge of the Superior Court or before the Clerk of the Circuit Court at the place where such case is pending, with the same legal effect as if received, acknowledged or taken before a Judge of the said Court. 5 10

Oaths under 16 V. c. 22, and 18 V. c. 13, and Certain other oaths may be taken before Commissioners under 48 G. 3, c. 22, or Recorders in L. C. XLIII. The oath required by the eleventh paragraph of the second section of *An Act to establish a Consolidated Municipal Loan Fund for Upper Canada*, passed in the sixteenth year of Her Majesty's Reign, and extended to Lower Canada by *An Act to extend and amend the Act to establish a Consolidated Municipal Loan Fund for Upper Canada, by applying the same to Lower Canada, and for other purposes*, passed in the eighteenth year of Her Majesty's Reign, or by any other provision of either of those Acts, and any oath required to be taken under any Act in which no mention is made of the name of the public functionary before whom such oath is to be taken, or any oath rendered necessary, or that may be required by the Governor in carrying into execution the provisions of any Act of the Legislature, may be administered by and taken before any Justice of the Peace, or any Commissioner appointed under *An Act to authorize the Judges in Civil Causes, in this Province, to delegate the power of administering oaths, in certain cases therein mentioned*, passed in the forty-eighth year of the Reign of His late Majesty King George the Third, or any Recorder in Lower Canada, within their several jurisdictions respectively; and any such oath already so taken before and administered by any one of such public functionaries, within their several jurisdictions, respectively, is declared valid to all intents and purposes. 15 20 25 30

Prothonotaries, &c. to have powers and duties assigned to Circuit Judges under 14, 15 V. c. 83. XLIV. The Prothonotary of the Superior Court, the Clerk of the Crown, and the Clerk of the Peace respectively, in and for any District, and the Inspector and Superintendent of Police of the City of Quebec or of the City of Montreal, shall each within the limits of his respective jurisdiction, have and perform all powers and duties which by the Act passed in the Session held in the fourteenth and fifteenth years of Her Majesty's Reign, and intituled: *An Act to authorize the confinement of Lunatics in cases where their being at large may be dangerous to the public*, were vested in or assigned to any Circuit Judge in Lower Canada. 35 40

Prothonotary may receive security un- XLV. The Prothonotary of the Superior Court in and for any District shall have the same power as any Judge of the said Court to receive security to his satisfaction under the 45

third Section of the Act of 1849, chaptered 42, to abolish imprisonment for debt, and for the punishment of fraudulent debtors in Lower Canada, and for other purposes, or under any other provision of the said Act, from any Defendant arrested on a
 5 Writ of *Capias ad respondendum*, and being either in custody or under bail to the Sheriff, and to cause the sureties to justify their sufficiency on oath before him, and to administer such oath, and to order the release of such Defendant or the discharge of the bail to the Sheriff, on the perfecting of
 10 such security.

XLVI. If in an affidavit for obtaining a writ of *saisie arret* before Judgment under the tenth section of the ordinance 27 G. 3, c. 4, or a writ of *capias ad respondendum*, under the said Act of 1849, in addition to the allegation that the Defendant is
 15 personally indebted to the Plaintiff in the sum required by the said Act or by the said ordinance, as the case may be, it shall be alleged upon grounds specially stated in the affidavit that the Defendant is a trader, that he is notoriously insolvent, that he has refused to compromise or arrange with
 20 his creditors, or to make a *cession de biens* to them or for their benefit, and that he continues to carry on his trade, such debtor shall then be held to be about to secrete his goods and chatels with intent to defraud his creditors generally, or the Plaintiff in particular, and a writ of *saisie arret* before judgment for attaching his estate, debts and effects, may issue under the said
 25 ordinance, and a writ of *capias ad respondendum* for arresting such Defendant, may also issue under the said Act :

Provided always, that if upon summary petition of such Defendant, it be proved to the satisfaction of any Judge of the
 30 said Court sitting at the place where such writ of *capias ad respondendum* issued, that when the said affidavit was made, such defendant was not a trader, or was not notoriously insolvent, or had not refused to compromise or arrange with his creditors, or to make a *cession de biens* to them or for their be-
 35 nefit, or was not continuing to carry on his trade, then the Defendant shall be discharged from custody by the order of such Judge.

XLVII. If any personal hypothecary debtor or *tiers détenteur* in possession of any immoveable property on which there exists
 40 any privileged claim or hypothec, personally or by the intervention of others, wilfully and with intent to defraud the party having such privileged claim or hypothec, injures, wastes or diminishes the value of such property by destroying, carrying away, or selling any house, outhouse or building or
 45 deteriorating the same, or by destroying, carrying away or injuring any timber or fence, or any fixture in any house or building on the said property, he may be sued in damages by such privileged or hypothecary creditor whether the sum secured by such privilege or hypothec be or be not then payable or exigible,

der sect. 3, of
12 V. c. 42.

What affidavit shall be sufficient for arrest of a trader defendant and for attachment of his goods.

Proviso: if the affidavit be shown to be untrue.

Remedy in damages given against persons wasting or injuring property subject to hypothec.

Amount of damages :
Contrainte par corps allowed.

and in such action the Plaintiff may recover from the Defendant, with condemnation to *contrainte par corps*, damages equal to the diminution of value occasioned by such act of the Defendant as aforesaid, or to the amount of the privileged claim or hypothec if such amount be less than such diminution of value, but the amount so recovered shall be secured by the said privilege or hypothec, and when paid shall go in discharge or in diminution of the same. 5

Capias ad respondendum may issue in certain cases: Affidavit to be made.

XLVIII. If the Plaintiff in any such case as last aforesaid shall state in an affidavit to be made in manner provided by law as regards affidavits for obtaining Writs of *Capias ad respondendum*, that the amount secured by his privileged claim or hypothec exceeds ten pounds currency, and that the Defendant, being such hypothecary debtor or *tiers détenteur*, is with the intent to defraud the Plaintiff, personally or by the intervention of others, 10
 injuring, wasting or diminishing in value the immoveable property subject to such privilege or hypothec, or is about so to injure, waste or diminish the value thereof, to an amount exceeding ten pounds currency, by destroying, carrying away or selling some house or out-house or other building thereon, or 20
 by wilfully injuring or deteriorating the same, or by destroying or carrying away any timber or fence, or any fixture in any house or building on such immoveable property, a Writ of *Capias ad respondendum* may issue against such Defendant, in like manner and with the like effect as in other suits in which 25
 such Writ may issue.

Proviso, for release of defendant on giving security; —or if the affidavit be proved untrue.

Provided always, that such defendant may be released from confinement at any time before judgment, upon giving security or bail, in like manner and upon like conditions as other defendants arrested upon *Capias ad respondendum*; and if upon summary petition of such defendant, it be proved to the satisfaction of any Judge of the Superior Court sitting at the place where such Writ of *Capias ad respondendum* issued, that the allegations of the affidavit on which such Writ was obtained were false in any essential particular, the Defendant may be discharged from custody by the order of such Judge. 30
 35

Party having privilege of *baillieur de fonds* on property sold by the Sheriff, may, if he becomes the purchaser, retain an amount not exceeding his claim, until final distribution of the proceeds.

XLIX. When any party having a privilege of *baillieur de fonds* or other privilege or hypothec on any real property seized and advertised to be sold by any Sheriff under any Writ to him directed, has filed his opposition at the Sheriff's Office according to law before the day on which the writ is returnable, with the titles, documents and certificates of registration requisite to support his claim,—then if such party becomes the purchaser of the whole or of any part of such real property, he may retain in his hands so much of the purchase money as shall not exceed 40
 45
 the sum due and unsatisfied on the said privilege or hypothec and for which his opposition is so filed, until the return of the Writ shall have been made by the Sheriff and the Court to which it is returnable shall have ordered a final distribution o

the proceeds, on which such purchaser shall forthwith pay into the hands of the Sheriff the sum by which his purchase money shall exceed the sum decreed by such order of distribution to be payable to such purchaser, and upon such payment the Sheriff shall execute to such purchaser aforesaid, a sufficient Deed of Sale of the property so by him purchased: Provided always, that any such party so becoming such purchaser shall give good and sufficient security to the Sheriff, for insuring the damages that may result to any party concerned, in case of the non-payment of the sum which such purchaser shall be subjected to pay to the Sheriff after such order of distribution.

L. It shall be lawful for any Sheriff, before executing any seizure of any kind under any process to him directed (whether *saisie arrêt* before judgment, seizure after Judgment, or *saisie revendication* or *entiercement*) to demand and receive in advance from the party at whose instance the seizure is to be made, or his Attorney *ad litem*, such sum as shall be by any one of the Judges of the Superior Court or by the Prothonotary of the district in which the process for the seizure issued be deemed sufficient for the safe keeping of the effects and moveable property seized; and when and as often as the sum so advanced shall be expended, such Sheriff may, on presenting a summary petition to any one of the Judges of the Superior Court or to the Prothonotary of the District where the seizure has been made, obtain an order from such Judge or Prothonotary upon the party at whose instance the seizure was made, for the payment in advance of such further sum as by the said Judge or Prothonotary shall be deemed sufficient for the safe keeping of the effects and moveables seized; and service of such petition and order shall in every instance be made upon the Attorney *ad litem* of the party seizing:—And in default of such payment in advance within twenty-four hours after the said petition and order, the seizure shall be discharged and such Sheriff exonerated from all liability to any person or party whomsoever.

And it shall also be lawful for any Sheriff to whom at the time when this Act comes into force, any sum of money is due on any seizure then pending, for costs and disbursements incurred for the safe keeping of any effects or moveable property, upon presenting a summary petition to any Judge of the Superior Court, or to the Prothonotary of the District where the seizure was made, stating the amount due to him as aforesaid, to obtain an order from such Judge or Prothonotary upon the party at whose instance the seizure was made, for the payment of the sum so due to him;—Service of such petition and order shall be made upon the Attorney *ad litem* of the seizing party, and in default of payment of the said sum within the time fixed by the said Judge or Prothonotary in such order, the seizure shall be discharged and such Sheriff exonerated from all liability to any person or party whomsoever, but such Sheriff shall nevertheless retain all his legal rights and remedies for recovering

Proviso, for security.

Sheriff before executing any *saisie*, may require security for his costs.

And so when the first sum is expended.

In default, Sheriff to be discharged.

Sheriff to whom any sum is due for such costs when this Act takes effect, to have a like remedy.

In default Sheriff to be discharged.

Advance for
any future
costs.

the costs and disbursements then due to him by reason of such seizure from any party who was by law liable for the same ;— And if in any such pending case the Sheriff is paid the amount of his fees and disbursements then incurred, he may thereafter demand and obtain in advance in the manner hereinbefore provided, any further sum of money required for the safe keeping of the effects and moveable property seized. 5

When the
Sheriff has
failed to make
or renew any
list of jurors
in time,
Judge may
order it to be
made within
a time to be
fixed.

LI. Whenever from any cause whatever, the several Lists of Jurors which the Sheriff is by law required to make or renew, have not been made or renewed for any District in the 10 manner and within the period limited by law, then as soon as the fact shall be made known by the Sheriff, Prothonotary, Clerk of the Peace or of the Crown, to any Judge of the Court of Queen's Bench for Lower Canada, or any Judge of the Superior Court when in such District, or whenever the fact has 15 come to the knowledge of such Judge, he shall order the Sheriff of such District to make or renew the Lists of Jurors for the same, or such of them as have not been made or renewed as aforesaid, and shall by such order fix a period within which such List shall be made or renewed ; and if such order be not 20 complied with, another may be made by the same or any other Judge in like manner until the said Lists are duly made or renewed :

Lists made
under such
order to be
valid.

The Lists made or renewed under any such order shall then be of the same force and effect as if originally made within the 25 time prescribed by law, and shall be deposited, dealt with and used as if so made, but shall remain in force only during the same period as if they had been made or renewed at the time prescribed by law, and Lists shall be again made or renewed accordingly at the expiration of such period : 30

Costs.

The cost of making or renewing any Lists of Jurors under such order as aforesaid, shall be borne by the Sheriff in default, unless he has some valid excuse for not making or renewing the same at the time prescribed by law :

Sheriff not
relieved from
penalty.

But nothing in this section shall relieve the Sheriff from any 35 penalty or liability incurred by his default to make or renew any such List at the time prescribed by law.

How process,
&c., may be
served when
the law makes
no special
provision.

LII. Whenever any writ, subpoena or other process, opposition, judgment, order, rule, notice or proceedings emanating from the Superior or the Circuit Court, or from any Judge, or 40 incident to any suit or proceeding in either of the said Courts, requires to be served upon any party or person residing or being at the time in another district,—then if there is no special provision of law regulating the manner in which such service is to be made, it may be made by any Bailiff of the Superior Court 45 for such other District, who shall make the service and return required, in like manner and with like effect as it would have

been made by a Bailiff for the District in which such writ, subpoena or other process, opposition, judgment, rule, order, judgment, notice or other proceeding originated, if the party or person on whom the service is made had been resident or had
5 been then present in such District.

LIII. In any suit or action brought or to be brought against any person who shall have left his domicile in Lower Canada, or against any person who shall have had no domicile in Lower Canada, but when such person shall have personal
10 or real property therein, or the cause of such suit or action shall have arisen within Lower Canada, then if such person be a resident of or is known to be then in Upper Canada, it shall be lawful for any Judge of the Superior Court, or for the Prothonotary of the Superior Court or Clerk of the Circuit Court at
15 the place where the action is brought, on being satisfied of the facts by affidavit or otherwise, to sign an order to be indorsed on the Writ of Summons in such suit or action, in the following words, "this Writ may be served in Upper Canada," and such Writ may then be served in Upper Canada by any
20 Bailiff entitled to serve process of the County Court of the County in which the service shall be made, and the affidavit of such bailiff made before some Commissioner authorized to receive affidavits to be used in the Superior Court for Lower Canada, in the form of the Schedule D, to this Act, or to the
25 like effect, shall be evidence of the service, and the person so served shall be bound to appear according to the exigency of the Writ, and if he fails so to appear, the plaintiff may proceed as in case of default, and as if the service had been made within the limits of the ordinary jurisdiction of the Court :--
30 Provided always, that there shall be between the day of service of the Writ and that on which the plaintiff is commanded to appear, at least ten days if the action is in the Superior Court, and at least five days if the action is in the Circuit Court, and one day more in either Court, for every five leagues of the
35 distance of the place where the service is made from that where the sittings of the Court are held :--And provided also, that nothing in this section shall oblige the plaintiff to adopt the proceeding hereinabove mentioned, or prevent such defendant from being notified to appear by advertisement in the
40 manner provided by the ninety-fourth section of the Lower Canada Judicature Act of 1849, if the plaintiff prefers to proceed under the said section.

Writs of Summons may be served in Upper Canada in certain cases.

Proviso.

Proviso.

LIV. The tenth section of the *Act to amend the Act to amend the Laws relative to the Courts of original Civil Jurisdiction in Lower Canada*, passed in the sixteenth year of Her Majesty's
45 Reign, shall apply to parties in appealable cases in the Circuit Court at Montreal and Quebec, and to non-appealable cases therein returnable in vacation,--and also to parties to cases in the Superior Court, or to appealable cases in the Circuit Court,
50 or non-appealable cases therein returnable in vacation, in every

Sect. 10 of 16 V. c. 194, to apply to certain cases in the Circuit Court.

other District, except only the Districts of Gaspé and Saguenay; so that (except in the Districts last mentioned,) no party to any such suit or case shall be compellable to file any plea, answer or reply, or to take any step or otherwise proceed therein, between the tenth day of July and the last day of August, both inclusive, in any year, save only as excepted in the said section and subject to the provisions thereof. 5

Verdict of jury need not be special, nor the facts defined by the Judge.

14, 15 v. c. 89, s. 4, par. 3, repealed.

LV. The subsection or paragraph marked "Thirdly," of the fourth section of the Act passed in the Session held in the fourteenth and fifteenth years of Her Majesty's Reign, intituled, *An Act to amend the Act, intituled, 'An Act to regulate the sum-* 10
mouing of Jurors in Lower Canada,' is hereby repealed, and it shall not be necessary that the facts to be inquired into by the Jury in any civil case be defined and determined by the Court or any Judge, or that the Jury return a special verdict. 15

Sect. 20 of 12 V. c. 41, revived, and right of appeal thereby allowed restored.

Proviso.

LVI. The first section of the Act passed in the sixteenth year of Her Majesty's Reign, chapter one hundred and ninety-nine, repealing the twentieth section of the Act passed in the twelfth year of Her Majesty's Reign, and intituled, *An Act to define the mode of proceeding before the Courts of Justice in Lower Canada,* 20
in matters relating to the protection and regulation of Corporate rights and Writs of Prerogative, and for other purposes therein mentioned, is hereby repealed; and the said twentieth section shall revive, and be again in force, and the right of appeal thereby allowed shall exist with respect to all judgments rendered after the passing of this Act, provided the Writ of Appeal 25
in any such case be issued within forty days from the rendering of the judgment appealed from, but not otherwise.

Miscellaneous Provisions.

As to Counties or Districts bounded by Rivers.

LVII. For the removal of doubts, it is declared and enacted, that in Lower Canada, wherever both banks of any 30
River are in any District or County, then the River itself is within such District or County—whenever one bank of any River is in one District or County and the opposite bank is in another, then the centre of the main channel of the River is the boundary between the two Districts or Counties, each of which 35
extends to the centre of such main channel;—and wherever any River or portion of a River is in any County it is also within the District of which such County forms part.

Interpretation Act (12 V. c. 10) and 12 V. c. 42, cited.

LVIII. And inasmuch as by the twenty-first subsection of section five of the Interpretation Act, (which applies as well to the 40
Lower Canada Judicature Act of 1857, as to the Lower Canada Judicature Act of 1849, and to the Act of 1849, *to abolish imprisonment for debt, and for the punishment of fraudulent debtors in Lower Canada, and for other purposes,* and to all Acts passed in or since the Session of 1849,) it is provided that when by any 45
such Act "Any party is 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 is expedient to define which shall be deemed the nearest Common Gaols in or to which any party may be imprisoned or committed upon any order for such imprisonment, made in any civil suit or proceeding in the Superior or Circuit Court, or in any Commissioners' Court, in any New District, or by any Justice of the Peace in the exercise of his jurisdiction or powers in any civil case or proceeding in any New District, or in any civil case or matter in which any person may be imprisoned or committed to prison, therefore---Until a Gaol has been built in any New District and has become the Common Gaol thereof, by virtue of any proclamation appointing the day when the said Lower Canada Judicature Act of 1857, shall be in force in such District for all purposes of the administration of Justice in Criminal matters, the Common Gaols which shall be held to be nearest to the said New Districts respectively, and in and to which such imprisonment or committal as aforesaid under any order, writ process or proceeding in the said New Districts respectively, shall be as follows:

Which shall be the common Gaols of the New Districts under m V. c. 44, respectively.

The Common Gaol in and for the District of Montreal, shall be deemed the nearest to the Districts of Terrebonne, Joliette, Richelieu, St. Hyacinth, Bedford, Iberville and Beauharnois;

The Common Gaol in and for the District of Quebec, shall be deemed the nearest Common Gaol to the Districts of Arthabaska, Beauce, Montmagny and Saguenay;

And the Common Gaol in and for the District of Kamouaska, shall be deemed the nearest Common Gaol to the District of Rimouski;

And the keepers of each of the said Common Gaols respectively, shall receive and therein safely keep until discharged or bailed in due course of law, all persons to be imprisoned or committed to prison in cases arising in such New Districts respectively as aforesaid:

Keepers to receive prisoners.

Provided always, that for all purposes of the administration of Justice in Criminal matters, the Common Gaols in and for the Old Districts as constituted before the passing of the said Lower Canada Judicature Act of 1857, shall continue to be the Common Gaols for the said Districts as then bounded, until the said Act fully comes into effect in the New Districts for all purposes of the administration of Justice in Criminal matters.

Proviso: as to the old districts.

LIX. And for the avoidance of doubts, it is declared and enacted that every Gaol in Lower Canada, whether in any of

Common Gaols declared to be

Houses of Correction.

the Old or in any of the New Districts, is and has been the House of Correction for the District or Districts of which it is the Common Gaol, and shall be so unless and until another building is by law made the House of Correction for such District or Districts, and this provision shall apply to any Gaol hereafter to be built. 5

Local jurisdiction of Justices of the Peace for the Old Districts under the Act 20 V. c. 44.

LX. Every Justice of the Peace for any of the Old Districts existing before the passing of the said Lower Canada Judicature Act of 1857, whether appointed as such before or after the passing of the said Act, but before the time to be appointed in any Proclamation under the fourth section thereof (as hereby amended) for its coming fully into effect in criminal matters, resident at that time in any of the New Districts constituted by the said Act, shall by virtue thereof and without any new Commission or oath of office, or other formality, be a Justice of the Peace for all purposes, civil or criminal, for the New District in which he is then resident, provided any part of such New District was at the time of his appointment included in the District for which he was appointed, and notwithstanding such New District may contain some part of some other of the old Districts, but he shall cease to be a Justice of the Peace for any part of such Old District which is not included in such New District. 10 15 20

How Justices of the Peace resident in New Districts may designate themselves in Official Acts.

LXI. Until the day appointed by any proclamation under the fourth section of the said Lower Canada Judicature Act of 1857 (as hereby amended) for its coming fully into effect in Criminal matters, every Justice of the Peace appointed or to be appointed before the said day for any of the Old Districts, (that is of the Districts existing before the passing of the said Act) who shall be resident in any of the New Districts thereby constituted, may, in the exercise of his civil jurisdiction in such New District, or in any document, or in any act done or proceeding had by or before him of a civil nature, whether under the Elections Petitions Act of 1851, or any other law, designate himself or be designated as a Justice of the Peace for the New District in which he is resident, and over the whole of which his civil jurisdiction extends, (although it may include a portion of one or more of the Old Districts other than that for which he was appointed) or as a Justice of the Peace for the Old District for which he was appointed; But every Justice of the Peace appointed for any of the Old Districts shall, in the exercise of his criminal jurisdiction designate himself and be, until the day first mentioned in this section, designated as a Justice of the Peace for such Old District, within the limits whereof only he shall act as a Justice of the Peace in Criminal matters. 25 30 35 40

And in Old Districts.

Local jurisdiction of Coroners in New Districts under the said Act 20 V. c. 44.

LXII. Until the said Lower Canada Judicature Act of 1857 is brought fully into force for all purposes of the administration of Justice in criminal matters, every Coroner in and for any one of the New Districts, may take inquisitions and make investigations appertaining to his office, within the District 45

for which he is appointed, and may exercise all powers incident to such inquisition or investigation, and may commit any person who ought in the consequence thereof to be committed to Gaol, to the Common Gaol for the Old District including the locality in which such inquisition or investigation is had ;—And such Coroner shall certify the inquisition and investigation and the evidence and recognizances and other matters thereunto appertaining to the proper officer of the Court in which the trial is to be, before or at the opening of the Court ;—Provided always, that the Coroner in and for any one of the Old Districts, may also take such inquisitions and make such investigations in any place within such Old District, until the said Lower Canada Judicature Act of 1857 is brought fully into force for all the purposes of the administration of Justice in criminal matters.

Proviso: as to Old Districts.

LXIII. And for the removal of doubts,—It is hereby declared and enacted, that,—Every Bailiff of the Superior Court duly appointed for any Old District before the said Lower Canada Judicature Act of 1857 was brought fully into effect for all purposes of the administration of Justice in civil matters, and resident when the said Act was brought fully into effect for the said purposes in any New District of which any part was theretofore included in such Old District, did thereupon by virtue thereof and without any new appointment or order, become a Bailiff of the said Court for such New District, although some part thereof was not included in such Old District, but ceased to be a Bailiff of the said Court for all places formerly in such Old District but not included in such new one,—And every Bailiff of the said Court for such Old District resident therein according to its new boundaries, remained a Bailiff of the said Court for all places which continued to be included in such Old District, but ceased to be such Bailiff for all places which became parts of any New District ;—

Declaratory provision concerning Bailiffs for Old Districts when the said Act 20 V. c. 44 came into force in civil matters.

Every such Bailiff has remained and shall remain a Bailiff of the said Court for the District for which he is above declared to have become or to have remained a Bailiff, until he is removed from office or ceases to reside in such District :

And every bond or security which any such Bailiff gave for the due performance of the duties of his Office in such Old District, has remained and shall remain in full force notwithstanding such alteration in the local limits within which such duties are to be performed, and shall be held to be conditioned for the due performance of such duties within the locality for which he is hereby declared a Bailiff, after such alteration, as well as for the due performance of such duties in the Old District before such alteration.

Bonds of Bailiff to remain valid.

LXIV. The forty-sixth section of the Lower Canada Judicature Act of 1857, shall be amended so as to read, as follows, and shall be interpreted and have effect accordingly :

Sect. 46, 20 V. c. 44, amended.

The said section as amended.

“ The Governor may by the same Proclamation or by several Proclamations, direct the Circuit Court to be held at more than one place in and for any of the Counties of Richmond, Stanstead, Wolfe, Missisquoi, Rimouski, Ottawa, Pontiac, Gaspé, Bonaventure, Beauce, Chicoutimi, Saguenay or Charlevoix, on being satisfied that proper accommodation has been provided for the Court and its officers at each of such places, and permanent provision made for their maintenance: Provided that in any of the said Counties in which the *Chef-lieu* of the district is situate, the place or places at which the Circuit Court shall be held for the County under any such Proclamation or Proclamations, shall be in addition to such *Chef-lieu*, at which the Circuit Court shall always be held for the District.”

And so much of the forty-fifth section of the said Act as may be inconsistent with this section is hereby repealed.

The said Act 20 V. c. 44, may be brought fully into effect in criminal matters in one or more districts, if certain requirements are complied with and the Governor sees fit, without waiting till it can be so brought into force in all the districts.

LXV. Notwithstanding any thing to the contrary in the fourth or in the one hundred and fifty-second section of the Lower Canada Judicature Act of 1857, whenever the Governor shall be satisfied that there is at the *chef-lieu* in any one or in any number of the New Districts constituted by the said Act, a proper Court House and Gaol for all the purposes of the administration of Justice, he may issue a Proclamation appointing a day on which the remaining sections of the said Act not then in force in such New District or Districts shall come into force therein, and also a Proclamation naming the day on which the said Act shall take full effect in Criminal matters in such New District or Districts, and appointing the times at which the Terms of the Court of Queen's Bench are to be held in such New District or Districts respectively, and declaring the said New District or Districts to be established for all purposes of the administration of Justice in Criminal matters; and any such Proclamation shall have the same effect, as regards the District or Districts mentioned therein, as a Proclamation to the like effect issued under the fourth section of the said Act with regard to all the New Districts would have had with regard to them under the said section, although there may be still some New District or Districts in which certain sections of the said Act are not then in force; And in case any Proclamation or Proclamations is or are issued under this section, the remaining New Districts not included in any such Proclamation, shall continue, for all purposes of the administration of Justice in Criminal matters, to form part respectively of the Old Districts of which they now form part for such purposes, until they are themselves established for such purposes by Proclamations issued under this section and the said Act: But nothing in this section shall make it necessary that any such Proclamation should issue at any time with respect to any New District or Districts, if the Governor should deem it advisable to delay the issue thereof in any case, either to a later day, or until the said Act can be brought fully into force in Criminal matters in all the New Districts.

Provi. o.

LXVI. The provisions of this Act and those of the several Acts herein referred to upon similar subjects, shall be construed with reference to each other and as parts of the same law; and the one hundred and thirteenth section of the said Lower Canada Judicature Act of 1849, (chapter 38), and all other provisions for the interpretation of that Act, and of the said Lower Canada Judicature Act of 1857, shall extend to the interpretation of this Act;—The express repeal of particular provisions of former Acts shall not be construed as continuing in force any other provision of the same or of any other Act inconsistent with this Act, but any such inconsistent provisions shall be held to be repealed: The expression “The Lower Canada Judicature Act of 1857,” when used in this Act shall mean the Act of the Parliament of Canada passed in the twentieth year of Her Majesty’s Reign, and intituled, *An Act to amend the Judicature Acts of Lower Canada.*

Act to be construed as one Act with 20 V. c. 44: and certain rules of Interpretation to apply to it.

Short title of Act 20 V. c. 44.

SCHEDULE A.

Affidavit of the plaintiff (or one of the plaintiffs) under section of this Act.

Lower Canada, District (or Circuit) of } In the Superior (or Circuit) Court.

A. B. Plaintiff, vs. C. D. Defendant.

A. B. of , the plaintiff (or one of the plaintiffs,) in this cause, being duly sworn doth depose and say, that the sum of , being the amount demanded of the defendant in this cause, is justly due by him to the plaintiff (or plaintiffs) therein for the causes in his (or their) *demande* mentioned: and the said deponent hath signed, or (hath declared himself unable to sign being thereunto duly required).

Signature, A. B.

Sworn before me, at , this day of 185

Signature of the Judge, Prothonotary, Clerk or Commissioner.

SCHEDULE B.

Affidavit of a person other than a plaintiff under section of this Act.

Lower Canada, District (or Circuit) of } In the Superior (or Circuit) Court.

A. B. Plaintiff, vs C. D., Defendant.

E. F. of , being duly sworn doth depose and say, that to his personal knowlege, the sum of being

the whole (or part as the case may be) of the amount demanded of the defendant in this cause, is justly due by him to the plaintiff (or plaintiffs) for the causes in his (or their) demande mentioned : and the said deponent hath signed, or (hath declared himself unable to sign, being thereunto duly required).

Signature, A. B.

Sworn before me, at _____, this _____ day of
185

Signature of the Judge, Prothonotary, Clerk or Commissioner.

SCHEDULE C.

*Affidavit of an Opposant or of some other person under
Section _____ of this Act.*

Lower Canada, } In the Superior (or Circuit
District (or Circuit) of } Court.

A. B., Plaintiff, vs. C. D., Defendant,
and
G. H., Opposant.

A. B. of _____, the opposant, (or one of the opposants in this cause, or other person as the case may be) being duly sworn doth depose and say, that the facts articulated and set forth in the annexed opposition, and each and every of them, is and are true ; and that the said opposition is not made with any intent unjustly to retard or delay the execution of the judgment recorded in this cause, but that the same is made in good faith for the sole purpose of obtaining justice, and the said deponent hath signed (or hath declared himself unable to sign, being thereunto duly required).

Signature, A. B.

Sworn before me, at _____, this _____ day of
185

Signature of the Judge, Prothonotary, Clerk or Commissioner.

SCHEDULE D.

AFFIDAVIT OF SERVICE UNDER SECTION _____ OF THIS ACT,
TO BE INDORSED ON THE WRIT OF SUMMONS.

A. B., of _____, being duly sworn, doth depose and say, that he is a Bailiff entitled to serve process of the County Court of the County of _____, in Upper Canada, and that he served the within Writ of Summons on C. D., the

Defendant (*or as the case may be*) therein named, at _____,
 in the said County, by delivering to *him* personally a true copy
 of the said Writ (*or as the case may be*) by leaving a true copy
 thereof for the said C. D. with a grown up person of *his* family
 at *his* domicile in the said County: and Deponent hath signed.

A. B.

Sworn before me, at _____, }
 this _____ day of _____, 18 _____, }

(*Signature of the Commissioner.*)